

## FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

### CLAUSE BY CLAUSE MOTIVATION OF AMENDMENTS

#### A. BRIEF SYNOPSIS

1. The primary objective of the Financial Services Laws Amendment Bill, 2008 ("Bill") is to ensure a sound and well regulated financial services industry and to promote financial market stability by strengthening the financial sector regulatory framework and enhancing the supervisory powers of the regulators, as well as the powers of the Minister of Finance in dealing with potential risks to the financial system.
2. The Bill amends the laws administered by the Financial Services Board ("FSB") and is divided into the following 12 parts:
  - Part 1: Amendments to Pension Funds Act, 1956 (clauses 1 to 50);
  - Part 2: Amendment to South African Reserve Bank Act, 1989 (clause 51);
  - Part 3: Amendments to Financial Services Board Act, 1990 (clauses 52 to 65);
  - Part 4: Amendments to Long-term Insurance Act, 1998 (clauses 66 to 107);
  - Part 5: Amendments to Short-term Insurance Act, 1998 (clauses 108 to 143);
  - Part 6: Amendments to Inspection of Financial Institutions Act, 1998 (clauses 144 to 153);
  - Part 7: Amendments to Financial Institutions (Protection of Funds) Act, 2001 (clauses 154 to 168);
  - Part 8: Amendments to Financial Advisory and Intermediary Services Act, 2002 (clauses 169 to 198);
  - Part 9: Amendments to Collective Investment Schemes Control Act, 2002 (clauses 199 to 231);
  - Part 10: Amendments to Co-operative Banks Act, 2007 (clauses 232 to 237);
  - Part 11: Amendment to Financial Services Laws General Amendment Act, 2008 (clause 238; and
  - Part 12: Amendment of laws and general matters (clauses 239 and 240).

#### Summary of the Bill

##### 3.1 The Bill addresses several urgent :

- closes gaps identified by the Financial Sector Assessment Program conducted by the IMF and World Bank regarding South Africa's adherence to international standards for financial regulation;
- aligns financial sector legislation with the new Companies Act, 2008;
- eliminates overlaps caused by the Consumer Protection Act, 2008, Companies Act, 2008 and Competition Commission Act, 2009;
- makes the Financial Services Board the lead regulator where there is concurrent jurisdiction;

- gives the Minister of Finance appropriate emergency powers to deal with systemic risks to the financial system; and
- strengthens the South African Reserve Bank's powers to intervene in the event of a banking crisis.

3.2 The Bill also provides for the following:

- the repeal of numerous advisory committees as part of the process to rationalise consultation processes, and improve their quality as we move towards the twin peaks model of regulation;
- an amendment to the Co-operatives Banks Act to transfer the supervisory function of the Co-operatives Banks Development Agency to the Reserve Bank; and
- an amendment to the definition of "business of a medical scheme" in the Medical Schemes Act, 1998, which is required to support Demarcation Regulations which were released last week by the National Treasury and the Department of Health.

## **B. DISCUSSION: CLAUSE BY CLAUSE**

### **B.1 PENSION FUNDS ACT, 1956**

#### **Clause 1 (amends section 1)**

- To substitute the definition of "actuarial surplus" to enable the registrar to prescribe the basis on which a valuator must calculate the value that valuator places on the assets of a fund to ensure consistency in approach; to establish a measure for financial soundness on a prescribed regulatory basis and to align the terminology used in the Act with relevant definitions provided for in the Act;
- To insert a definition of "Companies Act" to rectify the reference to the new Companies Act, 2008;
- To substitute the definition of "contingency reserve account" to clarify that contingency reserve accounts may only be established if provided for in the rules of a fund and that a separate account must be established for each category of contingencies;
- To substitute the definition of "deferred pensioner" to clarify that deferred pensioners exist in a defined benefit category of a fund, whereas in a defined contribution category of a fund the equivalent reference would simply be paid-up members;
- To substitute certain wording of definition of "defined contribution category of a fund" to align the definition with the substantive provisions of the Act and to clarify that a member's interest must throughout his/her membership at least be equal to a minimum benefit, rather than only at retirement or termination of membership and to allow for expenses to be deducted on funds where no contributions are forthcoming;
- To substitute certain wording of definition of "employer surplus account" to clarify that an employer surplus account must be provided for in the rules of a fund;
- To substitute certain wording of the definition of "fund return" to address the practical difficulties experienced by funds that do not smooth fund returns. These practical difficulties relate to processing mismatches that occur when there are timing differences

between the time that actual transactions occur and the time when these transactions are deemed to have occurred for purposes of calculating benefits or costs or accruing investment returns. These processing mismatches result in funds not being able to achieve “real-time” accuracy, and are inevitable and unavoidable;

- To substitute the definition of “investment reserve account”: to improve the language and accuracy of words used in the definition, to ensure consistency in respect of terminology used and definition provided for in the Act and to specify that expenses must be investment related;
- To substitute the definition of “member” to include the beneficiaries of beneficiary funds in the definition to ensure that the provisions of the Act relating to members also apply to these beneficiaries;
- To substitute the definition of “member surplus account” to clarify that a member surplus account may only be established if provided for in the rules of a fund and includes former members;
- To insert a definition of “official web site”: To provide for alternative means of notification (other than the *Gazette*) that certain actions were taken. This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.;
- To insert a definition of “pension preservation fund” to recognise pension preservation funds established prior to the definition of “pension preservation fund” being inserted in the Income Tax Act;
- To substitute the definition of “prescribe” to facilitate the publication of the Registrar’s actions on FSB web site, instead of the *Gazette*;
- To insert a definition of “publish” to provide clarity as to what is meant by “publish” in the Act;
- To substitute the definition of “Registrar” to clarify who the registrar is;
- To substitute the definition of “rules” to simplify the definition by clarifying that the rules must provide for the matters prescribed under section 11 only;
- To insert a definition of “sound financial condition” to clarify the meaning of the term when used in the substance of the Act;
- To substitute the definition of “this Act” to clarify that the term “this Act” when used in the Act includes any subordinate legislation. The definition assists with the interpretation of the Act;
- To substitute the definition of “unclaimed benefit” to correct the erroneous exclusion of death benefits from the definition, and to include any unclaimed benefits in respect of non-member spouses in the definition;

- To insert a definition of “unclaimed benefit fund” to recognise an unclaimed benefit fund as a pension preservation fund established prior to the definition of “pension preservation fund” being inserted in the Income Tax Act;
- To substitute the definition of “valuation exempt” to clarify that where a fund is valuation exempt, there is no need to appoint a valuator in terms of section 9A or to submit a statutory actuarial valuation report;
- To substitute the definition of “valuator” to clarify that a valuator must be an individual. The appointment of a company or partnership as the valuator of a fund will undermine the accountability of the individual in that company or partnership; and
- To insert a new subsection (3) to provide clarity that a board may when calculating fund return use a reasonable approximation where exact return is not possible.

### **Clause 2(amends section 2)**

To correct the incorrect use of the term “registration”; instead of “registrar” in subsection (5)(a).

Replacing reference to “in the Gazette” with “on the official web site” to clarify that notification of official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

### **Clause 3 (substitutes section 3)**

To clarify who the registrar and deputy registrar are and to clarify that the deputy registrar acts under powers delegated by the registrar. The current provision that enables both the registrar and deputy registrar to exercise the powers under the Act concurrently is not desirable as it is ambiguous and may lead to conflicting actions or decisions.

### **Clause 4 (repeals section 3B)**

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

### **Clause 5(amends section 4)**

- To clarify that where a set of rules does not contain an effective date, that the rules will be effective from the date of registration thereof by the registrar in line with the registration of amendments under section 12;
- Clarify the timeframe within which a fund that commences the business of a pension fund must apply for registration; and
- Provide for applications to lapse automatically after 6 months if a fund fails to adhere to a request for additional information or the verification of information.

### **Clause 6(amends section 5)**

To update reference to other legislation, to align terminology used with the Companies Act, 2008, and to include collective investment schemes and other investment vehicles as vehicles for the investment of pension fund funds.

**Clause 7 (amends section 6)**

Replacing reference to “in the Gazette” with “on the official web site” to clarify that notification of official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

**Clause 8(amends section 7A)**

- To clarify that a fund must comply with the Act and all other laws that applies to the fund; and
- To oblige a board member that is removed as such to report the perceived reasons for such removal to the registrar and to place a general obligation on board members to report any matter that may prejudice the fund or its members to the registrar.

**Clause 9 (amends section 7C)**

To clarify the independence and functions of the board of trustees and to empower the Registrar to prescribe good governance principles.

**Clause 10(amends section 7D)**

To authorise a board of trustees to delegate its duties and functions to facilitate the effective performance thereof and to empower the Registrar to prescribe disclosure and communication requirements.

**Clause 11 (amends section 8 )**

To provide for the timeframes within which a principle officer must be appointed by a fund.

**Clause 12(amends section 9)**

To align the reporting duties of auditors with that of principal officers and valuers.

**Clause 13(amends section 9A)**

To align the provisions relating to the appointment of valuers with those relating to the appointment of principal officers and auditors in the interest of ensuring appropriate appointments in respect of critical functions.

**Clause 14(amends section 12)**

- To extend for practical reasons the period within which an amendment to the rules of a fund must be submitted. Most funds are not able to prepare a rule amendment and secure board approval thereof within 60 days;
- To remove the discretion afforded to a fund by the term “substantially” in the section as to when a rule amendment must be approved by the registrar; and
- To provide for submissions of rule amendments to lapse automatically after 6 months if a fund fails to adhere to a request for additional information.

**Clause 15(amends section 13A)**

To extend liability for the non-payment of pension fund contributions by an employer (other than a sole proprietor) to certain individuals within that employer.

**Clause 16(amends section 13B)**

- To exclude financial institutions registered under the Collective Investment Schemes Control Act, the Long-term Insurance Act and the Securities Services Act and selected foreign financial institutions that administer investments on behalf of a pension fund from the requirement to register under section 13B because the investment activities of these institutions are already regulated under the Acts referred to;
- To provide clarity that all information and records that an administrator maintains on behalf of a fund are the property of the fund;
- To allow a fund reasonable access to such records and/or information;
- To oblige an administrator to maintain such records appropriately;
- To enable the registrar to prescribe fit and proper requirements for administrators;
- To provide for financial resources which should be held separately from the assets of an administrator and which may be applied to resolve outstanding administrative issues and services on an administrator being replaced;
- To impose whistle blowing duties upon pension fund administrators;
- To enable the registrar to notify immediately an administrator of any matter which could prejudice a fund without necessarily have to conduct an inspection in the first place;
- To make it compulsory for an administrator to keep separately his assets an administrator.

**Clause 17(amends section 14)**

- To mitigate against unforeseen negative implications for members brought about by legislative requirements promulgated after the approval of a scheme, such as the amendment of the Income Tax Act that provides for the taxation of members transferred from a Pension to a Provident Fund on employee and employer contributions after approval of the scheme, but prior to the implementation thereof where the members were not aware of the amendment; and
- To clarify that the changing of ownership from a fund to a pensioner of an annuity policy of insurance does not constitutes a transfer in terms of section 14(1).

**Clause 18(amends section 14A)**

To clarify when a minimum pension increase must be provided to members and deferred members of a fund.

**Clause 19(amends section 14B)**

- To clarify that reasonable expenses must still be allowed to be deducted by a fund even though there are no contributions;
- To ensure consistency in respect of terminology used and definition provided for in the Act and the Long-term Insurance Act;
- To allow for any other suitable measure of inflation to be applied in the calculation of minimum increases; and
- To clarify that any balance in a contingency reserve account may, in addition to liabilities, may be taken into account by a valuator in determining the affordability of a minimum pension increase.

**Clause 20(amends section 15A)**

- To clarify that where future surplus is allocated for the benefit of members the principles of section 15D must be complied with even though a fund is not required to establish a member surplus account in its rules; and
- To ensure consistency in respect of terminology used and definition provided for in the Act.

**Clause 21(amends section 15B)**

To, in respect of the apportionment of an existing surplus, –

- ensure that on the dissolution of a contingency reserve account any credit balance must be transferred to the member surplus account, or applied directly for the benefit of members and former members subject to section 15D(1) and the employer should not have any claim on the remaining credit balance;
- clarify that the registrar must approve a scheme before it can be implemented, refer to section 15B(9)(i);
- remove duplication as the acceptability, or otherwise, of a statutory actuarial valuation report is dealt with in section 16;
- remove the obligation of the registrar to assess whether or not a complaint has been resolved to the satisfaction of a complainant as this requirement is too onerous;
- provide the registrar a broader discretion in determining when to appoint an independent actuary to verify an apportionment;
- clarify that the registrar must approve the scheme and forward a certificate to the fund before the scheme can be implemented;
- remove duplication as all aspects relating to a specialist ad hoc tribunal are dealt with in section 15K;

- allow funds to approach the registrar with an amended scheme that can be considered timeously instead of having to approach the Courts. Currently the common law *functus officio* rule prohibits the registrar from reconsidering a scheme. A decision of the registrar to approve a surplus apportionment scheme can only be set aside by the High Court, a process that is extremely onerous, costly and time consuming; and
- ensure consistency in respect of terminology used and definition provided for in the Act.

#### **Clause 22(amends section 15C)**

To clarify that where future surplus is allocated for the benefit of members, the principles of section 15D must be complied with and that a fund is not required to establish a member surplus account in its rules.

#### **Clause 23(amends section 15D)**

To clarify that any distribution of actuarial surplus after the surplus apportionment date may only be made to members who exited the fund subsequent to that date, if the board is of the opinion that this is reasonable and equitable. The section prior to amendment required the board to consider former members who exited the fund as far back as 1 January 1980 when distributing surplus, despite the fact that the former members only have a right to actuarial surplus as at a fund's surplus apportionment date.

#### **Clause 24(amends section 15E)**

- To enable an employer to offset surplus utilised improperly where money is transferred into the employer surplus account to a fund where the employer has an obligation in this regard; and
- To clarify the conditions necessary to satisfy the registrar that such a transfer could be approved.

#### **Clause 25(amends section 15F)**

To, in respect of existing employer reserve accounts, –

- clarify the actions and the scope of such actions that will satisfy the registrar that the transfer may be approved;
- that the registrar, when exercising discretion to approve a transfer under this section, is not limited to considering procedural matters, but may consider substantive matters, i.e. considers if the initial transfer of actuarial surplus to an employer reserve account was reasonable and equitable.

#### **Clause 26(amends section 15K)**

To address various practical difficulties that have arisen in implementing section 15K, which difficulties were not foreseen when the legislation was originally drafted. This section clarifies the appointment and functioning of a tribunal.

#### **Clause 27(amends section 16)**

To allow the registrar to –

- reject a report where the latter is of the opinion that a fund manipulated its valuation result at surplus apportionment date;
- without first seeking the approval of the Minister, require a fund to undertake an investigation in respect of the position of the fund at the end of any financial year, if the registrar is of the opinion that the investigation would show that the fund is not in a sound financial condition; and
- remove the requirement that an auditor must issue certification in relation to the financial soundness of the fund, where a fund does not meet the requirements to be valuation exempt, but in respect of which the submission of statutory actuarial valuation report is not practical or cost-effective. The registrar is of the view that this requirement is unnecessary, as it should be adequate, for regulatory purposes, to rely on the valuator's certification and judgment.

**Clause 28(deletes section 17)**

To delete the section (relating to modifications where investigations by a valuator are unnecessary), as it is no longer relevant. The purpose of this section has been more appropriately accommodated under the proposed amendments to section 16.

**Clause 29 (inserts section 18A)**

To insert the provisions relating to business rescue in terms of the Companies Act, 2008.

**Clause 30(amends section 19)**

- To limit the extent of the ownership interests that a fund may acquire or hold in other entities; and
- To align the terminology used in the Act with that of the Companies Act, 2008.

**Clause 31 (substitutes section 24)**

To extend and clarify the powers of the registrar to address enquiries to any registered fund, approved administrator or third party in connection with the business of the registered fund or approved administrator.

**Clause 32 (substitutes section 25)**

To extend and clarify the powers of the registrar in respect of inspections and investigations under the Act.

**Clause 33 (amends section 26)**

To enable the registrar to replace a board member where the registrar is of the opinion that such board member is no longer fit and proper to hold the position.

**Clause 34 (amends section 28)**

- To provide clarity that liquidation accounts must be approved by the registrar;

- To enable the liquidator to pay unclaimed benefits to an unclaimed benefit fund; and
- To align the terminology used in the Act with that of the Companies Act, 2008.
- Replacing reference to “in the Gazette” with “on the official web site” to clarify that notification of official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

**Clause 35(amends section 28A)**

Replacing reference to “in the Gazette” with “on the official web site” to clarify that notification of official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

**Clause 36 (amends section 29)**

To remove references to the Companies Act, 1973, and align the terminology used in the Act with that of the Companies Act, 2008.

**Clause 37 (inserts section 29A)**

To authorise the registrar to apply to the court for the sequestration or liquidation of unregistered pension funds

**Clause 38 (amends section 30)**

To remove references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clause 39 (amends section 30N)**

To provide that where a determination consists of an obligation to pay an amount of money, the debt shall bear interest as from the date determined by the Pension Funds Adjudicator at the rate prescribed by the Minister from time to time under the Public Finance Management Act, 1999.

**Clause 40 (amends 30T)**

To determine who the accounting authority for the Office of the Adjudicator is and to clarify that the accounting authority must comply with the PFMA.

**Clause 41 (amends section 30V)**

To align penalties across the legislation administered by the FSB.

**Clause 42 (amends section 31)**

To allow for a period for carrying on business subsequent to application for registration but pending registration of a fund.

**Clause 43 (amends section 32)**

To remove the requirement for ministerial consent if registrar wishes to secure information from unregistered funds.

**Clause 44 (substitutes section 32A)**

- To delete the provision relating to certain practices or methods of conducting business prohibited as it is proposed that this provision be included in general overarching legislation, making the remedies available to all registrars; and
- To insert provisions affording the registrar certain powers in respect of communications, such as prescribing the information and the intervals at which such information must be communicated to members, former members or stakeholders by a fund or administrator.

**Clause 45(amends section 33A)**

Replacing reference to “in the Gazette” with “on the official web site” to clarify that notification of official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

**Clause 46 (amends section 34)**

To provide flexibility in respect of the timing of the submission of the registrar’s annual reports to the Minister.

**Clause 47 (amends section 37)**

To re-insert the provision making the contravention of certain sections of the Act criminal offences.

**Clause 48 (amends section 37A)**

To enable the trustees to make payments to another party where a member is unable to open a banking account to receive benefits.

**Clause 49 (amends section 37C)**

To clarify that the allocation of benefits is the responsibility of the fund and that trustees make such decisions on behalf of the fund.

**Clause 50 (amends section 37D)**

- To clarify what deductions may be made by a fund from a member’s interest;
- To clarify matters relating to that portion of a member’s interest that a non-member spouse is entitled to; and
- To correct incorrect references.

**B.2 SOUTH AFRICAN RESERVE BANK ACT, 1989**

**Clause 51 (amends section 13)**

To amend section 13 by the deletion of paragraph (c), to remove the restriction on the South African Reserve Bank to lend or advance money on security of a mortgage of immovable property or of a notarial or other bond or a cession thereof, or acquire immovable property.

**B.3 FINANCIAL SERVICES BOARD ACT**

**Clause 52 (amends section 1)**

To amend the definition of “financial institution” to rectify the reference to the Companies Act, clarify the references to the Insurance Laws and clarify the scope of the definition.

To insert definitions of “financial sector legislation”, “financial sector regulator”, “non-financial sector legislation and “non-financial sector regulator”.

**Clause 53 (amends section 2)**

To clarify that the FSB is subject to the Public Finance Management Act (PFMA).

**Clause 54 (amends section 3)**

To extend the legislative mandate of the FSB regarding consumer education is limited to “*promote programmes and initiatives by financial institutions and bodies representing the financial services industry to inform and educate users and potential users of financial products and services*” (section 3(c) of the Financial Services Board Act). On a strict interpretation, this mandate may deny the FSB the opportunity to take a pro-active lead in developing and establishing critical consumer education initiatives. Extending this mandate will ensure consistency with international trends and assist the FSB in fulfilling its mandate relating to the supervision and regulation of financial institutions.

To empower the Minister to prescribe a code of conduct for the FSB. This will enable to Minister, amongst others, to provide guidance to the FSB on consultation processes and practices to ensure appropriate consultation.

**Clause 55 (amends section 10)**

To clarify the authority of the enforcement committee once it is established by the board.

**Clause 56 (amends section 12)**

To clarify the authority of the FSB to establish or participate in initiatives that will assist it in fulfilling its mandate as amended, and to align with the PFMA.

**Clause 57 (inserts section 12A)**

To provide powers to enable the Minister to effectively mitigate against potential or actual financial systemic or stability risk, and also to address issues of lesser magnitude which are not clearly or appropriately addressed in terms of the current legislative provisions.

**Clause 58 (amends section 13)**

To clarify the powers and functions of the deputy executive officers. The latter is accountable to the executive officer for the performance of their functions.

**Clause 59 (amends section 16)**

To align with the PFMA.

**Clause 60 (amends section 17)**

To align with the PFMA.

**Clause 61 (amends section 18)**

To require consultation with the Minister and relevant Registrars in relation to amalgamations and mergers.

**Clause 62 (amends section 20)**

To provide for a more comprehensive system of delegation by authorising deputy executive officers to on-delegate powers and functions delegated or entrusted to them.

To provide for an appropriate system of delegation to be put in place to maximise administrative and operational efficiency and provide adequate checks and balances.

**Clause 63 (amends section 21)**

To align with the PFMA.

**Clause 64 (amends section 23)**

To align with similar provisions relating to other financial regulators. The current phrasing of the section is unique to the FSB (it does not appear in legislation regulating the liability of other regulators), creates an unnecessary burden in litigation matters. It is also inconsistent with International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICP) and the International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation that requires the supervisory authority to have adequate legal protection to exercise its functions and powers.

**Clause 65 (amends section 28)**

To establish the FSB as the lead regulator where the FSB and another regulator has jurisdiction in respect of the same entities.

To oblige other regulators to consult with the FSB when taking decisions or undertaking activities in respect of sectors regulated by the FSB.

To effectively address the application of financial sector specific legislation in relation to other non-financial sector legislation in the event of a conflict between these laws.

To exempt any financial service, product or institution regulated by the FSB and the FSB from the scope of the Consumer Protection Act, as higher standards of consumer protection are being implemented in terms of financial sector legislation.

**B.4 LONG-TERM AND SHORT-TERM INSURANCE ACTS****Clauses 66 and 108 (amend section 1 of the LTIA&STIA)**

- To delete the definition of advisory committee because of the deletion of the provisions relating to the establishment of an advisory committee;
- To substitute the definitions of “Companies Act”, “financial reporting standards”, “financial statements”, “public company”, “subsidiary” and “widely-held company” to remove references to the Companies Act, 1973, and to align the terminology used in the Act with that of the Companies Act, 2008;
- To insert a definition of “official web site” to facilitate the publication of the Registrar’s actions on FSB web site, instead of the *Gazette*. This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication;
- To substitute the definition of “prescribe” to facilitate the publication of the Registrar’s actions on FSB web site, instead of the *Gazette*;
- To insert a definition of “publish” to clarify what constitutes publish by persons, other than the registrar, under the Act;
- To substitute the definition of “Registrar” to clarify who the registrar is; and
- To, in respect of the Short-term Insurance Act, delete the definitions of “representative” and “intermediary services” to align the structures of the Short-term Insurance Act and the Long-term Insurance Act (and subordinate legislation) as far as reasonably possible and to enable the Registrar to act independently and swiftly in addressing practical, interpretation and other difficulties that may arise on implementation of the amendments.

**Clauses 67 and 109 (amends section 2 of the LTIA&STIA)**

To clarify who the registrar and deputy registrar are and to clarify that the deputy registrar acts under powers delegated by the registrar. The current provision that enables both the registrar and deputy registrar to exercise the powers under the Act concurrently is not desirable as it is ambiguous and may lead to conflicting actions or decisions.

**Clauses 68 and 110 (amends section 3 of the LTIA&STIA)**

Consequential amendment because of the deletion of the provisions relating to the establishment of an advisory committee.

**Clauses 69 and 111 (amend section 4 of the LTIA&STIA)**

- To remove the registrar’s power in respect of communications and *locus standi* for certain court proceeding as these are dealt with in other provisions; and
- To align the powers of the registrar in respect of on-site visits and inspections with those afforded to the registrars under other legislation administered by the FSB.

- To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clauses 70 and 112 (repeals section 6 of the LTIA&STIA)**

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

**Clauses 71 and 113 (amend section 8 of the LTIA&STIA)**

- To extend the prohibitions provided for under this section in respect of the insurers and other persons that publish documentation which is misleading or contrary to the public interest, contains an incorrect statement of fact or does not prominently include the name of the insurer underwriting the policy.
- To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clauses 72 and 114 (amend section 10 of the LTIA&STIA)**

To align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 73 and 115 (amend section 12 of the LTIA&STIA)**

To extend the powers of and the circumstances under which the registrar may prohibit an insurer from carrying on business. The requirement that the registrar must obtain the approval of the Minister prior to acting under this section has been removed. This is consistent with the IAIS Insurance Core Principles (international best practice) and the powers extended to other registrars.

**Clauses 74 and 116 (amend section 13 of the LTIA&STIA)**

To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clauses 75 and 117 (amend section 14 of the LTIA&STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 76 and 118 (amend section 15 of the LTIA&STIA)**

To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clauses 77 and 119 (amend section 19 of the LTIA&STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 78, 79, 120, 121 (amend sections 21 and 23 of the LTIA and sections 20 and 22 of the STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 80 and 122 (substitutes sections 24 of the LTIA and sections 23 of the STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 81 and 123 (amend section 25 of the LTIA and section 24 of the STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 82 and 124 (amend section 26 of the LTIA and section 25 of the STIA)**

To align the section with the Companies Act, 2008 that removes the concept of nominal or par value shares and redefines “control”, and to further clarify the interpretation of the section to ensure that the registrar may, in considering an application for the acquisition of shares, assess the financial soundness and fit and properness of any potential shareholders, irrespective of the number or value of the shares to be acquired.

**Clauses 83 and 125 (amend section 28 of the LTIA and section 27 of the STIA)**

To align with the proposed amendments to section 26 of the Long-term Insurance Act and section 25 of the Short-term Insurance Act.

**Clauses 84, 85, 86, 87, 88, 126, 127, 128 (amend sections 32, 37, 38, 39 and 40 of the LTIA and sections 36, 37, 38 of the STIA)**

- To extend, in respect of the Long-term Insurance Act, the powers of the Registrar to approve a compromise, arrangement, amalgamation, demutualisation or transfer, instead of the Courts and to align the requirements to that provided for under the Short-term Insurance Act. This will allow the Registrar to act swiftly when required in the interests of policyholders and financial stability. This amendment is also consistent with the IAIS Insurance Core Principles (international best practice) and the powers extended to other registrars; and
- To remove in respect of both Acts references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 89, 90, 129 and 130 (amend heading of Part VI and section 41 of the LTIA and heading of Part VI and section 40 of the STIA)**

To replace the provisions of the Acts relating to judicial management with sections relating to business rescue as the former concept has been replaced by the latter in the Companies Act, 2008.

**Clauses 91 and 131 (amend section 42 of the LTIA and section 41 of the STIA)**

- To extend the powers of the Registrar to apply to court for the winding-up of an insurer without first securing the approval of the Minister. This will allow the registrar to act swiftly when required in the interests of policyholders and financial stability. This amendment is also consistent with international best practice and the powers extended to other registrars;
- To address the concerns raised by the FSAP in this regard; and
- To, in respect of both Acts, remove references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 92 and 132 (amend section 43 of the LTIA and section 42 of the STIA)**

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

**Clause 93 (amends section 45 of the LTIA)**

To authorise the Registrar to prescribe what constitutes an inducement.

**Clauses 94 and 133 (amends section 49 of the LTIA and section 48 of the STIA)**

- To align the structures of the STIA and the LTIA, and subordinate legislation as far as reasonably possible; and
- To enable the Registrar to act independently and swiftly in addressing practical, interpretation and other difficulties that may in respect of what constitutes intermediary services and what remuneration is payable in respect of the various services, other than intermediary services, that are rendered in respect of insurance business.

**Clauses 95 and 134 (repeal section 50 of the LTIA and section 49 of the STIA)**

To remove the power of the registrar to declare a practice or business undesirable. This remedy is provided for under the Financial Institutions (Protection of Funds) Act.

**Clauses 96 and 135 (amend section 51 of the LTIA and section 54 of the STIA)**

To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clause 97 (amends section 53 of the LTIA)**

To clarify that where a policyholder elects to have an assistance policy benefit paid as a sum of money instead of opting for the rendering of a funeral service, that the sum of money must be equal to the value of the services that is provided for under the policy. For example, if a person has taken out a policy for a funeral service to the value of R 5000,00, and that person opts to take the cash value, that person must receive R 5000,00.

**Clause 98 (amends section 60 of the LTIA)**

To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clauses 99 and 136 (amend section 62 of the LTIA and section 55 of the STIA)**

To authorise the Registrar to make policyholder protection rules and to extend the matters in respect of which these rules may be made. This will allow the Registrar to act swiftly when required, is consistent with international best practice and the powers extended to other registrars.

**Clause 100 (amends section 63 of the LTIA)**

- To remove the outdated limitation of R 50 000 on policy benefits and assets acquired with policy benefits that are excluded from a policyholder’s insolvent estate and to align the section to the Insolvency Act. This amendment was requested by the Ombudsman for Long-term Insurance;
- To authorise the Registrar to prescribe what constitutes an inducement.

**Clauses 101, 102, 103, 137, 138, 139 (amend sections 66, 67, 68 of the LTIA and sections 64, 65, 66 of the STIA)**

To align penalties across the legislation administered by the FSB.

**Clauses 104, 140 (amend section 71 of the LTIA and section 69 of the STIA)**

To correct the references to the Companies Act, 1973 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clauses 105 and 141 (amend Schedule 1 of the LTIA and Schedule 1 of the STIA)**

To replace reference to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the Financial Services Board. This is consistent with section 15 of the Interpretation Act.

**Clause 106 and 142 (amend Schedule 3 of the LTIA and Schedule 2 of the STIA)**

To amend sub item (1) of item 7 in the Schedules, to refer to public companies, as opposed to widely held companies, which is consistent with the terminology used in the Companies Act, 2008.

**Clauses 107 and 143 (amends the Arrangement of Sections of the Act)**

To incorporate the proposed amendments in the table of contents.

**B.5 INSPECTION OF FINANCIAL INSTITUTIONS ACT, 1998**

**Clause 144 (amends section 1)**

To amend the definition of “registrar” and to rectify the references to the Medical Schemes Act, 1998.

**Clause 145 (amends section 2)**

To clarify the issuing and use of certificates of appointment of inspectors.

**Clause 146 (substitutes section 3A)**

To enable the registrar to respond to a request from another regulator under any agreement, communication or memorandum of understanding.

**Clauses 147 and 148 (amend sections 4 and 5)**

- To rectify the omission of a reference to section 3A;
- To align these sections with the Securities Services Act, 2004; and
- To authorise the seizure of documents if they appear to be relevant to an inspection.

**Clause 149 (inserts section 6A)**

To ensure compliance with constitutional requirements. A new section is inserted that prescribes the manner and time of searches, arranges for inspectors to be accompanied by police officers and provides for inspected parties' rights and dealing with privileged information.

**Clause 150 (amends section 7)**

To require interviewees to answer all questions relating to the affairs of an institution even if the answer to such a question might incriminate the person. The obligation is qualified in that evidence so obtained may not be used in criminal proceedings against such persons other than proceedings where such persons stand trial on charges relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers or a failure to answer lawful questions fully and satisfactorily. This will ensure that the registrar obtains information necessary for regulatory purposes to protect investors' interests and establish the true state of affairs of financial institutions but without infringing on a person's constitutional rights.

**Clause 151 (Repeal of section 10)**

To repeal the provision of section 10 as section 22 of the Financial Services Board Act (as amended in 2008) contains a similar, but more comprehensive, provision.

**Clause 152 (amends section 11)**

To allow for the recovery of inspection costs from private individuals (currently costs may only be recovered from financial institutions).

**Clause 153 (amends section 12)**

Consequential amendment because of the proposed amendment of sections 4 and 5.

**B.6 FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 2001**

**Clause 154 (amends section 1)**

- To insert a definition of “Companies Act”;
- To amend the definitions of “institution” and “law” because of the insertion of a new section 5A (statutory management);
- To amend the definition of “nominee company” to rectify a reference to the Companies Act, 2008; and
- To insert a definition of “official web site” to allow for publication of administrative actions on the FSB web site, instead of the *Gazette*. This is consistent with the Interpretation Act, and will result in significant cost savings and will result in more effective communication and publication.

**Clause 155 (amends section 2)**

To extend the duties relating to dealing with funds or trust property controlled by a financial institution to the financial institution itself. The current provision is incorrectly limited to natural persons.

**Clause 156 (amends section 3)**

To amend the duty to declare interests to align with the Companies Act, 2008.

**Clause 157 (amends section 4)**

To extend the duties relating to investing trust property controlled by a financial institution to the financial institution itself (the current provision is incorrectly limited to natural persons) and to align with the Companies Act, 2008.

**Clause 158 (substitutes of section 5)**

To align this section to the Banks Act by allowing the registrar to place a consenting financial institution under curatorship without having to apply to court.

**Clause 159 (insertion of new section 5A)**

To provide for the appointment of a statutory manager in respect of a financial institution by the court on application of the registrar or an institution with the registrar’s consent. A statutory manager serves in place of the financial institution’s management, primarily to achieve financial soundness and compliance with the law. The remedy is likely to be used by the registrar in a situation where more drastic enforcement measures such as liquidation or curatorship may be inappropriate and harmful to the financial institution’s reputation. This measure differs from business rescue proceedings under the Companies Act, 2008, as it is an enforcement tool under the exclusive control of the registrar.

**Clause 160 (amends section 6)**

- To empower the registrar in the interest of improved investor protection to apply for a court order-

- To prevent the concealment, removal, dissipation or destruction of assets or evidence thereof by any institution;
- To seize and remove the assets of an institution for safe custody pending the exercise of such other legal remedy as may be available to the registrar.
- Swift action by the FSB may be necessary to prohibit a financial institution from continuing business in case of prejudice as a result of contravention of the law, pending court action or the exercise of other legal remedies available to the FSB.
- To provide for enforceable undertakings. An enforceable undertaking is an undertaking given by a financial institution to the FSB that the institution will do something or refrain from doing something. If the institution fails to comply with the undertaking, the FSB may apply to the court for the enforcement of the undertaking. The advantage of this remedy is that, in the event of breach, all that has to be proved to the court by the FSB is that the breach of the undertaking has occurred.
- To provide for alternative means of notification (other than the *Gazette*) that certain actions were taken by the registrar.

**Clause 161 (amends section 6A)**

To ensure that the FSB has the same power as other supervisory authorities to impose sanctions under the Financial Intelligence Centre Act, while preserving the exclusive jurisdiction of the enforcement committee to impose financial penalties.

**Clause 162 (amends section 6B)**

To provide for a mechanism for ensuring compliance with timeframes set for the exchange and filing of pleadings in an enforcement committee matter.

**Clause 163 (amends section 6D)**

To clarify the burden of proof that must be met in a matter before the enforcement committee and to enable its chairperson to determine the reasonableness of the costs of a matter before the committee.

**Clause 164 (amends section 6F)**

To provide for the stay of execution of a determination in case of an appeal.

**Clause 165 (amends section 7)**

To empower the registrar to declare a practice or business undesirable. The principles that must inform such a declaration are also provided.

**Clause 166 (repeals section 8)**

The obligation for the registrar to consult with an exchange before exercising enforcement remedies is removed.

**Clause 167 (inserts of new section 9A)**

To provide for the verification of information by the registrar to ensure that a determination on whether a person is fit and proper is well-founded.

**Clause 168 (amends section 10)**

To increase outdated criminal sanctions.

**B.7 FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002**

**Clause 169 (amends section 1)**

- The definition of “Advisory Committee” is removed;
- To insert a definition of “Companies Act” to refer to new Companies Act, 2008;
- To insert a definition of “continuous professional development” to facilitate the introduction of a new section on fit and proper requirements;
- To amend the definition of “financial product” to correct the reference to Securities Services Act, 2004;
- To insert a definition of “fit and proper requirements” to facilitate the introduction of a new section on fit and proper requirements;
- To insert a definition of “official web site” to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette*. This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.
- To substitute the definition of “product supplier” to make the definition more general by removing the requirement that products issued must be authorised under a law;
- To insert a definition of “publish” to provides clarity as to what is meant by the term; to substitute the definition of “registrar” to clarify who acts as such;
- To substitute the definition of “Registrar” to clarify who the registrar is; and
- To amend subsection (4) to clarify the application of the FAIS Act to banks rendering financial services in respect of deposits exceeding 12 months.

**Clauses 169, 173, 176, 180, 183, 186, 188, 190, 191 (amendments to sections 1, 6, 8, 13(1), 15, 21, 26, 34 and 35)**

Consequential amendment because of the deletion of the provisions relating to the establishment of an advisory committee.

**Clauses 171, 178, 179, 181, 182, and 184 (amendments to sections 4(7), 9(2)(d), 3(b), 4(b), 11(2), 14(3)(b), 14A(4) and 17(2)(d))**

To replace references to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the FSB. This amendment is consistent with section 15 of the Interpretation Act.

**Clause 170 (amends section 2)**

To clarify who the registrar and deputy registrar are and to clarify that the deputy registrar acts under powers delegated by the registrar. The current provision that enables both the registrar and deputy registrar to exercise the powers under the Act concurrently is not desirable as it is ambiguous and may lead to conflicting actions or decisions.

**Clause 171 (amends section 4)**

- To extend the intervention powers of the registrar to compliance officers approved by the registrar; and
- To provide for alternative means of notification (other than the *Gazette*) that certain actions were taken.

**Clause 172 (amends sections 5)**

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

**Clauses 174 (inserts section 6A)**

To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.

**Clauses 175 (amends section 7)**

To clarify that a person may not act as a representative of an authorised financial services provider unless that person has been appointed as such.

**Clauses 176 and 177 (substitutes section 8 and inserts section 8A)**

To clarify the application of fit and proper requirements by the registrar in respect of authorised or approved persons.

To prohibit persons from making use of licences where such are no longer valid and publishing documentation that is misleading or contrary to the public interest.

**Clause 178 (amends section 9)**

To provide clarity as to the grounds and terms for withdrawal or suspension of an FSP licence.

**Clause 180 (amends section 13)**

To ensure that only fit and proper representatives are able to render financial services.

**Clause 184 (amends section 17)**

To clarify the responsibilities of financial services providers in respect of the submission of compliance reports.

**Clause 185 (amends section 19)**

To amend the reference to the new Companies Act, 2008.

**Clause 187 (amends section 23)**

To determine who the accounting authority for the FAISombud is and to clarify that the accounting authority must comply with the PFMA.

**Clauses 189 and 193 (repeal sections 33 and 37)**

To remove the *locus standi* of the registrar to claim in court for damages on behalf of clients of offenders. The registrar has never used this remedy and such cases are referred to the established enforcement committee.

**Clause 192 (amends section 36)**

To increase outdated criminal sanctions.

**Clause 194 (amends section 38)**

To rectify the reference to the Companies Act, 2008.

**Clause 195 (inserts sections 38A, 38B and 38C)**

- Section 38A: To insert a provision to provide for business rescue proceedings under the Companies Act, 2008.
- Section 38B: To grant the registrar *locus standi* to apply to court for the sequestration or winding-up of a financial services provider.
- Section 38C: To authorise the registrar to issue directives to ensure compliance with the Act.

**Clause 196 (amends section 40)**

To rectify the omission of a reference to this Act in this section.

**Clause 197 (amends section 45)**

To rectify the reference to the Companies Act, 2008, to align the terminology used in the Act with that of the Companies Act, 2008, and to align with the Companies Act, 2008 by providing for the substitution of judicial management for business rescue.

**Clause 198 (amends the Arrangement of Sections of the Act)**

To incorporate the proposed amendments in the table of contents.

**B.8 COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

### **Clause 199(amends section 1)**

- The definition of “advisory committee” is removed;
- To amend the definition of “authorised agent” to include a third party to a white label agreement. A “Third Party Fund”, or so-called “White Label Agreement”, is a practice where a manager of a collective investment scheme enters into a contract with a third party to establish a portfolio in the name of the third party under the manager’s scheme. The portfolio carries the name of the third party and is marketed under that name with a disclosure as to who the actual manager is. In some instances, the third party performs the investment management, *i.e.* the buying and selling of underlying assets, of such third party portfolio. Whether or not the investment management is done by the third party, the manager remains fully responsible for the administration of such fund and for the activities of the third party;
- To align the definition of “company” with the Companies Act;
- To amend the 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;
- To insert a definition of “official web site” to allow for the publication of administrative actions on the FSB’s web site, instead of in the *Gazette*. This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication;
- To insert a definition of “publish” to clarify what this term means in the Act; and
- To amend the definition of “registrar” to clarify who acts as such.

### **Clause 200 (amends 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.

### **Clause 201 (amends sections 5(b), 82 and 97)**

To replace references to “in the *Gazette*” with “on the official web site” to clarify that notification of official acts may be done via the web site of the FSB. This amendment is consistent with section 15 of the Interpretation Act.

### **Clause 202 (amends section 7)**

To clarify who the registrar and deputy registrar are and to clarify that the deputy registrar acts under powers delegated by the registrar. The current provision that enables both the registrar and deputy registrar to exercise the powers under the Act concurrently is not desirable as it is ambiguous and may lead to conflicting actions or decisions.

### **Clause 203 (repeals sections 8, 9, 10, 11, 12 and 13)**

To remove the provisions relating to the establishment and functioning of the advisory committee to further enhance the independence and impartiality of the registrar.

**Clause 204 (substitutes section 14)**

To allow the registrar to conduct on-site visits and inspections of persons registered or authorised under the Act.

**Clause 205 (amends section 15)**

- To rectify the reference to the Companies Act, 2008;
- The provision of paragraph (b) of subsection (1) is removed;
- 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);
- 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
- To increase outdated criminal sanctions.

**Clause 206 (inserts sections 15A and 15B)**

- Section 15A: To authorise the registrar to request rescue plan from a manager, custodian or trustee failing to maintain a financial sound position.
- Section 15B: To authorise the registrar to issue directives to ensure compliance with the Act.

**Clause 207 (repeals section 21)**

To remove the power of the registrar to declare a practice or business undesirable. This remedy is provided for under the Financial Institutions (Protection of Funds) Act.

**Clauses 208, 209, 210 and 211(amend sections 34, 35 and substitute sections 36 and 37)**

To rectify the reference to the Companies Act, 2008, to align the terminology used in the Act with that of the Companies Act, 2008, and to align with the Companies Act, 2008, by providing for the substitution of judicial management for business rescue.

**Clause 212 (amends section 41)**

To increase outdated criminal sanctions.

**Clause 213 (amends section 42)**

To authorise the registrar to withdraw or amend a condition of registration.

**Clause 214 (amends section 46)**

Consequential amendment because of the deletion of the provisions relating to the establishment of an advisory committee.

**Clause 215 (amends section 47)**

To rectify the reference to the Companies Act, 2008.

**Clause 216 (amends section 48)**

To rectify the reference to the Companies Act, 2008, and to increase outdated criminal sanctions.

**Clause 217 (amends section 50)**

To rectify the reference to the Companies Act, 2008.

**Clauses 218 and 219 (amend sections 53 and 65)**

To increase outdated criminal sanctions.

**Clause 221 (amends section 70)**

Consequential amendment because of the deletion of section 21 (declaration of undesirable practice or business).

**Clauses 220, 222, 223 and 224 (amend sections 69, 81, 84 and 90)**

To rectify the reference to the Companies Act, 2008 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clause 225 (amends section 97)**

To authorise the registrar to amend a deed where the parties to the deed fails to amend it in accordance with the requirements or within the period determined by the registrar.

**Clause 226 (amends section 109)**

To remove the *locus standi* of the registrar to claim in court for damages on behalf of clients of offender. The registrar has never used this remedy and such cases are referred to the established enforcement committee.

**Clause 227 (amends section 111)**

To rectify the reference to the Companies Act, 2008 and align the terminology used in the Act with that of the Companies Act, 2008.

**Clause 228 (inserts section 111A)**

To insert a provision to provide for business rescue proceedings under the Companies Act, 2008.

**Clause 229 (amends section 114)**

To provide for alternative means of notification (other than the *Gazette*) that certain actions were taken by the registrar.

**Clause 230 (amends section 116)**

To increase outdated criminal sanctions.

**Clause 231 (amends the Arrangement of Sections of the Act)**

To incorporate the proposed amendments in the table of contents.

**B.9 CO-OPERATIVE BANKS ACT, 2007**

**Clause 232 (amends section 26)**

To provide for the use of the money of the fund, in consultation with the supervisor, for the compensation of the members and for the expenses related to the control and management of the fund.

**Clause 233 (amends section 41)**

- To amend the section to delete reference to different types of co-operative banks.
- To remove the provisions of subsections (2), (3) and (4), in relation to the period in which the South African Reserve Bank may be required to inform the agency of the amount of the primary co-operative bank in the account.

**Clause 234 (repeals section 42)**

To delete the section (relating to co-operation and co-ordination between supervisors), as it is no longer necessary.

**Clause 235 (amends section 55)**

- To delete the provisions relating to the appointment of the supervisor by the agency.
- To provide for the agency to consultation the supervisor, in respect of the agency's powers to provide financial support to co-operative banks through loans or grants, and powers to assist co-operative banks with liquidity management;

**Clause 236 (amends section 57)**

To provide for the agency to prescribe rules, in consultation with the supervisor, in respect of the provision of financial support to co-operative banks through loans or grants, management of the fund in respect of the deposit insurance fund, and assistance of co-operative banks with liquidity management.

**Clause 237 (amends the Arrangement of Sections of the Act)**

To incorporate the proposed amendments in the table of contents.

**B.10 FINANCIAL SERVICES LAWS AMENDMENT ACT, 2008**

**Clause 238 (amends section 78)**

To rectify incorrect references included in the transitional provision.

**B.11 CONSEQUENTIAL AMENDMENT OF LAWS AND GENERAL MATTERS**

**Clause 239**

To amend the laws referred to in the Schedule.

**Clause 240**

To provide for the conventional short title and commencement of the Amendment Act.

**B.12 SCHEDULE**

- To amend the definition of “business of a medical scheme” in the Medical Schemes Act No. 131 of 1998, to correctly reflect the intention of the Legislature and facilitate an appropriate demarcation between health insurance and medical scheme products regulated under the Long- and Short-term Insurance Acts and the Medical Schemes Act, respectively;
- To amend the National Payment System Act No. 78 of 1998 and the Co-operatives Act No. 14 of 2005, to give effect to the amendments to the Co-operative Banks Act in respect of the clarification of supervisory responsibilities.