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KPMG in South Africa

Regulatory Updates for the week ended 30 June 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 published a directive for Authenticated Collections

Through this directive, participants involved in the collection of payments in the Electronic Debit Order (“EDO”) environment are instructed by South Africa Reserve Bank (“SARB”) to:

Design, develop and fully implement the payment system infrastructure by 31st October, 2019;

Minimise operational risk throughout the migration period to Authenticated Collections (AC);

Implement AC in a phased approach and report progress as requested by SARB;

Fully Implement AC by 31st January, 2019.

The Payments Association of South Africa is expected to:

- prepare the AC implementation plan in phases and timelines approved by SARB;
- monitor compliance: and
- undertake enforcement action through an appropriate compliance and enforcement framework among others. [SARB](#) Please contact [Joleen Young](#) for further information.

Others

Parliament Briefed on Debt Relief Policy

The Portfolio Committee on Trade and Industry received inputs from the National Treasury on the proposed policy and measures to be legislated for debt relief. The committee wants to introduce stronger relief for over-indebted South Africans. It plans to draw up a committee bill on debt relief. Some of the proposed guiding principles for debt relief include:

- Different solutions for different categories of distressed persons;
- Ensuring that debtors who can pay, do pay;
- Promoting responsible lending and responsible borrowing; and
- Providing a holistic response and maintaining systemic stability. [Sabinet](#) Please contact [Nicky Kingwill](#) for more information.

Parliament Passes Financial Sector Regulation Bill

Parliament passed the Financial Sector Regulation (“FSR”) Bill and has sent it to the President for assent. The Bill aims to put a Twin Peaks model of financial sector regulation in place. The Financial Services Board will oversee market conduct while the Reserve Bank will take responsibility for prudential regulation. As per the bill a Council of Financial Regulators has to be set up to ensure cooperation between the twin peaks regulators and other financial sector-related regulators. [Sabinet](#) For further information, please contact [Finn Elliot](#).

Outcome of the June, 2017 meeting of the FATF

South Africa participated in the third meeting of the Financial Action Task Force (“FATF”). At the meeting, the FATF presented the progress it had made to implementation measures against money laundering, terrorist financing and other threats to the integrity of the international financial system. Some of the key initiatives highlighted in the meeting were:

- Improving transparency and beneficial ownership of corporate vehicles;
- Revision to the international standards on targeted financial sanctions related to proliferation financing;
- Proposals to strengthen the FATF’s institutional basis, governance and capacity. [FIC](#) Please contact [Tersia Rossouw](#) for more information.

Financial Action Task Force (“FATF”) statements on jurisdictions with strategic anti-money laundering and counter-terror financing deficiencies

The Financial Action Task Force (FATF) in its second statement named [Democratic People’s Republic of Korea](#), [Islamic Republic of Iran](#), [Bosnia and Herzegovina](#), [Ethiopia](#), [Iraq](#), [Syria](#), [Uganda](#), [Vanuatu](#) and [Yemen](#) as jurisdictions that have strategic deficiencies in international standards on measures to combat money laundering and terror financing. [FIC](#)

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Market Developments

Africa

Guide for financial publication for banks and BOG licensed financial institutions (Ghana)

The Bank of Ghana (“BOG”) published this guide to assist financial institutions in adopting International Financial Reporting Standards (“IFRS”) in preparing financial statements. The guide is divided into the following four sections:

- Clarify and provide direction on areas of conflicts and (or) divergence between the IFRS and the legal framework and the prudential norms of BOG;
- Provide guidance on the format and minimum expectation in the content of financial statements/reports as well as bring uniformity in the financial reporting process across the industry;
- Provide a guide on institution’s quarterly, semi-annual and annual publications of unaudited and audited financial statements; and
- Guide on the newly adopted expected loss concept on credit risk of IFRS9. [Bank of Ghana](#)

CMA acknowledged government efforts to deepen Islamic Finance in Kenya (Kenya)

The Capital Markets Authority (“CMA”) acknowledged Kenya’s raft of targeted measures

designed under the Finance Act to support the growth of Islamic Finance in Kenya. Some of these measures include:

- Amendment to the Capital Markets Act to facilitate Shariah-complaint capital market products;
- Amendment of the Income Tax Act to provide for equivalent tax treatment of Shariah-compliant products with conventional financial products;
- Exemption from payment of stamp duty on transfer of title relating to Sukuk arrangement to support asset-backed securities transactions; and
- Amendment to the Public Finance Management Act to allow for government investment in Sukuk. [CMA](#)

New procedures for application for approval of creation of cells (Mauritius)

The Financial Services Commission ("FSC") has aimed to streamline the application process for approval of creation of cells under the Protected Cell Companies Act. The FSC aims to do so in order to achieve greater transparency, consistency and efficiency in the approval process. The FSC is introducing the following procedures:

- Application form for creation of cell;
- Introduction of processing and annual fees in respect of cells. [FSC](#)

Protocol of Cooperation between BNA and INACON on the structuring, implementation and operation of the Mobile Payments System (Angola)

The National Bank of Angola ("BNA") and the Angolan Institute of Communications ("INACON") signed a strategic cooperation partnership on protocol for the implementation and operation of the Mobile Payments System ("MPS"). The purpose of this protocol is to establish a framework for co-operation between the parties to investigate, analyse, decide and jointly regulate all matters related to the implementation and operation of the MPS. The framework will establish how parties should cooperate and collaborate in the analysis, approach and resolution of issues arising from the process of structuring, implementing and operating of the MPS. [BNA](#)

International

Approval of reinsurance arrangements under prudential standard on reinsurance (Australia)

The Australian Prudential Regulatory Authority ("APRA") published a letter for all life insurers. The letter provides guidance to life insurers on APRA's interpretation of Prudential Standard on reinsurance. The letter also includes APRA's approach to consider applications for approval of reinsurance contracts under the standard. [APRA](#)

Roundtable Hearing for the Productivity Commission Inquiry into the state of competition in the Australian Financial System (Australia)

At the Roundtable Hearing for Productivity Commission inquiry, the Chairman of the Australian Prudential Regulatory Authority ("APRA"), in his speech, mentioned how competition in the financial sector promotes innovation and enhanced outcomes for customers. He opined that sound regulatory setting will help deliver financially strong competitors, creating both financial stability and a dynamic and innovative marketplace for financial services. He highlighted that APRA is currently reviewing its licensing processes. As part of the review, APRA is considering the benefits and risks of adopting a two-phased approach to licensing for certain types of new entrants. [APRA](#)

ASIC clarifies its position on the use of 'independently owned' under the Corporations Act (Australia)

According to ASIC if a financial adviser does not receive any commissions or volume-based payments, or other gifts or benefits and has no conflicts of interest or influence from any product issuer, then they can describe themselves as being 'independently owned'. However, if the financial adviser does receive commissions or operates with conflicts of interest, then they will not be permitted to use the term 'independently owned' or other like words or expressions. [ASIC](#)

Malaysia and Australia seal agreement on fintech cooperation (Australia)

The Malaysia Securities Commission ("SC") and Australian Securities and Investments Commission ("ASIC") signed a co-operation agreement which provides a framework for cooperation to support and understand financial innovation in each economy. This agreement will expand ASIC's fintech cooperation network in Asia. The agreement will

enable the SC and ASIC to refer innovative fintech businesses to each other for advice and support. The agreement will also provide a framework for information sharing between the two regulators. [ASIC](#)

Improving access to insurance (UK)

The Executive Director of Strategy and Competition at FCA delivered a speech at the FCA Insurance access event. In his speech he mentioned how FCA is using Call for Input to better understand the issues facing vulnerable consumers accessing different financial markets, including more opportunities for exploration to encourage innovation in insurance. In this Call for Input, the FCA seeks to understand the following:

- The market in relation to third party tools and how consumers who have, or have had, cancer are treated by firms;
- The consumers' journey and the barriers they face; and
- Innovation and whether there is anything preventing the market from implementing innovative solutions. [FCA](#)

Bank of England welcomes NAO's report on its 'One Bank' strategy (UK)

The Bank welcomed the National Audit Office ("NAO")'s review of progress made under the Bank of England's 'One Bank' Strategic Plan. The NAO conducted a review which recognised the progress made under the strategy to create a single, unified institution which is better able to exploit the complementarities between its functions. The Strategic Plan's initiatives were successfully delivered. These initiatives were seeking to secure important changes to the Bank's structure, organisational culture and working environment. More specifically, they were designed to improve its ability to work as One Bank, including fully integrating the PRA, to deliver increased diversity and better talent management, to strengthen the Bank's tools including research and data, and to invest further in a more open and accountable institution. [BoE](#)

Investment and corporate banking: prohibition of restrictive contractual clauses (UK)

The Financial Conduct Authority ("FCA") published a policy paper that contains Handbook rules banning the use of clauses that restrict a client's choice of future providers of primary market services. As per the policy statement firms will be banned from entering into agreements with a provision that will give them a right to provide future primary market services to their clients. The ban will exclude future service restrictions in bridging loans. The FCA believes that banning the clauses will provide clients with greater choice of providers for future services, as well as more competitive terms. FCA wants firms to compete on the merits of their services rather than restricting clients' choice. [FCA](#)

FCA statement on contract for difference products (UK)

The Financial Conduct Authority (FCA) published a statement which provides an update on the FCA's policy work on Contract For Difference Products (CFDs) and the consultation paper on enhancing conduct of business rules for firms providing contract for difference products to retail clients. The FCA has decided to delay making final conduct rules for UK firms providing CFDs to retail clients, pending the outcome of the European Securities and Markets Authority "(ESMA's") discussions. ESMA is also discussing additional measures not consulted on in the consultation paper, including guaranteed limits on client losses. The FCA will continue to engage with ESMA to support the development of measures that promote a consistent level of investor protection across the European Union. [FCA](#)

FCA publishes final report into asset management sector (UK)

The Financial Conduct Authority ("FCA") published a report which contains the final findings of its asset management market study along with remedies to address the concerns that were raised in the interim report. The remedies for each concern are as

follows:

To help provide protection for investors who are not well placed to find better value for money, the FCA has proposed the following:

- Strengthen the duty on fund managers to act in the best interests of investors and use the Senior Managers Regime to bring individual focus and accountability;
 - Require fund managers to appoint a minimum of two independent directors to their boards;
 - Introduce technical changes to improve fairness around the management of share classes and the way in which fund managers profit from investors buying and selling their funds.

To drive competitive pressure on asset managers, the FCA will:

- Support the disclosure of a single, all-in-fee to investors;
- Support the consistent and standardised disclosure of costs and charges to institutional investors;
- Recommend the removal of barriers to pension scheme consolidation and pooling;
- Chair a working group to focus on fund objectives to be useful and consult on how benchmarks are used and performance reported.

To help improve the effectiveness of intermediaries, the FCA will: Launch a market study into investment platforms;

- Seek views on rejecting the undertakings in lieu of a market investigation reference regarding the institutional advice market to the Competition and Markets Authority;
- Recommend that HM Treasury considers bringing investment consultants into the FCA's regulatory perimeter. [FCA](#)

Consultations by the FPC and PRA on changes to the UK leverage ratio framework (UK)

The Prudential Regulatory Authority ("PRA") published two consultation papers. The first consultation sets out the Financial Policy Committee's ("FPC") proposed Recommendation to the PRA to exclude claims on central banks from the leverage exposure measure in the UK leverage ratio framework; and compensate for the resulting reduction in capital required by the leverage ratio framework. The second consultation sets out the PRA's proposals for implementing the FPC's proposed recommendation. The proposals aim to ensure that the leverage ratio does not act as a barrier to the effective implementation of any monetary policy action that leads to an increase in central bank reserves. They could also increase the financial sector's ability to cushion shocks to the financial system and the provision of credit to the real economy by drawing on central bank liquidity facilities as necessary. [PRA](#)

Regulator calls for radical shake-up of 7 trillion GBP investment sector (UK)

The Financial Conduct Authority ("FCA") told fund managers to overhaul their charging structures and improve governance standards following a two-year investigation into competition issues in asset management. The sweeping set of measures to stamp out conflicts of interest in the asset management industry, would make the UK one of the toughest regimes in the world for asset managers. [Financial Times](#)

Basel Committee consults on a simplified alternative to the market risk standardised approach (International)

The Basel Committee published a consultative document 'Simplified alternative to the standardised approach to market risk capital requirements'. The consultative document has set out a simplified alternative to the sensitivities-based method (SbM). The SbM is the primary component of the standardised approach. The consultative document has proposed a reduced sensitivities-based method that would:

- Remove capital requirements for Vega and curvature risks;
- Simplify the basis risk calculation; and
- Reduce risk factor granularity and the correlation scenarios to be applied in the associated calculations. [BIS](#)

FSB releases consultation on compensation tools to address misconduct (International)

The Financial Stability Board (“FSB”) supplementary guidance is intended to provide firms and supervisors with a framework to consider how compensation practices and tools can be used to reduce misconduct risk and address misconduct incidents. The recommendations address:

- Governance: the full range of responsibility, from senior management to the front line, for conduct issues arising from firm culture and commitment to ethical conduct;
- Non-financial metrics: integration of conduct-related non-financial considerations in performance assessment and compensation;
- Incentives: alignment of compensation incentives to the longer time frame of misconduct risk;
- Transparency: transparent, consistent, and fair compensation policies and procedures that establish clear expectations and accountability; and
- Supervisory expectations: supervisor responsibility in monitoring and assessing the effectiveness of firms’ compensation policies and procedures in managing misconduct risk.

The FSB requests comments and responses to the consultation draft by August 30, 2017.

[FSB](#)

Range of practices in implementing the countercyclical capital buffer policy (International)

The Basel Committee on Banking Supervision (“BCBS”) issued a paper on June 22, 2017 entitled Range of practices in implementing the countercyclical capital buffer policy, which examines how jurisdictions have designed their countercyclical capital buffer (CCyB) policies, frameworks, and practices. The BCBS introduced the CCyB policy as part of the Basel III reforms with the key objective of building a varying capital buffer that protects the banking sector from systemic risk associated with excess credit growth. The BCBS guidance detailed key requirements for CCyB policies but allowed members flexibility to design frameworks that were responsive to their national circumstances. The newly released paper discusses how the CCyB policy frameworks implemented across BCBS member jurisdictions differ with respect to governance structures, rules versus guidance, number of indicators used to guide policy decisions, activating and releasing the buffer, communication strategies, and reciprocity practices. [BIS](#)

IOSCO issues report on order routing incentives (International)

On June 19, 2017, the Board of the International Organization of Securities Commissions (IOSCO) published its final report on Order Routing Incentives, which provides an overview of the order routing incentives used by market regulators that may influence how intermediaries treat their clients. The report examines the regulatory conduct requirements for brokers or firms to manage conflicts of interest associated with routing orders and obtaining best execution. The report focusses on three primary incentives: monetary incentives; internalisation and use of affiliated venues that may commercially benefit a broker; and goods and services bundled with broker execution. The IOSCO concluded that no further work was required because existing regulation or imminent reforms adequately addressed the issue of conduct risks and order routing incentives. [IOSCO](#)

Building resilient growth requires international cooperation (International)

According to The Bank for International Settlements (“BIS”) in its annual report the current economic upswing provides an opportunity to build greater economic resilience. In its economic report, the BIS has examined risks to sustained growth from a potential flare-up in inflation, financial stresses, debt and protectionism and has analysed the balancing act central banks face in normalising policy. A research mentioned in the report shows how the interaction between banks’ internal capital allocation and regulatory standards can affect market functioning. [BIS](#)

Draft guidance for supervisory stress testing of central counterparties released (International)

The Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”) released the Draft guidance for authorities on how to design and run supervisory stress tests for central counterparties (“CCPs”). The framework covers six components of a stress-testing exercise:

- Setting the purpose and exercise specifications;
- Establishing governance arrangements;
- Developing stress scenarios;
- Collecting and protecting data;

- Aggregating results and developing analytical metrics; and
- Determining the use of results and disclosure. [BIS](#)

Call for comments on harmonising OTC derivatives data elements (International)

The Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”) published a consultative report on Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) – third batch. The report is a further step towards fulfilling the Group of 20’s 2009 commitment to report all OTC derivatives contracts to trade repositories (“TRs”), with the aim of improving transparency, mitigating systemic risk and preventing market abuse. [IOSCO](#)

FSB issues a report on the financial stability implications from FinTech (International)

The Financial Stability Board’s (“FSB”) report contains an analysis of potential financial stability implications from FinTech with a view to identifying supervisory and regulatory issues that merit authorities’ attention. Ten areas have been identified, of which the following three are seen as priorities for international collaboration:

- Need to manage operational risk from third-party service providers;
- Mitigating cyber risks; and
- Monitoring macrofinancial risks that could emerge as FinTech activities increase. [FSB](#)

ESMA consults on draft standards for trading obligation for derivatives under MIFIR (Europe)

The European Securities and Markets Authority (“ESMA”) has published a [consultation paper](#) regarding its draft technical standards specifying the trading obligation for derivatives under the Markets in Financial Instruments Regulation (“MiFIR”). MiFIR’s trading obligation will move over-the-counter (OTC) trading in liquid derivatives onto organized venues thus increasing market transparency and integrity alike. MiFIR, which implements parts of the MiFID II framework, outlines the process for determining which derivatives should be traded on-venue. [ESMA](#)

Handbook changes to reflect the application of the EU Benchmarks Regulation (Europe)

The Benchmarks Regulation (“BMR”) will supersede most of the Handbook rules that deal specifically with benchmark administration and contribution. Thus through this consultation, Financial Conduct Authority (“FCA”) is proposing to amend certain sections of the Handbook. In particular, much of the benchmarks section of the Market Conduct sourcebook will be deleted or amended. These changes will take effect on January 1, 2018. However, the current version will continue to apply in relation to benchmarks that are currently specified, and the administrators of, and contributors to, those benchmarks until the administrator of each is authorised or registered under the BMR. [FCA](#)

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The Inside Edge

[Authenticated Collections](#)

The South African Reserve Bank has issued Directive 1 of 2017 – Directive for conduct within the national payments system in respect of the collection of payment instructions for Authenticated Collections. KPMG have a compliment of specialists in our multi-disciplinary offering with diverse backgrounds and skill sets which enable them to respond with holistic solutions, thereby assisting with successful outcomes for our clients, providing a seamless transition to implementing Authenticated Collections.

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