

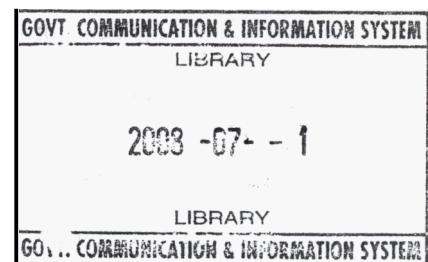
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**FINANCIAL SERVICES LAWS
GENERAL AMENDMENT BILL**

[B21—2008]

*(Amendments agreed to by the Portfolio Committee on Finance
(National Assembly))*



[B21A—2008]

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AMENDMENTS AGREED TO

FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL

[B 21—2008]

CLAUSE 1

1. On page 3, in line 11, after the second “a” to insert “fellow”.
2. On page 3, after line 13, to insert:

(b) by the deletion of the definition of “administrative penalty”;
3. On page 3, in line 17, to omit “funds” and to substitute “fund”.
4. On page 3, from line 20, to omit the definition of “normal retirement age” and to substitute:

“ ‘normal retirement age’ has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”.
5. On page 4, in line 7, to omit paragraph (c) and to substitute:

“(c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits, referred to in section 37C on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds”.
6. On page 4, from line 21, to omit the definition of “retirement” and to substitute:

“ ‘retirement’ means the period commencing on the member’s retirement date;”.
7. On page 4, from line 26, to omit the definition of “retirement date” and to substitute:

“ ‘retirement date’ has the meaning assigned to it in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”.
8. On page 4, in line 33, to omit “(b) and (c)” and to substitute “(b), (c) and (d)”.
9. On page 4, in line 42, to omit “instalment” and to substitute “pension payment or annuity”.
10. On page 4, in line 47, to omit “an approved” and to substitute “a”.
11. On page 4, in line 47, after “scheme” to insert “approved in terms of this Act”.
12. On page 4, in line 49, after “payable” to omit “;” and to insert “; or”.
13. On page 4, after line 49, to insert:

(d) any benefit that remained unclaimed or unpaid to a member, former member or beneficiary when a fund applies for cancellation of registration in terms of section 27 or where the liquidator is satisfied that benefits remain unclaimed or unpaid,

14. On page 4, in line 51, to omit “to another fund on amalgamation” and to substitute “as part of a transfer of business in terms of section 14, where an annuity is purchased in respect of a pensioner”.
15. On page 4, in line 54, to omit “12” and to substitute “24”.

CLAUSE 2

1. On page 5, in line 8, to omit “1 January 2009” and to substitute “the commencement date of the Pension Funds Amendment Act, 2008”.
2. On page 5, in line 19, to omit “by notice in the Gazette”
3. On page 5, in line 22, to omit “in the notice” and to substitute “by the registrar”.

CLAUSE 3

1. On page 5, in line 59, to omit “occupational”.

CLAUSE 4

1. On page 6, from line 24, to omit paragraph (b) and to substitute:

(b) If the registrar objects to an appointment in terms of paragraph (a), the board must terminate the appointment within 30 days of the registrar informing the board of the finalisation of the processes and procedures provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
2. On page 6, from line 41, to omit “Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)” and to substitute “Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 7:

Amendment of section 13B of Act 24 of 1956, as inserted by section 20 of Act 83 of 1992 and amended by section 7 of Act 11 of 2007

8. Section 13B of the Pension Funds Act, 1956, is hereby amended—

- (a) by the deletion of subsection (7);
- (b) by the substitution for subsection (8) of the following subsection:

“(8) Before taking any action under subsection (6) [or (7)], the registrar must inform the administrator and the board of the fund of the proposed action and grounds therefor, and afford them a reasonable opportunity to be heard.”; and
- (c) by the substitution for subsection (9) of the following subsection:

“(9) If it is in the public interest, the registrar may through appropriate media make known[—
(a)] the suspension or withdrawal of an approval referred to in subsection (6)[;

(b) any non-compliance and administrative penalty referred to in subsection(7)].”.

CLAUSE 8

1. On page 7, from line 52, to **omit** “, other than fees payable by the transferring member or non-member spouse personally and any fees payable to the registrar,”.
2. On page 7, in line 55, to omit “mandatory” and to substitute “mandatary”.
3. On page 8, from line 3, to omit paragraph (ii) and to substitute:

“(ii) for financial services rendered by a financial services provider or representative after the transfer in respect of the transferred interest of the transferring member or non-member spouse which exceeds the fees or maximum commission that would have been permissible for such services in terms of the Long Term Insurance Act, 1998 or any regulations made thereunder had the transfer not been done [.]
other than fees—

(aa) payable to the registrar;

(bb) negotiated and agreed to in writing by the transferring member or non-member spouse annually, which fees are—

(A) payable by the transferring member or non-member spouse personally; or

(B) authorised by the transferring member or non-member spouse to be paid by the fund or administrator.”

CLAUSE 10

1. On page 8, in line 46, to omit “benefits” and to substitute “assets”.

CLAUSE 12

1. On page 9, in line 3, to omit “employment” and to substitute “practice or method”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 12:

Amendment of section 37 of Act 24 of 1956, as substituted by section 26 of Act 11 of 2007

13. Section 37 of the Pensions Funds Act, 1956, is hereby amended—

(a) by the deletion of subsection (1);

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

“(2) The registrar may impose an administrative penalty in the case of any failure by a pension fund, administrator or third party to submit to the registrar or any other person within a period specified in terms of this Act or in a directive or condition imposed by the registrar in terms of the Act, any scheme, statement, report, return or other document or information required in terms of this Act to be

- submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.”;
- (c) by the substitution in subsection (3) for paragraph (e) of the following paragraph:
“(e) invite interested persons to make representations within a period specified by the registrar [, and],”;
and
- (d) by the deletion in subsection (3) of paragraph (f).

CLAUSE 13

1. On page 9, from line 13, to omit subsection (2)(a) and to substitute:

“(2) (a) For the purposes of this section, a payment by a registered fund for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee, if payment is made to—

(i) a trustee contemplated in the Trust Property Control Act, 1988, nominated by—

(aa) the member;

(bb) a major dependant or nominee, subject to subparagraph (cc); or

(cc) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor dependant or nominee, or a major dependant or nominee not able to manage his or her affairs or meet his or her daily care needs;

(ii) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a dependant or nominee; or

(iii) a beneficiary fund.”.

CLAUSE 14

1. On page 9, after line 35, to insert:

(a) the substitution in subsection (1) for paragraph (d) of the following paragraph:
“(d) deduct from a member’s benefit or minimum individual reserve, as the case may be—

(i) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act No. 99 of 1998), or

(ii) any amount assigned from his or her pension interest to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979);”.

2. On page 9, from line 38, to omit subsection (3) and to substitute:

“(3) (a) Any amount that may be deducted in terms of subsection (1)(d) may only be deducted after the amount of pension interest available has been reduced by any loan amount or guarantee amount referred to in subsection (1)(a), where such a loan or guarantee was granted prior to the granting of the court orders, irrespective of the fact that that amount is due and payable or not: Provided that the aggregate of all amounts deducted in terms of this subsection may not exceed the member’s pension interest available at any given time.

(b) In the event that more than one of the court orders referred to in subsection (1)(d) provides for the deduction of amounts from

a member's benefit or minimum individual reserve, as the case may be, at the same time, the court orders must be dealt with in accordance with the following hierarchy —

- (i) any maintenance order referred to in subsection (1)(d)(i);
- (ii) any decrees of divorce or for the dissolution of a customary marriage."

3. On page 9, in line 52, to omit "the decree of a divorce" and to substitute "a decree of divorce or decree for the dissolution of a customary marriage".
4. On page 9, in line 54, after "and" to insert ", on the written submission of the court order by the non-member spouse".
5. On page 9, in line 56, after "in" to insert "or identifiable from".
6. On page 10, from line 6, to omit "at the time of making the deduction referred to subsection (a)" and to substitute "within 45 days of the submission of the court order by the non-member spouse".
7. On page 10, from line 10, to omit subparagraph (ii) and to substitute:

“(ii) The non-member spouse must within 120 days of being requested to make an election —

 - (a) inform the pension fund of how the amount referred to in subparagraph (i) must be dealt with; and
 - (b) if he or she elects that the amount must be paid to him or her directly, provide the pension fund with the details of how that payment must be effected; or
 - (c) if he or she elects that the amount must be transferred to a pension fund on his or her behalf, provide the pension fund with the details of that pension fund.”
8. On page 10, in line 16, to omit "30" and substitute "60".
9. On page 10, in line 20, to omit "other".
10. On page 10, after line 23, to insert:

“(v) Despite subparagraph (iv), in the event that the pension fund cannot reasonably ascertain how the payment to the non-member spouse must be effected, the pension fund must retain the amount and any fund return referred to in paragraph (c)(ii) in the pension fund until such time as details of how that payment must be effected is made available to the pension fund by the member, the non-member spouse or any other person.”
11. On page 10, in line 25, to omit "does not acquire the rights of" and to substitute "is not".
12. On page 10, in line 27, to omit "interest" and to substitute "fund return".
13. On page 10, in line 29, to omit "(ii)" and to substitute "(b)(ii)".
14. On page 10, in line 42, to omit "of a divorce" and to substitute "granted in terms of section 7(8)(a) of the Divorce Act, 1979".
15. On page 10, after line 42, to insert:

“(6) Despite paragraph (b) of the definition of ‘pension interest’ in section 1(1) of the Divorce Act, 1979, the portion of the pension interest of a member of a pension preservation fund or provident preservation fund (as defined in the Income Tax Act, 1962), that is assigned to a non-member spouse, refers to the equivalent portion of

the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.".

CLAUSE 15

1. Clause rejected.

CLAUSE 22

1. On page 13, in line 11, after "i," to insert "and".
2. On page 13, from line 17, to omit paragraph (c) and to substitute:

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

CLAUSE 25

1. On page 14, in line 29, after "(Act No. 80 of 1998)." to omit "or".
2. On page 14, in line 30, after "(Act No.28 of 2001)" to insert "or the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).".

CLAUSE 27

1. On page 15, from line 7, to omit "appeal against that decision to the appeal board in accordance with the provisions of this Act." and to substitute:
" , subject to the provisions of another law, appeal against that decision to the appeal board in accordance with the provisions of this Act or such other law."

CLAUSE 28

1. On page 15, from line 42, to omit "Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)" and to substitute "Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)".

CLAUSE 32

1. On page 19, from line 12, to delete "as a clearing system participant".
2. On page 19, from line 16, to omit "clearing system participants or settlement system participants" and to substitute "[settlement system] clearing system participants".
3. On page 19, after line 33, to insert:

(g) by the substitution for the definition of "systemic risk" of the following definition:

" 'systemic risk' means the risk that failure of one or more settlement system participants, for whatever reason, to meet their payment obligations, including the payment obligations of clearing system participants, or their settlement obligations may result in any or all of the other

settlement system participants being unable to meet their respective payment or settlement obligations;”.

CLAUSE 35

1. On page 20, in line 59, to omit “of the system”.
2. On page 21, in line 6, after “to the” to insert “Reserve Bank settlement system participant who settles payment obligations on behalf of the designated clearing system participant and”.

CLAUSE 38

1. On page 22, in line 43, to omit “or”.
2. On page 22, in line 45, after “interest” to omit “.” and to substitute “, or”.
3. On page 22, after line 45, to insert the following paragraph:

“(e) that is already publicly available.”

CLAUSE 40

1. On page 23, in line 39, after “means” to insert:
the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and

CLAUSE 42

1. On page 24, from line 7, to omit section 6A and to substitute:

“Referral to enforcement committee

6A. (1) (a) Despite any provision in a law, if a registrar is of the opinion that a person is contravening a provision of a law in respect of which the registrar is not authorised to impose an administrative sanction, the registrar may refer the alleged contravention to the enforcement committee.

(b) A registrar authorised to impose sanctions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), must refer an alleged contravention under the Financial Intelligence Centre Act, 2001, to the enforcement committee.

(2) The directorate may, after an investigation carried out by the directorate under Chapter VIII of the Securities Services Act, 2004, refer an alleged contravention to the enforcement committee.”.

2. On page 25, from line 28, to omit subsection (1) and to substitute:
“(1) The enforcement committee must determine whether the respondent has contravened a law.”.
3. On page 26, from line 5, to omit subsection (4).
4. On page 26, in line 8, to omit “(5)” and to substitute “(4)”.
5. On page 26, in line 12, to omit “(6)” and to substitute “(5)”.

6. On page 26, in line 38, after “Subject to” to insert “the appeal proceedings under the Financial Intelligence Centre Act, 2001, and”.

CLAUSE 44

1. On page 27, in line 40, to omit “visible” and to substitute “readable”.
2. On page 27, after line 41, to insert:
 - (c) by the insertion after the definition of “regulation” of the following definition:
‘regulatory authority’ means an entity established in terms of national legislation responsible for regulating activities or an industry, or sector of an industry;

CLAUSE 45

1. On page 28, from line 23, to omit paragraph (ii) and to substitute:
“(ii) instruct an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).”
2. On page 28, from line 51, to omit subsection (7) and to substitute:
“(7) The registrar may make known—
(a) the status and outcome of an inspection;
(b) the details of an inspection if disclosure is in the public interest;
(c) the outcome and details of an on-site visit if disclosure is in the public interest,
by notice in the Gazette or by means of any other appropriate public media.”

CLAUSE 46

1. On page 28, in line 58, after “conduct” to insert “financial services related”.
2. On page 29, in line 2, after “financial services” to insert “and the conditions and restrictions of that licence authorises the rendering of that financial services,”.

CLAUSE 47

1. On page 29, in line 9, to omit “does not qualify and function as” and to substitute “is not”.
2. On page 29, in line 20, to omit “or 10”

CLAUSE 48

- On page 29, from line 43, to omit paragraph (a) and to substitute:

“(a) Before suspending or withdrawing any licence, the registrar—
(i) may consult any regulatory authority; and
(ii) must inform the licensee of the intention to suspend or withdraw and the grounds therefor and must give the licensee a reasonable opportunity to make a submission in response thereto.”

NEW CLAUSE

1. That the following be a new Clause to follow Clause 49:

“Amendment of section 11 of Act 37 of 2002

50. Section 11 of the Financial Advisory and Intermediary Services Act, 2002, 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* and, if necessary by means of any other appropriate public media announcement.”.

CLAUSE 50

1. On page 31, in line 8, to omit “from time to time”.

CLAUSE 56

1. On page 32, from line 55, to omit paragraphs (a), (b) and (c) and to substitute:

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) annually prepare, in respect of the relevant financial year of the provider, financial statements reflecting[, **with suitable particulars, the financial position of the business as at the last day of the financial year in question, and the results of the operations and cash flow information for the period then ended.**]=

- (i) the financial position of the entity at its financial year end;
- (ii) the results of operations, the receipt and payment of cash and cash equivalent balances;
- (iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and
- (iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii);”;

(b) by the substitution for subsection (2) of the following subsection

“(2)(a) An authorised financial services provider must cause the statements referred to in subsection (1)(b) to be audited and reported on in accordance with auditing, pronouncements as defined in section 1 of the Auditing Professions Act, 2005 (Act No. 26 of 2005) by an external auditor approved by the registrar: [**in order to produce—**

- (i) **an audited balance sheet, including such notes thereon or documents attached thereto as may be necessary;**
- (ii) **an audited income statement, inducing such**

notes thereon or documents attached thereto as may be necessary; and

- (iii) **an audited financial statement of the source and application of funds].**

(b) The financial statements must—

- [(i) **be prepared in conformity with generally accepted accounting practice;]**

(ii) fairly represent the state of affairs of the provider's business;

(iii) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and

(iv) be submitted by the authorised financial services provider to the registrar not later than **[six] four** months after the end of the provider's financial year or such longer period as may be allowed by the registrar.”.

- (c) by the substitution for subsection (3) of the following subsection:

“(3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and **[assets] financial products** 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* for different categories of financial services providers—

(a) the amount of money and **[assets] financial products** at year end held by the provider on behalf of clients;

(b) that such money and **[assets] financial products** were throughout the financial year kept separate from those of the business of the authorised financial services provider, and **[in the case of] report any instance of non-compliance identified in the course of the audit and the extent thereof; and**

(c) **any** other information required by the registrar.”

2. On page 33, from line 25, to omit subsection (7) and to substitute:

“(7) (a) A financial services provider may not change a financial year end without the approval of the registrar.

(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.

(c) Where a change of a financial year end was approved by another regulatory authority as is contemplated in paragraph (b), the provider must inform the registrar of that approval within 14 days of the approval being granted.”

CLAUSE 62

Clause rejected.

NEW CLAUSE

- ¹ That the following be a new Clause to follow Clause 61:

Substitution of section 18 of Act 45 of 2002

62. The following section is hereby substituted for section 18 of the Collective Investment Schemes Control Act, 2002:

“Power of registrar to impose fines

18. (1) The registrar may impose a fine in the case of any failure by a manager or third party to submit to the registrar or any other person designated by the registrar, within a period specified in terms of this Act any statement, report, return or other document or information required in terms of this Act to be submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues.

(2) The registrar must, before imposing a fine, by written notice to the manager or third party —

- (a) inform the manager or third party of the registrar’s intention to impose a fine;
- (b) specify the particulars of the alleged failure;
- (c) set out the reasons for the intended imposition of a fine;
- (d) specify the amount of the fine intended to be imposed; and
- (e) call upon the manager or third party to show cause within a period specified by the registrar why the fine should not be imposed.

(3) If the registrar, after consideration of representations made by the manager or third party, decides to impose a fine, the registrar must by written notice inform the manager or third party that, not later than 30 days after the date of the notice, the manager or third party must —

- (a) pay the fine; or
- (b) appeal in terms of section 24 against the imposition of the fine to the board of appeal.

(4) If a manager or third party fails to pay the fine or fails to appeal within the period referred to in subsection (3), the registrar may file with the clerk or registrar of any competent court a statement certified by the registrar as correct, stating the amount of the fine imposed on the manager or third party, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the Board for a liquid debt in the amount specified in the statement.”

CLAUSE 65

1. On page 35, in line 43, to omit the second “the” and to substitute “an”.
2. On page 35, in line 47, to omit “an” and to substitute “that”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 65:

Amendment of section 56 of Act 36 of 2004

66. Section **56** of the Securities Services Act, 2004, is hereby amended—

- (**a**) by the deletion of subsection (3); and
- (b) by the substitution for subsection (10) of the following subsection:

“(**10**) [**Sections**] Section 95(2), (3) and (4) is, with the changes required by context, applicable to the imposition of a fine under [**subsections (3) and**] subsection (9).”.