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| **COSATU Submission:**  **Financial Matters Amendment and**  **Banks Amendment Bills**  **12 February 2019** |
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1. **Introduction**

COSATU welcomes and supports government’s Financial Matters Amendment Bill. This is an important bill that seeks to address challenges that military veterans’ partners have experienced accessing pension benefits when their partners and ex-partners pass away.

It also seeks to address problems experienced in the auditing profession as seen recently where some auditors helped cover up corruption in the firms and SOEs they were contracted to be playing an auditing and oversight role in.

The FMA Bill also critically provides a legal frame work for the granting of banking licenses to State Owned Enterprises (SOEs).

COSATU supports the broad objectives and provisions of the FMA Bill with some proposed amendments to further strengthen its public accountability and oversight provisions with regards to its proposed amendments of the Banks and Auditing Professions Acts.

COSATU welcomes and supports the objectives of the Private Member’s Bill, the Banks Amendment Bill tabled by Honourable FN Shivambu. As with the FMA Bill, COSATU supports the proposed provisions providing for SOEs to be granted banking licenses.

However the federation is concerned by the lack of checks and balances and public accountability provided for in the Banks Amendment Bill. These can be addressed through the provisions provided for in the FMA Bill as well as COSATU’s proposed additional amendments.

1. **FMA Bill Amendments to the Military Pensions Act**

COSATU welcomes and supports the FMA Bill amendments to the Military Pensions Act.

The federation believes that they are critical in terms of protecting the rights and needs of military veterans, their partners, families and dependents.

The proposed amendments are in line with the non-sexist values of the Constitution and the need to prevent discrimination based upon gender and sexual orientation.

We believe that the amendments will also help protect the rights of partners, ex-partners and dependents and children of deceased military veterans who have often inadvertently struggled to access the remaining pension benefits due to their lost love one.

COSATU supports the FMA Bill’s Military Pensions Act proposed amendment in full.

1. **FMA Bill and Banks Amendment Bill Amendments to the Banks Act**
   1. **Objectives**

COSATU welcomes and supports the broad objectives of both Bills in providing legal frameworks for SOEs to be granted banking licenses.

These are in line with COSATU’s long standing calls to open up the banking sector to competition. We believe that there is a critical need to allow for state banks to enter the sector. This will help to inject badly needed competition to a sector that has been heavily characterised by monopolies, collusion, high charges and interest rates, lack of transformation and a general reluctance to support the needs of the poor and workers.

COSATU appreciates the need for the bill to provide for existing state banks e.g. the Post Bank.

COSATU believes that the entry of state owned banks will help to bring about:

* More competition;
* More affordable banking products and lower interest rates for consumers and SMMEs;
  + This is badly needed to help spur economic growth, improve the lives of the poor and especially the rural areas as well as to support SMMEs to grow.
* Transformation of a largely white male dominated industry;
* State banks especially those with a targeted developmental focus e.g. a housing and construction or focus geographic areas e.g. rural areas that are largely neglected by the dominant banks.
  1. **SOE Bank Licensing Requirements**

COSATU supports the provision that SOEs will not be exempt from any of the existing banking license requirements of the Banks Act and that they too will be accountable to the South African Reserve Bank.

Consumers and industry need to be assured that all banks, including state banks are held to the highest standards and codes of conduct. It is workers and the poor who are the first to suffer when there is a failure of good governance in banks e.g. African Bank etc. It is taxpayers who are called upon to pay bail outs when banks risk collapse.

COSATU believes that as it is taxpayers who will pay the bill if a state bank collapses that is there a need for strong oversight provisions to minimise such risks.

Whilst COSATU welcomes and supports the provisions of the Banks Amendment Bill, we are concerned that it does not include checks and balances or public accountability provisions beyond those already provided for in the Banks Act. Given the explosion of corruption and collapse of good governance in many and especially the largest SOEs, such anti-corruption, accountability and transparency measures are badly needed and must be included.

COSATU is largely pleased with oversight and accountability provisions provided for in the FMA Bill.

In particular we welcome and support the requirements that for an SOE to be allowed to apply for a banking license:

* Its liabilities must not exceed its assets over a period of 24 months.
  + This is fundamental to avoid further burdening an already fragile state to more financial exposures or reckless lending and looting.
* That the relevant oversight Minister and Finance Minister must approve of such an application by an SOE.
  + This is critical to help ensure executive accountability and to prevent rogue scenarios.
  1. **COSATU SOE Bank Licensing Requirements Proposed Additions**

However COSATU is concerned that the provisions of the FMA Bill itself do not go far enough to ensure oversight and accountability. We therefore propose the following additional provisions to be inserted into the FMA Bill:

* + 1. **Approval of Line Function Minister and Finance Minister**

Section 11. 4 (b) on page 7 of the FMA Bill speaks of the *“Minister, granted with the occurrence of the executive authority according to the PMFA…”*

The memorandum of the FMA Bill, Section 4.2 (a) on page 20 speaks of both the Minister of Finance and the line function Minister being required to give approval of an SOE banking license application.

In short the provisions of the FMA bill does not appear to fully flesh out the correct objectives of the bill as provided for in the memorandum.

**COSATU Proposed Amendment:**

* Amend Section 11.4 (b) with the insertion of wording to the effect of the **“relevant oversight Minister and the Minister responsible for Finance”**.
  + 1. **Cabinet Approval**

The FMA bill’s provisions speak to a Minister’s approval. The memorandum speaks to the oversight Minister and the Finance Minister’s approval.

Whilst supporting these provisions, COSATU believes they are not fully in sync with existing Cabinet practise and good governance.

Cabinet normally approves a variety of executive decisions ranging from approval of bills, appoint of SOE boards and the employment of Directors-General and even Deputy Directors-General. The granting of bank licenses to SOEs potentially carries significant financial exposure to the state. Yet no role is provided for in the bill for Cabinet approval.

COSATU believes that such an oversight mechanism is critical and must be included. COSATU therefore proposes it be included.

**COSATU Proposed Amendment:**

* Insert in Section 11.4 (b) wording to the effect of the **“and the approval of Cabinet”**.
  + 1. **Parliamentary Oversight**

The FMA bill is silent upon an oversight role for Parliament. COSATU believes that Parliament as the elected representatives of the public must and can play an oversight role. This is critical in the fight against corruption and the collapse of SOEs.

COSATU believes that such an oversight mechanism is critical and must be included. COSATU therefore proposes it be included.

**COSATU Proposed Amendment:**

* Insert in Section 11 e.g. an 11.5 wording to the effect of the **“the relevant oversight Minister and the Finance Minister must submit to Parliament notification of the intent for the SOE to apply for a banking license for Parliament’s comment. Parliament should be provided with a reasonable timeframe within which to comment e.g. 30 days.”**
  + 1. **Public Participation**

The FMA Bill is silent on a provision for public comments and participation.

Whilst one may appreciate that the public is not involved in banking license applications normally, state banks will be covered by taxpayers’ funds if they collapse. The public has a vested interest in such a matter.

Practise across the state as provided in all legislation is for the public to be given opportunities to comment on key state policies, decisions and actions e.g. bills, regulations, board appointments, codes of practise etc.

COSATU believes that such an oversight mechanism is critical and must be included. COSATU therefore proposes it be included.

**COSATU Proposed Amendment:**

* Insert in Section 11 e.g. an 11.6 wording to the effect of the **“the relevant oversight Minister and the Finance Minister must gazette and advertise for public comment notification of the intent for the SOE to apply for a banking license for Parliament’s comment. The public should be provided with a reasonable timeframe within which to comment e.g. 30 days.”**

1. **FMA Bill Proposed Amendments of the Auditing Profession Act**

COSATU supports the FMA Bill’s proposed amendments of the Auditing Profession Act. These are badly needed and long overdue as seen with recent exposure of collusion between auditors and the companies and SOEs over whom they were paid to provide oversight.

One of the key causes of this failure has been the cosy relationship between some auditors and their clients. Some auditors are contracted by their clients for decades.

The King Report has highlighted this as a key cause of an at times incestuous relationship. Auditors will turn a blind eye or even be complicit in illegal activities etc to protect their long standing contracts.

The King Report recommends time limits to such auditing contracts.

**COSATU Proposed Amendment:**

* Insert in a new section of the FMA Bill a provision limiting the lengths of auditing contracts of firms and SOEs to 5 years and renewable once only.

1. **Conclusion**

COSATU would like to thank the Committee for the opportunity to share its views on these two critical and progressive bills.

We strongly support the objectives of both bills to provide a legislative framework for granting qualifying SOEs banking licenses.

We support the additional provisions in the FMA Bill to provide much needed checks and balances on the granting of banking licenses to SOEs.

However COSATU feels that this checks and balances and oversight mechanisms need and must be further strengthened as outlined in our proposed amendments.

COSATU supports the FMA Bill’s proposed amendments of the Military Pensions Act as they are in line with the anti-discrimination values of the Constitution.

COSATU welcomes the proposed amendments of the FMA Bill to the Auditing Professions Act. However we feel that it must be further strengthened as indicated in our proposed amendment.

COSATU urges SCOF to support and adopt its proposed amendments to the FMA Bill and to ensure Parliament adopts the amended bill before the 2019 general elections.

Thank you for your time and consideration.

Yours comradely,

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