FINANCIAL SERVICES BOARD ACT 97 OF 1990

(Afrikaans text signed by the State President)

[Assented To: 28 June 1990]
[Commencement Date: 1 October 1990 – unless otherwise indicated]
[Proc. 175 / GG 12757 / 19900928]
[Proc. 29 / GG 13094 / 19910328]

as amended by:

Financial Services Board Amendment Act 41 of 1992
Financial Services Board Second Amendment Act 84 of 1992
Financial Institutions Second Amendment Act 104 of 1993
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996
Financial Institutions Amendment Act 22 of 1997
Financial Services Board Amendment Act 12 of 2000
Financial Advisory and Intermediary Services Act 37 of 2002
Collective Investment Schemes Control Act 45 of 2002
Prevention and Combating of Corrupt Activities Act 12 of 2004
Securities Services Act 36 of 2004
Financial Services Laws General Amendment Act 22 of 2008
[with effect from 1 November 2008 – GN 1170 / GG 31561 / 20081031]
[with effect from 1 January 2009 – GN 1170 / GG 31561 / 20081031]
Credit Rating Services Act 24 of 2012
[with effect from 15 April 2013 - GN 271 / GG 36337 / 20130412]

ACT

To provide for the establishment of a board to supervise compliance with laws regulating financial institutions and the provision of financial services; and for matters connected therewith.
[Long title substituted by s. 22 of Act 12/2000]

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(Section 1: Decided cases)

1. Definitions

In this Act, unless the context otherwise indicates –

"appeal board" means the appeal board established by section 26A;
[Definition of "appeal board" inserted by s. 19 of Act 22/2008 w.e.f. 28 February 2009]

"board" means the Financial Services Board established by section 2;

"board of appeal"……..
[Definition of "board of appeal" deleted by s. 19 of Act 22/2008 w.e.f. 28 February 2009]

"chief actuary" means the person appointed as such in terms of section 13;

"decision-maker" means-

(a) the executive officer; or

(b) any other person who has made a decision under a power conferred or a duty imposed on that person by or under any law and which law grants a right of appeal to the appeal board to any person aggrieved by a decision of that person;
[Definition of "decision-maker" inserted by Act 22/2008 w.e.f. 28 February 2009]

"deputy executive officer" means a person appointed as such in terms of section 13;
[Definition of "deputy executive officer" substituted by s. 1 of Act 41/92]

"executive officer" means the person appointed as such in terms of section 13;

"financial institution" means –

Editor's note: This definition of "financial institution" has been amended a number of times. The footnote in the definition of "financial institution" in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 refers to this definition in the Financial Services Board Act, 1990. However, the definition in the footnote of the Financial Institutions (Protection of Funds) Act, 2001 has never been amended.

(a)

(i) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the investments of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;

(ii) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;

(iii) a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002, a manager, trustee, custodian or nominee company registered or approved in terms of that Act, and an authorised agent of such a manager;
[Subpara. (iii) substituted by s. 117 of Act 45/2002 and s. 19 of Act 22/2008]

(iv) …….
[Subpara. (iv) deleted by s. 19 of Act 22/2008]

(v) any 'exchange', 'authorised user', 'stock -broker', 'settling party', 'clearing house', 'central securities depository', 'participant' or 'nominee' as defined in section 1 of the Securities Services Act, 2004;
[Subpara. (v) substituted by s. 117 of Act 36/2004]

(vi) …….
[Subpara. (vi) deleted by s. 117 of Act 36/2004]

(vii) any 'long-term insurer' as defined in section 1(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and any 'short-term insurer' as defined in section 1(1) of the Short-term Insurance Act 1998 (Act No. 53 of 1998);
[Subpara. (vii) substituted by s. 19 of Act 22/2008]

(viii) any 'independent intermediary' or representative as defined in-

(aa) section 1(1) of the Short-term Insurance Act, 1998;

(bb) regulation 3.1 of the Regulations under the Long-term Insurance Act, 1998; or
[Subpara. (viii) substituted by s. 19 of Act 22/2008]

(ix) any 'Lloyd's underwriter' as defined in section 1(1) of the Short-term Insurance Act, 1998, and referred to in section 56 of that Act;
[Subpara. (ix) substituted by s. 19 of Act 22/2008]

(x) any person rendering or who is to render services contemplated in section 23A(1) of the Insurance Act, 1943;

(xi) ……..
[Subpara. (xi) deleted by s. 117 of Act 36/2004]

(xii) any authorised financial services provider' or 'representative' as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2001;
[Subpara. (xii) added by s. 45 of Act 37/2002]

(xiii) any **"credit rating agency"** as defined in section 1 of the Credit Rating Services Act,

2012;

[Subpara. (xiii) added by s. 36 of Act 24/2012]

(b)

(i) a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007),which deals with trust property as a regular feature of its business; or

[Subpara. (i) substituted by s. 19 of Act 22/2008]

(ii) any other person who or which deals with trust property as a regular feature of his, her or its business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988);

[Definition of "financial institution" amended by s. 67 of Act 104/93 and substituted by s. 5 of Act 22/97]

"financial service" means any financial service rendered by a financial institution to the public or a juristic person and includes any service so rendered by any other person and corresponding to a service normally so rendered by a financial institution;

"Minister" means the Minister of Finance;

"supervision", in relation to supervision by the board over the performance of functions by the executive officer in terms of any law, means –

(a) the determination by the board that a particular function or category of functions –

(i) may not be performed by the executive officer without the prior approval of the board;

(ii) may be performed by the executive officer in accordance with guidelines issued by the board; or

(iii) may be performed by the executive officer in his or her discretion; and

(b) the periodical reporting to the board by the executive officer on the performance of his or her functions at such a time and in such a manner as may be determined by the board,

and **"supervise"** shall have a corresponding meaning;

[Definition of "supervision" inserted by s. 1 of Act 12/2000]

"this Act" includes a regulation made by the Minister under this Act;

"trust property" means 'trust property' as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984).

[Definition of "trust property" added by s. 5 of Act 22/97]

(Section 2: Decided cases)

2. Establishment of board

There is hereby established a juristic person to be known as the Financial Services Board.

3. Functions of board

The functions of the board are –

(Section 3(a): Decided cases)

(a) to supervise and enforce compliance with laws regulating financial institutions and the provision of financial services;

[Para. (a) substituted by s. 20 of Act 22/2008]

(b) to advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and

(c) to promote programmes and initiatives by financial institutions and bodies representing the financial services industry to inform and educate users and potential users of financial products and services.

[S. 3 substituted by s. 2 of Act 12/2000]

(Commencement date of s. 3: 1 April 1991)

4. Constitution of board

(1) The board shall be governed by so many members as the Minister may deem necessary and appoint, with due regard to the interests of the users of financial services and the suppliers of financial services, including financial intermediaries, and the public interest.

(2) The Minister may appoint an alternate member for every member of the board.

(3) The Minister shall appoint a member of the board as the chairperson and another member as the deputy chairperson.

(4) If the chairperson is absent or is for any reason unable to act as chairperson the deputy chairperson shall perform the functions of the chairperson.

[S. 4 substituted by s. 3 of Act 12/2000]

5. Persons disqualified from being members of board

No person shall be appointed as a member or an alternate member of the board -

(a) unless he is a citizen of, and permanently resident in, the Republic;

(b) if, in the opinion of the Minister, he or she is actually engaged in the business of a financial institution or actually engaged in the rendering of a financial service: Provided that the Minister may, in consultation with the recognised association or organisation of the relevant financial institution or financial service in which such person is actually engaged, appoint a person who would otherwise be disqualified in terms of this paragraph from being a member of the board;

[Para. (b) substituted by s. 68 of Act 104/93 and s. 4 of Act 12/2000]

(c) if he is an unrehabilitated insolvent;

(d) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option

of a fine or to a fine exceeding R100; or

[Para. (d) substituted by s. 36 of Act 12/2004]

(e) if he is of unsound mind.

6. Vacating of office by members of board

(1) A member or alternate member of the board shall vacate his office -

(a) if he becomes subject to a disqualification contemplated in section 5; or

(b) if, in the case of a member, he has been absent for more than two consecutive meetings of the board without leave of the chairman or if, in the case of an alternate member, he has been so absent during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

(2) The Minister may at any time terminate the membership of any member or alternate member of the board if in the opinion of the Minister sufficient reasons exist therefor.

[Subs. (2) substituted by s. 5 of Act 12/2000]

7. Term of office of members of board, and filling of vacancies

(1) A member or alternate member of the board shall hold office, subject to the provisions of section 6, for such period, not exceeding three years, as the Minister may determine at the time of his or her appointment: Provided that -

(a) the term of office of not more than 50 per cent of the members or alternate members of the board shall expire within any calendar year; and

(b) if at the expiry of the term of office of a member or alternate member of the board a successor has not been appointed as provided for in this subsection, such member or alternate member shall continue in office for a further period not exceeding six months until reappointed or until a successor is appointed, whichever occurs first.

[Subs. (1) substituted by s. 6 of Act 12/2000]

(2) If a member or an alternate member of the board for any reason vacates his or her office, the Minister may appoint a person to act in the place of such member or alternate member for the unexpired period of his or her term of office.

[Subs. (2) substituted by s. 21 of Act 22/2008]

(3) Any person whose term of office as a member or an alternate member of the board has expired, shall be eligible for reappointment.

8. Meetings and decisions of board

(1) The first meeting of the board shall be held at a time and place determined by the chairman, and thereafter the board shall meet at such times and places as the board may from time to time determine.

(2) The chairman may at any time convene an extraordinary meeting of the board to be held at a time and place determined by him.

(3) The quorum for a meeting of the board shall be a majority of its members.

(4) If both the chairman and the deputy chairman are absent from any meeting of the board, the members present shall from among themselves elect a person to preside at such meeting.

(5) The decision of a majority of the members present at a meeting of the board shall constitute a decision of the board, and in the event of an equality of votes on any matter the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by or act performed under the authority of the board, shall be invalid by reason only of a casual vacancy on the board or of the fact that any person not entitled to sit as a member of the board sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the board who were present at the time and entitled to sit as members.

(7) For the purposes of this section "member" shall include an alternate member present at a particular meeting of the board during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

9. Executive

(Section 9(1): Decided cases)
(1) There shall be an executive, which shall, during the periods between meetings of the board, perform the functions of the board in accordance with the policy and instructions of the board.

(Section 9(2): Decided cases)
(2) The executive shall not be competent, except in so far as the board may otherwise direct, to set aside or vary a decision of the board.

(Section 9(3): Decided cases)
(3) The board may set aside or vary any decision of the executive, except a decision in consequence of which a payment has been made or any other right has been granted to any person.

(4) The executive shall consist of the executive officer, the deputy executive officers, the chief actuary and such other officers or employees of the board as the board may from time to time appoint to the executive, on such conditions as it deems fit.
[Subs. (4) substituted by s. 2 of Act 41/92 and s. 7 of Act 12/2000]

(5) The decision of a majority of the members of the executive shall constitute a decision of the executive, and in the event of an equality of votes the executive officer shall have a casting vote in addition to his deliberative vote.
[Subs. (5) substituted by s. 2 of Act 41/92]

10. Committees of board

(1) The board may, subject to subsection (2), establish committees to assist it in the performance of its functions and it may at any time dissolve or reconstitute such committees.

(2)

(a) A committee consists of as many persons as the board considers necessary.

(b) The board may, subject to section 6B(1)(a) of the Financial Institutions (Protection of

Funds) Act, 2001 (Act No. 28 of 2001), appoint any person, who would not be disqualified under section 5 from becoming a board member, as a member of a committee.

(c) A member of a committee is appointed on the terms and conditions as the board may determine.

(3) The board must establish an enforcement committee in accordance with section 10A to be responsible for enforcing compliance with the laws regulating financial institutions and the provision of financial services.

(4) The board may terminate the membership of a member of a committee if-

(a) the performance by the member of the powers and functions assigned to the member of that committee is unsatisfactory;

(b) the member is unable to perform the functions of the committee effectively;

(c) the member has failed to comply with or breached any applicable code of conduct; or

(d) the conduct of the member negatively impacts on the integrity of the board or relevant committee.

(5) If the board does not designate a chairperson for a committee, the committee may elect a chairperson from amongst its members.

(6) The board must provide funding to its committees to enable them to perform their functions effectively.

(7) The board shall not be absolved from responsibility for the performance of any functions entrusted to any committee in terms of this section.

[S. 10 amended by s. 8 of Act 12/2000 and substituted by s. 22 of Act 22/2008]

10A. Enforcement committee

(1)

(a) The enforcement committee-

(i) must consist of sufficient persons with appropriate knowledge and experience so as to enable the committee to perform the functions entrusted to it by this Act or any other law: and

(ii) must include advocates or attorneys with at least ten years experience; and

(iii) may include a judge.

(b) The enforcement committee must be chaired by a person referred to in paragraphs (a) (ii) or (iii).

(c) The board must appoint the chairperson and as many deputy chairpersons as necessary from the members of the committee referred to in paragraph (a)(ii) or (iii).

(2)

(a) The chairperson or deputy chairperson of the committee, with the assistance of employees of the board designated by the executive officer appointed in terms of section 13, is responsible for-

(i) managing the matters referred to the enforcement committee; and

(ii) assigning these matters to a panel composed of not less than three members of the enforcement committee, who are suitably qualified to decide on a particular matter.

(b) The chairperson of a panel must be the chairperson or a deputy chairperson of the enforcement committee and has a casting vote in the event of an equality of votes.

(3) The board may at any time reconstitute the enforcement committee, but a reconstitution does not affect the composition of a panel referred to in subsection (2)(a)(ii) during the course of proceedings before that panel.

(4) If before or during a hearing in which a member is participating, it becomes apparent that the member has an interest in a matter referred to the enforcement committee, the member must immediately disclose this interest to the panel designated to hear the matter and withdraw from any further involvement in that hearing.

(5) If a member of a panel is unable to complete a hearing because of resignation, illness, death or withdrawal from a hearing, the chairperson or a deputy chairperson of the enforcement committee may-

(a) replace the member:

(b) despite subsection (2)(a)(ii), direct that the hearing of that matter must proceed before the remaining members of the panel; or

(c) terminate the proceedings before that panel and constitute another panel which may include any member of the original panel and direct that panel to conduct a new hearing.

[S. 10A inserted by s. 23 of Act 22/2008]

11. Remuneration of members of board and of committees

A member or an alternate member of the board or a member of any committee of the board who is not in the full-time employment of the State shall be paid such remuneration and allowances out of the funds of the board as the Minister may determine.

12. General powers of board

(1) For the purposes of any investigation by the board in connection with the performance of its functions the Commissions Act, 1947 (Act No. 8 of 1947), shall apply to the board and witnesses and their evidence as if the board were a commission to which the said Act applied and the executive officer were the secretary of the board.

(2) The board may call to its assistance such person or persons as it may deem necessary to assist in the performance of its functions.

(3) The board may -

(a) hire, purchase or otherwise acquire such movable or immovable property as the board may deem necessary for the performance of its functions and may let, sell or otherwise dispose of property so purchased or acquired.

(b) in order to perform its functions, enter into an agreement with any person, including the State, a university, a research institution or any other government institution, for the performance of any specific act or function or the rendering of specific services;

(c) insure itself against any loss, damage, risk or liability which it may suffer or incur;

(d) borrow money by the issue of stock or in any other manner to a maximum amount approved by the Minister;

(e) appoint officers and employees to assist it in the performance of its functions; and

(f) in general do anything which is necessary or expedient to perform its functions.

(Commencement date of s. 12: 1 April 1991)

13. Staff of board

(1) The board shall in the performance of its functions be assisted by -

(a) an executive officer, one or more deputy executive officers and a chief actuary appointed by the Minister after consultation with the board and who in that order of rank shall be the most senior officers of the board;

[Para. (a) substituted by s. 3 of Act 41/92]

(Commencement date of para. (a) (in so far as it pertains to the executive officer) : 1 October 1990)

(b) persons appointed by the board; and

(c) officers and employees placed at the disposal of the board under section 15 (3) (a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[Para. (c) substituted by s. 9 of Act 12/2000]

(2) The chief actuary shall -

(a) be a full member of the Actuarial Society of South Africa;

(b) be a South African citizen; and

(c) have had at least two years' appropriate practical actuarial experience after passing the entrance examination recognized or conducted by the Actuarial Society of South Africa.

(Section 13(3): Decided cases)

(3) The executive officer shall, subject to supervision by the board, perform the functions entrusted to him by or in terms of this or any other Act.

(4) Any person in the employment of the board may with his consent and on the conditions determined by the board be seconded, either for a specific service or for a period determined by the board, to the service of the State or the service of any other state or any council, institution or body established by or under any law or to any other body or person: Provided

that if any such person is so seconded, the terms and conditions on which he is employed by the board shall not be affected detrimentally by the secondment.

(Commencement date of s. 13: 1 April 1991)

14. Remuneration of staff of board

(1) The board may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market but with due regard to section 18 (b).

[Subs. (1) substituted by s. 1 of Act 84/92 and s. 10 of Act 12/2000]

(2) The board shall reimburse the State for any payment made by the State in terms of any contract of service applicable in respect of an officer or an employee referred to in section 13 (1) (c).

15. Acting executive officer

The Minister, after consultation with the board, may appoint a person to act as executive officer during-

(a) a vacancy in the office of the executive officer, and the person so appointed will act until an executive officer is appointed in terms of section 13; or

(b) any period when the executive officer is for any reason unable to perform the functions of the office.

[S. 15 repealed by s. 11 of Act 12/2000 and inserted by s. 24 of Act 22/2008]

15A. Levies

(1) The board may impose by notice in the *Gazette* levies on financial institutions and may, subject to the provisions of this section, at any time in similar manner amend, substitute or withdraw any such notice.

(1A)

(a) Before imposing levies referred to in subsection (1), the board must publish the proposed levies in such manner as it considers appropriate in order to bring the proposed levies to the attention of the financial institutions in question and the users of financial services rendered by these institutions, together with a statement that representations about the proposed levies may be made to the board within a specified time.

(b) Before imposing levies the board must have regard to any representations made in pursuance of the statement referred to in paragraph (a).

(c) Paragraphs (a) and (b) do not apply where the board, with the approval of the Minister, is of the opinion that the delay involved in complying with those paragraphs would be prejudicial to the functions of the board in terms of section 3 (a) and (c).

[Subs. (1A) inserted by s. 12 of Act 12/2000]

(2)

(a) The board shall in any such notice determine -

(i) the amounts of the levies or the bases or manners of calculation or determination of the amounts;

(ii) the periods in respect of which levies are imposed, the dates on which levies or the periods within which they are payable, and the manners of payment;

(iii) the rates of interest and manner of calculation of interest contemplated in subsection (3);

(iv) the manner in which applications for exemptions contemplated in subsection (4) shall be made; and

(v) the manner in which a notice contemplated in subsection (4) (b) (ii) shall be served.

(b) The board may in any such notice -

(i) impose different levies referred to in subsection (1); and

(ii) determine different amounts, bases or manners of calculation or determination, periods, dates, manners of payment, rates of interest and manners of calculation of interest, manners of making application or of service referred to in paragraph (a),

in respect of different financial institutions, different categories of financial institutions and different sub-categories of a specific type of financial institution.

(3)

(a) A financial institution which is under such notice liable for payment of a levy, and which fails to pay the levy in full within the period for payment as determined in the notice or on the date so determined, shall, at the rate and calculated in the manner determined in the notice, pay interest on the balance of the levy outstanding and on the interest so payable but unpaid.

(b) A levy imposed by any such notice, and interest owed in respect thereof, shall be deemed to be a debt due to the board and may be recovered by the board by way of judicial process in a competent court.

(4)

(a) The board may upon the application of a financial institution, and if the board is of the opinion that there are sound reasons therefor, grant exemption to the financial institution from a provision of the notice to the extent and subject to the conditions determined by the board.

(b) An exemption contemplated in paragraph (a) shall lapse when -

(i) the board on the ground of facts and information at its disposal finds that the financial institution concerned has contravened a provision of a condition imposed as contemplated in paragraph (a), or has failed to comply therewith, or has otherwise acted contrary to the exemption; and

(ii) the board has served a written notice to that effect in accordance with the provisions of a notice referred to in subsection (1) on the institution.

(c) The board shall before taking a decision contemplated in paragraph (b) (i), grant the financial institution concerned the opportunity deemed fit by the board to be heard.

[Para. (c) substituted by s. 12 of Act 12/2000]

[S. 15A inserted by s. 2 of Act 84/92]

16. Funds of board

(1) The funds of the board shall consist of -

(a) …….

[Para. (a) deleted by s. 4 of Act 41/92]

(b) money raised as fees, and interest in respect of overdue fees, in respect of services rendered by the board in the performance of its functions under this or any other Act or levies imposed by the board under section 15A on financial institutions and interest in respect of overdue levies;

[Para. (b) substituted by s. 3 of Act 84/92]

(Commencement date of para (b): 1 April 1991)

(c) money borrowed by the board subject to the provisions of section 12 (3) (d); and

(Commencement date of para (c): 1 April 1991)

(d) money accruing to the board from any other source.

(2)

(a) The board may accept money or other goods donated or bequeathed to the board, provided no condition is attached to such donation or bequest.

(b) Details of any such donation or bequest shall be specified in the annual report in question of the board.

(Commencement date of Subs. (2): 1 April 1991)

(3) The board shall utilize its funds for the defrayal of expenses incurred by the board in the performance of its functions under this Act.

(4) The board shall open an account with an institution registered as a bank or building society and shall deposit in that account all money referred to in subsections (1) and (2).

(5) The board may invest money deposited in terms of subsection (4) which is not required for immediate use, in any manner it deems fit.

(6) Any money standing to the credit of the board in the account referred to in subsection (4) at the close of any financial year of the board, as well as money which has been invested in terms of subsection (5), shall be carried forward to the next financial year as a credit in the account and of the board.

(Commencement date of Subs. (6): 1 April 1991)

17. Accounting responsibility

(1) The executive officer shall be the accounting officer of the board charged with accounting for all money received and payments made by the board.

(2) The financial year of the board shall end on 31 March in each year.

(3) The accounting officer shall -

(a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of, the board; and

(b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (2), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the board during, and its assets and liabilities at the end of, the financial year in question.

(4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor-General.

18. Consultation with Minister

The board and members of the executive contemplated in section 9 (4) -

(a) shall consult with the Minister on any matter relating to the exercise of such powers and the performance of such duties under this Act or any other law as the Minister may determine from time to time;

(b) may consult with the Minister in connection with any matter which any of them wishes to bring to the attention of the Minister.

[S. 18 substituted by s. 5 of Act 41/92 and s. 13 of Act 12/2000]

19. Rules by board

The board may make rules regarding -

(a) the manner in which meetings of the executive or any committee of the board shall be convened, the procedure at, the functions of and the quorums for such meetings and the manner in which minutes of such meetings shall be kept;

(b) the good management of the affairs of the board and the effective execution of its functions; and

(c) in general, any matter which the board may deem necessary or expedient to prescribe or to regulate in order to achieve the objects of this Act, the generality of this provision not being limited by the preceding paragraphs,

and may make any such rules known in such manner as it may deem fit.

20. Delegation of functions

(1) The Minister may delegate any power conferred upon him or her by this Act, excluding the power to make regulations and the power to appoint the members of the board, to the Director-General or any other official of the National Treasury.

[Subs. (1) substituted by s. 25 of Act 22/2008]

(2) The board may-

(a) on such conditions as the board may determine delegate to the chairperson, executive

officer or any other officer or employee of the board any power conferred upon the board by or under this Act or any other law; or

(b) authorise the chairperson, the executive officer or any other officer or employee of the board to perform any duty assigned to the board by or under this Act or any other law.

[Subs. (2) substituted by s. 25 of Act 22/2008]

(3) The executive officer may -

(a) delegate to an officer or employee of the board any power conferred upon the executive officer by or under this Act or any other law, including a power delegated to the executive officer under this Act; or

(b) authorize such officer or employee to perform any duty assigned to the executive officer by or under this Act or any other law.

(4) Any delegation under subsection (1), (2) (a) or (3) (a) does not prohibit the exercise of the power in question by the Minister, board or executive officer, as the case may be.

(5) Anything done or omitted to be done by an officer or employee of the board in the exercise of any power or the performance of any duty delegated or assigned to him under subsection (3), or by the deputy executive officers under any other law, shall be deemed to have been done or omitted by the executive officer.

[Subs. (5) substituted by s. 6 of Act 41/92]

(Commencement date of s. 20: 1 April 1991)

21. Annual report

(1)

(a) The Board shall each year submit to the Minister a report on its affairs and functions during the year ended on 31 December last preceding.

(b) The report referred to in paragraph (a) shall *inter alia* include the following in respect of the financial year referred to in section 17 ending during the year following the year on which a report is being submitted:

(i) An audited balance sheet, including any notes thereon or document annexed thereto providing information required by this Act;

(ii) an audited income statement, including any similar financial statement, where such form is appropriate, and including any notes thereon or document annexed thereto providing information required by this Act; and

(iii) an audited statement of the source and application of funds.

[Subs. (1) substituted by s. 69 of Act 104/93]

(2) The financial statements referred to in subsection (1) (b) shall -

(a) be in conformity with generally accepted accounting practice;

(b) fairly present the state of affairs and functions of the board and the results thereof; and

(c) refer to any material matters not specifically prescribed by this Act which have

affected or are likely to affect the affairs of the board.

[Subs. (2) amended by s. 69 of Act 104/93]

(3) …….

[Subs. (3) deleted by s. 14 of Act 12/2000]

(Commencement date of s. 21: 1 April 1991)

22. Preservation of secrecy

(1)

(a) No member or alternate member of the board, a member of a committee of the board, a member of the appeal board or a person referred to in section 13 may, subject to paragraph (b) and subsection (2), disclose to any other person any information obtained in the performance of functions under this Act, the Acts referred to in the definition of 'financial institution', the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) or the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(b) Despite the provisions of paragraph (a), disclosure of information may be made-

(i) in the course of performing functions under any law;

(ii) for the purposes of legal proceedings;

(iii) when required to do so by a court; or

(iv) by the board, the executive officer or deputy executive officer if in their opinion, disclosure is in the public interest.

[Subs. (1) substituted by s. 26 of Act 22/2008]

(Section 22(2): Decided cases)

(2) Notwithstanding the provisions of subsection (1), the executive officer may, unless he or she is of the opinion that any such disclosure or rendering of assistance will not be in the public interest, but subject to guidelines issued by the board -

(a) disclose to any foreign financial or investment services regulatory or supervisory authority, or any other regulatory or supervisory authority for financial or investment services in the Republic, including the Registrar of Medical Schemes and a self-regulatory body approved by the board, information relating to a particular financial or other institution or financial or other service or a particular individual who is or was involved in a particular financial institution or financial service, if the executive officer is of the opinion that such information will be of importance to the relevant regulatory or supervisory authority, Registrar of Medical Schemes or self-regulatory body; and

(b) disclose to any foreign financial or investment services regulatory or supervisory authority any information required in terms of any agreement, communiqué or memorandum of understanding concluded by the board or the executive officer with any such authority, and may render any assistance to such authority:

Provided that the board or the executive officer may impose conditions relating to the use that may be made of any information or assistance and the preservation of confidentiality in respect thereof.

[Subs. (2) added by s. 7 of Act 41/92 and substituted by s. 15 of Act 12/2000]

(Commencement date of s. 22: 1 April 1991)

23. Limitation of liability

No person shall be liable for any loss sustained by, or damage caused to any other person as a result of anything done or omitted by that person in the *bona fide*, but not grossly negligent, exercise of any power or the carrying out of any duty or the performance of any function under or in terms of this Act, the Acts referred to in the definition of "financial institution", the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), or the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).

[S. 23 substituted by s. 16 of Act 12/2000 and s. 27 of Act 22/2008]

24. Restriction on use of name or description implying connection with board

No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between such company, body, firm, business or undertaking and the board unless the person -

(a) has been authorised by the board to do so; and;

(b) complies with the conditions determined by the board.

[S. 24 substituted by s. 17 of Act 12/2000]

25. Liquidation

(1) The board shall not be placed in liquidation except by Act of Parliament.

(2) In the event of the liquidation of the board, the surplus assets of the board (if any) shall accrue to the State.

(Section 26: Decided cases)

26. Appeal against decision of decision-maker

(1) A person who is aggrieved by a decision of a decision-maker may, subject to the provisions of another law, appeal against that decision to the appeal board in accordance with the provisions of this Act or such other law.

(2) An appeal must be lodged within 30 days of the person becoming aware of, or ought to have become aware of a decision, in the manner and on payment of the fees prescribed by the Minister.

(3) An appeal lodged in terms of this section does not suspend any decision of a decision-maker pending the outcome of an appeal, unless the chairperson or a deputy chairperson of the appeal board, on application by a party, directs otherwise.

[S. 26 amended by section 8 of Act 41 of 1992, section 105 of Act 88 of 1996 and section 18 of Act 12 of 2000 and substituted by s. 28 of Act 22/2008 w.e.f. 28 February 2009]

26A. Appeal board

(1) An appeal board is hereby established.

(2) The appeal board consists of as many members, appointed by the Minister, as the Minister considers necessary, including-

(a) at least two advocates or attorneys with a minimum of 10 years experience, or judges;

and

(b) at least four persons who, in the opinion of the Minister, have experience and expert knowledge of the financial services industry.

(3) A person may not be a member of the appeal board if that person-

(a) is not a citizen of the Republic or is not ordinarily resident in the Republic;

(b) is an office-bearer of any political party;

(c) is a member of Parliament or a provincial legislature or a municipal councillor;

(d) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;

(e) is subject to an order of court holding that person to be mentally unfit or disordered;

(f) has been removed from an office of trust;

(g) has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, other than an offence committed prior to 27 April 1994 associated with political objectives, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), or any other offence involving dishonesty;

(h) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; or

(i) has been sanctioned by any other national or international statutory regulatory body for the contravention of a law relating to the regulation and supervision of financial institutions or the rendering of financial services.

(4)

(a) A member of the appeal board is appointed for a maximum period of three years.

(b) The Minister may reappoint a member of the appeal board at the expiry of that member's term of office.

(5)

(a) The appeal board must be chaired by a judge who has been discharged from active service or an advocate or attorney referred to in subsection (2)(a).

(b) The Minister appoints the chairperson and deputy chairperson of the appeal board from the members of the appeal board.

(6) The Minister

(a) must remove a member from office if that member no longer meets the criteria referred to in subsection (3);

(b) may, after affording the member a reasonable opportunity to be heard, terminate the period of office of a member of the appeal board -

(i) if the performance of the member is unsatisfactory; or

(ii) if the member is unable to perform the functions of office effectively.

(7) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board.

(8) The Minister may at any time reconstitute the appeal board, but a reconstitution does not affect the composition of a panel referred to in section 26B during the course of proceedings before that panel.

(9) Any vacancy that occurs on the appeal board must be filled by the appointment of another person by the Minister, subject to the provisions of subsections (2) and (3), and any person so appointed holds office for a period referred to in subsection (4)(a).

(10) A member of the appeal board who is not in the full-time employment of the State must be paid the remuneration and allowances as the Minister may from time to time determine.

(11) Secretarial support for the appeal board must be provided by the board.

(12) The board is responsible for the expenditure of the appeal board.

[S. 26A inserted by s. 29 of Act 22/2008 w.e.f. 28 February 2009]

26B. Panel and appeal proceedings

(1)

(a) The chairperson or deputy chairperson of the appeal board is responsible for managing the caseload of the appeal board and must assign each appeal to a panel constituted as set out in this section.

(b) Any reference in this Act or any other law to the appeal board must be construed as including a reference, where appropriate in the case of a particular appeal, to a panel to whom an appeal is or was assigned.

(2)

(a) A panel of the appeal board consists of not less than three members of the appeal board, who are suitably qualified to decide on the particular appeal.

(b) Subject to paragraph (c), the chairperson or deputy chairperson appoints a chairperson that presides over a hearing of a panel and that chairperson has a casting vote in the event of an equality of votes.

(c) The chairperson presiding over a hearing of a panel must be an advocate, attorney or judge, as the case may be, referred to in section 26A(2)(a).

(3) If before or during a hearing in which a member is participating, it becomes apparent that the member has an interest in a matter referred to (the appeal board the member must -

(a) immediately and fully disclose this interest to the other members of the panel designated to hear the matter; and

(b) withdraw from any further involvement in that hearing.

(4) If, because of resignation, illness, death or withdrawal from a hearing, a member of the panel is unable to complete a hearing, the chairperson of the appeal board may-

(a) replace that member;

(b) direct that the hearing of that matter must proceed before the remaining members of the panel; or

(c) terminate the proceedings before that panel and constitute another panel which may include any member of the original panel and direct that panel to conduct a new hearing.

(5) When the chairperson of a panel designated to hear an appeal deems it necessary that the panel be assisted by an assessor having expert knowledge of a particular relevant matter the panel may co-opt any such person to participate in the appeal as an assessor of the panel, without any right of participation in any decision.

(6) An appeal is heard on the date and at the time and place determined by the chairperson of the panel.

(7) The chairperson of a panel subject to this Act, determines the procedure for hearing an appeal.

(8) Any party to an appeal may be represented by a legal representative.

(9) The appeal board must conduct its hearings in public unless the chairperson of the panel which conducts the hearing rules that specific persons or groups of persons be excluded from the hearing for a reason that would be justifiable in civil proceedings before a High Court.

(10) An appeal is decided on the written evidence, factual information and documentation submitted to the decision-maker before the decision which is the subject of the appeal, was taken.

(11) Subject to the provisions of subsection (12) no oral or written evidence or factual information and documentation, other than what was made available to the decision-maker, may be submitted to the panel by a party to the appeal.

(12)

(a) Despite the provisions of subsection (11) the chairperson of a panel designated to hear an appeal may on application by-

(i) the appellant concerned, and on good cause shown, allow further oral and written evidence or factual information and documentation not made available to the decision-maker prior to the making of the decision against which the appeal is lodged; or

(ii) the decision-maker concerned and on good cause shown allow further oral and written evidence or factual information and documentation to be submitted and introduced into the record on appeal.

(b) If further oral and written evidence or factual information and documentation is allowed into the record on appeal under paragraph (a)(i), the matter must revert to the decision-maker concerned for reconsideration and the appeal is deferred pending the final decision of the decision-maker.

(c) If after the decision-maker concerned has made a final decision as contemplated in paragraph (b), the appellant continues with the appeal by giving written notice to the secretary the record on appeal must include the further oral evidence, properly transcribed written evidence or factual information and documentation allowed, and further reasons or documentation submitted by the decision-maker concerned.

(13)

(a) For purposes of allowing further oral evidence in terms of subsection (12)(a) the panel may-

(i) summon any person to appear before it at a time and place specified in the summons, to be questioned or to produce any document and retain for examination any document so produced; and

(ii) administer an oath to or accept an affirmation from any person called as a witness at an appeal.

(b) Any person summoned to provide oral evidence is entitled to legal representation at his, her or its own expense.

(c) Any person who has been duly summoned under paragraph (a)(i) and who, without sufficient cause-

(i) fails to appear at the time and place specified in the summons;

(ii) fails to remain in attendance until excused by the board from further attendance;

(iii) refuses to take the oath or to make an affirmation as contemplated in paragraph (a)(ii);

(iv) fails to answer fully and satisfactorily any question lawfully put to him or her; or

(v) fails to furnish information or to produce a document specified in the summons,

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding two years or to both a fine and such imprisonment.

(14)

(a) The decision of the majority of the members constituting a panel is the decision of the appeal board.

(b) The decision must be in writing and a copy must be furnished to every party to the appeal within a reasonable period.

(15) The appeal board may-

(a) confirm, set aside or vary the decision under appeal, and order that any such decision

of the appeal board be given effect to; or

(b) remit the matter for reconsideration by the decision-maker concerned in accordance with such directions, if any, as the appeal board may determine.

(16) The appeal board may make such order as to costs as it may deem suitable and fair, including an order regarding the costs referred to in section 26A(13) and the refunding of any fees referred to in section 26(2) paid by the appellant.

(17) An order by the appeal board has legal force and may be enforced as if it were issued in civil proceedings in a division of the High Court within whose area of jurisdiction the appeal hoard held its sitting.

(18) The decision of the appeal board must be made public.

(19)

(a) The Minister may make regulations not inconsistent with this Act-

(i) regarding any matter which he or she is required or permitted to prescribe in connection with (he appeal board; and

(ii) on any matter which the Minister deems necessary or expedient to prescribe to ensure that (he objectives of this Act regarding the appeal board is achieved.

(b) Different regulations may so be made in respect of different categories of appeals or applications to the appeal board, appellants or fees.

[S. 26B inserted by s. 29 of Act 22/2008 w.e.f. 28 February 2009]

27. Offences and penalties

Any person who contravenes the provisions of section 22 or 24 shall be guilty of an offence and on conviction liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[S. 27 substituted by s. 30 of Act 22/2008]

(Commencement date of s. 27: 1 April 1991)

28. Application of Act

The provisions of this Act shall not affect the operation of any bank or mutual bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993), respectively, in respect of any bank or mutual bank business carried on by such a bank or mutual bank in accordance with the provisions of the said Acts.

[S. 28 substituted by s. 19 of Act 12/2000]

(Commencement date of s. 28: 1 April 1991)

29. Amendment of laws

The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

(Commencement date of s. 29: 1 April 1991)

30. Short title and commencement

(1) This Act shall be called the Financial Services Board Act, 1990, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

Schedule

LAWS AMENDED
(Section 29)

No. and Year of Law	Short Title	Extent of Amendment
Act No. 27 of 1943	Insurance Act, 1943	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: " 'registrar' means the Registrar or the Deputy Registrar of Insurance referred to in section 2;"; (b) the substitution for section 2 of the following section: "Registrar and Deputy Registrar of Insurance 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Insurance, respectively."; and (c) the deletion of section 2C.
Act No. 24 of 1956	Pension Funds Act, 1956	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: " 'registrar' means the Registrar or the Deputy Registrar of Pension Funds mentioned in section 3;"; (b) the substitution for section 3 of the following section: "Registrar and Deputy Registrar of Pension Funds 3. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Pension Funds, respectively."; and (c) the deletion of section 3A.
Act No. 25 of 1956	Friendly Societies Act, 1956	(a) The substitution in section 1 (1) for the definition of "registrar" of the following definition: " 'registrar' means the Registrar or the Deputy Registrar of Friendly societies

		mentioned in section 4;"; (b) the substitution for section 4 of the following section: "Registrar and Deputy Registrar of Friendly Societies 4. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Friendly Societies, respectively."; and (c) the deletion of section 4A.
Act No. 73 of 1968	Usury Act, 73 of 1968	The substitution in section 1 for the definition of "Registrar" of the following definition: " 'Registrar' means the executive officer mentioned in section 1 of the Financial Services Board Act, 1990, or, as the Minister may deem fit, a person appointed by him as registrar subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984);".
Act No. 54 of 1981	Unit Trusts Control Act, 1981	(a) The substitution in section 1 for the definition of "registrar" of the following definition: " 'registrar' means the Registrar or the Deputy Registrar of Unit Trust Companies referred to in section 2;"; (b) the substitution for section 2 of the following section: "Registrar and Deputy Registrar of Unit Trust Companies 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Unit Trust Companies, respectively."; and (c) The deletion of section 2A.
Act No. 38 of 1984	Inspection of Financial Institutions Act, 1984	(a) The substitution in section 1 for the definition of "registrar" of the following definition: " 'registrar' means the executive officer mentioned in section 1 of the Financial Services Board Act, 1990, but in relation to a medical scheme registered in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967), the registrar of medical schemes appointed under section 13 of that Act;"; (b) the substitution for subsection (1) of section 2 of the following subsection: "(1) The registrar may from time to time appoint inspectors under this Act."; and

		(c) the substitution for subsection (2) of section 2 of the following subsection: "(2) When he considers it necessary, the registrar may appoint a person who is not in the full-time employment of the State or the board mentioned in section 1 of the Financial Services Board Act, 1990, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a financial institution or of any person, partnership or company not registered as a financial institution, or to undertake such an inspection.".
Act No. 1 of 1985	Stock Exchanges Control Act, 1985	(a) The substitution in section 1 for the definition of "Registrar" of the following definition: " 'Registrar' means the Registrar or the Deputy Registrar of Stock Exchanges mentioned in section 2;"; (b) the substitution for section 2 of the following section: "Registrar and Deputy Registrar of Stock Exchanges 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Stock Exchanges, respectively."; and (c) the deletion of section 2A.
Act No. 55 of 1989	Financial Markets Control Act, 1989	(a) The substitution in section 1 for the definition of "Registrar" of the following definition: " 'Registrar' means the Registrar or the Deputy Registrar of Financial Markets mentioned in section 2;"; and (b) the substitution for section 2 of the following section: "Registrar and Deputy Registrar of Financial Markets 2. The executive officer and the deputy executive officer mentioned in section 1 of the Financial Services Board Act, 1990, shall also be the Registrar and the Deputy Registrar of Financial Markets, respectively.".