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Regulatory Updates for the week ended 27 October 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.

- Regulatory Developments
- Market Developments
- Accounting / Auditing Update
- The Inside Edge

Regulatory Developments

Others

Code of Conduct for parties utilising Securities Financing Transactions in the South African Securities Markets

The Registrar of Securities Services issued a draft Code of Conduct that sets principles for parties involved in securities financing transactions (SFTs) and addresses some of the following topics:

- Principles of conduct for parties to SFTs;
- Lending agents and their responsibilities;
- Legal agreements between parties governing SFTs, such as the Global Master Securities Lending Agreement, Master Repurchase Agreement and the Margin Trading Agreement;
- Risk management;
- Custody arrangements, etc. *FSB*

Participants commented on the committees' observations and recommendations on transformation of financial sector

The Standing Committee on Finance and the Trade and Industry Committee released a summary document containing responses and comments on the transformation of the financial sector hearings held earlier in the year. Some of the comment participants include Nedbank, Standard Bank, ABSA, BASA, SARB. The committee is expected to report on this matter by November 1, 2017.

Tax bills tabled

The following bills were tabled in parliament on October 25, 2017 with the aim to amend the Estate Duty Act, 1955:

- Taxation Laws Amendment Bill [B27-2017]
- Tax Administration Laws Amendment Bill [B28-2017] *Parliament B27, B28*

For more information, please contact Dermott Gaffney

South African Reserve Bank (SARB) has called for a quantitative impact assessment on proposed debt relief measures be conducted

The South African Reserve Bank (SARB) called for a quantitative impact assessment on proposed debt relief measures. SARB recently briefed the Trade and Industry Committee on its position regarding plans to draw up a committee bill on debt relief. The justice and constitutional development department provided input on the application process for requesting debt relief, in particular, the adjudication process and application of the in duplum rule. The department holds the view that the in duplum rule does not need to be included in the proposed bill as there was both common law and statutory law that dealt with the rule stating that interest and collection fees could not exceed the sum of the outstanding debt. *Sabinet.* Please contact Lullu Krugel for more information.

Medium term budget policy statement in parliament

The Finance Minister stressed the need to undertake tough decisions while delivering his first Medium Term Budget Policy Statement in parliament. Some of the other key measures undertaken by the government, as mentioned in the article include:

Transformation and inclusive growth as key objectives of the budget;
Treasury considering changes to the design, targeting and value of the medical tax credit as part of the policy development process for the 2018 Budget;
Input from the Davis Tax Committee to be sought on the feasibility of proposals to adjust the medical tax credit to fund National Health Insurance;
National Development Plan and the Mandate Paper would guide spending priorities over the medium term;
Draft transitional regulations to begin the process of implementing the Twin Peaks system will soon be released for public comment. *Biznews*

SARS calls for returns on country-by-country reporting

Reporting entities are required to submit a return in the form and containing the information specified in the Country-by-Country and Financial Data Reporting external business requirement specification reporting schema. The South African Revenue Service (SARS) announced the requirement in Government Gazette. The required information relates to a CbC Report, a master file and a local file. It must be submitted within 12 months of the last day of the reporting year. SARS also indicated that if the total of an individual's potentially affected transactions for the year of assessment exceeds 100 million ZAR, and that person is a resident, the individual must submit a return in the form and containing the information relating to a master file and a local file. *Sabinet.*

To Top

Market Developments

Other African countries

National Insurance Commission (NAICOM) exposes new guidelines (Nigeria)

To ensure insurance market development through enhanced access points for insurance services in Nigeria, NAICOM recently exposed four new guidelines to the insurance market for comments. The exposed guidelines are:

Independent agent operational guidelines
Mutual organisations, associations, community based & non-governmental organisations' micro insurance agencies guidelines
Guidelines on state governments' implementation of compulsory insurances, and
Insurance web aggregators operational guidelines. *NAICOM*

FSC Mauritius elected to the Executive Committee of IOPS (Mauritius)

The Financial Services Commission (FSC) has been elected to the Executive Committee of the International Organisation of Pension Supervisors (IOPS) at its annual general meeting. Other elected members include Italy, India, Romania, Uganda, Egypt and Botswana. The

IOPS is the international standard setter and think tank of the pension industry worldwide. The Executive Committee with the support and guidance of the OECD is responsible for driving policy matters in the pension industry globally. *FSC*

National financial inclusion strategy launched (Uganda)
The Bank of Uganda (BoU) in collaboration with the Ministry of Finance, Planning and Economic Development (MoFPED) as well as members of the Inter Institutional Committee on Financial Inclusion (IICFI) has launched the National Financial Inclusion Strategy (NFIS) 2017-2022. Some of the key takeaways from the report are:

Financial inclusion is improving in Uganda; 54% of adults were financially included in formal institutions in 2013 compared to 28% in 2009

High level (70%) of awareness among bank clients of their rights

Need to broaden the scope of credit bureaus, and include smaller Tier IV institutions and other non-banks such as utilities/mobile money service providers. *BOU*

International

PRA launches series of improvements to the implementation of Solvency II (UK)
The series of targeted improvements will support the PRA's commitment to the Treasury Committee made in February 2017 to explore reform of some areas of the PRA's implementation of Solvency II, which came into force on January 1, 2016. The PRA has worked closely with firms and the Association of British Insurers (ABI) in developing these measures. The consultation paper includes additional guidance on the eligibility of assets for the Matching Adjustment (MA) and provides greater clarity on PRA's expectations for firms in relation to the application of MA. The series is intended to improve the implementation of certain aspects of Solvency II, consistent with the its role in this framework and its statutory objectives. Over the coming months, further consultation papers will follow in the series such as:

- December 2017 – Model change process: the PRA will consult on proposals on the minor model change process with the aim of reducing burden on firms and making better use of supervisory resources in pursuit of the PRA's objectives; and
- January 2018 – Reporting: the PRA will consult on proposals to reduce the reporting burden on firms. This will include reducing the content required in the PRA's National Specific Templates, and a revised approach to how the PRA grants quarterly reporting waivers. *BoE*

FCA publishes position limits for commodity derivative contracts (UK)
The limits have been established by exercising FCA's power of direction under Regulation 16 of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (MIFI Regs) and the methodology set out in RTS 21. The limits will apply from January 3, 2018 to positions held in the Spot Month and the Other Months' periods for each commodity derivative. *FCA*

FCA reforms to enhance the effectiveness of UK primary markets (UK)
Over the last 18 months the FCA has published several papers exploring potential enhancements to the current regulatory framework. Following consultation, the FCA is setting out final rules to:

Reform the availability of information during the UK equity initial public offering (IPO) process; and

Clarify and enhance some elements of the Listing Rules.

Alongside the two policy statements, the FCA has also published a Feedback Statement. It has identified three areas that it thinks merit further exploration and stakeholder engagement including the relative positioning of standard versus premium listing, the provision of patient capital to companies that require long-term investment and retail access to debt markets. The FCA will publish proposals for consultation on these areas where appropriate in due course. *FCA*

ASIC overhauls funds management guidance (Australia)
The six new and updated regulatory guides have been developed in advance of the upcoming new Asia Region Funds Passport and Corporate Collective Investment Vehicle (CCIV) legislation, taking into account these new areas as well as bringing ASIC's funds management policy up to date across the board. ASIC proposes to consolidate its core guidance for the funds management industry into 6 regulatory guides covering topics:

establishing an registering a fund

- constitutions
- compliance and oversight
- asset holding
  - how ASIC may exercise exemption or modification powers and common forms of relief it may grant
- entry and ongoing requirements for foreign passport funds.

The guidance will reflect ASIC's current views on these topics, and apply to managed investment schemes, CCIVs, Australian passport funds and certain other AFS licensees involved in funds management. *ASIC*

ASIC expands network of fintech cooperation agreements to Switzerland (Australia)
The Australian Securities and Investments Commission (ASIC) and the Swiss Financial Markets Authority (FINMA) entered a new agreement to cooperate on innovation in the financial sector. The agreement enables ASIC to refer innovative businesses to FINMA, where they will receive the same level of support offered to local fintechs. ASIC will also accept referrals from FINMA, and provide support for these innovative businesses through Innovation Hub. This includes dedicated contacts in each regulator and support prior to and during the authorisation process. Under the agreement, ASIC and FINMA will exchange information on regulatory and policy issues on issues relevant to fintech, including innovation in financial services and market trends and developments. *ASIC*

Individual challenges and mutual opportunities (Australia)
The Chairman of the Australian Prudential Regulatory Authority (APRA) gave a speech at the Customer Owned Banking Convention (COBA). He spoke about a few things in APRA's bailiwick and discusses a couple of the broader influences on the ability of mutual organisations to thrive and compete in the Australian banking system of today and the future. *APRA*

The FMA and ASIC confirm trans-Tasman collaborative approach to fintech (Australia)
The Financial Markets Authority (FMA) and the Australian Securities and Investments Commission (ASIC) re-affirmed their commitment to collaboration and cooperation on the expanding opportunities in fintech and innovation. According to the director of FMA, FMA will continue to share information and views on the regulatory issues arising from emerging technology and increasing innovation. *ASIC*

Identification and management of step-in risk (International)
The guidelines build upon two public consultations carried out by the Committee in December 2015 and March 2017. They introduce a flexible and tailored approach, where measures to mitigate significant step-in risk rely on a supervisory process that is supported by proportionate reporting. In particular:

- Banks define the scope of entities to be evaluated for potential step-in risk, based on the relationship of these entities with the bank
  - Banks identify entities that are immaterial or subject to collective rebuttals and exclude them from the initial set of entities to be evaluated
- Banks assess all remaining entities against the step-in risk indicators provided in the guidelines, including potential mitigants
  - For entities where step-in risk is identified, banks estimate the potential impact on liquidity and capital positions and determine the appropriate internal risk management action
- Banks report their self-assessment of step-in risk to their supervisor
  - After reviewing the bank's self-assessment analysis, where necessary supported by an analysis of the bank's policies and procedures, the supervisor should decide whether there is a need for an additional supervisory response. To that extent, the guidelines do not prescribe any automatic Pillar 1 liquidity or capital charge, but rather rely on the application of existing prudential measures available to mitigate significant step-in risk.

The guidelines are expected to be implemented in member jurisdictions by 2020. *BIS*

Fifth BCBS-FSI-BSCEE high-level meeting on supervisory priorities (International)
The Basel Committee on Banking Supervision (BCBS), the Financial Stability Institute (FSI) of the Bank for International Settlements (BIS) and the Group of Banking Supervisors from Central and Eastern Europe (BSCEE) jointly organised the fifth high-level meeting on supervisory priorities in Europe at the BIS in Basel on 18-19 October 2017. The senior

representatives present at the meeting discussed

- Topical banking regulatory and supervisory issues such as proportionality in banking regulation;
- Identification, measurement and resolution of non-performing loans (NPLs);
- Implementation of the post-crisis banking resolution framework; and
- Regulation and supervision of cybersecurity. *BIS*

Review of all members' implementation of the LCR completed by the Basel Committee (International)

The Basel Committee on Banking Supervision published assessment reports on the implementation of the Liquidity Coverage Ratio (LCR)
in Australia, Brazil, Canada and Switzerland. The assessments, which were conducted as part of the Committee's Regulatory Consistency Assessment Programme (RCAP), indicate that the LCR regulations in each of these jurisdictions were found to be compliant with the global Basel standards. The Basel Committee also published its thirteenth progress report on adoption of the Basel regulatory framework. The report sets out the status of adoption of Basel III standards in the Committee's member jurisdictions, as of end-September 2017. *BIS*

To Top

Inside Edge

ORSA - Continuous improvement cycle

South African insurance and reinsurance companies were expected to submit their first ever Own Risk and Solvency Assessment (“ORSA”) by the end of August 2015. This was the first compulsory call for submission by the Financial Services Board (“FSB”) and, for many insurers in South Africa, this was also the first mock ORSA cycle. This was the first compulsory call for submission by the Financial Services Board (“FSB”) and, for many insurers in South Africa, this was also the first mock ORSA cycle. For many, this first cycle took the format of compliance and few approached it from a value-add perspective. The next compulsory submission was due September 2016 with the third mock ORSA submission due in 2017, in line with the insurer’s ORSA cycle but before the calendar year is over.

This may be the last mock ORSA cycle for many, if the Solvency Assessment and Management (“SAM”) legislation is enacted in the second half of 2018, as per the latest indication from the FSB.

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Michelle Dubois
Senior Manager, Africa Regulatory CoE
Email ID: Michelle.Dubois@kpmg.co.za