

REPORT ON THE CONSULTATION PROCESS FOR THE AMENDMENTS TO REGULATIONS IN TERMS OF FINANCIAL SECTOR REGULATION ACT, 2017

Process followed and statement of the reasons why the delay involved in complying, or complying fully, with section 288 (4) to (6) of the FSRA was considered likely to lead to prejudice to financial customers or harm to the financial system, or defeat the object of the Amendments to the Regulations

The Minister of Finance, in Government Notice No. R1555 of 29 November 2019, gave notice as required in terms of section 288(4) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) ("the FSRA "), of the publication for public comment of draft Amendments to the Regulations which were published in Government Notice No. R405 of 29 March 2018, as amended, that are proposed to be made in terms of sections 61(4), 288 and 304 of the FSRA.

The draft Amendments to the Regulations were published on the national treasury website, www.treasury.gov.za/twinpeaks. The period allowed for comment was until the close of business on 24 January 2020.

The draft Amendments to the Regulations were tabled in Parliament, as required in terms of section 288(4)(b) of the FSRA, on 11 June 2020. The period for Parliament's consideration contemplated in section 288(5)(b) of 30 days while Parliament is in session was completed on 13 July 2020. No comments were received during this period from either House of Parliament.

Comments received and responses

The following comments were received during the consultation process:

Provision	Commentator	Comment	National Treasury Response
Amendment to Regulation 1	Banking Association of South Africa ("BASA")	We note that the definition and role of the "ministerial panel" has been repealed. BASA, notes the reasons for the proposed amendment, being streamlining the Commissioner and Deputy Commissioners' appointments, however is of the view that the role of the "ministerial panel" is critical during the interview process of the candidates for the positions of Financial Sector Conduct Authority ('FSCA') commissioner and deputy commissioners as it supports broad representation and participation. The panel is further important in bringing to life one of the objectives of the Financial Sector Regulation Act ('FSRA')	Disagree with the proposal, the Shortlisting Panel contains well-considered representation, and is well-capacitated to fulfil the necessary role of shortlisting, interviewing and recommending candidates for appointment. It is not necessary to have two panels.

		<p>under section 7(1)(h) which states that market participants should have confidence in the financial system.</p> <p>We recommend that the ministerial panel and its role be retained.</p>	
<p>Amendment of Regulation 3 insertion of sub-regulations (1)-(a); (aA) and (aB)</p>	<p>BASA</p>	<p>The transitional management committee cannot be operational for an open-ended period. We note that notice of termination of the transitional management committee ('TMC') cannot be announced prior to the Commissioner and at least 2 Deputy Commissioners have been appointed, however the Regulation is silent on the time period, after the appointment of the Commissioner and 2 Deputy Commissioners, the TMC is to be terminated. We recommend that Regulation 3(aA) be amended to read as follows: "The termination date determined in terms of paragraph (a) [may only be] must be given within 60 (sixty) days after the Commissioner and at least two Deputy Commissioners have been appointed."</p> <p>In respect of regulation 3(aB) the word 'until' has been duplicated, we hence recommend that one 'until' be deleted to read: "until [the person appointed as the Commissioner has commenced service] until the date determined in paragraph (a)."</p>	<p>The transitional management committee will not be operational for an open-ended period, the necessary notice will terminating the transitional management committee will be announced promptly after the appointment of the Commissioner and at least 2 Deputy Commissioners has occurred. The publication of the notice will certainly not be unreasonably delayed.</p> <p>It is not necessary to place a definite period within which the Notice must be published.</p> <p>This technical correction has been effected in the draft of the regulations that is submitted to Parliament for consideration.</p>
<p>Amendment of Regulation 3 [insertion of sub-regulation (1)(bA)]</p>	<p>BASA</p>	<p>We are of the view that the secondment of people from another "organ of state" is too broad.</p> <p>We recommend that reference to "organ of state" be substituted by "organ of state within the economic cluster".</p>	<p>The term "organ of state" is legally defined in section 239 of the Constitution, and the fact the regulations require any person that is seconded would need to be a person with knowledge and expertise relevant to the objective of the Financial Sector</p>

		<p>National Treasury together with other departments from the economic cluster have been directly involved in the changes that relate to the twin peaks model. Secondment of individuals from departments within the economic cluster would ensure that there is seamless continuity and would minimise disruptions that are related to information and skills handover.</p>	<p>Conduct Authority set out in section 57 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), provides sufficient guidance regarding appropriate persons who might be seconded. The proposed addition of “in the economic cluster” is not a legally defined term, and it is submitted that it would not provide any additional clarity or certainty regarding who may potentially be seconded.</p>
<p>Amendment of Regulation 3 [amendment of sub-regulation (1)(d)]</p>	<p>BASA</p>	<p>We note that the former chairperson of the former Financial Services Board “FSB” has been acting as commissioner within the current transitional committee of the FSCA. We request clarity as to whether the Minister will appoint another member of the transitional committee to perform the functions of the Commissioner after these draft amendments have been adopted and made law.</p> <p>We recommend that the punctuation be amended (indicated in blue for ease of reference) to read: “(d) The [Chairperson of the Financial Services Board] Minister must appoint a member of the transitional management, committee, referred to in paragraph (b) to perform the functions of the Commissioner in terms of the Act, until the person appointed as the Commissioner has commenced service.”</p>	<p>The Minister may potentially appoint another member of the transitional management committee to perform the functions of the Commissioner after these draft amendments have been finalised and published.</p> <p>It is not clear the rationale for the placement of the proposed punctuation, but the appropriate punctuation of the provision will be reviewed.</p>
<p>Amendment of Regulation 3 [insertion of sub-regulation 6]</p>	<p>BASA</p>	<p>Please refer to comment number 3 above [in respect of the insertion of sub-regulation (1)(bA)].</p>	<p>The term “organ of state” is legally defined in section 239 of the Constitution, and the fact the regulations require any person that is seconded would need to be a person with knowledge and expertise relevant to the objective of the Financial Sector Conduct Authority set out in section 57 of the</p>

			<p>Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), provides sufficient guidance regarding appropriate persons who might be seconded. The proposed addition of "in the economic cluster" is not a legally defined term, and it is submitted that it would not provide any additional clarity or certainty regarding who may potentially be seconded.</p>
<p>Amendment of Regulation 11 (a)</p>	<p>BASA</p>	<p>Per comment 1, Ministerial Panels to be maintained.</p>	<p>Disagree with the proposal, the Shortlisting Panel contains well-considered representation, and is well-capacitated to fulfil the necessary role of shortlisting, interviewing and recommending candidates for appointment. It is not necessary to have two panels.</p>