**Report of the Standing Committee on Finance on the Financial Matters Amendment Bill [B20B - 2023] (National Assembly- section 75), dated 17 May 2023**

The Standing Committee on Finance, having considered the Financial Matters Amendment Bill [B20B - 2023] (National Assembly- section 75) referred to it, reports the Bill, with amendments, as follows:

1. **INTRODUCTION AND BACKGROUND**
	1. The Financial Matters Amendment Bill (FMAB) was tabled in Parliament by the Minister of Finance on 02 September 2022. FMAB is an ordinary (section 75 of the Constitution) Bill dealing with the amendment of various pieces of legislation under the finance portfolio.
	2. The Bill seeks to amendment to following laws: the Associated Institutions Pension Fund Act, 1963; the Temporary Employees Pension Fund Act, 1979; the Military Pensions Act, 1976; the Government Employees Pension Law, 1996; the Financial and Fiscal Commission Act, 1997 (which was later abandoned); the Land and Agricultural Development Bank Act, 2002; the Auditing Profession Act, 2005; and the Auditing Profession Amendment Act, 2021.
2. **PUBLIC PARTICIPATION**
	1. SCOF was briefed on this Bill on 15 March 2023 and made a call for submissions thereafter. On 22 March 2023, the Committee held public hearings which were responded to on 09 May 2023.
	2. The Committee received written and oral submissions from the following organisations: the Association for Monitoring and Advocacy of Government Pensions (AMAGP), the Congress of South African Trade Unions (COSATU) and Deloitte (written submission only.).
	3. The National Treasury reported that it also consulted the Financial and Fiscal Commission, the Government Pensions Administration Agency, the Land and Agriculture Development Bank, and the Independent Regulatory Board for Auditors on the amendments that affected them in the Bill.
3. **OVERVIEW OF THE PROPOSALS IN THE FMAB**
	1. The Bill seeks to amend to following laws:
		1. the Associated Institutions Pension Fund Act, 1963, and the Temporary Employees Pension Fund Act, 1979, so as to amend certain definitions and other provisions to align these Acts with their administration by the Minister responsible for finance and to update references to other Ministers;
		2. the Military Pensions Act, 1976, so as to provide for the benefits for life partners of members retrospectively;
		3. the Government Employees Pension Law, 1996, so as to amalgamate the Associated Institutions Pension Fund into the Government Employees Pension Fund;
		4. the Financial and Fiscal Commission Act, 1997, so as to omit the provision for the Chief Executive Officer of the Financial and Fiscal Commission to be its Secretary (this amendment was rejected by the Committee as discussed below);
		5. the Land and Agricultural Development Bank Act, 2002, so as to substitute the definition of Minister and replace the provision for judicial management with business rescue in terms of the Companies Act, 2008;
		6. the Auditing Profession Act, 2005, so as to enable the enforcement committee, upon admissions of guilt, to refer instances of serious improper conduct to the disciplinary committee for sanctioning; and
		7. the Auditing Profession Amendment Act, 2021, so as to provide that acts of improper conduct not dealt with before the effective date of that Amendment Act be dealt with in terms of the Auditing Profession Act, 2005, after its amendment by the Auditing Profession Amendment Act, 2021, with the exception of sanctions (this amendment was abandoned or rejected as discussed later below); and
		8. to provide for matters connected therewith.
4. **LETTER FROM THE MINISTER OF FINANCE**
	1. The Minister of Finance subsequently addressed a letter to the Committee dated 05/04/2023 to bring two clauses (Clauses 18 and 22) to the attention of the Committee for its consideration during the deliberations.
	2. On Clause 18 and in relation to the amendments to the Financial and Fiscal Commission (FFC) Act, 1997, the Minister stated that he had been advised that the amendment was not necessary as it was covered by a procedure set out in section 76(4)(a) of the Constitution. He assured the Committee that the FFC had been accordingly advised and asked the Committee to reject the amendment.
	3. On Clause 22, which proposed to substitute section 23 of the Audit Profession Amendment Act, 2005, dealing with alleged improper conduct, the Minister explained that the Independent Regulatory Board of Auditors (IRBA) had sought advice from senior counsel who advised that the proposed amendment was already covered by the transitional arrangements of the previous Amendment Act. He again asked the Committee to reject this amendment.
5. **KEY ISSUES RAISED IN THE PUBLIC HEARINGS**
	1. Some commentators were concerned about the sustainability of the GEPF if merged with the Associated Institutions Pension Fund (AIPF) and the Temporary Employees Pension Fund (TEPF) into the Government Employees Pension Fund (GEPF).
	2. Among some of the concerns was that commentators were unable to access any information about the membership numbers or the financial position/financial sustainability or any actuarial evaluation of the AIPF and TEPF. They decried that such information was not freely available. They noted that secondary information confirmed that the administration of these two funds was already executed by the Government Pensions Administration Agency (GPAA), which also executes the administration of the GEPF. They submitted that in the absence of information to inform them on the factors that will either put the GEPF at risk or benefit, it was not possible for them to make any informed comment on the proposed amalgamation. In this regard, the Committee instructed the National Treasury to make available such required information to the commentators and the Committee. This information was provided accordingly to all parties.
	3. Some commentators welcomed the Bill, acknowledging that it was an important intervention in addressing the challenges faced by military veterans’ partners in accessing pension benefits when their partners and ex-partners had passed away or during separation. They noted that the Bill provided for the extension of existing legal requirements to Associated Institutions’ Pension Funds, thus providing the same rights and protections for those fund members. They said that these interventions were needed to help current and former SANDF members, their partners, and families in their moments of need.
	4. They further noted that the Bill seeks to address problems experienced in the auditing profession as seen recently where some auditors helped cover up corruption in the firms and SOEs.
	5. Some commentators proposed the insertion of a new section in the Bill formalising in law the existing IRBA rule providing for mandatory audit firm rotation (MAFR) and limiting lengths of auditing contracts of firms and SOEs to five years and not renewable thereafter. NT indicated that amendments to primary legislation to provide for MAFR will be pursued in the next round of APA amendments.
	6. Other comments, particularly from Deloitte, sought clarity around the proposed amendments to the powers of the enforcement committee. NT clarified that the referral to by the enforcement committee to the disciplinary committee will occur in two instances: if the auditor does not/ fails to admit guilt to charges and/or if the enforcement committee believes that the improper conduct of the auditor warrants deregistration or disqualification from registration as an auditor.
	7. With regards to Clause 21- commentators noted that the authority of the enforcement committee to determine if conduct warranted deregistration or disqualification had not been determined. NT explained that the authority of the enforcement committee to refer a matter to the disciplinary committee for a disciplinary hearing came from the provisions of section 49(1)(b), read with 49(5) of the Audit Profession Act (APA), 2005. NT said that the referral to the disciplinary committee will occur in instances where a respondent does not/ fails to admit guilt and/or where the committee believes that the improper conduct warrants a sanction contemplated in section 51B(3)(a) (iv) and (v) of the APA, and section 49(1)(b) read with 49(1)(a) of the APA.
	8. With regards to IRBA’s sanctions framework not having been finalized, thus making it unclear what the quantum of fines levied may be, NT explained that the draft implementation framework can only be finalized once the Minister of Finance has determined the maximum monetary fine and will be published once the Minister has made that determination.
6. **COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**
	1. The Committee welcomes the amendments to the various pieces of legislation as proposed in the Financial Matters Amendment Bill (B20B- 2022). The Committee believes that all public comments on the Bill, most of which were clarity seeking, were adequately responded to by NT before the Committee on 09 May 2023 and in writing.
	2. The Committee notes the Minister’s letter which asked the Committee to reject clauses 18 and 22. The Committee agrees with this request and accordingly rejects these clauses for the reasons provided by the Minister of Finance in the letter dated 05/04/2023 discussed above.
7. **CONCLUSION**
	1. The Committee agrees with amendments proposed in the A list of the Bill as presented to the Committee on 09 May 2023.
	2. The Committee reports the Bill [B20B-2022].

Report to be considered.