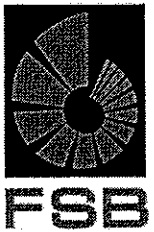


Protection of Personal Information Bill

Presentation to the Technical Committee of the
Portfolio Committee on Justice and
Constitutional Development

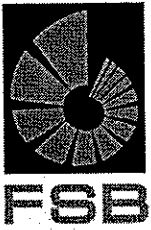
Nonkumbulo Tshombe & Jo-Ann Ferreira

10 October 2011

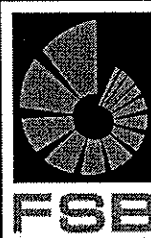


This presentation

- Who is the Financial Services Board?
- What is the nature of the financial services regulated by the FSB?
- The FSB's concerns



Who is the FSB?



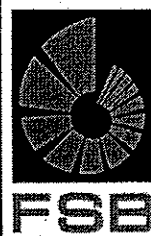
Who is the FSB?

- The Financial Services Board (FSB) is established by the Financial Services Board Act No. 97 of 1990 and is accountable to Parliament
- FSB is a statutory regulator similar to the Registrar of Banks, National Credit Regulator, Financial Intelligence Centre
- FSB is a public entity & Minister of Finance is the executive authority of the FSB



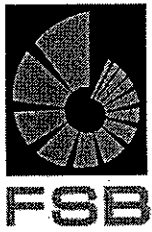
Who is the FSB?

- FSB regulates the following financial industries in the public interest:
 - insurance industry
 - retirement funds
 - financial markets [JSE and STRATE]
 - collective investments
 - financial advisory and intermediary services



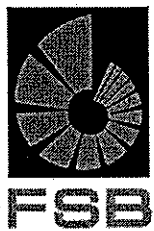
Who is the FSB?

- **Primary Mandate:** To supervise and enforce compliance with laws regulating financial institutions and the provision of financial services to ensure the -
 - ✓ protection of consumers of financial services and products
 - ✓ integrity of financial markets and institutions
 - ✓ financial soundness of financial institutions
 - ✓ systemic stability of financial services industries



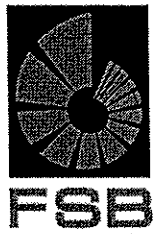
Who is the FSB?

- In meeting its mandate the FSB –
 - collects, processes, analyses, interprets and retains information of financial institutions
 - participates in local, regional and international supervisory colleges
 - exchanges information with –
 - other local, regional and international regulators
 - investigating authorities
 - enforcement agencies

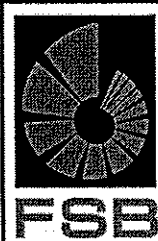


Who is the FSB?

- To meet its mandate the FSB –
 - must be able to freely share information
 - with other financial services regulators (local, regional and international)
 - on persons (natural and juristic) that participates in financial services (whether inside or outside the regulatory net)
 - adhere to international standards
 - ensure compliance with the national government's commitments at the G20, Financial Stability Board, SADC and CISNA



What is the nature of financial services regulated by the FSB?



What is the nature of the financial services regulated by the FSB?

- The institutions regulated by the FSB invests and manages **consumer's funds**
 - not own and shareholder funds only
- the investment and management activities do not always take place through trusts or similar structures



Concerns



Concerns 1

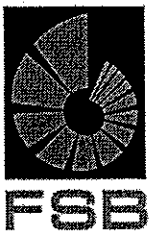
- Appears that Bill in section 4 does not facilitate or recognise the need for the collection, processing and sharing of personal information by or on behalf of public bodies for the purpose of –
 - supervising compliance with legislation
 - preventing, investigating or proving non-compliance with legislation
 - taking regulatory action and imposing administrative sanctions (other than pursuing criminal sanctions) for non-compliance with legislation

(cont)



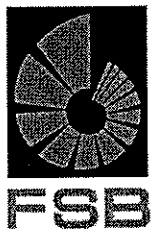
Concerns 1

- Non-compliance does not always constitute an offence
- Criminal charges not always best option
 - mitigation and prevention important
- FSB supervises and enforces through various actions such as –
 - the withdrawing of licenses
 - issuing of directives
 - imposing administrative penalties
 - public disclosure of non-compliance
- Internationally the above is provided for in legislation



Concerns 2

- Bill in a number of places refers to “complies with an obligation imposed by law on the responsible party”
 - Sections 10(1)(c), 11(1)(d)(ii), 15(3)(c)(ii), 17A(4)(c)(ii)
- FSB in supervising and enforcing complies with obligation imposed by law, but also exercises powers afforded in legislation when dealing with information



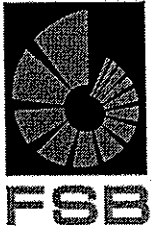
Concerns 3

- Bill in a number of places refers to “to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences”
 - Sections 11(2)(d)(i), 15(3)(c)(i), 17A(4)(c)(i)
- Not clear if this would include supervision and enforcement (civil & administrative) of legislation
- Not clear if this would include the exercise of authority afforded or compliance with obligations imposed under legislation



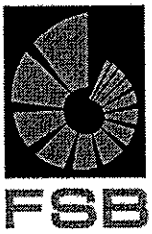
Concerns 4

- Bill requires notifications to / approvals by Regulator
 - Section 17(1) & (2), 34(1), 52
- This may seriously prejudice the ability of the FSB to –
 - supervise and enforce legislation, despite possibility that manual may address all matters required under the Bill
 - Act swiftly and decisively in crisis situations



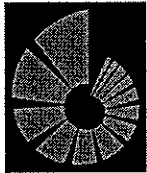
Concerns 5

- Prohibition on processing of criminal behaviour & exemption
 - Section 25(2), section 25A and 31
- For the FSB the sharing information of criminal behaviour is critical in, amongst others, establishing if a person is fit and proper to be a director of a financial institution / to deal with other person's funds



Concerns 6

- Transfer of personal information outside Republic (Section 69)
- Regulators in most developed countries subject to data protection legislation, however, this is not necessarily true in respect of regulators in developing countries
- Also not clear if it will include transfer of information in compliance with international standards and obligations



FSB

Thank you