national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

RESPONSE TO PUBLIC COMMENTS RECEIVED

ON THE

FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012

27 SEPTEMBER 2012

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	1(c)	After consideration of comments, it is proposed that an additional amendment be made to the definition of "actuary"	" 'actuary' means [a person] an individual admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the registrar by notice in the Gazette;"
ASISA IRF Towers Watson (Pty) Ltd Peter Theunissen Jonathan Mort	1(a)	Power of the Registrar to prescribe a basis for the calculation to be used by actuaries to determine the value of assets and the value of liabilities. Can the prescribed basis cause a fund to become financially unsound?Proposal to insert: (ii) the value that the valuator has placed on the liabilities of the fund*, <u>including the reasonable benefit expectations of members</u>, …"* The phrase "liabilities … in respect of pensionable service" does not strictly speaking include any death benefits payable nor pensions payable to persons who were not in service (such as to a spouse or a child).	**Responses were noted.** Purpose is to ensure consistency of valuation basis to demonstrate regulatory solvency and to align with international practice and will not result in a fund becoming unsound. Not possible to define reasonable benefit expectation, where a reasonable benefit expectation exist, it must be contained in the rules of the funds Liabilities must be included in the rules of a fund and not in the definition
	1(f)	Pension Funds Adjudicator requested that the "spouse and former spouse" be added to ensure that such persons have access to the PFA	"spouse and former spouse" added in the category of complainants
ASISA IRF	1(g)	Numerous proposals were made to improve the wording contained in the definition of "contingency reserve account". Proposal for the removal of "Requirements of the Registrar "in the definition of contingency reserve account Proposal that the term "exempt from actuarial valuation" under "actuarial surplus" is replaced with the term "valuation exempt".	Proposals where applicable have been incorporated **Don't agree** as it is already contained in the Act and not remove the authority for the registrar to require additional information **Accepted**

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
IRF NMG Employee Benefits Towers Watson (Pty) Ltd Jonathan Mort ASSISA		Submissions have been received regarding the insertion of the definition of "deferred pensioner" relevant to a DC fund appears to be unnecessary	After considering the comments, it was agreed that the amendment to this definition be removed from the Bill
ASSISA IRF Towers Watson (Pty) Ltd Peter Theunissen	1(h) 1(h)(d)	Proposal to remove "category" from the definition Questioning of the inclusion of "at least" in the definition Submissions were made on the change from "lawfully permitted" to "authorised by law" – the interpretation of the latter is too narrow and does not achieve the intention	**Not supported** as not properly motivated. Concerns are not valid **Agree** that the interpretation is too narrow and to retain the current wording
IRF	1(j)	Clarification is required on whether the fund must provide for an employer surplus account in the rules of a fund	Yes, employer surplus account must be provided in the rules of the fund
Towers Watson (Pty) Ltd	1(m)	Clarification on whether the investment reserve account can have a negative balance Word "over" must be underlined as it is an addition	Confirmation that the investment reserve account can have a negative balance Change has been included in the wording
Bowman Gilfillan	1(n)	Revision of the definition of a "member" to clarify "eligibility to membership" has been suggested	This will be considered in the wider reform
IRF	1(o)	Proposal that the words "including former members" in the definition of "member surplus account" should be deleted, as the definition of member already includes a	**Supported** and proposed amendment to include "former members" is deleted

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		former member	
IRF	1(q)	Concerns were raised about the manner in which consultation and disclosure will be facilitated	A new provision has been provided for in the FSB Act, to empower the Minister of Finance to provide guidance to the FSB through a code of consultation.
IRF Bowman Gilfillan	1(r) and (t)	Neither of the three new definitions refers to the said funds as a "pension fund organization"	**Agreed** and added amendment by adding "a fund" in the beginning of the definitions
IRF	1(v)	The definition of "rules" should be aligned with the 6 months period to apply for registration as provided for in section 4 For the period of 6 months allowed in section 4, will the unregistered rules be regarded as "rules" for purposes of the Act	Not necessary to make the proposed change under the definition of "rules" as the necessary change will be automatically implied in the relevant section
IRF Towers Watson	1(s) and (t)	Concerns about the registrar's powers to publish any document or information as contained under the definition of "prescribe" Concern about distinguish between publish and prescribe	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 Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette, 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 provide for a list of directives and exemptions which are intended to have a general application to be published annually as á schedule to the FSB's annual report that

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			is tabled in Parliament.
IRF Bowman Gilfillan		Concerns about the measurement of financial condition	Insertion of the definition of "sound financial condition" has been removed and the necessary measures for financial soundness prescribed by the registrar have been provided for section 18
ASISA IRF Oasis Group Holdings (Pty) Ltd	1(x)	Proposals to clarify that the period of 24 months commence on the date the fund became aware of the death of the member; or date on which the board of trustees have taken a decision. Proposal to remove the reference to "deduction" in sub-paragraph (e) Proposal to add "established for the receipt of unclaimed benefits" after the word "fund"	**Agreed**, the wording to be amended to: "when the board becomes aware of the death of a member" **Not agreed** as this specifies the date on which the deduction is made which is a different date as per section 37D **Not agreed**, it is clear that the unclaimed benefit fund is established for unclaimed benefit
ASISA	1 (zA)	Proposal that the definition of "valuator" is being substituted to clarify that a valuator must be an individual. The definition of "actuary" (a person admitted as a fellow member of the Actuarial Society of South Africa or any other institution approved by the registrar by notice in the Gazette) however is not being amended.	**Noted** – further amendment to be considered
ASISA IRF Towers Watson Jonathan Mort	1 (y)	Comments that subsection (3) must be included in the definition of fund return in subsection (1)	**Agreed.** See revised wording
IRF	3	Clarity sought on whether the Act need to be amended to allow for the delegation of powers	Provision inserted in the FSB Act to ensure the operational effectiveness to put a system in place related to the delegation of powers

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IRF	4	Concern that the removal to Advisory Committee will lead to no consultation	The Bill provides for the repeal of all existing advisory committees across financial sector legislation. There was public support for and against the removal of advisory committees. In particular, those against the removal were concerned that there would be less or no consultation with the industry or key stakeholders. Comments were noted and an amendment to the FSB Act has been provided for which empowers the Minister to prescribe a Code of Consultation for the FSB, which will set out requirements as to how the FSB must communicate, consult and engage with the industry or key stakeholders.
ASISA Anglo American Platinum Limited	5	Will the provision of 6 months regard rules as legal even though the rules are not registered, could have unintended consequences. Proposal that the rules must be submitted through the principal officer	Reference to a 6 months period has been dropped and the provision for registration revised to have the fund register within 2 months of commencing business **Don't agree**, the fund must be managed through the board of the fund and not the principal officer
ASISA	6	ASISA members suggest that this section be aligned with section 34 of the Long-term Insurance Act which deals with the holding of assets by another person and states that an insurer may not "allow its assets to be held by another person on its behalf", without the approval of the registrar. To allow for foreign CIS not registered under CIS	**Disagree**, not necessary to do the alignment **Don't agree**, must be regulated under CIS
ASISA Peter Theunissen ASSA IRF Anglo	8	Concern that the 30 day period to fill in a vacancy in the board may be too restrictive in certain circumstances New section 7A(3) inserted at the request of Treasury	Amendment made to provide for the registrar to prescribe the period Requirement that board members attain skills and training as prescribed by the registrar

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American Platinum Limited Jonathan Mort Towers Watson		Proposal on amendments to restrict the appointment of trustees by employer Concern has been raised that this clause may cause an occupational detriment and the Pension Funds Act does not provide any protection for whistle blowers. Add the term "board" before "…member's terms of appointment."	Beyond the scope of the amendment – will be considered in the broader retirement reform Noted, not in agreement, has to be retained and not to be too restrictive in the application Term "board" added before "member"
	9	New subsection 7C (e), (f)& (g) inserted	New provision requiring board members to act independently, exercise their fiduciary duties to pension fund members and comply with any other requirements as maybe prescribed by the registrar
	10	Not sure what is meant by "system of delegation" Proposal that the words "must maximise" in clause 10(c)(2)(a) be replaced by "should enhance"	The proposal is only an enabling provision not specific requirements in the rules Noted, however the wording has been retained.

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IRF Anglo American Platinum Limited Towers Watson (Pty) Ltd	11	A concern is that trustees are jointly and severally liable for the decisions of the board – should there not be a built in exemption where liability arises and it can be demonstrated that a trustee acted independently. If a trustee votes against a decision or blows the whistle he should not be held jointly and severally liable?	New section 7F inserted on the liability of board members inserted: A member who acts independently, honestly, and reasonably may be absolved by a court from joint and several liability from other trustees
ASISA Jonathan Mort Old Mutual IRF Oasis Group Holdings (Pty) Ltd Anglo American Platinum Limited Towers Watson (Pty) Ltd	12	Proposal to allow for the appointment of a deputy principal officer with the same powers as the principal officer To provide clarity on when the 30 day period commences, a proposal was made that after "30 days" the following be added: "*…of the commencement of such absence or inability to discharge any duty."*	**Agreed**, amendment proposed. An enabling provision has been inserted for the appointment of a deputy principal officer with the same powers as the principal officer Period for appointing another PO amended to be prescribed by the registrar
Towers Watson (Pty) Ltd ASSA	14	Comment on whether the valuator being outside the RSA for more than 45 days obliges a fund to appoint a new valuator. The proposal is that the whistle-blowing responsibilities set out in section 8(6) should in future also apply to valuators.	**Agree**, amendment made to the wording **Agreed.** The whistle blowing protection has been extended to valuators.

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	15	Comments were noted that there is a requirement for board members and valuators to disclose material information to the FSB, without the necessary legal protection when such disclosure is made.	Provision for legal protection (section 9B) similar to protections provided for the in the Protection of Disclosures Act has now been provided for board members, valuators, principal and deputy principal officers
IRF	16	Concern about the deletion of the word "substantially" as it would then imply exact match in consolidation	Where there is a difference, funds are required to submit revised rules and not consolidated rules
IRF Towers Watson (Pty) Ltd Jonathan Mort ASSA ASISA Municipal Gratuity Fund	17	Concerns have been raised about the extent of the amendment as there could be litigation. Question on whether this provision will be wide enough to be applicable to entities like public sector entities (e.g. municipal employers) that are not constituted as companies or CCs was raised.	Comment is **noted**, risk of possible litigation noted. 13A(8(c) revised to cover any other employers not mentioned
ASISA Jonathan Mort ASSA BASA Towers Watson (Pty) Ltd ASISA	18	Concern has been raised that the approval of investment administrators is currently a duplication of both the licensing and regulatory supervision Concern that capital adequacy requirements must be held separately Comments that the proposed subsection (7A) refers to the retention of records. *The reference to "all" in the new 13B(7A) is* too broad.	This will be deleted as the reference to "investment administrator" will be deleted from the introduction **Noted**, this requirement will be removed **Not supported**, all records must be retained. Wording to be amended to read: "All records, documentation and information relating to <u>the administration of</u> a fund…" **Agreed.** The subsection amended to refer to records,

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		"(7A) (a) All records, documentation and information relating to a fund*, its members and former members that is held by an administrator or is under an administrator's control is the property of the fund ..."* Section 13B (1A)(c) refers to an applicant satisfying the Registrar that the applicant 'complies with the requirements for a fit and proper administrator' and no guidance is given on what is meant by fit and proper requirements.	documentation and information related to the administration of the fund. An enabling provision has been provided for which will empower the Registrar to prescribe fit and proper requirements in the Government Gazette.
ASISA	18 (f)	Concern raised that the action taken by the Registrar could be subjective	Registrar is still subject to the provisions of PAJA and cannot take a subjective decision on suspending an administrator
ASISA	18(h)	An administrator should not be required to keep the records ad infinitum. It should be possible to hand the records back to the pension fund and to delete it from the records of the administrator. The requirements should thus not be applied to a terminated arrangement. It may also be unreasonable to require the administrator to keep the records if the fund does not consent to it being returned.	The fund will be required to maintain fund records, all records must be transferred to a new administrator or the fund as set out in BN setting out the conditions relating to administrators
Jonathan Mort	18	Section 13B(7A)- following subsection suggested for insertion as (iii): (iii) *must on termination for whatever reason of its relationship as administrator with a pension fund, transfer all the information referred to in paragraph (a) to that pension fund or its authorised agent, on such terms, in such manner and within such time period, as the registrar may prescribed."*	**Supported** but addressed in conditions to be set out by the fund as proposed above
ASISA	18(i)	Recommended that: only material matters which may	Proposed changes **accepted** and taken into consideration in the

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		seriously prejudice the fund should be reported without undue delay.	revised subsection
ASISA IRF ASSA	19(b)	The reference to subsection (1) should be a reference to subsection(6).	**Agree** – change made
ASISA Jonathan Mort	19(f)	Suggest wording change to refer to "Notwithstanding the above, the Registrar may exempt a transaction from the provisions of this section subject to such conditions or requirements as may be prescribed"	**Accepted**, wording revised
		Request that provision is made for unclaimed benefits to be transferred back to the originated fund to be utilised for the benefit of current members	**Not supported**, vested in the members and can only be used for the benefit for the member
ASISA	19(d)	Proposal that the words "directly or indirectly" be included. The inclusion of the "representative" may cause confusion as the term is not defined in this Act but it in FAIS. It is also not necessary as "agent" is more appropriate. The reference to "mandatory" should be replaced with a reference to "mandatory" as it is currently included in the Act.	Suggested "directly or indirectly" wording inserted. Rest of the wording/terms retained.
IRF ASSA Towers Watson	20	Concern raised that it may not be possible to pay within 6 months from effective date of actuarial valuation especially if there are queries or a dispute.	**Agree**, wording has been revised
IRF	21(a)	"Authorised by law" defined widely throughout the Act. Does this include both statutory and common law?	**Agree.** old wording "lawfully permitted" retained and the proposed amendment has been deleted
Jonathan Mort	21(d)	Clarify that the exemption from minimum pension increases in 14B must not apply where the full pensioner liability is outsourced in the name of the fund	**Agree**, wording revised

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NMG Employee Benefits Towers Watson ASSA IRF	21(e)	Concern that "manner consistent with past practice", implies that funds cannot change the practice, which may not be realistic, for example if the fund's benefit structure changes. A fund should only be consistent with past practice where appropriate.	**Agree**, reference to "past practice" removed
IRF	22(a)	Reference to section 15D(1) is incorrect	**Agree**, wording revised
Jonathan Mort Towers Watson (Pty) Ltd	23(b)	The wording is inconsistent with section 15C	Proposed amendment has been removed as it is inconsistent with section 15C
ASSA	23(b)	Comment was raised that the word fund return should apply until the surplus apportionment date and the period after the surplus apportionment date make reference to fund return or such other rate of return.	**Noted.** The amendment was made in 2007, the purpose of the proposed wording is to clarify and not to change the principle.
ASISA IRF ASSA	23(h)	Concern that the proposed wording is too broad and it is also uncertain as to what conditions will apply	**Agree**, wording revised to allow registrar to prescribe the conditions
Mr AB San Giorgio Bruce Moor Willem Hazewindus	24	Requirement that future surplus must be distributed to pensioners timeously. Concern was raised that the PFA is not clear on how to deal with future surpluses. Clauses 22(a) and (b) only contain a mild persuasion instead of compulsion to ensure that any surpluses are distributed amongst **all** stakeholders	Proposals are **not supported** as the current wording of section 15C does not present any difficulties of interpretation. The Board or the rules of funds must determine how section 15C must be dealt with. No obligation to allocate future surplus and if they do, section 15C has specific requirements on how it should be done. Any complaints can be dealt with by the adjudicator
Towers Watson (Pty) Ltd	25	Proposal that the wording of (1)(b) shouldn't be widened to cover section 15C surplus apportionments.	**Not supported**, members who exit during the inter-valuation period should be included in 15C distributions as is the current practice

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Jonathan Mort	26(a)	It is recommended to replace the word "request" to "require" in section 15E(1) Request for the employer to dictate the investment strategy of the employer surplus account	**Agreed**, the word "request" replaced with "require". The proviso is not supported as the employer cannot dictate how the assets of the employer surplus account are invested
Jonathan Mort	26(c)	Section 15E(2)(d)- The interpretation of "equitable distribution of surplus between the funds" is problematic	Supported, provision deleted
ASISA IRF Towers Watson ASSA	27	Amendment to section 15F must not be retrospective Clarity sought on what constitutes "majority" Reference to "employer reserve account" inconsistent with subsections (1) and (3)	**Agreed** **Agreed**, amendment removed **Agreed**, reference to "employer" removed
IRF	28(a)	Concern that the new subsection (1)(e) will be made effective retrospectively Concern that tribunal will be costly to certify a nil scheme	The section will not be effective retrospectively **Not supported**, There are currently existing funds that have not complied with surplus legislation. A tribunal will be the mechanism through which the Registrar can ensure that all funds have completed their surplus apportionments or nil schemes
ASSA	28(b)	Format of the subsection is incorrect	**Agree**, wording revised
ASSA	28(f)	The fund cannot be held responsible for "all" legal costs	**Agreed**, amendment removed
ASSA	29(a)	Wording may be confusing, use of "prescribe" maybe misinterpreted	**Not supported**, "prescribed" is defined
Towers Watson Bowman	29(c)	The interests of stakeholders can only be considered after the valuation is completed	**Not supported**, a fund may manipulate the valuation result at surplus apportionment date to motivate a nil surplus (i.e. former members will not share in a surplus apportionment); whereas the

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Gilfillan			Registrar may believe that a surplus apportionment is warranted.
Peter Theunissen	29	Propose an amendment to section 16(6) consistent with the "whistle blowing provisions" *(6) If the rules of a fund provide that the benefits which may become payable to a category of members are subject to the discretion of the board or management of the fund, the registrar shall, on request of the fund or on good cause by any officer of the fund or on the initiative of the registrar,* ***[and subject to payment by the fund of such expenses as the registrar may incur in the matter],*** *determine what amount or scale of benefits is to be taken into consideration for the purpose of the valuation, and such determination by the registrar shall be binding upon the fund; the fund shall bear such expenses as the registrar may incur in the matter.*	Proposed amendment included
IRF Towers Watson Bowman Gilfillan	32	Clarity was sought as to how business rescue will be applicable to a pension fund.	**Noted.** Business rescue has been provided for as another remedy available to the Registrar.
Bowman Gilfillan	33	Provision inserted allowing funds to acquire or hold ownership interest or exercise control over another entity not fully motivated.	provision set additional limits on a fund's investment or exposure to controlling interest or ownership
ASISA Towers Watson	33(c)	It is not known on what basis the decision was made to set control at 15% but ASISA members believe that it is too low and suggest that it would be more reasonable to set it at 35%.	Increased percentage by ASISA taken into consideration!

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
		There could be many cases where the ownership of entities exceeds 49% resulting in numerous applications for exemption.	
IRF	34	Clarification sought on whether the Promotion of Access to Information Act and Promotion of Administration of Justice Act will be applicable to enquiries.	**Noted**. The Registrar will always be subject to PAIA and PAJA
IRF ASSA Jonathan Mort Towers Watson	35	Making information available must be in public interest Proposal that "document" be extended to include electronic information and the power to search includes searching computers	**Agreed**, wording revised **Agreed**, wording revised
Jonathan Mort	36(a)	Where no board exists, the Registrar can appoint without giving notice	**Agreed**, the proposed wording has been accepted
ASISA	36(c)	The proposed clause appears to be a duplication of the existing section 26(5)	**Not agreed**, as the provision is different
Jonathan Mort	37	Section 28(4)(b) should be amend to include the following: *"(iii) to the payment "of minimum benefits referred to in section 14A."*	**Agreed**, the proposed amendment has been accepted and inserted
ASISA Towers Watson ASSA IRF	37(b)	It is suggested that the reference to "pension preservation fund or provident preservation fund established exclusively for managing unclaimed benefits" should be replaced with reference to "unclaimed benefit fund" as the term is defined	**Agreed**, wording revised
Actuarial Society of	37(d)	The proposed paragraph (b) of subsection (12A) provides for the payment of benefits to unclaimed benefit funds.	**Don't agree** with comment as payments must be finalised before submission of final accounts as the fund is cancelled on the

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South Africa		The current wording as a part of subsection (12A) suggests that such payment will only be allowed prior to the submission of final accounts.	submission of final accounts.
IRF Towers Watson	39	The proposed wording of 29(5) doesn't make sense after the deletion of "if the court is satisfied that". We suggest that the word "if" should not be deleted here.	**Agreed**, revised wording by not deleting "if"
IRF	40	This section must be aligned with s4 and s31 to allow funds to operate during the 6 or 12 months period. Insert after "not registered" the words "within the prescribed period". Presumably this section will only apply after expiration of the 6 months provided for in S4. If an application has been submitted, the registrar can only act once a decision is made whether or not to approve the rules?	**Agreed.** See revised wordings. Pension funds will be required to notify the Registrar of their intention to submit an application to register prior to commencing the business of a pension fund. Further, the fund must submit an application for registration within two months of providing such notice. Failure to comply will render the fund as carrying on the business of an unregistered pension fund.
IRF	39	It is not clear why the interest rate prescribed under the Public Finance Management Act would apply. This relates to debts out of or payable to a Revenue Fund as defined. A determination by the PFA will relate to an order in favour of a complainant, not the Revenue Fund	**Noted.** The amendment has been deleted and the Pension Fund Adjudicator will determine this rate.
IRF	44	This section must be aligned with s4 and s31 to allow funds to operate during the 6 or 12 months period. Insert after "not registered" the words "within the prescribed period". Presumably this section will only apply after expiration of the 6 months provided for in S4. If an application has been submitted, the registrar can only act once a decision is made whether or not to approve the rules?	Section has been aligned to section 4 requiring a fund to comply with requirements, conditions and periods prescribed or set by registrar in terms of section 4
IRF	46	In the proposed subsection (1) insert "other" before	**Not supported**

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ASSA		stakeholders Clarification sought on the interpretation of "misleading" or "confusing"	**Not supported**, legislative precedent exist
IRF	48	Heading is incorrect. **Suggested wording *change:*** <u>"Report by the registrar"</u>	**Agree**, see revised wording
ASISA BASA IRF	49	It should be made clear that these penalties do not apply to any subordinate legislation which may be made in terms of the listed sections. Most notably, the penalties should not apply to the Conditions determined in terms of section 13B as it would be excessively severe for example in the case of technical contraventions of the liquid asset requirements which recently have been the subject of administrative penalties. The Bill should be amended to remove criminal liability for the non-compliance with the Pension Funds Act. Clause 16 should be amended to provide clear requirements for the application for approval as an administrator to ensure fairness and certainty in the application process.	**Noted**, the Court will take the particular offence into account in setting the penalty and such decision will be appealable
ASISA IRF Towers Watson	50	Request that benefits are also payable to beneficiaries and attorney's trust accounts also be included.	**Agree** on adding beneficiary but not add wording to include attorney's trust account. The wording is wide enough.
IRF	51	Should be restricted to cases that remained unpaid by the fund on the date the fund was notified of the death of the member to ensure that those cases where payment was made without the fund being aware of the death of the member are excluded? Amends s37C(1): between the words "the date" and "of	**Agreed**, changes incorporated in the definition of "unclaimed benefits" **Agree.** Wording has been revised.

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		the death" insert the words "on which the fund became aware"	
ASISA	52 (a)	It is not clear why the amount is limited to an amount prescribed under the Long-term Insurance Act and may lead to interpretation difficulty in that it may not be certain as to what amount is referred to. It should also be possible for an employer with the consent of the beneficiary to pay funeral expenses and for the fund to then deduct the payment and refund the employer.	Proposed amendment has been deleted Funds can apply to the Registrar for approval to allow advance from the employer
ASISA IRF	52 (b) and (c)	These amendments assume that a portion of a deferred pensioner's benefit and the capital value of pensioner's pension (presumably where the pension is being paid from the fund and has not been purchased) may be assigned under the Divorce Act. This cannot be achieved by means of this amendment only and requires an amendment to the definition of "pension interest" in the Divorce Act. The reference to "capital value of a pensioner's pension" is problematic. A guaranteed pension does not have such value. How should the capital value be determined? This will require an amendment to the definition of "pension interest" in section 1 of the Divorce Act. It will be impossible to calculate pension interest in the context of a member of a retirement annuity, who is in possession of a pension and who had already exercised a cash option at retirement. This would be the case in the case of both fund-owned life and living annuities. This will be complicated further in cases where members have	Proposed amendments to allotting a portion of a pensioner's pension upon divorce have been deleted and may be considered at a later stage

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		exercised retirement options before the date of divorce. The reference to "the capital value of a pensioner's pension after retirement" may entitle a spouse in a maintenance matter to claim a lump sum FUTURE and ARREAR maintenance award from a member's pension. This requires further clarification in the context of "any amount payable" from both fund-owned life and living annuities. Member's interest is not a defined term and it is unclear what this refers to. Should this perhaps read "pension interest? If so, it is recommend that a definition be included with reference to the Divorce Act. Subsection (d)(i) is amended to only refer to a deduction of a divorce award from a member's pension interest. Does this limit the deduction to pension interest as defined in the Divorce Act i.e. only active members? If so, ASISA members agree with this interpretation. In respect of the reference to a "deferred pensioner's benefit" (this only applies in the context of a defined benefit category of fund – see amendment to definition of deferred pensioner) it is assumed that only maintenance orders can be deducted from the deferred pensioner's benefit and not also divorce awards. If the assumption is incorrect, ASISA members do not agree that such a deduction can be made from the capital value of a pensioner's pension after retirement. This section should also make provision for divorce orders granted in terms of section 8 of the Recognition of Customary Marriages Act and High Court orders dividing pension interest in the case of Islamic marriages.	
ASISA	52 (e)	The term "member's interest" is not defined, should it	Member's interest are relevant to preservation funds

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
IRF		refer to "pension interest"?	
IRF	52(f)	Date should refer to "date on which the non-member spouse made his/her election"	**Agree**, "deduction" must be substituted with "election"
ASISA IRF	52 (h)	The intention of the substitution of "pension interest" with "individual reserve": is not clear. There is no concept of individual reserve and the term is not defined. The amendment should be made to the Divorce Act to extend the definition of pension interest to preservation funds.	Proposed substitution of "pension interest" with "individual reserve" has been deleted
Peter Theunissen		Proposed new definitions for • Independent board member • Key management person • Legitimate expectation • Reasonable benefit expectation	**Not supported** as it goes beyond the scope of the purpose of the amendments and should be considered as part of broader retirement reform

RESPONSES TO COMMENTS RECEIVED ON THE FINANCIAL SERVICES BOARD ACT, NO. 97 OF 1990

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA ASISA BASA	52	Comments were noted that the broad definition of financial sector legislation and non-financial sector legislation could lead to unintended consequences as it extends the scope of the regulatory authority of the FSB and the power of the Minister of Finance beyond what is envisaged in the definition of "financial institution" in the FSB Act. In the current version of the FSB Act the definition of "financial institution", par a(x) still contains a reference to the Insurance Act, 1943.	**Agreed.** See amended clause **'Financial Services Board legislation'** means the legislation referred to in paragraph *(a)* of the definition of 'financial institution' The reference to the Insurance Act has been amended
ASISA	54	Comments were noted that the Clause by Clause Motivation of Proposed Amendments Memorandum (page 12) states that the proposed amendment of section 3 will empower the Minister to prescribe a code of conduct for the FSB to provide guidance on consultation processes and practices to ensure appropriate consultation. Clause 54 of the Bill however does not contain any proposals in this respect. Please also refer to the overarching comments.	**Agreed.** The change has been accurately reflected. See clause 56 in the tabled Bill "The Minister may prescribe a code of engagement, consultation, and communication for board."
ASISA IRF	55	Comments were noted that the current wording of the clause contradicts its intention and would absolve the Board from oversight over the enforcement committee.	**Agreed.** The clause has been revised to ensure that decisions taken by the enforcement committee will not be overturned by the Board. Despite subsection (7), the Board may not rescind or amend a decision of the enforcement committee
SAIA ASISA BASA	57	Comments were noted that the emergency power afforded to the Minister extend beyond the scope and mandate of the FSB Act. The Bill does not provide a definition for what would constitute 'actual financial systemic or stability risk', this gives the Minister a wide discretion in exercising the power. Further it does not provide for adequate consultation with Parliament and	**Agreed.** This clause has been removed from the Bill. It is proposed that this amendment be deferred to the broader "Twin Peaks" discussions underway

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		gives rise to legal uncertainty.	
IRF	61	Clarification was sought as to whether the merger of two financial institutions still requires Competition Commission approval. Does it just mean that both regulators would get involved, but in the event of a dispute or difference between them, the FSB would take precedence?	**Comments noted.** This clause provides the Minister of Finance or the relevant Registrar to have power of approval over mergers and acquisitions in relation to entities falling under the jurisdiction of Financial Services Board legislation, similar to the situation that is currently in place in relation to banks and co-operative banks. The Competition Commission would not have the authority to approve those mergers and acquisitions. The relevant provisions in section 116 of the Companies Act also would be applied in line with this power of the Minister of Finance or the relevant Registrar.
SAIA	62	Clarity was required as to whom the DEO could delegate his power.	**Comments noted.** The DEO may delegate his/her power to an officer or employee of the FSB.
ASISA SAIA Rosemary Hunter Andrew Crawford	64	Comments were noted that by deleting the words "bona fide, but not grossly negligent" from the FSB Act, this would have the effect of indemnifying FSB officials from losses caused in the exercise of their powers in terms of financial services legislation, even if the exercise of those powers was grossly negligent.	**Comments are supported.** The clause has been revised to include the words "*bona fide*", and the words "*but not grossly negligent*" have been removed. Officials' of a Regulator require protection against claims for losses sustained by third parties as a consequence of their exercise of powers conferred upon them in terms of statute provided those powers were exercised in good faith ('*bona fide'*). This is line with international standards and experiences
SAIA ASISA BASA	65	Clarity was required as to whether the clause was intended to override the Promotion of Administrative Justice, the Promotion of Access to Information Act and the Consumer Protection Act. Further, comments were made that this clause gives rise to legal uncertainty and should be redrafted to provide clear wording.	**Agreed.** The wording of this clause has been refined and simplified to appropriately define the relationship of FSB legislation with other legislation, in particular the Consumer Protection Act, and to define the relationship between the FSB and non-financial sector Regulators (such as the National Credit Regulator, Competition Commission, and Consumer Commission). These provisions will not apply to the legislation relating to access to information, the protection of information, the administration of justice or the regulators established in terms of that legislation. It also provides for the FSB to be the lead Regulator in respect of matters regulated in

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
			terms of the FSB legislation.
ASISA SAIA BASA Sanlam	56	Comments were noted that by repealing the existing advisory committees, this may impede effective consultation	**Comments noted.** An amendment to the FSB Act has been provided for which empowers the Minister to prescribe a code of consultation for the FSB, which will set out requirements as to how the FSB must communicate, consult and engage with the industry or key stakeholders.
ASISA SAIA BASA Sanlam	65	Comments were made that by compelling all rules and directives to be published on the FSB website rather than the Government Gazette would limit public accessibility to these documents.	**Comments noted:** 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.

RESPONSES TO COMMENTS RECEIVED ON THE
INSPECTION OF FINANCIAL INSTITUTIONS ACT, NO. 80 of 1998

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA		It is our submission that the preamble to the Act should be amended. The preamble in its current form is worded as follows: "To provide for the inspection of the affairs of financial institutions; the inspection of the affairs of unregistered entities conducting the business of financial institutions; and for matters connected therewith." "To provide for the inspection of the affairs of financial institutions; the inspection of the affairs of unregistered entities conducting the business of financial institutions; and for matters connected therewith if it appears to the registrar that the institution has in a material respect failed to comply with a law, is maladministered, or if it is in the interests of the clients of the institution."	No amendment was proposed to the long title of this Act. Further, the existing long title is still relevant and accurate.
ASISA	145	(3) **[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**~~] **representing the financial institution affected by the exercise of any power or performance of**	**Disagree**: the amendment obliges an inspector to also produce the certificate when securing information from a person other than the inspected institution.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		<u>duty in terms of this Act."</u> The current requirement is that the certificate be shown before commencement, but in terms of the proposed amendment the inspector now only has to show the certificate upon request to any person having a material interest. Who will make the call about whether a person has a material interest? What will the position be if there is a dispute in this respect? The proposed amendment creates unnecessary uncertainty and ASISA members therefore propose the wording as indicated.	
SAIA	146	The proposed provision is supported in principle. Given that an insurer would not be privy to the contents of the agreement, communique or memorandum of understanding, but still be subject to the ambit thereof in some form or manner, it is recommended that the notice accompanying the form carry sufficient detail to enable the insurer to assist.	**Noted.**
ASISA	146	It is not clear why the words "and who is present or resident in the Republic" is being deleted as an inspection in terms of this law cannot be conducted or enforced in territories outside of SA. ASISA members thus suggest that the reference to "and who is present or resident in the	**Noted and disagree:** The amendment facilitates a situation where another authority requests the FSB to participate in an inspection in another jurisdiction.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		Republic" not be deleted. It is also suggested that the sections 3 & 4 of this Act be amended to retain the protection and confidentiality clauses already set out in the Act, and also in the Income Tax Act.	
SAIA	147	It is understood and agreed that there is a need for the powers of the inspector as outlined in this proposed subsection; however it is recommended that such powers be tempered with a limitation or control so as not to give inspectors unfettered or unlimited discretion in the exercise of their powers. It is recommended that the word "servant" be deleted and substituted with the word "employee" as it carries a negative and perhaps politically incorrect connotation. It is recommended that notification be given to the institution that the inspector is on the premises of the institution as soon as said inspector arrives at said institution. In the alternative it is recommended that it be a requirement that either the compliance officer, or senior manager of the institution be present. It is recommended that an industry forum be created for the benefit of sustainability and regulatory certainty wherein a consultation process may be established and applied to offer a measure of recourse or protection to institutions and the greater industry.	**Noted.** Word "servant" removed. The institution will be aware that an inspector has arrived at its premises. It is an internal arrangement by the inspected party as to who should present. **Noted.**

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	147 (b)	summon any person who is or was a director, servant, employee, partner, member or shareholder of the institution and whom the inspector **on reasonable grounds** believes **or suspects to be[~~is~~**] in possession of or has under his or her control, any document relating to the **purpose or subject of the inspection [~~affairs of the institution~~]**, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine or, against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings; The inspector should at least have reasonable grounds to believe that the persons in question are in possession of the mentioned documents. We suggest that the words "on reasonable grounds to be" be inserted after the words "... and whom the inspector believes" The words "any documents relating to the affairs of the institution" is too wide and should be restricted to "any documents relating to the purpose or subject of the inspection". It is not necessary for the inspector to have access to any document relating to the affairs of the institution if such documents are not relevant to the inspection. We suggest that the words "to the affairs of the institution" be replaced with "to the purpose or subject of the inspection". The summoning process should be subject to reasonableness and specifically, reasonable notice and compensation for expenses incurred by the relevant	The wording of the amendment as proposed is appropriate. Further note that the actions of an inspector are subject to fair administrative process and that an aggrieved party may exercise the remedies available to it if of the opinion that the inspector is not acting reasonably.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		person or institution should be provided. Provision should be made for persons summoned to be compensated for reasonable expenses related to the appearance.	
ASISA	147 (c)	[**open**] cause to be opened any strongroom, safe or other container **on the premises of the financial institution** in which he or she suspects any document of the institution is kept; Any exercise of this power or duty by the inspector should be limited to the premises of the institution in question. If the need arises to gain access to private premises, the inspector should approach a Court to obtain an order to this effect. ASISA members propose that the words "on the premises of the financial institution" be inserted after the word "container".	The guidance afforded by the Constitutional Court in the North West gambling matter will inform the inspection of private premises.
ASISA	147 (d)	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 on reasonable grounds that the document contains information relevant to the inspection; ASISA members propose that the words "on reasonable grounds" be inserted after the word "opinion" as "opinion" is too subjective a measure.	As stated above, the actions of an inspector are subject to fair administrative process and that an aggrieved party may exercise the remedies available to it if of the opinion that the inspector is not acting reasonably. Further, an inspector should be able to summon or engage with any person that may assist in furthering the inspection, irrespective of the employment status of that person. It is not in the interest of an inspection to require the inspected institution to be notified of who and what information an inspector secured from another person.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	148	148 (b) Powers of inspectors relating to other persons Proposed substitution of the current S(1) with the draft S(1)(a) It is our concern that the phrase "summons any person" would have equal effect and application to employees as well as to non-employees or outsiders to the institution concerned. It is recommended that in the case of non-employees or outsiders to the institution, that the institution be notified of the existence and nature of the inspection or inquiry and access to the documentation supplied or seized. It is recommended that the wording of subsection a(ii) be amended to read as follows: "administer an oath or affirmation on any person or otherwise examine any document referred to in subparagraph (i);"	An inspector should be able to summon or engage with any person that may assist in furthering the inspection, irrespective of the employment status of that person. It is not in the interest of an inspection to require the inspected institution to be notified of who and what information an inspector secured from another person.
ASISA	148 (b)	Section 5(1)(a) (i) summon any person, if the inspector has reason to believe **on reasonable grounds** that such person may be able to provide information relating to the affairs of the institution **relevant to the inspection** or whom the inspector believes **on reasonable grounds** is in possession	As stated above, the actions of an inspector are subject to fair administrative process and that an aggrieved party may exercise the remedies available to it if of the opinion that the inspector is not acting reasonably.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		of, or has under control, any document relating to the affairs of the institution, to lodge such document with the inspector or to appear at a time and place specified in the summons to be examined or to produce such document and to examine, or against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings; (ii) administer an oath or affirmation or otherwise examine [**any person, if he or she has reason to believe that such person may be able to provide information relating to the affairs of the institution**] as referred to in subparagraph (i); The summoning process should be subject to reasonableness and specifically, reasonable notice and compensation for expenses incurred by the relevant person or institution should be provided. Provision should be made for persons summoned to be compensated for reasonable expenses related to the appearance. ASISA members propose that the words "on reasonable grounds" be inserted after the word "believe" as "believe" is too subjective a measure. It is also proposed that the words "relevant to the inspection" be inserted after the words "affairs of the institution".	
SAIA	149	Search and Seizure Proposed insertion the Draft S6A It is our recommendation that the rights as outlined in	The definition of person as defined in the Interpretation Act applies and includes juristic persons. The requirement to have the sheriff of the court present is not understood.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		subparagraphs (a), (b) and (c) should have equal application to institutions and juristic entities as well. It is our concern at subsection (2) that no provision is made for an independent third party, for example the sheriff of the court, for oversight purposes It is recommended that subsection (2) be amended to read as follows:—An inspector may be accompanied and assisted by a police officer during the entry and search of any premises under section 4 of 5, and must be accompanied by the applicable sheriff of the high court of the district that enjoys jurisdiction.	
ASISA	149	"Search and seizure 6A. (1) Any entry upon or search of any premises in terms of section 4 or 5 must be conducted with strict regard to decency and good order, including— (a) a person's right to, respect for and the protection of dignity; (b) the right of a person to freedom and security; and (c) the right of a person to personal privacy. (2) An inspector may be accompanied and assisted by a police officer during the entry and search of any premises under section 4 of 5. (3) Any entry and search under section 4 or 5 must be executed by day, unless the execution thereof by night is justifiable and necessary." What does justified and necessary mean? Should a court	Please see the guidance afforded by the Constitutional Court in the North West gambling matter. The actions of the FSB will be guided by this judgment.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		order not be required for an entry and seizure by night?	
SAIA	150	It is recommended that the word —servant be deleted from subsection (2)(b) as it carries a negative and perhaps politically incorrect connotation. It is recommended that Section 7 of the Act be expanded to provide for the right of legal privilege to in-house legal counsel.	Word "servant" removed. Legal privilege cannot extend to in-house legal counsel as the latter is not necessarily admitted by the Courts to act on behalf of its clients in a court.
ASISA	150	(a) Any person examined under section 4 or 5 may be required to answer any question 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, or incriminating evidence directly derived, from 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, servant, 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.	The protection afforded in paragraph (b) makes constitutional muster and is appropriate in the circumstances.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		The right against self-incrimination is a basic human right which will be infringed by this clause and/or regarded as unconstitutional. The proposed amendment does not absolve the person in question from all criminal prosecution. The fact that evidence may not be admissible in criminal proceedings offers scant comfort in that (a) The information provided may be used to unearth or collate other information which may be used in criminal proceedings; and (b) The evidence obtained may be used in civil proceedings against the person / institution concerned.	
ASISA	151	Section 10 (General Disclosure) of the principal Act is hereby repealed. The right to privacy is enshrined in our Constitution. If the registrar deems it necessary to convey information to any person, group of persons or entity not provided for in section 9, or to publish information, the registrar should approach a court and obtain permission to disclose any information. We propose that this amendment be deleted.	This provision and section 22 of the FSB Act duplicated each other. The secrecy provision (section 22) in the FSB Act has been retained and this provision deleted. Note that section 22 has also been amended to strengthen the secrecy requirement.
SAIA	152	152 Costs of inspections Proposed substitution of the current It is understood and accepted that the inspection itself	No amendment to the existing provision relating to principle of cost recovery is proposed. The existing provision is appropriate and has not been legally challenged to date.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		carries an element of urgency; however it is our view that the matter of costs relating to such inspection does not carry the same element of urgency, and therefore it is our view that derogation from the normal procedures for the recovery of costs is not warranted. It is our recommendation that the normal avenues for the recovery of costs as provided in the South African law of civil and criminal procedure be followed.	
ASISA	152	It is submitted that the section should be amended to stipulate under what circumstances the Registrar may direct the institution or specified individuals to pay the costs of an inspection. This increases the liability of the directors, servants, employees, partners, members and shareholders. The FSB must provide clear guidance on the ambit and meaning of the phrase" if the Registrar so decides" given the potential violation of the Constitutional rights to be presumed innocent and the common law rights of natural justice.	No amendment to the existing provision relating to principle of cost recovery is proposed. The existing provision is appropriate and has not been legally challenged to date. The inclusion of a wider range of persons from whom the costs may be recovered is appropriate.
SAIA	152	subsection (b) with the draft subsection (b) It is our concern that the ambit of this section is too wide in relation to employees, servants or shareholders, in that less senior employees, servants would in all likelihood have very little influence in the cause or subject matter of the reason for the inspection, and that shareholders would definitely not have any effect or say in the day to day affairs of an institution (in the case of a listed company). It is further our concern that such servant or employee (or	Word "servant" removed.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		shareholder in the case of a listed company) would in all likelihood not have the financial means to address an envisaged recovery of costs, thereby making the effect of this provision moot. It is recommended that words —employee , —servant , and —shareholder be deleted from the proposed subsection (b), and replaced with the words —senior employee and —shareholder in the case of a non-listed company .	
ASISA BASA	212	Concerns raised were that provisions in respect of inspections and investigations should be contained in the Inspections of Financial Institutions Act and not the respective Insurance and Pension Acts. Concerns raised were that the Registrar may authorise any suitable person or instruct an inspector to conduct an onsite visit of the business affairs of a financial institution. Proposal that descriptions to qualify "suitability" be included to balance subjectivity. Concerns were raised about publishing onsite information and could impact on the reputation of a financial institution. Proposal to include a public interest provision when publishing the outcome/ status of an on-site visit, inspection & investigation. Concerns that on-site visits at the premises of intermediary could compromise their right to privacy.	**Comments noted:** regard should be given to the reputation of the financial institution when making information public and that these powers should be centralised in the Inspections of Financial Institutions Act. The clause has now been amended to include the words in the "public interest" to balance stakeholder interests with the need for protecting the reputation of a regulated financial institution. The revised Bill retains the provisions for onsite powers in the respective Insurance and Pensions Acts. This is also in line with international best practice. **Not supported:** suitably qualified to be read in conjunction with the Interpretation Act.

RESPONSES TO COMMENTS RECEIVED ON THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES Act, NO. 37 OF 2002

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
SAIA	169	Clause 169(a), (k), (l), (m), – Section 1(1) Deletion of definition of 'Advisory Committee' and reference thereto in section 1 is supported by SAIA but it requests an alternative process to ensure adequate industry consultation.	**Noted.** An amendment to the FSB Act has been provided for which empowers the Minister to prescribe a Code of Consultation for the FSB, which will set out requirements as to how the FSB must communicate, consult and engage with the industry or key stakeholders.
BASA		Advisory committee is a platform for industry to proactively engage with the Registrar. The amendment has introduced no corresponding platform. It is crucially important that such platforms continue to exist to facilitate effective discussion with the Regulators, which ultimately influences what regulation is amended or introduced. In this regard it is important to note that to only invite industry to comment after a new amendment is tabled, is usually too late and doesn't allow industry effective opportunity to dialogue and influence the regulatory environment.	**Noted.** See comment above.
IRF	169	Consideration should be made for a formal working committee working with the Registrar made up of relevant industry role players e.g. Intermediary associations, ASISA, IRF, etc	**Noted.** See comment above.
CISA	169	Deletion of advisory committee is supported but it is recommended that an alternative consultation mechanism be put in place.	**Noted.** See comment above.
ASISA&BASA	169	Clause 169(c) - Section 1(1) The definition of 'continuous professional development' must be aligned with definition in subordinate legislation.	**Disagree.** The definition in subordinate legislation will be aligned with proposed new definition.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
IRF	169	The purpose of CPD is the points that affected persons must earn to continue to be competent to carry out their functions under FAIS and the annual certification required to prove this. However the definition does not make reference to this and needs to be expanded to cater for this, even if it is to refer to " as prescribed by the Registrar or recognised industry /representative body"	**Disagree.** The detail regarding the purpose, the hours of CPD that must be undertaken within a specific period is detailed in the subordinate legislation.
SAIA	169	Clause 169(g) – Section 1(1) It is recommended that the uniform resource locator (URL) of the "official website" be included within subordinate legislation to the FAIS Act.	**Noted**. As far as practicable and where applicable, reference is made to the web site address of the FSB in subordinate legislation.
CISA		Publication on the official web-site unaided by the Gazette is not supported as the internet website and links thereon is not always available. Legal certainty requires that official notices must be made available to all relevant persons at all times.	**Noted.** The purpose is to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette.* This is consistent with the Interpretation Act, will result in significant cost savings, and more effective communication. In addition, 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 Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette, 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 provide 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.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
IRF		There are a number of notifications by the Registrar that are now allowed to be done via the "official website". Use of electronic means of communication.	**Noted.** See comments above.
	169	Is prescribe the actual notice on the official website or is it the publication allowing for publication on the official website? Is defined very widely and the concern is how will people who may be affected by the publication know where to look –how is notification going to be done?	The comment is not understood.
	169	Clause 169(h) – Section 1(1)	
SAIA		The definition of product supplier should not include binder holders or outsourced arrangements as they act on behalf of the Insurer by nature of the relationship.	**Noted**. the proposed amendment does not include a binder holder as a product supplier. The binder holder acts as the agent of the insurer (the principal) who is the product supplier.
BASA		Definition should not be amended and clarity is sought whether it is intention to extend Registrar's jurisdiction to those product suppliers who introduce products into industry, but who are not currently regulated by other legislation such as the Banks Act (Deposits) or Insurance legislation? Should this be the intention clarity is sought regarding who exactly is intended to be regulated and how the amendment will affect FSPs?	**Disagree.**This provision does not extend the Registrar's jurisdiction to product suppliers and is not too broad as the definition is limited by the requirement that a product supplier must be a person that issues a 'financial product' as defined in section 1(1) of the FAIS Act. It is further the intention to regulate persons rendering financial services in respect of financial products issued by entities where such issuing of the product is not done in terms of an authority, approval or right granted to such entity under any law. Eg. Contracts for differences and over the counter future contracts. The proposed amendment closes the gap that currently exists when reading the definition of 'product supplier' with that of 'intermediary services'.
	169	Clause 169(i) – Section 1(1)	
SAIA		See comments under Short-term Insurance Act regarding the introduction of the definition of "publish".	**Disagree.** See comments under Short-term Insurance Act.
	169		
BASA		Clarity is required as to who other than Registrar is	Publish refers to communication of information by a person other

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		authorised to publish information to regulate FSPs and how will people know where to look for such publication.	than the Registrar and does not confer power to regulate, and excludes publications by the Registrar.
SANLAM ASISA SAIA	169	Concern raised that by compelling all rules and directives to be published on the FSB website rather than the Gazette could hamper appropriate version/quality controls. It is also difficult to locate documents on the current FSB website.	Noted. Regulations prescribed by the Minister and rules issued by the Registrar would continue to be published in the Government Gazette. The approach has been retained as was contained in the original published Bill, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette, 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 provide for a list of directives and exemptions which are intended to have a general application to be published annually as á schedule to the FSB's annual report that is tabled in Parliament.
BASA	169	Clause 169(n) - Section 1(1) This amendment brings long-term deposits under the FAIS act. This is onerous as unlike short-term deposits there is no corresponding specific code of conduct to regulate long-term deposits.	**Disagree.** The proposed amendment merely provides clarity. Long-term deposits are already regulated by the Act and providers are authorised to render financial services in respect of both Long-term deposits and Short-term deposits or either one of the aforementioned products. Providers authorised to render financial services in respect of short-term deposits must comply with a specific code of conduct unlike providers rendering financial services in respect of Long-term deposits who must comply with the General Code of Conduct.
IRF	170	Clause 170 – Section 2 Concerned about the weight that could be attached to a	The comment does not relate to the proposed amendment.

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		communication issued by a junior staff member of the Registrar's Office.	
SAIA	171	Clause 171(a) - Section 4(2) It is submitted that the duty to the Registrar to furnish information or documents as directed should lay with the authorised financials services provider, or representative and the compliance officer. In addition, the Registrar must copy FSP with all notices send to the compliance officer and *vice versa*.	**Disagree.** The Registrar may communicate with compliance officer regarding its own compliance with the Act and the FSP would therefore not necessarily be an interested party.
CISA		The compliance officer should in all instances where information is required from the FSP be included.	Outside scope of current Bill. However, we **disagree** with commentator as it should not be the duty of the Registrar to inform or copy the compliance officer of the activities of the Registrar in respect of a provider. The compliance function that must be established and that must be overseen by the compliance officer could provide for reporting by the provider to the compliance officer in respect of the aforementioned. It should further be noted that a compliance officer is appointed by the provider.
SAIA	171	The reference to provider should be changed to financial services provider.	Outside scope of current Bill. However, we **disagree** with comment as 'provider' is defined in section 1 of the Act and has a different meaning to 'financial services provider'. The use of the word 'provider' in the context of the proposed amendment is correct.
BASA		The scope of the compliance officer is erroneously extended to oversee compliance which is a function of the key individual of the FSP. The compliance officer must remain independent. Accordingly, the Registrar should seek the information contemplated herein from the KI, FSP or Representative.	**Disagree.** This section does not refer to compliance officer's duty to oversee compliance but Registrar's power to instruct an onsite visit and to request information. The purpose of the amendment is to extend the Registrar's power to conduct an onsite visit on a compliance officer to determine such officer's compliance with the Act.
SAIA	171	Clause 171(b) - Section 4(5)(a)(i)	

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		The Registrar must, where it contemplates an onsite visit on a FSP, include the compliance officer as an alternative and the reference to provider should be changed to financial services provider.	**Disagree.** The purpose of the onsite visit on a FSP is to determine compliance of the Act by that FSP. The aforementioned purpose would not be achieved if an additional onsite visit is conducted on the compliance officer to monitor the FSP's compliance with the Act. It is further not practical to inform the compliance officer of the onsite visit to be conducted on the FSP as such notification will negate the element of surprise. However, it is practice to agree the date and time of the onsite visit with a FSP who then may invite the compliance officer to attend. As regards the reference to 'provider', the latter word is defined in section 1 of the Act and has a different meaning to 'financial services provider'. The intention is to limit this section that empowers the Registrar to conduct onsite visits to authorised persons only and not to extend the scope to unauthorised persons. The use of the word 'provider' in the context of the proposed amendment is therefore correct.
BASA	171	The amendment of this section read with the amendment of section 17 (clause 184) erroneously extends the scope of a compliance officer's responsibility to "oversee" compliance. A key Individual is currently tasked to "manage and oversee" FAIS compliance within the FSP. The responsibility to "oversee" correctly vests in a KI as s/he is usually a senior business manager involved in operational activities of the Business. To add the responsibility of "oversight" to that of a compliance officer conflicts with the duty of the compliance officer to remain independent, as stipulated in Board Notice 127 of 2010. Inclusion of compliance officer responsibility to "oversee" will result in a blurring of the lines between businesses responsibility to embed compliance requirements into day to day business operations versus compliance responsibility to objectively monitor and report	**Disagree.**The purpose of this proposed amendment is to empower the Registrar to conduct an onsite visit on a compliance officer to determine such officer's compliance with the Act. The provision further does not extend the scope of the compliance officer's responsibilities to oversee compliance. It, however, requires a compliance officer to oversee the provider's compliance function. The amendment aligns the Act with the Regulations that currently requires a compliance officer to supervise the provider's compliance function established by the FSP as part of its risk management framework. In addition the compliance officer must currently make recommendations to the FSP as regards any aspect of required compliance or the compliance function. There is further no conflict between the role of a key individual and that of a compliance officer. It must be noted that the responsibility to comply with the legislation ultimately vests with the FSP.

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		on compliance status	
ASISA	171	Clause 171(c) - Section 4(5)(b)(i) Clarity is required as whether the amendment applies to compliance officers within the context of their employment only, i.e. it should not authorise the Registrar to enter the compliance officer's home.	**Noted.** The proposed amendment does not give the Registrar the power to conduct an onsite visit at the compliance officer's house unless the compliance officer conducts his business from home. The Registrar should, in order to effectively perform his supervisory functions, be able to search the premises or that part of the premises from where the compliance officer conducts his/her business.
ASISA	171	Clause 171(c) - Section 4(5)(b)(i) The word premise is too vague and could include inspections at the private residence of the individuals concerned.	Outside the scope of this Bill. However, we **disagree** with comment as Registrar must be able to conduct an onsite visit at the premise from where the provider is conducting business in order to determine his/her compliance with the Act. The Registrar should be able to effectively supervise the persons it authorises. This can only be done through onsite visits.
SAIA SAIA	171	Clarity is required as to how this process will differ from the process followed by the enforcement committee and the access to guidelines. The term 'provider' must be replaced with the term "financial services provider".	The enforcement committee does not have powers to instruct an inspection or to conduct an onsite visit. **Disagree.** This section is limited to provider and it is appropriate to refer to 'provider' in this context.
SAIA	171	Clause 171(d) - Section 4(5)(b)(i) The compliance officer must be notified of the seizure of any documents or the fact that documents were copied and the compliance officer must be provided with a copy of the receipt issued.	**Disagree.** It should not be the duty of the Registrar to inform or copy the compliance officer of the activities of the Registrar in respect of a provider. The compliance function that must be established and that must be overseen by the compliance officer could provide for reporting by the provider to the compliance officer

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
			in respect of the aforementioned. It should further be noted that a compliance officer is appointed by the provider.
SAIA	171	Clause 171(e) - Section 4(5)(b)(ii) The term 'provider' must be replaced with the term "financial services provider".	**Disagree.** The intention is to limit this section that empowers the Registrar to conduct onsite visits to authorised persons only and not to extend the scope to unauthorised persons. As such, this section is limited to provider and it is appropriate to refer to 'provider' in this context.
		The compliance officer must be included where an onsite visit on a FSP or representative is contemplated	**Disagree.** Such notification may compromise element of surprise. In addition, the compliance officer has vested interest in the outcome of the onsite visit.
CISA	171	The compliance officer should in all instances where information is required from the FSP be included.	**Disagree.** See comment in Clause 171(a) and comment made above.
SAIA	171	Clause 171(f) - Section 4(6) The term "provider must be replaced with the term "financial services provider".	**Disagree.** The intention is to limit this section that empowers the Registrar to conduct onsite visits to authorised persons only and not to extend the scope to unauthorised persons. As such, this section is limited to provider and it is appropriate to refer to 'provider' in this context.
SAIA BASA	171	Clause 171(g) – Section 4(7)(c) Concerns raised relate to provisions in respect of inspections and investigations should be contained in the Inspections of Financial Institutions Act and not the respective Insurance and Pension Acts. Concerns raised about publishing onsite information and could impact on the reputation of a financial institution.	Comments were **noted** that regard should be given to the reputation of the financial institution when making information public and that these powers should be centralised in the Inspections of Financial Institutions Act. This provision includes the words in the "public interest" to balance stakeholder interests with the need for protecting the reputation of a regulated financial

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		Proposal to include a public interest provision when publishing the outcome/ status of an onsite visit, inspection & investigation. Concerns relate to the Registrar may authorise any suitable person or instruct an inspector to conduct an onsite visit of the business affairs of a financial institution. Proposal that descriptions to qualify "suitability" be included to balance subjectivity. Concerns that onsite visits at the premises of intermediary could compromise their right to privacy. Concerns with the wide definition of "any document" that can be seized during a search. Further the search & seizure provisions as drafted are not subject to common law pertaining to evidence and procedure Proposal is to limit such a search should be limited to search for a document that the inspector reasonably believes exists.	institution. This is also in line with international best practice. **Not supported.** Suitably qualified to be read in conjunction with the Interpretation Act **Disagree.** The words "any document" is limited by the scope of the FAIS Act which defines the parameters within which the Registrar may act.
ASISA	171	Clause 171(g) - Section 4(7)(c) ASISA support the principle of publication insofar as it is accurate and in the public interest. However, what is in the public interest is a subjective concept.	Outside scope of current Bill. However, we **disagree** with comment. This provision mirrors the provision on confidentiality in the FSB Act. Clients have a right to know if a provider with whom they are
			conducting business is under investigation especially because of the reliance placed on a provider's authorisation status. A number of high profile cases where clients had suffered losses highlighted the

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
			importance of consumer protection and effective regulation. The Registrar follows precedents set by our courts as to what is meant and what constitute "in the public interest".
ASISA		Prior to publication, providers should be afforded the opportunity to provide input concerning the accuracy or otherwise of the information to be published and as to whether it is in the public interest.	Outside scope of current Bill. However, the commentator's concern is addressed by the provisions of PAJA. The Registrar is subject to PAJA and it is therefore not necessary to stipulate in the Act the administrative procedures that s/he must follow.
SAIA, BASA, CISA		Prescribing by website unaided by Gazetting process is not supported. Publication in the gazette provides certainty regarding the effective commencement date of legislation and will not be dependent on FSB's IT system functionality.	**Disagree.** See above the comments regarding publication on the FSB web-site. It must further be noted that this section does not allow the Registrar to prescribe anything; it merely allows the Registrar to publish the details of an onsite visit if disclosure is in the public interest.
SAIA	171	Concerned thatFSPs are not expressly given right to be heard before outcome is published.	Outside scope of current Bill. However, we **disagree** as the commentator's concern is addressed by the provisions of PAJA. The Registrar is subject to PAJA and it is therefore not necessary to stipulate in the Act the administrative procedures that he must follow.
CISA		It must be understood when such instances of disclosure of an onsite visit and the details thereof will be in the public interest. In a competitive industry it might have adverse consequences if the processes and other information of FSPs are published. It is recommended that the compliance officer of the FSP is included in such instances by changing the said insertions of "or" to "and".	Outside scope of current Bill. It must be noted that the Registrar who is subject to PAJA must act reasonable, fairly and justifiable when taking any decision that may adversely affect another person. The commentator's recommendation does not link to the clause referred to.

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IRF	172	Clause 172 – Section 5 Retain the reference in line with comments made under S1 amendments to set up a representative advisory committee	**Disagree.** See comments made above regarding the removal of the advisory committee.
IRF	174	Clause 174 - Section 6A Concern about the ability of the FAIS registrar to change the Fit and Proper requirements-as attaining any new qualifications in order to comply requires time. The powers must be made subject to prescribed time periods to allow compliance with any new requirements that may be introduced by the Registrar.	**Agree.** However, the commentator's concern is addressed by the provisions of PAJA. The Registrar is subject to PAJA and it is therefore not necessary to stipulate in the Act the administrative procedures that he must follow.
SAIA	174	Clause 174 - Section 6A(1)(a)(i) Clarification is requested regarding the underlying basis of requirement for the classification according to different categories. It is understood that flexibility is required in order to cater for different LSM groups however; the power to classify is not qualified.	**Noted.** It is not the intention to categorise FSPs by LSM groupings but by nature of activity performed by the FSP. It is therefore necessary to classify FSPs into different categories according to the type of financial service being rendered to ensure the different FSPs comply with appropriate and relevant requirements. The proposed amendment aligns the Act with current classifications of FSPs.
SAIA BASA	174	Clause 174 - Section 6A(1)(a)(iii) The term "provider must be replaced with the term "financial services provider". It is recommended that certainty be provided as to whether these KIs are KIs of juristic representatives, so as to distinguish them from KIs in subsection (aa)?	**Disagree.** This section is limited to provider and it is appropriate to refer to 'provider' in this context. **Disagree.** Section is clear if read with definition of key individual. Subparagraph (aa) of 6A(1)(a)(iii) refers to a key individual of a provider and subparagraph (cc) refer to a key individual of a representative.
	174	Clause 174 - Section 6A(2)	

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
SAIA		Any amendment to the fit and proper requirements should go through the formal legislation process.	**Noted.** The proposed amendment does not intend to change the current *status quo*. The Registrar is subject to PAJA and will follow an appropriate consultation process.
ASISA	174	Clause 174 - Section 6A(2)(b)(ii) Amendment supported.	**Noted.**
BASA	174	Clause 174 - Section 6A(2)(d) This fit and proper definition is not aligned to the definition of "competence" in section 3(2) of Board Notice 106 of 2008. It is recommended that the FAIS Act merely include a reference to being compliant with fit and proper requirements as stipulated in the subordinate legislation, especially given that subordinate legislative requirements change frequently.	**Disagree.** Competence is not defined in the Notice referred to by the commentator. However, the intention is to align the subordinate legislation with the Act.
BASA		This section when referenced to section 8(1)A indicates that Key Individuals do not need to meet "financial soundness" requirements. However, when referenced to section 13(2)(a)(ii) of the Act, the proposed amendment states that FAIS Representatives must "meet the fit and proper requirements". Fit and proper requirements are stated in this section such that it "may" be inclusive of "financial soundness". To extend the requirement of financial soundness to Representatives as is implied in this amendment, will result in the following practical challenges: The requirement conflicts with case law and legal opinions, which affirm that merely because a representative is sequestrated or under debt review, one cannot presume that the individual is incapable of providing sound financial advice.	The Registrar does not intend to require representatives to comply with financial soundness requirements. However, due to the fact that a representative can be either a natural person or a juristic entity, the Registrar may, if it becomes necessary to protect consumers, impose financial soundness requirements on juristic representative especially if they receive or hold client funds. The Registrar is, however, subject to PAJA and will in the eventuality that it wishes to impose such requirements follow an appropriate consultation process.

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		Financial Soundness is very specifically defined in Board Notice 106 of 2008. The ability of individual persons in the form of Representatives to meet such stringent financial standard requirements is very dubious. Should the Registrar intend that these requirements should apply to juristic representatives only, same should be clearly stated. Should the requirement for financial soundness be included now, it will create an uneven playing field in that representatives already appointed in FAIS roles need not meet the requirements, whereas new appointees will be required to do so. In addition, to keep such records of the varied requirements for each staff member in a business will be fairly onerous.	
BASA	174	Clause 174 - Section 6A(2)(e) It is unclear what is meant by continuous professional development and what it would entail.	**Disagree.** See the proposed definition for the term continuous professional development in clause169(c).
SAIA	174	Clause 174 - Section 6A(3) The term "provider must be replaced with the term "financial services provider". The fit and proper requirements should distinguish between compliance officers and compliance practices.	**Disagree.** This section is limited to provider and it is appropriate to refer to 'provider' in this context. **Disagree.** This section does distinguish between different types of compliance officer namely, natural persons that are partnerships, trusts, corporate and unincorporated bodies. The subordinate legislation provides for the distinction between individuals and entities acting as compliance officers.
SAIA	174	Clause 174 - Section 6A(4) Same comments as per clause 174(section 6A(4).	See comments to clause 174 (section 6A (4).

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BASA		There is no indication whether the amendments will be done in consultation with those affected and the section does not make provision for a draft to be published for comments. This clause introduces a split in the key individual role with inclusion of the terminology "key individuals of providers and key individuals of representatives of providers". What is intended with split?	The commentator's concern is addressed by the provisions of PAJA. The Registrar is subject to PAJA and it is therefore not necessary to stipulate in the Act the administrative procedures that s/he must follow. The Act already provides for key individuals of representatives (see section 13 of the Act) where the representative is a juristic entity. This clause will allow the Registrar to determine fit and proper requirements for those key individuals.
SAIA BASA	176	Clause 176(a) - Section 8(1) Clarification is requested on the intended meaning of the word "including" as it relates to an application from financial service providers not domiciled within the Republic (i.e. foreign financial services providers). It is proposed that the fit and proper requirements with regards to the operational ability of the provider are applied to key individuals of the provider. This in our view is not practical as Key Individuals will not each have by way of example, separate bank accounts, storage facilities and filing systems as this is only applicable to the provider and not to Key Individuals of the provider. We suggest that the fit and proper requirements be limited to honesty and integrity as well as competence which can practically be applied to the Key Individuals of the provider.	Outside scope of this Bill. However, this section clarifies that every person, whether or not domiciled in South Africa, who renders a financial services within the borders of South Africa must obtain authorisation. **Disagree.** The proposed amendment does not require a key individual to comply with the operational ability requirements applicable to a provider. However, the Registrar may determine operational ability requirements for key individuals to ensure that they are able to perform their functions under the Act. Eg. a key individual who has to oversee 6000 representatives will not have the operational ability to effectively oversee or manage the rendering of financial services by all such representatives.
SAIA	176	Clause 176(b) – Insertion after section 8(1) The key individual of a juristic representative should be subject to the same fit and proper requirements as the other key individuals.	**Noted.**

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
BASA	176	Clause 176(d) – Section 8(3)(a)(ii) The word "key" has been omitted.	**Agrees.** See proposed amendment. **Section 8(3)(a)(ii)** (ii) approves the key individual or key individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or
BASA	176	Clause 176(e) – Section 8(4)(a) Recommend that the Registrar include a reference to financial product subcategories for which the applicant is authorised.	**Noted.** See proposed amendment below. **Section 8(4)(a)** "(iv) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services."
SAIA	176	Clause 176(f) - Section 8(4)(a)(iv) If the guidelines are to be removed then it should be removed consistently throughout the Bill.	**Noted.** Consequential amendment due to removal of Advisory Committee.
ASISA	176	Clause 176(i) – Section 8(5)(a) The heading and introductory provisions of section to be amended accordingly.	**Agree.**The comment has been addressed in the amendment for consideration. **Section 8(5)(a)** "Where an application for authorisation is granted, the registrar must issue to the applicant—";

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
ASISA	176	Clause 176(m) – Section 8(9)(c)(i) The proposed inclusion of section 8(9)(c)(i) may unduly restrict legitimate activities of in the case of a financial	**Disagree.** The prohibitions relate to the rendering of financial services only and not to the activities performed by a product
SAIA		services provider also being a product supplier. Clarity is requested as to the intended meaning and purpose of this provision.	supplier in its capacity as product supplier. This section creates certain specific prohibitions to ensure the protection of consumers.
SAIA	176	Clause 176(m) – Section 8(9) The onus should be on the FSP to inform product suppliers and clients that its status as FSP has changed.	**Noted.** This section creates certain specific prohibitions. The requirement that a FSP must inform clients and product suppliers of a change in its status is already dealt with in the subordinate legislation.
BASA	176	Clause 176(n) & (o)– Section 8(10)(a) &(b) In subparagraph (i), the requirement remains unchanged from the current Act, save for the updated Section number insertion. Directors must meet requirements of honesty and integrity only. In paragraph (b), amendments to this section referring to section 1A contradicts the wording of section 1A in that 1A only applies to KI s whereas this section indicates that the requirements of honesty and integrity apply to directors, members; trustees and partners of such providers contemplated in this section. The proposed section must be amended to refer to the 8(1A).	**Disagree.** The references in both subparagraphs are correct and refer to the same section. Directors are required to meet the same requirements relating to honesty and integrity as what is applicable to key individuals.
BASA	177	Clause 177 - Section 8A Recommend that the Registrar clearly state whether the Key individual referred to in this latter phrase refers to the Key Individual of a juristic representative. As currently drafted it is not clear how the key individual in line 1 hereof is different from the Key individual referred to in line 2.	**Disagree.** The section does distinguish as it refers to a key individual and a key individual of a representative.
	178	Clause 178 – Section 9	

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
CISA		This clause does not only enhance supervisory powers but it opens the door to the potential for arbitrarily unfair treatment of FSPs and their employees.	**Disagree.** The power to withdraw a FSP's authorisation is an absolute necessity to ensure effective supervision and enforcement of the regulated persons and more importantly to protect consumers of financial services. The Registrar is further subject to PAJA and must act fairly, reasonably and justifiably.
ASISA	178	Clause 178(a) – Section 9(1)(a) Where an FSP has more than one key individual and one or more other key individual(s) meet the required fit and proper requirements, the failure of one key individual to meet fit and proper requirements should not be reason to suspend or withdraw a FSP's licence. The words "does not meet" may be deleted as this section deals with the suspension and withdrawal of an authorisation and the requirements should have been met on application	**Noted.** This section provides the Registrar with discretion as to whether or not to withdraw or suspend anFSPs licence. The Registrar must exercise such discretion fairly, reasonably and justifiably after having considered all the available information and circumstances. The Registrar, therefore, should be able to withdraw a licence of an FSP even though it has more than one key individual if there is evidence that the key individual who has been declared unfit (who may or may not be the majority or sole shareholder of the FSP) effectively is the directing mind and will of the FSP. The proposed amendment is therefore of paramount importance to protect consumers and to prevent a circumvention of the intention of the Act. **Disagree.** The Registrar may amend the fit and proper requirements (see clause 174) and a FSP must subsequent to being licensed comply with such amended requirements. The words "does not meet" would then be applicable.
SAIA	178	Clause 178(b) – Section 9(1)(d) The FSP should be granted a right of appeal against the fee or penalty imposed.	**Noted.** This section provides for the grounds on which the Registrar may withdraw or suspend a licence and not for the rights of a FSP. Section 39 of the Act provides for the FSP's right to appeal a decision of the Registrar.
	178	Clause 178(e) – Section 9(2)(d)	

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Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
SAIA		Clarity is requested for the intended definitions and meanings of *provisional suspension and withdrawals, suspension, withdrawals, lapsing and final suspension*. In addition, SAIA is concerned that in the case where e.g. a licence has been suspended prior to the finalisation of the appeal process, that any publication might be unfair.	Outside scope of current Bill. The terms referred to have been in use since inception of the Act as is the duty imposed on the Registrar to publish the details of a withdrawal or a suspension. It is further not unfair as the lodging of an appeal does not suspend the Registrar's decision. Consumers therefore have a right to know whether a person is authorised to render financials services.
SAIA &BASA	178	Clause 178(f) – Section 9 Prescribing by web-site unaided by Government Gazette is not supported.	**Comments noted:** 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.
SAIA	178	Clause 178(g) & (h) – Section 9(4)(a) Same comments as under clause 178(e).	See comments under clause 178(e).
SAIA	179	Clause 179 – Section 11(2) Same comments as under clause 178(e).	See comments under clause 178(e).
IRF	180	Clause 180(c) – Section 13 Clarity Remove "contemplated" as this implies a wider reading other than what is stated and replace with "stated"	**Agreed.** The removal thereof is proposed in this section.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
SAIA	180	Clause 180(a) – Section 13 Clarity regarding the application of this section within the context of juristic representatives and this section should be renumbered.	**Noted.** This section prohibits a person from rendering financial services as a representative if such person does not comply with the fit and proper requirements. The same prohibition would apply to a juristic representative insofar as it relates to the specific fit and proper requirements applicable to juristic representatives.
BASA		Fit and proper requirements cover varied aspects. Where a representative is not fit and proper s/he will be debarred. On-going compliance with CPD will always be a moving target. To keep track of fit and proper status changes in relation to CPD, with corresponding requirements to either mandate or not mandate a representative is not practical. Recommend that the insertion be deleted.	**Disagree.** A person will only be regarded as non-compliant when he/she must have met the requirements and have failed to do so. Such person must therefore be debarred.
BASA	180	The subordinate legislation allows for completion of various fit and proper requirements after employment date. Prohibition against an individual not acting as a representative, unless he meets the fit and proper requirements is inconsistent with Board Notice 106 of 2008. Further, any non-compliance in this regard is sufficiently addressed by the FSPs obligation to debar such representatives as referred to in section 14(1) of the Act.	**Disagree.** A person will only be in contravention of the fit and proper requirements when he/she is required to have met certain requirements but have failed to meet it. This section is therefore not inconsistent with Board Notice 106.
BASA	180	Clause 180(c) – Section 13 With reference to (i). Previously the fit and proper requirements referred to honesty, integrity and competence in relation to a representative. The proposed amended definition now may also include “financial soundness”. Please refer to the comment Ad clause 174 above.	**Disagree.** See comment in clause 174 above.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
SAIA	181	Clause 181 – Section 14(3)(b) Clarity is required regarding the timing of the updating of information of the official website and prescribing by website unaided by Government Gazette is not supported.	**Noted.** The purpose is to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette.* This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.
SAIA	182	Clause 182 – Section 14A(4) Prescribing by website unaided by Government Gazette is not supported.	**Noted.** The purpose is to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette.* This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.
CISA	184	Clause 184 – Section 17(1) It is debateable whether this clause read with clauses 171 and 174 are in the interest of providers and the industry. Compliance officers will be required to oversee the FSP's compliance function that may an increase in the cost of compliance.	**Disagree.**A compliance officer must in terms of the Regulations supervise the compliance function established by the FSP as part of its risk management framework and must make recommendations as regards any aspect of required compliance or the compliance function. The proposed amendment aligns the Act with the Regulations currently applicable to compliance officers. There should, therefore, be no increase in the cost of compliance.
SAIA	184	Clause 184(a) – Section 17(1)(a) &(b) Concerned that an external compliance officer would be required to oversee the compliance function rather than simply monitoring compliance.	**Disagree.**The provision does not extend the scope of the compliance officer's responsibilities. See the comment above.
ASISA	184	Clause 184(a) – Section 17(1)(a) It is recommended that the references to section 35(1)(c) and subsections (1)(b) and (2(a)(i) be placed in sequence.	**Agree.** The comment has been addressed in the amendment for consideration. "(a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
			subsections (1)(b) and (2)(a)(i) and section 35(1)(c) appoint one or more compliance officers to oversee the provider's compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar."
IRF	184	Clause 184(c) – Section 17(2) Reasonable time must be allowed to comply with any new fit and proper requirements. Imputing failure of a compliance officer to submit required reports as failure of the provider is not fair where the provider has an independent compliance officer over whom the provider has no control.	**Noted.** The commentator's concern is addressed by the provisions of PAJA. The Registrar is subject to PAJA and it is therefore not necessary to stipulate in the Act the administrative procedures that he must follow. **Disagree.** It is the responsibility of the provider to establish a compliance function and to ensure compliance with the Act. The provider ultimately remains responsible for compliance and not the compliance officer.
SAIA	184	Clause 184(c) - Section 17(2)(a)(i) Clarification is requested pertaining to the content of the guidelines and criteria as provided for in this proposed subsection.	Outside the scope of this Bill. However, the criteria and guidelines have already been determined by the Registrar in 2004.
SAIA	184	Clause 184(c) - Section 17(2)(a)(ii) Concern regarding time period for compliance with the amendment guidelines. It is recommended that the time period determined by the registrar be communicated via the official website and the gazetting process, and further that a consultation process be established.	The Registrar is subject to PAJA and must comply with the requirements relating to fair administrative procedure. See general comments regarding consultation.
SAIA	184	Clause 184(c) - Section 17(2)(c) Clarification is requested pertaining to the debarment process, as well as the compliance officer appointment and licensing processes.	Outside the scope of this Bill. However, reference is made to section 9 of the Act that details the processes referred to.
SAIA	184	Clause 184(d) – Section 17(2)(d)	

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		Clarification is required as to the timing and updating of information on the website and prescribing by website unaided by a Gazette is not supported.	**Noted.** The purpose is to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette.* This is consistent with the Interpretation Act, will result in significant cost savings and will result in more effective communication and publication.
SAIA	184	Clause 184(d) – Section 17(4) Similarly to our concern raised at S171 above, should it be deemed a failure by the FSP should the compliance officer not furnish the reports as contemplated under paragraph (a), it should be made a requirement that when such a request is made to the compliance officer by the registrar, that the registrar makes such request known to the FSP concurrently so that the FSP is aware of the request.	**Noted.** The Registrar always notifies the FSP of any non-compliance with the Act.
CISA	192	Clause 192 Some of the infringements for which a fine may be imposed are fairly minor contraventions. It is therefore difficult to comprehend the reason for the increase.	**Noted.** The penalties have been aligned across the legislation administered by the Financial Services Board. The amendments were further necessitated by the fact that these penalties have not been revised since 2002 and are not reflective of the seriousness of the offences. It must be further be noted that the amount referred to is a maximum and therefore not an absolute. The Court will exercise its discretion when determining a penalty after having cognisance of all the facts.
SAIA	192	Significant increase in fines from R1 000 000 to R10 000 000.	**Not supported.** The increase in fines ensures appropriate sanctions are in place and serve to act as a deterrent for contravening a section of the respective Acts. See comment above.
SAIA	195	Clause 195 – Section 38A This provision should be reworded to address and note the interest of the policyholder.	**Disagree.** The policyholder is a 'client' of the FSP and will therefore be included.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
BASA	**195**	The general comments regarding business rescue refers. In addition, the application of Chapter 6 of the Companies Act to an FSP raises the following concerns: Legal entities such as Banks comply with financial soundness and capital adequacy requirements as prescribed by the Banks Act. The Registrar currently issues a FAIS license to an authorised financial services provider "FSP", who is in turn defined as providing either FAIS advice or intermediary services or both. There is no current requirement in FAIS or in the proposed amendment, that an authorised FSP must be a "company" as defined in the Companies Act or even that the FAIS license must be held by the legal entity in a Group of companies. This results in the issue of FAIS licenses to: business units, segments and divisions within larger banking groups. In some instances none of the FAIS licenses is held by the legal entity. Each FSP in the group is required to submit annual audited financial statements to the Registrar. Those FSPs which are business units, segments and divisions report annually to the FSB under the legal entity's annual audited financial statements. These reports have, thus far, been accepted by the Registrar as sufficient to meet their requirements. To introduce Chapter 6 of the Companies Act as being applicable to an authorised financial services provider "FSP" which is neither a legal entity nor a company will result in untenable anomalies such as an individual business unit,	See general comments and proposed new provision that provides that this section does not apply if another registrar is authorised in terms of Financial Services Board legislation or in terms of banking legislation, to make an application for the business rescue of a provider. It must further be noted that the purpose of business rescue proceeding is to facilitate the rehabilitation of a company that is in distress in order to protect the interests/rights of clients/creditors. The Registrar should be able, where it is in the interest of clients of an FSP that is in financial distress to temporarily supervise the FSP, and or the management of its affairs, business and property. Currently the only legal avenue open to the Registrar in order to protect consumers is to apply for a curatorship order. This is not always the most appropriate action especially when less intrusive methods are available. It must further be noted that this section only empowers the Registrar to apply to the court for an order to begin business rescue proceedings and in its application the Registrar will have to show that the order sought will be in the interest of clients or the financial services industry. This section, therefore, does not provide the Registrar with wide powers which could be exercised unilaterally. The FSB further disagree that this section extends the oversight role of the FSB to pronounce on the financial soundness of the legal entity instead of that division of the legal entity that is authorised as a FSP. Currently, those FSPs must submit annual audited financial statements and must comply with various financial soundness requirements and in order to comply with the current applicable statutory provisions they themselves rely on the legal entity's financial statements and its compliance with the FAIS financial soundness requirements. The commentator's arguments are

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		segment or division in a legal entity may be subject to business rescue. It is dubious as to whether or not the Companies Act or Banks Act legislation contemplates or	therefore contradictory to the current factual position.
CISA		permits that business rescue may be undertaken in respect of smaller business units which are neither a legal entity nor company? Were this section to be introduced, it would extend the oversight role of the FSB to pronouncing on the financial soundness requirements of the legal entity, which is not itself a FAIS licensee. In this regard it is significant to note that any action undertaken by the Registrar does not contemplate consultation with other Regulators such as the SARB. The commentator is concerned that that Registrar may place an entity under business rescue without reference to any other body.	See comments above.
ASISA	195	Clause 195 – Section 38A(2) The requirement that the Registrar be "satisfied" is too subjective and too wide. It is proposed that reasonable grounds should be included.	**Disagree.** See general comments and comments above regarding the limitation on the exercise of the Registrar's power.
BASA	195	Clause 195 – Section 38B This section creates a wide discretion on the part of the Registrar. Interest is a wider concept and embodies more than rights, further the application can be made without taking into account the solvency of the provider. Recommendation: The clause should be amended to be in line with the common law requirements for liquidation and sequestration. It is accepted that Parliament can change the common law by enacting statute but it is argued it would be	**Disagree.** The recommendation is not acceptable as it is too restrictive. See further new provision that provides that this section does not apply if another registrar is authorised in terms of Financial Services Board legislation or in terms of banking legislation, to make an application for the liquidation or sequestration of a provider

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
		undesirable to change the common law requirements for insolvency. Further the section does not confine the concept of interests, it is submitted that if the section is retained then the 'interests' referred to, should be confined to 'financial interests'.	
CISA	195	The commentator is concerned that it would be in the sole judgement of the Registrar whether or not the FSP will in future be able to meet the financial soundness requirements imposed by the Act.	**Disagree.** The Registrar must apply to Court for the sequestration or liquidation of a provider and must be able to show that such application is necessary to protect the interests of the provider and for the integrity and stability of the financial sector.
ASISA	195	Clause 195 – Section 38B(1) The mere consideration by the Registrar is subjective and too wide and it is therefore proposed to include "on reasonable grounds". The action must be justifiable. In terms of the Insolvency Act, a debtor has to commit an act of insolvency before the creditor may apply for the sequestration of the debtor's estate. The Companies Act regulates the liquidation of a company and the company must be financially distressed to enable the creditor or members/shareholders to apply for liquidation. The Clause by Clause Motivation of Proposed Amendments Memorandum does not indicate a reason for the Registrar to be able to apply to the Court for the sequestration or liquidation if the provider is solvent. It is suggested that the reference thereto should be deleted.	**Disagree.** Subsection (1) must be read with subsection (2) that provides that a Court in deciding an application brought by the Registrar must take into account whether the sequestration or liquidation of a provider is reasonably necessary to protect the interests of the provider and for the integrity and stability of the financial sector.
IRF	195	Clause 195 – Section 38C Is this now different to Board Notices and if so how? Not sure of the rationale of 38C as the registrar has been able to achieve what is contemplated in section 38C by issuing Board Notices.	**Disagree.** The amendment seeks to empower the Registrar to issue directives to ensure compliance with or prevent a contravention of this Act. as such the proposed amendment.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
ASISA	**195**	The registrar should be cautious not to issue directives that would amount to plenary legislative powers. It should also be a requirement that a consultation process be followed to afford the affected parties the opportunity to comment. ASISA members are concerned that directives which contradict the obligations of the Administrative Justice Act may be issued. The regulator should consult with those affected, give written reasons for decisions, act rationally and reasonably in exercising administrative powers.	**Disagree.** The proposed amendment does not afford the Registrar plenary legislative powers. The Legislature (Parliament) may delegate its legislative powers to another body (including a public entity). This principle has been confirmed by the Constitutional Court. Any person that feels aggrieved by a decision or rule made by the Registrar may approach the Courts.
CISA	195	This section gives the Registrar sweeping powers to rule by decree. The exercise of supervisory powers when not subjected to review and the imposition of checks and balances has a tendency to lead to the abuse of power.	**Disagree.** See comment above.
SAIA	195	Clause 195 – Section 38C(4) & (5) These sections wish to deviate from the provisions of PAJA which was created to give effect to the right to administrative action that is lawful, reasonable and procedurally fair. Concerned that these proposed derogation from PAJA would not be fair and the inclusion of a statement to the effect outlining reasons for a departure would not be a suitable consolation for derogation from PAJA.	**Disagree.** See comments above. In addition, it is conceivable that certain conduct must be prohibited or restrained as a matter of urgency, therefore subsection (4) has been provided for.
BASA	195	Section 1(1) - Definition of "intermediary service" Definition of 'intermediary service' should be amended as it is wide in its ambit and subject to varied inconsistent interpretation, it should be aligned with similar definition in Long-term Insurance Act and the General Code of Conduct does not distinguish between advice and intermediary services.	Outside scope of current Bill. FAIS Act covers the rendering of financial services in respect of a wide variety of products and not only insurance products. The General Code of Conduct does distinguish between advice and intermediary services, and definition is not problematic.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
Esselaar attorneys		General comment Section 65 of the Bill proposes to amend section 28 of the Financial Services Board Act to exempt any financial service, product or institution regulated by the Financial Services Board ("FSB") and the FSB itself from the scope of the CPA, as higher standards of consumer protection are being implemented in terms of financial sector legislation. The Bill, however, fails to introduce this higher standard of consumer protection into the FAIS, thereby creating gap in South African law. We therefore submit that the amendment proposed in s 65 is premature and will deprive consumers of several protections afforded to them in terms of the CPA. The commentator recommended that the following sections be inserted into the Act. 6 B Treating Customers Fairly (1) The Registrar, for the purposes of this Act, by notice on the official website must determine requirements for financial services providers that oblige them to pay due regard to the interests of their customers and treat them fairly. 6B (2) Up until [date] no provision of this Act must be interpreted as to prevent a consumer from exercising any rights the consumer already had under the Consumer Protection Act, No.68 of 2008.	Outside scope of current Bill. In addition, the rendering of financial services as defined in the Act is already excluded from the ambit of the CPA (excluded from the definition of "service" in section 1 of the CPA). The rendering of financial services was excluded from the CPA as it was accepted that the Act already provided for consumer protection at the same if not higher level than the CPA. The Act already impose a requirement on financial services providers to render financial services honestly, fairly, with due skill, care and diligence, and in the interest of clients and the integrity of the financial services industry.
FSB/NT	173, 174, 176, 184, 185,	Clauses 173, 174, 176(a) and (h), 184(d), 185 and insertion of clauses 197 and 198 Substitution of reference to "Gazette" to "official website".	To align provisions in Act relating to the publication of information on the official website with the amendments proposed in this regard.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
	197 and 198		
FSB/NT	171	Clause 171 – Amendment of sub-clause (b) The proposed amendment expands the grounds on which the Registrar may conduct an onsite visit.	The purpose of the amendment is to ensure that the Registrar's powers in this Act are commensurate with the powers afforded to the Registrars referred to in the other legislation administered by the FSB.
	176	Clause 176 – Amendment of sub-clause (f) The amendment expands the type of factors the Registrar must have regard to when imposing conditions on a person's licence.	The purpose of the amendment is to include as factors to be considered by the Registrar the category or subcategory of products in respect of which a person may render financial services.
FSB/NT	178	Clause 178 – a of new sub-clause (d) and consequential amendments to other sub-clauses The proposed amendment expands the grounds on which the Registrar may suspend or withdraw a FSP's licence.	The purpose of the amendment is to ensure that the Registrar's powers in this Act are commensurate with the powers afforded to the Registrars referred to in the other legislation administered by the FSB with the exception of the new proposed paragraph (e). The purpose of the new proposed paragraph (e) is to ensure that a juristic entity does not conduct the business of a FSP if it does not have a key individual that was approved by the Registrar and who is responsible to manage and oversee the rendering of financial services by such FSP.
FSB/NT	180	Clause 180 – Amendment of new sub-clauses (a) and (d) The proposed amendment clarifies that a FSP's representative, when rendering financial services on behalf of the FSP, may only such services in the name of the FSP.	The purpose of the proposed amendments is to clarify the relationship between a FSP and its representative and to ensure such relationship is disclosed to the client.
FSB/NT	190	Clause 180 – Insertion of new sub-clause (b) The proposed amendment extends the prohibition to representatives of FSPs from carrying on an undesirable business practice.	The purpose of section 34 of the Act is to protect consumers by ensuring that the Registrar is able to stop any practice that is likely to have the effect of- harming the relations between FSPs, clients or the general public; unreasonably prejudicing any client; deceiving any client; or unfairly

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, , 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Regulatory Response
			affecting any client. Excluding representatives from the prohibition to continue with a practice that has been declared as being an undesirable business practice makes no sense of this section as it is mostly representatives that deal directly with the client.
FSB/NT	**195**	Clause 195 – Insertion of new subsections in sections 38A and 38B The amendment excludes the applicability of these sections to persons authorised in terms of any other legislation administered by the FSB or in terms of banking legislation.	The purpose of the amendment is to ensure that the Registrar is not able to apply for business rescue or liquidation if the FSP is authorised in terms of FSB administered legislation, eg. the Insurance Acts.

RESPONSES TO COMMENTS RECEIVED ON THE
COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, NO.45 OF 2002

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	200	"(5) (a) A manager may, with the approval of the registrar, delegate any function listed in the definition of 'administration' to any person (in this section referred to as the 'delegated person'). (b) Anything done or omitted to be done by the delegated person in the performance of a function so delegated, must be regarded as having been done or omitted by manager. (c) The registrar has, in respect of a delegated person, all the powers and duties conferred or imposed upon him or her in respect of a manager." It is imperative that a transitional provision be included to ensure that all current delegated functions will not be null and void when this section becomes effective as prior approval of the Registrar could not have been obtained for those functions. If such provision is not included, it may impact service delivery to clients. It is proposed that provision be made for a written agreement between the manager and the party to which the function has been/will be delegated.	**Agree** to the transitional period of 6 months.
ASISA	205 (c)	(1) If the registrar, after an investigation 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 may	**Agree** to the proposals to include the words “on reasonable grounds” and “written”.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		(i) instruct a manager to wind up a portfolio or amalgamate a portfolio with another portfolio; (j) if a manager fails to comply with a **written** request, direction or directive by the registrar under this Act , 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. The mere consideration by the Registrar is subjective and too wide and it is therefore proposed to include "on reasonable grounds". The action must be justifiable. Is it the intention for the Registrar to be able to assume the authority of the manco to do what is required in terms of the request, direction or directive? How will this happen in practice? ASISA members are concerned that they may not be afforded a fair and reasonable amount of time to comply with a request. Written requests, directions or directives should clearly stipulate a compliance date. The Clause by Clause Motivation of Proposed Amendments Memorandum indicates that the Registrar may in his/her opinion decide to assume authority for example when the continued existence of the portfolio is not viable. What will the basis be for determining the viability of a portfolio? ASISA members are of the view that these should be communicated properly to all industry participants. The existing section 15(1)(e) provides the registrar with the	

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		power to instruct the manco to wind up a portfolio. It appears as if the proposed subsection (i) is a duplication.	
ASISA	206	Directives 15B. (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person to whom the provisions of this Act apply. (2) A directive issued in terms of subsection (1) may— (a apply generally; or (b) be limited in its application to a particular person or to a category of persons. (3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive. (4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure. (5) The registrar may publish a directive in the Gazette and any other media which the registrar deems appropriate if the directive is issued to ensure	Comments noted. However, it is our view that a consultation process should not be necessary in respect of contraventions of the Act. Further, the provisions take due regard of administrative justice. It is assumed that the Registrar will act reasonably and fairly in all instances.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		the protection of the public in general. The registrar should be cautious not to issue directives that would amount to plenary legislative powers. It should also be a requirement that a consultation process be followed to afford the affected parties the opportunity to comment. ASISA members are concerned that directives which contradict the obligations of the Administrative Justice Act may be issued. The regulator should consult with those affected, give written reasons for decisions, act rationally and reasonably in exercising administrative powers.	
BASA	212	Clause 212 amends section 41 which deals with supervisors of co-operative banks. It is unclear which subsection of section 41 the clause attempts to amend. This amendment needs to be revised.	CISCA does not deal with banks.
ASISA	226	~~[The registrar may bring an action in a competent court in the name of, and for the benefit of, an investor or a specific group of investors for recovery of damages for a loss referred to in subsection (2).]~~ ASISA members are of the opinion that it is not in the best interests of investors to delete this clause. This section affords the registrar the ability to bring court action against a manco if investors have suffered harm due to the manco being noncompliant with the act. Investors were protected with this clause and many investors would not have the resources to take action.	**Agreed.** The provision will be retained.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	212	ASISA members understand that the Collective Investment Schemes Control Act is being reviewed in its entirety. It is however suggested that amendments to separate the roles of trustee, custodian and administrator be considered for inclusion in this Bill.	Not considered urgent at this stage and therefore can be handled under the review of CISCA.

RESPONSES TO COMMENTS RECEIVED ON THE
LONG-TERM INSURANCE ACT, NO. 52 OF 1998 AND SHORT-TERM INSURANCE ACT, NO. 53 OF 1998

RESPONSES TO COMMENTS RECEIVED ON THE LONG-TERM INSURANCE ACT, 1998

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	66 (f)	It is suggested that "state-owned company" be defined separately from a "public company" as the Companies Act defines the terms separately.	It is acknowledged that the Companies Act defines a public company and state-owned company separately. However, for purposes of the Insurance Acts it is prudent and efficient to include the latter in the definition of public company. The definition allows for any reference to a public company in the Insurance Acts to also refer to a state-owned company; the latter term therefore need not be included at each reference to public company in the Bill.
BASA	66	The Bill uses the terms 'independent intermediary' and 'representative' but does not provide or include a definition for these terms. The current Long-term Insurance Act does not have a definition for these terms. Recommendation: The Bill should be amended to provide for a definition for these terms and these definitions should be in line with those in the FAIS Act.	The terms are defined in the Regulations issued under the Insurance Acts and is best defined therein. Also see the clause by clause explanation of these amendments.
IRF	66 (a)	Consideration should be made to a formal working committee working with the Registrar of Long term Insurance made up of relevant industry role players e.g. ASISA, IRF etc. There is a number of notifications by the Registrar that are now allowed to be done via the "official website" Use of electronic means of communication will exclude any role players who do not have access to computers and internet facilities and no provision is made for the registrar's obligations in publicising this website.	An amendment to the Financial Services Board Act has been provided for that empowers the Minister of Finance to prescribe a code of conduct for the Financial Services Board, which code of conduct will address the consultation processes to be utilised. This amendment is informed by the practicality, transparency and cost implications of publishing matters in the Government Gazette. Note that the latter is inaccessible to most persons. Publication on the website will increase cost effectiveness and improve access. Note that subordinate legislation will still continue to be published in the Government Gazette, but also on the website.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		Is prescribe the actual notice on the official website or is it the publication allowing for publication on the official website?	Comment not understood. Please note that publications by the Registrar are excluded from this definition. The definition is consistent with principle based regulation that requires insurers to exercise their judgement as to how best publication should take place.
IRF	67	The concern has always been the weight that should be attached to communication issued by junior members of the Registrar of Long Term Insurance's office-whether they are duly authorized. If they are duly authorised (as they should be) then the public is entitled to act or rely on any communication that is issued by such staff.	Comment not understood. The amendment clarifies the roles of the Registrar and Deputy Registrar. It does not address communication by other employees – the latter will be addressed under the Financial Services Board Act's requirements relating to delegations.
ASISA	69	The registrar may, where a directive is issued to ensure the protection of the publican general, publish the directive [in the Gazette] on the official website and any other media that the registrar deems appropriate. Please refer to the overarching comments. In addition, the word "may" is permissive. It is believed that directives issued to ensure the protection of the public in general must be published.	Circumstances may exist where it may not be prudent to publish a directive, given potential broader financial stability issues.
FIA	69	While we understand what is intended, we believe that allowing for important changes to be published on the FSB's official website only could result in considerable market confusion and lead to an increase in the disregarding of requirements, as it is time-consuming to have to search the website on a daily basis, while many	This amendment is informed by the practicality, transparency and cost implications of publishing matters in the Government Gazette. Note that the latter is inaccessible to most persons. Publication on the website will increase cost effectiveness and improve access. Note that subordinate legislation will still continue to be published in the Government Gazette, but also on the website.

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		intermediaries do not have easy access to the internet.	
FIA	69	"search the premises……. for any document". The powers of search and seizure should be restricted to documents which bear relevance to the Long-term Insurance business.	This is implied as the scope of the Insurance Acts defines the parameters within which the Registrar may act.
ASISA	69	After an on-site visit or inspection has been carried out in terms of subsection (9),the Registrar may direct the long-term insurer, independent intermediary, representative or person concerned to take any steps, or to refrain from performing or continuing to perform any act or to terminate or remedy any contravention of or failure to comply with any provision of this Act: Provided the Registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001). The reference to subsection (9) appears to be incorrect.	**Agreed.** Corrected.
IRF	69	It should be "shall" - in all instances where there is a directive for protection of the public, it should be published and no discretionary power should be allowed. Any inspections should be on adequate prior notice, detailing the scope of the inspection. Following an inspection a detailed report must be issued by the Registrar to the inspected entity giving reasonable time for effecting any remedial action.	Circumstances may exist where it may not be prudent to publish a directive, given potential broader financial stability issues. Please see the Inspection of Financial Institutions Act that addresses the matters raised.

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IRF	71	Is this incorporation of provisions of the Consumer Protection Act - is more to be done by way of directives as there is provisions of CPA that have not been included.	This is an existing provision (previously in section 4(3)) of the Insurance Acts. It has been moved to section 8 as it is better placed there and has been enhanced to address the regulatory gap that exists.
FIA	71	"publish any advertisement ……..that does not prominently include the name of the long- term insurer….. underwriting the policy". This should not apply to instances where, for example, an intermediary is advertising, publishing etc. on a generic basis as opposed to an insurer-specific product.	This is implied in the current wording. Further, note that this is an existing provision (previously in section 4(3)) of the Insurance Acts. It has been moved to section 8 as it is better placed there and has been enhanced to address the regulatory gap that exists.
ASISA	73	The proposed amendment removes the opportunity for the long-term insurer to remedy a contravention. The Clause by Clause Motivation of Proposed Amendments Memorandum does not indicate a reason for this removal. ASISA members are of the view that an insurer should be given the opportunity to remedy any contravention and therefore propose the inclusion of paragraph (bF). Paragraph (bD): • Although the term "fit and proper" is used elsewhere in the Long-term Insurance Act it is not defined, nor does the Registrar have the authority to prescribe fit and proper requirements. What will be regarded as "fit and proper"? • It is submitted that "in the opinion" is too wide a discretion. At the very least it should be qualified as "reasonable". • "Sound corporate governance principles" is not defined and may therefore be open to interpretation. If the intention was to refer to King III, it should be borne in mind that the aim of King III was for it not be incorporated	Please note that any action by the Registrar under section 12 is subject to the Promotion of Administrative Justice Act (PAJA). The Registrar must therefore grant the insurer an opportunity to state its case. Further, if the Registrar is not acting reasonably, his / her decision may be taken on review. The following definition of "fit and proper" will be provided for: **"fit and proper requirements"** means, amongst others, qualities of competence, integrity and financial standing as may be prescribed by the Registrar. The requirement relating to sound corporate governance principles requires the insurer to apply its mind to what is relevant and appropriate; this is consistent with the principles of principled based regulation. Again, as stated above the Registrar is subject to PAJA and the insurer has a number of remedies in respect of decisions of the Registrar that it disagrees with.

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		by reference into legislation as it is meant to be aspirational in nature. The regulator may consider the inclusion of specific aspects thereof.	
ASISA	73	ASISA members prefer the original wording as it contributes to legal certainty.	It may be necessary to act under section 12 within a lesser period of 30 days given specific prevailing circumstances, hence the reasonable period. As stated above the actions of the Registrar is subject to PAJA.
ASISA	73	ASISA members recognise that the Registrar should be able to act swiftly but given the nature, scale and complexity of long-term insurance business and its potential impact on policyholders and the stability of the financial system, we are of the opinion that the Minister should at least be consulted before the carrying on of such business is prohibited.	This is a regulatory matter (as opposed to a policy matter) and the Registrar is best placed to take this decision. This is consistent with the principle of operational independence contained in the international standards set by the International Association of Insurance Supervisors (IAIS).
ASISA	73	It is submitted that the word "may" in subsection 3 should be replaced with the word "must". Once a notice envisaged in subsection 12(2)(c) has been issued, the Registrar must act in one of the prescribed ways.	There are other corrective actions that the Registrar may take to address the reasons for the prohibiting an insurer from conducting business prior to acting in accordance with subsection 12(2)(c). This discretion afforded to the Registrar is in the interest of the insurer.
BASA	73	The section affords the Registrar a wide discretion. The Registrar will now become the sole arbiter of whether or not an insurer should be permitted to continue doing business. Until this piece of Legislation, the Minister had to authorise the Registrar in writing to do so. Recommendation: section 12 should be amended to ensure that the circumstances under which the Registrar	The requirement relating to sound corporate governance principles requires the insurer to apply its mind to what is relevant and appropriate; this is consistent with the principles of principled based regulation. Again, as stated above the Registrar is subject to PAJA and the insurer has a number of remedies in respect of decisions of the Registrar that it disagrees with.

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		may apply this prohibition are clear and afford as little discretion as possible.	This is a regulatory matter (as opposed to a policy matter) and the Registrar is best placed to take this decision. This is consistent with the principle of operational independence contained in the international standards set by the International Association of Insurance Supervisors (IAIS). Please note that any action by the Registrar under section 12 is subject to the Promotion of Administrative Justice Act (PAJA). The Registrar must therefore grant the insurer an opportunity to state its case. Further, if the Registrar is not acting reasonably, his / her decision may be taken on review.
IRF	77	The requirement for having two of auditors should be linked to companies above a prescribed size. Consideration should be given for exemptions for long term insurance companies in liquidation.	This provision does not require an insurer to have two auditors. The requirement is to have at least one.
IRF	78	No mention is made of the circumstances under which the Registrar will exercise powers to appoint auditors. The powers should be exercised where it is in the public interest, where a company has failed to comply in making the required appointment.	Section 21 indeed states that if a long-term insurer for any reason fails to appoint an auditor that the Registrar may do so. The amendment proposed facilitates alignment with the Companies Act only. No substantial amendment is made.
ASISA	79	ASISA members suggest that the original reference to the "board of directors" be retained. If it is not retained, it places the duty of appointing an audit committee on the shareholders.	**Agreed.** See revised wording

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ASISA	81	Proposed wording: "an executor of the estate of a deceased shareholder of a company, a trustee of a shareholder whose estate has been sequestrated, or an administrator, curator, or guardian of a shareholder who is otherwise under disability." Wording is being proposed to improve the reading of the subsection.	**Agreed.** Proposed wording accepted.
BASA	81	Clause 81 of the Bill amends section 25 which deals with the registration of shares in the name of a nominee. The amendment in the Bill refers to 'a shareholder who is otherwise under disability'. It is unclear what this means. It could mean physical disability or it could be referring to a change in the legal status of the shareholder. Recommendation: section 25 needs to be reviewed. It is unclear what the drafters intended when they used the term 'shareholder who is otherwise under disability'.	See comment directly above.
ASISA	82	(Although this provision is in substance currently included in the Act, legally and practically it is not possible for a company to control the acquisition or holding of shares in a long-term insurer, even more so on an indirect basis. It is not practical or reasonable to expect a person to not acquire or hold shares in a related party of that long-term insurer. This would for example mean that a person may not acquire or hold shares in an investment management company that is related to a long-term insurer without the approval of the Registrar. How will this be dealt with if the related party is a listed company? A financial services company would not be able to sell for example a special purpose vehicle company or part of its bank without the	**Agreed.** The words "and no long-term insurer shall allow a person to" have been removed from subsection (2). A new subsection (2A) has been added – "(2A) A long-term insurer must inform the Registrar if any person, directly or indirectly, acquires shares or any other financial interests referred to in subsection (1) or (2) in that long-term insurer.".

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		regulator's approval simply because they are part of the same group.	
ASISA	85 (b)	ASISAmember's support that logical amalgamations be approved by the Registrar. The jurisdiction of the Court in respect of a compromise, arrangement, amalgamation, demutualisation or transfer is however unclear. The circumstances in which Court approval will be required are not indicated. This creates uncertainty.	The provisions of the Long-term Insurance Act have been aligned to that of the Short-term Insurance Act. Court approval will in future not be required for a fundamental transaction.
ASISA	86 (c)	It doesn't make sense to require that notice of an application to the Registrar be lodged 60 days prior to the lodging of the application to the Registrar. This section was only relevant when the application had to be made to court and notice of such application had to be given to the Registrar in order for it to evaluate same and comment to the court. Insofar as the court will no longer be required to approve the transfer of business, this requirement falls away and the section should provide that an application should be lodged in writing to the Registrar in the prescribed format. Paragraph (ii) may be amended to provide that the Registrar may, upon receipt of such application direct that a notice be published in the Gazette and such other media that the Registrar may require.	The provisions of the Long-term Insurance Act have been aligned to that of the Short-term Insurance Act. The 60 day provision has worked well in the Short-term Insurance Act context. It allows for processes and procedures to be agreed upfront. The process and procedures under the Short-term Insurance Act have over time proved to be more than effective, efficient and adequate to protect policyholder interests.

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ASISA	86 (g)	by the substitution in subsection **[(2)]** (1) for the paragraph (d) of the following paragraph: The reference to subsection (2) is incorrect and should be replaced with a reference to (1).	**Agreed.** Corrected.
BASA	88	Clause 88 of the Bill amends section 40 which deals with approved transactions. Section 40 is amended by removing all references to an order of court being required and replacing it with an approval by the Registrar. The amendment goes on to state that an officer of the Deeds Registry must effect transfer of the relevant bond, title deed or registration certificate upon the presentation of the certified approval. The Master of the High Court deals with the Deeds Registry and acts on instruction of the High Court. It would be inappropriate for the Bill to usurp the powers of the court. Recommendation: The Bill should not remove the reference to the court and court order as found in the current version of the Long-term Insurance Act.	The provisions of the Long-term Insurance Act have been aligned to that of the Short-term Insurance Act. The 60 day provision has worked well in the Short-term Insurance Act context. It allows for processes and procedures to be agreed upfront. The process and procedures under the Short-term Insurance Act has over time proved to be more than effective, efficient and adequate to protect policyholder interests.
ASISA&BASA	89	**"[Judicial management] Business rescue and winding-up of [~~short-term~~] long-term insurers".** It is recommended that the erroneous reference by corrected.	**Agreed.** Corrected.
ASISA	90	The requirement that copies of the documents must be lodged with the Registrar before application is set down for hearing does not provide for lodging of documents within a reasonable time before setting down for hearing to allow the Registrar to intervene timeously.	**Agreed.** The paragraph has been amended to read as follows: (a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application have been lodged with the Registrar at least 60 days before the application is set down for hearing;

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ASISA	93	The Clause by Clause Motivation of Proposed Amendments Memorandum states that the amendment is to authorise the Registrar to prescribe what constitutes an inducement. The current wording of the clause in fact prohibits inducements.	**Agreed.** Revised wording accepted.
IRF	93	Registrar to determine what constitutes an "inducement".	See comment directly above.
ASISA	94	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 LISPs (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 MareevsBooysen case will be confirmed in legislation. This will create enormous financial risk in the industry, which should not be underestimated.	**Noted.** A provision allowing for the staggered / delayed implementation of various sections of the Bill will be provided for.
BASA	94	Clause 94 amends section 49 of the Long-term Insurance Act in respect of the limitation of remuneration to intermediaries. This proposed amendment pre-empts the policy process that is underway within the FSB, and in consultation with the industry, regarding the remuneration policy for intermediaries in the insurance sector. As such this proposed amendment is premature and should be deleted from the Bill.	See comment immediately above.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	97	"(1) Despite the terms of an assistance policy entered into before 1 June 2009, the policy holder 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 must be equal in value to the **policy benefit** [~~**cost the long-term insurer**~~] ~~policy benefit expressed otherwise than as a sum of money that would have [**incurred**] been~~ ~~provided had the policy benefit been provided otherwise than as a sum of~~ ~~money.~~" The alternative wording is proposed to improve the reading of the subsection.	The proposed amendment clarifies appropriately that the value of the policy benefit that the policyholder is entitled to must be the same irrespective of it being provided in cash or as a service.
IRF	97	Provision equating a cash request to the sum insured	See comment immediately above.
ASISA	99	ASISA members are of the view that this provision may afford the Registrar plenary legislative power for consumer protection measures, especially if the Minister does not approve the rules. Please refer to the overarching comments. Subsection (4) may be redrafted to refer to the prescribed code of conduct for the FSB to provide guidance on consultation processes and practices to ensure appropriate consultation. ASISA members are concerned about the time frames for compliance in those instances where the Register may deem it necessary to publish rules without any prior notice. It is submitted that the powers granted to the Registrar in subsection (5) is too wide and that the circumstances should be qualified. The Registrar should not generally be able to publish rules	The proposed amendment does not afford the Registrar plenary legislative powers. The Legislature (Parliament) may delegate its legislative powers to another body (including a public entity). This principle has been confirmed by the Constitutional Court. It is conceivable that certain conduct must be prohibited or restrained as a matter of urgency, therefore subsection (5) has been provided for. Any person that feels aggrieved by a rule made by the Registrar may approach the Courts.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
		without consulting the parties to which the rule will apply.	
FIA	99	We are of the opinion that it would not be advisable for the FSB to be given the powers to determine the specifics of policy wording, which essentially forms part of a conventional commercial contract between parties.	The Registrar must be able to address policy wording that is unfair to policyholders, despite the fact that such wording may be included in a commercial contract.
BASA	99	Clause 99 of the Bill amends section 62, by substituting section 62 for a section which deals with the protection of policyholders. The section provides that the Registrar may make rules aiming to ensure to that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally. Section 62(5) states that if circumstances necessitate the immediate publication of the rule, the Registrar may publish the rule without complying with the comment process provided for in section 62(4). The Bill does not provide any indication what would qualify as circumstance necessitating immediate publication. The section affords the Registrar a wide discretion. Recommendation: Clause 99 of the Bill should be amended to provide clear circumstances under which the rules may be published with no comment period.	See the two comments immediately above. The provision is qualified. The Registrar may only "if circumstances necessitate" such make a rule without prior publication. If a person is of the view that the Registrar acted outside the authority afforded, that person may approach the Courts for relief.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA	100	Proposed wording for section 63(2): (2) The protection contemplated in subsection (1) shall apply to [- ~~(a)~~]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 unless it can be shown that the policy was taken out by the policyholder with the intention to defraud creditors.[; ~~and~~ ~~(b) policy benefits and assets so acquired (if any) to an aggregate amount of R50 000 or another amount prescribed by the Minister.~~] ASISA members suggest that section 63(2) as a whole should be amended, see proposed wording. Section 63(2)(a) deals with assets acquired and the proposed amendment of section 63(2)(b) as set out in the Bill will cause duplication. One ASISA member comments: The proposed amendment implies that money can be held in an endowment policy and be exempted from attachment. By removing the reference to the amount, creditors will not be able to attach any policy older than 3years, even where the policyholder in question is hopelessly insolvent and owes creditors millions of Rands. It is to be noted that if a policy is older than 5 years, it falls outside the restricted period provided for in section 54 and that part surrenders can thereafter be made on a regular basis. It is therefore submitted that the amount ofR50 000 rather be increased to R200 000 and not left uncapped. In the case of disability and health policies, however, the complete	Wording of section 63(2) has been revised

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		uncapping is supported, in line with the Long-term Insurance Ombudsman's concerns. Another ASISA member supports the proposal to remove the limit of R50 000protection, and proposes that the current protection be extended to cover the policy benefits or proceeds of any long-term policy that has an individual as policyholder. Individuals currently have protection for single premium and recurring premium policies. Individuals can take out single premium endowment policies (a life policy as defined as it has a life insured). Individuals may also opt to take out a guaranteed policy which is a sinking fund policy. Therefore, this member proposes that the protection should also cover the policy benefits and proceeds of sinking fund policies of individual policyholders.	
IRF	101-102	The increases are excessive and suggest that they be reduced to half of the proposed amounts	The penalties have been aligned across the legislation administered by the Financial Services Board. The amendments were further necessitated by the fact that these penalties have not been revised since 1998 and are not reflective of the seriousness of the offences.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
FIA	101	While we support the imposition of reasonable fines to ensure proper market conduct, we believe that the suggested limits of the fines are unduly harsh in relation to the extent of the possible misconduct and, if implemented, could have severe negative implications for the market.	See comment immediately above.

RESPONSES TO COMMENTS RECEIVED ON THE SHORT-TERM INSURANCE ACT, 1998

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	108	Comments were noted that the repeal of existing advisory committees could impede effective consultation.	As stated in the responses under the Long-term Insurance Act section, an amendment to the Financial Services Board Act has been provided for that empowers the Minister of Finance to prescribe a code of conduct for the Financial Services Board, which code of conduct will address the consultation processes to be utilised.
BASA	108	Clause 108 amends the definition section. The Bill deletes the definition of 'independent intermediary' but the Bill continues to use the concept in various amendments of the Short-term Insurance Act. Recommendation: Clarity should be sought as to whether this term is deleted or whether it survives after the commencement of the Bill.	The terms are defined in the Regulations issued under the Insurance Acts and is best defined therein. Also see the clause by clause explanation of these amendments.
SAIA	108	108 (b) Amendment to the definition of Companies Act. It is submitted that it is conceivable that further amendments to the Competition Act may follow. It is suggested the word —*as amended* should be included at the end of the definition.	Not necessary. Please see the Interpretation Act in this regard.
SAIA	108	Concerns raised regarding the accessibility of information if it is only published on the FSB website and not the Government Gazette.	This amendment is informed by the practicality, transparency and cost implications of publishing matters in the Government Gazette. Note that the latter is inaccessible to most persons. Publication on the website will increase cost effectiveness and improve access. Note that subordinate legislation will still continue to be published in the Government Gazette, but also on the website.
FIA	108	Concerns raised that the term services as an intermediary and independent intermediary is not defined in the Act.	The terms are best defined in the Regulations. Also see the clause by clause explanation of these amendments.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	108	Clause 108 (h) Definition of —*publish*is wide-ranging. The concern raised is whena document will be regarded as being published? Is it on date of release, date when the interested parties are notified of the publication on the website etc.	Please note that publications by the Registrar are excluded from this definition. The definition is consistent with principle based regulation that requires the insurers to exercise their judgement as to how best publication should take place.
SAIA	108	Clause 108 (j) Definition of —*representative* . Kindly refer to the comments under section 4 of the General Comments. A —*representative"* under the current STIA includes a natural person —*employed by or working for a short-term insurer selling that insurer' policies* *only* If this definition is deleted it raises an issue as to who is regarded as a representative for the purposes of the STIA as the term is still repeatedly used in the remainder of the Act. It creates uncertainty as to how this impacts employees of an insurer who perform intermediary services as defined by FAIS. The prohibition in terms of the new section 48 is absolute and is limited to commission and binder fees only. It does not allow remuneration (even in terms of FAIS). In the absence of a replacement provision it could be cross referenced to the FAIS Act which provides a definition of —representative . It should be noted that the definition under the FAIS Act includes juristic persons and natural persons. Kindly also refer to the comments above relating to the deletion of the definition of —*independent intermediary*. It is suggested that —*representative"* should remain defined.	The terms are best defined in the Regulations. Also see the clause by clause explanation of these amendments.
SAIA	108	(k) Definition of *"services as an intermediary* . See comments above regarding —*independent intermediary* . It is submitted that the deletion of —*intermediary"* results	The terms are best defined in the Regulations. Also see the clause by clause explanation of these amendments.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
		in a lacuna. It is furthermore submitted that the STIA provides for two types of intermediaries namely the one that sources business of the insurer (section 48) and one that collects premium on the insurer's behalf (section 45). In the event that the definition is deleted, as proposed, then the intermediary services in section 45 will become problematic. The premium collection intermediary earns interest on the money collected until it is paid over to the insurer 15 days after the month from collection. The intermediary that sources the business (section 48) is paid statutory commission. In the event that premium collection is regarded as an outsourced activity as proposed in the SAIA submission on intermediary services dated 30 March 2012 the problem should be addressed. Kindly note the comments relating to the deletion of the definition of *—independent intermediary".* It is suggested that the definition in the STIA should refer to the FAIS definition of *—intermediary"*. It is furthermore suggested that the transitional arrangements pending the finalisation of the intermediary status should be considered.	
FIA	111	111(i)(bb) "search the premises……. for **any** document". The powers of search and seizure should be restricted to documents which bear relevance to the Short-term Insurance business.	This is implied as the scope of the Insurance Acts defines the parameters within which the Registrar may act.
SAIA	111	Clause 111 (d) - Addition of sub subsection 8 (a) (i). Reference to *—suitable person".* It is recommended that *—suitable person"* be amended to *—suitable authorised person* to ensure that relevant	Comment not understood.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
		technical experts are included.	
SAIA	111	Clause 111 (d) Addition of subsection 8(a) (ii). Despite the deletion of independent intermediary and representative reference is made to independent intermediary and representative in this Clause. Kindly refer to the proposal in the definition section. It is proposed that —*representative* and —*independent intermediary* be defined adequately to avoid confusion.	The terms are best defined in the Regulations. Also see the clause by clause explanation of these amendments.
SAIA	111	Clause 111(d) - Addition of subsection 8(b)(i)(aa). It is proposed that the word —*binder holder* should be included in section (aa) and (bb) in order to align with the proposed insertion of section 8(a)(ii). Furthermore the proposed of insertion of an obligation on an independent intermediary or representatives to —*provide any document, record, information or explanation necessary for the purposes of the on-site visit*. should be reviewed to include the public officer. It is proposed that the word —*binder holder"* should be included in section (aa) in order to align with the insertion of (d) namely section 8(a)(ii). It is proposed to amend —*upon request* to —*upon reasonable request* It is suggested that in addition, the request must be submitted to the public officer with a view to ensuring continuity.	**Agreed.** Corrected. Reasonableness is implied. Where the Registrar does not act reasonably the Courts may be approached for relief. The proposed inclusion of a reference to the public officer in this section is not supported as the Registrar should be able to request the information from any person.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	111	Clause 111(d) - Addition of subsection 8(b)(i)(dd). Although the SAIA supports the process introduced in this section, it is proposed that due process should follow. It is proposed that in the event that the Registrar removes documents temporarily, a copy of the document that is seized should be supplied to the insurer. It is furthermore suggested that a register must be kept of documents reviewed and removed/seized. It is proposed that the process should only be followed in the event of reasonable/just cause.	The Registrar's actions are subject to review by the Courts. Further, the Registrar may only act within the scope of the Act itself.
SAIA	111	Clause 111(d) - Addition of subsection 8(b)(ii). Alignment with section 8(a)(ii) is proposed. It is proposed that the word —*binder holder* should be included in section 8(b)(ii) in order to align with the insertion of (d) namely section 8(a)(ii). It is furthermore proposed that reasonable notice to the insurer should be included in this provision.	**Agreed.** Corrected. Situations are foreseen where reasonable notice is not prudent. This provision is further consistent with the guidance afforded by the Constitutional Court in the North West Gabling Board case.
SAIA	111	Clause 111(d) - Addition of subsection 8(b)(iii). Although the principles behind the section are supported, the process should be reviewed. It is suggested that the public officer or nominated representative should be present in the event that the information or explanation is requested. It is furthermore proposed that the word —*holding* is deleted to ensure that the person that is requested for information/explanation is the accountable person.	The proposed inclusion of a reference to the public officer in this section is not supported as the Registrar should be able to request the information from any person.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	111	Clause 111(d) - Addition of subsection 10. The members noted the audial terampartem principle in this section. The introduction of the Registrar to make known by notice on —*any appropriate public media* is not supported. It is furthermore proposed that the guideline that the FSB utilises for visits must be a formally approved document and published to industry to allow insurers access to this document. It is suggested at a minimum that insurers must be afforded the right to respond to the allegations. It is proposed that —*any appropriate media* should be deleted. It is proposed that the notice should be published within a reasonable time of the outcome of the on-site visit.	The actions of the Registrar are in any event subject to PAJA. Situations are foreseen where publication in appropriate media may be prudent and necessary to protect the public.
BASA	111	Clause 111 amending section 4(d)(ii) - we suggest that provision for a notice be included in this definition to enable the party upon whom the inspection is to be conducted to be duly notified thereof.	Please see the Inspection of Financial Institutions Act in this regard.
SAIA	111	Clause 111 - Addition of subsection 10(b). The SAIA holds the view that this section is prejudicial to the industry. It is proposed that the same results can be achieved through the working of the enforcement committee. It is furthermore not clear why there is a distinction between status and outcome (b) and details (c) and furthermore why there is public interest requirements in (c) but not in (a) and (b) The powers to —*search and seize* without a warrant is not supported. It is proposed that the section should provide that the outcome of an inspection should **only** be made known in the event of a contravention that is in the —*public*	Subsection (10) amended: (10) The Registrar may, if 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. “

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		interest The disclosure must be included in the finding. Information should be regarded as confidential whilst the investigation is pending.	
SAIA	113	Clause 113(a) - Addition of section (d). It is suggested that the word —*prominently* should be reconsidered. It is proposed that the Regulator should consider amending the word —*prominently* to —*clearly disclose the name of the insurer/underwriter*	The word prominently is most appropriate in the context of this section.
SAIA&FIA	113	It is proposed that in the event that this provision is deleted certain transitional arrangements should follow. The practical challenge is that the deletion of this section in the STIA will create an interim prohibition in the event that the FSLGAB is enacted before the new regulations. It is proposed that clarification of where the demarcation of short-term insurance policies should start and stop should follow and further there should be specific provisions to allow the fees in FAIS legislation. The proposed deletion of subsection (5) if enacted is premature and will have serious implications for intermediaries. It is proposed that transitional arrangements must be included in the Bill and the remuneration of fees should be provided for in regulation.	**Noted.** A allowing for the staggered / delayed implementation of various sections of the Bill will be provided for.
FIA	113	113(a)(d) "publish any advertisement ……..that does not prominently include the name of the short- term insurer….. underwriting the policy". This should not apply to instances where, for example, an intermediary is advertising, publishing etc. on a generic basis as opposed to an insurer-specific product.	This is implied in the current wording. Further, note that this is an existing provision (previously in section 4(3)) of the Insurance Acts. It has been moved to section 8 as it is better placed there and has been enhanced to regulatory gaps that exist.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
BASA& SAIA	115	115 (a) Deletion of (b) (iii). The option to insurers to remedy is taken away. The provisions will allow representations but it is not clear whether this includes the action to remedy.	Please note that any action by the Registrar under section 12 is subject to the Promotion of Administrative Justice Act (PAJA). The Registrar must therefore grant the insurer an opportunity to state its case. Further, if the Registrar is not acting reasonably, his / her decision may be taken on review.
SAIA	115 (b)	It is proposed that the ownership issue should not be regulated in the proposed manner. It is submitted that the insertion of the words —in the opinion" of the Registrar is subjective and should be avoided. It is further not evident at what level the Registrar will view —managed or management and whether it refers to an executive level. The insertion of subsection (1)(b)(C) will afford directives legal stature as opposed to regulations. Kindly refer to section 2 in the general comments section. The deletion of the words —or owned in subsection (6D) is proposed. Deletion of the word managed until such time as the issue is addressed in the Insurance Laws Amendment Bill. It is proposed that subsection (1)(bC) must be deleted.	Please note that any action by the Registrar under section 12 is subject to the Promotion of Administrative Justice Act (PAJA). The Registrar must therefore grant the insurer an opportunity to state its case. Further, if the Registrar is not acting reasonably, his / her decision may be taken on review. The insurer must at all levels be managed appropriately. **Disagree.** Directives are issued to ensure compliance with the Act – see section 4. Owned is important and is consistent with the International Association of Insurance Supervisors Core Principles that require fit and proper owners and appropriate regulatory action where owners are not fit and proper. The requirement relating to sound corporate governance principles requires the insurer to apply its mind to what is relevant and appropriate; this is consistent with the principles of principled based regulation

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	115	it is proposed that the insurer should be afforded the opportunity to Appeal the decision of the Registrar and that this section must be subject to appeal process in terms of the Financial Services Board Act. It is proposed that this section must cross reference the right of Appeal afforded in section 26 the Financial Services Board Act.	All decisions of the Registrar are subject to appeal under the Financial Services Board Act – see section 3(3) of the Short-term Insurance Act.
SAIA	116	Kindly note the comment in section 2 of the general comments relating to the publication on the website.	This amendment is informed by the practicality, transparency and cost implications of publishing matters in the Government Gazette. Note that the latter is inaccessible to most persons. Publication on the website will increase cost effectiveness and improve access. Note that subordinate legislation will still continue to be published in the Government Gazette, but also on the website.
SAIA	118	Kindly note the comments in section 2 of the general comments relating to the publication on the website.	**Noted.** The purpose is to allow for the publication of administrative actions and the notifications of official acts on the FSB web site, instead of in the *Gazette.* This is consistent with the Interpretation Act, will result in significant cost savings, and more effective communication. In addition, 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 Bill as published, to allow for FSB directives and exemptions to be published on the FSB website rather than the Government Gazette, 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 provide for a list of directives and exemptions which are intended to

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	127	Clause 127(d)(iii) The significance of public hearings in this provision is not clear. It is proposed that the process to notify the Registrar will essentially be a business arrangement and renders public hearing in respect of the transactions unnecessary. It is submitted that the Companies Act addresses these transactions and further provisions in the STIA should be avoided. It is proposed that public hearings regarding the transactions may lead to anti-competitive behaviour.127(iii) be removed.	This requirement has been removed.
SAIA	130	Section 40(4)(d). It is suggested that this provision should be reworded to address the policyholder interest. We require clarity whether policyholders should be deemed to be a collective group in terms of an affected party under business rescue provisions. In the event that one policy holder does not agree with the business rescue plan it may result in unintended consequence. It is proposed that the section should read ..... —the interest of the policyholders should be considered"	The section is amended to align the Act with the Companies Act and to impose additional requirements on such a process in respect of insurers. Please see the Companies Act for clarity regarding the implications of the following paragraph "the reference to creditors shall be construed as a reference also to the policyholders of the short-term insurer".
BASA	130	Clause 130 of the Bill introduces the concept of business rescue into the Short-term Insurance Act, but the Bill goes on to provide that whether the short-term insurer is a company or not the business rescue provision found in the Companies Act shall apply. The Bill is effectively introducing the concept of business rescue to entities which are not companies as defined in the Companies Act. Taking into account the complexities the current business rescue provisions present for companies it would seem	This is consistent with the existing provisions of the Short-term Insurance Act in respect of judicial management. Note that the provisions relating to judicial management are replaced with provisions relating to business rescue.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		inappropriate to extend the concept to entities which are not covered by the Companies Act. Recommendation: Clause 130 should be amended by removing the words 'whether or not it is company' from the clause.	
SAIA	131	Section 131 (b) Insertion of subsection (2). It is proposed that the wording —he or she" should be reconsidered. It is proposed to amend the section as follows: —... winding-up of a short-term insurer **if the Registrar** is satisfied..."	This is not a critical amendment- both genders are referred to. The current wording is therefore not offensive. Response??
SAIA	133	Kindly refer to the comments under 4 of the General Comments above. The section refers to independent intermediaries that will be undefined. It is proposed that the current section 48 remains until such time as the remuneration discussions have been finalised. The substitution will have a huge impact for insurers. The remuneration of anything other than binder fees and commission will be outlawed. It is proposed that the introduction of this substitution is premature. The inclusion of the words —a policyholder would prevent an intermediary from charging a section 8(5) fee It is proposed that this definition be defined. We propose that the section remains until such time as the regulations are finalised.	**Noted.** A provision allowing for the staggered / delayed implementation of various sections of the Bill will be provided for.
SAIA	135	Kindly note the comments in section 2 of the general comments relating the publication on the website. The	This amendment relates only to the substitution of the words "in the Gazette" with "on the official website", which amendment is

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		Registrar is requested to clean up the provisions of this section in the principal act and clarify purpose of the section namely to address licensed conditions. It is proposed that the intention of the Registrar is to include contracts entered into before the commencement date of the Act. It is submitted that there are no such current STIA policies.	informed by the practicality, transparency and cost implications of publishing matters in the Government Gazette. Note that the latter is inaccessible to most persons. Publication on the website will increase cost effectiveness and improve access. Note that subordinate legislation will still continue to be published in the Government Gazette, but also on the website.
FIA	133	133 Limitation of remuneration – section 48. (a) reference is made to "independent intermediary". Refer to 1. above where this definition has been deleted. (b) the changes, as with 6. Above, bring into consideration the "FSB call for contributions…." initiative which is intended to deliberate on all tranches of remuneration and relative activities and functions for which varying types of remuneration should be allowed. In addition, the proposed definition, unless expanded upon in the regulations will negate what is common business practice in the large commercial/corporate insurance sector where it is accepted practice that net rating prevails and remuneration is negotiated with the	The terms are defined in the Regulations issued under the Insurance Acts and is best defined therein. Also see the clause by clause explanation of these amendments.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		client on an agreed fee basis. The proposed wording also takes out all activities not contemplated in the definition of "services as intermediary" such as Binder and non-discretionary outsourced functions.	
SAIA	136	The SAIA objects to the introduction of the Registrar to make rules without proper consultation with industry bodies. The proposed substitution will amend the current arrangement. Kindly refer to the general comments in section 2 in relation to publication on the website. It is proposed that the section should include that a process consultation with industry will follow. The provision in subsection 2(a) that rules may provide for certain provisions with a particular import may not appear in a policy, may lead to anti-competitive concerns. The introduction of such rules will furthermore inhibit the ability of an intermediary to present a product. It is proposed that this section should be reconsidered. Substitution of subsection 4(a). The SAIA does not support a process where rules are varied or rescinded without publication. It is submitted that industry will not be in a position to identify rules that are rescinded or varied. The insertion of subsection 4(a) should include the varying and rescinding of a rule.	The wording of the clause has been refined to provide for a reasonable comment period before the PPR is published. In an emergency situation, the Registrar may publish the PPR without public consultation, however the reasons for the emergency publication must be provided for upon publication. It further requires that the PPR be tabled before Parliament. A period for objection by the public and Parliament has been provided. Any person that feels aggrieved by a rule made by the Registrar may approach the Courts.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		Substitution of subsection 2(d) relating to norms and standards of a policy. In this regard further clarity regarding the intent of the Registrar is required. Substitution of subsection 2(e) relating to standard wording raises a concern as to whether this provision might not give rise to a contravention of competition legislation. It is proposed that rules should include directives, board notices, legislation and subsequently a proper process in this regard should be followed. The introduction of norms implies an insurer can elect to comply with the rules and it is respectfully submitted that that may not be the intention of the Registrar. It is proposed that introduction of norms may lead to regulatory uncertainty and confusion to both insurers and policyholders. Subsection 4(d) furthermore refers to type of a short-term policy. This terminology namely —type is undefined. It is proposed that term —type is extremely vague and it can be argued to even refer to the same policies being sold to person in different geographical areas or policies restricted to a maximum value. It is proposed that section 4(d) is deleted alternatively that the word —norms" should be deleted from subsection 2(d) and the referral of —type of a short-term insurance business should be properly defined or replaced	

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
		with class. Subsection (5). The provision of this subsection is not supported by industry. It is furthermore not clear what would necessitate the circumstances provided for in this subsection. It is submitted that there are many other avenues of redress It is proposed that this section be removed or alternatively that the section is reconsidered to include the specific circumstances that will necessitate the publication of rules without proper procedures.	
BASA	136	Clause 136 of the Bill amends section 55, by substituting section 55 for a section which deals with the protection of policyholders. The section provides that the Registrar may make rules aiming to ensure to that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally. Section 55(5) states that if circumstances necessitate the immediate publication of the rule, the registrar may publish the rule without complying with the comment process provided for in section 55(4). The Bill does not provide any indication what would be qualify as circumstance necessitating immediate publication. The section affords the Registrar a wide discretion. Recommendation: Clause 99 of the Bill should be amended to provide clear circumstances under which the rules may be published with no comment period.	See the two comments immediately above. The provision is qualified. The Registrar may only "if circumstances necessitate" such make a rule without prior publication. If a person is of the view that the Registrar acted outside the authority afforded, that person may approach the Courts for relief.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	137	Clause 137 (a). It is submitted that the word —contravenes is absent from the section and should be included at the beginning of the provision. Amendment of subsection 1(c) to read as follows:—" Contravenes a rule contemplated..."	Comment not understood. The provision indeed refers to a contravention.
FIA	137	While we support the imposition of reasonable fines to ensure proper market conduct, we believe that the suggested limits of the fines are unduly harsh in relation to the extent of the possible misconduct and, if implemented, could have severe negative implications for the market. Conclusion: it is essential that changes relating to definitions and remuneration be clearly stated, if not in the STIA then in accordance with the appropriate regulations. The industry and stakeholders would need this to be clarified prior to acceptance of this amended legislation,	The penalties have been aligned across the legislation administered by the Financial Services Board. The amendments were further necessitated by the fact that these penalties have not been revised since 1998 and are not reflective of the seriousness of the offences.
SAIA	137	Concerns raised that the increase in fines from R100 000 – R5 0000 000 represents a significant increase.	**Not supported.** The increase in fines ensures appropriate sanctions are in place and serve to act as a deterrent for contravening a section of the Act.
SAIA	138	Kindly refer to the comments in section 5 of the General Comments.	The penalties have been aligned across the legislation administered by the Financial Services Board. The amendments were further necessitated by the fact that these penalties have not been revised since 1998 and are not reflective of the seriousness of the offences.

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Organisation/ Individual	Clause in FSLGAB	Comment	Response
SAIA	139	The substitution of subsection (1) does not define —every day The introduction of the words —or such higher amount as the Registrar may prescribe" is wide-ranging and it proposed to rather consider that the Registrar increases or note a maximum the limit in the interest of certainty. It is proposed that —every day should be defined It is proposed that a maximum limit should be included as a penalty.	If the Registrar prescribes an excessive amount, any person may approach the Courts for relief.
SAIA	143	143(a) it is submitted that the substitution should refer to the Registrar of the Short-term Insurance. The Bill proposes a consequential amendment to the Medical Schemes Act by amending the definition of "business of a medical scheme "to correctly reflect the intention of the Medical Schemes Act and facilitate the appropriate demarcation between health insurance products and medical schemes. Comments were noted that this amendment should ideally be effected through the Medical Schemes Act, further it could be subject to a constitutional challenge as there is no rational connection between the legislation and the achievement of a legitimate government purpose.	Corrected.

RESPONSES TO COMMENTS RECEIVED ON THE CONSEQUENTIAL AMENDMENT TO THE MEDICAL SCHEMES ACT

RESPONSE TO PUBLIC COMMENTS RECEIVED ON FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL, 2012			
Organisation/ Individual	Clause in FSLGAB	Comment	Response
ASISA SAIA Discovery Health Knowles Husain Lindsay Inc. Werksmans Attorneys Ambledown Risk and Underwriting Managers (Pty) Ltd	257		**Disagree.** The amendment has been retained since it has the support of the Department of Health. This amendment seeks to make the definition of a medical scheme clear, and should not be conflated with the draft Demarcation Regulations which were released by the National Treasury for public comment. The draft Demarcation Regulations are still going through a review process following public comments, and revised draft of the Regulations will be released when ready.

RECORD OF COMMENTATORS

	NAME OF ASSOCIATION	NAME OF COMMENTATOR
1	Actuarial Society of South Africa (ASSA)	Wim Els
2	Association for Savings and Investment SA (ASISA)	AdriMesserschmidt
3	Financial Intermediaries Association of Southern Africa (FIA)	Justus van Pletzen
4	Institute for Retirement Funds (SA) (IRF)	RuwaidaKassim
5	Institute of Commercial Forensic Practitioners	Vernon Naidoo
6	Principal Officers Association (POA)	Anne-Marie D' Alton
7	South African Insurance Association (SAIA)	Suzette Strydom
8	The Banking Association South Africa (BASA)	Nicky Lala-Mohan
9	The Compliance Institute South Africa (CISA)	JE Methven
	NAME OF COMMENTATOR	**INDIVIDUAL/COMPANY**
10	AB San Giorgio	Individual
11	Andrew Crawford	Individual
12	Bruce Moor	Individual
13	Des Woodroffe	Individual
14	E Costerus	Individual
15	Jonathan Mort	Individual
16	Peter Theunissen	Individual
17	Rosemary Hunter	Individual
18	Willem Hazewindus.	Individual
19	Brett Wallenkamp	Wallenkamp Consulting
20	Cheryl Mestern	Old Mutual
21	Elizabeth de Stadler	Esselaar Attorneys
22	Erich Potgieter	Towers Watson (Pty) Ltd
23	Jeanine Schubach	NMG Employee Benefits
24	Johan van Zyl	Sanlam Limited
25	KgomotsoRamokala	Anglo American Platinum Limited
26	Mandi Mzimba	Discovery Health (Pty) Ltd
27	Mark de Klerk	Anglo American Platinum Limited
28	Morgan Riley	Knowles Husain Lindsay Inc
29	NazeemEbrahim	Oasis Group Holdings (Pty) Ltd
30	Neil Kirby	Werksmans Attorneys
31	Rosemary Hunter	Bowman Gilfillan
32	Tiago de Carvalho	Ambledown Risk and Underwriting Managers (Pty) Ltd
33	George van Niekerk	Edward Nathan Sonnenbergs