

FINANCIAL MARKETS BILL – 2012

PRESENTER: ROY HAVEMANN

| CHIEF DIRECTOR: FINANCIAL MARKETS AND STABILITY, NATIONAL TREASURY

| 21 NOVEMBER 2012



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



Context

- "A safer financial sector to serve South Africa better" announced a number of changes in our approach to regulation:
 - **Institutional architecture of regulation** →
 - Who regulates?
 - *Shift to twin peaks*
 - **Strengthening our approach to regulation** → How do they regulate?
 - *New banking regulations (Basel 2.5 and Basel 3)*
 - *Financial Markets Bill*
 - *Credit Ratings Services Bill*
 - *Financial Services General Laws Amendment Bill*
 - **Strengthening our approach to market conduct** → How do firms behave?
Important that financial services firms must be held to a higher standard (people's savings and livelihoods are at risk, as is the entire financial system)
Consumer protection regime needs to be

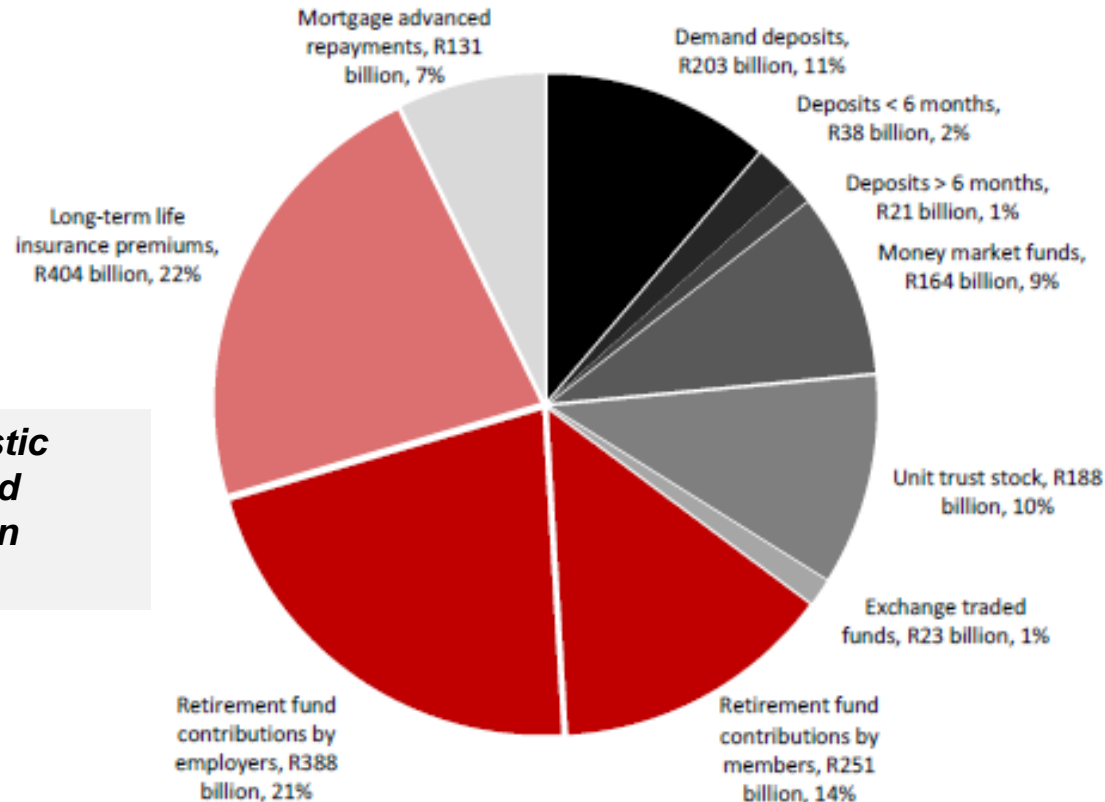
Capital markets convert savings into growth

The central role played by capital markets in our economy

- To stimulate economic growth, savings must be converted into investment in the real economy
- Government and companies access capital through capital markets i.e. issuance of equity, bonds, money market instruments and other
 - E.g. annual fiscal deficit is financed from bond market*
- Allows pension funds to invest directly into companies
 - PIC has large holdings in the JSE*
- Efficient (liquid and secure) financial market means more efficient allocation of capital, lower cost of capital, risk management, and effective access to domestic and foreign savings

Savings flow into financial markets mainly from pensions and life insurance

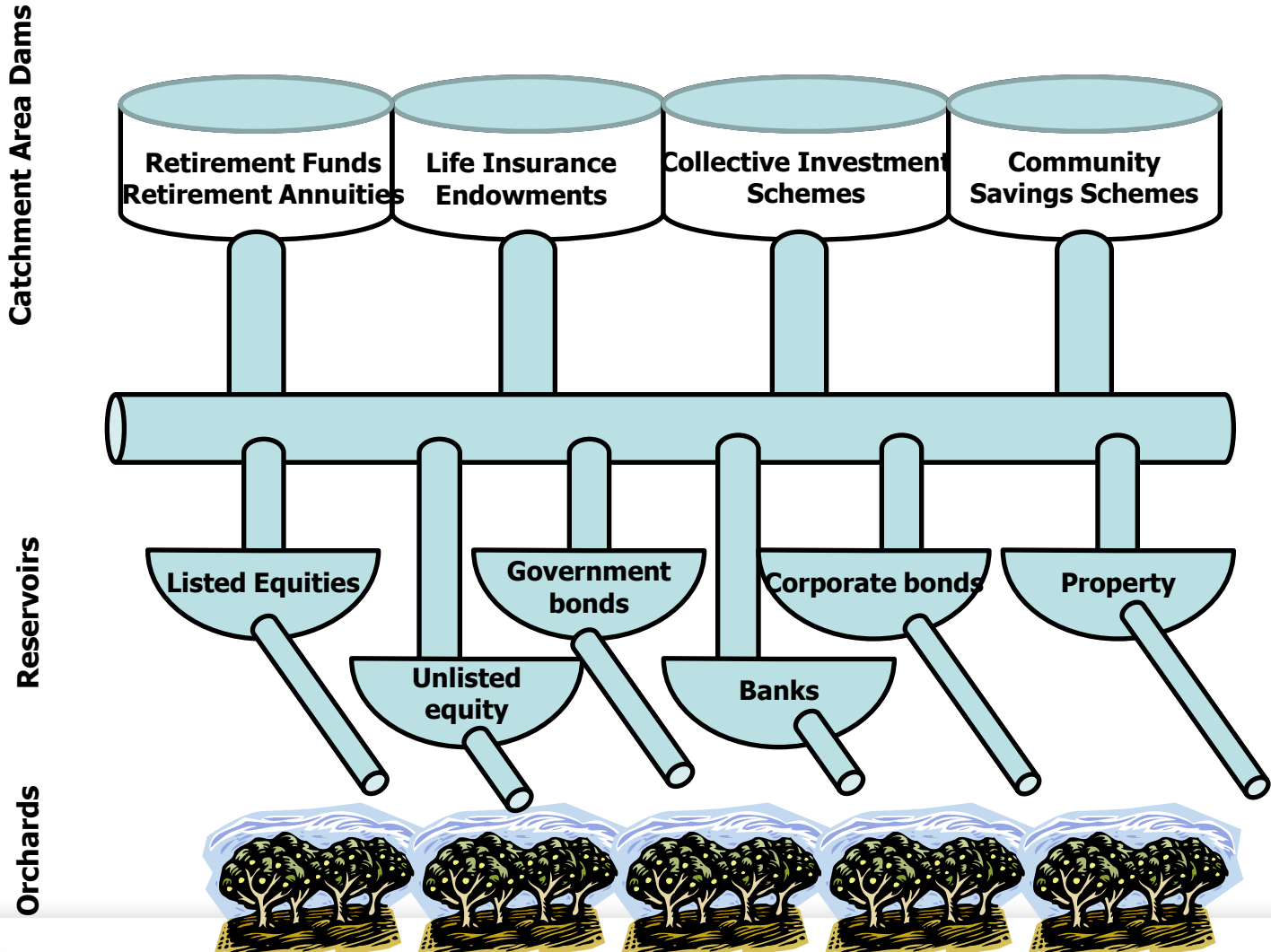
Flow of savings from household savings, 1999-2010



Due to low domestic savings, increased reliance on foreign savings

Source: National Treasury, 2012. Strengthening retirement savings

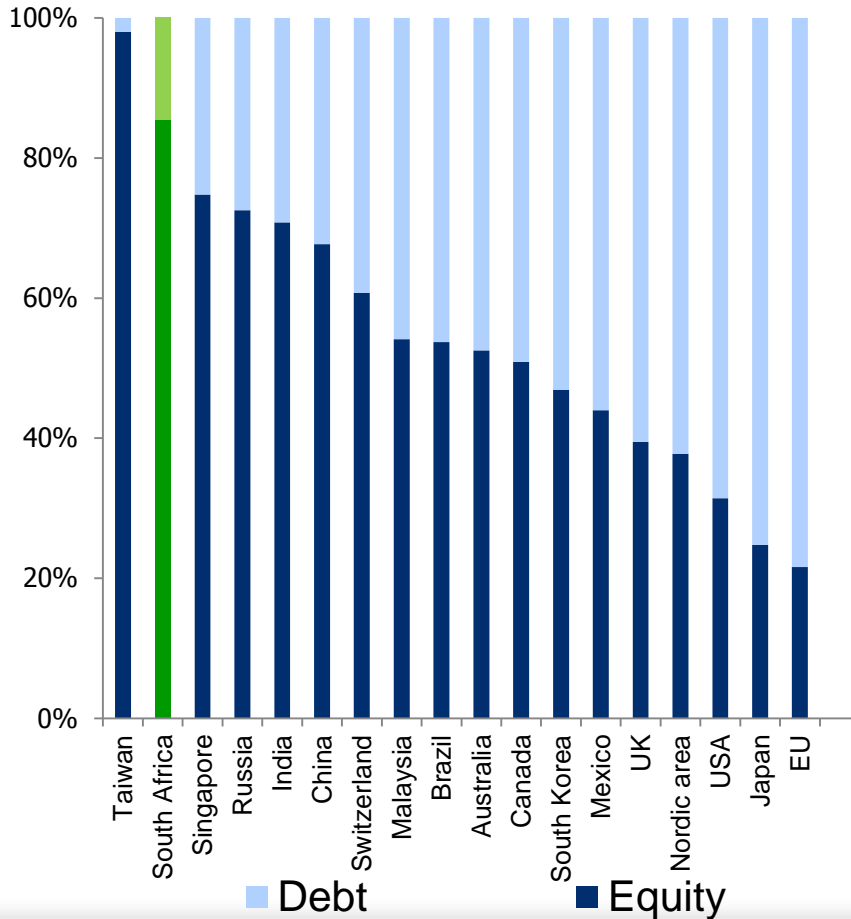
Financial markets channel savings into growth



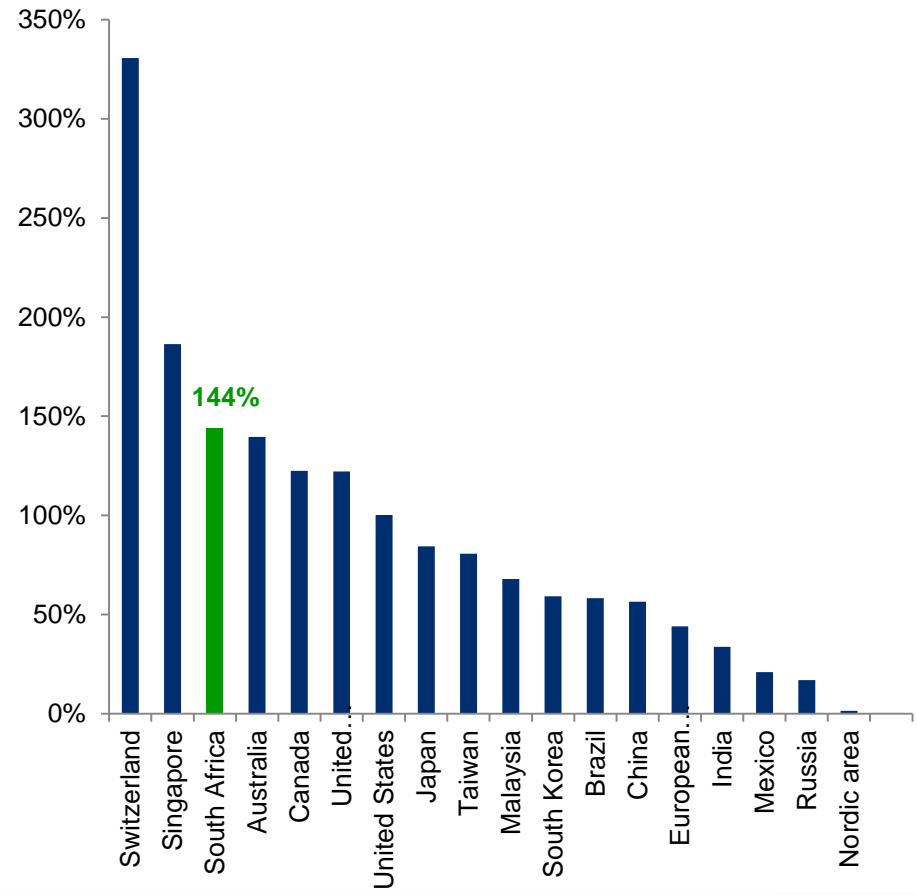
Source ASISA, 2010

South African capital markets are particularly deep and liquid

Equity to debt composition



Equity to GDP



South African regulatory framework is amongst the best in the world

The Global Competitiveness Index	Rank of 142 2011/12
Frequency of banking crises	1 st
Regulation of securities exchanges	1 st
Strength of auditing and reporting standards	1 st
Soundness of banks	2 nd
Efficacy of corporate boards	2 nd
Availability of financial services.	3 rd
Availability of financial services	3 rd
Financing through local equity market	4 th
Legal rights index, 0–10 (best)*	8 th
Strength of investor protection	10 th
External debt to GDP	11 th
Financial stress index	12 th
Ease of access to loans	36 th
Affordability of financial services	39 th
Venture capital availability	44 th

- Strong scores on regulation of securities exchanges, equity market financing, and strength of local equity financing
- Lower scores on ease of access to loans, affordability of financial services and venture capital availability

The Bill updates the Securities Services Act

- Repeal & replace Securities Services Act (no 36 of 2004), as amended
- Alignment with International developments:
 - G-20 commitments following global financial crisis
 - Financial Stability Board recommendations
 - International best practice: International Organisation of Securities Commissioners (IOSCO)
 - IMF and World Bank international assessments (Financial Sector Assessment Program, and Report on Observance of Standards and Codes)
- Changes in principles, laws, e.g. UNIDROIT Convention & international regulatory practices
- Technical/functional issues

Tabling of the Bill after a long process of engagement

- Securities Services Act Review (2009-11)
- Publication of draft Bill on 4 August 2011
- Comments Received
- Public Forum on 5 October 2011
- NT/FSB/SRO Working Group reviewed comments
- Follow up Treasury-led meetings and correspondence
- Consultative workshops with banks and non-bank financial inst.'s
- Additional meetings with stakeholders including IDBs and PDs
- Submission of the revised Bill to Parliament
- Informal briefing to Parliament earlier this year
- Public forum on 9 May 2012

The Bill has now reached the final stages of becoming law

Date '12

Legislative Process

7 February

Informal briefing on the two Bills

22 May

Formal briefings on Bills

29 May

Public Hearings

4 June

Initial Feedback on CRSB

1 August

Parliamentary Workshop

8 August

Final Response from Treasury

14/15 August

Deliberations

5 September

Adoption - SCoF

6 November

Adoption - National Assembly

21 November

SeCOF - NCOP

Process going forward

Date	Bills	
2012	Credit Ratings Services Bill	G-20 requirements
	Financial Markets Bill	G-20 requirements/ (OTC Derivatives)
2013 ?	Banks Amendments Bill	Basel III and align to new Companies Act
	Financial Services General Laws Amendment Bill	Annual/ Bi-annual Bill to update various laws, FSAP, etc.
2012/13	Insurance Laws Amendment Bill	
2013	Twin Peaks Architecture Bill	Establish new market conduct regulator, shift prudential regulation to Reserve Bank
2013/14	Twin Peaks Amendment Bill	Additional update of legislation

Main objectives of the Bill

Bill aims to:

- Increase confidence in the South African Financial Markets
- Promote the protection of regulated persons and clients
- Reduce systemic risk
- Promote international and domestic competitiveness of securities services

(Clause 2: Objects of the Act)

Achieves this through establishing a framework for:

- Efficient and effective supervision
- Financial stability & mitigating systemic risk
- Investor/client protection, taking into account protection against market abuse

The Structure of the Bill

- **Preliminary Provisions** (*Chapter I*) – *Definitions, Objects of the Act*
- **Regulation and Supervision** (*Chapter II*) – *Powers of the Minister (s5), Registrar & Deputy Registrar(s6)*
- **Exchange** (*Chapter III*) – *licensing , exchange rules, etc.*
- **Central Securities Depository** (*Chapter IV*) – *custody & administration of securities*
- **Clearing House** (*Chapter V*) – *licensing, rules & functions of a clearing house*
- **Trade Repositories** (*Chapter VI*) – *Duties of licensed TR*
- **General provisions applicable to Market Infrastructure** (*Chapter VII*)
- **Code of Conduct** (*Chapter VIII*), **Nominees** (*Chapter IX*)
- **Market Abuse** (*Chapter X*) – *Directorate of Market Abuse, offences, insider trading sanctions, etc.*
- **Auditing** (*Chapter XI*)
- **General Provisions** (*Chapter XII*) – *Enforcement Committee, winding-up & business rescue, etc.*

SSA

FMB

➤ Registrar powers detailed, Minister has general powers to issue Regulation (not applied in practice)

➤ No explicit consideration of systemic risk

➤ No requirement for regulatory coordination between regulators

➤ Minister has explicit regulation-making powers on policy matters (OTC derivatives, direct foreign participation, new regulated person category) – **s5(1)**

➤ Registrar powers expanded e.g. on-site visits (**s6 (6)(b)** & **s 95**, enforcement committee (**s99**))

➤ Requires reporting of systemic risk to Registrar & Minister – e.g. **s 10 (2)(f)**, **s 30 (2)(h)**, **s 50 (2)(b)**, *etc.*

➤ Registrar must coordinate with Governor to monitor & mitigate systemic risk – **s 6(3)(o)**

➤ May negotiate & enter into written agreements with other supervisory authority to co-ordinate and harmonise supervision – **s 6(6)**

SSA

➤ Provides for licensing & supervision of exchange (with integrated clearing function), CSD, associated CH, & respective users

➤ SRO model generally applied

➤ Concept of financial market infrastructure absent (refers instead to SROs)

➤ Licensing of exchange/CSD/associated CH requires local presence

FMB

➤ In addition, provides for licensing & supervision of independent CH (requirements aligned across clearing models) & TR, with respective users – **ch v & ch vi**

➤ SRO model retained, conflict & service provider provisions significantly strengthened - **s 61 & 62**

➤ Concept of FMI replaces SRO term (although model retained, see above) – **ch vii**

➤ Licensing of FMI subject to Minister regulation, no local presence required for CH and TR in the law (although may be required by Minister)

SSA

FMB

➤ Quiet on direct foreign participation in South African markets

➤ Limited oversight of unlisted securities (including OTC derivatives)

➤ Only market players that are "named" can be regulated

➤ Financial stability a policy priority

➤ Minister to prescribe how external entities enter SA market - **s 5(1)(c) & s 5(2)**

➤ Minister to prescribe regulatory framework for OTC derivatives - **s 5(1)(a)**

➤ Scope of regulation expanded to ensure full regulatory coverage; Minister can deem any entity to be a regulated person - **s 5(1)(b)**

➤ New provisions to strengthen stability, esp. wrt securities intermediation & insolvency (see on UN Convention)

SSA

FMB

➤ Limited powers relating to insolvency in settlement chain

➤ Provides for segregation of assets & client protection

➤ SROs enjoy limited liability in fulfillment of functions; covers both regulatory & commercial role

➤ Alignment to old Companies Act

➤ Alignment to UN Convention on securities intermediation

➤ Strengthening of these provisions – **e.g. s 21, s 22, s 32 (2)(m), etc.**

➤ Limitation of liability retained (**s 72**), balanced by stronger accountability provisions – esp. additional business (**s 61**), conflicts of interest (**s 62**), transparency in rules making & formalised complaints mechanism

➤ Alignment to new Companies Act

SSA

FMB

➤ Quiet on overlapping jurisdiction (by regulators)

➤ Coordination required between regulators which jurisdiction overlaps with Registrar Financial Markets, regulated persons carved out from Consumer Protection Act – **s 3(6)**

➤ No direct authority for Registrar for international cooperation (can do so through FSB Act)

➤ Registrar can enter into MoUs, Registrar can request information from any person – **s 6**

➤ Registrar to approve merger/takeover transactions above 15%

➤ In addition to Registrar powers, Minister to approve change in control exceeding 49% – **s 67(5)**

➤ Code of conduct for users of exchange/CSD/associated CH

➤ Code of conduct expanded to all regulated persons – **ch viii**

➤ Insider trading a contravention

➤ Market abuse and insider trading provisions strengthened – **ch x**

Big conceptual issues

- **A changing market structure, taking into account the SRO model for regulatory oversight**
 - Do we have it, do we want it, do we need it?
 - Containing market power in an entity that is referee & player
- **Accommodation of an exchange-lite (SRO lite?)**
- **Expand the scope of regulation** → minimise regulatory avoidance/arbitrage
- **A flexible law for a rapidly evolving, innovating market**
- **Preventing a crisis, containing a crisis, minimising loss** → role of the SARB as prudential/systemic regulator?
- **Keeping market participants honest** → curbing market abuse
- **The interplay of cross-cutting laws** → certainty supports stability

The background is a solid red color with several overlapping, semi-transparent, wavy bands of a darker red shade. These bands create a layered, textured effect across the top and middle of the page.

Thank You