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| **SECTIONS AND PARAGRAPHS** | **SUMMARY OF RESPONSES/COMMENTS/ FURTHER SUBMISSIONS BY PARTICIPANTS** |  |
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| **12.2.** | FINDING THE NECESSARY BALANCES TO ENSURE TRANSFORMATION BENEFITS ALL BUTMAINLY THE POOR |  |
| 12.2.3  Reporting of data to the FS Charter Council and BEEC and sanctions for lack of compliance with reporting requirements | Participants support this Recommendation. They said there should consequences for non-reporting and “naming and shaming’’.   * ABSA said the reporting on ownership statistics should be split between direct and indirect ownership as well as equity equivalent transactions, if any. * BASA said only when we have common and credible data that we can accurately track our transformation progress. * The BEEC said that industry be compelled to submit the necessary information to the B-BBEE Commission. The B-BBEE Act, however does not have a provision compelling any player in the financial sector to submit such information, except during an investigation where the Commission can issue summons. It Recommended that *The financial sector code must include a provision for reporting which requires compliance reports to be submitted to the B-BBEE Commission in the same manner as reports submitted in terms of section 13G. It said that once gazetted, the financial sector code will be binding on all players in the sector, and this will compel such provision of information.* * The BEEC further said that Sector Councils are accountable and responsible for ensuring that compliance reports are consolidated and submitted to the Minister of Trade and Industry for consideration and further submission to the B-BBEE Commission for assessment. To date, the Commission had not received even a single Sector Council report for consideration. * The BEEC said that the 2016 Draft Amended FS Code contains no sanctions for failure to meet targets. FS Charter Council is engaging NT, the FSB and other relevant statutory bodies and stakeholders to look at alternative measures to enforce compliance. The Summit will discuss this. |  |
| 12.2.4  Capacitating and Resourcing State Regulatory Institutions to perform effectively | Participants expressed support for the capacitation and resourcing of the FS Charter Council and the BEEC. They said that Chief Executive Officers or other senior role players in the industry must be active in the FS C Council.   * The BEEC added that being a new entity that started operating on 06 June 2016, the B-BBEE Commission must be well-resourced and capacitated to execute its mandate. The recommendation relating to restructuring or inadequate performance is applicable only to the FS Charter Council, not the B-BBEE Commission. It submitted that the Committees should revise its recommendation to reflect that inadequate performance did not apply to it yet. |  |
| 12.2.5  Reliability of statistics | * ASISA said that for BEE Statistics to be trusted, the verification agencies must be trusted. * FIA said it shares the Committees’ concerns about the lack of reliable statistics and would suggest necessary actions be taken to address such concerns. It suggested that the statistical claims made by all stakeholders be scrutinised as there are a number of inaccurate, incomplete, self-serving and unsubstantiated claims in the interim report – these ‘questionable’ claims are not limited to submissions by “dominant players in the financial sector”. Consideration should also be given to the veracity of claims submitted by individuals who are recounting personal experiences that may not be systemic across the industry. Examples: The R1000 pa ‘cap’ on insurer expenditure on an intermediary is made to sound like it specifically applies to previously disadvantaged intermediaries and no mention is made of the fact that this excludes training / development expenditure; the reference to black brokers being excluded from earnings from premium collections in 8.17.3 sounds like discrimination, when in fact it is simply because they do not collect premiums; the impression created in 18.17.7 is that the regulatory costs are somehow uniquely a problem to black intermediaries, whereas they present problems to the entire intermediary body etc |  |
| 12.2.8  **Making targets compulsory through regulation** | * The BEEC said that the Section 9 of the B-BBEE Act already provides that once gazetted, the FS Code will become compulsory for every player in the financial sector. There is no need to introduce regulations in this regard. |  |
| 12.2.9  **Aligning FSC with Generic Code targets** | * Nedbank acknowledged concerns about the misalignment of the 2016 Draft FSC Scorecard targets with the prescribed 2013 Generic Codes. It said that a one size fits all approach is not appropriate, but will participate actively in the realignment process to ensure that these concerns are addressed. * ASISA said it does not believe that the revised draft FSC targets are lower than the Generic Code targets. FSC targets on ownership are identical to the Generic Code. * FSC has unique features that are intended to address transformation peculiarities that exist in the financial sector. On the ownership element, the compliance targets in the FSC are the same as those in the Generic Codes (i.e. 25%+1 target for black ownership and 10% target for black women ownership, the difference is in the number of points allocated, which is lesser in the FSC to accommodate the additional elements. |
| 12.2.10  **Making transformation (FSC) a condition for licensing** | * Many participants opposed linking transformations to licensing arguing that it will create instability. Banks, BASA, SARB, SAIA, ASISA opposed this recommendation for the banking and insurance sectors citing capital adequacy requirements.      * BEEC pointed out that this is already a legislated requirement under section 10(1) of the B-BBEE Act. It said that all regulatory entities are required to integrate and require B-BBEE compliance for any authorisation or licensing process. It said that *All regulatory entities that are public entities or organs of state must implement the requirements of section 10(1) with immediate effect.* |  |
| **12.3** | **MARKET CONCENTRATION, MONOPOLISATION AND OWNERSHIP** |  |
| 12.3.1  **More objective process for tracking ownership data and publication of an annual ownership monitor.** | * This was widely supported by many participants who commented on it. |  |
| 12.3.3  **Declining Ownership in Ownership element scores in financial institutions and misaligned targets of FSC and Generic Codes.** | * ASISA disputed that the Draft FSC target on Ownership is 20%, saying that FSC and Generic Codes targets on Ownership are 25%. |  |
| 12.3.4  **“Once Empowered Always Empowered” (OEAE) Principle** | * ASISA said that the “Once Empowered Always Empowered” is no longer applied in the revised code. Instead the “Continuing consequences’ provisions drawn from the Generic Code are used in the revised FSC when empowerment shareholders sell out. * It further said that the only difference between the FSC and the Generic Codes is that equity equivalent funding can be used to top-up a portion of the lost BEE equity on exit of empowerment partners. * ASISA said that the Committees should give consideration on the balancing of the broad based and immediate impacts that the R100bn of equity equivalent funding committed to black business by the sector through the FS Code, against narrow based, delayed and systemic implications of R25bn in additional BEE equity directly held in financial institutions. * The JSE said while it recognises the Joint Committee’s position that the “one empowered, always empowered” principle should be consistent with the B-BBEE Act, it supports the view of Intellidex that ‘BEE deals should rather be seen as wealth creation and redistribution mechanisms than as ownership mechanisms’. It said that share owners should have a right to dispose of their shares and use the capital to create new opportunities. ‘It is not equitable to penalise the company that created the BEE deal when the beneficiaries exit the deal.’ * SAIA said that should the Committees’ proposal regarding the “once empowered always empowered” principle apply to all financial institutions and not only to banks, we request a discussion with the Committees regarding the feasibility and potential unintended consequences. |  |
| 12.3.7  **Incomplete JSE Statistics beyond the top 100** | * The JSE notes Joint Committee’s position regarding incomplete statistics. The top 100 companies, as at the end of 2013, comprised 94.97% of value of market capitalisation of the companies listed on the JSE. Consequently the value of analysing all JSE listed companies would be insignificant compared to the effort that would be required. |  |
| 12.3.10  **Fund dedicated to new black entrants in the financial services sector.**  **Funding for start-ups in the Financial Sector** | * SAIA and FIA support the setting up of a fund for new black entrants. * BASA noted an assertion in the Report about *“*funding for start-up companies being biased towards other sectors such as construction, mining, wholesale and manufacturing, with the new entrants into the financial sector being neglected.” It said the wording in the report implies that there is some degree of adverse selection in the decisions about financing of new businesses. We do not agree with this view. If there is truth to the assertion (we have not verified it) that start-ups in these sectors are more likely to access finance than those in the financial sector, this may simply be a function of barriers to entry in the different sectors, many of which are regulatory in nature rather than a deliberate bias against start-ups in the financial services sector. It is important that the problem is correctly diagnosed to avoid prescribing incorrect solutions and creating wrong perceptions. * ASISA noted that one of the key commitments that the sector has made in terms of the revised FSC Code is the commitment to provide R100bn in funding to support black business including black industrialists. It urged for the urgent finalisation of the revised FS Code. |  |
| 12.3.11.  **Monopolisation, lack of competition and market concentration** | * BASA, Nedbank, SAIA and ASISA disagree that there is monopolisation and lack of competition in the banking and insurance sectors respectively. * SARB acknowledged high concentration levels and highlighted their advantages. Expressed support for increased completion, stressing that new entrants will have to meet the minimum regulatory requirements. * ABSA said the high levels of concentration in the banking sector is not unique to South Africa, and contributes to the financial stability of our sector. Similar market constructs exist in Australia, Canada and the UK. Concentration makes banks more resilient, as they are well capitalised. |  |
| 12.3.12.1  12.3.17  **Less stringent requirements for the licensing of certain categories of new entrants while ensuring that depositors’ interests are protected.** | * Supports a tiered approach to licensing and regulatory compliance to support new entrants, provided there is sufficient protection for consumers. * The SARB said it does not accept a dual regulatory framework for incumbents and new entrants. One regulatory framework must be applied to govern the financial system. A dual system could potentially create financial instability within different regulatory and supervisory tools used to assess the same levels of risk. It is advised, furthermore, that the potential will then exist for the SARB to be subject to legal challenges from incumbents for creating less onerous regulatory requirements for new entrants. * FIA said consideration should be given to the impact of softer licensing requirements on the functioning of the Prudential Regulator. It said there is an inherent conflict between softer licensing requirements and protecting the needs of depositors and these aspects were not mutually supportive. |  |
| 12.3.12.2  12.3.12.3  12.3.15.1  12.3.15.2  **Ownership:**  **Linking FSC targets with new licenses.**  **Majority black, particularly African, ownership, with adequate ownership by women, be required in the case of new licenses being issued.** | * Participants warned against linking the issuing of new licenses with ownership in the financial sector, particularly banking and insurance. They said it will pose risks of financial instability. * Nedbank said the key focus should be on institutional ownership and ensuring institutional owners are both active owners of the banks and also represent many individual black owners drawn from savings and pension pools. It said what is important is whose money sits behind those institutional owners who are the natural owners of banks and the racial composition of those indirect owners. Individuals do not directly own systemically important banks at any scale anywhere in the world and it would be inadvisable to encourage this- from both a national financial stability point of view and prudent financial investment advice dispensed to an individual. * ABSA said the proposal of linking banking licenses to FSC compliance could result in unintended consequences for the economy, such as job losses and disruption of banking and payment services to customers, by entities still working through their transformation journeys and not yet compliant with minimum requirements. The current approach to B—BBEE compliance via procurement is well designed and can achieve the desired impact. * BASA cautioned against making transformation targets part of the licensing requirements. The reason for its caution is that banks are required to hold in reserve certain amount of capital to meet unanticipated losses. This is important given that banks have higher levels of debt relative to share capital. It is part of the prudential requirements that shareholders of banks should have debt-free capital, which makes individual ownership of a bank almost impossible. For this reason, banks in many jurisdictions are owned by institutions, and making direct black ownership a licensing requirement would simply limit new entrants into the banking industry as very few entrants would meet the capital requirements. Pushing through what seems to be a progressive proposal could have the unintended consequences of introducing instability at worst or further stifling competition. * Cautioning against this, the SARB said licensing must not be used as a blunt instrument to enforce transformation. The efforts to create effective and meaningful transformation of financial sector must be done in a manner that recognises the existing property rights of license holders; the impact on the stability of the financial system as a result of altering license conditions and the imperative of continued protection of depositors and policy holders. The role of a prudential regulator is to promote and enhance the safety and soundness of a financial institution, in order to protect financial customers against the risk that a financial institution may fail to meet its obligations. * The SARB said it supports the progressive realisation of an ownership structure of the banking sector that reflects the demographic composition of South Africa. However, the concept of shareholder equity in a bank is impacted by regulatory capital requirements imposed on a bank…Thus, as a starting point, any shareholder equity must be financed through unencumbered capital i,e, cannot be funded through a loan as the banks’ equity shareholders are the first to absorb losses when the bank experiences difficulties. In developing an approach to ownership transformation of the banking sector, cognisance must be taken for the changing nature of global finance. Banks raise capital from international capital markets. Regardless of the ownership profile of a bank, access to global capital markets is an imperative. As such, none of the big global have a controlling shareholder, and the major South African banks are no exception to this ownership trend. Failure to appreciate this will result in existing banks or future black owned banks restricted from growing to become significant players in global markets due to their inability to access global finance, This would have negative implications for the banking sector’s role in providing capital and lending to support South Africa’s growth and development. * ASISA said linking licensing to FSC targets will be detrimental for millions of policyholders who would be seriously compromised should their insurers have their licenses suspended or revoked. It said it is categorically ill-advised to reserve new insurance licenses for companies that are majority individual and community based black owned because:   + An insurance contract is the longest term contract that most consumers enter into. Premiums paid on insurance contracts rarely exceed the sums assured.   + Liabilities are certain for insurance companies. However growth in assets to back these liabilities is not. Significant shareholders capital, referred to as CAR is thus required. In South Africa, insurance companies currently hold in excess of R200bn for this purpose.   + At start-up phase, it may be possible for individuals to own insurance companies. However as soon as liabilities start growing, shareholders with access to significant capital are required in order to back the long term liabilities. Individuals, regardless of race, simply do not have access to the quantum of long term capital required for this purpose. This is also the case in most other countries.   + As in most other countries, insurance companies in SA thus tend to be majority owned by institutional investors (referred to as mandated investors in BEE legislation) * SAIA said it supports consequences for lack of progress with transformation but do not support linking licences to meeting targets. It can lead to unintended consequences and systemic risk in the financial sector. . It further said that this is of particular concern in view of the fact that all insurers will have to re-apply for licenses under the Twin Peaks dispensation.It proposed more discussion with the relevant stakeholders on what the consequences should be and at what level it should be applied. The discussions regarding appropriate targets are also crucial. The starting point should be for all insurers to report so that the current position and progress can be measured. * B-BBEE Commission said that Section 10 (1) of the B-BBEE Act already makes linking licensing to transformation compliance obligatory. All regulatory entities are required to integrate and require B-BBEE compliance for any authorisation or licensing process. It said that *All regulatory entities that are public entities or organs of state must implement the requirements of section 10(1) with immediate effect.* |  |
| 12.3.15.4,  12.19.12  **Set asides for new licenses** | * SAIA said that *“Set asides for black-owned and women-owned businesses as a condition for licensing”* be clarified as it is not clear whether this refers to ownership of insurers as a condition of licensing or to ownership of suppliers to the industry. |  |
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| **12.4.** | **MANAGEMENT CONTROL** |  |
|  | **No particular comments** |  |
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| **12.5.** | FINANCIAL INCLUSION AND SERVICE CHARGES |  |
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| **12.6** | REPOSSESSIONS AND CANCELLATION OF INSURANCE POLICIES |  |
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| **12.7** | SUPPORT FOR SMALLER AND OTHER BLACK BUSINESSES, INCLUDING THROUGH PROCUREMENT AND ENTERPRISE AND SUPPLIER DEVELOPMENT |  |
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| **12.8** | SKILLS DEVELOPMENT |  |
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| **12.9** | ASSET MANAGEMENT |  |
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| **12.10** | ACTUARIES AND OTHER PROFESSIONALS |  |
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| **12.11** | COOPERATIVE BANKS AND FINANCIAL INSTITUTIONS |  |
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| **12.12** | POSTBANK, STATE-OWNED AND BLACK-OWNED BANKS |  |
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| **12.13** | ROLE OF SOUTH AFRICAN RESERVE BANK |  |
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| **12.14** | NATIONAL PAYMENT SYSTEM |  |
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| **12.15** | BANK COLLUSION ON CURRENCY TRADING |  |
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| **12.16** | STATUTORY BODIES IN THE FINANCIAL SECTOR NEED TO BE MORE EFFECTIVE |  |
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| **12.17** | GENERAL ISSUES |  |
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| **12.18** | OTHER ISSUES |  |
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| **12.19** | A SUMMARY OF THE KEY RECOMMENDATIONS |  |
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