ANNEXURE 1 - SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON FINANCE

COMMENTS FROM MEMBERS OF THE ASSOCIATION OF SAVINGS AND INVESTMENT SOUTH AFRICA ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

18 APRIL 2013

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 1: AMENDMENT OF PENSION FUNDS ACT, 1956			
1(i) Definition of "disclosure"	**'disclosure'**, in addition to the meaning ascribed to 'disclosure' in section 1 of the Protected Disclosures Act, includes— *(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 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 *(b)* the disclosure of information relating to the affairs of the pension fund which may prejudice the fund or its members;	The insertion is suggested to improve the reading of the definition.	NT agreed with the proposed insertion.
1(w) Definition of "this Act"	'**this Act**' includes any matter **[~~required to be~~]**prescribed by the registrar by notice in the Gazette and any regulation;'';	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.	NT agreed with the proposed insertion.

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9 Section 7C(2) Object of board	*(e)* act independently; *(f)* have fiduciary duties to the fund and its members and beneficiaries~~[in respect of accrued benefits or the amounts accrued to provide a benefit]~~; and *(g)* comply with any other prescribed requirements.	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 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.	NT agreed with the proposed deletion of the reference to accrued benefits. In respect of ASISA's proposal that a reference to the fund be included, NT indicated that under current law trustees appear to owe a fiduciary relationship to the fund rather than to the members. NT is concerned about situations where the interests of the fund may be in conflict with the interests of the members, especially in commercial funds such as umbrella funds run by a corporate sponsor, or retirement annuity funds. In these cases, NT would prefer that the members' interests take precedence. From a legal point of view, it is complex to bring about this change in the current regulatory framework. NT indicated that this discussion should be postponed in view of the fact that a major overhaul of the Act is being considered. ASISA members hold the view that in the context of the current section 7C, the inclusion of a reference to the fund will clarify that the board of trustees also have fiduciary duties to the fund. If the reference is omitted, it may create the impression that trustees only have fiduciary duties to members which is not currently the case if section 7C is considered in its totality. Section 7C as it stands indicates a duty to the fund **and** its members.

ANNEXURE 1 - SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON FINANCE

COMMENTS FROM MEMBERS OF THE ASSOCIATION OF SAVINGS AND INVESTMENT SOUTH AFRICA ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

18 APRIL 2013

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
10(a) Section 7D(c) Duties of board	ensure that adequate and appropriate information is communicated to the members of the fund and beneficiaries informing**[~~them~~]** the members and beneficiaries of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed;	The communication duty also applies to beneficiaries of death benefits. Therefore, especially if read with the new proposed section 7C(2)(f), provision should also be made for disclosure requirements in respect of beneficiaries upon the death of a member.	NT agreed with the proposed insertion.
10(c) Section 7D(2)(a) Duties of board	~~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 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.~~ 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.	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 seems unusual in financial services legislation. Concepts such as a "system of delegation", "maximising administrative and operation efficiency" and "adequate checks and balances" may cause difficulty in interpretation. ASISA members therefore propose the alternative wording to simplify the reading of the clause in order to minimise difficulty with its interpretation.	Although NT indicated that it is preferred to retain the wording in the Bill to align with clause 64 of the Bill (which will insert section 20(6) in the Financial Services Board Act), ASISA members are of the opinion that the wording as proposed will be more suitable in a retirement fund context. The ASISA proposed wording will make it easier for trustees to interpret the provision.
10(c) Section 7D(2)(b) Duties of board	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.	ASISA members suggest the deletion of the reference to "if necessary" as it may cause interpretation difficulty.	NT agreed with the proposed deletion.

ANNEXURE 1 - SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON FINANCE

COMMENTS FROM MEMBERS OF THE ASSOCIATION OF SAVINGS AND INVESTMENT SOUTH AFRICA ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

18 APRIL 2013

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
12 Section 8(2) Principal officer	(a) (i) A registered fund may appoint an alternate principal officer, in the manner directed by its rules in respect of the appointment of a principal officer, to be its principal officer when a principal officer is absent or unable to discharge any duty imposed upon the principal officer in terms of this Act: Provided that the fund shall notify the registrar, within the prescribed period, of the period during which the alternate principal officer shall be its principal officer. (ii) If a registered fund does not appoint an alternate principal officer as contemplated in subsection (a)(i), and the principal officer is absent or unable to discharge any duty imposed upon the principal officer, the fund shall, in the manner directed by its rules, appoint another person to be its principal officer within the prescribed period from the commencement of the absence of the principal officer or the inability to discharge any duty by the principal officer. (b) The principal officer and alternate principal officer as contemplated in subsection (a)(i) of a registered fund shall each be individuals who are resident in the Republic[~~, and if [he] the principal officer is absent from the Republic or unable for any reason to discharge any duty imposed upon [him] the principal officer 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 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~~].	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 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. The wording proposed by ASISA members will provide as follows: (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	ASISA members amended its proposed wording and comments in respect of the proposed amendment of section 8(2)(a) subsequent to the discussions with NT and the FSB during February 2013. During the February meeting, NT disagreed with the deletions as proposed by ASISA. NT indicated that there is a difference in the delegation of powers from the board to the principal officer and original duties that vest in the principal officer. ASISA members wish to elaborate on the reasons for the proposed deletions: • Subsection (b) – rephrased in subsection (a). • Subsection (c) – it is not necessary to provide for delegation as the board will have the authority to delegate in terms of the proposed section 7D(2)(a) (refer to clause 10(c) of the Bill). The delegation will also not be necessary if the new proposal by ASISA members is accepted as it provides for an alternate PO to act as PO and not to act as such in a delegated capacity. • Subsection (d) – if a deputy principal officer is appointed to act as principal officer (refer subsection (a)), such deputy principal officer will be responsible for discharging the duties as principal officer. In other words the principal officer or the person acting as principal officer (the deputy principal officer) will be the responsible person during the times that they

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
	~~[(b) A registered fund may appoint a deputy principal officer.~~ ~~(c) The board may, in writing and in accordance with a system of delegation delegate as 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.~~ ~~(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.~~ ~~(e) If a fund has appointed a deputy principal officer, the 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].~~	appointment of the alternate PO. In this case there will be an 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. (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. (b) Both the principal officer and alternate principal officer must be residents of the Republic. 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.	act as the principal officer. A person should not be held responsible for duties discharged during their absence. The ASISA proposal for subsection (a) also clarifies who will be accountable at specific times. • Subsection (e) – duplication as subsection (a) already provides for the appointment of persons to as act principal officer.

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16 Section 12(2) Amendment of rules	First draft of Bill: (2) Within **[60]** 180 days from the date of the passing of a resolution 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. Proposed amendment: (2) Within 60 days from the date of the passing of a resolution adopting[~~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.	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 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.	NT agreed with the re-introduction of this clause in the Bill and the ASISA proposed wording.
17 Section 13A(9)(a) Payment of contributions and certain benefits to pension funds	A 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 of subsection (8) and the employer will then be obliged to furnish such information in writing.	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.	NT agreed with the proposed insertions and deletions.

ANNEXURE 1 - SUBMISSION TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON FINANCE

COMMENTS FROM MEMBERS OF THE ASSOCIATION OF SAVINGS AND INVESTMENT SOUTH AFRICA ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

18 APRIL 2013

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
24 Section 15C Apportionment of future surplus	*(a)* by the substitution for subsection (1) of the following subsection: ''(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 or directly for the benefit of members and former members[,] subject to the uses specified in section 15D(1).''; and *(b)* by the substitution in subsection (2) for the words preceding the proviso of the following words: ''If the rules are silent on the apportionment of actuarial surplus arising after the surplus apportionment date, any apportionment between the member surplus account, the employer surplus account or directly for the benefit of members and former members[,] subject to the uses specified in section 15D(1), shall be determined by the board taking into account the interests of all the stakeholders in the fund''	The commas 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.	NT agreed with the proposed deletions.
38 Section 28A(1) Remuneration of liquidator	The registrar **[~~by notice~~ [in the *Gazette*] ~~on the official web site shall determine~~]** shall 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.	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.	NT agreed with the proposed deletions and insertion.

CLAUSE	WORDING AS PROPOSED BY ASISA IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
44(b) Section 31(1)(b), (c) and (d) Carrying on business of unregistered pension fund organisation and use of designation "pension fund"	*'(b)* carry on the business of a pension fund **[established after such commencement]**, unless that fund has **[been duly]** complied with the requirements in section 4 to be registered under **[section four]** this Act; **[or]** *(c)* carry on the business of a pension fund for **[a]** such period **[of more than twelve months]** and subject to such conditions as may be prescribed 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]** rejected; or *(d)* **[after the expiration of a period of twelve months from the commencement of this Act,]** apply to **[his]** that person's business a name which includes the words 'pension fund' or any other name which is calculated to indicate that **[he]** that person carries on the business of a pension fund, unless such business is registered as a pension fund under this Act or has complied with the requirements in section 4 for registration under this Act[~~, except with the consent of the registrar~~].	ASISA members suggest that subsection (d) be aligned with subsection (b) so that a pension fund business can use the name "pension fund" 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. The view is held that the Registrar should not be able to consent to any person to use the words "pension fund" in the name of its business unless such business is in fact a pension fund or has applied for the registration of a pension fund. The reference to the consent of the registrar should be deleted.	NT agreed with the proposed insertion and deletion.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 3: AMENDMENT OF FINANCIAL SERVICES BOARD ACT, 1990			
54 Definition of "Financial Services Board legislation"	'~~[Financial Services Board]~~ **Financial Institution legislation'** means any law referred to in paragraph *(a)* of the definition of 'financial institution';	ASISA members suggest that the definition should be in respect of Financial Institution legislation and not Financial Services Board legislation. The view is held that it is more appropriate to refer to Financial Institution legislation as the Acts in question regulate financial institutions. A reference to Financial Services Board legislation may create the impression that the legislation emanates from the FSB and not Parliament. The references to Financial Services Board legislation in clauses 63, 65, 66, 68 and 201 should be replaced with reference to Financial Institution legislation.	NT indicated that the FSB considers the reference to Financial Services Board legislation to be clear and more appropriate. The initial proposed reference to "financial sector legislation" caused confusion. The FSB would however reconsider the definition in an attempt to clearly enunciate the concept of FSB administered legislation. ASISA members submit that the definition clearly refers to paragraph (a) of the definition of "financial institutions". All of the laws listed under this paragraph are administered by the FSB.
54 Proposed deletion of paragraph (a)(x) of the definition of "financial institution"	~~(a)(x) any person rendering or who is to render services contemplated in section 23A(1) of the Insurance Act, 1943~~	Although the "Responses to Comments Received" document indicates that the clause has been amended, it still provides for services contemplated in the repealed Insurance Act, 1943. As indicated in ASISA's comments on the Draft Bill, it is suggested that a clause be included in the Bill to delete section 1(a)(x) of the Financial Services Board Act.	NT agreed with the proposed deletion.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
56 Section 3(2) Functions of board	The Minister[~~may~~] must prescribe a code of engagement, consultation and communication for the board which shall at least provide for -. (a) an obligation on the executive officer or deputy executive officer, in exercising the powers conferred upon the executive officer or deputy executive officer by the Financial Institution legislation, to consult on matters of general application with entities regulated in terms of the Financial Institution legislation and where appropriate the general public; (b) the publication of draft rules, notices, directives or other instruments through which a power conferred upon the executive officer or deputy executive officer by the Financial Institution legislation will be exercised; (c) an Explanatory Memorandum which indicates the motivation and explanation of new requirements or proposed amendments; (d) an appropriate period to provide comments; (e) a response to the comments received; (f) the publication of the response as contemplated in subsection (e); and (g) the publication of the prescribed code of engagement, consultation and communication for the board on the official website of the board.	An appropriate and credible consultation process is fundamentally important to regulated entities. ASISA members hold the strong view that the prescription of a code of engagement, consultation and communication should be obligatory. Even though this proposal will codify a constitutional right to consultation, it is of utmost importance to alleviate legal uncertainty in respect of the process to be followed and will illustrate a commitment by National Treasury and the FSB to a fair and transparent process in this regard. Furthermore it will enable the respective Registrars to apply a consistent standard of consultation. ASISA members are also of the opinion that its proposed provisions will be proportionate to the powers assigned to the FSB by the legislation it administers. In its response document, National Treasury and the FSB indicated that the FSB remains subject to the Promotion of Administrative Justice Act (PAJA) and that subjects of administrative actions may, in terms of PAJA, institute proceedings in a court or a tribunal for the judicial review of an administrative action. With respect, ASISA members submit that PAJA does not offer a true remedy in the sense that it is retrospective and likely to be costly. It is therefore of utmost importance that a sound consultation process be in place to minimise the possibility of it being necessary to approach a court or tribunal as provided for in PAJA. In view of the fact that these consultations are of fundamental importance to the industry, ASISA members suggest that this provision and the provisions removing the Advisory Committees should become effective only once the code has been prescribed.	NT agreed with the proposed inclusion of the minimum requirements for the code of engagement, consultation and communication but disagreed with the proposal to delay the removal of the Advisory Committees until the code is finalised. It will not be practical to do so and it is envisaged that the code will be finalised by the time the Bill passes through Parliament. ASISA members remain concerned that there will be a period without any consultation mechanism being in place. In summary, ASISA proposes that – (a) the Minister be required (not merely enabled) to prescribe the code of engagement, consultation and communication; (b) minimum requirements for such code should be stipulated; and (c) such code must be prescribed prior to the enactment and coming into operation of the proposed amendments.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
64 Section 20(3) and (3A) Delegation of functions	(3) The executive officer may - (a) delegate to an officer or employee of the board any power other than a legislative power conferred upon the executive officer by or under this Act or any other law including a power delegated to the executive officer under this Act; or (b) authorize such officer or employee to perform any duty assigned to the executive officer by or under this Act or any other law. (3A) A deputy executive officer may— (a) delegate to an officer or employee of the board any power other than a legislative power delegated to the deputy executive officer under this Act or any other law; or (b) authorise such officer or employee to perform any duty assigned to the deputy executive officer under this Act or any other law.	Although the Bill does not contain a provision to amend section 20(3) of the FSB Act, the insertion of a new subsection (3A) highlighted the possible interpretation that the executive officer or deputy executive officer may be able to delegate the power to make subordinate legislation to an officer or employee of the board. It is submitted that the delegation of powers to an officer or employee should not include the power to make subordinate legislation. ASISA members thus suggest that subsections (3)(a) and (3A)(a) be amended as proposed to clarify that any legislative powers may not be sub-delegated.	NT agreed with the proposed clarification in subsection (3)(a). Subsequent to the discussions with NT and the FSB, ASISA amended its proposal and comment to include a similar clarification in subsection (3A)(a).

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67 Section 23 Limitation of liability	No person shall be liable for any loss sustained by, or damage caused to, any other person as a result of anything done or omitted by that person in the **[~~*bona fide*~~]**[**, but not grossly negligent,**] exercise of any power or the carrying out of any duty or the performance of any function under or in terms of this Act, the Acts referred to in the definition of 'financial institution', the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), or the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001): Provided that such person acted in a *bona fide* manner and with due skill, care and diligence.	The Explanatory Memorandum indicates that the clause is intended to align with similar provisions relating to other financial regulators and that it creates an unnecessary burden in litigation matters hence the deletion of the words "but not grossly negligent". It also indicates that the current provision is 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 require the supervisory authority to have adequate legal protection to exercise its functions and powers. IAIS ICP2 states among others that the supervisor, in the exercise of its functions and powers must have appropriate legal protection and meet high professional standards The IOSCO Objectives and Principles of Securities Regulation relating to the Regulator state among others that the regulator should be accountable in the exercise of its functions and powers, that it should adopt clear and consistent regulatory processes and that the staff of the regulator should observe the highest professional standards. Whilst it is debatable whether somebody can be said to be *bona fide* while acting in a grossly negligent manner, it is inconceivable that an official of the FSB who causes damage/losses by acting in a grossly negligent manner should be afforded protection against claims in respect of such damage/losses suffered. Although it is true that international standards do not refer to the words "grossly negligent", it does require that high professional standards be met or observed.	In its draft comments as discussed with NT and the FSB on 18 February 2013, ASISA proposed that a proviso be added that a person must act with integrity and observance of the highest professional standards to align with the international principles. NT did not agree with the proposal and indicated that "*bona fide*" captures all the concepts and that the proposal confuses legal liability with general conduct standards of the regulator. Further the term "highest professional standards" will create uncertainty and complexity. ASISA reconsidered and amended its proposal as it remains of the opinion that the provision should not only provide for the *bona fide* exercise of any power. *Bona fide* signals an intention of good faith. It is possible to intend to exercise power in good faith but still do so in a negligent manner. The regulator should be appropriately responsible and accountable when exercising the extensive powers granted to it. The regulator should exercise any power, carry out any duty or perform any function in a *bona fide* manner and with due skill, care and diligence. ASISA members' proposed wording indicates accordingly.

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COMMENTS FROM MEMBERS OF THE ASSOCIATION OF SAVINGS AND INVESTMENT SOUTH AFRICA ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

18 APRIL 2013

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
68 Section 28(3)(a)(iii) Application of Act	Despite any other law, but subject to subsection (4)— *(a)* if any conduct regulated by[~~Financial Services Board~~] Financial Institution legislation is, partially or fully, also regulated by any other legislation— (i) the[~~Financial Services Board~~] Financial Institution legislation and that other legislation may not be construed as establishing concurrent regulatory jurisdictions in respect of such conduct; (ii) the registrar referred to in the[~~Financial Services Board~~] Financial Institution legislation must be regarded as the lead authority regulating that conduct; and (iii) any action taken by that registrar in terms of the[~~Financial Services Board~~] Financial Institution legislation overrides any conflicting action taken by the[~~organ of state~~] regulatory authority administering that other legislation;	It is understood that the intention is to provide for Financial Institution legislation to override any other conflicting legislation. However, the reference to organ of state in subsection (3)(a)(iii) may create confusion. It is suggested that it be replaced with a reference to "regulatory authority". It is also uncertain as to how this proposed dispensation will be implemented and monitored in practice and ASISA members are concerned that it will give rise to legal uncertainty. NT should publish details of the process in terms of which conflicting actions by regulatory authorities will be identified, managed and monitored and details relating to conflicting actions should be available to the industry to improve legal certainty. The references to "Financial Services Board legislation" is proposed to be replaced with references to "Financial Institution legislation" as indicated in the comment on the definition of "Financial Services Board legislation" in clause 54 of the Bill.	ASISA amended its comment in respect of subsection (3)(a)(iii) subsequent to discussions with NT and the FSB. In respect of the reference to "Financial Institution legislation", please refer to NT's response on clause 54 of the Bill.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 4: AMENDMENT OF THE LONG-TERM INSURANCE ACT, 1998			
69(e), (f) and (h) Definitions "official website", "publish" and "prescribe"	'**official web site**' means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board; '**prescribe**' means to determine from time to time by notice on the official web site, unless notice in the Gazette is specifically required under a provision of this Act; '**publish**' means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the Registrar, seeks to bring any information to the attention of any other person, or all or part of the public;	ASISA members support the publication of matters to be prescribed on the official website subject to the FSB website being re-developed to provide for proper version control of documents and an archive facility to provide for access to historic documents. ASISA members require legal certainty and are concerned that consecutive publications may be altered without the knowledge of the industry and that there will be no access to previous versions of published documentation (notices, directives etc). The FSB website is currently, with respect, not generally reliable and effective and in some instances not functioning properly (for example the search facility). Until such time as the FSB website has been re-developed, publication in the Gazette should continue. There should also be provision for Disaster Recovery and Business Continuity Plans to ensure the consistent availability of the website. Without the website being re-developed, there is, with respect, little confidence that publications on the website will be properly dealt with. ASISA also proposes the consideration of minimum requirements for the FSB website being included in the Financial Services Board Act.	NT emphasised again that all subordinate legislation (other than statutory return formats) will continue to be published in the Government Gazette. As to the concerns raised in respect of the website: The Chief Information Officer of the FSB is preparing a short write-up on the FSB's website project (currently underway) that will address the concerns.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
72(d) Section 4(8)(a) Special provisions concerning Registrar and his or her powers General comment	~~The Registrar may—~~ ~~(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 long-term insurer or an independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business; or~~ ~~(ii) instruct an inspector under the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).~~ The registrar may— (a) conduct an on-site visit of the business of a long-term insurer to determine compliance with this Act; and (b) instruct an inspector appointed in terms of section 2 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), to carry out an inspection as contemplated in section 3 of that Act.	ASISA members suggest that this provision be aligned with the similar provision in the Credit Rating Services Act. This will ensure that an on-site visit is conducted in relation to the business of the long-term insurer to determine compliance with the Act. The uncertainty as to who will be a "suitable person" will also be removed. It may be considered to include the provisions in respect of on-site visits in the Financial Services Board Act to ensure that all financial institutions are subject to the same provisions in respect of on-site visits and to prevent misalignment in future. The respective Acts applicable to financial institutions can then refer to on-site visits as set out in the Financial Services Board Act.	NT indicated that the FSB and the NT has already committed (to Parliament) to consider the alignment of these provisions with that of the Credit Rating Services Act and the possible consolidation thereof. Despite the above, the specific entities referred to in the clause as tabled (i.e. long-term insurer or an independent intermediary, representative or any person to whom the long-term insurer has outsourced a part of its long-term insurance business) will be provided for in any consolidated / aligned version. ASISA remains of the opinion that on-site visits should be limited to the business of a long-term insurer to determine compliance with this Act. If the Registrar requires further investigation of other affairs of the long-term insurer or an independent intermediary, representative, it may appoint an inspector to do so. An inspector will have wider powers. A reference to any person to whom the long-term insurer has outsourced a part of its long-term insurance business is not necessary as that will remain part of the insurer's business responsibility.
72(d) Section 4(8)(b) Special provisions concerning Registrar and his	Replace section 4(8)(b) in clause 72(d) of the Bill: The registrar, when conducting an on-site visit in terms of subsection (8)(a)— (a) has a right of access at any reasonable time to any document as defined in terms of the Inspection of Financial institutions Act, 1998 (Act No. 80 of 1998) as may reasonably be required for the purposes of	ASISA members suggest that this provision be aligned with the similar provision in the Credit Rating Services Act. The proposal provides more appropriately for the circumstances in which the Registrar may enter premises and request and remove documents. It is suggested that provision also be made for the long-term insurer to copy the documents before they are temporarily removed as set out in the	NT indicated that the FSB and the NT has already committed (to Parliament) to consider the alignment of these provisions with that of the Credit Rating Services Act and the possible consolidation thereof.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
or her powers	the on-site visit; (b) may require a long-term insurer or any person holding, or who is accountable for, any such document on behalf of the long-term insurer or is involved in the management of the business of the long-term insurer to provide such information and explanation as may be necessary for purposes of the on-site visit; (c) may examine, make extracts from and copy any such document; and (d) may, where a contravention of this Act has been detected during an on-site visit, and it may be necessary to commence an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998)— (i) issue an instruction prohibiting the removal or destruction of any document or information; or (ii) in order to prevent the destruction of information, against a receipt, temporarily remove the document, pending the completion of an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998): Provided that the long-term insurer may make copies of the document prior to its removal. (3) After an on-site visit or inspection has been carried out in terms of subsection (1), the registrar may direct the long-term insurer 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.	proposed subsection (8)(d)(ii). From a practical perspective, it is possible that the contravention detected is not an actual contravention and the insurer should be able to continue with its business and may need the documents to do so while an inspection is underway.	

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
Clause 72(d) Section 4(10)(a) Special provisions concerning Registrar and his or her powers	~~The Registrar may, if disclosure is in the public interest, make known by notice on the official web site or by means of any other appropriate public media—~~ ~~(a) the outcome and details of an on-site visit;~~ ~~(b) the status and outcome of an inspection;~~ ~~(c) the details of an inspection.''.~~ The registrar may, if disclosure is in the public interest, by notice on the official website, or by means of any other appropriate public media, make known— (a) the status and outcome of an inspection; (b) the details of an inspection; (c) after having considered the impact upon and the interests of the long-term insurer, the outcome and details of an on-site visit.	ASISA members suggest that this provision be aligned with the similar provision in the Credit Rating Services Act. The proposal provides more appropriately for the circumstances in which the Registrar may publish the details of an inspection or on-site visit.	NT indicated that the FSB and the NT has already committed (to Parliament) to considering the alignment of these provisions with that of the Credit Rating Services Act and the possible consolidation thereof.
76(d) Section 12(2)(c) Registrar may under certain circumstances prohibit long-term insurers from carrying on business	**[if it is appropriate and if the Minister has authorised the Registrar in writing to do so,]** prohibit the long-term insurer from carrying on such long-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.	The majority of ASISA members agree with the proposed amendment. A minority of ASISA members are of the view that the present position in terms of which the Minister has to authorise the Registrar to prohibit a long-term insurer from carrying on business should be retained as such a prohibition may have a severe impact on the business of the insurer and the rights of its policyholders.	NT indicated disagreement with the minority view as the amendment was necessitated to ensure consistency with international standards, specifically IAIS ICPs 1.2, 2.3 and 2.4, aimed at ensuring the operational independence of the regulator.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
89(c) Section 38(1)(a) Application to Court replaced with Registrar approval required for compromise, arrangement, amalgamation, demutualisation or transfer	(i) submit an application to the Registrar in the prescribed format[~~- at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction, which particulars must be provided in the form as may be required by the Registrar~~]; (ii) on submitting the application[~~at least 30 days before lodging the application~~], cause a notice, in the form and containing the information[~~- required~~] prescribed by the Registrar, to be published in such official languages in the *Gazette* and in such other **[newspapers]** media as the Registrar may determine; (iii) **[before lodging the application, serve upon the Registrar a copy of the notice of motion, and of all accompanying affidavits and other documents relating thereto and to be filed in support of the application]** ~~upon making the application, provide the Registrar with the application and all other documents relating thereto and supporting the application~~;	If the Registrar and not the Court will approve a compromise, arrangement, amalgamation, demutualisation or transfer, it should not be necessary to still require that the Registrar be notified of the application prior to the application as the application will have to be submitted to the Registrar. This section may be amended to provide for an application in the form prescribed by the Registrar. It is also suggested that the format of the application should be prescribed to enable legal certainty and consistent application.	NT disagreed indicating that this process has been aligned to that of the Short-term Insurance Act, which process has worked well for the past 13 years or more. The notification assists in avoiding unnecessary delays. Further, please note that each transfer is unique, it is therefore impossible to develop formats and forms in this regard. ASISA members wish to respond by indicating that the proposed amendment of section 38(1)(a) will provide the Registrar with an adjudicating power that is currently required to be exercised by a Court. Care should be taken to not assign unfettered discretion to a regulatory authority. Even though it may be difficult to develop formats and forms for unique transactions, certain minimum requirements should be prescribed to enable legal certainty and consistent application in respect of transactions.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
97 Section 49 Limitation of remuneration [~~to intermediaries~~]	~~No consideration shall be offered or provided by or on behalf of a long-term insurer, a policyholder or **[a]** any other person **[on behalf of the long-term insurer]**, or accepted by any independent intermediary or any other person, for rendering services **[as intermediary as]** referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations.~~ A long-term insurer, or any person on behalf of the long-term insurer, may only offer or provide such consideration for the rendering of services related to the business of a long-term insurer, as is permitted in terms of this Act or the regulations, rules and directives issued in terms of this Act.	ASISA members in its comments on the Draft Bill indicated that it is of utmost importance that this provision not be made effective until the FSB Intermediary Remuneration Review has been completed and appropriate regulations are put in place. The proposed wording, if made effective immediately, will bring about very serious negative consequences. Because there are no regulations governing outsourced activities such as policy administration by linked investment service providers (only binder functions are currently regulated), nor are there regulations governing negotiated fees that can be paid by policyholders, the very negative implications of the Maree vs Booysen SCA case will be confirmed in legislation. This will create enormous financial risk in the industry, which should not be underestimated. National Treasury has responded by indicating that the comment is noted and a provision allowing for the staggered / delayed implementation of various sections of the Bill will be provided for. However, ASISA members would like to re-emphasise the importance of this proposed amendment to section 49 not being made effective until the regulations are appropriately amended and therefore propose that section 49 be re-phrased to clarify that this section and the applicable regulations, rules or directives will only apply to fees and/or commission to be paid by or on behalf of a long-term insurer in respect of those activities related to long-term insurance business. The proposed amendment will also address the impact of the Maree vs Booysen decision in so far as it will no longer contain a prohibition on the receipt of remuneration by a financial services provider from a person other than a long-term insurer.	NT again confirmed that the comment is noted and a provision allowing for the staggered / delayed implementation of various sections of the Bill will be provided for. As to the wording proposed by ASISA: The proposed wording will result in the regulator not being able to regulate advice fees payable by policyholders to intermediaries directly. It is the intention that the Retail Distribution Review will address all remuneration matters and may include standards and requirements relating to such advice fees. ASISA members appreciate NT's confirmation in this respect. We understand there is a process underway to review remuneration structures and this was taken into account in our proposed wording for the clause. It should also be borne in mind that financial services (advice) rendered in respect of a long-term insurance policy is regulated by the Financial Advisory and Intermediary Services Act and that it may be appropriate to regulate remuneration in respect of those services in that Act.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
100 Section 53(1) Option for payment of policy benefits in money	Despite the terms of an assistance policy entered into before 1 June 2009, the policyholder is entitled to demand that a policy benefit which is expressed otherwise than as a sum of money must be provided as a sum of money, in which case the sum of money to be provided must be equal[~~in~~] to the fair value[~~to~~] of the **[cost the long-term insurer]** policy benefit expressed otherwise than as a sum of money that would have **[incurred]** been [~~provided~~] acquired by the long-term insurer had the policy benefit been provided otherwise than as a sum of money.	It is understood that the amendment is proposed to clarify that where a policyholder elects to have an assistance policy benefit paid as a sum of money instead of the delivery of a funeral service, that the sum of money must be equal to the value of the funeral had it been provided by the insurer. This caters for old style policies before the Act required a Rand value to be included in the policy. At present the value of the funeral is determined by the cost to the insurer, in other words what the insurer would have paid for the funeral. If the reference to the "cost to the insurer" is deleted, the meaning of "value of the policy benefit" becomes unclear and it is thus suggested that the value be clarified as the fair value of a funeral as it would have been acquired by the insurer.	NT indicated that the comment is under consideration.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
102 Section 62(1) to (4) Protection of policyholders	(1) The Registrar may, subject to subsection (4) and such other or further consultation as may be required in terms of section 3(2) of the Financial Services Board Act, 1990, by notice in the Gazette[, may]— (a) …… (b) …… (c) …… (2) ……. (3) ……. (4) (a) Before the Registrar prescribes any rule under this section, the Registrar must— (i) publish notice of the release of the proposed rule in the Gazette, indicating that the proposed rule is available on the official web site and calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice; and (ii) submit the draft rules and any public comments received to Parliament, while it is in session, for parliamentary scrutiny at least one month before their promulgation. (b) …… (c) ……	Amendments to policyholder protection rules may have devastating consequences for both an insurer and a policyholder. The process to determine and amend these rules should therefore be particularly sound, fair and transparent. ASISA members suggest that this section should specifically be subject to subsection (4) and the consultation as contemplated in the Financial Services Board Act (please refer to comments on clause 56 of the Bill). It is imperative that the amendment of rules be motivated and explained properly and that the Registrar responds to comments received. There is a concern that the Registrar may consider comments but not necessarily take them into account properly and then proceed to publish a rule without further consultation. To further enhance the soundness of the process, it is suggested that when the draft rules are submitted to Parliament for scrutiny, they be accompanied by comments submitted to the Registrar and that such scrutiny will also provide for the public to be able to raise any issues which may not have been resolved through the process of consultation.	NT indicated agreement with the proposal in respect of subsection (4)(a)(ii). NT also agreed with the proposal in respect of subsection (1) subject to amendment to ensure no overlap between the amendment of the FSB Act and subsection (4). ASISA members wish to indicate that although it is legally technically not necessary to subject the Registrar in this clause to the consultation as stipulated in the Financial Services Board Act, this particular provision for the reasons explained in our comment is of such nature that the reinforcement of the consultation requirement is deemed appropriate.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
102 Section 62(5) and (6) Protection of policyholders	~~(5) The Registrar may, if circumstances necessitate the immediate publication of a rule, publish that rule without complying with subsection (4)(a), but the notice of publication of that rule must—~~ ~~(a) set out the reason why circumstances necessitated publication of the rule without giving notice in accordance with subsection (4)(a); and~~ ~~(b) invite any person who is aggrieved by the rule to make representations to the Registrar within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.~~ ~~(6) If the Registrar publishes a rule in terms of subsection (5), the notice referred to in subsection (5) must be tabled in Parliament, and the National Assembly may instruct the Registrar to repeal or amend the rule.~~	As policyholder protection rules will have general application, ASISA members are unable to envisage circumstances which would necessitate the immediate publication of a rule of general application. As indicated above, policyholder protection rules may have devastating consequences for both an insurer and a policyholder and as such the Registrar should not be able to make rules with general application without a proper consultation process being followed. National Treasury has indicated that it may be conceivable that certain conduct must be prohibited or restrained as a matter of urgency, but it is submitted that the Registrar already has powers to deal with specific circumstances as a matter of urgency. This proposed section provides for general application and not specific circumstances. It is also not practical to allow for a rule to be repealed or amended by the National Assembly after the fact. The practical implications of such a possibility should not be underestimated. Insurers who conduct business from the time the emergency rule is published until such time as it may be repealed or amended by the National Assembly will face extreme legal uncertainty and more importantly, consumers may be severely prejudiced as a result thereof. It is therefore suggested that these proposed amendments be deleted.	NT disagreed. The regulator deems it appropriate to have this authority. The process relating to Rules made under this subsection provides appropriate safeguards. ASISA members stand by its proposal to delete these proposed amendments for the reasons indicated.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 6: AMENDMENTS TO INSPECTION OF FINANCIAL INSTITUTIONS ACT, 1998			
149 Section 2(3) Appointment of inspectors	**[An]** When an inspector **[must, before commencement of an inspection or the examination of any person,]** exercises any power or performs any duty in terms of this Act, the inspector must be in possession of a certificate of appointment issued under subsection (2), and must produce **[his or her]** the certificate of appointment at the request of any person [~~having a material interest in the matter concerned~~] who is the subject of the inspection or any person representing the financial institution being inspected.	The reference to "any person having a material interest" may cause difficulty with interpretation and it is suggested that such person be limited to a person who is the subject of the inspection or any person representing the financial institution.	NT agreed with the deletion of "any person having a material interest" and the proposed wording.
151(d) Section 4(1)(e) Powers of inspectors relating to institutions	against the issue of a receipt, seize any document of the institution **[which in his or her opinion may afford evidence of an offence or irregularity]** if the inspector[~~is of the opinion~~] reasonably believes that the document contains information relevant to the inspection;	It is suggested that the wording be amended as proposed to align with section 4(1)(a) in that the inspector should reasonably believe that the document contains relevant information.	NT disagreed indicating that it is unnecessary to provide that the inspector must reasonably believe, as the inspector must act reasonable, fairly etc. in all circumstances. ASISA members remain of the opinion that the same standard of reasonability as included in section 4(1)(a) and (c) should be included in subsection (1)(e).
154 Section 7(2) Right to legal professional privilege	(a) Any person examined under section 4 or 5 may be required to answer any question lawfully put to him or her at the examination, notwithstanding that the answer might tend to incriminate him or her. (b) An incriminating answer[~~directly obtained~~] furnished in the course of an examination, or incriminating evidence[~~directly derived, from~~] that could not have	The right against self-incrimination is a basic human right which may potentially be infringed by this clause. The amendment as proposed does not absolve the person in question from all criminal prosecution. The fact that evidence directly obtained or derived from an answer during examination may not be admissible in criminal proceedings does not protect a person's right to self-	NT indicated that the provision is under consideration.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
	been found or appreciated except as a result of an answer furnished in the course of an examination under paragraph (a) shall not be admissible as evidence in criminal proceedings in a court against the person concerned, or against the institution of which the person is or was a director, employee, partner, member or shareholder, except in criminal proceedings where the person or institution is charged with an offence relating to— (i) the administering of an oath or the making of an affirmation; (ii) the giving of false evidence; (iii) the making of a false statement; or (iv) a failure to answer questions fully or satisfactorily.	incrimination if the information provided by the person is used to unearth or collate other information which would not have been uncovered but for the information provided by answers and used in subsequent criminal proceedings. The amendment is thus proposed to extend the protection to exclude information uncovered as a result of an answer given during examination without excluding derivative evidence that would in any event have been uncovered.	
156 Section 11(b) Costs of inspections	All expenses necessarily incurred by and the remuneration of any inspector appointed under section 2 may be recovered from - (b) the institution being inspected~~, or a director, employee, partner, or member or shareholder of such institution,~~ if the registrar so decides, after having considered the results of the inspection.	The Explanatory Memorandum contains no substantive motivation for the liability to be extended to directors, employees, partners, members or shareholders. It is assumed that the Registrar wishes to broaden the base from which the costs of an inspection can be recovered but it is submitted that an increase in potential liability must be proportionately balanced with an appropriate basis on which the Registrar may make a cost recovery decision, not merely if the Registrar so decides. The basis on which the Registrar should be able to recover costs from individuals (which may not be directly involved in the business for example a shareholder in a public company or a junior employee who have no decision making powers) should be included in this section failing which the liability should not be extended to a director, employee, partner, or member or shareholder.	NT indicated that the wording will be re-considered so as to make it clear that the individual from whom costs are to be recovered is responsible in some way for the contravention

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 7: AMENDMENTS TO FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 2001			
163 Section 5A Statutory management		It is uncertain why the Registrar requires an additional remedy given that the appointment of a statutory manager closely resembles the remedy available through curatorship. The Explanatory Memorandum indicates that the remedy is likely to be used where more drastic enforcement measures such as liquidation or curatorship may be inappropriate and harmful to the institution's reputation. It will be appreciated if the National Treasury can elaborate on the circumstances that would likely lead to statutory management as opposed to curatorship. It is also believed that the statutory manager should not be indemnified against his/her own negligence. The introduction of provisions in respect of statutory management is very likely to cause legal uncertainty. If provisions regarding a statutory manager are to remain, then far more detail is required in the Act. The statutory manager should meet certain minimum requirements to be fit and proper for appointment. If the manager is a board member, what effect will the appointment of such manager have on the responsibilities of other board members? To what extent will the statutory manager be accountable to the FSB and to what extent to the financial institution? How will potential conflict in responsibility be managed? Will the FSB become liable if the statutory manager acts negiligently?	NT indicated that it is important to retain the provision but the duties, functions or powers of the manager may have to be better described. ASISA suggests that the provisions in respect of statutory management need more extensive consultation and analysis of potential implications from a regulator and business perspective.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
164 Section 6(1)(b), (c) and (d) Powers of registrar	The registrar may institute proceedings in the High Court having jurisdiction in order to- *(b)* compel any institution ~~[or other person]~~ to comply with any law or to cease contravening a law; *(c)* compel any institution ~~[or other person]~~ to comply with a lawful request, directive or instruction made, issued or given by the registrar under a law; **[or]** *(d)* obtain a declaratory order **[on any point of law]** relating to any law or the business of an institution**[.]** ~~[or other person]~~;	As the Explanatory Memorandum contains no explanation as to the inclusion of another person, it is assumed that the reference is intended to be to "unregistered persons" as the reference to "other person" is too wide. The Registrars can only act in relation to the respective Acts under its administration and "unregistered person" is defined as a person not registered, approved or otherwise authorised to carry on the business of a financial institution, but who or which carries on the such business or a business corresponding to a business normally carried on by a financial institution. An unregistered person is also included in the definition of institution and therefore it is not necessary to amend these subsections. Other references to "other person" or "person" in clause 164 should also be deleted.	NT agreed.
171 Section 7(1)(b) Declaration of certain practices as irregular or undesirable	In determining whether or not a declaration contemplated in subsection (1)(a) should be made, the registrar must be guided by whether the practice concerned has or is likely to have the effect of— ……	The reference to subsection (1) should be replaced with a reference to section (1)(a) to align with the amendment proposed by this clause.	NT agreed.

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 8: AMENDMENTS TO FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002			
175 (g) Definition of "official web site"	**'official web site'** means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board;	Please refer to the comments on clauses 69(e) (f) and (h).	Please refer to the response on clauses 69 (e), (f) and (h).
Clause 177(g) Amend section 4(7)(c) Special provisions concerning powers of registrar	(c) after having considered the impact upon and the interests of the financial services provider, the outcome and details of an on-site visit if disclosure is in the public interest, by notice **[in the Gazette]** on the official web site or by means of any other appropriate public media.	Please refer to the comments on clause 72(d).	Please refer to the response on clause 72(d).

CLAUSE	WORDING AS PROPOSED BY ASISA MARKED IN RED	COMMENT	NATIONAL TREASURY (NT) RESPONSE TO ASISA DRAFT COMMENTS AND FURTHER COMMENTS FROM ASISA MEMBERS
PART 9: AMENDMENTS TO COLLECTIVE INVESTMENTS SCHEMES CONTROL ACT, 2002			
208 Section 4(5)(d) Duties of manager	If a manager delegated any function listed in the definition of 'administration' to any person without the prior approval of the registrar before the commencement of section 208 of the Financial Services Laws General Amendment Act, 2012, that delegation must be regarded as having been made in terms of paragraph *(a)* for a period of six months, reckoned from the date on of such commencement, and after the expiration of that six-month period, the delegation continues in effect as if the registrar has approved the delegation in accordance with paragraph *(a)*.	The proposed wording of section 4(5)(d) is interpreted to mean that any delegation made before the introduction of this provision will continue in effect as if the registrar approved such delegation. This transitional measure is welcomed as it is vital to ensure that all existing delegations of functions will not become null and void when this section becomes effective as prior approval of the Registrar could not have been obtained for those delegations. It will also eliminate any serious negative impact on service delivery to clients.	NT indicated that the provision will be reconsidered. ASISA members wish to re-emphasise that it is vital to ensure that all existing delegations should be regarded as having been approved when this provision comes into effect. From a practical perspective, it should not be required that applications for approval of existing delegations should be made within a certain period of time. Such a requirement may have severe negative consequences in respect of existing contractual arrangements and ultimately the service delivery to consumers.
213(d) Section 15(1)(j) Powers of registrar after investigation	If the registrar, after an **[investigation]** on-site visit or inspection under section 14, considers on reasonable grounds that the interests of the investors of a collective investment scheme or of members of the public so require, **[he or she]** the registrar may— (j) if a manager fails to comply with a request, direction or directive by the registrar under this Act within a reasonable time, do or cause to be done all that a manager was required to do in terms of the request, direction or directive of the registrar.	It is suggested that the manager be afforded a reasonable time to respond to a request, direction or directive by the registrar.	NT disagreed as reasonability is implied at all times. ASISA members agree that reasonability is implied but believe that it should be explicitly stated for the sake of clarity.