

MEMORANDUM ON OBJECTS OF THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

1. BACKGROUND TO THE BILL

- 1.1 The National Treasury published a policy paper on financial sector reform entitled “*A safer financial sector to serve South Africa better*” in February 2011. The paper aims to rationalise and improve the framework for financial regulatory co-ordination and accountability. Further, the paper outlines a comprehensive response by the National Treasury to the financial crisis, including enhanced consumer protection and prudential regulation measures. This policy paper will culminate in a series of regulatory and legislative interventions in the financial sector over the next three years.
- 1.2 Notwithstanding the transition to the twin peaks model of financial regulation, there is still an urgent need to address gaps within financial sector legislation to mitigate exiting risks in the financial system. In particular, the enactment of the new Companies Act, 2008 requires urgent legislative amendments to align all financial sector legislation to the changes introduced by the new Companies Act. The Financial Services Laws General Amendment Bill, 2012 (“the Bill”) proposes amendments which are also required to address gaps and strengthen the financial sector regulatory framework as identified by the International Monetary Fund/World Bank Financial Sector Assessment Program evaluation of South Africa’s adherence to international financial regulatory principles in respect of insurance, banking and securities regulation.
- 1.3 The 2008 financial crisis also necessitate legislative changes as outlined in policy paper. Urgent interim emergency powers are required to give effect to some of the proposals while a broader series of regulatory and legislative interventions are envisaged over the next three years.

2. OBJECTS OF THE BILL

- 2.1 The primary objective of the 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.

3. SUMMARY OF THE BILL

3.1 The Bill addresses several urgent areas:

- 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.

3.3 The Bill seeks to achieve the above by amending the laws administered by the 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).

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury has extensively engaged the FSB and the South African Reserve Bank. Previous consultation in the Economic Cluster over the principles in “*A safer financial sector to serve South Africa better*” have taken place for the Financial Markets Bill, and given effect in that and the current Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will not have any organisational and personnel implications for the FSB or the supervisor of co-operative banks.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.