



Financial Sector Regulation Act No. 9 of 2017

A. Summary

The Financial Sector Regulation Act No. 9 of 2017 was published in Government Gazette No. 41060 on 22 August 2017. The Act introduces the Twin Peaks model of financial sector regulation in South Africa. Twin Peaks places equal focus on prudential and market conduct supervision. This is done by creating dedicated authorities responsible for each of these objectives.

The purpose of the Act is to achieve a stable financial system that works in the interests of financial customers and supports balanced and sustainable economic growth. It wants to achieve this by establishing, together with the specific financial sector laws, a regulatory and supervisory framework that promotes certain principles and objectives. Some of these are financial stability, the safety and soundness of financial institutions and the fair treatment and protection of financial customers. A list of financial sector laws is set out in the Act and includes the Pension Funds Act, Banks Act and Financial Advisory and Intermediary Services Act.

B. Establishment of various regulatory bodies

1. Prudential Authority

The Prudential Authority (PA) is a regulatory body within the administration of the South African Reserve Bank (SARB). Some of the objectives of the PA include:

- promoting and enhancing the safety and soundness of financial institutions that provide financial products and securities services;
- protecting financial customers against the risk that they may fail to meet their obligations; and
- assisting in maintaining financial stability.

The PA also co-operates with and assists other regulators such as the Council for Medical Schemes, Competition Commission and the National Credit Regulator (NCR) on matters of mutual interest and as required in the Act.

2. Financial Sector Conduct Authority

The Financial Sector Conduct Authority (FSCA) replaces the Financial Services Board. It is a regulatory body within the administration of the Financial Intelligence Centre (FIC). The objectives of the FSCA include:

- promoting the fair treatment of financial customers by financial institutions;
- providing financial customers and potential financial customers with financial education programs; and
- promoting financial literacy.

To achieve its outcomes, the FSCA regulates and supervises the conduct of financial institutions. It also co-operates with and assists other regulators such as the Council for Medical Schemes, Competition Commission and the NCR on matters of mutual interest and as required in the Act.

3. Financial Services Tribunal

The Financial Services Tribunal is established to hear reviews of decisions made under financial sector laws, and for the imposing of administrative penalties and related orders.

4. Ombud Council

The Ombud Council (Council) assists in ensuring that financial customers have access to and are able to use affordable, effective, independent and fair alternative dispute resolution processes. The dispute resolution processes are for complaints about financial institutions for financial products, financial services, and services provided by market infrastructures. Examples of market structures include a licensed exchange and a licensed trade depository.

The Council achieves the above objectives by:

- promoting public awareness of the different ombuds and ombud schemes;
- promoting the services they provide as well as the kinds of complaints that the different ombuds deal with;
- taking steps to facilitate access by financial customers to the appropriate ombuds;
- monitoring the performance of the ombud schemes; and
- resolving the overlap of jurisdiction of the different ombud schemes.

The Council is granted powers to give recognition to an industry ombud scheme, provided that certain requirements have been met. The Council also has the power to vary any conditions for a given recognition, suspend or revoke such recognition.

C. Regulatory measures

1. Co-operation and collaboration between financial sector regulators

The Act requires financial sector regulators (such as the PA, FSCA, FIC and NCR), together with SARB, to co-operate and collaborate when performing their functions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act.

To facilitate the above, the Act establishes the Financial System Council of Regulators (FSCR). The FSCR is a forum for the senior representatives of the financial sector regulators and other institutions represented on the FSCR (such as the Department of Trade and Industry). The FSCR has to co-operate and collaborate, and where appropriate decide on the consistency of action between the financial sector regulators.

2. Licenses

A person will only be able to provide, as a business or part of a business, a financial product, financial service or market infrastructure if he is issued with a licence under a specific financial sector law. If there is no specific financial sector law that provides for such licence, the licence will be issued in terms of the Act. The Act sets out the licensing requirements for financial products, financial services and holding companies of financial group

D. Enforcement measures

1. Guidance notices, interpretation rulings and directives

The Act provides for the issuing of guidance notices and interpretation rulings by the financial sector regulators. Financial sector regulators are also able to issue non-binding guidance notices on the application of the financial sector laws. The PA and the FSCA are empowered to issue binding interpretations on the application of specific provisions of financial sector laws. They are also empowered to issue directives on specific matters. The power to issue directives is in addition to the ones granted in other financial sector laws.

Financial sector regulators are authorised to institute legal proceedings to enforce compliance with a financial sector law. They are also authorised to make orders debarring a person for not complying with financial sector laws including attempting, conspiring, aiding and abetting, inducing, inciting or procuring another person to contravene a financial sector law, or contravening a law of a foreign country that corresponds to a financial sector law.

A responsible authority for a financial sector law is authorised to enter into leniency agreements, in exchange for a person's co-operation in investigations or in proceedings relating to a contravention of a financial sector law.

2. Offences and penalties

The Act creates certain offences and penalties that may be imposed. Broadly speaking, the offences relate to the contravention of certain provisions in the Act. An example is conducting business without the required licence. Depending on the nature of the offence, the penalties that may be imposed vary from periods of imprisonment of up to 10 years to fines of up to R15 000 000, or a combination of both.

The Act introduces administrative penalties that may be imposed by the financial sector regulator responsible for the relevant financial sector law. The Act makes provision for the penalty to be paid in instalments and for interest to be levied on the penalty. A penalty cannot be imposed on a person where criminal proceedings against that person for the same set of facts have already started. A court will have to take into account any penalty that has been imposed for the same set of facts when determining a sentence to be imposed on a person convicted of an offence under a financial sector law.

Except under certain specific circumstances, a person will not be allowed to indemnify or compensate another person for payment made or liability that is incurred by the other person for a penalty imposed on the other person. For example, a financial institution cannot compensate an employee for a penalty imposed on the employee.

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