Global Financial Services Regulatory Guide - South Africa

2. What are the main sources of regulatory laws in your jurisdiction?

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# What are the main sources of regulatory laws in your jurisdiction?

The following primary statutes and regulations govern "financial institutions," including: (i) financial products or service providers; (ii) market infrastructures; (iii) holding companies of financial conglomerates; or (iv) persons required to be licensed in terms of a financial sector law.

**Legislation affecting participants in the financial sector generally**

The **Financial Sector Regulation Act, 2017** provides an overarching framework for regulating and supervising activities and participants in the South African financial sector. Please see the discussion under question 1 for more information.

The **Financial Institutions (Protection of Funds) Act, 2001**provides for the laws relating to the investment, safe custody and administration of funds and trust property by financial institutions.

The **Financial Intelligence Centre Act, 2001**establishes the Financial Intelligence Centre and a Money Laundering Advisory Council to combat money laundering activities and the financing of terrorist and related activities. It also imposes identification, record-keeping and reporting obligations upon "accountable institutions," including banks, attorneys, accountants, estate agents, investment managers and authorized users of securities exchanges.

The **Prevention of Organized Crime Act, 1998**provides measures for combatting organized crime, money laundering and criminal gang activities.

The **Currency and Exchanges Act, 1933** (and the regulations issued in terms thereof) regulates,inter alia*,* legal tender and currency and the export of capital from South Africa, the holding of foreign currency in South Africa, and the retention of the South African rand abroad.

The **Electronic Communications and Transactions Act, 2002** provides for the facilitation and regulation of electronic communications and transactions.

The **Protection of Personal Information Act, 2013** regulates the manner in which personal information may be processed by prescribing minimum threshold requirements for the lawful processing of specified personal information in line with international data protection laws.

The **Trust Property Control Act, 1996** aims to regulate control of trust property, which is to be administered in accordance with a trust instrument.

The **Consumer Protection Act, 2008**under the Financial Sector Regulation Act provides that the Consumer Protection Act does not apply to (a) any transaction product or service that is subject to the National Payment Systems Act, 1988 or any financial sector law, and which is regulated by the FSCA, the SARB, the Prudential Authority or the Prudential Committee in terms of the Financial Sector Regulation Act; and (b) any transaction that constitutes a credit agreement in terms of the National Credit Act. To the extent that any goods or services provided by an institution falls outside the scope of financial sector laws, the Consumer Protection Act will apply to those goods or services.

The **Prevention and Combating of Corrupt Activities Act, 2004**  provides for the strengthening of measures to prevent and combat corruption and corrupt activities.

The **Conduct of Financial Institutions Bill, 2020** (the "**Bill**") will, once enacted, give legislative effect to the market conduct policy approach, including the implementation of the Treating Customers Fairly principles. The Bill aims to establish a consolidated and comprehensive regulatory framework for the conduct of financial institutions that will protect financial customers; promote the fair treatment of financial customers by financial institutions; support fair and efficient financial markets; promote innovation and the development of and investment in innovative technologies, processes and practices; promote competition; promote financial inclusion, and promote the transformation of the financial services sector.

**Legislation applicable to the banking sector**

The **Banks Act, 1990** and the regulations published in terms thereof provide for the regulation and supervision of the taking of deposits from members of the public and of related activities.

The **South African Reserve Bank Act, 1989** regulates the SARB and the South African monetary system.

The **Mutual Banks Act, 1993** provides for the regulation and supervision of the activities of a juristic person that is registered as a mutual bank and its members.

The **Co-operative Banks Act, 2007** provides for the regulation and supervision of cooperative banks. The legislation acknowledges member-based financial services cooperatives as a different tier of the official banking sector.

**Other sector-specific financial regulations**

The **National Payment Systems Act, 1988**, together with regulations and notices issued thereunder, provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in South Africa.

The **Financial Advisory and Intermediary Services Act, 2002** provides for the regulation and supervision of rendering certain financial advisory and intermediary services to clients and the marketing of financial products and services.

The **National Credit Act, 2005** regulates the provision of consumer credit and provides for the registration of credit providers, credit bureaus and debt counselors.

The **Home Loans and Mortgage Disclosure Act, 2000**promotes fair lending practices, which require disclosure by financial institutions of information regarding the provision of home loans and establishes an Office of Disclosure.

The **Credit Rating Services Act, 2012** provides for the registration and regulation of credit rating agencies in accordance with international regulatory principles.

The **Financial Markets Act, 2012** provides for the regulation of financial markets, including, inter alia, the establishment, licensing and operation of market infrastructures for the trading, custody and administration of securities and the clearing and settlement of transactions, as well as the conduct of authorized users of, or participants in, any market infrastructure. Users or participants must also comply with the rules of the relevant exchange or central securities depository. The Financial Markets Act also deals with the prohibition on insider trading.

The **Insurance Act, 2017**replaced and consolidated parts of the Long-term Insurance Act, 1998 and the Short-term Insurance Act, 1998. The Insurance Act aims to bring stability to the South African insurance market, in part by introducing stricter regulation for certain entities such as foreign-based insurers in the local market. It also creates a legal framework for the micro-insurance industry, thus promoting financial inclusion and unifying insurance-related regulations.

The **Short-term Insurance Act, 1998** deals with the registration of short-term insurers and the regulation of short-term insurance providers and intermediaries, as well as the provision of policy benefits under short-term policies such as engineering, guarantee, miscellaneous, motor, accident and health, property, or transportation policies.

The **Long-term Insurance Act, 1998** provides for the registration of long-term insurers and the regulation of long-term insurance providers and intermediaries in relation to the provision of policy benefits under long-term policies, which include assistance policies, disability policies, fund policies, health policies, life policies or sinking fund policies. Further amendments to the Short-term Insurance Act and Long-term Insurance Act are pending.

The **Pension Funds Act, 2008** and regulations issued thereunder provide for the registration, incorporation, regulation and dissolution of pension funds.

The **Collective Investment Schemes Control Act, 2002** regulates and controls the establishment and administration of collective investment schemes and the marketing of domestic and foreign investment schemes or funds to South African residents.

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