



Collective Investment Schemes Control Act: Matrix

KEY TO CLASSIFICATION OF AMENDMENTS:

	Overarching amendment proposed in respect of all sector specific Acts
	Alignment with Companies and Financial Institutions (Protection of Funds) Act
	Regulatory gap: Policyholder protection and amendments to enhance clarity & certainty

Clause	Section in tabled bill	Commentator	Summary of concern/ comment	Proposed response
208	<p>Section 4 of the principal Act is hereby amended by the addition of the following subsection:</p> <p>"(5) <u>(a) A manager may, with the approval of the registrar and in writing, delegate any function listed in the definition of 'administration' to any person (in this section referred to as the 'delegated person').</u></p> <p><u>(b) Anything done or omitted to be done by the delegated person in the performance of a function so delegated, must be regarded as having been done or omitted by manager.</u></p> <p><u>(c) The registrar has, in respect of a delegated person, all the powers and duties conferred or imposed upon him or her in respect of a manager.</u></p> <p><u>(d) If a manager delegated any function listed in the definition of 'administration' to any person without the prior approval of the registrar</u></p>	<p>ASISA (18.02.2013) (18.04.2013)</p>	<p>The proposed wording of section 4(5)(d) is interpreted to mean that any delegation made before the introduction of this provision will continue in effect as if the registrar approved such delegation. This transitional measure is welcomed as it is vital to ensure that all existing delegations of functions will not become null and void when this section becomes effective as prior approval of the Registrar could not have been obtained for those delegations. It will also eliminate any serious negative impact on service delivery to clients.</p>	<p>To allow a manager of a collective investment scheme, to, with the prior approval of the registrar, delegate any of the functions contemplated in the definition of "administration", to any person. However, the manager remains responsible for all the activities of such a delegated person.</p>

	<p>before the commencement of section 208 of the Financial Services Laws General Amendment Act, 2012, that delegation must be regarded as having been made in terms of paragraph (a) for a period of six months, reckoned from the date on of such commencement, and after the expiration of that six-month period, the delegation continues in effect as if the registrar has approved the delegation in accordance with paragraph (a).".</p>			 <p>After “commencement” to insert “during which period the manager must apply for approval,”</p> <p>To omit “delegation continues in effect as if the registrar has approved the delegation in accordance with paragraph (a)”, and to substitute, “ deemed period will expire”.</p>
212	<p>The following section is hereby substituted for section 14 of the principal Act:</p> <p>"Investigations and inspections</p> <p><u>14. (1) (a) The registrar may—</u></p> <p><u>(i) authorise any suitable person in the employ of the Financial Services Board or any other suitable person; or</u></p> <p><u>(ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998),</u></p> <p><u>to conduct an on-site visit of the business and affairs of a person, whether registered or authorised in terms of this Act or not, who is involved in the administration of a collective investment scheme or the soliciting of investment in a collective investment scheme (in this section referred to as 'the investigated</u></p>	<p>BASA (17.04.2013)</p>	<p>Collective Investment Schemes Control 45 Of 2002 Clause 212 of the Bill amends section 14 of the Collective Investment Schemes Control Act by substituting the current section 14 for a section that deals with investigations and inspections. The comments on ‘on-site visits and inspections’ above apply.</p>	 <p>The following section is hereby substituted for section 14 of the principal Act:</p> <p>“Inspections and on-site visits</p> <p>14. (1) The registrar may—</p> <p><u>(a) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act 2001, (Act No.28 of 2001);</u></p> <p><u>or</u></p> <p><u>(b) instruct an inspector to conduct an inspection under</u></p>

<p>person') to determine compliance with this Act.</p> <p style="text-align: center;"><u>(b)</u> A</p> <p>person conducting an on-site visit in terms of paragraph (a)(i) may—</p> <p><u>(i)</u> at any time during business hours—</p> <p><u>(aa)</u> enter the premises of the investigated person and the investigated person must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;</p> <p><u>(bb)</u> search the premises of the investigated person for any document;</p> <p><u>(cc)</u> examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document;</p> <p><u>(dd)</u> against the issue of a receipt, seize any document which may furnish proof of any failure to comply with the provisions of this Act;</p> <p><u>(ii)</u> require the investigated person to produce at a specified time and place any specified documents or documents of a specified description in the possession or under the control of the investigated person;</p> <p><u>(iii)</u> require any person on the premises that is holding or is accountable for any document to provide information and an explanation of that information.</p> <p style="text-align: center;"><u>(2)</u> After an on-site visit or inspection has been carried</p>			<p style="text-align: center;"><u>the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).</u></p> <p><u>(2) After an on-site visit or inspection has been carried out in terms of subsection (1), the registrar may direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).The registrar may, by notice on the FSB official website, or by means of any other appropriate public media, make known—</u></p> <p style="padding-left: 40px;"><u>(a) the status and outcome of an inspection;</u></p> <p style="padding-left: 40px;"><u>(b) the details of an inspection, if disclosure is in the public interest;</u></p> <p style="padding-left: 40px;"><u>(c) — after having considered the impact upon and the interests of the regulated person as defined in section 4A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) that was the subject of the on-site visit, the outcome and details of an on-site visit, if disclosure is in the public interest.”</u></p>
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	<p>out in terms of subsection (1), the registrar may direct the person concerned to take any steps, to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).</p> <p>(3) The registrar may make known by notice on the official web site or by means of any other appropriate public media—</p> <p>(a) the outcome and details of an on-site visit if disclosure is in the public interest;</p> <p>(b) the status and outcome of an inspection; or</p> <p>(c) the details of an inspection if disclosure is in the public interest."</p>			
213	<p>Section 15 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“If the registrar, after an [investigation] on-site visit or inspection under section 14, considers on reasonable grounds that the interests of the investors of a collective investment scheme or of members of the public so require, [he or she] the registrar</p>	<p>ASISA (18.02.2013) (18.04.2013)</p>		<p>To rectify the reference to the Companies Act, 2008;</p> <p>to authorise the registrar, in addition to any other remedies, to direct a manager to wind up or amalgamate a portfolio with another if, in the opinion of the registrar, the continued existence of such portfolio is not viable (for example the size of a portfolio may be such that the relative costs of operating such portfolio may be prejudicial to investors);</p>

	<p>may—”;</p> <p>(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:</p> <p>"(a) apply to the court under [section 346 of] the Companies Act[, 1973 (Act No. 61 of 1973),] for the winding-up of a manager or of a collective investment scheme [as if he or she were a creditor thereof];"</p>			<p>to extend the powers of the registrar to act as the manager where that manager fails to comply with a request, direction or directive; and</p> <p>to increase outdated criminal sanctions</p>
	<p>(c) by the deletion in subsection (1) of paragraph (b);</p>			<p>Alignment with the Companies Act</p>
	<p>(d) by the deletion in subsection (1) of the word "or" at the end of paragraph (g) and the addition to that subsection of the following paragraphs:</p> <p><u>"(i) instruct a manager to wind up a portfolio or amalgamate a portfolio with another portfolio;</u></p> <p><u>(j) if a manager fails to comply with a request, direction or directive by the registrar under this Act, do or cause to be done all that a manager was required to do in terms of the request, direction or directive of the registrar."</u></p>		<p>It is suggested that the manager be afforded a reasonable time to respond to a request, direction or directive by the registrar.</p>	<p>To enhance the powers of the registrar to act in the interests of investors after an inspection or investigation</p> <p>There is no period stipulated as the nature of the transgression will determine what period is to be given to the manager, in the request, directive or direction.</p>

	<p>(e) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: "The registrar may oppose any application in terms of the Companies Act[, 1973 (Act No. 61 of 1973),] for—";</p> <p>(f) by the insertion in subsection (2) of the word "or" at the end of paragraph (a) and the deletion in that subsection of paragraph (b)</p>			Alignment with the Companies Act
	<p>(g) by substitution for subsection (4) of the following subsection: "(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (d), (e), (f) or (g) of subsection (1) is guilty of an offence and on conviction liable to a fine <u>not exceeding R10 million</u> or to imprisonment for a period not exceeding [one year] 10 years, or to both [a] <u>such</u> fine and such imprisonment."</p>			Alignment of penalties
214	<p>The following sections are hereby inserted in the principal Act after section 15:</p> <p>"Powers of registrar in respect of financial soundness requirement</p>	ASISA (18.02.2013)	The issuing of directives, especially those that will have general application should be subject to consultation as proposed in section 3(2) of the Financial Services Board Act.	To authorise the registrar to take action when a manager, custodian or trustee is in a financially unsound position

<p><u>15A. (1) If the registrar is satisfied that a manager, trustee or custodian is failing, or is likely to fail within a reasonable period, to comply with an applicable financial soundness requirement under this Act, the registrar may by notice direct the manager, trustee or custodian to furnish the registrar, within a specified period, with—</u></p> <p><u>(a) specified information relating to the nature and cause of the failure; and</u></p> <p><u>(b) proposals as to the course of action that the manager, trustee or custodian must adopt to ensure compliance with the financial soundness requirement under this Act.</u></p> <p><u>(2) When the registrar has received the information and proposals referred to in subsection (1), the registrar may, without derogating from the registrar's powers under any other provision of this Act—</u></p> <p><u>(a) by notice authorise the manager, trustee or custodian concerned to adopt a course of action which the registrar is satisfied will reasonably ensure that the manager, trustee or custodian complies with the financial soundness requirements under this Act;</u></p> <p><u>(b) at that time or at any time thereafter, by notice authorise the adjustment of that course of action to the extent that the registrar deems</u></p>			<p>The consultation process as prescribed in the Code of Engagement as determined by the Minister of Finance under the FSB Act will apply. It is not necessary to repeat said process. In addition, the Registrar is subject to PAJA as the issuing of directives constitutes an administrative action.</p>
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appropriate in the circumstance; or
(c) if deemed reasonably
necessary in the interests of
investors, at that time or at any time
thereafter, and notwithstanding any
steps already taken by the registrar
in accordance with paragraph (a) or
(b) or any other provision of this Act,
act in accordance with section 15.

(3) For the
purposes of this section, 'financial
soundness requirement' means any
requirement or limitation referred to
in sections 85 to 89, inclusive,
sections 91 to 96, inclusive, and
section 105 and includes any other
financial requirements imposed
under this Act.

Directives

15B. (1) The registrar
may, in order to ensure compliance
with or to prevent a contravention of
this Act, issue a directive to any
person to whom the provisions of this
Act apply.

(2) A directive
issued in terms of subsection (1)
may—
(a) apply generally; or
(b) be limited in its application to
a particular person or to a category
of persons.

(3) A directive
issued in terms of subsection (1)
takes effect on the date determined
by the registrar in the directive.

(4) In the event of

To authorise the registrar to issue directives to ensure compliance with the Act

Directives are issued subject to the provisions of PAJA.

	<p><u>a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.</u></p> <p><u>(5) The registrar must, where a directive is issued to ensure the protections of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order that the public may easily and reliably access the directive."</u></p>			
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SUMMARY OF REGULATORY GAPS

Overarching amendment proposed in respect of all sector specific Acts - Website, advisory committees, clarification on Registrar & Deputy Registrar, onsite visits, alignment of penalties

- Deletion of provisions relating to the “advisory committee”: sections 1, 8 -13, 46, 65
- Provisions enabling publication of certain of the registrar’s actions on the “official website of the FSB”: section 1, 5(b), 114(5)
- Clarification of the powers of the Registrar and Deputy Registrar: sections 1 and 7
- Alignment of the Registrar’s powers relating to on-site visits: section 14
- Increase out-dated criminal sanctions: section 15(4), 41(3), 48(3), 53(3), 65, 116

Alignment with Companies, Income Tax, Banks & Financial Institutions (Protection of Funds) Act

Companies Act:

- Reference to Companies Act No. 71 of 2008: section 1, 15, 34, 35, 36, 37, 47, 48, 50, 69, 81, 84, 90, 111, 111A

Financial Institutions (Protection of Funds) Act:

- Removal of provisions that is already provided for in this Act - undesirable business practices: deletion of section 21 and amendment of section 70

Regulatory gap: investor protection and amendments to enhance clarity & certainty

1. Definition of “authorised agent”: To insert a definition of “authorised agent” to provide for “Third Party Funds.

2. Definition of “deed” to clarify that a deed includes any supplemental deed entered into in terms of which any provision of a deed is amended.
3. Section 4: To allow a manager of a collective investment scheme, to, with the prior approval of the registrar, delegate any of the functions contemplated in the definition of “administration”, to any person. However, the manager remains responsible for all the activities of such a delegated person.
4. Section 15: To authorise the registrar, in addition to any other remedies, to direct a manager to wind up or amalgamate a portfolio with another if, in the opinion of the registrar, the continued existence of such portfolio is not viable (for example the size of a portfolio may be such that the relative costs of operating such portfolio may be prejudicial to investors); and to extend the powers of the registrar to act as the manager where that manager fails to comply with a request, direction or directive.
5. New section 15A: To authorise the registrar to request rescue plan from a manager, custodian or trustee failing to maintain a financially sound position.
6. New section 15B: To authorise the registrar to issue directives to ensure compliance with the Act.
7. Section 42(5): To authorise the registrar to withdraw or amend a condition of registration.
8. Section 97: To provide for greater clarity when the registrar may suspend and amend the provisions of a deed