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**TRANSFORMATION OF FINANCIAL SECTOR PUBLIC HEARINGS: RESPONSES/COMMENTS ON THE INTERIM REPORT OF 06 SEPTEMBER 2017**

**Participants who commented on the Committees’ Observations and Recommendations**

1. **NEDBANK**
2. **STANDARD BANK**
3. **ABSA**
4. **BASA**
5. **SARB**
6. **B-BBEE COMMISSION**
7. **FS CHARTER COUNCIL**
8. **ABSIP**
9. **ASISA**
10. **JSE**
11. **MFSA**
12. **FIA**
13. **SA AUTO REPAIRERS**
14. **SAIA**
15. **BIAC**
16. **CBDA**
17. **MONEYFICENT**
18. **MR ARIJS**
19. **MS OBERHOLZER**
20. **CASISA**
21. **MR ADAMS**

**Other participants did not comment on the Committee’s observations recommendations, but focussed on correcting some content in the Overview section of the report.**

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| **SECTIONS AND PARAGRAPHS**  | **SUMMARY OF RESPONSES/COMMENTS/ FURTHER SUBMISSIONS BY PARTICIPANTS** |  |
| **12.2.** | FINDING THE NECESSARY BALANCES TO ENSURE TRANSFORMATION BENEFITS ALL BUTMAINLY THE POOR |  |
| 12.2.3Reporting 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.
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| 12.2.4Capacitating 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.
* FS Charter has already commenced a reviewal of its position, structures and compositions to ensure that it is sufficiently capacitated and resourced to achieve its mandate effectively
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| 12.2.5Reliability 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.
* FS Charter Council said it is reviewing reporting processes to ensure the accuracy of data which is highly affected by low participation. It is mostly large entities that are reporting to the FS Charter Council. This distorts the overall picture and contributes to the view that the report is inaccurate. To further enforce the accuracy of data, the Draft Amended FS Code to be gazetted will include a clause that forces verification agencies, which are auditors for B-BBEE, to submit their reports directly to the FS Charter Council
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| 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.
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| 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.
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| 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.*
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| **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.
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| 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%.

 * FS Charter Council said that Ownership has been one of the contentious elements of the FS Code and various motivations have been submitted to explain why this sector has to be considered differently around this element. The Draft Amended FS Code proposes a solution which we view as more workable and will allow for an increase in Black owned businesses. However, the matter will continue to be debated in the review and summit processes.
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| 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.
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| 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.
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| 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.
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| 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.
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| 12.3.12.112.3.17**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.
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| 12.3.12.212.3.12.312.3.15.112.3.15.2**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.*
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| 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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| 12.3.1712.19.13**Committees’ support for easing of licensing and other requirements for new entrants in the financial sector** | * The SARB 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.
* The SARB does not agree with suggested reductions to regulatory requirements for financial institutions. We however support the application of the regulatory framework in a manner that is proportional to the business models of financial institutions. We will consider, as appropriate, developing capacity to provide guidance to prospective financial institutions on the licensing application process from the registering of a cooperative financial institution to a commercial bank.
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| **12.4.** | **MANAGEMENT CONTROL** |  |
| 12.4.4.12.4.6.12.19.14. **Alignment of Generic Codes and Amended FSC targets**  | * FS Charter Council said that Management Control targets, as outlined in the Draft Amended FS Code, are fully aligned to the targets in the Generic Code.
* Nedbank acknowledged the concern raised that the 2016 Draft FSC Scorecard targets do not align to the prescribed 2013 Generic Codes. A one size fits all approach is not appropriate.
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| **12.5.** | FINANCIAL INCLUSION AND SERVICE CHARGES |  |
| 12.5.412.19.17**NT and SARB develop a discussion paper on fintech ranging from deposit-taking, transactional banking, lending, investments and the new virtual currencies.**  | * SAIA said that an enabling regulatory environment for the use of Fintech by insurers should also be developed as it could have a positive impact on financial inclusion.
* SARB said there is a need to establish an appropriate regulatory framework for money remittance service providers or money transfer operators who are not necessarily banks and to review the overall access path for service provision in the payment system. SARB is developing its proposed regulatory approach on these matters.
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| 12.5.6**Debt relief measures** | * Nedbank said it would like to advise the Committees to exercise caution and pragmatism in respect of the extent to which they seek to legislate and impose debt relief interventions. Such actions will directly impact bank funding costs in response to increasing risk to bank income statements as well as curtail further lending to those borrowers that benefit from unfunded and forced permanent write-offs from credit providers
* MFSA said it supports the sentiments of Parliament for a credit market, which is sustainable and benefits society in totality including consumers who are financially challenged. We have extensive proposals informing the principles, objectives, interventions, and the management of unintended consequences that should underpin legislated debt relief. An important component of the credit market outside of banks is not being fully heard and understood in this matter. While both banks and microfinanciers are legal and registered credit providers, microfinanciers cannot be regulated in the same manner as banks specifically in the areas of: interest rates and fees; credit life insurance and implementation of imposed debt relief.
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| **12.5.7****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.** | * FS Charter Council said that the Empowerment Financing and the Access to Financial Services targets were originally set in 2012 as 5 year targets and will be reviewed within a 6 month period after the gazetting of the Amended Code.
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| **12.6** | REPOSSESSIONS AND CANCELLATION OF INSURANCE POLICIES |  |
| **12.6.1.** **12.19.19****The Committees unequivocally condemn cases of banks auctioning houses and cars unnecessarily below their market value when they repossess them (and then at times re-selling them at much higher prices again.**  | * Nedbank said that repossessions and subsequent auctioning of repossessed properties is absolutely the last resort. Auctioning of houses and cars below fair value is a bad practice.
* Ms Oberholzer said that it is grossly unfair that a person pays their bond for many years and they are suddenly retrenched and unable to pay their bond and then banks repossess them, auctions them for a paltry sum and the person is left homeless. She said that there is scant regard that the person has a vested interest in this home and has invested many years of hard earned money into it. This is really a gross violation of human rights and yet the banks do it all the time. She submitted that this needs to be addressed without delay.
* FS Charter Council said this matter, which was also brought to the attention of the FSC Council at the recent strategy session, could be taken into consideration during the review of the FSC Council’s Affordable Housing Standards.
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| **12.6.2****…The Committees believe that consideration needs to be given to proposals that insurance companies should reimburse homeowners the instalments they have paid if they end up losing their homes after all efforts to save them have failed…** | * SAIA said that it does not support the suggestion that insurance companies should reimburse homeowners the instalments they have paid if they end up losing their homes after all efforts to save them have failed.
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| **12.6.5** **… However, we believe that there should be an inquiry into financial malpractices…** | * CASISA said that in support of the recommendation in 12.6.5, it recommends that in light of the existing ongoing judicially authorised investigation by late Hawks Judge into court corruption:-that the Committees consider confirming from the Minister of Justice exactly when the new Hawks Judge (vacant since February) will be appointed to complete the investigation.
* Ms Oberholzer added that financial institutions who are found guilty of transgressions i.e. abuse of the Insolvency Act, breaking court rules, not adhering to acts such as the NCA should be prosecuted. This includes officials of banks and lawyers. Heavy fines should be imposed on financial institutions concerned and victims should be compensated.
* Ms Oberholzer said that there should be corruption monitors in all the courts as well, so that victims can report any misdemeanours to them. She said she personally has experience of the entire contents of her own file disappearing at the Cape High Court, never to be found again. There is a growing culture amongst Bank officials, their agents and anyone associated with them, to mislead the courts and the law, to the detriment of the beleaguered public who find themselves at the mercy of these individuals.
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| **12.6.8** …**the Committees support in principle the establishment over time of a fund to provide legal professional representation to consumers in instances where they get litigated against by big financial firms. Consideration needs to be given to a proposal at the hearings that such a fund could receive annual contributions from the financial sector businesses based on their collection of fees.** | * Ms Oberholzer said that it is an excellent idea for the financial institutions to contribute to a fund for victims of litigation. They are able to employ the best legal people, so it should be mandatory for them to make contributions to this fund based on a percentage of their profits.
* Mr Arijs said that there should be a right of free access to legal advice and opinions, free legal assistance by competent and independent lawyers. As in NHRBC, this should be sponsored by the financial structure to be created and independent. He further said there was a need to tackle the conflict of interest between Law Firms, Conveyancers, Notaries, Auctioneers, Estate Agents and the financial sector. There must also be free access online for the public to all data and information stored directly or indirectly, nationally and internationally within the financial sector and Deeds Office on the clients’ names and properties. There must also be written notification and case by case authorization from the client when the financial sector should sell, transfer or export data and information from their clients to third parties.
* Mr Arijs made other points related to this. He said there was a need to reorganize and restructure foreclosures and Public Auctions by eg. implementing reserve prices at market related prices. There must be transparency on the cost, fees, used structures and procedures of the recovery process used by the banks to recover the outstanding balance of bonds and facilities in case of default. Evictions from first residences must be abandoned. Consideration should be given to a "Sale and Lease Back" structure in a parastatal structure to buy back the properties from families who were forced to stop their instalments due to economic, social and health circumstances and which will ruin their families’ futures.
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| **12.7** | SUPPORT FOR SMALLER AND OTHER BLACK BUSINESSES, INCLUDING THROUGH PROCUREMENT AND ENTERPRISE AND SUPPLIER DEVELOPMENT  |  |
| **12.7.3****There has also been several complaints to the SCOF in recent months from black entrepreneurs about the negative effects of tightening legislation and regulations through the introduction of the new ‘Twin Peaks’ model to transform the financial sector…The Committees believe that the Bills giving effect to the new ‘Twin Peaks’ needs to take this into account, but also needs to balance the need to create more space for black entrepreneurs and the need to protect the interests of financial customers.** | * SARB said that It must be noted that the introduction of twin peaks is not anti-transformation. The objective of the twin-peaks model, at its core, is to ensure that the financial system is stable, protects financial customers and will be able to play a meaningful role in economic growth and development of the country
* FIA said that The FSR Act (Twin Peaks) is clearly driving up the cost of financial sector regulation (and compliance with same); but this is not the only concern here. Of greater concern in the intermediary sector, where many SMEs play, is the impact that RDR and related regulations will have on earnings etc. The Committees should note that these ‘barriers to entry’ are as onerous for black entrepreneurs as they are for white entrepreneurs.
* BASA said that the financial sector is interconnected and interlinking. It also plays a critical role in the economy. Actions in one part of the sector could have dire consequences in another part and ultimately the economy at large. We wish to draw the attention of the committee to the fact that the sector is undergoing a major restructuring at present with the introduction of the amendments to the Financial Intelligence Centre Act, Financial Sector Regulation Act, Conduct of Financial Institutions Bill and Levies Bill with the latter two being under consideration by the Standing Committee on Finance. We are also engaging with the Portfolio Committee on Trade and Industry regarding the proposed Committee Bill on debt relief. It urges that care should be taken in introducing further reforms to avoid overwhelming the financial sector such that it buckles under pressure. Already, our institutions are spending billions of Rand on regulatory compliance and the new reforms will add to that.
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| **12.7.6** **The Committees recommend that NT, the FSB and the insurance associations should investigate the concerns that were raised by BIAC in relation to the ‘conflict of interest’ rule, ‘binder agreements’, ‘premium collection’ and other regulatory barriers**. | * FIA said that it has worked withindustry stakeholders such as SAIA, ASISA and SAUMA to propose a regulatory framework in respect of Retail Distribution Review (RDR) Phase 1 which has resulted in a more sustainable outcome for intermediaries. Pro-active engagement will continue with the regulator and business to ensure the sustainability of intermediaries.
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| **12.7.7.** **“Preferred Insurance Service Provider System” and the “Motor Manufacture Factory Approved System”****The Committees believe that consideration needs to be given to the proposal made by the DTI that the panel system be phased out**. | * SA Auto Repairers and Salvage Association said that it agrees with the recommendation by DTI in section 12.7.7, on the phasing-out of the panel system. This process, however, requires very careful consideration of those structural imbalances that systematically prevents Black-owned business to compete for procurement. The panel system has across the last decade or more directed billions of Rands of procurement to large white-owned businesses. This access to procurement allowed white-owned businesses to develop very strong infrastructure and build massive monopolies. A simple abolishment of the panel system would allow such monopolies to dominate the industry even further. There is a real necessity for a ***planned*** phasing-out process that allows black-owned businesses unfettered access to enterprise development, affordable capital and redirected procurement spend.
* SAIA submits that directing more work to black owned enterprises may be assisted by having a panel system. In addition, panel systems greatly enhance the efficiency of short-term insurance procurement and therefore reduce premiums for policyholders. SAIA does not support the proposal to phase out panel systems as this would inevitably increase premiums for policyholders which will impact negatively on financial inclusion, and panels will assist in directing work to black panelbeaters.
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| **12.7.8****The Committees recommend that the Draft FSC targets should be reviewed to facilitate improved access to markets for small and medium sized black suppliers such as tow-truck operators and panel-beaters. The Committees recommend that black suppliers in this subsector should get more work from the government garage and the SOEs. The Committees also support a proposal made by DTI that procurement from black suppliers be increased to 50% by 2021.** **12.7.9****MoA of December 2014 not implemented properly in motor body repair industry** | * FS Charter Council We support the DTI’s proposal that procurement from black suppliers be increased to 50% by 2021. This will be further addressed during the review and the summit processes. Procurement targets in the sector will also be reviewed to improve areas that require transformation, i.e., Black stockbrokers and panel-beaters, etc
* FS Charter Council acknowledges that the current and Draft Amended FS Code include a specialised entities scorecard that endeavours to ensure that preferential procurement is addressed by all members of the sector. Further, for retirement funds a voluntary scorecard has been included which we recommend should be made compulsory. We will seek the assistance of the FSB and other relevant bodies to ensure this compulsion.
* ABSIP said that The FSC Council should take the lead in the mandatory requirement of BBBEE as opposed to narrow BEE. The Black Ownership and gender levels on a look through basis for Mandated Retirement Funds and similar funds (umbrella funds, CIS funds, medical aid funds etc.) must be taken into account in determining BBBEE shareholding. Black and gender shareholding of mandated funds can and should only be taken into account if the mandated fund has a valid BBBEE certificate and it discloses the Black Member and Gender percentage by value of assets or liabilities. Mandated Retirement Funds and similar funds (umbrella funds, CIS funds, medical aid funds etc.) whose assets are managed by asset management firms with a less than BBBEE Level II rating should have the BBBEE levels discounted on a graduated scale in determining the procurement level of mandated retirement funds and similar funds.
* The BBBEE FSC Retirement Fund Scorecard must be made part of the FSC BBBEE Codes of Good Practice (CoGP) and make it mandatory for all retirement funds, including umbrella funds, CIS funds, medical aid funds to disclose the detailed scorecard on the retirement fund website within six months of the retirement fund’s or similar funds year end. The current draft has the Retirement Fund and similar funds as an appendix of the FSC Codes of Good Practice. This will help encourage procurement of enterprises with Black and Female ownership across the full value chain. The value chain includes stockbrokers, asset managers, investment administrators, compliance services, law firms, corporate finance advisors etc.
* SA Auto Repairers and Salvage Association that it strongly supports the recommendation on setting targets for directed procurement spend by Government Garage and SoE’s. The absence of these state institutions at the signing of the Memorandum of Agreement (MoA), in December 2014, between Insurance Companies and Industry Associations remains seriously disturbing. We agree with the target as set at 50% but recommend an implementation date of 2019, rather than 2021. We recommend that interim targets should start in late 2017. It further recommends a review of the MoA of December 2014. The revised version should include specific procurement targets, including the setting of a 2018 target of 45% for directed procurement to 100% black and women-owned businesses. This new MoA should include the setting of targets for enterprise development, including specifying the role of black and women-owned professional service providers. Traditional white-owned businesses and service providers, through established networks with untransformed management structures, have dominated access to ED spend.
* SAIA said that it supports the principle of setting stretch targets for procurement to black motor body repairers (MBRs or panelbeaters) and other suppliers, within a reasonable timeframe. We are currently engaging on what such targets should be, to be underpinned by research to be done regarding capacity of MBRs, which will inform stretched but sustainable procurement targets. An enterprise development project will be linked to this in order to build the necessary capacity should the research indicate a need for this. It further supports the Committees’ recommendation that public entities and organs of state should also implement a procurement policy in line with transformation requirements. The “Interim Measures” whereby insurers will not remove vehicles from panelbeaters not on the insurers’ panels is still in place for vehicles out of warranty as per the agreement with the DTI, and are being implemented by insurers.
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| **12.8** | SKILLS DEVELOPMENT |  |
| 12.8.2, 12.19.55**The Committees are concerned that the 2016 Draft FSC Scorecard targets are lower than those prescribed in the 2013 Generic Codes. The Committees believe that Skills Development is very crucial in deracialising and transforming the sector. The Committees urge 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.**  | * FS Charter Council said that he FS Code targets are aligned to the Generic Code. The management levels are however tiered targets to ensure that the spend is concentrated at levels required to enhance skills required for senior and top management and control.
* MFSA said that on-going consumer education is an imperative for MFSA in the interests of a responsible and fair credit eco-system. However, consumer awareness remains problematic on the transformation agenda. Consumers are not educated enough and still remain unbanked. More effective consumer education needs to be implemented in order to ensure transformation does take place specifically with regards to access to credit and the use of technology and appropriate products. This is a collective and shared responsibility between the industry, government and regulators.
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| 12.8.312.19.34**The Committees recommend that INSETA should examine the challenges faced by BIAC and its constituency in respect of capacity building and skills development support for small black independent financial advisors. The Committees further urge the FSB and NCR to pay particular attention to the issues raised by Microfinance South Africa regarding training and support for micro-lenders in order to ensure that their businesses and business models remain sustainable.**  | MFSA said that relevant frameworks should afford recognition to microfinanciers as smaller players in the market. This diversification enables MFSA members to play their part and compete in their own right. This should not be construed as appealing for a special dispensation outside of the credit provider industry. We are advocating this on the basis that any legislation must be fit-for-purpose and thorough specifically when it deals with credit market regulation and thus consumer behaviour within the context of prudential and market risk in the interest of a sustainable financial ecosystem.FIA emphasised the need to build and develop financial intermediaries by means of internships and graduate programmes targeted at financial advisors and brokers. Skills and development should be extended to include how to be a leader in the emerging market space, practice management, and sales skills to ensure support and sustainability of new entrants. |  |
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| **12.9** | ASSET MANAGEMENT  |  |
| **12.9.2****A few large firms, through vertical integration, it was said, owned the full distribution channel and value chain from administration, risk management, employee benefits, wealth management, linked investment services, life insurance, collective schemes, stockbroking, and asset management. The lack of competition creates barriers to entry and access to creates barriers to entry and access to business for black asset managers, stockbrokers and others in the value chain. The Committees recommend that appropriate targets must be set in the new FSC for asset managers and asset consultants.** | ABSIP said that the recommendations on asset management do not go far enough in their current form to bring about the desired level of transformation required in the asset management industry. It said that currently there is no accountability or disclosure process to which asset consultants submit themselves to in respect of their advisory role. Asset consultants should form part of the “specialist professions” annual audit as contemplated 12.19.37 and state and corporate retirements funds should enforce this audit as compulsory to all service providers they engage. ABSIP recommends that the level status should be changed from level 4 to level 2 in 12.9.3 and 12.19.36. ASISA said that it is imperative that the revised FSC is gazetted in final form without delay, as the current Code dates back to 2012.  |  |
| **12.9.3****The Committees support the 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.** | ABSIP said that the recommendations on asset management do not go far enough in their current form to bring about the desired level of transformation required in the asset management industry. ABSIP recommended that the level status should be changed from level 4 to level 2 in 12.9.3 and 12.19.36. |  |
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| **12.10** | ACTUARIES AND OTHER PROFESSIONALS |  |
| **12.10.2****Mentorship** | SAIA supports this |  |
| **12.10.3****Audit of specialist professions in the financial sector** | It is ABSIP’s considered view that the recommendation in respect of Actuaries and Other Professional Bodies such as ASSA, BUSA, ASISA, BASA, SAICA, SAIA and Professional Bodies will not transform unless the FSC Codes BBBEE Specialised Scorecards are mandatory for all these bodies. ABSIP said that *The Professional Bodies in the Financial Sector should apply the FSC Specialised Scorecard and comply with the FSC. Non-compliance must result in a penalty (to be determined).*  |  |
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| **12.11** | COOPERATIVE BANKS AND FINANCIAL INSTITUTIONS |  |
| **General** | * CBDA said that the following needs to be politically driven imperatives:
1. The formation of a National Co-operative Bank as well as a Co-operative bank for Government Employees and Members of Parliament.
2. Access to the National Payment System.
3. The collaboration between Postbank and the CBDA needs to be endorsed at a political level as the two entities have a similar mandate of financial inclusion. Otherwise there is going to be unnecessary overlap and competition between the two entities and in the process wastage of resources,
4. Financial Sector Code needs to be clear and specific in terms of support towards Financial Co-operatives.
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|  | Moneyficent said that the requirement from NT is that prospective members of CFIs must be from a group of people who know each other very well and must be from the same area, city, town and jurisdiction. This is unfair as others from other jurisdictions (nationally, provincially and not necessarily knowing each other have indicated interest to be members of CFIs) would be barred from participating. |  |
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| **12.12** | POSTBANK, STATE-OWNED AND BLACK-OWNED BANKS |  |
| **12.12.3****The Committees believe that consideration needs to be given to the view that the ‘exponential growth of loan sharks and their preying upon the most poor and vulnerable required the National Credit Act to be strengthened to curb abuse.’** | MFSA said consumers and registered and legal microfinanciers require protection from underground unregistered and illegal lenders. Capacitating and resourcing the investigating and enforcement powers of the NCR within the context of implementing the NCA is a critical measure for achieving this. Adverse legislation and regulation which unfairly penalises responsible and legal microfinanciers to the detriment of consumers, will serve to drive consumers towards the illegal underground rogue lenders.**Moneyficent asked** What triggered PicknPay, as noted in the recent media news, to offer customers to buy food on credit given the dire situation of high indebtedness? How was this approved and how will it be regulated? |  |
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| **12.13** | ROLE OF SOUTH AFRICAN RESERVE BANK |  |
| **12.13.3****…While the Committees accept SARB’s explanations, we believe that if it is financially possible, the shares of SARB’s private shareholders should be bought out.** | * SARB said that it is not clear what is intended by the Committees on this recommendation. While we are aware that this issue was raised in the hearings, we are not clear about the public value or transformation effect of changing the shareholding structure of the SARB. While the current shareholding structure may seem unusual, there is utility in hearing from board members with a range of experience such as in areas of mining, agriculture and the public sector. The SARB functions in the public interest, private shareholders have no influence whatsoever on monetary policy, financial stability, or banking regulation. The rights of private shareholders are highly circumscribed. A shareholder, and his or her associates, cannot hold more than 10 000 shares of the total 2 million shares in issue.
* It said that according to the SARB Act, shareholders receive a fixed annual dividend of 10c per share. The SARB’s total dividend pay-out each year is R200 000. The shareholders got 0.014%, or roughly one ten-thousandth, of total profits made. In addition, 90% of the SARB profits are transferred to government, and the remaining 10% are allocated to SARB’s reserves. Policy execution is the preserve of the Governor and the Deputy Governors, who are appointed by the President. In essence, the nationalisation of the SARB would not change anything useful because shareholders already have no control over the SARB’s policy responsibilities. It would also be expensive as the SARB’s shares currently trade for much less than the price at which some shareholders are willing to sell their shares. The “buying-out” of existing shareholders will therefore result in paying large sumd of money to effect cosmetic changes that will have no bearing on the manner in which the SARB carries out its mandate or executes its policy responsibilities.
* ASISA disagrees with this recommendation. It said it endorses the Constitutional Court’s finding against the public protector. Private shareholding in the Reserve Bank cannot influence the Bank but serves to strengthen the integrity and governance of this critical and systemically important institution which should not be diverted in focus from its core functions.
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| **12.14** | NATIONAL PAYMENT SYSTEM  |  |
| **12.14.1**12.19.48.**The Committees recommend a review of the National Payment System Act (Act no 78 of 1998) to consider amending it appropriately to accommodate qualifying non-bank service providers and cooperative banks. The Committees recommend that NT also briefs the Standing Committee on Finance on the recommendations of the 2008 Banking Enquiry Panel Report on the NPS.** | * MFSA said that the National Payment System Act should be amended appropriately to accommodate qualifying non-bank service providers and cooperative banks. Bearing in mind that to date no MFSA member has been found guilty of abusing the National Payments System.
* The CBDA said that the lawmakers in conjunction with PASA and SARB must investigate the solution to expand the “Designated Clearing Participant” option to be more inclusive without compromising the National Payment System.
* The CBDA said there was no mention made in the Report of the Banking Platform and the Shared Services offering of CBDA which is compliant to enter the National Payment system and can really assist the sector to achieve parity with commercial banks.
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| **12.15** | BANK COLLUSION ON CURRENCY TRADING  |  |
|  | ABSA/ BAGL said the matter regarding alleged foreign exchange collusion is the subject of a Competition Tribunal process which is currently inflight. |  |
| **12.16** | STATUTORY BODIES IN THE FINANCIAL SECTOR NEED TO BE MORE EFFECTIVE  |  |
|  | **Already covered in 12.2.4 above** |  |
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| **12.17** | GENERAL ISSUES |  |
|  | **No specific comments to this section of the Report** |  |
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| **12.18** | OTHER ISSUES  |  |
|  | **No specific comments to this section of the report** |  |
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| **12.19** | A SUMMARY OF THE KEY RECOMMENDATIONS**This is a summary of 12.1 to 12.18 above. Some participants referenced the Summary Recommendations instead of the main recommendations from 12.1 to 12.18.**  |  |
| 12.19.1, 12.19.2, 12.19.9 | * FS Charter Council Although the Draft Amended FS Code has some shortfalls, it should be gazetted as is, subject to the immediate commencement of the review process as the Charter Council’s undertaking with NT and DTI. The review process has been commenced and will be incorporated into the NEDLAC’s Sector Summit which will convene in 2018. The planned review process and timeline is as follows1. Gazetting of the Amended FS Code: *October 2017*

2. Preparations for the Summit: *FS Charter Council commenced in August 2017**3.* The Summit Convenes: *Early 2018*4. Draft new FS Code taking into account the Summit recommendations and negotiations*: Up to end September 2018*5. Resubmission of the new FS Code to the DTI for section 9(5) gazetting: *October 2018*.6. Public commentary process*: November to December 2018*7. Review, consult and consider public comments and finalise new FS Code, if required: *January to March 2019*8. Submit the new FS Code for final gazetting to NT who then submits to the DTI*: Up to June 2019*.* FS Charter Council proposes that given the envisaged timeline and process, the 2016 Draft Amended FS Code be gazetted as is to allow the industry to be measured in accordance with the 2013 B-BBEE Act. The FSC Council’s 2017/18 transformation reports will inform the baseline for the new FS Code that will be negotiated rather than the reports which are based on the 2012 FS Code. The review process will address targets.
* ABSIP said that the Draft Amended FS B-BBEE Code has significant shortfalls. It should however be gazetted as is and as soon as possible, subject to the review process by the FS Charter Council and a strict timeline to be completed within 12 months. Progress reports of this review should be submitted to the Committees on a quarterly basis.
* ASISA said that in order to provide the sector with regulatory certainty, and to ensure that the renewed momentum with respect to transformation in the sector is not lost, it is imperative that the revised FS Code is gazetted in final form without delay.
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|  | **LEGISLATING TRANSFORMATION** |  |
|  | * BASA notes the disposition towards tighter regulation and introduction of legislation to enforce transformation commitments. While BASA and its members are absolutely committed to transformation, we caution against introducing legislation that may have far-reaching consequences for the rest of the economy without undertaking an impact assessment study.
* Nedbank said that legislative interventions need to be informed by socio-economic impact studies and an evidence led approach. They would appreciate participating in ongoing Parliamentary-led legislative discussions around the objectives for transforming the financial sector whilst these recommendations and interventions are being considered for adoption and implementation.
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| **General** | * Mr Adams said “After 23 years in power South Africa we need not only concentrate on radical economic transformation regarding ownership. It must always include what it does too and avoiding impoverishment effects towards the end users.

 Radical economic transformation can only become a reality if emphasis is put in place and legislation be developing and implemented on what the industry does.  Elimination of poverty is fully dependant on what services or products, obviously in conjunction with the charges the end users must pay, the industry offers to our nation without impoverishing effects.  Implementation of radical drastic economic transformation, both in who runs it and also what it does, must become reality within the following service providers with emphasis on rates or fees for services and products on offer by the:- 1. Loan sharks (12.12.3 extremely urgent), 2. Banks (12.12.1 Postbank must become reality before February 2018), 3. Life assurance companies, 4. Short term insurance companies, 5. Camouflage insurance companies called Medical aid companies, 6. Credit insurance companies.” |  |
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