




Pension Funds Act: Matrix


NOTE: The matrix is followed by a summary of the amendments relating to regulatory gaps in respect of the **powers of the Registrar (primarily due to alignment with international standards)** and **policyholder protection and amendments to enhance clarity & certainty**.




KEY TO CLASSIFICATION OF AMENDMENTS:

	Overarching amendment proposed in respect of all sector specific Acts - Website, advisory committees, clarification on Registrar & deputy Registrar, onsite visits, alignment of penalties
	Alignment with Companies, Income Tax, Banks & Financial Institutions (Protection of Funds) Act
	Regulatory gap: Powers of the Registrar (primarily due to alignment with international standards)
	Regulatory gap: Policyholder protection and amendments to enhance clarity & certainty
	Regulatory gap: Powers of the Registrar, other than alignment with international standards
	Technical amendments
	FSB Proposed amendments



Clause	Section in tabled bill	Commentator	Summary of concern/ comment	Proposed response
1	<p>'disclosure', in addition to the meaning ascribed to <u>'disclosure'</u> in section 1 of the Protected Disclosures Act, includes—</p> <p>(a) the disclosure of information regarding any conduct of a pension fund, an administrator or a board member, principal officer, deputy principal officer, valuator, officer or employee of a pension fund or</p>	ASISA	<p>The insertion is suggested to improve the reading of the definition:</p> <p><u>'disclosure'</u>, in addition to the meaning ascribed to <u>'disclosure'</u> in section 1 of the Protected Disclosures Act, includes—</p> <p>(a) the disclosure of information regarding any conduct of a pension fund, an administrator or a board member, principal officer, deputy principal officer, valuator, officer or</p>	<p>(b)  <u>the disclosure of</u> information relating to the affairs of the pension fund which may prejudice the fund or its members;</p>



	<p>administrator, made by a board member, principal officer, deputy principal officer or valuator, or other officer or employee, of a pension fund or administrator; and</p> <p>(b) information relating to the affairs of the pension fund which may prejudice the fund or its members;</p>		<p>employee of a pension fund or administrator, made by a board member, principal officer, deputy principal officer or valuator, or other officer or employee, of a pension fund or administrator; and</p> <p>(b) <u>the disclosure of</u> information relating to the affairs of the pension fund which may prejudice the fund or its members;</p>	
1(p)	<p>(p) by the substitution in subsection (1) for the definition of “non-member spouse” of the following definition: “non-member spouse”, in relation to a member of a fund, means a person who is no longer the spouse of that member [due to the dissolution or confirmation of the dissolution of the relationship by court order and to whom the court ordering or confirming the dissolution of the relationship] and who <u>has been granted a share of the member’s pension interest in the fund due to the dissolution of the relationship;</u>”;</p>	<p>Ms Dlamini-Dubanzana (20.03.2013)</p>	<p>Ms Dlamini-Dubanzana said that this matter would be of very critical importance.</p>	<p>The proposed amendment is omitted as it is dealt with in section 37D</p> <p> [“non-member spouse”, in relation to a member of a fund, means a person who is no longer the spouse of that member [due to the dissolution or confirmation of the dissolution of the relationship by court order and to whom the court ordering or confirming the dissolution of the relationship] and who has been granted a share of the member’s pension interest in the fund due to the dissolution of the relationship;”]</p>
1	<p>Definition of “pension fund organisation”</p> <p>by the substitution in subsection (c) for the definition of “pension fund organisation” of the following definition: “(c) any association of persons or business carried on under a scheme</p>	<p>FSB</p>	<p>The amendment is proposed so as to enable the transfer of benefits that became payable to beneficiaries other than death benefits, i.e. other insured benefits in respect of the deceased member to be paid to a beneficiary fund</p>	<p>“(c) any association of persons or business carried on under a scheme or arrangement established with the object of receiving, administering, investing and paying benefits that became payable  [referred to in section 37C] in terms of the employment of a member on behalf</p>

	or arrangement established with the object of receiving, administering, investing and paying benefits that became payable referred to in section 37C on behalf of beneficiaries, payable on the death of more than one member of one or more pension funds,”			of beneficiaries, payable on the death of more than one member of one or more pension funds,”
1(s)	(s) by the substitution in subsection (1) for the definition of “prescribed” of the following definition: “ ‘prescribed’ means prescribed by the registrar by notice <u>on the official website, unless notice in the Gazette is specifically required by this Act</u> ;	Mr Harris (20.03.2013)	Mr Harris was worried about this definition of publish which might be to escape the more onerous process of gazetting.	Please see key issues document
1(w)	(u) by the substitution in subsection (1) for the definition of “ this Act ” of the following definition: “ ‘this Act’ includes any <u>matter required to be prescribed by the registrar by notice in the Gazette and any regulation;</u> ”;	ASISA (18.02.2013)	The wording of the clause creates the impression that matters which are not yet prescribed will form part of the Act. It is suggested that the clause be rephrased as proposed to indicate that only matters which have been prescribed and published in the Gazette will form part of the Act.	Agreed, the provision has been amended accordingly “ ‘this Act’ includes any <u>matter</u>  [required to be] prescribed by the registrar by notice in the Gazette and any regulation;”;
4	Section 3B of the principal Act is hereby repealed	Mr Koornhof (20.03.2013)	Mr Koornhof asked why the Pension Funds Advisory Committee was 'taboo'.	Main themes –Code of Consultation will replace the consultation process with advisory committees
5	Section 4 of the principal Act is hereby amended— (a) by the substitution for	ASISA (18.02.2013)	ASISA members suggest that a similar provision be included in the Bill in respect of new participating employers joining an	Omit proposed changes to the provision and replace with:

			legislation did not help business efficiency, more especially the context of registering a business. How did one justify the two-months provision?	ensures that the Registrar is aware of the fund and that if something goes wrong, that the Registrar will have jurisdiction over the fund
6(a)	"(a) [a stockbroker] <u>an authorised user</u> as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);";	FSB	To correct the reference to the Financial Markets Act, 2012 which was recently promulgated replacing the Securities Services Act, 2004	"(a) [a stockbroker] <u>an authorised user</u> as defined in section 1 of the  [Securities Services Act, 2004 (Act No. 36 of 2004)] Financial Markets Act, 2012 (Act No. 19 of 2012);";
6(c)	Section 5(2)	FSB	To enable the Registrar to prescribe the conditions, consistent with similar provisions in the Act	Section 5(2) All moneys and assets belonging to a pension fund shall be kept by that fund and every fund shall maintain such books of account and other records as may be necessary for the purpose of such fund: Provided that such money and assets may, subject to the conditions  [determined by the Minister by notice in the <i>Gazette</i>]as may be prescribed , also be kept in the name of the pension fund by one or more of the following institutions or persons, namely –
9	Section 7C of the principal Act is hereby amended by addition to subsection (2) of the following paragraphs: "(e) <u>act independently; and</u> (f) <u>have fiduciary duties to members and beneficiaries in respect of accrued benefits or the amounts accrued to</u>	ASISA (18.02.2013) FSB/NT	The Explanatory Memorandum indicates that section 7C is proposed to be amended to clarify the independence, fiduciary duties and functions of the board of trustees and to empower the Registrar to prescribe good governance requirements. ASISA members could not determine why the clause amending section 7C(2)(f) includes specific references to accrued benefits or the	 (f) <u>have a fiduciary duty to members and each beneficiaries in respect of accrued benefits or any amount accrued to provide a benefit, as well as fiduciary duty to the fund, to ensure that the fund is financially sound and is responsibly managed and governed in accordance with the rules and this Act; and".</u>

	<p><u>provide a benefit; and</u> <u>(g) comply with any other</u> <u>prescribed</u> <u>requirements."</u>.</p>	<p>Mr T Mufamadi (20.03.2013)</p>	<p>amounts accrued to provide a benefit as fiduciary duties extend to far more than accrued benefits. If read in context of the entire section 7C(2), the inclusion of section 7C(2)(f) may not be necessary. If it is retained, ASISA members suggest the references to accrued benefits and amounts accrued to provide a benefit should be deleted.</p> <p>Mr T Mufamadi (ANC) had joined the meeting but let Mr Van Rooyen continue as Acting Chairperson. He said, with reference to fiduciary responsibility, that the trustees (board members) of pension funds had serious obligations in the decisions on how funds were invested, and there had been a serious loophole in that regard. There should be a deterrent on how they exercised their mandate. Most of the decisions taken at that level were irreversible.</p> <p>Mr Mufamadi said that this was one area that could not be left as it was. 'The real players – their actions and activities are never reported publicly.'</p> <p>Mr Mufamadi said that one should consider minimum penalties for people who were corrupt. He referred to the recent cable theft and the delay of the Gautrain. It was easy to characterise it as a petty crime but in fact it was economic sabotage of the economy of South Africa, and it related to the lenient sentences.</p>	<p>The fiduciary responsibilities of the trustees in respect of investments would be included in the proposed amendment. However, this responsibility if further strengthened in the provisions of regulation 28, however, where trustees fail in exercising their fiduciary duties, they can be held liable and accountable</p>
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			One must protect the investments of ordinary people. The penalties should be heavier.	
10	<p>Section 7D of the principal Act is hereby amended—</p> <p>(a) by the substitution of paragraph (c) of the following paragraph:</p> <p>"(c) ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund <u>subject to such disclosure requirements as may be prescribed</u>";</p> <p>(b) by the addition of the following paragraph:</p> <p>(g) <u>comply with any other prescribed requirements.</u>" and</p> <p>(c) the addition of the following subsection, the existing section becoming subsection (1):</p> <p>"(2) (a) <u>The board may, in writing and in accordance with a system of delegation set out in the rules, which system must maximise administrative and operational efficiency and must provide adequate checks and balances, delegate any of its</u></p>	ASISA (18.02.2013)	<p>There should also be disclosure requirements with regard to beneficiaries upon the death of a member. Especially if read with the new proposed s7C(2)(f).</p> <p>The communication duty also applies towards beneficiaries of death benefits.</p> <p>ASISA members understand and support the intention of the clause to authorise a board of trustees to delegate its duties and functions in a proper way similar to the way in which a board of directors of a company would delegate duties and functions. The proposed wording however is unusual in legislation as there may be interpretative issues with the concepts of a "system of delegation", "maximising administrative and operation</p>	<p>Agree that 'beneficiaries' must be included in the communication</p> <p>"(c) ensure that adequate and appropriate information is communicated to the members</p> <p> <u>and beneficiaries</u> of the fund informing them of their rights, benefits and duties in terms of the rules of the fund <u>subject to such disclosure requirements as may be prescribed</u>";</p> <p>"(2) (a) <u>The board may, in writing and in accordance with a system of delegation set out in the rules,</u>  <u>[which system must maximise administrative and operational efficiency and must provide adequate checks and balances].</u></p>

	<p><u>functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine.</u></p> <p><u>(b) The board is not divested or relieved of a function delegated under paragraph (a) and may, if necessary, withdraw the delegation at any time on reasonable notice."</u></p>		<p>efficiency" and "adequate checks and balances". The alternative wording is proposed to simplify the reading and interpretation of the clause.</p> <p>Proposed wording:</p> <p>2(a) The board may, in writing, delegate its administrative and operational functions as set out in the rules to a person or group of persons, or a committee of the board, subject to proper oversight and such conditions as the board may determine</p> <p>ASISA members suggest the deletion of the reference to "if necessary" as it may cause interpretation difficulty.</p>	<p><u>delegate any of its functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine.</u></p> <p><u>(b) The board is not divested or relieved of a function delegated under paragraph (a) and may,  [if necessary,] withdraw the delegation at any time  [on reasonable notice]."</u></p> <p>Agree with the deletion</p>
12	<p>Section 8 of the principal Act is hereby amended by –</p> <p>(a) the substitution for the heading of the following heading: <u>"Principal officer and deputy principal officer"</u></p> <p>(b) the substitution for subsection (2) of the following subsection: "(2) <u>(a)</u> The principal officer of a registered fund</p>	ASISA (18.04.2013)	<p>From a practical perspective, ASISA members propose that the clause should provide for the appointment of a deputy principal officer to discharge the duties of a principal officer if the principal officer is unable to do so without a time consuming process to be followed to appoint a deputy principal officer or to delegate functions to such deputy. In reality a principal officer should be able to take leave (not necessarily out of the country) and during</p>	<p>The appointment of an alternate principal officer will have the same effect as a deputy principal officer which is provided for in the amendments.</p>

	<p>shall be an individual who is resident in the Republic, and if [he] <u>the principal officer</u> is absent from the Republic or unable for any reason to discharge any duty imposed upon [him] <u>the principal officer</u> by any provision of this Act the fund shall, in the manner directed by its rules, appoint another person within [thirty days] to be its principal officer <u>within such period as may be prescribed by the registrar, after the commencement of a continuing absence or inability to discharge any duty by the principal officer.</u></p> <p>(b) <u>A registered fund may appoint a deputy principal officer.</u></p> <p>(c) <u>The board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the board must determine.</u></p> <p>(d) <u>The principal officer is not divested or relieved of a function delegated under paragraph (c) and the board may, if necessary, withdraw the delegation at any time on reasonable notice.</u></p> <p>(e) <u>If a fund has appointed a deputy principal officer, the</u></p>	<p>ASISA (18.04.2013)</p>	<p>that time a deputy principal officer should be able to discharge any duty of the principal officer and be accountable as if he/she was the principal officer during that time. This will be in the interests of members. For example, currently section 14 transfers cannot proceed if the principal officer is on leave or sick leave. If the proposal is accepted, the proposed subsections (b), (c), (d) and (e) can be deleted. The proposed wording will provide for a deputy principal officer to be appointed to act as principal officer if the principal officer is unable to do so.</p> <p>It is not necessary to provide for delegation as the board will have that authority in terms of section 7D(2)(a). Both the principal officer and the deputy principal officer should be accountable for those duties they discharge.</p> <p>All references to principal officer in sections 8(3) to 8(6) should be amended to include references to deputy principal officer to ensure that the requirements apply equally to a principal officer and a deputy principal officer. A definition of —deputy principal officerll should also be included in section 1 of the Act.</p> <p>To provide some background, ASISA members approached the FSB some time ago to discuss the practical problems experienced when a Principal Officer (PO) is unable to discharge the duties assigned by the Act. In reality, PO's take leave (not necessarily out of</p>	
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	<p><u>deputy principal officer acts as principal officer when the principal officer is absent from the Republic or unable for any reason to discharge any duty of the principal officer in terms of this Act, until the fund formally in the manner directed in its rules appoints a new principal officer."</u></p>	<p>the country) and they get sick. During these times, the duties assigned to the PO have to wait until he/she returns to the office. For example, currently section 14 transfers cannot proceed if the PO is unable to sign off on it. This clause will improve the current situation (as set out above) and will be in the interest of retirement fund members. It however still poses some challenges from an administrative and time efficiency point of view. In terms of section 8(3) of the Act, the fund must inform the Registrar of the appointment of a PO and the Registrar in terms of section 8(5) has the authority to object to the appointment. An appointed PO may thus not discharge any of the duties until the Registrar makes a decision on an objection. The potential time delay as a result of this decision will not be in the interests of fund members. It is understood that the Registrar requires a single person to act as PO at a point in time to ensure that a specific person is held accountable for the discharge of the assigned duties.</p> <p>The wording proposed by ASISA members will provide as follows:</p> <p>(a)(i) An alternate PO may be appointed in addition to the PO. The provisions in the rules of the fund for the appointment of a principal officer will be applicable to the appointment of an alternate principal officer. The Registrar will be able to exercise its authority in terms of section 8(5) on the appointment of the alternate PO. In this case there will be an</p>	
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		POA	<p>appointed alternate PO at all times and the alternate PO can immediately act as the PO during times when the PO is unable to do so. The Registrar must be informed of the time periods within which the alternate PO acts as PO so that the specific accountable person is known to the Registrar.</p> <p>(a)(ii) The appointment of another person as PO (due to the unavailability of a PO) if the fund does not appoint an alternate PO as set out above. In this case, the person will not be able to act as PO until the Registrar has exercised its authority in terms of section 8(5) of the Act.</p> <p>(b) Both the principal officer and alternate principal officer must be residents of the Republic.</p> <p>It is suggested that the proposed subsections (b), (c), (d) and (e) should be deleted as the matters have been adequately provided for in other proposed amendments.</p> <p>4.1 Recommendation 1: Define “Principal Executive Officer.”</p> <p>4.1.1 Replace the definition of “Principal Officer” with the following: <u>“Principal Executive Officer” means a person who exercises general executive control over and management of the business</u></p>	<p>Don't agree, as the board of the fund is collectively responsible for the management and control of the fund and it is not anticipated that the principal officer will be responsible for those functions.</p> <p>Don't agree, only some of the larger funds have principal officers that will</p>
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		POA 23.04.2013	<p><u>and activities of the Fund;</u></p> <p>4.1.2 Replace all references to <i>“Principal Officer”</i> within the legislation with <i>“Principal Executive Officer”</i>.</p> <p>4.1.3 View of the POA on the definition of the Principal Executive Officer</p> <p>4.1.3.1 The PFA defines a ‘Principal Officer’ as an officer referred to in Section Eight. Section 8(1) stipulates that every registered fund must appoint a Principal Executive Officer. This is the only reference to the executive role of the Principal Officer. Elsewhere, the Act refers to this specific Officer as a Principal Officer. Section 8 then continues to address issues relating to the absence of the Principal Officer, the appointment, termination and duty to report issues.</p> <p>4.1.3.2 There is thus no clear or appropriate definition of a Principal Officer or a Principal Executive Officer. It is assumed that by referring to a Principal Executive Officer in Section 8(1) the legislator intended to delineate between the two governance structures evident in</p>	<p>execute instructions from the trustees, however the trustees are still responsible for all such actions</p> <p>This is not our understanding of the Act, the principal officer was only responsible for limited duties as set out in the Act, the trustees are responsible for the management of a fund</p>
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			<p>a retirement fund i.e. that of the Board of Trustees who has strategic oversight and that of the “Chief Executive” that has management oversight.</p> <p>4.1.3.3 There is a growing consciousness about the executive role of the new generation Principal Officer. In light of the key drivers mentioned above the POA recommends that the PFA provides for a single definition that appropriately encompasses the functions, roles and responsibilities of this important officer i.e. the Principal Executive Officer.</p> <p>4.2 Recommendation 2: Duties of Principal Executive Officers</p> <p>4.2.1 Insert a new Section 8(2) that provides for a list of the duties of the Principal Executive Officer as well as the power to delegate authority:</p> <p>Section 8(2) The duties of a Principal Executive Officer shall be to -</p> <p>(a) Guide the Board of Trustees on strategy formulation and the implementation thereof;</p> <p>(b) Develop and recommend to the Board of Trustees the yearly business plans and budgets that</p>	<p>Do not agree with these duties to be inserted, the board of a fund is responsible for these duties and functions, they may however delegate it to a principal officer.</p>
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			<p>support the Funds long-term strategies</p> <p>(c) Monitor and report to the Board of Trustees organisational performance and its conformance with compliance imperatives</p> <p>(d) Establish an organisational structure in order to deliver services, programmes and information beneficial to the members and as specified by the Board of Trustees;</p> <p>(e) Ensure that proper registers, books and records of the operations of the fund are kept, inclusive of proper minutes of all resolutions passes by the board in a form and format specified by the Board of Trustees</p> <p>(f) Ensure that proper control systems are deployed as specified by the Board of Trustees</p> <p>(g) Ensure that a secretarial service is provided to support the Board of Trustees</p> <p>(h) Set the tone for ethical leadership and creating an ethical environment;</p> <p>(i) Ensure that the Fund complies with the rules and the operations of the fund complies with all relevant laws and governance principles</p> <p>(j) Act as the liaison between the Board of Trustees the members, sponsoring employers and external parties subject to any disclosures requirement that may be prescribed;</p> <p>(k) Advice the Board of Trustees on pertinent matters;</p> <p>(l) Fulfill any statutory duties contained in law.</p>	
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			<p>(m) Exercise delegations as specified by the Board of Trustees</p> <p>4.2.2 View of the POA on the duties of the Principal Executive Officer</p> <p>4.2.2.1 As indicated earlier in the submission the Principal Executive Officer is required to exercise and participate in a material degree in the general executive control over and management of the business and activities of the retirement fund. The PFA is silent on the non-statutory duties of the Principal Executive Officer which impact on his or her ability to offer a comprehensive service to the Board of Trustees, beneficiaries and all other stakeholders.</p> <p>4.2.2.2 Providing for the duties of the Principal Executive Officer in the same way than for a Board of Trustees as set out in Section 7 D will achieve the following:</p> <ol style="list-style-type: none"> 1) Clearly delineate between of roles and responsibilities of the Board of Trustees and the Management of the Fund; 2) Align governance structures of a retirement fund with best practices as set out in the 	
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			<p>King II report on good governance;</p> <p>3) Encourage and promote good corporate governance within retirement funds</p> <p>4) Supporting the Board of Trustees to give effect to the objectives of the Fund as provided for in Section 7C of the PFA.</p> <p>5) Enhance the accountability, transparency</p> <p>COMMENTS ON PROPOSED AMENDMENTS</p> <p>4.3 Comment 1: Appointment of Acting Principal Executive Officers</p> <p>PROPOSED AMENDMENT CONTAINED IN THE BILL:</p> <p><i>“11. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:</i></p> <p>PROPOSED AMENDMENT BY POA</p> <p>4.3.1 "Section 8(2)(a) The principal <u>executive</u> officer of a registered fund shall be an individual who is resident in the Republic.</p> <p>4.3.2 Section 8(2)(b) if [he] the principal</p>	
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			<p><u>executive officer</u> is absent from the Republic or unable for any reason to discharge any duty imposed upon [him] the principal <u>executive officer</u> by any provision of this Act, the fund shall, in the manner directed by its rules, appoint another person [within thirty days] to be its principal officer</p> <p>4.3.3 Section 8(3)(c) Any person who acts on behalf of the principal executive officer during periods of absenteeism must meet the fit and proper requirement set out in Section xxxx.</p> <p>4.3.4 Section 8(3)(d) The fund must notify the registrar about the appointment of the principal executive officers as provide for in Section 8(2)(b)</p> <p>4.3.5 View of the POA on the appointment of an “Acting” Principal Executive Officer</p> <p>4.3.5.1 Section 8(2) provides for eventualities where the Principal Executive Officer is absent whether planned or unplanned. In this instance the Principal Executive Officer is away for a short period and expected to return to his or her position. There is no expectation of an extension or permanent employment in the position as far as the acting</p>	
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			<p>person is concerned. Such an appointment is a temporary solutions to achieve a short-term operational objective, namely for signing documents, arranging board meetings and other meetings, etc.</p> <p>4.3.5.2 Furthermore, it should be sufficient that the board of trustees in accordance with system of delegation as provided for in Section 7D makes the appointment and that the registrar is only notified thereof. The board of trustees must also ensure that the acting principal executive officer is a fit and proper person.</p> <p>4.3.5.3 Given that the appointment is done by the Fund and the short term nature of the appointment the Fund should only be required to notify the registrar.</p> <p>4.4 Comment 2: Proposed Amendment: Delegation of authority</p> <p>PROPOSED AMENDMENT CONTAINED IN THE BILL:</p> <p>Section 8(2)(c The board_with may, in writing and in accordance with a system of delegation set out in the rules,</p>	
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		<p>delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the board must determine.</p> <p>PROPOSED AMENDMENT BY POA</p> <p>Section 8(2)(c) Replace The <u>board</u> with The <u>Principal Executive Officer</u> may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the <u>Principal Executive Officer</u> must determine.</p> <p>4.4.1 View of the POA on the delegation of Authority to the Principal Executive Officer</p> <p>4.4.1.1 According to the suggested amendment, the fund is given the power to appoint a deputy principal officer, the board is given the power to delegate the principal officer's functions to the deputy principal officer, yet the principal officer remains accountable for the functions so delegated.</p> <p>4.4.1.2 The POA is of the view that is Board of Trustee Board cannot</p>	<p>Agree, clause has been amended to:</p> <p>“(c) The  <u>principal officer</u> [board] may, in writing and in accordance with a system of delegation set out in the rules, delegate any of the principal officer's functions under this Act and the rules of the fund to the deputy principal officer, subject to conditions that the principal officer must determine.”</p>
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			<p>delegate a power that it does not have i.e. the principal officer's functions.</p> <p>4.4.1.3 The collective responsibility for the management of a retirement fund is vested in the Principal Executive Officer, in the same way as in a big corporation. The Board of Trustees delegates to management via the Principal Executive Officer and the Principal Executive Officer delegates to those who are reporting to him or her.</p> <p>4.5 Comment 3: Proposed Amendment: Delegation of authority</p> <p>PROPOSED AMENDMENT CONTAINED IN THE BILL:</p> <p>Section 8(2)(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the board may, if necessary, withdraw the delegation at any time on reasonable notice.</p> <p>PROPOSED AMENDMENT BY POA</p> <p>Section 8(2)(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the</p>	<p>Don't agree with the insertion of "executive"</p>
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		<p><u>principal executive officer</u> may, if necessary, withdraw the delegation at any time on reasonable notice.</p> <p>4.5.1 View of the POA on the delegation of Authority to the Principal Executive Officer</p> <p>The POA wishes to highlight a concern related to the use of the words “if necessary” and “on reasonable notice”. If a delegation goes awry, the board should be in a position to withdraw it without having to prove that it is necessary to do so, and without giving notice as time will likely be of the essence.</p> <p>This view holds true for the delegation of authority to trustees as well.</p> <p>5. COMMENTS IN RESPECT OF TRUSTEES</p> <p>5.1 The POA has noted the suggest amendments of section 7 that relate the roles and responsibilities of trustees and their boards. The POA welcomes the fact that trustees will be required to blow the whistle should they become aware of any material matter that might prejudice the fund and its members.</p> <p>5.2 The establishment of an</p>	<p>Agree clause has been amended as follows: Section 8(2)(d) The principal officer is not divested or relieved of a function delegated under paragraph (c) and the principal officer may,  [if necessary,] withdraw the delegation at any time  [on reasonable notice].</p>
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			<p>appropriate delegation of authority framework will go a long way to bring about administrative and operational efficiencies.</p> <p>5.3 The POA supports the inclusion of compulsory training and Continuous Development requirements for trustees.</p> <p>5.4 The amendment on joint and several liabilities brings relieve to concern of trustees however the amendment that relates to Section 7F(1)(b) requires clarification since the part underlined in the text below does seem to make sense:</p> <p><u>(b) having regard to all the circumstances of the case, including those connected with the appointment of the board member, it would be fair to excuse the board member.”.</u></p>	
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14	<p>CLAUSE 14. Section 9A of the principal Act is hereby amended— (b) by the insertion after subsection (2) of the following subsection:</p> <p><u>“(3) The valuator of a registered fund must be a natural person who is resident in the Republic, and if the valuator resigns or is unable for any reason to discharge any duty imposed upon a valuator by any provision of this Act, the fund shall appoint another person to be its valuator within such period as prescribed.”.</u></p>	FSB	This amendment is necessary to clarify that a valuator can also resign his or her appointment	<p>Section 9A of the principal Act is hereby amended— (b) by the insertion after subsection (2) of the following subsection:</p> <p><u>“(3) The valuator of a registered fund must be an individual who is resident in the Republic, and if the valuator</u>  <u>resigns</u> the appointment <u>or is unable for any reason to discharge any duty imposed upon a valuator by any provision of this Act, the fund shall appoint another person to be its valuator within such period as prescribed.”.</u></p>
16(a)	Amendment of Section 12 of the principal Act not currently in the original bill – was in the bill that were issued prior to public consultation	ASISA (18.04.2013)	<p>Section 12 of the principal Act is hereby amended - by the substitution for subsection (2) of the following subsection:</p> <p><u>“(2) Within 60 days from the date of the passing of a resolution <u>adopting</u> [for] the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with the particulars prescribed.</u></p> <p>In practice, a board may in general resolve to amend a rule but a final resolution is only adopted once there is agreement on the specific wording</p>	<p><u>“(2) Within 60 days from the date of the passing of a resolution</u>  <u>[for]</u> <u>adopting</u> the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with the particulars prescribed.</p>


		Mr Koornhof (20.03.2013)	<p>thereof. Section 12(2) of the Pension Funds Act was proposed to be amended in the first draft of the Bill but has been excluded from the Bill submitted to Parliament. ASISA members propose that the section 12(2) be amended as indicated to alleviate the uncertainty as to when the resolution and the particulars must be transmitted to the registrar. If the practicalities are taken into account, this transmission can only take place once the board has adopted a resolution with specific wording for a rule amendment.</p> <p>Mr Koornhof asked if it was now impossible for a pension fund to change rules.</p>	This amendment does not prevent amendments to rules, but provides clarity on by when the amendment to rules must be submitted to the registrar for approval
17	<p>Section 13A of the principal Act is hereby amended by the addition of the following subsection:</p> <p><u>"(8) For the purposes of this section, the following persons shall be personally liable for compliance with this section and for the payment of any contributions referred to in subsection (1):</u></p> <p><u>(a) If an employer is a company, every shareholder who controls the company and director who is regularly involved in the management of the company's overall financial affairs;</u></p> <p><u>(b) if an employer is a close corporation registered under the Close Corporations Act, 1984 (Act No.</u></p>	ASISA (18.04.2013)	<p>Mr E Mthethwa (ANC) asked if there was any way to enforce the contribution of an employer into a provident fund. He also asked if, in the case of those funds with large surpluses, there was any way to intervene to ensure appropriate distribution of those surpluses.</p> <p>Mr Harris thought that government entities had potentially been left out of the amendments.</p>	The non-payment of contributions is a criminal offence and legal action can be taken against the employer or persons listed in the new proposed subsection 8

	<p>69 of 1984), every member who controls or is regularly involved in the management of the close corporation's overall financial affairs; and</p> <p>(c) in respect of any employer other than an employer referred to in (a) and (b), every board member of a trust or partner in a partnership, in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.</p>	<p>Mr E Mthethwa (20.03.2013)</p> <p>Mr Harris</p> <p>Mr Mufamadi (20.03.2013)</p> <p>Acting Chairperson (20.03.2013)</p> <p>BASA</p>	<p>Mr Mufamadi referred to the Companies Act. Was the liability not vested with the directors? Shareholders might not be involved. How could one determine if a shareholder was involved on a day to day basis in the running of the company?</p> <p>The Acting Chairperson asked if a director could be a shareholder?</p> <p>Clause 17 of the Bill contains an amendment to section 13A by adding subsection (8) to section 13A of the Pension Funds Act. Section 13A(8) imposes personal liability on shareholders and directors of a company, members of a close corporation or an employer for compliance with section 13A of the Pension Funds Act. Section 13A deals with the payments by employers who are members of a fund to that particular fund. In terms of clause 47 of the Bill which amends the penalties section of the Pension Funds Act, section 37; a person who contravenes section 13A is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years. The amendment effecting imposes a criminal sanction on companies who are employers and members of a fund who do not comply with the provisions of the Pension Funds Act.</p> <p>To align the liability for enforcement purposes across legislation</p>	<p>a) <u>If an employer is a company,</u></p> <p>every  <u>[shareholder who controls the company and] director who is regularly involved in the management of the company's overall financial affairs;</u></p> <p>The criminal liability provision was erroneously taken out in a previous amendment and has to be put back.</p> <p>(c)  <u>[in respect of any employer other than an</u></p>
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		FSB/NT		<p><u>employer referred to in (a) and (b), every board member of a trust or partner in a partnership, in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.]</u></p> <p> <u>In respect of any other employer of any legal status or description that has not already been referred to in paragraphs (a) and (b), every person in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.".</u></p>
17(b)	<p><u>(9)(a) A fund to which the provisions of subsection (8) apply, must ensure that the employer agrees in writing to notify it of the identity of any such person so personally liable in terms of subsection (8).</u></p> <p><u>(b) In the event that an employer fails to comply with the requirements of this provision, all the directors (in respect of a company), all the</u></p>	ASISA	<p>The alternative wording is proposed for the sake of clarity. It would be difficult to "ensure" that the employer furnishes the information. A fund should request the information and the employer should be obliged to provide it.:</p> <p>(9)(a) A <u>fund to which the provisions of subsection (8) apply, must [ensure that the] request the employer [agrees] in writing to notify it of the identity of any such person so personally liable in terms</u></p>	<p>9)(a) A <u>fund to which the provisions of subsection (8) apply, must  [ensure that the employer agrees]</u></p> <p> <u>request the employer in writing to notify it of the identity of any such person so personally liable in terms of subsection (8) and the employer will then be obliged to furnish such</u></p>



	<u>members regularly involved in the management of the closed corporation (in respect of a closed corporation), or all the persons compromising the governing body of the employer, as the case may be, shall be personally liable in terms of subsection (8)."</u>		<u>of subsection (8) and the employer will then be obliged to furnish such information in writing.</u>	<u>information in writing.</u>
	Insert new subsection (10) – not in previous bill published for comment	FSB	To enable the Registrar to prescribe that the non-compliance be reported to the relevant authorities (Director of Public Prosecutor, SAPS or Commercial Crimes Unit) and subject to such conditions and format as prescribed.	<p>Not previously in the Bill published for comment: Insertion after subsection (9) of the following subsection:</p> <p> (10) <u>A board of a fund must report any non-compliance with the provisions of this section, in accordance with such conditions and in the format as may be prescribed.</u></p>
18	<p>by the substitution for subsection (1) of section 13B with the following subsection:</p> <p>No person shall administer on behalf of a pension fund the [investments of such a pension fund,] <u>receipt of contributions</u> or the disposition of benefits provided for in the rules of the fund, unless the registrar has in a particular case or in general granted approval thereto and the person complies with the requirements prescribed by the registrar for an applicant and at all times with such</p>	FSB	This amendment is necessary to align the wording with similar provisions elsewhere in the Act and to enable the Registrar to prescribe conditions both for applicant and for the continuous supervision and to ensure administrators continue to act properly	<p>by the substitution for subsection (1) of section 13B with the following subsection:</p> <p>No person shall administer on behalf of a pension fund the [investments of such a pension fund,] <u>receipt of contributions</u> or the disposition of benefits provided for in the rules of the fund, unless  [the registrar has in a particular case or in general granted approval thereto and the person complies with such conditions as the registrar may from</p>

	conditions as the registrar may prescribe from time to time determine in a the particular case or in general.			time to time determine in the particular case or in general]  <u>such person has been approved by the registrar and complies with such conditions as may be prescribed.</u>
18	<p>(b) by the insertion after subsection (1) of the following subsections:</p> <p><u>"(1A) Any application for approval in terms of subsection (1) shall—</u></p> <p><u>(a) be made in the prescribed manner;</u></p> <p><u>(b) be accompanied by the prescribed fee; and</u></p> <p><u>(c) contain such information as may be prescribed by the registrar in order to satisfy the registrar that the applicant complies with the requirements for a fit and proper administrator, prescribed by notice in the Gazette including information in respect of—</u></p> <p><u>(i) personal character qualities of honesty and integrity;</u></p> <p><u>(ii) the competence and operational ability of the applicant to fulfil the responsibilities imposed by this Act;</u></p> <p><u>(iii) the applicant's financial soundness; and</u></p> <p><u>(iv). any other requirements that may be prescribed.</u></p> <p><u>(1B) The registrar may—</u></p>	BASA	<p>Pension Funds Act 24 of 1956</p> <p>Clause 18 of the Bill amends section 13B of the Pension Funds Act. The Bill provides for the insertion of subsection (1A) and (1B) into the Pension Funds Act, which deal with an application for approval to administer a fund. Section 13B(1A)(c) refers to an applicant satisfying the Registrar that the applicant 'complies with the requirements for a fit and proper administrator'. On top of an applicant meeting the fit and proper requirements it should also provide information on the applicant's 'personal character qualities of honesty and integrity, the competence and operational ability of the applicant to fulfil the responsibilities imposed by the Pension Funds Act and the applicant's financial stability'. The Bill does not indicate what these requirements may be. In regards to the further information to be provided by the applicant there is no guidance as to what information would meet/satisfy the criteria of information listed in the section.</p> <p>Section 13B(1B)(b) states 'the Register may take into consideration any other information regarding the applicant, derived from any source, including any other regulatory or supervisory authority,</p>	<p>The requirements will be prescribed by Notice and the registrar will always be subject to PAJA where a decision is taken and the administrator will in terms of PAJA have a reasonable period to respond. The wording of the clause is proposes to amended as indicated hereunder.</p>


	<p><u>(a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and</u></p> <p><u>(b) take into consideration any other information regarding the applicant, derived from any source, including any other regulatory or supervisory authority, if such information is disclosed to the applicant and the applicant is given reasonable opportunity to respond."</u></p>		<p>if such information is disclosed to the applicant and the applicant is given reasonable opportunity to respond'. The Registrar should only take into account information which is required for the assessment of the application and which relates to the application. If the Registrar were to take into account any information regarding the applicant, this could lead to applicants not being assessed on the same criteria which could lead to unfairness in the application process. Though the Bill does provide that the applicant should be afforded an opportunity to respond this is not sufficient where the Registrar can take into account any information. Further the Bill allows the Registrar to accept information from any source, this section is too wide and should be confined to a specific list of individuals to ensure fairness in the application process.</p>	
19		FSB	<p>The 180 day timeframe for submission to the Registrar is acceptable where transfers involve DB funds. However for transfers from DC to DC funds e.g. should be submitted to the Registrar sooner, hence it is suggested that the period within which the transfer applications must be submitted be prescribed</p>	<p>This clause was not in the bill published for comment:</p> <p> Section 14(1)(a) is hereby amended –</p> <p>“(a) the scheme for the proposed transaction, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, has been submitted to the registrar within [180 days] <u>a period as prescribed</u> of the effective date of the transaction;</p>


24(a)	<p>Section 15C of the principal Act is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account, [and] the employer surplus account <u>or directly for the benefit of members and former members, subject to the uses specified in section 15D(1).</u>"; and</p>	ASISA (18.02.2013)	The comma after the words “former members” should be deleted to reduce the likelihood of an interpretation that would incorrectly make the section 15D(1) uses applicable to the apportionment of employer surpluses. Section 15D only applies to member surpluses.	<p>"(1) The rules may determine any apportionment of actuarial surplus arising in the fund after the surplus apportionment date between the member surplus account, [and] the employer surplus account <u>or directly for the benefit of members and former members[,] subject to the uses specified in section 15D(1).</u>"; and</p>
26(a)	<p>Section 15E 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>“Notwithstanding anything to the contrary in the rules, a participating employer may [request] <u>require</u> the board to use actuarial surplus allocated to the employer surplus account in terms of sections 15B, 15C and 15F for use by that employer for any of the following purposes namely –“</p>	Mr Mthethwa (20.03.2013)	Mr Mthethwa asked how far back one could go, especially for those who left the fund without collecting their surpluses.	The Act provides that funds had to go back to at least 1980 to determine the stakeholders in a surplus apportionment scheme




33(a)	<p>c) by the insertion after subsection (5C) of the following subsection:</p> <p><u>"(5D) (a) Subject to this subsection, a fund shall not without the prior approval of the registrar, directly or indirectly, acquire or hold—</u></p> <p><u>(i) an ownership interest exceeding 49 per cent in another entity; or</u></p> <p><u>(ii) shares or any other financial interest in another entity which results in the fund exercising control over that entity.</u></p> <p><u>(b) The approval referred to in paragraph (a) may be given subject to such conditions as the registrar may determine.</u></p> <p><u>(c) For the purposes of paragraph (a)(ii), a fund shall be deemed to exercise control over another entity if the fund—</u></p> <p><u>(i) is directly or indirectly able to exercise or control the exercise of more than 35 per cent of the voting rights associated with the shares of that entity, whether pursuant to a shareholder agreement or otherwise; or</u></p> <p><u>(ii) has the right to appoint or elect, or control the appointment or election of, directors of that entity who control more than 35 per cent of the votes at a meeting of the board of that entity."</u></p>	Mr Harris	<p>Mr Harris asked how many pension funds had controlling interests (ownership interest exceeding 49%) in entities in which they invested.</p> <p>Mr Harris said that the issue was whether one had control pursuant to a shareholder agreement. 35% was a random figure (see Clause 33(c) [line 43]. Why even specify that limit? Control began automatically at 50%.</p>	<p> "(5D) (a) [Subject to this subsection, a] A fund shall not without the prior approval of the registrar, directly or indirectly, acquire or hold shares or any other financial interest in another entity which results in the fund exercising control over that entity.</p> <p>  <u>[(i) an ownership interest exceeding 49 per cent in another entity; or]</u></p> <p><u>(b) The approval referred to in paragraph (a) may be given subject to such conditions as the registrar may prescribe</u></p>
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35	<p>The following section is hereby substituted for section 25 of the principal Act:</p> <p><u>SECTION 25</u></p> <p><u>35.</u> The following section is hereby substituted for section 25 of the principal Act:</p> <p><u>“Inspections and on-site visits</u></p> <p><u>25. (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 to conduct an on-site visit of the business and affairs of a fund or administrator; 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>(b) A person conducting an on-site visit in terms of paragraph (a)(i) may—</u></p> <p><u>(i) at any time during business hours—</u></p> <p><u>(aa) enter the premises of the fund or administrator and the fund or administrator must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;</u></p> <p><u>(bb) search the premises of the fund or administrator for any document;</u></p> <p><u>(cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document; and</u></p> <p><u>(dd) against the issue of a receipt, seize any document which may</u></p>	<p>Ms Dlamini-Dubazana</p> <p>FSB</p>	<p>Ms Dlamini-Dubazana thought that Ms Marais wanted to escape discussion the amendment to Section 25, but pointed out that the Registrar had so much power to search and seize documents. This ‘any suitable person’ was a concern and she asked to flag it. The Treasury was overlooking ‘any suitable person’.</p> <p>It is proposed to remove the on-site provisions from the sectorial Act and to consolidate these provisions in the FI (POF) Act so as to align the on-site visit powers and procedures within the FSB</p>	<p> <u>25. (1)The registrar may—</u></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); or</u></p> <p><u>(b) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).</u></p> <p><u>(c) after an on-site visit or inspection has been carried out in terms of subsection (1), direct the fund or 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).”.</u></p> <p> <u>[25. (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 to conduct an on-site visit of the business and affairs of a fund or administrator; 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>(b) A person conducting an on-site visit in terms of paragraph (a)(i) may—</u></p>
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<p><u>furnish proof of any failure to comply with the provisions of this Act;</u></p> <p><u>(ii) require the fund or administrator 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 fund or administrator; and</u></p> <p><u>(iii) require any person on the premises that is holding or is accountable for any document, to provide information and explanations of that information.</u></p> <p><u>(c) For the purposes of this section—</u></p> <p><u>(i) ‘document’ includes any recorded information regardless of form or medium; and</u></p> <p><u>(ii) the power to search includes the power to use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—</u></p> <p><u>(aa) search any data contained in or available to that computer system;</u></p> <p><u>(bb) reproduce any record from that data; and</u></p> <p><u>(cc) seize any output from that computer for examination and copying.</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 fund or 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</u></p>			<p><u>(i) at any time during business hours—</u></p> <p><u>(aa) enter the premises of the fund or administrator and the fund or administrator must upon request provide any document, record, information or explanation necessary for purposes of the on-site visit;</u></p> <p><u>(bb) search the premises of the fund or administrator for any document;</u></p> <p><u>(cc) examine, make extracts from and copy any document or, against the issue of a receipt, temporarily remove the document; and</u></p> <p><u>(dd) against the issue of a receipt, seize any document which may furnish proof of any failure to comply with the provisions of this Act;</u></p> <p><u>(ii) require the fund or administrator 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 fund or administrator; and</u></p> <p><u>(iii) require any person on the premises that is holding or is accountable for any document, to provide information and explanations of that information.</u></p> <p><u>(c) For the purposes of this section—</u></p> <p><u>(i) ‘document’ includes any recorded information regardless of form or medium; and</u></p>
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	<p>with any provision of this Act: <u>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).</u> <u>(3) The registrar may make known by notice on the official website or by means of any other appropriate public media, if disclosure is in the public interest –</u> <u>(a) the outcome and details of an on-site visit;</u> <u>(b) the status and outcome of an inspection;</u> <u>(c) the details of an inspection</u></p>			<p><u>(ii) the power to search includes the power to use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—</u> <u>(aa) search any data contained in or available to that computer system;</u> <u>(bb) reproduce any record from that data; and</u> <u>(cc) seize any output from that computer for examination and copying.]</u></p> <p> <u>[(3) The registrar may make known by notice on the official website or by means of any other appropriate public media, if disclosure is in the public interest –</u> <u>(a) the outcome and details of an on-site visit;</u> <u>(b) the status and outcome of an inspection;</u> <u>(c) the details of an inspection.]</u></p>
36		FSB	To enable the registrar to declare that a specific practice or method of conducting business is unacceptable, irregular or undesirable and that such fund, administrator or person must refrain from conducting such practice or method of conducting business.	<p>Not previously included in the Bill as published for comment:</p> <p>by the substitution for subsection (1) of section 26 with the following subsection:</p>



				 <p>“The registrar may, after considering the interests of the members of a fund (or of the several categories of members if there is more than one such category), [direct] –</p> <p>(a) <u>declare that a specific practice or method of conducting business is unacceptable, irregular or undesirable and that such fund, administrator or person must refrain from conducting such practice or method of conducting business; or</u></p> <p>(b) <u>direct</u> that the rules of the fund, including rules relating to the appointment, powers, remuneration (if any) and removal of the board, be amended if the results of an inspection or investigation under section 25 necessitates amendment of the rules of the fund or if the registrar is of the opinion that the fund -</p> <p><u>(i)</u> is not in a sound financial condition or does not comply with the provisions of this Act or the regulations affecting the financial soundness of the fund;</p> <p><u>(ii)</u> has failed to act in accordance with the provisions of section 18; or</p> <p><u>(iii)</u> is not managed in accordance with this Act or the rules of the fund.</p> <p>(4) If the registrar has reason to believe that a board member is not <u>or is no longer</u> fit and proper to hold office, the registrar may, after giving</p>
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				the board member a reasonable opportunity to be heard [.] = (a) direct the board member to vacate office; and (b) replace that board member with another person for the period and subject to the conditions that the registrar may  prescribe."
38	<p>Section 28A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>"(1) The registrar by notice [in the Gazette] on the official web site shall determine the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services."</p>	ASISA (18.02.2013)	ASISA members suggest the deletions and insertion to align the wording of this provision with the definition of "prescribe". "Prescribed" is defined to mean prescribed by the registrar by notice on the official website, unless notice in the Gazette is specifically required by this Act.:	<p>Proposed wording:</p> <p>"(1) The registrar [by notice [in the Gazette] <u>on the official web site</u>] shall  [determine] prescribe the services for which remuneration shall be payable to the liquidator of a fund which is terminated or dissolved voluntarily, whether wholly or in part, and prescribe the tariff of remuneration in respect of those services."</p>
44	<p>Section 31 of the principal Act is hereby amended –</p> <p>(a) by the repeal in subsection (1) of paragraph (a); and</p> <p>(b) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs respectively:</p> <p>"(b) carry on the business of a pension fund [established after such commencement], unless that fund has [been duly]</p>	ASISA (18.02.2013)	<p>ASISA members suggest that subsection (d) be aligned with subsection (b) so that a pension fund business can use the name —pension fundll if it has complied with the requirements of section 4. It would not be practical to not use such name in the period between the application and the registration.</p> <p>The view is held that the Registrar should not be able to consent to any person to use the words —pension fundll in the name of its business unless such business is in fact a pension fund or has applied for the registration of a pension</p>	<p>["(b) carry on the business of a pension fund [established after such commencement], unless that fund has [been duly] complied with the requirements in <u>section 4</u>, to be registered under [section four] <u>this Act</u>; or]</p> <p>"(b) carry on the business of a pension fund [established after such commencement], unless that fund has been [duly]  <u>provisionally or finally</u> registered under [section four]</p>

	<p>complied with the requirements in <u>section 4</u>, to <u>be</u> registered under [section four] <u>this Act</u>; or</p> <p>(c) carry on the business of a pension fund for [a] <u>such period [of more than twelve months]</u> and <u>subject to such conditions as may be prescribed</u> after the date on which the person who applied for registration of the fund is advised by the registrar that the application for registration has been [refused] <u>rejected</u>; or</p> <p>(d) [after the expiration of a period of twelve months from the commencement of this Act,] apply to [his] <u>that person's</u> business a name which includes the words "pension fund" or any other name which is calculated to indicate that [he] <u>that person</u> carries on the business of a pension fund, unless such business is registered as a pension fund under this Act, except with the consent of the registrar.</p>		<p>fund. The reference to the consent of the registrar should be deleted.</p>	<p><u>this Act</u>; [or]</p> <p>(d)[after the expiration of a period of twelve months from the commencement of this Act,] apply to [his] <u>that person's</u> business a name which includes the words "pension fund" or any other name which is calculated to indicate that [he] <u>that person</u> carries on the business of a pension fund, unless</p> <p>such business is  <u>provisionally or finally</u> registered as a pension fund under this Act.</p>
51(a)	<i>Section 37C of the principal Act is hereby amended-</i>	FSB	Amendment to the this section of the Act to be removed due to legal opinion	Omit the amendment in clause 51(a)

51(b)	<p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p>“Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse of child of the member in terms of the rules of a registered fund, which must be dealt with in terms of the rules) payable by such a fund upon the death of a member <u>or any benefits that remained unpaid by the fund on the date on which the fund became aware of the death of a member,</u> shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:”</p> <p>(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:</p> <p>“(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the [board]</p>	ASISA (18.02.2013)	<p>received that the benefits have accrued prior to death and must not form part of the death benefits and section 37D.</p> <p>It is proposed that the provisions of subsection (1)(a), be made subject to section 37C(1)(bA). Subsection (1)(a) compels payment to a dependant whereas subsection (1)(bA) provides for payment to a dependant and/or nominee. The potential conflict between these subsections creates uncertainty in application for a fund if there is a dependant and a nominee.</p>	<p><i>Section 37C of the principal Act is hereby amended-</i></p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p> [“Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse of child of the member in terms of the rules of a registered fund, which must be dealt with in terms of the rules) payable by such a fund upon the death of a member <u>[or any benefits that remained unpaid by the fund on the date on which the fund became aware of the death of a member,</u>]shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:”]</p>
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	<u>fund</u> , to one of such dependants or in proportions to some of or all such dependants.";		<p>To further illustrate -</p> <p>Subsection (1)(a) provides: If a fund becomes aware of or traces a dependant – the fund shall pay the benefit to such dependant in a manner deemed equitable by fund.</p> <p>Subsection (1)(bA) provides: If member has a dependant and has nominated a nominee in writing to the fund – the fund shall pay benefit to dependant or nominee as member indicated and as deemed equitable by fund (only applicable to nominees after June 1989 and the fund is not prohibited from paying the benefit to the dependant or nominee).</p> <p>Proposed wording:</p> <p>"(a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid <u>subject to subsection (bA)</u> to such dependant or, as may be deemed equitable by the [board] <u>fund</u>, to one of such dependants or in proportions to some of or all such dependants.";</p>	<p>The proposed amendment is superfluous as there is a hierarchy of beneficiaries created in section 37C(1) – (a) deals with scenarios where there are only dependants, (b) only nominees, (bA) dependants AND nominees, and (c) where there are no dependants or nominees.</p> <p>Therefore, there is no conflict because the hierarchy created is in the alternative</p>
52	Section 37D	FSB	To provide for Islamic marriages on divorce	<p>'(b) by the substitution in subsection (1)(d) for the words preceding subparagraph (i) of the following words:</p> <p>"deduct from a member's  <u>or</u></p>

				<p><u>deferred pensioner's benefit, [or] member's interest or minimum individual reserve, or the capital value of a pensioner's pension after retirement, as the case may be –“</u></p> <p>subparagraph:</p> <p>“(i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979)</p> <p> <u>or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution;”;</u></p>
52	<p>Section 37D</p> <p>By the substitution for the words preceding subparagraph (i) of paragraph (d) of subsection (1) of the following words:</p> <p>“deduct from a <u>member's benefit, member's interest or minimum individual reserve or the capital value of a pensioner's pension after retirement;</u> as the case may be-“</p> <p>(g) by the substitution for subsection (6) of the following subsection:</p> <p>“(6) Despite paragraph (b) of the definition of “pension interest” in <u>section 1(1) of the Divorce Act, 1979, (Act No. 70 of 1979),</u> the portion of the pension interest of a member of a</p>	FSB	<p>To make it clear that the benefit of a deferred pensioner is included in this subsection</p> <p>To provide for the computation of pension interest in respect of deferred pensioners and preservation fund members, including where the member has already taken a once-off withdrawal.</p>	<p>“deduct from a <u>member's</u>  <u>or deferred pensioner's</u> benefit, member's interest or minimum individual reserve <u>or the capital value of a pensioner's pension after retirement;</u> as the case may be-“</p> <p>g) by the substitution for subsection (6) of the following subsection:</p> <p>(6) Despite paragraph (b) of the definition of “pension interest” in section 1(1) of the Divorce Act, 1979, <u>(Act No. 70 of 1979),</u> the portion of the</p>

	<p>pension preservation fund or provident preservation fund [(as defined in the Income Tax Act, 1962),] that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated on the date on which the decree was granted.</p>			<p>pension interest of a member  <u>or</u> <u>deferred pensioner</u> of a pension preservation fund or provident preservation fund [(as defined in the Income Tax Act, 1962),] that is assigned to a non-member spouse, refers to the equivalent portion of the benefits to which that member would have been entitled to in terms of the rules of the fund if his or her membership of the fund terminated,</p> <p> <u>or the member or deferred pensioner retired</u> on the date on which the decree was granted.</p>
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