

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
FINANCIAL ADVISORY AND
INTERMEDIARY SERVICES
BILL**

[B 52—2001]

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

[B 52A—2001]

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AMENDMENTS AGREED TO
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES BILL
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1. On page 4, in line 4, after “registrar” to add “and Minister”.

CLAUSE 1

1. On page 4, in line 13, after “proposal” to insert “of a financial nature”.
2. On page 4, in line 42, to omit all the words after “means” and to substitute:

a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service;
3. On page 4, in line 46, to omit “2001” and to substitute “2002”.
4. On page 4, in line 48, to omit all the words after “complaint” up to and including “representative” in line 49.
5. On page 4, in line 51, to omit “an authorised” and to substitute “a”.
6. On page 5, from line 21, to omit subparagraphs (v) and (vi) and to substitute:

(v) any “securities” as defined in section 1 of the Securities Services Act, 2002;
7. On page 5, in line 52, after “provider” to insert:

, including any category of such services
8. On page 5, in line 56, to omit “part of a regular” and to substitute “a regular feature of the”.
9. On page 6, in line 23, to omit “or which”.
10. On page 6, in line 30, to omit “29,”.
11. On page 6, in line 33, to omit paragraph (a) and to substitute:

(a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
12. On page 6, in line 37, to omit “to clients”.
13. On page 6, in line 40, after “registrar” to insert “or deputy registrar”.
14. On page 7, from line 24, to omit subparagraph (iv).
15. On page 7, after line 43, to insert:

(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, or a mutual bank as defined in the Mutual Banks Act, 1993, to the extent that such application is regulated in the code of conduct contemplated in section 15(2)(b).

CLAUSE 3

1. On page 8, after line 15, to add:

(3) The registrar must in connection with the application of any provision of this Act to or in respect of any financial product or financial service, consult with any regulatory or supervisory authority in the Republic, including the Registrar of Medical Schemes, referred to in section 42, who is by law empowered to perform a regulatory or supervisory function in respect of such product or service.

CLAUSE 4

1. On page 8, in line 25, to omit all the words after “misleading,” up to and including “interest” in line 26 and to substitute “or confusing”.
2. On page 8, in line 27, to omit “the”.
3. On page 8, in line 28, to omit all the words after “thereto” to the end of the paragraph.
4. On page 8, after line 50, to add:

(c) if prejudice or damage may have occurred to a client, refer the matter, together with any information or documentation in the registrar’s possession, to the Office to be dealt with as a complaint by the client concerned.

CLAUSE 5

1. On page 8, in line 55, after “including” to insert:
a representative of the Council for Medical Schemes established by section 3 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), and
2. On page 9, in line 23, to omit “that committee” and to substitute “the Committee”.

CLAUSE 6

1. On page 9, in line 32, after “Act” to insert:
. excluding the power to make regulations under section 35.
2. On page 9, in line 38, after “Act” to insert:
. excluding the power to make rules under section 26

CLAUSE 8

1. On page 10, in line 50, to omit all the words after “that” up to and including “soundness” in line 3 on page 11 and to substitute:

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 *Gazette*, after consultation with the Advisory Committee, in respect of—

- (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
- (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—

- (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.

2. On page 11, in line 17, to omit “the registrar may deem” and to substitute “are”.

3. On page 11, from line 18, to omit subparagraph (i) and to substitute:

- (i) all facts and information available to the registrar pertaining to the applicant and any key individual of the applicant;
- (ii) the category of financial services which the applicant could appropriately render or wishes to render;
- (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

4. On page 11, in line 21, to omit “(if any)”.

5. On page 11, after line 56, to insert:

(7) (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).

(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).

(c) A person granted authority and licensed as contemplated in paragraph (a), together with any key individual, are thereafter subject to the provisions of this Act.

(d) If a licence—

- (i) is refused in terms of this section;
- (ii) is suspended in terms of section 9;
- (iii) is withdrawn in terms of section 10; or
- (iv) lapses in terms of section 11,

the accreditation referred to in paragraph (a) is deemed to have lapsed in terms of the Medical Schemes Act, 1998, or to have been suspended or withdrawn, as the case may be.

(e) If an accreditation referred to in paragraph (a) is suspended or

withdrawn or lapses in terms of the Medical Schemes Act, 1998, the licence issued in terms of that paragraph is deemed to have been suspended or withdrawn or to have lapsed in terms of sections 9, 10 and 11, respectively, of this Act.

CLAUSE 9

1. On page 12, in line 41, to omit all the words after “must” up to and including “consider” in line 42 and to substitute:

within a reasonable time after receipt of
2. On page 12, in line 42, after “(3)(a),” to insert “consider the response”.

CLAUSE 11

1. On page 13, in line 22, after “advised” to insert:

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.
2. On page 13, in line 23, after the first “and” to insert “the registrar”.

CLAUSE 13

1. On page 14, in line 6, to omit “ensure” and to substitute “be satisfied”.
2. On page 14, in line 8, after “requirements” to insert “similar to those”.
3. On page 14, in line 9, to omit “(i) and (ii)” and to substitute “(a) and (b)”.

CLAUSE 14

1. On page 14, in line 34, to omit “13(2)” and to substitute “13(2)(a)”.

CLAUSE 15

1. On page 15, in line 4, after “(2)” to insert “(a)”.
2. On page 15, after line 6, to add:

(b) A code of conduct must be drafted for the rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of “financial product” in section 1(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).

CLAUSE 20

1. On page 17, after line 44, to add:

(4) When dealing with complaints in terms of sections 27 and 28 the Ombud is independent and must be impartial.

CLAUSE 21

1. On page 17, in line 47, to omit “or” and to substitute “and”.
2. On page 17, in line 49, to omit “, for the purposes of sections 27, 28, 29, 31 and 39,”.
3. On page 17, in line 50, to omit “or” and to substitute “and”.
4. On page 17, from line 52, to omit paragraph (a).
5. On page 17, in line 55, to omit all the words after “Board” up to and including “Office”.
6. On page 18, in line 4, to omit “at any time” and to substitute “on good cause shown”.
7. On page 18, in line 6, after “incompetence” to insert:
 , after affording the person concerned a reasonable opportunity to be heard

CLAUSE 23

1. On page 18, from line 33, to omit subsection (4).

CLAUSE 24

1. On page 18, in line 37, to omit all the words after “Office,” up to and including “Board,” in line 38.
2. On page 18, in line 40, to omit “movable”.

CLAUSE 27

1. On page 20, in line 5, after “instituted” to insert “by the complainant”.
2. On page 20, after line 10, to add:
 (c) The Ombud may on reasonable grounds determine that it is more appropriate that the complaint be dealt with by a Court or through any other available dispute resolution process, and decline to entertain the complaint.
3. On page 20, in line 15, to omit all the words after “have” up to and including “documents” in line 16 and to substitute:
 been provided with such particulars as will enable the parties to respond thereto;
4. On page 20, in line 22, to omit “must” and to substitute “may”.
5. On page 20, in line 24, to omit “both” and to substitute “all”.
6. On page 20, after line 31, to insert:
 (d) may, in a manner that the Ombud deems appropriate, delineate the functions of investigation and determination between various functionaries of the Office;

- (e) may, on terms specified by the Ombud, mandate any person or tribunal to perform any of the functions referred to in paragraph (d).

CLAUSE 28

1. On page 20, in line 42, after “complaint,” to insert “wholly or partially,”.
2. On page 20, after line 47, to add:
 - (iii) the Ombud may make any other order which a Court may make.
3. On page 20, after line 60, to insert:
 - (3) Any award of interest by the Ombud in terms of subsection (2) may not exceed the rate which a Court would have been entitled to award, had the matter been heard by a Court.
4. On page 21, in line 4, to omit “with” and to substitute “to”.
5. On page 21, in line 5, to omit “court’ and to substitute “Court”.
6. On page 21, in line 10, to omit all the words after “judgment of” up to and including “jurisdiction” and to substitute “a Court”.
7. On page 21, in line 11, to omit “court” and to substitute “Court”.
8. On page 21, in line 12, to omit “court” and to substitute “Court”.
9. On page 21, in line 22, to omit “court” and to substitute “Court”.
10. On page 21, in line 26, to omit “court of law” and to substitute “Court”.

CLAUSE 30

1. On page 21, in line 38, to omit “three” and to substitute “six”.

CLAUSE 34

1. On page 23, in line 2, to omit all the words after “(1)” up to and including “(2)” in line 3 and to substitute:

Subject to subsections (2) and (3)

2. On page 23, after line 5, to insert:
 - (2) The following principles must guide the registrar in considering whether or not a declaration contemplated in subsection (1) should be made:
 - (a) That the practice concerned, directly or indirectly, has or is likely to have the effect of—
 - (i) harming the relations between authorised financial services providers or any category of such providers, or any such provider, and clients or the general public;
 - (ii) unreasonably prejudicing any client;
 - (iii) deceiving any client; or
 - (iv) unfairly affecting any client; and

(b) that if the practice is allowed to continue, one or more objects of this Act will, or is likely to, be defeated.

3. On page 23, in line 7, after “declaration” to insert “, giving reasons therefor.”.
4. On page 23, in line 18, to omit “(4)” and to substitute “(5)”.

CLAUSE 35

1. On page 23, in line 47, to omit “criminal”.

CLAUSE 36

1. On page 23, in line 56, to omit “34(3) or (5)” and to substitute “34(4) or (6)”.

CLAUSE 41

1. On page 24, in line 49, to omit all the words after “The” up to and including “Committee” and to substitute:

Minister must, after consultation with the registrar

2. On page 25, in line 3, to omit “so”.
3. On page 25, in line 4, after “registrar” to insert “by notice in the *Gazette*”.

CLAUSE 44

1. On page 25, in line 50, after “**registrar**” to add “**and Minister**”.
2. On page 26, after line 23, to add:

(5) The Minister, after consultation with the registrar, may, on such conditions as the Minister may determine, by notice in the *Gazette* exempt a financial services provider or representative, or category of financial services providers or representatives, from any provision of the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively.

CLAUSE 45

1. On page 26, in line 25, to omit “Subject to subsection (2), the” and to substitute “The”.
2. On page 26, from line 27, to omit subparagraphs (i), (ii) and (iii) and to substitute:
 - (i) any “authorised user”, “clearing house”, “central securities depository” or “participant” as defined in section 1 of the Securities Services Act, 2002, or exchange licensed under section 10 of that Act;

3. On page 26, in line 39, to omit “or an authorised agent”.
4. On page 26, in line 40, to omit “2001” and to substitute “2002”.
5. On page 26, in line 43, to omit “or 65”.
6. On page 26, from line 46, to omit all the words after “in” up to and including “respectively” in line 47 and to substitute “that section”.
7. On page 27, after line 15, to add:
 - (3) Until such time as the Collective Investment Schemes Control Act, 2002, referred to in sections 1(1) and 45(1)(a)(ii) of this Act comes into operation, any reference in this Act to—
 - (a) a collective investment scheme and manager must be construed as references to a unit trust scheme and management company, and scheme and manager, referred to in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), and the Participation Bonds Act, 1981 (Act No. 55 of 1981), respectively; and
 - (b) any word or expression defined in the Unit Trusts Control Act, 1981, and the Participation Bonds Act, 1981, unless clearly inappropriate or inconsistent with this Act, has the meaning so defined.
 - (4) Until such time as the Securities Services Act, 2002, referred to in sections 1(1) and 45(1)(a)(i) of this Act comes into operation, any reference in this Act to—
 - (a) an authorised user, exchange, a clearing house, central securities depository and participant, must be construed as references to a member, stock exchange, clearing house, financial exchange, recognised clearing house, central securities depository and depository institution referred to in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), Financial Markets Control Act, 1989 (Act No. 55 of 1989), and Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992), respectively; and
 - (b) any word or expression defined in the Stock Exchanges Control Act, 1985, Financial Markets Control Act, 1989, and Custody and Administration of Securities Act, 1992, unless clearly inappropriate or inconsistent with this Act, has the meaning so defined.

SCHEDULE

1. On page 35, to omit items II(d) and II(e).