**Report of the Standing Committee on Finance on the Financial Sector and Deposit Insurance Bill [B3-2022] Dated 18 May 2022.**

The Standing Committee on Finance, having considered the Financial Sector and Deposit Insurance Levies Bill [B3-2022] (National Assembly – Section 77) referred to it and classified by the JMT as a Money Bill, reports the Bill with amendments [B3A – 2022] as follows:

1. **INTRODUCTION AND RATIONALE FOR THE BILL**
	1. The Financial Sector and Deposit Insurance Levies Bill (“Levies Bill” or “the Bill”) seeks to make provision for the collection and administration of levies imposed in terms of the Financial Sector and Deposit Insurance Levies Bill, 2022.
	2. This Bill is a Section 77 (of Constitution) Bill as it is primarily concerned with making provision for the imposition and calculation of financial sector and deposit insurance levies on supervised entities. These levies will fund the operations of the Prudential Authority (PA), the Financial Sector Conduct Authority (FSCA), the Corporation for Deposit Insurance (CDI of CoDI), the Financial Services Tribunal (FST), the Ombuds Council, the Office of the Pension Funds Adjudicator (OPFA), and the FAIS Ombud.
	3. The Bill is one of the final implementing stages of the country’s financial sector regulatory reforms which introduced the so called “Twin-Peaks” regulatory architecture. These reforms followed from the 2008 global financial crisis.
	4. One of the initial broad policy papers entitled: ‘*A safer Financial Sector to serve South Africa Better*’ was adopted by the Cabinet and published in 2011. This policy paper sought to introduce more intensive, intrusive and effective financial regulation.
	5. In 2015, NT and the Reserve Bank published a further policy paper entitled “*Strengthening South Africa’s Resolution Framework for Financial Institutions*” and a discussion paper entitled ‘*Designing a Deposit Insurance Scheme for South Africa*’ in 2017.
	6. The Financial Sector Regulation Bill which was approved by Cabinet in 2014 and introduced in Parliament in 2015, got enacted in 2017. It was followed by the enactment of the Insurance Act, 2017. The Financial Sector Regulation Act (FSRA), 2017, headlined the regulatory reforms, introducing the “Twin-Peaks” model of financial regulation. The “Twin-Peaks” model of financial regulation is touted as a comprehensive system for regulating the financial sector, representing a radical shift away from fragmented regulation and mitigating the risk of regulatory arbitrage.
	7. The FSRA saw the introduction of two main regulatory authorities which are the Prudential Authority (PA), within the South African Reserve Bank (SARB), and the Financial Sector Conduct Authority (FSCA). The PA is responsible for the safety and soundness of banks, insurers and financial conglomerates (systemically important financial institutions). The FSCA is responsible for the protecting customers of financial firms, ensuring the integrity and efficiency of financial markets, and promoting effective consumer education. They were both established on 1 April 2018.
	8. SARB, under the FSRA, 2017, is responsible for the overall financial stability, with a statutory inter-agency Financial Stability Oversight Committee (FSOC), chaired by the Governor of SARB. This entails planning for worst and ensuring that there are plans in place to manage systemic failures in the financial system. This includes the introduction of deposit insurance as a financial safety net.
	9. In 2021, Parliament enacted the Financial Sector Laws Amendment (FSLA) Bill which established the Corporation for Deposit Insurance (CoDI) and the Deposit Insurance Fund (DIF). These, for the first time, will ensure that depositors are protected in the event of a bank failure.
	10. The objectives of financial sector regulation are to ensure a stable, inclusive and transformed financial sector that is a key driver of economic growth and job creation. The financial sector plays an important role of providing financial products and services to citizens, thus supporting economic activity. The efficient and effective regulation and supervision of financial institutions and markets minimises the risk of market failures. A strong system of financial sector regulation ensures the protection of financial customers.
	11. In order to achieve all these, an appropriate funding model in line with the Twin Peaks system is needed to provide for cost of regulation and capacity enhancement. The Levies Bills seeks to ensure that there is adequate funding and resourcing of regulators and supervisors. The financial sector requires regulatory resources proportional to its centrality as a result of the dependence of the entire economy on the sector as well as its size in relation to the economy.
	12. Finance is the largest industry in South Africa at 24% of GDP, followed by Personal Services at 17%, Trade at 14%, Manufacturing at 13%, Mining and Government at 9% each, Transport at 7%, Electricity, gas and water at 3%, and Construction and Agriculture at 2% each.
	13. Currently, prudential regulation of banks by the PA is funded from the general revenue of the SARB, as the operations of the former Office of the Registrar of Banks were funded. The FSCA is currently funded by levies raised in terms of section 302 of the FSRA and its regulations. Other financial sector bodies are funded through other arrangements. All these arrangements will be primarily funded by this Bill, when enacted.
2. **PUBLIC PARTICIPATION**
	1. This Levies Bill was introduced into the National Assembly by the Minister of Finance on 21 January 2022. The Committee was briefed on the Bill by the National Treasury on 09 February 2022. A call for public comments was issued by Parliament thereafter and only written submissions were made. The following organisations made written submissions to the Committee: Banking Association of South Africa (BASA), Financial Intermediaries Association of South Africa (FIASA), Johannesburg Stock Exchange (JSE), Masthead, Moonstone, Outsurance, South African Insurance Association, and Wealth Tap.
	2. On 11 May 2022, officials from the National Treasury and the affected regulatory bodies responded to the written submissions. As a result of the submissions, a number of amendments were made to the original A version of the Bill. The B version of the Bill was submitted to the Committee on 16 May and the Committee deliberated on 17 May 2022.
	3. NT reported that prior to the Bill being tabled, it undertook extensive consultations with affected stakeholders, including the regulatory agencies and industry.
3. **SUMMARY OVERVIEW OF THE BILL**
	1. The Levies Bill provides for: **Clause 2**- the imposition of financial sector levies on supervised entities; **Clause 9** - the imposition of a deposit insurance levy to fund the Corporation for Deposit Insurance; **Clause 10**– Ministerial powers to amend Schedules subject to Parliamentary approval; **Clause 11-** exemption from levies under certain circumstances; **Clause 12-** the allocation of amounts levied to financial sector bodies.
	2. The Bill also has several Schedules as follows: **Schedule 1**– calculation of levies applicable to certain supervised entities by the PA; **Schedule 2**– calculation of levies applicable to certain supervised entities by the FSCA; **Schedule 3**– calculation of levies for purposes of funding Financial Services Tribunal; **Schedule 4**– calculation of levies for purposes of funding the Ombud Council; **Schedule 5**– calculation of levies to fund OPFA and FAIS Ombud; **Schedule 6**– calculation of levies to fund Corporation for deposit insurance.
4. **KEY ISSUES RAISED IN THE SUBMISSIONS**
	1. The submissions received from stakeholders focused on technical and substantive issues. Some of these issues were accepted by National Treasury, leading to technical amendments. A number of technical comments were raised on the Definitions section of the Bill.
	2. Other comments and submissions were on: Clause 4: Amount and Payment of financial Sector Levy; Clause 5 and Clause 6: Levy Year and levy Period; Clause 7: Apportionment; Clause 8: Special Levy; Clause 9: Deposit Insurance Levy; Clause 10: Amendment of Schedules; Clause 11: Exemption from Levies; Schedule 1 and 2: Financial Sector Levy Calculation for Supervised Entities in respect of PA and FSCA; Schedule 4 and 5: Financial Sector Levy Calculation for Supervised Entities in respect of Ombud Council and in respect of Statutory Ombud Schemes; Schedule 6: Deposit Insurance levy and tables; and General Comments.
	3. Most of the substantive policy comments on the Bill focused on what can be referred to as compliance costs, particularly the quantum of the levies, possible duplication of the levy, and the special levy. Below some of these issues are summarized.

**COMPLIANCE COSTS**

* 1. A number of stakeholders made comments about the compliance costs as proposed in the Levies Bill; highlighting that the collection of levies for different supervisory bodies separately could lead to duplication and cause strain on the supervised entities and consumers. They also raised issue with the charging of the special levy. The main issues was that the compliance costs are too high, would create barriers to entry for new players, would lead to low penetration in the market, limit competition. All of these would therefore lead to increased costs for customers of the regulated financial institutions.
	2. To these issues raised above, the National Treasury emphasised the importance of regulation and supervision of the financial sector that is appropriately and adequately funded to enable regulators to execute their mandate effectively. NT pointed out that all regulation comes with some costs. It said that the cost of fund regulators under the Levies Bill will largely be based on cost recovery and will kept at minim. NT mentioned that while FSCA will be fully funded by the industry, SARB will continue to fund a portion of PA’s total costs from its resources.
	3. It further explained that PA will recover direct costs from the industry, clarifying that indirect costs, which are estimated at 40% of the total costs will be funded by SARB. On cost-recovery, NT stated that it should be borne in mind that the regulators and regulatory supervisors were non profit-making organisations. It said that the rationale behind imposing levies is to recover the costs involved in the regulation of the sector. It further assured that the formulation of levies was such that smaller financial sector institutions will pay less than the larger ones, ensuring that new entrants pay a base amount that is set at a threshold that does not create barriers to entry.
	4. NT further dismissed the view that levies payable to FSCA and PA would amount to duplication of costs. It explained that these authorities were separate and each had its own objectives and functions. It further stated that levies will be imposed for each of the different licensed activities undertaken by supervised entities.
	5. On the Special Levy, NT stated that it was only for the first levy years to enable regulators to cover set-up and required systems costs. NT stated that the Special Levy had initially been proposed at 15% over one year, but this has been split up two years at 7.5%, per year and falling away from year 3 going forward.
	6. NT further explained that the Bill makes provision for the granting of exemptions from the payment of all or part of the levy in the circumstances set out in Clause 11 of the Bill, in order to accommodate entities facing hardship.
1. **COMPLIANCE WITH SECTION 11(6) OF THE MONEY BILLS ACT ON AMENDMENTS TO SECTION 77 BILLS**
	1. On 19 May 2022, the Minister of Finance, Mr Enoch Godongwana, addressed a letter to the Chairperson and the Committee, commenting on the proposed amendment to the Bill following public submissions, in line with section 11(6)(b) of the Money Bills Act. The Minister commented as follows:

*“PROPOSED AMENDMENTS TO THE FINANCIAL SECTOR AND DEPOSIT INSURANCE LEVIES BILL [B 3—2022] IN TERMS OF SECTION 11 OF THE MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT, 2009*

*I refer to the Financial Sector and Deposit Levies Bill [B3—2022] (Levies Bill) that was introduced in Parliament on 21 January 2022. The Levies Bill lays the final stage for implementing the comprehensive Twin Peaks regulatory reform agenda undertaken by Government after 2011. The Levies Bill makes provision for the imposition of financial sector levies and a deposit insurance levy on certain entities to fund the operations of the Prudential Authority, the Financial Sector Conduct Authority, the Corporation for Deposit Insurance, the Financial Services Tribunal, the Ombuds Council, the Office of the Pension Fund Adjudicator and the FAIS Ombud. The Levies Bill is a money bill as contemplated in section 77 of the Constitution.*

*I hereby acknowledge the proposed amendments to the Levies Bill, made as a result of the submissions made by the stakeholders during the Parliamentary public hearings on the Levies Bill, and hereby submit the following comments on the substantive proposed amendments in terms of section 11 of the Money Bills Amendment Procedure and Related Matters Act, 2009, for consideration by the Committee:*

*• Clauses 7 and 9 of the Levies Bill dealing with the apportionment for the payment of the levy*

*The proposed amendments seek to clarify that pro-rata refunds of levies will be payable to the supervised entity or member if a license for that supervised entity is withdrawn or cancelled during a levy period or a member ceases to be a member during a levy period.*

*• Clause 10 dealing with amendment of schedules to the Levies Bill*

*The proposed amendment in clause 10(1)(a) seeks to explicitly introduce a*

*30-day period for public comment prior to the submission of proposed*

*amended schedules to Parliament.*

*The proposed amendment to clause 10(1)(c) seeks to clarify that if Parliament does not pass a resolution approving, adopting or rejecting amendments to the proposed amended schedules, Parliament will be deemed to have approved the amended schedules.*

*• Clause 11 dealing with exemption from levies*

*The proposed amendments seek to make provision for the Financial Sector*

*Conduct Authority, the Prudential Authority and the Corporation for Public Deposits, to be able to grant exemption not only by application by a supervised entity, but also at the initiative of the Financial Sector Conduct Authority, the Prudential Authority, or the Corporation for Public Deposits, as the case may be, and that the exemption can be granted not only to individual persons or entities but to categories or types of persons or entities.*

*• Items 2 of Schedules 1 and 2 of the Levies Bill dealing with alleviation of double levy payment in respect of a clearing house*

*The proposed amendments seek to clarify that a licensed independent*

*clearing house that is also licensed as a central counterparty will not make a double levy payment as both a clearing house and as a central counterparty.*

*• Table B of Schedule 2 dealing with financial sector levy calculation for certain*

*supervised entities in respect of the Financial Sector Conduct Authority, specifically Financial Service Providers (FSPs) licensed in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act)*

*The proposed amendments in relation to Category I and Category IV FSPs*

*lower the base amount from R4000 to R3600 and the amount in the variable formula from R620 to R520, whilst increasing the cap from R2 000 000 to R2 500 000. These amendments seek to alleviate the financial burden of the impact of the levies on smaller businesses within FSP license categories, by reducing the amount of levies payable by these persons and entities. It is noted, however, that because the overall maximum levy payable by a single entity will be increased from R2 000 000 to R2 500 000, the largest FSPs will pay a higher levy amount. The aggregate amount of levies that would be payable by FSPs will remain essentially unchanged from the levies that would be payable in terms of the tabled Levies Bill.*

*The proposed amendments in relation to Category II, IIA or III FSPs lower the base amount from R8000 to R7500 and the amount in the variable formula from R520 to R620, whilst increasing the cap from R2 000 000 to R2 500 000. These amendments seek to alleviate the financial burden of the impact of the levies to the smallest categories of financial service providers by reducing the amount of levies on smaller businesses within these FSP license categories, by reducing the amount of levies payable by these persons and entities. It is noted, however, that because the overall maximum levy payable by a single entity will be increased from R2 000 000 to R2 500 000, the largest FSPs will pay a higher levy amount. The aggregate amount of levies that will be payable by FSPs will remain essentially unchanged from the levies that would be payable in terms of the tabled Levies Bill.*

*The proposed amendments for Category I and IV FSPs in respect of only the following financial products sub-categories: Long term insurance subcategory A or Friendly Society Benefits, lower the base amount from R4000 to R3600 and the amount in the variable formula from R280 to R250, whilst increasing the cap from R2 000 000 to R2 500 000. These amendments seek to alleviate the financial burden of the impact of the levies on these transformative businesses, by reducing the amount of levies payable by these persons and entities. It is noted, however, that because the overall maximum levy payable by a single entity will be increased from R2 000 000 to R2 500 000, the largest FSPs will pay a higher levy amount. The aggregate amount of levies that will be payable by FSPs will remain essentially unchanged from the levies that would be payable in terms of the tabled Levies Bill.*

*The proposed amendments seek to delete in its entirety the formula for calculation of the levy payable by Financial Service Provider (Other), as it is not necessary to have reference to a category of “other” FSPs, as all of the current FSPs are covered in other categories provided for in the current schedule.*

*I acknowledge the set of additional grammatical and technical amendments proposed by National Treasury officials to the SCOF, which I fully support.*

*The above proposed amendments (together with other technical amendments) to the Levies Bill are set out in Annexure A, which National Treasury officials submitted to the SCOF at its hearing yesterday. I would like to formally record that I have proposed all these amendments for the consideration of the Committee in terms of section 11 of the Money Bills Amendment Procedure and Related Matters Act, 2009, which I understand the Committee has duly done at its hearing of 18 May 2022. I have requested Mr Ismail Momoniat to advise the Committee on any further queries it may have in this regard.”*

1. **COMMITTEE OBSERVATIONS**
	1. The Committee acknowledges the submissions made in the processing of this Bill. It however believes it would have benefitted more from oral presentations and engagements with stakeholders in the public hearings. The Committee had to cancel its scheduled public hearing on this Bill as there were no stakeholders who wanted to make oral submissions.
	2. Be that as it may, the Committee appreciates the comprehensive technical substantive written submissions on the Definitions, the clauses of the Bill and the Schedules. This shows that the stakeholders engaged with the contents of this Bill very intensively. This is borne out by the numerous proposed amendments which were accepted by NT and the related financial regulatory bodies in the B version of the Bill.
	3. The Committee notes and accepts the comments from the Minister of Finance in a letter addressed to it on 19 May 2022, cited above, regarding the proposed amendments to the Bill as required by section 11(6)(b) of the Money Bills Act.
	4. The Committee notes that this Bill is part of a suite of measures aimed at financial sector reforms under the Twin-Peaks system, necessitated by the global financial sector reforms following the global financial crisis of 2008. The last Bill that the Committee adopted in this regards was the Financial Sector Laws Amendment Act, enacted by Parliament in 2021. The latter Act established the resolution framework of banks, systemically important non-bank institutions (non-bank SIFIs) and the holding companies of these institutions. It also amended the FSRA, 2017, adding a new Chapter 12A to provide for the resolution objective, powers and functions of the Resolution Authority, the SARB. It also provided for the establishment of the Deposit Insurance Fund and the Corporation for Deposit Insurance.
	5. Other Acts that form part of the new regulatory architecture are the FSRA, 2017, which established such bodies as the FSCA and the PA, among others, and the Insurance Act of 2017.
	6. As part of the overarching reforms, the Committee still awaits and urges the Minister to prioritise the tabling of the Conduct of Financial Institutions Bill (CoFI Bill), which will, among other things, consolidate and strengthen market conduct laws, protect customers against weak and harmful market practices, promote financial inclusion and financial sector transformation.
	7. The Committee notes that the levies and special levies will provide the necessary funding mechanism to enable financial sector bodies to fulfil their functions in terms of the FSRA and related financial sector laws. The breakdown of these costs in the first year of the Bill are expected to be:
		1. Prudential Authority (R465m- Levy) and (R34m- Special Levy): The levies collected by the PA will fund direct costs incurred by the PA, while the Reserve Bank will continue to fund PA’s indirect costs. The Levies will be paid by: Deposit-Taking Institutions- which are banks, mutual banks and co-operative banks; Insurance companies (which include life, non-life and micro insurance firms); Market Infrastructures (MIs) and the Road Accident Fund. It is noted that Cooperative Financial Institutions are exempt from the levies. The banking sector will contribute the largest portion (61%) of the total levies, followed by insurers (31%) and market infrastructures (3%)
		2. Financial Sector Conduct Authority (R821m- Levy) and (R81m- Special Levy). Additional income of R66m is envisaged comprising fees, interest received and other income. The levies will be paid by Banks; Insurance Firms; Market Infrastructures (exchanges, central counterparties, over-the-counter derivative providers, central securities depository, and credit rating agencies); Collective Investment Schemes (participation bonds, foreign schemes unit trusts, local unit trusts, and hedge funds); and Pensions (pension funds and pension fund administrators). FAIS institutions will contribute 31% of the levy, followed by pension funds (22%), insurers (17%), and banks (12%).
		3. Office of the Pension Fund Adjudicator (R90m incl. special levy)
		4. FAIS Ombud (R81m incl. special levy)
		5. Financial Services Tribunal (R34m incl. special levy)
		6. Ombuds Council (R22m incl. special levy)
	8. The Committee notes that, based on the estimates made by NT, having undertaken consultation with regulatory agencies, the direct costs of regulation under the ‘twin-peaks’ system will amount to R1,6 billion per annum. This represents a marginal increase of R290m on the current costs of about R1,3 billion.
	9. NT further projected that the total levies that will be paid by insurers and banks account for about 0,3% and 0,2% of the total operating costs respectively. It further stated that each institution as a percentage of the total profits generated will pay 0,8% and 0,4% respectively.
	10. NT further estimated that the impact of these costs on consumers, if passed on, will amount to less than 50 cents per month towards the levies.

**Table 1: Impact of cost on institutions and customers**

|  |  |  |  |
| --- | --- | --- | --- |
| Institution | Every customer per month | % of total operating costs | %of total profit before tax |
| Banks\* | 0,5 | 0,2 | 0,4 |
| Insurers\*\* | 0,4  | 0,3 | 0,8 |
| Mutual Banks | 0,1 | 0,1 | net loss was recorded |
| Co-operative Banks | 0,2  | 0,2 | 0,5 |
| \*the estimates are based on figures derived as of March 2022 \*\* Insurers estimates are derived based on figures recorded end of 2021Source: *National Treasury: 18 May 2022 Parliament Report on Impact of Levies* |

* 1. NT further illustrated the proportionality embedded in the calculation and imposition of levies, showing that the smaller financial institutions will pay less compared to their larger peers as shown in table 2 below.

**Table 2: Illustration[[1]](#footnote-1) of proportionality of the levies using Schedule 1**

|  |  |  |
| --- | --- | --- |
| **Institution type** | **Levy to be paid by the largest entity per year** | **Levy to be paid by the smallest entity per year** |
| Banks | R45,000,000 | R53,000 |
| Insurers |  |  |
|  Life insurers | R15,000,000 | R50,000 |
|  Non-life insurers | R13,000,000 | R13,000 |
|  Microinsurers | R5,000 | R5,000 |
| Mutual Banks[[2]](#footnote-2) | R86,000 | R6,000 |
| Co-operative Banks[[3]](#footnote-3) | R5,000 | R1,300 |
| Co-operative Financial Institutions (CFIs) | No levy charged | No levy charged |

Source: *National Treasury: 18 May 2022 Parliament Report on Impact of Levies*

* 1. The Committee further notes that mitigating the real impact of these costs is the exemption system embedded in Clause 11 of the Bill, and the fact that the Special Levy will fall away after the second year and has been spread across 2 years with a reduced rate of 7,5% per year instead of 15% once off payment.
	2. The Committee believes that although these may be necessary costs, it is concerned, that these costs will be borne disproportionately by the customers, particularly the poor and low income earners. This is why the Committee ordered NT to present to it a Socio-Economic Impact Study (SEIS) on the Levies Bill, before deliberating.
	3. The Committee recommends that an independent survey be conducted to examine the actual pass-on costs of the levies to consumers after a reasonable time they have been collected.
1. **CONCLUSION**
	1. The Standing Committee on Finance, having considered the Financial Sector and Deposit Insurance Levies Bill [B3-2022], reports the Bill with amendments [B3A – 2022].

The Democratic Alliance (DA) reserve their position.

Report to be considered

1. This is as at September 2020 [↑](#footnote-ref-1)
2. No levy is charged if the total liabilities of a Mutual Bank do not exceed R3 million. [↑](#footnote-ref-2)
3. No levy is charged if the total liabilities do not exceed R2 million. [↑](#footnote-ref-3)