



FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, NO. 37 OF 2002

FAIS INFORMATION CIRCULAR 4 of 2014

DATE: 7 APRIL 2014

**AMENDMENTS TO THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT,
2002**

1. Purpose of circular

The purpose of this information circular is to-

- (a) serve as a reminder that as from 28 February 2014 all persons regulated (regulated persons) under the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), must comply with the amendments to that Act which amendments were effected by the Financial Services Laws General Amendment Act, No. 45 of 2013 (FSLGA Act); and
- (b) provide the motivation for the amendments.

2. Compliance with amended provisions of the FAIS Act

The FSLGA amended the FAIS Act and other laws administered by the Financial Services Board (FSB) and came into operation on 28 February 2014. From that date regulated persons must comply with all the amendments to the FAIS Act other than the amendment to section 13(1)(c) that has a delayed commencement date. Section 13(1)(c) of the FAIS Act only comes into operation on 28 May 2014.

It is important that regulated persons familiarize themselves with the amendments to the FAIS Act to ensure full compliance with such amendments. They must also ensure that they comply with the amendments to the other laws administered by the FSB where such laws are applicable to their activities.

3. Matrix of Amendments

The Matrix of Amendments (attached as **annexure A**) provides an overview of the amendments to the FAIS Act and the motivations for such amendments. Please note that the motivations listed in the Matrix are not necessarily a comprehensive list of all the motivations.

For ease of reference, the section in the first column of the Matrix refers to the corresponding section in the FSLGA (attached as **annexure B**).

4. Disclaimer

The information contained in the Matrix of Amendments is for general information purposes only. Please refer to the FSLGA for the specific amendments to the FAIS Act (see **annexure B**) for completeness. Any reliance placed on the Matrix is at your own risk. The FSB is not liable for any loss sustained or prejudice caused by a disregard of this disclaimer.


CD da Silva
Deputy Registrar: Financial Services Providers

Matrix of Amendments

Section Original section of the Financial Advisory and Intermediary Services Act

Amendment

Motivation for amendment

175	Section 1 of the Act was amended as follows:		
175(a)	Section 1 of the Act was amended as follows: "Advisory Committee" means the Advisory Committee on Financial Services Providers referred to in section 5;	by the deletion in subsection (1) of the definition of "Advisory Committee";	To delete the definition of advisory committee because of the deletion of the provisions relating to the establishment of an advisory committee.
175(b)	Insertion of a new definition	by the insertion in subsection (1) after the definition of "collective investment scheme" of the following definition: " 'Companies Act' means the Companies Act, 2008 (Act No. 71 of 2008);";	To insert a definition of "Companies Act" to refer to the new Companies Act, 2008.
175(c)	Insertion of a new definition	by the insertion in subsection (1) after the definition of "compliance officer" of the following definition: " <u>continuous professional development</u> means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act;";	To facilitate the introduction of a new section on fit and proper requirements and to provide an overarching indication as to what is meant with the term.
175(d)	"any "securities" as defined in section 1 of the Securities Services Act, 2002;"	by the substitution in subsection (1) for subparagraph (v) of paragraph (a) of the definition of "financial product" of the following subparagraph: "(v) any 'securities' as defined in section 1 of the [Securities Services Act, 2002] Financial Markets Act, 2012 (Act No. 19 of 2012);";	To correct the reference.
175(e)	"any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;"	by the substitution in subsection (1) for paragraph (h) of the definition of "financial product" of the following paragraph: "(h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;";	To remove the reference to the Advisory Committee because of the deletion of the provisions relating to the establishment of an advisory committee.
175(f)	Insertion of new definition	by the insertion in subsection (1) after the definition of "financial services provider" of the following definition: " <u>fit and proper requirements</u> means the requirements published under section 6A";	To insert a definition of "fit and proper requirements" to facilitate the introduction of a new section on fit and proper requirements and to provide an overarching indication as to what is meant with the term.
175(g)	Insertion of new definition	by the insertion in subsection (1) after the definition of "Minister" of the following definition:	To insert a definition to allow for the publication of administrative actions and

		<p>" official web site " means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board.;"</p>	<p>the notifications of official acts on the FSB web site, instead of in the Gazette. This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.</p>
175(h)	<p>"product supplier" means any person who issues a financial product by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 61 of 1973);</p>	<p>by the substitution in subsection (1) for the definition of "product supplier" of the following definition: "product supplier" means any person who issues a financial product [by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 61 of 1973)];";</p>	<p>To make the definition more general by removing the requirement that issuing of products must be authorised under a law.</p>
175(i)	<p>Insertion of new definition</p>	<p>by the insertion in subsection (1) after the definition of "product supplier" of the following definition: "publish" means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public.;"</p>	<p>To insert a definition of "publish" to clarify what constitutes publish by persons, other than the registrar, under the Act.</p>
175(j)	<p>"registrar" means the registrar or deputy registrar of financial services providers referred to in section 2;</p>	<p>by the substitution in subsection (1) for the definition of "registrar" of the following definition: "registrar" means the [registrar or deputy registrar of financial services providers] person referred to in section 2.;"</p>	<p>To clarify who is the registrar (and consequently the decision maker).</p>
175(k)	<p>"For the purposes of this Act a financial product does not include any financial product exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law."</p>	<p>by the substitution for subsection (2) of the following subsection: "(2) For the purposes of this Act a financial product does not include any financial product exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law.;"</p>	<p>To remove the reference to the Advisory Committee because of the deletion of the provisions relating to the establishment of an advisory committee.</p>
175(l)	<p>"any other advisory activity exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette;"</p>	<p>by the substitution in subsection (3)(a) for subparagraph (iv) of the following subparagraph: "(iv) any other advisory activity exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.;"</p>	<p>To remove the reference to the Advisory Committee because of the deletion of the provisions relating to the establishment of an advisory committee.</p>
175(m)	<p>"any other service exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.;"</p>	<p>by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph: "(iii) any other service exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.;"</p>	<p>To remove the reference to the Advisory Committee because of the deletion of the provisions relating to the establishment of an advisory committee.</p>
175(n)	<p>"The provisions of this Act only apply to the rendering of a</p>	<p>by the substitution for subsection (4) of the following subsection:</p>	<p>To amend subsection (4) to clarify the</p>

	<p>financial service in respect of a deposit referred to in paragraph (f) of the definition of "financial product" in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), to the extent that such application is regulated in the code of conduct contemplated in section 15(2)(b)."</p>	<p>"(4) The [provisions of this Act only apply to the] rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of 'financial product' in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), [to the extent that such application] is regulated by this Act in the code of conduct contemplated in section 15(2)(b)."</p>	<p>application of the FAIS Act to banks rendering financial services in respect of deposits exceeding 12 months.</p>
176	<p>Section 2 of the Act was amended as follows:</p>		
176	<p>Section 2: Registrar and deputy registrar of financial services providers "The executive officer and deputy executive officer of the Board are respectively the registrar and deputy registrar of financial services providers and have the powers and duties provided for by or under this Act or any other law."</p>	<p>by the substitution for section 2 of the following section: "Registrar and deputy registrar of financial services providers <u>2.</u> (1) The executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the registrar of financial services providers and has the powers and duties provided for by or under this Act and any other law. (2) The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of financial services providers. (3) The deputy registrar of financial service providers exercises the powers and duties of the registrar of financial service providers to the extent that such powers and duties have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990)."</p>	<p>To clarify who the registrar and deputy registrar are and to clarify that the deputy registrar acts under powers delegated by the registrar. The current provision that enables both the registrar and deputy registrar to exercise the powers under the Act concurrently is not desirable as it is ambiguous and may lead to conflicting actions or decisions.</p>
177	<p>Section 4: Special provisions concerning powers of registrar</p>		
177(a)	<p>"The registrar may by notice direct an authorised financial services provider or representative to furnish the registrar, within a specified period, with specified information or documents required by the registrar for the purposes of this Act."</p>	<p>by the substitution for subsection (2) of the following subsection: "(2) The registrar may by notice direct an authorised financial services provider [or], representative or compliance officer to furnish the registrar, within a specified period, with specified information or documents required by the registrar for the purposes of this Act."</p>	<p>To extend the intervention powers of the registrar to compliance officers approved by the registrar.</p>
177(b)	<p>"(i) authorise any suitable person in the employ of the Board or any other suitable person to conduct an on-site visit of the business and affairs of a provider or representative to determine compliance with this Act; or" (ii) instruct an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)."</p>	<p>by the substitution in subsection (5)(a) for subparagraphs (i) (ii) of the following subparagraphs: "(i) [authorise any suitable person in the employ of the Board or any other suitable person to] conduct an on-site visit [of the business and affairs of a provider or representative to determine compliance with this Act] under Chapter 1A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 80 of 1998); or"; (ii) Instruct an inspector to conduct an inspection under [section</p>	<p>To extend the intervention powers of the registrar to compliance officers approved by the registrar.</p>

	<p>(b) A person conducting an on-site visit in terms of paragraph (a)(i) may-</p> <p>(i) at any time during business hours-</p> <p>(aa) enter the premises of the provider or representative and the provider or representative must upon request provide any document;</p> <p>(bb) search the premises of the provider or representative for any document;</p> <p>(cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;</p> <p>(dd) seize any document against the issue of a receipt, which may furnish proof of any failure to comply with the provisions of this Act;</p> <p>"(ii) require the provider or representative to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the provider or;"</p> <p>(iii) require any person that is holding or is accountable for any document to provide information and an explanation of that information."</p>	<p>3 of] the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)."</p> <p>by the deletion in subsection 5 of paragraph (b).</p>	<p>To consolidate the powers of all the Registrars of the Acts administered by the FSB under the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 80 of 1998).</p>
<p>177(d)</p>	<p>"(6) After an on-site visit or inspection has been carried out in terms of subsection (5), the registrar may direct the provider, representative or person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or remedy any contravention of or failure to comply with any provision of this Act."</p>	<p>by the substitution for subsection (6) of the following subsection:</p> <p>"(6) After an on-site visit or inspection has been carried out in terms of subsection (5), the registrar may direct the provider, representative, <u>compliance officer</u> or person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or remedy any contravention of or failure to comply with any provision of this Act: <u>Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);</u> and</p> <p>by the deletion of subsection (7).</p>	<p>To extend the intervention powers of the registrar to compliance officers approved by the registrar and to ensure that orders that can be made by the Registrar does not fall within jurisdiction of the enforcement committee.</p>
<p>177(e)</p>	<p>"(7) The Registrar may make known-</p> <p>(a) the status and outcome of an inspection;</p> <p>(b) the details of an inspection if disclosure is in the public interest;</p> <p>(c) the outcome and details of an on-site visit if disclosure is in the public interest, by notice in the <i>Gazette</i> or by means of any other appropriate public media."</p>		<p>To consolidate the powers of all the Registrars of the Acts administered by the FSB under the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 80 of 1998).</p>
<p>178</p>	<p>Section 5 of the Act was amended as follows:</p>		

Section 5: Advisory Committee on Financial Services Providers

(1) There is an Advisory Committee on Financial Services Providers which may on its own initiative, or must at the request of the Minister or the registrar, investigate and report or advise on any matter relating to financial services providers.

(2) The Advisory Committee consists of a chairperson and other members, including a representative of the Council for Medical Schemes established by section 3 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), and persons representative of product suppliers, financial services providers and clients involved in the application of this Act, appointed by the Minister after consultation with the Board.

(3) The registrar is a member of the Advisory Committee by virtue of the office of the registrar, but without voting power on matters on which the registrar is to be advised by the Committee.

(4) A member of the Advisory Committee, excluding the registrar, holds office for the period determined by the Minister when the appointment is made.

(5) A member of the Advisory Committee, excluding the registrar, who is not in the full-time employment of the State or the Board must be paid such remuneration and allowances in respect of any expenses incurred in the performance of the functions of that committee, as may be determined by the Board.

(6) The Advisory Committee may meet or otherwise arrange for the performance of its functions, and may regulate its meetings as it thinks fit, after consultation with the Board.

(7) The registrar may submit to the Advisory Committee any information which is in the registrar's possession, and which is relevant to any matter which the Committee is investigating or considering.

(8) The Advisory Committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to financial services providers.

(9) The registrar is responsible for the administrative work incidental to the performance of the functions of the Advisory Committee.

(10) The expenditure connected with the functions of the Advisory Committee must be paid out of the funds of the

by the repeal of section 5.

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

	<p>Board, whose approval is required for all expenditure proposed to be incurred, or actually incurred, by the Committee.</p> <p>(11) For the purposes of any investigation by the Advisory Committee, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes.</p>		
179	<p>Section 6 of the Act was amended as follows:</p>		
179(a)	<p>"(a) Any body of persons which represents a group of persons falling within the ambit of this Act, may apply to the registrar for recognition by the Board by notice in the Gazette as a representative body for the purpose of performing the functions determined by the registrar, after consultation with the Advisory Committee and the Board;"</p>	<p>by the substitution in subsection (4) for paragraph (a) of the following paragraph:</p> <p>"(a) Any body of persons which represents a group of persons falling within the ambit of this Act, may apply to the registrar for recognition by the Board by notice [in the Gazette] on the official web site as a representative body for the purpose of performing the functions determined by the registrar, after consultation with the Advisory Committee and the Board;"</p>	<p>To remove the reference to the Advisory Committee and to replace references to "in the Gazette" with "on the official web site" to clarify that notification of official acts may be done via the web site of the FSB. This amendment is consistent with section 15 of the Interpretation Act.</p>
179(b)	<p>"must be made in the manner determined by the registrar by notice in the Gazette;"</p>	<p>by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:</p> <p>"(i) must be made in the manner determined by the registrar by notice [in the Gazette] on the official web site;"</p>	<p>To replace references to "in the Gazette" with "on the official web site" to clarify that notification of official acts may be done via the web site of the FSB. This amendment is consistent with section 15 of the Interpretation Act.</p>
180	<p>The Act was amended by the insertion of a new section 6A that provides as follows:</p>		
180	<p>Insertion of new section:</p> <p>Section 6A</p>	<p>"Fit and proper requirements</p> <p>6A. (1) The registrar, for purposes of this Act, by notice in the Gazette—</p> <p>(a) must—</p> <p>(i) classify financial services providers into different categories;</p> <p>(ii) determine fit and proper requirements for each category of providers; and</p> <p>(iii) in each category of providers determine fit and proper requirements for—</p> <p>(aa) key individuals of providers;</p> <p>(bb) representatives of providers;</p> <p>(cc) key individuals of representatives of providers; and</p> <p>(dd) compliance officers; and</p> <p>(b) may determine fit and proper requirements for providers, key</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>

		<p>individuals, representatives, key individuals of representatives and compliance officers in general.</p> <p>(2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to—</p> <p>(a) personal character qualities of honesty and integrity;</p> <p>(b) competence, including—</p> <p>(i) experience;</p> <p>(ii) qualifications; and</p> <p>(iii) knowledge tested through examinations determined by the registrar.</p> <p>(c) operational ability;</p> <p>(d) financial soundness; and</p> <p>(e) continuous professional development.</p> <p>(3) Different fit and proper requirements may be determined for providers, representatives and compliance officers that are natural persons and for those that are partnerships, trusts or corporate or unincorporated bodies.</p> <p>(4) The registrar may, by notice in the Gazette, amend the fit and proper requirements from time to time and a provider, key individual, representative, key individual of a representative and compliance officer must comply therewith within such period as determined by the registrar."</p>	
181	Section 7 of the Act was amended as follows:		
181	<p>Section 7: Authorisation of financial services providers</p> <p>(1) With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a financial services provider unless such person has been issued with a licence under section 8.</p>	<p>by the substitution for subsection (1) of the following subsection:</p> <p>"(1) With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a—</p> <p>(a) financial services provider, unless such person has been issued with a licence under section 8; or</p> <p>(b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13."</p>	<p>To clarify that a person may not act as a representative of an authorised financial services provider unless the person has been appointed as such.</p>
182	Section 8 of the Act was amended as follows:		
182(a)	<p>"An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar in the form and manner determined by the registrar by notice in the Gazette, and be accompanied by information to satisfy the registrar that the applicant complies with the requirements for fit and proper financial services providers or categories of providers, determined by the registrar by notice in the</p>	<p>by the substitution for subsection (1) of the following subsection:</p> <p>"(1) An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar in the form and manner determined by the registrar by notice [in the Gazette] on the official web site, and be accompanied by information to satisfy the registrar that the applicant complies with the fit and proper requirements determined for [fit and proper] financial services</p>	<p>To replace references to "in the Gazette" with "on the official web site" to clarify that notification of official acts may be done via the web site of the FSB, removal of the reference to advisory committee and to clarify the application of fit and proper requirements by the registrar in respect of authorised or</p>

	<p>Gazette, after consultation with the Advisory Committee, in respect of -</p> <p>(a) personal character qualities of honesty and integrity;</p> <p>(b) the competence and operational ability of the applicant to fulfil the responsibilities imposed by this Act; and</p> <p>(c) the applicant's financial soundness:</p> <p>Provided that where the applicant is a partnership, a trust or a corporate or unincorporated body, the applicant must, in addition, so satisfy the registrar that any key individual in respect of the applicant complies with the said requirements in respect of -</p> <p>(i) personal character qualities of honesty and integrity; and</p> <p>(ii) competence and operational ability,</p> <p>to the extent required in order for such key individual to fulfil the responsibilities imposed on the key individual by this Act.</p>	<p>providers or categories of providers, determined by the registrar by notice in the Gazette, after consultation with the Advisory Committee,] in respect of—</p> <p>(a) personal character qualities of honesty and integrity;</p> <p>(b) [the] competence [and operational ability of the applicant to fulfil the responsibilities imposed by this Act]; [and] (bA) <u>operational ability; and</u></p> <p>(c) [the applicant's] financial soundness:]</p> <p>[Provided that where the applicant is a partnership, a trust or a corporate or unincorporated body, the applicant must, in addition, so satisfy the registrar that any key individual in respect of the applicant complies with the said requirements in respect of—</p> <p>(i) personal character qualities of honesty and integrity; and</p> <p>(ii) competence and operational ability,</p> <p>to the extent required in order for such key individual to fulfil the responsibilities imposed on the key individual by this Act].;</p>	<p>approved persons.</p>
<p>182(b)</p>	<p>Insertion of new subsection</p>	<p>(b) by the insertion after subsection (1) of the following subsection:</p> <p>"(1A) If the applicant is a partnership, trust or corporate or unincorporated body the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the registrar that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, in respect of—</p> <p>(a) personal character qualities of honesty and integrity;</p> <p>(b) competence; and</p> <p>(c) operational ability,</p> <p>to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.";</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>
<p>182(c)</p>	<p>"take into consideration any other information regarding the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto."</p>	<p>by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p>"(b) take into consideration any other information regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.";</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>
<p>182(d)</p>	<p>"(a) if satisfied that an applicant complies with the requirements of this Act, grant the application; or</p> <p>(b) if not so satisfied, refuse the application.</p>	<p>by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:</p> <p>"(a) [if] grant the application if the registrar—</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>

		<p>(i) is satisfied that [an] the applicant [complies] and its key individual or key individuals comply with the requirements of this Act, [grant the application]; and</p> <p>(ii) approves the key individual or individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or</p> <p>(b) [if not so satisfied,] refuse the application if the registrar —</p> <p>(i) is not satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; or</p> <p>(ii) does not approve the key individual or key individuals of the applicant in the case of a partnership, trust or corporate or unincorporated body.”;</p>	<p>persons and the impact thereof on an applicant’s application for a licence.</p>
182(e)	<p>“(iii) the category of financial services providers in which the applicant will be classified in relation to the fit and proper requirements mentioned in subsection (1); and</p> <p>(iv) any guidelines provided to the registrar by the Advisory Committee or the Board.”</p>	<p>by substitution in subsection (4)(a) for subparagraphs (iii) and (iv) of the following subparagraphs (:</p> <p>“(iii) the category of financial services providers in which the applicant [will be] is classified [in relation to the fit and proper requirements mentioned in subsection (1)] for purposes of this Act; and</p> <p>“(iv) the [any guidelines provided to the registrar by the Advisory Committee of the Board] the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.”;</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>
182(f)	<p>“(iii) any change occurs in the personal circumstances of a key individual which affects the fit and proper requirements mentioned in subsection (1) and renders or may render such person to be no longer a fit and proper person, “</p>	<p>by the substitution in subsection (4)(b) for subparagraph (iii) of the following subparagraph:</p> <p>“(iii) any change occurs in the personal circumstances of a key individual which [affects the fit and proper requirements mentioned in subsection (1) and] renders or may render such person to be no longer [a fit and proper person] compliant with the fit and proper requirements for key individuals.”;</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>
182(g)	<p>“no such person may be permitted to take part in the conduct or management or oversight of the licensee’s business in relation to the rendering of financial services, unless such person has on application been approved by the registrar in the manner and in accordance with a procedure determined, after consultation with the Advisory Committee, by the registrar by notice in the Gazette.”</p>	<p>by the substitution in subsection (4)(b) for the words following subparagraph (iii) of the following words:</p> <p>“no such person may be permitted to take part in the conduct or management or oversight of the licensee’s business in relation to the rendering of financial services, unless such person has on application been approved by the registrar as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined, after consultation with the Advisory Committee, by the registrar by notice [in the Gazette] on the official web site.”;</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>
182(h)	<p>“Where an application is granted, the registrar must issue to the applicant-“</p>	<p>by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:</p> <p>“Where an application for authorisation is granted, the registrar must</p>	<p>To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.</p>

182(i)	(ii) pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished the licensee with reasons,	issue to the applicant—"; by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph: (ii) pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4)(b), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished the licensee with reasons,";	persons. Correction of incorrect reference.
182(j)	<p>"(a) Despite the provisions of subsections (1), (2) and (3), a person granted accreditation under section 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5).</p> <p>"(b) The registrar must be satisfied that a person to be granted authority under paragraph (a), and any key individual of such person, comply with the applicable fit and proper requirements determined under subsection (1).</p>	<p>by the substitution in subsection (7) for paragraphs (a) and (b) of the following paragraphs, respectively: "(a) Despite [the provisions] any other provision of [subsections (1), (2) and (3)] this section, a person granted accreditation under section 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5).</p> <p>(b) The registrar must be satisfied that a person to be granted authority under paragraph (a), and any key individual of such person, comply with the [applicable] fit and proper requirements [determined under subsection (1)].";</p>	To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.
182(k)		by the insertion in subsection (8) of the word "and" at the end of paragraph (b);	Correction of omission of the word "and".
182(l)	"9) A person may not in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed or has been withdrawn or, subject to section 9(2), during any time when the licensee is under provisional or final suspension contemplated in section 9."	<p>by the substitution for subsection (9) of the following subsection: "9) [A] No person may [not in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed or has been withdrawn or, subject to section 9(2), during any time when the licensee is under provisional or final suspension contemplated in section 9]— (a) in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed, has been withdrawn or provisionally withdrawn or during any time when the licensee is under provisional or final suspension; (b) perform any act which indicates that the person renders or is authorised to render financial services or is appointed as a representative to render financial services, unless the person is so authorised or appointed; and (c) perform any act, make or publish any statement, advertisement, brochure or similar communication which— (i) relates to the rendering of a financial service, the business of a provider or a financial product; and</p>	To provide for prohibitions to prohibit persons from making use of their licences where they no longer have such authorisations or from publishing documentation which is misleading or contrary to the public interest or contains an incorrect statement of fact.

		(ii) the person knows, or ought reasonably to know, is misleading, false, deceptive, contrary to the public interest or contains an incorrect statement of fact.";		Consequential amendment – correction of reference.
182(m)	"(l) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of section 8(1);"	by the substitution in subsection (10)(a) for subparagraph (i) of the following subparagraph: "(l) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of [section 8(1)] subsection (1A); and"; and		Consequential amendment – correction of reference.
182(n)	"(b) if the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of section 8(1), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9."	by the substitution in subsection (10) for paragraph (b) of the following paragraph: "(b) if the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of [section 8(1)] subsection (1A), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9."		Consequential amendment – correction of reference.
183	The Act was amended by the insertion of a new section 8A that provides as follows:			
183	Insertion of new section Section 8A	" Compliance with fit and proper requirements after authorisation 8A. An authorised financial services provider, key individual, representative of the provider and key individual of the representative must— (a) continue to comply with the fit and proper requirements; and (b) comply with the fit and proper requirements relating to continuous professional development."		To provide clarity that the fit and proper requirements must be complied with on a continued basis.
184	Section 9 of the Act was amended as follows:			
184(a)	"no longer meets the requirements contemplated in section 8,"	by the substitution in subsection (1) for paragraph (a) of the following paragraph: "(a) [no longer meets the requirements contemplated in section 8] does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;"		To provide clarity as to the grounds and terms for withdrawal or suspension of an FSP licence.
184(b)	"(c) had failed to comply with any other provision of this Act; or (d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), an amount or penalty under section 33(2), a penalty under section 41(2) and (3) or an administrative sanction under	by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs: "(c) has failed to comply with any other provision of this Act; [or] (d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), [an amount or penalty under section 33(2)], a penalty under section 41(2) and (3) or		Consequential amendment due to removal of section 33.

184(c)	<p>section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, amount or administrative sanction and any interest in respect thereof."</p> <p>Insertion of new subsection</p>	<p>an administrative sanction under section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, [amount] penalty or administrative sanction and any interest in respect thereof.;"</p> <p>by the addition to subsection (1) of the following paragraphs: <u>"(e) does not have an approved key individual;</u> <u>(f) has failed to comply with any directive issued under this Act;</u> <u>or</u> <u>(a) has failed to comply with any condition or restriction imposed under this Act.;"</u></p>	<p>To provide clarity and as to the grounds and terms for withdrawal or suspension of an FSP licence and to provide for further grounds on which a licence may be suspended/withdrawn.</p>
184(d)	<p>"Where the registrar contemplates the suspension of any licence, the registrar must also inform the licensee of—"</p>	<p>by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words: "Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of—";</p>	<p>To provide clarity as to the grounds and terms for withdrawal or suspension of an FSP licence and to allow the Registrar to attach terms to the withdrawal of a licence.</p>
184(e)	<p>"(ii) any terms to be attached to the suspension, including— (aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and (bb) terms designed to facilitate the lifting of the suspension."</p>	<p>by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph: "(ii) any terms to be attached to the suspension or withdrawal, including— (aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and (bb) terms designed to facilitate the lifting of the suspension.;"</p>	<p>To provide clarity as to the grounds and terms for withdrawal or suspension of an FSP licence and to allow the Registrar to attach terms to the withdrawal of a licence.</p>
184(f)	<p>"Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice in the Gazette and may make known such information by means of any other appropriate public media.;"</p>	<p>by the substitution in subsection (2) for paragraph (d) of the following paragraph: "(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice [in the Gazette] on the official web site and may make known such information by means of any other appropriate public media.;"</p>	<p>To amend the requirements in respect of publication.</p>
184(g)	<p>"(b) make known such provisional suspension or withdrawal by notice in the Gazette and, if necessary, by means of any other appropriate public media.;"</p>	<p>by the substitution in subsection (3) for paragraph (b) of the following paragraph: "(b) make known such provisional suspension or withdrawal by notice [in the Gazette] on the official web site and, if necessary, by means of any other appropriate public media.;"</p>	<p>To amend the requirements in respect of publication.</p>

184(h)	"(ii) render the suspension or withdrawal final.;	by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph: "(ii) render the <u>provisional suspension or withdrawal final</u> ."; and	To provide clarity that the reference is to a provisional suspension of an FSP licence.
184(i)	"(b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice appropriate public media.".	by the substitution in subsection (4) for paragraph (b) of the following paragraph: "(b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice <u>[in the Gazette] on the official web site and, if necessary, in any other appropriate public media.</u> "	To amend the requirements in respect of publication.
185	Section 11 of the Act was amended as follows:		
185	"(2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee and the reasons therefore and the registrar may make known any such lapsing of a licence by notice in the Gazette and, if necessary by means of any other appropriate public media announcement.".	by the substitution for subsection (2) of the following subsection: "(2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons therefore and the registrar may make known any such lapsing of a licence by notice <u>[in the Gazette] on the official website and, if necessary by means of any other appropriate public media announcement.</u> ".	To amend the requirements in respect of publication.
186	Section 13 of the Act was amended as follows:		
186(a)	"(i) is able to provide confirmation, certified by the provider to clients-"	by the substitution in subsection (1)(b)(i) for the words preceding item (aa) of the following words: " <u>[is able to provide] prior to rendering a financial service, provides confirmation, certified by the provider, to clients-</u> ";	To ensure that only lawfully appointed representatives are able to render financial services.
186(b)	Insert new subparagraph	by the insertion in subsection (1)(b) after subparagraph (i) of the following subparagraph: " <u>(iA) meets the fit and proper requirements; and</u> ";	To ensure that only fit and proper representatives are able to render financial services.
186(c)	"(ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar, after consultation with the Advisory Committee, by notice in the Gazette, for the reappointment of a debarred person as a representative."; and	by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: "(ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar <u>[after consultation with the Advisory Committee,] by notice in the Gazette, for the reappointment of a debarred person as a representative.</u> "; and	To remove the reference to the Advisory Committee.
186(d)	Insert new subparagraph	by the deletion in subsection (1) of the word "or" at the end of paragraph (a), the addition of the word "or" at the end of paragraph (b) and the addition of the following paragraph: " <u>(c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.</u> "; and	To clarify that a representative can only contract or render financial services in the name of the provider.
186(e)	"(a) at all times be satisfied that the provider's	by the substitution in subsection (2) for paragraphs (a) of the following	To ensure that only fit and proper

	representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with the requirements contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable; and"	paragraph: "(a) at all times be satisfied that the provider's representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with— (i) the <u>fit and proper</u> requirements [contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable]; and (ii) <u>any other requirements contemplated in subsection (1)(b)(ii).</u> "	representatives are able to render financial services.
187	Section 14 of the Act was amended as follows:		
187	"(b) The registrar may make known any such debarment and the reasons therefore by notice in the <i>Gazette</i> or by means of any other appropriate public media."	by the substitution in subsection (3) for paragraph (b) of the following paragraph: "(b) The registrar may make known any such debarment and the reasons therefore by notice [in the <i>Gazette</i>] on the <u>official website</u> or by means of any other appropriate public media."	To amend the requirements in respect of publication.
188	Section 14A of the Act was amended as follows:		
188	"(b) The registrar may make known any such debarment and the reasons therefore, or the lifting thereof, by notice [in the <i>Gazette</i>] on the <u>official website</u> or by means of any other appropriate public media."	by the substitution for subsection (4) of the following subsection: "(b) The registrar may make known any such debarment and the reasons therefore, or the lifting thereof, by notice [in the <i>Gazette</i>] on the <u>official website</u> or by means of any other appropriate public media."	To amend the requirements in respect of publication.
189	Section 15 of the Act was amended as follows:		
189	"(a) The registrar must, after consultation with the Advisory Committee and with representative bodies of the financial services industry and client and customer bodies determined by the Advisory Committee, draft a code of conduct for authorised financial services providers."	by the substitution for paragraph (a) of subsection (1) of the following paragraph: "(a) The registrar must, after consultation [with the Advisory Committee and] with representative bodies of the financial services industry and client and customer bodies [determined by the Advisory Committee], draft a code of conduct for authorised financial services providers."	To remove the reference to the Advisory Committee.
190	Section 17: Compliance officers and compliance arrangements		
190(a)	"(a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c), appoint one or more compliance officers to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar."	by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: "(a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c) and subsections (1)(b) and (2)(a)(i), appoint one or more compliance officers to oversee the provider's compliance function and to monitor compliance with this Act by the provider and	To clarify the appointment criteria and role of compliance officers.

	<p>(b) Such person may be any person with suitable qualifications and experience determined by the registrar by notice in the <i>Gazette</i>, after consultation with the Advisory Committee."</p> <p>Insertion of new paragraph</p>	<p>such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar.</p> <p>(b) Such person [may be any person with suitable qualifications and experience determined by the registrar by notice in the <i>Gazette</i>, after consultation with the Advisory Committee] <u>must comply with the fit and proper requirements.</u>;</p> <p>by the insertion in subsection (1) after paragraph (b) of the following paragraph:</p> <p>"(bA) The provisions of section 8A apply with the necessary changes to a compliance officer.";</p>	<p>To clarify the fit and proper requirements applicable to compliance officers.</p>
<p>190(b)</p>		<p>by the substitution for subsection (2) of the following subsection:</p> <p>"(2)(a) (i) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar, after consultation with the Advisory Committee.</p> <p>(ii) <u>The registrar may amend such criteria and guidelines, and an approved compliance officer must comply with the amended criteria and guidelines within such period as may be determined by the registrar.</u></p> <p>(b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer—</p> <p>(i) has contravened or failed to comply with any provision of this Act; [or]</p> <p>(ii) <u>does not meet or no longer meets the fit and proper requirements; or</u></p> <p>(iii) <u>does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a) [of this subsection].</u></p> <p>(c) The provisions of section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b) [of this subsection].</p> <p>(d) The registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice [in the <i>Gazette</i>] on the official web site or by means of any other appropriate public media."; and</p>	<p>To clarify the appointment criteria & fit and proper requirements.</p>
<p>190(d)</p>	<p>"(4) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the</p>	<p>by the substitution for subsection (4) of the following subsection:</p> <p>"(4) (a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar <u>in the manner and regarding the</u></p>	<p>To provide clarity regarding responsibilities of FSP in respect of the submission of compliance reports.</p>

	<p>registrar by notice in the <i>Gazette</i> for different categories of compliance officers, after consultation with the Advisory Committee."</p>	<p>matters, as from time to time determined by the registrar by notice [in the <i>Gazette</i>] on the official web site for different categories of compliance officers], after consultation with the Advisory Committee].</p> <p>(b) An authorized financial services provider must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph."</p>	
191	<p>Section 19 of the Act was amended as follows:</p>		
191(a)	<p>"(3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which conforms, in the form and manner determined by the registrar by notice in the <i>Gazette</i> for different categories of financial services providers."</p>	<p>by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>"(3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which conforms, in the form and manner determined by the registrar by notice [in the <i>Gazette</i>] on the official web site for different categories of financial services providers."</p>	<p>To amend the requirements in respect of publication</p>
191(b)	<p>"(b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the Registrar of Companies established under the Companies Act, 1973 (Act No. 61 of 1973), regulating the financial soundness of the provider."</p>	<p>by the substitution in subsection (7) for paragraph (b) of the following paragraph:</p> <p>"(b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the [Registrar of Companies of established under the Companies Act, 1973 (Act No. 61 of 1973)] Companies and Intellectual Property Commission, regulating the financial soundness of the provider."</p>	<p>To amend the reference to the new Companies Act, 2008.</p>
192	<p>Section 21 of the Act was amended as follows:</p>		
192(a)	<p>"The Board, after consultation with the Advisory Committee—"; and</p>	<p>by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>"The Board [after consultation with the Advisory Committee]—"; and</p>	<p>To remove the reference to the Advisory Committee.</p>
192(b)	<p>"(4) The Board may on good cause shown, after</p>	<p>by the substitution for subsection (4) of the following subsection:</p>	<p>To remove the reference to the Advisory</p>

	consultation with the Advisory Committee, remove the Ombud or deputy ombud from office on the ground of misbehaviour, incapacity or incompetence, after affording the person concerned a reasonable opportunity to be heard." .	"(4) The Board may on good cause shown [after consultation with the Advisory Committee,] remove the Ombud or deputy ombud from office on the ground of misbehaviour, incapacity or incompetence, after affording the person concerned a reasonable opportunity to be heard."	Committee.
193	Section 23 of the Act was amended as follows:		
193	(1) The Ombud is the accounting officer in respect of all funds received and all payments made in respect of expenses incurred by the Office. (2) The Ombud as accounting officer must - (a) keep a full and correct record of all funds received and payments made, and of all assets, liabilities and financial transactions of the Office; (b) as soon as is practicable, but not later than three months after the end of every financial year, prepare annual financial statements reflecting, with appropriate particulars, all funds received and payments made during, and all such assets, liabilities and transactions at the end of, the relevant financial year.	by the substitution for subsections (1) and (2) of the following subsections, respectively: "(1) [The Ombud] Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the accounting officer in respect of all funds received and all payments made in respect of expenses incurred by] authority of the Office. (2) The [Ombud as] accounting [officer] authority must[— (a) keep a full and correct record of all funds received and payments made, and of all assets, liabilities and financial transactions of the Office; (b) as soon as is practicable, but not later than three months after the end of every financial year, prepare annual financial statements reflecting, with appropriate particulars, all funds received and payments made during, and all such assets, liabilities and transactions at the end of, the relevant financial year] comply with the Public Finance Management Act."	To determine who the accounting authority for the FAIS ombud is and to clarify that the accounting authority must comply with the PFMA.
194	Section 26 of the Act was amended as follows:		
194	"The Board may, after consultation with the Advisory Committee, make rules, including different rules in respect of different categories of complaints or investigations by the Ombud, regarding—"	by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "The Board may, after consultation with the Advisory Committee,] make rules, including different rules in respect of different categories of complaints or investigations by the Ombud, regarding—"	To remove the reference to the Advisory Committee.
195	Section 33 of the Act was amended as follows:		
195	(1) The registrar may, when satisfied on the basis of available facts and information that a person has contravened or not complied with any provision of this Act, or is likely so to contravene or not to comply, apply to a Court for an order restraining such person from continuing to commit any such act or omission or from committing it in future, and requiring the person to take	by the repeal of section 33.	To remove the <i>locus standi</i> of the registrar to claim in court for damages on behalf of clients of offenders. The registrar has never used this remedy and such cases are referred to the established enforcement committee.

- such remedial steps as the Court deems necessary to rectify the consequences of the act or omission, including consequences which prejudiced or may prejudice any client.
- (2) The registrar may institute action in a Court against any person who has contravened or not complied with any provision of this Act, for payment of -
- (a) an amount determined by the Court as compensation for losses suffered by any other person in consequence of such contravention or non-compliance;
 - (b) a penalty for punitive purposes in a sum determined in the discretion of the Court;
 - (c) interest; and
 - (d) costs of suit on such scale as may be determined by the Court.
- (3) Any amount recovered by the registrar in terms of subsection (2) must be deposited by the registrar directly into a specially designated trust account established by the registrar with an appropriate financial institution, and thereupon -
- (a) the registrar is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred in bringing proceedings under subsection (2) and in administering the distributions made to persons in terms of subsection (5);
 - (b) the balance, if any (hereinafter referred to as the "distributable balance") must be distributed by the registrar to the persons referred to in subsection (5), any funds remaining, accruing to the registrar in the registrar's official capacity.
- (4) Any amount not claimed within three years from the date of the first distribution of payments, accrues to the registrar in the registrar's official capacity.
- (5) The distributable balance must be distributed on a pro rata basis -
- (a) to all persons who prove to the reasonable satisfaction of the registrar that they are persons who suffered losses as contemplated in subsection (2); and
 - (b) to the extent of the losses contemplated in

	<p>subsection (2):</p> <p>Provided that no money may be distributed to a person who has contravened or failed to comply with any provision of this Act.</p> <p>(6) A Court issuing any order under this section must order it to be published in the <i>Gazette</i> and by such other appropriate public media announcement as the Court considers appropriate.</p> <p>(7) The registrar may withdraw, abandon or compromise any civil proceedings instituted under this section, but any agreement or compromise must be made an order of Court and the amount of any payment made in terms of any such compromise must be published in the <i>Gazette</i> and by such other public media announcement as the Court considers appropriate.</p> <p>(8) Where civil proceedings have not been instituted, any agreement or settlement (if any) may, on application to the Court by the registrar after due notice to the other party, be made an order of Court and must be published in the <i>Gazette</i> and by such other public media announcement as the Court considers appropriate.</p>	
196	<p>Section 34 of the Act was amended as follows:</p>	
196(a)	<p>"(1) Subject to subsections (2) and (3), the registrar may, after consultation with the Advisory Committee, by notice in the <i>Gazette</i> declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider".</p>	<p>by the substitution for subsection (1) of the following subsection: "(1) Subject to subsections (2) and (3), the registrar may, after consultation with the Advisory Committee, by notice in the <i>Gazette</i> declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider".</p>
196(b)	<p>"(4) An authorised financial services provider concerned may not, or or after the date of the publication of a notice referred to in subsection (1), carry on the business practice concerned."</p>	<p>by the substitution for subsection (4) of the following subsection: "(4) [The] An authorised financial services provider [concerned] or representative may not, on or after the date of the publication of a notice referred to in subsection (1), carry on the business practice concerned."</p>
197	<p>Section 35 of the Act was amended as follows:</p>	
197	<p>subsection (1) the words preceding paragraph (a): "The Minister may by notice in the <i>Gazette</i>, after consultation with the registrar and the Advisory Committee, make regulations relating to—".</p>	<p>by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: "The Minister may by notice in the <i>Gazette</i>, after consultation with the registrar [and the Advisory Committee], make regulations relating to—".</p>
		<p>To remove the reference to the Advisory Committee.</p> <p>To extend the prohibition to representatives.</p> <p>To remove the reference to the Advisory Committee.</p>

198	<p>Section 36 of the Act was amended as follows:</p>	<p>To enhance the wording of the provision.</p>
198(a)	<p>"(d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another such first-mentioned representative;"</p>	<p>by the substitution for paragraph (d) of the following paragraph: "(d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another [such first-mentioned] representative,"; and</p>
198(b)	<p>"is guilty of an offence and is on conviction liable to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment."</p>	<p>by the substitution for the words following paragraph (d) of the following words: "is guilty of an offence and is on conviction liable to a fine not exceeding [R1 000 000] R10 million or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment."</p>
199	<p>Section 37 of the Act was amended as follows:</p>	<p>Consequential amendment due to removal of section 33.</p>
199	<p>Consideration of quantum of fines and penalties (1) In the consideration of the quantum of any penalty under section 36, the Court must take into consideration any award made or to be made under section 33, from the same cause. (2) In the consideration of the quantum of any award under section 33, the Court must take into account any penalty imposed or to be imposed under section 36, from the same cause.</p>	<p>by the repeal of section 37.</p>
200	<p>Section 38 of the Act was amended as follows:</p>	<p>To rectify the reference to the Companies Act, 2008.</p>
200	<p>"(b) special resolution relating to the winding-up, as contemplated in section 349 of the Companies Act, 1973 (Act No. 61 of 1973), and registered in terms of that Act, of;</p>	<p>by the substitution for paragraph (b) of the following paragraph: "(b) special resolution relating to the winding-up, as contemplated in section 349 of the Companies Act, 1973 (Act No. 61 of 1973)], and registered in terms of that Act, of;"</p>
201	<p>The Act was amended by the insertion of the following new sections after section 38:</p>	<p>Section 38A: To provide for specific requirements when a provider apply for business rescue proceedings under the Companies Act, 2008.</p>
201	<p>Insertion of new sections</p>	<p>"Business rescue <u>38A. (1)(a) Notwithstanding the provisions of the Companies Act or any other law under which a provider is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a provider, whether or not it is a company.</u> <u>(b) This section does not apply if another registrar is authorised</u></p>

in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to make an application for the business rescue of a provider.

(2) The registrar may make an application under section 131 of the Companies Act in respect of a provider if the registrar is satisfied that it is in the interests of the clients of the provider or the financial services industry.

(3) The following acts are subject to the approval of the registrar:

- (a) The resolution of a provider to begin business rescue proceedings;

- (b) the appointment of a business rescue practitioner;

- (c) the adoption of a business rescue plan; and

- (d) the exercise of a power by the business rescue practitioner under the Companies Act.

(4) In the application of Chapter 6 of the Companies Act —

- (a) any reference to the Commission shall be construed as a reference also to the registrar;

- (b) the reference to creditors shall be construed as a reference also to clients of the provider;

- (c) any reference relating to the ability of a provider to pay all debts, shall be construed as relating also to the provider's inability to comply with the financial soundness requirement under section 8(1)(c) of this Act;

- (d) there shall be considered, in addition to any question relating to the business of a provider, also the question whether any cause of action is in the interests of the clients.

(5) If an application to a Court for an order relating to the business rescue of a provider is made by an affected person other than the registrar—

- (a) the application shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the registrar, before the application is set down for hearing;

- (b) the registrar may, if satisfied that the application is not in the interests of the clients of the provider, join the application as a party and file affidavits and other documents in opposition to the application.

(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted

	<p>permission to do so by a court.</p> <p>Application by registrar for sequestration or liquidation</p> <p><u>38B. (1) Subject to subsection (3), if the registrar, after an on-site visit in terms of section 4(5) or an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), considers that the interests of the clients of a financial services provider or of members of the public so require, the registrar may apply to the Court for the sequestration or liquidation of that provider, whether or not the provider is solvent, in accordance with—</u></p> <p><u>(a) the Insolvency Act, 1936 (Act No. 24 of 1936);</u> <u>(b) the Companies Act;</u> <u>(c) the Close Corporations Act, 1984 (Act No. 69 of 1984); or</u> <u>(d) the law under which that provider is incorporated.</u></p> <p><u>(2) In deciding an application contemplated in subsection (1), the Court—</u></p> <p><u>(a) may take into account whether sequestration or liquidation of the financial services provider concerned is reasonably necessary—</u></p> <p><u>(i) in order to protect the interests of the clients of the provider; and</u> <u>(ii) for the integrity and stability of the financial sector;</u></p> <p><u>(b) may make an order concerning the manner in which claims may be proved by clients of the financial services provider concerned; and</u> <u>(c) shall appoint as trustee or liquidator a person nominated by the registrar.</u></p> <p><u>(3) This section does not apply if another registrar is authorised in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to apply to the court for the sequestration or liquidation of that provider.</u></p> <p>Directives</p> <p><u>38C. (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.</u></p> <p><u>(2) A directive issued in terms of subsection (1) may—</u> <u>(a) apply generally; or</u> <u>(b) be limited in its application to a particular person or category of persons.</u></p> <p><u>(3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.</u></p>	<p>Section 38B: To grant the registrar locus standi to apply to court for the sequestration or winding-up of a financial services provider.</p>
	<p>Section 38C: To authorise the registrar to issue directives to ensure compliance with the Act.</p>	<p>Section 38C: To authorise the registrar to issue directives to ensure compliance with the Act.</p>

		(4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure. (5) The registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”	
202	Section 40 of the Act was amended as follows:		
202	40. No provision of this Act, and no act performed under or in terms of any such provision, may be construed as affecting any right of a client, or other affected person, to seek appropriate legal redress in terms of common law or any other statutory law, and whether relating to civil or criminal matters, in respect of the rendering of any financial service by an authorised financial services provider, or representative of such a person who is not an authorised financial services provider or a representative of such a provider.	by the substitution of the following section for section 40: "Saving of rights 40. No provision of this Act, and no act performed under or in terms of any such provision, may be construed as affecting any right of a client, or other affected person, to seek appropriate legal redress in terms of <u>this Act</u> , the common law or any other statutory law, and whether relating to civil or criminal matters, in respect of the rendering of any financial service by an authorised financial services provider, or representative of such a provider, or any act of a person who is not an authorised financial services provider or a representative of such a provider.”	To rectify the omission of a reference to this Act in this section.
203	Section 41 of the Act was amended as follows:		
203	(b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice in the Gazette.	by the substitution in subsection (1) for paragraph (b) of the following paragraph: (b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice [in the Gazette] on the official web site.	To amend the requirements in respect of publication.
204	Section 45 of the Act was amended as follows:		
204	(a) The registrar may in any case not provided for in this Act, on reasonable ground, on application or on the registrar's own initiative by notice in the Gazette, exemption any person or category of persons from any provision of this Act.	by the substitution in subsection (4) for paragraph (a) of the following paragraph: (a) The registrar may in any case not provided for in this Act, on reasonable ground, on application or on the registrar's own initiative by notice [in the Gazette] on the official web site, exemption any person or category of persons from any provision of this Act.	To amend the requirements in respect of publication.
205	Section 45 of the Act was amended as follows:		
205	(iii) the liquidator or judicial manager of a company in liquidation or under judicial management, or a person acting	by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:	To rectify the reference to the Companies Act, 2008, to align the

	<p>on behalf of such liquidator or judicial manager;</p>	<p>"(iii) the liquidator of a company in liquidation, [judicial manager] <u>business rescue practitioner</u> of a company [under judicial management] <u>subject to business rescue proceedings</u>, or a person acting on behalf of such liquidator or [judicial manager] <u>business rescue practitioner</u>;"</p>	<p>terminology used in the Act with that of the Companies Act, 2008, and to align with the Companies Act, 2008 by providing for the substitution of judicial management for business rescue.</p>
--	--	--	--

170

Repeal of section 8 of Act 28 of 2001

172. Section 8 of the principal Act is hereby repealed.

Insertion of section 9A in Act 28 of 2001

173. The following section is hereby inserted in the principal Act after section 9:

“Verification of information

5

9A. Before making a determination in accordance with any law as to whether or not a person is fit and proper to hold office or continue to hold office in a financial institution, the registrar may request for the verification of information or may verify information at the registrar’s disposal by making enquiries to any state department, credit bureau or other source of relevant information concerning that person.”

Amendment of section 10 of Act 28 of 2001

174. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person who contravenes or fails to comply with any provision of [this Act] Chapter 1 is guilty of an offence and on conviction liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding [15] 10 years, or to both such fine and such imprisonment.”

Part 8**Amendment of Financial Advisory and Intermediary Services Act, 2002**

20

Amendment of section 1 of Act 37 of 2002, as amended by section 45 of Act 22 of 2008

175. Section 1 of the Financial Advisory and Intermediary Services Act, 2002 (in this Part referred to as the principal Act), is hereby amended—

- (a) by the deletion in subsection (1) of the definition of “Advisory Committee”; 25
- (b) by the insertion in subsection (1) after the definition of “collective investment scheme” of the following definition:
 “‘Companies Act’ means the Companies Act, 2008 (Act No. 71 of 2008);”
- (c) by the insertion in subsection (1) after the definition of “compliance officer” 30
 of the following definition:
 “‘continuous professional development’ means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act;” 35
- (d) by the substitution in subsection (1) for subparagraph (v) of paragraph (a) of the definition of “financial product” of the following subparagraph:
 “(v) any ‘securities’ as defined in section 1 of the [Securities Services Act, 2002] Financial Markets Act, 2012 (Act No. 19 of 2012);” 40
- (e) by the substitution in subsection (1) for paragraph (h) of the definition of “financial product” of the following paragraph:
 “(h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar, after consultation with the Advisory Committee, by notice in the Gazette to be a financial product for the purposes of this Act;” 45
- (f) by the insertion in subsection (1) after the definition of “financial services provider” of the following definition:
 “‘fit and proper requirements’ means the requirements published under section 6A;” 50

- (g) by the insertion in subsection (1) after the definition of "Office" of the following definition:
 " **'official web site'** means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board;";
- (h) by the substitution in subsection (1) for the definition of "product supplier" of the following definition:
 " **'product supplier'** means any person who issues a financial product [by virtue of an authority, approval or right granted to such person under any law, including the Companies Act, 1973 (Act No. 61 of 1973)];";
- (i) by the insertion in subsection (1) after the definition of "product supplier" of the following definition:
 " **'publish'** means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public;";
- (j) by the substitution in subsection (1) for the definition of "registrar" of the following definition:
 " **'registrar'** means the [registrar or deputy registrar of financial services providers] person referred to in section 2;";
- (k) by the substitution for subsection (2) of the following subsection:
 "(2) For the purposes of this Act a financial product does not include any financial product exempted from the provisions of this Act by the registrar[, after consultation with the Advisory Committee,] by notice in the *Gazette*, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law.";
- (l) by the substitution in subsection (3)(a) for subparagraph (iv) of the following subparagraph:
 "(iv) any other advisory activity exempted from the provisions of this Act by the registrar[, after consultation with the Advisory Committee,] by notice in the *Gazette*;
- (m) by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph:
 "(iii) any other service exempted from the provisions of this Act by the registrar[, after consultation with the Advisory Committee,] by notice in the *Gazette*."; and
- (n) by the substitution for subsection (4) of the following subsection:
 "(4) The [provisions of this Act only apply to the] rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of 'financial product' in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), [to the extent that such application] is regulated by this Act in the code of conduct contemplated in section 15(2)(b)."

Substitution of section 2 of Act 37 of 2002

50

176. The following section is hereby substituted for section 2 of the principal Act:

"Registrar and deputy registrar of financial services providers

2. (1) The executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the registrar of financial

services providers and has the powers and duties provided for by or under this Act and any other law.

(2) The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of financial services providers.

(3) The deputy registrar of financial service providers exercises the powers and duties of the registrar of financial services providers to the extent that such powers and duties have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).”

Amendment of section 4 of Act 37 of 2002, as amended by section 46 of Act 22 of 2008

177. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The registrar may by notice direct an authorised financial services provider [or], representative or compliance officer to furnish the registrar, within a specified period, with specified information or documents required by the registrar for the purposes of this Act.”;

(b) by the substitution in subsection (5)(a) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

“(i) [authorise any suitable person in the employ of the Board or any other suitable person to] conduct an on-site visit [of the business and affairs of a provider or representative to determine compliance with this Act] under Chapter 1A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); or

(ii) instruct an inspector to conduct an inspection under [section 3 of] the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).”

(c) by the deletion in subsection (5) of paragraph (b);

(d) by the substitution for subsection (6) of the following subsection:

“(6) After an on-site visit or inspection has been carried out in terms of subsection (5), the registrar may direct the provider, representative, compliance officer or person concerned to take any steps, or to refrain from performing or continuing to perform any act, to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).”; and

(e) by the deletion of subsection (7).

Repeal of section 5 of Act 37 of 2002

178. Section 5 of the principal Act is hereby repealed.

Amendment of section 6 of Act 37 of 2002

179. Section 6 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) Any body of persons which represents a group of persons falling within the ambit of this Act, may apply to the registrar for recognition by the Board by notice [in the *Gazette*] on the official web site as a representative body for the purpose of performing the functions determined by the registrar[, after consultation with the Advisory Committee and the Board].”; and

(b) the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:

“(i) must be made in the manner determined by the registrar by notice [in the *Gazette*] on the official web site.”.

Insertion of section 6A in Act 37 of 2002

180. The following section is hereby inserted in the principal Act after section 6:

“Fit and proper requirements

- 6A.** (1) The registrar, for purposes of this Act, by notice in the *Gazette*—
- (a) must—
 - (i) classify financial services providers into different categories;
 - (ii) determine fit and proper requirements for each category of providers; and
 - (iii) in each category of providers determine fit and proper requirements for—
 - (aa) key individuals of providers;
 - (bb) representatives of providers;
 - (cc) key individuals of representatives of providers; and
 - (dd) compliance officers; and
 - (b) may determine fit and proper requirements for providers, key individuals, representatives, key individuals of representatives and compliance officers in general.
- (2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to—
- (a) personal character qualities of honesty and integrity;
 - (b) competence, including—
 - (i) experience;
 - (ii) qualifications; and
 - (iii) knowledge tested through examinations determined by the registrar;
 - (c) operational ability;
 - (d) financial soundness; and
 - (e) continuous professional development.
- (3) Different fit and proper requirements may be determined for providers, representatives and compliance officers that are natural persons and for those that are partnerships, trusts or corporate or unincorporated bodies.
- (4) The registrar may, by notice in the *Gazette*, amend the fit and proper requirements from time to time, and a provider, key individual, representative, key individual of a representative and compliance officer must comply therewith within such period as determined by the registrar.”.

Amendment of section 7 of Act 37 of 2002, as amended by section 47 of Act 22 of 2008

181. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) With effect from a date determined by the Minister by notice in the *Gazette*, a person may not act or offer to act as a—
- (a) financial services provider, unless such person has been issued with a licence under section 8; or
 - (b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13.”.

Amendment of section 8 of Act 37 of 2002, as amended by section 48 of Act 22 of 2008

182. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar in the form and manner determined by

- the registrar by notice **[in the *Gazette*]** on the official web site, and be accompanied by information to satisfy the registrar that the applicant complies with the fit and proper requirements determined for [fit and proper] financial services providers or categories of providers, determined by the registrar by notice in the *Gazette*, **[after consultation with the Advisory Committee,]** in respect of— 5
- (a) personal character qualities of honesty and integrity;
 - (b) **[the] competence [and operational ability of the applicant to fulfil the responsibilities imposed by this Act]; [and]** 10
 - (bA) operational ability; and
 - (c) **[the applicant's] financial soundness**;
- Provided that where the applicant is a partnership, a trust or a corporate or unincorporated body, the applicant must, in addition, so satisfy the registrar that any key individual in respect of the applicant complies with the said requirements in respect of—** 15
- (i) personal character qualities of honesty and integrity; and
 - (ii) competence and operational ability,
- to the extent required in order for such key individual to fulfil the responsibilities imposed on the key individual by this Act.”;**
- (b) by the insertion after subsection (1) of the following subsection: 20
- “(1A) If the applicant is a partnership, trust or corporate or unincorporated body, the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the registrar that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, in respect of— 25
- (a) personal character qualities of honesty and integrity;
 - (b) competence; and
 - (c) operational ability, 30
- to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.”;
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 35
- “(b) take into consideration any other information regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.”; 40
- (d) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively: 45
- “(a) [if] grant the application if the registrar—
 - (i) is satisfied that [an] the applicant [complies] and its key individual or key individuals comply with the requirements of this Act[, grant the application]; and 45
 - (ii) approves the key individual or key individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or
 - (b) **[if not so satisfied,] refuse the application if the registrar—** 50
 - (i) is not satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; or
 - (ii) does not approve the key individual or key individuals of the applicant in the case of a partnership, trust or corporate or unincorporated body.”; 55

- (e) by the substitution in subsection 4(a) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:
- “(iii) the category of financial services providers in which the applicant **[will be] is classified [in relation to the fit and proper requirements mentioned in subsection (1)] for the purposes of this Act;** 5
and
 - (iv) **[any guidelines provided to the registrar by the Advisory Committee or the Board] the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.”;** 10
- (f) by the substitution in subsection (4)(b) for subparagraph (iii) of the following subparagraph:
- “(iii) any change occurs in the personal circumstances of a key individual which **[affects the fit and proper requirements mentioned in subsection (1) and] renders or may render such person to be no longer [a fit and proper person] compliant with the fit and proper requirements for key individuals,”;** 15
- (g) by the substitution in subsection (4)(b) for the words following subparagraph (iii) of the following words:
- “no such person may be permitted to take part in the conduct **[or]**, 20
management or oversight of the licensee’s business in relation to the rendering of financial services, unless such person has on application been approved by the registrar **as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined[, after consultation with the Advisory Committee,]** by the registrar by notice **[in the Gazette] on the official web site.”;** 25
- (h) by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:
- “Where an application **for authorisation** is granted, the registrar must issue to the applicant—” 30
- (i) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4)(b), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished the licensee with reasons,”; 35
- (j) by the substitution in subsection (7) for paragraphs (a) and (b) of the following paragraphs, respectively: 40
- “(a) Despite **[the provisions] any other provision of [subsections (1), (2) and (3)] this section**, a person granted accreditation under section 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5). 45
 - (b) The registrar must be satisfied that a person to be granted authority under paragraph (a), and any key individual of such person, comply with the **[applicable] fit and proper requirements [determined under subsection (1)].”;** 50
- (k) by the insertion in subsection (8) of the word “and” at the end of paragraph (b);
- (l) by the substitution for subsection (9) of the following subsection: 55
- “(9) **[A] No person may [not in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed or has been withdrawn or, subject to section 9(2), during any time when the licensee is under provisional or final suspension contemplated in section 9]—**
 - (a) in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed, has been withdrawn or 60

- provisionally withdrawn or during any time when the licensee is under provisional or final suspension;
- (b) perform any act which indicates that the person renders or is authorised to render financial services or is appointed as a representative to render financial services, unless the person is so authorised or appointed; and 5
- (c) perform any act, make or publish any statement, advertisement, brochure or similar communication which— 10
- (i) relates to the rendering of a financial service, the business of a provider or a financial product; and
- (ii) the person knows, or ought reasonably to know, is misleading, false, deceptive, contrary to the public interest or contains an incorrect statement of fact.”;
- (m) by the substitution in subsection (10)(a) for subparagraph (i) of the following subparagraph: 15
- “(i) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider’s business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of [section 8(1)] subsection (1A); and”; and 20
- (n) by the substitution in subsection (10) for paragraph (b) of the following paragraph: 25
- “(b) If the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of [section 8(1)] subsection (1A), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9.”.

Insertion of section 8A in Act 37 of 2002

183. The following section is hereby inserted in the principal Act after section 8:

“Compliance with fit and proper requirements after authorisation 30

8A. An authorised financial services provider, key individual, representative of the provider and key individual of the representative must—

- (a) continue to comply with the fit and proper requirements; and
- (b) comply with the fit and proper requirements relating to continuous professional development.”. 35

Amendment of section 9 of Act 37 of 2002, as substituted by section 49 of Act 22 of 2008

184. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40
- “(a) [no longer meets the requirements contemplated in section 8] does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual.”; 45
- (b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively: 50
- “(c) has failed to comply with any other provision of this Act; [or] 50
- (d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), [an amount or penalty under section 33(2),] a penalty under section 41(2) and (3) or an administrative sanction under section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), 55

- and has failed to pay the said levy, [amount] penalty or administrative sanction and any interest in respect thereof[.];”;
- (c) by the addition to subsection (1) of the following paragraphs:
“(e) does not have an approved key individual;
(f) has failed to comply with any directive issued under this Act; or
(g) has failed to comply with any condition or restriction imposed under this Act.”;
- (d) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:
“Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of—”;
- (e) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
“(ii) any terms to be attached to the suspension or withdrawal, including—
(aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to uncompleted business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and
(bb) terms designed to facilitate the lifting of the suspension.”;
- (f) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
“(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice [in the Gazette] on the official web site and may make known such information by means of any other appropriate public media.”;
- (g) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
“(b) make known such provisional suspension or withdrawal by notice [in the Gazette] on the official web site and, if necessary, by means of any other appropriate public media.”;
- (h) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
“(ii) render the provisional suspension or withdrawal final.”; and
- (i) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
“(b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice [in the Gazette] on the official web site and, if necessary, in any other appropriate public media.”

Amendment of section 11 of Act 37 of 2002, as amended by section 51 of Act 22 of 2008

185. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons therefor and the registrar may make known any such lapsing of a licence by notice [in the Gazette] on the official web site and, if necessary by means of any other appropriate public media announcement.”

Amendment of section 13 of Act 37 of 2002, as amended by section 52 of Act 22 of 2008

186. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(b)(i) for the words preceding item (aa) of the following words: 5
“[is able to provide] prior to rendering a financial service, provides confirmation, certified by the provider, to clients—”;
- (b) by the insertion in subsection (1)(b) after subparagraph (i) of the following subparagraph: 10
“(iA) meets the fit and proper requirements; and”;
- (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 15
“(ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar [**after consultation with the Advisory Committee,**] by notice in the *Gazette*, for the reappointment of a debarred person as a representative.”;
- (d) by the deletion in subsection (1) of the word “or” at the end of paragraph (a), the addition of the word “or” at the end of paragraph (b) and the addition of the following paragraph: 20
“(c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.”; and
- (e) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 25
“(a) at all times be satisfied that the provider’s representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with—
(i) the fit and proper requirements [contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable]; and 30
(ii) any other requirements contemplated in subsection (1)(b)(ii).”.

Amendment of section 14 of Act 37 of 2002, as amended by section 53 of Act 22 of 2008 35

187. Section 14 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

- “(b) The registrar may make known any such debarment and the reasons therefor by notice [**in the *Gazette***] on the official web site or by means of any other appropriate public media.”. 40

Amendment of section 14A of Act 37 of 2002, as amended by section 54 of Act 22 of 2008

188. Section 14A of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) The registrar may make known any such debarment and the reasons therefor, or the lifting thereof, by notice [**in the *Gazette***] on the official web site or by means of any other appropriate public media.”. 45

Amendment of section 15 of Act 37 of 2002, as amended by section 55 of Act 22 of 2008

189. Section 15 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 50

- “(a) The registrar must, after consultation [**with the Advisory Committee and**] with representative bodies of the financial services industry and client and customer bodies [**determined by the Advisory Committee**], draft a code of conduct for authorised financial services providers.”. 55

Amendment of section 17 of Act 37 of 2002, as amended by section 57 of Act 22 of 2008

190. Section 17 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively: 5
- “(a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c) and subsections (1)(b) and (2)(a)(i), appoint one or more compliance officers to oversee the provider’s compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar. 10
- (b) Such person [may be any person with suitable qualifications and experience determined by the registrar by notice in the *Gazette*, after consultation with the Advisory Committee] must comply with the fit and proper requirements.”; 15
- (b) by the insertion in subsection (1) after paragraph (b) of the following paragraph: 20
- “(bA) The provisions of section 8A apply with the necessary changes to a compliance officer.”;
- (c) by the substitution for subsection (2) of the following subsection: 25
- “(2) (a) (i) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar[, after consultation with the Advisory Committee]. 25
- (ii) The registrar may amend such criteria and guidelines, and an approved compliance officer must comply with the amended criteria and guidelines within such period as may be determined by the registrar. 30
- (b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer— 30
- (i) has contravened or failed to comply with any provision of this Act; [or] 30
- (ii) does not meet or no longer meets the fit and proper requirements; or 35
- (iii) does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a) [of this subsection]. 35
- (c) The provisions of section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b) [of this subsection]. 40
- (d) The registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice [in the *Gazette*] on the official web site or by means of any other appropriate public media.”; 40
- and
- (d) by the substitution for subsection (4) of the following subsection: 45
- “(4) (a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the registrar by notice [in the *Gazette*] on the official web site for different categories of compliance officers[, after consultation with the Advisory Committee]. 50
- (b) An authorised financial services provider must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph. 50

Amendment of section 19 of Act 37 of 2002, as amended by section 58 of Act 22 of 2008

191. Section 19 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 5

“The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice [in the *Gazette*] on the official web site for different categories of financial services providers—”; and 10

- (b) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 15

“(b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the [Registrar of Companies of established under the Companies Act, 1973 (Act No. 61 of 1973)] Companies and Intellectual Property Commission, regulating the financial soundness of the provider.”. 20

Amendment of section 21 of Act 37 of 2002

192. Section 21 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25

“The Board [, after consultation with the Advisory Committee]—”; and

- (b) by the substitution for subsection (4) of the following subsection:

“(4) The Board may on good cause shown [, after consultation with the Advisory Committee,] remove the Ombud or deputy ombud from office on the ground of misbehaviour, incapacity or incompetence, after affording the person concerned a reasonable opportunity to be heard.”. 30

Amendment of section 23 of Act 37 of 2002

193. Section 23 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 35

“(1) [The Ombud] Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the accounting [officer in respect of all funds received and all payments made in respect of expenses incurred by] authority of the Office. 40

(2) The [Ombud as] accounting [officer] authority must[—

- (a) keep a full and correct record of all funds received and payments made, and of all assets, liabilities and financial transactions of the Office;

- (b) as soon as is practicable, but not later than three months after the end of every financial year, prepare annual financial statements reflecting, with appropriate particulars, all funds received and payments made during, and all such assets, liabilities and transactions at the end of, the relevant financial year] comply with the Public Finance Management Act.”. 45

Amendment of section 26 of Act 37 of 2002

194. Section 26 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“The Board may, **after consultation with the Advisory Committee,** make rules, including different rules in respect of different categories of complaints or investigations by the Ombud, regarding—” 5

Repeal of section 33 of Act 37 of 2002

195. Section 33 of the principal Act is hereby repealed.

Amendment of section 34 of Act 37 of 2002, as amended by section 60 of Act 22 of 2008 10

196. Section 34 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:
“(1) Subject to subsections (2) and (3), the registrar may, **after consultation with the Advisory Committee,** by notice in the *Gazette* declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider.”; and 15
(b) by the substitution for subsection (4) of the following subsection:
“(4) **[The] An** authorised financial services provider **[concerned]** or **representative** may not, on or after the date of the publication of a notice referred to in subsection (1), carry on the business practice concerned.” 20

Amendment of section 35 of Act 37 of 2002

197. Section 35 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“The Minister may by notice in the *Gazette*, after consultation with the registrar **[and the Advisory Committee],** make regulations relating to—” 25

Amendment of section 36 of Act 37 of 2002, as amended by section 61 of Act 22 of 2008

198. Section 36 of the principal Act is hereby amended—
(a) by the substitution for paragraph (d) of the following paragraph:
“(d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another **[such first-mentioned]** representative.”; and 30 35
(b) by the substitution for the words following paragraph (d) of the following words:
“is guilty of an offence and is on conviction liable to a fine not exceeding **[R1 000 000] R10 million** or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment.” 40

Repeal of section 37 of Act 37 of 2002

199. Section 37 of the principal Act is hereby repealed.

Amendment of section 38 of Act 37 of 2002

200. Section 38 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) special resolution relating to the winding-up], as contemplated in section 349 of] in terms of the Companies Act[, 1973 (Act No. 61 of 1973)], and registered in terms of that Act, of;”.

Insertion of sections 38A, 38B and 38C in Act 37 of 2002

201. The following sections are hereby inserted in the principal Act after section 38:

“Business rescue

38A. (1) (a) Notwithstanding the provisions of the Companies Act or any other law under which a provider is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a provider, whether or not it is a company.

(b) This section does not apply if another registrar is authorised in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to make an application for the business rescue of a provider.

(2) The registrar may make an application under section 131 of the Companies Act in respect of a provider if the registrar is satisfied that it is in the interests of the clients of the provider or the financial services industry.

(3) The following acts are subject to the approval of the registrar:

- (a) The resolution of a provider to begin business rescue proceedings;
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act.

(4) In the application of Chapter 6 of the Companies Act—

- (a) any reference to the Commission shall be construed as a reference also to the registrar;
- (b) the reference to creditors shall be construed as a reference also to clients of the provider;
- (c) any reference relating to the ability of a provider to pay all debts, shall be construed as relating also to the provider’s inability to comply with the financial soundness requirement under section 8(1)(c) of this Act;
- (d) there shall be considered, in addition to any question relating to the business of a provider, also the question whether any cause of action is in the interests of the clients.

(5) If an application to a Court for an order relating to the business rescue of a provider is made by an affected person other than the registrar—

- (a) the application shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the registrar, before the application is set down for hearing;
- (b) the registrar may, if satisfied that the application is not in the interests of the clients of the provider, join the application as a party and file affidavits and other documents in opposition to the application.

(6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted permission to do so by a court.

Application by registrar for sequestration or liquidation

38B. (1) Subject to subsection (3), if the registrar, after an on-site visit in terms of section 4(5) or an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), considers that the interests of the clients of a financial services provider or of members of the public so require, the registrar may apply to the court for the sequestration or liquidation of that provider, whether or not the provider is solvent, in accordance with—

- (a) the Insolvency Act, 1936 (Act No. 24 of 1936);
- (b) the Companies Act;
- (c) the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- (d) the law under which that provider is incorporated.

(2) In deciding an application contemplated in subsection (1), the court—

- (a) may take into account whether sequestration or liquidation of the financial services provider concerned is reasonably necessary—
 - (i) in order to protect the interests of the clients of the provider; and
 - (ii) for the integrity and stability of the financial sector;
- (b) may make an order concerning the manner in which claims may be proved by clients of the financial services provider concerned; and
- (c) shall appoint as trustee or liquidator a person nominated by the registrar.

(3) This section does not apply if another registrar is authorised in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to apply to the court for the sequestration or liquidation of that provider.

Directives

38C. (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.

(2) A directive issued in terms of subsection (1) may—

- (a) apply generally; or
- (b) be limited in its application to a particular person or category of persons.

(3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.

(4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.

(5) The registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.”

Substitution of section 40 of Act 37 of 2002

202. The following section is hereby substituted for section 40 of the principal Act:

“Saving of rights

40. No provision of this Act, and no act performed under or in terms of any such provision, may be construed as affecting any right of a client, or other affected person, to seek appropriate legal redress in terms of this Act, the common law or any other statutory law, and whether relating to civil or criminal matters, in respect of the rendering of any financial service by an authorised financial services provider, or representative of such provider, or

any act of a person who is not an authorised financial services provider or a representative of such a provider.”.

Amendment of section 41 of Act 37 of 2002

203. Section 41 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 5

“(b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice [in the Gazette] on the official web site.”.

Repeal of section 42 of Act 37 of 2002

204. The principal Act is hereby amended by the repeal of section 42. 10

Amendment of section 44 of Act 37 of 2002

205. Section 44 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) The registrar may in any case not provided for in this Act, on reasonable grounds, on application or on the registrar’s own initiative by notice [in the Gazette] on the official web site, exempt any person or category of persons from any provision of this Act.”. 15

Amendment of section 45 of Act 37 of 2002

206. Section 45 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph: 20

“(iii) the liquidator of a company in liquidation, [judicial manager] business rescue practitioner of a company [under judicial management] subject to business rescue proceedings, or a person acting on behalf of such liquidator or [judicial manager] business rescue practitioner.”.

Amendment of Arrangement of Sections of Act 37 of 2002

207. The Arrangement of Sections of the principal Act is hereby amended— 25

- (a) by the insertion after item 6 of the following item:
“6A. Fit and proper requirements”;
- (b) by the insertion after item 8 of the following item:
“8A. Compliance with fit and proper requirements after authorisation”; 30
- (c) by the deletion of item 33;
- (d) by the deletion of item 37;
- (e) by the insertion after item 38 of the following items:
“38A. Business rescue
38B. Application by registrar for sequestration or liquidation
38C. Directives”; and 35
- (f) by the deletion of item 42.

Part 9

Amendment of Collective Investment Schemes Control Act, 2002

Amendment of section 1 of Act 45 of 2002

208. Section 1 of the Collective Investment Schemes Control Act, 2002 (in this Part 40 referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “advisory committee”;
- (b) by the substitution for the definition of “authorised agent” of the following definition: