

THE FINANCIAL MARKETS BILL

Financial Markets Bill Public Workshop

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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PURPOSE OF BILL

- Repeal & replace Securities Services Act
- Alignment with International developments
 - G20 & Financial Stability Board
 - IOSCO
 - FSAP
- Changes in principles, laws, e.g. UNIDROIT Convention, and international regulatory practices
- Technical/functional issues

PROCESS

- SSA Review (2010-11)
- Publication of FMB on 4 August 2011
- Comments Received
- Public Forum on 5 October 2011
- NT/FSB/SRO Working Group reviewed comments
- Follow up Treasury-led meetings and correspondence
- Consultative workshops with banks and non-bank financial inst.'s
- Additional meetings with stakeholders including IDBs and PDs
- Submission of the revised Bill to Parliament

MAIN OBJECTIVES & POLICY PRINCIPLES

Bill aims to:

- Increase confidence in the South African Financial Markets
- Promote the protection of regulated persons and clients
- Reduce systemic risk
- Promote international competitiveness of securities services in the Republic

Testing for:

- Regulatory effectiveness
- Investor/client protection
- Minimising systemic risk
- Financial stability

TESTING POLICY PRINCIPLE

By taking into account:

- Competition/ownership issues
- SRO model
- Requirements for effective market infrastructure (e.g. considering settlement assurance & certainty, central register)
- Cross-border participation
- Accounting standards - IFRS (G20)
- The spread of regulatory oversight - improved visibility of OTC derivative transactions
- Powers of registrar
- Regulatory cooperation
- Market abuse

FINANCIAL MARKETS BILL MEETING LIST

MEETING SUBJECT	DATE	REPRESENTATION
Feedback on comments	22-Sep-11	NT and FSB
SARB comments discussion	28-Sep-11	NT, FSB and SARB
Internal discussion	29-Sep-11	NT and FSB
Workshop arranged by FSB	30-Sep-11	NT and FSB
Public forum	5-Oct-11	All stakeholders
Meeting with Banking Association	18-Oct-11	NT and BASA
Discussion with IDB on FMB	28-Oct-11	IDBs
Meeting on policy issues	3-Nov-11	NT and FSB
Meeting on remote membership and link-up in the Financial Markets Bill (foreign participation in SA markets)	9-Nov-11	NT, FSB, Strate, JSE and SARB
CSD Participant meeting on FMB	16-Nov-11	NT and Institute of Bankers
FMB workshop for non-banks	17-Nov-11	NT and stakeholders
FMB discussion with FIC (teleconference between K Gibson and FIC)	22-Nov-11	K Gibson and FIC
FMB workshop for non-banks	22-Nov-11	NT and stakeholders
FMB meeting with FIC	23-Jan-12	NT, FSB and FIC

COMMENTATORS

ABSA Capital	ICAP SA
ABSA Group	Investec Capital Markets
ASISA	Investec Securities
Banking Association	JSE
Bowman Gilfillan	Macquarie Securities
Computershare SA	SAVCA
Corwil Investments Holdings	Standard Bank
Depository Trust and Clearing Corporation	South African Reserve Bank
Financial Intelligence Centre	Strate Ltd
Firststrand Bank	

NT RESPONSE TO COMMENTS

MARKET STRUCTURE, SRO MODEL, TWIN PEAKS

SSA

SRO model entrenched in Act. Act makes provision for Exchanges (Ch. 3) & CSDs (Ch. 4) to regulate their users / participants

Aug 2011 version of FMB

SRO model retained; introduce SR clearing house

Comments

Anti-competitive vertical integration, inconsistent with Twin Peaks (role of the SARB?);
Conflicts of interest provisions should be improved.

FMB 2012 version

SRO model to be reviewed, concurrent to twin peaks

Col and engagement/adjudication processes strengthened (cl. 62, 63, 72(2)-(4))

Should principle of competition be included as object of the act?

CONFLICTS OF INTEREST

SSA

No dedicated section on Col. Registrar must publish proposed rule amendments in Gazette only (s.61). Penalty does not extend to CHs and CH members

Aug 2011 version of FMB

Impose Registrar requirements w.r.t. additional business that gives rise to Col

Comments

Col arise out of SRO model, in particular:

- Regulating services that it may provide
- Setting compliance requirements that benefit SRO bottom line
- New business

Propose code of conduct, public declarations of Col, annual reporting requirement proving separation of regulatory functions and commercial services, complaints mechanism, & enforcement duty provision

CONFLICTS OF INTEREST (cont.)

FMB 2012 version

Overlap of regulatory function vs. provision securities services

- Improved separation by definition e.g. cl. 29(1)(s)
- Rules/listing requirements s.t. Registrar approval
- Stricter parameters governing new business (cl.62)
- New Col requirements - transparent, open to public scrutiny, s.t. annual self-assessment (cl. 63)

Lack of SRO accountability to Registrar

- Stronger rule-making processes; Formalised consultation process - cl. 72 (2)
- SRO must explain rule & objections – cl. 72(3)(a)
- Equivalent requirements for listing requirements – cl. 10(6)

CONFLICTS OF INTEREST (cont.)

FMB 2012 version (cont.)

Disputes bet. market users & SROs / market users & regulator ... we believe **sufficient recourse mechanisms**

- Strengthened consultation processes in bill
- Concerns can be voiced to Registrar at any time; cl. 5(3) requires due regard of these, informed by objects of Act
- Administrative decisions s.t. appeal under cl. 107
- Accountability of FSB as regulator can be strengthened but part of broader reform agenda; policy matter returned to Minister (e.g. cl. 5(6) and 77(1))
- Ad hoc consultation forums useful but does not need to be legislated for

CONSULTATION & ADJUDICATION PROCESSES

SSA

s61 provides for consultation between the Registrar & the SRO w.r.t *“Manner in which exchange rules and depository rules may be made, amended or suspended”*

Aug 2011 version of FMB

No changes to consultation & adjudication processes

Comments

Require more robust consultation period required w.r.t. amendments to listing requirements

Provision should be made for a process to review and appeal Registrar decisions (along the lines of the mechanism provided for in the Banks Act)

FMB 2012 version

SRO rule making – dealt with above

Approval of additional business – should not interfere with day-to-day operations (cl. 62, 63 & 107(a) adequate)

Subordinate regulation – administrative decisions can be appealed, regulation itself should be tested through the design process

OTC DERIVATIVES

SSA

The Registrar may:

- i. prevent a person from carrying on the business of buying and selling unlisted securities if the business is carried on in a way that defeats an object of the SSA
- ii. impose or prescribe conditions in respect of the OTC market

Aug 2011 version of FMB

Provides for trade repository to which all OTC derivative trades must be reported (Chapter VI). Extends scope of regulation unlisted securities; registrar to regulate trading in unlisted transactions and prohibit undesirable advertising or canvassing relating to securities (Chapter IX)

OTC derivative regulation in general

Comment

Powers afforded to Registrar too great, scope of regulation extends too far. Regulation should focus on principal-to-principal transactions which do not fall within FAIS

FMB 2012 version

Principle oriented approach appropriate. Regulation to vest with Minister in s.77(1), supported by economic impact assessment.

OTC DERIVATIVES (cont.)

Trade Repository

Comments

Unnecessary; TR definition overly broad, unintentionally captures regular operational reporting type systems & activities; Unclear what types of derivatives to be reported & potential incremental margin; Concern about a TR being for-profit, introducing conflicts; No clear reporting requirements; Confidentiality needs to be dealt with so that trading strategies are not revealed; More clarity required on how authorities will use data from a TR to potentially wind down systemically important but non-viable financial institutions

NT Comments

Agree - will not mitigate systemic risk, but central reporting crucial first step, interim can help monitor systemic build-up. Existing reporting lines incomplete, inadequate - OTC derivatives discussion document gives flesh to TR policy matters.

Other - confidentiality provision strengthened - 57(1)(f), no limitations on outsourcing, phase-in period assured, alignment of reporting between listed instruments traded off-exchange & OTC derivatives – cl. 24 gives flexibility.

OTC DERIVATIVES (cont.)

Independent Clearing House

Comment

Multiple CHs may be problematic in SA market

- *CH funding* – high concentration of underwriting banks means this model would increase rather than mitigate risk
- *CH function* – specify that for OTC derivatives only

Relieving counterparty to OTC derivative transaction from obligations if other counterparty contravenes any provision of the Act (cl. 77(2)) potentially introduces systemic risk

Code of conduct & reporting obligations should be provided for persons who enter into OTC derivative contracts, not just those providing securities services

NT Comments

CH can be independent - link to SRO? Central clearing a priority. Number of CHs should not be legislated, nor should model be prescribed.

OTC DERIVATIVES (cont.)

Other matters

Comment

Counterparty relieved of all obligations should other CP contravene Act, introducing systemic risk

Response

Agreed, deleted.

Comment

Propose clear & mandatory code of conduct

FMB 2012 version

Agreed, to be effected through regulation (cl. 76(1))

DIRECT FOREIGN PARTICIPATION IN LOCAL MARKET INFRASTRUCTURE

SSA

No provision for foreign participation in local financial market infrastructure

Aug 2011 version of FMB

To increase competition & better regulate cross-border transactions, bill provides for foreign entities to be members of the South African financial markets infrastructure. It creates a platform for the signing of MoU (cl. 5(5)(b)) with regulators in other countries, to assist FSB in investigating, inspecting or conducting on-site visits of foreign entities.

Comments

CSD Link-up – Cautiously agree with principle s.t. well defined arrangements in legislation esp. to prevent anticompetitive practices; market participants should not be compelled to connect via CSD. Propose new category of participant, with rules.

Remote membership – General concern that may introduce new risks to system, esp. firm reputation, regulatory jurisdiction, inability to enforce contracts. May undermine “SA Inc”.

Foreign provision of market infrastructure – Need local presence; CHs & TRs possible exceptions; Policy decisions in these matters should be in Bill.

FMB 2012 version

Direct foreign participation - Policy decision to allow but should be phased in over time, & s.t. Minister regulation (cl. 5(6)); Industry engagement & economic impact assessment assured. On link-up: existing channels for cross-border transactions should remain.

SRO LICENCE APPLICATIONS

SSA

Exchange section 8-10, CSD section 30-33, Clearinghouse section 64-69. General licensing requirements, e.g. an association applying for exchange license must consist of 10 or more persons.

Aug 2011 version of FMB

Alignment with section 8(3) of Companies Act, allowing and recognising associations formed “pursuant to another law”. Enabling the registrar to prescribe license application fees ensuring its independence from the govt (FSAP recommendation). For cost effective regulation, registrar can publish license application on the official website as opposed to in two national newspapers.

Comments

SRO structure purports significant barrier to entry as applicant must have operational and regulatory resources necessary to perform the role. Definitions of CH and TR linked to function (cl. 30 and 50), meaning entities inadvertently captured.

FMB 2012 version

SRO model validated but to be reviewed, beginning 2012. Structure for SRO licensing requirements improved & definitions refined to prevent unintended capturing other business – see new clauses 6-8, 26-28, 46-48, and 54-56.

CENTRAL ORDER BOOK TRADING

SSA

Instructs who may buy and sell listed securities.

Aug 2011 version of FMB

Clarifies confusion around the meaning of the “*business of buying and selling of listed securities*” and whether all trades should be executed on the exchange trading system.

Clarifies that all orders through or by an authorised user should be “*executed*” on the exchange trading system.

Comments

Seemingly an inconsistency between Bill and EM because cl. 24 of FMB does not say that orders by AU’s have to be executed on the exchange trading system.

NT Comments

Relevant clause in the Explanatory Memorandum not intended to imply that exchange implement a rule to force all its AU’s to execute orders of listed securities on the exchange trading system. The word “execute” here refers to the reporting of trades to the JSE which officially makes a trade a “transaction” or contract.”

SECURITIES OWNERSHIP REGISTER

SSA

SOR not enabled in legislation

Aug 2011 version of FMB

The amended definition of “central securities account” extends the entities for which the CSD may hold securities to include, in addition to participants, external central securities depositories and other persons as determined in the depository rules, to enable a securities ownership register (“SOR”).

Comments

SOR, especially in vertically integrated SRO model, should not have authority to obtain information and conduct activities that effectively allow it to compete directly with the participants that it regulates.

FMB 2012 version

SOR to increase real-time transparency of securities ownership. Will help with informing policy and govt debt issuance. With regards to an SOR, the CSD will not have unlimited authority to impose requirements on market participants. Registrar must approve all rules according to the legislation (cl. 72).

SECURITIES INELIGIBLE FOR DEPOSIT

SSA

Participants are required to deposit the securities deposited with them with the CSD, unless the client directs otherwise. Makes provision for “subregister” & limits functions performed by the participants. See s35 of SSA.

Aug 2011 version of FMB

Alignment with section 50(3) of the 2008 Companies Act requires deposit of clients' securities with the CSD notwithstanding any contrary direction by clients. (cl. 32(a))

Comments

Clarification sought on what should happen if securities are not eligible for deposit into a CSD due to a decision by the depository not to accept such securities for deposit.

cl. 32 inconsistent with the right of a client to rematerialise his securities as provided for in cl. 35(h), because CSD does not accept rematerialised shares for deposit.

NT Comments

CSD participants cannot keep uncertificated securities without depositing them in the CSD. At the same time CSD can control what is eligible for deposit. There is a process by which an issuer becomes eligible. cl. 32(a), new cl. 31(a), is therefore retained.

REVOCAION OF SETTLEMENT INSTRUCTIONS

SSA

Section 39 “Requirements with which depository rules must comply” does not allow for default rules.

Aug 2011 version of FMB

cl. 35(2)(u) added to allow for default rules. Gives CSD power to limit revocation of any settlement instruction by a participant or to revoke a settlement instruction on commencement of insolvency proceedings but prior to settlement. This is aimed at ensuring certainty in the settlement system and to reduce systemic risk where there is a failure of a participant or client.

Comments

Revocation of instructions at any time on or before insolvency may cause substantial practical problems, in particular where instructions will be netted, processed in batches or subject to settlement cycles, because the unwinding of a single transaction at that late stage may cause systemic risk.

NT Comments

CSD directives already prescribe “contractual commitment” (sub-clause i) with exceptions only in very specific circumstances as prescribed in the directive. Sub-clause ii deals with special case where insolvency circumstances arise & where the CSD would want to practically pull transactions out of the cycle to minimise systemic risk.

PLEDGES AND CESSIONS CLARITY

SSA

Pledges or cessions may only be effected by entry in either a central securities account or a securities account, both of which are held by or for a participant.

Aug 2011 version of FMB

Clarifies that the required entries in respect of pledges and cessions should be effected at the level of holding and to make the entry effective to third parties in accordance with the provisions of the 2008 Companies Act. Amendment aimed at extending necessary protections to the pledgee or cessionary & to give effect to UNIDROIT. Out-and-out cessions excluded from this section as regarded as transfers to be effected under cl. 39 of the Bill.

Comments

“cession” could create confusion with *“out-and-out cession”*; propose changing to *“cession in securitatem debiti”* to emphasise that it deals with pledge only. Confusion created by the word *“may”* and possible legal consequences if an entry (flag) of the pledge was not made on the respective account as required in this cl..

FMB 2012 version

Retains phrase *“cession to secure a debt”* as plain English for *“cession in securitatem debiti”*. The Bill now clearly distinguishes between *“pledge or cession to secure a debt”* in terms of new cl. 38(1) and *“out-and-out cession”* as set out in cl. 38(2). Wording corrected to *“must”* in new cl. 38(1)(a)

FRONT RUNNING

SSA

No mention of front-running

Aug 2011 version of FMB

No mention of front-running

Comments

As front-running is widely recognised as an offence in the industry it was proposed that this conduct be explicitly listed as a prohibited practice under cl. 84 of the Aug Bill – “Prohibited Trading Practices”

NT Comments

Front-running still left out. But this is not problematic since front-running can fall within the definition of insider trading. It is therefore possible for someone to be prosecuted for front-running both under the code of conduct (new cl. 75) in terms of contravention of fiduciary duties toward a client, as well as under the provisions on insider trading (new cl. 80). In other words in the case where the front-running is not insider trading, it can be dealt with through the code of conduct.

DEEMING PROVISIONS : PROHIBITED TRADING PRACTICES

SSA

Deeming provisions for prohibited trading practices in s75 – “Prohibited Trading Practices.”

Aug 2011 version of FMB

No change

Comments

Deeming provisions place too great onus on the respondent to prove that he did not execute a deeming transaction with the intent of creating a false price, for example setting or correcting of reference or ruling price of an illiquid derivative by a market maker.

NT Comments

Not necessary to remove any deeming provisions in new cl. 82. The deeming provisions do not cause a shift in the onus to the respondent. The FSB will still require proof that the market participant intended to create a deceptive appearance of trading activity in connection with, on an artificial price for, the security relevant to that transaction.

NEGLIGENCE ELEMENT: INSIDER TRADING

SSA

No negligence element in terms of insider trading

Aug 2011 version of FMB

Amendment to extend the liability of persons who enter transactions into the market on behalf of another, to instances where such persons acted grossly negligent.

Comments

cl. 82(2) of Aug Bill places onus on traders to launch investigation before each trade and to refuse trades on the basis of suspicion that client is an insider. Such refusal may have negative impact on client relationships. Also too onerous to expect a broker to always conduct an insider trading investigation before placing an order.

FMB 2012 version

NT has removed the negligence element from the insider trading provisions, but Bill designed so that if a trader knows that a client is an insider, that trader would still contravene the Act.

NEGLIGENCE ELEMENT: MARKET MANIPULATION

SSA

No negligence element in terms of market manipulation

Aug 2011 version of FMB

Amendment to extend the liability of persons who enter manipulative transactions into the market on behalf of another, to instances where such persons acted grossly negligent.

Comments

Test for participating in a manipulative practice should be the standard reasonable man test as opposed to the “had reason to suspect” test. This is less onerous.

FMB 2012 version

Criminal liability for a person who had reason to suspect that he was executing a manipulative transaction has been taken out. It is agreed that criminal liability would be too onerous and that it should remain an administrative penalty in these circumstances. Criminal liability however remains for those who know that they are taking part in a manipulative practice.

NEGLIGENCE ELEMENT : MISLEADING, IMPROPER, FALSE STATEMENTS

SSA

Negligence element in terms of misleading, improper, or false statements - “Ought reasonably to have known” (s76).

Aug 2011 version of FMB

No change

Comments

Criminal sanction for those who had reason to suspect that a statement was misleading, improper, or false is overly harsh.

FMB 2012 version

Changed to only an administrative offence, but where there is intent, both criminal and administrative liability still apply. Also, a person who made a false, misleading, or deceptive statement without knowing it and becomes aware of it must immediately publish a “full and frank correction with regard to such statement.” (see new cl. 83).

COMPENSATION OBLIGATIONS

SSA

Compensation orders only exist for insider trading (s77)

Aug 2011 version of FMB

Amendment to extend compensation orders to cases of price manipulation and false reporting (cl. 87).

Comments

Compensation obligations provisions in cl. 87 should be deleted because of the difficulty in identifying people who are affected by such contraventions, the amount such persons could claim and the amount that the offender can be held liable for.

FMB 2012 version

Compensation orders for price manipulation and false statements have been removed, but remain for insider trading, where it is possible to identify the “victims.”

CIVIL LIABILITY FOR INSIDER TRADING

SSA

Contains civil remedy of approaching a court to administer an insider trading penalty (cl. 78 – “Powers if directorate in civil proceedings” and 80 – “Assessment of fines and penalties”)

Aug 2011 version of FMB

Still contains this civil remedy, now in cl. 88 & 89.

Comments

The civil remedy of approaching a court to administer an insider trading penalty had outlived its shelf life.

FMB 2012 version

The clauses on civil remedy for insider trading penalties have been removed. When the Capital Markets Enforcement Committee was introduced in 2005, it became the Directorate of Market Abuse’s enforcement tool of choice, and the civil action has not been used since.

OTHER MATTERS

FAIS OVERLAP

SSA

s3(2)(b) of the SSA read together with s45(1)(a)(i) of the FAIS Act effectively exempts persons regulated under the SSA from complying with FAIS.

Aug 2011 version of FMB

Exemption provision removed

Comments

Removing the SSA provision in the Bill introduces uncertainty of when the FAIS Act applies and when it doesn't.

NT Comments

A consequential amendment to Section 45(1)(a)(i) of the FAIS Act makes it clear that persons licensed and regulated under governing securities legislation are exempt from FAIS provisions, so corresponding provision in FMB would be duplication.

LIMITATION OF LIABILITY

SSA

Wide limitation of liability (section 62)

Aug 2011 version of FMB

The safe harbour applies only to an SRO in performance of its regulatory functions and obligations (cl. 73).

Comments

An SRO could be overly-protected as would be able to claim any action or conduct as being related to its regulatory function

NT Comments

cl. 73 retained without amendment. It would be contrary to drafting convention to in one cl. define the instances in which SROs enjoy a limitation of liability and in the next, to state examples that do not fall within the protection afforded to SROs in circumstances where the very nature of the definition in any event excludes protection.

FUNDING ARRANGEMENTS

SSA

Makes provision for a levy on users in terms of funding the business of the exchange.

Aug 2011 Bill

No changes

Comments

Bill should make provision for other methods of maintaining the requirements of cl. 15 (of the Aug Bill), for example the use of the organisation's balance sheet. Also, the provision that an exchange may require its AU's and their clients to contribute towards the funds of the exchange for the purpose of carrying on the business of the exchange (cl. 16 of the Aug Bill) would only be acceptable in the case of a mutualised exchange.

NT Comments

cl. 15 of the August Bill (new cl. 14) does not prevent an exchange from using its own balance sheet to manage risk, but rather provides for alternative funding arrangements. cl. 16 (new cl. 15) is a carry-over from the mutual arrangements for market infrastructure and should apply only to that form. It has been amended to reflect this.

PRIVATE COMPANIES

SSA

Imposes conditions on buying and selling of unlisted securities (s20). Does not regulate the securities of private companies held in certificated form.

Aug 2011 Bill

Expanded regulation of unlisted securities (cl. 77)

Comments

Clarity requested as to whether intention of Bill was to regulate securities of private companies held in certificated form. Also, whether or not the CSD and participant structure which currently exists under the SSA for listed securities will also apply to unlisted securities when the Act comes into effect.

NT Comments

The FMB will not regulate private companies, as these are excluded from the definition of securities. Also, Bill does not require that unlisted securities be deposited into the CSD.

UNLISTED SECURITIES

SSA

Registrar's authority iro unlisted securities limited to business of buying and selling such securities. Registrar has authority to prohibit a person from carrying on the business of buying and selling unlisted securities in the manner that contravenes the objects of the SSA, as well as to impose conditions in respect of the carrying on of such business. Furthermore, the registrar may prescribe conditions for the buying and selling of certain specified types of unlisted securities (s20)

Aug 2011 Bill

This section has been amended to extend the regulatory authority of the registrar in respect of unlisted securities to include any "securities services" that may be provided in respect of such securities and not just the buying and selling (cl. 77).

Comments

Concern about undue, administratively intensive, costly compliance requirements imposed on unlisted securities. Also concern about Strate having jurisdiction over the certificated environment.

NT Comments

Securities in private companies do not fall under the Bill, but unlisted securities held in a public company do. To ensure proper reconciliation, the issuer relies on the CSD to ensure that there is no "over-issue" on its total issued share capital.

IDBs

SSA

No mention of central order book trading of bonds.

Aug 2011 Bill

No mention of central order book trading of bonds.

Comments

IDB's concerned that FMB promotes the move to central order book trading of bonds, but this will not grow the market. IDB's want to be extensively consulted about bond market changes.

NT Comments

No substantive structural changes will be made to bond market without considering full impact. No direct bearing on Bill though, review taking place outside of the FMB process.

SECURITIES LENDING

SSA

No mention of securities lending

Aug 2011 Bill

No mention of securities lending

Comments

Clarity requested regarding treatment of securities lending under FMB framework, especially as regards cl. 25: **Reporting of transactions in listed securities**, cl. 39: **Pledge, or cession of securities to secure debt**, and cl. 40: **Ranking of interests in securities**.

NT Comments

Bill remains silent on securities lending for now. Premature to include regulatory requirements within the securities framework at this stage.

DEFINITION OF TRUST ACCOUNT

SSA

No definition of “trust account”

Aug 2011 Bill

No definition of “trust account”

Comments

Regulator should provide guidance through subordinate regulation as to what constitutes a trust account, and when this ought to be used relative to a nominee structure.

NT Comments

Trust account already defined in the Financial Institutions (Protection of Funds) Act.

AUDITING

SSA

Reference to “generally accepted accounting standards” in cl. 90(1)

Aug 2011 Bill

Reference to “generally accepted accounting standards” in cl. 98(1): “The auditor must, in conformity with generally accepted auditing standards, examine the accounting records and annual financial statements...”

Comments

Concern about reference to “generally accepted accounting standards,” as such standards do not exist in SA. In particular, The Independent Regulatory Board for Auditors (IRBA) is the national auditing standard setter and requires registered auditors to comply with the International Standards on Auditing (ISA). The Companies Act 2008 & its regulations prescribe International Financial Reporting Standards (IFRS).

FMB 2012 version

cl. 93 (cl. 98 in the August Bill) has been amended in accordance with the proposals to refer to ISA, IFRS, and the Companies Act.

OVERLAP WITH FICA

SSA

No mention regarding which legislation prevails when there is an inconsistency.

Aug 2011 Bill

cl. 3(4) has been added to ensure that the FMA prevails in the event of any inconsistency between its provisions and the provisions of any other national legislation.

Comments

Uncertainty may result as both the FMB and FICA contain overriding provisions over other legislation. In particular uncertainty regarding ability of the Registrar to supervise and enforce compliance with FICA, as required by that Act.

FMB 2012 version

FMB not intended to override FICA, which is legislation that specifically addresses combatting money laundering activities and the financing of terrorist and related activities – see amendment cl. 3(3).

IMPROVED ALIGNMENT ACROSS NATIONAL LEGISLATION

- The South African Reserve Bank Act, 1989 (Act No. 90 of 1989)
- The Banks Act, 1990 (Act No. 94 of 1990)
- The National Payment Systems Act, 1998 (Act No. 78 of 1998)
- Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)
- The Consumer Protection Act, 2008 (Act No. 68 of 2008).

PROVISIONAL TIMETABLE FOR PARLIAMENTARY PROCESS

- Formal Briefings - 22 May 2012
- Public hearings - 29 May 2012
- Report back - 05 June 2012
- Committee to adopt and consider report - 06 June 2012

THANK YOU, QUESTIONS?

e-mail financial.policy@treasury.gov.za or