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The Secretary to Parliament
c/o Mr. Bradley Viljoen
Committee Section
Parliament of the RSA
P.O. Box 15
CAPE TOWN
8000

Dear Sir

Re: **GENERAL FINANCIAL SERVICES LAWS AMENDMENT BILL 2008**

Thank you for affording us the opportunity to provide comment on the General Financial Services Laws Amendment Bill.

The comments contained below were provided to the Institute by its members.

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976, section 9 of Act 94 of 1977, section 10 of Act 80 of 1978, section 38 of Act 99 of 1980, section 20 of Act 54 of 1989, section 29 of Act 97 of 1990, section 14 of Act 83 of 1992, section 21 of Act 104 of 1993, section 1 of Act 22 of 1996, section 1 of Act 39 of 2001, section 1 of Act 65 of 2001 and section 1 of Act 11 of 2007

1(c) Normal retirement age should be linked to a fund member's employment contract and a minimum age should not be set out in the Pension Funds Act or prescribed by the Registrar.

Substitution of section 2 of Act 24 of 1956, as amended by section 10 of the Act 94 of 1977, section 13 of Act 103 of 1979, section 36 of Act 9 of 1989, section 15 of Act 83 of 1992, section 22 of Act 104 of 1993, section 211 of Act 66 of 1995 and section 2 of Act 11 of 2007

2(c) This clause amends section 2(5)(a) of the Pension Funds Act and provides that the registrar may exempt funds from provisions of the Act by notice in the Government Gazette. It should not be necessary for specific exemptions granted to individual funds to be granted by notice in the Gazette. It should be possible for these to be granted in writing to the fund by the Registrar.

Directors: M Botha, G Cook, J Durr, T Howse, G Jacobs, J Methven, H Krull,
R Rattue (UK), E Scheepers, J Symington

Amendment of section 7B of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996

This clause amends section 7B(1) of the Pension Funds Act and refers, in the proposed section 7B(1)(b)(i), to the definition of "occupational pension fund" and "provident fund" in the Income Tax Act. The word occupational should be deleted as the Income Tax Act defines "pension fund" and "provident fund" and does not use the term "occupational". Also, "definition" should be "definitions" and the words "in the as defined" should be deleted.

Amendment of section 8 of Act 24 of 1956, as amended by section 30 of Act 104 of 1993 and sections 3 and 4 of Act 22 of 1996

This clause, which amends section 8 of the Pension Funds Act, gives the Registrar powers that are unreasonably wide with respect to terminating the appointment of principal officers and determining if they are fit and proper.

Repeal of section 38 of Act 24 of 1956 as amended by section 29 of Act 104 of 1993

This clause repeals section 38 of the Pension Funds Act. The intention behind this amendment is not clear. Does this mean that funds registered under the Pension Funds Act are trusts in terms of the Trust Property Control Act and must comply with its provisions or is it assumed that they are not and that the provision is therefore redundant and can be repealed?

Amendment of section 37D of Act 23 of 1956, as inserted by section 14 of Act 94 of 1977 and amended by section 14 of Act 80 of 1978, section 4 of Act 65 of 2001 and section 28 of Act 11 of 2007

- Insofar as this clause introduces section 37D(4)(a)(i)(bb) into the Pension Funds Act, it is confusing and requires clarification. Is the intention to deal with transfers that take place prior to the date of divorce, or is the intention just to include transfers which took place after the date of divorce, but prior to the named fund being notified of the divorce? In addition, successive transfers would escape the ambit of the provision, as the clause currently only provides that the "fund" or "funds" to which the named fund transferred the pension interest, need effect the deduction. There should be an "and/or" between (aa) and (bb).
- The question of what constitutes the pension interest should the member spouse be a member of a preservation fund at the date of divorce still requires clarification.
- The procedure set out in the proposed section 37D(4)(a) is confusing and flawed. For example, the proposed sections 37D(4)(a)(ii) and 37D(4)(b) do not make sense if read together. Section 37D(4)(a)(ii) states that the relevant portion of the pension interest must be "deducted on the date on which an election is made ...". Section 37D(4)(b) states that at the time of making a deduction, the fund must request the non-member spouse to make his/her election.
- A fund may not have the details of the non-member spouse and may not be able to make contact with him/her in order to do what is required by these provisions.

Amendment of section 1 of Act 37 of 2002

Paragraph 44(c) Definition of "representative" We are satisfied with the amended definition of representative.

Definition of "financial product" was not amended and still includes a deposit as defined in section 1(1) of the Banks Act, 1990. It is suggested that **credit products** should specifically

be excluded from the definition of “financial product” for purposes of FAIS, as credit products are regulated by the National Credit Act.

Definition of intermediary service still does not specifically state that an FSP can’t provide an intermediary service on it’s own behalf or for itself. There must be certainty around this aspect.

Amendment of section 4 of Act 37 of 2002

This clause amends section 4 of the Financial Advisory and Intermediary Services Act. The references to “any document” in the proposed sections 4(5)(b)(i), (ii) and (iii) are too wide and should be amended to apply only to documents relevant to the inspection or a possible contravention of the Act.

The proposed section 45(7) provides that the registrar “may make known any details regarding the on-site visit or inspection, and the reasons therefore, by notice in the Gazette or by means of any other appropriate public media”. This gives the Registrar unrestricted powers to publish any information whatsoever that has come to light by virtue of an on-site visit, under any circumstances. This is unreasonable and could unfairly prejudice a financial service provider. The ambit of this provision needs to be restricted to situations where such publication is in the public interest and does not cause unfair prejudice to the financial services provider concerned.

Amendment of section 7 of Act 37 of 2002

Paragraph 46 Further clarity is required as to the definition of “conduct business”

Amendment of section 8 of Act 37 of 2002

Paragraph 47 We do not agree that this section should apply to Banks at all. The Banks Act Regulations requires the chairperson of the board of directors to submit a duly completed statement and declaration named a form BA 020, to the Registrar of Banks in the following instances:

- The appointment for the first time of a person as a director or executive officer of a bank, controlling company, branch of a foreign bank or mutual bank;
- The re-appointment of a director or executive officer after a lapse of 12 months from resignation;
- Any serving directors or executive officers, at the Registrar’s request.

The BA 020 must be submitted to the Registrar of Banks at least 30 days prior to the appointment becoming effective. The 30-day period is required to give the Registrar the opportunity to review the application.

We further do not agree that the Registrar should have the power to suspend or withdraw a licence in instances when a director does not qualify as a representative or a key individual does not comply with the fit and proper requirements. This could cause systemic risk to the bank. If the Registrar has the power in these circumstances to suspend or withdraw a licence then this should at least be done in consultation with the Banking Regulator.

Another concern is what will happen if the Registrar of Banks accepts the appointment but the FAIS Registrar doesn’t?

Therefore, because the Banks Act already regulates the appointment of directors we propose that Banks should specifically be excluded from this section.

Insertion of new section 14A in Act 37 of 2002

s 14 A (1) - This section empowers the FSB to debar a Representative. Previously only an FSP could debar their Representative and this should remain unchanged. The FSB should notify the FSP that the Representative does not meet the Fit & Proper requirements and should be debarred - ultimate responsibility for debarment should only be with the FSP who would be able to manage the process in terms of Labour Relations legislation.

Amendment of section 14 of Act 37 of 2002

Paragraph 51 (1)

" or has contravened or failed to comply with any provision of this Act in a **material** manner". More clarity should be given as to what would be regarded as material.

Amendment of section 19 of Act 37 of 2002

s 19 (7) - FSP will be required to get approval of FSB to change financial year end. Once again we are already regulated by the Registrar of Companies and the Reserve Bank in this aspect and Banks therefore, should be exempt from this section as well.

We trust that you find the comments contained herein to be constructive and of assistance.

Yours sincerely



J.E. METHVEN
GENERAL MANAGER