



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

**EXPLANATORY MEMORANDUM
ON THE
FINANCIAL SERVICES LAWS GENERAL AMENDMENT
BILL, 2012**

27 September 2012

FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

CLAUSE BY CLAUSE MOTIVATION OF AMENDMENTS

A. BACKGROUND TO THE BILL

1. The Financial Services Laws General Amendment Bill, 2012 (“the Bill”) was considered and approved by the Minister of Finance and Cabinet on 22 February 2012. The Bill was thereafter released for public comment on 9 March 2012. The public comment period was extended from 13 April 2012 to 2 May 2012, to accommodate stakeholder requests for an extension.
2. The Bill amends eleven financial sector laws to address legislative gaps highlighted after the 2008 financial crisis and to align these laws with the Companies Act, 2008(Act No. 71 of 2008)(“the Companies Act, 2008”) and other legislation. Many of these gaps were noted in the policy paper, “*A safer financial sector to serve South Africa better*”, published by the National Treasury (“NT”) with the 2011 Budget. The paper outlined 15 principles that will guide the reform of South Africa’s financial regulatory architecture. However, it should be noted that the proposed amendments do not cover the more fundamental reforms envisaged in the shift towards a Twin Peaks model of financial regulation, but rather address the more urgent legislative gaps and the removal of inconsistencies in current legislation. Amendments to legislation to introduce the Twin Peaks model are expected to be published in 2013.
3. A total of 35 submissions were received during the public comment process. Each submission was thoroughly considered by the NT and Financial Services Board (“FSB”). The tabled Bill contains amendments to the original version of the Bill that was published for public comments to take into account comments received during the public consultation process. A response to the comments has been prepared and is included as part of the documents released with the Bill.
4. The NT held information sessions with key industry stakeholders, including the Congress of South African Trade Unions, Association of Savings and Investments South Africa, the South African Insurance Association, the Banking Association of South Africa and the Institute of Retirement Funds. The purpose of the information session was to provide a broad overview of the objectives of the Bill and to clarify comments received on the Bill. The NT also engaged with the FSB, the South African Reserve Bank (“the SARB”), the Department of Trade and Industry, and the Financial Intelligence Centre.

B. BRIEF SYNOPSIS

1. *Objectives of the Bill*
 - 1.1 The primary objective of the Bill is to ensure that even during the transition to the Twin Peaks system, South Africa has a sounder and better regulated financial services industry which promotes financial stability by:
 - strengthening the financial sector regulatory framework;
 - enhancing the supervisory powers of the regulators; and

- enhancing the powers of the Government to address potential risks to the financial system.

1.2 *The Bill addresses several urgent areas by:*

- closing gaps identified by the Financial Sector Assessment Program conducted by the IMF and the World Bank regarding South Africa's adherence to international standards for financial regulation;
- aligning financial sector legislation with the Companies Act, 2008;
- eliminating overlaps caused by the Consumer Protection Act, 2008 (Act No. 68 of 2008), the Companies Act, 2008, and the Competition Amendment Act, 2009 (Act No.1 of 2009); and
- making the FSB the lead regulator where there is concurrent jurisdiction.

1.3 *The Bill seeks to strengthen the financial sector regulatory framework by:*

- updating and aligning existing legislation to the Companies Act;
- resolving regulatory overlaps caused by the Consumer Protection Act, 2008 and the Competition Act, 1998.
- closing regulatory gaps identified by the Financial Sector Assessment Program conducted by the IMF and the World Bank in existing legislation regarding South African's adherence to international standards for financial regulation;
- enhancing the supervisory powers of the FSB Registrars';
- providing for enhanced supervisory powers by establishing the FSB as the lead regulator where there is concurrent jurisdiction in respect of the same entities;
- clarifying the status of FSB legislation in relation to other legislation, to the extent that such legislation may impact on the stability of the financial services sector and impede effective supervision; and
- effecting technical amendments to clarify the intent and purpose of certain provisions.

1.4 *The Bill also provides for the following:*

- repealing all current Advisory and Standing Committees with the aim of rationalising the consultation process;
- enabling the SARB to provide emergency liquidity to the banking system during a financial crisis;
- amending the Co-operative Banks Act, 2007 (Act No. 40 of 2007), to provide for the SARB to be the sole supervisor of Co-operative Banks; and
- amending the definition of "business of a medical scheme" in the Medical Schemes Act, 1998 (Act No. 131 of 1998), to correctly reflect the intention of the Medical Schemes Act, 1998, and to facilitate the appropriate demarcation between health insurance products and medical schemes.

2. *Laws Amended in the Bill*

The Bill amends the following laws administered by the FSB:

- 2.1 the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- 2.2 the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998);
- 2.3 the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 80 of 2001);

- 2.4 the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- 2.5 the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- 2.6 the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- 2.7 the Short-term Insurance Act, 1998(Act No. 53 of 1998);
- 2.8 the Pension Funds Act, 1956 (Act No. 24 of 1956); and
- 2.9 the Financial Services Laws General Amendment Act, 2008 (Act No. 22 of 2008).
- 2.10 The Bill also amends the Co-operative Banks Act, 2007(Act No. 40 of 2007), administered by the South African Reserve Bank and the Co-operative Banks Development Agency to clarify regulatory responsibilities.
- 2.11 The Bill amends section 13 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), to delete paragraph (c) of that section. A comprehensive review of the legislative framework for crisis resolution conducted jointly by the SARB and the NT has found that that provision unduly constrains the ability of the SARB to provide emergency liquidity to the banking system during a financial crisis.

3. *Summary of Amendments*

3.1 The Bill was finalised in response to comments received during the public consultation process. A number of general comments were received in relation to the Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, the Financial Advisory and Intermediary Services Act, 2002, and the Financial Institutions (Protection of Funds) Act, 2001. Key amendments were also introduced in the Financial Services Board Act, 1990, and the Pension Funds Act, 1956, to address comments received.

3.2 *Key amendments effected in the FSB Act include:*

- Limitation of liability of the regulator if it exercises the powers conferred upon the regulator in terms of statute, provided those powers were exercised in good faith (*'bona fide'*).
- Empowering the Minister to prescribe a code of engagement, consultation and communication for the FSB.
- Appropriately defining the relationship of FSB legislation with other legislation.
- Defers some of the emergency powers to legislation next year that will lay the basis for implementing the "Twin Peaks" regulatory regime.
- Provides for exemptions and directives to be tabled by the FSB.
- Ensuring that information received by the FSB is treated confidentially.

3.3 *Key amendments effected in the Pension Funds Act include:*

- Whistle-blowing protection for Board members, valuers, principal/deputy officers, and employees who disclose material information to the Registrar.
- Requires a fund board member to attain skills and training as prescribed by the Registrar, within a certain period.
- Extending personal liability to employers in respect of non-payment of pension contributions to a pension fund.
- Protection for board members from joint and several liability, if they act independently, honestly, and exercise their fiduciary obligations.
- To require pension funds to notify the Registrar of their intention to submit an application to register prior to commencing the business of a pension fund.

3.4. The Bill is divided into the following 12 Parts:

- Part 1: Amendment of Pension Funds Act, 1956 (clauses 1 to 52);
- Part 2: Amendment of South African Reserve Bank Act, 1989 (clause 53);
- Part 3: Amendment of Financial Services Board Act, 1990 (clauses 54 to 68);
- Part 4: Amendment of Long-term Insurance Act, 1998 (clauses 69 to 110);
- Part 5: Amendment of Short-term Insurance Act, 1998 (clauses 111 to 147);
- Part 6: Amendment of Inspection of Financial Institutions Act, 1998 (clauses 148 to 157);
- Part 7: Amendment of Financial Institutions (Protection of Funds) Act, 2001 (clauses 158 to 174);
- Part 8: Amendment of Financial Advisory and Intermediary Services Act, 2002 (clauses 175 to 206);
- Part 9: Amendment of Collective Investment Schemes Control Act, 2002 (clauses 207 to 238);
- Part 10: Amendment of Co-operative Banks Act, 2007 (clauses 239 to 255);
- Part 11: Amendment of Financial Services Laws General Amendment Act, 2008 (clause 256); and
- Part 12: Consequential and Related Amendments to Certain Laws, Exemptions, Saving and Short Title and Commencement (clauses 257 to 259).

C. DISCUSSION: CLAUSE BY CLAUSE

C.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 a valuator places on the assets of a fund to ensure consistency in approach; to align the terminology used in the Act with relevant definitions provided for in the Act;
- To substitute the definition of “actuary”, to appropriately align the definition with the definition of “valuator”;

- To delete the definition of “advisory committee”;
- To insert a definition of “Companies Act”, to rectify the reference to the Companies Act, 2008;
- To insert a definition of “complainant”, to appropriately define the term for the purposes of complaints that may be referred to the Pension Funds Adjudicator;
- 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 specific category of contingency;
- To insert definitions of “disclosure”, “protected disclosure”, and “Protected Disclosures Act”, to enable that defined disclosures to the registrar are granted protection in line with that contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000);
- To substitute certain wording in the definition of “employer surplus account”, to clarify that an employer surplus account must be provided for in the rules of a fund;
- To substitute the definition of “fund return”, to provide that the board may use a reasonable approximation, made in such manner as may be prescribed, to allocate a fund return if there are sound administrative reasons why an exact allocation cannot be effected;
- 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;
- To substitute the definition of “non-member spouse”, to more appropriately define the term;
- To insert a definition of “official web site”, in order to provide for alternative means of notification (other than by publication in the *Gazette*) that certain actions have been taken. This is consistent with the Interpretation Act, resulting in significant cost savings, more effective communication and publication;
- To insert a definition of “pension preservation fund” and a definition of “provident preservation fund”, to recognise pension preservation funds and provident preservation funds established prior to the definition of “pension preservation fund” and “provident 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, unless the Act specifically requires publication in 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 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; and
- To substitute the definition of “valuator”, to clarify that, when read in conjunction with the amended definition of an “actuary”, 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.

Clause 2(amends section 2)

- To correct the incorrect use of the term “registration”; instead of “registrar” in subsection (5)(a); and
- To replace the reference to “in the Gazette” with “on the official web site”, to clarify that notification of certain 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;
- To require a fund to first notify the registrar of its intention to establish a pension fund prior to commencing pension fund business, and to lodge an application for registration within two months of this notification; and
- To provide for applications to lapse automatically if a fund fails to adhere to a request for additional information or the verification of information.

Clause 6(amends section 5)

To update references 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 funds.

Clause 7 (amends section 6)

To replace a reference to “in the Gazette” with “on the official web site”, to clarify that notification of certain 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 the composition of a fund must comply with the requirements of the rules of the fund, and that a vacancy on the board must be filled within a prescribed period;
- To require that board members attain and retain prescribed levels of skills and training; and
- To oblige a board member that is removed 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, fiduciary duties and functions of the board of trustees and to empower the Registrar to prescribe good governance requirements.

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, communication, and other relevant requirements.

Clause 11 (inserts section 7F)

To provide that a board member who acted independently, honestly, and reasonably, in accordance with the director's fiduciary duties, may potentially be relieved from joint and several liability by a court. This underscores that where board members do not act in accordance with their duties, they will be jointly and severally liable for the actions of the board.

Clause 12 (amends section 8)

- To provide for the timeframes within which a principal officer must be appointed by a fund; and
- To provide for a fund to appoint a deputy principal officer, and for functions of the principal officer to be delegated to the deputy principal officer.

Clause 13(amends section 9)

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

Clause 14(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.
- To provide that the valuator of a registered fund must be a natural person who is resident in the Republic, and if the valuator resigns the appointment 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.

Clause 15 (inserts section 9B)

To provide that defined disclosures to the registrar are granted protection in line with that contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

Clause 16(amends section 12)

- 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 if a fund fails to adhere to a request for additional information.

Clause 17(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, and to provide for personal liability of those if the employer fails to comply with its obligations.

Clause 18(amends section 13B)

- To delete the reference in subsection (1) to “investments of a pension fund”, as in respect of 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, the investment activities of these institutions are already regulated under the Acts referred to;
- To specify requirements relating to applications for approval in terms of subsection (1);
- 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 prescribed financial resources which must be maintained;
- To impose whistle-blowing duties upon pension fund administrators; and
- To enable the registrar to notify immediately an administrator of any matter which could prejudice a fund, and issue a directive to the administrator, without necessarily first having to conduct an inspection.

Clause 19(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 constitute a transfer in terms of section 14(1).
- To provide that any assets transferred must be increased or decreased with fund return from the effective date until the date of final settlement.

Clause 20(amends section 14A)

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

Clause 21(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 definitions 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, be taken into account by a valuator in determining the affordability of a minimum pension increase.

Clause 22(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 23(amends section 15B)

In respect of the apportionment of an existing surplus to, –

- 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;
- ensure consistency in respect of terminology used and definitions provided for in the Act; and
- provide that the registrar may, on application by the board of a fund, and subject to such conditions as may be prescribed, withdraw the certificate issued in terms of subsection

(9)(i), in which event the fund shall be deemed not to have submitted a scheme in terms of subsection (1).

Clause 24(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 25(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 26(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 27(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; and
- provide 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 28(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 29(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 the 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 a fund, where the fund does not meet the requirements to be valuation exempt, but in respect of which the submission of a 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 30(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 31 (amends section 18)

To amend the section to provide that the registrar may prescribe criteria for financial soundness, and when any return under this Act indicates that a registered fund is not in a sound financial condition, the registrar may, save as provided in section 29, direct the fund to submit a scheme setting out the arrangements which have been made, or which it intends to make, to bring the fund into a financially sound condition within such period, and subject to such conditions determined by the registrar.

Clause 32 (inserts section 18A)

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

Clause 33(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 34 (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 35 (substitutes section 25)

To extend and clarify the powers of the registrar in respect of inspections and on-site visits under the Act.

Clause 36 (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 37 (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.

Clause 38(amends section 28A)

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

Clause 39 (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 40 (inserts section 29A)

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

Clause 41 (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 42 (substitutes section 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 43 (amends section 30V)

To align penalties across the legislation administered by the FSB.

Clause 44 (amends section 31)

- To align this section with the requirements specified in section 4; and
- To provide that the registrar will prescribe conditions in terms of which and the period for which a fund may continue carrying on business for purposes of winding up the business, if the fund’s application for registration is rejected.

Clause 45 (amends section 32)

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

Clause 46 (substitutes section 32A)

- To delete the provision relating to the prohibition of certain practices or methods of conducting business, 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 47(amends section 33A)

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

Clause 48 (amends section 34)

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

Clause 49 (amends section 37)

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

Clause 50 (amends section 37A)

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

Clause 51 (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 52 (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.

C.2 SOUTH AFRICAN RESERVE BANK ACT, 1989

Clause 53 (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.

C.3 FINANCIAL SERVICES BOARD ACT

Clause 54 (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 Services Board legislation” and “Public Finance Management Act”, which are utilised in other amendments to the Financial Services Board Act that are contained in the Bill.

Clause 55 (amends section 2)

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

Clause 56 (amends section 3)

- To enhance the financial education mandate of the FSB, by inserting the following wording:

“provide, promote or otherwise support financial education, awareness and confidence regarding financial products institutions and services”.

Extending the FSB’s mandate as described in the amendment 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 engagement and consultation for the FSB. This will enable the Minister to provide guidance to the FSB on appropriate consultation processes and practices. Amongst other matters, the Code will specify appropriate measures that must be undertaken by the FSB, to ensure that the publication of actions of the FSB Registrars on the FSB website will satisfy requirements of accessibility and reliability, and will be subject to appropriate controls.

Clause 57 (amends section 6)

To provide that the Minister, on terminating the membership of any member or alternate member of the Board of the FSB in accordance with subsection (2), must publish the reasons for the termination in appropriate media.

Clause 58 (amends section 10)

To provide that the Board of the FSB may not amend or rescind a decision of the enforcement committee.

Clause 59 (amends section 12)

To align with the PFMA.

Clause 60 (amends section 13)

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

Clause 61 (amends section 16)

To align with section 2, as amended, and the PFMA.

Clause 62 (repeals section 17)

To repeal section 17, as it is no longer necessary in light of the amendments to section 2, and the provisions of the PFMA.

Clause 63 (amends section 18)

- To provide for powers for the Minister and relevant Registrars in relation to amalgamations and mergers in the financial sector; and
- To provide that the Board of the FSB may consult the Minister on matters relating to the exercise of their powers, the performance of their duties, or any other matter that the Board may wish to consult the Minister on.

Clause 64 (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; and
- 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 65 (amends section 21)

- To align with section 2 and the provisions of the PFMA; and
- To provide that the annual report of the board must include a list of all directives and exemptions issued under Financial Services Board legislation in the reporting period and must indicate that the directives and exemptions are available on the FSB website.

Clause 66 (amends section 22)

To ensure appropriate confidentiality of information obtained by specified persons in the performance of their functions for the FSB.

Clause 67 (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), and 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 68 (amends section 28)

- To effectively address the application of FSB legislation in relation to other legislation in the event of a conflict of laws.
- To exempt any financial service, product or institution regulated by the FSB and the FSB from the scope of the Consumer Protection Act, 2008, as higher standards of consumer protection are being implemented in terms of financial sector legislation;
- To establish the FSB as the lead regulator where the FSB and another regulator both have jurisdiction in respect of the same FSB regulated matter.
- To provide that if other national legislation confers a power on or imposes a duty upon another organ of State in respect of a matter regulated by Financial Services Board legislation, that power or duty must be exercised or performed in consultation with the registrar referred to in the Financial Services Board legislation, and any decision taken in accordance with that power or duty must be taken with the approval of that FSB registrar.
- This section does not apply in respect of—
 - (a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
 - (b) legislation relating to the access to information, the protection of information or the administration of justice administered by the Minister of Justice and Constitutional Development; and
 - (c) regulators established in terms of the above legislation.

C.4 LONG-TERM AND SHORT-TERM INSURANCE ACTS**Clauses 69 and 111 (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 “fit and proper requirements”;
- To insert a definition of “official web site”, to facilitate the publication of certain of the Registrar’s actions on the FSB web site, instead of in the *Gazette*. As has always been the case, Regulations prescribed by the Minister would continue to be published in the

Government Gazette. The approach has been retained as was contained in the original Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette. This is to avoid the high costs of publication in the Government Gazette. However, where a directive has been issued in the interest of public protection, then the Registrar may still consider publishing such rules, directives and exemptions in the Government Gazette, in order to ensure reliable public access to the directives. A clause has been inserted into the FSB Act which provides for a list of directives and exemptions which are intended to have a general application to be published annually as a schedule to the FSB's annual report that is tabled in Parliament. To substitute the definition of "prescribe", to facilitate the publication of certain of the Registrar's actions on FSB web site, instead of in 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 70 and 112 (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 71 and 113 (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 72 and 114 (amend section 4 of the LTIA & STIA)

- To remove the Registrar's power in respect of communications and *locus standi* for certain court proceedings, as these are dealt with in other provisions.
- 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 references to "in the *Gazette*" with "on the official web site", to clarify that notification of certain official acts may be done via the FSB web site. This is consistent with section 15 of the Interpretation Act.

Clauses 73 and 115 (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 74 and 116 (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 certain 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 10 of the LTIA & STIA)

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

Clauses 76 and 118 (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 77 and 119 (amend section 13 of the LTIA & STIA)

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

Clauses 78 and 120 (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 79 and 121 (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 certain 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 80 and 122 (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 81, 82, 123, 124 (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 83 and 125 (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 84 and 126 (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 85 and 127 (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 86 and 128 (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 87, 88, 89, 90, 91, 129, 130, 131 (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 those 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 92, 93, 132 and 133 (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 94 and 134 (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 Acts with that of the Companies Act, 2008.

Clauses 95 and 135 (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 96 (amends section 45 of the LTIA)

To authorise the Registrar to prescribe what constitutes an inducement.

Clause 136 (amends section 44 of the STIA)

To provide for a prohibition on inducements.

Clauses 97 and 137 (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 arise 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 98 and 138 (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 99 and 139 (amend section 51 of the LTIA and section 54 of the STIA)

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

Clause 100 (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 are 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, and that person opts to take the cash value, that person must receive R 5000.

Clause 101 (amends section 60 of the LTIA)

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

Clauses 102 and 140 (amend section 62 of the LTIA and section 55 of the STIA)

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

Clause 103 (amends section 63 of the LTIA)

- To provide that the protection contemplated in subsection (1) shall apply to policy benefits and assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided; and
- To provide that policy benefits are provided in subsection (1)(a) and (b), unless it can be shown that the policy was taken out with the intention to defraud creditors.

Clauses 104, 105, 106, 141, 142, 143 (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 107, 144 (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 108 and 145 (amend Schedule 1 of the LTIA and Schedule 1 of the STIA)

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

Clause 109 and 146 (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 110 and 147 (amends the Arrangement of Sections of the Act)

To incorporate the proposed amendments in the table of contents.

C.5 INSPECTION OF FINANCIAL INSTITUTIONS ACT, 1998

Clause 148(amends section 1)

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

Clause 149 (amends section 2)

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

Clause 150 (substitutes section 3A)

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

Clauses 151 and 152 (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 153 (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 154 (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, the administering or making of an affirmation, the giving of false evidence, 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, without infringing on a person’s constitutional rights.

Clause 155 (repeal of section 10)

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

Clause 156 (amends section 11)

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

Clause 157 (amends section 12)

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

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

Clause 158 (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 in the *Gazette*. As has always been the case, Regulations prescribed by the Minister would continue to be published in the Government Gazette. The approach has been retained as was contained in the original Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette. This is to avoid the high costs of publication in the Government Gazette. However, where a directive has been issued in the interest of public protection, then the Registrar may still consider publishing such rules, directives and exemptions in the Government Gazette, in order to ensure reliable public access to the directives. A clause has been inserted into the FSB Act which provides for a list of directives and exemptions which are intended to have a general application to be published annually as a schedule to the FSB’s annual report that is tabled in Parliament.

Clause 159 (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 160 (amends section 3)

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

Clause 161 (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 162 (substitutes of section 5)

- To align this section to the Banks Act, 1990 (Act No. 94 of 1990), by allowing the registrar to place a consenting financial institution under curatorship without having to apply to court; and

- To provide for other amendments relating to the application for appointment of a curator.

Clause 163 (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 164 (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 165 (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, 2001, while preserving the exclusive jurisdiction of the enforcement committee to impose financial penalties.

Clause 166 (amends section 6B)

To provide for matters relating to notice and timeframes for the filing of pleadings in an enforcement committee matter.

Clause 167 (amends section 6C)

- To clarify requirements in respect of the notification of the date of a hearing of the enforcement committee; and
- To clarify when the enforcement committee may summon a person to appear before it to give oral evidence.

Clause 168 (amends section 6D)

- To clarify the burden of proof that must be met in a matter before the enforcement committee; and
- To empower the enforcement committee to make an order of costs and interest.

Clause 169 (amends section 6E)

To provide for the notification and enforcement of enforcement committee determinations.

Clause 170 (amends section 6F)

- To provide that a determination of the enforcement committee may be taken on appeal to the High Court as if the determination were a decision of a magistrate in a civil matter; and
- To provide for the stay of execution of a determination in case of an appeal.

Clause 171 (amends section 7)

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

Clause 172 (repeals section 8)

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

Clause 173 (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 174 (amends section 10)

To increase outdated criminal sanctions.

C.7 FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

Clause 175 (amends section 1)

- The definition of “Advisory Committee” is removed;
- To insert a definition of “Companies Act” to refer to the 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 the 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 notification of certain official acts on the FSB web site, instead of in the *Gazette*. As has always been the case, Regulations prescribed by the Minister would continue to be published in the Government Gazette. The approach has been retained as was contained in the original Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette. This is to avoid the high costs of publication in the Government Gazette. However, where a directive has been issued in the interest of public protection, then the Registrar may still consider publishing such rules, directives and exemptions in the Government Gazette, in order to ensure reliable public access to the directives. A clause has been inserted into the FSB Act which provides for a list of directives and exemptions which are intended to have a general application to be published annually as a schedule to the FSB’s annual report that is tabled in Parliament.
- 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 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 175, 179, 182, 186, 189, 192, 194, 196, 197 (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 177, 184, 185, 187, 188, 190, 203 and 204 (amendments to sections 4(7), 9(2)(d), 3(b), 4(b), 11(2), 14(3)(b), 14A(4), 17(2)(d), 41(1)(b), and 44(4)(b))

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

Clause 176 (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 177 (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 178 (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 180 (inserts section 6A)

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

Clauses 181 (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 182 and 183 (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 184 (amends section 9)

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

Clause 186 (amends section 13)

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

Clause 190 (amends section 17)

To clarify the responsibilities of financial services providers in respect of their compliance function, including the submission of compliance reports.

Clause 191 (amends section 19)

To align with the Companies Act, 2008.

Clause 192 (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 195 and 199 (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 198 (amends section 36)

To increase outdated criminal sanctions.

Clause 200 (amends section 38)

To rectify the reference to the Companies Act, 2008.

Clause 201 (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 202 (amends section 40)

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

Clause 205 (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 business rescue for judicial management.

Clause 206 (amends the Arrangement of Sections of the Act)

To incorporate the proposed amendments in the Arrangement of Sections.

C.8 COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

Clause 207(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 insert a definition of “Companies Act”;
- 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 web site, instead of in the *Gazette*. As has always been the case, Regulations prescribed by the Minister would continue to be published in the Government Gazette. The approach has been retained as was contained in the original Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette. This is to avoid the high costs of publication in the Government Gazette. However, where a directive has been issued in the interest of public protection, then the Registrar may still consider publishing such rules, directives and exemptions in the Government Gazette, in order to ensure reliable public access to the directives. A clause has been inserted into the FSB Act which provides for a list of directives and exemptions which are intended to have a general application to be published annually as a schedule to the FSB's annual report that is tabled in Parliament.
- 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 208 (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 209 (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 certain official acts may be done via the web site of the FSB. This amendment is consistent with section 15 of the Interpretation Act.

Clause 210 (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 211 (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 212 (substitutes section 14)

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

Clause 213 (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 a manager fails to comply with a request, direction or directive; and
- To increase outdated criminal sanctions.

Clause 214 (inserts sections 15A and 15B)

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

Clause 215 (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 216, 217, 218 and 219 (amend sections 34, 35 and substitute sections 36 and 37)

To rectify the references 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 business rescue for judicial management.

Clause 220 (amends section 41)

To increase outdated criminal sanctions.

Clause 221 (amends section 42)

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

Clause 222 (amends section 46)

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

Clause 223 (amends section 47)

To rectify the reference to the Companies Act, 2008.

Clause 224 (amends section 48)

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

Clause 225 (amends section 50)

To rectify the reference to the Companies Act, 2008.

Clauses 226 and 227 (amend sections 53 and 65)

To increase outdated criminal sanctions.

Clause 229 (amends section 70)

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

Clauses 228, 230, 231 and 232 (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 233 (amends section 97)

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

Clause 234 (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 235 (inserts section 111A)

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

Clause 236 (amends section 114)

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

Clause 237 (amends section 116)

To increase outdated criminal sanctions.

Clause 238 (amends the Arrangement of Sections of the Act)

To incorporate the proposed amendments in the Arrangement of Sections.

C.9 CO-OPERATIVE BANKS ACT, 2007

Clause 239 (amends section 1)

- To amend the definition of “co-operative bank”;
- To insert a definition of “co-operative financial institution”; and
- To amend the definitions of “representative body”, “rule”, and “support organization”.

Clause 240 (amends section 23)

To clarify which investments, loans and deposits by a co-operative bank require the approval of the supervisor.

Clause 241 (amends section 31)

To substitute the reference to “supervisor” with a reference to “Agency”.

Clause 242 (amends section 32)

To align with the amended definition of “representative body”.

Clause 243 (amends section 36)

To substitute the references to “supervisor” with references to “Agency”.

Clause 244 (amends section 37)

- To delete paragraph (a); and
- To insert a reference to “co-operative financial institutions” in paragraph (b).

Clause 245 (amends section 41)

- To amend the section to delete the reference to different types of co-operative banks.
- To delete subsections (2), (3) and (4).

Clause 246 (repeals section 42)

To delete the section (relating to co-operation and co-ordination between supervisors), as it will no longer be necessary, given that there will only be one supervisor for co-operative banks going forward.

Clause 247 (amends section 43)

To remove references to the Agency, in line with the Registrar of Banks being the sole supervisor of co-operative banks.

Clause 248 (amends section 48)

To correct a reference to legislation.

Clause 249 (amends section 48)

To substitute the reference to “Reserve Bank” with “supervisor”, in line with the designation of the Registrar of Banks as the sole supervisor of co-operative banks.

Clause 250 (amends section 55)

- To delete subsection (1)(b), relating to the appointment of the supervisor by the Agency;
- To provide for the Agency to have powers, in consultation with the supervisor, to provide financial support to co-operative banks through loans or grants, and to assist co-operative banks with liquidity management; and
- To provide for the Agency to perform any other functions not inconsistent with the Act, that the Minister may determine by notice in the *Gazette*.

Clause 251 (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, the management of the deposit insurance fund, and the assistance of co-operative banks with liquidity management.

Clause 252 (amends section 58)

To amend the composition of the board of the Agency.

Clause 253 (amends section 61)

To increase the term of the chairperson and deputy chairperson from two to three years.

Clause 254 (amends section 83)

To remove the requirement that financial information submitted to the supervisor must be signed by the auditor of the co-operative bank.

Clause 255 (amends the Arrangement of Sections of the Act)

To incorporate the proposed amendments in the Arrangement of Sections.

C.10 FINANCIAL SERVICES LAWS AMENDMENT ACT, 2008

Clause 256 (amends section 78)

To rectify incorrect references included in the transitional provision.

C.11 CONSEQUENTIAL AND RELATED AMENDMENTS OF CERTAIN LAWS, EXEMPTIONS, SAVING AND SHORT TITLE AND COMMENCEMENT

Clause 257

To provide for consequential and related amendments to the laws referred to in the Schedule.

Clause 258

To provide for exemptions, and saving.

Clause 259

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

C.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.