

FINANCIAL SECTOR CONDUCT AUTHORITY

NO. 707

26 JUNE 2020

**FINANCIAL SECTOR REGULATION ACT, 2017
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****AMENDMENT OF THE DETERMINATION OF FIT AND PROPER REQUIREMENTS, 2017**

I, DP Tshidi, hereby, under section 6A of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), promulgate amendments to the Determination of Fit and Proper Requirements, 2017, as set out in the Schedule.

**DP TSHIDI****FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY**

SCHEDULE A

Interpretation

1. In this Schedule, “the Determination” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, published in Board Notice No. 194 of 2017.

Amendment of section 1(1) of the Determination

2. Section 1(1) of the Determination is hereby amended by-

- (a) the substitution for the definition “cash” of the following definition:

““cash” means –

- (a) physical currency consisting of Reserve Bank notes and coins;
- (b) any balance in an account with a -
 - (i) bank as defined in section 1(1) of the Banks Act;
 - (ii) ‘branch’, ‘branch of a bank’ or a ‘mutual bank’ as defined in section 1(1) of the Banks Act;
 - (iii) bank established in a country other than the Republic and which lawfully conducts in such other country a business similar to the business of a bank, excluding a facility that extends credit;”;

- (b) the substitution for the definition “CPD activity” of the following definition:

““CPD activity” means an activity that is-

- (a) approved by a Professional Body that confirmed that the activity is verifiable; and
- (b) allocated an hour value or a part thereof by that Professional Body; and
- [(c) verifiable,]

and excludes -

- (i) an activity performed towards a qualification; and
- (ii) product specific training;”;

- (c) the substitution for the definition “fund member policy” of the following definition:

““fund member policy” means a fund member policy as defined in [Part 5A] Regulation 3.1 of the Regulations under the Long-term Insurance Act;”;

- (d) the insertion after the definition “fund member policy” of the following definition:

“fund policy” means a fund policy as defined in Regulation 1.1 of the Regulations under the Long-term Insurance Act;”

(e) the insertion after the definition “hedge fund FSP” of the following definition:

“Insurance Act” means the Insurance Act, 2017 (Act No. 18 of 2017);”

(f) the substitution for the definition “long-term insurance subcategory A” of the following definition:

“long-term insurance subcategory A” means an assistance policy or a life insurance policy as defined in section 1 of the Insurance Act underwritten under the Funeral class of life insurance business as set out in Schedule 2 of the Insurance Act;”

(g) the substitution for the definition “long-term insurance subcategory B1” of the following definition:

“long-term insurance subcategory B1” means –

(a) a disability, health and life policy as defined in section 1(1) of the Long-term Insurance Act which provides only risk benefits as contemplated in the Regulations under that Act, but excludes–

[(a)](i) a fund policy as defined in section 1(1) of that Act;

[(b)](ii) a fund member policy;

[(c)](iii) an investment policy as defined in Part 5B of those Regulations; or

[(d)](iv) a policy referred to in the definitions of long-term insurance subcategories A, B1-A, B2, B2-A and C; or

(b) **means a life insurance policy as defined in section 1 of the Insurance Act underwritten under the Risk or Credit Life classes of life insurance business as set out in Schedule 2 of the Insurance Act;”**

(h) the substitution for the definition “long-term insurance subcategory B1-A” of the following definition:

“long-term insurance subcategory B1-A” means those long-term insurance policies or life insurance policies referred to in the definition of long-term insurance subcategory B1 which require no or limited underwriting;”

(i) the substitution for the definition “long-term insurance subcategory B2” of the following definition:

“long-term insurance subcategory B2” means –

(a) a long-term policy as defined in section 1 of the Long-term Insurance Act which is –

- ~~[(a)](i)~~ an investment policy as defined in Part 5B of the Regulations under that Act and which guarantees a minimum return of any premium paid at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;
- ~~[(b)](ii)~~ a disability, health or life policy that provides risk benefits as contemplated in the Regulations under that Act and has a guaranteed investment value or a materially equivalent value;
- ~~[(c)](iii)~~ an annuity which guarantees a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or
- ~~[(d)](iv)~~ a policy which combines the any of the policy features referred to in paragraphs (i) to (iii),

but excludes a fund policy, a fund member policy and a policy referred to in the definitions of long-term insurance categories A, B1, B1-A, B2-A and C; or

~~(b) a life insurance policy as defined in section 1 of the Insurance Act which is –~~

~~(i) an investment policy as defined in Part 5B of the Regulations under the Long-term Insurance Act and which guarantees a minimum return of any premium paid at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;~~

~~(ii) a combined policy underwritten under the following classes of life insurance business as set out in Schedule 2 of the Insurance Act –~~

~~(aa) risk class or credit life class; and~~

~~(bb) individual investment class or income drawdown class;~~

~~that has a guaranteed investment value or a materially equivalent value;~~

~~(iii) underwritten under the Life Annuity class of life insurance business as set out in schedule 2 of the Insurance Act and which guarantees a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or~~

~~(iv) a policy which combines the any of the policy features referred to in paragraphs (i) to (iii).~~

but excludes a fund policy, a fund member policy and a policy referred to in the definitions of long-term insurance categories A, B1, B1-A, B2-A and C;:

~~(j) the substitution for the definition "long-term insurance subcategory B2-A" of the following definition:~~

“long-term insurance subcategory B2-A” means those long-term insurance policies or life insurance policies referred to in the definition of long-term insurance subcategory B2 which provide for the premiums to be invested in an investment portfolio managed by the product supplier with no option by the policyholder to request a change or amendment to that portfolio;”

- (k) the substitution for the definition “long-term insurance subcategory C” of the following definition:

“long-term insurance subcategory C” means a long-term policy[ies] as defined in section 1(1) of the Long-term Insurance Act, [1998,] or a life policy as defined in section 1 of the Insurance Act [but excludes] excluding –

- (a) a fund policy[ies] as defined in section 1(1) of the Long-term Insurance Act, [1998,]
- (b) a fund member policy[ies]; and
- (c) a policy referred to in the definitions of long-term insurance subcategories A, B1, B1-A, B2 and B2-A;”

- (l) the substitution for the definition “short-term insurance commercial lines” of the following definition:

“short-term insurance commercial lines” means –

- (a) short-term insurance policies referred to in the Short-term Insurance Act purchased by juristic persons and natural persons acting in a business capacity; or
- (b) a non-life insurance policy as defined in section 1 of the Insurance Act, but excludes a policy referred to in the definition of ‘personal lines’ as defined in that Act;”

- (m) the substitution for the definition “short-term insurance personal lines” of the following definition:

“short-term insurance personal lines” means –

- (a) short-term insurance policies referred to in the Short-term Insurance Act purchased by natural persons acting otherwise than in a business capacity, but excludes a policy referred to in the definition of short-term insurance personal lines A1; or
- (b) a non-life insurance policy as defined in section 1 of the Insurance Act, where the policyholder is a natural person acting otherwise than solely for the purposes of the person’s own business;”

- (n) the substitution for the definition “short-term insurance personal lines A1” of the following definition:

“short-term Insurance personal lines A1” means –

- (a)** the short-term Insurance policies referred to in the definition of ‘short-term Insurance personal lines’, excluding-
- (i) marine policies; and
 - (ii) engineering policies and guarantee policies as defined in section 1 of the Short-term Insurance Act; or
- (b)** a non-life Insurance policy referred to in the definition of ‘short-term Insurance personal lines’, but excluding non-life Insurance policies underwritten under the following classes of non-life Insurance business as set out in Schedule 2 of the Insurance Act –
- (i) Marine; and
 - (ii) Engineering;

and which policies–

- [(I)](aa)** require no or limited underwriting;
- [(II)](bb)** define policy benefits or obligations as a sum insured, provide for the replacement of the insured asset or provide for the settlement of outstanding balances due and payable to credit providers;
- [(III)](cc)** have contract terms of 24 months or less;
- [(IV)](dd)** are not subject to the principle of average; and
- [(V)](ee)** do not provide for any exclusions or conditions from liability of the insurer other than-
 - (a[a]A)** exclusions relating to unlawful conduct, provided that such exclusions may only be applied or relied on if there is a direct link between the cause of the loss and the unlawful conduct;
 - (b[b]A)** special risks referred to in the Conversion of the SASRIA Act, No. 134 of 1998;
 - (c[c]A)** exclusions relating to the condition of any asset insured at inception of the policy other than exclusions relating to the wear and tear of the asset;
 - (d[d]A)** exclusions relating to the maintenance and usage of the insured asset under a policy that insures against unforeseen mechanical or electrical component failure;
 - (e[e]A)** exclusions relating to consequential loss; or

(f)A) any combination of (aA) to (eA);”.

Amendment of section 27 of the Determination

3. Section 27 of the Determination is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) Regulatory examinations may be set and delivered by examination bodies [recognised for that purpose by the Registrar].”;

Amendment of section 37 of the Determination

4. Section 37 of the Determination is hereby amended by the substitution of paragraph numbers (ii) and (iii) after paragraph (i) of subsection (2)(b) of the following paragraph numbers:

- “(ii)(iii) systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, including –**
- (aa) electronic data security and internal and external cybersecurity;**
 - (bb) physical security of assets and records;**
 - (cc) system application testing;**
 - (dd) back-up and disaster recovery plans and procedures for systems and electronic data; and**
- “(iii)(iv) systems and processes to ensure accurate, complete and timely processing of data, reporting of information and the assurance of data integrity.”;**

Amendment of section 40 of the Determination

5. Section 40 of the Determination is hereby amended by –

(a) the substitution of paragraph (i) of subsection (1)(a) of the following paragraph:

(i) is not [declared insolvent or provisionally insolvent] an unrehabilitated insolvent;”; and

(b) the insertion after subsection (4) of the following subsection:

“(5) If a representative who is a natural person is sequestered after the appointment referred to in subsection (1), the FSP who appointed the representative may only allow such representative to continue to act on behalf of the FSP as a representative if the FSP implements appropriate measures to mitigate any risks that may arise for clients or the FSP as a result of the representative being sequestered.”;

Amendment of section 47 of the Determination

6. Section 47 of the Determination is hereby amended by –

(a) the substitution for the definition “annual expenditure” of the following definition:

“annual expenditure” means -

- (a)** the expenditure set out in the latest set of financial statements of an FSP;
or
- (b)** in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts,

less-

- (i)** staff bonuses;
- (ii)** employees' and directors', partners' or members' share in profit;
- (iii)** emoluments of directors, members, partners or sole proprietor;
- (iv)** other appropriation of profits to directors, members and partners;
- (v)** remuneration that is linked to-
 - (aa)** a percentage of the FSP's revenue; or
 - (bb)** a percentage of the revenue generated by an employee[,] or representative [or contractor] of the FSP; andthat in the absence of such revenue the FSP has no obligation to pay the remuneration;
- (vi)** depreciation;
- (vii)** bad debts; and
- (viii)** any loss resulting from the sale of assets;”;

(b) the substitution for the definition “remuneration” of the following definition:

“remuneration” for purposes of the definition of ‘annual expenditure’, includes salaries, wages, commissions, fees and any other payment, paid directly or indirectly by an FSP to an employee[,] or representative [or contractor] of that FSP either directly or indirectly;”.

Amendment of section 52 of the Determination

7. Section 52 of the Determination is hereby amended by –

(a) the insertion after subsection (17) of the following subsection:

“(18) An FSP, key individual or representative who has successfully completed a regulatory examination contemplated in the Notice referred to in section 51(1)(b) that was applicable to an FSP, key individual or representative, respectively, is deemed to meet the regulatory examination requirements set out in Part 4 of Chapter 3 applicable to an FSP, key individual or representative respectively.”.

Amendment of Annexure Four of the Determination

8. Annexure Four of the Determination is hereby amended by –

(a) the amendment of the arrangement of the numbers of the subclasses listed under the item Short-term Insurance: Personal Lines in the first column of Table 1 of the following arrangement:

1.1	Personal lines: Accident and health policy
1.2	Personal lines: Liability policy
[1.4]1.3	Personal lines: Miscellaneous policy
[1.5]1.4	Personal lines: Motor policy
[1.6]1.5	Personal lines: Property policy
[1.7]1.6	Personal lines: Transportation policy
[1.8]1.7	Personal lines: Short-term reinsurance policy

(b) the substitution for the definition “Long-term Investment policy” of the following definition:

““[Long-term] Life Investment policy” means a life policy as defined in section 1(1) of the Long-term Insurance Act other than a life risk policy;”.

Short title and commencement

9. This Notice is called the Amendment of the Determination of Fit and Proper Requirements, 2020, and comes into operation on date of publication.