

**FINANCIAL SECTOR AND DEPOSIT INSURANCE LEVIES BILL [B3-2022]**

**PUBLIC COMMENTS RECEIVED ON THE LEVIES BILL**

**February 2022**

# List of Commentators

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|  |  |  |
|  | 1. Banking Association of South Africa (BASA)
2. Financial Intermediaries Association of South Africa (FIASA)
3. Johannesburg Stock Exchange (JSE)
4. Masthead
5. Moonstone
6. Outsurance
7. South African Insurance Association
8. Wealth Tap
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**COMMENTS ON THE 2022 FINANCIAL SECTOR AND DEPOSIT INSURANCE LEVIES BILLS**

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| Clause 1: Definitions |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| BASA | Definitions | Definitions are not stipulated consistently.**Recommend** consistent referencing be applied in the definition section. | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation.  |
| BASA | Definitions | Definition of "deposit insurance levy" does not reference the applicable Act**Recommend** referencing the Act, the definition is based on. | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation.  |
| BASA | Definitions | Definition of "financial sector levy" " does not reference the applicable Act**Recommend** referencing the Act, the definition is based on.  | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation.  |
| BASA | Definitions | No definition of the Banks Act and Collective Investment Control Act in the paper.**Recommend** adding a definition in the same way the definition of the Financial Markets Act and Financial Sector Regulation Acts have been included. | These terms are defined in the FSRA, and terms defined in the FSRA which are used in the Bill, which are not defined in the Bill, have the meaning of the term defined in the FSRA. |
| BASA | Definitions | Definition of "deposit insurance levy" does not reference the applicable Act.**Recommend** referencing the Act the definition is based on. | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation |
| BASA | Definitions | Definition of “levy year” does not reference the applicable Act. **Recommend** referencing the Act the definition is based on. | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation.  |
| BASA | Definitions | Definition of “special levy” does not reference the applicable Act. **Recommend** referencing the Act, the definition is based on. | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation |
| BASA | Definitions | The definition of “Tribunal” is not included. **Recommend** including the definition of “Tribunal”. | The term is defined in the FSRA, and terms defined in the FSRA which are used in the Bill, which are not defined in the Bill, have the meaning of the term defined in the FSRA. |
| BASA | Definitions | Special levy cross-reference to legislation is incomplete. Recommend completing the relevant cross-reference.  | It is not necessary to refer to “of this Act”, a reference in legislation refers to a provision in that piece of legislation, unless it is indicated that the reference is to a provision in a different piece of legislation |
| Outsurance | Definitions | We note the definition provided for a “supervised entity”. In terms of the Financial Sector Regulation Act paragraph (a) of supervised entity is defined as “a licensed financial institution”. The term financial institution is however not defined in the proposed Bill. It is therefore not clear what is meant by the term “financial institution”. The Financial Sector Regulation Act provides a definition for “financial institution”. It is defined as any of the following, other than a representative: (a) A financial product provider (b) A financial services provider (c) A market infrastructure (d) A holding company of a financial conglomerate or (e) A person licensed or required to be licensed in terms of a financial sector law. It is however not clear if this definition is applicable to the current Bill? We therefore suggest that a definition be included for “financial institution” to remove any uncertainty. It would be ideal if the definition is aligned with the Financial Sector Regulation Act. We would however recommend to limit the definition to categories (a), (b) and (c) of the said definition, considering there are no proposed levies for other licensed entities. | To ensure that the scope of entities that in fact are liable to pay levies in terms of the Bill are accurately captured, it is proposed to refine the definition of “supervised entity” as follows:‘‘supervised entity’’ means a financial institution envisaged in paragraph (a) of the definition of ‘‘supervised entity’’ in section 1(1) of the Financial Sector Regulation Act of the types listed in Schedules 1 to 6;  |
| SAIA | Definitions | We note the definition provided for a “supervised entity”. In terms of the Financial Sector Regulation Act paragraph (a) of supervised entity is defined as “a licensed financial institution”. The term financial institution is however not defined in the proposed Bill. It is therefore not clear what is meant by the term “financial institution”. The Financial Sector Regulation Act provides a definition for “financial institution”. It is defined as any of the following, other than a representative: (a) A financial product provider (b) A financial services provider (c) A market infrastructure (d) A holding company of a financial conglomerate or (e) A person licensed or required to be licensed in terms of a financial sector law. It is however not clear if this definition is applicable to the current Bill? We therefore suggest that a definition be included for “financial institution” to remove any uncertainty. It would be ideal if the definition is aligned with the Financial Sector Regulation Act. We would however recommend to limit the definition to categories (a), (b) and (c) of the said definition, considering there are no proposed levies for other licensed entities. |  To ensure that the scope of entities that in fact are liable to pay levies in terms of the Bill are accurately captured, it is proposed to refine the definition of “supervised entity” as follows:‘‘supervised entity’’ means a financial institution envisaged in paragraph (a) of the definition of ‘‘supervised entity’’ in section 1(1) of the Financial Sector Regulation Act of the types listed in Schedules 1 to 6;  |
|  |  | **Clause 4: Amount and Payment of Financial Sector Levy** |  |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| Outsurance | Clause 4(1)(a) | The levy payable to the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) with regards to insurers, appears to be a duplication and, in our view, will put unnecessary strain on these entities and ultimately the consumers. Especially in light of the fact that most of these entities are also Financial Services Providers and would be liable for the levies set out in Schedule 5 as well. In addition, special levies are also being introduced which creates a further additional burden on these entities to both the PA and the FSCA. Since the establishment of the PA, the levy paid to the FSCA was split between the two Authorities. It is our submission, this is a more sensible approach which will ensure levy payments to both Authorities and alleviate insurers from unnecessary double levy payments and financial stress.One of the concerns raised during the proposal of the establishment of the twin peaks supervisory model was the cost of compliance, which would be as a result of establishing two Authorities. At the time the Regulator has assured that the costs of compliance will not be affected. However, considering the proposed levies to both the PA and the FSCA, it is evident that the costs have significantly increased for insurers. In light of this, we would like to propose that insurers that already pay Schedule 1 levies be exempted from paying the Schedule 2 levy and that the amount paid in Schedule 1 be split between the Authorities as has been done in the past. It is further our submission that the introduction of this increases the barrier to entry for new financial institutions which would wish to enter into the financial services industry in that these levies would impact their financial soundness as and when they are required to make payment. Low penetration into the market would limit competition and would result in cost increases to consumers. We further plead with the Authorities to reconsider the significant increase especially since it is introduced during a period where the pandemic has wreaked havoc for the financial industry, we would therefore recommend for levies to be applied in a measured manner and much lower than doubling the levies of insurers.The levy payable to the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) with regards to insurers, appears to be a duplication and, in our view, will put unnecessary strain on these entities and ultimately the consumers. Especially in light of the fact that most of these entities are also Financial Services Providers and would be liable for the levies set out in Schedule 5 as well. In addition, special levies are also being introduced which creates a further additional burden on these entities to both the PA and the FSCA of establishing two Authorities. At the time the Regulator has assured that the costs of compliance will not be affected. However, considering the proposed levies to both the PA and the FSCA, it is evident that the costs have significantly increased for insurers. In light of this, we would like to propose that insurers that already pay Schedule 1 levies be exempted from paying the Schedule 2 levy and that the amount paid in Schedule 1 be split between the Authorities as has been done in the past. It is further our submission that the introduction of this increases the barrier to entry for new financial institutions which would wish to enter into the financial services industry in that these levies would impact their financial soundness as and when they are required to make payment. Low penetration into the market would limit competition and would result in cost increases to consumers. We further plead with the Authorities to reconsider the significant increase especially since it is introduced during a period where the pandemic has wreaked havoc for the financial industry, we would therefore recommend for levies to be applied in a measured manner and much lower than doubling the levies of insurers. | The NT does not agree with the comment that the levies payable to the PA and the FSCA would be a duplication.The two authorities are separate and each one has its own objectives and functions. The levies are imposed to fund their operations in pursuit of fulfilling their mandates. The approach that has been adopted is that the levies will be imposed for each of the different licensed activities undertaken by a supervised entity. One fundamental principle that has also been adopted is that of cost recovery. As the industry would be aware, the Authorities are not profit-making organisations. The reason for imposing levies is to recover the costs involved in the regulation of the sector. The notion that the levies that are currently paid to the FSCA should simply be split between the PA and FSCA will not work, and it also means that the Authorities will not be in a position to fund their budgets. The formulation of the levies is such that the smaller institutions will pay less when compared to the larger ones. The base amount that is payable by a new entrant, as an example is set at a threshold that does not make the levy a barrier to entry.Concerning the issue of the special levy, this will only be imposed in respect of the first levy years. The special levy was initially 15% and has since been reduced to 7.5% which is a balance between ensuring that the Authorities have adequate resources for set-up and other required systems while also minimising the burden on the supervised entities.It is of paramount importance that the regulation and supervision of the financial sector is appropriately and adequately funded to enable the regulators to execute their mandates effectively. While all regulation comes with some costs, the cost of funding the regulators will be based kept at a minimum. While the FSCA will be fully funded by the industry, the Reserve Bank will continue to fund a portion of the PA’s total costs from its resources. What the PA will recover from the industry are direct costs, indirect costs, which are estimated at 40% of the total costs will be funded by the Reserve Bank, therefore there is no duplication of costs. It is also understood that financial hardship may be experienced as a result of the pandemic. As noted above, the Authorities are empowered to grant exemptions from the payment of all or part of a levy in the circumstances set out in clause 11 of the Bill. On the basis that the principle underlying the charging of the levies is cost recovery, this cannot be supported because it will mean that the Authorities will not be sufficiently funded to execute their important mandates.It should be noted that the FSCA will receive considerably less from the insurance industry than it currently collects.  |
| SAIA | Clause 4 | Since the establishment of the PA, the levy paid to the FSCA was split between the two Authorities. It is our submission, this is a more sensible approach which will ensure levy payments to both Authorities and alleviate insurers from unnecessary double levy payments and financial stress. One of the concerns raised during the proposal of the establishment of the twin peaks supervisory model was the cost of compliance, which would be as a result of establishing two Authorities. At the time the Regulator has assured that the costs of compliance will not be affected. However, considering the proposed levies to both the PA and the FSCA, it is evident that the costs have significantly increased for insurers. In light of this, we would like to propose that insurers that already pay Schedule 1 levies be exempted from paying the Schedule 2 levy and that the amount paid in Schedule 1 be split between the Authorities as has been done in the past. It is further our submission that the introduction of this increases the barrier to entry for new financial institutions which would wish to enter into the financial services industry in that these levies would impact their financial soundness as and when they are required to make payment. Low penetration into the market would limit competition and would result in cost increases to consumers. We further plead with the Authorities to reconsider the significant increase especially since it is introduced during a period where the pandemic has wreaked havoc for the financial industry, we would therefore recommend for levies to be applied in a measured manner and much lower than doubling the levies of insurers. | The comment is noted. It is of paramount importance that the regulation and supervision of the financial sector is appropriately and adequately funded to enable the regulators to execute their mandates effectively. While all regulation comes with some costs, the cost of funding the regulators will be based on cost recovery and will be kept at a minimum. While the FSCA will be fully funded by the industry, the Reserve Bank will continue to fund a portion of the PA’s total costs from its resources. What the PA will recover from the industry are direct costs, indirect costs, which are estimated at 40% of the total costs will be funded by the Reserve Bank. Therefore, there is no duplication on the costs. It is also understood that financial hardship may be experienced as a result of the pandemic. As noted above, the Authorities are empowered to grant exemptions from the payment of all or part of a levy in the circumstances set out in clause 11 of the Bill. On the basis that the principle underlying the charging of the levies is cost recovery, this cannot be supported because it will mean that the Authorities will not be sufficiently funded to execute their important mandates.It should be noted that the FSCA will receive considerably less from the insurance industry than it currently does. See comment above for further detail. |
| **Clause 5 & 6: Levy Year and Levy Period** |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| BASA | Clause 5 and 6 | Requested clarity in 2021 on when supervised entities should pay levies to the FSCA. Whilst the levy period and levy year are stipulated in the Bill, the date for payment of levies is not clear. The National Treasury response document states that the S242 of the FSRA provides for when levies are payable. S242 of the FSRA is copied below. It merely indicates that the assessment notice issued by the financial sector body must state the date on which the levy is due and must be paid and that levies must be paid within 30 days of receipt of the notice.FSRA S242Assessments of levy242. (1)A financial sector body must issue to each supervised entity that is liable to pay a levy for the financial year, an assessment of a levy payable by the supervised entity.(2) The assessment notice issued to a supervised entity must state the date on which the levy is due and must be paid, which period must not be less than 30 days from the date of receipt of the notice of assessment by the supervised entity.This, therefore, does not answer the query raised. Reading sections 5 and 6 of the Levies Bill with S242 of the FSRA, is the assumption then correct that if levies are due annually, an assessment notice will be issued at or after the end of the levy year, 31 March each year (per the Levies Bill), and payment is due within 30 days the receipt of the notice. Similarly, if levies are due quarterly, an assessment notice will be issued at or after the end of June, September, December, and March each year, and payable within 30 days of receipt of the assessment notice?**Clarify** the payment date for levies and confirm if the following understanding is correct. Reading sections 5 and 6 of the Levies Bill with S242 of the FSRA, is the assumption then correct that if levies are due annually, an assessment notice will be issued at or after the end of the levy year, 31 March each year (per the Levies Bill), and payment is due within 30 days following the receipt of the notice. Similarly, if levies are due quarterly, an assessment notice will be issued at or after the end of June, September, December, and March each year, and payable within 30 days of receipt of the assessment notice? | As indicated, section 242 of the FSRA empowers the regulators to determine the dates on which levies must be paid. From the FSCA’s perspective, future dates will be aligned to the approach currently taken in the Levies on Financial Institution, 2021 Notice. Under the Levies Bill, the FSCA will timeously communicate the dates on which levies must be paid.  |
| **Clause 7: Apportionment** |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| BASA | 7(1) | Do any levies paid under an existing financial sector law be used toward payment (wholly or partly) if levies are due under this Bill? | From the FSCA’s perspective the intention is to request the commencement of the Levies Bill’s in the new financial year. This will mean that levies received under the Levies Notice will be applied until the end of the current financial year.  |
| BASA | 7(4) | Will a pro-rata refund be paid to supervised entities whose licence is withdrawn or cancelled after levies have been paid? The Bill is silent on this.  | Yes, they will be, but to ensure that this is clear, it is proposed to amend clause 7(3) and similarly clause 9(4), as follows:7.(3): (3)(a) Where the licence of a supervised entity is withdrawn or cancelled during a levy year or a levy period for whatever reason, a part of a levy year or a levy period mustapply from the beginning of the relevant levy year or levy period to the date on which the licence is withdrawn or cancelled.(b) Where a levy has already been paid in full or a levy year or a levy period during which the licence of a supervised entity is withdrawn or cancelled, a refund of the levy must be provided to the supervised entity for the proportion of the levy year or levy period subsequent to the withdrawal or cancellation of the licence.  In respect of clause 9(4): (4))(a) Where an entity becomes a member during a levy period or ceases to be a member during a levy period, the levy payable must be proportional to the remainder of the levy period during which the entity is a member or ceases to be a member.(b) Where a levy has already been paid in full or a levy year or a levy period during which a member ceases to be a member, a refund of the levy must be provided to the former member for the proportion of the levy year or levy period subsequent to the cessation of membership |
| **Clause 8: Special Levy**  |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| FIASA  | Clause 8 | Again, while we acknowledge the reduction in the special levy amount from 15% to 7.5%, the proposed levies still represent a significant increase in levies in very tough economic conditions. | The comment is noted. As you have correctly noted, the special levy was reduced from 15% to 7.5%. This is a balance between ensuring that the Authorities have adequate resources for set-up and other required systems while also minimising the burden on the supervised entities. Kindly also note that the special levy will be imposed for only the first two levy years following the date of the commencement of the Bill. The special levy is not only for establishing the PA/FSCA – it is for other expenses that are not part of the ordinary course of the regulation and supervision of financial institutions. A special levy may be charged in accordance with the provisions of the Levies Bill to cover other initial costs. The estimate of expenditure has been published by the Authorities which included an estimate for the special expenditure in relation to a special levy proposal. While three years have passed since the establishment of the two peaks, there are set-up projects e.g. enhanced IT processes that are yet to be implemented. For the 2022/23 financial year, the FSCA, has budgeted for a deficit of R18 million even though it has made a provision for the special levies. This deficit will be funded by reserves. |
| JSE | Clause 8 | **Special levies**Notwithstanding the significant increases in the levies imposed on the JSE and JSE Clear to fund the Authorities’ normal oversight functions, the JSE and JSE Clear are simultaneously also having to bear material special levies for a two-year period. Again, in the absence of budgets and further information on what costs and activities these special levies are going to cover, we have no sense of the regulatory imperatives in imposing these levies when the JSE and JSE Clear are already having to bear significant increases in their normal levies. As mentioned earlier, we owe it to the market participants who are likely to bear much of the impact of these higher levies to make every attempt to gain an understanding of the purpose and application of the new levies. The JSE and JSE Clear will, in aggregate, pay nearly R12 million in special levies over a two-year period. The special levy imposed by the FSCA on the JSE stands out as being particularly high at approximately R3,5 million per annum. We do not know whether these special levies are earmarked to fund specific activities or initiatives that the Authorities have committed to undertaking, and that will strengthen the regulatory oversight of the financial markets to the benefit of all stakeholders, or whether the special levies are being charged to cover as-yet undefined activities that may or may not be undertaken. But in light of the already significant proposed increases in the normal levies imposed on the JSE and JSE Clear, we implore National Treasury and the Authorities to consider whether these special levies, or the quantum thereof, are necessary at this time. | The Authorities will provide their budgets and budget forecast that will provide further information on their costs as well as what the special levies are meant to cover. These will be shared with the industry.As a general principle, the levies that are proposed to be imposed are to recover the operational costs of the regulators. In accordance with section 239 of the FSR Act, a proposal for a special levy must also include the estimate of expenditure for the special expenditure in relation to a special levy. The Authorities have identified expenditures that they have earmarked for the special levies. Please refer to the comment above for further clarity. |
| Outsurance | Clause 8(1) | It is our understanding that a special levy will be payable for the first two years immediately following the effective date of the Bill. We however require clarity if this interpretation is accurate, or does this section suggest a special levy equal to the amount of the first two levy years would be payable at commencement. I.e. is a special levy payable spread over the first two years or does this section suggest one payment equal to two years’ special levy. | A special levy will be calculated and payable, separately, in each of the two levy periods (years) following the commencement of the Bill. The idea to spread the imposition of this levy over the first two years is a way of reducing the burden on the industry. The special levy is spread over the first two years following the effective date of the Bill. |
| SAIA | Clause 8(1) | It is our understanding that a special levy will be payable for the first two years immediately following the effective date of the Bill. We however require clarity if this interpretation is accurate, or does this section suggest a special levy equal to the amount of the first two levy years would be payable at commencement. (I.e. is a special levy payable spread over the first two years or does this section suggest one payment equal to two years’ special levy.It is further our submission that increased levies must be regarded in the context of the overall cost of regulatory changes, compliance and regulatory reporting and Considering that the increase is significant and is occurring during a period where the pandemic has wreaked havoc for the financial industry, we would like to propose that the levies should perhaps be implemented in a staggered manner, with the special levy being spread over more than two years in order to ensure that the impact on the industry is not debilitating.  | A special levy will be calculated and payable, separately, in each of the two levy periods (years) following the commencement of the Bill. The idea to spread the imposition of this levy over the first two years is a way of reducing the burden on industry.The special levy was reduced from 15% to 7.5% to reduce the burden on industry and its also being spread over two years. The special expenditure earmarked for the special levy requires funding and a two-year spread seems reasonable. The special levy is spread over the first two years following the effective date of the Bill.Refer to comment above for further clarity. |
| **Clause 9: Deposit Insurance Levy** |
| **Reviewer** | **Section** | **Comment** |  |
| BASA | 9(4) | Recommend that this section also deals with the license of a supervised entity being withdrawn or cancelled. Similar to section S7(3) above. The section should also allow for a prorate refund where applicable.**Clarify and confirm** if a pro-rata refund will be paid if a license is withdrawn or cancelled. | Membership to CoDI is linked to the bank’s licence. A bank becomes a member of CoDI when it receives a license from the PA and ceases to be a member of CoDI when the license is withdrawn. CoDI can therefore confirm that a pro-rata refund will be paid to a bank if its license is withdrawn, and it ceases to be a member of CoDI. |
| **Clause 10: Amendment of Schedules** |
| **Reviewer** | **Section** | **Comment** |  |
| BASA | 10(1)(a) | Both the public commenting process and approval by Parliament should be required. Can it be circumvented? | The following refinements are proposed to subsection (1):(1) *(a)* The Minister may amend a Schedule, with the concurrence of the financial sector body concerned, **[amend a Schedule,]** and after having published a proposed amended Schedule in the *Gazette* for public comment for a period of at least 30 days, either by submitting an amended Schedule to Parliament for approval, or in accordance with subsection (4).*(b)* Parliament must approve, adopt amendments to or reject an amended Schedule within three months of the date of tabling of the amended Schedule*(c)* If Parliament does not pass a resolution **[approve, adopt amendments to or reject]** approving, adopting amendments to, or rejecting the amended Schedule within three months of the date of tabling, Parliament is deemed to have approved the amended Schedule, and—(i) the Minister may publish the amended Schedule in the *Gazette*; and(ii) the amended Schedule takes effect from the date of publication in the *Gazette*.*(d)* Section 13 of the Money Bills and Related Matters Act, 2009 (Act No. 9 of 2009),applies in relation to the consideration by Parliament of an amended Schedule that is tabled for approval. |
| BASA | 10(4) | Both the public commenting process and approval by Parliament should be required. | A public comment process is proposed in the above refinements to subclause (1). In relation to subclause (4), Parliament is effectively in the primary legislation approving an annual increase of up to CPIX. |
|  |  | **Clause 11: Exemption from Levies** |  |
| **Reviewer** | **Section** | **Comment** |  |
| FIASA | Clause 11 | The feedback further notes that under justifiable circumstances, the Authorities are empowered to grant exemptions from the payment of all or part of a levy. As previously noted in discussions with Treasury, this process is overly burdensome for firms, and again does not take into consideration the overall hardship that will be created as a result of increases of this nature. Furthermore, clause 11 is tightly worded and only allows exemption in specific circumstances, and makes no provision for those FSPs who are dual regulated by the CMS, and FSCA. Consideration needs to be given to an overall reduction of fees for intermediaries, as well as alternative payment mechanisms, i.e. monthly vs annual payments etc. | Exemption from levies11. (1) (a) The Financial Sector Conduct Authority may, in writing, on application by a supervised entity or on its own initiative, exempt a supervised entity or a type or category of supervised entities, from the payment of all or a part of the financial sector levy specified in Schedules 2 to 5, or the special levy referred to in section 8(2)(a), in respect of a levy year or a part of a levy year.(b) The Prudential Authority may, in writing, on application by a supervised entity or on its own initiative, exempt a supervised entity or a type or category of supervised entities, from the payment of all or a part of the financial sector levy specified in Schedule 1, or the special levy referred to in section 8(2)(b), in respect of a levy year or a part of a levy year.(c) The Corporation may, in writing, on application by a member or on its own initiative, exempt a member or a type or category of members from the payment of all or part of the deposit insurance levy specified in Schedule 6, in respect of the period referred to in section 9(3), or a part of that period.For consideration- might we want to provide that the regulator could exempt a category of entities, or not only on application by a financial institution? As part of the process, upon agreement between the Authority and the supervised entity, the FSR Act, allows for a situation where a supervised entity may offer to pay a fee of a levy by specified instalments.As exemptions will not be justified in all circumstances, it is proposed that it is better to provide for exemptions from these fees on a case-by-case basis rather than for a general exemption. |
| Schedule 1: Financial Sector Levy Calculation for Supervised Entitiesin respect of Prudential Authority |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | Schedule 1 | CISCA will be repealed by the Conduct of Financial Institutions Act. Similarly, the Credit Rating Services Act and FAIS will be repealed. It is assumed that the references to the relevant legislation will be amended/updated depending on the timing/sequence of the Levies Bill and COFI Bill being promulgated and becoming effective.**Clarify** if our assumptions are correct that the references to the relevant legislation will be amended/updated depending on the timing/sequence of the Levies Bill and COFI Bill being promulgated and becoming effective. | Yes, the legislative references will need to be updated in light of the CoFI Bill, once it is enacted as and when necessary.  |
| BASA | Schedule 1 | References to “Pensions Fund” as catered for under the Pension Funds Act, 1956 and used in the Bill. Recommend that all current terminology and referencing in the Bill be aligned to the proposed amendments being made in CoFI Bill and to the Pension Funds Act, 1956, which once CoFI Act is enacted, will be known as the Retirement Fund Act. | Yes, it will be premature to refer to legislation. The reference will be updated in light of the CoFI Bill, once it is enacted with consequential amendments.  |
| Schedule 2: Financial Sector Levy Calculation for Supervised Entitiesin Respect of Financial Sector Conduct Authority |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | 1(a) | The branch is not listed while in the table that follows.**Recommend** including “branch”. | Can include this reference. Agree. It is proposed to amend item 1*(a)* as follows, to also align with the similar item in Schedule 1:a bank or a branch; |
| JSE | Paragraph 2 | **Alleviation of double levy payment in respect of clearing house**We welcome the inclusion of the paragraph 2 of Schedule 2, which aligns the FSCA’s approach to the Prudential Authority’s approach in respect of the alleviation of a double levy payment in respect of a clearing house. However, as pointed out in our prevision submission to the draft Bill, paragraphs 2 of Schedule 1 and Schedule 2 do not provide clarity as to whether this approach will be applied in respect of a licensed central counterparty. The approval granted to JSE Clear to perform the functions of a central counterparty in terms of Section (110)(6) of the Financial Markets Act is valid until the earlier of 31 December 2022 or when JSE Clear is licensed as an independent clearing house and central counterparty.We have expressed, in our submission, our serious concerns regarding the significant quantum of the levies to be imposed on JSE Clear, and if it is the intention of the Authorities to impose the levies applicable to an independent clearing house and a central counterparty on JSE Clear, once it is licensed as such, we believe the burden of the double levies, on top of the significant quantum of the levies, would make trading in the derivative market unprofitable for market participants and, as such, would destroy the listed derivative markets. Table 3[[1]](#footnote-1) below sets out the potential impact of double levies.If it is not the intention of the Authorities to impose the levies applicable to an independent clearing house and a central counterparty on JSE Clear, once it is licensed as such, we recommend the following amendment to paragraphs 2 of Schedule 1 and Schedule 2:*A clearing house that is approved in terms of section 110(6) of the Financial Markets Act to perform the functions of a central counterparty or that is licensed as a central counterparty, is liable to pay the levy applicable to a central counterparty, and is not liable to pay the levy applicable to an associated clearing house or an independent clearing house.* | It is not the intention of the Authorities to impose the levies applicable to an independent clearing house and a central counterparty on JSE Clear, once it is licensed as such. Once JSE Clear is licensed as an independent clearing house and CCP, the Authorities will only require JSE Clear to pay the levy applicable to a CCP, not both. It is proposed also to clarify that an independent clearing house which is also a central counterparty, would be exempt from the payment of levies relating to the independent clearing house, to provide for instances of independent clearing houses which did not transition but apply after the transition.It is proposed to amend item 2 in Schedules 1 and 2 as follows“2. A clearing house that is approved in terms of section 110(6) of the Financial Markets Act to perform the functions of a central counterparty or a licensed independent clearing house who is also licensed as a central counterparty is liable to pay the levy applicable to a central counterparty, but is not liable to pay the levy applicable to an associated clearing house or an independent clearing house.” |
| JSE | Schedule 2 | **Authorities’ levies imposed on JSE Clear**JSE Clear, the central counterparty appointed by the JSE to clear JSE listed derivatives, is a subsidiary of JSE Limited and has in the past not been subject to direct regulatory levies. JSE Clear is unable to absorb the proposed total quantum of levies of approximately R23.5m (see Table 1), as the cost would render JSE Clear insolvent. JSE Clear will therefore have no option but to pass a material portion of the levies on to market participants who, in turn, are likely to pass all or a portion of the cost on to investors. We estimate this will result in an increase in the cost of clearing for the listed derivatives market of between 15% and 17%. An increase in clearing costs of such a magnitude, coupled with a possible increase in trading costs due to the significant increase in the levies imposed on the JSE, is likely to have a devastating impact on the listed derivatives market:a) higher trading and clearing costs could disincentivize investors from trading listed derivatives;b) investors could migrate derivative trading activity to the OTC derivative markets or other unregulated markets;c) liquidity in the listed derivatives markets could decrease; andd) the listed derivatives markets, in particular those markets already under cost pressures, could become unprofitable and may close.The migration of derivative trading from a regulated and transparent listed market to uncleared OTC markets or unregulated alternative markets would have implications for the wider South African capital markets viz, increased risks relating to market integrity, investor protection and financial stability, as well as significantly reduced oversight by the South African regulators and market authorities in respect of these risks. Central counterparties are globally regarded as the best-in-class infrastructure to risk-manage capital markets, and international regulators and market authorities are driving the trading of financial securities onto transparent and regulated markets, with clearing through regulated central counterparties. A disruption in the listed derivatives markets as a result of material increases in trading and clearing costs could result in South Africa’s market structures being in conflict with international standards and global best practice. | The Authorities do take note of the JSE’s concern and consider the likelihood that levies will be passed on to market participants and ultimately, the investors.The way the levies are structured is such that each type of supervised entity is charged a separate levy based on the licensed activities performed. It should be noted that the levy payable by JSE Clear under schedule 2 is approximately R10 million and is for the supervisory activities that the FSCA will be performing.  |
| JSE | Schedule 2 | **FSCA’s levy imposed on JSE Clear**With reference to paragraph 3.2 above, and in the absence of the FSCA’s budget, we are unable to determine what conduct matters in a central counterparty would require intensive supervision by the FSCA. The Prudential Authority and the FSCA’s levies to be charged to JSE Clear are roughly of a similar quantum, R11m and R10m, respectively. It is our understanding that a central counterparty, based on the nature of its operations, would require far more intensive prudential supervision than conduct supervision. Our understanding is evidenced by the frequency and intensity of the supervisory engagements with the respective Authorities. For example, in 2021 the Prudential Authority conducted 11 onsite supervisory reviews of JSE Clear, whereas the FSCA only conducts one supervisory review annually, with the last FSCA review having been conducted in 2019.The FSCA’s levy on JSE Clear therefore appears excessive relative to the Prudential Authority’s levy, just as it appears excessive relative to the FSCA’s levy on the JSE. The market abuse portion of the FSCA levy on the JSE will presumably remain fairly constant in relation to the current Market Abuse levy, on the assumption that the cost of the FSCA’s market abuse work will remain approximately the same. Therefore, if the market abuse portion of the FSCA’s levy will be approximately R28 million, that means that approximately R16 million of the total levy of R44 million relates to the conduct supervision of the JSE. Based on our interactions with the FSCA over many years, and our general understanding of the nature and extent of the conduct issues pertaining to the JSE and JSE Clear, we do not understand why the cost of the FSCA’s oversight of JSE Clear is as high as R10 million when the cost of regulating the JSE is R16 million. There are significantly more conduct issues pertaining to an exchange than to a clearing house. The R10 million levy to be imposed by the FSCA on JSE Clear therefore seems disproportionate under the circumstances.  | The budget for the FSCA has been provided as part of this consultation. The FSCA’s remains the conduct regulator of the CCP and must exercise its regulatory and supervisory activities in this regard. The FSCA’s supervisory activities in respect of JSE Clear as a CCP will entail the following: Conducting annual risk assessments on JSE Clear, onsite inspections, regular Conduct Based Returns, approval of rules prior to being implemented, approval of any rule amendments post licensing, approval of license variations, assessment of any additional business, attending board committee meetings, IOSCOs PFMI Assessments (every two years), Annual Assessments (annually) in line with the FMA, assessing appointments of Board members and senior staff members, any change in shareholding structure, assessment of any applications in terms of the FMA or Regulations that we may receive.Having detailed the activities above, the FSCA is of the view proposed levies are justified.As an Associated Clearing House, JSE Clear utilised the rule book of the JSE and the governance arrangements and HR arrangements were also the same as for the JSE, so there was no separate regulation thereon in terms of the approval of the Board and senior employees. The PFMI assessments and Annual assessments were also conducted for JSE Clear as an Associated Clearing House not a CCP. |
| JSE | Schedule 2 | **Misaligned incentives**Further point to make when considering the potential adverse consequences of imposing high regulatory costs on regulated central counterparties, including the possible migration of trading to less-regulated OTC markets, is that the global financial crisis illustrated the extent of the risks associated with non-cleared unregulated OTC markets relative to centrally cleared markets. The incentives should be directed at promoting regulated central clearing. But we note that whereas JSE Clear will pay approximately R21 million per annum to the two Authorities, in addition to the substantial levy that the JSE will pay in relation its listed derivatives markets, the levy for an OTC Derivatives Provider is a flat fee of R150 000. So, for example, a bank can operate a large OTC market in competition with an exchange and a CCP, and it will only pay R150 000 in regulatory costs to operate that market. In this case, the incentives appear to be completely misaligned with the objectives set by local and international authorities in addressing the risks to financial stability and consumers associated with uncleared OTC derivative markets, following the global financial crisis. | The Authorities have published a roadmap highlighting the steps towards mandating of central clearing in line with Regulation 4 of the FMA regulations. In future specific OTC derivative transactions will have to be centrally cleared. It is unclear why JSE Clear which only clears listed derivatives would compare fees payable by an ODP which will eventually be subjected to central clearing pertaining to certain specified derivatives.  |
| Masthead | Schedule 2 | We note the Regulators response and reference to certain base and variable amounts to arrive at 4% but we are not clear on the commentary on the impact/actual impact of these changes because they refer to the proposed levies and do not consider the actual 2020/2021 levy. In view of the actual levies charged and proposed increase amount, the FSP levy for Categories I and IV increases from R3 792 to R4 000, a 5.49% increase. The FSP representative levy based on actual 2020/2021 increases from R605 to R620 which is 2.48%.In our view, the actual impact of these increases is significant for smaller sized FSPs and is not reasonable, especially when considered against the additional levies that are being proposed. Small businesses are materially important to the economy and therefore we believe that the regulators should be looking at them in a way that doesn't place significant additional financial burdens on them.  | The comment is noted. The levy increases are to a certain extent aligned to inflation where possible. Below is an example of how a smaller FSP will be impacted by all the levies charged according to the Bill.Even though the percentage increase is 10.39% the rand increase is R52.08 and therefore not significantly higher in real rand terms.  |
| Masthead | Schedule 2 | **Re: Cat I or IV FSPs (iro LT Ins subcategory A and/or Friendly Society Benefits)**Similar to the comment above, we do not follow the Regulators response in calculation of the 2020/2021 levies increase % because they refer to the proposed levies and do not consider the actual 2020/2021 levy. In view of the actual levies charged and proposed increase amount, the FSP levy for Categories I and IV increases from R3 792 to R4 000, a 5.49% increase.We also remain concerned about FSP representative levy, in that this proportion of increase (even at R30 per rep and KI) on the levy amount, is still at 12% and is material for FSPs working the funeral market. | Refer comment above, and to note further is that the key individuals/representatives levy for an FSP operating in the funeral business is reduced to R280 per key individual or representative.  |
| Masthead | Schedule 2 | **Re: Cat II, IIA, and III FSPs**We note the Regulators feedback and agreement to reduce the V2 rate to 0.001895%. We appreciate the revision. | Noted.  |
| Outsurance | Schedule 2 | **Financial Sector Levy Calculation for Supervised Entities in Respect of Financial Sector Conduct Authority**In the description columns for both Non-Life and Life insurers it determines that the Gross written premium as stated in the most recent annual Qualitative Return Template submitted to the Financial Sector Conduct Authority. These templates are submitted to the Prudential Authority and we would therefore recommend for the column to be aligned with the submission process.  | Comment noted and the correct amendment will be done. Amends are as follows:It is proposed that the following amendments will be included in Schedule 2 in table B:In relation to the row for “Non-life Insurer” in the column for “description of variable”:C = gross written pre- miums above R60 millionGross written premiums as stated in the most recent annual Quantitative Return Template submitted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the pre- scribed requirements”Also note in relation to the row for “Non-life Insurer”, the following typographical correction in the column for “Variable Amounts (Rands)” should be made:V1 = 0.155%x B [V2 =]V2 =0.047% x C (effectively a line return needs to be inserted after “B”).In relation to the row for “Life Insurer” in the column for “description of variable”:“D = gross best estimate liabilities or technical provisions as a whole, adjusted to an absolute value per line of business as reported in the most recent annual Quantitative Return Template submit- ted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the prescribed requirements”Similarly, in relation to the row for “Microinsurer”, in the column for “description of variable”, the following refinements should be included:E = Gross written premiums below R60 million as stated in the most re- cent annual Quantitative Return Template submitted to the [Financial Sector Conduct] Prudential Authority in respect of the year preceding the levy year, in accordance with the pre- scribed requirementsF = Gross written premiums above R60 million as stated in the most re- cent annual Quantitative Return Template submit- ted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the prescribed requirements Also, in the row for “Microinsurer”, in the column for Variable Amount(s) (Rands)”, the following typographical correction needs to be corrected:V1=0.1016% xE[V2=]V2=0.0308% x FEffectively, a line return needs to be inserted between “E” and “V2”.Other similar formatting corrections in relation to the “Variable Amounts (Rands”) Column are the following, where effectively line returns need to be inserted:On page 20, in the row for “Pension fund Administrator” to substitute what is currently in the block, to provide as follows:“V1 = 870 x MV2 = 1.05 xL”On page 20, in the row for “Collective investment scheme in securities” to substitute what is currently in the block, to provide as follows:“V1= 2 067 x NV2= 0.000052%x O”On page 20, in the row for “Collective investment scheme in hedge funds” to substitute what is currently in the block, to provide as follows:“V1 = 2067x PV2 = 0.00465% x Q”On page 20, in the row for “Foreign Collective Investment Scheme” to substitute what is currently in the block, to provide as follows:“V1 = 7 150x RV2 = 0.000354% x S”On page 21, in the row for “Collective investment scheme in participation bonds” to substitute what is currently in the block, to provide as follows:“V1 = 2 067 x UV2 = 0.000052%x V”On page 21, in the row for “Category II, IIA or III ﬁnancial services provider” to substitute what is currently in the block, to provide as follows:“V1 = 620 x WV2 = 0.0018595% x X” |
| Outsurance | Schedule 2 | **Financial Sector Levy Calculation for Supervised Entities in Respect of Financial Sector Conduct Authority**Considering that the number of representatives will be calculated using the average total number of key individuals plus the average total number of representatives, we would kindly request clarity as to how these averages will be calculated and confirmed prior to invoicing.  | The average number of key individuals will be calculated by adding the number of key individuals/representatives over the period 1 September – 31 August each year (according to the Authority’s system) and dividing that number by 12. The information will be detailed on the assessment notice issued in terms of s242.  |
| SAIA | Schedule 2 | **Financial Sector Levy Calculation for Supervised Entities in Respect of Financial Sector Conduct Authority**In the description columns for both Non-Life and Life insurers it determines that the Gross written premium as stated in the most recent annual Qualitative Return Template submitted to the Financial Sector Conduct Authority. These templates are submitted to the Prudential Authority and we would therefore recommend for the column to be aligned with the submission process. | It is proposed that the following amendments will be included in Schedule 2 in table B (refer to comment above provided by outsurance):In relation to the row for “Non-life Insurer” in the column for “description of variable”:C = gross written pre- miums above R60 millionGross written premiums as stated in the most recent annual Quantitative Return Template submitted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the pre- scribed requirements”Also note in relation to the row for “Non-life Insurer”, the following typographical correction in the column for “Variable Amounts (Rands)” should be made:V1 = 0.155%x B [V2 =]V2 =0.047% x C (effectively a line return needs to be inserted after “B”).In relation to the row for “Life Insurer” in the column for “description of variable”:“D = gross best estimate liabilities or technical provisions as a whole, adjusted to an absolute value per line of business as reported in the most recent annual Quantitative Return Template submit- ted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the prescribed requirements”Similarly, in relation to the row for “Microinsurer”, in the column for “description of variable”, the following refinements should be included:E = Gross written premiums below R60 million as stated in the most re- cent annual Quantitative Return Template submitted to the [Financial Sector Conduct] Prudential Authority in respect of the year preceding the levy year, in accordance with the pre- scribed requirementsF = Gross written premiums above R60 million as stated in the most re- cent annual Quantitative Return Template submit- ted to the [Financial Sector Conduct Authority] Prudential Authority in respect of the year preceding the levy year, in accordance with the prescribed requirements Also, in the row for “Microinsurer”, in the column for Variable Amount(s) (Rands)”, the following typographical correction needs to be corrected:V1=0.1016% xE[V2=]V2=0.0308% x FEffectively, a line return needs to be inserted between “E” and “V2”.Other similar formatting corrections in relation to the “Variable Amounts (Rands”) Column are the following, where effectively line returns need to be inserted:On page 20, in the row for “Pension fund Administrator” to substitute what is currently in the block, to provide as follows:“V1 = 870 x MV2 = 1.05 xL”On page 20, in the row for “Collective investment scheme in securities” to substitute what is currently in the block, to provide as follows:“V1= 2 067 x NV2= 0.000052%x O”On page 20, in the row for “Collective investment scheme in hedge funds” to substitute what is currently in the block, to provide as follows:“V1 = 2067x PV2 = 0.00465% x Q”On page 20, in the row for “Foreign Collective Investment Scheme” to substitute what is currently in the block, to provide as follows:“V1 = 7 150x RV2 = 0.000354% x S”On page 21, in the row for “Collective investment scheme in participation bonds” to substitute what is currently in the block, to provide as follows:“V1 = 2 067 x UV2 = 0.000052%x V”On page 21, in the row for “Category II, IIA or III ﬁnancial services provider” to substitute what is currently in the block, to provide as follows:“V1 = 620 x WV2 = 0.0018595% x X” |
| SAIA | Schedule 2 | **Financial Sector Levy Calculation for Supervised Entities in Respect of Financial Sector Conduct Authority**Considering that the number of representatives will be calculated using the average total number of key individuals plus the average total number of representatives, we would kindly request clarity as to how these averages will be calculated and confirmed prior to invoicing  | The average number of key individuals will be calculated by adding the number of key individuals/representatives over the period 1 September – 31 August each year (according to the Authority’s system) and dividing that number by 12. The information will be detailed on the assessment notice issued in terms of section 242. |
| **Schedule 4 & 5: Financial Sector Levy Calculation for Supervised Entities****in respect of Ombud Council & Financial Sector Levy Calculation for Supervised Entities****in respect of Statutory Ombud Schemes** |
| **Reviewer** | **Section**  | **Comment** | **Response** |
| Masthead | Schedule 4 & 5 | **Re: Tribunal, Ombud Council, Ombud Schemes-FSPs levies**We agree that the services provided by the Tribunal, Ombud Council, Ombud Schemes are important to the market, however we remain concerned about the financial impact of these two new levies. The actual impact the new levies (base + variable) are significant and, in our view, unreasonable and are likely to financially prejudicial smaller FSPs. We therefore urge the regulator to waive increases or at the very least to reconsider the base and variable amount of these two new levies.We further propose that the Regulator investigate whether, based on history of financial sanctions, an additional income stream can be identified and used to supplement the cost of running these Schemes. | Careful consideration has been given on the levies provided for in the Bill in line with the objectives of the FSR Act of ensuring that the financial sector is appropriately regulated form a prudential and conduct perspective. The Financial Services Tribunal may be seen as a continuation of the Appeal Board under the repealed Financial Services Board Act but with an extended scope. Although levies were not provided separately for the Appeal Board in the past, its operational expenses were provided for in the budget of the Financial Services Board. In terms of the FSRA the Tribunal includes other appeal boards in terms of financial sector laws and is now a more unified entity. The Tribunal is a completely independent body separate from the regulators with a much wider remit. Furthermore, it is imperative that the Tribunal is sufficiently funded to ensure that there is a proper appeal structure that is an internal remedy in the Act. The FSR Act seeks to protect and promote the rights of financial customers. It is important therefore that financial customers have access to an independent Ombud Council that can assist in ensuring that financial customers have access to and are able to use affordable and effective fair alternative dispute resolution processes for complaints against financial institutions. The same principle is applicable in relation to Ombud Councils. |
| Masthead | Schedule 4 & 5 | **Re: Tribunal, Ombud Council, Ombud Schemes-FSPs levies**We note the regulator's response and, while we follow the logic, we simply wish to state our feeling that one cannot place so much pressure on small businesses without causing them serious financial harm. In our view, to have an increase in regulatory expenses in the order of 12% and upwards, is likely to have that effect. | Comment noted, refer to the example provided above of the expected increase on small FSPs.  |
| Schedule 6: Deposit Insurance Levy |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | Deposit Insurance Premium” - FSR Act consequential amendments | Should the formula column not read “premium =” instead of “levy =”?“Branch” in the last Line should refer to “foreign bank branch” to avoid confusion with a local bank branch. | Agree. Schedule 5’s formula column should read “premium” and not “levy” for all types of supervised entities.The following amendment is proposed: The following amendment is proposed: Schedule 5 is hereby amended by the substitution for the Schedule of the following Schedule:**DEPOSIT INSURANCE PREMIUM**

|  |
| --- |
| **Monthly deposit insurance premium** |
| **Type of supervised entity** | **Premium Frequency** | **Minimum****Amount** | **Variable Amount(s)** | **Description of variable** | **Formula** | **Maximum** |
| Bank | Monthly | 0 | 0.2%/12 x A | A= covered deposits as at the end of each calendar month  | Premium= Variable amount | Not applicable |
| Co-operativebank | Monthly | 0 | 0.2%/12 x A | A= covered deposits as at the end of each calendar month  | Premium = Variable amount | Not applicable |
| Mutual bank | Monthly | 0 | 0.2%/12 x A | A= covered deposits as at the end of each calendar month  | Premium = Variable amount | Not applicable |
| Branch | Monthly | 0 | 0.2%/12 x A | A= covered deposits as at the end of each calendar month | Premium = Variable amount | Not applicable |

SECTION 166BDisagree. The definition is aligned to the definition of branches in the Banks Act (section 1(1)) and the FSLAA. |
| Schedule 2: Table B |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | CCP Cap | The cap for the Central Counterparty levies to the FSCA has drastically increased from R750 000 in the previous version of the Bill to R3 750 000. Clarify what is the rationale for the drastic increase in the Central Counterparty cap? | The increase was to rectify the caps between the CCP and the clearing house levies. The cap for the independent clearing house was reduced. The previous version of the Bill incorrectly reflected the levies to be paid by ICPs and CCP and were corrected.  |
| BASA | Column referring to “financial serviceproviders (other)” | It is unclear and not a category catered for under existing FSCA Levies categories.Provide examples of which FSPs will fall into this category |  It is proposed that reference to the category of FSP’s can be removed, and the following refinements are proposed to item 1 of Schedule 2:(zA) a category I or category IV financial services provider in respect of only the following financial products subcategories:(i) Long-term insurance subcategory A; or(ii) friendly society benefits; or(zB) [a financial services provider (other); or](zC)]a financial services provider (authorised in multiple categories). AndThe deletion in Table B of the row relating to “Financial Services Provider (other)” |
| BASA | Column referring to “financial serviceproviders (authorised in multiplecategories)” | This section does not cater for the scenario where many FSPs sit within a single legal entity. This is covered in the FSCA Levies categories.**Recommend** that the section catered for the scenario where many FSPs sit within a single legal entity, whilst the licensing framework is being finalised under the FSR Act. | The way the levies are structured is such that each type of supervised entity is charged a separate levy based on the licensed activities performed. The dispensation granted to legal entities will not loner apply.  |
| BASA | Multiple FSP | Under point 2 “Provided that the key individuals” Recommend removing second “that.” | Agree to implement. |
| Schedule 5: Table E |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | Statutory Ombud cap for FSPs | The cap for levies payable by FSPs to the Ombud Council has increased from R255 500 to R333 275.Clarify the rationale for the increase in the cap? | The cap for the levies currently payable by the FSP’s is R317 376 as per the Levies Notice, 2021 therefore translating to a 5% increase. |
| Moonstone | Schedule 5, Table E | Whilst most of the increases in levy amounts for Financial Services Providers seem reasonable from an inflation perspective, we are concerned about the impact of the increase in the variable amount for the Office of the Ombud for Financial Services Providers, Schedule 5 Table E. The amount of R690 is an increase of 54.36% over the previous levy amount of R447. The R447 amount was published in Notice 465 of 2021 – Levies on Financial Institutions for the levy year of 1 April 2021 to 31 March 2022. | It was deemed necessary to increase the variable amount as indicated in the formula to the amount for the Office to meeting its operational and capital funding requirements. The Office funding shortfalls were previously provided for by the FSCA per instruction of National Treasury. Subsequent to the implementation of the FSR Act and Levies Bill, the Office is required to be self-sustainable from the funding perspective. Hence, based on the best available estimates, the variable amounts were increased to the amount in order to ensure that the Office is adequately funded to deliver on its mandate.   |
| Moonstone | Schedule 5, Table E | **CALCULATING THE KEY INDIVIDUALS / REPRESENTATIVES**We support the move from the number of Key Individuals / Representatives as at 31 August of each year to the average number over the period 1 September to 31 August each year. This should eliminate the changes to Representative Registers around the 31 August each year.We do have two queries on the calculations:1. How will the Authority be calculating the average number of Key Individuals / Representatives? The formula needs to be provided so that there is no confusion between FSPs and the Authority in the number that will be used for the levy calculation.
2. Is it the intention of the Authority to levy Key Individuals who are also Representatives [Schedule 2, Table B] twice (see below [C])? No provision is made for reduction of key individuals who are also representatives. This is different from how it is currently handled (see below [A]) as well as different to the formula provided for the variable amount for the Office of the Ombud for Financial Services Providers (See below [B]).

We believe this is not the intention of the Authority.[A] Current formula for variable levy*: “the total number of key individuals of the financial services provider approved in terms of section 8(3)(a)(ii) of the Financial Advisory and* *Intermediary Services Act plus the total number of representatives appointed by the financial services provider, less key individuals that are also appointed as representatives, as at 31 August of the levy year.”*[B] New Office of the Ombud for Financial Services Providers variable levy formula: “AA x 690, AA = W – BB. where W = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September of the preceding levy year to 31 August of the levy year, BB = Average total number of key individuals that are also appointed as representatives, calculated over the period 1 September of the preceding levy year to 31 August of the levy year”[C] New variable formula for FSPS: “R620 x W, where W = Average total number of key individuals plus average total number of representatives, calculated over the period 1 September of the preceding levy year to 31 August of the levy year”We believe that an individual should be charged once and not for every role that they have. | An individual will be charged once as is currently the practice, whether key individuals or representative. The average number of key individuals and representatives will be calculated by adding the number of key individuals/representatives over the period 1 September – 31 August each year and divided by 12.  |
| **Schedule 6: Table F** |
| **Reviewer** | **Section** | **Comment** | **Response** |
| BASA | Frequency | The payment of the levy was understood to be monthly, yet in the table, it is listed as annual.**Recommend** amending too monthly. | The deposit insurance levy is payable annually and the deposit insurance premium is payable monthly.  |
| General |
| **Reviewer** | **Section** | **Comment**  | **Response** |
| FIASA | General  | The Financial Intermediaries Association is a trade association that represents over 1700 businesses operating in the intermediated market of financial services (life, non-life, employee benefits, financial planning and discretionary investment management) of which 80% of these businesses are small to medium sized enterprises. Our members are all financial services providers who collectively employ in excess of 45 000 people countrywide. Included within our membership are also those members who hold both Category I and Category II licences.The FIA strives to protect, develop, educate, promote and influence the professional service of our members and their employees, so that consumers can benefit from the value of advice, risk management and product fulfilment.We thank you for the opportunity to comment again on the revised Draft Financial Sector and Deposit Insurance Levies Bill, and wish to make the following comments. | Noted.  |
| FIASA | General | Following the updated publication, and in order to understand the impact of the proposed Financial Sector and Deposit Insurance Levies Bill on our members, we have again undertaken a financial analysis, to look at different bands of members, and the cost of increases over time, as well as the impact of the Draft Bill relative to previous increases. We note the amendment to the V2 rate for Category II FSPs, and the correction to the Ombud levy. The table below reflects our findings in this regard, and you will note that even excluding the special levy, the increases are substantial, and far exceed inflation.  | Noted |
| FIASA | General | The table below (excel spreadsheet also provided separately) looks at the changes in the various levies for the years 2019/2020, 2020/2021 and the proposed change for 2021/2022 only, as we have previously shown that historically the levies have been increased at a rate that is considerably more than the official inflation rate over the years (see Annexure A).Various types of intermediary operating at different scales have been used purely to get an idea of the broader impact across the membership base of the FIA. The different size of operation should not be seen as thresholds in any way, as the way that the levy applies is that the levy increases proportionally as the number of representatives increases due to the variable charge (and the assets under management in some categories of intermediary). Column 21 provides the average annual escalation for the last two years based on the proposed levies in order to put the percentage increase in column 22 into perspective given the “concessionary” increase that was applied for 2020/2021, while column 23 looks to remove the impact of the proposed interim implementation levy on the basis that this will be a temporary measure only and is not part of the “normal” operating process.  | The Table below is noted. |
| FIASA | General | While we recognise the feedback provided in the response to comments on the February 2021 Levies Bill, we specifically note the comment that the increase in levy is largely due to the necessity to fund the financial sector bodies separately. As intermediaries do not fall within the jurisdiction of the Prudential Authority directly, it remains unclear as to why such high increases are necessary.  | Schedule 1 does not have intermediaries. The PA does not charge levies to intermediaries, as a category.  |
| FIASA | General | As previously noted, it is estimated that intermediaries in South Africa suffered an income loss of some 18% in 2020 as a result of the pandemic and subsequent “lock downs” (Stalker Hutchison Admiral (SHA) Risk Specialists Annual Specialist Risk Review 2020). Increased regulation and discussions regarding reductions in commission are placing strain on an already strained market, meaning that many small and medium sized businesses may no longer be able to continue doing business. Intermediaries are the gateway to entrepreneurship, development and consumer advice and product education within the sector. Serious consideration needs to be given to the need to develop SMME’s in order stimulate economic growth. The proposed levies make entry into the market prohibitive.Also, as previously noted, while product suppliers may increase their prices in mitigation, due to the highly competitive environment in which intermediaries operate, the challenge for our members is that they cannot transfer increases in costs to their clients. Their income is based on a fixed regulated commission, and even fee earnings are limited. This means that all increases reduce the profit margin, and hence sustainability of the intermediary. Ultimately though, it is the consumer who bears the costs of these increases, as indeed, product providers will increase their costs. as the cost of compliance, governance and doing business becomes more and more expensive. | The comment is noted. The comment provides mitigating circumstances which can be presented for consideration of an exemption in terms of clause 11 which is possible as provided for by the Bill.   |
| FIASA | General | We note the inclusion of the Socio-Economic Impact Assessment (Annexure A - SEIAS), and while we certainly understand that the proposals relate to the Twin Peaks model, and enhanced financial sector bodies, which aim to improve consumer outcomes, without a detailed understanding of the current and proposed future budget it is not possible to determine if these figures are reasonable and/or commensurate with the services being, or to be provided by the Regulator and to give effect to the implementation of the Twin Peaks model.  | The comment is noted. The Budgets of the Authorities will be shared with the industry. |
| FIASA | General | It is noted in your feedback that: ‘Although chapter 16 is not yet effective, the financial sector bodies will publish their budget for the 2021/22 financial year and proposed draft budget for the 2022/23 financial year together with the revised draft of the Bill. The FSR Act introduces financial sector bodies as separate bodies responsible for their own budgets. Under chapter 16 these bodies will be required to publish their budgets as well as levies proposals. As such it should be noted that the increase in levy is largely due to the necessity to fund these offices separately’.It is imperative that the industry understand how these levies will enable the regulatory bodies to adequately perform their functions, and how the calculation is justified. The SEIAS makes statements regarding the fact that the levies will allow the regulatory bodies to carry out their statutory duties and functions adequately, but provides no clear indication of ‘how’ they intend to do this and very limited consideration of the impacts on firms, imposed by these proposed levies.  | The comment is noted. The Budgets of the Authorities will be shared with the industry. |
| FIASA | General | We urgently request that the necessary insight is provided into the rationale behind these levies, as well as evidence into the modelling undertaken to determine that these levies will actually enable the financial sector bodies to achieve financial and operational efficiencies together with the high-level outcomes described in the SEIAS. It is essential that the financial sector bodies conduct the appropriate assessments to ensure that the levies are not unduly burdensome on regulated entities.The FIA hereby requests an opportunity to make verbal representations and provide more context to our submission during the public hearings.  | The principle underpinning the charging of levies is cost recovery. The starting point is the Authorities’ budgets that will be funded from the levies. The assessments to determine whether the levies will not be burdensome on the regulated entities was conducted and the findings are captured in the SEIAS report.  |
| JSE  | General | The JSE welcomes the opportunity to comment on the Financial Sector and Deposit Insurance Levies Bill (‘the Bill’). Our comments on the Bill repeat a number of the comments we made on the two previous versions of the draft Bill, as many of the issues that we have raised previously remain of significant concern for us and have not been addressed in the latest Bill.As a broad initial comment, we of course recognise the need for effective regulatory oversight of the licensed market infrastructures and for the regulators to be capacitated to perform their important oversight functions. But the quantum of the increase in levies for the market infrastructures in the JSE group relative to the levies paid to date is huge, and the impact of this much higher level of levies going forward is going to be felt by the market participants who participate in the markets that we operate.The significant increase in costs to the JSE and JSE Clear associated with the new levies will inevitably be recovered, in whole or in part, in some manner from the market participants who directly or indirectly use the services of these two market infrastructures. We therefore owe it to those market participants to thoroughly interrogate the proposed levies and to ensure, by examining the relevant information and asking the appropriate questions, that the levies accurately represent the reasonable and legitimate costs incurred by the Authorities in overseeing the JSE and JSE Clear. A sudden, significant increase in the cost of participating in the JSE markets due to a step change in regulatory levies could have a detrimental effect on the liquidity, competitiveness and attractiveness of the South African capital markets, particularly if there is insufficient clarity on the regulatory benefits to the markets and the regulatory imperatives associated with these higher levies.We also, of course, understand that the role of the Prudential Authority in relation to the regulation of market infrastructures is new and will, of necessity, introduce additional regulatory costs into the system that have not been recovered from the market infrastructures through levies to date. Our comments are aimed at trying to understand the rationale for the high level of levies being imposed by the Prudential Authority and the FSCA on the JSE and JSE Clear, both in aggregate and individually. We have yet to obtain the clarity that we are seeking, either through the latest Bill, the Responses to Public Comments document, or any other information published by National Treasury or the two Authorities, and hence we are persisting with many of our previous comments.  | The comment is noted. However, one of the fundamental principles as set out in the policy paper “A Safer Financial Sector to Serve South Africa Better” on the regulation and supervision of the financial sector is that regulators should be appropriately and adequately funded to enable them to execute their mandates effectively. According to this policy document, a regulated sector should ideally fund the operational budgets of regulators. Furthermore, the principle underpinning the Levies Bill is to recover the cost of running the Authorities and not to make a profit.The increase in the levies payable by JSE can be attributed to the following: (i) additional fees payable in respect of the Tribunal and Ombud Council which JSE did not have to pay previously; (ii) the imposition of a special levy payable for a period of 2 years following the implementation of the Act and therefore temporary; and (iii) levy payable for JSE Clear as an independent clearing house and CCP (once licensed).  |
| JSE | General | **Lack of transparency and consultation**As stated in our comments on previous versions of the draft Bill, it is impossible to comment meaningfully on the Bill without insight to the wider context of the cost of supervision that is being recovered through the respective levies, to enable an understanding of the budget and estimates of costs that each financial sector body has incurred or is expected to incur in performing its supervisory function.Despite the requirements provided for in Sections 239(1), 239(2) and 240 of the Financial Sector Regulation Act (FSRA), and National Treasury’s responses1 to our (and other commentators’) submissions on the version of the Bill published in February 2021, the budgets, estimates of expenditure, and the explanations thereof, for each financial sector body have not been published for consultation prior to the date on which comments on the Bill are due.This lack of transparency and consultation precludes commentators from critically assessing the supervisory activities undertaken or to be undertaken by each financial sector body, and further prevents an analysis of the reasonability and fairness of the levies to be imposed on financial institutions and market infrastructures. Knowing what the budgeted costs of each financial sector body are in relation to their oversight of the financial institutions and market infrastructures on whom levies are being imposed is a prerequisite to commenting on the appropriateness of the proposed levies, particularly when the proposed levies are significantly higher than the levies previously imposed on a regulated entity. The failure to publish the relevant budgets, despite the assurance that they would be published with the Bill, puts us in the same invidious position that we have been in each time that we have been invited to comment on previous versions of the Bill. We are presented with significant proposed levy increases but with no underlying support for the basis on which the proposed levies have been calculated. That naturally leads us to repeatedly question the quantum of the proposed levies, but each time we do so (including in this submission) we have to comment without the benefit of critical information. This is surely not an appropriate level of transparency and full consultation.  | It is of paramount importance that the regulation and supervision of the financial sector is appropriately and adequately funded to enable the regulators to execute their mandates effectively. While all regulation comes with some costs, the cost of funding the regulators will be based kept at a minimum. The supervised entities have an opportunity to comment on the budgets of the Authorities who are expected to collect enough resources to fund their operations and not to make a profit. While the FSCA will be fully funded by the industry, the Reserve Bank will continue to fund a portion of the PA’s total costs from its resources. What the PA will recover from the industry are direct costs, indirect costs, which are estimated at 40% of the total costs will be funded by the Reserve Bank, therefore there is no duplication of costs. As a general principle, the levies that are proposed to be imposed are to recover the operational costs of the regulators. In accordance with section 239 of the FSR Act, a proposal for a special levy must also include the estimate of expenditure for the special expenditure in relation to a special levy. The Authorities have identified expenditures that they have earmarked for the special levies. Authorities went through a lot of detail on the budgets of the financial sector bodies in Parliament.  |
| JSE  | General | **Significant quantum of the Levies**Table 1[[2]](#footnote-2) sets out the overview of the calculations of the levies applicable to JSE and JSE Clear. The calculations are in accordance with the provisions of the Bill, using trade data for 2021 for illustrative purposes. The JSE and JSE Clear do not anticipate that the trade data for 2022 will significantly deviate from the 2021 trade data. | Noted and agreed.  |
| JSE  | General | **Aggregate Authorities’ levies**National Treasury’s response to our comments on the previous version of the draft Bill regarding the significant increase in total levies suggested that the JSE had not calculated the levies accurately2. The response stated:‘We note that the JSE compared the current levies payable with the levy caps to arrive at the percentage increases. Should the JSE, simulate the levy formulas with real numbers to estimate its potential levies payable, the percentage increases reflected are likely going to look significantly lower than reflected.’In calculating the proposed levies applicable to the JSE and JSE Clear, we did use ‘real numbers’ i.e., the most recent quarterly trade statistics. In the case of the JSE’s calculations, the levy caps were reached for every period (quarterly), and in the case of JSE Clear, the draft Bill was unclear on which levy formulas should be applied i.e., in respect of an independent clearing house, a central counterparty or for both types of market infrastructures.Consequently, the percentage increases are not materially lower than the increases reflected in our previous submission, and have since been affected by the increase of the FSCA’s quarterly maximum limits - from R8.75 to R11m in respect of the JSE; and from R750 000 to R3.75m in respect of JSE Clear. The percentage increase in total levies to be imposed on the JSE and JSE Clear remains untenably high at 85.7%. | As stated above, the increase in the levies payable by JSE can be attributed to the following: (i) additional fees payable in respect of the Tribunal and Ombud Council which JSE did not have to pay previously; (ii) the imposition of a special levy payable for a period of 2 years following the implementation of the Act; and (iii) levy payable for JSE Clear as an independent clearing house and CCP (once licensed). The way the draft Levies Bill is drafted is such that each type of supervised entity is charged a separate levy based on its licensed activities. |
| JSE  | General | We have been provided with no information on the extent of the transfer of responsibilities from the FSCA to the Prudential Authority, nor do we know how the FSCA will split its oversight function between the JSE and JSE Clear. But it is reasonable to assume that the FSCA and the Prudential Authority have agreed on how they will exercise their respective responsibilities for prudential and conduct oversight, and that a material portion of the FSCA’s responsibilities have transferred to the Prudential Authority. Similarly, the FSCA has always regulated JSE Clear as a licensed associated clearing house and an approved central counterparty, presumably bearing the costs associated with that regulation and (perhaps) recovering those costs in the levy imposed on the JSE, given that the JSE has to date performed most of the operational functions of JSE Clear. If the FSCA is to impose a separate levy on JSE Clear in future, it is reasonable for us to assume that a substantial portion of the current levy imposed by the FSCA on the JSE would shift to the levy to be imposed on JSE Clear, given that JSE Clear will continue to operate as a central counterparty and that the scope of the FSCA’s oversight of conduct matters in relation to the JSE and JSE Clear will presumably be similar to what it is currently. However, none of our assumptions seem to be borne out when examining the quantum of the levies imposed by the two Authorities, both individually and in aggregate.It is difficult for us to comment with any real insight on which of the levies appears to be excessive, given the lack of information on the oversight functions to be exercised by each of the Authorities in relation to the JSE and JSE Clear, and the costs that will be incurred by each Authority in their respective roles. The aggregate amount of the levies imposed by the Authorities on the JSE and JSE Clear appears difficult to justify when compared to the current levies, and that remains our main concern. But despite the lack of information to guide our analysis, we will attempt to describe our concerns in relation to some of the individual levies.  | The FSCA’s supervisory responsibilities and activities in respect of JSE remain unchanged. In respect of JSE Clear, the regulatory and supervisory activities have been detailed in the responses above. The supervisory activities and regulatory obligation of the FSCA to JSE and JSE Clear is informed by the sectoral legislation such as the Financial Markets Act, the FMA Regulations, Financial Sector Regulation Act and includes Standards issued in terms of these Acts. The MoUs entered into between the Authorities further demarcate the responsibilities between them. Market infrastructures are critical to the maintenance of financial stability and given the close relationship between micro-prudential and macro-prudential oversight, the approach taken in the FSR Act is to mandate the PA to also oversee the safety and soundness of market infrastructures. The FSRA established the PA under the auspices of the South African Reserve bank (SARB) and the Financial Sector Conduct Authority (FSCA). In terms of the FSRA, the objective of the PA in respect of MIs is to, promote and enhance the safety and soundness of MIs; and to assist in maintaining financial stability.Well-functioning market infrastructures including the JSE can vastly improve the efficiency, transparency, and safety of the financial ecosystem. However, market infrastructures, such as the JSE, often concentrate risk and may even act as a source of systemic risk.  Poorly designed and poorly operated market infrastructures can contribute to and exacerbate systemic crises if the risks of these platforms are not adequately mitigated and managed, and as a result, financial shocks could be passed from one participant or market infrastructure to others. The effects of such a disruption could extend well beyond market infrastructures such as the JSE and its members threatening the stability of domestic market, the broader economy and implications for international markets. In contrast, robust market infrastructures have been evidenced as an important source of strength in financial markets, giving market participants the confidence to fulfil their obligations on time, even in periods of market stress. Given the important role played by the JSE as a market infrastructure in the global financial markets it is critical for the JSE to be subjected to robust micro prudential regulation and supervision to ensure that they are safe and sound and that risks are managed appropriately to avoid knock-on effects and risks to financial stability. The JSE is also a complex market infrastructure as it performs its own clearing and associated risk management for settlement in respect of its equities market, (of which equities is a primary source of income and a material business for JSE). Given the nature, size and complexity of JSE it is important that it is subjected to micro prudential supervision.The FMA is the primary sectoral law governing the regulation of financial markets, market infrastructure and securities service providers operating in South Africa and allocates direct responsibilities to both the PA and the SARB in primary legislation. In addition, to give effect to the PA’s mandate, the PA assesses the functions as well as the requirements as set out in the FMA in respect of the various market infrastructures to identify areas of where prudential regulation and supervisory oversight is required. Supervisory oversight of these requirements in respect of the various MIs has been delegated to the PA has been limited in so far as it relates to the objectives of the PA. The PA has developed several supervisory tools to monitor and supervise market infrastructures which include risk assessment documents, management information reports, reporting returns as well as the market infrastructure capital assessment process. Furthermore, the PA together with the SARB and the FSCA, assesses certain MIs on its observance with international principles such as the Principles for Financial Market Infrastructures-CPMI-IOSCO. The assessment allocations for the authorities takes into account the different mandates of the respective authorities. In terms of Section 34(4) of the FSR Act the PA must take into account the need for its supervisory functions to be pre-emptive; outcomes focused and implement a risk-based approach. This entails the PA prioritising the use of resources in line with the significance of risks and the achievement of the objectives of the PA. The PA has targeted supervisory meetings with all market infrastructures and as a result thereof has seen a stronger focus and enhancement by market infrastructures including the JSE to its strategy and governance, risk management, operational risk management including cyber security, compliance and internal audit functions as well as the identification and assessment of emerging risks. |
| JSE  | General | **FSCA’s levy imposed on the JSE**While the FSCA’s levy of R44m in respect of the JSE appears, in isolation, to be reasonable in comparison to the current FSCA levies (decrease of 2.9%), this levy needs to be viewed in the context of the broader picture, which includes the Prudential Authority’s levy on the JSE and the FSCA’s levy on JSE Clear. The proposed levy appears to only cater for a fairly small downward adjustment in relation to the transfer of some of the FSCA’s responsibilities to the Prudential Authority and/or a split of the recovery of the FSCA’s regulatory costs between the JSE and JSE Clear. Our expectation is that a more significant portion of the Prudential Authority’s levy imposed on the JSE would have been deducted from the FSCA’s levy imposed on the JSE, on the assumption that the Prudential Authority is assuming a material portion of the FSCA’s oversight function, as the Prudential Authority’s levy on the JSE seems to imply. Equally, we expected a more significant reduction in the FSCA’s levy on the JSE given the quantum of the levy being imposed by the FSCA on JSE Clear, on the assumption that as the FSCA or its predecessor has regulated JSE Clear as a central counterparty for many years3, the levy to be imposed by the FSCA on JSE Clear represents, at least partly, a split of the recovery of the FSCA’s regulatory costs between the two licensed entities. The Prudential Authority’s levy on the JSE will be R10 million per annum and the FSCA is imposing a levy of a similar amount on JSE Clear, but the reduction in the FSCA’s levy on the JSE appears to be a fraction of those amounts. Therefore, when viewed in the full context of the FSCA and Prudential Authority levies, the FSCA levy of R44 million for the JSE appears to be materially higher than we expected, or that can justify to the market. | The comment is noted. However, one of the fundamental principles as set out in the policy document, A Financial Sector to Serve South Africa Better, is that regulators should be appropriately and adequately funded to enable them to execute their mandates effectively. According to this policy document, a regulated sector should ideally fund the operational budgets of regulators. Furthermore, the principle underpinning the charging of the levies is to recover the cost of running the Authorities.The way the levies are structured is such that each type of supervised entity is charged a separate levy based on its licensed activities. Twin peaks introduced two regulators into the system with the overall objective of providing for a better regulated financial sector. This will bring about required capacity building and increased costs. The design and operational models of the regulators are strongly informed by international standard setting bodies and peer reviews like the FATF mutual evaluation and FSAP. The existing levies would underfund what is expected of the country and its regulators in this regard, impacting the efficiency, integrity, fairness and stability of the markets. The regulators need to be capacitated to be pro-active, pre-emptive, intensive and intrusive. The global financial crisis showed us that this cannot be compromised for the private profitability of certain financial institutions.  |
| JSE  | General | **Disparate approach to levies on exchanges**Our concerns regarding the aggregate increase in levies and the apparent failure to appropriately account for the transfer of responsibilities from the FSCA to the Prudential Authority are also informed by the disparate approach to the levies imposed on the JSE, on the one hand, and the levies imposed on other exchanges. In this regard, we are not commenting on the relative quantum of the levies imposed on the JSE and the other exchanges but on the fact that the levies imposed on other exchanges seem to validate the assumptions that we have made regarding the expected impact of the transfer of responsibilities between the Authorities on the future levies, whereas those assumptions do not hold true for the levies to be imposed on the JSE, for reasons that we cannot understand. | It is unclear what is meant with this comment by JSE in relation to the supervisory and regulatory responsibilities of the Authorities in relation to these exchanges.  |
| JSE  | General | Per our calculations of the levies to be imposed on one of the other exchanges (based on 2021 trade data), the FSCA’s levy has effectively been reduced by the full amount of the levy imposed by the Prudential Authority (see Table 2 below)[[3]](#footnote-3). The effective increase in JSE levies charged by the Authorities is 19%, whereas the levy charged by the FSCA in respect of the other exchange will decrease by 28,2%, and the total levies charged by the two Authorities will increase marginally by 0.1%. This material difference in approach to how future levies are calculated versus the current levies, across the different exchanges, requires an explanation. | The FSCA is not in a position to comment on this and would need more information on this point. |
| JSE | General | **Calculation of levies across different asset classes**The levies to be imposed on exchanges, clearing houses and central counterparties are made up of a base amount plus a variable amount, with the variable amount being based on the value of trades. The variable percentage is the same percentage for all asset classes. We believe that applying the same percentage to all asset classes is problematic because it implies that the intensity of oversight by the FSCA and the Prudential Authority, and the regulatory costs associated with each asset class, is determined by the respective value of trades in each asset class. This is patently not the case.For example, we know from experience that the professional, wholesale bond market attracts significantly less regulatory scrutiny than the equities market or the derivatives market. There have been almost no investigations into market abuse in the bond market for as long as the FSCA (and its predecessor) has been responsible for investigating market abuse. And there appears to be very few other regulatory issues involving the bond market that require the attention of the FSCA compared to, for example, the equities market. But the nature of the wholesale bond market is such that the values traded in that market dominate the JSE’s total value traded across all markets. This means that the levies to be paid by the JSE are attributed mainly to the bond market. To illustrate this point, if hypothetically the quarterly caps were not applied in calculating the levies to be paid by the JSE, 70% of the JSE’s levy would be attributable to the bond market and only 12% of the levy would be attributable to the equities market (with the balance of 18% attributable to the derivatives markets). These figures are not an accurate reflection of how the two Authorities allocate their resources across the different asset classes. The application of the same variable percentage to every asset class creates various problems. Firstly, it penalizes an exchange that operates a bond market, as far as the quantum of the levies are concerned, relative to an exchange that doesn’t operate a bond market. If the recovery of the regulatory costs incurred by the Authorities is to be apportioned across different exchanges, an exchange with high value but low regulatory-impact bond trades will attract far more of the cost recovery than an exchange that only trades, say, in equities. This appears to be borne out by the fact that despite the Twin Peaks regime introducing significantly higher costs into the system, which, if apportioned fairly, should be borne by all the affected market infrastructures, we have the perverse outcome of the other exchange mentioned in paragraphs 3.3 and 3.4 above seemingly facing almost no increase in levies from the two Authorities whilst the JSE is facing a 19% increase.The second problem that the same variable percentage for every asset class creates is that if it isn’t fixed now and is only fixed some time in the future when it is unavoidable, it could result in a sudden change at the time in the variable percentages for each asset class, with some percentages declining steeply and others rising steeply to address the identified disparities. That will result in sudden dramatic increases in levies for an exchange trading an asset class for which the variable percentage has increased steeply. Say, for example, at some time in the future, an exchange commences trading in bonds, or a clearing house begins to clear bond trades, and at that point there is a realization that applying the same variable percentage to bond trades as to the other asset classes is unfair and unsustainable, because the relatively low regulatory-impact of bond trading doesn’t justify the levies that it would attract. If that realization results in a steep reduction in the variable rate for bond trades, it may consequentially result in a steep increase in the variable rate for, say, equities, to better reflect the relative regulatory-impact of the different asset classes. That adjustment may have less of an impact at the time on the total levies paid by an exchange that has always been, and will remain, a multi-asset class exchange, but it could have a dramatic impact on an exchange that only trades equities.The affected exchange would justifiably be unwilling at the time to suddenly pay much higher levies just because of a change in the variable rates, when the scope and intensity of the regulatory oversight of that exchange is not going to change.Therefore, all things considered, we propose that National Treasury and the Authorities consider using different variable rates at the outset for each broad asset class, to better reflect the relative regulatory impact of each asset class and the allocation of regulatory costs. This will address any current disparities caused by using the same rate for every asset class and will minimize any problems that could arise in future. As ever, we stand ready to engage with National Treasury and the Authorities on the issues raised in our submission. We urge National Treasury to publish the budgets, estimates of expenditure, and the explanations thereof for each financial sector body, to provide the much-needed insight in respect of supervisory activities to support the quantum of the levies.  | The calculation of the levies is not based on the levels of supervision applicable to different asset classes. The levies have been structured in such a way that the Authorities can recover costs. Proportionality and measured by either the size of a financial institution or the value of trades is used to determine the quantum of levies to be charged in a manner that ensures that the Authorities are sufficiently funded to execute on their mandate. The measures that have been used in the formula are a proxy for size and the Authorities are of the view that the methodology used is appropriate and provides a balance between smaller and larger players. The Authorities acknowledge that there are various methodologies that could have been considered in the calculation of the levies payable, including that of a fixed amount, however, the chosen methodology is fit for purpose. The main objective is to ensure that the Authorities are adequately funded in a manner that distributes the cost across all the industry players in a proportional manner.  |
| Masthead | General | The Masthead Financial Advisors Association (“the Association”) is an association of ±6’000 independent financial advisors. What makes the members of Masthead independent is the fact that they work for themselves and they act under their own Financial Sector conduct Authority (FSCA) issued licences. Independent financial advisors (“advisors”) represent or are mandated to act for an authorised Financial Services Provider (FSP) through which they provide advice and/or intermediary services to customers. A sizable percentage of the FSPs which form part of the Association are smaller in size and in some cases may consist only of an advisor and one or two staff members.Masthead (Pty) Ltd is a registered compliance practice and delivers compliance services to ±1’800 FSPs who are members of the Masthead Financial Advisors Association. As such, our input/commentary in relation to the proposals on the imposition of levies on the financial sector comes from the perspective of the IFA. | Noted. |
| Masthead | General | The impact of Covid -19 on earnings and job losses, together with low economic growth has a long lasting negative impact on spending of companies and individuals regarding insurance and investments, leaving a gap of potential business in the industry.Independent Financial Service providers are already financially strained due to the factors above and is our view that excessive levy increases will only add to current hardship within the industry. | The comments are noted. The impact of the pandemic is well understood. The Authority is empowered to grant exemptions to address to the individual hardship cases.  |
| Moonstone | General | We have reviewed the Bill and taken note of the 2021 Comments Matrix regarding the determination of levies, specifically “The levy proposals are based on a cost-recovery principle to fund the operations of the Authorities.The Authorities are not profit-making entities and will only recover the minimal from the industry to fund their operations based on their budgets that will also be published and the industry will have an opportunity to provide comments on the budget.”Whilst the levy is based on a cost-recovery principle, the increase in levies in some cases seem excessive. | The comment is noted and it is correct that financial sector bodies are not profit-making institutions and the levies are n a cost-recovery basis. Where levies are deemed to be excessive, a reduction mechanism is available via clause 11.  |
| Outsurance | General | It is further our submission that increased levies must be regarded in the context of the overall cost of regulatory changes, compliance and regulatory reporting and engagements (requiring significant time and resources to collate reports, data and presentations) in the Twin Peaks Regime which further increases costs which ultimately is passed to the consumer. Considering that the increase is significant and is occurring during a period where the pandemic has wreaked havoc for the financial industry, we would like to propose that the levies should perhaps be implemented in a staggered manner, with the special levy being spread over more than two years in order to ensure that the impact on the industry is not debilitating. | Comment noted. One of the fundamental principles as set out in the policy document, *A safer financial sector to serve South Africa better* is that regulators should be appropriately and adequately funded to enable them to effectively execute their mandates. According to this policy document, a regulated sector should ideally fund the operational budgets of regulators. The principle that has been adopted in the consideration of the levies is that of cost recovery. While the Authorities note the impact of the Covid-19 pandemic on the industry, this must also be balanced with the need to ensure that the regulators are adequately funded to be able to appropriately supervise the sector. Failure to do so will have dire implications on the financial sector, the economy and the greater society. |
| Wealth Tap | General | This email is to register my dissent regarding the proposed increase to levies especially in how they affect smaller FSPs. This does not appear to correlate with the narrative that is espoused by the ‘powers that be’ that there is a drive to promote SMEs in SA. If morality, or lack thereof in business is one of the reasons, hence the need for ‘beefing up’ the Ombuds office, then perhaps it should be considered that the example set drives the subsequent behaviour.  | Please refer to the example provided above on the calculation of the levies for smaller FSPs.  |



Legend

\*In this year the FSB levies dropped in anticipation of the introduction of the Tribunal levy, Ombud’s Council levy and the 15% special levy for the Twin Peaks implementation but the FAIS Ombud fees increased significantly.

\*\*Proposed

\*\*\*Previous calendar year (not aligned to the FSB’s levy year) Red = levy increase more than 10% above inflation Yellow = levy increase above inflation Dark green = Levy increase more than 10% below inflation Light green = Levy increase below inflation

NOTES

1) Apart from the years of 2008/9, 2014/15, 2016/17 and 2017/18 the increase in the levies have exceeded inflation, while the huge increases in 2005/6 to 2007/8 as well as 2021/21 and the proposed increase for 2021/22 mean that the levy increases would have been more than double the inflation rate since they were introduced.

2) This excludes the proposed additional tribunal and Ombuds Council levies at 2,5% of the base amount as well as the now proposed interim levy at 7,5% of the total.







1. See Table below on page 24 [↑](#footnote-ref-1)
2. See below on page 22. [↑](#footnote-ref-2)
3. See Table below on page 24. [↑](#footnote-ref-3)