**COMMENTS ON THE SUMMARY OF KEY RECOMMENDATIONS ON INTERIM REPORT ON TRANSFORMATION OF FINANCIAL SECTOR PUBLIC HEARINGS**

**12.19. A Summary of the Key Recommendations**

12.19.1 To have a fuller sense of these summarized, condensed recommendations it is necessary to consider the ‘Observations and Recommendations” in sections 12.1 to 12.18 above.

*We would agree with the Interim Report that the pace of change in the Financial Sector and consequently its impact on other sectors especially the Broad Based Black Economic Empowerment is too slow. The present set of proposals contained in the financial sector code which was presented to the Minister of Trade and Industry does not effectively address the urgent need for more rigorous and rapid transformation or what is often referred to as radical transformation.*

***Section 9(2) of South Africa’s Constitution says, “Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, LEGISLATIVE and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination MAY BE TAKEN”. This perspective argues that to promote the achievement of equality, LEGISLATIVE and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination MUST BE TAKEN.***

***Therefore in its current form of the Financial Sector Codes should be significantly revised before it is gazetted including the removal of ordinary or regular business and equity equivalent provisions.***

The recommendations are summarized in the very brief points below, with references in brackets to the sections above to which they refer:

12.19.2 Take into account that many issues raised here can be processed through the present FSC review and the Financial Sector Summit to be held next year.(12.1.10)

***Yes, if done before the FSC is gazetted.***

12.19.3 An active campaign to make stakeholders and the public aware *of the implications of the* FSC *and its impact on the BBBEE among other intersecting pieces of legislation*. (12.2.3)

12.19.4 A ‘name and shame’ approach to those who do not comply with FSC reporting requirements. (12.2.3).

*The purpose of this recommendation is supported.* **However the BBBEE Act does not have a provision that compels those working in the financial Sector to submit such information, except when the BBBEE Commission can issue a summons.**

12.19.5 Industry be compelled to provide the necessary information to the FSC Council and the newly established BEEC. FSC Council and BEEC to investigate whether the statistics provided are accurate.(12.2.3)

**Comment under 12.19.4 applies therefore the Financial Sector Code should include a reporting accountability provision which would compel the reports also to be submitted to the BBBEE Commission. Once the Financial Sector Code has been gazette it would then be binding on all who work in this sector. Reports could be submitted in terms of section 13G.**

12.19.6 The FSC Council and the BEEC be effectively capacitated and resourced, and if necessary restructured, to play their important roles in the transformation of the financial sector. (12.2.4)

The draft Financial Sector Codes provide for consumer education as an element of measurement of transformation. This is problematic as Consumer education is already a requirement under the National Credit Act, Consumer Protection Act and the legislation administered by Financial Services Board. Consumer education is normal business practice and companies should not be rewarded for it.

**Given that the BEEC was only commissioned operationally 6 June 2016 it should be effectively capacitated and resourced to support the implementation of its mandate. The recent legislation and establishment of the BEEC took into account its structure, however agree that the restructuring of the FSC, which was established in 2003 is warranted given their current performance. The issues confronting these two institutions and their respective legislative structures requires that they be dealt with separately.**

12.19.7 CEOs of financial institutions be active in the decision-making processes of the FSC Council to ‘ensure sector buy-in’. (12.2.4)

*See comments under 12.19.6*

12.19.8 FSC and BEEC to perform more effectively and sanctions for the subjective failings of individuals in this regard. Committees to hold them to account for their performance far more rigorously in various ways. (12.2.4).

Not only the company but also individuals of the FSC should be more specifically accountable for their non-compliance as is the case for example in the Companies Intellectual and Property Act.

12.19.9 Higher FSC targets, especially on ownership, management control, procurement, skills development and financial inclusion. Targets on the latter to be about take-up and usage, not just access.(12.2.8)

The Interim Report in 12.2.8 recommends that the targets in the in Financial sector Codes should be compulsory and even put into regulations. **However this is an anomaly because section 9 of the BBBEE Act already provides that when gazetted, the financial sector code becomes compulsory for every official/player in the financial sector. It is therefore imperative that the Financial Sector Code is finalized to establish certainty in the sector because currently the Financial Sector is operating under old sector codes that are not aligned to the 2013 BBBEE Codes of Good Practice.**

**Market concentration, monopolization and ownership**

***Targets for preferential procurement and supplier development are below the targets of the generic codes targets.***

12.19.10 Decisions on “once empowered, always empowered” be consistent with the B-BBEE Act. (12.3.4)

*This subverts the intention of the BBBEE Act therefore cannot be applied only once. While it is acknowledged that changes in ownership cannot be suppressed nevertheless in compliance with the BBBEE the ownership element must remain least 40 percent taking account of the Principle of Continued Consequence****. The “Once Empowered, Always Empowered”: this principle creates regression of transformation. The principle means that companies with a demonstrable track record over a sufficient period of time of black shareholding are given a permanent black empowerment status afforded. A challenges arise when the black shareholders exit the company leaving the company with white ownership while its score card continue to say that the company is empowered. The Commission proposed that this principle not be included in any sector codes as it creates deterioration in transformation. Exclusion of this in the codes will ensure that companies initiate and finance new black ownership transactions in order to remain B-BBEE compliant.***

12.19.11 Government and other relevant institutions give concerted attention to reducing the high levels of monopoly in the banking sector and encouraging new entrants. NT to consider in what ways there can be more direct black ownership of the major banks and report on this regularly. Among many other issues, consideration needs to be given to the following: (12.3.2)

1. Less stringent requirements for the licensing of certain categories of new entrants while ensuring that the depositors’ interests protected. (12.3.12.1)

***Reduce cost of getting licences for black entrants, in line with definition of black in the BBBEE Act.***

1. Majority black, particularly African, ownership, with adequate ownership by women, in new licenses issued. (12.3.12.2)

***Africans ownership who are citizens of the RSA by birth or descent, or who became citizens of the RSA by naturalisation before 27 April 1994, or on or after 27 April 1994, who would have been entitled to acquire citizenship by naturalisation prior to that date.***

1. Banks, within certain timeframes, ensure that their South African direct ownership is mainly black, particularly African, with adequate ownership by women.(12.3.12.2).

*The ownership target is the same as in the generic codes notwithstanding the slow pace of transformation in the sector. This shows that the sector is not willing to fast-track transformation. In principle, to ensure that the low ownership patterns in the sector are addressed, the sector should be aiming for higher ownership targets.*

***This recommendation must state specific timeframes eg one year, two 0r three or years. Secondly percentage of black ownership in line with BBBEE code at least 40 percent and again specificity of ownership by women use percentages.***

1. Banks, within certain timeframes, to have blacks, particularly Africans, in the majority at all levels of management, with adequate inclusion of women.(12.3.12.3)

***This recommendation must state specific timeframes eg one year, two years or three years. Secondly percentage of black ownership in line with BBBEE code at least 40 percent and again specificity of ownership by women use percentages.***

1. Engaging with stakeholders to legislate on these and other relevant proposals.(12.3.12.5)

***Stakeholders within the context of BBBEE and Financial Sector codes, unions and civil society.***

12.19.12 More black, including African and women, ownership of large firms in insurance industry and new black entrants to be encouraged. Among many other issues, consideration needs to be given to the following in the insurance industry. (12.3.15.1)

Point already made about the need for alignment on what we mean by black and which Africans should benefit.

1. Majority black, particularly African, ownership, with adequate representation of women, in new licenses issued. (12.3.15.1)

***See comment under 12.19.11 on the need for specificity and use of percentages rather than the words certain and adequate which is very subjective.***

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1. Set-asides for black-owned and women-owned businesses as a condition for licensing.(12.3.15.4)
2. Engaging with stakeholders to legislate on these and other relevant proposals.(12.3.15.5)

***Stakeholders within the context of BBBEE and Financial Sector codes, unions and civil society.***

12.19.13 The easing of licensing and other requirements for new entrants in the financial sector provided the needs and interests of depositors and policy holders protected. Needs to be balance between focusing on the need for new entrants, and deracializing the financial sector and protecting depositors and policy holders; both these aspects be important parts of transformation.(12.3.17)

**Management Control**

12.19.14 Clear FSC targets to be set for management and Boards to be reasonably representative of the demographics of country(12.4.6).

***What is reasonably representative after 23 years of Constitutional Democracy which seeks to redress the imbalances of the past in particular in areas which prevented/excluded the majority of the population from benefitting.***

**Financial Inclusion, including service charges**

12.19.15 NT to report on progress on implementing the recommendations of 2008 Banking Enquiry Panel report, in particular on the proposals on the capping of punitive non-interest fees that are charged by banks on bounced debit orders (‘dishonour fees’) and on cash withdrawals on ATMs of rival banks. Unless strong arguments to the contrary provided, these proposals should be implemented.(12.5.3)

12.19.16 Support the SARB on need for regulatory framework for money remittance service providers or money transfer operators who are not necessarily banks and review the overall access path for service provision in the payment system. (12.5.4)

12.19.17 NT and SARB develop a discussion paper on fintech ranging from deposit-taking, transactional banking, lending, investments and the new virtual currencies. (12.5.4)

12.19.18 FSC targets Empowerment Financing’ and ‘Access to Financial Services’ be amended to cater for inflationary increases, growth in assets, population and economic growth since the 2002 targets. (12.5.7)

***Section 1o (1) already obligates the achievement of sector targets as one of the conditions for the licensing of financial institutions. It is imperative that all regulatory entities are compelled integrate and comply with the BBBEE Act for any authorization or licensing process.***

**Repossessions and cancellation of insurance policies**

***Fully agree with all the recommendations in this sub-section***

12.19.19 Review National Credit Act to ensure that homeowners do not lose their homes easily when they fall into financial distress. Consideration be given to proposal for 12-month financial recovery eriod.(12.6.1)

***Fully agree with this recommendation and speedily implementable sanctions to be imposed for non-compliance.***

12.19.20 Firm action against abuses.(12.6.5)

12.19.21 Support changes to the Rules of Court and legislation to stop repossession abuses. (12.6.3)

12.19.22 Support the Constitutional Court action by Adv Douglas Shaw on behalf of applicants seeking damages for the auctioning of their houses below market value. (12.6.4)

12.19.23 Amount for BEE transaction financing to increase to cater for growth in assets held by the participants since 2002 targets.(12.7.1)

**Support for smaller and other black businesses, including through procurement and enterprise and supplier development**

*The procurement of local content is not simply a recommendation, it is a legal requirement for state entities. All organs of state are obliged to procure goods that are on the designated list and conform with local content requirements. The South African Bureau of Standards (SABS) to serve as the Local Content Verification Agency, with the Local Content Verification. The NT’s forthcoming Public Procurement Bill is also underpinned with penalty consequences for non-compliance*

*Localisation is one of the levers that South Africa has identified as a tool to fastrack industrialisation. As South African government we are not signatory to the World Trade Organisation.*

Enterprise and Supplier Development*(“ESD”) is an initiative that that assists qualifying companies by providing financial and business support which is one of the most critical constraints faced by*small business *which creates more jobs than medium or larger enterprises.*

12.19.24 B-BBEE Commission and FSC Council tighten loopholes in policy and regulations to reduce prospects of the system being rigged.(12.7.3)

***Given that procurement is often linked to Transfer Pricing or Base Erosion of Prices this must be more effectively addressed in the Revenue laws Amendment Bills through a radical review to re-classify it from evasion to avoidance*.**

***The magnitude of these outflows is weakening the economy through reduction of taxes, payable to the country, which in turn reduces the profits available to black empowerment partners and deprives all workers of better wages. It therefore undermines job creation and the industrialisation efforts of government.***

12.19.25 NT, the FSB and the insurance associations to investigate BIAC concerns about the ‘conflict of interest’ rule, ‘binder agreements’, ‘premium collection’ and other regulatory barriers.(12.7.6)

***Agreed***

12.19.26 Consideration be given to DTI proposal that the panel system that affects small and medium-sized black-owned panel-beaters, body repair shops and tow truck operators be phased out. (12.7.7)

***Full agreed, in addition measures to tighten the compliance of this sector with legislation that is in line with the BBBEE codes.***

12.19.27 A proper balance between implementing global regulatory and other standards and ensuring the emergence of new Black entrants in the sector.(12.2.9; 12.3.17)

***The legislation around procurement, and enterprise supplier development should be effectively implemented and the services of the Auditor General in identifying the breakdown should be regarded as material and qualify the AG report.***

12.19.28 To avoid cherry-picking the easiest elements of empowerment financing, government consider disaggregating the combined empowerment financial targets in the banking and long-term insurance subsectors across the four different pillars of Empowerment Financing to give more weight to particularly those pillars that focus on funding black SMEs, rural and township entrepreneurs, and new industries.(12.7.4)

12.19.29 FSC targets to facilitate improved access to markets for small and medium sized black suppliers such as tow-truck operators and panel-beaters. Black suppliers get more work from the government garage and the SOEs. Support DTI proposal that procurement from black suppliers be increased to 50% by 2021. (12.7.8)

***See earlier comments and recommendations relating to targets eg 12.19.9***

12.19.30 NT, the FSB, the DTI and the insurance associations and other players work more effectively together with the towing and panel-beating SMEs and consider reintroducing the DTI special dispensation for short-term insurers. Review 6 December 2014 Memorandum of Agreement on transformation and procurement targets in the towing and panel-beating Industry and consider introducing a new version of this. (12.7.9)

***Absolutely agree with the re-introduction of the DTI special dispensation for short-term insurers. Plus a review of the 6 December MOU on transformation and procurement targets in this P&T business.***

12.19.31 Report back to Trade and Industry Committee within 6 months of the adoption of this Report.(12.7.10)

***Report back to DTI in three months. Current auditing practices, highlight loopholes in existing legislation and lack of implementation related to tax particularly in*** [***mining***](http://www.polity.org.za/topic/mining)***. As pointed out earlier the lack of alignment in related legislation eg BBBEE and the Minerals Petroleum Resources Act must be addressed expeditiously.***

**Skills Development**

***Given that one the biggest challenges facing South Africa is a critical shortage of strategic skills there must be an urgent review of our strategies in this direction.***

***However what is now clear is that even when there are the requisite skills transformation is not happening because black people as noted within the BBBEE Act do not always have the experience financial companies are insisting on which is unnecessary.***

12.19.32 NEDLAC to pay special attention to the Skills Development element of the Draft FSC and ensure that it prioritises blacks, particularly Africans and women, and aligns with the Generic Codes. (12.8.2)

12.19.33 INSETA to address BIAC challenges on capacity building and skills development support for small black independent financial advisors. (12.8.2)

12.19.34 FSB and NCR to pay particular attention to training and support for micro-lenders. (12.8.3)

**Asset Management**

12.19.35 Appropriate targets to be set in the FSC for asset managers and asset consultants. (12.9.2)

12.19.36 Support DTI proposal that by 2019 state assets must be managed by asset management entities that are at least 51% black-owned and/or Level 4 B-BBEE status.(12.9.3)

**Actuaries and other professionals**

12.19.37 Audit of specialist professions in the financial sector to encourage transformation and mentorship.(12.10.3)

**Cooperative Banks and Financial Institutions** 115

12.19.38 Revised FSC to set effective targets for the strengthening of the cooperative subsector.(12.11.5)

12.19.39 Strengthen legislative and regulatory framework.(12.11.4)

12.19.40 Develop a Cooperative Banking Strategy.(12.11.1)

12.19.41 Increase CBDA’s budget provided they held to rigorous account and there are effective sanctions for poor performance.(12.11.2)

12.19.42 NT and DTI to consider a National Cooperative Bank. (12.11.4)

**Postbank, State-Owned and Black-Owned Banks**

12.19.43 Licensing of the Postbank as soon as possible(12.12.1)

12.19.44 Based on experiences of the Postbank consider whether need for another state-owned bank.(12.12.1)

12.19.45 Support formation of a major black-owned bank. NT and the regulators to consider ensuring that the licensing and regulatory environment conducive to encouraging the entry of black-owned banks into the market. (12.12.2)

**Role of Reserve Bank**

12.19.46 If it is financially possible, the shares of SARB’s private shareholders should be bought out. (12.13.4)

12.19.47 Support need for discussions on how SARB can further contribute to advancing socio-economic development.(12.13.3)

**National Payment System**

12.19.48 A review of the National Payment System Act to consider amending it appropriately to accommodate qualifying non-bank service providers and cooperative banks. (12.14.1)

**Bank Collusion on Currency Trading**

12.19.49 Strong action against bank collusion on the manipulation of currency trading. (12.15.2)

12.19.50 Support Competition Tribunal process.(12.15.1)

12.19.51 If there has been wrongdoing, not just the banks, but the individuals responsible be acted against.(12.15.1)

12.19.52 Consider tightening legislation to reduce prospects of bank collusion.(12.15.4)

**Statutory Bodies in Financial Sector Need to be More Effective**

12.19.53 Statutory bodies be more effective even within their limited resources. Consider more resources, provided greater accountability and effective sanctions for poor performance.(12.16.1)

12.19.54 Consider community reinvestment legislation.(12.18.1)

12.19.55 Government, regulators, other statutory bodies and financial institutions to give greater attention to the financial education and literacy of their customers and the public generally. (12.18.2)

12.19.56 Distinguish between legitimate and unreasonable complaints against decisions by regulators. (12.18.3)

**Other Issues**

12.19.54 Consider community re-investment legislation. (12.18.1

***Worked very well in USA can also work in this country.***