

LEPPARD LEGISLATION WATCH

SEPTEMBER 2017

The world as we know it is going to change, albeit sometime in the future, but we need to start preparing ourselves for the upheaval. Most, if not all of us in the insurance industry, have been anticipating the introduction of the 'Twin Peaks' approach to financial sector regulation. The Act has now been signed into law although no commencement date has been gazetted yet. We remind you in broad strokes of the impact of the Act below.

Secondly, given the headlines of corruption, fraud and general unlawful behaviour we encounter daily, the commencement of the Protected Disclosures Amendment Act 2017 should be welcomed by all. We discuss the Act in a little detail below, and while you consider it and your obligations in terms of it, remember also the words of Edmund Burke, who said that all that is necessary for the triumph of evil, is for good men and women to do nothing!

What to watch – selected recent developments

Financial Zone

- ❖ Financial Sector Regulation Act, 9 of 2017 – The Financial Sector Regulation Bill was signed into law by President Zuma on 21 August 2017. The commencement dates for the new Financial Sector Regulation Act (FSR Act) are not yet known. The Act provides the architecture for the new 'twin peaks' method of regulation to be adopted across the South African financial services industry, and is the first step toward the commencement of a complete regulatory overhaul of the South African financial services sector.

Currently all South African banks are regulated by the Banking Supervision Department of the South African Reserve Bank (SARB) and all non-bank financial institutions (financial service providers, insurers, pension funds, collective investment schemes and market infrastructures) are regulated by the Financial Services Board (FSB), with each institution complying with its own industry-specific pieces of legislation. The FSR Act creates two brand new regulators – the Prudential Authority and the Financial Sector Conduct Authority.

The Prudential Authority will be responsible for regulating the prudential aspects of banks and all non-bank financial institutions and the Financial Sector Conduct Authority will be responsible for regulating market conduct and fair treatment of financial consumers. Practically, this new set-up will see the Banking Supervision

Department of the SARB becoming the Prudential Authority and the FSB transforming into the Financial Sector Conduct Authority. The Reserve Bank will sit above these two new regulators to provide overall financial oversight.

While the commencement of the FSR Act is unlikely to drastically change the existing regulatory framework with immediate effect i.e. the current ambit of financial services legislation and licenses will remain in force, it will bring about changes in respect of regulatory supervision with each type of financial institution being allocated to either the Prudential Authority or the Financial Sector Conduct Authority. Banks and insurers (who will have a new Insurance Act) will be allocated to the Prudential Authority while all other financial institutions will be allocated to the Financial Sector Conduct Authority.

Once the FSR Act comes into operation, it will interact with a multitude of other financial sector Acts, and one is going to have to keep one's wits about one when reading these Acts. These are some of the Acts which will be affected:

- The Banks Act
- The Collective Investment Schemes Control Act
- The Financial Advisory and Intermediary Services Act – the FSR Act will amend the definitions of 'financial product', and 'intermediary service', amend the exceptions to what is considered to be an intermediary service, require removal of a debarred person within 5 days, overhaul the sections dealing with debarment, and revise exemptions for certain product suppliers.
- The Financial Institutions (Protection of Funds) Act
- The Financial Markets Act
- The Financial Services Board Act
- The Financial Services Ombud Schemes Act
- The Friendly Societies Act
- The Inspection of Financial Institutions Act
- The Long-term Insurance Act
- The Mutual Banks Act
- The Pension Funds Act
- The Short-term Insurance Act

General

- ❖ Protected Disclosures Amendment Act, 5 of 2017 – this Act commenced on 2 August 2017, and amended the Protected Disclosures Act, 26 of 2000, which commenced on 16 February 2001. Whistleblowers are vital in the fight against corruption and fraud in the workplace, but understandably, are fearful to blow the whistle on an employee, given the victimisation and abuse they will face if they do so. The Protected Disclosures Act seeks to provide some protection for employees in the private and public sector, whereby they may disclose information regarding unlawful conduct by their employers or other employees to an appropriate authority, and be protected from occupational detriment. Last-mentioned takes

place with the Act stating that any dismissal as a consequence of having made a protected disclosure is deemed to be an automatically unfair dismissal in terms of the Labour Relations Act, which will allow the employee to receive compensation in terms of that Act.

Disclosures made in the following circumstances are protected disclosures:

- Any disclosure made to a legal practitioner in the course of obtaining legal advice;
- Any disclosure to an employer, in good faith, in accordance with any prescribed procedure;
- Any disclosure, made in good faith, to a member of Cabinet or the Executive Council of a province, provided that certain employment criteria are met;
- Any disclosure, made in good faith, to the Public Protector, Auditor-General and other prescribed persons or bodies, in respect of which the employee reasonably believes that the relevant impropriety falls within the ambit of such body.

The Amendment Act now extends the application of the Act to include ex-employees of the State, and this is good as such ex-employees should not be as fearful of reprisals or be financially reliant on the employer. The Act also now creates an obligation on the recipient of the information to deal with it in terms of the Act within a short turnaround time of 21 days. The Act provides immunity for a whistleblower from civil, criminal and disciplinary proceedings, where the disclosure shows that a criminal offence has been committed. To protect the employer from false disclosures, the Act criminalises the intentional disclosure of false information, which on conviction, could render the discloser to a fine or 2 years imprisonment.

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