THE BANKING ASSOCIATION SOUTH AFRICA

Tel +27 11 645 6700
Fax +27 11 645 6800
P O Box 61674
Marshalltown 2107
www.banking.org.za

3rd Floor Building D
Sunnyside Office Park
32 Princess of Wales Terrace
Parktown 2193

17 May 2021

**The Parliament - Standing Committee on Finance**
Mr Allan Wicomb and Ms Teboho Sepanya
Committee Secretaries
PO Box 15
Cape Town
8000

| | |
|---|---|
| Doc Ref: | JACQUELINEB/#300166_V1 |
| Your ref: | J BIDDLECOMBE |
| Direct ☎: | 011 645 6778 |
| E-✉: | JacquelineB@banking.org.za |

Per Email: awicomb@parliament.gov.za and tsepanya@parliament.gov.za

Dear Mr Wicomb and Ms Sepanya,

The Banking Association South Africa ("BASA") would like to thank the Standing Committee on Finance ("the Committee") for the opportunity to comment on the proposed amendments to Pension Funds Act, 24 of 1956 (by a Private Member's Bill).

Our members have submitted their comments to BASA which we have articulated in this document as the industry comments on the Private Member's Bill. We have also included some important background notes for consideration before dealing with specific items of the Bill.

We look forward to engaging with the Committee as required and invite you to engage with us on any aspects which may be unclear and/or need further discussions.

Yours faithfully,

Jacky Biddlecombe

**Jacqueline Biddlecombe**
**Senior Specialist Legislation & Regulatory Oversight**
**Banking Association South Africa**

**IMPORTANT BACKGROUND TO NOTE:**

1. BASA would like to bring the following important background information to the attention of the Committee:

   1.1. The Pension Funds Act, 24 of 1956 (the "PFA") permits the fund to issue an on-demand or first demand guarantee as security for a credit agreement, only where the purpose of the credit agreement is to purchase or improve immovable property. Thus, the objective of the credit agreement should be to assist in the achievement of the constitutional right to adequate housing.

   1.2. The credit agreement is not a mortgage agreement (as the immovable property is not provided as security).

   1.3. The credit agreement is a secured loan as defined in section 1 of the National Credit Act, 34 of 2005 (the "NCA").

   1.4. The secured loan remains subject to the provisions of the NCA, including the obligations of the credit provider to conduct an affordability assessment before concluding a credit agreement and to ensure that the relevant credit agreement does not cause the over-indebtedness of a consumer.

   1.5. An affordability assessment is conducted to determine whether a consumer has sufficient monthly discretionary income (all income, minus deductions, living expenses and existing debt and other committed obligations) to make payment of the credit agreement instalment.

   1.6. A consumer's debt repayment history is also considered.

   1.7. The secured loan is subject to the costs of credit provisions of the NCA.

   1.8. The guarantee issued by the fund is only security for the credit agreement (secured loan) and may only be called upon by the credit provider if a consumer defaults on or breaches the credit agreement obligations.

   1.9. An over-indebted or financially distressed consumer would fail an affordability assessment and therefore the responsible credit provider would not be able to grant the relevant credit agreement (even if security is offered).

   1.10. Considering the aforementioned background, BASA is not convinced that the objective of the proposed amendment is indeed achievable, unless the proposal is for credit providers to advance emergency loans as defined in section 1 of the NCA. These emergency loans are exempt from the affordability assessment obligations in the NCA; however, there are other conditions which must be met such as (a) reasonable proof of the relevant emergency must be provided by the consumer; (b) the types of emergencies which may be funded are limited; (c) there must be a causal link between the emergency and the funding needed and (d) there are additional reporting obligations to the National Credit Regulator.

**NAME OF PERSON COMPILING SUBMISSION: JACQUELINE BIDDLECOMBE**
**ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA**
**SUBMISSION DESCRIPTION: Pension Funds Amendment Bill, 2020 (Private Member's Bill)**

| # | REFERENCE IN ACT/BILL/DOCUMENT | COMMENT (Why is it a problem?) | RECOMMENDATIONS /PROPOSED WORDING/CHANGE |
|---|---|---|---|
| **1.** | **General Comments** | While BASA notes that the aim of the Bill is noble, and the laudable and well-intentioned Objective of the Amendment Bill (namely, to allow consumers to leverage their pension fund as security for a credit agreement when a significant emergency occurs), we are concerned that it would unfortunately give rise to several unintended consequences which are not desirable. Our concerns are articulate below as follows:<br><br>1. The Bill seeks to deviate from the purpose of Pension Funds and has the potential to further introduce policy uncertainty.<br>2. The Bill may lend itself to abuse given the generic nature with which it has been drafted. As a result, credit appetite may be negligible; and<br>3. The Bill may have unintended socio-economic consequences if the customer's ability to retire with sufficient means is impacted.<br>4. The Bill should also be clear on whether the intention is to limit the proceeds of the loan to the related emergency or whether it would be in the discretion of the lender as to how the proceeds of the loan can be applied.<br>5. Utilising this mechanism (security in the form of an on-demand or first demand guarantee provided by the relevant pension fund for a credit agreement) to provide financial support to consumers in the short to medium term should be weighed up against the longer-term financial health of consumers to ensure that short term decisions do not pose unintended consequences to the long-term financial stability of consumers. | 1. We recommend that the following items should be considered and balanced when the proposed amendment is considered:<br><br>2. The NCA, which is applicable to most consumer credit and binds credit providers of consumer credit, articulates the following important and relevant purposes in section 3:<br><br>2.1.1. *The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers*.<br>2.1.2. *Promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions.*<br>2.1.3. *Promoting responsibility in the credit market by– (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfillment of financial obligations by consumers; and (ii) discouraging reckless credit granting by credit providers and contractual default by consumers.*<br><br>3. The proposed amendment does support access to credit and where credit is used for productive purposes (like wealth creation) and in a sustainable and responsible manner, this could provide a good mechanism for the consumers to improve their financial position. However, for the purposes of |

| # | REFERENCE IN ACT/BILL/DOCUMENT | COMMENT (Why is it a problem?) | RECOMMENDATIONS /PROPOSED WORDING/CHANGE |
|---|---|---|---|
| | | | the Bill it would be important to consider whether the proposed change could be abused to give access to credit in instances where a significant emergency does not exist and where the purpose does not speak to sustainable credit.<br>4. The importance of being able to assist consumers in the event of serious emergency situations like national states of disaster.<br>5. The importance of treating consumers fairly and ensuring that the consumer's needs are understood, and the appropriate product offered to speak to those needs as envisaged in market conduct legislation and the treating customers fairly outcomes applicable to financial institutions.<br>6. The consumer's financial position at the time of retirement and assisting the consumer to manage his or her finances in a responsible manner. Consider a consumer taking credit secured by a guarantee against their pension fund of 75% when the consumer is 5 years from retirement. If the consumer is unable to repay the credit agreement, they risk losing the security that they have worked hard to build up via pension savings and potentially resulting in broader financial distress due to this. To reduce the risk to the consumer, consideration could be given to allowing different guarantee values based on the age of the consumer to protect consumers that are closer to retirement and therefore more vulnerable.<br>7. The low levels of savings in South Africa.<br>8. We recommend that consideration be given to limit the guarantees as security only for the funding of appreciating asset classes. |
| **2.** | **Clause 1 of the Proposed amendment to section 19.** | Pensions may be described as a sensitive form of collateral insofar as lending is concerned, as the main purpose of having a pension is to have some form of financial support upon retirement. | BASA recommends that it would be important to ring-fence the expansion of Section 19 i.e., to ensure that the purpose for which a loan is being applied for / granted is directly associated with cash |

| # | REFERENCE IN ACT/BILL/DOCUMENT | COMMENT (Why is it a problem?) | RECOMMENDATIONS /PROPOSED WORDING/CHANGE |
|---|---|---|---|
| | | Currently, BASA notes that pension backed loans are linked to housing needs. The credit advanced to a fund member/consumer is therefore tied into a "long-term" investment for the consumer. A positive return on investment is therefore more likely to be achieved within the current context and structure as members will retain their property investment even where the pension, as a form of security, has been realised.<br><br>With the amendments, consumers will have their pension linked to satisfaction of immediate needs versus long-term return on investment. This may also result in depletion of pension funds for "non-essential" needs if not regulated carefully.<br><br>It is likely that many consumers may still lose their jobs due to the effects of the COVID-19 pandemic. With this comes the increased possibility of realising security to settle credit related obligations as members would be unable to service the loan on a month-to-month basis.<br><br>The amendment will therefore enable much needed immediate relief however, the medium and long-term effects of this lending structure may be problematic insofar as servicing and repercussions are concerned.<br><br>Section 37D(1)(a)(ii) of the PFA allows a registered fund to *"deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act 58 of 1962), and any amount due to the fund in respect of any amount for which the fund becomes liable under a guarantee furnished in respect of a member for a loan granted by some other person to the member in terms of section 19(5)"* – the possibility of erosion therefore remains present even with the existence of a guarantee. | flow deficits which are linked to the impact of the COVID-19 pandemic.<br><br>Fund members'/consumers' interests must be protected, and credit where a pension is used as collateral must be necessitated by COVID-19 emergency. Fund members should be able to prove a negative impact on their income or loss of employment due to COVID-19. |

| # | REFERENCE IN ACT/BILL/DOCUMENT | COMMENT (Why is it a problem?) | RECOMMENDATIONS /PROPOSED WORDING/CHANGE |
|---|---|---|---|
| **3.** | **Objects of the Bill** | BASA notes that it is not expressly clear from the Bill whether the loan will fall under the ambit of an *"emergency loan"* as defined in the NCA, save for mentioning this in section 2 (objects of the Bill). The Bill should be clear in this regard so that credit providers can assess the extent of the application of the NCA. | If the proposed amendment goes ahead, regardless of BASA's concerns raised, then we recommend that with the advent of Covid-19, such loans are limited to Covid-19 related purposes and emergencies only, meaning the loan is strictly limited to some sort of Covid-19 relief with time limitations, meaning after a specified time (whether it is 12 or 24 months) the loans will no longer be offered. |
| **4.** | **FINANCIAL IMPLICATIONS FOR THE STATE**<br><br>**None.** | Pensions are afforded special protection and we should be careful, in enabling consumers to use pensions for loans. Especially, the long-term effects, as it could result in an older population, marred by deficits and insufficient pensions. | |