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## THE PRESIDENCY

No. 48 24 January 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 36 of 2004: Securities Services Act, 2004.

## IHHOVISI LIKAMONGAMELI

Ino. 48 24 January 2005

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelewa umphakathi:—

Ino. 36 ka 2004: Umthetho Wemi-sebenzi Yamathuluzi Okuhweba Emakethe Yezimali ka-2004.



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

*(English text signed by the President.)  
(Assented to 18 January 2005.)*

# ACT

To consolidate and amend the laws relating to the regulation and control of exchanges and securities trading, the regulation and control of central securities depositories and the custody and administration of securities, and the prohibition of insider trading; to provide for the licensing of a clearing house and the approval of nominees; to provide for a code of conduct for authorised users; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(English text signed by the President.)  
(Assented to 18 January 2005.)

# UMTHETHO

Ukuhlunganisa nokuchibiyela imithetho eqondene nokulawula nokwengamela izikhungo zokuhweba emakethe yezimali, ukulawula nokwengamela izikhungo zokulondoloza amathuluzi okuhweba emakethe yezimali, ukucina nokuphatha amathuluzi okuhweba emakethe yezimali nokuvimbela umkhuba wokuhweba ngolwazi lwangaphakathi enkampanini; ukuhlinzeka ngemvume yendlu ebhalisa ukudayiselana ngamasheya nokwemukela abaqokiwe; ukuhlinzeka ngenqubo yokuziphatha kwabantu abagunyaziwe nokuhlinzekela izindaba ezihlobene nale misebenzi.

**M**AWUMISWE EMTHETHWENI yiSishayamthetho saseNingizimu Afrika, ngalendlela elandelayo:—

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UMTHETHO WEMISEBENZI YAMATHULUZI  
OKUHWEDA EMAKETHE YEZIMALI, 2004

Act No. 36, 2004

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OKUHWEBE EMAKETHE YEZIMALI, 2004

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**CHAPTER I****PRELIMINARY PROVISIONS****Definitions**

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“ <b>advice</b> ” means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to a client or group of clients in respect of the buying and selling of listed securities and irrespective of whether or not such advice results in any such transaction being effected, but does not include—	35
(a) factual advice given merely—	
(i) on the procedure for entering into a transaction in respect of listed securities;	40
(ii) in relation to the description of listed securities;	
(iii) in reply to routine administrative queries;	
(iv) in the form of objective information about listed securities; or	
(v) by the display or distribution of promotional material;	45

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***Ukusonga amafa, ukuphatha okugunyazwe yisinqumo senkantolo nokulondwa ngumsongi-mafa***

107. Isinyathelo senkantolo sokusonga amafa noma ukudla amafa enhlangano, omuntu noma ebhizinisi 20  
 108. Ukuphatha okugunyazwe yisinqumo senkantolo  
 109. Ukuqokwa komsongi-mafa  
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**ISAHLUKO I****IMIBANDELA YESINGENISO****Izincazelo 35**

1. Kulo Mthetho, ngaphandle uma ingqikithi ichaza ngokwehlukile—  
 “**iseluleko**” sichaza noma yisiphi isincomo, ukuhola noma isiphakamiso esinikiwe sohlobo lwezemali, olunikwe nganoma iyiphi indlela ekhasimendeni noma eqoqweni lamakhasimende mayelana nokuthenga nokudayisa amathuluzi abhalisiwe okuhweba emakethe yezimali, akukhathalekile ukuthi leso seluleko siholela ekuphazamisekeni kwalowo msebenzi wokuhweba kodwa akuhlanganisi—  
 (a) iseluleko esinobuqiniso esikhishwe,—  
 (i) Ngokwenqubo yokuthenga noma yokudayisa ethinta amathuluzi abhalisiwe okuhweba emakethe yezimali; 45  
 (ii) mayelana nencazelo yamathuluzi abhalisiwe okuhweba emakethe yezimali;  
 (iii) ukuphendula imibuzo ejwayelekile lapho kusetshenzwa; noma  
 (iv) ngokukhangiswa noma ngokusatshaliswa kwemikhiqizo yokukhangisa; 50

- (b) an analysis or report on listed securities without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the listed securities is appropriate to the particular investment objectives, financial situation or particular needs of a client;
- “advisory board”** means the Financial Markets Advisory Board referred to in section 6; 5
- “auditor”** means an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);
- “authorised user”** means a person authorised by an exchange in terms of the exchange rules to perform such securities services as the exchange rules may permit; 10
- “bank”** means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), and a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- “board”** means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); 15
- “board of appeal”** means the board of appeal established by section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- “central securities depository”** means a person who is licensed as a central securities depository under section 32;
- “clear”**, in relation to a transaction or group of transactions in listed securities, means— 20
- (a) to calculate and determine, before each settlement process—
- (i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller;
- (ii) the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or group of transactions; or 25
- (b) where applicable, the process by means of which—
- (i) the functions referred to in paragraph (a) are performed; and
- (ii) the due performance of the transaction is underwritten from the time of trade to the time of settlement; 30
- “clearing house”** means a person licensed in terms of section 66 as a clearing house and appointed by an exchange to provide clearing house services to such exchange;
- “clearing house services”** means either clearing services or settlement services or both clearing and settlement services provided to an exchange by a clearing house; 35
- “client”** means any person who uses the services of an authorised user or a participant, as the case may be;
- “Companies Act”** means the Companies Act, 1973 (Act No. 61 of 1973);
- “depository rules”** means the rules made by a central securities depository in accordance with this Act; 40
- “derivative instrument”** means any—
- (a) financial instrument; or
- (b) contract,
- that creates rights and obligations and that derives its value from the price or value, or the value of which may vary depending on a change in the price or value, of some other particular product or thing; 45
- “directive”** means a directive issued by a self-regulatory organisation in accordance with its rules;
- “director”** means the Directorate of Market Abuse referred to in section 83;
- “electronic”** includes created, recorded, transmitted or stored in digital or other intangible but visible form by electronic, magnetic, optical or any similar means; 50
- “enforcement committee”** means the enforcement committee established in terms of section 97;
- “exchange”** means a person who constitutes, maintains and provides an infrastructure— 55

- (b) uhlaziyo noma umbiko ngamathuluzi abhalisiwe okuhweba emakethe yezimali olungenazo izincomo, ubuholi noma isiphakamiso sokuthi ukuthenga noma ukudayisa okuthile kwethuluzi lokuhweba kuzifanele izinhloso, isimo sezimali noma izidingo ezithile zekhasimende;
- “Isigungu sokweluleka”** sichaza Isigungu Sokweluleka Ezimakethe Zezimali okuqondiswe kuso esigabeni -6; 5
- “Umcwaningi-mabhuku”** uchaza umcwaningi-mabhuku ngokulandisa koMthetho wabaCubunguli nabaCwaningi-mabhuku bamaBhuku ezimali zoMphakathi ka--1991(uMthetho uNo. -80 we-1991);
- “ogunyazwe ukusebenza”** uchaza umuntu onikwe yisikhungo igunya lokuhweba ngamathuluzi ezimali, ngokulandisa kwemithetho yokuhweba ngemali ukuqhuba imisebenzi yokudayisa ngezinhlobo ezehlukene zamathuluzi emali evunyelwe yimithetho yesikhungo; 10
- “ibhange”** lichaza ingodla njengoba ichazwe eMthethweni wamaBhange, we-1990 (Umthetho uNo. 94 we-1990), nebhange elingasabalalisi ngenzuzo emalungeni alo njengoba lichazwe eMthethweni wamaBhange angayabi inzuzo ekupheleni konyaka ka 1993 (Umthetho uNo. 24 we-1993); 15
- “Isigungu”** sichaza Isigungu Semisebenzi Yezimali esisungulwe yisigaba 2 soMthetho Wemisebenzi Yezimali we-1990 (Umthetho uNo. 97 we-1990);
- “isigungu sokwedlulisa isikhalo”** sichaza isigungu sokwedlulisa isikhalo esisungulwe yisigaba- 26 soMthetho Wemisebenzi Yezimali we-1990; 20
- “ingodla yokucina amathuluzi okuhweba ngemali ezimakethe”** ichaza umuntu onemvume yendawo yokulondoloza amathuluzi okuhweba ezimakethe ngaphansi kwesigaba-32;
- “ukukhokha”**, okuqondane nomgidi wokuthengiselana ngamathuluzi emali abhalise ezimakethe zokuhweba ngemali, kusho lokhu— 25
- (a) ukubala nokunquma, ngaphambi kwesigameko ngasinye sokukhokhelana—
- (i) isibalo esiqondile noma isamba senani lohlobo ngalunye lwethuluzi lokuhweba okufanele ledluliswe ngothengisayo noma lowo oqokwe ngothengisayo; 30
- (ii) isamba semali okufanele ikhokhwe ngothengayo noma oqokwe ngothengayo, ngenhloso yokukhokhela isigameko sokuthengiselana, kungaba umgidi owodwa noma yiqoqo lamathuluzi athengisiwe; noma
- (b) Uma kwenzeka, inqubo—
- (i) okuqhutshwa ngayo imisebenzi echazwe endimeni (a); 35
- (ii) okubhalwa ngayo isivumelwane sokuhweba ngemali kusukela esikhathini sokudayisa kuze kufike ekukhokheni;
- “indlu ebhalisa ukudayiselana ngamasheya”** ichaza umuntu onemvume ngokulandisa kwesigaba 66 njengeziko lokukhokha oqokwe yisikhungo sokuhweba emakethe yezimali ukuqhuba lo msebenzi; 40
- “umsebenzi wendlu yokudayiselana ngamasheya”** uchaza umsebenzi wokubhala nokwesula amasheya ashintshane izandla noma ukwenza yomibili lemisebenzi esikhungweni sokuhweba emakethe yezimali;
- “ikhasimende”** lichaza umuntu osebenzisa usizo logunyaziwe noma obambe iqhaza, kuye ngesimo; 45
- “imithetho yokulondoloza”** ichaza imithetho eyenziwe yingodla yokucina amathuluzi okuhweba emakethe yezimali ngokulandela loMthetho.;
- “ithuluzi lokuhweba emakethe yezimali”** lichaza noma yiluphi uhlobo—
- (a) Iwephepha lemali noma
- (b) isivumelwane, esidala amalungelo noma isibophezelo nesithola intengo emalini noma esinentengo engaguquka ngokuncika ekushintsheni kwentengo yento ethile; 50
- “umlayelo”** uchaza umlayelo okhishwe yinhlangano ezilawula ngokwemithetho yayo;
- “ingosi”** ichaza Ingosi Elawula Ukuxhashazwa kweziMakethe ephawulwe esigabeni -83; 55
- “umbiko ngombani”** uhlanganisa uhlobo olusungulwe, lwaqoshwa, lwathunyelwa noma lwagcinwa ngokubhaliwe noma ngokungathinteki kodwa okubonakalayo. Lombhalo usambani, ubonakala ngamehlo enyama noma ngolunye uhlobo; 60
- “Ikomidi lokuqondisa”** lichaza ikomidi lokuphoqeleta elisungulwe yisigaba 97;
- “isikhungo sokuhweba emakethe yezimali”** sichaza umuntu ophethe, ogcine noma owethula inqalasisinda—

- (a) for bringing together buyers and sellers of securities;
- (b) for matching the orders for securities of multiple buyers and sellers; and
- (c) whereby a matched order for securities constitutes a transaction;
- “exchange rules”** means the rules made by an exchange in accordance with this Act; 5
- “external exchange”** means a person authorised to function as an exchange in terms of the laws of a country other than the Republic;
- “financial institution”** means—
- (a) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the securities of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund; 10
- (b) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society; 15
- (c) any collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or any manager or nominee in relation to such a scheme;
- (d) any long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively; 20
- (e) any intermediary rendering the services contemplated in section 72(1)(d) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or section 70(e) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998); and
- (f) a bank; 25
- “Financial Institutions (Protection of Funds) Act”** means the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001);
- “Financial Services Board Act”** means the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- “foreign collective investment scheme”** means a scheme, in whatever form, carried on in a country other than the Republic, in pursuance of which members of the public— 30
- (a) are invited or permitted to invest money or other assets in one or more groups of assets (whether called a portfolio or by any other name) of such scheme;
- (b) acquire an interest or undivided share (whether called a unit or by any other name) in such a group of assets upon such investment; and 35
- (c) participate proportionately in the income or profits and the risk derived from such investment;
- “index”** means an indicator that reflects changes in the value of a group of securities on one or more exchange or external exchange; 40
- “Insider Trading Act”** means the Insider Trading Act, 1998 (Act No. 135 of 1998);
- “in writing”**, in relation to anything which, in terms of this Act must be done in writing, includes any such thing done in electronic form;
- “issuer”** means an issuer of securities and, in Chapter IV, includes an issuer of money market instruments; 45
- “listed securities”** means securities included in the list of securities kept by an exchange in terms of section 12;
- “management of securities”** means—
- (a) the giving of instructions, on behalf of another person, to buy or sell securities on behalf of that other person; 50

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- (a) yokuhlanganisa abathengi nabadayisi bezinhlobo zemali yokuhweba emakethe yezimali;
- (b) yokuqhathanisa imilayelo yokuthenga izinhlobo zamathuluzi emali yokuhweba emakethe yezimali evela kubathengi nabadayisi abaningi
- (c) nalapho umlayelo wokuthenga uhlobo oluthile lwethuluzi lokuhweba luthathwe njengomgidi noma isehlo sokuthenga; 5
- “imithetho yokuhweba emakethe yezimali”** ichaza imithetho eyenziwe yisikhungo sokuhweba emakethe yezimali ngokulandisa kwalo Mthetho;
- “isikhungo sangaphandle sokuhweba emakethe yezimali”** sichaza umuntu ongunya lokusebenza njengendawo yokuhweba emakethe yezimali ngesimiso semithetho yelinye izwe okungelona elaseNingizimu Afrika; 10
- “isikhungo sezimali”** sichaza—
- (a) noma iyiphi inhlango yesikhwama sempesheni esibhaliswe ngaphansi koMthetho Wezikhwama zeMpesheni ka 1956 (Umthetho uNo. 24 we- 1956), noma yimuphi umuntu okuqondiswe kuye esigabeni -13B salowo Mthetho osingethe izinhlobo zamathuluzi emali okuhweshwa ngawo emakethe yezimali kuleso sikhwama sempesheni noma ukuqeda imihlomulo ehlinzekwe emithethweni yaleso sikhwama sempesheni; 15
- (b) noma iyiphi inhlango yobungani ebhaliswe ngaphansi koMthetho Wezinhlango Zobungani we-1956 (Umthetho uNo. 25 we- 1956), noma yimuphi umuntu owengamele izindaba zaleyo nhlangano; 20
- (c) noma iluphi uhlobo lweqhinga lomfelandawonye wokutshala imali oluchazwe esigabeni- 1 soMthetho Wokulawula Umfelandawonye Wokutshala Izimali we- 2000 (Umthetho uNo. 45 we- 2002), noma imuphi umphathi noma oqokwe maqondana naleli qhinga; 25
- (d) noma ngubani obhaliswe njengomdayisi mshuwalense wesikhathi eside noma esifushane obhalise ngaphansi koMthetho Womshuwalense Wesikhathi eside we-1998 (Umthetho uNo. 52 we- 1998), noma Umthetho Womshuwalense Wesikhathi esifushane we-1998 (Umthetho uNo. 53 we-1998) ngokulandelana; 30
- (e) noma ngubani ophakathi nendawo othula imisebenzi eqagulwe esigabeni- 72(1)(d) soMthetho Womshuwalense Wesikhathi eside we-1998, noma isigaba 70(e) soMthetho Womshuwalense Wesikhathi esifushane, we-1998; kanye 35
- (f) nebhange. 35
- “uhlelo lomfelandawonye wokutshala izimali emazweni angaphandle”** luchaza iqhinga lwanoma yiluphi uhlobo oluqhutshwa ngaphandle kwezwe laseNingizimu Afrika, lapho amalunga omphakathi enza khona lokhu—
- (a) emenywa noma evumeleke khona ukutshala imali noma uhlobo lwamafa eqoqweni elilodwa noma kwamaningi emithonjeni yezimali ezahlukene (lokhu kungabizwa ngeqoqo lezinhlabo ezithile zamathuluzi okuhweba noma kube ngelinye igama) aleli qhinga; 40
- (b) ukuthola umhlomulo noma iqhuzu lesheya elingahleshuliwe (elibizwa nge-unithi noma ngelinye igama) kulelo qoqo lamafa ngesikhathi sokutshala imali; 45
- (c) ukubamba iqhaza elilinganayo kwinzuzo nasebungozini obutholakala kulokho kutshala imali;
- “inkomba”** ichaza isiboniso sesibalo esikhomba izinguquko entengweni yamathuluzi okuhweba emakethe yezimali, noma emaqoqweni amathuluzi okuhweba emakethe yezimali, ngaphakathi esikhungweni semakethe yezimali noma kwesangaphandle; 50
- “odayisa ngethuluzi lokuhweba”** uchaza lowo odlulisa noma othengisa ithuluzi lokuhweba emakethe yezimali, eSahlukweni -IV, kuhlanguanisa ukudayisa nokwebolekisa ngohlobo oluthile lwemali isikhathi esifushane;
- “ngokubhaliwe”**, maqondana nanoma yini okufanele ibhalwe phansi ngokulandisa kwalo Mthetho, kuhlanguanisa noma yini ebhalwe ngokusambani; 55
- “amathuluzi abhalisiwe okuhweba emakethe yezimali”** achaza amathuluzi okuhweba emakethe asohlwini lwamathuluzi okuhweba nacinwe esikhungweni sokuhweba ngaphansi kwesigaba -12;
- “ukuphathwa kwamathuluzi okuhweba emakethe yezimali”** kuchaza— 60
- (a) ukukhipha imilayelo yokuthenga noma yokudayisa amathuluzi okuhweba emakethe yezimali egameni lomunye umuntu;

- (b) the buying or selling of securities on behalf of another person on the instructions of that other person;
- (c) an agreement to buy or sell securities on behalf of another person;
- (d) the furnishing of advice to any person in connection with the buying and selling of securities; or 5
- (e) the handling of another person's funds intended for the purchase of securities on behalf of that other person;
- "Minister"** means the Minister of Finance;
- "nominee"** means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons; 10
- "participant"** means a person that holds in custody and administers securities or an interest in securities and that has been accepted in terms of section 34 by a central securities depository as a participant in that central securities depository;
- "prescribed by the Minister"** means prescribed by the Minister by regulation;
- "prescribed by the registrar"** means prescribed by the registrar by notice in the *Gazette*; 15
- "Public Accountants' and Auditors' Act"** means the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);
- "registrar"** means the Registrar or Deputy Registrar of Securities Services referred to in section 5; 20
- "regulated person"** means a self-regulatory organisation or any other person who provides or who previously provided securities services;
- "regulation"** means a regulation made under section 113;
- "securities"**—
- (a) means— 25
- (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (ii) notes;
- (iii) derivative instruments; 30
- (iv) bonds;
- (v) debentures;
- (vi) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act; 35
- (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
- (viii) instruments based on an index; 40
- (ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange; and
- (x) an instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the *Gazette* to be a security for the purposes of this Act; 45
- (xi) rights in the securities referred to in subparagraphs (i) to (x);
- (b) excludes—
- (i) money market instruments except for the purposes of Chapter IV; and
- (ii) any security contemplated in paragraph (a) specified by the registrar by notice in the *Gazette*; 50
- "securities services"** means services provided in terms of this Act in respect of—



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- (b) ukuthenga noma ukudayisa amathuluzi okuhweba emakethe yezimali ngomlayelo egameni lomunye umuntu okhiphe umlayelo wokuthenga noma wokudayisa;
- (c) isivumelwane sokuthenga noma sokudayisa egameni lomunye umuntu;
- (d) ukwethula iseluleko kunoma ngubani mayelana nokuthenga nokudayisa amathuluzi okuhweba emakethe yezimali; 5
- (e) ukuphatha izimali zomunye umuntu ngenhloso yokuthenga amathuluzi okuhweba emakethe yezimali egameni lalowo muntu;
- “UNgqongqoshe”** uchaza Ungqongqoshe Wezimali;
- “oqokiwe”** uchaza umuntu osebenza njengomgcini mathuluzi okuhweba ongumnini noma onelungelo lenzuzo ethuluzini lokuhweba kodwa oqhuba umsebenzi womunye umuntu; 10
- “obambe iqhaza”** uchaza umuntu ogcinile nolawula amathuluzi okuhweba emakethe yezimali noma inzuzo yawo nosebukelwe yingodla yesikhungo sokugcina imali yalolu hlobo ngokulandisa kwesigaba -34 sokuthi angalibamba iqhaza kwingodla yokulondoloza amathuluzi okuhweba ; 15
- “okumiswe nguNgqongqoshe”** lokho okusemthethweni okunqunywe nguNgqongqoshe;
- “okumiswe nguMlawuli-sikhungo”** lokho okuyisaziso okunqunywe kwashicilelwa ku*Gazette* nguMlawuli-sikhungo; 20
- “Umlawuli-sikhungo”** uchaza umphathi olawula indawo yesikhungo noma Iphini lomphathi yeMisebenzi Yamathuluzi Okuhweba Emakethe Yezimali okuqondiswe kuyo esigabeni -5;
- “ogunyazwe ukuhweba ”** leyo nhlangano ezilawulayo noma omunye umuntu ohweba noma owayehweba ngamathuluzi asemakethe yezimali; 25
- “imigomo”** ichaza umthetho owenziwe ngaphansi kwesigaba- 113;
- “amathuluzi okuhweba emakethe yezimali”—**
- (a) asho—
- (i) amasheya, ubufakazi bokulondoloza imali enkampanini ebhaliswe emakethe yezimali nezinye izinhlobo zemali ezidayisa emakethe yezimali ngaphandle kohlobo olutshalwa enkampanini edayisa amasheya ngezixha njengoba ichaziwe eMthethweni Olawula Ukuthengisa Amasheya Ngezixha we-1980 (Umthetho uNo. -59 we-1980); 30
- (ii) izethembiso ezibhalwe phansi zenkokhelo; 35
- (iii) amathuluzi ayizinhlobo nhlobo okuhweba emakethe yezimali;
- (iv) imali-mboleko enesibambiso (*amabhondi*);
- (v) imali-mboleko eyenziwa yizinkampani ezinkulu kwezinye ngaphandle kwesibambiso;
- (vi) inzuzo yokubamba iqhaza ohlelweni lomfelandawonye wokutshala imali njengoba luchaziwe eMthethweni Olawula Umfelandawonye Wokutshala Imali we- 2000 nama-unithi noma yiluphi olunye uhlobo lokubamba iqhaza ohlelweni lwangaphandle kwezwe lomfelandawonye wokutshala imali olwemukelwe ngumlawuli-sikhungo Wohlelo Lomfelandawonye Wokutshala Imali ngokulandisa kwesigaba-65 salowo mthetho; 40 45
- (vii) ama-unithi noma olunye uhlobo lokubamba iqhaza ohlwini lomfelandawonye wokutshala imali noma olubhaliswe kwelinye izwe;
- (viii) amathuluzi okuhweba agxile ezinkombeni
- (ix) amathuluzi okuhweba ahlonzwe ezindinyaneni (I) kuya ku (viii) ezibhaliswe esikhungweni sakwelinye izwe 50
- (x) ithuluzi elifana nelinye noma amanye ahlonzwe ezindinyaneni (I) kuya ku (ix) aziswe ngesaziso se*Gazette* ngumlawuli-sikhungo ukuthi angamathuluzi okuhweba ngaphansi kwalo Mthetho;
- (xi) amalungelo atholakala emathuluzini okuhweba okukhulunywa ngawo endinyaneni (I) kuya ku (x); 55
- (b) okungesiyo ingxenye—
- (i) ngamathuluzi okuhweba ngemali isikhathi esifushane ngaphandle kwesimo senhloso yeSahluko IV;
- (ii) yinoma yiliphi ithuluzi lokuhweba elihlonzwe endimeni (a) elichazwe ngumlawuli-sikhungo ngesaziso esikhishwe ku*Gazette*; 60
- “imisebenzi yamathuluzi okuhweba emakethe yezimali”** ichaza imisebenzi ebekwe yilo Mthetho maqondana nalokhu—

- (a) the buying and selling of securities;
  - (b) the custody and administration of securities;
  - (c) the management of securities by an authorised user;
  - (d) the clearing of transactions in listed securities; and
  - (e) the settlement of transactions in listed securities; 5
- “**self-regulatory organisation**” means an exchange or a central securities depository;
- “**settle**” means to discharge the obligations arising from a transaction in listed securities;
- “**settling party**” means a buyer or seller of listed securities who settles a 10 transaction or any person appointed in terms of exchange rules by such buyer or seller to settle a transaction on behalf of such buyer or seller;
- “**stockbroker**” means a natural person who is a member of the South African Institute of Stockbrokers;
- “**systemic risk**” means the danger of a failure or disruption of the Republic’s 15 financial system as a whole;
- “**this Act**” includes any measure prescribed by the Minister or by the registrar;
- “**transaction**” means a contract of purchase and sale of securities.

### Objects of Act

2. This Act aims to— 20
- (a) increase confidence in the South African financial markets by—
    - (i) requiring that securities services be provided in a fair, efficient and transparent manner; and
    - (ii) contributing to the maintenance of a stable financial market environment; 25
  - (b) promote the protection of regulated persons and clients;
  - (c) reduce systemic risk; and
  - (d) promote the international competitiveness of securities services in the Republic.

### Application of Act 30

3. (1) This Act applies to—
- (a) regulated persons and the securities services provided by regulated persons;
  - (b) issuers;
  - (c) clients;
  - (d) market abuse; and 35
  - (e) matters incidental to the matters referred to in paragraphs (a) to (d).
- (2) This Act does not apply to—
- (a) a collective investment scheme regulated by or under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); and
  - (b) the activities regulated by or under the Financial Advisory and Intermediary 40 Services Act, 2002 (Act No. 37 of 2002).
- (3) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.

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- (a) ukuthenga nokudayisa amathuluzi okuhweba emakethe yezimali;
- (b) ukugcina nokuphatha amathuluzi okuhweba emakethe yezimali;
- (c) ukuphatha amathuluzi okuhweba emakethe yilowo ovunyelwe ukuwasebenzisa
- (d) ukulungisa yonke imigidi yokuthengiselana ngamathuluzi okuhweba emakethe yezimali; 5
- (e) ukukhokhela yonke imigidi yokudayiselana ngamathuluzi okuhweba emakethe yezimali;
- “inhlango ezilawulayo”** ichaza isikhungo semakethe yezimali noma ingodla yokulondoloza imali yesikhungo semakethe yezimali; 10
- “khokha”** kuchaza ukuhlangabezana nezibophezelo ezivela emgidini wokudayiselana ngamathuluzi okuhweba emakethe yezimali;
- “ithimba elikhokhayo”** lichaza umthengi noma umdayisi wethuluzi elibhaliswe emakethe yezimali lapho ekhokhela ithuluzi noma umuntu oqokwe ngumthengi noma ngumdayisi ngaphansi kwemithetho yesikhungo sokuhweba emakethe yezimali ukuze akhokhele umgidi wokudayiselana egameni lomthengi noma lomdayisi; 15
- “umhwebi-masheya”** lowo muntu oyilunga Lesikhungo sabaHweba Ngamasheya eNingizimu Afrika;
- “Ubungozi obungalawuleki”** buchaza ingozi yokwehluleka noma yokuphazamiseka kwesimo jikelele sezimali lapha eNingizimu Afrika; 20
- “Lo Mthetho”** uhlanganisa noma yiliphi igxathu elimiswe nguNgqongqoshe noma umlawuli-sikhungo;
- “umgidi wokudayiselana”** uchaza isivumelwane noma isigameko ngasinye sokuthenga nokudayisa amathuluzi okuhweba emakethe yezimali. 25

**Izinhlalo zoMthetho****2. Lo Mthetho uqonde—**

- (a) ukwenyusa ukwethembana phakathi kwabantu abagunyazelwe umsebenzi nabathengi ngale ndlela—
- (i) ngokudinga ukuba amathuluzi okuhweba emakethe yezimali ethulwe ngendlela enobulungiswa, ehlekile nesobala; 30
- (ii) ngokuba nesandla ekugcineni isimo sezimakethe zokuhweba ngemali senelisa;
- (b) ukukhuthaza isimo sokuvikelela kwabagunyazelwa lomsebenzi kanye nabathengi; 35
- (c) ukunciphisa ubungozi obungalawuleki balo msebenzi;
- (d) ukukhuthaza intuthuko nokudlondlobala komsebenzi wokuhweba ngamathuluzi emali emakethe yaseNingizimu Afrika.

**Ukusebenza kwalo Mthetho****3. (1) Lo Mthetho usebenza lapha— 40**

- (a) kubantu abalawulwayo nemisebenzi yamathuluzi okuhweba emakethe yezimali ehlinzekwa ngabantu abalawulwayo;
- (b) kubadayisi bamathuluzi okuhweba;
- (c) emakhasimendeni;
- (d) ekuxhaphazeni imakethe; 45
- (e) ezindabeni ezithinta lezo ezidingidwa ngaphansi kwezindima (a) kuya ku (d);

**(2) Lo Mthetho awusebenzi—**

- (a) ohlelweni lomfelandawonye wokutshala imali olawulwa noma ongaphansi koMthetho Olawula Umfelandawonye Wokutshala Imali we-2002; (Umthetho No. 45 ka 2002); 50
- (b) ezigamekweni ezilawula noma ngaphansi koMthetho Wemisebenzi Encikile Neluleka Ngezimali ka 2002 (Umthetho uNo.37 we-2002);
- (3) Noma yimuphi umthetho ophathelene nokugembula noma nokubheja awusebenzi esigamekweni esilawulwa noma esingaphansi kwalo Mthetho.

**Prohibitions**

4. (1) No person may—
- (a) operate as an exchange unless that person is licensed under section 10;
  - (b) operate as a central securities depository unless that person is licensed under section 32; 5
  - (c) operate as a clearing house unless that person is licensed under section 66;
  - (d) act as an authorised user unless authorised by an exchange in terms of the exchange rules;
  - (e) carry on the business of buying or selling listed securities unless that person complies with section 19; 10
  - (f) carry on the business of buying or selling unlisted securities if prohibited under section 20 or in contravention of conditions imposed or prescribed under that section;
  - (g) act as a participant unless accepted in terms of section 34 as a participant by a central securities depository; 15
  - (h) if the person is an authorised user, undertake the management of listed securities unless that person complies with exchange rules regulating the management of listed securities.
- (2) Subject to any contrary provision in any other law, a person who is not—
- (a) licensed as an exchange, a central securities depository, or a clearing house; 20
  - (b) a participant; or
  - (c) an authorised user,
- may not purport to be an exchange, central securities depository, clearing house, participant, or authorised user, as the case may be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between 25 that person and an exchange, a central securities depository, clearing house, participant or authorised user, as the case may be.

**CHAPTER II****REGULATION AND SUPERVISION OF SECURITIES SERVICES****Registrar and Deputy Registrar of Securities Services 30**

5. (1) The executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act are the Registrar and the Deputy Registrar of Securities Services, respectively.

(2) The registrar must perform the functions assigned to the registrar by or under this Act and must supervise compliance with this Act by every regulated person. 35

(3) In performing those functions the registrar—

- (a) must act in a manner which—
  - (i) is compatible with the objects of this Act; and
  - (ii) is most appropriate for meeting those objects;
- (b) must have regard to— 40
  - (i) international supervisory standards;
  - (ii) the principle that a restriction which is placed on a regulated person, or on the rendering of securities services, should be proportionate to the purpose for which it is intended;
  - (iii) the desirability of facilitating innovation in securities services; 45

**Okwenqatshiwe**

4. (1) Akekho ovunyelwe—
- (a) ukusebenza njengesikhungo sokuhweba emakethe yezimali ngaphandle kokuba lowo muntu enemvume ngaphansi kwesigaba-10;
  - (b) ukusebenza njengengodla yokulondoloza amathuluzi okuhweba emakethe yezimali ngaphandle kokuba lowo muntu enemvume ngaphansi kwesigaba-32;
  - (c) ukusebenza njengendlu ebhalisa ukudayiselana ngamasheya ngaphandle kokuba lowo muntu enemvume ngaphansi kwesigaba-66;
  - (d) ukusebenza njengogunyaziwe ngaphandle kwegunya lesikhungo sokuhweba emakethe yezimali ngokulandisa kwemithetho yesikhungo sokuhweba emakethe yezimali;
  - (e) ukuqhuba ibhizinisi lokuthenga nokudayisa amathuluzi okuhweba emakethe yezimali ngaphandle kokuba lowo muntu ehambisana nesigaba-19;
  - (f) ukuqhuba ibhizinisi lokuthenga nokudayisa ngamathuluzi okuhweba emakethe yezimali uma kungavunyiwe yisigaba 20 noma kuphambene nemibandela ebekwe noma enqunywe ngaphansi kwaleso sigaba;
  - (g) ukusebenza njengomuntu obambe iqhaza ngaphandle kokuvunyelwa yisigaba-34 segunya lokubamba iqhaza elivela kungodla yokulondoloza imali yamathuluzi okuhweba emakethe yezimali;
  - (h) uma umuntu enegunya lokusebenza, engamele amathuluzi okuhweba emakethe yezimali ngaphandle kokuba lowo muntu ehambisana nemithetho yesikhungo elawula ukuphathwa kwamathuluzi okuhweba emakethe yezimali.
- (2) Ngaphandle uma kunesimo esithile esivunwa ngeminye yemithetho, umuntu—
- (a) ongenamvume yokuhweba njengesikhungo, ukuba yingodla yamathuluzi okuhweba noma ukusebenza njengendlu ebhalisa ukudayiselana ngamasheya;
  - (b) obambe iqhaza noma;
  - (c) ogunyaziwe, akanalo ilungelo lokuba yisikhungo, yingodla yokulondoloza amathuluzi okuhweba, yindlu ebhalisa ukudayiselana ngamasheya, ukubamba iqhaza noma ukugunyazelwa ukuqhuba lo msebenzi kuye ngesimo esivelile, noma aziphathe ngendlela, asebenzise igama noma incazelo ekhombisa ukuxhumana phakathi kwakhe nesikhungo, ingodla yokulondoloza amathuluzi okuhweba emakethe, indlu ebhalisa ukudayiselana ngamasheya, obambe iqhaza noma ogunyazelwe umsebenzi, kuye ngesimo njengoba sivelile.

**ISAHLUKO II****IMIGOMO NOKWENGAMELA IMISEBENZI YAMATHULUZI OKUHWEBA  
EMAKETHE YEZIMALI****Umlawuli-sikhungo nePhini Lomlawuli-sikhungo weMisebenzi Yamathuluzi  
Okuhweba Emakethe Yezimali**

5. (1) Isikhulu esiphezulu nephini laso eliphawulwe esigabeni-1 soMthetho Wokweluleka Ngezimali we-1990 nguMlawuli-sikhungo nePhini lakhe Lemisebenzi Yamathuluzi Okuhweba Emakethe yezimali ngokulandelana kwabo.
- (2) Umlawuli-sikhungo kufanele enze imisebenzi ejutshelwe umlawuli-sikhungo noma abhekele ukuthi wonke umuntu ongaphansi kwalo Mthetho uyawulandela.
- (3) Lapho kuqhutshwa lemisebenzi, umlawuli-sikhungo—
- (a) kumele asebenze ngendlela—
    - (i) ehambisana nezinhloso zalo Mthetho;
    - (ii) elungele kahle ukuhlangabezana nalezo zinhloso;
  - (b) kufanele aqikelele—
    - (i) ukulandela amaqophelo okwengamela aseziningeni lomhlaba;
    - (ii) ukuthi inkambiso yemigoqo ebekwe kumuntu osebenza ngaphansi kwalo mthetho noma othula imisebenzi yamathuluzi okuhweba emakethe yezimali kufanele ihambisane nezinga lomhlomulo oncikene naleyo migomo;
    - (iii) ukuthi ugqozi lokusungula nokwenza izinto ezintsha emisebenzini yamathuluzi okuhweba emakethe yezimali luyakhuthazwa;

- (iv) the international nature of regulated persons and securities services;
- (v) the principle that competition between regulated persons should not be impeded or distorted; and
- (vi) the need to use resources in the most effective and cost-efficient way;
- (c) must give written reasons for a decision to any person adversely affected by such decision; 5
- (d) may impose conditions that are consistent with this Act in respect of any licence, authorisation, approval, consent or permission granted by the registrar and may amend or withdraw such conditions.

### **Financial Markets Advisory Board** 10

6. (1) The Financial Markets Advisory Board established by section 3 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), continues to exist, despite the repeal of that Act by section 117.

(2) The advisory board consists of—

- (a) a chairperson; and 15
- (b) the other members, including persons representing regulated persons and clients,

appointed by the Minister after consultation with the board.

(3) The registrar is a member of the advisory board by virtue of the registrar's office but may not vote on matters on which the registrar is to be advised by the advisory board. 20

(4) A member of the advisory board holds office for the period determined by the Minister when the appointment is made.

(5) The board pays to a member of the advisory board who is not in the full-time employment of the State—

- (a) the remuneration or allowances determined by the board; and 25
- (b) the reimbursement of expenses incurred in the performance of the member's duties.

(6) (a) (i) The chairperson of the advisory board must convene the first meeting of the advisory board after the commencement of this Act and thereafter the advisory board meets at a time and place determined by the advisory board. 30

(ii) The chairperson convenes a meeting following upon a meeting at which there was no quorum.

(b) The quorum for a meeting of the advisory board is a majority of its members.

(7) The advisory board may on its own initiative, and must, at the request of the Minister or the registrar, investigate and report or advise on administrative and technical matters concerning regulated persons or the provision of securities services. 35

(8) The advisory board may—

- (a) appoint a subcommittee consisting of members of the advisory board and, if necessary, other persons, to investigate and advise on matters referred to the subcommittee by the advisory board; 40
- (b) call upon any person to assist it or to investigate a matter relating to regulated persons or securities services.

(9) The registrar may submit to the advisory board any information that is relevant to any matter investigated by the advisory board.

(10) The registrar is responsible for the administrative work incidental to the functions of the advisory board and a subcommittee of the advisory board. 45

(11) (a) The board must pay the expenses connected with the functions of the advisory board.

(b) The advisory board must obtain the approval of the board before expenses are incurred. 50

(12) The provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths and affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the changes required by the context to an investigation by the advisory board or a subcommittee thereof. 55

- (iv) isimo sezinga lomhlaba sabantu abahweba kulemboni kanjalo nemisebenzi eqhutshwayo ngamathuluzi okuhweba emakethe yezimali
- (v) inkambiso yokuncintisana phakathi kwabantu abangaphansi kwalo mthetho ayiphazanyiswa noma iphendulelwe;
- (vi) isidingo sokusebenzisa izinsiza ngendlela efanele neyongayo; 5
- (c) kufanele akhiphe izizathu zesinqumo kunoma yimuphi umuntu othintwe kakhulu yilesi sinqumo;
- (d) angabeka imibandela ehambisana nalo Mthetho mayelana nemvume, igunya, ukwemukela noma ilungelo elikhishwa ngumlawuli-sikhungo kanti lowo mbandela unghoxiswa noma uchitshiyelwe. 10

### Isigungu Sokweluleka Izimakethe Zezimali

6. (1) Isigungu Sokweluleka Izimakethe Zezimali esisungulwe yisigaba- 3 soMthetho Olawula Izimakethe Zokuhweba ngemali we-1989 (Umthetho uNo. 55 ka 1989) usasebenza nakuba loMthetho uchithwe yisigaba 117. 15
- (2) Isigungu sokweluleka sibunjwe— 15
- (a) usihlalo;
  - (b) namanye amalunga, ahlanganisa abantu abamele abasebenza kulemboni namakhasimende abaqokwe nguNgqongqoshe ngemuva kokubonisana nesigungu.
- (3) Umlawuli-sikhungo yilunga lesigungu sokweluleka ngesikhundla sakhe sokuba sehhovisi kodwa akakwazi ukuvota odabeni lapho edinga khona iseluleko sesigungu sokweluleka. 20
- (4) Ilunga lesigungu sokweluleka lihlala esikhundleni isikhathi esinqunywa nguNgqongqoshe ngesikhathi liqokwa.
- (5) Isigungu sikhokhela lelo lungu lesigungu sokweluleka elingaqashiwe ngokugcwele nguHulumeni— 25
- (a) iholo noma imali yezindleko enqunywa yisigungu;
  - (b) izindleko zemali esetshenzisiwe yilunga ekuqhubeni imisebenzi ejutshelwe lona.
- (6) (a) (i) usihlalo wesigungu sokweluleka kufanele abize umhlangano wokuqala wesigungu sokweluleka ngemuva kokuqala kwalo Mthetho, ngemuva kwalokhu, isigungu sokweluleka siyohlalanga ngesikhathi nasendaweni eyonqunywa yisigungu sokweluleka. 30
- (ii) Usihlalo ubiza umhlangano olandelayo ngemuva kowedlule lapho isibalo esidingekayo samalunga omhlangano sahluleka ukuhlalanga. 35
- (b) Isibalo esidingekayo samalunga ukuze umhlangano uqhubeke siyoba yiningi lamalunga esigungu sokweluleka.
- (7) Isigungu sokweluleka singazithathela ngokwaso noma sicelwe nguNgqongqoshe noma ngumlawuli-sikhungo ukuphenya nokwethula umbiko noma iseluleko ngodaba lokuphatha noma lobungoti ngabantu abasebenza kule mboni noma ngokwethulwa kwemisebenzi yamathuluzi okuhweba emakethe ezimali. 40
- (8) Isigungu sokweluleka—
- (a) singaqoka ikomidi elincane elibunjwe ngamalunga esigungu sokweluleka, uma kunesidingo liqoke abanye abantu bokuphenya nokweluleka ngodaba olwedluliselwe ekomidini elincane lokweluleka; 45
  - (a) singacela kunoma ngubani usizo noma aphenye udaba oluthinta abantu abasebenza kule mboni noma ngemisebenzi yokuhweba ezimakethe zemali.
- (9) Umlawuli-sikhungo angethula esigungwini noma yiluphi ulwazi olufanele ngodaba oluphenywa yisigungu sokweluleka.
- (10) Umlawuli-sikhungo unesibophezelo sokuphatha umsebenzi osondelene nemisebenzi yesigungu sokweluleka nekomidi elincane lesigungu sokweluleka. 50
- (11) (a) isigungu kufanele sikhokhe izindleko eziqondene nemisebenzi yesigungu sokweluleka.
- (b) isigungu sokweluleka kufanele sithole imvume yesigungu ngaphambi kokuthwala izindleko. 55
- (12) Imibandela yoMthetho yeKhomishani we-1947 (Umthetho uNo. 8 we- 1947) oqondene nokuvela kwikhomishani, ukuhlola abantu nokusingatha imisebenzi yokwenza izifungo, ikhwelo lokukhipha izincwadi, imibhalo nezinto ezithile nokwephula umthetho okwenziwa ngofakazi isebenzisana nezinguquko ezidingwa yindikimba yophenyo olwenziwa yisigungu sokweluleka noma yikomidi elincane eliqokwe. 60

## CHAPTER III

### EXCHANGES

#### Definitions

7. In this Chapter, unless the context indicates otherwise—
- “list” means the list of securities referred to in section 12; 5
  - “listing requirements” means the requirements, determined by an exchange, that must be met before a security may be traded, or may continue to be traded, on that exchange.

#### *Licensing of exchange*

#### Application for exchange licence 10

8. (1) A person may apply to the registrar for an exchange licence in respect of one or more types of securities referred to in the definition of “securities” in section 1.
- (2) Despite section 30 of the Companies Act an association consisting of 10 or more persons may apply for an exchange licence.
- (3) An application for an exchange licence must— 15
- (a) be made in the manner and contain the information prescribed by the registrar;
  - (b) show that the applicant complies with the requirements listed in section 9;
  - (c) be accompanied by—
    - (i) a copy of the proposed exchange rules that must comply with section 18;
    - (ii) a copy of the proposed listing requirements that must comply with section 12; 20
    - (iii) the founding documents of the applicant;
    - (iv) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar;
    - (v) the application fee prescribed by the Minister; 25
  - (d) be supplemented by any additional information that the registrar may reasonably require.
- (4) The registrar must give notice of an application for an exchange licence in two national newspapers at the expense of the applicant. The notice must state— 30
- (a) the name of the applicant;
  - (b) where the proposed exchange rules may be inspected by members of the public; and
  - (c) the period within which objections to the application may be lodged with the registrar.

#### General requirements applicable to applicant for exchange licence 35

9. (1) Subject to subsection (2), an applicant for an exchange licence must—
- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of an exchange in terms of this Act;
  - (b) have made arrangements for the proper supervision of all transactions effected through the exchange so as to ensure compliance with the exchange rules; 40
  - (c) have the infrastructure necessary for the sustained operation of an exchange in terms of this Act;
  - (d) maintain security and back-up procedures to ensure the integrity of the records of transactions effected through the exchange; 45



**ISIAHLUKO III****IZIKHUNGO ZOKUHWEBA EZIMAKETHE ZEMALI****Izincazelo**

7. Kulesi Sahluko, ngaphandle uma ingqikithi ilandisa ngenye indlela—  
 “uhlu” luchaza uhla lwamathuluzi okuhweba emakethe yezimali okuqondiswe 5  
 kulo esigabeni-12;  
 “izidingo zokubhalisa” zisho okufunekayo, okunqunywe yisikhungo sokuhweba  
 emakethe yezimali okufanele kulandelwe ngaphambi kokuba ithuluzi lokuhweba  
 emakethe lidayiswe noma liqhubeke nokuhweba kuleso sikhungo semakethe  
 yezimali. 10

***Ukukhishwa kwemvume yesikhungo sokuhweba emakethe yezimali*****Isicelo semvume yesikhungo sokuhweba emakethe yezimali**

8. (1) Umuntu angafaka isicelo semvume kumlawuli-sikhungo maqondana nohlobo  
 olulodwa noma eziningi zokuhweba emakethe yezimali eziphawulwe kwincazelo 15  
 esigabeni-1.  
 (2) Ngaphandle kwesigaba 30 soMthetho Wezinkampani, inhlango enabantu  
 abayishumi noma ngaphezulu ingafaka isicelo semvume yesikhungo sokuhweba  
 emakethe yezimali  
 (3) Isicelo semvume yokuhweba emakethe yezimali kufanele—  
 (a) senziwe ngendlela ehambisana futhi equkethe imininingwane enqunywe 20  
 ngumlawuli-sikhungo;  
 (b) sikhombise ukuthi ofaka isicelo uyahambisana nezimfanelo ezibhalwe  
 esigabeni -9;  
 (c) siphelzelwe—  
 (i) imibhalo efanayo (*ikhophi*) yemithetho ehlongozwayo yesikhungo 25  
 sokuhweba emakethe yezimali ehambisanayo nesigaba -18;  
 (ii) ngumbhalo ofanayo wezimfanelo ezihlongozwayo zokubhalisa  
 ezihambisanayo nesigaba -12;  
 (iii) ngumbhalo wokuqala ibhizinisi walowo ofaka isicelo;  
 (iv) yimininingwane yamalunga enhlangano eyinhloko yebhizinisi yalowo 30  
 ofake isicelo enganqunywa ngumlawuli-sikhungo;  
 (v) imali yokufaka isicelo enqunywe nguNgqongqoshe;  
 (d) siphelzelwe yinoma yiluphi ulwazi nemininingwane ebalulekile engafunwa  
 ngumlawuli-sikhungo.  
 (4) Umlawuli-sikhungo kufanele akhiphe isaziso sesicelo semvume yesikhungo 35  
 sokuhweba emakethe yezimali emaphephandabeni amabili kazwelonke. Izindleko  
 zokukhangisa zithwalwa ngofake isicelo. Isaziso kummele sisho lokhu—  
 (a) igama lofake isicelo;  
 (b) indawo lapho amalunga omphakathi engacwaninga khona imithetho 40  
 yesikhungo;  
 (c) isikhathi esibekelwe ukufaka isicelo sokuphikisa kumlawuli-sikhungo.

**Imibandela evamile esebenza kulowo ofake isicelo semvume yesikhungo sokuhweba emakethe yezimali**

9. (1) Ngokuthobela imigomo yesigatshana- (2), ofake isicelo semvume yokuhweba  
 emakethe yezimali kufanele— 45  
 (a) abe nemali, abaphathi nabasebenzi abaqeqeshwe ngokwenele abayokwazi  
 ukuqhuba umsebenzi wesikhungo sokuhweba emakethe yezimali  
 ngokulandela loMthetho;  
 (b) enze amalungiselelo okwengamela yonke imigidi yokuthengisa eqhutshwa  
 esikhungweni ukuze aqikelele ukuthi imithetho yesikhungo iyalandelwa; 50  
 (c) abe nenqalasisinda efanele yokusimamisa isikhungo ngendlela elandela  
 loMthetho;  
 (d) agcine inkambiso yokuphepha nokulondoloza ngenhloso yokuqinisekisa  
 ukuthi imibhalo yemigidi yomsebenzi oqhutshwe yisikhungo ihlala iphephile.

- (e) have insurance, a guarantee or compensation fund or other warranty in place to enable it to provide compensation, subject to the exchange rules, to clients; and
  - (f) make provision, to the satisfaction of the registrar, for the clearing and settlement of transactions effected through the exchange and for the management of trade and settlement risk. 5
- (2) The registrar may, with reference to the nature of an exchange, determine to what extent an applicant must comply with the requirements referred to in subsection (1).
- (3) The registrar may prescribe any of the requirements referred to in subsection (1) in greater detail. 10

### **Licensing of exchange**

- 10.** (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 8(4) and subject to any conditions which the registrar may consider appropriate, grant an exchange licence if— 15
- (a) the applicant complies with the relevant requirements of this Act; and
  - (b) the objects of this Act referred to in section 2 will be furthered by the granting of an exchange licence.
- (2) The exchange licence must specify the services that the exchange may provide, the main office of the exchange in the Republic and the places where the exchange may be operated, and stipulate that the exchange may not be operated at any other place without the prior written approval of the registrar. 20
- (3) An exchange may at any time apply to the registrar for an amendment of the terms of its licence and the conditions subject to which the licence was granted.
- (4) (a) The registrar must give notice of an application for an amendment of the terms of an exchange licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant. 25
- (b) The notice must state—
- (i) the name of the applicant;
  - (ii) the nature of the proposed amendments; and
  - (iii) the period within which objections to the application may be lodged with the registrar. 30

### *Functions of exchange*

#### **General functions of exchange and power of registrar to assume responsibility for functions**

- 11.** (1) An exchange— 35
- (a) must enforce the exchange rules and listing requirements;
  - (b) must supervise compliance by authorised users with this Act and the exchange rules;
  - (c) may issue directives;
  - (d) may amend or suspend the exchange rules in terms of section 61, and may amend its listing requirements in consultation with the registrar; 40
  - (e) (i) must make provision for the clearing and settlement of transactions in listed securities effected through the exchange;
  - (ii) may appoint a clearing house licensed in terms of section 66 to perform clearing house services for the exchange in accordance with the exchange rules; 45
  - (iii) must consult with an appointed clearing house when making or amending exchange rules pertaining to clearing and settlement;
  - (f) must supervise compliance by issuers of listed securities with the listing requirements, the exchange rules and this Act; 50
  - (g) may do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Act.
- (2) (a) The registrar may assume responsibility for one or more of the functions referred to in subsection (1) if the registrar considers it necessary in order to achieve the objects of this Act referred to in section 2. 55

- (e) abe nomshuwalense, isamba sesiqiniseko noma isikhwama sokunxephezela noma esinye isibambiso esikhona esiyokwenza akwazi ukuhlinzekela isidingo sokukhokha izinxephezelo ebantwini abagunyaziwe namakhasimende, ngokulandisa kwemithetho yesikhungo;
- (f) ukuhlinzekela inkokhelo nokukhokhela yonke imigidi yokudayiselana ngamasheya eyenziwa esikhungweni sokuhweba emakethe yezimali nokuphatha umcimbi wokuhweba nokubhekela ubungozi bokukhokhela amathuluzi okuhweba athengwe esikhungweni sezimakethe zokuhweba. 5
- (2) Ngokubheka uhlobo lwesikhungo sokuhweba emakethe yezimali, umlawuli-sikhungo angaquma umgamu wokuhambisana nemibandela obekelwe lowo ofaka isicelo nephawulwe esigatshaneni -(1). 10
- (3) Umlawuli-sikhungo angafuna eminye yemininingwane ephawulwe esigatshaneni (1) ngokugcwele.

#### Ukukhishwa kwemvume yesikhungo sokuhweba emakethe yezimali

10. (1) Ngemuva kokucubungula noma yimiphi imibiko yokuphikisa etholiwe ngenxa yesaziso okubhekiswe kuso esigabeni- 8(4) nokuhlola izimo angazibona zifanele, umlawuli-sikhungo angakhipha imvume yokuhweba emakethe yezimali, uma—
- (a) ofake isicelo ehambisana nemibandela yalo Mthetho;
- (b) izinhloso zalo Mthetho okuqondiswe kuwo esigabeni- 2 ziyohutshelwa phambili ngokukhipha imvume yokuhweba emakethe yezimali 20
- (2) Imvume yokuhweba emakethe yezimali kufanele ichaze imisebenzi eyokwethulwa yisikhungo, ihhovisi elikhulu lapho siyokanisa khona eNingizimu Afrika nezindawo okungasebenzela kuzo isikhungo nokuchaza ukuthi isikhungo ngeke sisebenzele kwenye indawo ngaphandle kwemvume ebhalwe phansi wumlawuli-sikhungo. 25
- (3) Isikhungo singafaka isicelo noma yinini kumlawuli-sikhungo sokuchibiyela imigomo nemibandela yemvume okwakhishwa ngayo imvume.

#### Imisebenzi yesikhungo

#### Imisebenzi evamile yesikhungo sokuhweba emakethe yezimali namandla omlawuli-sikhungo okwemukela isibophezelo sale misebenzi 30

11. (1) Isikhungo—
- (a) kufanele siphokelele imithetho yesikhungo semakethe yokuhweba nemibandela yokubhalisa;
- (b) kufanele sengamele ukulandelwa kwalo Mthetho yilabo abagunyazwe ukusebenza esikhungweni kanjalo nemithetho yesikhungo; 35
- (c) ukukhipha imilayelo;
- (d) ukuchibiyela noma ukumisa imithetho yesikhungo ngokulandisa kwesigaba- 61 kanti singachibiyela imibandela yokubhalisa ngemuva kokubonisana nomlawuli-sikhungo; 40
- (e) (i) kufanele sihlinzekele ukuhlawula izimali zamathuluzi okuhweba emakethe nokukhokhela imigidi yokuhwebelana ephothulwe esikhungweni;
- (ii) singaqoka indlu ebhalisa ukudayiselana amasheya enikwe imvume ngaphansi kwesigaba- 66 eyokwenza umsebenzi wokubhalisa amasheya ashintshe izandla esikhungweni sokuhweba ngendlela ehambisana nemithetho yesikhungo sokuhweba emakethe yezimali; 45
- (iii) kufanele sibonisana nomnyango oqokelwe ukubhalisa amasheya ashintshe izandla lapho kuguqulwa noma kuchitshiyelwa imithetho eqondene nokukhokhelana nokuqondiselana ngemicimbi yokuhwebelana esikhungweni; 50
- (f) kufanele siqaphe ukuthi abadayisa ngamathuluzi okuhweba emakethe abhalisiwe balandela yonke imigomo yokubhalisa, imithetho yesikhungo nalo Mthetho;
- (g) singenza zonke ezinye izinto ezifanele, ezixhumene noma ezifanele zokuqhuba umsebenzi wesikhungo nezingashayisani nalo Mthetho. 55
- (2) (a) Umlawuli-sikhungo angathatha isibophezelo somsebenzi owodwa noma ngaphezulu walena ephawulwe esigatshaneni (1) uma umlawuli-sikhungo ebona kufanele ngenhloso yokufeza izinhloso zalo Mthetho okuqondiswe kuwo esigabeni- 2.

- (b) The registrar must, before assuming responsibility as contemplated in paragraph (a)—
- (i) inform the exchange of the registrar's intention to assume responsibility;
  - (ii) give the exchange the reasons for the intended assumption; and
  - (iii) call upon the exchange to show cause within a period specified by the registrar why responsibility should not be assumed by the registrar. 5

### Listing of securities

12. (1) An exchange must, to the extent applicable to the exchange in question, make listing requirements which prescribe—
- (a) the manner in which securities may be listed or removed from the list or in which the trading in listed securities may be suspended; 10
  - (b) the requirements with which issuers of listed securities and of securities which are intended to be listed, as well as such issuers' agents, must comply;
  - (c) the standards of conduct that issuers of listed securities and their directors, officers and agents must meet; 15
  - (d) the standards of disclosure and corporate governance that issuers of listed securities must meet;
  - (e) such details relating to the listed securities as may be necessary;
  - (f) the steps that must be taken by the exchange, or a person to whom the exchange has delegated its disciplinary functions, for the investigation and discipline of an issuer, or director, officer or employee of an issuer, that contravenes or fails to comply with the listing requirements; 20
  - (g) for any contravention of or failure to comply with the listing requirements, any one or more of the following penalties that may be imposed by the exchange or a person to whom the exchange has delegated its disciplinary functions: 25
    - (i) A reprimand;
    - (ii) a fine not exceeding R5 million;
    - (iii) disqualification, in the case of a natural person, from holding the office of a director or officer of a listed company for any period of time; 30
    - (iv) the payment of compensation to any person prejudiced by the contravention or failure.
- (2) The listing requirements may prescribe that—
- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, other national newspapers or through the news service of the exchange; 35
  - (b) any person who contravenes or fails to comply with the listing requirements may be ordered to pay the costs incurred in an investigation or hearing;
  - (c) an exchange may take into account at a hearing information obtained by the registrar in the course of an inspection conducted under section 93 or obtained by the directorate in an investigation under section 82. 40
- (3) If a person fails to pay a fine or compensation referred to in subsection (1)(g), the exchange may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed or compensation payable, and such statement thereupon has all the effects of a civil judgment lawfully given in that court against that person in favour of the exchange for a liquid debt in the amount specified in the statement. 45
- (4) The listing requirements must prescribe the purpose for which a fine referred to in subsection (1)(g) must be appropriated.
- (5) Listing requirements and any other conditions of listing are binding on an issuer and an authorised user and their directors, officers, employees and agents. 50
- (6) An exchange—
- (a) must keep a list of the securities which may be traded on the exchange;

(b) Ngaphambi kokuba umlawuli-sikhungo athathe isibophezelo semisebenzi ehlonzwe endimeni (a)—

- (i) kufanele azise isikhungo ngesifiso somlawuli-sikhungo sokuthatha lesa sibophezelo;
- (ii) kufanele anike isikhungo izizathu zesifiso sokuzibophezela; 5
- (ii) kufanele anike isikhungo ithuba lokuziphendulela ukuthi kungani umlawuli-sikhungo engafanele ukuthatha lesa sibophezelo, lokhu kufanele kwenziwe singakapheli isikhathi esithile esibekiwe.

### Ukubhaliswa kwamathuluzi okuhweba emakethe yezimali

12. (1) Kuye ngesimo esisebenzayo kuleso siwombe, isikhungo kufanele sibumbe imibandela yokubhalisa ephawula lokhu— 10

- (a) indlela okungabhaliswa noma kwesulwe ngayo ohlwini izinhlobo zamathuluzi okuhweba emakethe yezimali noma isimo okungamiswa ngaso ukudayisa ngohlobo oluthize olubhalisiwe;
- (b) imibandela esetshenziswa ngabadayisi bamathuluzi okuhweba nalawo ahloswe ukufakwa ohlwini kanjalo nabasebenzela lowo odayisa ngohlobo lwethuluzi lokuhweba kufanele ahambisane nomthetho; 15
- (c) amazinga okuziphatha okufanele bahlangabezane nawo abaqondisi, abasebenzi nabadayisa ngamathuluzi okuhweba emakethe yezimali;
- (d) amazinga okudalula nobulungiswa bokuphatha ibhizinisi okufanele abadayisi bamathuluzi okuhweba emakethe bahlangabezane nawo; 20
- (e) imininingwane efanele eqondene namathuluzi okuhweba emakethe yezimali abhalisiwe;
- (f) izinyathelo okufanele zithathwe yisikhungo noma ngumuntu onikwe amandla okuqondisa izigwegwe, ukuphenya nokuqondisa izigwegwe kulowo odayise ithuluzi lokuhweba emakethe yezimali, kungaba ngumqondisi, isisebenzi esiphambene noma esehluleke ukuhambisana nemibandela yokubhalisa; 25
- (g) Kunoma yiluphi uhlobo lokuphambana nomthetho noma lokwehluleka ukuhambisana nemibandela yokubhalisa, eyodwa noma eziningi zale nhlawulo zinganqunywa yisikhungo noma ngumuntu ogidlabezwe amandla okuthatha izinyathelo zokuqondisa izigwegwe: 30
  - (i) Ukuthethisa;
  - (ii) inhlawulo engeqile emalini eyizigidi ezingu-5 zamarandi;
  - (iii) ukuhoxiswa, umuntu ophilayo angamiswa isikhathi esithile engavunyelwe ukuba sesikhundleni sokuphatha noma yisisebenzi senkampani ebhaliswe emakethe yezimali; 35
  - (iv) Ukukhipha isinqumo sokuxephezela umuntu ohlukumezekile ngenxa yokwepulwa komthetho noma ukwehluleka.

(2) Imibandela yokubhalisa inganquma ukuthi—

- (a) yonke imininingwane eqondene nenhlawulo ishicilelwe ku*Gazette*, amanye amaphephandaba kazwelonke noma umbiko ukhishwe engosini yezindaba zesikhungo; 40
- (b) noma ngubani ophula umthetho noma ohluleka ukuhambisana nemibandela yokubhalisa aphoqwe ukukhokha izindleko zophenyo noma zokulalela icala;
- (c) ngesikhathi sokulalelwa kodaba, isikhungo singahlola silalela imininingwane eqoqwe ngumlawuli-sikhungo ngesikhathi enza uphenyo ngaphansi kwesigaba -93 noma etholwe yingosi lapho iphenya ngokwesigaba- 82. 45

(3) Uma umuntu ehluleka ukukhokha inhlawulo noma isinxephezelo okuqondiswe kuso esigatshaneni -(1)(g), isikhungo singenza umbiko ofungelwe kumabhalane noma kumlawuli-sikhungo wenkantolo evumelekile, lowo mbiko uyochaza isamba senhlawulo enqunyiwe kanti umbiko uyoba nomthelela onamandla esinqumo saleyo nkantolo esiqondiswe kothathelwe sona, umphumela waso uvuna isikhungo ukuba sithole ngokushesha imali ekweletwayo ebhalwe embikweni. 50

(4) Imibandela yokubhalisa kufanele ichaze inhlawulo yokwaba inhlawulo ephawulwe esigatshaneni- (1)(g). 55

(5) Imibandela yokubhalisa neminye imigomo yokubhalisa iyabophezela kodayisa ngethuluzi lokuhweba kanjalo nalowo ogunyazwe ukulisebenzisa, abaqondisi, abasebenzi nabadayisa ngalo.

(6) Isikhungo—

- (a) kufanele sigcine lonke uhlu lwamathuluzi okuhweba angahle athengiswe esikhungweni sokuhweba emakethe yezimali; 60

- (b) must receive and consider, and may grant, defer or refuse, subject to its listing requirements and any other conditions that it may determine, applications for the inclusion of securities in the list;
  - (c) may include securities issued by it in its own list subject to the approval of and the conditions prescribed by the registrar; and 5
  - (d) may, despite any arrangement entered into before or after the commencement of this Act according to which listed securities may be bought and sold on the exchange, charge the fees provided for in the listing requirements or the exchange rules.
- (7) An exchange must, before refusing an application to include securities in the list— 10
- (a) inform the issuer of its intention to refuse the application;
  - (b) give the issuer the reasons for the intended refusal; and
  - (c) call upon the issuer to show cause within a period specified by the exchange why the application should not be refused.

### Removal of listing and suspension of trading 15

13. (1) An exchange may, subject to this section, the exchange rules and the listing requirements, remove securities from the list, even to the extent that a removal may have the effect that an entire board or substantial portion of the board on the exchange is closed, or suspend the trading in listed securities, if it will further one or more of the objects of this Act referred to in section 2. 20

(2) An exchange must, subject to subsection (3) and before a removal or suspension referred to in subsection (1)—

- (a) inform the issuer of its intention to remove or suspend;
- (b) give the issuer the reasons for the intended removal or suspension; and
- (c) call upon the issuer to show cause, within a period specified by the exchange, why the removal or suspension should not be effected. 25

(3) If the listing requirements, the conditions determined by an exchange in respect of the listing of securities or the exchange rules are not complied with or if a circumstance arises which the exchange rules or the listing requirements envisage as a circumstance justifying the immediate suspension of trading, an exchange may, subject to subsection (1), order an immediate suspension referred to in that subsection for a period not exceeding 30 days, which period may be extended for further periods of 30 days. 30

(4) If the trading of listed securities has been suspended in terms of this section, an exchange may, despite subsections (1) and (3), permit authorised users to buy and sell those securities for the sole purpose of fulfilling their obligations entered into in relation to those securities before the suspension. 35

(5) (a) If an issuer requests an exchange to remove its securities from the list but the exchange considers the securities to be eligible for continued inclusion in the list, the removal must be approved by the holders of those securities in a manner specified by the exchange and the exchange must be satisfied on reasonable grounds that the interests of minority holders of the securities have been considered. 40

(b) An issuer must provide reasons for the request contemplated in paragraph (a).

(6) (a) If an exchange refuses an application for the inclusion of securities in the list under section 12(6)(b), or under subsection (1) removes securities from the list, the exchange concerned must immediately notify every other exchange in the Republic of the reasons for and date of the refusal or removal. 45

(b) If the refusal to list securities was due to any fraud or other crime committed by the issuer, or any material misstatement of its financial position or non-disclosure of any material fact, or if the removal of securities was due to a failure to comply with the listing requirements of the exchange, no other exchange in the Republic may, for a period of six months from the date referred to in paragraph (a), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such 50

- (b) kufanele semukele, sicabange futhi singakhipha, sihlelise noma senqabe izicelo zokufaka ohlwini amathuluzi okuhweba emakethe yezimali, kuye ngemibandela yokubhalisa nanoma yiziphi ezinye izimo esingazikhetha;
- (c) singaxuba amathuluzi okuhweba emakethe yezimali esizikhiphele sona ohlwini, inqobo uma kunemvume nokulandela isimo esibekwe ngumlawuli-sikhungo; 5
- (d) singakhokhisa imali ehlelwe emibandeleni yokubhalisa noma esemthethweni wesikhungo, ngale kwamalungiselelo okufinyelelwe kuwo ngaphambi noma ngemuva kwalo Mthetho olawula ukuthenga nokudayisa amathuluzi abhalisiwe okuhweba emakethe yezimali. 10
- (7) Ngaphambi kokwenqaba isicelo sokufaka ohlwini amathuluzi okuhweba emakethe yezimali, isikhungo—
- (a) siyokwazisa odayisa ithuluzi lokuhweba inhloso yaso yokuchitha isicelo;
- (b) siyonika odayise ithuluzi izizathu zenhloso yokuchitha isicelo;
- (c) siyonika odayise ithuluzi ithuba lokwethula ubufakazi bokuthi kungani isicelo kufanele singenqatshwa, singakapheli isikhathi esinqunywe yisikhungo. 15

### Ukwesulwa ohlwini lokubhaliswa nokumiswa okwesikhashana ekuhwebeni

13. (1) Isikhungo singesula amathuluzi okuhweba emakethe yezimali noma simise uhwebo ngalawo mathuluzi abhalisiwe uma lokho kuyoqhuba izinhloso zalo Mthetho ophawulwe esigabeni -2, inqobo uma kuhambisana nalesi sigaba, imithetho yesikhungo nemibandela yokubhalisa. 20
- (2) Ngokulandela isigatshana- (3) nangaphambi kokwesula noma ukumisa okuphawulwe esigatshaneni- (1), isikhungo kufanele—
- (a) sazise abadayisa amathuluzi ngenhloso yaso yokwesula noma yokumisa;
- (b) sinike odayisa amathuluzi okuhweba izizathu zenhloso yokwesula noma yokumisa; 25
- (c) siyonika odayisa ithuluzi ithuba lokwethula ubufakazi bokuthi kungani isikhungo kungafanele simesule noma simmise, singakapheli isikhathi esinqunywe yisikhungo.
- (3) Uma imibandela yokubhalisa, izimo ezinqunywe yisikhungo maqondana nokwehluleka ukubhalisa amathuluzi okuhweba emakethe noma ukungahambisani nemithetho yesikhungo, ngaphansi komgomo wesigatshana- (1), isikhungo singathatha isinqumo sokumisa esiphawulwe kuleso sigatshana, leso sijeziyo siyodonsa izinsuku ezingevile emashumini amathathu kanti singanezelwe ngezinye izinsuku ezingamashumi amathathu. 30
- (4) uma ukuhweba ngamathuluzi abhalisiwe emakethe yokuhweba kumisiwe ngokulandisa kwalesi sigaba, isikhungo singavumela abagunyazwe ukuwasebenzisa ukuba bawathenge noma bawadayise ngenhloso yokuhlangabezana nezibophezelo zabo ezenziwe maqondana nawo ngaphambi kokukhishwa kwesinqumo sokumisa, inqobo uma bekwenza ngokulandela izigatshana -(1) ne- (3). 40
- (5) (a) uma odayisa ithuluzi lokuhweba ecela isikhungo ukuba sisuse amathuluzi aso okuhweba ohlwini kodwa isikhungo sibona lawo mathuluzi efanele ukuqhubeka nokuba yingxenywe yohlu, ukususa lawo mathuluzi kufanele kugunyazwe ngabanini bawo ngendlela ebekwe yisikhungo, isikhungo kummele seneliseke ukuthi lesa senzo ngeke sihlukumeze amagunya edlanzana elinentshisekelo ngalawo mathuluzi okuhweba. 45
- (b) odayisa ngethuluzi lokuhweba kufanele aveze izizathu zesicelo esiphawulwe endimeni (a).
- (6) (a) Uma isikhungo sichitha isicelo sokufaka amathuluzi okuhweba njengengxenywe yohlu olungaphansi kwesigaba- 12(6)(b) noma esigatshaneni -(1), sesula ohlwini amathuluzi noma simisa ukuthengisa kwamathuluzi okuhweba emakethe yezimali, umdayisi ozizwa ehlukumezekile kufanele azise ngokushesha zonke ezinye izikhungo lapho kubhalisiwe khona lamathuluzi ngosuku lwesinqumo sokwenqaba, ukwesula noma ukumiswa kwawo. 50
- (b) Uma ukwenqatshwa kokubhaliswa ohlwini kwamathuluzi okuhweba noma ukwesulwa kwawo okuqondwe endimeni (a) kungenxa yokwehluleka ukuhambisana nemibandela yokubhalisa emiswe yisikhungo, kusukela osukwini oluphawulwe endimeni (a) kuya ezinyangeni eziyisithupha, asikho isikhungo sokubhalisa esiyomukela isicelo sokuthatha amathuluzi okuhweba athinteka ohlwini olugcinwe yiso ukuba adayise ngaphandle kokuba isinqumo sokwenqatshwa, sokwesulwa noma ukumiswa sekuhoxiswe yisikhungo esasithathe isinqumo noma ngemuva kwesinqumo 60

securities, unless the refusal or removal is withdrawn by the first exchange or set aside on appeal by the board of appeal in terms of section 111.

(c) If an exchange withdraws a refusal or removal before the expiry of the six months, it must notify the issuer and every other exchange in the Republic.

#### **Application of new listing requirements and conditions to previously listed securities** 5

**14.** (1) Listing requirements or conditions determined by an exchange in respect of the listing of securities may be applied by the exchange to securities listed before the determination of the listing requirements or conditions, by notice in writing to the issuer of such listed securities. 10

(2) Listing requirements or conditions so applied take effect from a date determined by the exchange, which date must not be earlier, except when special circumstances justify an earlier date, than one month after the date on which the exchange so notifies the issuer, but the exchange may postpone the former date on written request by the issuer. 15

(3) If an exchange refuses a request for a postponement in terms of subsection (2) the issuer concerned may make representations in writing to the registrar, and if the request for a postponement is reasonable, the registrar may, after consultation with the exchange, postpone the date on which the listing requirements or conditions take effect by not more than three months and must inform the exchange accordingly in writing. 20

#### **Disclosure of information by issuers of listed securities**

**15.** (1) (a) An exchange may require an issuer of listed securities to disclose to it any information at the issuer's disposal about those securities, or about the affairs of that issuer, if such disclosure is necessary to achieve one or more of the objects of this Act referred to in section 2. 25

(b) An exchange may require the issuer to disclose that information to the registered holders of the securities, within a period specified by the exchange.

(c) If the issuer refuses to disclose the information to the exchange or the registered holders of the securities, the exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend trading in those securities until such time as the required disclosure has been made to the satisfaction of the exchange. 30

(2) When an issuer discloses information in terms of this section to the registered holders of securities that may influence the price of those securities, the issuer must at the same time make the information available to the public.

#### **Maintenance of insurance, guarantee, compensation fund or other warranty** 35

**16.** An exchange may impose a levy on any person involved in a transaction in listed securities effected through the exchange for the purpose of maintaining the insurance, guarantee or compensation fund or other warranty contemplated in section 9(1)(e).

#### **Funds of exchange**

**17.** (1) An exchange may require its authorised users and their clients to contribute towards the funds of the exchange for the purpose of carrying on the business of the exchange. 40

(2) If an exchange has assets which are surplus to its requirements it may distribute such assets to any person—

(a) after providing for any liabilities of the exchange; 45



sesigungu sokucubungula izicelo ezedlulisiwe esihoxisa isinqumo ngolandisa kwesigaba 111.

(c) Uma isikhungo sihoxisa isinqumo sokwenqaba, sokwesula noma sokumisa zingakapheli izinyanga eziyisithupha, umdayisi ohlukumezekile angazisa ezinye izikhungo ezibhalise lelo thuluzi lokuhweba.

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#### **Isicelo semibandela yokubhalisa okusha nezimo ezisebenza emathuluzini okuhweba asake abhaliswa**

14. (1) Imibandela yokubhalisa noma izimo ezinqunywa yisikhungo maqondana nokubhalisa amathuluzi okuhweba emakethe yezimali ingasetshenziswa yisikhungo emathuluzini abhaliswe ngaphambi kwesinqumo semibandela nezimo zokubhalisa, lokhu kuyokwenziwa ngokushicilela isaziso esibhaliwe saqondiswa kodayisa amathuluzi okuhweba abhalisiwe.

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(2) Ngaphandle kwesimo eshlukile esiphoqa usuku oluseduzane, imibandela nezimo zokubhalisa ezisetsheziwe ngale ndlela ziyiqala ukusebenza ngosuku olunqunywe yisikhungo. Lolo suku akufanele lube ngaphambili kwenyanga eyodwa ngemuva kosuku isikhungo esazise ngalo odayise ithuluzi lokuhweba kodwa isikhungo singaluhlehlisa usuku olunqunywe kuqala ngemuva kokuthola isicelo esifakwe ngodayise ithuluzi.

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(3) Uma isikhungo sichitha isicelo sokuhlehlisa ngokulandisa kwesigatshana-(2), umnini-thuluzi lokuhweba othintekayo engathula ubufakazi obubhaliwe kumlawuli-sikhungo, uma isicelo sokuhlehlisa sizwakala, umlawuli-sikhungo angahlehlisa usuku okuqala ngalo ukusebenza imibandela nezimo zokubhalisa isikhathi ezingedluli izinyanga ezintathu kanti kufanele azise isikhungo ngalokhu ngokubhalwe phansi, lokhu kuyokwenziwa ngemuva kokubonisana nesikhungo.

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#### **Iminingwane edalulwa ngabadayisa amathuluzi okuhweba abhaliswe emakethe yezimali**

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15. (1) (a) Isikhungo singafuna lowo odayisa ngamathuluzi okuhweba abhaliswe emakethe yezimali ukuba asidalulele noma yiluphi ulwazi analo ngamathuluzi noma ngezindaba zomdayisi-thuluzi uma lolo lwazi lufanele ukufeza izinhloso zalo Mthetho okuqondiswe kuwo esigabeni -2.

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(b) Isikhungo singacela odayisa amathuluzi okuhweba adalule lolo lwazi kwababhaliswe njengabanini mathuluzi okuhweba singakapheli isikhathi esinqunywe yisikhungo.

(c) Uma odayisa amathuluzi okuhweba enqaba ukudalulela isikhungo ulwazi noma ongunnini wamathuluzi okuhweba esikhungweni, isikhungo singamisa ukuthengiswa kwalelo thuluzi lokuhweba kuze kufike isikhathi sokudalulwa kolwazi olufanele nolugculisa isikhungo, ngaphandle uma okhiphe lelo thuluzi lokuhweba ethole invume yekantolo emgunyaza ukuba angalwethuli ulwazi.

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(2) Uma odayisa amathuluzi okuhweba edalula ulwazi ngokulandisa komthetho kubanikazi ababhalisiwe bethuluzi lokuhweba abangaba negalelo lokuphazamisa intengo yethuluzi lokuhweba, ngesikhathi esifanayo lowo olidayisile kufanele enekele umphakathi lolu lwazi.

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#### **Ukusungula nokusingatha isikhwama sesinxephezelo**

16. Isikhungo esisingethe isikhwama sokunxephezela abagunyazelwe ukusebenza esikhungweni namakhasimende abo ngokulandisa kwemithetho yesikhungo bangahlawulisa imali ethile ngenhloso yokuhlomulisa isikhwama. Lokhu kungenziwa kunoma ngubani obandanyekayo emgidini wokuhwebisana ngamathuluzi okuhweba emakethe yezimali ngokusebenzisa isikhungo.

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#### **Izikhwama zesikhungo sokuhweba emakethe yezimali**

17. (1) Isikhungo singadinga abasebenzi abagunyaziwe namakhasimende ukuba baphonse esivivaneni sesikhwama zesikhungo ngenhloso yokuqhuba umsebenzi wesikhungo.

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(2) Uma isikhungo sinamafa evile ezidingweni zaso, singaba lawo mafa kunoma ngubani—

(a) Ngemuva kokuhlinzekela izikweletu zesikhungo;

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- (b) in accordance with its founding documents; and
  - (c) with the written consent of the registrar.
- (3) If an exchange is a non-proprietary exchange, the distribution referred to in subsection (2) may be made despite contrary provisions of any law or the common law and without affecting the non-proprietary status of the exchange. 5

### *Exchange rules*

#### **Requirements with which exchange rules must comply**

- 18.** (1) The exchange rules must be consistent with this Act.
- (2) The exchange rules must provide—
- (a) for the criteria for authorisation and exclusion of authorised users and, in particular, that no person may be admitted as an authorised user or allowed to continue such person's business as an authorised user unless the person—
    - (i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and 15
    - (ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the exchange rules; 15
  - (b) (i) for the capital adequacy, guarantee and risk management requirements with which an authorised user must comply; 20
  - (ii) that capital adequacy, guarantee and risk management requirements must be prudent although they may differ in respect of different categories of authorised users or different activities of an authorised user's business; 20
  - (c) if there are different categories of authorised users, for the restriction of the activities of such categories subject to different conditions; 25
  - (d) for an efficient, honest, transparent and fair manner in which and terms and conditions subject to which transactions in listed securities must be effected by authorised users, whether for own account or on behalf of other persons; 25
  - (e) for the manner in which transactions in listed securities must be cleared and settled; 30
  - (f) for the clearing and settlement of transactions if the exchange has not appointed a licensed clearing house, in compliance with requirements prescribed by the registrar under section 65(1)(b); 30
  - (g) for the circumstances in which a buyer or seller of listed securities may repudiate the transaction; 35
  - (h) for the regulation of transactions in listed securities entered into as a result of any first communication made to a person without an express or tacit invitation from such person; 35
  - (i) for the circumstances in which a transaction in listed securities may be declared void by the exchange; 40
  - (j) for the conditions subject to which an authorised user may undertake management of listed securities for remuneration or benefit in any form; 40
  - (k) that no authorised user may effect a transaction in securities with a person whom the authorised user believes or suspects requires approval to undertake management of securities in terms of any law without having taken reasonable measures to ascertain that such person has the necessary approval; 45
  - (l) for the approval by the exchange of a nominee of an authorised user which nominee holds securities in a securities repository or central securities repository as defined in Chapter IV; 45
  - (m) for surveillance of any matter relevant for the purposes of this Act, the exchange rules and the directives; 50

- (b) ngokulandela imibhalo yokuqala ibhizinisi;
- (c) uma umlawuli-sikhungo ekhiphe imvume ebhaliwe.

(3) Uma isikhungo kuwuhlobo olungaphethwe ngayedwa, isenzo sokwaba esiphawulwe esigatshaneni-(2), singenziwa nakuba kukhona imibandela yemithetho ethile ephikisayo kodwa ngaphandle kokuphazamisa isimiso sobunini bomsebenzi wesikhungo sokuhweba emakethe yezimali. 5

***Imithetho yesikhungo sokuhweba emakethe yezimali***

**Imibandela okufanele ilandelwe yimithetho yesikhungo semakethe yezimali**

18. (1) Imithetho yesikhungo kufanele ihambisane nalo Mthetho.
- (2) Imithetho yesikhungo kufanele ihlinzekele lokhu— 10
- (a) umgamu wokukala igunya nokubuyiselwa eceleni kwabantu abanegunya lokusebenza, ikakhulu isinqumo sokuthi akekho umuntu ongemukelwa njengogunyaziwe noma ovunyelwe ukuqhuba umsebenzi walolu hlobo ngaphandle kokuba—
    - (i) eziphetho kahle futhi ethembekile, uma kuyinhlango, kube 15  
ngephethwe futhi elawulwa ngabantu abaziphetho kahle nabethembekile;
    - (ii) ehambisana noma uma kuyinhlango iphethwe ngabantu noma iqashe abantu abahambisanayo namazinga okuqeqeshwa, ulwazi olunzulu nenye imfundo edingwa yimithetho yesikhungo; 20
  - (b) (i) enemali eyanele futhi engumuntu ogunyaziwe ohlangabezana nemibandela yokukhipha isiqiniseko nekhono lokuphatha ubungozi; 25  
(ii) enelisa imibandela yemali eyanele nekhono lokuphatha ubungozi nakuba imibandela ingehluka ngezigaba zabagunyazelwe lomsebenzi noma imisebenzi ehlukene yebhizinisi lomuntu ogunyaziwe; 25
  - (c) uma kunezigaba ezehlukene zabagunyaziwe, ukubeka imigomo yemisebenzi yalezo zigaba, kuye ngokwehlukana kwezimo;
  - (d) ukusebenza kahle, ngokwethembeka, ngendlela esobala nenobulungiswa lapho imigomo nemibandela okuqhutshwa ngayo umgidi wokudayiselana ngamathuluzi okuhweba abhaliswe emakethe eyokwenziwa yilabo 30  
abagunyaziwe, akukhathalekile ukuthi bazenzela ngokwabo noma bammele abanye;
  - (e) indlela imigidi yokudayiselana ngamathuluzi okuhweba abhalisiwe eyoqondiswa futhi ikhokhwe ngayo;
  - (f) izinhlelo zokusingatha isikhungo lapho kukhokhwa noma kuphethwa 35  
umcimbi wokudayiselana, uma isikhungo singaqokanga indlu ebhalisa ukudayiselana amasheya. Lezi zinhlelo zokuqondisa nokukhokha kumele zihambisane nemibandela enqunywe ngumlawuli-sikhungo ngaphansi kwesigaba-65(1)(b);
  - (g) isimo lapho umthengi noma umdayisi wamathuluzi okuhweba abhalisiwe 40  
engachitha, aphikisane nomcimbi noma isigameko sokudayiselana;
  - (h) ukulawula imigidi yokudayiselana ngamathuluzi okuhweba emakethe yezimali okuvunyelwene ngakho ngemuva kokuxoxisana nomuntu ngaphandle kombhalo noma ngendlela eyenziwe ngomlomo;
  - (i) isimo lapho umgidi wokudayiselana ngamathuluzi okuhweba ungathathwa 45  
yisikhungo njengalowo ongekho emthethweni;
  - (j) isimo lapho ogunyazwe njengosebenza ngethuluzi engasingatha khona amathuluzi okuhweba ngokuthola inkokhelo noma ngomhlomulo othile ngalo msebenzi;
  - (k) isimo sokuvimbela ogunyazelwe lomsebenzi ukudayisa amathuluzi 50  
okuhweba nomuntu ogunyaziwe acabanga noma asola sengathi udinga imvume yokuhweba ngamathuluzi asemakethe ngaphansi kwanoma yimuphi umthetho uma ogunyaziwe engazange athathe ngokwenele izinyathelo ezingala ukuhlolisisa lesi simo sezinsolo ngemvume yomsolwa;
  - (l) imvume yesikhungo soqokwe esikhundleni somuntu onegunya, lapho 55  
oqokiwe egodle khona amathuluzi okuhweba kungodla yokulondoloza yemakethe yokuhweba ngemali njengoba ichazwe kuSahluko IV, emithethweni yesikhungo nasemilayelweni;
  - (m) ukuqapha noma yiluphi udaba olufanele ngenjongo yalo Mthetho, imithetho yesikhungo nemilayelo; 60

- (n) for the conditions subject to which an officer or employee of an authorised user may, in relation to the buying and selling of listed securities, advise on or conclude any transaction on behalf of an authorised user in the course of that authorised user's business and for the circumstances in which an officer or employee of an authorised user may be denied access to the exchange; 5
- (o) for the circumstances in which trading in any listed security may be suspended or halted;
- (p) for the manner in which an authorised user is required to conduct the business of buying and selling listed securities generally;
- (q) for the operation by an exchange or authorised user of a trust account contemplated in section 27; 10
- (r) for the—
- (i) recording of transactions effected through the exchange;
  - (ii) monitoring of compliance by authorised users with this Act, the exchange rules and directives; and 15
  - (iii) surveillance of any matter relevant for the purposes of this Act, the exchange rules and the directives;
- (s) for the circumstances and manner in which an authorised user may advertise or canvass for business;
- (t) for the equitable and expeditious settlement of disputes between authorised users and between authorised users and clients in respect of transactions in listed securities; 20
- (u) for the manner in which complaints against an authorised user or officer or employee of an authorised user must be investigated;
- (v) for the steps to be taken by the exchange, or a person to whom the exchange has delegated its investigative and disciplinary functions, to investigate and discipline an authorised user or officer or employee of an authorised user who contravenes or fails to comply with this Act, the exchange rules, the interim exchange rules or the directives and for a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings; 25 30
- (w) for the manner in which an authorised user, officer or employee of an authorised user who is believed to—
- (i) be able to furnish any information on the subject of any investigation referred to in paragraphs (u) and (v); or 35
  - (ii) have in such person's possession or under such person's control any document which has bearing upon that subject, may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
- (x) in respect of the insurance, guarantee, compensation fund or other warranty referred to in section 16, for— 40
- (i) the persons who must contribute to maintain such insurance, guarantee, compensation fund or other warranty;
  - (ii) the amount of the levy imposed by the exchange for this purpose;
  - (iii) different categories of claims that may be brought against the insurance, guarantee, compensation fund or other warranty; 45
  - (iv) restrictions on the amount of any claim;
  - (v) the control and administration of the insurance, guarantee, compensation fund or other warranty;
  - (vi) the ownership of the insurance, guarantee, compensation fund or other warranty; 50
- (y) that authorised users must disclose to clients the fees for their services;
- (z) that authorised users may charge a fee for different categories of transactions;
- (aa) for the purposes for which an exchange may issue directives;
- (bb) for the supervision by an exchange of compliance with the duties imposed on it and its authorised users by the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). 55

(3) An exchange may, with the approval of the registrar, make exchange rules on matters additional to those listed in subsection (2).

(4) An exchange rule made under this section is binding on an exchange, an authorised user, an issuer and their officers and employees, and on clients. 60

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- (n) izimo okuyosebenza ngaphansi kwazo isisebenzi somuntu onegunya lokusebenza esikhungweni maqondana nokuthenga nokudayisa ngamathuluzi okuhweba emakethe yezimali abhalisiwe, lapho singeluleka, siphethe noma yimuphi umsebenzi ojwayelekile wokuhweba, egameni lonegunya ngaphandle kwesimo lapho leso sisebenzi senqatshelwe khona ukungena ngaphakathi esikhungweni; 5
- (o) isimo sokuhweba ngamathuluzi athile abhalise emakethe yezimali amisiwe noma esuliwe;
- (p) indlela okudingeka onegunya lokusebenza aqhube ngayo ibhizinisi lokuthenga nokudayisa amathuluzi okuhweba emakethe yezimali; 10
- (q) ukusetshenziswa kwesikhwama somfelandawonye esiphawulwe esigabeni 27 yisikhungo noma yilowo ogunyaziwe;
- (r) izinhlelo okufanele zigcinwe yisikhungo-  
 (i) ukubhala imigidi yohwebo eyenzeke esikhungweni,  
 (ii) ukuqaphela indlela yokuhambisana nalo Mthetho kubantu abagunyazelwe ukusebenza ngesikhungo, imithetho yesikhungo nemilayelo ebekiwe; 15  
 (iii) ukuqapha noma yiluphi udaba ngenhloso yalo Mthetho, imithetho yesikhungo nemilayelo;
- (s) isimo nendlela abasebenzisi besikhungo abakhangisa ngayo noma abanxena ngayo ibhizinisi; 20
- (t) isimo sokuxazulula ngendlela egculisayo ingxabano phakathi kwabasebenzi abanegunya ngokwabo naphakathi kwabanegunya kanye namakhasimende lapho kuqhutshwa uhwebo ngamathuluzi asemakethe yezimali;
- (u) indlela yokuphenya izikhalo ezifakwe ngomuntu ogunyazelwe umsebenzi noma isisebenzi; 25
- (v) izinyathelo eziyothathwa yisikhungo noma ngumuntu ogidlabezwe amandla okuphenya noma okwenza umsebenzi wokuqondisa izigwegwe elungeni eligunyaziwe noma isisebenzi sakhe esitholakale siphambene noma sehluleke ukuhlangabezana nalo Mthetho, imithetho yesikhungo, imithetho yesikhashana noma imilayelo. Umbiko womphumela wokuqondisa izigwegwe uyokwethulwa kumlawuli-sikhungo zingakapheli izinsuku ezingu-30 ngemuva kokuphuthula lonke ucwaningo; 30
- (w) indlela yokubizela ngaphambi komphenyi umuntu ogunyazelwe umsebenzi wesikhungo nesisebenzi sakhe esisolwa ngokuthi— 35  
 (i) singaba nolwazi ngodaba oluphenywayo oluphawulwe endimeni (u) no (v) noma;  
 (ii) sinombhalo noma umqulu othile ogodliwe onomthelela ngodaba oluphenywayo, angabizelwa phambi komphenyi ngenhloso yokufakwa imibuzo noma alethe lowo mbhalo. 40  
 (x) uma isikhwama sokunxephezela, somshuwalense noma sokubambisa noma esinye isiqiniseko esiqondwe esigabeni -16 sigcinelwa—  
 (i) abantu okufanele bafake kuso;  
 (ii) imali ejutshwe yisikhungo;  
 (iii) imikhakha ehlukeni okungakhokhwa izindleko zayo kulesi sikhwama; 45  
 (iv) isamba sesinxephezelo esiwungamu nokungafanele seqiwe;  
 (v) ukulawula nokuphatha isikhwama;  
 (vi) ubunini besikhwama;
- (y) Lowo ogunyazelwe umsebenzi wesikhungo kufanele adalulele amakhasimende inkokhelo okufanele ikhokhwe ngomsebenzi awenzile; 50
- (z) Ogunyazelwe umsebenzi angahlawulisa imali yokusingatha umsebenzi eyohluka ngemikhakha yemigidi yohwebo kodwa iqophelo lenhlawulo liyomiswa yisikhungo;
- (aa) Ngezinhlalo isikhungo esingakhipha ngazo imiyalelo;
- (bb) ngomsebenzi wokuqapha ukuthi isikhungo nabasegunyeni lokusebenza kuso balandela imithetho ebekiwe yoMthetho Wesikhungo Sobunhloli Bezimali we- 2001 (Umthetho uNo. 38 we- 2001). 55
- (3) Ngemvume yomlawuli-sikhungo, isikhungo singashaya imithetho yaso ngezinto ezengeziwe kulezo ezibhalwe esigatshaneni -(2).
- (4) Umthetho wesikhungo oshaywe ngaphansi kwalesi sigaba ubophezela isikhungo, odayisa amathuluzi okuhweba, abasebenzi namakhasimende. 60

### *General provisions in relation to exchange*

#### **Buying and selling listed securities**

19. A person may carry on the business of buying or selling listed securities if that person—
- (a) is an authorised user; 5
  - (b) effects such buying or selling through an authorised user;
  - (c) is a financial institution transacting as principal with another financial institution also transacting as principal; or
  - (d) is a person who, subject to any condition that the registrar may prescribe, buys or sells listed securities in order to— 10
    - (i) give effect to a reconstruction of a company or group of companies by the issue or reallocation of shares, or a takeover by one company of another or an amalgamation of two or more companies; or
    - (ii) effect a change in the control over management or the business of a company. 15

#### **Restriction on buying and selling unlisted securities**

20. (1) The registrar may—
- (a) prohibit a person from carrying on the business of buying or selling unlisted securities if that person carries on such business in a manner which defeats one or more of the objects of this Act referred to in section 2; 20
  - (b) impose conditions for the carrying on of such business;
  - (c) prescribe conditions in terms of which specified types of unlisted securities may be bought or sold.
- (2) A person who buys unlisted securities from or sells unlisted securities to a person who contravenes or fails to comply with a prohibition or condition referred to in subsection (1) may cancel the transaction. 25

#### **Reporting of transactions in listed securities**

21. (1) A financial institution, whether it carries on the business of buying or selling listed securities or not, must report to the registrar any transaction in listed securities resulting in a change of beneficial ownership of those securities and concluded by it outside of an exchange. 30
- (2) The registrar may, in respect of a report referred to in subsection (1), prescribe—
- (a) the information required in respect of any transaction; and
  - (b) the manner in and time within which reports are to be rendered.
- (3) The registrar must disclose information about a transaction reported in terms of subsection (1) to— 35
- (a) the exchange on which the securities are listed; and
  - (b) the public, unless the registrar is satisfied on reasonable grounds that such disclosure will be contrary to the objects of this Act referred to in section 2.
- (4) The exchange referred to in subsection (3) may publish any information disclosed to it in terms of that subsection. 40

#### **Undesirable advertising or canvassing relating to securities**

22. (1) No person, other than an authorised user or an officer or employee of an authorised user who is so permitted in terms of exchange rules, may in any manner, directly or indirectly, advertise or canvass for the business of an authorised user. 45
- (2) Despite any contrary law, the registrar may, if an advertisement, brochure or other document relating to securities is misleading or for any reason objectionable, direct that the advertisement, brochure or other document not be published or the publication

*Imibandela evamile mayelana nesikhungo sokuhweba emakethe yezimali***Ukuthenga nokudayisa amathuluzi abhalisiwe okuhweba emakethe yezimali**

19. Umuntu angaqhuba ibhizinisi lokuthenga nokudayisa amathuluzi okuhweba abhalisiwe emakethe yezimali, uma lowo muntu—

- (a) enegunya; 5
- (b) eqhuba umsebenzi wokuthenga nokudayisa egameni lomuntu onegunya;
- (c) eyisikhungo esebokisa ngemali sibe sihweba nesinye njengomnini wethuluzi lokuhweba;
- (d) ethenga futhi edayisa ngamathuluzi okuhweba abhalisiwe ngokunjalo elandela imigomo enqunywe ngumlawuli-sikhungo ngenhloso— 10
  - (i) yokuvuselela kabusha inkampani noma iqoqo lezinkampani ngokukhipha noma ngokwaba kabusha amasheya, noma ukugwinya inkampani eyodwa noma ukuhlenganisa izinkampani ezimbili noma ngaphezulu;
  - (ii) yokuguqula amandla okuphatha enkampanini noma umsebenzi webhizinisi. 15

**Imigomo yokuthenga nokudayisa amathuluzi angabhalisiwe emakethe yezimali**

20. (1) Umlawuli-sikhungo—

- (a) angenqabela umuntu ekuqhubeni ibhizinisi lokuthenga nokudayisa ngamathuluzi okuhweba abhalisiwe, uma lowo muntu eqhuba umsebenzi ngendlela ephambane nalo Mthetho ophawulwe esigabeni -2; 20
- (b) angaphoqelela imibandela yokuhweba lelo bhizinisi;
- (c) angabeke imibandela yokuhweba ngamathuluzi angabhalisiwe emakethe yezimali.

(2) Umuntu othenga noma odayisa amathuluzi okuhweba emakethe angabhalisiwe otholwa ephambana nesenzo esingavunyelwe noma umbandela ophawulwe esigatshaneni (1), angahoxisa umcimbi wokudayiselana. 25

**Ukubika imigidi yokudayiselana ngamathuluzi okuhweba abhalisiwe**

21. (1) Isikhungo sokwebolekisa ngemali, akukhathalekile ukuthi siqhuba ibhizinisi lokuthenga noma lokudayisa amathuluzi okuhweba emakethe yezimali abhalisiwe kufanele sibikele umlawuli-sikhungo nganoma yiluphi uhlobo lomgidi wokudayiselana ngamathuluzi abhalisiwe emakethe okungaba nomphumela wokuguquka komhlomulo wobunini ngalawo mathuluzi okuhweba nokwenziwe ngaphandle kwesikhungo. 30

(2) Umlawuli-sikhungo anganquma—

- (a) ulwazi oludingekayo maqondana nanoma yimuphi umgidi wokudayiselana; 35
- (b) ngendlela kanye nesikhathi okufanele kwethulwe ngaso imibiko.

(3) Umlawuli-sikhungo kufanele adalule ulwazi ngomgidi wokudayiselana obikwe ngaphansi kwesigatshana (1)—

- (a) esikhungweni lapho amathuluzi okuhweba ebhalisiwe khona;
- (b) emphakathini, ngaphandle uma isikhungo senelisekile ngobuqotho bezizathu ezichaza ukuthi ukudalula ulwazi kuyophambana nezinhlalo zalo Mthetho ophawulwe esigabeni-2. 40

(4) Isikhungo esiphawulwe esigatshaneni- (3) singashicilela noma yiluphi ulwazi esinikwe lona ngaphansi kwaleso sigatshana..

**Ukukhangisa okunganambitheki noma ukunxenxa abantu okuqondene namathuluzi okuhweba emakethe yezimali 45**

22. (1) Ngokwalo Mthetho, kwabagunyaziwe noma kubasebenzi abavunyelwe ngaphansi kwemithetho yesikhungo, akekho onemvume yokukhangisa noma yokunxenxa nganoma iyiphi indlela, kungaba yindlela eqonde ngqo noma ejikelezayo engakhangisa khona noma yiluphi uhlobo lwebhizinisi lokuthenga nokudayisa ngamathuluzi okuhweba emakethe yezimali. 50

(2) Noma ingaba khona eminye imithetho, uma umlawuli-sikhungo ebona isikhangiso, ipheshana lokukhangisa noma umbhalo mumbhe oncike emathuluzini okuhweba okhombisa ukwedukisa abantu noma ovusa impikiswano, angalayela ukuba

thereof be stopped or that such amendments as the registrar considers necessary be effected.

#### **Certain written matter to bear names of certain persons**

**23.** No person may publish or circulate any written comment which relates to the trading results of a public company or which may influence the value of the listed securities of a company unless such comment is accompanied by— 5

- (a) the name of the person or persons who compiled it or the name of the person or persons on the editorial staff of a newspaper or periodical who, in the opinion of the editor thereof, compiled it; or
- (b) disclosure of the source from which it was obtained. 10

#### **Restriction on borrowing against and repledging of securities belonging to other persons**

**24.** No authorised user may—

- (a) borrow against pledged listed securities an amount in excess of the outstanding balance of any amount which the authorised user may have lent the pledgor against the pledged securities; 15
- (b) repledge listed securities without the written consent of the pledgor. 15

#### **Marking of or recording details of securities**

**25.** When a document of title relating to listed securities comes into the possession of an authorised user, the authorised user must, as soon as possible— 20

- (a) mark it; or
- (b) record and store the necessary details,

in a manner which will render it possible at any time thereafter readily to establish the identity of the owner of those securities.

#### **Restriction on alienation of securities** 25

**26.** Subject to the exchange rules, an authorised user may only alienate listed securities deposited with the authorised user if the person who deposited them has authorised such alienation in writing.

#### **Segregation of funds of authorised users and other persons**

**27. (1) (a)** Every authorised user must open and maintain a trust account at a bank designated for client funds, or may use such an account opened and maintained by an exchange, into which any instruments of payment or cash received from a client must be deposited on the day of receipt: Provided that any deposit that is made by a client directly into an authorised user's own account, or any deposit that is received after banking hours, must be transferred into such trust account by the start of business on the next day. 30 35

(b) A trust account referred to in this subsection may contain only funds of clients and not those of an exchange or authorised user.

(2) Funds received from a client need not be deposited into a trust account if payment— 40

- (a) is made to the authorised user by a buyer of listed securities—
  - (i) against delivery of such securities to the buyer; or
  - (ii) against such securities being marked or recorded as the property of the buyer; or
- (b) is preceded by a payment made by the authorised user to the seller of listed securities against delivery of such securities to the authorised user; or 45



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leso sikhangiso, ipheshana lokukhangisa noma umbhalo ungashicilelwa, ummiswe noma uguqulwe ngendlela ayibona ifanele.

**Izinto ezithile ezibhaliwe ziyoveza amagama abantu abathile**

23. Akekho umuntu ongashicilela noma asabalalise noma yini ebhaliwe ethinta imiphumela yohwebo lwenkampani ebhaliswe emakethe yezimali noma engaba nomthelela wentengo yamathuluzi okuhweba emakethe yezimali aleyo nkampani ngaphandle kokuba lowo mbiko noma umbhalo uphelezela yilokhu— 5

- (a) igama lomuntu noma abantu abaqoqe umbiko noma abantu abasethimbeni labaqoqi bezindaba ephephandabeni noma embikweni lapho kunombono oqinile womhleli wephephandaba wokuthi uyabazi ngempela abaqoqi bombiko. ; 10
- (b) ukudalula umthombo walolu daba. 10

**Umgomo wokweboleka ngokubambisa ngamathuluzi okuhweba okungesiwona awakho**

24. Kulabo abanegunya lokuhweba, akekho— 15

- (a) ongeboleka ngokubambisa ngamathuluzi okuhweba abhaliswe emakethe aze edlule kwusamba sesikweletu somuntu okuthathwe amathuluzi akhe okuhweba nayisisekelo sesibambiso; 15
- (b) ongabambisa ngethuluzi elilodwa izikhawu eziningi ngaphandle kwemvume yomnini. 20

**Ukushaya uphawu noma ukubhala imininingwane yamathuluzi okuhweba emakethe yezimali**

25. Uma umbhalo wobunini ophathelene namathuluzi okuhweba abhalisiwe uwela ezandleni zomuntu onegunya lokuhweba, lowo onegunya kufanele enze lokhu ngokushesha— 25

- (a) alishaye uphawu; 25
- (b) alibhale bese egcina yonke imininingwane, Ngendlela eyenza kube lula ngaso sonke isikhathi ukuthola ubunini balawo mathuluzi okuhweba. 25

**Umgomo wokudayisa ngamathuluzi okuhweba emakethe yezimali**

26. Ngokuhambisana nemithetho yesikhungo, umuntu onegunya lokuhweba angadayisa amathuluzi okuhweba abhalisile nalondolozwe kuye uma lowo owalondolozile emnikeze invume ebhaliwe yokuwadayisa. 30

**Ukwehlukana izikhwama zabanegunya lokusebenza nabanye abantu**

27. (1) (a) Wonke onegunya lokuhweba kufanele avule futhi agcine isikhwama ebhange elibekelwe amakhasimende noma asebenzise isikhwama esivulwe salawulwa yisikhungo lapho kuyofakwa khona zonke izimali zekhasimende ezitholwe ngosuku: lokhu makwenziwe ngokuqonda ukuthi yonke imali efakwa yikhasimende esikhwameni somuntu ogunyaziwe noma imali etholwe sekuvaliwe emabhange kummele igcinwe kuleso sikhwama kuze kube wusuku olulandelayo lomsebenzi. 35

(b) Isikhwama sokugcina imali esiphawulwe kulesi sigatshana singaqukatha kuphela imali yamakhasimende hhayi imali yesikhungo noma yomuntu onegunya lokuhweba emakethe. 40

(2) Izimali ezitholwe emakhasimendeni akufanele zigcinwe esikhwameni semali yamakhasimende uma inkokhelo—

- (a) yenziwa ngumthengi wamathuluzi okuhweba abhalisiwe, iqondiswe konegunya lokusebenza— 45
- (i) kulandela ukulethwa lwalawo mathuluzi kumuntu owathengile; noma
- (ii) yenzelwa amathuluzi aseshaywe uphawu noma asebhalewe njengefa lomthengi; noma
- (b) ilandelwa yinkokhelo eyenziwe ngonegunya lokuhweba enika umdayisi wamathuluzi okuhweba abhalisiwe ngemuva kokuletha lawo mathuluzi okuhweba; 50

- (c) is made to pay a debt due to the authorised user: Provided that a debt arising from the purchase of listed securities which have not been marked or recorded as the property of the buyer of the securities may not be regarded as a debt due for this purpose; or
- (d) is made in terms of any other law or exchange rule which specifically provides for such payment to be deposited into some other account. 5
- (3) Funds held in a trust account and any funds which have not been deposited into a trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, are considered to be “trust property” as defined in the Financial Institutions (Protection of Funds) Act and that Act applies to those funds, subject to this section. 10
- (4) Funds deposited into a trust account may only be withdrawn by an authorised user for the purpose of making payment—
- (a) to the person entitled to the payment; or
- (b) in terms of any other law or the exchange rules: 15
- Provided that if, after the withdrawal, any deposited cheque, draft or other instrument against which the withdrawal was made is not subsequently honoured, the authorised user must pay the shortfall arising from the default into the trust account immediately.
- (5) All bank charges accruing in respect of a trust account are for the account of the authorised user except that bank charges specifically relating to a deposit or withdrawal of the funds of a client are for that client’s own account. 20
- (6) Any interest accruing to the funds in a trust account is payable to the owner of the funds after any fees owing to the authorised user or exchange have been deducted.
- (7) Any excess remaining in a trust account after payment of or provision for all claims of persons whose funds have or should have been deposited in the trust account, is not trust property as contemplated in subsection (3). 25
- (8) The division of the High Court of South Africa having jurisdiction over an authorised user may, on the application of an exchange, the registrar or any other person having a claim against a trust account of the authorised user, on good cause shown, prohibit the authorised user from operating the trust account, and may appoint a curator to control and administer the trust account with such rights, powers and duties in relation thereto as the court may consider necessary. 30

#### Use of designation “stockbroker” and related designations

28. (1) A stockbroker may use the designation “stockbroker”, “stockbroker (South Africa)” or “stockbroker (SA)”. 35
- (2) A person who is not a stockbroker may not—
- (a) purport to be a stockbroker; or
- (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act implying, or tending to induce the belief, that such person is a stockbroker. 40
- (3) A person to whom the rules of an external exchange apply, and whose business is substantially similar to that of a stockbroker, may use the designation “stockbroker” if the country in which the use of the designation is authorised is indicated after the designation.

### CHAPTER IV

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#### CUSTODY AND ADMINISTRATION OF SECURITIES

##### Definitions

29. In this Chapter, unless the context indicates otherwise—
- “central securities account” means an account kept by a central securities depository for a participant and reflecting the number or nominal value of securities of each kind deposited and all entries made in respect of such securities; 50

- (c) yenzelwa ukukhokha imali ekweletwa kumuntu onegunya lokusebenza, inqobo uma isikweletu esidaleke ngokuthenga lawo mathuluzi okuhweba angakabhalwa njengefa lomthengi wawo singathathwa njengesikweletu esidalwe ukufeza lokhu; noma
- (d) yenziwa ngaphansi kwanoma yimuphi umthetho noma owesikhungo ohlinzeka ngokucacile ukuthi leyo nkokhelo kufanele ilondolozwe esikhwameni esithile. 5
- (3) Izimali ezigcinwe esikhwameni nezinye ezingalondwanga esikhwameni njengoba isigatshana -(1) sifanekisa, kodwa eziqagulwa njengezomuntu othile zithathwa "njengefa lesikhwama": ngencazelo yoMthetho Wezikhungo Zezimali (Ukuvikelwa Kwezimali) we-2001 (Umthetho uNo. -28 we-2001), loMthetho usebenza kulezo zikhwama kodwa uncike kulesi sigaba. 10
- (4) Izimali ezigcinwe esikhwameni sezimali zingakhishwa kuphela ngumuntu onegunya ngenhloso yokukhokhela—
- (a) umuntu onelungelo lenkokhelo; noma 15
- (b) ngokulandela noma yimiphi eminye imithetho noma eyesikhungo: Onegunya lokusebenza kufanele akhokhe ngokushesha umehluko ongadaleka phakathi kwemali efakwe esikhwameni naleyo ekhishiwe, inqobo uma lingekho isheke eliphindiselwe emuva ngenxa yokwentuleka kwezimali.
- (5) Zonke izindleko zebhange eziqongelele esikhwameni ziyothwalwa ngonegunya lomsebenzi ngaphandle kwezindleko eziqondene ngqo nokukhipha noma ukufaka imali ebhange neyizindleko zekhasimende uqobo. 20
- (6) Yonke inzalo yezimali zesikhwama ziyokhokhelwa umnini-sikhwama ngemuva kokudonsa yonke imali yonegunya lokusebenza noma yesikhungo.
- (7) Yonke imali esala esikhwameni ngemuva kwenkokhelo yezindleko ezihlinzekelwe abantu abanelungelo lazo noma imali elondolozwe esikhwameni, ayithathwa njengefa lesikhwama njengoba isigatshana -(3) siphawula. 25
- (8) Iziko leNkantolo Ephakeme yaseNingizimu Afrika elinamandla kumuntu onegunya lingenqabela umuntu onegunya ukuba asebenzise isikhwama semali, lingaqasha umqoqi-mafa ukulawula nokuphatha imali yesikhwama linike lowo mqoqi-mafa amalungelo, amandla nemisebenzi elibona ifanele. Lesi sinqumo senkantolo singenzeka lapho isikhungo, umlawuli-sikhungo noma omunye umuntu okweletwa yisikhwama selunga eligunyaziwe seliveze ubufakazi obenelisayo. 30

#### Ukusebenzisa isikhundla "umhwebi-masheya" nezikhundla ezencikile

28. (1) Umhwebi-masheya angasebenzisa isikhundla "umhwebi-masheya", "umhwebi-masheya (Ningizimu Afrika)" noma "umhwebi-masheya(SA)". 35
- (2) Umuntu ongesiyena umhwebi-masheya akufanele—
- (a) azishaye umhwebi-masheya, oqashwe njengaye noma isisebenzi somuntu ohweba ngamasheya; noma
- (b) asebenzise isikhundla esiphawulwe esigatshaneni- (1) noma elinye igama, isikhundla, incazelo noma uphawu lomthetho, ukunika umqondo noma isenzo sokuyenga esikhombisa ukuthi lowo muntu uhweba ngamasheya, uqashiwe noma usebenzela umhwebi-masheya. 40
- (3) Umuntu obuswa yimithetho yesikhungo onebhizinisi elifana kakhulu nelomhwebi-masheya angasebenzisa isikhundla "umhwebi-masheya" uma izwe lapho esebenzisa khona isikhundla livuma futhi libhalwe ngemuva kwesikhundla sakhe. 45

#### ISAHLUKO IV

#### UKULONDOLOZA NOKUPHATHA AMATHULUZI OKUHWEBA EMAKETHE YEZIMALI

##### Izincazelo

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29. Kulesi Sahluko, ngaphandle kokuba ingqikithi ilandisa ngenye indlela—  
"isikhwama sokulondoloza amathuluzi okuhweba" sichaza isikhwama esigcinwa yingodla elondoloza amathuluzi okuhweba emakethe yezimali yomuntu ngamunye obambe iqhaza emsebenzini wokuhweba nekhomba isibalo noma inani lamathuluzi okuhweba ohlobo ngalunye olugciniwe nayo yonke imigidi noma imicimbi yohwebo ngalawo mathuluzi; 55

- “**central securities repository**” means a collection of securities of the same kind held by a central securities depository;
- “**certificated securities**” means securities evidenced by a certificate or written instrument;
- “**deposit**” means a deposit of securities and includes a deposit by means of an entry in a securities account or a central securities account; 5
- “**entry**” includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other transaction in respect of securities;
- “**securities**” includes certificated securities and uncertificated securities and money market instruments; 10
- “**securities account**” means an account kept by or on behalf of a participant for a client and reflecting the number or nominal value of securities of each kind deposited and all entries made in respect of such securities;
- “**securities of the same kind**” means securities of the same class and issued by the same issuer; 15
- “**securities repository**” means a collection of securities of the same kind held by a participant;
- “**subregister**” means a subregister as defined in section 91A of the Companies Act; 20
- “**uncertificated securities**” means securities that are not evidenced by a certificate or written instrument and are transferable by entry without a written instrument.

### *Licensing of central securities depository*

#### **Application for central securities depository licence**

- 30.** (1) A person may apply to the registrar for a central securities depository licence. 25
- (2) Such an application must—
- (a) be made in the manner and contain the information prescribed by the registrar;
- (b) show that the applicant complies with the requirements referred to in section 31;
- (c) be accompanied by— 30
- (i) a copy of the proposed depository rules that must comply with section 39;
- (ii) the founding documents of the applicant;
- (iii) such information in respect of members of the controlling body of the applicant as may be prescribed by the registrar; 35
- (iv) the application fee prescribed by the Minister;
- (d) be supplemented by any additional information that the registrar may reasonably require.
- (3) The registrar must give notice of an application for a central securities depository licence in two national newspapers at the expense of the applicant. The notice must state— 40
- (a) the name of the applicant;
- (b) where the proposed depository rules may be inspected by members of the public; and
- (c) the period within which objections to the application may be lodged with the registrar. 45

- “Iqoqo lamathuluzi okuhweba”** lichaza isixha samathuluzi okuhweba ohlobo olufanayo agcinwe kungodla yamathuluzi okuhweba;
- “amathuluzi anesiqiniseko”** achaza lawo mathuluzi okuhweba anobufakazi besitifiketi noma ayithuluzi elibhaliwe;
- “ukulondoloza”** kuchaza ukugcina amathuluzi okuhweba kanti kuhlanganisa indlela yokubhala ebhukwini noma esikhwameni samathuluzi okuhweba emakethe; 5
- “ukubhala ebhukwini”** kuhlanganisa ukuloba ngosizo lwekhompuyutha lonke uhlobo lokulondoloza, ukukhipha, ukwedlulisa, ukudla ifa, ukubambisa, umgidi wokubambisa ngethuluzi lokuhweba lapho kwebolekwa imali nesigameko esiqondene namathuluzi okuhweba; 10
- “amathuluzi okuhweba emakethe yezimali”** ahlanganisa izinhlobo ezehlukene zezimali namaphepha okuhweba emakethe, axube amathuluzi anesiqiniseko nangenaso;
- “isikhwama samathuluzi okuhweba emakethe yezimali”** sichaza ibhuku eligcinwa ngobambe iqhaza noma ibamba lakhe elisebenzela ikhasimende, siveza isibalo nenani lamathuluzi okuhweba ohlobo ngalunye olugciniwe kanjalo nemigidi edlule noma eqhutshwe ngalawo mathuluzi; 15
- “amathuluzi ohlobo olufanayo”** achaza amathuluzi ohlobo noma esigaba esisodwa nadayiswe ngumuntu oyedwa; 20
- “iqoqo lamathuluzi okuhweba emakethe”** lichaza isixha samathuluzi okuhweba ohlobo olufanayo omuntu oyedwa obambe iqhaza;
- “ibhukwana lokubhalisa”** ichaza ibhuku elincane njengoba lichazwe esigabeni -91A soMthetho weziNkampani we-1973;
- “amathuluzi okuhweba angenasiqiniseko”** achaza amathuluzi okuhweba angenabo ubufakazi besitifiketi noma angenambhalo, lana ngamathuluzi edluliswa ngaphandle kwethuluzi elibhaliwe. 25

***Ukukhishwa kwemvume yengodla yokulondoloza amathuluzi okuhweba emakethe yezimali***

**Isicelo semvume yengodla yokulondoloza amathuluzi okuhweba emakethe yezimali** 30

- 30.** (1) Umuntu angafaka isicelo kumlawuli-sikhungo ukuze athole imvume yengodla yokulondoloza amathuluzi okuhweba emakethe.
- (2) Leso sicelo kufanele—
- (a) Senziwe ngendlela futhi siqukathe ulwazi olunqunywe ngumlawuli-sikhungo; 35
- (b) Sikhombise ukuthi ofake isicelo uhambisana nemibandela ephawulwe esigabeni—31;
- (c) Siphelzelwe—
- (i) wumbhalo ofanayo(*ikhophi*) wemithetho yengodla ehlongozwayo nokufanele ihambisane nesigaba-39; 40
- (ii) yimibhalo yokuqala ibhizinisi yomuntu ofake isicelo;
- (iii) wulwazi oluqondene namalunga esigungu esilawulayo somuntu ofake isicelo olungadingwa nguMlawuli-sikhungo;
- (iv) yimali yokufaka isicelo enqunywe nguNgqongqoshe; 45
- (d) sengezelwe ngolunye ulwazi olungadingwa ngumlawuli-sikhungo. 45
- (3) Umlawuli-sikhungo kufanele akhiphe isaziso sesicelo semvume yengodla yokulondoloza amathuluzi okuhweba emaphephandabeni amabili kazwelonke ngezindleko eziyokhokhwa ngumuntu ofake isicelo. Isaziso kufanele sichaze—
- (a) igama lomuntu ofake isicelo ;
- (b) indawo lapho amalunga omphakathi engahlola khona imithetho yengodla ehlongozwayo; 50
- (c) ubude besikhathi sokuphikisa isicelo esiyoqondiswa kumlawuli-sikhungo.

### General requirements applicable to applicant for central securities depository licence

31. (1) An applicant for a central securities depository licence must—
- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of a central securities depository in terms of this Act; 5
  - (b) have made arrangements for the proper supervision of compliance by participants with the depository rules;
  - (c) maintain security and back-up procedures to ensure the integrity of its records.
- (2) The registrar may prescribe any of the requirements referred to in subsection (1) in greater detail. 10

### Licensing of central securities depository

32. (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 30(3) and subject to the conditions which the registrar may consider appropriate, grant a central securities depository licence if— 15
- (a) the applicant complies with the relevant requirements of this Act; and
  - (b) the objects of this Act referred to in section 2 will be furthered by the granting of such a licence.
- (2) The licence must specify the securities services that may be provided by the central securities depository, the main office of the central securities depository in the Republic and the places where the central securities depository may be operated, and that the central securities depository may not be operated at any other place without the prior written approval of the registrar. 20
- (3) A central securities depository may at any time apply to the registrar for an amendment of the terms of its licence and the conditions subject to which its licence was granted. 25
- (4) (a) The registrar must give notice of an application for an amendment of the terms of a central securities depository licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant.
- (b) The notice must state— 30
- (i) the name of the applicant;
  - (ii) the nature of the proposed amendments; and
  - (iii) the period within which objections to the application may be lodged with the registrar.

### *Functions of central securities depository* 35

### Functions of central securities depository

33. A central securities depository—
- (a) must enforce the depository rules;
  - (b) may amend or suspend the depository rules in terms of section 61;
  - (c) must supervise compliance by participants with this Act and the depository rules; 40
  - (d) may issue directives;
  - (e) may hold all securities of the same kind deposited with it by a participant collectively in a separate central securities repository;
  - (f) must maintain a central securities account with due regard to the interests of the participant and its clients; 45
  - (g) must notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;
  - (h) must balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer— 50
    - (i) in respect of each kind of certificated security, not less than once every six months;
    - (ii) in respect of each kind of uncertificated security—
      - (aa) if that aggregate has not changed, not less than once every month;

**Imibandela evamile ebusa abafaka isicelo semvume yengodla yokulondoloza amathuluzi okuhweba emakethe**

31. (1) Ofake isicelo semvume yengodla yokulondoloza amathuluzi okuhweba emakethe kufanele—

- (a) abe nemali, ithimba lokuphatha nabasebenzi abanolwazi olufanele oludingekayo ukuqhuba umsebenzi wengodla yamathuluzi okuhweba, ngendlela elandela lo Mthetho; 5
- (b) aphothule wonke amalungiselelo okwengamela labo ababambe iqhaza ngenhloso yokuqiniseka ukuthi balandela imithetho yokulondoloza;
- (c) agcine inqubo yokuphepha nokulondoloza ukuze kube nesiqiniseko sobuqiniso nokwethembeka kwemibhalo. 10

(2) Umlawuli-sikhungo angafuna ngokugcwele noma yimiphi imibandela ephawulwe esigatshaneni-(1).

**Ukukhishwa kwemvume yengodla yokulondoloza amathuluzi okuhweba emakethe yezimali**

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32. (1) Ngemuva kokucubungula yonke imibiko yokuphikisa isicelo elandela isaziso esiphawulwe esigabeni-30(3) nangaphansi kwezimo ezicatshangwe ngumlawuli-sikhungo, umlawuli-sikhungo angaqoka ukukhipha imvume yengodla yokulondoloza amathuluzi okuhweba emakethe uma—

- (a) ofake isicelo ehambisana nemibandela efanele yalo Mthetho; 20
- (b) izinhloso zalo Mthetho eziphawulwe esigabeni-2 ziyodlondobaliswa wukukhishwa kwaleyo mvume.

(2) Imvume kufanele ichaze imisebenzi yamathuluzi okuhweba engethulwa yingodla yokulondoloza amathuluzi okuhweba, inhloko-hhovisi yengodla yokulondoloza amathuluzi okuhweba eliseNingizimu Afrika nezindawo lapho kuyosebenza khona ingodla yokulondoloza amathuluzi okuhweba nencazelo yokuthi ingodla yokulondoloza amathuluzi okuhweba ngeke isetshenziswe kwenye indawo ngaphandle kwemvume yomlawuli-sikhungo. 25

(3) Noma ngasikhathi sini, ingodla yokulondoloza amathuluzi okuhweba ingafaka isicelo sokuguqula nokuchibiyela izimo nemibandela okwakhishwa ngayo imvume yengodla. 30

***Imisebenzi yengodla yokulondoloza amathuluzi okuhweba emakethe yezimali*****Imisebenzi yengodla yokulondoloza amathuluzi okuhweba emakethe yezimali**

33. Ingodla yokulondoloza amathuluzi okuhweba—

- (a) kufanele iphoqecele imithetho yengodla yokugcina amathuluzi okuhweba; 35
- (b) ingaguqula noma immise imithetho yengodla yokulondoloza amathuluzi okuhweba ngokulandisa kwesigaba- 61;
- (c) kufanele ilandelele ukuthi labo ababambe iqhaza bayahambisana nalo Mthetho nemithetho yokulondoloza;
- (d) ingakhipha imilayelo; 40
- (e) ingacina kwenye ingodla wonke amathuluzi okuhweba ohlobo olulodwa olugcinwe kuyo ngumuntu obambe iqhaza;
- (f) kufanele igcine isikhwama sokulondoloza endaweni eyodwa amathuluzi okuhweba nokubhekela amalungelo alabo ababambe iqhaza namakhasimende abo; 45
- (g) kufanele yazise ngokubhaliwe noma ngenye indlela okuvunyelwene ngayo labo ababambe iqhaza ngomgidi owenzekile esikhwameni samathuluzi okuhweba emakethe yomuntu obambe iqhaza;
- (h) kufanele iqhathanise amanani emali egcinwe ezikhwameni zokulondoloza amathuluzi okuhweba nalokho okubhalwe phansi ngamathuluzi abo adayisiwe— 50
  - (i) ngohlobo ngalunye lwethuluzi lokuhweba elinesitifiketi, amahlandla angaphezulu kwelilodwa phakathi kwezinyanga eziyisithupha;
  - (ii) emathuluzini ngamanye angenazo izitifiketi—
    - (aa) uma leso samba singaguqukanga, kwenziwe iziwombe ezidlule kwesisodwa ngenyanga; 55

- (bb) if that aggregate has changed, on the business day after such change;
- (i) must administer and maintain a record of uncertificated securities deposited with it;
- (j) is entitled to access to the records of uncertificated securities administered and maintained by its participants; 5
- (k) may be appointed as a clearing house by an exchange if the central securities depository is licensed as a clearing house under section 66;
- (l) must disclose to participants and issuers the fees and charges required by it for its services; 10
- (m) must on request disclose to—
- (i) the registrar information about the securities held by a participant in a central securities account;
- (ii) an issuer information about the securities issued by that issuer and held by participants in central securities accounts; 15
- (n) must, if a participant ceases to be a participant, notify the registrar thereof as soon as possible; and
- (o) must conduct its business in a prudent manner and with due regard to the rights of participants, clients and issuers.

### *Participant* 20

#### Acceptance of participant

34. A central securities depository may accept, in terms of the depository rules, a person that holds securities or an interest in securities, as a participant in that central securities depository.

### *Functions of participant* 25

#### Functions of participant

35. A participant—
- (a) must, if securities are deposited with the participant, deposit them with a central securities depository unless the client expressly directs otherwise in writing; 30
- (b) must maintain a securities account for a client in respect of securities deposited;
- (c) must reflect the number or nominal value of each kind of securities deposited in a securities account;
- (d) must administer and maintain a record of all securities deposited with it in accordance with the depository rules; 35
- (e) must record all securities of the same kind deposited with it in a subregister if so required by the depository rules;
- (f) must disclose to clients and issuers the fees and charges required by it for its services; 40
- (g) must notify a client in writing or as otherwise agreed to by the client of an entry made in the client's securities account;
- (h) must on request disclose to—
- (i) the registrar information about the securities recorded in a securities account; 45
- (ii) an issuer information about the securities issued by that issuer and recorded in a securities account;
- (i) must have a central securities account with a central securities depository, and may—
- (i) deposit securities with or withdraw securities from that central securities depository; or 50
- (ii) transfer, pledge or cede an interest in securities through that central securities depository;



- (bb) uma lesa samba siguqukile, kwenziwe ngosuku lomsebenzi olulandela okwenzeke ngalo ushintsho;
- (i) kufanele iphathe futhi ilandelele imibhalo yamathuluzi okuhweba angenazo izitifiketi elondolozwe kuso;
- (j) ingafinyelela emibhalweni yamathuluzi okuhweba angenazo izitifiketi enganyelwe futhi abhekwe ngabasebenza njengabantu ababambe iqhaza kuwo; 5
- (k) ingaqokwa yisikhungo njengendlu ebhalisa ukudayiselana amasheya uma ingodla yokulondoloza amathuluzi okuhweba inemvume yokuhweba njengaleyondlu ngaphansi kwesigaba- 66; 10
- (l) kufanele sidalulele labo ababambe iqhaza nabadayisa amathuluzi imali nezindleko ezidingekayo ngomsebenzi owenziwayo;
- (m) uma icelwa, kufanele idalule—
- (i) kumlawuli-sikhungo ulwazi ngamathuluzi okuhweba alondolozwe ngobambe iqhaza kwingodla yokugcina amathuluzi okuhweba; 15
- (ii) kodayisa ngethuluzi ulwazi ngamathuluzi okuhweba agcinwe ngababambe iqhaza ezikhwameni zokulondoloza amathuluzi okuhweba emakethe;
- (n) uma obambe iqhaza eyeka ukwenza lo msebenzi, kufanele azise ngokushesha umlawuli-sikhungo ngalesi simo; 20
- (o) kufanele aqhube ibhizinisi ngendlela efanele nokwazisa amalungelo alabo ababambe iqhaza, amakhasimende nabadayisa ngamathuluzi okuhweba.

### *Obambe iqhaza*

#### **Ukwamukela obambe iqhaza**

34. Ngokulandisa kwemithetho yokulondoloza, Ingodla yokulondoloza amathuluzi okuhweba emakethe ingemukela umuntu onamathuluzi okuhweba noma onefa ethuluzini lokuhweba njengomuntu obambe iqhaza kuleyo ngondla yokulondoloza. 25

### *Imisebenzi yobambe iqhaza*

#### **Imisebenzi yobambe iqhaza**

35. Obambe iqhaza— 30
- (a) angalondoloza amathuluzi okuhweba engodleni yokulondoloza uma amathuluzi okuhweba ebekwe kobambe iqhaza ngaphandle uma ikhasimende likubeke kwacaca ngokubhaliwe ukuthi lifuna kwenzeke ngenye indlela;
- (b) kufanele agcine isikhwama sokulondoloza amathuluzi okuhweba sekhasimende esiqondane namathuluzi okuhweba alondolozwe; 35
- (c) kufanele akhombise isibalo noma inani lesamba sohlobo ngalunye lwamathuluzi okuhweba nagcinwe esikhwameni samathuluzi okuhweba;
- (d) kufanele aphaathe futhi agcine imibhalo yawo onke amathuluzi alondolozwe, ngokulandela imithetho yokulondoloza kwingodla yokugcina amathuluzi okuhweba; 40
- (e) kufanele abhale ebhukwini onke amathuluzi okuhweba ohlobo olufanayo agciniwe uma imithetho yokulondoloza amathuluzi kungodla ifuna kanjalo;
- (f) kufanele adalule emakhasimendeni nakubanini bamathuluzi imali nezindleko ezifunekayo ngokuqhuba lo msebenzi;
- (g) kufanele azise ngokubhaliwe amakhasimende noma ngenye indlela evunywe yikhasimende ngomgidi wokudayiselana owenzeke esikhwameni sekhasimende ngohwebo lwamathuluzi asemakethe; 45
- (h) uma ecelwa, kufanele adalule—
- (i) kumnikazi wamathuluzi, ulwazi ngamathuluzi adayiswe ngumnini wawo nase lotshwe esikhwameni sakhe sokuhweba; 50
- (ii) kumlawuli-sikhungo, ulwazi ngamathuluzi okuhweba abhalwe esikhwameni sokuhweba ngamathuluzi;
- (i) kufanele abe nesikhwama sokuhweba ngamathuluzi esivulwe kwingodla yokuhweba ngamathuluzi emakethe kanti angenza lokhu—
- (i) ukulondoloza nokudayisa amathuluzi okuhweba kwingodla; noma 55
- (ii) ukwedlulisa, ukubambisa noma ukubambisa ngenzuzo yawo kwingodla yokulondoloza amathuluzi okuhweba;

- (j) must exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client; and
- (k) must balance and reconcile the aggregate of the securities accounts with the central securities accounts on a daily basis. 5

### *Nominee*

#### **Approval of nominee**

**36.** (1) A nominee of—

- (a) an authorised user must be approved by the exchange in terms of exchange rules; 10
- (b) a participant, or any other nominee who has an account with a participant, must be approved by the central securities depository in terms of depository rules.

(2) A nominee that is not approved as a nominee in terms of subsection (1) must be approved by the registrar and must comply with the requirements which the registrar may prescribe for nominees before it can function as a nominee in terms of this Act. 15

(3) The registrar must maintain a list of all nominees approved in terms of exchange rules or depository rules.

### *Uncertificated securities*

#### **Uncertificated securities** 20

**37.** (1) Certificated securities may be converted to uncertificated securities and an issuer may issue uncertificated securities despite any contrary provision in—

- (a) any other law;
- (b) the common law;
- (c) an agreement; 25
- (d) the articles of association of an issuer;
- (e) a prospectus; or
- (f) any other conditions applicable to the issuing of securities.

(2) An issuer and a central securities depository and its participants must make arrangements in accordance with depository rules for uncertificated securities to be evidenced by way of entry. 30

(3) An issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

#### **Functions of issuer of uncertificated securities** 35

**38.** An issuer of uncertificated securities must—

- (a) record in its register the number or nominal value of each kind of uncertificated securities issued by it;
- (b) maintain separate records for each central securities depository holding uncertificated securities unless all those securities are held by one central securities depository; 40
- (c) if required by section 40(1), record the name of that central securities depository or its wholly owned subsidiary as the registered holder of the uncertificated securities;
- (d) balance and reconcile with a central securities depository the record referred to in paragraph (a) in respect of each kind of uncertificated security— 45

- (j) kufanele asebenzise amalungelo aqondene namathuluzi okuhweba agcinwe kwingodla yokulondoloza ngokwakhe egameni lekhasimende uma etshelwa yikhasimende;
- (k) kufanele aqathanise isamba esiqukethwe yizikhwama zamathuluzi okuhweba nesikhwama esigcinwe yingodla yemakethe yezimali, lokhu kufanele kwenziwe nsuku zonke. 5

### *Oqokiwe*

#### **Ukwemukelwa koqokiwe**

36. (1) Oqokwe—
- (a) yilowo onegunya kufanele emukelwe yisikhungo ngokwemithetho yesikhungo sokuhweba emakethe yezimali; 10
- (b) ngobambe iqhaza, noma ngomunye oqokiwe onesikhwama somuntu obambe iqhaza kufanele emukelwe yingodla yokulondoloza amathuluzi okuhweba ngokulandisa kwemithetho yengodla yokugcina amathuluzi okuhweba.
- (2) Oqokiwe kodwa ongemukelwe njengomuntu oqokiwe ngaphansi kwesigatshana - (1) kufanele emukelwe ngumlawuli-sikhungo futhi ahambisane nemibandela engase inqunyelwe abaqokiwe ngaphambi kokuqala ukusebenza, ngokulandela lo Mthetho. 15
- (3) Umlawuli-sikhungo kufanele agcine uhlu lwabo bonke abaqokiwe abemukelwe ngaphansi kwemithetho yesikhungo noma yengodla yokulondoloza amathuluzi okuhweba. 20

### *Amathuluzi okuhweba emakethe yezimali angenasiqiniseko*

#### **Amathuluzi okuhweba emakethe yezimali angenasiqiniseko**

37. (1) Amathuluzi okuhweba anesiqiniseko engaguqulelwa kwanesiqiniseko lapho umnikazi eyokhipha khona angenasiqiniseko, nakuba kunokuhlinzekwe ngenye indlela— 25
- (a) kweminye imithetho;
- (b) emthethweni ojwayelekile;
- (c) esivumelwane;
- (d) kumqulu olawula izinhloso nezimiso zenkampani;
- (e) kumbiko wokukhangisa ngamasheya; noma 30
- (f) kwezinye izimo ezisebenza ekuhwebeni ngamathuluzi, amathuluzi okuhweba emakethe yezimali anesiqiniseko angaphendulwa amathuluzi okuhweba angenasiqiniseko lapho umnikazi eyokhipha khona amathuluzi anesiqiniseko.
- (2) Odayisa ithuluzi lokuhweba, ingodla yokulondoloza amathuluzi okuhweba nalabo ababambe iqhaza kufanele benze amalungiselelo ahambisana nemithetho yengodla ukuze umgidi wokubhala amathuluzi angenasiqiniseko ube nobufakazi obuphathekayo. 35
- (3) Odayisa ithuluzi lokuhweba unesibophezelo esifanayo ngamathuluzi okuhweba angenasiqiniseko nalawo anesiqiniseko ngaphandle kokuthi asiphumi isitifiketi noma iphepha kulawo angenasiqiniseko. 40

#### **Imisebenzi yomuntu odayisa ngamathuluzi okuhweba ngamathuluzi angenabufakazi**

38. Odayisa ngamathuluzi okuhweba angenasiqiniseko kufanele—
- (a) abhale ebhukwini isibalo noma inani lesamba sohlobo ngalunye lwamathuluzi angenasiqiniseko nadayiswe nguye; 45
- (b) agcine imibhalo ehlukeni yengodla ngayinye elondoloze amathuluzi okuhweba angenasiqiniseko ngaphandle uma wonke lawo mathuluzi egcinwe kwingodla eyodwa;
- (c) sibhale igama laleyo ngodla yokulondoloza amathuluzi noma ibhizinisi eliyinxenye yayo ebhaliswe njengegcina amathuluzi okuhweba angenasiqiniseko, lesi simo sidingwa yisigaba- 40(1); 50
- (d) aqathanise umbhalo osezincwadini zengodla yamathuluzi okuhweba nesamba samathuluzi njengoba iphawula indima (a) ngohlobo ngalunye lwethuluzi lokuhweba elungenasiqiniseko—

- (i) if that record has not changed, not less than once every month;
- (ii) if the record has changed, on the business day after such change; and
- (e) if applicable, comply with section 91A of the Companies Act.

### *Depository rules*

## **Requirements with which depository rules must comply** 5

- 39.** (1) The depository rules must be consistent with this Act.
- (2) The depository rules—
- (a) must provide for equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interests of issuers and clients; 10
  - (b) if applicable, must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
  - (c) must provide for adequate steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate and discipline a participant or officer or employee of a participant who contravenes or fails to comply with this Act, the depository rules, the interim depository rules or the directives and must require a report on the disciplinary proceedings to be furnished to the registrar within 30 days after the completion of such proceedings; 15
  - (d) must provide for the manner in which a participant who is believed to—
    - (i) be able to furnish any information on the subject of any investigation; or
    - (ii) have in that participant's possession or under that participant's control any document, which has bearing upon that subject, 25
 may be required to appear before a person conducting an investigation, to be interrogated or to produce such document;
  - (e) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of—
    - (i) the participant's actual and potential liabilities; 30
    - (ii) conditional and contingent liabilities to the central securities depository; and
    - (iii) liabilities which existed before or accrue after a person has ceased to be a participant;
  - (f) must require that— 35
    - (i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to participants or clients and, if applicable, by participants to clients;
    - (ii) all notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to participants and clients; and 40
    - (iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities repository as provided for by this Chapter;
  - (g) must require that where a participant agrees, or is otherwise required, to— 45
    - (i) receive monies in respect of securities on behalf of clients from a central securities depository or issuer, such monies are paid to the clients concerned;
    - (ii) convey to clients all information regarding rights and other benefits accruing to the securities held on behalf of such clients, such information is, in fact, conveyed; and 50
    - (iii) give effect to the lawful instructions of clients with regard to voting rights and other matters, the necessary action is taken;

- (i) uma lowo mbhalo ungaguqkanga, lokhu kufanele kwenziwa izikhathi ezevile kwesisodwa njalo ngenyanga;
- (ii) uma umbhalo uguqkile, ngalo lolosuku lomsebenzi ngemuva koshintsho;
- (e) uma kudingeka, kuhanjiswa nesigaba- 91A soMthetho Wezinkampani we-1973. 5

### *Imithetho Yokulondoloza*

#### **Imithetho yokulondoloza amathuluzi okuhweba emakethe yezimali okufanele ihambisane nezidingo ezimisiwe**

- 39.** (1) Imithetho yokulondoloza imali yamathuluzi okuhweba kufanele ihambisane nalo Mthetho. 10
- (2) Imithetho yokulondoloza imali yamathuluzi—
- (a) kufanele ibe nesikali esingakhethi sokwemukela nokuxosha obambe iqhaza nokwenza lokho kwemukela nokuxosha kufeze izifiso zomdayisi kanye nekhasimende lamathuluzi okuhweba; 15
  - (b) uma kwenzeka, kufanele ihlinzekele amalungiselelo okuguqula amathuluzi okuhweba anesiqiniseko abe yilawo angenabo nokunika abadayisi ithuba lokudayisa amathuluzi angenasiqiniseko;
  - (c) kufanele ihlinzekele ukuthathwa kwezinyathelo ezifanele yingodla yokulondoloza amathuluzi emakethe noma ngumuntu onikwe yingodla amandla okuphenya nokuqondisa izigwegwe ilunga elibambe iqhaza noma esisebenzini noma koqashwe yilowo obambe iqhaza otholwe noma osolakala ukuthi uphambeni noma wephule lo Mthetho, imithetho yokulondoloza kungodla, imithetho yesikhashana noma imilayelo. Esiphethweni salo mbhidlango, kuyodingeka umbiko womphumela wokuqondiswa kwezigwegwe oyothulwa kumlawuli-sikhungo zingakapheli izinsuku ezingu-30 uphuthuliwe; 20 25
  - (d) kufanele ihlinzeke indlela okufanele lowo osolwayo—
    - (i) ethule ngayo noma yibuphi ubufakazi ngodaba oluphenywayo; noma
    - (ii) yokwethula umbhalo ophethwe ngumuntu obambe iqhaza noma lowo mqulu olawulwa nguye noqondene nodaba oluphenywayo, lowo muntu kungenzeka adingeke avele phambi komphenyi wodaba ngenhloso yokuphonswa imibuzo noma ukuveza umbhalo; 30
  - (e) kufanele ibeke imibandela eqondene namandla esimo sezimali kumuntu obambe iqhaza nesibambiso esenele okufanele sigcinwe maqondana— 35
    - (i) nezikweletu ezikhona nezingase zivele zalowo obambe iqhaza;
    - (ii) nezikweletu ezidalwa yisimo nalezo ezingahle zidaleke kwingodla yokulondoloza amathuluzi emakethe yokuhweba;
    - (iii) izikweletu ebezikhona esikhathini esedule noma ezidaleke ngemuva kokuba obambe iqhaza eyeke ubulungu; 40
  - (f) kufanele ifune—
    - (i) ukuba kukhokhwe imihlomulo ekhokhelwa umuntu onamasheya neny inkokhelo ekhokhwa ngabadayisa ngamathuluzi okuhweba emakethe lapho bekhokhela abantu ababambe iqhaza nokukhokhela amakhasimende; 45
    - (ii) ukwedlulisa izaziso eziqondene namalungelo neminye imihlomulo ezuzwe ngabanini bamathuluzi alondolozwe yingodla yamathuluzi;
    - (iii) amalungelo ababambe iqhaza noma amakhasimende awaphazanyiswa nakancane wukuthi amathuluzi abo okuhweba noma abagcinelwe wona ngokuhlanganyela kwingodla njengoba kuphawulwe kulesi Sahluko; 50
  - (g) uma obambe iqhaza evuma noma kwenzeka, kufanele ifune—
    - (i) ukwemukela izimali eziqondene namathuluzi okuhweba egameni lamakhasimende, lezo zimali kufanele zikhokhelwe amakhasimende athintekayo;
    - (ii) ukwedlulisa emakhasimendeni lonke ulwazi oluqondene namalungelo neminye imihlomulo eyinzalo yamathuluzi okuhweba egcinelwe amakhasimende nesiqiniseko sokuthi lolu lwazi lwedluliswa ngempela;
    - (iii) isiqiniseko sokuthi imilayelo esemthethweni yamakhasimende maqondana nokuvota nezinye izindaba iyafezeka futhi nezinyathelo ezifanele ziyathathwa; 60

- (h) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities repository or central securities repository, deliver a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities repository or central securities repository, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned; 5
- (i) must require that a participant's central securities accounts do not show a debit balance; 10
- (j) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those securities;
- (k) must provide for—
- (i) the duty of a client to disclose to a participant, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited by a client with a participant or by a participant with a central securities depository, as the case may be; and 15
- (ii) the manner, form and frequency of such disclosure; 20
- (l) must provide for the manner in which a central securities depository or a participant must keep records of clients, or owners or beneficial owners of securities and limited or other interests in securities;
- (m) must provide for the manner in which participants must give instructions to a central securities depository; 25
- (n) if the central securities depository is appointed as a clearing house by an exchange, may regulate, consistent with the exchange rules, the clearing and settlement functions to be performed by participants in the clearing and settlement process;
- (o) must provide for the purposes for which a central securities depository may issue directives; 30
- (p) must provide for the manner in which a participant must hold and administer securities; and
- (q) must provide for the approval by the central securities depository of a nominee of a participant, or any other nominee who has an account with a participant, which nominee holds securities in a securities repository or central securities repository. 35
- (3) A central securities depository may, with the approval of the registrar, make depository rules on matters additional to those listed in subsection (2).
- (4) A depository rule made under this section is binding on the central securities depository, a participant, an issuer of securities deposited with the central securities depository and their officers and employees, and clients. 40

### *General provisions relating to custody and administration of securities*

#### **Registration of securities**

40. (1) The registrar may direct that any securities held by a central securities depository must, unless they are bearer instruments, money market instruments or recorded in a subregister in accordance with section 91A of the Companies Act and the depository rules, be registered in the name of that central securities depository or its wholly owned subsidiary, as defined in section 1 of the Companies Act and approved by the registrar. 45
- (2) (a) No central securities depository or participant may become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of—
- (i) a deposit of securities; or
- (ii) the registration in its name of— 50
- (aa) securities; 55

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- (h) ngemuva kokuthola isicelo esibhalwe yikhasimende sokudayisa amathuluzi okuhweba noma inzalo yawo agcinwe kungodla noma endaweni ethile yokulondoloza, kufanele obambe iqhaza alethe isitifiketi noma ubufakazi obubhaliwe obukhomba isibalo esifanayo samathuluzi noma amathuluzi enani elifanayo nohlobo olugcinelwe ikhasimende kwingodla noma endaweni eyodwa yokulondoloza, inqobo nje uma insalela yamathuluzi ekhasimende ingekho ngaphansi kwaleyo abambise ngayo umuntu obambe iqhaza othintekayo; 5
- (i) kufanele sifune isikhwama sokulondoloza somuntu obambe iqhaza singabi nesikweletu kwi-akhawunti yamathuluzi okuhweba; 10
- (j) singanika ingodla yokulondoloza amandla okwenqaba ukwemukela amathuluzi okuhweba adayiswa ngumuntu othile mayelana namalungiselelo esikhungo okwesula noma ukukhokha imigidi yokudayiselana ngamathuluzi okuhweba; 15
- (k) kufanele ihlinzekele— 15
- (i) umsebenzi wekhasimende wokudalula nomsebenzi wobambe iqhaza wokudalulela ingodla yokulondoloza izimali zemakethe ulwazi ngalowo ohlomulayo, imali noma inzalo efakwe yikhasimende kobambe iqhaza noma efakwe ngobambe iqhaza kwingodla lokulondoloza imali yemakethe, kuye ngesimo ngasinye; 20
- (ii) indlela, isimo kanye nokuvama ukwenzeka kwalokho kudalula;
- (l) kufanele ihlinzekele indlela ingodla elondoloza imali yezimakethe noma obamba iqhaza okufanele igcine ngayo imibhalo yamakhosimende, yabanini noma labo abahlomula ngamathuluzi ohwebo nezinye izinto ezithinta amathuluzi ohwebo; 25
- (m) kufanele ihlinzekele ngendlela okufanele ababambe iqhaza banikeze ngayo imiyalelo kungodla yokulondoloza;
- (n) uma ingodla yokulondoloza iqokelwe ukuba indlu ebhalisa ukudayiselana amasheya, ingalawula, ivumelane nemithetho yokushintsha, imisebenzi yodayisa amasheya nokuwakhokhela kufanele yenziwe ngababambe iqhaza ohlelweni lokukhokha nokubhalisa amasheya ashintshe izandla; 30
- (o) kufanele ihlinzekele izinhloso zengodla yokulondoloza engakhiphela kuzo imiyalelo;
- (p) kufanele ihlinzekele indlela obambe iqhaza okufanele abambe futhi aphaathe ngayo amathuluzi okuhweba; 35
- (q) kufanele ihlinzekele ukuvunywa kokukhethwa kobambe iqhaza yingodla yokulondoloza, noma nanoma yimuphi okhethiwe one-akhawunti nobambe iqhaza, lowo okhethiwe ogcine amathuluzi okuhweba endaweni yesikhungo sokuhweba ngamasheya.
- (3) Ngemvume yomlawuli-sikhungo, ingodla yokulondoloza amathuluzi okuhweba ingashaya imithetho yokulondoloza ngezinto ezingaphezulu kwalezo ezisohlwini esigatshaneni -(2). 40
- (4) Umthetho wokulondoloza owenziwe ngaphansi kwalesi sigaba uyabophezela kwingodla yokulondoloza, kobambe iqhaza noma kohweba ngamathuluzi agcinwe kwingodla yokulondoloza, izikhulu, abasebenzi kanjalo namakhosimende. 45

***Imibandela evamile ephathelene nokulondoloza nokuphatha amathuluzi okuhweba emakethe yezimali*****Ukubhalisa amathuluzi okuhweba emakethe yezimali**

40. (1) Wonke amathuluzi okuhweba agcinwe yingodla yokulondoloza kufanele abhaliswe egameni lengodla yokulondoloza eyodwa noma engosini esingethwe yileyo ngodla njengoba ichazwe esigabeni- 1 soMthetho Wezinkampani we- 1973 ngaphandle uma kungamathuluzi ohlobo olungabhalwe mnini oqondile noma ebhaliswe ebhukwaneni ngokulandisa kwesigaba 91A soMthetho Wezinkampani we- 1973 futhi evunywe ngumlawuli-sikhungo. 50
- (2) (a) Ayikho ingodla yokulondoloza noma umuntu obambe iqhaza ongaphenduka umnini, ingxenye yomnini, umdayisi noma ongabanjiswa ithuluzi ngenhloso yokweboleka ngenxa nje yokuthi— 55
- (i) ulondoloze amathuluzi okuhweba; noma
- (ii) kubhaliswe egameni lakhe—
- (aa) amathuluzi okuhweba emakethe yezimali; 60

- (bb) limited rights in securities;
- (cc) other rights in securities;
- (dd) benefits in respect of securities; or
- (ee) benefits accruing to securities.

(b) Paragraph (a) also applies to a wholly owned subsidiary as defined in section 1 of the Companies Act of a central securities depository or participant. 5

### Ownership of securities

41. (1) Where securities of any kind are deposited with a participant or with a central securities depository, or accrue to the owner of securities held by a participant in a securities repository or by a central securities depository in a central securities repository, the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities repository or central securities repository, as the case may be. 10

(2) In so far as any limited right exists in respect of any securities at the time of such deposit or accrual, such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner. 15

(3) The interest of a co-owner, client or participant in all the securities in a securities repository or central securities repository, as the case may be, must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner, client or participant and accruing to such securities, bears from time to time to the total number or nominal value of all securities of that kind held in the securities repository or central securities repository, as the case may be. 20

(4) A written statement issued by or on behalf of a participant in respect of an owner of securities or of a client, or by or on behalf of a central securities depository in respect of a participant, as the case may be, and specifying the interest of that owner, client or participant, is *prima facie* evidence of the title or interest of that person in such securities. 25

### Transfer of securities

42. Transfer of an interest in securities held by a central securities depository or participant must be effected by entry in the central securities account or securities account of the transferor and the transferee kept by the central securities depository or the participant, as the case may be. 30

### Pledge, or cession of securities to secure debt

43. (1) A pledge or cession to secure a debt, in respect of an interest in securities held by a central securities depository or participant or in a securities account held on behalf of a participant, must be effected by entry in the central securities account or the securities account of— 35

- (a) the pledgor in favour of the pledgee specifying the name of the pledgee, the interest in the securities pledged and the date; or
- (b) the cedent in favour of the cessionary specifying the name of the cessionary, the interest in the securities ceded and the date, 40

as the case may be.

(2) Such interest in securities may not be transferred except with the written consent of the pledgee or cessionary.

(3) The pledgee or cessionary of such interest in securities is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt. 45

(4) Subsections (1), (2) and (3) also apply, with the changes required by the context, to the pledge and cession to secure a debt by one participant to another of an interest in securities held by a central securities depository in a central securities account. 50



UMTHETHO WEMISEBENZI YAMATHULUZI  
OKUHWEBA EMAKETHE YEZIMALI, 2004

Act No. 36, 2004

*(bb)* amalungelo athile alingene emathuluzini okuhweba;*(cc)* amanye amalungelo emathuluzini okuhweba;*(dd)* imihlomulo eqondene namathuluzi okuhweba noma*(ee)* imihlomulo eqongeleke emathuluzini okuhweba.*(b)* Indima *(a)* isebenza nasebhizinisini eliphethwe ngelinye njengencazelo yesigaba 5  
1 yoMthetho Wezinkampani esibusa ingodla yokulondoloza noma obambe iqhaza.**Ubunini bamathuluzi okuhweba emakethe yezimali**

41. (1) Lapho kulondolozwa noma yiluphi uhlobo lwamathuluzi okuhweba kumuntu obambe iqhaza, kwingodla yokulondoloza noma inzalo yamathuluzi agcinwe ngobambe iqhaza, umuntu owayengumnini ngesikhathi elondolozwa noma ezala nguyena othola umhlomulo njengomunye wabanini bawo wonke amathuluzi ohlobo olufanayo alondolozwe kungodla yokulondoloza. 10

(2) Maqondana namalungelo athile athinta amathuluzi okuhweba ngesikhathi elondolozwa kwingodla, lawo malungelo edlulela enzuzweni yalowo mnini oyingxenywe nakunoma yimaphi amathuluzi adayiselwe lowo ngomunye wabanini. 15

(3) Umhlomulo wabanini ababambisene, ikhasimende noma obambe iqhaza emathuluzini onke agcinwe kwingodla yokulondoloza, kuye ngesimo ngasinye, kufanele ubalwe ngokuqhathanisa nengxenywe yesibalo noma yenani elibumbe inani eliphelele lamathuluzi alondolozwe egameni lomunye wabanini, ikhasimende noma lobambe iqhaza, lesi sibalo noma inani ligcine seliqhathaniswe nesibalo kanjalo nenani jikelele lohlobo olufanayo lwamathuluzi agcinwe yingodla yokulondoloza. 20

(4) Umbiko obhaliwe okhishwe ngobambe iqhaza noma ibamba lakhe maqondana nomnini wamathuluzi okuhweba, ikhasimende noma ingodla yokulondoloza noma oyibambele ochaza umhlomulo walowo mnini, wekhasimende noma obambe iqhaza uwubufakazi obusobala bobunini noma bomhlomulo walowo muntu ophethe lawo mathuluzi okuhweba. 25

**Ukushintsha izandla kwamathuluzi okuhweba emakethe yezimali**

42. Ukwedlulisa umhlomulo osemathuluzini okuhweba agcinwe Yingodla yokulondoloza noma ngobambe iqhaza kufanele kwenziwe ngokubhala phansi esikhwameni samathuluzi okuhweba noma esikhwameni salowo owdlulisayo nothengayo esigcinwa yingodla yokulondoloza noma ngobambe iqhaza, kuye ngesimo ngasinye. 30

**Isibambiso noma ukwedlulisa amathuluzi emakethe yezimali ngenhloso yokuthola isikweletu**

43. (1) Ukubambisa ngenhloso yokuthola isikweletu ngomhlomulo osethuluzini eligcinwe yingodla yokulondoloza noma ngobambe iqhaza kufanele kwenziwe ngokubhala phansi esikhwameni samathuluzi okuhweba esilawulwa yingodla noma esikhwameni— 35

*(a)* somuntu owenza isethembiso lapho eyobhala khona igama lomuntu onikwa isibambiso, uhlobo lomhlomulo anawo ethuluzini lesibambiso kanye nosuku lwesivumelwane; noma 40

*(b)* salowo odluliselwa ithuluzi nencazelo yegama lonikwa ithuluzi, umhlomulo ethuluzini edluliswayo kanye nosuku, kwehluke ngesimo ngasinye.

(2) Lowo mhlomulo osethuluzini awedluliseki ngaphandle kwemvume ebhalwe ngumuntu onikwe wona noma onikwe ilungelo lawo. 45

(3) Onikwe isibambiso noma odluliselwa ithuluzi lokuhweba unegunya lamalungelo onke empahla ethuthekayo njengomuntu noma ilungelo lempahla ethuthekayo ukuthola isikweletu.

(4) Izigatshana -(1), (2) no- (3) zisebenza nezinguquko ezifunyuwa yindikimba esibambisweni nasekwedluliseni ithuluzi ngenhloso yokuthola isikweletu, lapho obambe iqhaza edlulisela komunye umhlomulo osethuluzini lokuhweba eligcinwe yingodla yokulondoloza imali yemakethe esikhwameni esimiselwe lokhu. 50

**Delivery of securities**

44. Subject to sections 41 and 43, the owner of an interest in securities held by a participant in a securities repository or a participant holding an interest in securities in a central securities repository, as the case may be, is at all times entitled, on written request for withdrawal, to delivery, within a reasonable time, by the participant or central securities depository concerned, of a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind as the interest in securities held on such owner or participant's behalf, as long as such owner or participant has a sufficient unencumbered credit balance of those securities in that owner's securities account or in that participant's central securities account, as the case may be. 5 10

**Records**

45. If the records of a central securities depository are inconsistent with those of a participant regarding securities deposited with the central securities depository by the participant, the records of the central securities depository are deemed to be correct until the contrary is proved. 15

**Warranty**

46. (1) Every person, whether a client or participant, who deposits securities with a participant or central securities depository, as the case may be, is deemed to warrant that such person is entitled to deposit the securities deposited by that person and that any document or instruction relating to such securities and lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by the participant or central securities depository arising out of such deposit or breach of warranty. 20 25

(2) A central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).

**Relationship of trust**

47. A central securities depository is not obliged to recognise any relationship of trust or agency of its participants in respect of securities. 30

**Attachment**

48. (1) The attachment of an interest in securities deposited with a participant and held in a securities repository or central securities repository is only complete when—

- (a) notice of the attachment has been given in writing by the sheriff to the participant; 35
- (b) the sheriff has taken possession of any securities account as evidenced by a written acknowledgement issued by the participant or has certified that the sheriff has been unable, despite diligent search, to obtain possession of such written acknowledgement; and 40
- (c) the sheriff has made an entry of the attachment on such securities account or caused it to be made by such participant.

(2) The sheriff may upon exhibiting the original of the warrant of execution to the participant enter upon the premises where such account is kept and make an inventory and valuation of the interest attached. 45

**Ukwedlulisa amathuluzi asemakethe yezimali**

44. Ngokulandela izigaba 41 no- 43, umnini womhlomulo emathuluzini okuhweba agcinwe ngumuntu obambe iqhaza nabekwe kwingodla yokulondoloza uhlala ngaso sonke isikhathi enelungelo lokunikwa isitifiketi, noma ithuluzi elibhaliwe elikhomba isibalo samathuluzi okuhweba awalondolozile noma amathuluzi okuhweba kanye nenzalo esikhona kuwo esingethwe yilowo mnini noma ibamba lakhe, lokhu okushiwoyo kungenziwe ngemuva kwesicelo esibhaliwe, inqobo uma onikwa umlayelo ephiwa isikhathi esenele futhi uma esikhwameni salowo mnini ofake isicelo noma obambe iqhaza kungasali isikweletu ngenxa yezitifiketi ezidonsiwe, kuye ngokwehluka kwesimo. 5 10

**Imibhalo**

45. Uma imibhalo yengodla yokulondoloza amathuluzi okuhweba ishayisana naleyo yobambe iqhaza mayelana namathuluzi alondolozwe kwingodla ngobambe iqhaza, imibhalo yengodla yokulondoloza ithathwa njengenobuqiniso kuze kuvele ubufakazi obuphikisa lobo. 15

**Isiqiniseko**

46. (1) Wonke umuntu, akukhathalekile ukuthi yikhasimende noma ngobambe iqhaza, ofaka amathuluzi endaweni yokulondoloza, kuye ngesimo ngasinye uthathwa njengowenza isiqiniseko sokuthi lowo muntu unelungelo lokulondoloza amathuluzi okuhweba nokuthi yonke imibhalo noma imilayelo ephathelene nalawo mathuluzi, afakwe noma ethulwe yilowo muntu ayiqiniso futhi alunge ngayo yonke indlela nokuthi lowo muntu uthathwa njengovumile ukukhokha noma yiziphi izindleko zomuntu obambe iqhaza noma ingodla yokulondoloza amathuluzi eziwumphumela wokulondoloza noma wokwephula isivumelwane. 20

(2) Ingodla yokulondoloza ayithathwa ngokuthi seyikhiphe isiqiniseko noma isinxephezelo esiphawulwe esigatshaneni (1). 25

**Ubudlelwane bokwethembana**

47. Ingodla yokulondoloza amathuluzi okuhweba ayiphoqiwe ukwazisa ubudlelwane bokwethembana noma ukuzenza igatsha lalabo ababambe iqhaza ngamathuluzi okuhweba. 30

**Ukudla impahla**

48. (1) Ukudla ilungelo noma amathuluzi uqobo ezindolozwe ngobambe iqhaza nezigcinwe kwingodla yokulondoloza yinto ephelile kuphela uma—

(a) sekuphume isaziso senhloso yokudla impahla esibhalwe yisithunywa senkantolo sayiqondisa kobambe iqhaza; 35

(b) isithunywa senkantolo sesithathe isikhwama samathuluzi okuhweba ngesaziso esibhalwe ngumuntu obambe iqhaza noma ubufakazi obufungelwe obubhalwe nguye bokuthi nakuba ezame ngakho konke okusemandleni, isithunywa sehlulekile ukuthola lobo bufakazi,

(c) isithunywa senkantolo sesibhalise esikhwameni sokuhweba yonke impahla edliwayo noma iphoqe obambe iqhaza ukuba enze kanjalo. 40

(2) Ngemuva kokuveza isamanisi lokuqala eligunyaza ukudla impahla, isithunywa senkantolo singangena emagcekeni lapho kugcinwe khona isikhwama bese sibala inani nesibalo sempahla ezodliwa.

## CHAPTER V

### GENERAL PROVISIONS APPLICABLE TO SELF-REGULATORY ORGANISATIONS

#### Expiry and renewal of licence of self-regulatory organisation

**49.** (1) The licence of a self-regulatory organisation (in this Chapter referred to as “a licence”) expires on 31 December of the year for which it is issued but may be renewed on application to the registrar. 5

(2) An application for renewal of a licence must be—

- (a) made in the manner and contain the information prescribed by the registrar;
- (b) accompanied by the application fee prescribed by the Minister; and 10
- (c) supplemented by any additional information that the registrar may reasonably require.

#### Refusal of renewal of licence

**50.** (1) The registrar may refuse to renew a licence if during the year preceding the date of the application for renewal the applicant failed to— 15

- (a) comply with this Act or the rules of the self-regulatory organisation;
- (b) comply with a direction, request, condition or requirement of the registrar in terms of this Act; or
- (c) give effect to a decision of the board of appeal in terms of section 111, and such failure has defeated the objects of this Act referred to in section 2 or is likely to defeat them. 20

(2) The registrar must, before refusing to renew a licence—

- (a) inform the applicant of the registrar’s intention to refuse renewal;
- (b) give the applicant the reasons for the intended refusal; and
- (c) call upon the applicant to show cause within a period specified by the registrar why the renewal should not be refused. 25

(3) If the registrar refuses to renew a licence the registrar must take such steps as are necessary to achieve the objects of this Act referred to in section 2, which steps may include—

- (a) the transfer of the business of the self-regulatory organisation to another similar self-regulatory organisation; or 30
- (b) the winding-up of the self-regulatory organisation in terms of section 107.

#### Cancellation or suspension of licence

**51.** (1) The registrar may cancel or suspend a licence if—

- (a) the self-regulatory organisation has failed to— 35
  - (i) comply with this Act or the rules of the self-regulatory organisation;
  - (ii) comply with a direction, request, condition or requirement of the registrar in terms of this Act; or
  - (iii) give effect to a decision of the board of appeal in terms of section 111, and such failure has defeated the objects of this Act referred to in section 2 or is likely to defeat them; 40
- (b) after an inspection in terms of section 93 of the affairs of the self-regulatory organisation the registrar is satisfied on reasonable grounds that the manner in which it is operated is—
  - (i) not in the best interests of authorised users or participants, as the case may be, and their clients; or 45
  - (ii) defeating the objects of this Act referred to in section 2;
- (c) the self-regulatory organisation has ceased to operate or has failed to commence operating within a reasonable period after being licensed; or

**ISIAHLUKO V****IMIBANDELA EVAMILE ESEBENZA EZINHLANGANWENI  
EZIZILAWULAYO****Ukuphela kwesikhathi nokuvuselela imvume yenhlangano ezilawulayo**

**49.** (1) Imvume yenhlangano ezilawulayo (kulesi Sahluko, ebizwa nge “mvume”) 5  
iyophelwa yisikhathi mhla ka-31 Disemba onyakeni ekhishelwe ngawo kodwa  
ingavuselelwa ngesicelo esifakwa kumlawuli-sikhungo.

(2) isicelo sokuvuselela imvume kufanele—

- (a) senziwe ngendlela futhi siqkathe imininingwane enqunywe ngumlawuli-  
sikhungo; 10
- (b) siphelzelwe yimali yesicelo enqunywe nguNgqongqoshe;
- (c) iphelzelwe yimininingwane engeziwe engase ifunwe ngumlawuli-sikhungo.

**Ukwenqatshwa kwesicelo sokuvuselela imvume**

**50.** (1) Umlawuli-sikhungo angenqaba ukuvuselela imvume uma kwenzeka  
esikhathini esedule ngaphambi kosuku lokuvuselela, ofaka isicelo ehlulekile— 15

- (a) ukuhambisana nalo Mthetho noma eminye elawula izinhlangano  
ezizilawulayo;
- (b) ukuhambisana nomlayelo, isicelo, isimo noma umbandela womlawuli-  
sikhungo ngokwalo Mthetho;
- (c) ukulandela isinqumo esenziwa yisigungu sokwedlulisa amacala ngokulandisa 20  
kwesigaba -111, nalapho ukwehluleka okuchaziwe kululaza izinhloso zalo  
Mthetho ophawulwe esigabeni-2 noma kungase kuzivimbe.

(2) Ngaphambi kokwenqaba ukuvuselela imvume, umlawuli-sikhungo kufanele—

- (a) azise ofake isicelo ngenhloso yomlawuli-sikhungo yokwenqaba ukuvuselela  
imvume; 25
- (b) anike ofake isicelo izizathu zenhloso yokwenqaba;
- (c) abize ofake isicelo ukuba azochaza ukuthi kungani umlawuli-sikhungo  
kungafanele enqaba ukuvuselela isicelo, lokho kufanele kwenziwe  
singakapheli isikhathi esinqunywe ngumlawuli-sikhungo;

(3) Uma umlawuli-sikhungo enqaba ukuvuselela imvume, umlawuli-sikhungo 30  
kufanele athathe izinyathelo ezifanele zokufeza izinhloso zalo Mthetho eziphawulwe  
esigabeni 2, nezingaqukatha lokhu okulandelayo—

- (a) ukwedlulisa ibhizinisi lenhlangano ezilawulayo liye kwenye inhlangano  
efanayo; noma
- (b) ukusonga umsebenzi wenhlangano ezilawulayo ngokulandisa kwesigaba- 35  
107.

**Ukwesula noma ukumisa okwesikhashana imvume**

**51.** (1) Ngaphansi kwemibandela ebekwe ngumlawuli-sikhungo, umlawuli-  
sikhungo angahoxisa noma ammise imvume uma—

(a) inhlangano ezilawulayo yehlulekile— 40

- (i) ukuhambisana nalo Mthetho noma eminye elawula inhlangano  
ezilawulayo;
- (ii) ukuhambisana nomlayelo, isicelo, isimo noma umbandela walo  
Mthetho; noma
- (iii) ukulandela isinqumo sesebhodi sokulalela amacala nezikhalo 45  
ezedlulisiwe, ngokwesigaba-111, nokwehluleka okuvimbe izinhloso  
zalo Mthetho eziphawulwe esigabeni -2 noma okungenzeka zivimbeke;

(b) ngemuva kokuhlola okuhambisana nesigaba-93 sezindaba zenhlangano  
ezilawulayo, umlawuli-sikhungo enelisekile ukuthi indlela okuqhutshwa  
ngayo— 50

- (i) ayihlomulisi abantu abagunyazelwe umsebenzi noma ababambe iqhaza  
namakhasimende, kuye ngesimo ngasinye; noma
- (ii) ivimba izinhloso zalo Mthetho ophawulwe esigabeni- 2;
- (c) inhlangano ezilawulayo ayisasebenzi noma yehlulekile ukuqala umsebenzi  
ngesikhathi esilindelwe ngemuva kokunikwa imvume yokusebenza; noma 55

- (d) the registrar is satisfied on reasonable grounds that the licence was obtained through misrepresentation.
- (2) The registrar must, before cancelling or suspending a licence—
- (a) inform the self-regulatory organisation of the registrar's intention to cancel or suspend; 5
- (b) give the self-regulatory organisation the reasons for the intended cancellation or suspension; and
- (c) call upon the self-regulatory organisation to show cause within a period specified by the registrar why its licence should not be cancelled or suspended.
- (3) If the registrar cancels or suspends a licence the registrar must take such steps and may impose such conditions as are necessary to achieve the objects of this Act referred to in section 2, which steps may include— 10
- (a) the transfer of the business of the self-regulatory organisation to another similar self-regulatory organisation; or
- (b) the winding-up of the self-regulatory organisation in terms of section 107. 15

#### **Juristic personality of self-regulatory organisation and carrying on additional business**

52. (1) A self-regulatory organisation that is not a juristic person is, from the date on which it is licensed by the registrar, a juristic person capable of acquiring rights and duties and of acquiring, owning, burdening, hiring, letting and alienating property, and, subject to this Act, of doing such things as may be necessary for or incidental to the performance of its functions in terms of its rules. 20

(2) If a self-regulatory organisation carries on business in addition to that regulated by or under this Act the registrar may, for the purpose of minimising systemic risk, lay down requirements in respect of the carrying on of such business. 25

#### **Demutualisation of self-regulatory organisation**

53. (1) A self-regulatory organisation which is not incorporated as a company having a share capital in terms of the Companies Act may convert to such a company with the approval of the registrar and subject to the conditions that the registrar may prescribe. 30
- (2) If a conversion referred to in subsection (1) takes place—
- (a) the self-regulatory organisation referred to in subsection (1) is deemed to be a company incorporated in terms of the Companies Act from a date determined by the registrar in consultation with the self-regulatory organisation;
- (b) the Registrar of Companies, appointed in terms of section 7 of the Companies Act, must register the memorandum and articles of association of the self-regulatory organisation in terms of section 63(1) of that Act on the date referred to in paragraph (a); 35
- (c) the continued corporate existence of the self-regulatory organisation from the date on which it was first licensed by the registrar is unaffected and any actions of the self-regulatory organisation before its conversion remain effectual; 40
- (d) the terms and conditions of service of employees of the self-regulatory organisation are not affected;
- (e) all the assets and liabilities of the self-regulatory organisation, including any insurance, guarantee, compensation fund or other warranty owned or maintained by the organisation to cover any liabilities of the authorised users or participants, as the case may be, to clients, remain vested in and binding upon the company or such other entity acceptable to the registrar as the company may designate; 45
- (f) the company has the same rights and is subject to the same obligations as were possessed by or binding upon the self-regulatory organisation immediately before its conversion; 50
- (g) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the self-regulatory organisation and in force immediately before the conversion remain in force and effectual, and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the company, as the case may be; 55
- (h) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by the self-regulatory organisation which was in force immediately before the conversion remains in force, and is construed as a

- (d) umlawuli-sikhungo enelisiwe ukuthi isimo okwatholwa ngaso imvume samiselwe emangeni noma kwinkohliso.
- (2) Ngaphambi kokuhoxisa noma ukumisa imvume, umlawuli-sikhungo kufanele,—
- (a) azise inhlango ezilawulayo ngenhloso yomlawuli-sikhungo yokuhoxisa noma ukummisa imvume; 5
- (b) anike inhlango ezilawulayo izizathu zenhloso yokwenqaba;
- (c) abize inhlango ezilawulayo ukuba izochaza ukuthi kungani umlawuli-sikhungo kungafanele engahoxisi noma amise imvume, lokho kufanele kwenziwe singakapheli isikhathi esinqunywe ngumlawuli-sikhungo;
- (3) Uma umlawuli-sikhungo ehoxisa noma emisa imvume, umlawuli-sikhungo 10 kufanele athathe izinyathelo ezifanele zokufeza izinhloso zalo Mthetho eziphawulwe esigabeni -2, nezingabandakanya lokhu—
- (a) ukwedlulisa ibhizinisi lenhlango ezilawulayo lidluliselwe enhlanganweni efanayo; noma
- (b) ukusonga umsebenzi wenhlango ezilawulayo ngokulandisa koMthetho- 15 107.

#### **Amandla alingana nawomuntu enhlanganweni ezilawulayo nokuqhuba ibhizinisi elengeziwe**

52. (1) Inhlango ezilawulayo engenawo amandla afana nomuntu ophilayo iyophenduka efana nomuntu kusukela osukwini enikwe ngalo imvume ngumlawuli-sikhungo, inhlango enamandla afana nomuntu ikwazi ukuthola amalungelo nemisebenzi yokuthola, ubunini, ukufuna, ukuqasha, ukuqashisa nokwehlukana amafa nokwenza zonke izinto ezibalulekile ekuqhubeni imisebenzi yayo, inqobo uma ilandela imithetho yenhlango.
- (2) Uma inhlango ezilawulayo iqhuba elinye ibhizinisi elengeziwe kulelo elilawulwa noma elingaphansi kwalo Mthetho, ngenhloso yokunciphisa ubungozi, umlawuli-sikhungo angabeka imibandela okufanele ilandelwe mayelana nalelo bhizinisi. 25

#### **Ukuhlonyuliswa kwenhlango ezilawulayo ngamasheya**

53. (1) Inhlango ezilawulayo kodwa engabhalisiwe njengenkampani enamasheya ngaphansi koMthetho Wezinkampani ingaguqulwa enkampanini yamasheya ngemvume yomlawuli-sikhungo nokulandela imibandela enqunywe nguye. . 30
- (2) Uma ushintsho oluqondiswe esigatshaneni- (1) lwenzeka—
- (a) inhlango ezilawulayo ephawulwe esigatshaneni-(1) ithathwa njengenkampani ebhalisiwe ngaphansi koMthetho Wezinkampani kusukela osukwini olunqunywe ngumlawuli-sikhungo ngokubonisana nenhlango ezilawulayo; 35
- (b) umlawuli-sikhungo Wezinkampani oqokwe ngaphansi kwesigaba-7 soMthetho Wezinkampani kufanele abhalise umbiko obhaliwe nesisekelo sokubumba ibhizinisi lenhlango ezilawulayo ngokuchaza kwesigaba-63(1) salowo Mthetho ngosuku oluphawulwe endimeni (a); 40
- (c) ikusasa lebhizinisi lenhlango ezilawulayo kusukela ngesikhathi lithola imvume kumlawuli-sikhungo aliphazamiseki kanti noma yiziphi izinyathelo zenhlango ezilawulayo ezathathwa ngaphambi koshintsho aziguquki;
- (d) isimo nemibandela ebekelwe abasebenzi benhlango ezibusayo asiphazamiseki; 45
- (e) wonke amafa nezikweletu zenhlango ezilawulayo kuhlangele nanoma yisiphi isiqiniseko, isikhwama senhlango sokulondoloza imali noma sokukhokha izindleko noma leso esigcinwe yinhlango ukubhekana nezikweletu zamalunga enhlango azikweleta amakhasimende ziyohlala ziyisibophezelo senkampani noma ohlotsheni lwebhizinisi elemukelwe ngumlawuli-sikhungo olungaqokwa yinkampani; 50
- (f) inkampani inamalungelo afanayo futhi inalezo zibophezelo ezazibusa noma ezazivele zikhona enhlanganweni ezibusayo ngaphambi kokuguqulwa;
- (g) zonke izivumelwane, ukuqasha, imigidi yokudayiselana nemibhalo esayiniwe, okuvunyelwane ngayo, eyenziwe noma edwetshiwe nabathile noma evuna inhlango ezilawulayo nebisebenza ngaphambili kancane koshintsho, iyohlala isebenza kanti ngezimo zomsebenzi ithathwa 55

bond, pledge, guarantee or instrument given to or in favour of the company, as the case may be;

- (i) any claim, right, debt, obligation or duty accruing to any person against the self-regulatory organisation or owing by any person to such organisation is enforceable against or owing to the company, subject to any law governing prescription; 5
- (j) any legal proceedings that were pending or could have been instituted against the self-regulatory organisation before the conversion may be continued or instituted against the company, subject to any law governing prescription; and
- (k) the licence of the self-regulatory organisation remains vested in the company if the company complies with all the requirements of this Act in respect of a self-regulatory organisation. 10

#### **Amalgamation or transfer of self-regulatory organisation**

**54.** (1) Two or more exchanges, or two or more central securities depositories, may amalgamate or merge, or any of the assets and liabilities of an exchange or central securities depository may be transferred to or taken over by any other exchange or central securities depository, as the case may be, with the approval of the registrar and subject to the conditions that the registrar may prescribe. 15

(2) If an amalgamation or transfer referred to in subsection (1) takes place—

- (a) all the assets and liabilities of the amalgamating organisations (or in the case of a transfer of assets and liabilities, of the organisation by which the transfer is effected), including any insurance, guarantee, compensation fund or other warranty owned or maintained by any of them to cover any liabilities of authorised users or participants, as the case may be, to clients, vest in and become binding upon the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities or such other entity acceptable to the registrar as the parties to the amalgamation may designate; 20
- (b) the amalgamated organisation (or in the case of a transfer of assets and liabilities, the organisation taking over such assets and liabilities) has the same rights and is subject to the same obligations as were, immediately before the amalgamation or transfer, possessed by or binding upon the amalgamating organisations or, as the case may be, the organisation by which the transfer has been effected; 25
- (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamated organisations or, as the case may be, the organisation by which the transfer has been effected, and in force immediately before the amalgamation or transfer remain in force and are construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the amalgamated organisation or, as the case may be, the organisation taking over the assets and liabilities in question; 30
- (d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services by any of the amalgamating organisations or, as the case may be, by the organisation transferring such assets and liabilities, which was in force immediately prior to the amalgamation or transfer, remains in force and is construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities; and 35
- (e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating organisations or owing by any person to any of such organisations is enforceable against or owing to the amalgamated organisation or, as the case may be, the organisation taking over such assets and liabilities. 40



njengesayiniwe, evunyiwe, eyenzwe noma edwetshwe nothile noma evuna inkampani, kuye ngesimo ngasinye;

- (h) noma yiliphi ithuluzi lokweboleka imali, isibambiso, isiqiniseko noma ngenye lamathuluzi okuhweba ezithathelwe ukuthola imali esikhathini esizayo, ukuthola izinsiza zokusebenza noma imisebenzi yenhlangano ezilawulayo eyayikhona ngesikhathi esiphambi koguquko, liyohlala liyisibophezelo futhi lithathwa njengethuluzi lokweboleka imali, isibambiso, isiqiniseko noma ngeinye lamathuluzi anikwe noma avuna inkampani, kuye ngesimo ngasinye; 5
- (i) noma iyiphi inhlawulo, ilungelo, ezisikweletu, isibophezelo noma umsebenzi okweletwa ngumuntu enhlanganweni uyophoqeletwa ukuba ukhokhelwe noma ukhokhwe yinkampani, kuye ngokuthi ikhona yini imithetho enquma ngenye indlela; 10
- (j) noma yiziphi izinyathelo zomthetho ezaziqhubeka noma okwakufanele ziqalwe ziqondane nenhlangano ezilawulayo ngaphambi koguquko, zingaqhutshwa noma zibhekiswe enkampanini, kuye ngokuthi ikhona yini eminye imithetho enquma ngenye indlela; 15
- (k) imvume yenhlangano ezilawulayo iyohlala iyingxenywe yenkampani uma inkampani ihambisana nayo yonke imibandela yalo Mthetho maqondana nenhlangano ezilawulayo; 20

#### Ukuhlanganisa noma ukwedlulisa inhlango ezilawulayo

54. (1) Izikhungo ezimbili noma ngaphezulu, izingodla zokulondoloza amathuluzi ezimbili noma ngaphezulu zingadibana noma kwedluliswe amafa noma izikweletu zesikhungo noma ingodla yokulondoloza zifakwe ngaphansi kwenye noma igwinywe ngesinye sezikhungo zokuhweba noma izingodla zokulondoloza, kuye ngesimo ngasinye, inqobo uma umlawuli-sikhungo evumile futhi kulandelwe imibandela ayinqumile. 25

(2) Uma ukuhlanganisa noma ukwedlulisa okukhulunywa ngakho esigatshaneni- (1) kwenzeka—

- (a) onke amafa nezikweletu zezinhlangano ezibumbene (noma esiwombeni sokwedlulisa amafa nezikweletu zenhlangano ethintekayo ekwedluliseni) kuxubene nanoma yisiphi isiqiniseko, isikhwama somfelandawonye noma esokugcina imali esiphethwe yiyo ngenhloso yokukhokha izindleko ezithile zamalunga amakhasimende ziyobophezela inhlango ezibumbene, ngokushiyana ngesimo, inhlango ingathatha lawo mafa nezikweletu ngendlela eyemkelwe ngumlawuli-sikhungo neqokwe yinhlangano ezibumbene; 30
- (b) inhlango ezibumbene (noma esiwombeni sokwedlulisa amafa nezikweletu zenhlangano okwenziwa ngakho ukwedlulisa) inelungelo nesibophezelo esifanayo nesikhathi esedlule ngaphambi kokuguquka ihlangane nenywe noma kwedluliswe amafa nezikweletu, ngale ndlela lamalungelo nezibophezelo ziyaqhubeka ukuba yisibopho enhlanganweni entsha; 35
- (c) zonke izivumelwane, ukuqasha, imigidi yokudayiselana nemibhalo okuvunyelwane ngayo, eyenziwe noma edwetshwe nenhlangano noma evuna inhlango ebivele isebenza phambi kwesinqumo sokuhlangana iyohlala isebenza futhi ithathwe ngokuthi yenziwa ngenhloso yokwenza isivumelwane, ukusebenza noma idwetshwe nenhlangano noma iyovuna inhlango ezibumbene nokukhulunywa ngayo lapha esihlanganise amafa nezikweletu; 45
- (d) noma yisiphi isikweletu, isibambiso, isiqiniseko noma ezinye ithuluzi lokuhweba ezithathwe noma ezenziwe ngenhloso yokuthola imali, izinsiza noma imisebenzi yinoma iyiphi inhlango ezibumbene noma, ngokwehluka ngesimo, yinhlangano edlulisa amafa nesikweletu esasikhona phambi kwesinqumo sokuhlangana siyoqhubeka nokuthathwa njengesikweletu, isibambiso, isiqiniseko noma ngelinye ithuluzi elanikwa noma elivuna inhlango ebumbene esigwinye wonke amafa nezikweletu zenhlangano endala, kuye ngesimo ngasinye; 50
- (e) Noma isiphi isikweletu, ilungelo, isibophezelo, umsebenzi osalele ngemuva womuntu oyingxenywe esebenzela inhlango noma okweletwa yisisebenzi senhlangano kuphoqekile ukuba uqedelwe yinhlangano ezibumbene esigwinye amafa nezikweletu zenhlangano endala, kuye ngesimo ngasinye. 55 60

### **Duty of members of controlling body of self-regulatory organisation**

55. Each member of the controlling body of a self-regulatory organisation owes a fiduciary duty and a duty of care and skill to the self-regulatory organisation.

### **Appointment of members of controlling body of self-regulatory organisation**

56. (1) No person who— 5

(a) may not be appointed or act as a director in terms of section 218 of the Companies Act; or

(b) has been penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a self-regulatory organisation, which contravention involved dishonesty, 10

may be appointed as a member of the controlling body of a self-regulatory organisation.

(2) A person who accepts an appointment in contravention of subsection (1) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 2 years, or to both a fine and such imprisonment.

(3) If a self-regulatory organisation makes an appointment in contravention of subsection (1)— 15

(a) without making reasonable enquiry as to whether the appointed member is disqualified in terms of subsection (1); or

(b) knowing that the appointed member is so disqualified,

the registrar may impose a fine not exceeding R50 000 upon the self-regulatory organisation. 20

(4) A self-regulatory organisation must, within 14 days of the appointment of a new member to its controlling body, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require.

(5) The provisions of subsection (4) may not be construed so as to render the appointment of a member of the controlling body of a self-regulatory organisation subject to the approval of the registrar. 25

(6) If it appears to the registrar that a member is disqualified in terms of subsection (1), the registrar may, subject to subsection (7), instruct the self-regulatory organisation to remove that member from its controlling body. 30

(7) The registrar must, before giving an instruction in terms of subsection (6)—

(a) in writing inform the self-regulatory organisation and the particular member of the registrar's intention to give such an instruction;

(b) give the self-regulatory organisation and the particular member written reasons for the intended instruction; and 35

(c) call upon the self-regulatory organisation and the particular member to show cause within a period of 14 days why the instruction should not be given.

(8) If the registrar instructs the self-regulatory organisation to remove a member from its controlling body, the self-regulatory organisation must so remove the member within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the self-regulatory organisation. 40

(9) If a self-regulatory organisation fails to comply with subsection (8), the registrar may, in respect of such failure, impose a fine not exceeding R5 000 for every day during which such failure continues. 45

(10) Sections 95(2), (3) and (4) is, with the changes required by the context, applicable to the imposition of a fine under subsections (3) and (9).

### **Limitation on control of and certain shareholding or other interest in certain self-regulatory organisations**

57. (1) For the purposes of this section "associate", in relation to— 50

(a) a natural person, means—

(i) that person's spouse;

(ii) that person's child, parent, stepchild or stepparent and any spouse of such person;

**Umsebenzi wamalunga esigungu esiphethe inhlango ezilawulayo**

55. Ilunga ngalinye lesigungu esilawula inhlango ezilawulayo linesibophezelo sokwethemba nomsebenzi wokusebenza ngokucophelela kanjalo nokukhombisa ikhono enhlanganweni ezilawulayo.

**Ukuqokwa kwamalunga esigungu esiphethe enhlanganweni ezilawulayo**

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56. (1) Akekho umuntu oyoqashwa njengelunga lesigungu sokulawula enhlanganweni ezilawulayo uma—

(a) engavunyelwe noma engeke aqashwe njengomqondisi ngokulandisa kwesigaba-218 soMthetho Wezinkampani; noma

(b) kade eqondiswa izigwegwe ecaleni lokwephula imithetho yezinhlangano zochwepheshe, kuhlango enhlango ezilawulayo esiwombeni sokulahlwa ngecala lokungethembeke;

(2) Umuntu omukela isikhundla kodwa ephule isigatshana-(1) wephula umthetho futhi engahlawulisa noma aboshwe isikhathi esingevile eminyakeni emibili noma athole inhlawulo nokuboshwa.

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(3) Uma inhlango ezilawulayo iqasha umuntu ngendlela ephambene nesigatshana-(1)—

(a) ngaphandle kokwenza uphenyo olwenele ukuthola ukuthi lelo lungu liwufanele yini umsebenzi ngokulandisa kwesigatshana (1) noma

(b) liqashe ilunga liqonda kahle ukuthi aliwufanele umsebenzi umlawuli-sikhungo angahlawulisa inhlango ezilawulayo imali engevile e-R50 000.

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(4) Zingakapheli izinsuku eziyi-14 liqashiwe ilunga elisha lesigungu sokulawula, inhlango ezilawulayo kufanele yazise umlawuli-sikhungo ngalesi senzo, imnike neminingwane ayidingayo ngalolu daba.

(5) Imibandela yesigatshana-(4) akufanele ithathwe sengathi ilunga lesigungu sokulawula enhlanganweni ezilawulayo liyoqashwa ngemvume yomlawuli-sikhungo.

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(6) uma kuhlaluka kumlawuli-sikhungo ukuthi ilunga ladingiswa noma aliwufanele lo msebenzi ngokwesigaba-(1), ngokulandisa kwesigatshana (7), umlawuli-sikhungo angalayela inhlango ezilawulayo ukuba isuse lelo lungu esigungwini sokulawula inhlango.

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(7) Ngaphambi kokukhipha umlayelo ngokulandisa kwesigatshana- (6), umlawuli-sikhungo—

(a) uyokwazisa ngokubhaliwe inhlango ezilawulayo nelunga elithintekayo ngenhloso yakhe yokukhipha lowo mlayelo;

(b) uyonika inhlango ezilawulayo nelunga elithintekayo izizathu ezibhaliwe zenhloso yokukhipha umlayelo;

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(c) uyofuna enhlanganweni ezilawulayo naselungeni elithintekayo ukuba liveze ukuthi kungani ungafanele ukukhishwa umlayelo, lokhu kufanele kwenziwe zingakapheli izinsuku eziyi-14.

(8) Uma umlawuli-sikhungo etshela inhlango ezilawulayo ukuba isuse ilunga esigungwini sokulawula, inhlango kufanele ilisuse lelo lungu zingakapheli izinsuku eziyi-14 futhi kufanele iqiniseke ukuthi lowo muntu okukhulunywa ngaye akahlangani nhlobo, ngendlela eqondile noma ethile nokuphatha noma ukubamba iqhaza ekuphatheni inhlango ezilawulayo.

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(9) Uma inhlango ezilawulayo yehluleka ukuhambisana nesigatshana (8), ngalokho kwehluleka, umlawuli-sikhungo angahlawulisa inhlango imali engevile ku R5 000 usuku ngalunye eqhubeka ngalo nokwehluleka.

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(10) Isigaba 95(2), (3) no (4) nezinguquko ezidingwa yingqikithi zihambisana nenhlawulo enqunywe yizigatshana -(3) no (9).

**Umgomo wokulawula nokuba namasheya noma umhlomulo ezinhlanganweni ezithile ezilawulayo**

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57. (1) Ngokwenhloso yalesi sigaba “ubuhlobo” mayelana—

(a) nomuntu ophilayo, busho—

(i) abantu abathandanayo noma abashadile;

(ii) ingane yalowo muntu, umzali, ingane etholwe ngaphandle komshado noma umzali ongesiye owegazi noma ngomunye othandana nalowo muntu;

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- (iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the self-regulatory organisation in question;
- (iv) a juristic person whose board of directors acts in accordance with that person's directions or instructions; 5
- (v) a trust controlled or administered by that person;
- (b) a juristic person—
- (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof; 10
- (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
- (iii) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company— 15
- (aa) had it been a company; or
- (bb) in the case where that other juristic person is not a company either, had both it and that other juristic person been a company;
- (iv) means any person in accordance with whose directions or instructions its board of directors acts; 20
- (v) means another juristic person whose board of directors acts in accordance with its directions or instructions;
- (vi) means a trust controlled or administered by it.
- (2) For the purposes of this section, a person is deemed to exercise control over a self-regulatory organisation which is a company or close corporation, if that person, alone or with associates— 25
- (a) holds shares in the self-regulatory organisation of which the total nominal value represents more than 15 per cent of the nominal value of all the issued shares thereof;
- (b) holds shares which entitle that person to exercise more than 15 per cent of the voting rights attached to the issued shares of that self-regulatory organisation; 30
- or
- (c) has the power to determine the appointment of more than 15 per cent of the directors of that self-regulatory organisation, including the power to— 35
- (i) appoint or remove, without the concurrence of another person, more than 15 per cent of the directors; or
- (ii) prevent a person from being appointed as a director without another person's consent.
- (3) No person may, subject to this section, without the prior approval of the registrar acquire or hold shares or any other interest in a self-regulatory organisation which is a company or close corporation, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control over the self-regulatory organisation. 40
- (4) No person may acquire or control shares in a self-regulatory organisation which is a company or close corporation, if the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and his or her associates, will amount to more than 15 per cent of the total nominal value of all the issued shares of the self-regulatory organisation concerned, without the prior approval of the registrar. 45
- (5) The approval referred to in subsection (3)— 50
- (a) may be given—
- (i) subject to the condition that the aggregate nominal value of the shares owned by the person concerned and his or her associates may not exceed such percentage as may be determined by the registrar;
- (ii) subject to such other conditions as the registrar may determine; 55
- (b) may not be given if it will defeat the objects of this Act referred to in section 2; and
- (c) may be refused if the person concerned, alone or with his or her associates, has not already owned shares in the self-regulatory organisation— 60
- (i) of the aggregate nominal value; and

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- (iii) omunye umuntu ongena esivumelwaneni noma ohlelweni nomuntu ophilayo maqondana nokuthola, ukugcina noma ukwedlulisa noma ukusebenzisa amalungelo okuvota ngesimo samasheya enhlangano ezilawulayo okukhulunywa ngayo;
- (iv) isakhiwo esifaniswa nomuntu ophilayo onesigungu sabaqondisi abasebenza ngemiyalelo noma ngokujutshwa yilowo muntu noma umfanekiso; 5
- (v) isikhwama esilawula noma esiphethwe yilowo muntu
- (b) isakhiwo esifaniswa nomuntu ophilayo—
- (i) esiyinkampani, sichaza ingxenye yebhizinisi kanye nenkampani uqobo kanjalo nanoma iyiphi enye inkampani nochungechunge lwezixenye zamabhizinisi ayo; 10
- (ii) esiyibhizinisi elibhaliswe ngaphansi koMthetho Wamabhizinisi Azishaya sankampani ka 1984 (Umthetho uNo. 69 we-1984), uchaza ilunga ngalinye njengoba lichazwe esigabeni -1 salowo Mthetho; 15
- (iii) esingesiyi inkampani noma ibhizinisi elizishaya sankampani, sichaza esinye isakhiwo esizishaya samuntu esingaba yingxenye yenkampani noma inkampani ephethe—
- (aa) uma besiyinkampani;
- (bb) esiwombeni lapho isakhiwo esizishaya samuntu ophilayo singesiyo inkampani, uma inkampani naleso sakhiwo esizishaya samuntu bekuyinkampani; 20
- (iv) sisho noma yimuphi umuntu otshela abaqondisi besigungu ukuba balandele imilayelo yakhe;
- (v) sichaza omunye umuntu onesakhiwo esifana nomuntu ophilayo lapho isigungu sabaqondisi bezwa noma belandela umyalelo wakhe; 25
- (vi) sichaza isikhwama esilawulwa noma esiphethwe yiso.
- (2) Ngokwenhloso yalesi sigaba, umuntu uthathwa njengolawula inhlangano ezibusayo, okuyinkampani noma ibhizinisi elizishaya sankampani uma lowo muntu ngobuyena noma ngokuhlanganyela— 30
- (a) enamasheya enhlanganweni ezilawulayo lapho inani lonke analo ledlula emaphesentini ayi-15 enani lonke lamasheya adayiswe yinkampani;
- (b) enamasheya amnika igunya lokusebenzisa amavoti angaphezulu kwamaphesenti angu 15 ahambisana namasheya adayiswe yileyo nhlangano ezilawulayo; noma 35
- (c) enamandla okunquma isibalo sabaqondisi esingaphezulu kwamaphesenti ayi-15 aleyo nhlangano ezilawulayo, kuhlange namandla—
- (i) okuqasha noma okususa, isibalo sabaqondisi abangaphezulu kwamaphesenti ayi-15, ngaphandle kokwesekwa ngomunye umuntu;
- (ii) okunqanda umuntu ekuqashweni njengomqondisi ngaphandle kwemvume yomunye umuntu.. 40
- (3) Ngokulandela lesigaba, akekho umuntu ongathola noma agcine amasheya noma umhlomulo othile enhlanganweni ezilawulayo, eyinkampani noma ibhizinisi elizishaya sankampani, uma lokho kuthenga noma ukugcina kunomphumela wokuba lowo muntu ngayedwa noma nomngane wakhe bagcine ngokulawula inhlangano ezibusayo, isimo esinjena ngeke sivunywe ngaphandle kwemvume yomlawuli-sikhungo. 45
- (4) Ngaphandle kwemvume yomlawuli-sikhungo, akekho umuntu oyolawula noma athenge amasheya enhlanganweni ezilawulayo neyinkampani noma ibhizinisi elizishaya sankampani uma inani eliphelele lalawo masheya elithengwe yilowo muntu noma yena nomngane wakhe lingaphezulu kwamaphesenti ayi-15 enani jikelele lenhlangano ezilawulayo okukhulunywa ngayo. 50
- (5) Imvume ephawulwe esigatshaneni -(3)—
- (a) ingakhishwa—
- (i) inqobo uma inani eliphelele lamasheya athengwe yilowo muntu othintekayo kanye nabangane bakhe lingeqi ephesentini elingase linqunywe ngumlawuli-sikhungo ; 55
- (ii) ngokulandela leyo migomo engase inqunywe ngumlawuli-sikhungo;
- (b) ngeke ikhishwe uma ukuyikhipha kuyodunga izinhloso zalo Mthetho ophawulwe esigabeni- 2;
- (c) ingenqatshwa uma umuntu othintekayo, ngokwakhe noma nomngane wakhe engakaze abe ngumnini masheya enhlanganweni ezilawulayo— 60
- (i) ayinani elithile; noma

- (ii) for the minimum period, not exceeding 12 months, that the registrar may determine.

(6) If the registrar is satisfied on reasonable grounds that the retention of a particular shareholding by a particular shareholder will be prejudicial to the self-regulatory organisation, the registrar may apply to the court in whose area of jurisdiction the main office of the self-regulatory organisation is situated for an order—

- (a) compelling such shareholder to reduce, within a period determined by the court, that shareholding to a shareholding with a total nominal value not exceeding 15 per cent of the total nominal value of all the issued shares of the self-regulatory organisation; and
- (b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his or her shareholding to 15 per cent of the voting rights attached to all the issued shares of the self-regulatory organisation.

#### **Delegation of functions**

58. (1) A self-regulatory organisation may delegate or assign any function entrusted to it by this Act or its rules to a person or group of persons, or a committee approved by the controlling body of the self-regulatory organisation, or a division or department of the self-regulatory organisation, subject to the conditions that the self-regulatory organisation may determine.

(2) The registrar may delegate or assign any function entrusted to the registrar by or under this Act subject to the conditions that the registrar may determine.

(3) A self-regulatory organisation or the registrar, as the case may be, is not divested or relieved of a function delegated or assigned under subsection (1) or (2) and may, if necessary, withdraw the delegation or assignment at any time on reasonable notice.

#### **Report by self-regulatory organisation to registrar**

59. Within four months after the financial year-end of a self-regulatory organisation, that self-regulatory organisation must submit to the registrar an annual report containing the details prescribed by the registrar and audited annual financial statements that fairly present the financial affairs and status of the self-regulatory organisation.

#### **Attendance of meetings by, and furnishing of documents to, registrar**

60. (1) The registrar or a person nominated by the registrar may attend any meeting of the controlling body of a self-regulatory organisation or a committee of the controlling body and may take part, but may not vote, in all the proceedings at such meeting.

(2) A self-regulatory organisation must furnish the registrar with all notices, minutes and documents which are furnished to members of the controlling body of the self-regulatory organisation or a committee of the controlling body, as if the registrar were a member of that body or committee.

#### **Manner in which exchange rules and depository rules may be made, amended or suspended and penalties for contraventions of such rules**

61. (1) In this section “rules” means exchange rules and depository rules.

(2) The registrar must as soon as possible after issuing a licence to a self-regulatory organisation cause the rules made by that organisation to be published in the *Gazette* at the expense of the organisation concerned.

(3) (a) A self-regulatory organisation may, subject to this section, amend or suspend its rules.

(b) The registrar may, subject to this section, amend the rules or issue an interim rule.

(4) A proposed amendment, other than a suspension, of the rules must be submitted to the registrar for approval and must be accompanied by an explanation of the reasons for the proposed amendment.

(ii) isikhathi esithile esilindelwe, esingedlule ezinyangeni eziyi-12 ezinqunywe ngumlawuli-sikhungo.

(6) Uma umlawuli-sikhungo eneliswa ukuthi inani elithile lamasheya athengwe ngumthengi-masheya othile lingabeka engcupheni isimo senhlangano ezilawulayo, angafaka isicelo enkantolo ephethe leyondawo okudayiswa kuyo lawo masheya enhlangano ngenhloso yokuthola isinqumo— 5

(a) sokuphoqa lowo mthengi wamasheya ukuba ehlise isibalo samasheya awathengile enhlanganweni ezilawulayo ukuze inani lawo lingedluli emaphesentini ayi-15 enani jikelele lenhlangano;

(b) sokunciphisa ngokushesha amalungelo okuvota ahambisana nenani noma nesibalo samasheya asithengile ngenxa yokuthi ingxenye yamasheya akhe imnika ilungelo lokuvota eledlule emaphesentini ayi-15. 10

### Ukwedlulisa noma ukwabela abanye imisebenzi

58. (1) Inhlangano ezilawulayo ingabela abanye amandla noma inike imisebenzi ejutshelwe yona yilo Mthetho noma eminye, kumuntu noma ethimbeni labantu noma ekomidini elemukelwe yisigungu esilawula inhlangano ezilawulayo, noma eziko lenhlangano ezilawulayo, inqobo uma ilandela imigomo enqunywe yinhlangano ezilawulayo. 15

(2) Umlawuli-sikhungo angehlisela amandla noma enze eminye imisebenzi enikwe yena yilo Mthetho, inqobo uma elandela imigomo ebekwe ngumlawuli-sikhungo. 20

(3) Inhlangano ezilawulayo noma umlawuli-sikhungo akaphunyikile ekwenzeni umsebenzi wakhe awedlulisele komunye umuntu esigatshaneni- (1) ne- (2), kanti uma sikhona isidingo angafaka isaziso sokuhoxisa lawo mandla noma umsebenzi odluliselwe amandla noma ngasiphi isikhathi uma ebona kufanele, kuye ngesimo ngasinye. 25

### Umbiko wenhlangano ezilawulayo obhekiswe kumlawuli-sikhungo

59. Zingakapheli izinyanga ezine ngemuva kokuphela konyaka wezimali wenhlangano ezilawulayo, kufanele yethule kumlawuli-sikhungo umbiko wonyaka onemininingwane ebekwe nguye nezincwadi zomsebenzi ezicutshungulwe ngumcwaningi-mabhuku ezibonisa ukuthi izindaba nesimo senhlangano siphethwe ngendlela efanele futhi siveza ubuqiniso bayo ngempela. 30

### Ukuhambela imihlangano nokwethula imibhalo kumlawuli-sikhungo

60. (1) Umlawuli-sikhungo noma umuntu oqokwe esikhundleni sakhe angahambela noma yimiphi imihlangano yesigungu esilawula inhlangano ezilawulayo noma ikomidi lokulawula futhi angabamba iqhaza kuyo yonke into eqhubekayo kulowo mhlango ngaphandle kwelungelo lokuvota. 35

(2) Inhlangano ezilawulayo kufanele inike umlawuli-sikhungo zonke izaziso, amaminithi nemibhalo enikwa amalunga esigungu sokulawula enhlanganweni ezilawulayo noma ikomidi lesigungu sokulawula, ngendlela efana nokuthi umlawuli-sikhungo uyilunga laleso sigungu noma ikomidi. 40

### Indlela okushaywa, kuchitshiyelwe noma kumiswe ngayo imithetho yesikhungo sokuhweba ngamasheya nengodla yokulondoloza imali yemakethe kanye nenhlawulo yokwephulwa kwaleyo mithetho

61. (1) Kulesi sigaba "imithetho" ichaza imithetho yesikhungo sokuhweba ngamasheya nengodla yokulondoloza izimali zemakethe. 45

(2) Ngemuva kokukhipha imvume yenhlangano ezilawulayo, umlawuli-sikhungo kufanele adalule ngokushesha imithetho eyenziwe yileyo nhlangano ngokuyishicilela kuGazethe ngezindleko eziyokhokhwa yinhlangano ethintekayo.

(3) (a) Ngaphansi kwalesi sigaba, inhlangano ezilawulayo ingachibiyela noma immise imithetho yayo. 50

(b) Ngaphansi kwalesi sigaba, umlawuli-sikhungo angachibiyela noma ashaye umthetho wesikhashana.

(4) Isichibiyelo esihlongozwayo (ngaphandle kokumisa) semithetho kufanele sethulwe kumlawuli-sikhungo ngenhloso yokwemukelwa futhi kummele siphelzelwe yincenzo yezizathu zesichibiyelo esiphakanyiswayo. 55

(5) The registrar must as soon as possible after the receipt of a proposed amendment cause to be published in the *Gazette*, at the expense of the self-regulatory organisation, a notice of the proposed amendment calling upon all interested persons who have any objections to the proposed amendment to lodge their objections with the registrar within a period of 14 days from the date of publication of the notice. 5

(6) If there are no such objections or if the registrar has considered the objections after consultation with the self-regulatory organisation and has decided to approve the proposed amendment in the form published in the *Gazette* in terms of subsection (5), the amendment comes into operation on a date determined by the registrar by notice in the *Gazette*. 10

(7) If the registrar decides, after consultation with the self-regulatory organisation and as a result of the objections, to amend the proposed rules as published in the *Gazette* in terms of subsection (5), the proposed rules thus amended must be published by the registrar in the *Gazette* and come into operation on a date determined by the registrar by notice in the *Gazette*. 15

(8) The registrar may—

- (a) if there is an urgent imperative under exceptional circumstances;
- (b) if it is necessary to achieve the objects of this Act referred to in section 2;
- (c) after consultation with the self-regulatory organisation concerned; and
- (d) with the consent of the Minister, 20

by notice in the *Gazette* amend the rules of that self-regulatory organisation.

(9) (a) Subject to the prior approval of the registrar, a self-regulatory organisation may suspend any of the rules of that organisation for a period not exceeding 30 days at a time after reasonable notice of the proposed suspension has been advertised in the *Gazette*. 25

(b) The registrar may, for the period of such suspension, issue an interim rule by notice in the *Gazette* to regulate the matter in question.

(c) Any contravention of or failure to comply with an interim rule has the same legal effect as a contravention of or failure to comply with a rule.

(10) (a) The rules may prescribe that a self-regulatory organisation, or a person to whom the self-regulatory organisation has delegated its disciplinary functions, may impose any one or more of the following penalties for any contravention thereof or failure to comply therewith: 30

- (i) A reprimand;
- (ii) censure; 35
- (iii) a fine not exceeding R5 million;
- (iv) suspension or cancellation of the right to be an authorised user or participant;
- (v) a restriction on the manner in which an authorised user or participant may conduct business or may utilise an officer, employee or agent;
- (vi) the payment of compensation to clients prejudiced by the contravention or failure. 40

(b) The rules may prescribe that—

- (i) full particulars regarding the imposition of a penalty must be published in the *Gazette*, other national newspapers or through the news service of the self-regulating organisation, if any; 45
- (ii) any person who has contravened or failed to comply with the rules may be ordered to pay the costs incurred in an investigation or hearing conducted in terms of the rules;
- (iii) a self-regulatory organisation may take into account at a disciplinary hearing any information obtained by the registrar in the course of an inspection conducted under section 93; 50
- (iv) a self-regulatory organisation, or a person to whom a self-regulatory organisation has delegated its disciplinary functions, may, upon good cause shown and subject to the conditions it may impose, vary or modify any penalty which it may previously have imposed upon any person, but that in varying or modifying such penalty the penalty may not be increased. 55

(11) If a person fails to pay a fine or compensation referred to in subsection (10)(a) the self-regulatory organisation may file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed or compensation payable, and such statement thereupon has all the effects of a civil 60



UMTHETHO WEMISEBENZI YAMATHULUZI  
OKUHWEDA EMAKETHE YEZIMALI, 2004

Act No. 36, 2004

(5) Ngokushesha ngemuva kokuthola isichibiyelo esihlongozwayo, umlawuli-sikhungo kufanele adalule ushintsho ngokushicilela kwi*Gazette* lolo guquko ngezindleko eziyokhokhwa yinhlango ezilawulayo, isaziso siyohlaba ikhwelo kubantu abanogqozi abafuna ukuphikisa ushintsho, abaphikisayo bayofaka izikhalo zabo kumlawuli-sikhungo zingakapheli izinsuku eziyi-14 kusukela osukwini okuphuma ngalo isaziso. 5

(6) Uma zingekho izicelo zokuphikisa noma umlawuli-sikhungo esezicubungulile lezo zicelo ngemuva kokubonisana nenhlango ezilawulayo futhi esenqume ukulwemukela uguquko oluphakanyiswayo nolushicilelwe kwi*Gazette* ngokwesigatshana (5), isichibiyelo siqala ukusebenza ngosuku oluyonqunywa ngumlawuli-sikhungo ngesaziso esiyokhishwa kwi*Gazette*. 10

(7) Uma umlawuli-sikhungo enquma ukuchibiyela imithetho ehlongozwayo njengoba ishicilelwe ku*Gazette* ngokulandisa kwesigatshana -(5), leyo mithetho ephakanyisiwe nesichitshiyelwe kufanele ishicilelwe ngumlawuli-sikhungo kwi*Gazette* bese iqala ukusebenza ngosuku olunqunywe ngumlawuli-sikhungo ngesaziso se*Gazette*, lokhu uyokwenza esebonisene nenhlango ezilawulayo kulandela isicelo sokuphikisa isichibiyelo. 15

(8) Ngesaziso kwi*Gazette*, Umlawuli-sikhungo angachibiyela imithetho yaleyo nhlangano ezilawulayo—

(a) uma ebona kufanele ukuthi isenzo sakhe siyofeza izinhloso zalo Mthetho eziphawulwe esigabeni 2; 20

(b) ngemuva kokubonisana nenhlango ezilawulayo ethintekayo;

(c) ngemuva kokuthola imvume kaNgqongqoshe.

(9) (a) Ngokuthola imvume yomlawuli-sikhungo, inhlango ezilawulayo ingammisa noma yimuphi umthetho waleyo nhlangano isikhathi esingevile ezinsukuni ezingu 30 ngemuva kokukhipha kwi*Gazette* isaziso esihlongozwayo sokumisa. 25

(b) Ngesikhathi imisiwe, umlawuli-sikhungo engashaya umthetho wesikhashana ngesaziso kwi*Gazette* ngenhloso yokulawula udaba olusematheni.

(c) Noma yikuphi ukuphambana nomthetho wesikhashana noma ukwehluleka ukuhambisana nawo kufana nokwephula umthetho noma ukwehluleka ukuhambisana nomthetho. 30

(10) (a) Imithetho inganquma ukuba inhlango ezilawulayo noma umuntu odluliselwe yinhlango amandla okuqondisa izigwegwe aphoqecele noma yiluphi uhlobo lwenhlawulo kulezi ezilandelayo ngenxa yokwephulwa komthetho noma ngokwehluleka ukuhambisana nawo; 35

(i) ukuthethisa;

(ii) ukunswinya;

(iii) inhlawulo engevile ezigidini eziyi-5;

(iv) ukumisa noma ukuqeda ilungelo lokugunyazelwa ukusebenza noma lokubamba iqhaza; 40

(v) ukubeka imigomo ngendlela umuntu ogunyaziwe noma obambe iqhaza angaqhuba ngayo ibhizinisi noma angasebenzisa ngayo isisebenzi, oqashiwe noma oqashelwe ukusiza amakhasimende;

(vi) inkokhelo yokunxephezela amakhasimende ahlukumezekile ngokwephulwa komthetho noma ngokwehluleka. 45

(b) Imithetho inganquma ukuba—

(i) kudalulwe kwi*Gazette* yonke imininingwane ephathelene nenhlawulo, kwamanye amaphephandaba noma engosini yezindaba zenhlango ezilawulayo, uma ikhona;

(ii) noma ngubani ophule umthetho noma ohluleke ukuhambisana nayo akhokhiswe izindleko ezitholwe ngesikhathi kulalelwe udaba noma kwenziwa uphenyo ngaphansi kwemithetho; 50

(iii) inhlango ezilawulayo icubungule yonke imininingwane etholwe ngumlawuli-sikhungo ngesikhathi kwenziwa uphenyo ngaphansi kwesigaba- 93; 55

(iv) inhlango ezilawulayo noma umuntu odluliselwe amandla okuthatha izinqumo zokuqondisa izigwegwe angaguqula noma abuyekeze isinqumo senhlawulo esikhishwe phambilini kodwa ngeke ayenyuse inhlawulo idlule enqunye phambilini, lokhu uyokwenza uma kunesizathu esiqinile futhi elandela imigudu ebekiwe yokuguqula isinqumo. 60

(11) Uma umuntu ehleleka ukukhokha inhlawulo noma isinxephezelo esiphawulwe esigatshaneni -(10)(a), inhlango ezilawulayo ingenza umbiko ofungelwe kumabhalane wenkantolo enamandla alokhu noma kumlawuli-sikhungo oyochaza inani

judgment lawfully given in that court against that person in favour of the self-regulatory organisation for a liquid debt in the amount specified in the statement.

(12) This section does not prejudice the common law rights of a person aggrieved by a contravention of or failure to comply with a rule to claim any amount except to the extent that any portion of such amount has been recovered under subsection (10). 5

(13) The rules must prescribe the purpose for which a fine referred to in subsection (10) must be appropriated.

### Limitation of liability

62. No self-regulatory organisation, chief executive officer, other officer, employee or representative of a self-regulatory organisation, or any member of a controlling body or committee of a controlling body of a self-regulatory organisation, is liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by— 10

- (a) the self-regulatory organisation, chief executive officer, other officer, employee, representative or member; or 15
- (b) an authorised user or participant, in the *bona fide* or negligent performance of any function under or in terms of this Act, the listing requirements of an exchange or the rules or directives of a self-regulatory organisation.

### Disclosure of information by self-regulatory organisation

63. Despite any contrary provisions in any other law, a self-regulatory organisation may disclose information relating to or arising from its functions to any other self-regulatory organisation or supervisory authority, whether domestic or foreign, if such disclosure will further one or more of the objects of this Act referred to in section 2. 20

## CHAPTER VI 25

### CLEARING HOUSE

#### *Licensing of clearing house*

#### Application for clearing house licence

64. (1) A person may apply to the registrar for a licence to provide clearing house services to an exchange. 30

(2) An application for such a licence must be—

- (a) made in the manner and contain the information prescribed by the registrar;
- (b) accompanied by— 35
  - (i) particulars of the applicant's proposed appointment by an exchange;
  - (ii) the application fee prescribed by the Minister; and
  - (iii) such other information as the registrar may reasonably require.

(3) The registrar must give notice of an application for a clearing house licence in two national newspapers at the expense of the applicant. The notice must state—

- (a) the name of the applicant;
- (b) the period within which objections to the application may be lodged with the registrar. 40

lenhlawulo noma isinxephezelo, lowo mbiko unamandla afanayo nesinqumo senkantolo sokukhokhisa lowo muntu okweleta inhlango ezilawulayo leyo mali ebhalwe kuwo.

(12) Lesi sigaba asidungi amalungelo omthetho ojwayelekile omuntu ohlukunyezwe wukwepulwa komthetho noma wokwehluleka ukuhambisana nawo lapho efuna khona imali yesinxephezelo, ngaphandle kwesimo lapho leyo mali seyaqoqwa ngaphansi kwesigatshana (1). 5

(13) Imithetho kufanele ichaze inhloso yokwaba inhlawulo njengoba iphawulwe esigatshaneni (1).

### Imigomo yokunciphisa isibophezelo sesikweletu

62. Ayikho inhlango ezilawulayo, inhloko yenhlango, omunye wezikhulu, isisebenzi noma omele inhlango ezilawulayo noma ilunga lesigungu sokulawula noma lekomidi lokulawula inhlango ezilawulayo oyobekwa icala ngokulahlekelwa noma ngomonakalo oyodaleka kumuntu ngesizathu sanoma yini eyenziwe noma ekhohlwe— 10

- (a) yinhlangano ezilawulayo, inhloko yenhlango, omunye wezikhulu, isisebenzi noma ommele inhlango noma ilunga; 15
- (b) ogunyazelwe ukusebenza noma obambe iqhaza, lapho eqhube khona noma yimuphi omunye wemisebenzi ngokwethembeka noma ngobudedengu ngaphansi noma kulo Mthetho, imibandela yokubhalisa emakethe yezimali noma imithetho noma imilayelo yenhlango ezilawulayo. 20

### Imininingwane edalulwa yinhlangano ezilawulayo

63. Ngale kwemibandela ephikisayo kunoma yimuphi umthetho, inhlango ezilawulayo ingadalula imininingwane ephathelene noma esukela emisebenzini yayo maqondana nanye inhlango ezilawulayo noma umkhandlu owengamele, akukhathalekile ukuthi ingaphakathi ezweni noma emazweni angaphandle, inqobo nje uma lokho okudaluliwe kuyothuthukisa izinhloso zalo Mthetho eziphawulwe esigabeni -2. 25

## ISAHLUKO VI

### INDLU EBHALISA UKUDAYISELANA NGAMASHEYA

*Ukukhipha invume yendlu ebhalisa ukudayiselana ngamasheya* 30

#### Isicelo semvume yendlu ebhalisa ukudayiselana ngamasheya

64. (1) Umuntu angafaka isicelo semvume yendlu ebhalisa ukudayiselana ngamasheya kumlawuli-sikhungo.

(2) Isicelo saleyo mvume kufanele—

- (a) senziwe ngendlela futhi siqkathe imininingwane enqunywe ngumlawuli-sikhungo; 35
- (b) siphelzelwe—
  - (i) yimininingwane yomuntu ophakanyiselwa ukuqashwa yisikhungo; (ii) yimali yokufaka isicelo enqunywe nguNgqongqoshe;
  - (iii) ngolunye ulwazi olungacatshangwa ngumlawuli-sikhungo njengolubalulekile. 40

(3) Umlawuli-sikhungo kufanele akhiphe emaphephandabeni amabili kazwelonke isaziso sesicelo maqondana nomnyango wokwesula nokukhokhela amathuluzi adayisiwe, izindleko ziyokhokhwa yilowo ofake isicelo. Isaziso kumele sisho—

- (a) igama lomuntu ofake isicelo; 45
- (b) ubude besikhathi okungafakwa ngaso isikhalo sokuphikisa isicelo kumlawuli-sikhungo.

**General requirements applicable to applicant for clearing house licence**

- 65.** (1) An applicant for a clearing house licence must—
- (a) have the financial resources, and the management and human resources with appropriate experience, necessary for the operation of a clearing house in terms of this Act; 5
  - (b) comply with the requirements prescribed by the registrar for the provision of clearing house services;
  - (c) maintain infrastructure for the sustained provision of clearing house services; and
  - (d) maintain security and back-up procedures to ensure the integrity of its records of transactions. 10
- (2) The registrar may prescribe any of the requirements referred to in subsections (1)(a), (c), and (d) in greater detail.

**Licensing of clearing house**

- 66.** (1) The registrar may, after consideration of any objection received as a result of the notice referred to in section 64(3) and subject to the conditions which the registrar may consider appropriate, grant a clearing house licence if— 15
- (a) the applicant complies with the relevant requirements of this Act; and
  - (b) the objects of this Act referred to in section 2 will be furthered by the granting of a clearing house licence. 20
- (2) The clearing house licence must specify whether the clearing house may provide both clearing and settlement services, or either clearing or settlement services, the main office of the clearing house in the Republic and the places where the clearing house may be operated, and that the clearing house may not be operated at any other place without the prior written approval of the registrar. 25
- (3) A clearing house may at any time apply to the registrar for an amendment of the terms of the licence and the conditions subject to which the licence was granted.
- (4) (a) The registrar must give notice of an application for an amendment of the terms of a clearing house licence and the conditions subject to which the licence was granted in two national newspapers at the expense of the applicant. 30
- (b) The notice must state—
    - (i) the name of the applicant;
    - (ii) the nature of the proposed amendments; and
    - (iii) the period within which objections to the application may be lodged with the registrar. 35

**Renewal, cancellation or suspension of clearing house licence**

**67.** Sections 49, 50 and 51 apply, with the changes required by the context, to the expiry, renewal, refusal of renewal, cancellation or suspension of a clearing house licence.

**Limitation of liability** 40

**68.** Section 62 applies with the changes required by the context to a clearing house.

**Amalgamation or transfer of clearing house**

- 69.** (1) Two or more clearing houses may amalgamate or merge with one another or with any self-regulatory organisation, or any of the assets and liabilities of a clearing house may be transferred to or taken over by any other clearing house or self-regulatory organisation with the approval of the registrar and subject to the conditions that he or she may prescribe. 45
- (2) Section 54 is applicable with the changes required by the context to an amalgamation or transfer referred to in subsection (1).

**Imibandela evamile esebenza kulowo ofake isicelo semvume yendlu ebhalisa ukudayiselana ngamasheya**

- 65.** (1) Ofake isicelo semvume sendlu ebhalisa ukudayiselana ngamasheya kufanele—
- (a) abe nemali eyenele, amakhono okuphatha nabasebenzi abanekhono elifanele abadingekayo ekuqhubeni ngendlela efanele umsebenzi wokuqondisa nokukhokhela imigidi yokudayiselana, ngokulandela lo Mthetho; 5
  - (b) ihambisane nemibandela yokuqondisa nokukhokhela yonke imigidi yokudayiselana ebekwe ngumlawuli-sikhungo;
  - (c) agcine ingqalasizinda evumela umsebenzi wokubhalisa ukudayiselana amasheya; 10
  - (d) ukugcina inqubo yokuphepha nokulondoloza imibhalo ngenhloso yokugcina isimo semibhalo nemigidi yokudayiselana iphephile.
- (2) Umlawuli-sikhungo anganquma ngokugcwele noma iyiphi imibandela ephawulwe isigatshaneni -(1) (a), (c) no (d). 15

**Ukukhipha imvume yendlu ebhalisa ukudayiselana amasheya**

- 66.** (1) Ngemuva kokubhekela zonke izicelo zokuphikisa eziwumphumela wesaziso esiphawulwe esigabeni 64(3) nangaphansi kwemibandela ecatshangwe ngumlawuli-sikhungo, umlawuli-sikhungo angakhipha imvume yendlu ebhalisa ukudayiselana amasheya nokukhokhela imigidi yokudayiselana, uma— 20
- (a) ofake isicelo ehambisana nemibandela yalo Mthetho;
  - (b) ukukhipha imvume yendlu ebhalisa ukudayiselana amasheya nokukhokhela imigidi yokudayiselana kudlondlobalisa izinhloso zalo Mthetho eziphawulwe esigabeni -2.
- (2) Indlu ebhalisa ukudayiselana amasheya nokukhokhela imigidi yokudayiselana kufanele ichaze ukuthi lendlu ingasebenza yini ukwesula nokubhala emabhukwini nokukhokhela imigidi yokudayiselana, noma okukodwa kwalokhu, inhloko-hhovisi ezinze eNingizimu Afrika nezindawo lapho iyosebenza khona nombandela wokuthi lendlu ngeke isebetsheziwe kwenye indawo ngaphandle kwemvume yomlawuli-sikhungo. 30
- (3) Noma nini, indlu ebhalisa ukudayiselana amasheya nokukhokhela imigidi yokudayiselana ingafaka isicelo sokuchibiyela imigomo nemibandela okwakhishwa ngayo imvume yokusebenza kumlawuli-sikhungo.

**Ukuvuselela, ukuhoxisa noma ukumisa imvume yendlu ebhalisa ukudayiselana amasheya** 35

- 67.** Izigaba 49, 50 no 51 zisebenza nezinguquko ezifunywanga yindikimba ephawula ngokuphela kwesikhathi semvume, ukuvuselela, ukwenqaba ukuvuselela, ukuhoxisa noma ukumisa imvume yendlu ebhalisa ukudayiselana amasheya.

**Umgomo wokunciphisa isibophezelo sesikweletu**

- 68.** Isigaba 62 sisebenza nezinguquko ezidingwa yindikimba yendlu ebhalisa ukudayiselana amasheya. 40

**Ukuhlanganisa noma ukwedlulisa indlu ebhalisa ukudayiselana amasheya**

- 69.** (1) Izindlu ezimbili noma ngaphezulu zingahlangana, zibumbane noma zedlulisele kwenye indlu amafa noma izikweletu noma zidliwe ngenye indlu ngemvume yomlawuli-sikhungo ngaphansi kwemibandela enqunye nguye. 45
- (2) Isigaba 54 sisebenza nezinguquko ezidingwa yindikimba yokuhlanganisa noma yokwedlulisa ephawulwe isigatshaneni (1).

## CHAPTER VII

### CODE OF CONDUCT

#### Code of conduct for authorised users

70. (1) The registrar must in an appropriate consultative manner prescribe a code of conduct for authorised users. 5
- (2) The code of conduct is binding on authorised users, their officers and employees and clients.

#### Principles of code of conduct

71. (1) The code of conduct must be based on the principle that an authorised user must— 10
- (a) act honestly and fairly, with due skill, care and diligence and in the interests of a client;
  - (b) uphold the integrity of the securities services industry;
  - (c) have and effectively employ the resources, procedures and technological systems for the conduct of its business; 15
  - (d) seek information from a client regarding his or her financial position, investment experience and objectives in connection with the securities service required; and
  - (e) act fairly in a situation of conflicting interests.
- (2) The code of conduct must in particular provide for— 20
- (a) the disclosure to a client of relevant material information, including the disclosure of actual or potential own interests of the authorised user;
  - (b) proper record-keeping;
  - (c) avoidance of fraudulent and misleading advertising, canvassing and market- 25
  - (d) proper safekeeping, separation and protection of funds and transaction documents of clients;
  - (e) where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover; and
  - (f) any other matter which is necessary or expedient to be regulated in the code of 30
- conduct for the achievement of the objects of this Act.

## CHAPTER VIII

### MARKET ABUSE

#### Definitions

72. In this Chapter, unless the context indicates otherwise— 35
- “**claims officer**” means the person appointed by the board to be responsible for considering and determining claims in terms of sections 77(8) and (9);
- “**deal**” includes conveying or giving an instruction to deal;
- “**document**” includes a book, record, security or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, 40
- electro-mechanically or optically or in any other form;
- “**executive director**” means a person appointed as such in terms of section 83(12);
- “**inside information**” means specific or precise information, which has not been made public and which—
- (a) is obtained or learned as an insider; and 45
  - (b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;
- “**insider**” means a person who has inside information—

## ISAPHLUKO VII

## INQUBO YOKUZIPHATHA

## Inqubo yokuziphatha yalabo abanegunya lokusebenza

70. (1) Umlawuli-sikhungo kufanele anqume inqubo yokuziphatha yalabo abanegunya lokusebenza. 5
- (2) Inqubo yokuziphatha iyisibophezelo kulabo abanegunya lokusebenza, izikhulu nabasebenzi kanye namakhasimende.

## Inkambiso yenqubo yokuziphatha

71. (1) Inqubo yokuziphatha kufanele igxile enkambisweni yokuthi lowo onegunya lokusebenza kufanele— 10
- (a) asebenze ngokwethembeka nangobulungiswa, ngokusebenzisa ikhono, ngokunakekela, ngokuzinikela nokusebenzela izifiso zekhasimende;
- (b) alonde isigqi semboni yemisebenzi yamathuluzi okuhweba emakethe;
- (c) abe nezinsiza nokuqasha abantu, izinhlelo zenqubo nobuchwepheshe bokuqhuba ibhizinisi obusebenza ngemfanelo; 15
- (d) afune ulwazi emakhasimendeni oluqondene nesimo sakhe sezimali, ulwazi lomsebenzi wokutshala izimali nezinhloso eziqondene nemisebenzi edingekayo yamathuluzi okuhweba;
- (e) ukusebenza ngobuqotho kwisimo sezifiso ezishayisanayo. 20
- (2) Inqubo yokuziphatha kufanele ihlinzekele kakhulu— 20
- (a) ukudalula ekhasimendeni imininingwane efanele ehlanganisa ukudalula izidingo zangempela nalezo ezingahlaluka zabantu abanegunya lomsebenzi;
- (b) ukugcinwa ngendlela efanele kwamabhuku;
- (c) ukugwema izikhangiso zomkhonyovu nokukhangisa okuholela ophathe, ukunxenxa nokukhangisa jikelele; 25
- (d) ukugcina ngendlela efanele ukwehlukana nokuvikela izikhwama nemigidi yokuhweba ngamathuluzi okuhweba’;
- (e) uma kwenzeka, iziqiniseko ezifanele noma isikhwama sesinxephezelo noma isivikelo somshwalense;
- (f) noma yiluphi udaba olubalulekile noma oluphuthumayo okufanele lusingathwe ngaphansi kwenqubo yokuziphatha ngenhloso yokufeza izinhloso zalo Mthetho. 30

## ISAPHLUKO VIII

## UKUXHAPHAZA IMAKETHE

## Izincazelo 35

72. Kulesi Sahluko, ngaphandle uma ingqikithi ilawula ngenye indella—
- “**Isikhulu esicubungula isicelo sokuhlomula**” sichaza umuntu oqokwe yisigungu osebenza ukucubungula nokunquma izicelo zokukhokhelwa ngokulandisa kwesigaba 77(8) no 9
- “**uhwelo**” sixubanisa ukwedlulisa noma ukukhipha umlayelo wesenzo sokudayiselana; 40
- “**umbhalo**” uhlanganisa umqulu, incwadi, ithuluzi lokuhweba noma i-akhawunti noma eminye imininingwane elondolozwe noma ebhalwe ngombiko wombani, ngesithombe, ngomshini, sambiko ngomshini noma ngendlela ebonakalayo noma ngolunye uhlobo; 45
- “**umqondisi ophakeme**” uchaza umuntu oqokwe ngokulandisa kwesigaba 83(12);
- “**ulwazi lwangaphakathi**” luchaza ulwazi oluthile noma oluqondile olungakaze lunikwe umphakathi—
- (a) olutholwe noma olufundwe njengemfihlo; 50
- (b) uma beludalulwe emphakathini, wulwazi olunomthelela kwintengo noma enanini lethuluzi lokuhweba emakethe yezimali;
- “**umuntu wangaphakathi**” uchaza umuntu unolwazi lwangaphakathi—

- (a) through—
- (i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or
  - (ii) having access to such information by virtue of employment, office or profession; or
- (b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);
- “market abuse rules”** means the rules made under section 82(2)(g);
- “market corner”** means any arrangement, agreement, commitment or understanding involving the purchasing, selling or issuing of securities listed on a regulated market—
- (a) by which a person, or a group of persons acting in concert, acquires direct or indirect beneficial ownership of, or exercises control over, or is able to influence the price of, securities listed on a regulated market; and
  - (b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of the securities listed on a regulated market, as reflected through the facilities of a regulated market, is or is likely to be abnormally influenced or arbitrarily dictated by such person or group of persons in that the said trading price deviates or is likely to deviate materially from the trading price which would otherwise likely have been reflected through the facilities of the regulated market on which the particular securities are traded;
- “person”** includes a partnership and any trust;
- “public sector body”** means—
- (a) all spheres of the government of the Republic or of any other country or territory;
  - (b) the South African Reserve Bank; or
  - (c) the central bank of any country or territory outside the Republic,
- but does not include the Public Investment Commissioners established by section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);
- “regional court”** means a court established for a regional division under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
- “regulated market”** means any market, whether domestic or foreign, which is regulated in terms of the laws of the country in which the market conducts business as a market for dealing in securities listed on that market.

### *Offences*

#### **Insider trading**

- 73.** (1) (a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—
- (i) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;
  - (ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.
- (2) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she—
- (i) is an authorised user and was acting on specific instructions from a client, save where the inside information was disclosed to him or her by that client;



- (a) (i) ngokuba ngumqondisi, isisebenzi, umnikazi wamasheya abhaliswe emakethe elawulwayo othintekayo ekukhipheni ulwazi lwangaphakathi noma;
- (ii) ngamandla okufinyelela kulolo lwazi ngesizathu sokuqashwa, sokusebenza ehovisi noma ngokuba kulowo mkhakha womsebenzi; 5
- (b) lapho lowo muntu eqonda ukuthi umthombo wolwazi oqondile noma ngandlela thize yilowo muntu oqondwe endimeni- (a)
- “imithetho yokuxhaphaza imakethe”** ichaza imithetho eyenziwe ngaphansi kwesigaba -83(2)(g);
- “ikhona lemakethe”** ichaza noma yimaphi amalungiselelo, isivumelwane, isibophezelo noma ulwazi oluthinta ukuthenga, ukudayisa noma ukwedlulisa amathuluzi okuhweba emakethe yezimali abhalisiwe— 10
- (a) lapho umuntu noma ithimba labantu elisebenza ngokuhlanganyela lithenga noma lithola ubunini noma lisebenzisa amandla okulawula nokuba negalelo ekushintsheni intengo yamathuluzi okuhweba emakethe yezimali; 15
- (c) lapho umthelela wamalungiselelo, isivumelwane, isibophezelo noma ulwazi lunethuba lokuwunga kakhulu intengo yokuthengisa emathuluzini okuhweba emakethe yezimali noma isenzo somuntu noma idlanzana esiholela ekushintsheni kakhulu intengo yokudayisa yamathuluzi okuhweba noma isimo esingashintsha kakhulu inani lentengo kuleyo ejwayelekile ebezi zithengisa ngayo lawo mathuluzi okuhweba emakethe yezimali; 20
- “umuntu”** ubandakanya abasebenza ngokubambisana nanoma yimuphi umfelandawonye
- “isigungu semboni yomphakathi”** sichaza—
- (a) yonke iminyango kahulumeni waseNingizimu Afrika noma elinye izwe noma umbuso; 25
- (b) ibhange-Ngodla laseNingizimu Afrika;
- (c) ibhange-Ngodla lanoma yiliphi izwe noma umbuso ongaphandle kweNingizimu Afrika, kodwa elingahlanganene neKhomishani Yokutshala Izimali eMphakathini esungulwe yisigaba 2 soMthetho Wokutshala Izimali eMphakathini we-1984 (Umthetho uNo. 45 we-1984); 30
- “inkantolo yesifunda”** ichaza inkantolo esungulelwe iziko lesifunda ngaphansi koMthetho Wezinkantolo zeziMantshi ka 1944 (Umthetho uNo. 32 we 1944);
- “imakethe elawulwayo”** ichaza imakethe, kungaba ngeyasekhaya noma yakwamanye amazwe elawulwa ngaphansi kwemithetho yezwe lapho imakethe iqhuba khona ibhizinisi njengomhwebi wasemakethe odayisa amathuluzi abhalisiwe okuhweba emakethe yezimali. 35

### *Ukwephula umthetho*

#### **Ukuhweba ngolwazi lwangaphakathi**

73. (1) (a) Umuntu wangaphakathi owaziyo ukuthi unolwazi lwangaphakathi nohweba ngqo noma ngandlela thize ngamathuluzi okuhweba noma othuma omunye umuntu ngalezo zinsiza ezibhaliswe emakethe elawulwayo nopotshoza ulwazi ngawo noma okungenzeka athinteke ngalolo lwazi, wephula umthetho. 40
- (b) Umuntu wangaphakathi nakuba engenalo icala ngokuhlonza kwendima (a) uma lowo muntu wangaphakathi eveza ubufakazi obunozinkomba eziqinile zokuthi— 45
- (i) wayesebenza ukuqedelela ibhizinisi lokuhweba ngethuluzi elithintekayo njengencazelo yesigaba -440A soMthetho Wezinkampani;
- (ii) uphenduke umuntu wangaphakathi ngemuva kokuba enike umlayelo wokuhweba umuntu onegunya lokusebenza nalapho umlayelo ungazange uguqulwe nhlobo ngemuva kokusebenza ngaphakathi. 50
- (2) (a) Umuntu wangaphakathi owaziyo ukuthi unolwazi futhi osebenzela ngqo noma ngandlela thize omunye umuntu onamathuluzi okuhweba ezibhaliswe emakethe elawulwayo nopotshoza ulwazi lwangaphakathi noma okungaphazamisa imakethe, wephula umthetho.
- (b) Umuntu wangaphakathi nakuba engenalo icala ngokuhlonza kwendima (a) uma lowo muntu wangaphakathi eveza ubufakazi obuqinile bokuthi— 55
- (i) ungumuntu onegunya futhi obesebenza ngolwazi ngemilayelo ethile yekhasimende, akukhathalekile ukuthi ulwazi lwangaphakathi anikwe lona yikhasimende beluvela kuphi;

- (ii) was acting on behalf of a public sector body in pursuit of monetary policy, policies in respect of exchange rates, the management of public debt or external exchange reserves; or
- (iii) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act; 5
- (iv) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.

(3) (a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence. 10

(b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information. 15

(4) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it commits an offence. 20

### Publication

74. (1) For the purposes of the definition of “inside information”, information is regarded as having been made public in circumstances which include, but are not limited to, the following:

- (a) When the information is published in accordance with the rules of the relevant regulated market for the purpose of informing clients and their professional advisers; 25
- (b) when the information is contained in records which by virtue of any enactment are open to inspection by the public; or
- (c) when the information can be readily acquired by those likely to deal in any listed securities— 30
  - (i) to which the information relates; or
  - (ii) of an issuer to which the information relates; or
- (d) when the information is derived from information which has been made public. 35

(2) Inside information which would otherwise be regarded as having been made public must still be so regarded even though—

- (a) it can be acquired only by persons exercising diligence or observation, or having expertise;
- (b) it is communicated only on payment of a fee; or 40
- (c) it is only published outside the Republic.

### Prohibited trading practices

75. (1) No person may—

- (a) either for such person’s own account or on behalf of another person, directly or indirectly use or knowingly participate in the use of any manipulative, improper, false or deceptive practice of trading in a security listed on a regulated market, which practice creates or might create— 45
  - (i) a false or deceptive appearance of the trading activity in connection with; or
  - (ii) an artificial price for, 50
    - that security;
- (b) place an order to buy or sell listed securities which, to his or her knowledge will, if executed, have the effect contemplated in paragraph (a).

(2) A person who contravenes subsection (1) commits an offence.

(3) Without limiting the generality of subsection (1), the following are deemed to be manipulative, improper, false or deceptive trading practices: 55

- (a) Approving or entering on a regulated market an order to buy or sell a security listed on that market which involves no change in the beneficial ownership of that security;

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- (ii) wayethunye yiziko lemboni kahulumeni egcina imisebenzi yenqubomgomo elawula izimali ezweni, inqubomgomo ephathelene nentengo yezikhungo zemakethe yezimali, ukusingatha isikweletu sikahulumeni noma isikhwama sesikhungo sokuhweba sangaphandle kwezwe;
- (iii) wayesebenza ukuqedela lowo mgidi othintekayo ochazwe esigabeni-440A woMthetho Wezinkampani; 5
- (iv) uphenduke umuntu wangaphakathi ngemuva kokukhipha umyalelo wokuhweba kogunyaziwe nokuthi lowo myalelo awuzange uguquke ngemuva kokusebenza ngaphakathi.
- (3) (a) Umuntu wangaphakathi owaziyo ukuthi unolwazi lwangaphakathi noludalulela omunye umuntu, uyobe wephula umthetho. 10
- (b) Ngaphandle kwendima (a), umuntu wangaphakathi akanalo icala njengoba isho lendima uma lowo muntu wangaphakathi eveza ubufakazi obunezinkomba eziqinile zokuthi wadalula ulwazi lwangaphakathi ngesikhathi eqhuba umsebenzi wakhe ojwajelekile ngesikhathi eqashiwe, esehhovisi noma ngokwesikhundla sakhe futhi evuma ukuthi lolo lwazi lwaluyimfihlo yangaphakathi. 15
- (4) Umuntu wangaphakathi owaziyo ukuthi unolwazi lwangaphakathi nokhuthaza noma ofaka umoya komunye noma odikibalisa noma omisa omunye umuntu ekuhwebeni ngamathuluzi ezithile ezibhaliswe emakethe yezimali noma lawo mathuluzi ezingase zithinteke, zeephula umthetho. 20

**Ukushicilela**

74. (1) Ngokwenhloso yencazelo "ulwazi lwangaphakathi", ulwazi luthathwa njengalolo olwenekelwe umphakathi ngaphansi kwezimo ezihlanganisa kodwa ezingapheleli kulezi ezilandelayo:
- (a) uma ulwazi lushicilelwe ngokuhambisana nemithetho ehlobene nezimakethe ezilawulwayo ngenhloso yokunika ulwazi amakhasimende nabeluleki bawo; 25
- (b) uma ulwazi luqukethwe emibhalweni evuleleke ukuhlolwa wumphakathi;
- (c) uma ulwazi lungatholwa kalula yilabo abahweba ngamathuluzi abhalisiwe okuhweba-
- (i) mayelana nolwazi oluthintekayo; 30
- (ii) luhlanganisa odayisa ithuluzi nolwazi; noma
- (d) uma ulwazi lutholwe eminingwaneni evezwe emphakathini.
- (2) Ulwazi lwangaphakathi lungathathwa njengolutholalalayo emphakathini nakuba—
- (a) lungatholwa kuphela ngabantu abaqaphelayo noma abanekhono noma abanobuchule; 35
- (b) lwedluliswa kuphela ngemuva kokukhokha imali; noma
- (c) lushicilelwe kuphela ngaphandle kwemingcele yaseNingizimu Afrika.

**Imikhuba yokuhweba enqatshelwe**

75. (1) Akekho umuntu— 40
- (a) ongasebenzela isikhwama sakhe noma omunye umuntu, ngendlela eqondile noma ngandlela thize abambe iqhaza ebe enolwazi noma azibandakanye kunoma yimuphi umkhuba wokuhweba ngamathuluzi okuhweba onenkohliso, ongalungile noma onamanga noma anike isithombe esiyize—
- (i) lapho eveza khona isithombe esingamanga noma esiyinkohliso esixhumene nohwebo ngamathuluzi noma ngensiza ethile; 45
- (ii) ngentengo eyize; ngaleyo thuluzi lokuhweba;
- (b) ofaka isicelo sokuthenga noma sokudayisa izinsiza zezoluvikela emakethe yezimali ezibhalisiwe owaziyo ukuthi uma kungenzeka siphumelela siyoba nomthelela ophawulwe endimeni (a). 50
- (2) Umuntu ophambana nesigatshana (1) wephula umthetho.
- (3) Ngaphandle kokunqinda lokho okuvamile okuhlinzekwe ngaphansi kwesigatshana -(1), lokhu okulandelayo kuthathwa njengomkhuba wokuhweba oyinkohliso, ongenaqiniso, onamanga noma onobuqili: 55
- (a) Ukwemukela noma ukungena emakethe yokuhweba elawulwayo ngenhloso yokuthenga noma yokudayisa ngamathuluzi okuhweba emakethe okungabandakanyi uguquko ebuninini alelo thuluzi lokuhweba;

- (b) approving or entering on a regulated market an order to buy or sell a security listed on that market with the knowledge that an opposite order or orders of substantially the same size at substantially the same time and at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating— 5
- (i) a false or deceptive appearance of active public trading in connection with; or
- (ii) an artificial market price for, that security;
- (c) approving or entering on a regulated market orders to buy a security listed on that market at successively higher prices or orders to sell a security listed on that market at successively lower prices for the purpose of unduly or improperly influencing the market price of such security; 10
- (d) approving or entering on a regulated market an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of a security listed on that market; 15
- (e) approving or entering on a regulated market an order to buy or sell a security listed on that market during any auctioning process or pre-opening session and cancelling such order immediately prior to the market opening, for the purpose of creating or inducing a false or deceptive appearance of demand for or supply of such security; 20
- (f) effecting or assisting in effecting a market corner;
- (g) maintaining at a level that is artificial the price for dealing in securities listed on a regulated market;
- (h) employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the facilities of a regulated market; or 25
- (i) engaging in any act, practice or course of business in respect of dealings in securities listed on a regulated market which is deceptive or which is likely to have such effect:

Provided that the employment of price-stabilising mechanisms that are regulated in terms of the rules or listing requirements of an exchange does not constitute a manipulative, improper, false or deceptive trading practice for the purposes of this section or insider trading for the purposes of sections 73 and 77. 30

(4) A purchase or sale of securities listed on a regulated market does not, for the purposes of subsection (3)(a), involve a change in the beneficial ownership if a person who has a beneficial interest in those securities before the purchase or sale, or a person associated with that person in relation to those securities, directly or indirectly holds a beneficial interest in those securities after the purchase or sale. 35

#### **False, misleading or deceptive statements, promises and forecasts**

**76.** (1) No person may, directly or indirectly, make or publish in respect of listed securities, or in respect of the past or future performance of a public company— 40

- (a) any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the person knows, or ought reasonably to know, is false, misleading or deceptive; or 45
- (b) any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the person knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.

(2) A person who contravenes subsection (1) commits an offence. 50

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- (b) ukwemukela noma ukungena emakethe yokuhweba elawulwayo ngenhloso yokuthenga noma yokudayisa ngamathuluzi kuleyo makethe ube unolwazi lokuthi kukhona ofake isicelo esincintisanayo noma esifana ncimishi ngokwesibalo, intengo nesisindo nangesikhathi esisodwa noma esikhathini esizayo lapho umuntu oyedwa noma abehlukene behlose khona ukudala— 5
- (i) isithombe esingamanga noma esikhohlisayo ngohwebo lwamathuluzi emphakathini noma;
- (ii) intengo eyize; ngalelo thuluzi lokuhweba;
- (c) ukwemukela noma ukungena emakethe yokuhweba elawulwayo ngenhloso yokuthenga ithuluzi lokuhweba elibhaliswe emakethe ngentengo ephezulu noma umyalelo wokudayisa ithuluzi lokuhweba elibhaliswe kuleyo makethe ngentengo encane ngenhloso yokuphazamisa intengo yokudayisa le thuluzi emakethe yezimali; 10
- (d) ukwemukela isicelo sokuthenga noma ukungena emakethe elawulwayo ngesikhathi sekuyovalwa ngenhloso yokuguqula noma yokulonda intengo yokuvula yamathuluzi okuhweba kuleyo makethe; 15
- (e) ukwemukela isicelo sokuthenga noma ukungena emakethe yohwebo ngaphambi kokuvulwa ngokusemthethweni kohwebo ngamathuluzi nokumisa ngokushesha leso sicelo sokuthenga ngaphambi kokuvula kwemakethe ngenhloso yokudala noma yokubumba isithombe esiyinkohliso sedumela lamathuluzi athile okuhweba; 20
- (f) ukuphumelelisa noma usizo lokuchumisa isenzo sokuthenga noma sokudayisa emakethe;
- (g) ukugcina ezingeni eliyize intengo yokuhweba ngamathuluzi abhaliswe emakethe elawulwayo; 25
- (h) Ukusebenzisa noma yisiphi isikhali, uhlelo, insiza noma ithuluzi ngenhloso yokugunyatha omunye umuntu ngenxa yokuqhuba umgidi wokudayiselana owenziwe ngokusebenzisa izinsiza zemakethe elawulwayo;
- (i) ukubandanyeka esenzweni, emkhubeni noma ohlelweni lwebhizinisi oluqondene nokuhweba ngamathuluzi okuhweba ezibhalisiwe emakethe elawulwayo, okuyisenzo esiyinkohliso noma esinomthelela wokukhohlisa; 30
- Inqobo uma ukusebenzisa amalinge okusimamisa intengo elawulwa ngokwemibandela yemithetho noma yokubhalisa esikhungweni semakethe yamasheya engaholeli kwinqubo eyengayo, engalungile, engamanga noma eyinkohliso ngokwenghloso yalesi sigaba noma ngolwazi lwangaphakathi okuchazwe yisigaba 73 no 77. 35
- (4) Ngokwenghloso yesigatshana (3)(a), ukuthenga noma ukudayisa amathuluzi okuhweba ezibhaliswe emakethe yamathuluzi ezimali akubandakanyi uguquko ebuninini uma umuntu obenomhlomulo kulezo mathuluzi ngaphambi kokuthenga noma kokudayisa engumuntu onobuhlobo nomnikazi wamathuluzi ngendlela eqondile noma enye futhi eba nomhlomulo othile ngemuva komcimbi wokuthenga noma wokudayiswa kwethuluzi. 40

**Imibiko engamanga, edukisayo noma eyinkohliso, izethembiso nezibikezelo**

76. (1) Akekho umuntu oyoshicilela ngqo noma ngandlela thize umbiko ngamathuluzi okuhweba isimo esenzeke esikhathini esedlule noma ngekusasa lenkampani— 45
- (a) noma yimuphi umbiko, isethembiso noma isibikezelo esinezinkomba zokuthi ngesikhathi wenziwa nangaphansi kwezimo ezikhona ongamanga, odukisayo noma oyinkokhiso noma ophendukezela amaqiniso nowaziwa kahle ngumuntu owukhiphayo ukuthi awunabo ubuqiniso, uyedukisa noma uyinkohliso; noma 50
- (b) yimuphi umbiko, isethembiso noma isibikezelo esishiya ngaphandle iqiniso elibalulekile ngamabomu kube kunomuntu owaziwa ngokushiywa ngaphandle kweqiniso, okunomthelela wokuthi umbiko, isethembiso noma isibikezelo sibe ngamanga, sidukise noma sibe nenkohliso ngesizathu sokushiywa ngaphandle kwalelo qiniso. 55
- (2) Umuntu ophambana nesigatshana (1), wephula umthetho.

*Civil liability***Civil liability resulting from insider trading**

77. (1) An insider who knows that he or she has inside information and who—
- (a) deals directly or indirectly or through an agent, for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it; 5
  - (b) makes a profit or would have made a profit if he or she had sold the securities at any stage, or avoids a loss, through such dealing; and
  - (c) fails to prove, on a balance of probabilities, any one of the defences set out in section 73(1)(b), 10
- is liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—
- (i) the equivalent of the profit or loss referred to in paragraph (b);
  - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i); 15
  - (iii) interest; and
  - (iv) costs of suit on such scale as may be determined by the court.
- (2) An insider who knows that he or she has inside information and who—
- (a) deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it; 20
  - (b) makes a profit for that other person or would have made a profit if the securities had been sold at any stage, or avoids a loss, through such dealing; and 25
  - (c) fails to prove any one of the defences set out in section 73(2)(b) on a balance of probabilities,
- is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—
- (i) the equivalent of the profit or loss referred to in paragraph (b); 30
  - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
  - (iii) interest;
  - (iv) the commission or consideration received for such dealing; and 35
  - (v) cost of suit on such scale as may be determined by the court.
- (3) An insider who knows that he or she has inside information and who—
- (a) discloses the inside information to any other person; and
  - (b) fails to prove on a balance of probabilities the defence set out in section 73(3)(b), 40
- is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board—
- (i) if the other person dealt in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing; 45
  - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i); 50
  - (iii) interest;
  - (iv) the commission or consideration received for such disclosure; and
  - (v) cost of suit on such scale as may be determined by the court.

*Isinyathelo somthetho sokufuna isinxephezelo***Isinyathelo somthetho sokufuna isinxephezelo esidalwa wuhwebo ngolwazi lwangaphakathi**

77. (1) Umuntu wangaphakathi owaziyo ukuthi unolwazi lwangaphakathi—
- (a) osebenza ngqo noma ngandlela thize nomuntu ohwebayo, okungenzeka asebenzise isikhwama sakhe sokuhweba ngamathuluzi okuhweba abhaliswe emakethe elawulwayo athintekayo elwazini nokungenzeka athinteki ngalolo lwazi; 5
  - (b) owenza inzuzo noma obengayenza uma lawo mathuluzi okuhweba bezi ethengisiwe noma ngalolo lwazi akwazi ngalo ukugwema ukulahlekelwa ngenxa yolwazi oluthiwe; 10
  - (c) ohluleka ukuveza amaphuzu okuzivikela amiswe esigabeni 73(1)(b), osolwa ngolwazi lwangaphakathi, angabekwa icala kunoma iyiphi inkantolo enamandla afanele lapho engahlawula khona esigungwini-
    - (i) imali elingana nenzuzo noma nokulahlekelwa okuphawulwe endimeni (b); 15
    - (iii) inhlawulo ngenhloso yokunxephezela noma ukujezisa, leso samba siyonqunywa ngokubona kwenkantolo kodwa akufanele seqe kwisamba esiphindwe kathathu kuleyo ephawulwe kwindinyana (i); 20
    - (iv) inzalo; 20
    - (v) izindleko zecala eziwumthamo onganqunywa yinkantolo.
- (2) Umuntu ohweba ngolwazi lwangaphakathi owaziyo ukuthi unolwazi lwangaphakathi—
- (a) ohweba ngqo nomunye umuntu noma oxhumene naye ngandlela thize ngamathuluzi okuhweba abhaliswe emakethe elawulwayo nokuthinteka ngawo ulwazi lwangaphakathi nokungenzeka athinteki; 25
  - (b) owenzela lowo muntu inzuzo noma obekungenzeka ahlomule inzuzo uma lawo mathuluzi ebethengisiwe ngesikhathi esithile noma okwaze ukugwema ukulahlekelwa ngenxa yolwazi lwangaphakathi;
  - (c) ohluleka ukuveza ubufakazi bokuzivikela obuphawulwe esigabeni 73(2)(b) uma kucutshungulwa isimo, ngokulandisa kwesigatshana (5), ngemuva kwecala elifakwa enkantolo eseduze nenamandla afanele, engashushiswa ngenhloso yokukhokhela isigungu—
    - (i) isamba esilingana nenzuzo noma ukulahlekelwa okuphawulwe endimeni (b); 35
    - (ii) inhlawulo ngenhloso yokunxephezela noma yokujezisa eyinani eliyonqunywa ngokubona kwenkantolo kodwa ingedluli kwephindwe kathathu kuleyo ephawulwe endinyaneni (i);
    - (iii) inzuzo;
    - (iv) ikhomishini noma umhlomulo otholwe ngokuqhuba lowo mgidi wohwebo; 40
    - (vi) izindleko zecala eziwumthamo onqunywe yinkantolo.
- (3) Umuntu ohweba ngolwazi lwangaphakathi owaziyo ukuthi unolwazi lwangaphakathi—
- (a) odalulela omunye umuntu ulwazi lwangaphakathi; 45
  - (b) ohluleka ukuveza ubufakazi bokuzivikela obuphawulwe esigabeni- 73(3)(b), ngokulandisa kwesigatshana (5), angabekwa icala yinkantolo eseduze nenamandla ukuba akhokhele isigungu—
    - (i) uma omunye umuntu ehweba ngamathuluzi ezibhaliswe emakethe elawulwayo ezithintekayo olwazini lwangaphakathi noma okungenzeka athinteki ngalolo lwazi, inhlawulo kungaba yisamba esilingana nenzuzo eyenziwe yilowo muntu noma abengase ayenze uma amathuluzi okuhweba ebethengisiwe ngesikhathi esithile noma inhlawulo elingana nokulahlekelwa okugwenyiwe ngenxa yolwazi lwangaphakathi olutholiwe; 50
    - (ii) inhlawulo yenhloso yesinxephezelo noma yesijeziso eyisamba esinqunywe ngokubona kwenkantolo kodwa esingedluli kwisamba esiphindwe kathathu kuleso esiphawulwe endinyaneni (i); 55
    - (iii) inzuzo;
    - (iv) ikhomishini noma umhlomulo otholwe ngolwazi oludaluliwe; 60
    - (v) izindleko zecala eziwumthamo onganqunywa yinkantolo.

- (4) An insider who knows that he or she has inside information and who encourages or causes any other person to deal in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board— 5
- (a) if the other person dealt in such securities, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;
  - (b) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (a); 10
  - (c) interest;
  - (d) the commission or consideration received for such encouragement; and
  - (e) cost of suit on such scale as may be determined by the court.
- (5) If the other person referred to in subsections (2), (3) and (4) is liable as an insider in terms of subsection (1), the insider referred to in subsections (2), (3) and (4) is jointly and severally liable together with that other person to pay the amounts set out in subsection (2)(i), (iii) and (v), (3)(i), (iii) and (v), or (4)(a), (c) and (d), as the case may be. 15
- (6) The profit made, or the profit that would have been made if the listed securities had been sold at any stage, or the loss avoided, is determined in the discretion of the court which must have regard to factors such as the consideration for the dealing referred to in subsections (2), (3) and (4), the time between the relevant dealing and the publication of the inside information and any other relevant factors. 20
- (7) Any amount recovered by the board as a result of the proceedings contemplated in this section or as a result of an agreement of settlement must be deposited by the board directly into a specially designated trust account and— 25
- (a) the board is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (8) and an additional sum equal to 10% of the gross amount so recovered less any amount of costs actually recovered from the other party prior to the finalisation of the distribution account; 30
  - (b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (8) in accordance with subsection (9); 35
  - (c) any amount not paid out in terms of paragraph (b) accrues to the board.
- (8) The balance referred to in subsection (7)(b) must be distributed to all claimants who—
- (a) submit claims to the directorate within 90 days from the date of publication of a notice in two national newspapers inviting persons who are affected by the dealings referred to in subsections (1) to (4) to submit their claims; and 40
  - (b) prove to the reasonable satisfaction of the claims officer that—
    - (i) they were affected by the dealings referred to in subsections (1) to (4); and
    - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in subsections (1) and (2), or the other person referred to in subsections (3) and (4) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or 45
    - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day, as the insider or other person referred to in subparagraph (ii). 50
- (9) Subject to subsection (10), a claimant must receive an amount—



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- (4) Umuntu wangaphakathi owaziyo ukuthi unolwazi lwangaphakathi nokhuthaza noma obangela ukuba omunye umuntu ahwebe ngamathuluzi ezibhaliswe emakethe elawulwayo ezithintekayo elwazini lwangaphakathi noma ezingase zithinteke, angabekwa icala lokukhokhela isigungu yinkantolo eseduze nenamandla ngemuva kwesicelo esifakwe yisigungu, lokhu kungenzeka ngokulandisa kwesigatshana -(5)— 5
- (a) lowo muntu ohwebe ngalezo mathuluzi angahlawuliswa isamba esilingana nenzuzo etholwe nguye noma abengase ayenze uma izinsiza ebezithengisiwe ngesikhathi esithile noma isamba sokulahlekelwa esigwenyiwe ngenxa yolwazi lwangaphakathi olusetshenziwe; 5
- (b) inhlawulo yesinxephezelo noma yesijeziyo eyisamba esinqunywe yinkantolo kodwa esingedluli esambeni esiphindwe kathathu kuleyo ephawulwe endimeni (a); 10
- (c) inzuzo; 15
- (d) ikhomishani noma umhlomulo walokho kukhuthaza; 15
- (e) izindleko zecala eziwumthamo onganqunywa yinkantolo. 15
- (5) Uma lowo muntu ophawulwe esigatshaneni (2), (3) no (4) ebekwa icala njengomuntu wangaphakathi oqagulwe esigatshaneni (1), ohweba ngolwazi lwangaphakathi ochazwe kwizigatshana -(2), (3) no -(4), uyobekwa icala kanye nalowo muntu lapho eyokhokhiswa khona isamba esibekwe esigatshaneni- (2)(i), (iii) no (v), (3)(i), (iii) no (v) noma -(4)(a), (c) no (d), kuye ngesimo ngasinye. 20
- (6) Inzuzo eyenziwe noma inzuzo ebingenziwa ngamathuluzi okuhweba ezibhalisiwe nganoma yisiphi isikhathi noma ukulahlekelwa obekungagwenywa iyonqunywa yinkantolo ngokubona kwayo ngemuva kokubhekela izimo okuqhutshwe ngazo uhwebo njengoba ziphawulwe esigatshaneni -(2), (3) no (4), ubude besikhathi phakathi komgidi wokuhweba nokushicilela ulwazi lwangaphakathi nemanye amaphuzu athintekayo. 25
- (7) Noma yimalini eqoqwe yisigungu ngomphumela wezinyathelo okukhulunywa ngazo ezibalulwe kulesi sigaba noma ngomphumela wesivumelwane sokukhokhelana kufanele ilondolozwe yisigungu kwi-akhawunti eyisipesheli yomfelandawonye emiselwe lemisebenzi, kanti— 30
- (a) isigungu sinelungelo lokuxebula ingxenyana yenkokhelo yaso yezindleko zonke ezidaleke ngesikhathi iqhuba lo msebenzi ukuze kulungiswe isimo nalapho icaza izimali zabantu abehlukene ngokulandisa kwesigaba -(8), ngaphezulu kwazo, ingadonsa isamba esilingana namaphesenti ayi-10 emali isiyonke eqoqiwe sekususwe leyo eqoqwe kwabanye abantu abathintekayo ngaphambi kokuqedelela ngokuphelele yonke imidati yesikhwama sokukhokhela abakweletwayo nabathintekayo; 35
- (b) uma ikhona insalela kufanele icazelwe labo abafake izicelo zokuhlomula njengoba silandisa isigatshana- (8) ngokuhambisana nesigatshana (9); 40
- (c) yonke imali engakhokhwanga ngokuchaza kwendima (b), ingena esikhwameni sesigungu. 40
- (8) Imali eyinsalela ephawulwe esigatshaneni- (7)(b), kufanele icazelwe bonke abafaka izicelo zesinxephezelo—
- (a) ezidluliswa eziko zingakapheli izinsuku ezingu 90 kusukela osukwini lokushicilelwa kwesaziso emphephandabeni amabili kazwelonke lapho kumenywa khona abantu abathintekayo ngodaba oluphawulwe esigatshaneni (1) no (4), inhloso yesaziso ukuba bethule izicelo zabo; 45
- (b) abaveza ubufakazi obenelisayo kwisikhulu sezinxephezelo—
- (i) sokuthi bathinteka ngempela wudaba lohwebo oluphawulwe esigatshaneni (1) kuya ku (4); 50
- (ii) esigamekweni lapho ulwazi lwangaphakathi ludalulwe emphakathini zingakapheli izinsuku ezinhlanu zokuhweba kusukela ngesikhathi umuntu wangaphakathi ophawulwe ezigatshaneni- (1) no (2) noma omunye umuntu oqagulwe ezigatshaneni (3) no (4) behwebe ngamathuluzi afanayo noma ngesikhathi esisodwa noma ngasiphi ngemuva kokuba umuntu wangaphakathi noma omunye ehwebile, ngaphambi kokuba lolo lwazi ludalulelwe emphakathini; noma 55
- (iii) kuzo zonke izigameko bahweba ngethuluzi elifanayo ngesikhathi esisodwa noma ngasiphi isikhathi emuva kwalolo suku olufanayo njengomuntu wangaphakathi noma omunye oqondwe endinyaneni (ii). 60
- (9) Ngokulandela isigatshana (10), ofake isicelo sesinxephezelo, kufanele athole isamba—

- (a) equal to the difference between the price at which the claimant dealt and the price, determined by the court or a settlement, that the claimant would have dealt if the inside information had been published at the time of dealing; or
- (b) equal to the pro rata portion of the balance referred to in subsection (7)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (8) by claimants, 5

whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.

(10) An amount awarded in proceedings contemplated in section 85 must be deducted from any amount claimed in terms of this section. 10

(11) The common law principles of vicarious liability apply to the civil liability established by this section.

### **Powers of directorate in civil proceedings**

**78.** (1) The directorate may withdraw, abandon or compromise any civil proceedings instituted in terms of section 77 but any agreement of compromise must be made an order of court and the amount of any payment made in terms of such compromise must be made public. 15

(2) Where civil proceedings have not been instituted, any agreement of compromise may, on application to the court by the board after due notice to the other party or parties, be made an order of court and the parties to the agreement and the amount of any payment made in terms of such agreement must be made public. 20

### *Procedural matters*

#### **Jurisdiction**

**79.** (1) Only a High Court or a regional court has jurisdiction to try any offence referred to in sections 73, 75 and 76 and to impose a penalty up to the maximum set out in section 115(a). 25

(2) For the purposes of subsection (1) and sections 77 and 81 a court of competent jurisdiction includes the court within whose jurisdiction the regulated market has its principal place of business or head office or in which any element of the dealing or offence occurred and it is not necessary to make any attachment to found or confirm jurisdiction. 30

#### **Assessment of fines and penalties**

**80.** (1) In the assessment of any penalty in terms of section 115(a), the court must take into account any award previously made under section 77 which arises from the same cause. 35

(2) In the assessment of any award under section 77, the court must take into account any penalty which arises from the same cause and previously imposed in terms of section 115(a).

#### **Attachments and interdicts**

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**81.** (1) On application by the board, a court may order the attachment of assets or evidence to prevent their concealment, removal, dissipation or destruction.

(2) The board may institute any interdict or interlocutory proceedings against a person who made a profit or avoided a loss or whom the board reasonably believes may have made a profit or avoided a loss as contemplated in section 77. 45

(3) Such proceedings may include proceedings to obtain an interdict to prevent the disposal of assets or of evidence.

- (a) esilingana naleso esiwumehluko phakathi kwentengo okwahweba ngayo ofake isicelo nentengo enqunywe yinkantolo noma okuvunyelwene ngayo nokuyintengo efana naleyo eyayingatholakala uma ulwazi lwangaphakathi lwalushicilelwe ngesikhathi sokudayiselana; .
- (b) esilingana nengxenyana ethile yensalela eqondiswe esigatshaneni -(7)(b), esibalwa ngokobudlelwane obuncike kwisamba esihlonzwe endimeni (a), lesi yisamba esihambisana naleso esinobufakazi ngokulandisa kwesigatshana (8) yilowo ofake isicelo sesinxephezelo, kuyoba yisamba esincane kunesinye lapho kuqhathaniswa, ngaphandle uma isikhulu sezinxephezelo sinquma ngokwaso ukuthi ofake isicelo kufanele athole imali encane noma angatholi lutho. 5
- (10) Isamba esikhishwe ngale nqubo ehlonzwe esigabeni 85 kufanele sidonswe kunoma iyiphi imali efunwe ngokwalesi sigaba. 10
- (11) Inkambiso yomthetho ovamile yesibophezelo sesikweletu iyasebenza emthethweni wokunxeshelwa osungulwe yilesi sigaba. 15

#### **Amandla eziko ezinyathelo zokufuna isinxephezelo**

- 78.** (1) Ingosi ingahoxisa, ilaxaze noma ibekezele inqubo yokuthatha izinyathelo zomthetho eziqalwa ngokulandisa kwesigaba- 77 kodwa isivumelwane sokubekezela kufanele senziwe ngaphansi kwesinqumo senkantolo kanjalo nanoma iyiphi inkokhelo eyenziwe ngaleyo ndlela kufanele idalulwe emphakathini. 20
- (2) Ngesicelo sasenkantolo esenziwa yisigungu ngemuva kokwaziswa okufanele kwamathimba athintekayo, lapho kungafakwananga khona enkantolo, noma yisiphi isivumelwane sokubekezela singathathwa njengesinqumo senkantolo kanti amathimba athintekayo kwisivumelwano nasemalini yanoma iyiphi inkokhelo ehlangene nesivumelwane kufanele kwaziswe umphakathi. 25

#### ***Inqubo elandelwayo***

#### **Amandla okulawula**

- 79.** (1) Inkantolo Ephakeme noma yeSifunda kuphela enamandla okuqula icala noma yisiphi isenzo sokwephula umthetho esiphawulwe esigabeni 73 no 76 nokukhokhisa inhlawulo ephezulu kakhulu enqunywe esigabeni 115(a). 30
- (2) Ngokwenhloso yesigatshana- (1) nezigaba 77 no 81, inkantolo enamandla okulawula nefanele ihlanganisa leyo nkantolo enamandla okuzinze kuyo imakethe elawulwayo noma lapho kukanise khona inhloko-hhovisi noma lapho kwaqhubeka khona umsebenzi othile noma ukwepulwa komthetho.

#### **Ukuhlaziya isijeziso nenhlawulo 35**

- 80.** (1) Ekuhlaziyeni noma iyiphi inhlawulo echazwe esigabeni 115(a), inkantolo kufanele ibhekele zonke izinqumo ezike zakhishwa esikhathini esedlule ngaphansi kwesigaba 77 ezivela ngaphansi kwesimo esifanayo. 30
- (2) Ekuhlaziyeni noma yisiphi isinqumo esikhishwe ngaphansi kwesigaba 77, inkantolo kufanele ibhekele noma iyiphi inhlawulo evela ngaphansi kwesimo esifanayo eyakhishwa esikhathini esedlule ngaphansi kwesigaba 115(a). 40

#### **Ukudla impahla nesivimbelo senkantolo**

- 81.** (1) Ngemuva kwesicelo esifakwa yisigungu, inkantolo inganquma ukudla amafa noma ivimbele ukufihlwa, ukususwa, ukulinyazwa nokushabalaliswa kwempahla. 45
- (2) Isigungu singafaka isicelo sokuvimbela noma sokwenqabela umuntu othile owenze inzuzo noma ogweme ukulahlekelwa noma lowo obonwa yisigungu njengomuntu ohlomulile noma ogweme ukulahlekelwa ngendlela ephawulwe esigabeni -77. 45
- (3) Lezi zinyathelo zingahlanganisa ukuthola isinqumo sokuvimbela ukudayiswa kwamafa nokulahlwa kobufakazi. 50

*Administration of this Chapter***Powers and duties of Financial Services Board**

**82.** (1) The board is responsible for the supervision of compliance with this Chapter.

(2) In addition to its powers in terms of the Financial Services Board Act the board may, subject to section 83—

- (a) investigate any matter relating to an offence referred to in sections 73, 75 and 76, including insider trading in terms of section 440F of the Companies Act and the Insider Trading Act committed before the repeal of that section and that Act; 5
- (b) institute such proceedings as are contemplated in this Chapter; 10
- (c) administer the proof of claims and distribution of payments in terms of section 77; 10
- (d) summon any person who is believed to be able to furnish any information on the subject of any investigation or to have in such person's possession or under such person's control any document which has bearing upon that subject, to lodge such document with the board, or to appear at a time and place specified in the summons, to be interrogated or to produce such document; and 15
- (e) interrogate any such person under oath or affirmation duly administered, and examine or retain for examination any such document: Provided that any person from whom any document has been taken and retained under this subsection must, so long as such document is in possession of the board, at that person's request and expense be allowed to make copies thereof or to take extracts therefrom at any reasonable time and under the supervision of the person in charge of the investigation; 20
- (f) in relation to a matter investigated in terms of paragraph (a), on the authority of a warrant, at any time without prior notice— 25
  - (i) enter any premises and require the production of any document;
  - (ii) enter and search any premises for any document;
  - (iii) open any strongroom, safe or other container which he or she suspects contains any document; 30
  - (iv) examine, make extracts from and copy any document or, against the issue of a receipt, remove such document temporarily for that purpose;
  - (v) against the issue of a receipt, seize any document;
  - (vi) retain any seized document for as long as it may be required for criminal or other proceedings, 35
 but the board may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph;
- (g) make market abuse rules after consultation with the directorate—
  - (i) concerning the administration of this Chapter by the board and the directorate; 40
  - (ii) concerning the manner in which investigations in terms of this Chapter are to be conducted;
  - (iii) concerning the notification of amounts received in terms of sections 77, the procedure for the lodging and proof of claims, the administration of trust accounts and the distribution of payments in respect of claims; 45
  - (iv) concerning meetings of the directorate;
  - (v) which are generally designed to ensure that the board and the directorate are able to perform their functions in terms of this Chapter;
  - (vi) dealing with the manner in which inside information should be disclosed and, generally, with the conduct expected of persons with regard to such information; 50
- (h) after consultation with the relevant regulated markets in the Republic, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter.

*Ukuphathwa kwalesi Sahluko***Amandla nemisebenzi yeSigungu seMisebenzi yeZimali**

82. (1) Isigungu sin esibophezelo sokuqapha ukuthi imigomo ebekwe kulesi Sahluko iyalandelwa.
- (2) Ngaphezulu kwamandla esinikwe wona wuMthetho weSigungu seMisebenzi yeZimali, ngegunya lesigaba 83, isigungu—
- (a) singaphenya noma yiluphi udaba oluphathelele nokwephula umthetho okuphawulwe esigabeni -73, 75 no 76 kuhlangele nokuhweba ngolwazi lwangaphakathi ngokulandisa kwesigaba- 440F soMthetho weziNkampani kanjalo noMthetho wokuHweba ngoLwazi Lwangaphakathi okwenzeke ngaphambi kokwesulwa kwaleso sigaba nalowo Mthetho; 10
  - (b) singaqalisa ngezinyathelo ezihlonzwe kulesi Sahluko;
  - (c) singenza umsebenzi wokucubungula zonke izicelo zezinxephezelo nokwaba inkokhelo echazwe esigabeni -77;
  - (d) singabiza noma yimuphi umuntu esikholwa wukuthi unolwazi ngodaba oluphenywayo noma ogcine noma olawula imibhalo ethile edingwa yisigungu, noma ifune lowo muntu avele endaweni nangesikhathi esithile esibekwe kumasamanisi lapho eyophenywa khona noma ethule leyo mibhalo efunekayo; 15
  - (e) singaphenya noma ngubani owenze isifungo, ihlole noma igcine imibhalo eqoqiwe ngenhloso yokuyihlola; inqobo uma leyo mibhalo eginwe yisigungu ngaphansi kwalesi sigatshana, ingathathwa noma yinini ngumnikazi wayo lapho edinga ukugaya amaphepha athile ombhalo, izindleko zokugaya amaphepha ziyokhokhwa yilowo ocelile kanjalo uyowagaya egadwe ngumpheni wodaba; 20
  - (f) ngokuhambisana nodaba oluphenywayo, ngaphansi kwendima (a), singenza lokhu okulandelayo ngaphandle kokukhipha isaziso, ngokusebenzisa imvume yesamanisi—
    - (i) yokungena ngaphakathi emagcekeni nokufuna ukuba kukhishwe noma yimuphi umbhalo; 30
    - (ii) yokungena emagcekeni ngenhloso yokucinga noma yimuphi umbhalo;
    - (iii) yokuvula noma iyiphi indawo yokucinga impahla, isisefo noma olunye uhlobo lwendawo yokulondoloza ayisola ngokucinga imibhalo ethile;
    - (iv) yokuhlola, ukukhipha izingxenye ezithile noma ukugaya amaphepha embhalweni noma ukuthatha imibhalo ethile okwesikhashana ngenhloso yokuyihlola, inqobo uma ithathwe ngemuva kokuthola incwadi efakazisa ukuthatha lowo mbhalo; 35
    - (v) yokubamba noma yimuphi umbhalo ngemuva kokuthola incwadi efakazisa isenzo sokuthatha;
    - (vi) yokulondoloza izincwadi ezibanjiwe isikhathi eside ngendlela edingelwa ukuqhuba uphenyo noma esinye isizathu; 40
- kodwa isigungu singaqhubeka ngaphandle kwencwadi yemvume uma umuntu ophethe amageceke evumela izenzo ezihlonzwe kule ndima;
- (g) senze imithetho yokuxhaphaza imakethe ngemuva kokubonisana neziko—
    - (i) maqondana nokusebenzisa lesi Sahluko yisigungu neziko; 45
    - (ii) mayelana nendlela okuphenywa ngayo ephawulwe kulesi Sahluko;
    - (iii) mayelana nezaziso zemali etholwa ngaphansi kwesigaba -77, inqubo yokufaka nobufakazi bokufuna izinxephezelo, ukusingathwa kwesikhwama somfelandawonye nokucaza inkokhelo eqondene nemali yokunxephezela; 50
    - (iv) maqondana nemihlangano yeziko;
    - (v) edwetselwe kakhulu ukuqiniseka ukuthi isigungu nengosi bayakwazi ukuqhuba imisebenzi ngendlela elandela lesi Sahluko;
    - (vi) ukuphatha ngendlela efanele isimo sokudalula ulwazi lwangaphakathi nenqubo efanele yokuziphatha elindelwe kubantu abathintekayo; 55
  - (h) ngemuva kokubonisana nezimakethe ezilawulwayo ezifanele zaseNingizimu Afrika kufanele lezo zimakethe zisebenzise izinhlelo njengoba isidingo silawula ukuze kube lula ukuqapha nokuqagula izimo zokuphazanyiswa kwalesi Sahluko.

(3) (a) A warrant contemplated in subsection (2)(f) may be issued, on application by the board, by a judge or magistrate who has jurisdiction in the area where the premises in question are located.

(b) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the matter being investigated in terms of subsection (2)(a), is kept at the premises in question. 5

(c) Any person from whom a document has been seized under subsection (2)(f), or such person's authorised representative, may examine such document and make extracts therefrom under the supervision of the board during normal office hours.

(d) Any person who has been duly summoned under subsection (2)(d) and who, without sufficient cause— 10

(i) fails to appear at the time and place specified in the summons;

(ii) fails to remain in attendance until excused by the board from further attendance;

(iii) refuses to take the oath or to make an affirmation as contemplated in subsection (2)(e); 15

(iv) fails to answer fully and satisfactorily any question lawfully put to him or her under subsection (2)(e); or

(v) fails to furnish information or to produce a document in terms of subsection (2)(d), 20

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(4) The board may, subject to the conditions it may determine, delegate the power to investigate an alleged contravention of this Chapter to any fit person and such person has the powers set out in subsections (2)(d), (e) and (f). 25

(5) The board must cause the publication in the *Gazette* of a notice of any proposed market abuse rule or amendment of such a rule, calling upon all interested persons who have any objections to the proposed rule or amendment, to lodge their objections with the board within a period of 14 days from the date of publication of the notice.

(6) If there are no such objections or if the board has, after consultation with the directorate, considered the objections and has decided to introduce the proposed rule or amendment in the form published in the *Gazette* in terms of subsection (5), the rule or amendment comes into operation on a date determined by the board by notice in the *Gazette*. 30

(7) If the board has, after considering such objections, decided after consultation with the directorate to amend the proposed rule or amendment as published in the *Gazette* in terms of subsection (5), the proposed rule or amendment thus amended must be published by the board in the *Gazette* and comes into operation on a date determined by the board by notice in the *Gazette*. 35

(8) A rule made under subsection (2) is binding on regulated persons and members of the public. 40

(9) If the Director of Public Prosecutions declines to prosecute for an alleged offence in terms of this Chapter, the board may prosecute in respect of such offence in any court competent to try that offence and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to such a prosecution. 45

(10) The board must, at the request of the directorate, investigate any matter and summon and interrogate any person in respect of the matters referred to in subsections (2)(a), (d) and (e).

### Composition and functions of directorate

**83.** (1) (a) The Insider Trading Directorate established by section 12 of the Insider Trading Act continues to exist, despite the repeal of that Act by section 117. 50

(b) As from the commencement of this Act the Insider Trading Directorate referred to in paragraph (a) is known as the Directorate of Market Abuse and a reference to the Insider Trading Directorate in any law must, unless clearly inappropriate, be construed as a reference to the Directorate of Market Abuse. 55

(c) The directorate exercises the powers of the board—

(i) to institute any civil proceedings as contemplated in this Chapter;

(3) (a) Incwadi yemvume ehlonzwe esigatshaneni (2)(f) ingakhishwa ngesicelo sesigungu, sejaji noma semantshi enamandla endaweni okukanise kuyo amageceke athintekayo.

(b) Leyo ncwadi yemvume ingakhishwa kuphela uma kucaca elwazini olufungelwe ukuthi asikho isizathu sokukholwa ukuthi umbhalo ophathelene nodaba oluphenywayo ngaphansi kwesigatshana- (2)(a) ugcinwe kulawo magceke athintekayo. 5

(c) Noma yimuphi umuntu obanjelwe umbhalo ngaphansi kwesigatshana (2)(f) noma isithunywa sakhe esigunyawe, unelungelo lokuhlola lowo mbhalo futhi akhiphe izingxenyana ezithile zawo ngaphansi kweso lesigungu ngezikhathi zomsebenzi zehhovisi lesigungu. 10

(d) Noma yimuphi umuntu obizwe ngaphansi kwesigaba (2)(d) futhi ohluleka ngaphandle kwesizathu esizwakalayo—

- (i) ukuvela ngesikhathi nasendaweni echazwe kwisamanisi;
- (ii) ukuhambela imbizo aze akhululwe yibhodi ekuyihambeleni;
- (iii) ukufunga noma ukwenza isiqinisekiso njengoba kushiwo esigatshaneni (2)(e); 15
- (iv) ukuphendula ngokugcwele nangokweneliso noma yimuphi umbuzo abuzwa wona ngokusemthethweni ngaphansi kwesigatshana (2)(e); noma
- (v) ukwethula ulwazi noma ukukhipha umbhalo ngokwesigatshana (2)(d) wenza icala futhi ufanele ukuboshwa akhokhiswe inhlawulo noma avalelwe ejele isikhathi esingevile iminyaka emibili noma kokubili inhlawulo nokuboshwa. 20

(4) Ngokulandela imibandela engase inqunywe, isigungu singedlulisela kwabanye amandla okuphenya izinsolo ezithile zokwephula umthetho walesi Sahluko kunoma ngubani onamandla, bese lowo muntu egidlabezwa amandla abekwe esigatshaneni 2)(d), (e) no (f).

(5) Isigungu kufanele siqikelele ukuthi isaziso sesiphakamiso noma isichibiyelo somthetho wokuxhaphaza imakethe sishicilelwa kwi*Gazette* esibiza bonke abathintekayo abanesifiso sokuphikisa ukuba benze njalo zingakapheli izinsuku eziyi 14 kusukela osukwini lokushicilelwa kwesaziso. 25

(6) Uma zingekho izicelo zokuphikisa noma uma isigungu sesicubungule zonke izicelo zokuphikisa sase siquma ukuqalisa noma ukuchibiyela umthetho ophakanyiswayo ngohlobo olushicilelwe kwi*Gazette* ngokwesigatshana (6), umthetho noma isichibiyelo siyokhangiswa yisigungu ngesaziso se*Gazette*, usuku lokuqala komthetho luyonqunywa yisigungu. 30

(7) Ngemuva kokucubungula izicelo zokuphikisa, sekuboniswa neziko, isigungu sesinqume ukuchibiyela noma ukuguqula umthetho ophakanyiswayo njengoba ushicilelwe kwi*Gazette*, ngencazelo yesigatshana (6), umthetho ophakanyiswayo noma oququliwe kufanele ushicilelwe yisigungu kwi*Gazette* bese uqala ukusebenza ngosuku olunqunywe yisigungu, lolu suku kufanele lwaziswe ngesaziso se*Gazette*. 35

(8) Umthetho oshaywe ngaphansi kwesigatshana (2) uyabophezela ebantwini abalawulwayo nasemalungeni omphakathi. 40

(9) Uma Umqondisi wokuShushisa Imisebenzi yoMphakathi ehluleka ukushushisa isenzo esisolwayo ngaphansi kwalesi Sahluko, isigungu singashushisa lesi senzo kunoma iyiphi inkantolo efanele ngenhloso yokushushisa lelo cala, isigaba -8() no- (3) soMthetho weNqubo Elawula Ubugebengu we-1977 (Umthetho uNo. 51 ka 1977) asisebenzi kulokhu kushushisa. 45

(10) Uma sithola isicelo seziko, isigungu singaphenya noma yiluphi udaba futhi sibizele phambi kwaso noma yimuphi umuntu ngenhloso yokumphenya kabanzi ngodaba oluqondwe esigatshaneni—(2)(a), (d) no e).

### Ukubumbeka nemisebenzi yeziko

83 (1) (a) Iziko lokuHweba Ngolwazi Lwaphakathi elisungulwe yisigaba 12 soMthetho wokuHweba Ngolwazi Lwaphakathi lisaqhubeka nakuba lowo Mthetho uchithwe yisigaba 117. 50

(b) Kusuka ngosuku lokuqala ngalo loMthetho, Iziko lokuHweba Ngolwazi Lwaphakathi okuqondiswe kulo endimeni (a) lwaziwa ngokuthi yiZiko lokuLawula Ukuxhashazwa kweMakethe, konke okuphawulwe emithethweni kufanele kuthathwe ngokuthi kuqondwe iZiko lokuLawula Ukuxhashazwa kweMakethe, ngaphandle uma kucaca ukuthi akufanele. 55

(c) Iziko lisebenzisa amandla esigungu—

- (i) ukuqala yonke imigidi yokunxeshelwa njengaleyo ehlonzwe kulesi Sahluko; 60

- (ii) to investigate any matter relating to an offence referred to in section 82(2)(a);  
and
- (iii) contemplated in section 82(2)(d), (e) and (f), in the name of the board.
- (d) The directorate is not intended to act as an administrative body when exercising its powers referred to in paragraph (c). 5
- (e) The directorate must—
- (i) report quarterly to the board and the Minister on its activities in terms of this Chapter; and
  - (ii) furnish the board and the Minister, at their request, with copies of such documents and records of proceedings of the directorate, as the board or the Minister may direct. 10
- (2) (a) The directorate consists of the chairperson and the other members and alternate members appointed by the Minister.
- (b) A member and alternate member hold office for such period, not exceeding three years, as the Minister may determine at the time of his or her appointment and is eligible for reappointment upon the expiry of his or her term of office: Provided that if on the expiry of the term of office of a member reappointment is not made or a new member is not appointed, the former member must remain in office for a further period of not more than six months. 15
- (c) The Minister may remove the chairperson from his or her office or terminate the membership of any other member on good cause shown and after having given the chairperson or member, as the case may be, sufficient opportunity to show why he or she should not be removed or why his or her membership should not be terminated. 20
- (3) The Minister must appoint as members of the directorate—
- (a) the executive officer of the board or his or her deputy, or both; 25
  - (b) one person and an alternate from each of the regulated markets in the Republic;
  - (c) one commercial lawyer of appropriate experience and an alternate;
  - (d) one accountant of appropriate experience and an alternate;
  - (e) one person of appropriate experience and an alternate from the insurance industry; 30
  - (f) one person of appropriate experience and an alternate from the banking industry;
  - (g) one person of appropriate experience and an alternate from the fund management industry; 35
  - (h) one person of appropriate experience and an alternate nominated by the Share Holders' Association of South Africa or any other similar organisation chosen by the Minister;
  - (i) one person of appropriate experience and an alternate nominated by the SA Reserve Bank; and 40
  - (j) two other persons of appropriate experience and alternates.
- (4) The persons referred to in subsection (3) are nominated by reason of their availability and knowledge of financial markets and may not be practising authorised users.
- (5) The directorate must designate from its members a deputy chairperson who performs the functions of the chairperson when the office of chairperson is vacant or when the chairperson is unable to perform his or her functions. 45
- (6) The members of the directorate may co-opt one or more persons as additional members of the directorate.
- (7) All members of the directorate, other than the additional members, have one vote in respect of matters considered by the directorate, but an alternate member only has a vote in the absence from a meeting of the member whom the alternate is representing. 50
- (8) The meetings of the directorate are held at such times and places as the chairperson may determine, but four members of the directorate may by notice in writing to the chairperson of the directorate demand that a meeting of the directorate be held within seven business days of such notice. 55
- (9) The chairperson must determine the procedure of a meeting of the directorate.
- (10) The decision of a majority of the members of the directorate constitutes the decision of the directorate.
- (11) No proceedings of the directorate are invalid by reason only of the fact that a vacancy existed on the directorate or that any member was not present during such proceedings or any part thereof. 60



- (ii) ukuphenya noma yiluphi udaba lokwephula umthetho okuphawulwe esigabeni -82(2)(a);
- (iii) ahlonzwe esigabeni 82(2)(d), (e) no (f) egameni lesigungu.
- (d) Iziko aliqondile ukusebenza njengesigungu sokuphatha lapho lisebenzisa amandla aqondwe endimeni-(c). 5
- (e) Iziko kufanele—
- (i) lethule umbiko kanyanga-ntathu esigungwini nakuNgqongqoshe ngemisebenzi yalo elawulwa yilesi Sahluko;
- (ii) linike isigungu noNgqongqoshe imibhalo efanayo nemiqulu yokuqhubeka nophenyo lweziko efunwa yisigungu noma nguNgqongqoshe. 10
- (2) (a) Iziko libunjwe ngusihlalo namanye amalunga kanjalo nalawo abambile aqokwe nguNgqongqoshe.
- (b) Ilunga noma ibamba lihlala esikhundleni isikhathi ezingedluli eminyakeni emithathu, kuye ngokunquma koNgqongqoshe ngesikhathi liqokwa futhi linelungelo lokuqokwa kabusha ekupheleni kwesikhathi esibekiwe; uma ovele esesikhundleni engaqokwa kabusha noma lingaqashwa ilunga elisha, lowo omdala angahlala ehhovisi isikhathi esengeziwe kodwa esingedluli ezinyangeni eziyisithupha. 15
- (c) Ungqongqoshe angasusa usihlalo ehhovisi lokuphatha noma aqede ubulunga banoma yiliphi ilunga uma kunesizathu esihle salokho, lesi sinyathelo siyothathwa ngemuva kokunika usihlalo noma elinye ilunga ithuba elenele lokuveza ubufakazi noma ukuzivikela ukuthi kungani singafanele isinyathelo sokususa noma sokumisa ubulunga. 20
- (3) Ungqongqoshe kufanele aqoke njengamalunga eziko—
- (a) umphathi ophakeme wesigungu noma iphini lakhe noma bobabili;
- (b) umuntu oyedwa nebamba lakhe abavela emakethe ngayinye elawulwayo yaseRiphabhuliki; 25
- (c) ummeli oyedwa wezohwebo onolwazi olufanele nebamba lakhe;
- (d) umgcini-mabhuku oyedwa onolwazi olufanele nabamba lakhe;
- (e) umuntu oyedwa onolwazi olufanele nebamba lakhe embonini yomshuwalense;
- (f) umuntu oyedwa onolwazi olufanele nebamba lakhe abavela embonini yamabhange; 30
- (g) umuntu oyedwa onolwazi olufanele nebamba lakhe elivela embonini yokuphatha izimali;
- (h) umuntu oyedwa onolwazi olunzulu olufanele nebamba lakhe eliqokwe yiNhlangothi yabaThengi Bamasheya noma ngenye inhlangothi efanayo eqokwe nguNgqongqoshe; 35
- (i) umuntu oyedwa onolwazi olunzulu olufanele nebamba lakhe abaqokwe yiBhange-ngodla laseNingizimu Afrika;
- (j) abantu ababili abanolwazi olunzulu olufanele namabamba abo.
- (4) Abantu okuqondiswe kubo esigatshaneni-(3) baqokwa ngesizathu sokutholakala kwabo nolwazi lwemakethe yezimali, akudingekile ukuba baze bagunyazelwe ukusebenza kule mboni. 40
- (5) Iziko kufanele liqoke emalungeni alo oyedwa noma ababili njengamalunga okwengezela eziko.
- (6) Amalunga eziko anganxena umuntu oyedwa noma ngaphezulu njengamalunga okwengezela eziko. 45
- (7) Onke amalunga eziko, ngaphandle kwalawo okwengezela anevoti elilodwa odabeni oludingidwa yiziko kodwa ilunga eliyibamba linezwi lokuvota kuphela uma ilunga eligcwele nelimmelwe lingekho emhlanganweni.
- (8) Imihlangano yeziko ibanjwa ngezikhathi nendawo enqunywe ngusihlalo kodwa amalunga amane eziko analo igunya lokuphoqa usihlalo ukuba abize umhlangano weziko zingakapheli izinsuku eziyisikhombisa zamalanga okusebenza. Lokhu kungenzeka ngokukhipha isaziso esibhaliwe esiqondiswe kusihlalo. 50
- (9) Usihlalo kufanele anqume inqubo yomhlangano weziko.
- (10) Isinqumo seningi lamalunga eziko siyothathwa njengesinqumo seziko. 55
- (11) Azikho izinyathelo zeziko eziyothathwa njengamampunge ngesizathu sokuthi kwakukhona isikhala somuntu eziko noma elinye lamalunga lalingekho ngesikhathi kuqhubeka umhlangano noma kuthathwa isinqumo.
- (12) Ekwenzeni imisebenzi yayo, iziko liziswa ngumqondisi ophakeme oqokwe yisigungu ngemuva kokubonisana neziko, lomqondisi angahambela imihlangano yeziko kodwa akanagunya lokuvota kulowo mhlangano. 60

(12) The directorate is, in the performance of its functions, assisted by an executive director who is appointed by the board after consultation with the directorate and who may attend all meetings of the directorate but may not vote at such meetings.

### **Financing of directorate**

**84.** The costs of performing the functions of the board and those of the directorate in terms of this Chapter are paid out of levies imposed by the board on exchanges under section 15A of the Financial Services Board Act. 5

### *General provisions*

### **Protection of existing rights**

**85.** Nothing in this Chapter prejudices the common law rights of any person aggrieved by any dealing or offence contemplated in this Chapter to claim any amount save to the extent that any portion of such amount has been recovered by such person under section 77. 10

### **Confidentiality and sharing of information**

**86.** (1) No person may, subject to subsections (3) and (4), disclose to any other person any information acquired in the performance of functions under this Chapter. 15

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(3) Disclosure of the information referred to in subsection (1) does not constitute a contravention of that subsection if made by— 20

- (a) a person for the purpose of performing functions in terms of this Chapter;
- (b) a person for the purpose of any legal proceedings under this Chapter;
- (c) a person when required to do so by a court or any other law;
- (d) the directorate or the board, if it is necessary to achieve one or more of the objects of this Act referred to in section 2; 25
- (e) the directorate, if it is in the public interest; or
- (f) the directorate by publishing the status and outcome of investigations under this Chapter.

(4) The directorate may share information concerning any matter dealt with in terms of this Chapter with the institutions which have nominated persons to the directorate, the Securities Regulation Panel constituted in terms of section 440B of the Companies Act, the South African Reserve Bank, the Public Accountants' and Auditors' Board constituted in terms of the Public Accountants' and Auditors' Act, all self-regulatory organisations, the Financial Intelligence Centre established by the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the National Treasury, the Minister and with the persons, whether inside the Republic or elsewhere, responsible for regulating, investigating or prosecuting insider trading, prohibited trading practices and other market abuses. 30 35

### **Offences committed in terms of section 440F of Companies Act and Insider Trading Act** 40

**87.** (1) Despite the repeal of section 440F of the Companies Act, and the Insider Trading Act, the board is responsible for investigating alleged offences in terms of that section and the latter Act that were committed before the repeal, and for that purpose it has the powers and duties referred to in section 82. 45

(2) The Securities Regulation Panel constituted in terms of section 440B of the Companies Act must disclose to the board all information in its possession relating to an alleged offence in terms of this Chapter.

(3) The board may disclose information received in terms of subsection (2) to any of the institutions or persons referred to in section 86(3). 50

**Imali yokuxhasa iziko**

84. Izindleko zokuqhuba umsebenzi wesigungu naleyo yeziko elawulwa yilesi Sahluko ithathwa emalini ephoqwe yisigungu ezikhungweni ngaphansi kwesigaba -15A soMthetho Wemisebenzi Yezimali.

*Imibandela evamile*

5

**Ukuvikelwa kwamalungelo akhona**

85. Akukho lutho kulesi Sahluko okubeka engcupheni amalungelo amile anoma ngubani ohlukumezekile ngesenzo sohwebo noma sokwephula umthetho okuhlonzwe kulesi Sahluko sokufuna isinxephezelo semali engafinyeleli kuleyo eqoqwe yilowo muntu ohlukumezile noma ophule umthetho njengoba isigaba 77 silandisa.

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**Imfihlo nokwabelana ngolwazi**

86. (1) Ngaphansi kwesigatshana (3) no (4), akekho umuntu ongadalu lela omunye ulwazi aluthole ngomsebenzi awenzayo, ngencazelo yalesi Sahluko.

(2) Noma ngubani ophambana nesigatshana- (1) wephula umthetho futhi angahlwa yicala bese ehlawuliswa noma adonse isigwebo esingevile eminyakeni emibili noma athole isigwebo senhlawulo nokudonsa iminyaka ejele.

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(3) Ukudalula ulwazi oluqondiswe esigatshaneni (1) akusho ukuphambana nomthetho walesi sigatshana uma kwenziwe—

- (a) ngumuntu ngenhloso yokuqhuba umsebenzi ophawulwe kulesi Sahluko;
- (b) ngumuntu ngenhloso yesinyathelo somthetho, ngaphansi kwalesi Sahluko;
- (c) ngumuntu olandela umlayelo wenkantolo noma omunye umthetho ukuba enze kanjalo;
- (d) yingosi noma yisigungu lapho kubalulekile ekufezeni izinhloso zalo Mthetho eziphawulwe esigabeni- 2;
- (e) yingosi uma lokho kuhlomulisa umphakathi; noma
- (f) yingosi, ngokushicilela isimo nomphumela wophenyo ngaphansi kwalesi Sahluko.

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(4) Iziko lingashiyelana ulwazi lwanoma yiluphi udaba olungaphansi kwalesi Sahluko nezinye izikhungo eziqokele engosini abantu, Umkhandlu Olawula Amathuluzi Okuhweba Emakethe yezimali ebunjwe yisigaba 440B soMthetho Wezinkampani, Ibhange-ngodla laseNingizimu Afrika, Isigungu Sabacwaningi-mabhuku Nababunguli bawo saseNingizimu Afrika esibunjwe ngaphansi koMthetho Wabacwaningi-mabhuku Nabacubunguli bawo, zonke izinhlangano ezizilawulayo, Isikhungo Sobunhlofi Bezimali esisungulwe wuMthetho Wesikhungo Sobunhlofi Bezimali we-2001 (Umthetho uNo. 38 we- 2001), Umnyango kaZwelonke Olawula Izimali, uNgqongqoshe weziMali nabanye abantu abanesibophezelo sokulawula, ukuphenya noma ukushushisa uhwebo ngolwazi lwangaphakathi, imikhuba engavumelekile nokunye ukuthunaza imakethe, akukhathalekile ukuthi baseNingizimu Afrika noma kwamanye amazwe.

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**Ukwephula umthetho okwenziwa esigabeni 440F soMthetho Wezinkampani noMthetho Wokuhweba Ngolwazi Lwangaphakathi**

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87. (1) Nakuba isigaba 440F soMthetho Wezinkampani noMthetho wokuHweba Ngolwazi Lwangaphakathi sesichithiwe, isigungu sinesibophezelo sokuphenya zonke izenzo zokwephula umthetho ngokwalesi sigaba kanjalo nomthetho wakamuva, lezo yizenzo zangaphambi kokuchithwa komthetho, ngakho sinamandla nemisebenzi ephawulwe yisigaba 82.

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(2) Umkhandlu Olawula Amathuluzi Okuhweba Emakethe yezimali obunjwe ngaphansi kwesigaba 440B soMthetho Wezinkampani kufanele udalulele isigungu lonke ulwazi onalo mayelana nesenzo esiphambene esiphawulwe kulesi Sahluko.

(3) Isigungu singadalula ulwazi olutholwe ngaphansi kwesigatshana (2) kunoma yisiphi isikhungo noma abantu abachazwe esigatshaneni 86(3).

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## CHAPTER IX

## GENERAL PROVISIONS

*Auditing***Auditor**

**88.** (1) A regulated person must appoint and at all times have an auditor who engages in public practice and who has no direct or indirect financial interest in the business in respect of which the auditor is so appointed. 5

(2) No firm of auditors, or a member of such firm, in which a regulated person or director, officer or employee of a regulated person has any financial interest, may be appointed as an auditor of a regulated person. 10

(3) The registrar must approve the appointment of the auditor of every self-regulatory organisation and clearing house and may withdraw the approval if it is necessary.

**Accounting records and audit**

**89.** A regulated person must—

(a) maintain on a continual basis the accounting records prescribed by the registrar and prepare annual financial statements that conform with generally accepted accounting practice and contain the information that may be prescribed by the registrar; 15

(b) cause such records and annual financial statements to be audited not later than three months after the financial year end of the regulated person, or such later date as the registrar may allow, by an auditor appointed in terms of section 88; and 20

(c) preserve such records, which may be in electronic form, in a safe place for a period of not less than five years as from the date of the last entry therein.

**Functions of auditor**

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**90.** (1) The auditor must, in conformity with generally accepted auditing standards, examine the accounting records and annual financial statements and be satisfied that the accounting records comply with the requirements of this Act and that the financial statements are properly drawn up so as to fairly present the financial position, cash flows and the results of the operations of the regulated person. 30

(2) When an auditor of a regulated person has conducted an audit in terms of subsection (1), the auditor must, subject to subsection (3), report to the regulated person or to the self-regulatory organisation if the auditor is the auditor of an authorised user or participant, and on request to the registrar—

(a) to the effect that the auditor has examined the accounting records and the annual financial statements in accordance with generally accepted auditing standards and in the manner required by this Act and that in the auditor's considered opinion they fairly present the financial position, cash flows and results of the operations of the regulated person; and 35

(b) on the matters prescribed by the registrar. 40

(3) If the auditor is unable to make such a report or to make it without qualification, 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 it without qualification.

(4) When the auditor of a regulated person furnishes copies of a report or other document or particulars contemplated in section 20(5)(b) of the Public Accountants' and Auditors' Act, the auditor must, despite any contrary law, also furnish a copy thereof to the registrar, if the auditor is the auditor of a self-regulatory organisation or clearing house, or to the self-regulatory organisation in question, if the auditor is the auditor of an authorised user or participant. 45 50

**ISIAHLUKO IX****IMIBANDELA EVAMILE*****Ukucwaninga amabhuku*****Umcwaningi-mabhuku**

**88.** (1) Umuntu olawulwayo kufanele aqoke futhi ngaso sonke isikhathi abe nomcwaningi-mabhuku osasebenza kulo mkhakha kodwa ongenaqhaza eliqondile noma ngandlela thize lezimali ebhizinisini aqashwe kulo njengomcwaningi-mabhuku. 5

(2) Ayikho inkampani noma ibhizinisi labacwaningi-mabhuku noma ilunga laleyo bhizinisi lapho umuntu olawulwayo noma ongumqondisi, isisebenzi noma oqashwe yilowo muntu olawulwayo oneqhaza elithile lobunini oyoqokwa njengomcwaningi-mabhuku womuntu olawulwayo. 10

(3) Umlawuli-sikhungo kufanele emukele umcwaningi-mabhuku oqashiwe kuzo zonke izinhlangano ezizilawulayo nendlu ebhalisa ukudayiselana amasheya futhi engahoxisa imvume uma sikhona isidingo.

**Amabhuku ezimali nokucwaninga amabhuku**

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**89.** Umuntu olawulwayo kufanele—

(a) Agcine ngendlela eqhubekayo amabhuku ezimali anqunywe ngumlawuli-sikhungo alungise nombiko wezimali wokuphela konyaka ohambisana nemigomo emukelekile yokugcinwa kwamabhuku ezimali futhi aqukathe imininingwane enganqunywa ngumlawuli-sikhungo; 20

(b) Afune ukuba amabhuku ezimali nombiko wezimali ucwaningwe zingakapheli izinyanga ezintathu ngemuva kokuphela konyaka wezimali womuntu olawulwayo, noma ngosuku oluvunywe ngumlawuli-sikhungo, ucwaningo lwenziwe wumcwaningi-mabhuku oqokwe ngokulandisa kwesigaba 88; futhi

(c) Alondoloze leyo mibhalo, ingaba ngohlobo olwenziwa yikhompuyutha noma ngenye indlela isikhathi esiyiminyaka emihlanu noma ngaphezulu kusukela osukwini lokugcina okusetshenziswe noma okubhalwe ngalo okuthile kulawo mabhuku. 25

**Imisebenzi yomcwaningi-mabhuku**

**90.** (1) Ngokulandela amaqophelo avumelekile okucwaninga amabhuku, umcwaningi-mabhuku uyohlola izincwadi zomsebenzi nombiko wezimali wokuphela konyaka azenelise ukuthi amabhuku ezimali ahambisane nemibandela yalo Mthetho nokuthi imibiko yezimali yokuphela konyaka idwetshwe ngendlela efanele ukuze iveze isithombe okuyiso samafa nezimali zebhizinisi nesimo somsebenzi womuntu olawulwayo. 30

(2) Uma umcwaningi-mabhuku womuntu olawulwayo eseqede umsebenzi wokucwaninga amabhuku njengoba kuchazwe esigatshaneni (1), umcwaningi-mabhuku kufanele abikele umuntu olawulwayo noma inhlango ezilawulayo uma lowo mcwaningi engumcwaningi womuntu ogunyaziwe noma obambe iqhaza kanti ngesicelo esiqondiswe kumlawuli-sikhungo uyomazisa— 35

(a) ukuthi usezihlolile izincwadi zomsebenzi futhi wenelisiwe ukuthi umbiko wezimali wokuphela konyaka uhambisana namaqophelo okulondwa kwezimali futhi ubeka ngendlela egculisayo isimo sezimali sebhizinisi nomphumela wemisebenzi eqhutshwe ngumuntu olawulwayo; 40

(b) ngodaba olunqunywe ngumlawuli-sikhungo. 45

(3) Uma umcwaningi-mabhuku engakwazi ukwethula lowo mbiko ngaphandle kokuphawula okuthile okungahambi kahle noma okwenza angakwazi ukuchaza kahle isimo sebhizinisi, umcwaningi-mabhuku kufanele afake embikweni isitatimende esichaza amaqiniso noma izimo ezinqande umcwaningi ukwenza umbiko noma ukuwukhipha ngaphandle kokuhakambisa amaphutha atholiwe. 50

(4) Uma umcwaningi-mabhuku womuntu olawulwayo ekhipha imibhalo engamakhophi ombiko noma eminye imibhalo noma imininingwane ehlonzwe esigabeni- 20(5)(b) ngaphansi koMthetho wabaCwaningi nabaCubunguli-mabhuku boMphakathi, umcwaningi-mabhuku kufanele ethule omunye umbhalo kumlawuli-sikhungo, noma kungaba khona omunye umthetho ophikisayo uma umcwaningi- 55

(5) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must—

- (a) submit to the registrar, if the auditor is the auditor of a self-regulatory organisation or clearing house or to the self-regulatory organisation in question, if the auditor is the auditor of an authorised user or participant, a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination; 5
- (b) if the auditor would, but for that termination, have had reason to submit to the regulated person a report contemplated in section 20(5)(a) of the Public Accountants' and Auditors' Act, submit such a report to the registrar or the self-regulatory organisation, as the case may be. 10

(6) An auditor must inform the registrar or the self-regulatory organisation, as the case may be, in writing of any matter relating to the affairs of the regulated person 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 regulated person's ability to meet its liabilities at all times. 15

#### **Furnishing of information in good faith by auditor**

91. (1) The furnishing, in good faith, by an auditor of a report or information in terms of this Act does not constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject. 20

(2) The failure, in good faith, by an auditor to furnish a report or information in terms of this Act does not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

#### **Power of registrar to request audit**

92. (1) The registrar may at any time by written notice direct a regulated person to have its accounts, records and financial statements audited and to submit the results of such an audit to the registrar within the time specified in the notice. 25

(2) A person who, pursuant to subsection (1), gives information, an explanation or access to records knowing that the information, explanation or records are false or misleading, commits an offence. 30

#### ***Powers of registrar and court***

#### **Powers of registrar to investigate or conduct inspection**

93. (1) If the registrar receives a complaint, charge or allegation that a person (hereinafter referred to as the respondent) who provides securities services (whether the respondent is licensed or authorised in terms of this Act or not) is contravening or is failing to comply with any provision of this Act, or if the registrar has reason to believe that such a contravention or failure is taking place, the registrar may investigate the matter by— 35

- (a) directing that respondent in writing to—
  - (i) provide the registrar with any information, document or record reasonably required by the registrar about such services; 40
  - (ii) appear before the registrar at a specified time and place; or
- (b) instructing an inspector under section 3 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), to carry out an inspection of the affairs of the respondent. 45

(2) If a respondent is questioned in terms of subsection (1)(a)(ii) and is obliged to answer questions which may incriminate him or her or, if he or she is to be tried on a criminal charge, may prejudice him or her at such trial, no evidence regarding any such questions and answers is admissible in any criminal proceedings, except in criminal proceedings for perjury. 50

mabhuku esebenzela inhlango ezilawulayo noma indlu ebhalisa ukudayiselana amasheya noma enzela leyo nhlango ezilawulayo, uma umcwaningi-mabhuku ecwaningela umuntu ogunyazelwe ukusebenza noma obambe iqhaza.

(5) Uma ukuqashwa komcwaningi-mabhuku kuqedwa ngesizathu esithile esihlanganisa ukushiya emsebenzini, umcwaningi-mabhuku kufanele— 5

(a) ethule kumlawuli-sikhungo umbiko onezizathu zokuhoxa kwakhe, noma lezo ezicatshangwa ngumcwaningi-mabhuku ngokushiya phansi umsebenzi, lokhu uyokwenza uma engumcwaningi-mabhuku wenhlango ezilawulayo ephathekayo noma indlu ebhalisa ukudayiselana amasheya noma enzela umsebenzi inhlango ezilawulayo; 10

(b) ethule lowo mbiko kumlawuli-sikhungo noma enhlanganweni ezilawulayo, kuye ngesimo ngasinye uma umcwaningi-mabhuku ebenesizathu okwethula umbiko kumuntu ohlonzwe esigabeni 20(5)(a) woMthetho wabaCwaningi nabaCubunguli-mabhuku oMphakathi ukuba ubengesulanga emsebenzini. 15

(6) Umcwaningi-mabhuku kufanele azise ngokubhalwe phansi umlawuli-sikhungo noma inhlango ezilawulayo nganoma yiluphi udaba oluphathelele nomuntu olawulwayo nolwaziwe ngumcwaningi-mabhuku ngesikhathi ecwaninga amabhuku olubonakala luphambene nesimo esifanele ngombono womcwaningi noma olungabeka engcupheni igalelo lomuntu olawulwayo ukuhlangabezana nezikweletu zakhe ngaso sonke isikhathi, lokhu kuyohamba ngesimo ngasinye. 20

### **Ulwazi olunikwa ngokwethembeka ngumcwaningi-mabhuku**

91. (1) Ukukhipha umbiko noma ulwazi ngokwethembeka okwenziwa ngumcwaningi-mabhuku akusho ukuphambana nombandela womthetho noma ukwephula umgomo wokuziphatha ngendlela efanele komuntu onguchwepheshe, nokuyinto eyisibophezelo somcwaningi-mabhuku. 25

(2) Ukwehluleka, ngaphandle kokuzenzisa komcwaningi-mabhuku ukwethula umbiko noma ulwazi ngaphansi kwalo Mthetho akuniki omunye umuntu ilungelo lokuthathela umcwaningi-mabhuku izinyathelo ebezingeke zitholakala ukuba lokho kwehluleka akwenzekanga.

### **Amandla omlawuli-sikhungo okucela ucwaningo lwamabhuku**

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92. (1) Noma ngasiphi isikhathi, umlawuli-sikhungo angakhipha umlayelo wesaziso esibhaliwe oqondiswe kumuntu olawulwayo nokwethula imiphumela yalolo cwaningo kumlawuli-sikhungo singakapheli isikhathi esibekwe kwisaziso.

(2) Ngokulandela isigatshana (1), umuntu onika ulwazi, incazelo noma ofinyelela emibhalweni ethile, azi ukuthi lolo lwazi, incazelo noma imibhalo ingamanga noma iholela ophathe, wephula umthetho. 35

### ***Amandla omlawuli-sikhungo***

#### **Amandla omlawuli-sikhungo okuphenya noma okuhlola**

93. (1) Uma umlawuli-sikhungo ethola isikhalo, izinsolo noma iphutha lokuthi (*umsolwa*) umuntu ohweba ngamathuluzi (kungaba ngumsolwa onemvume noma ogunyazwe ngaphansi kwalo Mthetho noma omunye) wephula noma wehluleka ukuhambisana nombandela yalo Mthetho noma umlawuli-sikhungo enezinsolo zokuthi ukwephula umthetho noma ukwehluleka kuyenzeka, umlawuli-sikhungo angaphenya udaba ngokwenza lokhu— 40

(a) ukutshela ngokubhaliwe umsolwa ukuba— 45

(i) anike umlawuli-sikhungo lonke ulwazi, ibhuku noma umbhalo odingwa ngumlawuli-sikhungo ngomsebenzi othintekayo;

(ii) ukucela phambi komlawuli-sikhungo ngesikhathi nendawo ethile ebekiwe; noma

(b) ukulayela abaphenyi ngaphansi kwesigaba 3 soMthetho weziKhungo zokuPhenya Izimali we-1998 (Umthetho uNo. 80 we- 1998) ukuphenya izindaba zomuntu osolwayo. 50

(2) Uma umsolwa efakwa imibuzo ngaphansi kwesigatshana (1)(a)(ii), futhi enesibopho sokuphendula imibuzo okungenzeka imbophe noma imbeke engcupheni yokulahlwa ngecala uma eshushiswa ngecala lobugebengu, ubufakazi obutholakala 55

### Powers of registrar after investigation or inspection

94. After an investigation or inspection has been done under section 93, the registrar may in order to achieve the objects of this Act referred to in section 2—

- (a) if the respondent is a company—
  - (i) apply to the court under section 346 of the Companies Act for the winding-up of the respondent as if the registrar were a creditor of the respondent; 5
  - (ii) apply to the court under section 427(2) of the Companies Act for a judicial management order in respect of the respondent as if the registrar were a creditor of the respondent; 10
- (b) subject to section 5 of the Financial Institutions (Protection of Funds) Act, apply to the court for the appointment of a curator for the business of the respondent; 10
- (c) direct the respondent to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or state of affairs disclosed by the investigation or inspection; 15
- (d) direct the respondent to prohibit or restrict specified activities, performed in terms of this Act, of a director, managing executive, officer or employee of the respondent, if the registrar believes that the director, managing executive, officer or employee is not fit and proper to perform such activities; 20
- (e) refer the matter to the enforcement committee to be dealt with in accordance with sections 102 to 105: Provided that in the case of an investigation carried out by the directorate under Chapter VIII, such referral must be done by the directorate; 20
- (f) hand the matter over to the National Director of Public Prosecutions provided that the contravention or failure constitutes an offence in terms of this Act. 25

### Power of registrar to impose penalties

95. (1) The registrar may impose a fine in the case of any failure by a regulated person to submit to the registrar within any period specified by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, not exceeding R1 000 or such other amount prescribed by the registrar for every day during which the failure continues. 30

(2) The registrar must, before imposing a fine, by written notice to the regulated person—

- (a) inform the regulated person of the registrar's intention to impose a fine; 35
- (b) specify the particulars of the alleged failure;
- (c) set out the reasons for the intended imposition of a fine;
- (d) specify the amount of the fine intended to be imposed; and
- (e) call upon the regulated person to show cause within a period specified by the registrar why the fine should not be imposed. 40

(3) If the registrar, after consideration of representations made by the regulated person, decides to impose a fine, the registrar must by written notice inform the regulated person that, not later than 30 days after the date of the notice, the regulated person may—

- (a) pay the fine; or 45
- (b) appeal in terms of section 111 against the imposition of the fine to the board of appeal.



ngale mibuzo nezimpendulo ngeke bathathwa njengobufakazi obemukelekile enkantolo, uma kuqhubeka icala, ngaphandle kwesimo secala lokuqamba amanga kade enze isifungo sokukhuluma iqiniso.

#### Amandla omlawuli-sikhungo ngemuva kophenyo noma kokuhlola

94. Ngemuva kophenyo noma ukuhlola okwenziwe ngokulandisa kwesigaba 93, 5  
umlawuli-sikhungo angenza lokhu okulandelayo ngenhloso yokufeza izinhloso zalo  
Mthetho eziphawulwe esigabeni 2—

- (a) uma oziphendulelayo eyinkampani—
  - (i) efaka isicelo senkantolo ngaphansi kwesigaba 346 soMthetho 10  
weNkampani esifuna ukusonga amafa omsolwa ngendlela efana nokuthi  
umlawuli-sikhungo ubekweletwa ngumsolwa;
  - (ii) efaka isicelo senkantolo ngaphansi kwesigaba 427(2) soMthetho  
Wezinkampani sokuthola isinqumo senkantolo sokuphatha inkampani  
yomsolwa kube sengathi umsolwa ukweleta umlawuli-sikhungo;
- (b) ngokuhambisana nesigaba- 5 soMthetho Wezikhungo Zezimali (Ukuvikelwa 15  
Kwezimali), umlawuli-sikhungo angafaka enkantolo isicelo sokuqasha  
umsongi-bhizinisi lomsolwa;
- (c) angatshela oziphendulelayo noma umsolwa ukuba athathe noma yiziphi 20  
izinyathelo noma agweme isenzo esithile ngenhloso yokusiqeda noma  
ukwenza singaqhubeki ngenhloso yokunqanda noma ukuvimbela noma  
yisiphi isimo noma udaba oludalulwe wuphenyo noma ukuhlola;
- (d) ukutshela oziphendulelayo ukuba enqabele noma avimbele izenzo ezibekiwe 25  
ezenziwe ngaphansi kwalo Mthetho, zomqondisi, zomqondisi ophethe,  
zesikhulu noma zesisebenzi soziphendulelayo uma umlawuli-sikhungo  
ekholelwa wukuthi umqondisi, umqondisi ophethe, isikhulu noma isisebenzi  
asiwufanele umsebenzi wokuqhuba leyo misebenzi;
- (e) ukwedlulisela udaba ekomidini lokuphoqelela ukuze ludingidwe 30  
ngokulandisa kwezigaba-102 kuya ku-105: Okubalulekile wukuthi uphenyo  
luqhutshwe yiziko ngaphansi kweSahluko VIII, ukwedlulisela ngale ndlela  
kufanele kwenziwe yiziko;
- (f) ukwedlulisela udaba kuMqondisi kaZwelonke Wokushushisa Izindaba  
Zomphakathi, inqobo uma lokho kuphambana nomthetho noma ukwehluleka  
kulawulwa yilo Mthetho.

#### Amandla okuhlululisa kamlawuli-sikhungo

95. (1) Umlawuli-sikhungo angakhipha isinqumo senhlawulo esiwombeni 35  
sokwehluleka komuntu olawulwayo ukwethula kumlawuli-sikhungo noma yimuphi  
umbiko, isitatimende, omunye umbhalo noma ulwazi oludingwa noma olungaphansi  
kwalo Mthetho, le nhlawulo ngeke yedlule ku- R1 000 noma imali ethile enqunywe  
ngumlawuli-sikhungo usuku ngalunye lokuqhubeka kokwehluleka, lo mlayelo kufanele  
ulandelwe singakapheli isikhathi esithile. 40

(2) Ngaphambi kokuhlululisa, umlawuli-sikhungo kufanele azise umuntu  
olawulwayo ngesaziso esibhaliwe—

- (a) esichaza inhloso yomlawuli-sikhungo yokuhlululisa;
- (b) esichaza imininingwane yezinsolo zokwehluleka;
- (c) esichaza izizathu zenhlawulo ehlosiwe; 45
- (d) esigagula isamba senhlawulo ehlosiwe;
- (e) esilayeza umuntu olawulwayo ukuveza ubufakazi noma izizathu zokuthi  
kungani kungafanele ahlululise.

(3) Ngemuva kokucubungula ubufakazi obethulwa ngumuntu olawulwayo, 50  
umlawuli-sikhungo anganquma ukuhlululisa umuntu olawulwayo kodwa umlawuli-  
sikhungo kummele azise lowo muntu ngokubhaliwe ngelungelo lakhe lokwenza lokhu  
okulandelayo zingakapheli izinsuku ezingamashumi amathathu ngemuva kosuku  
lwesaziso—

- (a) ukukhokha inhlawulo; noma
- (b) ukufaka isikhalo sokwedlulisela udaba esigungwini esifanele, ngaphansi 55  
kwesigaba -111 esikhononda ngenhlawulo.

(4) If a regulated person fails to pay the fine or note an appeal in terms of subsection (3), the registrar may file with the clerk or registrar of any competent court a statement certified by him or her as correct, stating the amount of the fine imposed on the regulated person, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board for a liquid debt in the amount specified in the statement. 5

#### **Power of court to declare person disqualified**

**96.** (1) If a court—

(a) convicts an authorised user or participant, or an officer or employee of those entities, of an offence under this Act or of an offence of which any dishonest act or omission is an element; or 10

(b) finds, in proceedings to which a person referred to in paragraph (a) is a party or in which his or her conduct is called into question, that he or she has been guilty of reckless or dishonest conduct,

the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the person concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on business or being employed in a capacity of trust. 15

(2) The court may, on good cause shown, vary or revoke a declaration made under subsection (1). 20

(3) The registrar of the court that has made a declaration under subsection (1) or varied or revoked a declaration under subsection (2), must as soon as possible notify the registrar, and the self-regulatory organisation concerned, thereof.

(4) No declaration made under subsection (1) affects any power of a self-regulatory organisation to take disciplinary action in terms of its rules against the person concerned. 25

#### *Enforcement committee*

#### **Establishment of enforcement committee**

**97.** The board must establish an enforcement committee which—

(a) is a committee of record; and

(b) must perform its functions in accordance with this Act. 30

#### **Composition of enforcement committee**

**98.** (1) The board must, on the date that this Act comes into operation, appoint as members of the enforcement committee so many persons as the board may consider necessary: Provided that a minimum of two members are persons qualified in law. 35

(2) The enforcement committee may, as the need arises and on an *ad hoc* basis, co-opt one or more persons with appropriate knowledge and experience as additional members of the enforcement committee. 35

(3) No member of the enforcement committee who was involved in the investigation of a matter or who has an interest in that matter may participate in a decision on that matter by the enforcement committee. 40

(4) The board must designate from the members of the enforcement committee a chairperson and a deputy chairperson who performs the functions of the chairperson when the office of chairperson is vacant or when the chairperson is unable to perform his or her functions.

(5) The board may at any time reconstitute the enforcement committee but a reconstitution may not affect the membership of a panel referred to in section 100 during the course of proceedings before such panel. 45

(4) Uma umuntu olawulwayo ehluleka ukukhokha inhlawulo noma efaka isikhalo sokwedlulisa udaba ngokulandisa kwesigatshana (3), umlawuli-sikhungo angenza umbiko ofungelwe awunike umabhalane wenkantolo enamandla noma umlawuli-sikhungo, lapho ebeka khona isamba senhlawulo ekhokhiswe umuntu olawulwayo, lombiko unomthelela ofanayo nogunyazwe yinkantolo ovuna isigungu ngemali okufanele ikhokhwe echazwe embikweni. 5

#### **Amandla enkantolo okwephuca umuntu amagunya okwemukelwa**

**96.** (1) Uma inkantolo—

- (a) ilahla ngecala umuntu onegunya lokusebenza noma obambe iqhaza, isikhulu noma oqashwe kulelo bhizinisi, lapho etholwe ephule omunye wale Mithetho noma icala elibandakanya isenzo sokungethembeki noma sokwehluleka ukwenza okufanele; noma 10
- (b) ekuqhubekeni kophenyo oluqondene nomuntu ngaphansi kwendima-(a), kutholakala ukuthi uyingxenye noma kunezinsolo zokuthi uyathinteka ezenzweni zobudedengu noma sokungethembeki, (ngaphezulu kwesimo esiphawulwe endimeni -(a), esigwebeni esingakhishwa), inkantolo inganquma ukwephuca umuntu amagunya okwemukelwa isikhathi esinganqunywa yinkantolo lapho engeke akwazi ukuqhubeka nebhizinisi noma ukuqashelwa umsebenzi wokwethembeka. 15
- (2) Ngokuveza isizathu esiqinile, inkantolo ingaguqula noma ibuyisele eceleni isinqumo sokwephuca amandla esenziwe ngaphansi kwesigatshana-(1). 20
- (3) Unobhala wenkantolo owenze isinqumo sokwephuca amandla ngokulandisa kwesigatshana-(1), sokuguqula noma sokubuyisele eceleni ngaphansi kwesigatshana-(2) kufanele azise ngokushesha umlawuli-sikhungo nenhlango ezilawulayo efanele ngalesi simo. 25
- (4) Asikho isinqumo sokwephuca amandla esenziwe ngaphansi kwesigatshana-(1) esingaphazamisa amandla enhlangano ezilawulayo okuqondisa izigwegwe kumuntu othintekayo, ngokulandisa kwemithetho eyibusayo.

#### ***Ikomidi lokuphoqelela***

**Ukusungula ikomidi lokuphoqelela** 30

**97.** Isigungu kufanele sibumbe ikomidi lokuphoqelela—

- (a) eliyikomidi lokubhala izimo;
- (b) elenza imisebenzi ngokuhambisana nalo Mthetho.

#### **Ingxube yekomidi lokuphoqelela**

**98.** (1) Ngosuku okuqala ngalo ukusebenzi kwalo Mthetho, isigungu kufanele siqoke amalunga ekomidi lokuphoqelela ayisibalo esifanele nesingakhethwa yisigungu: Okubalulelikile wukuthi okungenani amalunga amabili kube ngabantu abagogodele ezomthetho. 35

(2) Kuye ngokuvela kwesidingo nezimo ezithile, ikomidi lokuphoqelela linganxena umuntu noma ngaphezulu abanolwazi olunzulu olufanele ukuba ngamalunga okwengezela ekomidini. 40

(3) Alikho ilunga lekomidi lokuphoqelela ebelibambe iqhaza ophenyweni lodaba noma elineqhaza odabeni elingaba yingxenye yokuthatha isinqumo esenziwa yikomidi lokuphoqelela.

(4) Isigungu kufanele siqoke kumalunga ekomidi lokuphoqelela usihlalo nephini lakhe eliyiqhuba imisebenzi kasihlalo uma engekho ehhovisi noma usihlalo engakwazi ukwenza imisebenzi yakhe. 45

(5) Nganoma yisiphi isikhathi, isigungu singabumba kabusha ikomidi lokuphoqelela kodwa lesi senzo ngeke siphazamise ubulungu bekomidi okuqondiswe kulo esigabeni-100 ngesikhathi kuqhutshekwa nophenyo oludingidwa yilelo komidi. 50

### Functions of enforcement committee

**99.** (1) If the registrar or the directorate refers a matter to the enforcement committee under section 94, the enforcement committee must deal with the matter in accordance with sections 102 to 105, to the extent that those sections are applicable to the matter in question. 5

(2) The enforcement committee must submit to the board an annual report—

- (a) on the activities of the enforcement committee during the preceding calendar year;
  - (b) within the period; and
  - (c) containing the information, 10
- specified by the board.

### Enforcement committee proceedings

**100.** (1) The chairperson of the enforcement committee, with the assistance of employees of the board designated by the registrar, is responsible for managing the caseload of the enforcement committee and must assign each matter referred to the enforcement committee to a panel composed of the chairperson or deputy chairperson and not fewer than two other members of the enforcement committee who are suitably qualified to decide on the matter in question. 15

(2) A panel determines its own procedure for the performance of its functions.

(3) The proceedings of a panel are open to the public. 20

(4) The decision of the panel on a matter assigned to it must be in writing and include reasons for the decision.

(5) The decision of the majority of the members of a panel is the decision of the enforcement committee.

### Referral of matter 25

**101.** (1) The referral of a matter to the enforcement committee in terms of section 94(e) may at any time be withdrawn by the registrar or the directorate, as the case may be.

(2) The power of the board to institute civil proceedings in a court under section 77 against a person who has contravened section 73 is, subject to section 105(5), not affected by the referral of a matter to the enforcement committee in terms of section 94(e). 30

### Consideration of matter by enforcement committee

**102.** (1) The referral of a matter to the enforcement committee must be accompanied by a report on the investigation or inspection referred to in section 93, or on an investigation done under Chapter VIII, as the case may be, and all other evidence relevant to the alleged contravention or failure and in the possession of the registrar or the directorate. 35

(2) The enforcement committee must serve a copy of the report and evidence referred to in subsection (1), together with particulars of the alleged contravention or failure to comply with this Act, on the respondent (which may include an individual member of the controlling body of a regulated person) and direct him or her to respond thereto by way of affidavit within a time specified by the enforcement committee. 40

(3) The panel to which a specific matter has been assigned must consider the documentary evidence before it without hearing further evidence, subject to subsection (4). 45

(4) The panel may, in exceptional circumstances and when it is necessary to come to a just decision, by written notice summon a person to appear before the panel to be questioned or to produce a document specified in the summons.

(5) A legal representative may assist a person summoned in terms of subsection (4) at such person's own expense. 50

(6) If a person is questioned in terms of subsection (4) and is obliged to answer questions which may incriminate him or her or which, if he or she is to be tried on a criminal charge, may prejudice him or her at such trial, no evidence regarding any such questions and answers is admissible in any criminal proceedings, except in criminal proceedings for perjury. 55

**Imisebenzi yekomidi lokuphoqelela**

99. (1) Uma umlawuli-sikhungo noma ingosi okuqondiswe kuyo yedlulisela ekomidini lokuphoqelela ngaphansi kwesigaba -94, ikomidi lokuphoqelela kufanele lidingide udaba ngokulandela izigaba -102 kuya ku -105, kuye ngokuthi yiziphi izigaba ezithintekayo kuleso simo. 5

(2) Ikomidi lokuphoqelela kufanele lethule esigungwini umbiko wonyaka—

- (a) izigameko ezenziwe yikomidi lokuphoqelela onyakeni ophelayo wekhalenda;
- (b) walesi sikhathi;
- (c) imininingwane enqunywe yisigungu.

**Inqubo yekomidi lokuphoqelela**

100. (1) Usihlalo wekomidi lokuphoqelela ngokusizwa ngabasebenzi besigungu abagunyazwe ngumlawuli-sikhungo unesibophezelo sokuphatha wonke umsebenzi wekomidi lokuphoqelela, kufanele asabalalise udaba ngalunye olwedluliselwe ekomidini ethimbeni elibunjwe ngusihlalo noma yiphini likasihlalo elibandakanya okungenani amalunga amabili ekomidi anolwazi olufanele lokuthatha isinqumo ngodaba. 15

(2) Ithimba lizinqumela inqubo yokuqhuba imisebenzi yalo.

(3) Inqubo yethimba ivulelekile emphakathini.

(4) Isinqumo sethimba ngodaba olunikwe lona kufanele sibhalwe phansi bese sixuba izizathu zesinqumo. 20

(5) Isinqumo seningi lamalunga ethimba sithathwa njengesinqumo sekomidi lokuphoqelela.

**Ukwedluliswa kodaba**

101. (1) Ukwedluliswa kodaba luye ekomidini lokuphoqelela, ngokulandisa kwesigaba -94(e) kungahoxiswa noma yinini ngumlawuli-sikhungo noma yiziko, kuye ngesimo. 25

(2) Amandla esigungu okuqalisa izinyathelo zenkantolo ngaphansi kwesigaba -77 eziqondiswe kumuntu ophambene nesigaba- 73, uma singaphikisani nesigaba-105(5) awaphazanyiswa wukwedluliselwa ekomidini lokuphoqelela ngokulawula kwesigaba 94(e). 30

**Ukulalelwa kodaba yikomidi lokuphoqelela**

102. (1) Ukwedluliswa kodaba ekomidini lokuphoqelela kufanele kuphelezelwe ngumbiko wophenyo noma ukuhlola okuphawulwe esigabeni -93 noma ophenyweni olwenziwe ngaphansi kweSahluko VIII, kuye ngesimo ngasinye, kuhambisane nobufakazi obufanele bezinsolo zokweqa umthetho noma zokwehluleka eziphambi komlawuli-sikhungo noma iziko. 35

(2) Ikomidi lokuphoqelela kufanele lethule ikhophi yombiko nobufakazi obuphawulwe esigatshaneni-(1) kanye nemininingwane yezinsolo zokweqa umthetho noma zokwehluleka ukuhambisana nalo Mthetho koziphendulelayo ( umsolwa engaxuba lesigungu esilawula noma esiphethe umuntu olawulwayo), lo mbiko uyophoqa umsola ukuba aphenywe ngombiko ofungelwe singakapheli isikhathi esinqunywe yikomidi lokuphoqelela. 40

(3) Ithimba elabelwe udaba kufanele lucubungule bonke ubufakazi elibunikiwe ngaphambi kokulalela obunye, kuye ngokulandisa kwesigatshana-(4).

(4) Kwizimo ezehlukile nalapho kufanele kufinyelelwe kusinqumo esingachemile, singabizela phambi kwethimba umuntu ukuba azophonswa imibuzo noma alethe umbhalo othile ochazwe kusamanisi. 45

(5) Isazi-mthetho singasiza umuntu obizwe ngaphansi kwesigatshana-(4), kodwa izindleko zomeli ziyokhokhwa ngumsolwa.

(6) Uma umuntu ephonswa imibuzo ngaphansi kwesigatshana- (4) futhi enesibopho sokuphendula imibuzo engamholela ekuboshweni, noma kwenzeka eshushiswa ngecala lobugebengu, ubufakazi obuqondene nemibuzo nezimpendulo ezitholwe ngalesi sikhathi abemukeleki njengobufakazi basenkantolo, ngaphandle uma umuntu ebekwe icala lokuqamba amanga kade efungele ukukhuluma iqiniso. 50

### Admission by respondent

**103.** (1) If a respondent admits that he or she has committed the contravention or failure of which the respondent is charged and the panel and the respondent agree on the appropriate amount of an administrative penalty, the panel may—

- (a) impose that penalty; and 5
- (b) if necessary, instruct the respondent to take any remedial action as contemplated in section 94(c),

and the respondent must pay the penalty to the board and take the remedial action within the time specified by the panel.

(2) If the respondent fails to pay the agreed penalty or to take the remedial action instructed within the specified time, the registrar or directorate, as the case may be, may file with the clerk or registrar of any competent court a statement certified as correct, stating the amount of the penalty imposed on the respondent and the contents of the instruction, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board. 10  
15

### Imposition of administrative penalty

**104.** (1) If a panel is satisfied that a respondent has contravened or failed to comply with this Act and—

- (a) the respondent did not admit as contemplated in section 103; or
- (b) if the panel and the respondent could not agree on the appropriate amount of a penalty in terms of that section; or 20
- (c) if the respondent has paid the penalty imposed under section 103(1)(a) but failed to take the remedial action instructed under section 103(1)(b),

the enforcement committee may cause to be delivered by hand to that respondent a written notice that must contain the particulars contemplated in subsection (2). 25

(2) A notice referred to in subsection (1) must—

- (a) specify the name and address of the respondent;
- (b) specify the particulars of the contravention or failure;
- (c) set out the reasons for the panel's decision to impose an administrative penalty; 30
- (d) specify the amount of the administrative penalty which the panel considers appropriate in the circumstances, and may, if necessary, contain an instruction to the respondent to take any remedial action as contemplated in section 94(c);
- (e) inform the respondent that within the period specified in the notice the respondent may— 35
  - (i) pay the administrative penalty and take the instructed remedial action, if such an instruction was issued; or
  - (ii) appeal in terms of section 111 against the imposition of the administrative penalty and the instruction to take remedial action, if such instruction was issued, to the board of appeal; and 40

(f) state that a failure to comply with the requirements of the notice within the time permitted will result in the proceedings contemplated in subsection (3).

(3) If the respondent fails to comply with the requirements of a notice referred to in subsection (2), the registrar may file with the clerk or registrar of any competent court a statement certified as correct, stating the amount of the administrative penalty imposed on the respondent and the contents of the instruction, and such statement thereupon has all the effects of a civil judgment lawfully given in that court in favour of the board. 45

(4) If a respondent is a member of the controlling body of a regulated person, the panel may direct that an administrative penalty imposed under section 103(1)(a) or subsection (2) be paid by the respondent in his or her personal capacity. 50

(5) A panel may make such an order for the payment of the costs of the proceedings of the enforcement committee as it may consider fair in the circumstances of each case.

(6) The enforcement committee may not impose a penalty contemplated in this section if the respondent has been charged with a criminal offence in respect of the same set of facts. 55

(7) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court must take into account any administrative penalty imposed under this section or section 103(1)(a) in respect of the same set of facts.

**Ukuzivumela icala komsolwa noma oziphendulelayo**

**103.** (1) Uma umsolwa evuma ukuthi wephule umthetho noma wehlulekile ukwenza lokho abekwa icala lakho, futhi ithimba nomsolwa bevumelana ngesamba senhlawulo, ithimba—

- (a) lingamkhokhisa inhlawulo; 5
- (b) uma kunesidingo, umsolwa anganikwa ithuba lokuthatha izinyathelo zokulungisa isimo njengoba kuchazwe esigabeni- 94(c), bese ekhokhela isigungu inhlawulo nokuthatha izinyathelo ezifanele zokulungisa isimo singakapheli isikhathi esinqunywe yithimba.

(2) Uma umsolwa ehluleka ukukhokha inhlawulo okuvunyelwene ngayo noma izinyathelo zokulungisa isimo ezimiselwe isikhathi esithile, umlawuli-sikhungo noma iziko lingenza umbiko ofungelwe kumabhalane noma kunobhala wenkantolo enamandla afanele umbiko oqagula isamba senhlawulo ethweswe umsolwa nengqikithi yomlayelo, lowo mbiko unamandla afanayo esinqumo senkantolo esikhishwe yileyo nkantolo esivuna isigungu, ukwenzeka kwalokhu kuyoba ngesimo ngasinye. 15

**Ukukhokhisa inhlawulo yokwenza umsebenzi**

**104.** (1) Uma ithimba lenelisiwe ukuthi umsolwa wephule umthetho noma wehluleke ukuhambisana nalo Mthetho, futhi—

- (a) akazange azivumele njengoba kuhlonzwe esigabeni-103; noma
- (b) uma ithimba nomsolwa behlulekile ukuvumelana ngesamba esifanele senhlawulo ngokulandisa kwaleso sigaba; noma 20
- (c) uma umsolwa eseyikhokhile inhlawulo enqunywe esigabeni 103(1)(a) kodwa wehluleka ukuthatha izinyathelo ezifanele zokulungisa isimo ngomlayelo wesigaba-103(1)(b), ikomidi lokuphoqelela lingakhipha umlayelo wesaziso esibhaliwe ohanjiswa ngesandla kumsolwa okufanele uqukathe imininingwane ehlonzwe esigatshaneni-(2). 25
- (2) Isaziso esiqondwe esigatshaneni-(1) kufanele—
  - (a) sichaze igama nekheli lomsolwa;
  - (b) sichaze imininingwane yokwephula umthetho noma yokwehluleka;
  - (c) sichaze izizathu zesinqumo sokukhokhisa inhlawulo esenziwe yithimba; 30
  - (d) sichaze isamba senhlawulo yokwenza umsebenzi ocatshangwa njengofanele yithimba, uma kunesidingo, singaqakatha umlayelo oqondiswe kumsolwa sokuthatha izinyathelo ezihlonzwe ngaphansi kwesigaba-94(c) ;
  - (e) sazise umsolwa ukuthi ngesikhathi esinqunywe esazisweni, kufanele—
    - (i) akhokhe imali yenhlawulo yomsebenzi futhi athathe izinyathelo zokulungisa isimo, uma kukhishwe umlayelo onjalo; noma 35
    - (ii) afake isicelo sokwedlulisa udaba ngokulandisa kwesigaba-111 ngoba ephikisana nenhlawulo enqunyiwe noma izinyathelo okufanele zithathwe ukulungisa isimo , uma zikhona, lesi sikhalo siyofakwa esigungwini sokwedlulisela udaba; 40
  - (f) achaze ukuthi ukwehluleka ukuhambisana nemibandela yesaziso ngesikhathi esivunyelwe kuyoholela ezinyathelweni ezihlonzwe ngaphansi kwesigatshana-(3).

(3) Uma umsolwa ehluleka ukuhambisana nemibandela yesaziso esiqondwe esigatshaneni-(2), umlawuli-sikhungo uyofaka umbiko ofungelwe kumabhalane wenkantolo enamandla nefanele, umbiko oqagula isamba senhlawulo yokwenza umsebenzi efunwe kumsolwa nengqikithi yomlayelo, lo mlayelo unamandla afanayo nesinqumo senkantolo esikhishwe savuna isigungu. 45

(4) Uma umsolwa eyilunga lesigungu sokulawula umuntu olawulwayo, ithimba linganquma ukuba inhlawulo yokwenza umsebenzi emiswe ngaphansi kwesigaba-103(1)(a) nesigatshana-(2) ikhokhwe ngumsolwa ngokwakhe. 50

(5) Ithimba lingathatha isinqumo sokukhokhwa kwezindleko zophenyo olwenziwe yikomidi lokuphoqelela elicabanga ukuthi zifanele, kuye ngesimo ngasinye.

(6) Ikomidi lokuphoqelela ngeke likhokhise inhlawulo ehlonzwe kulesi sigaba uma umsolwa esethweswe icala lobugebengu eliqondene nalesi senzo noma amaqiniso. 55

(7) Uma inkantolo ihlaziya inhlawulo okumele inqunywe umuntu olahlwe ngecala ngokwalo Mthetho, inkantolo ingabhekela inhlawulo ebekwe kulesi sigaba noma esigabeni 103(1)(a) mayelana namaqiniso akhona.

(8) An administrative penalty imposed and paid in terms of this section does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(9) When determining an appropriate administrative penalty a panel must consider the following factors: 5

- (a) The nature, duration, seriousness and extent of the contravention or failure;
- (b) the extent to which the contravention or failure was deliberate or reckless;
- (c) any loss or damage suffered as a result of the contravention or failure;
- (d) the level of profit derived from the contravention or failure;
- (e) whether the respondent has previously been found in contravention of this Act; 10
- (f) any other factor that the panel considers relevant.

### Payment of compensatory amount

**105.** (1) If a panel is satisfied that a respondent has contravened or failed to comply with section 73, the panel may require the respondent to pay to the board a compensatory amount. 15

(2) The procedure prescribed by sections 103 and 104 in respect of the imposition of administrative penalties is, with the changes required by the context and subject to subsection (3), applicable when a panel requires the respondent to pay a compensatory amount. 20

(3) Section 77 is, with the changes required by the context, applicable to the determination and distribution of a compensatory amount.

(4) Such compensatory amount is composed of the equivalent of the profit or loss, the penalty for compensatory and punitive purposes, interest, and where applicable, commission or consideration, as if it were determined under section 77. 25

(5) No civil proceedings in respect of the same set of facts may be instituted under section 77 against a respondent if the respondent has paid a compensatory amount in terms of this section.

### Confidentiality

**106.** (1) Subject to subsection (3), no member of the enforcement committee or employee of the board may disclose to any person any information acquired in the performance of the functions of the enforcement committee and which relates to the proceedings or a decision of the enforcement committee except— 30

- (a) for the purpose of the performance of functions in terms of this Act;
- (b) when required to do so by a court or any law; 35
- (c) to the extent that such information has already been made public; or
- (d) to a self-regulatory organisation when necessary for the achievement of one or more of the objects of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years or to both a fine and such imprisonment. 40

(3) If a respondent does not appeal against a decision of the enforcement committee within the period specified in terms of section 104(2)(e), the registrar must make public the decision of the enforcement committee, unless such publication will be contrary to the objects of this Act referred to in section 2, or unless there are exceptional circumstances that justify the preservation of the confidentiality of the decision. 45

### *Winding-up, judicial management and curatorship*

#### Winding-up or sequestration by court

**107.** (1) An order for the winding-up or sequestration of the estate of a regulated person may be granted by the court on the application of— 50

- (a) the regulated person;
- (b) one or more of the regulated person's creditors;
- (c) if the regulated person is an exchange or a central securities depository, one or more authorised users or participants, as the case may be;



(8) Inhlawulo yokwenza umsebenzi enqunywe futhi yakhokhwa ngaphansi kwalesi sigaba ayisho ukutholwa unecala okwedlule njengoba kuhlonza iSahluko-27 soMthetho weNqubo Yamacala Obugebengu we-1977 (Umthetho uNo. 51 we-1977).

(9) Uma linquma inhlawulo yokwenza umsebenzi, ithimba kufanele licabange lamaphuzu alandelayo: 5

- (a) Uhlobo, ubude besikhathi, ubucayi nomgamu wokwephula umthetho noma ukwehluleka;
- (b) ukuthola igxathu lokwephula umthetho noma lokwehluleka ngenhloso yokuthola ukuthi bukhona yini ubudedengu noma amabomu;
- (c) ukulahlekelwa noma umonakalo owehlile ngenxa yokwephulwa komthetho noma ukwehluleka; 10
- (d) iqophelo lenzuzo etholwe ngokwephula umthetho noma ngokwehluleka;
- (e) ukuthola ulwazi lokuthi umsolwa wake watholakala yini ephule lo Mthetho esikhathini esedlule;
- (f) amanye amaphuzu abalulekile emehlweni ethimba. 15

### **Inkokhelo yesamba sokunxephezela**

105. (1) Uma ithimba leneliseka ukuthi umsolwa wephule umthetho noma wehlulekile ukuhambisana nesigaba-73, linganquma ukuba umsolwa akhokhe isamba sokunxephezela.

(2) Inqubo enqunywe ezigabeni -103 no -104 eqondene nenhlawulo yokwenza umsebenzi ihambisana nezinguquko ezidingwa yindikimba nesigatshana (3) esiwombeni esivumayo, uma kwenzeka ithimba lifuna umsolwa akhokhe isamba sokunxephezela. 20

(3) Isigaba 77 ngokuhambisana nezinguquko ifunwa yindikimba esebenza ekutholeni nasekusabaliseni imali yesinxephezelo. 25

(4) Leso samba sesinxephezelo sibunjwe ingxenye elinganayo yenzuzo noma yokulahlekelwa, inhlawulo yenhloso yesinxephezelo nokuhlululisa, inzalo, uma kwenzeka ikhomishini noma umhlomulo kube sengathi inqunywe ngaphansi kweSigaba 77.

(5) Azikho izinyathelo zokufuna isinxephezelo eziyothathelwa umsolwa ngaphansi kwesigaba-77 uma esesikhokhile isamba sesinxephezelo ngokulandisa kwalesi sigaba. 30

### **Imfihlo**

106. (1) Ngokuhambisana nesigatshana-(3), alikho ilunga lekomidi lokuphoqeleta noma isisebenzi sesigungu esingadalulela noma ngubani ulwazi olutholwe emsebenzini noluphathelene nophenyo noma isinqumo sekomidi lokuphoqeleta, ngaphandle kwesimo lapho lenza khona imisebenzi ehlonzwe kulo Mthetho noma ebizwe phambi kwenkantolo. 35

(2) Noma ngubani ophula umthetho wesigatshana-(1), wenza icala futhi uma elahlwa yicala angahlawuliswa noma aboshwe isikhathi esingevile eminyakeni emibili noma athole kokubili, isigwebo nenhlawulo. (3) Uma umsolwa engafaki isicelo sokwedlulisa udaba ngesinqumo esithathwe yikomidi lokuphoqeleta singakapheli isikhathi esibekwe ngokwesigaba-104(2)(e), umlawuli-sikhungo kufanele amemezele emphakathini isinqumo esithathwe yikomidi lokuphoqeleta, ngaphandle uma isimemezelo siyophambana nezinhloso zalo Mthetho eziphawulwe esigabeni-2 noma kunezimo ezehlukile eziveza isidingo sokugcina isinqumo siyimfihlo. 45

### ***Ukusonga amafa, ukuphatha ngesinqumo senkantolo nomsongi-mafa oqokwe ngokomthetho***

### **Isinyathelo sokusonga amafa noma ukudliwa kwamafa yinkantolo**

107. (1) Umlayelo wokusonga nokudla amafa enhlangano, omuntu noma ebhizinisi ungakhishwa yinkantolo— 50

- (a) Ngesicelo somuntu olawulwayo;
- (b) Ngesicelo somuntu noma abaningi abakweletwa yilowo olawulwayo;
- (c) Ogunyaziwe oyedwa noma ngaphezulu noma ababambe iqhaza, kuye ngesimo ngasinye, uma olawulwayo eyisikhungo sokuhweba emakethe yamasheya noma ingodla elondoloza izimali zamathuluzi okuhweba emakethe yezimali; 55

- (d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);
- (e) the provisional judicial manager or final judicial manager of the regulated person;
- (f) the provisional curator or curator of a regulated person; or
- (g) the registrar. 5
- (2) A regulated person which is a company or other corporate body may be wound-up by the court, subject to section 110, according to the Companies Act, and the estate of a regulated person who is a natural person or partnership may be sequestrated according to the Insolvency Act, 1936 (Act No. 24 of 1936).
- (3) For the purposes of subsection (2)— 10
- (a) section 346(3) of the Companies Act must be construed as if after the words “except an application by” there were inserted the words “the Registrar of Securities Services or”;
- (b) section 346(4)(a) of the Companies Act must be construed as if after the words “lodged with the Master” there were inserted the words “and the Registrar of Securities Services”; 15
- (c) section 346(4)(b) of the Companies Act must be construed as if after the word “Master” there were inserted the words “or the Registrar of Securities Services”; and
- (d) section 357 of the Companies Act must be construed as if the registrar were included among the persons to whom notice is required to be given under subsection (1)(b) of that section. 20
- (4) An order for the winding-up or sequestration of a regulated person may not be made unless the court is satisfied that—
- (a) if the regulated person is a company or other corporate body, it is not desirable that the regulated person be placed under judicial management in terms of the Companies Act, or curatorship in terms of the Financial Institutions (Protection of Funds) Act; 25
- (b) if the regulated person is not a company, it is not desirable that the regulated person be placed under curatorship in terms of the Financial Institutions (Protection of Funds) Act. 30

### Judicial management

**108.** (1) The court may grant a judicial management order in respect of a regulated person which is a company or other corporate body on the application of the persons, except a provisional or final judicial manager or curator, referred to in section 107, and section 107(4)(a) and (b) applies, with the changes required by the context, to an application for a judicial management order. 35

(2) The Companies Act applies, subject to section 110, to the judicial management of a regulated person that is a company.

### Appointment of curator

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**109.** (1) The court may appoint a curator in terms of section 5 of the Financial Institutions (Protection of Funds) Act in respect of any regulated person.

(2) The Financial Institutions (Protection of Funds) Act applies to the management and control of a regulated person by a curator appointed under this section.

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- (d) ngesicelo esenziwe ngabantu abathile ngokuhlanganyela noma amathimba ngamanye abalulwe ezindimeni (a), (b) no (c);
- (e) ngesicelo somphathi wesikhashana oqokwe ngokwesinqumo senkantolo noma ophethe ngokugcwele obhekele ubulungiswa bomuntu olawulwayo;
- (f) umsongi-mafa wesikhashana noma ogcwele noma; 5
- (g) umlawuli-sikhungo.
- (2) Umuntu olawulwayo, oyinkampani noma esinye isakhiwo sebhizinisi singasongelwa amafa aso yinkantolo, ngokuhambisana nesigaba-110 soMthetho Wezinkampani kanti amafa omuntu ophilayo, obambisene nomunye angasongwa ngokulandela Umthetho Wokudliwa Kwamafa we-1936 (Umthetho uNo. 24 we- 1936). 10
- (3) Ngokwenhloso yesigatshana (2)—
- (a) Isigaba 346(3) soMthetho Wezinkampani kufanele sithathwe sengathi kufakwe amagama athi “uMlawuli-sikhungo Wemisebenzi Yamathuluzi Okuhweba Emakethe Yezimali” ngemuva kwamagama athi “ngaphandle kwesicelo sika”; 15
- (b) isigaba 346(4)(a) soMthetho Wezinkampani kufanele sithathwe sengathi kunombhalo “wethulwe kuMphathi” ogaxwe emuva kwamagama athi “nakumlawuli-sikhungo seMisebenzi Yamathuluzi Okuhweba Emakethe Yezimali”; 20
- (c) isigaba 346(4)(b) soMthetho Wezinkampani kufanele sithathwe sengathi sinombhalo othi “Umphathi” ogaxwe emuva kwamagama “noma Umlawuli-sikhungo yeMisebenzi Yamathuluzi Okuhweba Emakethe Yezimali”; 20
- (d) isigaba-357 soMthetho Wezinkampani kufanele sithathwe sengathi umlawuli-sikhungo uyingxenywe yabantu okufanele bathole isaziso esifunwa yisigatshana (1)(b) saleso sigaba. 25
- (4) Umyalelo wokusonga noma wokudla amafa omuntu olawulwayo ngeke kwenziwa ngaphandle kokuba inkantolo yeneliseke ukuthi—
- (a) Uma umuntu olawulwayo eyinkampani noma olunye uhlobo lwebhizinisi futhi kubonakala ukuthi impatho yesinqumo senkantolo elawulwa nguMthetho Wezinkampani noma ukuphathelwa amafa ngaphansi koMthetho Wezikhungo Zezimali (Ukuvikela Izimali) ngeke yanambitheka; 30
- (b) Uma umuntu olawulwayo engesiyona inkampani futhi kunganambitheki ukufaka lowo muntu olawulwayo ohlwini lokusongelwa amafa akhe ngokulandela uMthetho Wezikhungo Zezimali (Ukuvikela Izimali) we- 2001.

**Ukuphatha ngaphansi kwesinqumo senkantolo**

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**108.** (1) Inkantolo ingakhipha umyalelo oqondene nomuntu olawulwayo oyinkampani noma uhlobo oluthile lwebhizinisi lapho ithola isicelo esivela ebantwini abafake isicelo somyalelo wokuphatha ngaphansi kwesinqumo senkantolo, ngaphandle kwalapho kuqokwa khona umphathi wesikhashana ogunyazwe yinkantolo, ogunyazwe ngokugcwele noma umsongi-mafa ophawulwe esigabeni -107 nezigaba -107(4)(a) no (b) okuhambisana nezinguquko ezidingwa yingqikithi. 40

(2) Ngokuhambisana nesigaba-110, Umthetho Wezinkampani we-1973 usebenza ekuphatheni ngaphansi kwesandla senkantolo umuntu oyinkampani.

**Ukuqokwa komsongi-mafa**

**109.** (1) Inkantolo ingaqoka umsongi-mafa ngokulandisa kwesigaba- 5 soMthetho Wezikhungo Zezimali (Ukuvikela Izimali) oqondene nanoma yimuphi umuntu olawulwayo. 45

(2) Umthetho Wezikhungo Zezimali (Ukuvikela Izimali) usebenza ukuphatha nokulawula umuntu olawulwayo yilowo oqashwe kulesi sigaba njengomsongi-mafa.

### Appointment of liquidator and judicial manager

110. Despite the provisions of the Companies Act, the Master of the High Court may, only after consultation with the registrar, appoint a liquidator or judicial manager in respect of a regulated person.

### Miscellanea

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### Right of appeal

111. (1) A person aggrieved by a decision of—
- (a) the registrar under a power conferred or a duty imposed upon the registrar by or under this Act;
  - (b) the enforcement committee to impose an administrative penalty or to require the payment of a compensatory amount; 10
  - (c) an exchange to refuse an application by that person to be admitted as an authorised user;
  - (d) an exchange to withdraw the authorisation of an authorised user or to direct an authorised user to terminate the access to the exchange by an officer or employee of such authorised user; 15
  - (e) an exchange to defer, refuse or grant an application for the inclusion of securities in the list or to remove securities from the list or to suspend the trading in listed securities;
  - (f) a central securities depository to refuse an application by a person to be accepted as a participant; 20
  - (g) a central securities depository to terminate the participation of a participant or to direct a participant to terminate the access to the central securities depository by an officer or employee of a participant;
  - (h) an exchange or central securities depository to impose a penalty on an authorised user, issuer or participant, as the case may be, or on an officer or employee of an authorised user, issuer or participant; 25
  - (i) the claims officer referred to in Chapter VIII,
- may appeal to the board of appeal on the conditions determined by or under section 26 of the Financial Services Board Act and subject to this section. 30
- (2) The board of appeal must conduct its hearings in public.
- (3) In an appeal against a decision of the enforcement committee the registrar must act as the respondent.
- (4) The registrar may appeal to the board of appeal against a decision of a self-regulatory organisation if the self-regulatory organisation fails to respond to a written request by the registrar to review the decision within a reasonable period. 35
- (5) In deciding an appeal the board of appeal must take into account—
- (a) the reasons for the decision appealed against;
  - (b) the grounds of appeal;
  - (c) the documentary or verbal evidence submitted or given by any person at the request or with the permission of the board of appeal; and 40
  - (d) any other information at the disposal of the board of appeal.
- (6) The board of appeal must within a reasonable time—
- (a) confirm, amend or set aside the decision appealed against; and
  - (b) make such award as to costs as it may consider appropriate. 45
- (7) (a) The decision of the board of appeal is binding on the parties to the appeal.
- (b) Neither this Act nor the rules of a self-regulatory organisation may be construed so as to limit the right of any interested person to have a decision of a self-regulatory organisation or the board of appeal reviewed by a court of competent jurisdiction, subject to the obligation on such person to have first exhausted his or her remedies in terms of this Act. 50

**Ukuqokwa komhlakazi-mafa nomphathi omiswe yisinqumo senkantolo**

110. Noma ikhona imibandela yoMthetho Wezinkampani, Umphathi Wenkantolo Ephakeme angaqoka umhlakazi-mafa noma umphathi omiswe yisinqumo senkantolo mayelana nomuntu olawulwayo kuphela ngemuva kokubonisana nomlawuli-sikhungo.

*Ingxubevange*

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**Ilungelo Lokwedlulisa phambili udaba**

111. (1) Umuntu ohlukunyezwe yisinqumo—
- (a) somlawuli-sikhungo ngaphansi kwamandla anikwe wona noma ngomsebenzi awethwesiwe noma ngaphansi kwalo Mthetho;
  - (b) sekomidi lokuphoqelela esifunza inhlawulo yokuphatha noma isidingo 10 senkokhelo yemali yesinxephezelo;
  - (c) sesikhungo sokwenqaba isicelo somuntu ofuna ukusebenza njengonegunya;
  - (d) sesikhungo sokuhoxisa imvume yomuntu onegunya noma ukutshela umuntu onegunya ukuba enqabele isisebenzi noma oqashwe ngumuntu ogunyaziwe;
  - (e) sesikhungo sokuhlehlisa, sokwenqaba noma sokunika imvume yokufaka 15 ohlwini amathuluzi okuhweba, ukuzisusa noma ukuzimisa ohlwini engabe esadayisa emakethe yezimali;
  - (f) sengodla yokulondoloza amathuluzi okuhweba sokwenqaba isicelo somuntu ukuba enqatshwe njengobamba iqhaza;
  - (g) sengodla yokulondoloza amathuluzi okuhweba sokuqeda ilungelo lomuntu 20 obambe iqhaza noma ekungeneni kwakhe, isisebenzi noma oqashwe nguye ngaphakathi kwengodla yokulondoloza;
  - (h) sesikhungo noma sengodla yokulondoloza amathuluzi okuhweba lapho sihlawuliswa khona umuntu onegunya, obambe iqhaza, isisebenzi somuntu;
  - (i) sesikhulu esicubungula izicelo zesinxephezelo eziphawulwe kwiSahluko- 25 VIII, angafaka isicelo sokwedlulisa udaba ngokulandela imibandela enqunye noma emiswe esigabeni-26 soMthetho Wesigungu Semisebenzi Yezimali nangaphansi kwalesi sigaba.
- (2) Isigungu sokwedlulisa isicelo kufanele silalele udaba esidlangeni.
- (3) Uma kwenziwa isicelo sokwedlulisa ngenhloso yokuphikisana nesinqumo 30 sekomidi lokuphoqelela, umlawuli-sikhungo kufanele abe ngoziphendulelayo.
- (4) Umlawuli-sikhungo angafaka isicelo sokwedlulisa udaba ngesinqumo senhlangano ezilawulayo uma le nhlangano yehluleka ukuphendula isicelo esibhaliwe somlawuli-sikhungo esicela ukuba isinqumo sibuyekwezwe singakapheli isikhathi eside 35 ngokwenele.
- (5) Ekunqumeni isicelo sokwedlulisa udaba, isigungu kufanele sibhekele lokhu okulandelayo—
- (a) izizathu zesinqumo okukhalwa ngaso;
  - (b) Izizathu zokwedlulisa udaba;
  - (c) ubufakazi obubhaliwe noma bomlomo obethuliwe noma obunikwe yinoma 40 ngubani ngesicelo noma ngemvume yesigungu sokwedlulisa udaba; noma
  - (d) yiluphi olunye ulwazi olusezandleni zesigungu sokwedlulisa udaba.
- (6) Isigungu sokwedlulisa udaba kufanele senze singakapheli isikhathi eside lokhu okulandelayo—
- (a) ukugcizelela, ukuchibiyela noma ukubuyisela eceleni isinqumo okukhalwa 45 ngaso;
  - (b) isinqumo esiqondene nalowo oyokhokha izindleko zecala, ngendlela ebona ifanele.
- (7) (a) Isinqumo sesigungu sokwedlulisa udaba sibophezela amaqembu omabili 50 ayingxenywe yesikhalo esedlulisiwe.
- (b) Lo Mthetho noma eminye yenhlangano ezilawulayo ayikwazi ukunikwa amandla okunciphisa ilungelo lanoma ngubani onentshisekelo ngesinqumo ukuba edlulise udaba luyocutshungulwa yinkantolo enamandla afanele endaweni ngemuva kwesinqumo senhlangano ezilawulayo noma isigungu esilalela udaba olwedlulisiwe, udaba luyocutshungulwa yinkantolo uma lowo muntu eseladele yonke imigudu efanele 55 yokufinyelela kwisixazululo enqunye yilo Mthetho.

**Evidence**

**112.** A record, including an electronic record, purporting to have been made in the ordinary course of the business of a regulated person, or a copy or printout of or an extract from such record certified to be correct by an officer in the service of such regulated person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under this Act, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and *prima facie* proof of the facts contained in such record, copy, printout or extract. 5

**Regulations**

- 113.** The Minister may make regulations regarding— 10
- (a) all matters which by this Act are required or permitted to be prescribed by the Minister;
  - (b) generally, all matters which are necessary or expedient to be prescribed in order that the objects of this Act may be achieved.

**Fees**

**114.** (1) The Minister may prescribe fees after consultation with the registrar in respect of matters contemplated in this Act and, in relation to such fees as well as fees payable in terms of this Act, the person by whom the fee must be paid, the manner of payment thereof and, where necessary, the interest payable in respect of overdue fees. 15

(2) Fees payable in terms of this Act and interest so payable in respect of overdue fees may be recovered by the registrar by civil action in a competent court. 20

**Offences and penalties**

- 115.** A person who—
- (a) commits an offence referred to in section 73, 75 or 76 is liable on conviction to a fine not exceeding R50 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment; 25
  - (b) commits an offence referred to in section 92(2) is liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment;
  - (c) contravenes or fails to comply with section 4(1) or (2), 19, 20, 21, 22 or 29 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment. 30

**Savings**

**116.** (1) The licence, registration or authorisation of a regulated person who immediately before the date of commencement of this Act was licensed, registered or authorised under an Act repealed by this Act— 35

- (a) shall have effect as from the date of commencement of this Act as if granted under a corresponding provision of this Act;
- (b) in the case of a licence, registration or authorisation which expires after a specified period, shall remain in force, subject to this Act, for so much of that period as falls after the date of commencement of this Act. 40

(2) The repeal by this Act of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), does not affect the recognition of a clearing house under the latter Act: Provided that such a clearing house must apply for a clearing house licence in terms of section 64 within six months from the date of commencement of this Act. 45

**Ubufakazi**

112. Umbhalo kuhlangele nobhalwe ngekompuyutha ozishaya sengathi wenziwe ngumuntu olawulwayo lapho eqhuba ibhizinisi lakhe elejwayelekile, ikhophi, ipheshana lombiko noma ingxenye yebhuku efungelwe ekhishwe kulowo mbhalo eyenziwe yisisebenzi esiqashwe ngumuntu olawulwayo, ngokuvezwa kwawo kunoma yisiphi isimo sokuqula icala lesinxephezelo, lobugebengu, lokuphatha noma izinyathelo zokuqondisa izigwegwe ngaphansi kwalo Mthetho, imithetho yenhlangano ezilawulayo noma omunye wemithetho kwisimo lapho lowo mbhalo, ipheshana lombiko noma ingxenyanana ethathwe ebhukwini inobufakazi obamukelekile obuqondiswe kothile futhi kunamaqiniso aqukethwe yiwo. 5 10

**Imigomo**

113. Ungqongqoshe angashaya lemi gomo elandelayo maqondana—
- (a) nazo zonke izindaba ezidingwa yilo Mthetho noma ezivunywe nguNgqongqoshe;
  - (b) nazo zonke izindaba ezibalulekile noma eziphuthumayo okufanele zimiswe ukuze kufezeke izinhloso zalo Mthetho. 15

**Inkokhelo**

114. (1) Ungqongqoshe anganquma inkokhelo ngemuva kokubonisana nomlawuli-sikhungo mayelana nezindaba ezihlonzwe kulo Mthetho kanjalo inkokhelo nemali ekhokhwa ngaphansi kwalo Mthetho, umuntu okufanele akhokhe imali, indlela yokukhokha, uma kwenzeka nenzuzo eqondene nemali ekweletwayo. 20

(2) Inkokhelo ekhokhwa ngokwalo Mthetho nenzuzo ekhokhelwa isikweletu eseqiwe yisikhathi ingaqoqwa ngumlawuli-sikhungo ngezinyathelo zenkantolo efanele noma ngesinqumo sayo.

**Ukwephula umthetho nenhlawulo**

115. Umuntu—
- (a) ophula umthetho oqondiswe esigabeni-73, 75 no 76 angalahlwa ngecala ahlawuliswe imali engevile ezigidini ezingu-50 noma abhadle ejele isikhathi esingedluli eminyakeni eyishumi noma athole isijezo sokuboshwa nokuhlawuliswa imali; 30
  - (b) ophula umthetho oqondiswe esigabeni-92(2) angalahlwa ngecala ahlawuliswe imali noma abhadle ejele isikhathi esingedluli eminyakeni emihlanu noma athole isijezo sokuboshwa nokuhlawuliswa imali.
  - (c) ophula noma ohluleka ukuhambisana nesigaba 4(1) noma (2), 19, 20, 21, 22 noma 29, wenza icala futhi angalahlwa ngecala ahlawuliswe imali noma abhadle ejele isikhathi esingevile eminyakeni emihlanu noma athole kokubili, inhlawulo nokuboshwa. 35

**Ukongca**

116. (1) Imvume, ukubhalisa noma igunya elinikwe umuntu olawulwayo onikwe lemvume, obhaliswe noma wanikwa igunya ngomunye wemithetho phambili kancane kosuku okuchithwe ngalo lowo Mthetho yilona omusha— 40

- (a) iyoqala ukusebenza ngosuku okuqale ngalo lo Mthetho sengathi ikhishwe ngaphansi kombandela ofanayo walo Mthetho;
- (b) esigamekweni semvume, sokubhalisa noma igunya eliphela ngemuva kwesikhathi esibekiwe, iyoqhubeka isikhathi eside esilingana nengxenye elandela usuku okuqale ngalo lo Mthetho, ngokulandela neminye imigomo yalo Mthetho; 45

(2) Ukuchithwa okwenziwa yilo Mthetho Olawula Izimakethe Zezimali we-1989 awuphazamisi ukwaziswa komnyango wokwesula ebhukwini nokukhokhela imigidi yokudayiselana ngaphansi kwalo Mthetho odlule; inqobo uma indlu ebhalisa ukudayiselana amashya ifake isicelo semvume yalendlu ngokulandisa kwesigaba- 64 zingakapheli izinyanga eziyisithupha kuqale lo Mthetho. 50

(3) The rules of a self-regulatory organisation made under an Act repealed by this Act and in force immediately before the date of commencement of this Act continue in force so far as they are not inconsistent with this Act: Provided that a self-regulatory organisation must, within six months from the date of commencement of this Act, amend or replace its rules so as to comply with the requirements of this Act. 5

(4) Subsection (3) applies with the changes required by the context to the listing requirements of an exchange.

#### **Amendment and repeal of laws**

**117.** The laws referred to in the Schedule are hereby amended or repealed to the extent specified in the third column thereof. 10

#### **Short title and commencement**

**118.** This Act is called the Securities Services Act, 2004, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.



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(3) Imithetho yenhlangano ezilawulayo eyenziwe ngaphansi koMthetho ochithwe yilona nebisebenza phambi kokuqala kwalo Mthetho iyoqhubeka njalo, inqobo uma ingashayisani nalo Mthetho: Kubalulekile ukuba inhlangano ezilawulayo ichibiyele noma iguqule imithetho yayo ngenhloso yokuhambisana nezidingo zalo Mthetho zingakapheli izinyanga eziyisithupha. 5

(4) Isigatshana- (3) sihambisana nezinguquko ezidingwa yingqikithi yemibandela yokubhalisa efunwa yisikhungo.

**Izichibiyelo nokucinywa kwemithetho**

117. Imithetho ephawulwe kuShedluli iyachitshiyelwa noma ichithwa ngendlela ebekwe kukholomu yesithathu. 10

**Isihlokwana nokuqala komthetho**

118. Lo Mthetho ubizwa ngoMthetho Wemisebenzi Yamathuluzi Okuhweba Emakethe Yezimali we- 2004, futhi uqala ukusebenza ngosuku olunqunywe nguMongameli ngesaziso *seGazethe*.

## SCHEDULE

## LAWS AMENDED OR REPEALED

## (Section 117)

No. and year of act	Short title	Extent of amendment or repeal	5
Act No. 1 of 1985	Stock Exchanges Control Act, 1985	The repeal of the whole.	
Act No. 55 of 1989	Financial Markets Control Act, 1989	The repeal of the whole.	
Act No. 85 of 1992	Custody and Administration of Securities Act, 1992	The repeal of the whole.	10
Act No. 135 of 1998	Insider Trading Act, 1998	The repeal of the whole.	
Act No. 97 of 1990	Financial Services Board Act, 1990	<p>The amendment of section 1—</p> <p>(a) by the substitution in the definition of “financial institution” for subparagraph (v) of paragraph (a) of the following subparagraph:</p> <p>“(v) any ‘[stock] exchange’, [‘member’ or] ‘authorised user’, ‘stock-broker’, ‘settling party’, ‘clearing house’, ‘central securities depository’, ‘participant’ or ‘nominee’ as defined in section 1 of the [Stock Exchanges Control] Securities Services Act, [1985 (Act No. 1 of 1985) 2004 for any person referred to in section 4(1) of that Act managing investments as contemplated in that section];”;</p> <p>(b) by the deletion in the definition of “financial institution” of subparagraphs (vi) and (xi) of paragraph (a).</p>	15 20 25 30
Act No. 61 of 1973	Companies Act, 1973	<p>1. The amendment of section 91A—</p> <p>(a) by the substitution in subsection (1) for—</p> <p>(i) the definition of “central securities depository” of the following definition:</p> <p>“‘central securities depository’ means a central securities depository as defined in section 1 of the [Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992)] Securities Services Act, 2004;”;</p> <p>(ii) the definition of “participant” of the following definition:</p> <p>“‘participant’ means a [depository institution accepted by a central securities depository as a participant in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992)] participant as defined in section 1 of the Securities Services Act, 2004;”;</p> <p>(iii) the definition of “uncertificated securities” of the following definition:</p> <p>“‘uncertificated securities’ means uncertificated securities as defined in section [1] 29 of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] Securities Services Act, 2004, which are entered in the relevant company’s register of members as uncertificated securities [by virtue] in terms of [this] subsection (3)(a) [transferable without a written instrument and are not evidenced by a certificate].”;</p>	35 40 45 50 55 60

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## ISHEDULI

## IMITHETHO ECHITSHIYELWE NOMA ECINYIWE

(Isigaba -117)

Inombolo nonyaka woMthetho	Isihlokwana	Ubungako besichibiyelo noma ukucinywa	
Umthetho 1 ka 1985	Umthetho Wezikhungo Zokuhweba eMakethe yeziMali ka 1985	Ucinywe ngokuphelele	5
Umthetho 55 ka 1989	Umthetho Wokulawula Izimakethe Zezimali ka 1989	Ucinywe ngokuphelele	10
Umthetho 85 ka 1992	Umthetho wokuLondolozwa nokuPhathwa kwamaThuluzi okuHweba eMakethe yezimali ka 1992	Ucinywe ngokuphelele	15
Umthetho 135 ka 1998	Umthetho wokuHweba ngoLwazi lwaNgaphakathi ka 1998	Ucinywe ngokuphelele	20
Umthetho 97 ka 1990	Umthetho weSigungu Semisebenzi yeziMali ka 1990	<p>Ukuchitshiyelwa kwesigaba 1---</p> <p>(a) ngokufaka esikhundleni "sezikhungo zezezimali" sendinyana (v) yendima (a) yendinyana elandelayo:</p> <p>"(v) noma yisiphi i- "[<b>isikhungo semakethe</b>]", [<b>ilungu</b>] noma [<b>umsebenzisi ogunyaziwe</b>], [<b>umthengisi wamashezi</b>], [<b>umelekeleli olungisayo</b>], [<b>indlu ebhalisa ukudayiselana amasheya</b>], [<b>ingodla yokulondoloza</b>], [<b>obambe iqhaza</b>] noma [<b>oqokiwe</b>] njengoba kuchaziwe esigabeni 1 [<b>soKulawulwa Kwe-Sikhungo semakethe</b>] Umthetho Olawula Imisebenzi yamaThuluzi okuHweba eMakethe yeziMali, ka[1985 (Umthetho No. 1 ka- 1985) 2004 (Umthetho No. ka- 2004)];" kanye</p> <p>(b) nokucisha encazelwani "yezikhungo zezezimali" zezindinyana (vi) no-(xi) zendima (a).</p>	<p>25</p> <p>30</p> <p>35</p> <p>40</p>

No. and year of act	Short title	Extent of amendment or repeal	
		<p>(b) by the insertion in subsection (1) after the definition of "central securities depository" of the following definition:  <u>"'certificated securities' means certificated securities as defined in section 29 of the Securities Services Act, 2004;"</u>;</p> <p>(c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:            "(b) Where any provision of this Act is not expressly or impliedly amended by this section, this Act shall apply in respect of uncertificated securities in the same manner as it applies to <u>certificated securities [in certificated form].</u>";</p> <p>(d) by the substitution in the Afrikaans text of section 91A for the expression "ongesertifiseerde effekte", wherever it occurs, of the expression "ongesertifiseerde sekuriteite";</p>	5 10 15
Act No. 24 of 1936	Insolvency Act, 1936	<p>The amendment of section 35A by the substitution in subsection (1) for—</p> <p>(a) the definition of "exchange" of the following definition:  <u>"'exchange' means [a licensed stock] an exchange as defined in section 1 and licensed under section 10 of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or a financial exchange] Securities Services Act, 2004, and for the purposes of this section includes a central securities depository as defined in section 1 of that Act and which is also licensed as a clearing house under section 66 of that Act, or a clearing house as defined in section 1 of [the Financial Markets Control Act, 1989 (Act No. 55 of 1989)] that Act;"</u>;</p> <p>(b) the definition of "market participant" of the following definition:  <u>"'market participant' means [a stockbroker or a member as defined in section 1 of the Stock Exchanges Control Act, 1985, or a financial instrument principal or a financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989, or a client of such a stock-broker, member or financial instrument trader] an authorised user, a participant, a client or a settling party as defined in section 1 of the Securities Services Act, 2004, or any other party to a transaction;"</u>;</p> <p>(c) the definition of "rules of an exchange" of the following definition:  <u>"[rules of an exchange] 'exchange rules' means [rules made pursuant to either section 12 of the Stock Exchanges Control Act, 1985, or section 17 of the Financial Markets Control Act, 1989] the exchange rules and depository rules as defined in section 1 of the Securities Services Act, 2004;"</u>.</p>	20 25 30 35 40 45 50 55

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Inombolo nonyaka woMthetho	Isihlokwana	Ubungako besichibiyelo noma ukucinywa	
Umthetho 61 ka 1973	Umthetho weziNkampani ka 1973	<p>1. Isichibiyelo sesigaba 91A—</p> <p>(a) ngokukhipha ufake esigatshaneni (1) izinguquko ezilandelayo</p> <p>(i) ukubuyekeza incazelo “ingodla yokulondoloza amathuluzi ngendlela elandelayo:  <b>“Isigungu Semisebenzi Yezimali”</b> sichaza isigungu sokulondoloza izinsiza zezokuvikela ngendlela echazwe kusigaba 1 [soMthetho Wokugcinwa nokuPhathwa kwezinsiza zezokuvikela ka 1992 (uMthetho No. 85 ka 1992)] Umthetho Wemisebenzi yezinsiza zezokuvikela Emakethe Yezimali ka 2004;—</p> <p>(ii) incazelo “obambe iqhaza: ngencazelo elandelayo;  “obambe iqhaza usho [isikhungo esifaka imali sibe semukelwe yingodla yokulondoloza njengelunga ngaphansi koMthetho Wokugcinwa nokuPhathwa kwezinsiza zezokuvikela ka 1992 (Umthetho No. 85 ka 1992)] obambe iqhaza ngendlela echazwe esigabeni 1 soMthetho Wemisebenzi wezinsiza zezokuvikela Emakethe yezimali ka 2004;—</p> <p>(iii) incazelo “<b>amathuluzi angenasiqiniseko</b>” kulencazelo elandelayo “amathuluzi angenasiqiniseko” asho amathuluzi angenasiqiniseko ngendlela echazwe esigabeni [1] 29 [soMthetho Olawula Izikhungo Zokuhweba Ngamasheya ka 1985 (Umthetho No. 1 ka 1985)] Umthetho Wemisebenzi Yamathuluzi Okuhweba Emakethe Yezimali ka 2004, abhalwe ebhukwini elifanele lamalunga enkampani njengamathuluzi angenasiqiniseko [ngesizathu] ngokwalesi sigatshana (3)(a) [engedluliswa ngaphandle kwephepha elibhaliwe futhi awaphelezela wubufakazi obuyisitifiketi]</p> <p>(b) ngokugaxa esigatshaneni (1) ngemuva kwencazelo “ingodla yokulondoloza amathuluzi okuhweba emakethe yezimali”  <b>“amathuluzi anesiqiniseko”</b> asho amathuluzi anesiqiniseko ngendlela echazwe esigabeni 29 soMthetho Wemisebenzi Yamathuluzi Okuhweba Emakethe yezimali ka 2004;</p> <p>(c) ngokukhipha ufake endimeni (b) esigatshenini (2) lendima elandelayo;  “(b) Lapho umbandela walo Mthetho ungachitshiyelwe ngokuqondile noma ngandlela thize yilesi sigaba, loMthetho uyosebenza kumathuluzi angenasiqiniseko ngendlela efanayo naleyo esebenza kumathuluzi anesiqiniseko [ngohlobo olunesiqiniseko]</p> <p>(d) ngokukhipha embhalweni wesiBhunu umbhalo wesigaba 91A isisho esithi “ongesertifeerde effekte” noma yikuphi lapho uvela khona, ufake “ongesertifeerde sekuriteite”;</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p> <p>65</p>

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Inombolo nonyaka woMthetho	Isihlokwana	Ubungako besichibiyelo noma ukucinywa	
Umthetho 24 ka 1936	Umthetho Wokuwa kweBhizinisi ka 1936	<p>Isichibiyelo sesigaba 35A ngokufaka lokhu okulandelayo esigatshaneni (1)</p> <p>(a) incazelo "isikhungo sohwebo emakethe yezimali" kufakwe incazelo elandelayo:  "Isikhungo sohwebo emakethe yezimali"  sichaza [amasheya anemvume] isikhungo esichazwe esigabeni 1 nesinemvume ngaphansi kwesigaba 10 [soMthetho Olawula Izikhungo Zokuhweba Ngamasheya ka 1985 (Umthetho No. 1 ka 1985) noma isikhungo sokuhweba ngemali] Umthetho Wemisebenzi Yamathuluzi okuhweba Emakethe yezimali 2004 (Umthetho ka 2004), ngokwenhloso yalesi sigaba ihlanganisa ingodla yokulondoloza amathuluzi okuhweba emakethe yezimali njengoba ichazwe esigabeni 1 salo Mthetho nesinikwe igunya lokusebenzi njengendlu ebhalisa ukudayiselana amasheya ngaphansi kwesigaba 66 salo Mthetho noma indlu ebhalisa ukudayiselana amasheya njengoba ichazwe esigabeni 1 [soMthetho Olawula Izimakethe Zezimali ka 1989 (Umthetho No. 55 ka 1989)] walowo Mthetho,"</p> <p>(b) incazelo "yomuntu obambe iqhaza" ngendlela elandelayo:  "obambe iqhaza" uchaza [ohweba ngamasheya noma ilunga elichazwe esigabeni 1 soMthetho Olawula Izikhungo zokuhweba Ngamasheya ka 1985 noma ongunya lokuhweba ngethuluzi lasemakethe yezimali noma odayisa ngamathuluzi okuhweba njengoba kuchazwe esigabeni 1 soMthetho Olawula Izimakethe Zemali ka 1989 noma ikhasimende lalowo mhwebi-masheya, ilunga noma odayisa ngamathuluzi okuhweba] ogunyazelwe ukusebenzisa, obambe iqhaza, ikhasimende noma ithimba elikhokhayo ngendlela echazwe esigabeni 1 soMthetho Wemisebenzi Yamathuluzi Okuhweba emakethe yezimali ka 2004 (Umthetho ka 2004) noma elinye ithimba elithintekayo ekudayiselaneni,"</p> <p>(c) incazelo "yemithetho yesikhungo" ngendlela elandelayo:  "[imithetho yesikhungo sokuhweba emakethe yezimali]" "imithetho yesikhungo" ichaza [imithetho eshaywe ngokulandela isigaba 12 soMthetho Olawula Isikhungo seMakethe Yamasheya ka 1985 noma isigaba 17 soMthetho Olawula Izimakethe zemali ka 1989] imithetho yesikhungo nemithetho yokulondoloza njengoba ichazwe esigabeni 1 soMthetho Wemisebenzi Yamathuluzi Okuhweba emakethe yezimali ka 2004 (Umthetho ka 2004)</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>

