1. **Report of the Standing Committee on Finance on the Insurance Bill [B 1 - 2016] (National Assembly- section 75), dated 22 November 2017**

The Standing Committee on Finance, having considered and thoroughly examined the Insurance Bill [B1 - 2016] (National Assembly – section 75), referred to it, and classified by the JTM as a section 75 Bill, reports the Bill with amendments [B1A – 2016].

**Insurance Bill Part of New “Twin Peaks” Model of Financial Transformation**

1. The Insurance Bill of 2016 (“the Bill”) is part of the tranche of Bills giving effect to the new “Twin Peaks” model that seeks to transform the financial sector to reduce the prospects of the negative consequences of the 2008 global financial and economic crisis recurring, especially for financial customers. It is the lower income earners that usually suffer disproportionately when financial institutions fail – and in South Africa these are mainly Black people.
2. The Bill provides a consolidated legal framework for the prudential supervision of insurers that is consistent with international standards for insurance regulation and supervision and takes into account the specific conditions in South Africa. It also seeks to replace and consolidate substantial parts of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998) relating to prudential supervision.
3. The Bill seeks to promote the maintenance of a fair, safe and stable insurance market by establishing a legal framework for insurers that –

* Enhances financial soundness and oversight through higher prudential standards, group supervision and stronger reinsurance arrangements;
* Increases access to insurance through a dedicated micro-insurance framework;
* strengthens the regulatory requirements in respect of governance, risk management and internal controls for insurers; and
* aligns with international standards and is in accordance with South Africa’s G20 commitments, while taking into account the specific conditions in South Africa.

1. The insurance sector plays an important role in supporting a sustainable inclusive economy. Insurance provides the necessary protection for households and corporates to mitigate against unexpected losses. In the absence of such protection, vulnerable households and corporates could be pushed into a vicious cycle of debt and poverty.
2. The Committee supports Government’s policy priorities to ensure that all South Africans have access to affordable and appropriate insurance coverage (financial inclusion), consumers are treated fairly, and are protected from poor outcomes arising from market failures (market conduct). Insurers must meet their long and short-term promises to consumers and must remain financially stable, in order to be in a position to continue to pay claims (prudential soundness).
3. The 2008 global financial and economic crisis highlighted the importance of having higher prudential and market conduct standards on both banks and insurance companies, to enhance their financial soundness and ultimately support consumer protection and financial stability.
4. In South Africa, a new prudential framework for the insurance sector called the Solvency Assessment and Management (“SAM”) framework has been developed to improve policyholder protection and contribute to financial stability through aligning insurers’ regulatory capital requirements with the underlying risks of the insurer.
5. The enhanced prudential framework for insurers forms part of Phase 2 of Twin Peaks reforms. Phase 1 was the passage of the Financial Sector Regulation Act, 2017. These reforms seek to significantly enhance South Africa’s financial regulatory and supervisory framework, by also enabling an intensive, intrusive and effective system of regulating the financial sector.
6. The Bill facilitates a seamless transition into the Twin Peaks model that is envisaged in the Financial Sector Regulation Act, in respect of prudential supervision of insurers, which will be enforced by the new Prudential Authority under the South African Reserve Bank.
7. As an important part of the overall transformation of the financial sector, the Bill seeks to encourage new entrants in the highly monopolized insurance industry and contribute towards deracialisation and other aspects of the transformation of the insurance sector.

**Public Consultation Process**

1. The Bill was first approved by the Cabinet and released for public comment on 17 April 2015. The Minister of Finance tabled the Bill in Parliament on 28 January 2016. The committee released the Bill for further public comments on 15 December 2016, followed by public hearings on the Bill on 7 February 2017. A total of 18 submissions were received from a diverse range of affected stakeholders. On 10 May 2017, the National Treasury provided responses to the submissions on the Bill, some of the participants in the hearings responded to this and NT subsequently responded to this. The Committee considered submissions from stakeholders continuously in the processing of the Bill.
2. National Treasury also published amendments to Schedules 1 and 3 to the Bill for public comment on 10 October 2017 and responses from stakeholders were discussed in the Committee meeting of 8 November 2017. Comprehensive responses were provided to all public submissions received at each stage of the public consultation process.
3. A key issue raised by mainly the emerging entrepreneurs and professionals in the public hearings was the barriers to entry for them and the need to urgently transform the insurance sector.
4. The Finance Committee, together with the Portfolio Committee on Trade and Industry, organized major public hearings on Financial Sector Transformation (FST) on 14 March, 22 March and 3 May 2017, in which all the key stakeholders in the financial sector, including in insurance, participated. An Interim FST Report, dealing also with the insurance sector specifically, was finalized on 6 September 2017 and sent to all the participants in the hearings with a request for their responses. Their responses were subsequently processed through Committee meetings and a final Report adopted on 15 November. Many of the issues around the need for transformation of the insurance sector raised at the Insurance Bill public hearings were repeated at these hearings and taken further.
5. The Committee was not able to finalise the Insurance Bill sooner because of several reasons, including our huge legislative and oversight role, and the need to have hearings on the financial sector as a whole and finalizing a report on this first. The FST Report will provide a framework for the Committee’s processing of Bills giving effect to the “Twin Peaks” model.

**Transformation of the insurance sector**

1. During the Insurance Bill public hearings, a number of emerging entrepreneurs in the insurance sector argued that the Bill does not deal adequately with transformation of the insurance sector. At the FST public hearings, as the FST Report notes, there was extreme frustration expressed about the lack of transformation.
2. The Committee’s overall approach to the Bill was that new entrants need to be encouraged in the sector and that it needs to be deracialized and diversified, while at the same time ensuring that the needs and interests of the policyholders are protected. The Committee proposed several amendments to the Bill to make the necessary transformation more explicit in the Bill and to strengthen the focus on transformation. These include:
   1. Making explicit transformation in the objective of the Bill (clause 3 *(d)* );
   2. Defining transformation of the insurance sector by referring to the Broad-Based Black Economic Empowerment Act and the financial sector code issued under it (clause 1(1));
   3. Linking licensing to plans to meet transformation commitments as envisaged by the Financial Sector Code (clause 22(1) *(c)* (iii) );
   4. Empowering the Prudential Authority to impose licensing conditions to facilitate the progressive or incremental compliance with the Bill to promote developmental, financial inclusion and transformation objectives (clause 25(10) *(b)*;
   5. Empowering the Prudential Authority to amend, vary or impose additional licensing conditions when it is in the public interest, including transformation of the insurance sector (clause 26(1) *(b)*);
   6. Enabling the Prudential Authority to prescribe in standards governance principles and requirements relating to the achievement and maintenance of the stated commitments in the transformation plan referred to in section 22(1)*(c)*(iii) (clause 30(4));
   7. Providing that Prudential standards must have regard to developmental, transformation objectives (clause (63(2) *(d)* ) and clause 62 (4) (c) );
   8. Providing for the Prudential Authority to exempt any insurer from a provision of the Bill in order to achieve developmental and transformation objectives or financial inclusion (clause 66 (1) *(c )* );
   9. Providing for transitional arrangements to ensure that insurers currently registered under the Insurance Acts will upon licence conversion be subject to the same transformation requirements as new applicants (Schedule 3 (3) (b) (iii)); and
   10. Providing for the Prudential Authority to exempt any insurer or controlling company from a provision of the Bill in order to achieve developmental and transformation objectives or financial inclusion (clause 13*(b)*).
3. The Committee believes that effective fines should be imposed on insurers who do not meet their transformation commitments to deter companies.
4. The Committee believes that serious consideration must be given to enable smaller entrants into the sector. This could be achieved by lowering fees and levies in an appropriate system of proportionality in the pending Financial Sector Levies Bill.
5. The Committee notes that Section 7 of the Financial Sector Regulation Act (FSRA) explicitly highlights transformation as one of the key objectives of the Act. The mandate and functions of the Prudential (PA), are set out in (sections 33 and 34) to the FSRA. Financial stability, financial inclusion and transformation are at the core of the PA’s mandate and functions when sections 7, 33 and 34 are read together. Section 34(2) also imposes an obligation on the PA to perform any other functions conferred on it in terms of any other provisions of the FSRA or other legislation. Representatives of both NT and the SARB explained to the Committee that they believed that PA would be best placed to balance both the financial stability and transformation objectives. NT said that If the PA does not address transformation issues some other regulator will have to do so, and it is better that the PA does this. Both the NT and SARB said that the Insurance Bill does not undermine the independence of the PA.

**Continuation of previously registered insurers**

1. Emerging insurers expressed concerns about the relicensing process as set out in the Bill, given that they are likely to be at greater risk, since that they do not have the capacity of the major institutions to resort to legal action if the re-licensing process weakens current property rights.
2. The original wording used in the Bill – “relicensing” - does not reflect the actual process envisaged, which is the conversion of current insurance licenses to reflect more accurately the type of insurance activity for which an entity is operating under its current license. The conversion process is not meant to take away any license, which could be regarded as a possible deprivation of property rights. To alleviate this risk and provide greater certainty, amendments were made to guide the conversion process.

**Micro-insurance**

1. The Bill gives effect to the National Treasury‘s Micro-insurance Policy Document released in July 2011 by introducing an enabling legal and regulatory framework for micro-insurance. This framework supports the development of an inclusive insurance sector to address the needs of low income households. It balances policyholder protection with having proportionate and appropriate regulation and supervision for micro-insurance, enabling the development of affordable insurance products.
2. During the public hearings, concern was raised that the Bill seeks to distinguish between micro-insurance and macro-insurance business and this would exacerbate the lack of transformation in the industry by “ghetto-izing” Blacks in the micro-insurance sector.
3. National Treasury argued that micro-insurance is also important in promoting financial inclusion. It establishes an enabling regulatory framework that provides for lowering regulatory barriers to entry to facilitate the development of access products for the low-income market.
4. National Treasury explained that micro-insurance products will be characterised by lower risk, enabling reduced prudential and market conduct requirements to facilitate the lower cost of underwriting and distribution. The aim is to provide a developmental path for informal insurance providers and small prospective insurers who find current registration requirements too onerous, to be able to register as insurers with reduced but appropriate requirements that still enable them to meet minimum acceptable standards from a risk management and consumer protection point of view. However, the Committee stressed that while micro-insurance can assist in the emergence of new entrants, there is an urgent need to ensure that the level of concentration and monopolization in the insurance sector as a whole is reduced and that it is deracialized and transformed.

**Fee and levies**

1. The Committee raised the need for application fees to be reduced for black-owned companies applying for licenses. National Treasury‘s response was that fees and levies will be decided in terms of the Financial Sector Regulation Act and the pending Financial Sector Levies Bill.
2. All fees and levies to be applied will be subject to consultation in the same manner as Prudential Standards. The Committee notes National Treasury‘s response that the consultation process provided for in the Financial Sector Regulation Act will provide an opportunity for small and black-owned companies to motivate why the fees and levies applicable to them should be reduced. The Committee requires National Treasury to report to it on the outcomes of this.

**Policyholders’ preferential creditor status in the event of insolvency**

1. The Committee raised the need for policyholders to have preferential creditor status in the event of the insolvency of an insurer. National Treasury explained that international standards require that legislation affords policyholders a high legal priority in the event of the insolvency of an insurer. However, this has not been provided for in the South African regulatory framework.
2. The National Treasury, in its 2015 policy document on Strengthening South Africa’s Resolution Framework for Financial Institutions, committed to do further technical work relating to a creditor hierarchy and the implications specifically for policyholders when an insurer is in resolution. This technical work is required to inform policy decisions on the type of insurance products and investment-related insurance products that should be afforded preference, the maximum amount that can be claimed in the case of a life or a non-life policy and the type of policyholders that must be protected. If such a policyholder protection scheme is established, it will form part of a second phase following the establishment of a depositor guarantee scheme. The Committee recommends that National Treasury does this technical work expeditiously and briefs the Committee on its positions.

**Costs of regulation (Capital add-on)**

1. There were concerns raised during the public hearings on the Bill that the Prudential Authority may direct a capital add-on if the risk profile or governance framework of the insurer deviates from the underlying Solvency Capital Requirement calculation. It was submitted that this could result in higher costs of regulation for small black-owned insurers.
2. The National Treasury explained that a capital add-on is necessary to ensure the financial soundness of the insurer so that promises to, and claims of, policyholders can be met. It is a measure of last resort, when other supervisory measures are ineffective or inappropriate. The circumstances under which a capital add-on may be imposed is limited in the Bill to where the Prudential Authority reasonably believes that the risk profile of the insurer deviates significantly from the solvency capital requirement calculation or governance framework requirement.
3. The Bill also requires the Prudential Authority to review any capital add-on imposed at least once a year and remove the capital add-on when the Prudential Authority is satisfied that an insurer has remedied the deficiencies that led to its imposition.

**Alignment with the Financial Sector Regulation Act**

1. Several minor amendments were made to the Bill so that it can be properly aligned with the Financial Sector Regulation Act.

**Relevance of NA Rule 286 (4) (b)**

1. On the day the Committee was meant to finalize the Bill the DA raised objections to its processing in terms of NA Rule 286(4)(b)

**Appreciation for cooperation**

1. The Committee expresses its appreciation to all those who assisted with the processing of the Bill including the National Treasury team, civil society stakeholders, the industry and parliamentary staff.

**ANNEXURE**

**RESOLUTION ON SUBJECT OF THE INSURANCE BILL**

**22 November 2017**

1. The DA argued that the amendments on transformation in the Insurance Bill have changed the scope of the Bill and necessitate that the Committee seeks the approval of the National Assembly in terms ofNA rule 286(4)(b) to extend the subject (or scope) of the Bill before proceeding, and the Committee also needs to have further public hearings on these amendments as they did not emerge in the Insurance Bills hearings. The DA also argued that the amendments expanded the role of the Prudential Authority (PA) and the South African Reserve Bank (SARB) to deal with non-prudential criteria, such as transformation, beyond what is provided for in the Financial Sector Regulation Act and serve to undermine the independence of the PA and SARB.

1. Parliament’s Legal Services Unit explained that NA rule 286(4)(b) provides that a Committee may seek permission from the House to extend the subject of the Bill. The term “subject of a Bill” means, as defined, “the objects of the Bill as introduced in the Assembly and the substance of the Bill to give effect to those objects”. Sub-rule 4(f) provides that the Committee “may, or if permitted by the Assembly to extend the subject of a Bill in accordance with Paragraph (b) or (c) must, consult the person in charge of the Bill”.
2. According to Parliament’s Legal Services Unit, the purpose of this rule is to ensure that new policy issues introduced in a Bill in the process before a Committee are done with broad consultation between all stakeholders, including the National Assembly, the relevant Minister and the public. It is not meant to require permission when a Committee makes explicit in the Bill before it what is implicit in the Bill. In this respect, the rule has the same purpose as sub-rule (4)(c) that requires permission from the House when a Committee considers an amendment Bill and intends to amend additional provisions in the principal Act. Practically, neither of these rules is meant to require permission from the House when the amendments by the Committee fall into the same policy area that is before the Committee. This is in line with the general purpose and context of NA rule 286(4).
3. Parliament’s Legal Services Unit pointed out that in the same vein, public participation might focus the attention of the Committee on such additional areas within the broad policy of the Bill, in which case the Committee does not have to conduct additional public participation.
4. Parliament’s Legal Services Unit also explained that, practically, Committee amendments to Bills that require permission from the House and further public consultation should be substantial and distinguishable from the broad purpose of the Bill.
5. Parliament’s Legal Services Unit explained that the amendments on transformation in the Bill, in the objective of the Bill, make explicit what is implicit in the Bill and flow from the public hearings. Furthermore, transformation is a constitutional objective linked to public participation (Doctors for Life International v Speaker). “The transformation that our Constitution requires includes economic redress.” (AllPay Consolidated Investments Holdings v SASSA). Parliament’s Legal Services Unit pointed out that National Treasury confirmed that the Insurance Bill aims to give effect to this requirement. According to Parliament’s Legal Services Unit Rule 286(4)(b) does not apply to the processing of the Insurance Bill by the Committee.
6. The Insurance Bill is part of the tranche of Bills giving effect to the new “Twin Peaks” financial transformation model. As pointed out in the Committee’s Report on the Bill “It seeks to transform the financial sector to reduce the prospects of the negative consequences of the 2008 global financial and economic crisis recurring, especially for financial customers. It is the lower income earners that usually suffer disproportionately when financial institutions fail – and in South Africa these are mainly Black people.” The Report on the Bill also observes that: “As an important part of the overall transformation of the financial sector, the Bill seeks to encourage new entrants in the highly monopolized insurance industry and contribute towards deracialisation and other aspects of the transformation of the insurance sector.” The Committee’s amendments on transformation make explicit what is implicit in the Bill and strengthen the transformation aspects.
7. In fact, a major issue that emerged in the Insurance Bill public hearings was that the Bill does not deal adequately with transformation and that this needs to be addressed. Emerging black players in the industry argued that the Bill’s crude conformity to international standards impedes their growth. These views were taken much further in the subsequent extensive public hearings on Financial Sector Transformation (FST) held in the first half of this year. Black entrepreneurs in the insurance sector expressed extreme frustration at the lack of transformation in the sector. The FST Report adopted by the Committee focuses significantly on the need to transform the insurance sector. As the Committee’s Report on the Insurance Bill notes in respect of the FST process, “all the key stakeholders in the financial sector, including in insurance, participated. An Interim FST Report, dealing also with the insurance sector specifically, was finalized on 6 September 2017 and sent to all the participants in the hearings with a request for their responses. Their responses were subsequently processed through Committee meetings and a final Report adopted on 15 November. Many of the issues around the need for transformation of the insurance sector raised at the Insurance Bill public hearings were repeated at these hearings and taken further.” National Treasury (NT) also published amendments to Schedules 1 and 3 to the Bill for public comment on 10 October 2017 and responses from stakeholders were discussed in the Committee meeting of 8 November 2017. Comprehensive responses were provided to all public submissions received at each stage of the public consultation process. Moreover, the Committee allows public participation until the very day on which it votes on a Bill. The claim therefore that the amendments on transformation did not emerge in the hearings are patently inaccurate, and the need for further public hearings in the wake of such extensive public hearings and such ongoing concerted engagement with stakeholders cannot be justified. As happens usually, participants in hearings propose changes to Bills, but many of them, lacking legal and other technical skills, do not propose specific wording to amend specific clauses of the Bill – but they are clear about the policy changes they want. The Committee gave concrete effect to the broad proposals on transformation that emerged in all the hearings from a significant strata of the role-players in the sector.
8. In respect of issues related to the role of the Prudential Authority (PA), Section 7 of the Financial Sector Regulation Act (FSRA) explicitly highlights transformation as one of the key objectives of the Act. The mandate and functions of the PA, are set out in (sections 33 and 34) to the FSRA. Financial stability, financial inclusion and transformation are at the core of the PA’s mandate and functions when sections 7, 33 and 34 are read together. Section 34(2) also imposes an obligation on the PA to perform any other functions conferred on it in terms of any other provisions of the FSRA or other legislation. Representatives of both NT and the SARB explained to the Committee that they believed that PA would be best placed to balance both the financial stability and transformation objectives. NT said that If the PA does not address transformation issues some other regulator will have to do so, and it is better that the PA does this. Both the NT and SARB said that the Insurance Bill does not undermine the independence of the PA.
9. The Committee accepts that if the subject or scope of a Bill is substantially changed, the Committee needs to abide by NA rule 286(4)(b). Based on Parliament’s Legal Services Unit’s interpretation of the Rule and the Committee’s experience in processing the Bill, the Committee is decisively clear: NA rule 286(4)(b) does not apply in this case. If it were to do so, then it will mean that most Bills that are significantly amended will have to make use of the Rule. - and it will have the effect of discouraging Committees from making significant amendments to Bills, and seriously diminish the legislative role of Parliament, and subordinate Parliament to the Executive. The Committee believes that it is important that the Rule should not be used in a narrow and sectarian manner to settle policy differences, and urges that the Rules Committee provides greater clarity on in what conditions exactly NA rule 286(4)(b) applies. The rule needs to be amended or the NA Guide to Procedure should provide the necessary clarity.

The Democratic Alliance (DA) reserve their position on the report and Bill

Report to be considered