

REPUBLIC OF NAMIBIA

NATIONAL COUNCIL

**FINANCIAL SERVICES
ADJUDICATOR BILL**

(As passed by the National Assembly)

(Introduced by the Minister of Finance)

[B. 10 - 2018]

BILL

To establish the Office of the Financial Services Adjudicator; to provide for its powers and functions and other matters relating to the Office; to provide for the appointment of the Adjudicator and the powers and functions of the Adjudicator; and to provide for incidental matters.

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SCHEDULE

Financial Services Providers and establishing legislation

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“*ad-hoc* Adjudicator” means a person appointed as an *ad-hoc* Adjudicator under section 16(1)(c);

“Adjudicator” means the Financial Services Adjudicator appointed in terms of section 16(1)(a);

“Bank” means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997);

“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“Board” means the Board of the Office referred to in section 6;

“chief executive officer” means the Financial Services Adjudicator appointed in terms of section 16(1)(a);

“committee” means a committee of the Board established under section 13;

“complainant” means a person to whom a financial services provider has provided a financial service, and includes a successor in title of that person or a beneficiary of the financial service, who has lodged a complaint with the Office;

“complaint” means a complaint relating to a financial service made by a complainant against a financial services provider in which a complainant alleges that as a result of the financial services provider, its employee, representative or agent having -

- (a) contravened or failed to comply with a provision of the applicable establishing legislation;
- (b) contravened or failed to comply with a provision of an agreement or the law or a code of conduct subscribed to by the financial services provider;
- (c) intentionally or negligently provided or failed to provide a financial service;
- (d) intentionally or negligently provided wrong advice; or
- (e) treated the complainant unreasonably or unfairly,

the complainant has suffered or is likely to suffer financial prejudice or damage, the rights of the complainant have been infringed or a dispute of fact or law has arisen between the complainant and the financial services provider;

“day” means a day which is not a Saturday, Sunday or public holiday as specified or declared as a public holiday under the Public Holidays Act, 1990 (Act No. 26 of 1990);

“Deputy Adjudicator” means a person appointed as a Deputy Adjudicator under section 16(1)(b);

“establishing legislation” means the legislation specified in the Schedule which establishes a financial services provider as specified in that Schedule;

“financial advice” means an advice, recommendation, guidance, projection or proposal relating to a financial product or financial service provided by a financial services provider to a person under the applicable establishing legislation provided by any means, irrespective of whether or not such advice, recommendation, guidance, projection or proposal is sought by the person or whether such advice, recommendation, guidance, projection or proposal has resulted in a transaction being effected;

“financial product” means a financial product offered or provided by a financial services provider under the applicable establishing legislation;

“financial service” means a service of a financial nature provided by a financial services provider under the applicable establishing legislation, and includes the service of providing a financial product or financial advice;

“financial services law” means -

- (a) an establishing legislation;
- (b) a law that declares itself to be a financial services law for the purposes of this Act; and
- (c) a law declared by the Minister under section 2 to be a financial services law for the purposes of this Act,

and includes regulations and other subordinate legislation made under any of those laws;

“financial services provider” means a person, organisation and institution specified in the Schedule;

“generally accepted accounting practice” means the accounting frameworks adopted by the Institute of Chartered Accountants of Namibia referred to in the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“interested party” means a person having an interest in the matter and who has applied to the Adjudicator to be joined as a party to a complaint and who is granted permission to be joined as a party to the complaint or a person having an interest in the matter whom the Adjudicator has ordered that the person be joined as a party to a complaint;

“Legal Practitioners Act” means the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“legal practitioner” means a legal practitioner as defined in the Legal Practitioners Act;

“Minister” means the Minister responsible for finance;

“NAMFISA” means the Namibia Financial Institutions Supervisory Authority referred to in section 2 of the Namibia Financial Institutions Supervisory Authority Act, 2018 (Act No.of 2018);

“Office” means the Office of the Financial Services Adjudicator established by section 4;

“party” means a complainant, a financial services provider against whom a complaint is made or an interested party;

“Public Enterprises Governance Act” means the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006);

“regulation” means a regulation made under section 38;

“rule” means a rule made under section 37; and

“this Act” includes the regulations, rules and notices issued in the *Gazette* under this Act.

Declaration as financial services law

2. The Minister may by notice in the *Gazette* declare a law to be a financial services law for the purposes of this Act.

Object of Act

3. The object of this Act is to create a legal and institutional framework for the enquiry into and determination of complaints lodged under this Act in a just, procedurally fair, economical and expeditious manner.

PART 2
OFFICE OF FINANCIAL SERVICES ADJUDICATOR

Establishment of Office

4. There is established a juristic person to be known as the Office of the Financial Services Adjudicator which, subject to this Act, enquires into and determines complaints lodged with the Office under this Act.

Functions and powers of Office

5. (1) The functions of the Office are to -
- (a) enquire into and determine complaints in a just, procedurally fair, economical and expeditious manner with due regard to -
 - (i) the veracity, substance and merits of the complaint;
 - (ii) the contractual or any other legal relationship between the parties;
 - (iii) the provisions of this Act, the applicable establishing legislation and any other applicable law, including an applicable financial services law; and
 - (iv) consideration of justness and fairness; and
 - (b) advise the Minister on matters related to this Act or to financial services providers, whether on its own accord or at the request of the Minister.
- (2) To enable the Office to achieve its object or perform its functions, the Office may -
- (a) hire, purchase or otherwise acquire moveable or immovable property and let, sell or otherwise dispose of such property;
 - (b) enter into an agreement with a person for the performance of a specified function or the rendering of specified services on such terms and conditions that the Office and that person may agree on;
 - (c) insure the Office against loss, damage, risk or liability;
 - (d) obtain professional advice as may be reasonably required and which is not contrary to this Act or any other law; and
 - (e) do such things as it may consider necessary or expedient in order to achieve the object of this Act.

PART 3
BOARD OF OFFICE

Board of Office

6. (1) The Office must have a Board which, subject to this Act, is responsible for the policy, management and controlling the affairs of the Office, except that the Board may not manage or control the Adjudicator when performing functions or exercising powers under Part 6 of this Act.

(2) Unless a different number is determined in accordance with section 14(1)(a) of the Public Enterprises Governance Act, the Board consists of six members appointed by the Minister after consultation with the relevant industries or business associations, experts or government offices, ministries or agencies with due regard to the functions and powers of the Board.

(3) The chief executive officer is an *ex officio* member of the Board with no voting rights and he or she may not serve as the chairperson of the Board.

(4) A person appointed under subsection (2) as a member of the Board must possess adequate knowledge and experience in governance, accounting, financial services, economics, law or other related fields of expertise which are necessary for the Board to function effectively.

(5) Subject to section 14(1)(e)(iii) of the Public Enterprises Governance Act, the Minister must appoint the chairperson and vice-chairperson of the Board from among the members of the Board and the vice-chairperson must perform the functions or exercise the powers of the chairperson during any period that the chairperson is unable to perform his or her functions or exercise his or her powers.

(6) The Minister must, as soon as possible after appointing members of the Board under subsection (2), notify in the *Gazette* -

- (a) the name of every person appointed as a member of the Board;
- (b) the period for which the appointment is made; and
- (c) the date from which the appointment takes effect.

(7) Despite subsection (6), a failure to publish the name of a member of the Board pursuant to that subsection does not invalidate an appointment made in terms of subsection (2) or an action or decision taken by the Board.

Powers and functions of Board

7. (1) The Board manages, controls and supervises the affairs of the Office, except that the Board may not manage, control or supervise the Adjudicator when performing a function or exercising a power under Part 6 of this Act.

- (2) The Board must ensure that the Office maintains -
 - (a) an effective, efficient and transparent system of business process, financial, risk and performance management, good governance, compliance and internal control, including a system of internal auditing;

- (b) an appropriate and responsible procurement and provisioning system which is equitable, transparent, competitive and cost effective;
 - (c) an appropriate organisational structure and adequate staff; and
 - (d) sufficient resources for the Office to perform its functions effectively.
- (3) The Board must determine the remuneration, terms and conditions of service and other benefits of the employees of the Office.
- (4) The Board must take appropriate and effective steps to -
- (a) ensure the collection of moneys due to the Office; and
 - (b) prevent irregular or wasteful expenditure and deficits in the Office.
- (5) The Minister may request the Board to provide the Minister with information relating to the performance of the Office and the Board must comply with the request by the Minister.
- (6) The Board must ensure that there is in place a code of conduct, inclusive of conflict of interest guidelines applicable to the Adjudicator, Deputy Adjudicator, an *ad-hoc* Adjudicator, members of the Board and other employees of the Office, and the Board must furnish the Minister with a copy of such code of conduct forthwith after such code of conduct is in place.
- (7) The Board must from time to time, but at least once every two years, review the code of conduct referred to in subsection (6).

Disqualifications for appointment as member of Board

- 8.** (1) A person is not eligible for appointment as a member of the Board, if that person -
- (a) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
 - (b) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of his or her estate;
 - (c) is actively engaged in the business of a financial services provider, unless that person ceases being actively engaged in that business;
 - (d) is an office-bearer of a political party, unless that person resigns as an office-bearer;
 - (e) is a member of Parliament, regional council or local authority council, unless that person resigns as a member;
 - (f) during the period of 10 years preceding the date of the proposed appointment as a member of the Board, or at any time after that date, has been convicted whether in Namibia or elsewhere of theft, fraud, forgery or perjury or any other offence under a law on corruption or any other offence involving dishonesty;

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- (g) has under any law been declared to be of unsound mind or under legal disability;
 - (h) during the period of 10 years preceding the date of proposed appointment, or at any time after that date, has been removed from an office of trust or had his or her membership of any statutory regulated profession terminated due to misconduct;
 - (i) during the period of 10 years preceding the date of the proposed appointment, or any time after that date, has been sanctioned by a national or international statutory regulatory body for contravening a law relating to the regulation and supervision of financial services providers or other financial institutions or financial intermediaries as defined in section 1 of the Financial Institutions and Markets Act, 2018 (Act No. of 2018);
 - (j) is a board member, an employee or an officer of NAMFISA or the Bank, unless that person resigns as a board member, an employee or an officer;
 - (k) is a member of the board or an officer of a financial services provider or acts in a capacity similar to that of a member of the board or an officer, unless that person resigns as a member of the board, as an officer or no longer acts in a capacity similar to that of the member of the board or an officer of the financial services provider;
 - (l) is an employee of a financial services provider, unless that person resigns as an employee; or
 - (m) during the period of five years preceding the date of the proposed appointment, or any time after that date, acted as an advisor to a financial services provider or represented a financial services provider in any capacity.

(2) Despite subsection (1)(a) the Minister may appoint a person, as member of the Board, who is not a Namibian citizen or a person lawfully admitted to Namibia for permanent residence if there is no Namibian citizen or a person lawfully admitted to Namibia for permanent residence with the required expertise.

(3) The Minister may only appoint a person under subsection (2) if that person has the necessary permit in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993), if applicable, to allow the person to exercise his or her power or perform his or her function as a member of the Board.

Term of office of members of Board

9. (1) Unless a different determination has been made in terms of section 14(1)(d) of the Public Enterprises Governance Act, the term of office of a member of the Board is five years.

(2) A member of the Board whose term of office has expired may be re-appointment for another one term only.

(3) In appointing members of the Board under section 6, the Minister must ensure that the terms of office of the members of the Board are staggered in a way that ensure continuity of members of the Board, except that a member may not serve as a member of the Board for more than 10 years in total.

Vacation of office by members of Board

10. (1) A member of the Board vacates his or her office, if he or she -

- (a) becomes subject to a disqualification referred to in section 8;
- (b) resigns by giving written notice to the Minister and the Board at least three calendar months before the intended date of vacation of office, except if the Minister allows for a shorter period of resignation;
- (c) has been absent from three consecutive meetings of the Board without leave of the Board, or in the event that the chairperson of the Board is so absent, without leave of the Minister; or
- (d) is removed from office under subsection (2).

(2) Subject to subsection (3), the Minister, after consultation with the Board, may remove a member from office before the expiry of his or her term as a member of the Board, if such member is guilty of any misconduct or the Minister is satisfied that such member -

- (a) is by reason of his or her physical or mental condition or for any other reason unable to effectively perform his or her function as a member of the Board;
- (b) neglects his or her functions as a member of the Board;
- (c) has divulged confidential information contrary to section 35; or
- (d) acts in a manner that prejudices or is in conflict with the functions of the Board.

(3) The Minister may only so remove a member of the Board from office under subsection (2) after giving notice to such member and after affording him or her a reasonable opportunity to be heard.

(4) The Minister must, as soon as possible after removing a member of the Board under subsection (2), notify in the *Gazette* the -

- (a) name of the member removed from the office;
- (b) reason for the removal of the member; and
- (c) date from which the removal takes effect.

(5) If a member of the Board dies or vacates his or her office under subsection (1) or (2) before the expiration of his or her term of office, the Minister must appoint a person to fill the vacancy for the remainder of such term in accordance with section 6.

Meetings of Board

11. (1) The first meeting of the Board takes place at a time and place determined by the Minister and subsequent meetings of the Board must be held at such times and places as the Board determines, but at least four meetings must be held each year.

(2) Despite subsection (1), the chairperson of the Board -

(a) may, on his or her own initiative, convene a special meeting of the Board by giving at least 14 days' notice to other Board members; or

(b) if requested in writing by the Minister or by the majority of members of the Board, must convene a special meeting of the Board within 14 days after the date of receipt of the request to hold the special meeting,

and the notice of the special meeting must clearly state the purpose for which the meeting is to be convened, the place and the agenda of the meeting.

(3) The majority of all the voting members of the Board form a quorum at a meeting of the Board.

(4) The chairperson of the Board presides at meetings of the Board or in his or her absence the vice-chairperson and in the absence of both the chairperson and the vice-chairperson the members of the Board present at a meeting must elect from their number a member to preside at the meeting.

(5) A decision of the majority of the members of the Board present and voting at a meeting of the Board constitutes a decision of the Board and in the event of an equality of votes the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(6) A decision of the Board or an act performed under the authority of the Board is not invalid by reason of -

(a) a vacancy in the membership of the Board; or

(b) the fact that a person who is not entitled to attend a meeting of the Board was in attendance when the decision was taken or act was authorised,

if the decision was taken or act was authorised by the required majority of the members of the Board present and entitled to sit as members of the Board and to vote at the meeting of the Board.

(7) Subject to this Act, the Board determines the procedures that must be followed at meetings of the Board.

(8) The Board must cause proper minutes of the proceedings of its meetings to be kept.

(9) The Board may invite a person to attend and participate in the deliberations of a meeting of the Board, but such person has no right to vote.

(10) Despite subsection (5), a written resolution not passed at a meeting of the Board but signed by all the members of the Board is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and such resolution must be recorded in the minutes of the next meeting of the Board.

Fiduciary duties of members of Board

- 12.** (1) Each member of Board must -
- (a) exercise the duty of utmost care, skill and diligence to ensure reasonable protection of the assets and records of the Office; and
 - (b) act with fidelity, honesty, integrity and in the best interest of the Office.
- (2) A member of the Board may not -
- (a) act in a way that is inconsistent with the functions of the Board in terms of this Act;
 - (b) act in a way that is inconsistent with the conduct expected of a director of a company; or
 - (c) for personal gain or to improperly benefit another person, use his or her position as a member of the Board or use privileges or confidential information of the Office.

Committees of Board

- 13.** (1) Subject to such terms of reference that the Board may determine, the Board -
- (a) must establish a finance and audit committee; and
 - (b) may establish one or more other committees to -
 - (i) advise the Board on such matters relating to its powers and functions as it may refer to the committee; or
 - (ii) assist the Board in the exercise and performance of its powers or functions as the Board may delegate or assign to the committee.
- (2) The Board may appoint a person who is not a member of the Board as a member of a committee but at least one member of the committee must be a member of the Board and the committee must consist of at least three members.
- (3) The Board must designate a member of the Board who is a member of a committee as chairperson of that committee.
- (4) The chairperson of a committee presides at meetings of a committee and in his or her absence the members of the committee present at a meeting must elect from their number a member to preside at the meeting of the committee.

(5) A person presiding at a meeting of a committee must cause proper record of the proceedings of the meeting to be kept and must cause a report containing an executive summary of the proceedings as well as recommendations and resolutions by the committee to be submitted to the Board as soon as possible after the meeting of the committee.

(6) The Board is not absolved from performing a function or exercising a power assigned or delegated to a committee under this section.

(7) The Board may at any time dissolve or reconstitute a committee.

(8) Sections 8 and 11(3), (6), (7) and (9) and 12 apply with necessary changes to this section.

Disclosure of interests by members of Board or committee

14. (1) A member of the Board or a committee who has a direct or indirect financial or personal interest in a matter being considered or proposed to be considered by the Board or a committee must, as soon as is practicable after the relevant facts have come to his or her attention, disclose the nature of the interest at a meeting of the Board or committee.

(2) Subject to subsection (3), a member of the Board or a committee who makes a disclosure under subsection (1) -

- (a) may not deliberate or vote in the matter referred to in that subsection;
- (b) may not be counted for the purposes of a quorum in respect of that matter; and
- (c) must absent himself or herself from the proceedings concerning the matter in which he or she has an interest.

(3) The remaining members must discuss the nature of the interest on which the member has made a disclosure under subsection (1) and must determine whether the member is prohibited from participating in the proceedings concerning the matter, and if the interest is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or committee, then the member may not be allowed to participate in the proceedings concerning that matter.

(4) A disclosure made under subsection (1) must be recorded in the minutes of the meeting at which the disclosure is made.

(5) A member of the Board or a committee who fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Remuneration and allowances of members of Board or committees

15. (1) A member of the Board or a committee, who is not in full-time employment of the State, is entitled to be paid out of the funds of the Office such remuneration and allowances, including subsistence and travel allowances as

the Minister may, subject to section 22(1) of the Public Enterprises Governance Act, determine.

(2) The Board may reimburse a member of the Board or a member of a committee for subsistence and travelling expenses reasonably incurred by him or her while attending a meeting of the Board or a committee.

PART 4 PERSONNEL PROVISIONS

Adjudicator, Deputy Adjudicator, *ad-hoc* Adjudicator and employees of Office

16. (1) Subject to this Act, the Board, with the approval of the Minister -

- (a) must appoint a legal practitioner having at least 10 years of experience as a legal practitioner and who possesses adequate knowledge of financial services law and financial services, as the Adjudicator;
- (b) may appoint one or more persons having at least eight years of relevant experience and who possesses adequate knowledge of financial services law and financial services, as Deputy Adjudicator;
- (c) may appoint a person, including an employee of the Office, having at least eight years of relevant experience and who possesses adequate knowledge of financial services law and financial services, as an *ad-hoc* Adjudicator; and
- (d) must determine the remuneration, terms and conditions of service and other benefits of the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator.

(2) The Adjudicator is the chief executive officer of the Office.

(3) A person appointed as an *ad-hoc* Adjudicator under subsection (1)(c) does not become an employee of the Office by virtue of his or her appointment as an *ad-hoc* Adjudicator and his or her appointment is not subject to the labour laws of Namibia unless such an *ad-hoc* Adjudicator is an employee of the Office appointed as an *ad-hoc* Adjudicator.

(4) The Adjudicator, Deputy Adjudicator and an *ad-hoc* Adjudicator must -

- (a) at all times be impartial and independent from any interference from any person including the Board when performing his or her functions or exercising his or her powers under Part 6 of this Act; and
- (b) recuse himself or herself from enquiry into or determining a complaint if there is an actual or perceived conflict of interest.

(5) The Adjudicator, Deputy Adjudicator or an employee of the Office appointed as an *ad-hoc* Adjudicator may not accept or hold any other office for profit or receive remuneration other than the remuneration contemplated in this Act, unless authorised by the Board.

(6) The Adjudicator or a Deputy Adjudicator holds office for a term of five years and is eligible for reappointment.

(7) Subject to the general control and supervision of the Board, the Adjudicator and Deputy Adjudicator are responsible for carrying out the functions of the Office and decisions of the Board, but are free from interference in discharging of their functions or exercising their powers under Part 6 of this Act.

(8) Subject to section 22(3) of the Public Enterprises Governance Act, the chief executive officer may appoint employees of the Office, as approved on the organisational structure referred to in section 7(2)(c), to assist the Adjudicator, Deputy Adjudicator or the Office in the performance or exercising of powers or functions under this Act.

Disqualifications for appointment as Adjudicator, Deputy Adjudicator or *ad-hoc* Adjudicator

17. (1) Except for paragraph (m) of subsection (1) of section 8, that subsection applies with necessary changes to a person appointed as an Adjudicator, a Deputy Adjudicator or an *ad - hoc* Adjudicator.

(2) Despite section 8(1)(a), the Board may in terms of section 16 appoint a person as the Adjudicator, a Deputy Adjudicator or an *ad-hoc* Adjudicator who is not a Namibian citizen or lawfully admitted to Namibia for permanent residence if there is no Namibian citizen or a person lawfully admitted to Namibia for permanent residence with the required expertise.

(3) The Board may only appoint a person as an Adjudicator, Deputy Adjudicator or an *Ad-hoc* Adjudicator under subsection (2) if that person has the necessary permit in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993), if applicable, to allow the person to exercise his or her power or perform his or her function as an Adjudicator, Deputy Adjudicator or an *Ad-hoc* Adjudicator.

Vacation of office by Adjudicator, Deputy Adjudicator or *ad-hoc* Adjudicator

18. (1) An Adjudicator or Deputy Adjudicator vacates his or her office, if he or she -

- (a) becomes subject to a disqualification referred to in subsection (1) of section 8, except for a disqualification referred to in paragraph (m) of that subsection;
- (b) resigns by giving written notice to the Board at least three calendar months before the intended date of vacation of office, except if the Board allows for a shorter period of resignation; or
- (c) is removed from office under subsection (3).

(2) An *ad-hoc* Adjudicator vacates his or her office in accordance with the terms and conditions of a contract on which such an *ad-hoc* Adjudicator is appointed.

(3) Subject to subsection (4), the Board, with the approval of the Minister, may remove the Adjudicator, a Deputy Adjudicator or an *ad-hoc* Adjudicator from office before the expiry of his or her term, if the Adjudicator, Deputy Adjudicator or an *ad-hoc*

Adjudicator is guilty of any misconduct or the Board is satisfied that the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator -

- (a) is by reason of his or her physical or mental condition or for any other reason unable to effectively perform his or her function;
- (b) neglects his or her functions;
- (c) has divulged confidential information contrary to section 35;
- (d) acts in a manner that prejudices or is in conflict with the functions of the Board or Office; or
- (e) is in breach of the terms of the contract in terms of which he or she is appointed.

(4) The Board may only so remove the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator from office under subsection (3) after giving notice to the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator and after affording him or her a reasonable opportunity to be heard.

(5) The Board must, as soon as possible after removing the Adjudicator, a Deputy Adjudicator or an *ad-hoc* Adjudicator under subsection (3), notify in the *Gazette* the -

- (a) name of the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator removed from the office;
- (b) reason for the removal of the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator; and
- (c) date from which the removal takes effects.

(6) In the event that the office of the Adjudicator becomes vacant as a result of the Adjudicator vacating his or her office under subsection (1) or (3), the Board, with the approval of the Minister, must appoint a Deputy Adjudicator to act as an Adjudicator for a period of not more than six months, unless such period has been extended by the Board in a case where the Adjudicator is not appointed within that period.

PART 5 FINANCIAL PROVISIONS

Funds of Office

- 19.** (1) The funds of the Office consist of -
- (a) moneys which may be provided by NAMFISA and the Bank as determined by the Minister after consultation with NAMFISA and the Bank;
 - (b) moneys from cost orders and interest that may accrue to such cost orders that may be awarded to the Office pursuant to section 24(3);

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- (c) punitive monetary penalties and interest that may accrue to the punitive monetary penalties payable to the Office pursuant to section 24(4);
 - (d) any administrative penalties and interest accruing to such administrative penalties payable to the Office;
 - (e) prescribed fees and levies payable by financial services providers;
 - (f) fees paid by persons under section 29(2); and
 - (g) moneys accruing to the Office from any other source,

and the funds of the Office are exempted from any tax, duty or levy imposed under any law.

(2) Not later than 90 days before the end of the financial year of the Office, the chief executive officer must prepare a budget for the ensuing financial year for approval by the Board, and the Board must submit the budget to the Minister.

(3) The Minister may make changes to the budget submitted to him or her in terms of subsection (2) as he or she may consider necessary or expedient and must approve the budget.

(4) The chief executive officer is the accounting officer for the funds of the Office, and -

- (a) must deposit all money received by or on behalf of the Office into a banking account of the Office opened under subsection (11); and
- (b) must ensure that payment by or on behalf of the Office is made from a banking account referred to in paragraph (a).

(5) The Office must utilise its funds to defray costs and expenditures incurred in the performance of its powers and functions under this Act.

(6) The financial year of the Office ends on 31 March each year.

(7) Moneys standing to the credit of the Office in a banking account opened in terms of subsection (11) at the end of the financial year or invested under subsection (8) is carried forward to the next financial year.

(8) Moneys deposited under subsection (4)(a) which are not required for immediate use may be invested by the Office in accordance with the investment policy, standards and procedures of the Office developed in terms of subsection (12), except that the Office must establish a reserve account under subsection (11) and deposit into the reserve account from time to time such sufficient moneys for the purposes of subsection (9).

(9) The reserve account established pursuant to subsection (11) is used -

- (a) to defray unforeseen costs and expenditure referred to in subsection (5); and

- (b) to defray other unforeseen costs and expenditure of the Office not referred to in subsection (5) which may arise.

(10) The Board must authorise the defrayal of costs and expenditure from the reserve account.

(11) For the purposes of subsection (4) or (8), the Office must open and maintain such bank accounts and reserve accounts at one or more banking institutions.

(12) The Board must, with the approval of the Minister, develop an investment policy, standards and procedures that must be adhered to when investing moneys under subsection (8).

(13) Any proposed changes to the investment policy, standards and procedures developed in terms of subsection (12) must be approved by the Minister.

(14) The Board must take reasonable steps to ensure that the provisions of the investment policy, standards and procedures developed under subsection (12) are observed when investing money of the Office under subsection (8).

Accounting and auditing

20. The chief executive officer must -

- (a) keep or cause to be kept full and correct accounts and records of moneys received and payments made by the Office during a financial year;
- (b) keep or cause to be kept records of assets and liabilities of the Office and other financial transactions of the Office during the financial year;
- (c) prepare or cause to be prepared the annual financial statements for the Office in accordance with generally accepted accounting practice; and
- (d) cause the accounts and records referred to in subparagraphs (a) and (b) to be audited annually by a person registered as an accountant and auditor under section 23 of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

Annual report

21. (1) As soon as practicable but not later than 120 days after the end of financial year of the Office, the Board must approve and submit to the Minister -

- (a) the audited financial statements pursuant to section 20(d) and a report of the auditor on the statements in respect of that financial year; and
- (b) a report on the activities of the Office during that financial year.

(2) The annual report and financial statements referred to in subsection (1) must -

- (a) fairly present the state of affairs of the Office, its business, financial results, performance against predetermined objectives and its financial position at the end of the financial year; and

- (b) include particulars of -
 - (i) any material losses through criminal conduct or any irregular or wasteful expenditure that occurred during that financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses, irregular or wasteful expenditure;
 - (iii) any losses recovered or written off; and
 - (iv) any other matter that may be required in terms of accounting practice.

(3) After receipt of the annual report and financial statements referred to in subsection (1), the Minister must table the annual report and the audited financial statements in the National Assembly -

- (a) within 30 days of receipt of the annual report and financial statement if the National Assembly is in session; or
- (b) if the National Assembly is not in session within 30 days after the commencement of its next session.

PART 6 COMPLAINTS

Submission of complaints to Office

22. (1) A person who has a complaint against a financial services provider may lodge such complaint with the Office.

- (2) A complaint lodged under subsection (1) must contain -
 - (a) the name and contact details of the complainant;
 - (b) the name of the financial services provider against whom the complaint is made; and
 - (c) description of the complaint.

(3) A complaint referred to in subsection (1) must be lodged with the Office in a manner and form determined by the rules.

(4) On receipt of a complaint lodged by a complainant under subsection (1), the Adjudicator must -

- (a) determine whether the requirements of subsection (2) are complied with by the person lodging the complaint; and
- (b) if the requirements of subsection (2) are satisfied, acknowledge receipt of the complaint in writing to the complainant.

(5) The complainant must, on receipt of an acknowledgment of receipt by a complainant pursuant to subsection (4)(b), serve a notice of the complaint, in the

prescribed form, on every party to the complaint and file with the Office the return of service in the prescribed form.

(6) If a person lodging a complaint under subsection (1) fails to comply with subsection (2), the Adjudicator must advise the complainant to comply with subsection (2).

(7) Subject to any costs order which the Adjudicator may impose under section 24(3), an enquiry into and a determination of a complaint under this Act is free of any charges to a complainant.

(8) For the purposes of this section and sections 6(1), 7(1), 23, 24, 25, 26, 27, 28, 29, 31, 32, 38, 39 and 42 a reference to the Adjudicator includes a reference to a Deputy Adjudicator or an *ad-hoc* Adjudicator.

Enquiry into complaints

23. (1) The Adjudicator may not enquire into and determine a complaint lodged under section 22, unless the Adjudicator -

(a) is satisfied that each party who has an interest in the complaint is joined to the complaint by the adjudicator or by a party to the complaint and such party is notified in writing of the complaint lodged with the Office in a manner provided for by this Act; and

(b) has afforded the parties to the complaint an opportunity to respond to the complaint in a manner determined by the rules.

(2) The Adjudicator may -

(a) when he or she enquires into and determines a complaint under this Act follow and implement a procedure which the Adjudicator considers just and fair, including procedures of an inquisitorial nature and the Adjudicator must deal with the merits of a complaint with minimum legal formalities;

(b) in a manner that the Adjudicator considers just and fair, delineate the scope of the enquiry into or determination to be made by the Adjudicator; or

(c) summon a person as an assessor who has, in his or her opinion, expertise relevant to a complaint to advise the Adjudicator, at any stage during the adjudication of a complaint.

(3) A person summoned under subsection (2)(c) who is not in the full-time employment of the State is entitled to such compensation in respect of his or her services rendered under that subsection, as the Adjudicator, with approval of the Board, may determine.

(4) The Adjudicator may, on application by a party, exclude a member of the public from attending the proceedings of an enquiry into and determination of a complaint where confidential information may not be disclosed or in circumstances where it is just and fair to do so.

(5) For the purposes of an enquiry into and determination of a complaint by the Adjudicator, the Adjudicator may -

- (a) summon a person as a witness and such person may be examined by the Adjudicator or by the parties to the complaint;
- (b) administer oath or solemn affirmation on a person summoned as a witness;
- (c) call for the production of books, documents and objects by a person.

(6) A person summoned to attend and give evidence or to produce a book, document or object before the Adjudicator who, without sufficient cause -

- (a) fails to attend the enquiry at a time and place specified in the summon;
- (b) fails to remain in attendance until the conclusion of the enquiry into and determination of a complaint or until the person is excused by the Adjudicator;
- (c) refuses to be sworn or to make affirmation as a witness after he or she has been required by the Adjudicator to do so;
- (d) fails to answer fully and satisfactorily to any question lawfully put to him or her after having been sworn in or having made an affirmation;
- (e) fails to produce a book, document or object in his or her control, possession or custody which he or she is summoned to produce,

commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(7) A person who after having been sworn or having made affirmation gives false evidence before the Adjudicator on any matter knowingly such evidence to be false commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding one year or both such fine and such imprisonment.

Determination by Adjudicator

24. (1) For the purpose of this section “monetary award” means -

- (a) a determination by the Adjudicator amounting to a monetary award made pursuant to subsection (2)(b)(i);
- (b) any cost award made pursuant to subsection (3);
- (c) a punitive monetary penalty made pursuant to subsection (4); or
- (d) any interest payable under paragraph (a), (b) or (c).

(2) The Adjudicator must, where a complaint has not been withdrawn or settled by the parties, make a determination which may -

- (a) dismiss the complaint; or
- (b) uphold the complaint, wholly or in part, in which case -
 - (i) an award may be given in favour of the complainant of an amount of money as fair compensation by a party for financial prejudice or damage suffered by the complainant; or
 - (ii) a directive may be issued that a party takes or refrains from taking such steps or performs or refrains from performing such actions in relation to the complaint as the Adjudicator considers just and fair.

(3) In addition to a determination that may be made under subsection (2), the Adjudicator may make an award against a party in respect of costs of a prescribed amount of money in favour of a party or the Office, if in the opinion of the Adjudicator -

- (a) the conduct of a party against whom the cost award is made, in relation to the submission, opposition, defence or continuation of a complaint, was frivolous or vexatious; or
- (b) the party against whom the cost award is made was responsible for an unreasonable delay in the finalisation of the enquiry into and determination of the complaint.

(4) In addition to a determination that may be made under subsection (2)(b), the Adjudicator may impose a punitive monetary penalty against a financial services provider in favour of the Office in such an amount of money and for such a particular kind of financial prejudice or damage caused to a complainant or a particular kind of action or omission by a financial services provider, as may be prescribed by the Minister.

- (5) The Adjudicator may -
 - (a) when making a monetary award pursuant to subsection (2)(b)(i);
 - (b) any cost award pursuant to subsection (3); or
 - (c) any punitive monetary penalty pursuant to subsection (4),

order that a party must pay interest on the amount to be paid which interest is to be paid at a rate not exceeding the rate specified under the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) payable from a date determined by the Adjudicator.

- (6) A determination by the Adjudicator must -
 - (a) be in writing;
 - (b) provide reasons for the determination; and
 - (c) be signed by the Adjudicator.

(7) The Adjudicator must ensure that a copy of the determination referred to in subsection (6) is sent to the parties and any other person which regulates or supervises the financial services provider under the applicable legislation or of which the financial

services provider is a member in respect of the financial services provided by such financial services provider.

(8) If a determination amounting to a monetary award is made by the Adjudicator in favour of a party or the Office, the party or the Office may enforce such determination in the High Court or magistrate's court having jurisdiction by lodging a certified copy of such determination and an affidavit or affirmation in support of such determination with the registrar of the High Court or the clerk of the magistrate's court who must register such determination in the prescribed manner.

(9) A determination registered under subsection (8) has the effect of a civil judgment given in the court at which such determination is registered for a liquid debt in the amount specified in the determination.

(10) On request by the Office or a party in whose favour a monetary award is made, the registrar of the High Court or the clerk of the magistrate's court where the determination is registered may, after the expiration of 14 days from the date on which such determination is registered with the court, issue a writ of execution.

(11) A writ of execution referred to in subsection (10) may be executed by the deputy sheriff of the High Court or a messenger of magistrate's court accordance with the rules of such court.

(12) A monetary award made in favour of the Office and not paid by a party against whom an order is made is a debt due to the Office and the Office may enforce such order in pursuance to this section.

(13) The Adjudicator may, on good cause shown, on application by a party affected by a determination made by the Adjudicator or on his or her own accord in a case referred to in paragraph (c) -

- (a) rescind or vary the determination granted against the party who was not present during an enquiry into or determination of a complaint;
- (b) rescind or vary the determination which is ambiguous, contains an obvious error or omission or was obtained by fraud or mistake common to the parties; or
- (c) correct patent or obvious error or omission or ambiguity in the determination in respect of which an appeal or review is not pending.

Powers of Adjudicator

25. In relation to a complaint lodged with the Office under section 22, the Adjudicator is empowered to -

- (a) enquire into and determine such complaints in accordance with the provisions of this Act;
- (b) consider and make an order in relation to any application made to the Adjudicator during the enquiry or determination under this Act;
- (c) grant urgent interim relief in respect of an application referred to in paragraph (b) until a final order is made in terms of that paragraph;

- (d) issue a declaratory order in relation to an application or interpretation of a provision of a financial services law, an agreement or a code of conduct subscribed to by the financial services provider; or
- (e) make an order which a court of law is entitled to make in civil matters or which he or she is authorised to make under a provision of this Act in order to give effect to the object of this Act.

Offences relating to Adjudicator

26. A person who -
- (a) interferes with the Adjudicator when performing his or her functions under this Part;
 - (b) conducts himself or herself in a manner calculated to unduly influence the determination of the Adjudicator;
 - (c) wilfully interrupts or disrupts proceedings by the Adjudicator or misbehaves himself or herself in any manner during the course of the proceedings by the Adjudicator; or
 - (d) in connection with a complaint does anything which if done before a court of law would have constituted contempt of court,

commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Recusal by Adjudicator

27. (1) If before or during the enquiry into or determination of a complaint by the Adjudicator, it becomes apparent that the Adjudicator has a direct or indirect interest in the matter being enquired into or determined, the Adjudicator must -

- (a) immediately and fully disclose the interest to the parties; and
- (b) recuse himself or herself from enquiry into or determining the complaint.

(2) In the event that the Adjudicator recuses himself or herself as contemplated in subsection (1), a Deputy Adjudicator or an *ad hoc* Adjudicator must, subject to subsection (3), enquire into or determine the complaint.

(3) Subject to the provisions of the rules relating to the continuation of a partly heard complaint where the Adjudicator recuses himself or herself under subsection (1), the Deputy Adjudicator or an *ad-hoc* Adjudicator to enquire into or determine the complaint under subsection (2) must decide whether the enquiry into or determination of the complaint must start afresh with due consideration of the object of the Act.

Legal representation or other expert representation

28. (1) A party is not entitled to legal or any other relevant expert representation at proceedings before the Adjudicator, except the representation of a

juristic person by an officer or permanent employee of the juristic person and such officer or employee may not be a legal or other relevant expert.

(2) Despite subsection (1) and subject to consideration of the object of this Act, the Adjudicator may permit a legal or other relevant expert representative to represent a party if -

- (a) the parties to a complaint agree; or
- (b) on application of a party, the Adjudicator is satisfied that the circumstances require, or a complaint is of such complexity, that it is appropriate for a party to be represented by a legal or other relevant expert representative, and a party which is not represented is not unduly prejudiced.

Record keeping and access to records

29. (1) The Adjudicator must keep proper files and records of complaints lodged with the Office and must keep or cause to be kept by electronic means or any other means a record of the proceedings relating to the enquiry into and determination of the complaint and evidence given or received.

(2) Subject to section 35 and the discretion of the Adjudicator pertaining to confidential information, an Adjudicator may, at no cost, give a person reasonable access to the files and records referred to in subsection (1), and on payment of a fee determined by the Adjudicator, a person may obtain copies of the files and records, including electronic or digital copies, prints or transcripts of such files and records.

(3) When the record of the proceedings of enquiry into and a determination by the Adjudicator is required to be proven, inspected or referred to in any manner, a copy of the record or determination duly certified by the Adjudicator under the seal of the Office is *prima facie* evidence without proof of the authenticity of the signature of the Adjudicator.

Report of complaints

30. (1) Within one month after the end of each quarter of a financial year of the Office, the Adjudicator must submit a report to the Minister, NAMFISA and the Bank containing a list of complaints -

- (a) received by the Office during the quarter in question;
- (b) determined and finalised by the Adjudicator; and
- (c) pending before the Adjudicator and not finalised.

(2) In the case of complaints pending and not finalised by the Adjudicator, the Adjudicator must specify the reasons why the complaints are pending and not finalised, and must provide such other information as may be required by the Minister, NAMFISA or Bank.

Jurisdiction and prescription of complaints

31. (1) The Adjudicator has jurisdiction to enquire into and determine -

- (a) any matter emanating from any law or agreement which -
 - (i) qualifies as a complaint in terms of this Act;
 - (ii) may be adjudicated by a court of law; and
 - (iii) occurred before or after the commencement of this Act;
- (b) any matter emanating from any law which has been repealed by the Financial Institutions and Markets Act, 2018 (Act No. of 2018) or by any other law which -
 - (i) qualifies as a complaint in terms of this Act;
 - (ii) could have been adjudicated by a court of law under the repealed law; and
 - (iii) occurred before to the commencement of the Act.

(2) Despite subsection (1), a party to a complaint is not entitled to any defence, right or privilege which such party could not have been otherwise entitled to if such complaint was or is to be adjudicated by a court of law.

(3) The Adjudicator must decline to enquire into and determine a complaint lodged with the Office under section 22, if -

- (a) proceedings are instituted by the complainant in a civil court in respect of a matter which constitutes the subject or cause of the complaint and such proceedings are pending before the court; or
- (b) a final judgment or final order has been granted in respect of such proceedings.

(4) The service of a notice of complaint on a party to a complaint pursuant to section 22(5) of the Act interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969) and section 15 of that Act applies with necessary changes to the running of prescription under this Act.

(5) Nothing in this Act must limit or diminish a right of a complainant from approaching a competent civil court for relief he or she may be entitled to in respect of a cause of action which qualifies as a complaint.

Appeal and review

32. (1) A party may appeal to the High Court of Namibia against a determination or an order made by the Adjudicator and must cite as respondents to the appeal the Adjudicator and any other person who was a party to a complaint.

(2) A party does not prejudice his or her right to appeal under subsection (1), if the party has complied with the order given in a determination or if the party has accepted a benefit from the determination.

(3) Where a party appeals under subsection (1), the High Court may -

(a) confirm, amend or set aside a determination which is being appealed against and give a judgment or make an order which in the opinion of the court is just and fair in the circumstances;

(b) if the record of the proceedings of the determination does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the Adjudicator with such instructions as the court may consider necessary;

(c) order a party to produce in the High Court such further evidence as the High Court may consider necessary; or

(d) take any other course which may lead to the just, speedy and cost effective settlement or disposal of the case.

(4) The High Court may make such order as to costs as it may consider necessary on any appeal lodged under subsection (1).

(5) A party may approach the High Court for the review of a determination or an order made by the Adjudicator under this Act on the grounds of -

(a) absence of jurisdiction on the part of the Adjudicator;

(b) interest in the cause, bias, malice or corruption on the part of the Adjudicator;

(c) gross irregularity in the proceedings of enquiry into or determination of a complaint; or

(d) any other grounds on which a decision of an administrative body may be reviewed.

(6) Where a party has approached the High Court for review under subsection (5), the High Court may -

(a) confirm, review, correct or set aside a determination or order which is the subject of the review;

(b) make any order which the circumstances may require; or

(c) take any other course which may lead to the just, speedy and cost effective settlement or disposal of the case and which the High Court may consider appropriate in the circumstances.

(7) An appeal or review under this section must be made within the period and in the manner prescribed by the rules, but the High Court may condone, on good cause shown, the late noting of an appeal or review application under this section.

(8) If an appeal is noted under subsection (1) or an application for review is made under subsection (5), the appeal or review -

- (a) operates to suspend any part of the determination or order that is adverse to the interest of a complainant; and
- (b) does not operate to suspend any part of the determination or order that is favourable to the interest of a complainant.

(9) A financial services provider against whom an adverse determination or order has been made may apply to the High Court for an order varying the effect of subsection (8), and the High Court may make an appropriate order.

(10) When considering an application in terms of subsection (9), the High Court -

- (a) must consider any irreparable harm that a complainant or financial services provider may suffer if the determination or order, or any part of it, is suspended or not suspended;
- (b) if the balance of irreparable harm favours neither the complainant nor the financial services provider conclusively, must determine the matter in favour of the complainant; or
- (c) may order that the determination or order or any part of the determination or order, be suspended and attach conditions to its order, including but not limited to, conditions requiring the payment of security into Court.

(11) When an appeal is made under subsection (1) or an application for review is made under subsection (5) and the appeal or review involves the interpretation, implementation or application of this Act, the Minister may intervene in the proceedings on behalf of the State if the Minister considers it necessary for the effective administration of this Act.

PART 7 GENERAL PROVISIONS

Winding up of Office

33. (1) The Office may not be wound up except by or under the authority of an Act of Parliament.

(2) In the event of winding up of the Office under subsection (1), any surplus assets of the Office, if any, accrue to NAMFISA and the Bank as determined by the Act of Parliament referred to in that subsection.

Delegation of powers and assignment of functions

34. (1) The Minister may, in writing and on such conditions as it may determine, delegate a power or assign a function conferred or imposed on the Minister to the chairperson of the Board, other than the power to -

- (a) declare a law to be a financial services law under section 2;

- (b) appoint members of the Board in terms of section 6 and to notify in the *Gazette* the names of persons appointed as members of the Board in terms of that section;
- (c) remove a member of the Board from the Office under section 10;
- (d) table the annual and audited financial statement in the National Assembly in terms of section 21(3);
- (e) intervene in the proceeding under section 32(10);
- (f) make regulations under section 38;
- (g) amend the Schedule under section 40; or
- (h) determine the commencement date of this Act in terms of section 43.

(2) The Board may, in writing and on such conditions as the Board may determine, delegate a power or assign a function conferred or imposed on the Board or Office by or under this Act to the Adjudicator, other than the power to -

- (a) appoint the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator in terms of or under section 16; or
- (b) remove from office the Adjudicator, Deputy Adjudicator or an *ad-hoc* Adjudicator from Office under section 18.

(3) The Adjudicator may, in writing and on such conditions as the Board may determine, delegate a power or assign a function conferred or imposed on the Adjudicator by or under this Act to -

- (a) a Deputy Adjudicator; or
 - (b) an employee of the Office, except power to enquire into and determine complaints under Part 6 of this Act.
- (4) The Minister, the Board or the Adjudicator -
- (a) is not divested of a power delegated or function assigned under this section;
 - (b) may at any time withdraw or amend such delegation or assignment; and
 - (c) may without prejudice of any right, set aside or vary a decision made in the exercise of such power or performance of a function.

Preservation of secrecy

35. A member of the Board, the Adjudicator, Deputy Adjudicator, an *ad hoc* Adjudicator, an employee of the Office or any other person performing a function or exercising a power under this Act may not disclose to a person information relating to the affairs of the Office or the Board, except -

- (a) for the purpose of exercising a power or performing a function under this Act or any other law;
- (b) when required to disclose the information by a court of law; or
- (c) when authorised by the Minister in cases of public interest.

Limitation of liability

36. The Minister, a member of the Board, the Adjudicator, Deputy Adjudicator, an *ad hoc* Adjudicator, an employee of the Office or any other person performing a function or exercising a power under this Act is not personally liable for damage or loss in respect of an act or omission done in good faith in the exercise of the power or the performance of the function under this Act or any other financial services law.

Rules by Adjudicator

37. (1) The Adjudicator, with the approval of the Minister, may make rules not inconsistent with a provision of this Act or any establishing legislation relating to -

- (a) the form and manner of lodging complaints to the Office;
- (b) the form, manner and the time within which an application under Part 6 of this Act is to be made to the Adjudicator;
- (c) the form and manner of joining a party to a complaint;
- (d) the form, manner and the time within which to file a defence, opposition or reply to a complaint or to an application made to the Adjudicator in terms of Part 6 of this Act;
- (e) the form and manner of discovery of documents prior to the inquiry into a complaint;
- (f) the conduct of proceedings before the Adjudicator, including a matter relating to the admissibility of evidence;
- (g) the continuation of the enquiry into and determination of a partly heard complaint;
- (h) the hours during which the Office is open for the lodging of complaints or the enquiry into and determination of complaints;
- (i) the period within which and the manner in which an appeal against a determination or an order of the Adjudicator may be brought before the High Court;
- (j) the period within which and the manner in which a review application may be brought before the High Court;
- (k) the period within which a party may apply for rescission, varying or correction of a determination under section 24(13);

- (l) the fees payable by a person for obtaining copies, including electronic or digital copies, prints or transcripts of files and records;
 - (m) the manner in which a complaint, application, defence, opposition or reply to a complaint or other documents, including documents pertaining to summoning of witnesses is delivered or served to parties under this Act; or
 - (n) generally, any matter which may be necessary or expedient in order to ensure the proper dispatch and conduct of the proceedings by the Adjudicator.
- (2) The Adjudicator must -
- (a) ensure that a rule made under subsection (1) does not detract from or affect the independence of the Adjudicator in any way; and
 - (b) publish the rules made under subsection (1) in the *Gazette*.
- (3) Before making a rule under subsection (1), the Adjudicator must -
- (a) publish a draft of the proposed rules in the *Gazette*;
 - (b) give the affected persons at least 30 days from the date of publication of the proposed rules to make representations in writing to the Adjudicator with respect to the proposed rules; and
 - (c) take any such representations into account in determining whether to issue the rules as originally published or in a modified form.

Regulations

38. (1) The Minister, after consulting the Board, may make regulations not inconsistent with this Act relating to -

- (a) the type of complaint determinable by the Adjudicator;
- (b) the minimum monetary value of a complaint determinable by the Adjudicator;
- (c) the fees and levies payable to the Office by financial services providers for purposes of section 19(1)(e);
- (d) the amount of money payable under section 24(3);
- (e) the particular kinds of financial prejudice or damage caused to a complainant or particular kinds of action or omission by a financial services provider which may attract punitive monetary penalties and the amount of punitive monetary penalties which may be imposed under section 24(4);
- (f) the administrative penalties to be imposed on a party by the Adjudicator for contravening or failure to comply with the rules;

- (g) any other matter which is required or permitted under this Act to be prescribed; and
- (h) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) A regulation made under subsection (1) may prescribe an administrative penalty that the Office may impose for contravening or failing to comply with that regulation and interest that may be charged on the administrative penalty that is not paid.

(3) A regulation made under this section may provide for the creation of offences and for penalties on contravention of, or a failure to comply with, a regulation not exceeding a fine of N\$100 000 or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

Administrative penalties

39. (1) If the Adjudicator on reasonable grounds believes that a party has contravened or failed to comply with a provisions of a rule issued pursuant to section 37, the Adjudicator may impose a prescribed administrative penalty and may impose such administrative penalty for every day during which the contravention or non-compliance continues.

(2) Before imposing the administrative penalty, the Adjudicator must in writing -

- (a) inform the party of his or her intention to impose an administrative penalty;
- (b) specify the particulars of the alleged contravention or non-compliance with the rules;
- (c) specify the amount and the period in respect of which the administrative penalty is intended to be imposed; and
- (d) invite a party to make written representations within 10 days of receipt of the invitation and to show cause why the administrative penalty may not be imposed.

(3) If the Adjudicator, after consideration of the representations made under subsection (2)(d), decides to impose an administrative penalty, he or she must by written notice inform the party to pay the penalty within 10 days of receipt of the notice.

(4) An administrative penalty payable pursuant to subsection (3) bears interest at a rate not exceeding the rate specified under the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) and is payable from a date determined by the Adjudicator.

(5) An administrative penalty payable under this section accrues to the Office and is a debt due to the Office, and in the event that a party fails to pay such administrative penalty or any interest on the administrative penalty, the Office may lodge with the registrar of the High Court or a clerk of a magistrate's court a statement

certified by the Adjudicator stating the correct amount of the administrative penalty and the interest on the administrative penalty.

(6) The registrar of the High Court or a clerk of the magistrate's court must, in the prescribed manner register the statement lodged pursuant to subsection (5) and such statement has the effect of a civil judgment given in that court for a liquid debt in the amount specified in the statement and may be enforced by the Office.

(7) A party aggrieved by a decision of the Adjudicator made under this section may, within the period determined by the rules, apply to the High Court for the review of the decision.

Power to amend Schedule

40. The Minister may from time to time by notice in the *Gazette* amend the Schedule to this Act by including or adding the name of a person, organisation, institution or other body established in terms of any legislation which the Minister determines to be a financial service provider for the purposes of this Act.

Conflict or inconsistency

41. In the event of a conflict or inconsistency between a provision of this Act and a provision of any other law, the provision of this Act prevails to the extent of the conflict or inconsistency.

Short title and commencement

42. (1) This Act is called the Financial Services Adjudicator Act, 2018 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may, under subsection (1), determine different dates in respect of different provisions or Parts of this Act.

SCHEDULE

FINANCIAL SERVICES PROVIDERS AND ESTABLISHING LEGISLATION

The following persons, organisations and institutions are the financial services providers and, where applicable, the establishing legislation under which the financial services providers are established:

- (a) the Agricultural Bank of Namibia as referred to in section 3 of the Agricultural Bank of Namibia, 2003 (Act No. 5 of 2003);
- (b) a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
- (c) a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 82 of 1986);
- (d) the Development Bank of Namibia established by section 2 of the Development Bank of Namibia Act, 2002 (Act No. 8 of 2002);
- (e) a financial institution as defined in section 1 of the Financial Institutions and Markets Act, 2018 (Act No. ... of 2018);

- (f) a financial intermediary as defined in section 1 of the Financial Institutions and Markets Act, 2018 (Act No. ... of 2018);
 - (g) a microlender as defined in section 1 of the Microlending Act, 2018 (Act No. ... of 2018);
 - (h) the National Housing Enterprise referred to in section 2 of the National Housing Enterprise Act 1993 (Act No. 5 of 1993);
 - (i) the Savings Bank as defined in section 1 of the Posts and Telecommunications Act 1992 (Act No. 19 of 1992);
 - (j) a person, organisation or institution categorised as such in an Act, regulation or other law; and
 - (k) a person, organisation or institution which provides financial services without being duly registered, licensed or authorised to provide such financial services.
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