**PUBLIC COMMENTS ON THE PROPERTY PRACTITIONERS BILL, 2018 IN PARLIAMENT (04 SEPTEMBER 2018)**

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| **ORGANISATION/INSTITUTION** | **SECTIONS OF THE BILL** | **COMMENT** | **DEPARTMENT’S RESPONSE** |
| **1. MORCSA** | S1 (iv)& 2 definition of the “Property Practitioner “and application of the Act  Section 57(1) | MORCSA indicated in their submission that, since 2004 they were not regulated until recently where they are now regulated by the Financial Sector Regulation Act, No. 9 of 2017 (“FSRA”). MORCSA submits that they should not be regulated under the Property Practitioners Bill, 2018 because they are already regulated under FSRA.  Must be rephrased to read “encouraged for reward”. | The rational to extending the definition to cover and regulate the Financial Sector was to advance consumer protection in general. The Dept will consult with the Financial Sector regulated under Financial Sector Regulation Act, No. 9 of 2017 (“FSRA”) to ensure that the same interest and obligation are also covered in that legislation, as and when the FSRA is amended. Therefore the Dept will consider excluding the Financial Sector from this provision for the reasons as set out above.  The Dept concurs with the proposed amendment and the provision will be revised accordingly |
| 2.  **Independent Regulatory Board of Auditors (IRBA)** | Section 1 Definitions  No definition of  “accounting records”  No definition of “audit”  No definition for “ recognized financial reporting framework”  No definition “trust money”  Sections 53(1), (a) – (b) and section 53(5). Section 53 (1), (a)-(b) stipulates *that “Every property practitioner- (a) must open and keep one or more separate trust accounts, which must contain a reference to this section, with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990);*  *(b) must immediately after opening a trust account contemplated in paragraph (a) appoint an auditor as prescribed…..*  Section 54(4)(a) o | Proposed definition **“accounting records”** means information in written or electronic form concerning the property practitioner’s trust accounts as required in terms of this Act, including but not limited to records of all transactions involving trust monies, general and subsidiary ledgers and other documents and books used in the administration of the trust accounts, and, in relation to the property practitioner’s business as such, information in written or electronic form concerning the financial affairs of the business as required in terms of this Act, as well as in terms of any other Act that may be applicable to the form of entity of the property practitioner’s business, including but not limited to, records of assets, liabilities, income and expenses, general and subsidiary ledgers and other documents and books used in the preparation of financial statements of the business.  Proposed definition **“audit”** has the meaning set out in the Auditing Profession Act 26 of 2005 (APA).  Proposed definition “**recognised financial reporting framework”** means International Financial Reporting Standards or the International Financial Reporting Standard.  **“trust money”** means money held by the property practitioner on behalf of a client in a trust account for services to be rendered by the property practitioner.  IRBA indicates that compliance engagement will report on materials matters. IRBA further submits that the Bill should differentiate what is expected or required in terms of the above mentioned sections; however it should not be in details but be merely mentioned.  IRBA further submits that a further clarity by the meaning of *“state of affairs”* as stipulated under section under this section must be given | The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  Taking into consideration the high audit fees and as raised consistently during the public hearings and the recent EAAB research on illegal trading, the Dept proposes the following insertions regarding this section:   1. We need only to have an full audit for firms with a turnover of over R 2.5 Million and Independent review for firms with the turnover of less than R 2.5 Million The Dept will develop specific regulations in order to give effect to this specific section   The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition |
| **3.**  **Council for Debt Collectors (CDC)** |  | CDC submits that, even though the Debt Collectors Act is being repealed the Council was never consulted or engaged as a stakeholder. The other important concerns of the CDC may be summarized as follows:   * The Department of Justice (Doj) has embarked on a process to remove the exclusion of attorneys from the Debt Collectors Act. Reason being abuse of court processes and fees has necessitated their inclusion under the Debt Collectors Act. * At the time when the protection of attorneys is being by the Act, The Bill aims once again to create an exemption from the Debt Collectors Act. * The Bill makes no provision for any fee structure or enforcement process for the recovery of debts. * There is no provision made for a Code of Conduct for debt collection in the Bill * There are no amendments in the Magistrate Court Act which provides for every Property Practitioner to collect arrear rent, levies, and charging of fees. In the absence of such amendments collecting arrear rent, levies and charging fees would then be committing a criminal offence. * The Bill appears to exclude those employees who merely collect and receive monies payable on a lease. This in effect would mean that the employees demanding the arrear amounts would not be considered a property practitioner and fall outside the ambit of the Bill and would in effect then be unregulated. * The amendment will have severe negative impact on consumers. The actions of managing agents and their employees as well as the fees they charge will be become unregulated and lead to the exploitation of consumers who have fallen behind on the payment of rent and levies.   In short the Bill must be aligned with the Debtors Collectors Act in order to protect the consumers. | The Dept will reconsider the provision of this section and revise it accordingly to be aligned with the Debtors Collectors Act, in order to advance consumer protection in general.  The Dept will revise the definition dealing with managing agents accordingly and managing agents will be incorporated in the definition, as raised consistently during the public hearing |
| **4. South African Institute for Chartered Accountant |SAICA)** | Definition S1  No definition of **“accounting records”**  No definition of **“**  **immovable property”**  No definition of **“recognized financial reporting framework”**  No definition of **“trust money”**  Managing agents  No definition of “business undertaking”  Section 13(7)  Sections 53(1)  Section 53(1)(b)  Section 53  Sections 53(3);  Section 53(2)(b)  Section 53(4)  Section 53(5)  Sections 53(6) &53(7)  Section 53(8)  Section 53(15)  Sections 54(4)  Transitional Provisions.  section 76 (6) stipulates that “*all regulations under the current EAA Act will remain in force and effect”* | SAICA proposed definition of the term **“accounting records**” required for trust and business accounts should be defined  SAICA submit that this is not practical as the regulations were drafted from a specific viewpoint of that Act  The question that arises on whether shares would constitute immovable property.Proposed definition according to the South African Property Practice and Law (Delport), published by Juta states that “immovable property according to the definition of business undertaking includes land, premises and buildings”. It also amongst others extends to any form of commercial operation according to the above extract. Certain exclusions also exist e.g. *any interest in immovable property , other than a right or interest registered or capable of being registered under the Mining Titles Registration Act, 1967 (Act No. 16 of 1967)*  SAICA suggest that **“recognized financial reporting framework”** be defined in order to ensure consistency  SAICA further submit that the accuracy and appropriateness of the definition should be considered and therefore proposed the definition of trust money as follows: *“trust money”* means money held by the property practitioner on behalf of a client in a trust account for services to be rendered by the property practitioner”.  SAICA submits that managing agent is specifically excluded in the definition of a property practitioner in subsection (a)(iv) and (c). However it is included under subsection (a)(iii)  SAICA request that a definition of business undertaking is included with reference to the issues, or that the reference to a business undertaking is removed  The Board must, in addition to this section, adopt a charter setting out its rules of operation in line with the applicable KING III report. KING III Report on Corporate Governance was replaced by KING IV with effect from 1 April 2017  SAICA submits that Trust accounting is not always clear. Requirements for the Trust Account should be set out. These sections do not contain requirement relating to the interest received on money in trust or invested in a separate savings or other interest-bearing account. The extent the Bill requires interest to be paid over the Fidelity Fund. Proposed that similar requirement be included in the Bill or alternatively in the subsequent regulations  SAICA Support the Bill. However they submit that trust account especially section 53(5) should outline or describe in details in the regulations as how such accounts should kept. They further submit that refinements relating to trust account should be done.  Refers to an auditor being appointed as prescribed. There is no prescribed method to appoint auditor in the Bill  Section does not contain requirements relating to the interest received on money in trust or invested in a separate savings or other interest-bearing account. The current Act requires interest to be paid over to the Fidelity Fund. SAICA recommend that a similar requirement be included in the Bill or alternatively in the subsequent regulations. SAICA proposed the following provisions should be inserted between subsections 2 and 3 and reads as follows “(2A) The prescribed portion of interest on moneys deposited in a trust account referred to in subsection (1)(a), and on moneys invested in terms of paragraph (2), shall, subject to the express terms of a written mandate, be paid to the fund, without deducting bank charges, by the property practitioner concerned. Any terms in a written mandate that makes the property practitioner the beneficiary of the full amount of interest shall be void”  “A property practitioner must retain all trust money deposited in terms of subsection (1) or invested in terms of subsection (2), until he, she or it –(a) is *lawfully entitled* to such money, or (b) is *lawfully instructed* in writing to make payment therefrom to any person”  Definition of *“lawfully entitled”* and *“lawfully instructed”* is not included  SAICA submits that if the current regulations are not replaced then this section cannot be implemented  Submission of a certificate to the Authority declaring the interest in that account  Section 53(5) deals with the requirements to keep and maintain accounting records for the trust. Although mention is made of business accounts in subsection (b) it only refers to having the Business accounts audited and nor in respect of keeping and maintaining business accounts. Section 54(4) is interpreted as referring to both the property practitioner’s trust accounting records and business. Furthermore “accounting records” is not defined  Both sections refer to *audit report* and *audited statement*. This seems to indicate that there are two different documents, a report and a statement. The acceptable term in accordance with International Standards on Auditing is “auditor’s report”  This section allows for a Property Practitioner to be exempted from keeping trust accounts under certain circumstances, as prescribed by the Minister. This is welcomed. However, the following question arises, that requires consideration:   * If a property practitioner is exempted from keeping trust account there will also not be a need to appoint an auditor to audit such accounts. * However, will there still be a requirement to appoint an auditor to audit the property practitioner’s business accounts?   This requirement should be clarified and there SIACA proposed that the following be added (8) The Minister may prescribe circumstances under which a property practitioner may be exempted from keeping trust account. Under such circumstances the Minister will also prescribe the requirements regarding appointment of an auditor and the audit of the property practitioner’s financial statements where there are no other laws or regulations that would otherwise require and audit of the financial statements based on the type of business through which the property practitioner practices.”  Section 53(15) Requires that a property practitioner must annually confirm or update the details of his or her or its auditor. SAICA submits that there is no requirement for the property practitioner to do so. SAICA further proposed that the following provision should be inserted between subsection 14 and 15. “(14A) A property practitioner must annually confirm or update the details of his, her or its bank accounts contemplated in section 53(1)(a) and 53(2)”  Business Accounts. SAICA submits that clarity is required in terms of sections 54(4) which requires that records should be kept in respect of the business and exclude the personal assets / liabilities. Further preparation of financial statements should be required and it should be prepared in accordance with a financial reporting framework. They further submit that an entity specific basis of accounting is required.  SAICA submit that if the current regulations are not replaced then this section cannot be implemented. Regulation should prescribe the manner in which information must be submitted.  “In addition to the duties contemplated in section 54, a property practitioner must in respect of his, her or its activities-  (b) cause the accounting records contemplated in paragraph (a) to be audited by an auditor within six months after the final date of the financial year of the property practitioner, which final date may not be altered by him, her or it without the prior written approval of the Authority.  SAICA submits that in terms of the auditing standards the financial statements are audited and not the accounting records, although the accounting records are used to prepare the financial statements. SIACA therefore propose that the section be amended as follows: “(b) prepare financial statements and cause **[the accounting records contemplated in paragraph (a)]** them to be audited by an auditor within six months after the final date of the financial year of the property practitioner, which final date may not be altered by him, her or it without the prior written approval of the Authority.  (c) the financial statements must be either be prepared in accordance with a recognized financial reporting framework or a basis of accounting as determined by the property practitioner taking cognizance of other applicable laws and regulations which may prescribe the financial reporting framework to applied in the preparation of the financial statements based on type of business through which the property practitioner practices.  SAICA submit that this is not practical as the regulations were drafted from a specific viewpoint of that Act | The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The regulations will be developed in accordance with the transitional provision  The comments is adequately covered  Comments noted. IRBA has already proposed the definition.  Comments noted and will be reconsidered as already raised by IRBA  The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The Dept will revise the definition dealing with managing agents accordingly and managing agents will be incorporated in the definition, as raised consistently during the public hearing  The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The note the comment and the provision will be reconsidered accordingly  The Dept concurs and IRBA has already raised that comment  The Dept note the comment  Prescribed means it will be prescribed in the regulations the manner in which an auditor will be appointed.  The Dept concurs with the proposed amendment and the provision will be revised by way of insertion in section 53 between subsection (2) and (3)  The Dept concurs with the proposal and therefore it will be dealt by way of the new insertion in the definition under the regulations  The Dept concurs with the proposal and therefore it will be dealt by way of the new insertion in the definition under the regulations  The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The Dept concurs with the proposed amendment and the provision will be revised by way of insertion in section 53(4)  The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  The Dept concurs with the proposed amendment and the provision will be revised accordingly by way of insertion in the definition  The Dept concurs with the proposed amendment and the provision will be revised by way of insertion in section 53(8)  The Dept concurs with the proposed amendment and the provision will be revised by way of insertion in section 53(8)  The Dept concurs with the proposed amendment and the provision will be revised by way of insertion in section 53(15)  The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The transitional provisions under section 76(6) of the Bill will also apply to the application of the Act and it regulations.  The Dept concurs with the proposal and the provision will be reconsidered by way of insertion in subsection (b) and (c)and deletion of the words [ the accounting records contemplated in paragraph (a)]  The transitional provisions under section 76(6) of the Bill will also apply to the application of the Act and it regulations. |
| **5**. **Banking Association of South Africa (BASA)** | Definition S1  Clause (a)(i)  Clause (a)(v) | BASA submit the term “business undertaking” should be defined  BASA further submits that Sheriffs are regulated by the Sheriffs Act, 90 of 1986 and therefore should be excluded from the definition of “property practitioners by including the words “sale in execution” BASA therefore proposed that the clause should read as follows “by auction or otherwise”  BASA submits that the wording of this clause be read to include bank property assessors, NHBRC assessors and Municipal Valuers. They further submit that there are two distinct types of assessors, namely those who act on behalf of a buyer/seller and those who represent the NHBRC/ a Municipality or a mortgagee. BASA agree that a property assessor who acts on behalf of a buyer/seller to “determine the defects, value for money and fit for use as part of the conclusion of an agreement to sell and purchase, or hire or let property” should be included as a regulated intermediary as this will safeguard the public. However a property assessor(Professional Valuer) should be excluded, including the Municipal Valuers and NHBRC assessors | The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA)  The provisions will be revised accordingly and the Sheriffs will be excluded in the definition.  The Dept concurs and the provision will be revised accordingly.in line with the comment from the Council of Property Valuers. |
|  | Section 2 Application of the Draft Bill | The term “business undertaking” should be defined | The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA) |
|  | Section 3 Objects of the Act clause (k) | BASA is of the view that there is a pressing need for the tenants to also be included within the scope of training which DHS envisages fulfilling. They further submit that care should however be taken for DHS in terms of this Bill, not to duplicate on the role of the Office of the CSOS, as one of the roles which this office envisages is the provision of training for both body corporate trustees and sectional title owners.  BASA therefore propose that the Bill should be amplified to include the need for tenant education and to exclude any training which CSOS intends undertaking in terms of CSOS Act. | The provisions will be revised accordingly and the necessary alignment with the CSOS and the Rental Housing Act will be done accordingly  The provisions will be revised accordingly and the necessary alignment with the CSOS and the Rental Housing Act will be done accordingly |
|  | Section 6, Functions of Authority | BASA submits that the Bill refers to estate agents in clause (a), (b) and (e), however, this is inconsistent with the Bill as the purpose of the Bill is to regulate property practitioners and not only estate agents.  BASA therefore propose that the word “estate agent” be replaced with property practitioner. | The provision will be revised accordingly by way of substitution of the word “estate agents” and the subsequent new insertion thereto. |
|  | Section 23, Lodging of Complaints to the Ombuds | BASA submit that the scope of the Ombuds office should be extended to include hearing industry complaints against the Property Practitioners’ Board, especially where matters are not being resolved that are affecting the ability of a practitioner to continue operating and in extension, livelihood of the practitioners in that agency affected. | The Ombuds chapter will be omitted in lieu of the establishment the Human Settlements Ombud in the Human Settlements Bill. |
|  | Section 25, Adjudication | BASA submits that there is no mention of time limit that dictates the length of a matter in the adjudication process.  BASA further submit that the non-recognition of section 34 of the Constitution of RSA in the adjudication process is a concern, in that the Bill seem to indicate that the adjudicator’s decision once referred to Ombud is final. There is no recourse in the event the consumer is not happy about the decision.  BASA therefore propose that a “time frame” clause in the Bill which prescribes a time frame for matters in the adjudication process. Further clause 25 (b) (12) which stipulates that “An order of the Ombud is final and binding and may only be reviewed by the High Court” be reinstated. | The Ombuds chapter will be omitted in lieu of the establishment the Human Settlements Ombud in the Human Settlements Bill.  The Ombuds chapter will be omitted in lieu of the establishment the Human Settlements Ombud in the Human Settlements Bill.  The Ombuds chapter will be omitted in lieu of the establishment the Human Settlements Ombud in the Human Settlements Bill. |
|  | Section 46, Fidelity Fund Certificates (FFC) | BASA submits that this section requires that every property practitioner to apply annually for a FFC and pay the prescribed annual fee. The possession of the FFC is a mandatory requirement for a property practitioner.  BASA further submits that in instances where a juristic person participates as a property intermediary, every director of the company will be required to in possession of the FFC. This will also apply to all members of a close corporation, all trustee of a trust; and all partners of a partnership.  BASA submits that this will place undue burden and therefore propose that at least one director/member/trustee/partner to be possession of a FFC only | The provision will be revised accordingly by way of exemptions in the Bill and by way of regulations.  The provision will be revised accordingly by way of exemptions in the Bill and by way of regulations.  The provision will be revised accordingly by way of exemptions in the Bill and by way of regulations. |
|  | Section 49, Disqualification from issue of FFC | BASA submits proposes a long list of mandatory reasons for the Property Practitioners Regulation Authority (PPRA)to withhold a FFC, and thereby affect the ability for them to earn an income. BASA submits that there should be a legitimate and justifiable ground for withholding FFC which is based on principle of fairness and natural justice | The Dept concurs and the provision will be revised accordingly as set out in the disqualification provisions as set out in section 49 and substitute the subsection accordingly to exclude subsection (vi), (vii), (viii) and subsection (b), (c) and (d) will be aligned accordingly with subsection (a) |
|  | Section 53, Trusts | BASA submits that in terms of Regulations in support of the Banks Act No.94 of 1990, a bank may not open a trust account for a property practitioner unless they are registered with the Property Practitioner Regulator. BASA further submit that clause 53(1) (b) is therefore incorrect as it should require a property practitioner to register with the Property Practitioner s Board and only to approach a bank thereafter for a trust account to be opened. BASA therefore propose that clause 53(1)(b) be amended accordingly. | The Dept concurs with the comments and will revised clause 53(1)(b) accordingly . |
|  | Section 54, Duty of Property Practitioner to keep accounting records and other documents | BASA submits that section 1 (g) a record is defined as “means any recorded information regardless of form or medium” while section 54 make mention of accounting records. Clarity is required | The provision will be revised accordingly by way of insertion in the definition as proposed by IRBA (proposal materially the same as IRBA and SAICA) |
|  | Section 65, Prohibition on conduct to influence issue of certain certificates | BASA submits that the list is incomplete as property owners are compelled by legislation to provide a certificate which confirms that gas and security electrical fencing is compliant. BASA propose that clause (d) and € be added to this section of the Bill to include gas and security fencing | The Dept concurs and the provision will be revised accordingly by way of new insertion in section 65 to include clause (c) and (d) |
|  | Section 67(1) language of agreements | BASA submits that the requirement that the sale/lease agreements be prepared in the language of choice of the purchaser/lessee may be problematic considering the 11 official languages in SA and the fact that the agreements need to be understandable to all stakeholders in the property sale/letting process  BASA therefore propose that this provision be aligned to the provisions of the National Credit Act which deals with Language Statement of Intent and which dictates that the official version be provided in English and copies be made available in the language of choice, upon request | The Dept concurs and the provision will be revised accordingly section 67(1) and be aligned with the National Credit Act NCA) in relation to provisions dealing with language of statement of intent. |
|  | Section 69(4), Property Sector Transformation | BASA submits that they are supportive of transformation within the property sector, including intermediaries. However, the wording within clauses 69(3) and 69(4) go beyond the intent of the Bill, which is to regulate and transform the property intermediary sector.  BASA further submits that the Bill envisaged transformation and the creation of a transformation fund should therefore be restricted to expenditure used to transform property practitioners operating within the sector, including the up skilling of potential homeowners and property practitioners. Therefore the purpose of the transformation fund should be to provide opportunities for historically disadvantaged individuals including women and youth to become property practitioners and thereafter to be able to compete with their established competitors only.  BASA therefore propose that the aforesaid sections be amended accordingly | The Dept concurs and as consistently been raised during the public hearings, a new chapter on transformation will be drafted and section 69 will be substituted accordingly. |
|  | General Comments | There must be alignment of the Property Practitioner Bill, 2018 with the Financial Intelligence Centre Act (FICA) 38 of 2001 as this act contains a definition of an Estate Agent within its Schedule 1. This schedule describes s parties affected by this Act. It highlights estate agents as defined in the Estate Agency Affairs Act 112 0f 1967 | The rational to extending the definition to cover and regulate the Financial Sector was to advance consumer protection in general. The Dept will consult with the Financial Sector regulated under Financial Sector Regulation Act, No. 9 of 2017 (“FSRA”) to ensure that the same interest and obligation are also covered in that legislation, as and when the FICA act is amended. The definition will be aligned with the FICA Act accordingly. |
| **6. CENTRE FOR AFFORDABLE HOUSES(CAHF)** | Section 1 Definition | CAHF submits that the broad definition of property practitioner as out in the Bill is necessary in order to ensure transformation of the sector as whole. | The Dept concurs with the comments. Further it must be noted that small firms with a turnover of less than R 2.5 Million will be exempted from opening the Trust Account. The Dept will develop specific regulations in order to give effect to this specific section |
|  | Section 46, Fidelity Fund Certificates (FFC)  & Section 53 trust account | CAHF submits that the mandatory requirement to be in possession of the FFC if you are a property practitioner might be a barrier to entry on informal sector e.g. some role players involved in housing sales and finance at the lower end of the market will not need, for or capacity to set up trust accounts. CAHF further submits that the impact of the Bill on the informal sector must be considered, to ensure that there are no unintended consequences which will lead to restricted access by indigent households to services which facilitates and enable access to housing finance and transaction support | The Dept concurs with the comments. Further it must be noted that small firms with a turnover of less than R 2.5 Million will be exempted from opening the Trust Account. The Dept will develop specific regulations in order to give effect to this specific section |
|  | Section 4(5), Exemption | CAHF submits that the Bill does not actually state under what circumstances or grounds a property practitioner can apply for an exemption.  CAHF therefore propose that grounds for exemption can be provided for in the regulation e.g. regulations could identify category of small enterprises focused on the historically disadvantaged townships markets, those small enterprises who are financially unable to contribute to the Fund and, due to their function in the property value chain, do not need to open trust account (e.g. provide legal advice). | The Dept concurs with the proposal and therefore it will be dealt by way of the new insertion under the regulations |
|  | General Comments | CAHF submits that the Bill does not differentiate types of property practitioners and their respective roles e.g. housing finance, estate agents and property advertisers, legal advice and conveyancers. | The Dept notes the comments, however the definition of the “property practitioner is wide enough to cover any person or juristic person who participate directly or indirectly within the property market |
| **7.BLACK PROPERTY PRACTITIONERS ASSOCIATION (BPPA)** | Section 20, The establishment of Property Practitioners Ombud’s Office  Section 69, Property sector transformation | BPPA submits that clarity is sought on how the Property Practitioners Authority Ombud is related to the Property Practitioners Authority.  BPPA further submit that the issue of transformation should be thrashed out in details. They submit that they issue of amnesty should be considered. | The Ombuds chapter will be omitted in lieu of the establishment the Human Settlements Ombud in the Human Settlements Bill  The Dept concurs and as consistently raised during the public hearings, a new chapter on transformation will be drafted and section 69 will be substituted accordingly |
| **8. ARCHICHECK (Pty) Ltd** | Section 46, Fidelity Fund Certificates (FFC) | Archicheck submit that architecture registered with Archicheck should be exempted from paying fees.  Archicheck further submits that property inspectors should be registered with Archicheck in order to ensure uniformity and standard in inspections | The provisions dealing with exemptions relating to fees payable and related matters are provided for in terms of the Bill  The Dept concurs and further consultation to ensure uniformity and standard on inspection during the implementation of the Act |
| **9.ADAMS AND ADAMS** | S1 Definition  Section 3, Objects of the Bill  Section 38(1), Grants | Adams & Adams (A&A) make the submissions on behalf of SETA. A&A submits the definition of “property practitioner is too broad as it encompasses a wide and diverse variety of persons in the scope of a “property practitioner”.  A&A submits that section 3(f) that one of the objects of the Bill is to *“provide for education , training and development of property practitioners and candidate property practitioners”*  A&A submits that the term ‘provide ‘is a particular concern to Services SETA as this is in direct conflict with Services SETA’s rights as Services SETA to provide qualifications.  A&A further submits that the Bill is unclear as to who would provide this training and allows for the Board to advise the Minister on the education and training of property practitioners in terms of section 9(g). A&A submits that providing education, training and development is a function already performed by Services SETA and to subsequently provide such mandate to another body via the Bill will lead to a conflict of jurisdiction.  A&A submits that this is also a mandate which falls within the scope of Service SETA’s area of practice in terms of section 10(1)(b)(iii). | The Dept is of the view that one of the objectives of the Bill is to regulate additional role players who are currently unregulated.  The Dept recognize that one of the objectives of the Services SETA is to develop qualifications, but however the Authority will be expected to provide training and development such as CPD over and above the qualifications as developed by the Services SETA. In this regard strategic partnership and collaboration will be consolidated between the two entities regarding the application of this Act in relation to training  The grants payable in terms of the Bill will be solely utilized to promote transformation and the inclusive participation of the Previously Disadvantage Individuals (PDI) in the property market. |
| **10 REBOSA** | Section 2, Application of Act | REBOSA submits that the application of the Act is too wide and creates many ambiguities and uncertainties.  REBOSA further submits that the legislation should apply only to activities pertaining to immovable property located within the Republic. | The rational to make the definition too wide was to advance consumer protection in general and to regulate the entire property market  The Dept concurs as it is not the intention of this legislation to regulate activities pertaining to immovable property outside the Republic |
|  | Section 46, Fidelity Fund Certificates (FFC) | REBOSA submits that annual renewal of the FFC is strenuous | The Dept concurs with the comment and the provision will be reconsidered in order to reduce the burden of renewing FFC annually and provide that it will be now be renewable every three years as proposed by SAPOA |
|  | BEE Certificate | REBOSA further submits that the requirement of a BEE certificate especially to small businesses is costly and barrier to entry | The Dept concurs and the provision will be revised accordingly as set out in the disqualification provisions as set out in section 49 and substitute the subsection accordingly to exclude subsection (vi), (vii), (viii) and subsection (b), (c) and (d) will be aligned accordingly with subsection (a) |
|  | section 53, Trust account | REBOSA submits that opening of a trust account should be optional | The Dept note the comments, however the Minister will prescribe exemptions in terms of keeping trust account |
| **11.National Property Forum(NPF)** | Section 1 Definition | NPF submits that the definition exclude, sheriffs, attorneys and developers, except developers who sell their properties. | The Dept concurs with the proposal, however it must be noted that sheriffs are excluded in definition. Further the definition will be amended to include attorneys and developers who use third parties to sell their properties |
|  | sections 53, Trust account | NPF further submits that 99% of the estate agents do not use Trust Accounts. NPF therefore propose that it should not be mandatory for businesses that have annual turnover of less R 1.5 M to open a Trust Account | The Dept note the comments, however the Minister will prescribe exemptions in terms of keeping trust account |
|  | section 54, Duty of property practitioner to keep accounting records and other documents | NPF submits that keeping of the account records is not necessary; however it should be optional because of cost involved. | The Dept note the comment and therefore the responsibility of keeping accounting records will be reduced from 10 years to 5 years by way of substitution in section 54 |
|  | Section 69, Property Sector transformation | NPF submits that transformation of the sector should have a dedicated chapter which will outline the timeframe, targets etc. , transformation should not be dealt by way of a section.  NPF further submits that a certain turn over amount of big estate agent firms must be paid into the Transformation Fund and managed by the sector | The Dept concurs and as consistently raised during the public hearings, a new chapter on transformation will be drafted and section 69 will be substituted accordingly  Comments noted |
| **12. BLACK PROPERTY PRACTITIONERS ASSOCIATION** | Section 69, property sector transformation | Black Property Practitioners Association submits that section 69 which deals with property sector transformation in not detailed enough as to how the Bill envisage to achieve transformation.  They further submit that amnesty should be considered for the previously disadvantaged individuals (PDI’s) | The Dept concurs and as consistently raised during the public hearings, a new chapter on transformation will be drafted and section 69 will be substituted accordingly  Comments noted and the chapter on transformation will deal with this issue |
| **13. ZENANI FRANCE SIBANYONI** | Preamble | Mr Sibanyoni submit that the preamble of the Bill should be expanded in order to express the establishment of the PRRF  He further submits that a mortgage bond holders’ internal Property Repossession Risk Fund (PRRF) for the protection of both the property owner and mortgage bond holder should be established | Comments will be considered in the new chapter dealing with transformation and the regulation  Comments will be considered in the new chapter dealing with transformation and the regulation |
| **14. South African Property Owners Association (SAPOA)** | Sections, 14, 16 and 56 of the Consumer Protection Act (CPA) | SAPOA submits that the EAAB’s should apply for the exemption on the said sections of the CPA.  SAPOA submits that they do acknowledge that is will be important for those who are actively involved in the day to day running of the property practitioner business to be registered as property practitioner, they are of the opinion that a blanket registration requirement is to restrictive because it does not allow the industry to draw on the skills and expertise of other areas such as expertise in law, banking, construction or environmental scientist | The Dept concurs with the proposal and will ensure that the cross referencing in relation to exemption as provided for in the CPA is aligned accordingly |
|  | Chapter 2, Composition and appointment of Board | SAPOA submits that it critically important that the Board should be representative of the various regulated sub-sectors of the property industry.  SAPOA further submits it is important that the required expertise and experience should be available to enable the Board to take policy and strategic decisions after consideration of implications on various regulated property practitioners. | The Dept concurs and as raised during the public hearings, the Portfolio Committee need to relook not only the composition but the overall alignment of this provision with NCR  The DTI has done a comprehensive study regarding rationalization of the Public Entities which mainly deals with regulating various sectors. And they are prepared to share the rationalization process with the Committee in particular the NCR legislation amendment. |
|  | Section 37(2), limitation of amount which may be paid from the Fund in respect of any category of claims | SAPOA is of the view that such a limitation is unjustified and may well lead to a loss of confidence of the public in dealing with property practitioners. | The Dept notes the comments and the section will be revised accordingly. |
|  | Sections 53, Trust Account | SAPOA submits that only those property practitioners which in fact hold money in trust on behalf of the public should be required to maintain Trust Accounts.  SAPOA further submits that the wasted costs associated with holding a trust account and having same to be audited every year even where that trust account remains unused places a further hurdle in the way of promoting participation within the sector. | Comments noted and it will be dealt by the way of exemptions  Comments noted and it will be dealt by the way of exemptions |
|  | Section 53 | SAPOA submits that section 53 does not cover the manner in which interest earned on trust accounts should be dealt with. SAPOA therefore propose that the current position under section 32 of the EAA Act should be brought and interest accrued on the balances in trust accounts should be paid to the Fund | The Dept concurs with the comment and the provision will be reconsidered as raised by IRBA and SAICA |
|  | General Comments | SAPOA submits that listed and non-property companies are highly regulated, SAPOA therefore submits that non-listed property owning companies should also be exempted from being classified as property practitioners. | The Dept note the comment, however the objectives of the Bill is to regulate the entire property market |
|  | Exemptions and Exclusions | SAPOA submits that there are inconsistencies when it comes to the application of the Act and the exclusions as provided in the Bill | The Dept note the comment and the provisions will be reconsidered accordingly |
|  | Section 4, exemptions | SAPOA submits that the provision be made to group exemptions that could apply to a specified calls of persons. SAPOA further submit that this will lessen the burden placed on the Authority to consider multiple applications from the same industry players who are facing the same issues. | The Dept concurs with the proposal and the provision will be reconsidered accordingly |
|  | Section 34(1), primary purpose of the Fund | SAPOA submits that the in terms of section 18 of the EAA Act, the Fund is to reimburse persons who have suffered pecuniary loss by the reason of theft of trust money by an estate agent. However unlike section 34(1) of the Bill, such claims are not limited to theft by the estate agents who are in possession of a FFC at the time of theft.  SAPOA submit that the status *quo* should remain. | The Dept note the comment however it will not be sustainable for the Fund to cover any pecuniary loss suffered by any persons for any reason |
|  | Section 48(3,Mandatory periods for issuing certificates | SAPOA submit that section 48(3) makes provisions for the deemed approval of an application for a FFC.  SAPOA propose that the same provision should apply to the property practitioner in that he, she or it should be deemed to be in possession of a FFC for the purpose of this Act until such time as the Authority actually issues the certificate in terms of section 48(3) | The Dept concurs and the provision will be reconsidered accordingly |
|  | Section 28, powers of inspectors to enter, search and seize | SAPOA submits that inspectors have been given the power to enter and inspect any business premises of a property practitioner without a warrant | The Dept notes the comment, however this section has been carefully drafting with the guidance from the Constitutional Court Judgment in the a matter of EAAB v Auction Alliance |
|  | Section 46, Fidelity Fund Certificates (FFC) | SAPOA submits that it has no objection to the payment of registration and renewal fees as funding of the regulatory framework must be supported. However they propose that the period of validity of the FFC be extended from 1 year to 3 years | The Dept concurs with the comment and the provision will be reconsidered to reduce the burden of renewing FFC annually and provide that it will be now be renewable every three years. |
|  | Section 47(4), Prohibition on rendering services without FFC | SAPOA submit that this section is inappropriate as the property practitioner may have a valid defence for not being in possession of a FFC at particular time. E.g. the Authority might have failed to issue an FFC to property practitioner due to an administrative fault or due other circumstances which lie outside the control of a property practitioner. | Comments noted |
|  | Section 55(5), property practitioner not entitled to remuneration in certain circumstances | SAPOA propose that the remuneration be paid to the Fund where after the consumer or the property practitioner may submit a claim for such amount or a portion thereof if equitable under circumstances | The Dept concurs with the proposal and the provision will be reconsidered accordingly |
|  | Section 60, Code of conduct for the property practitioners | SAPOA submits that the adoption of the code of conduct should be done with prior consultation with the property practitioners within the industry | The Dept concurs with the proposal as it is a standard principle in the legislative drafting process to consult with all the parties who has interest and who might be affected by the that particular legislation. |
|  | Section 62(3), undesirable practices | SAPOA submits that this provision should be deleted given the fact that in practice, registration of transfer may be prevented as a result of breach of agreement by the seller or purchaser. They further submit that a property practitioner who had successfully discharged his or her or its duty, notwithstanding the fact that registration of transfer was not effected should be entitled to commission. | The Dept concurs with the comment and the provision will be reconsidered accordingly by way of substitution of section 62. |
|  | Section 67, Language of agreements | SAPOA submits that the drafting of agreement of sale or lease in any official language requested by the purchaser or lessee places an unjustifiable administrative as well as cost burden on the property practitioner concern.  SAPOA propose that the agreement in question should be drafted in English and the purchaser or lessee can translate it at his or her cost if it so wish. | The Dept concurs and the provision will be revised accordingly section 67(1) and be aligned with the National Credit Act NCA) in relation to provisions dealing with language of statement of intent. |
| **15.**  **South African Council for the Property Valuers Profession (SACPVP)** | Definitions, section 1(a)(v) | SACPVP submits that they are already regulated under the Property Valuers Profession Act,2000  SACPVP further submits that the word “assessment” should be defined or be excluded property valuers as there might be unintended consequences  SACPVP therefore propose that subsection “(ee) be inserted under exclusions in the definition and will read as follows “excluding a person regulated under Property Valuers Act, 2000” | The Dept concurs and the provision will be revised accordingly.in line with the comment from the Council of Property Valuers to exclude professional valuers from the definition and application of the legislation. |