



FINANCIAL INTERMEDIARIES MODEL LAW, 2023

A Model Law to provide for the harmonisation of licensing, regulation, and supervision of financial intermediaries in Southern Africa Development Community member states; and to provide for matters connected with or incidental to the foregoing.

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1. Short title

This Model Law may be cited as the Financial Intermediaries Model Law, 2023.

2. Definitions

In this Model Law—

“advertisement” means any communication published through any medium and in any form, by itself or together with any other communication which is intended to create public interest in financial products or services, or to persuade the public or part thereof to transact in respect of a financial product or service in any manner;

“Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing” shall have the meaning as defined in the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing matters and Financial Action Task Force standards;

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“associate”

- (a) in relation to an individual means—
 - (i) the spouse of the individual;
 - (ii) the child, parent, stepchild, stepparent or sibling of the individual and the spouse of any such person;
 - (iii) a person who has entered into an agreement or arrangement with the individual relating to the acquisition, holding or disposal of, or the exercise of voting rights in respect of, shares or other ownership interests in an entity;
 - (iv) a corporate body or other juristic person or unincorporated entity controlled, directly or indirectly, by, or the affairs or part of the affairs

of which are managed or administered by, or at the direction or instructions of the individual or any person referred to in subparagraphs (i) and (ii); and

- (v) a trust controlled by the individual;
- and
- (b) in relation to a corporate body, other juristic person or other unincorporated entity means—
 - (i) an entity which is controlled, directly or indirectly, by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, the corporate body, juristic person or unincorporated entity;
 - (ii) an entity—
 - A. which controls, directly or indirectly, the corporate body, juristic person or unincorporated entity;
 - B. which manages or administers the affairs or part of the affairs of the corporate body, juristic person or entity; or
 - C. on whose directions or instructions the affairs or part of the affairs of the corporate body, juristic person or entity are managed or administered;
- or
- (iii) a participating employer, where the corporate body, juristic person or unincorporated entity is a retirement fund;

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“auditor” means a person registered and certified to practise as an auditor in terms of the domestic law;

“beneficial owner” means natural person(s) who ultimately own(s) or exercise(s) ultimate control over a legal person or legal arrangement;

“Committee of Insurance, Securities, and Non-Banking Financial Authorities” means a committee of authorities responsible for the supervision of insurance, securities, and non-banking financial institutions in Southern African Development Community member states, which was established under the Protocol on Finance and Investment of the Southern African Development Community;

“client” means a person or group of persons who—

- (a) may make an investment through a financial intermediary;
- (b) engages the financial services of a financial intermediary; or
- (c) is the successor in title of such person;

“dealings” in relation to financial products, means acquiring, disposing of, subscribing for or underwriting any financial product or making or offering financial product with any person, or inducing or attempting to induce a person to enter into or offer to enter into, an agreement relating to the acquisition or disposal of, subscription for or underwriting of financial products;

“domestic law” means a law prevailing in a respective member state;

“financial advice” includes any recommendation, guidance, projection or proposal relating to a financial product furnished by any means or medium, to any person who is a client, potential client, or group of clients or potential clients, whether or not specifically sought by that person or group, and irrespective of whether or not such advice results in a transaction being effected in respect of—

- (a) buying, selling, handling or exchanging a financial product;
- (b) investing in any financial product; or
- (c) the variation of any term or condition applying to a financial product, or the replacement of a financial product, or the termination of any purchase of or investment in a financial product;

Notwithstanding anything in this definition, financial advice does not include—

- (i) factual information given merely—
 - A. on the procedure for entering into a transaction in respect of a financial product;
 - B. in relation to a description of a financial product;
 - C. in answer to routine administrative enquiries;
 - D. in the form of objective information about a particular financial product including information regarding the tax treatment of a particular financial product;
 - E. by the display or distribution of promotional material; or
 - F. by way of an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the financial product is appropriate to the particular investment objectives, financial situation or particular needs of a client;

or

- (ii) advice given by—
 - A. the board or any board member of a retirement fund or by a friendly society to the members of the fund or society on benefits enjoyed or to be enjoyed by those members;
 - B. the board of trustees or any board member of a medical aid fund to the members of the medical aid fund, on health care benefits enjoyed or to be enjoyed by those members; or
 - C. a member of a professional association, including without limitation, a legal practitioner, auditor or actuary, where the advice is for tax purposes or ancillary to some other advice that is not financial advice;

“financial intermediary” includes a person, as defined in the domestic law, who directly or indirectly provides or acts on behalf of transacting parties for the activities in—

- (a) insurance;
- (b) capital markets,
- (c) retirement funds

- (d) credit and financial co-operatives / unions;
- (e) medical aid funds; and
- (f) any other activity provided by a non-banking financial institution;

“financial product” refers to non-bank financial products and includes—

- (a) securities and instruments, including—
 - (i) shares in a company;
 - (ii) debentures and securitised debt;
 - (iii) any warrant, certificate or other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii);
- (b) a participatory interest in one or more collective investment schemes;
- (c) a long-term or short-term insurance contract or policy, referred to in the relevant domestic law;
- (d) a benefit provided by—
 - (i) a pension fund as defined in the domestic law, to members of the organisation by virtue of membership;
 - (ii) a friendly society referred to in the domestic law, to members of the society by virtue of membership;
- (e) a foreign currency denominated investment instrument, including a foreign currency deposit;
- (f) a deposit as defined in the domestic law;
- (g) a health service benefit provided by a medical scheme as defined in the domestic law;
- (h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, defined by the relevant regulatory authority;
- (i) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive; or
- (j) any financial product issued by any foreign product supplier and marketed in the relevant country and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (i), inclusive;
- (k) any other instrument as may be declared by the domestic law to be a financial product;

“financial service” means provision of financial advice, product or service to a client entering into a financial transaction;

“fit and proper person” means a person who meets the fit and proper criteria defined by a regulatory authority;

“insider information” means a fact or information that can be of financial advantage if acted upon before it is generally known to the market;

“key responsible person” means—

- (a) any person that manages, controls, formulates the policy and strategy, directs the affairs of a financial intermediary or has the authority to exercise the powers and perform such functions;

(b) any person other than a person referred in (a) who makes or participates in making decisions that affects the whole or substantial part of the business of the financial intermediary or has the capacity to affect significantly the financial standing of the financial intermediary; and

(c) any person in charge of a control function including compliance, internal audit or risk management;

and key responsible personnel shall be construed accordingly.

“market manipulation” means any practice or activity which has created or is likely to have the effect of creating a false or deceptive appearance of the demand for supply of, or trading activity in connection with, or an artificial price of a security;

“person” includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

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“representative” means any person, who provides financial services on behalf of the financial intermediary, in terms of an employment contract or any other mandate but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service—

(a) does not require judgment on the part of the latter person; or

(b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;

“trade allocation policies” relates to a function performed by financial intermediaries in allocating trades to avoid unfairness and ensure an equitable balance of client interests;

“underwriting” means the process through which a financial intermediary assists in taking on financial risk for a fee.

3. Application of the Model Law

Southern African Development Community member states are required to benchmark their domestic laws governing the regulation and supervision of non-banking financial intermediaries to meet the minimum requirements as set out in this Model Law.

4. Objectives of the Model Law

(1) The objective of this Model Law shall be to promote the maintenance of a fair, safe and stable financial sector by providing the minimum licensing and operational requirements for financial intermediaries in the Southern Africa Development Community member states. in order to

(a) promote market integrity and investor confidence;

(b) promote a fair, safe and stable market for financial intermediaries;

(c) prevent market manipulation, fraud and financial crime;

(d) combat Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing;

(e) mitigate systemic risk.

(f) ensure consumer protection;

(g) avoid regulatory arbitrage.

(2) To enable the regulatory authority to achieve the objectives set out in subsection (1), the regulatory authority shall exercise the following functions—

- (a) licensing, supervising, monitoring and regulating financial intermediaries in order to ensure high standards of professionalism and integrity on their part;
- (b) regulating the provision of financial services and products; and
- (c) regulating and supervising for Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing purposes in terms of the domestic law.

5. Responsibilities and powers of the regulatory authority

(1) The regulatory authority, subject to the domestic law, shall be responsible for the following—

- (a) licensing;
- (b) market conduct supervision;
- (c) consumer protection and education;
- (d) prudential supervision;
- (e) policy formulation;
- (f) subject to the domestic law, regulate and supervise for Money Laundering, Combating Financing of Terrorism and Proliferation.

(2) The regulatory authority shall exercise the following powers—

- (a) issue rules, guidelines and standards;
- (b) enforce rules, guidelines and standards;
- (c) conduct investigation and supervisory processes of an intermediary;
- (d) compel production of any information from financial intermediaries that is relevant to monitor compliance, and to impose sanctions for failure to comply with set requirements;
- (e) impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the financial intermediary's licence, where applicable.

(3) The regulatory authority shall have adequate powers to supervise or monitor, and ensure compliance by financial intermediaries with requirements to combat Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing, including the power to conduct inspections.

PART II

LICENSING REQUIREMENTS

6. Licensing of financial intermediaries

(1) No financial intermediary shall conduct a financial service without being licensed to conduct the relevant business.

(2) A person who wishes to conduct any financial services shall apply to the regulatory authority in the prescribed manner or form.

(3) The regulatory authority shall ensure that the licensing requirements and procedures for licensing are clear, objective and public, and are consistently applied.

(4) The regulatory authority shall prescribe the licensing requirements that shall include the following—

- (a) capital or professional indemnity requirements, where applicable;
- (b) sound business and financial plans;
- (c) professional knowledge and experience of the financial intermediary;
- (d) experience and competences of the financial intermediary;
- (e) qualifications of the directors and key responsible persons;;
- (f) fit and probity requirements of directors and key responsible persons;
- (g) shareholding requirements and structure, including nominee shareholders;
- (h) aspects of proposed business that shall include the business plan and ownership;
- (i) safeguards to protect clients' funds;
- (j) corporate governance requirements;
- (k) the institutional structure of the intermediary;
- (l) risk management requirements;
- (m) Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing requirements and other best practice applicable to the financial intermediary;
- (n) application and licensing fee;
- (o) any other as shall she prescribed in the domestic law.

(5) The regulatory authority shall prescribe timelines on which an application for a licence shall be processed and licensing of an applicant finalised.

(6) An issued licence must clearly state its scope and must provide sufficient information to identify the types and classes of the financial intermediary's business under which the licence is to be used.

(7) Where an application for licence is rejected, the regulatory authority shall, within a prescribed period, notify the applicant of such rejection and the reasons thereof.

(8) Before licensing any person to conduct any financial services within a member state, the regulatory authority shall take effective measures to combat money laundering and the financing of terrorism.

(9) The regulatory authority shall periodically publish an updated and complete list of licensed financial intermediaries and the scope of the licences granted.

(10) In deciding whether and if so on what basis, to license or continue to license a branch or subsidiary of a foreign financial intermediary in its jurisdiction, the regulatory authority shall consult with the relevant regulatory authority(s) in the other jurisdiction a to determine the fitness of the foreign applicant to be issued with a licence.

(11) Where a financial intermediary intends to have a commercial presence in the jurisdiction of the host regulatory authority, the host regulatory authority concerned shall consult with the home regulatory authority, as necessary, before such financial intermediary conducts the cross border financial service.

(12) Subject to domestic law, the regulatory authority shall ensure that its licensed financial intermediary is subject to ongoing supervisory review on the following—

- (a) ongoing compliance with licensing conditions and regulatory requirements;
- (b) financial and/or audit statements;
- (c) funds accounts and management;
- (d) changes in key functions or ownership;
- (e) consumer protection and complaints handling;
- (f) compliance with Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing issues;
- (g) any other as may be specified by the regulatory authority.

(13) Any person who provides financial services without being licensed as such shall be guilty of an offence and liable to a penalty as shall be prescribed in the domestic law.

7. Notification by financial intermediary of change of particulars

(1) Where there is any change in the circumstances and particulars of a financial intermediary, the financial intermediary shall, in writing seek approval from the regulatory authority, within a prescribed period as provided in the domestic law.

(2) The changed circumstances and particulars referred to in subsection (1) shall include the following—

- (a) the financial intermediary ceases to carry on the activity to which the licensing relates or materially alters the nature of that activity;
- (b) there is a material change in the shareholding, ultimate beneficial ownership membership, management or control of the financial intermediary;
- (c) there is a change in any of the particulars recorded in the licence register kept by the regulatory authority in relation to the financial intermediary;
- (d) any other material change.

(3) The regulatory authority shall prescribe the requirements and procedures to be followed by a financial intermediary where it intends to change its circumstances and particulars.

8. Alteration of licence

(1) The regulatory authority may at any time amend the licence or any term or condition of the licence under such form or manner as it may determine.

(2) The domestic law shall prescribe the procedures the regulatory authority must follow before amending a licence, where the amendment is at the instance of the regulatory authority, which shall ensure that principles of natural justice are adhered to.

(3) The regulatory authority shall prescribe the requirements and procedures to be followed by the licensed financial intermediary where the alteration of the licence is at the request of the financial intermediary, which shall include the reason for the alteration.

(4) Where the regulatory authority refuses to alter a licence at the request of a financial intermediary, the regulatory authority shall, within a prescribed period, notify the financial intermediary in writing of the decision and of the reasons for it.

9. Cancellation of licence

(1) The regulatory authority may, by notice in writing to the licensed intermediary, cancel a licence where it has reasonable grounds for believing that—

- (a) the financial intermediary has ceased to carry on business;
- (b) the licence was granted in error or through fraud or the misrepresentation or wilful non-disclosure of a material fact by the financial intermediary;
- (c) the financial intermediary has contravened any provision of the domestic law(s) or any term or condition of the licence;
- (d) the financial intermediary misrepresents the services offered to the public;
- (e) the financial intermediary has become disqualified as required by domestic law;
- (f) the financial intermediary no longer meets any prescribed financial requirements for carrying on any activity that the financial intermediary was licensed for;
- (g) the financial intermediary, or any key responsible person or representative of the financial intermediary, has been guilty of any act or omission in the conduct of the financial intermediary's business that has resulted or is likely to result in prejudice to members of the public;
- (h) the financial intermediary, where the financial intermediary is a natural person or any key responsible person or representative of the financial intermediary, no longer meets the fit and probity requirement, whether the cause arose prior to or after granting of the licence;
- (i) where the financial intermediary is an individual, the intermediary—
 - (i) has been confirmed by a certifying authority to be mentally or physically incapable of carrying on business; or
 - (ii) has committed an act of insolvency prescribed in the relevant insolvency laws;
- (j) where the financial intermediary is a company or body corporate, proceedings have been instituted for the intermediary's winding up or dissolution, if the regulatory authority so requests;
- (k) where the licensed financial intermediary contravenes laws relating to Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing issues.
- (l) where the regulatory authority is of the opinion that the cancellation is in the best interest of the public, clients or investors;
- (m) where the financial intermediary voluntarily requests that the licence be cancelled

(2) Before cancelling any licence, the regulatory authority shall—

- (a) notify the financial intermediary in writing that it wishes to cancel the licence and the reasons for the proposed cancellation of licence;
- (b) give the financial intermediary an opportunity to make representations in the matter within prescribed time periods.

(3) If the regulatory authority refuses to cancel a licence as requested by a financial intermediary, the regulatory authority shall, within such period as may be prescribed after

reaching the decision, notify the financial intermediary in writing, of the decision and of the reasons for it.

(4) Before cancelling a licence, the regulatory authority shall ensure the financial intermediary has put in place measures to ensure that rights and interests of clients are protected.

(5) Where the regulatory authority cancels the licence of a financial intermediary, it shall publish a notice of the cancellation within a period prescribed in the domestic law.

10. Suspension of licence

(1) The regulatory authority may by notice in writing, suspend the licence of a financial intermediary wholly or in part in relation to all or any of the activities permitted by the licence—

- (a) in order to facilitate an investigation into the financial intermediary's conduct;
- (b) following the institution of proceedings for the financial intermediary's sequestration or winding up or the placing of the financial intermediary under judicial management;
- (c) to allow the financial intermediary to address non-compliance with applicable laws;
- (d) for any other reason, as shall be prescribed in the domestic law.

(2) The regulatory authority shall ensure that before suspending a licence of a financial intermediary, it—

- (a) shall inform the financial intermediary of the grounds for the suspension;
- (b) give the financial intermediary an opportunity to make representations in the matter within prescribed time periods, as provided in the domestic law and in the manner as prescribed by the regulatory authority.

(3) The regulatory authority may at any time and by notice in writing to the financial intermediary lift the suspension.

Provided the reasons that may have caused the suspension are addressed.

(4) During the period under which the financial intermediary's licence is suspended, the financial intermediary shall only exercise the activities as the regulatory authority may permit the financial intermediary to perform.

11. Powers of regulatory authority to deal with unlicensed financial intermediary

If the regulatory authority has reason to suspect that a person who is not licensed is providing financial services, it shall take action as shall be prescribed in the domestic law, to ascertain whether that business constitutes the provision of financial services.

PART III

FITNESS AND PROBITY REQUIREMENTS

12. Personal character qualities of honesty and integrity

(1) Every financial intermediary shall maintain appropriate levels of integrity, honesty, qualifications, knowledge and experience.

(2) A financial intermediary, key responsible person or representative must be a person who is fit and proper within the meaning of the domestic laws.

(3) A financial intermediary and every key responsible person must, in the application to the regulatory authority, be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to, the financial intermediary or key responsible person, and which may be relevant for purposes of a decision by the regulatory authority, or in the case of a representative, by the financial intermediary, that the financial intermediary, key responsible person or representative complies with fit and proper requirements as may be specified in the domestic law.

(4) The financial intermediary shall ensure that the regulatory authority assesses the competency of its key responsible persons for the purpose of approving or objecting, before such persons assume their roles.

13. Financial soundness or solvency

(1) To determine whether a person is fit and proper to be licensed as a financial intermediary or approved as a key responsible person or representative, the regulatory authority shall have regard to the financial status, in particular, whether or not the applicant meets any financial requirements that may be prescribed by the regulatory authority.

(2) A person applying for a licence as a financial intermediary or to be approved as a key responsible person or representative must not be insolvent or under liquidation or provisional liquidation.

(3) The assets of a financial intermediary shall, to the extent so prescribed, comply with any general requirement prescribed by the regulatory authority for the appropriate matching of assets and liabilities.

(4) In determining financial soundness, a regulatory authority shall consider matters such as, but not limited to—

- (a) whether there are any indications that the applicant will not be able to meet his debts as they fall due;
- (b) whether relevant solvency requirements are met;
- (c) whether the applicant has been subject to any judgement debt or award that remains outstanding or has not been satisfied within a reasonable period;
- (d) whether the applicant has made arrangements with creditors, filed for insolvency, voluntary winding up or been adjudged insolvent or had assets sequestrated;
- (e) whether the applicant has been able to provide the regulatory authority with a satisfactory credit reference; or
- (f) whether the applicant has used legitimate sources of funds to start a financial institution.

14. Operational ability

(1) A financial intermediary must have—

- (a) a fixed physical business address or principal office in the member state;
- (b) adequate access to communication facilities including at least a telephone, electronic mail service, and typing and document duplication facilities;
- (c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence; and

- (d) subject to the domestic law, a framework to provide for cybersecurity and data protection matters;
- (e) an account with a bank including, where required by the domestic law, a separate bank account for client funds.

(2) A financial intermediary that utilises any third party to render administrative or system functions in relation to any of the financial intermediary's business activity on its behalf must have in place a detailed service level agreement, specifying the agreed services, time standards, roles and responsibilities and any penalties that might be applicable where there is breach of the terms and conditions set out in the service level agreement:

Provided that the financial intermediary shall remain responsible and liable for the conduct of the said third party.

(3) Where a financial intermediary is a body corporate, it must ensure that it has in place, internal policies, procedures, and controls, which shall be documented.

(4) A financial intermediary must record all financial and system procedures to ensure that the financial intermediary is able to report in terms of applicable accounting and other requirements.

(5) A financial intermediary must have general administration processing, accounting transactions and risk control measures in place to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity.

(6) A financial intermediary's internal policies, procedures and controls shall sufficiently cover Anti Money Laundering and Combating Financing of Terrorism and Proliferation Financing requirements, in line with the domestic laws and international best practice.

(7) A person applying for a licence as a financial intermediary must, to the extent required by the regulatory authority, maintain in force suitable guarantees or professional indemnity insurance or fidelity insurance cover to cover the risks of losses due to fraud, dishonesty or negligence.

(8) A financial intermediary shall maintain a register of representatives and key individuals of such representatives who shall be subject to the requirements set out by the regulatory authority.

(9) Every financial intermediary shall have adequate and appropriate resources to provide financial services.

15. Continuous professional development

(1) A financial intermediary, key responsible person or a representative must maintain appropriate qualifications or memberships, where it is relevant to remain competent for the position the person holds.

(2) A financial intermediary, key responsible person or representative shall meet the continuous professional development requirements that may be prescribed by the regulatory authority.

PART IV

CONDUCT REQUIREMENTS

16. Conduct related matters for financial intermediaries

- (1) The regulatory authority shall ensure that—
- (a) clients are given products that meet their needs;
 - (b) the integrity of the financial industry is protected and enhanced; and
 - (c) markets are competitive.
- (2) The regulatory authority shall ensure that the following outcomes be the benchmark for financial intermediaries' good conduct—
- (a) clients must be confident that they are dealing with financial intermediaries where the fair treatment of client is central to the corporate culture;
 - (b) financial services are designed in a manner that ensures fair treatment of clients and interests of clients are taken into account when developing the financial services;
 - (c) subject to section 39, the advertising, marketing and promotion of financial services is done in a clear manner which is not misleading;
 - (d) financial services marketed and sold are designed to meet the needs of identified clients and are targeted accordingly;
 - (e) clients are provided with adequate, clear information in a timely manner and are kept appropriately informed before, during and after the point of sale;
 - (f) where clients receive advice, the advice is suitable and takes account of their circumstances;
 - (g) clients are provided with financial services that perform as the financial intermediary has led them to expect, and the associated service is of an acceptable standard and as they have been led to expect;
 - (h) clients do not face unreasonable post-sale barriers to change the financial service, submit a claim or make a complaint.
 - (i) ensure that the distribution methods to be used are appropriate for the financial service and target market.

17. Independence, integrity, professionalism and ethics

A financial intermediary shall, in the interest of its clients and the public—

- (a) at all times act honestly, fairly, with due skill, care and diligence;
- (b) avoid conflict of interest, and where this is not possible, mitigate any conflict and set up operational safeguards;
- (c) not disclose any confidential information unless the written consent has been obtained or disclosure of information is required under any domestic law;
- (d) have systems and processes to preserve and safeguard the security, integrity and confidentiality of information;
- (e) not engage in market manipulation and misuse of inside information;
- (f) render financial services in accordance with the contractual relationship and reasonable request or instructions of the client;

- (g) ensure that trade allocation policies address how initial public offerings and private placements are handled.

18. Suitability assessment

A financial intermediary shall, prior to providing a client with financial advice—

- (a) obtain information regarding the client’s financial situation, risk profile, product experience and objectives to enable the financial intermediary to provide the client with appropriate advice;
- (b) conduct a client suitability assessment for purposes of the advice, based on the information obtained;
- (c) identify the financial product or service that will be appropriate to the client’s risk profile and financial needs, subject to any contractual arrangement.

19. Adequate disclosure

(1) A financial intermediary shall—

- (a) communicate with clients timely and on an ongoing basis;
- (b) provide for representations to be made and information provided to a client in a manner that is—
 - (i) factually correct;
 - (ii) in plain language, avoid uncertainty or confusion and not be misleading;
- (c) prior to the conclusion of a transaction, inform a client in writing of all relevant facts that could influence the client’s decision relating to the financial service or product, including but not limited to—
 - (i) any conflict of interest;
 - (ii) the costs associated with the financial service;
 - (iii) benefits and risks associated with the financial service;
 - (iv) contract terms and conditions.

(2) A financial intermediary must fully disclose the following to the regulatory authority—

- (a) any violations of procedures, policies and applicable laws;
- (b) audited financial results;
- (c) significant policy and organizational changes;
- (d) all other disclosures as shall be prescribed in the domestic law.

20. Whistle blowing and complaints handling

A financial intermediary shall establish and maintain a clear whistle blowing and complaints handling mechanism that ensures quick and efficient resolution of complaints, in line with the domestic law.

21. Code of conduct

The regulatory authority shall prescribe a code of conduct for its licensed financial intermediaries which shall provide for requirements, limitations or prohibitions in respect of the operational conduct of financial intermediaries.

PART V

COMPLIANCE REQUIREMENTS

22. Compliance function

(1) A financial intermediary shall—

- (a) establish an independent compliance and any other key control functions, as part of its risk management framework, as may be determined by the regulatory authority.
- (b) have procedures in place to comply with requirements of the domestic law on an ongoing basis and identify any non-compliance with those requirements;
- (c) ensure that a compliance function is provided with authority, independence and resources to enable it to operate effectively;
- (d) establish written policies and procedures in respect of conflict of interests, including acceptance of gifts and entertainment, to promote the effective oversight of conflict of interests and to ensure the fair treatment of clients.

(2) Every financial intermediary shall comply with the relevant domestic Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing law.

23. Prohibition against use of false or misleading information

(1) No person shall, in any document required by or for the purposes of any rule or requirement, make a statement that is false, relating to material information, knowing the statement to be false or not having reasonable grounds for believing it to be true.

(2) No person shall, with intent to defraud or deceive shall—

- (a) destroy, mutilate, alter or falsify any book or record, paper or financial product belonging to or relating to a financial intermediary; or
- (b) make, or is a party to the making of, a false or misleading entry in any register, book of account or other document or record belonging to or relating to a financial intermediary.

24. Trust accounts

(1) Every financial intermediary who, when carrying on any licensed activity, holds or receives any money for or on behalf of a client shall open and keep an account at a bank as a separate trust account in which the financial intermediary shall deposit all such money.

(2) In addition to the trust account referred to in subsection (1), and subject to any domestic law and any instructions given to the financial intermediary by the client for or on whose account the financial intermediary holds the money, a financial intermediary may open and keep a trust account, containing money that is not immediately required for any purpose, which account shall bear interest at a bank or financial institution approved by the regulatory authority for the purposes of this subsection.

(3) If, with the authority of the client for or on whose account he holds or has received the money, a financial intermediary holds or receives any money in a separate account from those mentioned in subsections (1) and (2), that account shall—

- (a) be regarded as a trust account; and
- (b) be in the same name as the trust account opened in terms of subsection (1) and shall indicate the name of the person for or on whose account the money is held.

(4) An amount standing to the credit of a trust account opened by a financial intermediary shall not form part of the financial intermediary's assets and shall not be liable to attachment at the instance of any of the financial intermediary's creditors.

25. Request for certified balance or account statement of trust account

A bank or financial institution at which a financial intermediary keeps a trust account, shall, whenever so required by the regulatory authority, furnish to the regulatory authority a signed certificate of account statement or balance certifying the amount(s), if any, standing to the credit or debit of that trust account as at such dates as may be specified by the regulatory authority:

Provided that the regulatory authority may directly request the information from the bank or financial institution or the authority responsible for the regulation of the bank or financial institution in question.

PART VI

SUPERVISION AND INVESTIGATION OF FINANCIAL INTERMEDIARY

26. Inspection and investigation by regulatory authority

(1) The regulatory authority shall—

- (a) be responsible for continuously monitoring and supervising financial intermediaries to ensure that they comply with the domestic law;
- (b) as part of its supervisory approach, have the power to conduct on-site and off-site inspections into the affairs of a financial intermediary.
- (c) have the power to conduct investigations into the affairs of any particular financial intermediary, where the regulatory authority considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of the relevant law;
- (d) have the power to appoint an inspector who may assist the regulatory authority to conduct inspections or investigations and to ensure compliance with the law.

(2) Subject to the domestic law, the regulatory authority or any person authorised or appointed by the regulatory authority, may at any time, inspect the financial intermediary's documents and accounts at any place where the financial intermediary conducts its business or any other place where the books and accounts may be placed.

(3) The financial intermediary shall cause its books and accounts to be produced to an inspector and shall ensure that its employees furnish such information as the inspector may reasonably require for the purposes of the inspection or investigation.

(4) No person must obstruct or hinder an inspection or investigation of a financial intermediary or inspection of books and accounts.

(5) The powers of an inspector shall be as prescribed in the domestic law.

(6) The regulatory authority may recover the costs of the investigation from the financial intermediary.

27. Regulatory authority's actions in case of non-compliance.

(1) If, in the opinion of the regulatory authority, it would be in the interests of existing and prospective clients to do so, the regulatory authority may, for the period of an investigation, do one or more of the following measures to a financial intermediary being investigated—

- (a) prohibiting the financial intermediary from initiating any new business as the regulatory authority shall specify;
- (b) withholding approval for new business activities or acquisitions;
- (c) restricting the transfer of assets;
- (d) restricting the ownership of subsidiaries;
- (e) restricting activities of a subsidiary where, in its opinion, such activities jeopardise the financial situation of the financial intermediary;
- (f) requiring measures that reduce or mitigate risks;
- (g) requiring an increase in capital, where applicable;
- (h) restricting or suspending dividend or other payments to shareholders;
- (i) restricting purchase of the financial intermediary's own shares and other assets;
- (j) arranging for the transfer of business to another financial intermediary that accepts this transfer;
- (k) barring individuals acting in responsible capacities from performing such roles;
- (l) prohibiting and prevent the financial intermediary from disposing of any property connected with its business;
- (m) prevent the financial intermediary from operating any account with any bank, building society or financial institution.

(2) If, following a report by an inspector and, where appropriate, after considering any representations made by the financial intermediary concerned, the regulatory authority is satisfied that a financial intermediary has contravened any term or condition of his licence or any provision of the relevant law or any directive, requirement or order made by the regulatory authority, the regulatory authority may, subject to this section, do any one or more of the following—

- (a) require the financial intermediary to appoint a person who, in the regulatory authority's opinion, is qualified to advise the financial intermediary on the proper conduct of his business;
- (b) issue a written instruction to the financial intermediary to undertake remedial action specified in the instruction;
- (c) convene a meeting of the shareholders or other owners of the financial intermediary to discuss the remedial measures to be taken;
- (d) issue a warning to the financial intermediary;
- (e) instruct the financial intermediary to suspend or remove any of his directors or employees;
- (f) direct the financial intermediary to suspend all or any of his financial intermediary business;
- (g) appoint a person to monitor the financial intermediary's affairs;
- (h) place or cause the financial intermediary to be under the management of a curator, where applicable;
- (i) impose a penalty on the financial intermediary; or

- (j) subject to requirements of the domestic law, amend or cancel the financial intermediary's licence.

28. Procedure on completion of investigation

(1) On completion of an investigation, an inspector shall forward his report thereon to the regulatory authority.

(2) On receipt of a report in terms of subsection (1), the regulatory authority shall, subject to domestic law and as may be determined by the regulatory authority—

- (a) communicate the findings of the inspection to the financial intermediary; and
- (b) invite the financial intermediary to make representations on the contents of the report.

(3) A financial intermediary to whom a report has been sent in terms of subsection (2) may, if he so wishes, submit to the regulatory authority representations on any of the contents of the report, within the time specified by the regulatory authority.

29. Action by regulatory authority following investigation

If, after considering an inspector's report sent to it by an inspector, together with any representations made by the financial intermediary concerned, the regulatory authority is satisfied that the financial intermediary has contravened any provision of the law or any directive, requirement or order made in terms of the domestic law, the regulatory authority shall within a period specified by the regulatory authority take any action referred to in section 27(2).

30. Curatorship and winding up of financial intermediaries.

(1) Subject to the domestic law, the regulatory authority may place a financial intermediary under curatorship or causing the winding up of a financial intermediary where—

- (a) a financial intermediary is in an unsound financial condition, where applicable; or
- (b) a financial intermediary is not operating in accordance with sound administrative and accounting practices and procedures, and not adhering to proper internal control systems;
- or
- (c) a financial intermediary failing to comply with the prescribed minimum financial requirements and the regulatory authority considers that it is unlikely to comply with them unless it is placed in curatorship.

(2) The procedure the regulatory authority shall follow when placing the financial intermediary under curatorship, causing the winding up of a financial intermediary or for voluntary winding up of a financial intermediary shall be as specified in the domestic law.

(3) Subject to any applicable law in the member state, the domestic law shall clearly state the effect of placing a financial intermediary under curatorship.

(4) The duties shall include the following—

- (a) taking over and assuming the management of the financial services of the financial intermediary concerned;
- (b) managing the financial services of the financial intermediary concerned in such manner as he considers prudent and most likely to promote the interests of the financial intermediary and financial intermediary's creditors;
- (c) ensuring proper compliance with the relevant laws by the financial intermediary concerned;

- (d) ensuring that proper accounting records are kept and proper annual financial statements are prepared in relation to the relevant domestic law of the financial intermediary concerned;
 - (e) preparing reports for the regulatory authority showing the assets and liabilities of the financial intermediary concerned and his debts and obligations, verified by the financial intermediary's auditor, and all such information as may be necessary to enable the regulatory authority to become fully acquainted with the financial intermediary's financial position;
 - (f) examining the affairs and transactions of the financial intermediary concerned before he was placed under curatorship, in order to ascertain whether any past or present director or employee of the financial intermediary—
 - (i) has contravened or appears to have contravened any provision of the law;
 - (ii) has committed or appears to have committed any offence; or
 - (iii) is or appears to be personally liable to pay damages or compensation to the financial intermediary or is personally liable for any of the financial intermediary's liabilities;
 and submit to the regulatory authority a report containing full particulars of any such contravention, offence or liability; and
 - (g) report to the regulatory authority as to whether or not, in his opinion, it is in the interests of the financial intermediary's clients and creditors that the financial intermediary should remain under curatorship.
- (5) The curator may exercise the following powers—
- (a) suspend or reduce, as from the date on which the financial intermediary concerned was placed under curatorship or any subsequent date, the right of creditors to claim or receive interest on any money owing to them by the financial intermediary;
 - (b) make payments, whether in respect of capital or interest, to any creditor of the financial intermediary concerned at such time, in such order and in such manner as he thinks fit;
 - (c) cancel any agreement between the financial intermediary concerned and any other party to advance moneys due after the date on which the financial intermediary was placed under curatorship or to extend any existing credit facility after that date, if in his opinion—
 - (i) such advance or any loan under such facility would not be adequately secured or would not be repayable on satisfactory terms;
 - (ii) the financial intermediary lacks the necessary funds to meet his obligations under the agreement; or
 - (iii) it would not otherwise be in the interests of the financial intermediary to abide by the agreement.
 - (d) convene from time to time, in such manner as he thinks fit, a meeting of creditors of the financial intermediary concerned for the purpose of establishing the nature and extent of the financial intermediary's indebtedness to them and consulting them on decisions taken by him in the course of managing the financial intermediary's affairs, to the extent that the creditors' interests may be affected by those decisions;

- (e) negotiate with any individual creditor of the financial intermediary concerned with a view to a final settlement of the creditor's affairs with the financial intermediary;
- (f) during the period of curatorship, determine on the viability of the financial intermediary's business and if it is prudent to continue operations.
- (g) generally, take any action necessary for the administration or operation of the financial intermediary concerned, including the sale or closure of any branch, agency, or other office of the financial intermediary and, subject to any other law, the dismissal of any of the employees.

(6) Subject to the provisions of other applicable domestic laws, the regulatory authority may have the right to apply to a court of competent jurisdiction for the winding up of the financial intermediary if the regulatory authority is satisfied that the financial intermediary has solvency challenges or other challenges that may be prescribed in the domestic law which makes it difficult for the financial intermediary to meet its liabilities and continue with the business or for any other reason which is appropriate and in the public interest.

(7) The domestic law shall provide for the procedures to be followed by the regulatory authority before applying to court for the winding up of the financial intermediary.

PART VII

FINANCIAL STATEMENTS

31. Appointment of an auditor

(1) Every financial intermediary, required by the domestic law to be audited, shall appoint an auditor in line with the domestic law.

(2) The auditor appointed in terms of subsection (1) shall be—

- (a) selected for appointment by the financial intermediary's board committee responsible for audit; and
- (b) approved or not objected to act as an auditor of the financial intermediary by the regulatory authority.

(3) The regulatory authority shall prescribe the number of years an auditor may be appointed as an auditor for the financial intermediary.

(4) If the regulatory authority refuses to grant its approval for the appointment of an auditor in terms of subsection (2), it shall, within the period specified in the domestic law after reaching its decision, notify the financial intermediary concerned, in writing, of its decision and of the reasons for it.

32. Disqualifications from appointment as auditor

A person shall not qualify for appointment as an auditor of a financial intermediary, if he is—

- (a) a key responsible person of the financial intermediary or of a body corporate which controls or is controlled by the financial intermediary;
- (b) an officer or employee of the financial intermediary or of any associate of the financial intermediary;
- (c) a partner or employee of a person referred to in paragraph (a) or (b);
- (d) an employer of a person referred to in paragraph (a); or

- (e) a person who by himself or herself, or his partner or his employee, regularly performs the duties of secretary or record keeper to the financial intermediary or to any associate of the financial intermediary;
- (f) any other circumstance where conflict of interest may arise; and
- (g) any other reason as may be specified in the domestic law.

33. Powers and responsibilities of an auditor

- (1) Subject to the domestic law, every auditor of a financial intermediary shall—
 - (a) have a right of access at all reasonable times to the financial intermediary's books, documents, records, accounts, vouchers and financial products; and
 - (b) be entitled to require such information and explanations from any key responsible person or representative of the financial intermediary;

as is, in his opinion, necessary to perform his duties as an auditor.
- (2) Notwithstanding subsection (1) the domestic law may prescribe more powers that may be conferred on an auditor.
- (3) No person shall without just cause—
 - (a) refuse an auditor access to the required information or documents; or
 - (b) refuses to comply with a requirement in terms of subsection (1) (b).
- (4) An auditor of a financial intermediary shall be responsible for—
 - (a) auditing the financial statements of the financial intermediary and reporting on the same;
 - (b) planning and carrying out audit procedures designed to detect non-compliance or irregularities and illegal activities in the conduct of the business of the financial intermediary;
 - (c) where possible, communicating to the audit committee any evidence he may have relating to non-compliance or that irregularities or illegal activities have been committed in the course of the business of the financial intermediary, whether or not they may have led to material misstatements in the accounts or records for the financial intermediary; and
 - (d) communicating to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—
 - (i) any director of the financial intermediary; or
 - (ii) any person;

if there is a reasonable possibility that they may cause prejudice to clients or significant damage to the financial stability of the financial intermediary.

- (5) The regulatory authority may prescribe on the nature of reports an auditor shall produce.

34. Accounting records and audit

- (1) A financial intermediary shall—
 - (a) maintain, on a continual basis, the accounting records prescribed by the regulatory authority and prepare annual financial statements prepared in accordance with requirements of the Public Accountants and Auditor's law and International Financial Reporting Standards or any other international standards as may be prescribed in the domestic law; and
 - (b) cause such accounting records and annual financial statements to be audited by an auditor within a period specified in the domestic law.
- (2) The auditor must audit the annual financial statements of the financial intermediary in accordance with the International Standards on Auditing to obtain sufficient evidence that the financial statements are in accordance with the underlying records, and are prepared in accordance

with the International Financial Reporting Standards and the requirements of the Public Accountants and Auditor's law and such requirements as may be prescribed by the regulatory authority so as to fairly present the financial position, cash-flows and the results of the operations of the financial intermediary.

- (3) When auditing a financial intermediary, an auditor shall—
 - (a) take due care to ensure objectivity; and
 - (b) apply such auditing standards as the regulatory authority may direct.
- (4) When an auditor has conducted an audit, the auditor must, report to the financial intermediary, and to the regulatory authority—
 - (a) to the effect that the auditor has completed the audit of the annual financial statements in accordance with the International Standards on Auditing and in the manner prescribed and that in the auditor's considered opinion they fairly present the financial position, cash-flows and results of the operations of the financial intermediary; and
 - (b) on the matters prescribed by the regulatory authority, including matters relating to the nominees of those financial intermediaries.
- (5) If the auditor is unable to make a report or to make an unqualified report, the auditor must include in the auditor's report a statement explaining the facts or circumstances that prevented the auditor from making a report or from making an unqualified report.
- (6) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must submit to the regulatory authority a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination.
- (7) An auditor must inform the financial intermediary and the regulatory authority in writing of any matter relating to the affairs of the financial intermediary of which the auditor became aware in the performance of the auditor's functions and which, in the opinion of the auditor, is irregular or may prejudice the financial intermediary's ability to meet his liabilities at all times.
- (8) The auditor's report prepared in terms of subsection (4) shall contain the following information:
 - (a) any irregularity or illegal act which he has ascertained, or which he suspects, has occurred in relation to the financial intermediary's business;
 - (b) any act which has contributed to a loss of any of the financial intermediary's moneys or assets;
 - (c) any other matter which, in the auditor's opinion, requires rectification or attention by the financial intermediary; and
 - (d) any recommendations for improving the financial intermediary's financial administration of his business.
- (9) The auditor must provide any report or information as required by the regulatory authority despite the provisions of any contrary domestic law or a provision of a code of professional conduct to which the auditor is subject.
- (10) The regulatory authority shall be entitled to require an auditor of a financial intermediary to provide such information and explanations as the regulatory authority, may reasonably require, for the purpose of monitoring and supervising the financial intermediary concerned.
- (11) The auditor of a financial intermediary shall comply with his obligations to submit reports or to include information in reports.

(12) Notwithstanding any duty of confidentiality to the contrary, the auditor shall not be held liable in any proceedings arising out of his compliance with any such obligation unless it is proved that he acted in bad faith.

(13) The regulatory authority may under circumstances specified by the regulatory authority, by written notice direct a financial intermediary to have his accounts, records and financial statements audited at the financial intermediary's costs and to submit the results of such an audit to the regulatory authority within the time specified in the notice.

35. Keeping of records of transactions

(1) Subject to the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, every financial intermediary shall maintain, in a safe place within the member state or where they can be easily accessible, all records pertaining to the financial intermediary's operations, both domestic and international, which may be in physical or electronic form, for a period of not less than five years following completion of the transaction or termination of the business relationship.

(2) The financial intermediary's records maintained in terms of subsection (1) must be sufficient in such nature as to—

- (a) reveal clearly and correctly the financial intermediary's state of the business affairs and financial condition;
- (b) explain the transactions so as to enable the regulatory authority to determine whether the financial intermediary has complied with the prescribed requirements;
- (c) identify clearly assets and financial products held on behalf of the clients; and
- (d) reconstruct in detail all transactions undertaken on behalf of the clients.

(3) Notwithstanding the generality of subsection (2), records kept in terms of subsection (1), where appropriate, must include full client account records and information for all trades or dealings made by the financial intermediary on a business day.

(4) Where practicable, original or copies of documents relating to transactions shall be kept and maintained in a medium that allows the storage of information so that—

- (a) the regulatory authority can access them readily and reconstitute each material stage of each transaction;
- (b) any corrections or other amendments to the records, and the contents of the records prior to such corrections or amendments, can be easily ascertained; and
- (c) except as provided in paragraph (b), the records cannot be manipulated or altered.

PART VIII

TRANSFERS, MERGERS AND ACQUISITIONS

36. Amalgamation or transfer of financial intermediaries

(1) No financial intermediary shall, without the approval of the regulatory authority and verification of the other requirements imposed by the domestic law—

- (a) amalgamate with one or more other financial institution; or
- (b) transfer its business or any part thereof to another financial institution;
- (c) take transfer from a financial institution of the whole or part of any of its business.

(2) The application procedure to be complied with the applicant for an amalgamation or transfer shall be as prescribed in the domestic law.

(3) The application procedure referred to in subsection (2) shall include matters relating to—

- (a) publication of a notice of the proposed amalgamation or transfer using a media with wide circulation;
- (b) lodging of objections or representations in regard to the application within such period as may be specified in the notice.

(4) If the regulatory authority is of the opinion that the amalgamation or transfer will not prejudice the interests of clients concerned or the public interest, it shall approve it subject to such conditions as regulatory authority thinks fit:

Provided that the regulatory authority shall ensure that objections raised are addressed before approving the amalgamation or transfer.

(5) Where an amalgamation or transfer has been approved by the regulatory authority in terms of subsection (4), it shall cause a notice to be published in a media with wide circulation stating that the amalgamation or transfer has been approved.

(6) The merging financial intermediaries or transferee and transferor financial intermediary shall ensure client data is transferred to the financial intermediary or transferee financial intermediary after an amalgamation and that data is not lost during the transfer or merging process.

(7) The new financial intermediary shall not, without the consent of the client, change the rights and obligations provided for in the transferred financial services.

(8) The domestic law shall prescribe the obligations of the financial intermediary after the amalgamation or transfer.

37. Transfers or changes in shareholding

Subject to the domestic law, the regulatory authority may restrict any issuance or transfer of shares of a financial intermediary where the transfer is above a threshold prescribed in the domestic law and would result in change in beneficial ownership.

PART IX

GENERAL

38. Licence register

(1) The regulatory authority shall maintain a financial intermediaries' licensing register that shall record, in relation to each licensee the following—

- (a) the name of the financial intermediary;
- (b) the shareholder(s) and the beneficial owner(s) as well as beneficiaries of trustees and nominees;
- (c) the directors and key responsible persons of the financial intermediary;
- (d) the principal office at which the financial intermediary conducts business;
- (e) the type of financial products to which the licence relates;

- (f) the financial activity to which the licence relates;
- (g) any terms and conditions subject to which the licence is issued;
- (h) the period of validity of the licence;
- (i) any amendment, cancellation or suspension of the licence; and
- (j) any other particulars in relation to the financial intermediary that the regulatory authority considers necessary or desirable to record.

(2) The register shall be open for inspection by members of the public under terms and conditions the regulatory authority may prescribe, subject to the domestic law.

39. Advertisements

(1) A financial intermediary shall—

- (a) ensure that its advertisements are clear, written in plain language, unambiguous, accurate and contains balanced presentation of key information;
- (b) not make any false, exaggerated, unwarranted or misleading statement or claim in any advertisement or publish, circulate or distribute any advertisement that the financial intermediary knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading;
- (c) not, in an advertisement, predict or project performance implying that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.
- (d) not conceal, disguise, diminish or obscure important warnings or statements in an advertisement and must be capable of being readily understood by the target group and shall disclose all the risks concerned;
- (e) ensure that advertisements clearly state where clients or the public can source more information about what is being advertised.

(2) The regulatory authority may prescribe the advertisements that are required for approval before publication and may stipulate the time and manner in which such advertisements may be filed for approval.

(3) The regulatory authority may if satisfied that an advertisement issued, caused to be issued or proposed to be issued is misleading, direct the financial intermediary to—

- (a) correct, modify or withdraw the advertisement;
- (b) publish a correction in the manner and form specified by the regulatory authority.

(4) Subject to domestic law, a financial intermediary must maintain records of all advertisements for a period not less than 5 years from the date of last publication, which includes the name of the responsible person of the financial intermediary who approved the advertisement and the date such approval was given.

(5) Subject to domestic law, an electronic, voice-logged record of all communications must be maintained for a period of not less than five years where a financial intermediary advertises a financial service by telephone.

40. Change of name of financial intermediary

(1) No financial intermediary shall, without the written approval of the regulatory authority, alter the financial intermediary's name as specified on the licence.

(2) No financial intermediary shall, for the purposes of its financial service, use or refer to itself by—

- (a) a name other than the name specified on its licence; or
- (b) an abbreviation of the name specified in its licence, unless the abbreviation has been approved by the regulatory authority;
- (c) a trade name, unless the trade name has been approved by the regulatory authority.

(3) A financial intermediary may, with the written approval of the regulatory authority, use or refer to itself by—

- (a) the name of a business or undertaking with which it has been amalgamated or which it has absorbed; or
- (b) the financial intermediary's previous name, where the financial intermediary has changed his name;

in conjunction with the name specified in his or her licence certificate.

(4) The regulatory authority shall prescribe the procedure a financial intermediary may follow when it intends to change its name.

(5) In the event that an application is made and the regulatory authority rejects the application, it must, within the prescribed period after reaching the decision, notify the financial intermediary concerned, in writing, of its decision and of the reasons for it.

(6) Whenever a financial intermediary has altered its name with the regulatory authority's approval, the regulatory authority shall cause a notice of the alteration to be published, in a media with a wide circulation as shall be prescribed in the domestic law.

41. Display of name and licence

Every financial intermediary shall display conspicuously, in easily legible letters its name and a statement of the fact that it is licensed in a category of financial services as the case may be—

- (a) at the entrance to every place in the member state where the financial intermediary conducts the financial intermediary services; and
- (b) on every letter, advertisement or other communication published or issued by or on behalf of the financial intermediary.

42. Certain names, titles and descriptions reserved for use by financial intermediaries

(1) Subject to the domestic law, the regulatory authority may restrict certain names, titles and descriptions to be exclusively used by financial intermediaries.

(2) The domestic law shall prescribe the procedure to be followed where a person other than a financial intermediary intends to use names, titles and descriptions referred in subsection (1).

(3) If, on application being made, the regulatory authority rejects the application for a person's use of a word, the regulatory authority shall, within the prescribed period after reaching its decision, notify the applicant, in writing, of its decision and of the reasons for it.

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43. Exemptions

(1) Subject to domestic law, the regulatory authority may exempt certain financial intermediaries from complying with certain sections of this Model Law as shall be specified in the domestic law

(2) The exemptions referred to in subsection (1) shall be exercised depending on the nature, size and complexity of the financial intermediary.

44. Preventive measures, corrective measures and sanctions

(1) The regulatory authority shall—

- (a) take prompt and effective action to deal with cases of non-compliance with measures designed to prevent a breach of the law from occurring, where such non-compliance could put clients at risk or impinge on any other regulatory objectives;
- (b) quickly enforce corrective action where problems involving financial intermediaries are identified;
- (c) issue formal directions to financial intermediaries to take particular actions or to desist from taking particular actions to address problems identified;
- (d) impose restrictions on the business activities of a financial intermediary;
- (e) take measures, or to require others to take measures, to reinforce the financial position of a financial intermediary;
- (f) have mechanisms in place to check compliance by the financial intermediary once corrective action has been taken or remedial measures, directions or sanctions have been imposed;
- (g) have mechanisms in place to assess effectiveness of the corrective action taken or remedial measures, directions or sanctions imposed on a financial intermediary.

(2) The regulatory authority may replace or restrict the power of the following persons as a means of addressing management and governance problems—

- (a) board members;
- (b) auditor;
- (c) other key responsible persons in control functions;

(3) The regulatory authority may, in extreme cases where a financial intermediary is failing to meet prudential or other requirements, take the following actions—

- (a) impose curatorship over a financial intermediary;
- (b) take control of a financial intermediary;
- (c) appoint other specified officials or receivers to take control of a financial intermediary;
- (d) make other arrangements for the benefit of the clients a private or public censure;
- (e) a fine;
- (f) suspension of a licence;
- (g) cancellation of a licence.

(4) The regulatory authority shall have the power to enforce preventive and corrective measures and impose sanctions, which are timely, necessary to achieve the objectives of

supervision of financial intermediaries, and based on clear, objective, consistent, and publicly disclosed general criteria.

(5) The regulatory authority may take action against financial intermediaries that—

(a) that fails to operate in accordance with—

- (i) the law;
- (ii) supervisory guidelines;
- (iii) sound business practices;

(b) is considered at risk of failing to operate in accordance with—

- (i) the law;
- (ii) supervisory guidelines;
- (iii) sound business practices;

(c) fails to operate in a manner that is consistent with regulatory requirements.

(6) The regulatory authority shall ensure that there is a progressive escalation in actions or remedial measures that are to be taken if the problems become worse or a financial intermediary ignores requests from the regulatory authority to take preventive and corrective action.

(7) The regulatory authority shall—

- (a) require the financial intermediary to take actions that address the regulatory authority's identified concerns;
- (b) have the power to require a financial intermediary to develop an acceptable plan for prevention and correction of problems;
- (c) periodically check that the financial intermediary is taking action and assesses the effectiveness of the financial intermediary's actions.

45. General offences and penalties

(1) The regulatory authority shall have the power to impose penalties and sanctions on financial intermediaries and individuals proportionate to the breach of regulatory requirements or other misconduct.

(2) The sanctions and penalties the regulatory authority may impose on a financial intermediary and individuals and the circumstances under which the sanctions may be imposed shall be clearly defined in the domestic law.

(3) The domestic law shall set out the procedures to be followed by the regulatory authority in imposing sanctions and penalties.

(4) The procedures set out in subsection (3) shall take into account the right of the alleged defaulting person to be heard before a penalty or sanction is imposed against such person.

46. Appeals

(1) Any person aggrieved by the regulatory authority's decision may appeal to the relevant authority as set out in the domestic law.

(2) The appeal authority referred to in subsection (1) must be independent.

(3) The procedures an aggrieved person may follow to lodge an appeal against a regulatory authority's decisions shall be as set out in the domestic law.

(4) The procedures referred to in subsection (3) shall—

- (a) be specific and balanced to preserve supervisory independence and effectiveness;
- (b) not unduly impede the ability of the regulatory authority to make timely interventions to protect policyholders' interests.