

# SWAZILAND GOVERNMENT GAZETTE

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VOL. XLVIII]

MBABANE, Friday JUNE 11<sup>th</sup>, 2010

[No. 63

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PUBLISHED BY AUTHORITY

LEGAL NOTICE NO. 91 OF 2010THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT, 2010  
(Act No. 2 of 2010)THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT (DATE OF  
COMMENCEMENT) NOTICE, 2010  
(Under Section 1)

In exercise of the powers conferred by Section 1 of the Financial Services Regulatory Authority Act, 2010, the Minister for Finance hereby issues the following Notice -

***Citation***

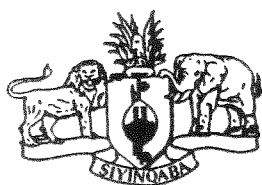
1. This Notice may be cited as the Financial Services Regulatory Authority Act (Date of Commencement) Notice, 2010.

***Date of Commencement of the Act***

2. The Financial Services Regulatory Authority Act, 2010, shall be deemed to have come into operation on the 1<sup>st</sup> day of June, 2010.

**MAJOZI SITHOLE**  
*MINISTER FOR FINANCE*

MBABANE  
1<sup>st</sup> June, 2010



# SWAZILAND GOVERNMENT GAZETTE

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VOL. XLVIII]

MBABANE, Friday MARCH 12<sup>th</sup>, 2010

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**PART I  
PRELIMINARY**

***Short Title and Commencement***

1. This Act may be cited as the Financial Services Regulatory Authority Act, 2010, and shall come into force on such date as the Minister may, by Notice published in the Gazette determine.

***Interpretation***

2. (1) In this Act, unless the context otherwise requires -

“act of insolvency” has the same meaning as in the Insolvency Act, 1955;

“affiliate” means, in relation to a financial services provider, a-

(a) company, association, syndicate, partnership or other body of persons corporate or unincorporated in which at least twenty five percent (25%), or such other percentage as the Minister may, by Notice published in the Gazette, determine, of any class of voting shares or other voting participation is directly or indirectly owned or controlled by the financial services provider or a controller of the financial services provider or held by the financial services provider or a controller of the financial services provider with power to vote;

(b) company, association, syndicate, partnership or other body of persons corporate or unincorporated in which the election of a majority of directors is controlled in any manner by the financial services provider or a controller of the financial services provider; or,

(c) controller of the financial services provider;

“Appeals Tribunal” means the committee established under section 79;

“authorised financial services provider” means a financial services provider licensed to provide financial services in terms of this Act, or a financial services law as defined in this Act;

“Authority” means the Financial Services Regulatory Authority established under section 3;

“Bank” means the Central Bank of Swaziland;

“Board” means the Board of Directors of the Authority established under section 7;

“by-law” means a by-law made by the Authority under section 7;

“Capital Markets Development Division” means the Division established in the Bank with responsibility for Capital Markets;

“central securities depository” has the same meaning as in the Securities Act, [2009];

“Chairperson” means the Chairperson of the Authority appointed under section 7;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 8;

“collective investment scheme” has the same meaning as in the Securities Act, [2010];



“controller”, in relation to a financial services provider, means a person who, in the opinion of the Authority, is in a position to control or exert significant influence over the operations of a financial services provider;

“co-operative” means an institution that is registered as a co-operative society under the Co-operative Societies Act, 2003;

“Court” means the High Court;

“dealer” has the same meaning as in the Securities Act, [2010];

“the representative of a dealer” has the same meaning as in the Securities Act, [2010];

“deputy Chairperson” means the deputy Chairperson of the Authority appointed under section 7;

“director” includes any person, by whatever title referred to, who carries out or is empowered to carry out substantially the same functions in relation to the direction and management of a financial services provider as those carried out by a director of a company as defined in the Companies Act, 2009;

“financial crime” means-

- (a) a crime that involves fraud or dishonesty relating to a financial services provider;
- (b) financing or facilitating crime relating to a financial services provider;
- (c) dealing with the proceeds of crime, whether or not related to financial services providers;
- (d) money laundering; or,
- (e) financing of terrorism;

“financial services provider” means a non-bank financial services provider;

“financial services providers in capital markets” includes-

- (a) a central securities depository;
- (b) a collective investment scheme;
- (c) the manager of a collective investment scheme;
- (d) an investment adviser;
- (e) the representative of an investment adviser;
- (f) a person providing nominee services, or acting as a nominee in relation to securities as defined in the Securities Act, [2010];
- (g) a securities exchange;
- (h) a dealer; or

(i) the representative of a dealer;

“financial services” means services relating to financial matters rendered to the public by a financial services provider;

“financial services law” means any of the laws specified in the First Schedule, or any law that declares itself to be a financial services law for the purposes of this Act;

“financial services licence” means, in relation to a financial services provider, a licence, authorisation, registration or similar procedure under Part VI of this Act or the relevant financial services law;

“insurance agent” has the same meaning as in the Insurance Act, 2005;

“insurance broker” has the same meaning as in the Insurance Act, 2005;

“insurer” has the same meaning as in the Insurance Act, 2005;

“investment adviser” has the same meaning as in the Securities Act, [2010];

“Levies Account of the Authority” means the account established by section 22;

“manager”, in relation to a collective investment scheme, has the same meaning as in the Securities Act, [2009];

“member” means a member of the Board and includes the Chairperson and deputy Chairperson;

“Minister” means the Minister responsible for Finance;

“non-bank financial services provider” means-

(a) any of the persons or institutions specified in the Second Schedule; or;

(b) any person or institution declared by the Minister by Regulation to be a non-bank financial services provider for purposes of this Act;

“records of a financial services provider” means documents and information used in the ordinary course of the business of a financial services provider, whether in written form or kept on microfilm, magnetic tape or any other form of mechanical or electronic medium;

“retirement fund” has the same meaning as in the Retirement Funds Act, 2005;

“SACCO” means a savings and credit co-operative society licensed under this Act to provide financial services to its members;

“securities exchange” has the same meaning as in the Securities Act, [2010];

“stakeholder” means, in relation to-

(a) a financial services provider, a client, customer or prospective client or customer of the financial services provider that uses the financial services of the financial services provider;

(b) an insurer, a policyholder or prospective policyholder or a beneficiary or prospective beneficiary under a policy;

(c) a retirement fund, a member or prospective member or beneficiary or prospective beneficiary of the fund;

(d) a SACCO, a member or a prospective member; and,

(e) a financial services provider in capital markets, investors or prospective investors;

“supervisory levy” means a levy imposed under section 21;

“trustee”, in relation to-

(a) a retirement fund, has the same meaning as in the Retirement Funds Act, 2005; or,

(b) collective investment scheme, has the same meaning as in the Securities Act, [2010].

## **PART II**

### **CONSTITUTION OF THE AUTHORITY**

#### ***Establishment of the Authority***

3. (1) There is hereby established the Financial Services Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession, a common seal and the ability to acquire, hold and dispose of real and personal property and may sue and be sued in its corporate name.

(3) The Authority shall not be placed in liquidation except by an Act of Parliament.

#### ***Principal objects of the Authority***

4. The principal objects of the Authority shall be to foster, through the regulation and prudential supervision of financial services providers-

(a) the stability of the Swaziland financial system;

(b) the safety and soundness of financial services providers;

(c) the highest standards of conduct of business by financial services providers;

(d) the promotion of fair competition between different financial services providers for the benefit of stakeholders;

(e) the fairness, efficiency and orderliness of the Swaziland non-bank financial sector; and,

(f) the protection of stakeholders.

#### ***Functions of the Authority***

5. The Authority shall have such functions as are necessary to further its objects and, in particular, shall-

(a) be responsible for the administration of financial services laws;

- (b) license, regulate, monitor and supervise the conduct of the business activities of financial services providers;
- (c) carry out investigations and take measures to suppress illegal, dishonourable and improper practices, market abuse and financial fraud in relation to any activity in the financial services sector;
- (d) make rules and issue guidance notes and codes of conduct governing the conduct of the business of financial services providers;
- (e) carry out research and disseminate information in the field of financial services;
- (f) in conjunction with financial services providers, promote public understanding of the financial system including awareness of the benefits and risks associated with different kinds of investment;
- (g) take measures for the better protection of stakeholders of financial services;
- (h) collect, compile, publish and disseminate statistics in respect of financial services providers;
- (i) share both public and non-public information with domestic and foreign counterparts and, in particular-
  - (i) subject to proper confidentiality safeguards, establish information sharing mechanisms, through memoranda of understanding or otherwise, that set out when and how to share both public and non-public information with domestic and foreign counterparts; and,
  - (ii) provide assistance to foreign counterparts who need to make inquiries in the discharge of their functions and exercise of their powers;
- (j) advise the Minister generally on any matter relating to the financial services sector;
- (k) exercise and perform such other powers, authorities and duties as may be conferred or imposed upon it by or under this Act or any other Act; and,
- (l) do all such other acts as may be incidental or conducive to the attainment of the objects of the Authority or the exercise of its powers under this Act.

***Powers of the Authority***

6. (1) The Authority shall have such powers as are necessary to enable it to effectively discharge its functions and may, in particular-
- (a) formulate policy and make rules for the effective implementation of the objects of this Act;
  - (b) issue guidelines and codes of practice for the proper conduct of business in the financial services sector;
  - (c) set up such technical committees as it deems fit to examine and report on any matter in relation to the administration of any financial services law referred to them by the Board or the Chief Executive Officer;

- (d) give directives to a financial services provider, including directives to observe any guideline or code of practice; or,
  - (e) revoke any licence issued under any financial services law-
    - (i) in accordance with that financial services law; or,
    - (ii) where the Authority is satisfied that the authorised financial services provider is carrying on business in a manner which threatens the integrity of the financial system of Swaziland or is contrary or detrimental to the interest of the public.
- (2) In exercising its powers and discharging its functions and duties, the Authority shall adopt processes which are-
- (a) consistently applied;
  - (b) comprehensible;
  - (c) transparent to the public; and,
  - (d) fair and equitable.
- (3) In the formulation of policy, the Authority shall-
- (a) have a process of consultation with the public, including those who may be affected by the policy;
  - (b) publicly disclose, where appropriate, the policies of the Authority in important operational areas;
  - (c) observe high standards of procedural fairness; and,
  - (d) have regard to the cost of compliance with regulation.
- (4) A technical committee appointed under subsection (1) (c) shall consist of not less than three (3), but not more than seven (7), members including a chairperson whom shall be appointed by the Board on such terms and conditions as the Board deems fit and may-
- (a) meet as often as may be necessary and at such time at place as the Chairperson may determine;
  - (b) meet when required to do so by the Board;
  - (c) co-opt, with the approval of the Board, any person to assist it in its functions;
  - (d) set up such subcommittees as it considers necessary; and,
  - (e) regulate the conduct of its meetings as it deems fit.
- (5) The Authority may at any time, terminate the appointment of any member of a technical committee for misconduct, default or breach of trust his or her duties, or for any other good or sufficient cause.

**PART III**  
**THE BOARD, CHIEF EXECUTIVE OFFICER AND**  
**STAFF OF THE AUTHORITY**

***The Board***

7. (1) The Authority shall be administered and managed by a Board of Directors.

(2) The Board shall consist of-

(a) a Chairperson and not more than four (4) other members, who shall be appointed by the Minister;

(b) a representative of the Swaziland Law Society;

(c) a representative of the Institute of Accountants;

(d) the Principal Secretary of the Ministry of Finance, or a person authorised by the Principal Secretary in writing to act on behalf of the Principal Secretary; and,

(e) the Chief Executive Officer of the Authority, who shall act as secretary to the Board.

(3) The members appointed by the Minister under subsection (2)(a) shall be persons of recognised standing and experience in the financial services sector.

(4) The members shall elect one of their number, other than the Principal Secretary, to be Deputy Chairperson.

(5) A member of the Board, other than the-

(a) Principal Secretary of the Ministry of Finance; and,

(b) Chief Executive Officer;

shall hold office for a period not exceeding three (3) years on such terms and conditions as the Minister may determine, and shall be eligible for reappointment.

(6) The Board may nominate one or more committees, which may, subject to the instructions of the Board, perform such functions as the Board may determine.

(7) A Member of the Board or a member of a committee of the Board, other than the Chief Executive Officer, shall be entitled to such fees and allowances as the Minister may approve.

(8) In its administration and management of the affairs of the Authority, the Board shall adopt and be guided by best practice in corporate governance.

(9) The Board may make by-laws and issue directives to regulate the conduct of the business of the Authority.

***Chief Executive Officer***

8. (1) The Minister may, on the advice and recommendation of the Board, appoint the Chief Executive Officer.

(2) The Chief Executive Officer shall be a person with not less than ten (10) years working experience in financial matters, with relevant academic credentials.

(3) The Chief Executive Officer shall, subject to this Act, the Regulations, by-laws and directives, act in all matters for and on behalf of the Authority.

(4) The Chief Executive Officer shall devote the whole of his or her professional services to the Authority and, while holding office, shall not, without the written approval of the Minister-

- (a) receive any additional salary or supplement to the salary of Chief Executive Officer from any source other than the Authority; or,
- (b) occupy another office or employment, whether remunerated or not, except as nominee of the Authority.

(5) Notwithstanding subsection (4)(b), the Chief Executive Officer may-

- (a) act as member of a Board, committee or commission established by Government; or,
- (b) hold office on the Board of an international financial services provider or similar body of which Swaziland is a member.

(6) The terms of appointment of the Chief Executive Officer shall be set out in the instruments of appointment of the Chief Executive Officer.

#### ***Disqualification***

9. (1) A person shall not be eligible to hold or continue to hold office as a member of the Board if that person-

- (a) is a member of Parliament;
- (b) is an officer, employee or owner of, or significant shareholder in, a financial services provider;
- (c) is mentally or physically incapable of carrying out his or her duties as member;
- (d) is an insolvent or has, in Swaziland or elsewhere, been declared bankrupt and has not been rehabilitated;
- (e) has, in Swaziland or elsewhere, been convicted of an offence involving dishonesty;
- (f) has, in Swaziland or elsewhere, been found guilty of gross misconduct;
- (g) in the case of a person with professional qualifications, has been disqualified or suspended, other than at his or her own request, from practising the profession by the order of a competent authority on the grounds of his or her misconduct and has not been rehabilitated; or,
- (h) has been absent for three (3) consecutive meetings of the Board without leave or good cause.

(2) In this section, "significant shareholder" means a shareholder who holds more than twenty five (25) percent of the equity in a financial services provider.

***Resignation***

10. A member of the Board appointed under section 7 (2) (a) may resign office on giving a notice of not less than one (1) month in writing to the Minister.

***Removal from office***

11. (1) The Minister may by written notice remove a member from office if the member is disqualified in terms of section 9.

(2) Where the Chairperson of the Board or the Chief Executive Officer is removed from office as contemplated in subsection (1) the Authority shall publicly disclose the reason for such removal.

***Meeting of Board***

12. (1) The Board shall meet as often as the business of the Authority may require, but not less frequently than once in every two months.

(2) A quorum at a meeting shall be five members, including the Chief Executive Officer or a person acting in that capacity.

(3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson, shall chair a meeting of the Board.

(4) Except as otherwise provided in this Act, decisions of the Board shall be determined by a majority of members present and voting, and in the event of a tie, the person chairing that meeting shall have a casting vote in addition to the deliberative vote.

(5) An act or proceeding of the Board shall not be invalid merely because of a vacancy or vacancies, or because of a defect in the appointment of a member.

***Conflict of interest***

13. (1) In carrying out their functions, members shall not act as representatives of a commercial, financial, agricultural, industrial or other interest, or receive or accept directives from anybody in respect of those functions.

(2) A member shall fully disclose to the Board all interests of whatever kind, direct or indirect, that that member may have in connection with a matter that is, or may become, the subject of action by the Board or the Authority.

(3) A member who has disclosed an interest under subsection (2) shall not take part in any vote, decision or action in relation to such a matter, whether or not the required disclosure was made but such member shall be counted in constituting a quorum.

(4) A member, officer or employee of the Authority shall not accept any gift or advantage for himself or herself or, on his or her behalf, for any person with whom that member may have family, business, or financial connections if its acceptance would result, or give the appearance of resulting, in lessening the impartial devotion of that member to his or her duties.

(5) A person who contravenes subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding five thousand emalangeni (E5,000) or to imprisonment for a term not exceeding more than one (1) year or to both such fine and imprisonment.



(6) The Authority shall formulate and apply codes or principles of conduct to govern conflicts of interest at Board, committee and staff level.

*Staff etc. of the Authority*

14. (1) The Authority may engage staff, including deputies to the Chief Executive Officer, consultants and other persons for the purposes of assisting it to perform its functions, on terms and conditions it thinks fit.

(2) Notwithstanding subsection (1), the Authority shall not delegate any of its functions to a third party unless-

- (a) it has comprehensively assessed the competence of that third party;
- (b) it has put in place measures to monitor the performance of that third party; and,
- (c) the terms and conditions of the delegation clearly indicate that the third party is independent from a financial services provider or any other related party.

(3) The Authority 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.

(4) A person employed under sub-section (1) shall observe the highest professional standards and shall be given clear guidance on matters of conduct, including the-

- (a) avoidance of conflicts of interest;
- (b) appropriate use of information obtained in the course of the exercise of powers and the discharge of duty; and,
- (c) observance of procedural fairness.

(5) The Authority may enter into a memorandum of understanding with the Government or the Bank for the secondment to it of staff and related issues.

*Transfer of staff*

15. (1) Subject to subsection 91(3), the Registrar of Insurance and Retirement Funds, the staff of the Registrar and the staff of the Capital Markets Division shall be entitled to be transferred to the Authority.

(2) A person who is transferred to the Authority as provided in subsection (1) shall, subject to subsection 14 (3), be employed on such terms and conditions which are not less favourable than those applicable to such persons before the transfer.

(3) The period of service of a person to who is transferred to the Authority in terms of subsection (1) with the Office of the Registrar of Insurance and Retirement Funds or the Capital Markets Division, as the case may be, shall be deemed to be an unbroken period of service with the Authority and no such person shall be entitled to claim that his or her employment has been terminated in breach of any law.

(4) A pension or other similar scheme operated by, or on behalf of, the Office of the Registrar of Insurance and Retirement Funds or the Capital Markets Division, as the case may be, for the benefit of the staff shall from the date of transfer of the staff to the Authority be operated by, or on behalf of the Authority.

(5) Any disciplinary inquiry or other similar proceedings which have been instituted or are due to be instituted against any person to whom subsection (2) applies may, from the date of transfer of that person be instituted, continued or completed by the Authority and any resulting decision shall have the same force and effect as if the subject matter of the disciplinary inquiry or proceedings had been conducted by the person during his or her employment with the Authority.

#### *Arrangements with other agencies*

16. (1) The Authority may enter into arrangements with the Minister, the Bank any Government department or agency or any local or foreign institution with similar objects functions or powers as the Authority in connection with the performance of its functions.

(2) The Authority shall furnish, when so required by the Bank, such information as may be required for the purposes of assisting the Bank in the discharge of its functions.

(3) Subject to subsection (4), the Bank may publish, in whole or in part, any information furnished under subsection (2).

(4) No information shall be published by the Bank where such publication would entail the disclosure of the financial affairs of any individual or enterprise without the consent in writing of the individual or enterprise.

#### *Independence*

17. (1) The Authority shall not be subject to direction by any person or institution, except that the Minister may give directions on broad policy matters if the Minister considers it in the national interest.

(2) A direction issued in terms of subsection (1) shall not relate to a particular case and shall be tabled in Parliament as soon as practicable after it is given.

#### *Protection of the Authority and its officials*

18. The Authority, members of the Board, committee members and any officer or employee of the Authority shall not be liable for damages for any act or omission under this Act or a financial services law, unless it is established that the act or omission was done or omitted in bad faith.

#### *Confidentiality*

19. (1) Except for the purpose of the performance of his or her duties or the exercise of his or her functions, or when lawfully required to do so by a court or under any law, a member, an officer or employee of the Authority or auditor for the Authority shall not disclose to any person any information relating to the affairs of the Authority or of any financial services provider or other person acquired in the performance of his or her duties or the exercise of his or her functions.

(2) A person referred to in subsection (1) shall, before acting under this Act, take and subscribe before a Commissioner of Oaths, such oath of secrecy as may be prescribed by the Minister.

(3) A person who, in contravention of the true intent of the oath of secrecy taken by that person and without lawful excuse, reveals any matter or thing, which has come to the knowledge of that person in the performance of his or her duties or the exercise of his or her functions, commits an offence and is liable, on conviction, to a fine not exceeding five thousand Emalangeni (E5,000) or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment.

#### **PART IV** **FINANCIAL RESOURCES OF THE AUTHORITY**

##### ***Funds of the Authority***

20. The Authority shall be funded by-

- (a) moneys appropriated by Parliament for the purpose;
- (b) the payment to the Authority of fees or other charges, as prescribed by the Authority in relation to-
  - (i) any application to the Authority for any licence, approval, registration, exemption, waiver or modification under this Act or the regulations made under this Act;
  - (ii) any other function performed by the Authority under this Act; and,
  - (iii) any other matter with regard to which provision is made by or under this Act;
- (c) the payment to the Authority of supervisory levies imposed under section 21;
- (d) the payment to the authority of administrative penalties imposed under section 68;
- (e) notwithstanding section 38 of the Insurance Act, such percentage out of the Registrar's Levies Account as the Minister may, acting on the advice of the Board, by Notice published in the Gazette, determine.
- (f) grants and donations made to the authority; and,
- (g) such sums of money or such other assets as may accrue to or vest in the Authority from time to time, whether in the course of the exercise of its functions or otherwise.

##### ***Supervisory levies***

21. (1) The Authority may, by Notice published in the Gazette, impose supervisory levies on financial services providers and may, subject to the provisions of this section, amend, substitute or withdraw any such Notice.

- (2) Before imposing levies referred to in subsection (1), the Authority shall-
  - (a) bring the proposed levies to the attention of financial services providers, together with a statement that representations about the proposed levies may be made to the Authority within a specified time; and,
  - (b) have regard to any representations made in pursuance of the statement referred to in paragraph (a).
- (3) In the Notice referred to in subsection (1), the Authority shall specify the-

- (a) amounts of the levies or the basis or manner of calculation or determination of the amounts;
- (b) periods in respect of which levies are imposed, the dates on which levies or the periods within which they are payable, and the manner of payment;
- (c) rates of interest and manner of calculation of interest contemplated in subsection (4); and,
- (d) manner in which applications for exemptions contemplated in subsection (7) shall be made.

(4) In the Notice referred to in subsection (1), the Authority may-

- (a) impose different rates of supervisory levies for different classes of financial services providers; and,
- (b) determine different-
  - (i) amounts;
  - (ii) basis or manner of calculation or determination;
  - (iii) periods, dates, manners of payment, rates of interest;
  - (iv) manners of calculation of interest; or,
  - (v) manners of making application or of service referred to in paragraph (a),

in respect of different classes, types or categories of financial services providers.

(5) A financial services provider which is under notice to pay levies in terms of this section and fails to pay the levy in full within the period for payment as determined in the notice or on the date so determined, shall, at the rate calculated and in the manner determined in the notice, pay interest on the balance of the levy outstanding and on the interest payable.

(6) Levies imposed under this section and interest owed in respect thereof, shall be deemed to be a debt due to the Authority and may be recovered by the Authority by way of judicial process in a competent court.

(7) The Authority may, upon the application of a financial services provider, and if the Authority is of the opinion that there are sound reasons therefor, grant exemption to a financial services provider from a provision of the notice to the extent and subject to the conditions determined by the Authority.

(8) This section shall not apply to levies imposed under the Insurance Act, 2005, and the Retirement Funds Act, 2005.

#### ***Levies Account of Authority***

22. (1) Levies, fees and other charges, and appropriations under section 20 shall be paid into an account established by the Authority to be designated the "Levies Account of the Authority".

(2) Money standing to the credit of the Levies Account of the Authority may only be spent to defray the expenses of the Authority.

(3) Money standing to the credit of the Levies Account of the Authority, but not immediately required may be invested as the Authority so determines.

(4) Money standing to the credit of the Levies Account of the Authority at the close of any financial year of the Authority, as well as money which has been invested in terms of subsection (3), shall be carried forward to the next financial year of the Authority.

*Estimates of expenditure*

23. (1) The Authority shall, not later than 30 September in each financial year, submit to the Minister for approval estimates of the income and expenditure of the Authority for the next financial year.

(2) In addition to the estimates referred to in subsection (1), the Authority shall submit projected estimates for the next two financial years together with an action plan for those years.

*Financial Year*

24. The financial year of the Authority shall coincide with the financial year of Government.

*Accounts*

25. The Authority shall cause proper accounts to be kept of the assets and liabilities and income and expenditure of the Authority for each financial year.

*Audit*

26. (1) The Authority shall, within fourteen (14) days after the end of each financial year, submit a statement of the accounts prepared for that year for audit to auditors appointed by the Authority with the approval of the Minister.

(2) The auditors shall prepare a report on the accounts and send the report to the Authority who shall forthwith send a copy of the report and a copy of the statement of accounts to the Minister.

(3) The report of the auditor shall include a statement whether, in their opinion-

- (a) proper accounting records have been kept throughout the financial year;
- (b) the income and expenditure account for the financial year to which the report relates gives a true and fair view of the surplus or deficit of the Authority; and,
- (c) the balance sheet for such financial year gives a true and fair view of the financial affairs of the Authority at the end of that financial year.

(4) The auditors appointed under subsection (1) shall have a right of access at all reasonable times to the books, accounts, vouchers and other records of the Authority and shall be entitled to require from the Authority such information and explanations as they consider necessary for the performance of duties as auditors.

(5) Notwithstanding subsection (1), the Minister may at any time require the Auditor-General to examine and report on the Authority's accounts or any aspect of its operations, and the Authority shall provide the Auditor-General with all necessary and proper facilities for that examination.

***Annual report***

27. (1) The Authority shall, within 3 months after the close of each financial year, transmit to the Minister-

- (a) a copy of the annual accounts certified by the auditors; and,
- (b) a report of its operations and affairs during that year,

which shall be published by the Authority.

(2) The Minister shall, as soon as possible thereafter-

- (a) cause a copy of the annual accounts and the report of operations to be laid before Parliament; and,
- (b) cause a copy of the annual accounts to be published in the Gazette.

***Reports to the Minister***

28. The Authority may at any time report to the Minister about matters related to the-

- (a) safety and soundness of financial services providers;
- (b) conduct of business by financial services providers; and,
- (c) efficiency, orderliness, stability and fairness of the non-bank financial sector.

**PART V**

**ADMINISTRATION OF FINANCIAL SERVICES LAWS**

***Administration of financial services laws***

29. (1) The Authority shall, notwithstanding any provision to the contrary in any financial services law, administer financial services laws with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring them in conformity with the provisions of this Act.

(2) The provisions of this Act that confer powers on the Authority shall be in addition to the provisions of any other financial services law that expressly or, by operation of this Act, confers powers on the Authority.

***Power to make rules***

30. (1) The Authority may make such rules applying to authorised financial services providers-

- (a) with respect to the licensing of financial services providers;
- (b) with respect to the books, accounts and records to be maintained by authorised financial services providers;
- (c) with respect to the carrying on by financial services providers of financial services;
- (d) with respect to the carrying on by financial services providers of activities which are not financial services;

- (e) as appear to it to be necessary or expedient for the purpose of protecting the interests of stakeholders;
- (f) prescribing capital adequacy, solvency and other prudential standards in respect of financial services providers;
- (g) relating to the handling of clients' money held by a financial services provider in circumstances specified in the rules;
- (h) in relation to the prevention and detection of money laundering in connection with the carrying on of financial services by financial services providers;
- (i) prescribing requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group; or,
- (j) to make provision, not inconsistent with a financial services law, prescribing or declaring matters necessary or desirable to be prescribed or declared to give effect to a financial services law.

(2) Rules made under subsection (1)-

- (a) shall be published by Notice published in the Gazette by the Authority; and,
- (b) may prescribe penalties, not exceeding a fine of ten thousand Emalangeni (E10,000) or imprisonment for a term of two years or both such fine and imprisonment.

***Modification or waiver of rules***

31. The Authority may, on the application of, or in consultation with, a financial services provider, direct that all or any of the rules to which this Part applies are-

- (a) not to apply to that financial services provider; or,
- (b) to apply to that financial services provider with such modifications as may be specified in the direction.

***Actions for damages***

32. A contravention by a financial services provider of a rule is actionable at the suit of a person who suffers loss as a result of the contravention.

***Codes, guidelines, etc., by Authority***

33. (1) The Authority may issue, in such manner as it considers appropriate, such codes, guidelines, policies and practice notes as it considers appropriate for providing guidance-

- (a) in furtherance of its regulatory objectives under this Act or a financial services law;
- (b) in relation to any matter relating to any of the functions of the Authority under any of the provisions of this Act or a financial services law;
- (c) in relation to the operation of any of the provisions of this Act or a financial services law;

- (d) with respect to the operation of this Act or a financial services law and of any rules made thereunder;
- (e) with respect to any matters relating to functions of the Authority; or,
- (f) with respect to any other matters about which it appears to the Authority to be desirable to give information or advice.

(2) The Authority may publish any such code, guideline, and policy statement or practice note in such manner as it thinks fit.

(3) Any code, guideline, policy or practice note issued under this section-

- (a) may be of general or specific application; and,
- (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

***Directives to financial services providers***

34. (1) If the Authority considers that a financial services provider is conducting its affairs, or is proposing to conduct its affairs, in an imprudent, improper, financially unsound or unlawful way, it may give the financial services provider any directive it is satisfied is necessary or desirable to remedy the matter or protect the interests of the financial services sector or of stakeholders.

(2) A financial services provider to whom a directive has been issued under subsection (1) shall comply notwithstanding anything contained in its articles of association or in a contract or arrangement to which it is a party.

(3) A person may not rely on a directive to terminate, repudiate or cancel a contractual obligation with or of the financial services provider, but, if not involved in the matter that led to the directive, may recover damages from the financial services provider for any loss it suffers because of the directive.

(4) A person who-

- (a) without reasonable excuse, fails to comply with a directive, order or requirement given to the person under this Act, the regulations or the rules; or
- (b) knowingly hinders or prevents compliance with a directive, order or requirement given under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni (E10,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

**PART VI**  
**FINANCIAL SERVICES LICENCES**

***Restriction on the right to provide financial services***

35. (1) A person shall not provide, purport to provide or hold himself or herself out as being able or authorised to provide financial services in Swaziland unless that person is an authorised financial services provider under this Part, or as otherwise permitted in this Act.



(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni (E20, 000) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

***Application or renewal of a financial service licence***

36. (1) An application for a licence or for the renewal of a licence shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fees and, in the case of an application for renewal of a licence, such application shall be made not later than one month before the expiry of the licence.

(2) The Authority may require an applicant to supply the Authority with such further information, in relation to the application, as the Authority considers necessary.

(3) Notwithstanding the generality of subsection (2), the applicant shall provide the Authority with-

(a) the risk management systems of the applicant including-

- (i) internal control systems;
- (ii) information technology systems; and,
- (iii) policies and procedures adequate for the nature and scale of the business in question;

(b) the business plan of the applicant, verified by auditors or actuaries, and projected out for a minimum of three years, which give details of-

- (i) business lines and risk profile;
- (ii) projected setting-up costs;
- (iii) capital requirements;
- (iv) projected development of business;
- (v) solvency margins; and,
- (vi) other relevant arrangements;

(c) information on the financial services to be offered by the applicant;

(d) information on contracts with affiliates and outsourcing arrangements; and,

(e) information on the reporting arrangements of the applicant, both internally to its own management and to the Authority.

(4) The Authority shall not refuse to grant or renew a licence without first giving the applicant or the holder of a licence an opportunity of being heard.

***Grant of a financial services licence***

37. (1) An application for a licence to carry on one or more financial services may be made to the Authority by-

- (a) an individual;
- (b) a company registered under the Companies Act, 2009;
- (c) a partnership;
- (d) a cooperative society registered under the Co-operative Societies Act, 2003; or,
- (e) a statutory body.

(2) A licence shall only be granted if the applicant meets and the Authority is satisfied that the applicant will continue to meet-

- (a) the capital adequacy, solvency or other prudential standards prescribed by the Authority;
- (b) minimum financial requirements as may be prescribed by the Authority;
- (c) licensing conditions in terms of the licensing rules issued by the Authority;
- (d) requirements of the applicable finance services law; or,
- (e) other prudential requirements determined by the Authority by Notice published in the Gazette.

(3) It shall be a condition of approval under this section that the applicant-

- (a) is a fit and proper person, or in the case of a corporate body, is managed and controlled by fit and proper persons;
- (b) complies, or in the case of a corporate body, is managed by persons or employs persons who comply, with the standards of training and experience prescribed by the authority;
- (c) in the case of a corporate body, has adequate internal controls to the satisfaction of the authority;
- (d) complies with best practice in corporate governance to the satisfaction of the Authority;
- (e) has made adequate arrangements for the safe custody of customer assets through appropriate segregation; and,
- (f) undertakes to pay the supervisory levies imposed by the Authority under section 21 of this Act.

(4) Where an applicant is twenty five (25) percent or such other percentage as the Minister may, by Notice published in the Gazette determine, foreign owned, the application under this Part shall be accompanied by-

- (a) confirmation from the home supervisory authority that the applicant is authorised to carry on the types of financial services proposed; and,
- (b) information from the home supervisory authority that the applicant is solvent and meets all the regulatory requirements in the home jurisdiction.

(5) In considering whether a person is a fit and proper person in terms of this section, the Authority shall have regard to the-

- (a) financial status of that person;
- (b) ability of that person to perform the proposed function efficiently, honestly and fairly; and,
- (c) reputation, character, financial integrity and reliability of that person.

***Power of Authority to impose conditions or restrictions***

38. (1) The Authority may-

- (a) grant or renew a licence under this Part subject to such conditions or restrictions as it deems fit; or,
- (b) at any time, by written notice to an authorised financial services provider, vary any condition or restriction or impose further conditions or restrictions.

(2) Without limiting the generality of subsection (1), the Authority may, in granting or renewing a licence, impose such conditions or restrictions as the Authority deems fit as to the class or classes of business that a financial services provider may carry on.

(3) A person who contravenes or fails to comply with any condition of, or restriction in, a licence granted to that person under this Act, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand Emalangeni (E100, 000) and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5, 000) for every day or part thereof during which the offence continues.

***The Authority may issue written notices***

39. (1) Where it appears to be necessary or expedient in the public interest or in the interest of stakeholders, the Authority may, by notice in writing, direct any holder or class of holders of a financial services licence to comply with such requirements as the Authority may specify in the notice.

(2) Without prejudice to the generality of subsection (1), any requirement specified in a notice issued by the Authority under that subsection may relate to-

- (a) the standards to be maintained by the person concerned in the conduct of business; and,
- (b) the type and frequency of financial returns and other information to be submitted to the Authority.

(3) A holder of a financial services licence who contravenes or fails to comply with any of the requirements specified in a notice issued under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni (E20, 000), and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5, 000) for every day or part thereof during which the offence continues.

***Revocation and suspension of licences***

40. (1) A licence under this Part shall be deemed to be revoked, in the case of-

- (a) a natural person, if that person dies; and,
- (b) a company, if the company has been wound up.

(2) The Authority may revoke a licence or suspend, for a specified period-

(a) in the case of a natural person if-

- (i) a writ of execution in respect of that person has not been satisfied;
- (ii) that person ceases to carry on the business for which he was licensed;
- (iii) that person has been declared insolvent in Swaziland or elsewhere;
- (iv) the Authority has reason to believe that that person has not performed his or her duties efficiently, honestly or fairly;
- (v) that person is convicted of an offence involving dishonesty punishable by imprisonment for a term of not less than three (3) months;
- (vi) that person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision in this Act; or,
- (vii) that person commits an act of insolvency.

(b) in the case of a company or other legal person-

- (i) it is being or will be wound up;
- (ii) a writ of execution in respect of it has not been satisfied;
- (iii) a liquidator has been appointed whether by the court or creditors in respect of the company's property;
- (iv) it has entered into any composition or arrangement with its creditors;
- (v) it ceases to carry on the business for which it was licensed;
- (vi) the Authority has reason to believe it or any of its directors or employees have not performed their duties efficiently, honestly or fairly; or,
- (vii) it contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence or any other provision in this Act; or
- (viii) it commits an act of insolvency.

(3) In a case to which subsection (2) applies, the Authority may, instead of revoking a licence, suspend the licence for a specific period.

(4) The Authority shall not revoke or suspend a licence under subsection (2) or (3) without-

- (a) specifying the grounds and the facts supporting its decision; and,
- (b) giving such person an opportunity of being heard.

(5) Where the Authority considers on reasonable grounds that the matter is urgent and that it is in the public interest, a licence may be revoked immediately.

(6) A person whose licence is revoked or suspended under this section shall, for the purpose of this Part, be deemed not to be licensed as from the date that the Authority revokes or suspends the licence, as the case may be.

(7) A revocation or suspension of a licence shall not operate so as to-

- (a) avoid or affect any agreement, transaction or arrangement entered into by any person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; or,
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

***General prohibitions***

41. (1) A person shall not, without the prior written approval of the Authority, acquire by transfer either directly or indirectly any interest in the share capital of an authorised financial services provider which would confer upon that person a voting share exceeding twenty (20) percent or such other percentage as the Minister may, by Notice published in the Gazette, determine, of the total issued share capital, and, in considering its approval, the Authority may call for such information as it may require.

(2) An authorised financial services provider shall not, without the prior written approval of the Authority-

- (a) enter into a merger or consolidation;
- (b) transfer the whole or any part of its assets in Swaziland other than in the ordinary course of its business;
- (c) effect an increase or reduction of its authorized share capital or a reduction of its paid-up capital;
- (d) alter its name as set out in its licence; or,
- (e) amend its memorandum or articles of association.

(3) An application for approval by the Authority in terms of this section shall be in writing and shall be accompanied by any information or document which the Authority may deem necessary including-

- (a) a statement of the nature of the transfer, merger or consolidation;
- (b) a copy of the proposed agreement under which the transfer, merger or consolidation is to be effected;
- (c) information on shareholders and any other person directly or indirectly exercising control in the group; and,
- (d) details about the intended beneficial owner.

(4) In determining an application in terms of this section, the Authority shall ensure that-

- (a) the applicant meets the applicable requirements under section 36; and,
- (b) the structures of the financial group which controls the applicant are sufficiently transparent not to hinder supervision of the applicant.

(5) In order to assess applications under this section, the Authority shall establish requirements for financial and non-financial resources of applicants.

(6) The Authority may reject applications under this section if it appears, from all circumstances of the application, that approval would be unduly prejudicial to stakeholders.

***Variation etc. at request of financial services provider***

42. (1) The Authority may, on the application of a financial services provider-

- (a) vary the licence on such terms and conditions as it deems fit; or,
- (b) cancel the licence.

(2) The Authority may refuse an application under this section if it appears that-

- (a) the interests of stakeholders, or potential stakeholders, would be adversely affected if the application were to be granted; or,
- (b) it is desirable in the interests of stakeholders, or potential stakeholders, for the application to be refused.

***Variation of licence on acquisition of control***

43. If it appears to the Authority that a person has acquired control over an authorised financial services provider and that the likely effect of the acquisition of control on the authorised financial services provider, or on any of its activities, is uncertain or prejudicial to the interests of stakeholders or the financial services sector, the Authority may vary the licence of the authorised financial services provider by-

- (a) imposing conditions on the authorised financial services provider; or,
- (b) varying a requirement included in the authorised financial services provider's licence.

***Determination of applications***

44. (1) An application under this Part shall be determined by the Authority before the end of a period of three (3) months beginning with the date on which it received the completed application.

(2) The applicant may withdraw the application, by giving the Authority written notice, at any time before the Authority determines it.

(3) If the Authority grants an application for, or for variation of licence, it shall give the applicant written notice, which shall state the date from which the licence, or the variation, has effect.

(4) If the Authority proposes to refuse an application made under this Part, it shall advise the applicant accordingly in writing.

***Right to refer matters to the Appeals Tribunal***

45. An applicant who is aggrieved by a decision of the Authority under this Part may refer the matter to the Appeals Tribunal.

**PART VII**  
**MARKET CONDUCT OF FINANCIAL SERVICES PROVIDERS**

***Statements of principle***

46. An authorised financial services provider shall, at all times in the conduct of business, act according to the principles of best practice and, in particular, shall-

- (a) act honestly and fairly in the best interest of stakeholders and the integrity of the market;
- (b) observe a high standard of integrity and fair dealing;
- (c) act with due skill, care and diligence in the best interest of stakeholders and the integrity of the market;
- (d) observe high standards of market conduct;
- (e) seek from stakeholders information about their circumstances and objectives which might reasonably be expected to be relevant in enabling the financial services provider to fulfil responsibilities of that financial services provider to stakeholders;
- (f) take reasonable steps to give every stakeholder that that financial services provider advises, in a comprehensible way, any information needed to enable the stakeholder to make a balanced and informed decision;
- (g) avoid any conflict of interest with stakeholders and, where such a conflict unavoidably arises, ensure fair treatment to stakeholders by complete disclosure or by declining to act;
- (h) protect properly, by way of segregation and identification, those stakeholder assets for which he is properly responsible;
- (i) maintain adequate financial resources to meet the business commitments of that financial services provider and withstand the risks to which the business of that financial services provider is subject;
- (j) organise and control the internal affairs of that financial services provider in a responsible manner;
- (k) keep proper records;
- (l) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and,

- (m) deal with the Authority in an open and co-operative manner and keep the Authority informed of anything concerning that financial services provider that might reasonably be expected to be disclosed.

***Misleading or deceptive conduct***

47. (1) An authorised financial services provider shall not, in connection with its business, engage in conduct that is misleading or deceptive or likely to mislead or deceive.

(2) Activity mentioned in subsection (1) entitles anyone who suffers a loss because of the activity to recover the amount of the loss from the authorised financial services provider and from anyone involved in the activity.

***Tying provisions***

48. (1) An authorised financial services provider shall not provide any financial services on the condition or requirement that the stakeholder-

- (a) obtains or provides some additional credit, property or service from the authorised financial services provider or an affiliate of the authorised financial services provider; or,
- (b) does not obtain some financial service from another authorised financial services provider.

(2) Subsection (1) of this section shall not prevent an authorised financial services provider imposing a reasonable condition or requirement to assure the soundness of the customer's credit.

(3) The Authority may grant an exemption from subsection (1).

***Power of Authority to prescribe rules of good business conduct***

49. (1) The Authority may prescribe rules for regulating the market practice of authorised financial services providers.

(2) Without limiting the generality of subsection (1), rules made under this section may provide-

- (a) that a contravention of any specified provision thereof shall be an offence;
- (b) that any contract entered into by an authorized person with stakeholders otherwise than in compliance with any specified rules, notwithstanding anything in the contract, unenforceable at the option of the stakeholder;
- (c) for penalties not exceeding a fine of one hundred thousand Emalangeni (E100,000) or imprisonment for a term not exceeding twelve (12) months or both such fine and imprisonment; or,
- (d) that any contravention of the rules is actionable at the suit of any person who suffers a loss as a result of the contravention.

***Fidelity insurance and professional indemnity***

50. An authorised financial services provider shall, notwithstanding a financial services law-



- (a) insure itself against any loss resulting from the negligence or dishonesty of any of its officers and other personnel to an amount which the Authority deems adequate with a person approved by the Authority and carrying on insurance business in Swaziland or the business of guaranteeing against any such loss; and,
- (b) indemnify itself against legal liability to pay compensatory damages, including claimants and defence costs, as a result of any negligent act, negligent error or negligent omission in the conduct or execution of its professional activities and duties to an amount that the Authority deems adequate.

*Appointment of compliance officer*

51. An authorised financial services provider shall designate one of its officers as a compliance officer for the purpose of ensuring compliance with this section, the provisions of this Act, regulations, rules and notices issued thereunder, the provisions of a financial services law and such other directives as may be issued by the Authority from time to time.

**PART VIII**  
**AUDITORS AND ACTUARIES**

*Appointment.*

52. (1) The Authority may make rules requiring an authorised financial services provider to appoint an-

- (a) auditor, or,
- (b) actuary,

if the authorised financial services provider is not already under an obligation to do so imposed by a financial services law.

(2) Rules made under subsection (1) may require an authorised financial services provider to-

- (a) produce periodic financial reports; and,
- (b) have them reported on by an auditor or an actuary.

(3) Rules may impose such other duties on auditors of, or actuaries acting for, authorised financial services providers, as may be specified.

(4) Rules under subsection (1) may make provision-

- (a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
- (b) requiring the Authority to be notified of an appointment;
- (c) enabling the Authority to make an appointment if no appointment has been made or notified;
- (d) as to remuneration; or,
- (e) as to the term of office, removal and resignation of an auditor or actuary.

(5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by the rules under subsection (3) shall-

- (a) act in accordance with such provision as may be made by the rules; and,
- (b) have such powers in connection with the discharge of the functions of auditor or actuary as may be provided by the rules.

*Access to books etc.*

53. An appointed auditor of, or an appointed actuary acting for, an authorised financial services provider shall-

- (a) have a right of access at all times to the authorised financial services provider's books, accounts and vouchers, including electronic versions thereof; and,
- (b) be entitled to require from the authorised financial services provider's officers such information and explanations as the auditor or actuary reasonably considers necessary for the performance of the duties of auditor or actuary.

*Information given by auditor or actuary to the Authority*

54 (1) An auditor or actuary does not contravene any duty to which the auditor or actuary is subject merely because the auditor or actuary gives to the Authority information on a matter of which the auditor or actuary has, or had, become aware in the capacity of auditor or actuary acting for, the authorised financial services provider, or, gives the Authority an opinion on such a matter, if the auditor or actuary is acting in good faith and reasonably believes that the information or opinion is relevant to any functions of the Authority.

(2) Subsection (1) applies whether or not the auditor or actuary is responding to a request from the Authority.

(3) The Minister may make regulations prescribing circumstances in which an auditor or actuary shall communicate matters to the Authority as mentioned in subsection (1).

(4) Matters to be communicated to the Authority in accordance with the regulations made under subsection (3) may include matters relating to persons other than the authorised financial services provider concerned.

*Duty of auditor or actuary resigning etc. to give notice*

55. (1) An auditor or actuary appointed under this Part shall, without delay, notify the Authority if the auditor or actuary-

- (a) is removed from office by an authorised financial services provider;
- (b) resigns before the expiry of his or her term of office with such a person; or
- (c) is not re-appointed by such a person.

(2) An auditor or actuary referred to in subsection (1) shall notify the Authority of any matter connected with the -

- (a) removal;

(b) resignation; or,

(c) failure to be reappointed,

of the auditor or actuary, if the auditor or actuary thinks such ought to be drawn to the Authority's attention.

***Disqualification***

56. (1) If it appears to the Authority that an auditor or actuary to whom this Part applies has failed to comply with a duty imposed on that auditor or actuary under this Act or a financial services law, the Authority may disqualify that auditor or actuary from being the auditor of, or from acting as an actuary for, any authorised financial services provider or any particular class of authorised financial services providers.

(2) If the Authority proposes to disqualify an auditor or actuary under this section it shall give the auditor or actuary and the authorised financial services provider due notice in writing.

(3) The Authority may remove any disqualification imposed under this section if satisfied that the disqualified auditor or actuary will in future comply with the duty in question.

(4) An auditor or actuary who has been disqualified under this section may refer the matter to the Appeals Tribunal.

***Provision of false or misleading information to auditor or actuary***

57. (1) An authorised financial services provider who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred and fifty thousand Emalangeni (E150,000) or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.

(2) Subsection (1) applies equally to an officer, controller or manager of an authorised financial services provider.

**PART IX**

**INFORMATION, REPORTS, INSPECTION AND INVESTIGATION**

***Register of licence holders***

58. (1) The Authority shall keep, in such form as it thinks fit, a register of authorised financial services providers, specifying such particulars as the Authority may deem necessary.

(2) A person may, upon payment of a fee prescribed by the Authority, inspect and take extracts from the register kept under subsection (1).

(3) Where a change occurs in any matter specified in subsection (1), the authorised financial services provider concerned shall, not later than fourteen (14) days after the occurrence of the event concerned, give to the Authority, on the form prescribed by the Authority, particulars in writing of the event concerned.

***Power of Authority to publish information***

59. (1) The Authority may, where it thinks it necessary or expedient in the interest of the public or for the protection of stakeholders and in such form or manner as it thinks fit, publish any information relating to an authorised financial services provider, which the Authority has acquired in the exercise of its functions or the performance of its duties under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority may publish information relating to-

- (a) the lapsing, revocation or suspension of the approval, licence or exemption granted to an authorised financial services provider;
- (b) the making of a prohibition order against an authorised financial services provider;
- (c) the reprimand of any authorised financial services provider under the terms of this Act;
- (d) the removal of an officer or any person from office;
- (e) the commission of any offence-
  - (i) under this Act committed by any person; or,
  - (ii) under any other law, whether of Swaziland or elsewhere, involving an authorised financial services provider referred to in subsection (1);
- (f) any civil or criminal proceedings brought-
  - (i) under this Act against any person and the outcome of such proceedings, including any settlement, whether in or out of court; or,
  - (ii) under any other law, whether of Swaziland or elsewhere, against any person referred to in subsection (1) and the outcome of such proceedings, including any settlement, whether in or out of court;
- (g) any disciplinary proceedings brought against any person referred to in subsection (1), by the Authority and the outcome of such proceedings; and,
- (h) any other action as may have been taken by the Minister or the Authority against any person referred to in subsection (1).

***Reporting obligations by authorised financial services providers***

60. (1) The Authority may make rules to prescribe requirements for authorised financial services providers and affiliates to make reports to the Authority and give information or documents to the Authority, about matters concerning the authorised financial services provider, for the purpose of the Authority's performing its functions under this Act or a financial services law.

(2) The requirement to make reports under subsection (1) may be directed to-

- (a) directors and former directors of authorised financial services providers;
- (b) managers and former managers of authorised financial services providers; or,

- (c) controllers of authorised financial services providers.

(3) A person who subjects another person to any prejudice in the employment of that other person, or penalises that other person in any way on the grounds that that other person reported a suspected breach of a financial services law to the Authority, even if there was no obligation to report, commits an offence and shall be liable on conviction to fine not exceeding five thousand Emalangeni (E5,000) or a term of imprisonment not exceeding one (1) year.

***Power of Authority to require production of books by authorised and other persons***

61. (1) The Authority may, if it considers that there is sufficient reason to do so, by notice in writing give a direction to-

- (a) an authorised financial services provider;
- (b) a person who is or has been a member, an officer or employee of, or an agent, advocate or attorney, auditor or other person acting in any capacity for or on behalf of an authorised financial services provider; or,
- (c) any person,

requiring the production at such time and place as specified by the Authority, of such books as are so specified, that are in the custody or under the control of that person, being books relating to-

- (i) the business or affairs of an authorised financial services provider;
- (ii) the character or financial position of, or any business carried on by, an authorised financial services provider; or,
- (iii) an audit of, or any report of an auditor or any accounts or records of an authorised financial services provider.

(2) Where the Authority exercises a power under this section to require another person to produce books-

- (a) if the books are produced, the Authority may-
  - (i) take possession of the books and make copies of, or take extracts from, the books;
  - (ii) require the other person or any person who was party to the compilation of the books to make a statement providing an explanation of any of the books; and,
  - (iii) retain possession of the books for as long as the Authority may consider necessary to enable the books to be inspected and copies of or extracts from the books to be made or taken by or on behalf of the Authority; or,
- (b) if the books are not produced, the Authority may require the other person to-
  - (i) state, to the best of his or her knowledge and belief, where the books may be found; and,
  - (ii) identify the person who, to the best of his or her knowledge and belief, last had custody of the books and to state, to the best of or her knowledge and belief, where that last-mentioned person may be found.

(3) Whenever it appears to any court of competent jurisdiction, upon written information on oath, and after any enquiry it may think necessary, that there are reasonable grounds for suspecting that there are on particular premises any books the production of which has been required by virtue of this section, and which have not been produced in compliance with that requirement, the court may issue a warrant authorising the Authority or any person named therein with or without assistance to-

- (a) search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and,
- (b) take possession of, or secure against interference, any books that appear to be books the production of which was so required.

(4) The powers conferred under subsection (3) are in addition to, and not in derogation of, any other powers conferred by law or a financial services law.

(5) A copy of or extract from a book referred to in this section that is proved to be a true copy of the book or of the relevant part of the book is admissible in evidence as if it were the original book or the relevant part of the original book.

(6) For the purposes of subsection (5), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given orally or by a sworn affidavit.

(7) In this section-

- (a) "books" include electronic versions thereof; and,
- (b) "premises" includes any structure, building, aircraft, vehicle, vessel or place.

#### ***Inspections by Authority***

62. (1) The Authority may, from time to time, conduct on-site inspections under conditions of secrecy, of the books, accounts, documents, transactions, operations and affairs of an authorised financial services provider.

(2) An inspection under subsection (1) may, where the Authority specifies, include foreign branches, if any, of the authorised financial services provider.

(3) The Authority may appoint any person to exercise the power of the Authority under subsection (1).

(4) The purpose of an inspection under subsection (1) shall be to determine whether-

- (a) the authorised financial services provider concerned is in a sound financial condition;
- (b) the provisions of this Act, a financial services law and regulations and rules made thereunder are being complied with by the authorised financial services provider; or,
- (c) the business of an authorised financial services provider is being operated in a lawful and prudent manner.

(5) For the purpose of determining the condition of an authorised financial services provider and its compliance with this Act, a financial services law and the regulations and rules made thereunder, the Authority may cause an inspection to be made of any of the authorised financial services provider's affiliates in Swaziland to the same extent that an examination may be made of the authorised financial services provider.

(6) For the purpose of an inspection under this section, the authorised financial services provider under inspection shall afford the Authority access to, and shall produce, the books, accounts and documents of that authorised financial services provider and shall give such information and facilities as may be required to conduct the inspection.

(7) A person appointed by the Authority shall, at all times, have the power to copy or take possession of the books, accounts and other documents of an authorised financial services provider.

(8) An authorised financial services provider who, without reasonable excuse, fails to produce any book, account or document or furnish any information or facilities in accordance with subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand Emalangeni (E100, 000) or to imprisonment for a term not exceeding one (1) year or to both such fine and imprisonment.

#### ***Investigation by the Authority***

63. Where the Authority has reasonable grounds to suspect that a person has committed an offence under this Act or is about to do an act that, if done, would be an offence under this Act, it may carry out such investigations as it considers appropriate for the due administration of this Act.

#### ***Power of the Authority's officers to enter and search***

64. For the purposes of carrying out an investigation or ensuring the production of information which has been required by virtue of section 61 and which has not been produced in compliance with that requirement, an officer of the Authority authorised for the purpose may enter and search the premises occupied by an authorised financial services provider and take possession of, or secure against interference, any records, documents or other material found on the premises which may constitute evidence of an offence under this Act.

#### ***Powers of Authority after investigation or inspection***

65. (1) If the Authority, after an investigation or inspection has been done under this Part, considers it in the public interest, it may-

- (a) in the case of a company, apply to the Court under the Companies Act, 2009, for the winding-up of the company as if the Authority were a creditor thereof;
- (b) apply to the Court for the appointment of a curator for the business of the person concerned;
- (c) direct the person to take steps, or to refrain from doing or continuing to do any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the investigation or inspection; or,
- (d) require the person to terminate the appointment of a director, managing executive, officer or employee of that person, if the Authority believes that the director, managing executive, officer or employee is not a fit and proper person to hold the office concerned.

(2) A person who refuses or fails to comply with a direction or request referred to in paragraphs (c) and (d) of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand Emalangeni (E100, 000) or to imprisonment for a term not exceeding one (1) year or to both such fine and imprisonment.

### ***Offences and penalties***

66. A person who-

- (a) without reasonable excuse, refuses or fails to comply with a requirement made under section 61;
- (b) in purported compliance with a requirement made under section 61, furnishes information or makes a statement that is false or misleading in a material particular;
- (c) without reasonable excuse, intentionally obstructs or hinders the Authority or another person in the exercise of any power under this Part;
- (d) fails, without reasonable excuse, to give the Authority or an officer of the office of the Authority such assistance as any of them may reasonably require;
- (e) furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular-
  - (i) for the purpose of, or in connection with, an application for a licence under this Act, or,
  - (ii) in purported compliance with any requirement imposed on that person by or under this Act or a financial services law; or,
- (f) with intent to defraud or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power under this Act or a financial services law, destroys, conceals, mutilates or alters any record or account required to be kept or maintained under this Act or a financial services law,

commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty thousand Emalangeni (E250,000) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

## **PART X DISCIPLINARY MEASURES**

### ***Failure or inability to comply with a requirement of this Act***

67. If an authorised financial services provider fails, is unable to comply with or contravenes a requirement imposed on that authorised financial services provider by or under a provision of this Act or a financial services law, the Authority may-

- (a) publish a statement to that effect in terms of section 59;
- (b) issue a written warning;
- (c) direct the authorised financial services provider, subject to such conditions as the Authority may determine, to do a specified act, or refrain from doing a specified act, within a period specified by the Authority, in order to-



- (i) comply with the relevant provision;
  - (ii) remedy the effects of the contravention;
  - (iii) compensate persons who have suffered loss because of the contravention; or,
  - (iv) ensure that the authorised financial services provider does not commit further contraventions of this Act or a financial services law; or,
- (d) impose an administrative penalty under section 68.

***Administrative penalties***

68. (1) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against an authorised financial services provider in respect of any failure, inability or contravention referred to in section 67, the Authority may, by written notice impose upon that authorised financial services provider, in respect of such failure, inability or contravention, an administrative penalty.

(2) The administrative penalty referred to in subsection (1) shall, in respect of failure or inability-

- (a) to comply with capital adequacy standards imposed by the Authority, be an amount not exceeding three (3) percent of the amount of the shortfall for every day during which the authorised financial services provider fails or is unable to comply;
- (b) to comply with any other prudential, solvency or supervisory requirement, be an amount not exceeding one (1) percent of the amount of the shortfall for every day during which such failure or inability continues;
- (c) to submit to the Authority within any period specified by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, be an amount not exceeding five thousand Emalangení (E5, 000), or such other amount prescribed by the Authority, for every day during which the failure continues; or,
- (d) any contravention of this Act or a financial services law, an amount not exceeding twenty five thousand Emalangení (E25,000) for each day during which a contravention continues.

(3) Before taking action under subsection (1), the Authority shall give the authorised financial services provider notice of its intention to do so, specifying the grounds and the facts supporting its decision, and allow the authorised financial services provider a reasonable time to make submissions to the Authority about the matter.

(4) If, within fourteen (14) days after the notice is served under subsection (2), the person requests a hearing on the matter, the Authority shall hold a hearing before taking any action under subsection (1).

(5) The Authority may make rules with regard to administrative penalties under this section.

***Recovery of fines.***

69. (1) A fine imposed under section 68 shall be paid to the Authority within such period as may be specified by the Authority.

(2) If an authorised financial services provider fails to pay the fine within the period specified by the Authority under subsection (1), the Authority may by way of civil action in a court of competent jurisdiction, recover from that authorised financial services provider the amount of the fine or any portion thereof which it considers justified in the circumstances.

***Removal of officer by the Authority***

70. (1) Where the Authority is satisfied that an officer of an authorised financial services provider-

- (a) has wilfully contravened or wilfully caused that authorised financial services provider to contravene this Act or a financial services law;
- (b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or a financial services law by that authorised financial services provider;
- (c) has failed to discharge the duties or functions of his or her office;
- (d) is an undischarged bankrupt whether in Swaziland or elsewhere;
- (e) has had execution against the authorised financial services provider in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Swaziland or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation; or,
- (g) has been convicted, whether in Swaziland or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Authority may, if it thinks it is necessary in the interest of the public or for the protection of stakeholders, direct by notice in writing that authorised financial services provider to remove the officer from office or employment either for an unlimited period or for a period specified in the notice, and that authorised financial services provider shall comply with such notice.

(2) The Authority shall not direct an authorised financial services provider to remove an officer from office or employment without giving the authorised financial services provider an opportunity to be heard.

(3) Where an officer has been removed in terms of subsection (1), the Authority may, if it thinks it is necessary in the interest of the public or for the protection of stakeholders, direct that the officer be barred from acting in a responsible capacity in the financial services industry either for an unlimited period or for a period specified in the notice.

(4) A person shall not-

- (a) contravene a notice under subsection (1) or (3); or,
- (b) employ or engage another person knowing or reasonably suspecting that the employment or engagement would be inconsistent with a notice under subsection (3).

(5) A person who contravenes the provisions of subsection (4) commits an offence and shall be liable on conviction to fine not exceeding five thousand Emalangeni (E5, 000) or a term of imprisonment not exceeding two (2) years.

**PART XI**  
**CURATORS AND WINDING UP OF AUTHORISED**  
**FINANCIAL SERVICES PROVIDERS**

***Appointment of curators***

71. (1) The authority shall have the power to appoint a curator-

- (a) at the request of an authorised financial services provider; or,
- (b) if the Authority considers that an authorised financial services provider is-
  - (i) not complying in a material way with this Act, a financial services law; and regulations, rules, notices and directives issued under this Act;
  - (ii) not complying in a material way with any of the conditions of its licence;
  - (iii) engaging in fraudulent or questionable practices in the conduct of its business which endangers its reputation or threatens its solvency and the integrity of the financial services industry;
  - (iv) conducting business in an unsafe or unauthorised manner; or,
  - (v) involved in financial crime.

(2) The Authority may make rules with respect to-

- (a) the powers, functions and duties of the curator; and,
- (b) the relationship of the curator with the management of an authorised financial services provider.

***Curator's protection***

72. Where a curator has been appointed to manage the affairs of an authorised financial services provider, he shall not be liable for a loss that the authorised financial services provider suffers unless it is established that the loss was caused by the fraud, dishonesty, negligence or wilful failure of the curator to comply with the law.

***Control over winding up of an authorised financial services provider***

73. (1) Notwithstanding any other law, an authorised financial services provider may not to be liquidated or wound up, whether voluntarily or compulsorily, without the approval of the Authority.

(2) The Authority may apply to Court for the compulsory liquidation of an authorised financial services provider, if-

- (a) the licence of the authorised financial services provider has been or is to be revoked; or,
- (b) the Authority considers that the authorised financial services provider-
  - (i) is engaging in fraudulent or questionable practices in the conduct of its business which endangers its reputation or threatens its solvency;

- (ii) is conducting business in an unsafe or unauthorised manner; or,
- (iii) is involved in financial crime.

(3) These provisions shall apply notwithstanding the provisions of the Companies Act, 2009, and the Insolvency Act, 1955.

## PART XII THE OMBUDSMAN OF FINANCIAL SERVICES

### *Appointment of Ombudsman*

74. (1) The Authority may, in consultation with the financial services industry, appoint an independent person, as Ombudsman, in order to enable certain disputes in the financial services industry to be resolved quickly and with minimum formality.

(2) The Ombudsman shall be a person of recognised experience in financial matters.

(3) The Authority may make rules which define-

- (a) the powers and jurisdiction of the Ombudsman;
- (b) instances where complaints may be entertained by the Ombudsman;
- (c) persons or classes of persons eligible to bring complaints before the Ombudsman;
- (d) the nature of complaints that may be brought before the Ombudsman;
- (e) the nature and category of activities which qualify under this Part;
- (f) different provisions in relation to complaints arising from different activities;
- (g) the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage alleged by a complainant;
- (h) the power of the Ombudsman to award costs in accordance with the provisions of the rules;
- (i) payments to the Ombudsman by authorised financial services providers; or,
- (j) the funding arrangements for the establishment of the Ombudsman and its operations.

### *Determination of complaints*

75. (1) A complaint before the Ombudsman shall be determined by reference to what is, in the opinion of the Ombudsman, fair and reasonable in all the circumstances of each case.

(2) When the Ombudsman has determined a complaint, the Ombudsman shall give a written statement of the determination of the Ombudsman to the respondent and to the complainant, which shall-

- (a) give the reasons of the Ombudsman for the determination;
- (b) be signed by the Ombudsman; and,

- (c) require the complainant to notify the Ombudsman in writing, before a date specified in the statement, whether the complainant accepts or rejects the determination.

(3) If the complainant notifies the Ombudsman that the complainant accepts the determination, it shall be binding on the respondent and the complainant and shall be final.

(4) If, by the specified date, the complainant has not notified the Ombudsman of the acceptance or rejection of the determination, the complainant shall be treated as having rejected it; and the Ombudsman shall notify the respondent of the outcome.

(5) A copy of the determination on which appears a certificate signed by an Ombudsman shall be evidence that the determination was made, unless the contrary is shown.

#### ***Awards***

76. (1) If a complaint which has been dealt with by the Ombudsman is determined in favour of the complainant, the determination may include-

- (a) an award against the respondent of such amount as the Ombudsman considers fair compensation for loss or damage suffered by the complainant; or,
- (b) a directive that the respondent take such steps in relation to the complainant as the Ombudsman considers just and appropriate.

(2) An award made under paragraph (a) of subsection (1) may compensate for-

- (a) financial loss;
- (b) any other loss; or,
- (c) any damage,

suffered by the complainant.

#### ***Ombudsman's power to require information***

77. (1) An Ombudsman may, by notice in writing given to a party to a complaint, require that party-

- (a) to provide specified information or information of a specified description; or,
- (b) to produce specified documents or documents of a specified description,

which the Ombudsman considers necessary for the determination of the complaint.

(2) The information or documents referred to in subsection (1) shall be provided or produced-

- (a) before the end of such reasonable period as may be specified; and
- (b) in such manner or form as may be specified.

(3) If a document is produced in response to a requirement imposed under this section, the Ombudsman may-

- (a) take copies or extracts from the document; or

- (b) require the person producing the document to provide an explanation of the document.
- (4) If a person who is required under this section to produce a document fails to do so, the Ombudsman may require that person to state, to the best of his or her knowledge and belief, where the document is.
- (5) If a person claims a lien on a document, its production under this Part shall not affect the lien.

(6) In this Part-

- (a) "complainant" means the person bringing a complaint against an authorised financial services provider; and,
- (b) "respondent" means an authorised financial services provider against whom a complaint is brought under this Part.

***Powers of court where information required***

78. (1) Where a person fails to comply with a requirement imposed under section 77, the Ombudsman may certify that fact in writing to the Court and the Court may enquire into the case.
- (2) If the court is satisfied that the person referred to in subsection (1) failed without reasonable excuse to comply with the requirement, it may deal with that person as if that person was in contempt.

**PART XIII  
APPEALS**

***Appeals Tribunal***

79. (1) There shall be a committee, to be known as the Appeals Tribunal, appointed in accordance with this section to consider appeals made under this Act.
- (2) The Appeals Tribunal shall be appointed by the Minister and shall consist of three (3) persons being-
- (a) a lawyer of not less than ten (10) years professional experience;
  - (b) an accountant of not less than ten (10) years professional experience; and,
  - (c) a banker of not less than ten (10) years professional experience.
- (3) A person appointed under subsection (2) shall hold office for a period of three (3) years and shall be eligible for reappointment.
- (4) The Appeals Tribunal-
- (a) shall, in any of its sittings, elect one of their number to be Chairperson; and,
  - (b) may co-opt for assistance, on ad-hoc basis, any other person, who has expertise in a particular field, as they may consider necessary.
- (5) The Appeals Tribunal shall regulate its own procedures.

(6) A Member of the Appeals Tribunal shall be paid such allowances as the Minister may, on the recommendation of the Authority, approve.

#### ***Appeals***

80. (1) A person who is aggrieved by a decision of an authorised financial services provider may, within thirty (30) days after the decision, appeal to the Authority.

(2) A person who is aggrieved by the decision of the Authority may, within thirty (30) days after that person is notified of the decision, appeal to the Appeals Tribunal.

(3) An authorised financial services provider who is aggrieved by-

- (a) the decision of the Authority to withdraw, cancel, suspend or revoke a license or registration under this Act may, within twenty one (21) days after the withdrawal, cancellation, suspension or revocation, appeal to the Appeals Tribunal; or
- (b) any written directive of the Authority may, within thirty (30) days of the date of the directive of the Authority, appeal to the Appeals Tribunal.

(4) A person or an authorised financial services provider who is aggrieved by a decision of the Appeals Tribunal may, within thirty (30) days after that person or authorised financial services provider is notified of the decision, appeal to the Court.

#### ***Certification of documents***

81. In any proceedings under this Part, the Authority shall certify to the Appeals Tribunal or the Court, as the case may be-

- (a) the decision of the Authority, together with any statement of reasons thereof;
- (b) the record of any review conducted by the Authority in respect of a particular decision; and,
- (c) all written submissions to the Authority or other material that is relevant to the appeal.

#### ***Powers of the Appeals Tribunal or the Court***

82. (1) Where an appeal is made under this Part, the Appeals Tribunal or the Court may-

- (a) confirm or, after affording the Authority an opportunity of being heard, set aside the Authority's decision; or,
- (b) direct the Authority to make such decision or to do such other act as the Authority is authorised and empowered to do under this Act or the regulations and as the Appeals Tribunal or the Court considers proper, having regard to the material and submissions before it and to this Act, and the Authority shall make such decision or do such act accordingly.

(2) In any appeal under this section, the decision of the Court shall be final and shall be given effect to by the Authority.

**PART XIV**  
**MISCELLANEOUS**

***Relationship with other laws***

83. (1) The Co-operative Societies Act, 2003, shall not apply in relation to a SACCO.
- (2) Notwithstanding anything to the contrary in that Act, the Authority shall perform the functions of the Registrar under the Building Societies Act, 1962.
- (3) The Insurance and Retirement Funds Board established under the Insurance Act, 2005, shall cease to exist at the commencement of this Act.
- (4) Part XVI of the Insurance Act, 2005 and, Part VIII of the Retirement Funds Act, 2005 are hereby repealed.

***Evidence and judicial notice***

84. A certificate under the seal of the Authority certifying as to any matter relating to a financial services licence or to compliance with a financial services law, shall be admissible evidence of the matter certified therein in all legal proceedings; and in the absence of any evidence to the contrary, shall be conclusive.

***Interdicts etc***

85. (1) If an authorised financial services provider has engaged, is engaging, or proposes to engage, in conduct in contravention of this Act or a financial services law, the Court may, on application by the Authority, make an order-
- (a) restraining the authorised financial services provider and anyone who, directly or indirectly, counselled, procured, aided or abetted or was otherwise knowingly in violation, from engaging in the conduct; or,
  - (b) if the Court thinks it desirable to do so, requiring the authorised financial services provider or such a person to do or refrain from doing a particular act.
- (2) If an authorised financial services provider has refused or failed, or intends to refuse or fail, to do an act that a financial services law requires it to do, the Court may, on application by the Authority, make an order requiring it to do the act.
- (3) The Court may make an interim order pending the determination of an application under this section.
- (4) The Authority may not be required, as a condition of the making of an interim order under subsection (3), to give an undertaking as to damages.
- (5) The power of the Court under subsection (3) may be exercised-
- (a) whether or not it appears to the Court that the authorised financial services provider intends to engage again, or to continue to engage, in conduct of that kind; and,
  - (b) whether or not the authorised financial services provider has previously engaged in conduct of that kind.
- (6) The powers under this section shall be in addition to any other power of the Court.



***Conduct by directors, servants and agents***

86. (1) If, in proceedings for an offence against this Act or a financial services law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it shall be sufficient to show that-

- (a) the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and,
- (b) the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it shall be sufficient to show that-

- (a) the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and,
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual establishes that he took reasonable precautions and exercised due diligence to avoid the conduct.

(5) A reference in this section to the state of mind of a person includes a reference to-

- (a) the knowledge, intention, opinion, belief or purpose of the person; and,
- (b) the person's reasons for the intention, opinion, belief or purpose.

***Extension of liability***

87. If a person violates a provision of a financial services law, any person who, directly or indirectly, counselled, procured, aided or abetted or was otherwise knowingly concerned in the violation shall also be taken to have committed the violation.

***Service of documents and notices***

88. A document or notice required or permitted to be served on, or given to, a person under or for the purposes of a financial services law may be served or given-

- (a) in the case of a person other than a body corporate, by serving it personally upon the person or by sending it by registered post to the person at his or her usual or last known place of abode or business;
- (b) in the case of a body corporate incorporated in Swaziland, by leaving it at or sending it by registered post to the registered office of the body corporate; or,

- (c) in the case of any other body, by leaving it at the address for the body corporate last known to the Authority.

### ***Regulations***

89. (1) The Minister may, after consultation with the Authority, make regulations as to-

- (a) the matters which by this Act are required or permitted to be prescribed by the Minister;
- (b) generally, all matters which the Minister considers necessary or expedient to prescribe in order that the objects of this Act may be achieved;
- (c) the efficient administration of this Act;
- (d) the protection of stakeholders, or,
- (e) the increase or decrease in any fine or other penalty which may be imposed on conviction for a breach of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations to-

- (a) amend the schedules to this Act;
- (b) declare a class or classes of persons or institutions that provide financial services to be financial services providers for the purposes of this Act;
- (c) provide for the regulation, operation and supervision of any other financial services activity by the Authority; or,
- (d) prescribe the matters necessary or expedient to give effect in Swaziland to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to financial services to which Swaziland or the Authority is a party.

### ***Transfer of assets and liabilities***

90. (1) The assets, rights and liabilities of the Office of the Registrar of Insurance and Retirement Funds and the Capital Markets Division shall, from the date of coming into force of this Act, vest in the Authority.

(2) Notwithstanding subsection (1), the transfer of assets, rights and liabilities referred to in subsection (1) shall, without the need to comply with any other formality, be signified by an instrument in writing by the Minister, and the Minister may, in that instrument, specify only certain assets, rights and liabilities as having been transferred.

### ***Transitional provisions***

91. (1) Notwithstanding any provisions in this Act, any person who immediately before the commencement of this Act was carrying on a business that requires a licence or registration under this Act shall be entitled to carry on such business without a licence or certificate of registration under this Act for a period of six (6) months from such commencement and, if prior to the expiration of that period an application is made for a licence under this Act, until the licence is granted or finally refused or the application is withdrawn.

(2) A person entitled to carry on business under subsection (1) shall, during the period of six months referred to therein be subject to all the provisions of this Act except the requirement for a licence or certificate of registration.

(3) Where, on the commencement of this Act, any other law provides for the carrying out of any of the functions under section 5 by any person or institution other than the Authority, that person or institution shall, until the functions are established within departments under the Authority carry out those functions.

(4) A licence issued by a person or institution other than the Authority, as envisaged in subsection (3), shall be valid for such time as the Authority may, by Notice published in the Gazette, determine.

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#### **FIRST SCHEDULE**

##### **(SECTION 2) FINANCIAL SERVICES LAWS**

The Hire Purchase Act, 1969

The Insurance Act, 2005

The Lotteries Act, 1963

The Money Lending and Credit Financing Act, 1991

The Pawnbroking Act, 1894

The Retirement Funds Act, 2005;

The Securities Act, [2009]

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#### **SECOND SCHEDULE**

##### **(SECTION 2) NON-BANK FINANCIAL SERVICES PROVIDERS**

A central securities depository

A collective investment scheme

A credit bureau

A dealer

A fund administrator

A representative of a dealer

An insurance agent

An insurance broker

An insurer

An investment adviser

A pawnbroker

The representative of an investment adviser;

The manager of a collective investment scheme

A medical aid scheme

A medical aid scheme provider

A nominee

A SACCO

A retirement fund

The trustee of a retirement fund

A securities exchange

A provident fund