

Financial Sector Regulations amendments published

Minister of Finance Tito Mboweni has published the Financial Sector Regulations amendments that are intended to simplify the process for appointing the commissioner and deputy-commissioners of the Financial Sector Conduct Authority (FSCA).



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The amendments were published as Notice No.850 in Gazette No. 43581 in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act No.9 of 2017 (FSR Act).

The amendments also empower the minister to appoint additional persons to the Transitional Management Committee (TMC) of the FSCA, and to designate one such person to perform the functions of the commissioner while the recruitment process is underway.

In addition, they clarify how vacancies to the shortlisting panel should be handled.

“The process to appoint a commissioner and deputy commissioner of the FSCA commenced in April 2018, following the appointment of the shortlisting panel as per requirements of the regulations.

“The shortlisting panel could not complete the process of shortlisting four candidates in 2018-19 for consideration for each

of the positions of commissioner and the deputy commissioners by the minister,” National Treasury said on Thursday, 6 August.

Given the rigidity of the process in terms of the initial regulations, the shortlisting panel was not able to identify the minimum of four candidates for recommendation for appointment to the minister.

'Weaknesses in the regulations'

“The terms of office of two members of the shortlisting panel, a deputy governor of the South African Reserve Bank and the National Consumer Commissioner, also subsequently expired, and could not be replaced in terms of the original regulations.

“These weaknesses in the regulations have delayed the process to complete the appointment process, and necessitated amendments to the regulations,” National Treasury said.

The draft amendments to the regulations were tabled in Parliament on 11 June 2020 for review for a period of 30 days while Parliament is in session, as required in terms of section 288(4)(b) and (5)(b) of the FSR Act.

The period for Parliamentary review ended on 13 July 2020. No comments regarding the draft regulations were received from either House of Parliament.

Implementation timelines

The minister has re-appointed the available members of the shortlisting panel, and also initiated a process to fill the vacant posts.

“The panel will soon be fully constituted to process the applications received after further applications were received by 16 March 2020, following the placement of advertisements in February 2020,” National Treasury said.

The minister has tasked the panel to complete their process for submitting their recommendations for the appointment of the commissioner within the next 60 days.

The process for appointing deputy commissioners will also be overseen by the shortlisting panel, and are expected to be completed in parallel in a separate process.

An advert for the deputy commissioner position will be published in the next week. The members of the shortlisting panel will be announced as soon as the panel is fully constituted.

“Following the appointment of Abel Sithole as CEO of the Public Investment Corporation, and his subsequent resignation as chair of the TMC, the minister has designated Adv Dube Tshidi to perform the functions of the commissioner whilst the National Treasury embarks on a recruitment process for a full time commissioner,” National Treasury said.

The designation will be for a period of three months, effective from 6 August 2020 to 5 November 2020, or sooner if a new commissioner has taken up this position.

Position rotated

The position will be rotated to other members of the TMC if no commissioner is appointed within 90 days.

“The minister and National Treasury also want to express their deep gratitude for the role Sithole has played as the chair of the board of the Financial Services Board and in managing the transition from the FSB to the establishment of the Financial Services Conduct Authority.

“He has served both these positions with great integrity and dedication. We wish him all the best in his new job as the CEO of the Public Investment Corporation,” National Treasury said.

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