Subject: Consolidated FinWatch - A Newsletter for the period Dec. 2016 - Jan. 2017 | EXTERNAL EDITION

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Regulatory Updates for the period December 2016 to January 2017

FinWatch – A Weekly Newsletter

Find the latest edition of **FinWatch** which provides a gist of all regulatory developments impacting the financial services industry in South Africa.

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Regulatory Developments

Banking

SARB issues margin requirements for non-centrally cleared derivatives
On 19 December 2016, the South African Reserve Bank issued a guidance note to banks in South Africa, branches of foreign institutions, controlling companies, and auditors of banks or controlling companies, with respect to the implementation of margin requirements for non-centrally cleared derivatives, in terms of the Banks Act 1990. On 23 November 2016, the SARB had issued a proposed directive to implement these requirements starting 1 January 2017, and had invited comments on the same. This directive was issued following the SARB's decision to incorporate the international framework for margin requirements for non-centrally cleared derivative instruments, as established by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO), into the legislative framework of South Africa. Based on the comments received, the SARB has decided to delay the implementation of the margin requirements to a date later than 1 January 2017, and announced that it would intimate all affected parties once the new implementation date is finalized. *SARB*

Trade and Industry Committee adopts report on debt relief measures
The Department of Trade and Industry has adopted a Sub-Committee report on measures to address debt, and plans to introduce a Committee Bill designed to address identified gaps in the National Credit Act (NCA) of 2005. This decision came against the backdrop of the committee having recently held several engagements with stakeholders to discuss the over-indebtedness in South Africa, its socio-economic impact on society and viable measures to provide debt relief. The proposed Bill aims to amend the NCA to provide for a

simpler and more rigorous enforcement of the Act, and criminal prosecution of lenders who contravene the Act. It also calls for the set-up of an effective debt counselling framework for low-income workers and capped debt relief to promote a change in the borrowing and spending habits of the over-indebted society. For more information on the NCA, please contact Finn Elliot. *Parliament of South Africa*

NCR and DTI to appeal the judgment of micro-finance South Africa
The National Credit Regulator (NCR) as well as the Minister of Trade and Industry have decided to appeal the recent judgment in which the court had set aside the regulations relating to short term credit transactions. The court had set the regulations aside after the Micro-Finance South Africa (MFSA) disputed the reduction of the maximum prescribed interest rate from 5% per month on the first loan to 3% per month for subsequent loans in the same calendar year. The MFSA is of the view that the reduction of interests' rate does not take the interest of the credit market into account at all. Hence, the regulations were set aside. However, NCR and DTI are of the view that the appeal allows an opportunity to clarify issues raised in the judgment, as the reduction is informed amongst others, by the fact that consumers are not able to repay the debt in one month and often go back for another loan on top of the unpaid debt and interest. This debt spiral resulted in issuing the regulations. The authorities are appealing the judgment on setting these regulations aside, as they believe that the facts and evidences submitted by them were not taken into account. *DTI*, *NCR*
For further information on this topic, please contact KPMG's Finn Elliot

Investment Management

National Treasury publishes the second draft of the retirement funds default regulations
The National Treasury issued a second draft regulation on retirement funds for comments after incorporating stakeholder input on a document released in July 2015. The second draft takes the first major step towards implementing regulations that aim to lower charges and improve market conduct in the retirement industry. Among other things, the regulation no longer prohibits the inclusion of products with 'elements of a guarantee or smoothing or performance fees' in default investment portfolios; limits the default investment portfolio regulation to retirement funds with a defined contribution category; and requires boards to 'equally consider both passive and active investment strategies when choosing default investment portfolios'. It also provides clarity on default preservation (in terms of which a member's pot/s may only be consolidated with his/her consent, not automatically); and annuities (a strategy for which makes in-fund and out-of-fund annuities eligible, and changes the default from opt-in to opt-out). These regulations form a part of the reform program under the implementation of Twin Peaks, to deliver better customer outcomes across the financial sector. *National Treasury 1*; *National Treasury 2*; *National Treasury 3*

Insurance

FSB issues a notice pertaining to the personal lines claims reporting
The Financial Services Board (FSB) issued a notice under the Short-term Insurance Act. The purpose was to direct all short-term insurers to furnish information to the Registrar on the number of personal lines claims reported in the 2016 calendar year. The information will be made available to the Ombudsman for Short-term Insurance (OSTI) for the purpose of reporting claims versus complaint ratios for each insurer in the OSTI's annual report. It was recognized that the number of claims reported was already required to be submitted in the annual statutory return. However, this information was reported as per the financial years for insurers, which differ among them. This notice was issued to facilitate the accurate comparisons by securing information for the same period across all the short-term insurers. For more information, please contact Nicky Kingwill. *FSB*

National Treasury makes amendments to demarcation regulations under the Long Term Insurance Act and the Short Term Insurance Act
On 23 December 2016, the National Treasury issued a notice making certain amendments to demarcation regulations under the Long Term Insurance Act and the Short Term Insurance Act. The demarcation regulations that were originally issued in March 2012 seek to clearly separate health insurance products from medical schemes.. *Green Gazette 1*; *Green Gazette 2*
Please contact Benjamin Vosloo for additional information on this topic.

Notice of proposed rulemaking on the Long-Term Insurance Act (52/1998) and Short-Term Insurance Act (53/1998)
On 15 December 2016, the Financial Services Board issued Notice No.191 and 102 in Government Gazette No.40501 and 40507 respectively, pertaining to the proposed replacement of the Policyholder Protection Rules (PPRs). The proposed replacement of the PPR rules are being made to give effect to a number of important 'conduct of business' reforms. The proposed PPRs will be open for comments through 22 February 2017. Please contact Derek Vice for more information. *Government Gazette; Green Gazette*

Parliament's Standing Committee on Finance calls for public submissions on the Insurance Bill, 2016
On 20 December 2016, the National Treasury issued a media statement announcing the Parliament's Standing Committee on Finance's (SCOF's) invitation for public comments on the Insurance Bill, 2016. The Bill that was tabled in the Parliament by the Minister of Finance on 28 January 2016, forms a part of the Twin Peaks reforms agenda. The Bill provides a consolidated legal framework for the prudential supervision of the insurance sector consistent with international standards. It also seeks to replace and consolidate substantial parts of the Long-term Insurance Act, No. 52 of 1998 and the Short-term Insurance Act, No. 53 of 1998 with respect to prudential supervision.
The Bill will be open for comments through 3 February 2017**. National Treasury 1; National Treasury 2.** Please contact Derek Vice to discuss further.

FSB issues insurance notices pertaining to the Short and Long Term Insurance Acts
On 15 December 2016, the Financial Services Board (FSB) issued two notices with respect to the Short-Term Insurance Act and the Long-Term Insurance Act of 1998 respectively, to remind insurance firms of their obligation to file the 'Conduct of Business Return (CBR)' with the insurance registrar for the period January – June 2016. The CBR is required to be submitted by 30 April 2017, and applies to all registered insurers other than reinsurers and captive insurers. The intention of filing CBR returns is to follow a more pre-emptive and pro-active approach to conduct supervision as contemplated in the Treating Customers Fairly Roadmap and in line with the Twin Peaks implementation. The returns will assist the insurance regulator in carrying out detailed off-site analysis of insurer's conduct of business and customer treatment practices. Please contact KPMG's Derek Vice for more information. *FSB1; FSB2*

National Treasury and FSB publish a set of amendments to the insurance regulations The National Treasury and the Financial Services Board (FSB) published the amendments to the insurance regulations that give effect to a number of conduct of business reforms. These reforms include appropriate minimum requirements for claims management, closing regulatory gaps and effecting technical improvements to clarify the purpose of certain provisions. These reforms will be given effect through existing regulations made by the Minister of Finance and the Policyholder Protection Rules (PPRs) made by the Registrar of Long-term and Short-term Insurance under the Long-term Insurance Act and the Short-term Insurance Act. Comments on these regulations are invited by 22 February 2017. *National Treasury*

Others

SARS introduces changes to the country-by-country reporting standard for multinational enterprises
The South African Revenue Service (SARS) has introduced changes to the country-by-country reporting standard for multinational enterprises. The regulations flow from the definition of "international tax standard" in the Tax Administration Act, and contain details on definitions, filing obligation, notification, country-by-country report, time for filing and use and confidentiality of country-by-country report information. The changes are followed by the agreement made by the Republic of South Africa to participate in the joint Base Erosion and Profit Shifting Action Project of the Group of 20 (G20) and Organization for Economic Co-operation and Development (OECD). The OECD/G20 Base Erosion and Profit Shifting Project Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 — 2015 Final Report was published on 5 October 2015. The Competent Authority of South Africa signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports on 27 January 2016. These Regulations specify the changes to the

Country-by-Country Reporting Standard for Multinational Enterprises (MNEs) required for South Africa's circumstances. For further information, please contact Finn Elliot. *South African Government*

DA seeks documents on FICA Bill referral

The Democratic Alliance (DA) party triggered the Promotion of Access to Information Act (Paia) to seek for documents backing President Jacob Zuma's decision to refer the Financial Intelligence Centre Amendment (Fica) Bill back to Parliament. The article states that the party is seeking these documents in an effort to understand the process that led to the delay by Zuma in dealing with the Bill, which was passed by Parliament in May. *Business Live*

For more information on this topic, please contact Tersia Rossouw.

FSB releases an update document on RDR

The FSB published an update on implementation plans for the Phase 1 RDR proposals, followed by a more general status update in December 2015. Technical work, consultation processes and review of the stakeholder inputs were continued throughout 2016. This update document provides an overview of:

- The status of specific regulatory instruments to give effect to RDR Phase 1
- FSB's current thinking regarding proposals to be implemented in RDR Phases 2 and 3, including planned technical work *FSB*.

To discuss the implications of RDR with KPMG, please contact Michelle Dubois.

SARS releases the CRS guide in FAQ format

The South African Revenue Service (SARS) released the final version of the common reporting standard (CRS) guide in a frequently asked questions (FAQ) format. The FAQ guide is intended to assist financial institutions in understanding the CRS regulations. The guide provides clarifications on the aspects of reporting, due diligence and the effective implementation of CRS. In line with the same, a KPMG member firm in South Africa has prepared a December 2016 report. Please *click here* to access the report. For more information on CRS please contact Finn Elliot. *SARS*

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Market Developments

Africa

FSC Mauritius issues the draft Captive Insurance (Captive Insurance Business) Rules 2016 for consultation (Mauritius)

On 23 December 2016, the Financial Services Commission (FSC) of Mauritius issued its draft Captive Insurance Business Rules 2016 for public consultation. Some of the topics that the draft rules touch upon include:

- Classification of captive insurance businesses into various categories;
- Permissible classes of captive insurance business;
- Risk Management;
- Capital and solvency requirements;
- Asset valuation;
- Audit and reporting requirements; etc.

FSC

Request for comments on Draft Payment Systems and Services Bill, 2017 (Ghana)

Ghana's central bank published the draft Payment Systems and Services Bill, a bill aimed at regulating payment services, in October 2016, and is seeking comments from various stakeholders before finalizing the law. The legislation has been introduced on the back of the Bank of Ghana's decision to review the Payment Systems Act 2003 to reflect technological changes and other developments in the payment systems landscape. The

Bill will be open for comments through 20 January 2017. *Bank of Ghana 1; Bank of Ghana 2*.

International

FCA publishes key themes from the feedback received on its consultation document entitled "Our future Mission" (UK)

The Financial Conduct Authority (FCA) published its mission document for public consultation on 26 October 2016, outlining some of the key questions faced by it as a financial conduct regulator, and seeking input from various stakeholders on how it can work better towards improving financial market conduct while keeping in mind consumers' increasingly complex needs. In this context, the FCA released some of the key themes gathered from the respondents' feedback so far which include:

- A desire for clarity, including a clearer rationale for the decisions taken by the FCA;
- While the respondents largely agreed with providing more protection to vulnerable consumers, they sought more clarity on the definition of a 'vulnerable consumer';
- Preference for a clear sets of principles defined for business conduct rather than prescriptive rules. Some respondents also sought more clarity on existing rules of market conduct as they felt these often got too vague;
- A recommendation for the FCA to adopt a more active role in sharing good practices with firms;
- A recommendation for more tailored communications to firms illustrating risks for their particular market.

This consultation exercise is expected to play a key role in shaping the FCA's regulatory agenda for the upcoming year. *FCA1; FCA2*

GHOS on finalizing Basel III reforms (Global)

On 3 January 2017, the Group of Central Bank Governors and Heads of Supervision (GHOS), which is the oversight body of the Basel Committee on Banking Supervision (BCBS), issued a statement recognizing the progress made by it towards completing the Basel Committee's post-crisis regulatory reforms. However, the GHOS also highlighted that it would need more time to finalize certain aspects of the reforms including the framework's final calibration, before it can review the package of proposals. Hence a meeting of the GHOS that was originally planned for early January has been postponed for the time being. *BIS*

BIS working paper entitled, 'Macroeconomics of bank capital and liquidity regulations' (Global)

On 19 December 2016, the Bank for International Settlements (BIS) released a working paper entitled 'Macroeconomics of bank capital and liquidity regulations.' Through the working paper, the BIS studies the transmission mechanisms of liquidity and capital regulations and their impact on the economy. To conduct this analysis, the BIS used a macro-economic model to study the trade-off that a regulator faces. The study concludes that while banking regulations may reduce the aggregate supply of credit, they also promote the allocation of credit to its best uses. Accordingly, a regulated economy has lesser, but more productive lending. It also concedes that both liquidity and capital requirements are required, and that they mutually reinforce each other. The study then goes on to provide the BIS' broad support to the Basel III's "multiple metrics" framework. *BIS*

BIS issues working paper entitled, 'Bank networks: contagion, systemic risk and prudential policy' (Global)

The Bank for International Settlements (BIS) released a working paper on 20 December 2016, which details a study conducted to assess the impact of prudential policy requirements on the liquidity, and the resultant contagion that may occur through liquidity hoarding by banks, interbank inter-linkages, and fire sale of non-liquid assets etc. The study concludes that liquidity requirements unequivocally decrease systemic risk, but at the cost of lower efficiency (measured by aggregate investment in non-liquid assets). It also concedes that equity requirements reduce risk and increase stability, though without significantly reducing overall investment. On this basis, the BIS provides its general support for the Basel III approach based on complementary regulatory metrics. *BIS*

Basel Committee completes reviews of all its members' risk-based capital frameworks (Global)

The Basel Committee on Banking Supervision (BCBS) has completed its review of the implementation of the risk-based capital framework by all of its members, and has published the reports that assess the implementation of Basel standards in Indonesia, Japan and Singapore. These reports evaluate regulations adopting the Basel risk-based capital framework and the Liquidity Coverage Ratio (LCR). Assessments of the implementation of the Basel framework's LCR will be completed by December 2017. The Committee has also carried out its first follow-up assessment on one member's risk-based capital framework. These reports form part of a series of publications on the implementation of Basel standards in the Committee's member jurisdictions. The assessments were conducted under the Committee's Regulatory Consistency Assessment Programme (RCAP), established in 2012 to examine the consistency and completeness of member jurisdictions' prudential standards. *BIS*

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Accounting Changes

IPSASB "A Closer Look at:" Video Series
The International Public Sector Accounting Standards Board (IPSASB) issued a video series entitled, 'A Closer Look', which examines the key challenges faced and benefits derived by governments across the world adopting the International Public Sector Accounting Standards (IPSAS) and accrual accounting. In the video, experts from each nation describe the adoption process and share key details, timelines, and lessons learned. *IFAC*

FASB issues technical improvements to revenue recognition guidance
On 21 December 2016, the Financial Accounting Standards Board (FASB) issued a final Accounting Standards Update (ASU) making certain amendments to, and clarifying certain aspects of the revenue recognition guidance issued in 2014. Amendments were made based on input received from FASB stakeholders and the FASB's Revenue Recognition Transition Resource Group (TRG). Some of the areas where amendments / improvements were made include:

- Loan guarantee fees;
- Contract costs—impairment testing;
- Contract costs—interaction of impairment testing with guidance in other topics;
- Provisions for losses on construction-type and production type contracts;
- Disclosure of remaining performance obligations;
- Disclosure of prior-period performance obligations;
- Examples of contract modifications;
- Refund liability;
- Advertising costs;
- Fixed-odds wagering contracts in the casino industry; and
- Cost capitalization for advisors to private funds and public funds, etc

FASB

IRBA publishes amendments to the code of professional conduct for registered auditors
On 9 December 2016, the Independent Regulatory Board for Auditors (IRBA) published amendments to the code of professional conduct for registered auditors relating to non-compliance with laws and regulations. The amendments were published in Gazette 40480, and will come into force from 15 July 2017. *Government Gazette*

FASB issues targeted changes to the key areas of accounting guidance
The Financial Accounting Standards Board (FASB) issued an Accounting Standards Update (ASU) that clarifies and removes inconsistencies in key areas of US Generally Accepted Accounting Principles (GAAP). The provisions in the ASU impact some of the topical areas in the FASB Accounting Standards Codification. Some of these topics include compensation, financial instruments, not-for-profit entities, fair value measurement, liabilities, and transfers and servicing. Most of the amendments are effective immediately; others take effect for interim and annual reporting periods beginning after December 15, 2016. The amendments are intended to make it easier to understand and implement guidance across important areas of GAAP. *FASB*

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The Inside Edge

POPI commencement date pending

The Information Regulator will be tasked with, among other things, monitoring compliance with, and enforcement of, the provisions of the POPI Act. The Chairperson, Advocate Pansy Tlakula, and members have been appointed with effect from 1 December 2016 and will serve for a period of five years. It is anticipated that the commencement date for the remaining provisions of the POPI Act will soon follow the appointment of the members of the Information Regulator.

KPMG's POPI specialist and attorney, Nikki Pennel says: "Companies will have 12 months from the commencement date to become fully compliant."

Given the relatively short transitional period afforded by the POPI Act, organisations should be already well underway with their POPI compliance programmes.

Click here to view the POPI journey.

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Please click here to access the previous issues of the External edition of FinWatch

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