

INSPECTION OF FINANCIAL INSTITUTIONS ACT NO. 80 OF 1998

[ASSENTED TO 20 OCTOBER, 1998]
[DATE OF COMMENCEMENT: 28 OCTOBER, 1998]

(English text signed by the President)

This Act has been updated to *Government Gazette* 41060 dated 22 August, 2017.

as amended by

Financial Services Board Amendment Act, [No. 12 of 2000](#)
[with effect from 12 May, 2000]

Financial Services Laws General Amendment Act, [No. 45 of 2013](#)
[with effect from 28 February, 2014, unless otherwise indicated]

proposed repeal by

Financial Sector Regulation Act, [No. 9 of 2017](#)

ACT

To provide for the inspection of the affairs of financial institutions; the inspection of the affairs of unregistered entities conducting the business of financial institutions; and for matters connected therewith.

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1. Definitions.-In this Act, unless the context indicates otherwise-

"associated institution" means-

- (a) any person, partnership, company or trust in which, or in the business of which, a financial institution or unregistered person, has or had a direct or indirect interest;
- (b) any person, partnership, company or trust which has or had a direct or indirect interest in a financial institution or unregistered person, or in the business of a financial institution or unregistered person;
- (c) a participating employer in a pension fund organisation;
- (d) any person, partnership, company or trust that controls, manages or administers the affairs or part of the affairs of a financial institution or an unregistered person;

"company" includes a close corporation referred to in the Close Corporations Act, 1984 ([Act No. 69 of 1984](#));

"document" includes books, records, securities or accounts, and any information, including information stored or recorded electronically, digitally, photographically, magnetically or optically;

"financial institution" means-

- (a) any institution referred to in the definition of "[financial institution](#)" in [section 1](#) of the Financial Services Board Act, 1990 ([Act No. 97 of 1990](#));
- (b) a medical scheme registered in terms of the Medical Schemes Act, 1967 ([Act No. 72 of 1967](#));
- (c) for the purposes of implementation of any agreement, *communiqué* or memorandum of understanding referred to in [section 3A](#), any person referred to in that section;
[Definition of "[financial institution](#)" amended by [s. 21](#) of [Act No. 12 of 2000](#).]

Wording of Sections

"inspector" means a person appointed as an inspector under [section 2](#);

"institution" means a financial institution, an associated institution and an unregistered person;

"legal representative" means an attorney as defined in [section 1](#) of the Attorneys Act, 1979 ([Act No. 53 of 1979](#)), and an advocate as defined in [section 1](#) of the Admission of Advocates Act, 1964 ([Act No. 74 of 1964](#));

"registered", in relation to a financial institution, includes provisionally registered;

"registrar" means the executive officer defined in [section 1](#) of the Financial Services Board Act, 1990 ([Act No. 97 of 1990](#)), but in relation to a medical scheme registered in terms of the Medical Schemes Act, 1998 ([Act No. 131 of 1998](#)), means the registrar of medical schemes appointed under section 18 of the Medical Schemes Act, 1998;

[Definition of "[registrar](#)" substituted by [s. 146](#) of [Act No. 45 of 2013](#).]

Wording of Sections

"unregistered person" means a person, partnership, company or trust inspected under [section 3 \(2\)](#).

2. Appointment of inspectors.-(1) The registrar may from time to time appoint inspectors under this Act.

(2) An inspector appointed under [subsection \(1\)](#) must, upon appointment, be issued with a certificate of appointment signed by the registrar.

[[Sub-s. \(2\)](#) substituted by [s. 147](#) of [Act No. 45 of 2013](#).]

Wording of Sections

(3) When an inspector exercises any power or performs any duty in terms of this Act, the inspector must be in possession of a certificate of appointment issued under [subsection \(2\)](#), and must produce the certificate of appointment at the request of any person in respect of whom such power is being exercised.

[[Sub-s. \(3\)](#) substituted by [s. 147](#) of [Act No. 45 of 2013](#).]

Wording of Sections

(4) An inspector may, with the consent of the registrar, appoint any person to assist him or her in carrying out an inspection.

3. Inspection of institutions.-(1) The registrar may at any time instruct an inspector to carry out an inspection of the affairs, or any part of the affairs, of a financial institution or associated institution.

(2) If the registrar has reason to believe that a person, partnership, company or trust which is not registered or approved as a financial institution, is carrying on the business of a financial institution, he or she may instruct an inspector to inspect the affairs, or any part of the affairs, of such a person, partnership, company or trust.

(3) Any person who holds shares in an institution as a nominee or in trust on behalf of another person, must upon the request of an inspector or the registrar, disclose the name of that other person.

(4) Before the registrar instructs an inspector to carry out an inspection he or she must take all reasonable steps to ensure that the person so instructed will be able to report objectively and impartially on the affairs of the institution.

3A. Inspections for purposes of agreements, *communiqués* and memoranda of understanding.-The registrar may at any time instruct an inspector to carry out an inspection in accordance with the provisions of [sections 4](#) and [5](#), pursuant to and for the purposes of implementation of any agreement, *communiqué* or memorandum of understanding contemplated in [section 22 \(2\) \(b\)](#) of the Financial Services Board Act, 1990 ([Act No. 97 of 1990](#)), of the affairs or part of the affairs of any person referred to in, or identified by the requesting authority acting in terms of, any such agreement, *communiqué* or memorandum.

[[S. 3A](#) inserted by [s. 21](#) of [Act No. 12 of 2000](#) and substituted by [s. 148](#) of [Act No. 45 of 2013](#).]

Wording of Sections

4. Powers of inspectors relating to institutions.-(1) In carrying out an inspection of the affairs of an

institution under [section 3](#) or [3A](#) an inspector may-

- (a) (i) summon any person who is or was a director, employee, partner, member, trustee or shareholder of the institution and whom the inspector believes is in possession of or has under his or her control, any document relating to the affairs of the institution, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine or, against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;
- (ii) administer an oath or affirmation or otherwise examine any person who is or formerly was a director, employee, partner, member or shareholder of the institution;
[[Para. \(a\)](#) substituted by [s. 149 \(b\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

- (b) at any time without prior notice enter and search any premises occupied by the institution and require the production of any document relating to the affairs of that institution;
- (c) cause to be opened any strongroom, safe or other container in which he or she reasonably suspects any document of the institution is kept;
[[Para. \(c\)](#) substituted by [s. 149 \(c\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

- (d) examine and make extracts from and copies of any document of the institution or, against the issue of a receipt, remove such document temporarily for that purpose;
- (e) against the issue of a receipt, seize any document of the institution if the inspector is of the opinion that the document contains information relevant to the inspection;
[[Para. \(e\)](#) substituted by [s. 149 \(d\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

- (f) retain any seized document for as long as it may be required for any criminal or other proceedings.
[[Sub-s. \(1\)](#) amended by [s. 149 \(a\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

(2) An institution or its authorised representative may, during normal office hours, examine, copy and make extracts from any document seized or retained from the institution under [subsection \(1\) \(a\)](#) or [\(e\)](#), under the supervision of the registrar or an inspector.

[[Sub-s. \(2\)](#) substituted by [s. 149 \(e\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

5. Powers of inspectors relating to other persons.-(1) In order to carry out an inspection of the affairs of an institution under [section 3](#) or [3A](#) an inspector may-

- (a) (i) summon any person, if the inspector has reason to believe that such person may be able to provide information relating to the affairs of the institution or whom the inspector reasonably believes is in possession of, or has under control, any document relating to the affairs of the institution, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine, or against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;
- (ii) administer an oath or affirmation or otherwise examine any person referred to in [subparagraph \(i\)](#);
[[Para. \(a\)](#) substituted by [s. 150 \(b\)](#) of [Act No. 45 of 2013](#).]

Wording of Sections

- (b) on the authority of a warrant, at any time without prior notice-
 - (i) enter any premises and require the production of any document relating to the affairs of the institution;
 - (ii) enter and search any premises for any documents relating to the affairs of the institution;
 - (iii) open any strong-room, safe or other container which he or she suspects contains any document relating to the affairs of the institution;
 - (iv) examine, make extracts from and copy any document relating to the affairs of the institution or, against the issue of a receipt, remove such document temporarily for that purpose;
 - (v) against the issue of a receipt, seize any document of the institution relating to the affairs of the institution if the inspector is of the opinion that the item contains information relevant to the inspection;

[Sub-para. (v) substituted by s. 150 (c) of Act No. 45 of 2013.]

Wording of Sections

(vi) retain any seized document for as long as it may be required for criminal or other proceedings, but an inspector may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph.

[Sub-s. (1) amended by s. 150 (a) of Act No. 45 of 2013.]

Wording of Sections

(2) (a) A warrant contemplated in [subsection \(1\) \(b\)](#) may be issued, on application of an inspector, by a judge or magistrate who has jurisdiction in the area where the premises in question is located.

(b) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the affairs of the institution being inspected, is kept at the premises concerned.

(3) Any person whose document has been removed or retained, or from whom a document has been seized, under [subsection \(1\) \(a\)](#) or [\(b\)](#) or his or her authorised representative, may examine and copy such document and make extracts therefrom under the supervision of the registrar or an inspector during normal office hours.

[Sub-s. (3) substituted by s. 150 (d) of Act No. 45 of 2013.]

Wording of Sections

6. Time and place of examinations.-(1) An inspector may determine the time and place of any examination in terms of [section 4](#) or [5](#) and may determine who may be present at such an examination.

(2) Despite the provisions of [subsection \(1\)](#), a person examined in terms of [section 4](#) or [5](#), whether under oath or otherwise, may have his or her legal representative present.

6A. Search and seizure.-(1) Any entry upon or search of any premises in terms of [section 4](#) or [5](#) must be conducted with strict regard to decency and good order, including-

- (a) a person's right to, respect for and the protection of dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to personal privacy.

(2) An inspector may be accompanied and assisted by a police officer during the entry and search of any premises under [section 4](#) of 5.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "premises under [section 4](#) of 5" should read as "premises under [section 4](#) or [5](#)".)

(3) Any entry and search under [section 4](#) or [5](#) must be executed by day, unless the execution thereof by night is justifiable and necessary.

[S. 6A inserted by s. 151 of Act No. 45 of 2013.]

7. Right to legal professional privilege.-[Section 4](#) or [5](#) shall not be construed so as to infringe upon the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney, whether in writing or verbally, so as to enable him or her to provide advice, or render other legal assistance to or defend the client in connection with an offence under any law with which he or she is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to instituting criminal proceedings is being conducted against him or her.

8. Observance of secrecy.-A person carrying out an inspection under this Act, including a person appointed in terms of [section 2 \(4\)](#), must preserve, or aid in preserving, secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties and may not communicate any such matter to any person except the registrar, or unless a court of law orders such communication, or insofar as such communication is necessary to properly carry out the inspection.

9. Disclosure to certain affected parties.-If the registrar has reason to believe that-

- (a) an offence or irregularity has been committed relating to the affairs of an institution inspected under this Act; or
- (b) an institution so inspected is in an unsound financial condition,

he or she may convey any information obtained during an inspection to-

- (i) any department or organ of State;
- (ii) any regulatory authority;
- (iii) any self-regulating association or organisation;
- (iv) any statutory board charged with supervisory or regulatory duties;
- (v) any shareholder, partner, member, director, auditor, accounting officer, liquidator, curator, executor or trustee of an institution inspected under this Act;
- (vi) any participating employer in a pension fund organisation inspected under this Act,

if the person or entity referred to in [subparagraphs \(i\) to \(vi\)](#) is affected by, or has an interest in, such information.
[S. 9 substituted by s. 152 of Act No. 45 of 2013.]

Wording of Sections

10.

[S. 10 repealed by s. 153 of Act No. 45 of 2013.]

Wording of Sections

11. Costs of inspections.-All expenses necessarily incurred by and the remuneration of any inspector appointed under [section 2](#) may be recovered from-

- (a) a person who has applied for an inspection of an institution, and the registrar may require such person to furnish such security as the registrar may deem satisfactory and sufficient to cover such expenses and remuneration; or
- (b) the institution being inspected, if the registrar so decides, after having considered the results of the inspection.
- (c) any person, when it appears after considering the outcome of an inspection, that such person was knowingly a party to the carrying on of the affairs of the institution in a manner that constituted an irregularity, non-compliance or contravention.

[Para. (c) added by s. 154 of Act No. 45 of 2013.]

12. Offences and penalties.-A person who-

- (a) when requested by an inspector to take an oath or to make an affirmation, refuses to do so;
- (b) without lawful excuse refuses or fails to answer a question put by an inspector and relating to the affairs of an institution being inspected;
- (c) wilfully gives any false information to an inspector;
- (d) without lawful excuse refuses or fails to comply with any reasonable request by an inspector in the exercise of his or her powers or the performance of his or her duties;
- (e) wilfully hinders an inspector in the exercise of his or her powers or the performance of his or her duties;
- (f) contravenes [section 8](#); or

[Para. (f) substituted by s. 155 (a) of Act No. 45 of 2013.]

Wording of Sections

- (g) has been duly summoned under [section 4 \(1\) \(a\)](#) or [5 \(1\) \(a\)](#) 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 inspector from further attendance;
 - (iii) fails to lodge or produce any document referred to in the summons with the inspector,

[Para. (g) added by s. 155 (b) of Act No. 45 of 2013.]

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

13. Repeal and amendment of laws.-(1) The Inspection of Financial Institutions Act, 1984 ([Act No. 38 of 1984](#)), is hereby repealed.

(2) Anything done or deemed to have been done under any provision of a law repealed by [subsection \(1\)](#) and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

14. Short title.-This Act is called the Inspection of Financial Institutions Act, 1998.