



REPUBLIC OF SOUTH AFRICA

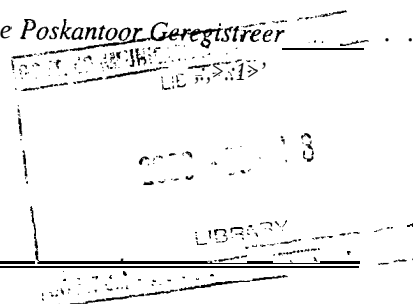
GOVERNMENT GAZETTE

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THE PRESIDENCY

No. 447.

3 Mei 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 12 of 2000: Financial Services Board Amendment Act, 2000.

DIE PRESIDENSIE

No. 447.

3 May 2000

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 12 van 2000: Wysigingswet op die Raad op Finansiële Dienste, 2000.

GENERAL EXPLANATORY NOTE:

- [1 Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 April 2000.)

ACT

To amend the Financial Services Board Act, 1990, so as to insert a definition; to amend the provisions dealing with the functions of the Financial Services Board; to make further provision for the appointment of members of the Financial Services Board and its executive; to amend certain outdated provisions; to repeal the provision relating to the pension rights of certain officers and employees; to provide for consultation before the imposition of levies on financial institutions; to repeal the provision regarding the printing of the annual report; to make further provision for the provision of information and assistance to other regulatory authorities; to make further provision for the limitation of liability of certain functionaries, bodies and persons; to further regulate the prohibition on the use of a name or description implying a connection with the Financial Services Board; and to further regulate the constitution and functions of the board of appeal; and to provide for matters connected therewith.

BE IT ENACTED by Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 97 of 1990, as amended by section 1 of Act 41 of 1992, section 67 of Act 104 of 1993 and section 5 of Act 22 of 1997

1. Section 1 of the Financial Services Board Act, 1990 (hereinafter referred to as the principal Act), is amended by the insertion after the definition of “Minister” of the following definition:

“ ‘supervision’, in relation to supervision by the board over the performance of functions by the executive officer in terms of any law, means—

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

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

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

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

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

and ‘supervise’ shall have a corresponding meaning.”

Substitution of section 3 of Act 97 of 1990

2. The following section is substituted for section 3 of the principal Act:

“Functions of board

3. The functions of the board are—

- (a) to supervise the **[exercise of control, in terms of any law, over the 5 activities of]** compliance with laws regulating financial institutions [and over] and the provision of financial services; [and]
- (b) to advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and 10
- (c) to promote programmes and initiatives by financial institutions and bodies representing the financial services industry to inform and educate users and potential users of financial products and services.”.

Substitution of section 4 of Act 97 of 1990

3. The following section is substituted for section 4 of the principal Act:

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“Constitution of board

4. (1) The board shall **[consist of]** be governed by so many members as the **[State President]** Minister may deem necessary and appoint, with due regard to the interests of the users of financial services and the suppliers of financial services, including financial intermediaries, and the public 20 interest.

(2) The **[State President]** Minister may appoint an alternate member for every member of the board.

(3) The **[State President]** Minister shall appoint a member of the board as the **[chairman]** chairperson and another member as the deputy 25 **[chairman]** chairperson.

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

Amendment of section 5 of Act 97 of 1990, as amended by section 68 of Act 104 of 30 1993

4. Section 5 of the principal Act is amended by the substitution for paragraph (b) of the following paragraph:

“(b) if, in the opinion of the **[State President]** Minister, he or she is actually engaged in the business of a financial institution or actually engaged in the 35 rendering of a financial service: Provided that the **[State President]** Minister may, in consultation with the recognised association or organisation of the relevant financial institution or financial service in which such person is actually engaged, appoint a person who would otherwise be disqualified in terms of this paragraph from being a member of the board;”. 40

Amendment of section 6 of Act 97 of 1990

5. Section 6 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The **[State President]** Minister may at any time terminate the membership of any member or alternate member of the board if in the opinion of the **[State 45 President]** Minister sufficient reasons exist therefore.”.

Amendment of section 7 of Act 97 of 1990

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

“(1) A member or alternate member of the board shall hold office, subject to the provisions of section 6, for such period, not exceeding three years, as the **[State 5 President] Minister** may determine at the time of his or her **appointment: Provided that—**

- (a) the term of office of not more than 50 per cent of the members or alternate members of the board shall expire within any calendar year; and
- (b) if at the expiry of the term of office of a member or alternate member of the 10 board a successor has not been appointed as provided for in this subsection, such member or alternate member shall continue in office for a further period not exceeding six months until reappointed or until a successor is appointed, 7 whichever occurs first.”.

Amendment of section 9 of Act 97 of 1990, as amended by section 2 of Act 41 of 1992 15

7. Section 9 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) The executive shall consist of the executive officer, the deputy executive officers, **[and]** the chief actuary and such other officers or employees of the board as the board may from time to time appoint to the executive, on such conditions as 20 it deems fit.”.

Amendment of section 10 of Act 97 of 1990

8. Section 10 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Such a committee shall consist of so many members of the board or so 25 many other persons or so many members or other persons as the board may deem necessary, and the board may at any time dissolve or reconstitute such a committee: Provided that the nomination and appointment of other persons to a committee of the board shall not cease upon the vacation of office of a member of the board who served on such a committee.”.

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Amendment of section 13 of Act 97 of 1990, as amended by section 3 of Act 41 of 1992

9. Section 13 of the principal Act is amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) officers and employees placed at the disposal of the board under section 35 [14(3)(a)] 15(3)(a) of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994).”.

Amendment of section 14 of Act 97 of 1990, as amended by section 1 of Act 84 of 1992

10. Section 14 of the principal Act is amended by the substitution for subsection (1) 40 of the following subsection:

“(1) The board may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the board may, after having obtained **such professional advice as it may deem fit**, consider as being competitive in the open market **[for the manpower 45 concerned and may determine without being subject to any provisions of the Public Service Act, 1984 (Act No. 111 of 1984)] but with due regard to section 18(b).**”.

Repeal of section 15 of Act 97 of 1990

11. Section 15 of the principal Act is repealed.

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Amendment of section 15A of Act 97 of 1990, as inserted by section 2 of Act 84 of 1992**12. Section 15A of the principal Act is amended—**

(a) by the insertion after subsection (1) of the following subsection:

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

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

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

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

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

Substitution of section 18 of Act 97 of 1990, as substituted by section 5 of Act 41 of 1992**13. The following section is substituted for section 18 of the principal Act:****“Consultation with Minister**

18. The board and [the executive officer, deputy executive officers and chief actuary] members of the executive contemplated in section 9(4)—

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

[and the board and the executive officer shall directly] and

(b) may consult with the Minister in connection with any [other] matter [it or he] which any of them wishes to bring to the attention of the Minister.”.

Amendment of section 21 of Act 97 of 1990, as amended by section 69 of Act 104 of 1993**14. Section 21 of the principal Act is amended by the deletion of subsection (3).****Amendment of section 22 of Act 97 of 1990, as amended by section 7 of Act 41 of 1992****15. Section 22 of the principal Act is amended by the substitution for subsection (2) of the following subsection:**

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

(a) disclose to any foreign financial or investment services regulatory or supervisory authority, or any other regulatory or supervisory authority for financial or investment services in the Republic, including the Registrar of Medical Schemes and a self-regulator! body approved by the board, information relating to a particular financial or other institution or financial or other service or a particular individual who is or was involved in a particular financial institution or financial service, if the executive officer is of the opinion that [taking into consideration the public interest] such in fornla-

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tion will be of importance to the relevant [foreign financial services] regulatory or supervisory authority, Registrar of Medical Schemes or self-regulatory body; and

- (b) disclose to any foreign financial or investment services regulatory or supervisory authority any information required in terms of any agreement, 5
communique or memorandum of understanding concluded by the board or the executive officer with any such authority, and may render any assistance to such authority:

Provided that the board or the executive officer may impose conditions relating to the use that may be made of any information or assistance and the preservation of 10
confidentiality in respect thereof.”.

Substitution of section 23 of Act 97 of 1990

16. The following section is substituted for section 23 of the principal Act:

“Limitation of liability

23. The Minister, the board, a member or alternate member of the board 15
or the board of appeal or any officer or employee in the employment of the board shall not be liable [in respect of any *bona fide* exercise of a discretion in the performance of any function by him] for any loss 20
sustained by, or damage caused to, any person as a result of anything done or omitted by any such functionary, body or person in the *bona fide*, but not
grossly negligent, exercise of any power or the carrying out of any duty or the performance of any function under or in terms of this Act or any other 25
law.”.

Substitution of section 24 of Act 97 of 1990

17. The following section is substituted for section 24 of the principal Act: 25

“Restriction on use of name or description implying connection with board

24. No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection 30
between such company, body, firm, business or undertaking and the board unless the person—
(a) has been authorised by the board to do so; and
(b) complies with the conditions determined by the board.”.

Amendment of section 26 of Act 97 of 1990, as amended by section 8 of Act 41 of 1992 35

18. Section 26 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) There is hereby established a board of appeal, which shall consist of three persons with an alternate for each of them (hereafter referred to 40
as ‘the members of the board of appeal’), appointed by the Minister, of whom—

- (a) one shall be a person appointed on account of his or her wide experience and expert knowledge of law, who shall be the 45
[chairman] chairperson;
(b) one shall be [one of the members of the board] a person appointed 45
on account of his or her wide experience and expert knowledge of financial institutions and financial services; and
(c) one shall be a person registered as an accountant and auditor under [section 23 of] the Public Accountants’ and Auditors’ Act, [1951 50
(Act No. 51 of 1951)] 1991 (Act No. 80 of 1991), and who in the opinion of the Minister has wide experience of, and expert knowledge of the latest developments in, the accountants’ and auditors’ profess ion.’;

- (b) by the substitution for subsection (1A) of the following subsection:
 “(1A) The executive officer shall designate [an officer of the board] any person to act as secretary of the board of appeal.”;
- (c) by the insertion after subsection (1A) of the following subsection:
 “(1 B).(a) When the board of appeal deems it necessary for the hearing of a particular appeal that the board of appeal should be assisted by an assessor having expert knowledge of a particular matter, the board of appeal may co-opt any such person to participate in the appeal as an assessor of the board of appeal.
 (b) Such assessor may not participate in any decision of the board of appeal.”;
- (d) by the insertion after subsection (2) of the following subsection:
 “(2A) The noting of an appeal in terms of subsection (2) does not suspend the operation or execution of the decision pending the decision of the board of appeal, unless the board of appeal, on the application of a party, directs otherwise.”;
- (e) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
 “(b) in the case of the member referred to in subsection (1)(b), [one of the other members of the board] a person temporarily appointed [by the Minister] subject to the provisions of that subsection; and”;
- (f) by the substitution for subsection (6) of the following subsection:
 “(6) An appeal shall be heard on the date and at the place and time fixed by the board of appeal, which shall in writing notify [the appellant as well as the executive officer] the parties to the appeal thereof.”;
- (g) by the substitution for subsection (9) of the following subsection:
 “(9) [The appellant as well as the executive officer] Any party to an appeal shall be entitled to be represented at an appeal by a legal [practitioner] representative.”;
- (h) by the substitution for subsection (10) of the following subsection:
 “(10) The board of appeal may after hearing the appeal—
 (a) confirm, set aside or vary the relevant decision against which the appeal was brought;
 (b) order that the decision of the board of appeal be given effect to; or
 (c) refer any matter back for consideration or reconsideration by the executive officer in accordance with such directions as the board of appeal may lay down.”;
- (i) by the substitution for subsection (12) of the following subsection:
 “(12) The decision of the board of appeal shall be put in writing, and a copy thereof shall be furnished to [the appellant as well as to the executive officer] every party to the appeal.”;
- (j) by the substitution for subsection (14) of the following subsection:
 “(14) (a) The board of appeal may make such order as to costs, including an order regarding the refunding of any fees paid in terms of subsection (2), as it may deem suitable and fair.
 (b) An order as to costs shall have legal force and may be enforced as if it were issued in civil proceedings in a division of the High Court of South Africa within whose area of jurisdiction the board of appeal held its sitting.”.

Substitution of section 28 of Act 97 of 1990

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19. The following section is substituted for section 28 of the principal Act:

“Application of Act

28. The provisions of this Act shall not affect the operation of any bank or mutual [building society or building society] bank registered in terms of the Banks Act, [1965 (Act No. 23 of 1965)] 1990 (Act No. 94 of 1990), or the Mutual [Building Societies Act, 1965 (Act No. 24 of 1965), or the Building Societies Act, 1986 (Act No. 82 of 1986)] Banks Act, 1993 (Act No. 124 of 1993), respectively, in respect of any bank or [building society]

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mutual bank business carried on by such a bank or **[building society]**
mutual bank in accordance with the provisions of the said Acts.”.

Savings and transitional provisions

20. (1) The repeal of section 15 of the principal Act by section 11 shall not affect—
(a) the previous operation of section 15 or anything done under, in terms of or by virtue of section 15; or
(b) any right, privilege, obligation or liability acquired, accrued or incurred under, in terms of or by virtue of section 15.

(2) The provisions of this Act shall not affect anything done or omitted under, in terms of or by virtue of any provision of the principal Act, before the date of commencement of this Act, which could have been done or omitted under, in terms of or by virtue of a provision of the principal Act as amended by this Act: Provided that anything specifically done by the Financial Services Board under sections 3(a) and 13(3) of the principal Act prior to the date of commencement of sections 1 and 2 of this Act, shall continue to have legal force unless the executive officer of that Board after the date of commencement of this Act decides otherwise, and shall in any such case, be deemed to have been done by that executive officer.

- (3) The provisions of this Act shall not affect—
(a) any legal proceedings in which the said Financial Services Board is involved, and which are pending in any court of law immediately prior to the date of commencement of this Act, which proceedings shall proceed in all respects until final disposal thereof, as if this Act had not been passed; and
(b) any international agreement, memorandum of understanding or *communiqué* concluded before the date of commencement of this Act by the said Financial Services Board, provided that any functions or duties entrusted or imposed on, or rights granted to, that Board under , in terms of or by virtue of any such agreement, memorandum or *communiqué* shall upon the date of commencement of this Act devolve on the executive officer of that Board.

Amendment of laws

21. The laws mentioned in the Schedule are amended to the extent indicated in the 30 third column thereof.

Substitution of long title of Act 97 of 1990

22. The following long title is hereby substituted for the long title of the principal Act:
“TO provide for the establishment of a board to **[exercise supervision over the business of]** supervise compliance with laws regulating financial institutions and the provision of financial services; and for matters connected therewith.”.

Short title and commencement

23. This Act is called the Financial Services Board Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED

(Section 21)

No. and year of law	Short title	Extent of amendment
Act No. 32 of 1996	Supervision of Financial Institutions Rationalisation Act, 1996	1. The amendment of section 2 by the deletion of subsection (6).
Act No. 80 of 1998	Inspection of Financial Institutions Act, 1998	1. The amendment of section 1 by the addition to the definition of "financial institution" of the following paragraph: <u>"(c) for the purposes of implementation of any agreement, <i>communiqué</i> or memorandum of understanding referred to in section 3A, any person referred to in that section;"</u> 2. The insertion of the following section after section 3: <u>"Inspections for purposes of agreements, <i>communiqués</i> and memoranda of understanding</u> <u>3A. The registrar may at any time instruct an inspector to carry out an inspection in accordance with the provisions of sections 4 and 5, pursuant to and for the purposes of implementation of any agreement, <i>communiqué</i> or memorandum of understanding contemplated in section 22(2)(b) of the Financial Services Board Act, 1990 (Act No. 97 of 1990), of the affairs or part of the affairs of any person referred to in, or identified by the requesting authority acting in terms of, any such agreement, <i>communiqué</i> or memorandum, and who is present or resident in the Republic."</u>