

FINANCIAL SECTOR REGULATION BILL

SCHEDULE 4

Outstanding issues on consequential amendments

SCOF CONSEQUENTIAL AMENDMENTS SUB-COMMITTEE DELIBERATIONS

1. On Wednesday, 21 September, the Chair of the Standing Committee on Finance (SCOF) established a Sub-Committee to attend to the Schedules during the Constituency Period. It was agreed that the consequential amendments relating to the FSR Bill (Schedule 4) would be considered by the Sub-Committee, chaired by Honourable Sifiso Buthelezi (ANC). The first meeting of the Sub-Committee would take place on 22 September 2016 with additional meetings to be held in Pretoria.
2. To kick-off the process, the SCOF considered and adopted the Schedule 1, 2 and 3 of the FSR Bill. Treasury also presented an overview of main amendments to the various sectoral laws, and the following Acts were considered by the SCOF:

Insolvency Act, No 24 of 1936

No amendments recommended for approval.

Pension Funds Act, No 24 of 1956

No amendments recommended for approval.

Friendly Societies Act, No 25 of 1956

No amendments recommended for approval.

Insolvency Act, No 24 of 1936

No amendments recommended for approval.

South African Reserve Banks Act, No 90 of 1989

No amendments recommended for approval.

Banks Act, No 94 of 1990

No amendments recommended for approval.

Financial Services Board Act, No 94 of 1990

No amendments recommended for approval.

Financial Supervision of the Road Accident Fund Act, No 8 of 1993

No amendments recommended for approval.

DELIBERATIONS OF 22 SEPTEMBER 2016

3. The Sub-Committee met on Thursday 22 September 2016 in Parliament Cape Town, and reconvened on Monday 26 September 2016 at the offices of the Financial Services Board in Pretoria.
4. Treasury explained that the purpose of the consequential amendments is to facilitate the implementation of the FSRB architecture. Treasury highlighted that the consequential amendments that require detailed consideration relate to amendments to the following:

- 4.1 Financial Markets Act, specifically the amendments proposed to facilitate the implementation of G20 commitments (framework for recognising the equivalence of other jurisdictions to facilitate cross-border trading).
- 4.2 Cooperative Banks Act, specifically clarification and extension of the Development Agency that supports emerging cooperative banks. A comprehensive review of the agency is underway, but in the interim, changes are required to coordinate supervision and developmental mandates between PA and the agency.
- 4.3 FAIS Act specifically the clarification of matters relating to the definition of intermediation and debarment.
- 4.4 The Sub-Committee will continue its consideration of the Schedule on 26 September 2016 at the FRB offices in Pretoria.

OVERVIEW OF DELIBERATIONS OF 26 SEPTEMBER 2016

- 5. The sub-committee met on 26 September 2016 to continue its consideration of Schedule 4 – the consequential amendments.
- 6. The following of matters and issues recommended to be elevated to the SCOF are provided below:

Financial Markets Act (FMA), No 19 of 2012

General	<p>Note:</p> <p>In responding to G20 requirements, and other multilateral institutions such as the IMF and World Bank, there should be some latitude for South Africa to consider its own goals.</p> <p>Treasury needs to be clear in its policy papers how proposals will benefit South Africa in terms of contributing to economic growth, creating jobs, etc.</p>
Item 28 Clause 49A(1) – Licensing of external central counterparty	<p>To make it explicit in clause 49A(1) that an exemption is in terms of section 6(3)(m)</p> <p>Action:</p> <p>Treasury to revise and revert to the SCOF</p>
Item 37 Clause 56A(1) – Licensing of external trade repository	<p>To make it explicit in clause 56A(1) that an exemption is in terms of section 6(3)(m)</p> <p>Action:</p> <p>Treasury to revise and revert to the SCOF</p>
Item 60 Section 85 – Composition and functions of the Directorate [of Market Abuse]	<p>The Sub-committee raised concerns with limiting membership of the Directorate, and consideration must be given to require a mix of skills and experience. Section 85(3)(k) should be revised to cater for this.</p>

	<p>The Sub-committee agreed to delete section 85(6), as the intention of co-opting persons as additional members of the directorate is a legacy provision and unclear</p> <p>Section 85(8) to be revised as talking to two different processes. Secondly, the reconsideration of whether logically what is appropriate for the chairperson to determine where and when meetings are to be held.</p> <p>Section 8(9) – consider aligning to other provisions in the FSR Bill, and include other matters, e.g. disclosure of conflicts of interest</p> <p>Action:</p> <p>Treasury to revise clause 85 and revert to the SCOF</p>
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Long Term Insurance Act, No 52 of 1998

General	The Sub-committee had discussions around funeral parlours, and how these would be addressed in the Insurance Bill.
Funeral Parlours	<p>Action:</p> <p>Treasury/FSB to present to the SCOF</p>
Item 10(d) Section 26 – Limitation on control and certain shareholding or other interest in long-term insurers	<p>The Sub-committee questioned the approval of the Authority to acquire or hold shares in a long-term insurer to be subject to fit and proper requirements, including financial standing (insertion of (aA)), as the financial circumstances of (potential) shareholders can change due to events beyond the shareholder's control (e.g. economic downturn, or liquidation), and not because the person acted in bad faith.</p> <p>The Sub-committee considered whether it would be appropriate to include a process or valuation methodology (for calculating the aggregate nominal value of the shares or total number of shares) for shareholding reduction, or alternatively to include reference to a competent person /evaluator. This could perhaps be considered as part of the Insurance Bill as a guideline.</p>

Financial Intelligence Centre Act, No 38 of 2001

Item 1 Section 45E – Establishment of appeal board	<p>The Sub-committee raised concerns with the proposed dual role and procedures of the Tribunal when acting as the appeal board of the FIC, and the feasibility thereof.</p> <p>Action:</p> <p>Treasury legal team to engage with Adv. Jenkins and present to the SCOF</p>
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Financial Advisory and Intermediary Services (FAIS) Act, No 37 of 2002

Item 11 Section 14 – Debarment of representatives	<p>The Sub-committee questioned the constitutionality of debarment under FAIS generally (as these are existing provisions). The Sub-Committee was informed that this is an existing provision and that the proposed amendments are an improvement on the current provisions in order to address abuses of the process. However the Chair was concerned that a person could not work for a Financial Services Provider (FSP) unless they are certificated (in terms of the FAIS exams) and secondly, debarment means that they no longer work for the FSP and in addition cannot work in the industry. The Sub-committee raised questions as to the difference when the Authority was exercising powers to debar a person (section 14A) and when the FSP was exercising those powers in terms of section 14. An FSP can debar a person for contravening the law, and only a court can decide whether there has been a contravention of the law, therefore it cannot be the regulated entity deciding. The Sub-committee questioned whether administrative justice was being upheld, as the consequences for the debarred person are far reaching (i.e. debarred from the sector, reputational damage, loss of income, etc.) The Sub-committee took issue that the Authority was delegating or outsourcing regulatory responsibilities to the FSPs.</p> <p>The Sub-committee discussed whether these provisions were potentially in conflict with the labour legislation, the concern being that the employer (FSP)/ employee (FAIS representative) relations are skewed in favour of the FSP in debarment.</p> <p>Action:</p> <p>Debarment (generally) under FAIS to be elevated to the SCOF. The Sub-Committee requested that when the matter is presented at SCOF, Treasury also provide details regarding the exact number of section 14(1) debarments, and those who had successfully appealed such debarments.</p>
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Co-operative Banks Act, No 40 of 2007

General	<p>There were no objections to the proposed amendments. It was noted that the definition of Cooperative Financial Institutions and Cooperative Financial Services under the Co-operatives Act, 2005 required alignment.</p> <p>It was noted that the Co-operative Banks Act could be used as a means to ensure development of financial services particular the development of smaller financial institutions. It was further noted that this may be an area that could assist in the development of banks. It was agreed that additional amendments could possibly be made to this legislation in order</p>
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	<p>to support development and financial inclusion.</p> <p>Action:</p> <p>The Sub-committee requested the CBDA to present to the SCOF</p>
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Credit Rating Services Act, No 24 of 2012

No amendments recommended for approval.

Mutual Banks Act, 1993

No amendments recommended for approval.

Policy Board for Financial Services and Regulations Act, 1993 (Act No 141 of 1993)

No amendments recommended for approval.

Short Term Insurance Act, 1998 (Act No 53 of 1998)

No amendments recommended for approval

Inspection of Financial Institutions Act, 1998 (Act No 80 of 1998)

No amendments recommended for approval.

Financial Institutions (Protection of Funds) Act, 2001 (Act No 28 of 2001)

No amendments recommended for approval.

Collective Investment Schemes Control Act, 2002 (Act No 45 of 2002)

No amendments recommended for approval.

National Credit Act

It was noted that Treasury representatives had a meeting on 26 September 2016 with representatives of the Department of Trade and Industry (Dti) and the National Credit Regulator, in which where amendments to the National Credit Act (NCA) were discussed and agreed upon. The consequential amendments to the NCA were reviewed. No concerns were raised and the amendments were accepted and recommended for approval by SCOF.