

FINANCIAL SERVICES BOARD ACT NO. 97 OF 1990

Repealed by s. 290 read with Sch. 4 of Act No. 9 of 2017, except s. 1 in respect of the definitions of "financial institution" and "trust property", ss. 2 to 9, 10 (1), (2), (4) to (7), 11 to 13, 15A, 16 and 17
[with effect from 1 April, 2018, unless otherwise indicated]

[ASSENTED TO 28 JUNE, 1990]

[DATE OF COMMENCEMENT OF ss. 1, 2, 4-11, 13 (1) (a) (in so far as it pertains to the executive officer), 14, 15, 16 (1) (a), (d), (3), (4) and (5), 17, 18 (1)-(2), 19 and 23-25: 1 October, 1990.;

DATE OF COMMENCEMENT OF ss. 3, 12, 13, 16 (1) (b), (c), (2) and (6), 20-22 and 26-29: 1 April, 1991;

DATE OF COMMENCEMENT OF s. 18 (3) to be proclaimed.]

(Afrikaans text signed by the State President)

This Act has been updated to *Government Gazette* 41947 dated 28 September, 2018.

as amended by

Financial Services Board Amendment Act, No. 41 of 1992

Financial Services Board Second Amendment Act, No. 84 of 1992

Financial Institutions Second Amendment Act, No. 104 of 1993

[with effect from 1 July, 1993]

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996

[with effect from 22 November, 1996]

Financial Institutions Amendment Act, No. 22 of 1997

[with effect from 12 September, 1997]

Financial Services Board Amendment Act, No. 12 of 2000

Financial Advisory and Intermediary Services Act, No. 37 of 2002

Collective Investment Schemes Control Act, No. 45 of 2002

Prevention and Combating of Corrupt Activities Act, No. 12 of 2004

[with effect from 27 April, 2004]

Securities Services Act, No. 36 of 2004

[with effect from 1 February, 2005]

Financial Services Laws General Amendment Act, No. 22 of 2008

[with effect from 1 November, 2008, unless otherwise indicated]

Credit Rating Services Act, No. 24 of 2012

[with effect from 15 April, 2013]

Financial Services Laws General Amendment Act, No. 45 of 2013

proposed amendment by

**Financial Services Laws General Amendment Act, No. 45 of 2013
(provision mentioned below shall come into operation on a date
determined in a notice published in the Gazette on a date after the date of
GN 120 of 2014.)**

Proposed amendments by

Sections to be amended

S. 61 of Act No. 45 of 2013

S. 18 (3) of Act No. 97 of 1990

proposed repeal by

Financial Sector Regulation Act, No. 9 of 2017

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 No. 12 of 2000](#).]

ARRANGEMENT OF SECTIONS

1.	Definitions
10A.	Enforcement committee
14.	Remuneration of staff of board
15.	Acting executive officer
17.
18.	Consultation
19.	Rules by board
20.	Delegation of functions
21.	Annual report
22.	Utilisation and disclosure of information and co-operation
23.	Limitation of liability
24.	Restriction on use of name or description implying connection with board
25.	Liquidation
26.	Appeal against decision of decision-maker
26A.	Appeal Board
26B.	Panel and appeal proceedings
27.	Offences and penalties
28.	Application of Act and Financial Services Board legislation in relation to other legislation
29.	Amendment of laws
30.	Short title and commencement
Schedule.	Laws amended (section 29)

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 (a) of [Act No. 22 of 2008](#) and repealed s. 290 read with Sch. 4 of [Act No. 9 of 2017](#) with effect from a date determined by the Minister by notice in the *Gazette*: 28 September, 2018 (General Notice No. 1019 in *Government Gazette* 41947 of 28 September, 2018.).]

"board" means the Financial Services Board established by [section 2](#);

"board of appeal"

[Definition of **"board of appeal"** deleted by s. 19 (b) of [Act No. 22 of 2008](#) with effect from 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 s. 19 (c) of [Act No. 22 of 2008](#) with effect from 28 February, 2008.]

"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 No. 41 of 1992](#).]

"executive officer" means the person appointed as such in terms of [section 13](#);

"Financial Services Board legislation" means-

- (a) any law referred to in [paragraph \(a\)](#) of the definition of **"financial institution"**;
- (b) the Inspection of Financial Institutions Act, 1998 ([Act No. 80 of 1998](#)); and
- (c) the Financial Institutions (Protection of Funds) Act, 2001 ([Act No. 28 of 2001](#));

[Definition of **"Financial Services Board legislation"** inserted by s. 54 (f) of [Act No. 45 of 2013](#).]

"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;

"Public Finance Management Act" means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#));
[Definition of "[Public Finance Management Act](#)" inserted by s. 54 (g) of [Act No. 45 of 2013](#).]

"regulatory authority" means-

- (a) any organ of state as defined in [section 239 of the Constitution](#) of the Republic of South Africa, 1996, responsible for the supervision or enforcement of legislation, or a similar body designated in the laws of a country other than the Republic to supervise or enforce legislation of that country; or
- (b) a market infrastructure that is responsible for the supervision of persons authorised by such infrastructure under the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)); or
- (c) an Ombud established under Financial Services Board legislation or a recognised Scheme under the Financial Services Ombud Schemes Act, 2004 ([Act No. 37 of 2004](#));
[Definition of "[regulatory authority](#)" inserted by s. 54 (h) of [Act No. 45 of 2013](#).]

"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 No. 12 of 2000](#).]

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

10. (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.

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 [paragraph \(a\) \(ii\)](#) 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 No. 22 of 2008](#).]

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 \(b\)](#).
[[Sub-s. \(1\)](#) substituted by [s. 1](#) of [Act No. 84 of 1992](#) and by [s. 10](#) of [Act No. 12 of 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 No. 12 of 2000](#) and inserted by [s. 24](#) of [Act No. 22 of 2008](#).]

17.

[[S. 17](#) repealed by [s. 60](#) of [Act No. 45 of 2013](#).]

18. Consultation.-(1) (a) [Section 18 \(2\)](#) and [\(3\)](#) of the Competition Act, 1998 ([Act No. 89 of 1998](#)), applies with the changes required by the context to a merger which requires the approval of the Minister or the relevant Registrar referred to in Financial Services Board legislation.

(b) For the purposes of [paragraph \(a\)](#), "merger" means a merger as defined in [section 12](#) of the Competition Act, 1998 ([Act No. 89 of 1998](#)).

(c) [Section 116 \(4\)](#) and [\(9\)](#) of the Companies Act, 2008 ([Act No. 71 of 2008](#)), applies with the changes required by the context to an amalgamation or a merger which requires the approval of the Minister or the relevant Registrar referred to in Financial Services Board legislation.

(d) For the purposes of [paragraph \(c\)](#), "amalgamation" or "merger" means an amalgamation or merger as defined in [section 1](#) of the Companies Act, 2008 ([Act No. 71 of 2008](#)).

(2) The board and members of the executive contemplated in [section 9 \(4\)](#)-

- (a) must consult with the Minister on any matter relating to the exercise of such of their powers and the performance of such of their duties under this Act or any other law as the Minister may determine; and
- (b) may consult with the Minister on any other matter which the board or any such member wishes to bring to the attention of the Minister.

(3) The Minister must prescribe a code of norms and standards for consultation for the board and Registrars as referred to in Financial Services Board legislation, which must-

- (a) incorporate the following principles, namely that the-
 - (i) appropriate stakeholders to be consulted must be identified;
 - (ii) the purpose and scope of consultation must be clear;
 - (iii) the timing, medium and process of consultation must be appropriate, proportional and transparent;
 - (iv) consultation material must be clear; and
 - (v) stakeholder input must be considered and feedback provided; and

- (b) stipulate requirements and standards relating to publication.

(Date of commencement of [s. 18 \(3\)](#) to be proclaimed.)

[[S. 18](#) substituted by [s. 5](#) of [Act No. 41 of 1992](#), [s. 13](#) of [Act No. 12 of 2000](#) and by [s. 61](#) of [Act No. 45 of 2013](#).]

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.

[[Sub-s. \(1\)](#) substituted by [s. 25](#) of [Act No. 22 of 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.

[[Sub-s. \(2\)](#) substituted by [s. 25](#) of [Act No. 22 of 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.

(3A) A deputy 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, excluding any legislative powers, including a power delegated to the executive officer under this Act; or
- (b) authorise such officer or employee to perform any duty assigned to the deputy executive officer under this Act or any other law.

[[Sub-s. \(3A\)](#) inserted by [s. 62 \(a\)](#) of [Act No. 45 of 2013](#).]

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

[[Sub-s. \(4\)](#) substituted by [s. 62 \(b\)](#) of [Act No. 45 of 2013](#).]

(5) Anything done or omitted to be done by an officer or employee of the board, or a deputy executive officer, in the exercise of any power or the performance of any duty delegated or assigned under [subsection \(3\)](#) or [subsection \(3A\)](#) shall be deemed to have been done or omitted by the person that delegated or assigned the power or duty.

[[Sub-s. \(5\)](#) substituted by [s. 6](#) of [Act No. 41 of 1992](#) and by [s. 62 \(b\)](#) of [Act No. 45 of 2013](#).]

(6) The board, the executive officer and the deputy executive officers must develop an appropriate system of delegation that will maximise administrative and operational efficiency and provide adequate checks and balances in the performance of their functions.

[[Sub-s. \(6\)](#) added by [s. 62 \(c\)](#) of [Act No. 45 of 2013](#).]

21. Annual report.-The annual report of the board must include a list of all directives and exemptions issued under Financial Services Board legislation during the reporting period and must indicate that the directives and exemptions are available on the official web site.

22. Utilisation and disclosure of information and co-operation.-(1) Other than in accordance with this section, no information obtained in the performance of any power or function under this Act, Financial Services Board legislation or [sections 45 and 45B](#) of the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#)), may be utilised or disclosed to any person by-

- (a) a member or alternate member, or former member or former alternate member, of the board;
- (b) a member or former member of a committee of the board;
- (c) a member or former member of the appeal board or the enforcement committee; or
- (d) a person referred to in [section 13](#) (including any employee or contractor or consultant of or person acting on behalf of the board), while appointed or after such appointment has terminated.

(2) (a) Information obtained in the performance of any power or function under the Acts referred to in [subsection \(1\)](#), including personal information as defined in the Protection of Personal Information Act, 2013, may be utilised or disclosed only-

- (i) in the course of performing functions under, or as enabled by the Acts referred to in [subsection \(1\)](#);
- (ii) for the purposes of legal proceedings or other proceedings;
- (iii) when required to do so by a court; or
- (iv) by the executive officer or deputy executive officer if in their opinion, disclosure is appropriate-
 - (aa) for purposes of warning the public against conducting business with a financial institution or other person conducting activities in contravention of Financial Services Board legislation;
 - (bb) for purposes of informing the public of actions taken against a financial institution under Financial Services Board legislation;
 - (cc) for purposes of alerting the public to activities carried out by one or more financial institutions which the executive officer or deputy executive officer believes to constitute a potential risk to consumers and in respect of which consumers should take care;
 - (dd) in the public interest;
 - (ee) to a regulatory authority, for the purposes-
 - (A) of ensuring that financial sector institutions conduct their business in a manner that is consistent with and promotes the objectives of consumer and investor protection, the fair treatment of consumers and investors, efficiency and integrity in financial markets and confidence in the financial system;
 - (B) of ensuring the safety and soundness of financial institutions, in particular the ability of financial institutions to meet the financial commitments and obligations they incur in the course of carrying out their business;
 - (C) of ensuring the stability of the financial system;
 - (D) of coordinating the supervision of financial institutions with other regulatory authorities;
 - (ff) for the purposes of disclosing to any regulatory authority in accordance with a cooperation agreement referred to in [subsection \(3\) \(a\) \(v\)](#) or otherwise, 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 that regulatory authority has a material interest in the information;
 - (gg) for the purposes of developing and implementing policies and activities to deter, prevent, detect, report and remedy fraud or other criminal activity in relation to financial services; or
 - (hh) for the purposes of anti-money laundering and combating the financing of terrorism, and the performance of supervisory functions in accordance with the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#)).

(b) Information obtained under the Financial Intelligence Centre Act, 2001, other than under [sections 45 and 45B](#) of that Act, may be utilised or disclosed in accordance with [sections 40 and 41](#) of that Act only.

(c) When information is used or disclosed for the purposes referred to in [paragraphs \(a\) and \(b\)](#), such utilisation or disclosure constitutes compliance with an obligation imposed by law for purposes of [sections 11 \(1\) \(c\), 12 \(2\) \(d\) \(ii\), 15 \(3\) \(c\) \(ii\), and 18 \(4\) \(c\) \(ii\)](#) of the Protection of Personal Information Act, 2013.

(3) (a) The executive officer or a deputy executive officer in pursuing the purposes referred to in [subsection \(2\) \(a\)](#), may,-

- (i) liaise with any regulatory authority on matters of common interest;
- (ii) participate in the proceedings of any regulatory authority;
- (iii) advise or receive advice from any regulatory authority;
- (iv) prior to taking regulatory action which the executive officer or a deputy executive officer deems material against a financial institution, inform any regulatory authorities that the executive officer or a deputy executive officer deems to have a material interest in that financial institution of the pending regulatory action, or where this is not possible, inform the relevant regulatory authorities as soon as possible after taking the regulatory action; and
- (v) negotiate and enter into bilateral or multilateral cooperation agreements, including memoranda of understanding, with regulatory authorities, including regulatory authorities in whose countries a subsidiary or holding company of a financial institution is incorporated or a branch is situated, to, amongst others-
 - (aa) co-ordinate and harmonise the reporting and other obligations of
 - (A) financial institutions; and
 - (B) issuers as defined in the Financial Markets Act, 2012 ([Act No. 19 of 2012](#));
 - (bb) provide mechanisms for the exchange of information, including, but not limited to a provision that the executive officer, deputy executive officer or regulatory authority-
 - (A) be informed of adverse assessments of qualitative aspects of the operations of a financial institution; or
 - (B) may provide information regarding significant problems that are being experienced within a financial institution;
 - (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of financial institutions or issuers as defined in the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), on an on-going basis, including, but not limited to, a provision that the executive officer or deputy executive officer may conduct an on-site visit or an inspection of a financial institution or issuers as defined in the Financial Markets Act, 2012, on the request of a regulatory authority, and that the regulatory authority may assist the registrar in such on-site examination or inspection;
 - (dd) assist any regulatory authority in [paragraph \(a\)](#) of the definition of regulatory authority in regulating and enforcing any laws of that regulatory authority that are similar to Financial Services Board legislation.

(b) An agreement referred to in [paragraph \(a\) \(v\)](#), which complies with the requirements set out in [subsection \(4\)](#), constitutes an agreement that complies with the requirements of [section 72 \(1\)](#) of the Protection of Personal Information Act, 2013.

(4) (a) Information may only be disclosed to another regulatory authority if, prior to providing information, it is established that the regulatory authority that will receive the information has appropriate safeguards in place to protect the information, which safeguards must be similar to those provided for in this section.

(b) A person referred to in [subsection \(1\)](#) may only consent to information provided to a regulatory authority being made available to third parties if that person is satisfied that the third parties have appropriate safeguards in place to protect the information received, which safeguards must be similar to those provided for in this section.

(c) Information may only be requested from another regulatory authority in performing the powers and functions under the Acts referred to in [subsection \(1\)](#).

(d) Any information requested from or provided by another regulatory authority-

- (i) must only be used for the purpose for which it was requested;
- (ii) must not be made available to third parties without the consent of the regulatory authority that provided the information;
- (iii) if lawfully compelled to make information provided by a regulatory authority available-
 - (aa) inform that regulatory authority of the event and the circumstances under which the information will be made available; and
 - (bb) where possible, use all reasonable means to oppose the disclosure of or protect the information.

(5) For the purposes of this section, information does not include-

- (a) aggregate statistical data;
- (b) information and analysis about the financial condition or business conduct practises of a financial services sector or a part thereof.

[S. 22 amended by s. 7 of Act No. 41 of 1992, by s. 15 of Act No. 12 of 2000, by s. 26 of Act No. 22 of 2008 and substituted by s. 64 of Act No. 45 of 2013.]

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* 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 No. 12 of 2000, by s. 27 of Act No. 22 of 2008 and by s. 65 of Act No. 45 of 2013.]

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 No. 12 of 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.

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 s. 8 of Act No. 41 of 1992, by s. 105 of Act No. 88 of 1996, by s. 18 of Act No. 12 of 2000 and substituted by s. 28 of Act No. 22 of 2008 with effect from 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 No. 22 of 2008](#) with effect from 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 board 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 the appeal board; and
- (ii) on any matter which the Minister deems necessary or expedient to prescribe to ensure that the 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 No. 22 of 2008 and repealed s. 290 read with Sch. 4 of Act No. 9 of 2017 with effect from a date determined by the Minister by notice in the *Gazette*: 28 September, 2018 (General Notice No. 1019 in *Government Gazette* 41947 of 28 September, 2018.).]

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 No. 22 of 2008.]

28. Application of Act and Financial Services Board legislation in relation to other legislation.-(1) 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.

(2) (a) Subject to [subsections \(1\)](#) and [\(4\)](#), the provisions of Financial Services Board legislation prevail over any provision of other legislation that conflicts with or is inconsistent with a provision of Financial Services Board legislation.

(b) Without derogating from the generality of [paragraph \(a\)](#), the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), does not apply to-

- (i) any function, act, transaction, goods or services that is or are subject to Financial Services Board legislation; or
- (ii) the board or a registrar referred to in Financial Services Board legislation.

(3) Despite any other law, but subject to [subsection \(4\)](#)-

- (a) if any conduct regulated by Financial Services Board legislation is, partially or fully, also regulated by any other legislation-
 - (i) the Financial Services Board legislation and that other legislation may not be construed as establishing concurrent regulatory jurisdictions in respect of such conduct;
 - (ii) the registrar referred to in the Financial Services Board legislation must be regarded as the lead authority regulating that conduct; and
 - (iii) any action taken by that registrar in terms of the Financial Services Board legislation overrides any conflicting action taken by the organ of state administering that other legislation;
- (b) if any other national legislation confers a power on or imposes a duty upon an organ of state in respect of a matter regulated by Financial Services Board legislation, that power or duty must be exercised or performed in consultation with the registrar referred to in the Financial Services Board legislation, and any decision taken in accordance with that power or duty must be taken with the approval of that registrar.

(4) [Subsections \(2\)](#) and [\(3\)](#) do not apply-

- (a) to the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#));
- (b) subject to [section 22](#), to legislation relating to the access to information, the protection of information or the administration of justice administered by the Minister of Justice and Constitutional Development; and
- (c) to regulators established in terms of the legislation referred to in [paragraphs \(a\)](#) and [\(b\)](#).

[S. 28 substituted by s. 19 of Act No. 12 of 2000 and by s. 66 of Act No. 45 of 2013.]

29. Amendment of laws.-The laws mentioned in [the Schedule](#) are hereby amended to the extent indicated in the third column thereof.

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](#))

<i>No. and Year of Law</i>	<i>Short Title</i>	<i>Extent of Amendment</i>
Act No. 27 of 1943	Insurance Act, 1943	(a) Amends section 1 (1) by substituting the definition of "registrar". (b) Substitutes section 2. (c) Deletes section 2C.
Act No. 24 of 1956	Pension Funds Act, 1956	(a) Amends section 1 (1) by substituting the definition of "registrar". (b) Substitutes section 3. (c) Deletes section 3A.
Act No. 25 of 1956	Friendly Societies Act, 1956	(a) Amends section 1 (1) by substituting the definition of "registrar". (see title: WELFARE ORGANISATIONS) (b) Substitutes section 4. (see title: WELFARE ORGANISATIONS) (c) Deletes section 4A. (see title: WELFARE ORGANISATIONS)
Act No. 73 of 1968	Usury Act, 73 of 1968	Amends section 1 by substituting the definition of "registrar".
Act No. 54 of 1981	Unit Trusts Control Act, 1981	(a) Amends section 1 by substituting the definition of "registrar". (b) Substitutes section 2. (c) Deletes section 2A.
Act No. 38 of 1984	Inspection of Financial Institutions Act, 1984	(a) Amends section 1 by substituting the definition of "registrar". (b) Substitutes section 2 (1). (c) Substitutes section 2 (2).
Act No. 1 of 1985	Stock Exchanges Control Act, 1985	(a) Amends section 1 by substituting the definition of "registrar". (b) Substitutes section 2. (c) Deletes section 2A.
Act No. 55 of 1989	Financial Markets Control Act, 1989	(a) Amends section 1 by substituting the definition of "registrar". (b) Substitutes section 2.