

# Financial Services Laws General Amendment Bill

*Presentation to the Select Committee on Finance*

*NCOP*

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Department:  
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# Background to the Financial Services Laws General Amendment Bill

- The Financial Services Laws General Amendment Bill, 2012 is an “**Omnibus Bill**”; ie amends 13 various financial sector laws.
- Bill seeks to do **URGENTLY** do the following:
  - Address gaps identified by the **IMF/World Bank FSAP** (Fin Sector Assessment Program) to adhere to international standards for financial regulation.
  - Addresses gaps identified post the **2008 Global Financial Crisis**.
  - Aligning financial sector legislation with the **new Companies Act**.
  - Ensuring **higher consumer protection standards** and **removing duplication** in relation to the Consumer Protection Act.
  - Dealing with **mergers** in non-banking fin sector.
- The Bill ultimately aims to ensure that even during the transition to the “Twin Peaks” system, SA has a sounder and better regulated financial services industry which:
  - promotes **financial stability**; has **strong financial sector regulatory framework**; and **stronger supervisory powers for the regulators**.

# Background on Twin Peaks reforms after Global Fin Crisis

- Making financial regulators/supervisors like Fin Services Board (FSB) and Banking Supervision Dept. much STRONGER and TOUGHER
- Re-organisation to the Prudential Regulatory Authority in the SARB and transforming the FSB into a new MARKET CONDUCT REGULATOR
- Regulators will need to be protected from legal liability when they act (e.g. FIDENTIA)
- Financial Institutions will be held to HIGHER standards on CONSUMER PROTECTION, Market Conduct, Capital Reserves, Liquidity etc.
- Financial Institutions will also have to continue to meet ACCESS targets, as agreed in the Financial Sector Code

# Overview of legislation amended

- The 13 financial sector laws updated include:
  - Financial Services Board Act
  - Inspections of Financial Institutions Act
  - Financial Institutions (Protection of Funds) Act
  - Short & Long-term Insurance Acts
  - Pension Funds Act
  - Financial Advisory and Intermediary Services Act
  - South African Reserve Bank Act
  - Collective Investment Schemes Control Act
  - Financial Services Laws General Amendment Act, 2008
  - Co-operative Banks Act
  - Financial Markets Act
  - Credit Rating Services Act
  - Medical Schemes Act

# Key issue 1: Aligning to the new Companies Act

The Bill seeks to:

- align terminology used in all FSB legislation with terminology used in the Companies Act (e.g. the new Companies Act redefines “public company” and “subsidiary company”).
- align certain duties stipulated in financial sector legislation with how those duties are reflected in the new Companies Act (e.g. such as the duty to declare interests and duties relating to the investment of trust property, in the Financial Institutions (Protection of Funds) Act).
- ensure that FSB legislation appropriately refers to business rescue procedures in the new Companies Act, while retaining existing enforcement procedures contained in the Financial Institutions (Protection of Funds) Act, so that Registrars have appropriate mechanisms at their disposal to appropriately enforce their legislation.

## Key issue 2: Strengthening the regulatory framework and enhancing enforcement powers

The following amendments take into account the **FSAP recommendations & address regulatory gaps** identified in the FSAP:

- Strengthening the operational independence and effectiveness of the Registrar of Insurance, by extending the powers of the Registrar to apply to court for the winding-up of an insurer without first securing the approval of the Minister.
- Empowering the FSB Registrars to take swift and decisive action when necessary to protect consumers and financial stability, in particular by clarifying and strengthening the powers to conduct on-site visits and inspections.

## Key issue 3: Inspections and On-site Visits

- The Bill clarifies and strengthens the powers of various Registrars to conduct on-site visits and inspections of financial institutions.
- On-site powers are different to inspection powers:
  - Inspection powers contained in Inspections Act, are aimed at also investigating unregulated persons/entities conducting the business of financial institutions, can be exercised where entities unlawfully operate outside the regulatory framework.
  - On-sites are limited to FSB regulated persons/entities; they enable regular reviews of regulated institutions as part of on-going supervisory activities, and enable the Registrar to obtain information & detect problems early.

## Key issue 4: Policyholder Protection Rules

- The Bill empowers the Registrar of Insurance to make Policyholder Protection Rules, to give effect to Treating Customers Fairly (TCF) principles, without Ministerial approval:
  - Enables the Registrar to protect consumers by improving disclosure in insurance contracts.
  - For e.g. policyholders are misled into thinking that they have “**comprehensive**” motor insurance cover, when in fact, the cover is partial with exclusions. **Standardised policy wording** will help consumers compare insurance policy benefits and risk.
  - In line with international standards, for e.g. IAIS (ICP 19) requires regulators to set requirements to ensure customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.
  - USA, UK, Singapore, China, South Korea and Malaysia have introduced standard contract provisions, exclusions and definitions.

## Key issue 5: Effective Consultation

- The Bill provides for the abolition of Advisory Committees which are currently provided for in terms of financial sector legislation.
- There are currently too many industry advisory bodies, Standing Committees and Boards operating at the expense of the tax payer.
- Aim is to rationalise consultation processes, and broaden to cover all key stakeholders.
- Coming Twin Peaks reform will formalise consultation processes with stakeholders, but in the meanwhile:
  - Bill enables the Minister to prescribe better standards for consultation on regulatory and policy issues, through a code of norms and standards for consultation for the FSB.

## Key issue 6: Publication of subordinate legislation

- The Bill amends requirements in the FSB legislation relating to publication of subordinate legislation and other actions of the FSB Registrars:
  - **Regulations** prescribed by the Minister will continue to be published in the *Government Gazette*.
  - **Rules** issued by the Registrars, (e.g. Policyholder Protection Rules) will be published for comment and tabled in Parliament, the final rules will be published in the *Government Gazette*.
  - **Directives, exemptions and other similar subordinate measures** will be published on the **FSB website** rather than being required to be published in the *Government Gazette*.
- A list of directives and exemptions which are intended to have general application will be **published annually** as a schedule to the **FSB Annual Report** that is tabled in Parliament.

# Key issue 7: Overlapping Regulatory Powers

- The Bill proposes amendments to the **FSB Act** to deal with overlapping legislation:
  - establishes the **FSB as the lead regulator**, where there is concurrent jurisdiction & where there is conflicts with other legislation (e.g. Consumer Protection Act, Competition Act and Companies Act) or regulators.
  - **limits the powers of other regulators**, to unilaterally take actions and decisions relating to the fin services sector without consultation (e.g. mergers/competition). (Not applicable to Protection of Personal Information & Promotion of Administrative Justice Acts.)
  - **overrides the Consumer Protection Act**, the fin sector must be held to **HIGHER STANDARDS** of consumer protection, esp. given shift to Twin Peaks and a new market conduct regulator/supervisor. Financial contracts may require instantaneous protection (e.g. transfer of funds), and also very long period of protection (e.g. pension funds).
  - **consultation on mergers**: The Competition Commission will be required to consult with the Minister and FSB Registrars in respect of mergers in the financial sector.

# Key changes to FSB Act

- **FSB limitation of liability**

- The Bill amends section 23 of the FSB Act, which deals with the limitation of liability, by deleting “*but not grossly negligent*” while retaining the words “*bona fide*”.
- Affords regulators legal protection, provided powers were exercised in good faith.
- Consistent with international practice & other regulatory statutes (e.g. Australia, SARB & Banks Act and Insurance Core Principles).

- **Utilisation and disclosure of information and co-operation (amending section 22 of the FSB Act)**

- The Bill will amend section 22 of the FSB Act to appropriately provide for the sharing of information and co-operation with other regulators, in line with the framework set out in the Protection of Personal Information Bill.
- Other consequential amendments repealing provisions in other pieces of FSB legislation that currently provide for information sharing and co-operation with other regulators are proposed, so that section 22 of the FSB Act, as amended, will apply to all of the FSB Registrars.

# Key changes to Pension Funds Act

- **Trustee fiduciary duties**
  - Explicitly state duty to members/beneficiaries, AND also to the fund.
  - Funds must be responsibly managed and governed.
- Board Members to **attain training within six months** of appointment.
- **Liability of non-payment of pension contributions** extended to certain individuals within the employer.
- **Protection for whistle blowers**
  - Cover Board members, valuers, principal/deputy officers, and employees who disclose material information to the Registrar.
  - Trustees who act honestly, independently and reasonably
- **Pension fund cannot commence business** without first being fully or provisionally registered
- Enable distribution of pension benefits to non-member spouse married under **Islamic law** if divorce decreed by Court
- Allow appointment of **Deputy Principal Officer** and for delegation of duties

# Other Amendments in the Bill

- An amendment to the **Co-operatives Banks Act** is required to:
  - transfer the supervisory function of the Co-operatives Banks Development Agency to the SARB and provide for the SARB to be the sole supervisor of co-operative banks.
- An amendment to the definition of “**business of a medical scheme**” in the Medical Schemes Act, seeks to make the definition of medical schemes clear:
  - ie undertaking one or more of defined activities will constitute business of medical schemes
  - DoH and Council for Medical Schemes fully support amendment
  - Implementation date of the definition subject to finalising of appropriate demarcation regulations in 2014
- The Bill removes S13(c) in the SARB Act and empowers the SA Reserve Bank to provide **emergency liquidity** to the banking system during a financial crisis

# Conclusion

- Financial Services Laws General Amendment Bill deals with **URGENT** legislative requirements.
- The Bill has been around since 2012, and now adopted by National Assembly on 31 October 2013.
- Bill has gone through rigorous public consultations, deliberations in Parliament and refinements.

**Thank You**