LAW REVIEW PROJECT

Association Incorporated under Section 21
No: 199200110008

VAT Reg No: 4830 1818 24

Floor 0, Prime Meridian House,
Block 6
Bryanston Gate
170 Curzon Road
Bryanston
PO Box 4056
Cramerview 2060
Tel **011 884 0270**
Fax **011 884 5672**
Email **gailday.fmf@mweb.co.za**

MEMORANDUM

TO: AG Wicomb
Committee Secretary
Standing Committee on Finance

22 April 2013

FROM: Leon Louw
Law Review Project

SUBMISSION BY THE LAW REVIEW PROJECT ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL 29 OF 2012 (B29-2012) – PROPOSED SUBSTITUTION OF S55 OF THE STIA AND S62 OF THE LTIA

INTRODUCTION

1. The Law Review Project (LRP) welcomes the opportunity to comment on the Financial Services Laws General Amendment Bill 29 of 2012 (B29-2012)

2. A draft Bill, a Financial Services Laws General Amendment Bill was released for comment on the 9th March 2012 which after revisions reappeared in its present finalized form.[1]

3. The provisions of the Bill are wide ranging with the intention of amending numerous sections in 11 existing Acts of Parliament.

4. Clearly the scope of the proposed amendments, 11 Acts is far too extensive to permit consideration of all the proposed amendments. This submission is confined to ss 102 and140 of B29-2012. S102 proposes a substitution of s62 of the Long-term Insurance Act 52 of 1998 (LTIA) and s140 proposes a substitution of s55 of the Short-term Insurance Act 53 of 1998 (STIA). Since the two sections marked for substitution are essentially the same, in the interests of simplification, reference will be made only to s55 of the STIA.

5. If the concerns over these two substitutions are borne in mind, essentially the only two amendments considered in this submission, it is accepted that additional concerns about other sections of the proposed amendments, in this wide ranging Bill must also exist and it can be anticipated that the proposals contained in these amendments will lead to considerable problems to the financial industry in the future.

RECOMMENDATIONS

6. For reasons set-out below it is recommended that:

A The existing s55 be repealed

B Nothing is substituted in its place

C The existing rules passed in terms to the existing s55 be re-promulgated as regulations to the Act

[1] It is customary, when referring to parliamentary Bills, to refer to clauses of the Bill which distinguishes the clauses in Bills from sections in Acts and makes it clear as to which of the two documents is being discussed. B29-2012 does not follow this custom and designated the clauses in the Bill as sections. Nevertheless to avoid unnecessary confusion in these comments the clauses in Bill 29-2012 also will be referred to as sections so as to be consistent with the text of the Bill itself.

REASONS IN SUPPORT OF THE RECOMMENDATIONS

7. The reasons for the repeal of s55 are now explained.

Existing system – current s55

Introduction

8. The current s55 is headed; *Protection of Policyholders*..

9. S55 of the STIA deals with the making of rules as approved by the Minister.

10. The STIA also empowers the Minister to make regulation (s70). The STIA thus permits the making of both Rules and Regulations. It can be accepted that Rules are different from Regulations failing which one of the two is redundant.

Rules distinguished from regulations

11. Rules are usually associated with clubs or professional societies or bodies. So there are the rules of the tennis club golf club and so on. Professional rules exist such as the professional rules of conduct. The difference between rules and regulations is therefore that the rules are made by the club or the professional body. They are not and cannot be made by an outside entity such as a Regulator.

12. Rules are known in legislation but follow the above principle, being made by the club or professional body itself. For example there are the Rules of a Pension Fund (ss11-13) of the Pension Funds Act 24 of 1956 recognizes the rules made by the Pension Fund and specifies the form and format and declares that these Rules legally have binding force. Rules also exist for Medical Schemes and recognized and regulated in terms of the Medical Schemes Act 131 of 1998. There is no suggestion that either the Regulator or the Minister can make the Rules of a Pension Fund or Medical Scheme. The Regulator may approve the rules made by the regulated body but not make the rules for the body. Neither the Regulator nor the Minister can make the rules and impose these on the regulated body. If the Minister wishes to impose something on the regulated body, against the will of that body, the only way that that can be achieved is via regulations.

13. If the current s55 of the Short-term Act is examined it will be seen that it enables rules that follow the above scheme of things.   To be made by the Minister they must follow the statutory process.

14. The rules emanate in proposal form, from the Advisory Committee (s55(1)) or the Registrar but only after consultation with the Advisory Committee (s55(1)). In either case, the rules are under the control of the Advisory Committee.

15. The proposed rules, after approval by the Advisory Committee, are submitted to the Minister (s55(4)), *together with* all written representations received in the proposal process.

16. Once the Minister has received the proposed rules and all the representations, the Minister may approve the rules and cause these to be promulgated.

17. The Minister could not of his own accord make rules. The Rules had to be approved or in consultation with the Advisory Committee and if the Advisory Committee disagreed about the content of the Rules the Minister would be fully informed about this disagreement including the reasons therefore. The Advisory Committee consisted largely of representatives of the industry. If the Registrar ever attempted to pass Rules which did not get the support of the industry the Minister would be fully informed and could decide, and almost certainly would not to pass the Rules. At most the existing s55 envisages a form of self-regulation by the industry under the auspices of the Advisory Committee as in the case of pension funds and medical schemes.

Rules in the now discarded UK self-regulatory system.

18. The Short-term Insurance Act was passed in 1998 but took a decade to finialise. The philosophies underpinning the Act are to be found in the Melamet Commissions of the time and regulatory developments in the UK.

19. The reasons for the rules and their relationship to a system of self-regulation is not hard to find. Self-regulation formed the cornerstone of the UK system ushered in by the passing of the Financial Services Act of 1986 (UK). Miller (1989) quotes Sir Nicholas Goodison's explanation of the then new strategy behind the Act: Sir Nicholas explained:

> The Financial Services Act . . . aims to combine the speed and flexibility of self-regulation with the security and credibility of statutory protection for the investor. It hopes to achieve this by organizing brokers, dealers, fund managers

and advisers in the various City investment markets into self- regulating organizations (SROs), whose rules and procedures would need to be recognized by a central agency. The same agency would also recognize exchanges, such as the stock exchange, as investment exchanges (RIEs). This new layer of authority will be represented by the Securities and Investments Board (SIB)

20. The idea was thus that each market organization would regulate itself and in so doing draw up, so to speak, the rules of the club. An example of this is the JSE Rules. The Rules drawn up by the regulated body would then be sent to the regulator (the SIB in the UK) who after consultation would promulgate these. The regulator was never to be the author of the rules. No one but the regulated SRO itself could impose those rules on the SRO's. The system did not work in the UK and the SIB morphed into the FSA, which too did not work and it is not surprising that the FSA has now been abolished.

Conclusions about the current system and safeguards

21. In South Africa the system also never really worked as originally planned. The system never allowed the Regulator or Minister to make and impose rules on the industry. At least two, if not three, significant safeguards exist. Firstly the rules were under the control of the Advisory Committees and secondly the rules were made by the Minister not regulator who would only make Rules if so recommended by the Advisory Committee and after considering all the representations. The third safeguard envisaged in the original UK model was in South Africa, never in place, and that is the rules themselves should have emanated from the industry bodies themselves. So Rules for the Short-Term industry, where needed, should have emanated from the South African Insurance Association (SAIA) and for the intermediaries by the FIA (Financial Intermediaries Association) and so on.

22. If the Regulator were to make rules, the two safeguards would be removed. If the Regulator is to impose itself into the rule making system then the regulator would have hi-jacked the system in a way never intended. If the Advisory Committee is to be abolished then the rules system which goes with it should also be abolished. S55 should not be substituted; it should be abolished.

National Treasury's unconstitutional proposal

Parliament is being asked to hand-over its legislative powers, unfettered to an unelected regulator

23. As pointed out above, rules only exist because they are drawn up by the club or professional body. No regulator nor minster has the authority to draw-up rules. The Minister can regulate in terms of making regulations. The regulator does not make regulations but regulates in terms of the existing regulations.

24. There is no known basis in law for a regulator to make its own regulations and regulate in terms of these regulations. That would violate all known constitutional principles.

25. As will become clear the substitution will result in parliament handing over its legislative power to the regulator. If passed the regulator will become the legislator – it will become a parliament.[2] The Regulator would not even be ruling in terms of law but by decree.

26. Should parliament substitute the current section with the proposed section, which legally it cannot do, the legitimacy of parliament as an institution will be seriously undermined.

27. It is emphasized that the substitution does not ask parliament to delegate its legislative power, the proposed rules will not be subordinate legislation as is usually understood but has the end result of parliament handing over its legislative power.

28. The handing over is without any checks and balances which forms part of the parliamentary process.

29. The proposed substituted section is completely different. The section now states: "*The Registrar* … may make rules" (emphasis supplied).

30. No longer is the Advisory Committee *nor the Minister* involved, nor any process. Advisory Committees are now to be abolished in terms of other proposals in B29-2012.

[2] A parliament is the institution which has the power to create or change laws. As AV Dicey, the world's most famous constitutional jurist pointed out this power, in the Westminster system, comprises of three institutions; the king, the lords and the commons. It does not reside in a single institution, such as the commons. Historically to make laws required the consent of the three individual estates. The drafters of the Constitution of the Republic of South Africa, 1996 seemed not to understand what a parliament is since s42 declares that parliament is composed of the National Assembly and the National Council of Provinces. It forgets the President without whose consent there can be no law. S81 of the Constitution of 1996 correctly requires the President to assent to a Bill before it becomes an Act of Parliament.

31. None of the existing safeguards are replaced in the proposed section. There are now in fact no safeguards whatsoever.

32. The intention of the substituted section is now that the Regulator will make, arbitrarily, its own Rules. The Regulator would have greater powers than the Minister has to make regulations, and indeed parliament itself. The Regulator is asking Parliament to hand over its legislative powers. In is strongly doubted if Parliament even has the authority to do so. It would be contrary to established constitutional principles for Parliament to hand over its legislative pen to a non-elected government entity. It would be a violation of the principle of the separation of powers. It would violate the fundamental historical purpose of a parliament of elected legislators. If the substitution is approved, the executive would have legislative powers which the executive will argue parliament has delegated to it.

33. In recent years there has been a growing tendency to expand the concept of delegated legislation but there is a limit to which legislative power can legitimately be delegated. Such a limitation is pointed out by Professor LM du Plessis in his work on the *Interpretation of Statutes* (1986:par 5.4) when dealing with delegated legislation. He points out, "Regulations in this category [delegated to someone other than a Minister] must usually also be approved by a higher authority, *and this approval then serves as a prerequisite for their validity*" (emphasis added). Constitutionally the Regulator cannot legitimately be the approver of its own Rules. The Minister fulfills this vital role in the existing legislation. The approval of the Minister after following due process which exists in the current legislation is not there for show. Without the approval of the Minster any rules made by the regulator will lack legal validity.

34. Not only is the attempt by the Regulator to acquire parliament's legislative powers contrary to fundamental constitutional principles, not surprisingly, it does not rest on constitutional authority found within the South African Constitution. The authority of the National Legislative Authority to assign its legislative power is governed by s44(1)(a)(iii) of the SA Constitution, 1996 and this section clearly does not include assigning its legislative power to any non-elected regulator.

Hand over, not delegated – no empowering limitation

35. Legislation often contains provisions which delegate to the Minister the power to make

regulations. Generally these regulations must be consistent with the Act and fall within the four corners of the delegating provisions, failing which the regulations become *ultra vires*. In that way historically it is argued that parliament still controls the legislation.

36. The empowering provisions for making these so-called rules, on the other hand, are so broad that the provision does not contain any clear limitation on the rules which can be made. Parliamentary power is not being delegated within a limiting empowerment section. It is being handed over. For example the relevant portion of proposed s55(2)(d) reads:

> S55(2) The Rules [made by the Regulator] may provide:
>
> (d) for norms and standards with which … a short-term insurer or … short-term insurance business must comply;

37. Norms and standards are, of course, simply other words for laws. The section thus authorizes the Regulator to make any "law" to which a short-term insurer must comply – this is authority to make complete and absolute arbitrary "legislation". The passing of this section will result in Rule by Arbitrary Decree by a regulator, not the rule of law.

Bill of Attainder

38. Not only is the regulator asking parliament to hand over its legislative pen, it wants the power to pass Bills of Attainder.

39. A new section has been added, s55(3) which reads:

> "Rules referred to in subsection (2) may—
> (a) apply generally; or
> (b) be limited in application to a particular kind or type of policy,
> short-term insurer or short-term insurance business."

40. This proposed section will enable the Registrar to make arbitrary specific rules applicable to a specific insurer. Parliament is supposed to only make laws of general application. It may not make laws applicable to specific persons and instances. Specific laws are known as Bills of Attainder. These in terms of constitutional principles have been outlawed for centuries.[3] Not only is the Registrar attempting to acquire parliament's legislative powers but also powers which parliament does itself not have. The regulator wishes to have the power to issue Bills of

[3] Bills of Attainder are specifically outlawed in the Constitution of the United States of America.

Attainder.

41. In any event to have legislation which permits the Regulator to treat insurers differently and specifically will lead to extortion and corruption.

Failed attempt by National Treasury to remedy the constitutional shortcomings

42. Once the constitutional shortcomings of this section became public knowledge[4] the National Treasury attempted to remedy some of the defects by inserting, a section which did not exist in the first draft of the Bill, section 55(6) which reads:

> "(6) If the Registrar publishes a rule in terms of subsection (5), the notice referred to in subsection (5) must be tabled in Parliament (sic), and the National Assembly may instruct the Registrar to repeal or amend the rule."

43. It is not clear how this section will overcome constitutional illegitimacy. An illegitimate rule cannot become legitimate merely if the notice is tabled in [a House of] parliament. It is not clear what the tabling is supposed to achieve. Does the National Treasury seriously think that members of parliament will on reading the rules suddenly jump up in the National Assembly and declare the rules to be unacceptable? In any event the proposed s55(6) is legal nonsense and unconstitutional. It is legal nonsense since the notice cannot be tabled in parliament. It can be tabled in a chamber of parliament but parliament itself does not exist as a single chamber. Secondly for the National Assembly to start instructing a government entity to do something is for the National Assembly to become part of the executive and as such violate the doctrine of separation of powers. If the government or its institutions are to be instructed by parliament that is to be achieved via the passing of law.

REGULATOR DRAFTING POLICY WORDING

Introduction

44. In addition to the overall concerns, specific novel sections are also of concern.

45. The provisions of s55(2)(d) and (e) are unprecedented. The Regulator wishes to acquire the authority to write policy wordings of insurance contracts. These sections read:

[4] Vivian (2012a; 2012b)

S55(2) The Rules [made by the Regulator] may provide:

(d) for norms and standards with which a policy, a short-term insurer or a type of short-term insurance business must comply;
(e) for standardized wording, definitions or provisions that must be included in a policy;

46. And to emphasize the point made above; the Regulator may make different rules for different insurers. The Regulator may approve one set of policy wording for one insurer and prevent a different insurer using the exact same wording.

End of insurance innovation

47. Policy wording stand at the heart of insurance innovation. Historically South African insurers have been held internationally in high esteem leading the world in several innovative aspects. If the regulator can interfere, approve or dictate policy wording there can be little doubt that innovation will cease. West Germany is a country which has far superior regulatory talents than South Africa and had a tightly regulated insurance market. In 1985 the *Institute of Fiscal Studies* carried out a comparative study of the UK and West German markets and found on all points the West German insurance market lagged behind the unregulated UK market (Finsinger *et al* 1985). One of the West German regulatory requirements was that policy wording needed prior approval. Experience showed that it took decades to get any approval. As a consequence compared to the UK the West German market became moribund. The system of policy prior approvals of policy wording had to be abandoned when West Germany entered into the EU Common market.

Solvency of insurers and policy wordings

48. The Regulator is in no position to judge the financial consequences of any changes in policy wording. In fact the Regulator has no idea at all of the financial consequences of any of its actions. As Johan van Zyl, the chairman of Sanlam, recently pointed out the Solvency Assessment Project (which has not yet been implemented) has already cost Santam at least R120 m and it is estimated will cost the insuring public in excess of R1 bn. It has been estimated that FAIS cost the public R2bn in 2012. It is doubted if this massive expenditure has achieved anything other than to massively decrease the productivity (efficiency) of South African insurers. As Van Zyl points out the R120 m has gone on consultants and additional staff – none of which were employed to increase productivity of Santam but merely to manage the regulatory burden.

49. In any event the regulator does not have the expertise to draft policy wording. In the 1980s the South African insurance market set about drawing up model wording – it took the best technical brains in the market several years to produce the market model policy wordings, the MultiMark series. The industry decided to abandon the series on legal advice that the series may violate the Competition legislation. The Regulator has already demonstrated its inability to draft proper policy wordings through its Code of Conduct for intermediaries. It drafted a single wording based on investment intermediaries and then declared that this code was also applicable to short-term insurers. This has resulted in incomprehensible liabilities being imposed on short-term intermediaries.

50. The Regulator is clearly oblivious of the link between insurer solvency and policy wordings. The broader the wordings the greater the insurer liabilities. As already noted the existing regulations have already added billions of rands in expenses on the insuring public. The Regulator has no way of assessing the impact of its wording on insurer liabilities and hence solvency.

Other countries' regulators impose policy wordings?

51. The National Treasury has tried to justify its desire to impose policy wording on the grounds that it is required by IAIS (ICP 19) and that the USA, UK, Singapore, China, South Korea and Malaysia have introduced standard contract provisions. IAIS (ICP 19) says nothing whatsoever about standard wordings. A reading of the lengthy ICP 19 makes it very clear that standard wordings are not envisaged. It appears that National Treasury is confusing and equating the concept of Treat your Customer Fairly (TCF) with the imposition of standard wording.

52. National Treasury holds that the UK imposes standard wordings on the market. This is incorrect. The South African market practice is derived directly from the UK practice. Insurers were until the 1970s able to impose standard wordings on members of the Tariff. However a commission expressed the view that Tariff Committees may well be illegal and these were disbanded. Since the 1970s no mechanism has existed in the UK for standard wordings and as already indicated industry model wordings have been abandoned in SA for fear of running fowl of the competition regime. Once again it appears National Treasury is confusing the UK TCF programme with standard wordings. The now defunct, in 2008, FSA did issue a document entitled *Fairness of terms in consumer contracts: a visible factor in firms treating their customers fairly*. The FSA did not have any authority to specify standard insurance wording.

What it could do was draw to the attention of some insurers that it considered some terms in their policies to be unfair to the consumer in terms of the *Unfair Terms in Consumer Contracts Regulations* 1999 and ask insurers to change their wording. This is vastly different to the regulator dictating the wordings. Once an insurer agreed to or undertakes to change its wording the FSA advised the Office of Fair Trading (OFT) of the undertaking which was then published.

53. The USA is a special case. Insurance is a state matter and thus a state by state review would have to be carried out. Decades ago insurers were given an option to either be subject to the anti- trust legislation or be subject to regulation. Insurers chose regulation. Daniel Schwarcz (2011) by examining homeowners policies debunks the commonly held claim that insurance policy wordings are standard. The abstract to his research reads:

> This article empirically debunks the common claim that homeowners insurance policies do not vary across different insurance carriers. In fact, carriers' homeowners policies differ radically with respect to numerous important coverage provisions.

54. As already indicated West Germany had to abandon prior approval procedures when joining the EU. It can thus be accepted that the EU does not permit a regulator to impose standard wordings.

55. The processes in Singapore, China, and South Korea will not be commented on since insurance practice is not normally benchmarked on these countries.

**NATIONAL TREASURY'S JUSTIFICATION
OF PATENTLY UNCONSTITUTIONAL LEGISLATION**

56. By any measure this is an extraordinary Bill. National Treasury has attempted to justify this Bill. Firstly it did so at a presentation on the 14th November 2012 and secondly in its document entitled *Comparative Matrices of Proposed Amendments and Explanatory Motivations*.

57. No motivation given for the substitution of s55 withstands scrutiny.

58. The motivation given in *Comparative Matrices of Proposed Amendments and Explanatory Motivations* is no motivation at all. It is merely a statement of what the proposed substitution aims at achieving ie to authorize the registrar to make rules and to extend the matters on which

rules may be made. As indicated the extension means to make arbitrary rules. Reference is made to international standards but no international standard is referred to. No such international standard exists. The so-called motivation given in the document *Comparative Matrices of Proposed Amendments and Explanatory Motivations* can thus be dismissed as a non-event.

59. More detail as to motivation was given in the presentation of the 14th November 2012 and that motivation is now examined.

Global financial crises

60. National Treasury (2012:slides 3) justifies the legislative changes on the basis of the global financial crisis:

> The Bill addresses URGENT issues in 11 financial sector laws, including legislative gaps highlighted after the *2008 financial crisis* (sic) and to align these laws with the new Companies Act, 2008 and other legislation
>
> (Emphasis provided)
>
> And (slide 6)
>
> Making financial regulators/supervisors like Fin Services Board (FSB) and Banking Supervision Dept. much STRONGER, more INTRUSIVE and much TOUGHER- it is meant to be DRACONIAN in line with G20 commitments

61. The 2007 financial crisis was a banking not short-term insurance crisis and the current crisis is caused by government deficits. There is factually no link or any rational reason to impose this legislation on the insurance market. The insurance industry did not cause or face any of the problems associated with the banking crisis. Cynics may single out the American insurance company, AIG, as an insurer which got into trouble. However AIG is not such an example since the problem did not arise from conventional insurance. It had ‘strayed from the safety of conventional insurance into trading credit derivatives and other combustible activities’. This is now widely acknowledged by the IAIS (*Economist* 406-8828:71). The AIG has paid back all the TARP funding from its conventional insurance business indicating the soundness of that business. The South African insurance market is not susceptible to the AIG problem since insurance can only be written for classes for which the insurer is licenced. Credit derivatives

are not a class of insurance business.

62. So the short-term insurance market can reject the idea that intrusive, draconian, unconstitutional regulation should be imposed upon it because of the banking crisis of the 2008s.

63. Contrary to the view that lack of regulation caused the banking crisis, a much more plausible explanation for the financial crisis is given by Professor Niall Ferguson (2012:48), the United Kingdom's leading economic historian who has extensively studied financial systems and the financial crises and concludes that it was not the absence of regulations but regulators and regulations themselves which caused the banking crisis:

> In my next [chapter] I shall ask if excessively complex government regulation of markets is in fact the disease of which it purports to be a cure. The rule of law has many enemies, as we shall see. But among the most dangerous foes are the authors of very long and convoluted laws.

And at page 54:

> The financial crisis that began in 2007 had its origins precisely in over-complex regulation.

And at page 57 the point already made:

> Banks were the cause of the crisis …and banks were regulated.

In line with International standards and powers extended to other registrars

64. The National Treasury keeps indicating that the powers sought are in line with international standards. This view is incorrect. National Treasury does not appear to understand the regulatory power in other countries.

> This will allow the Registrar to act swiftly when required, is consistent with international standards and the powers extended to other registrars.

65. It is interesting that National Treasury does not provide copies of the legislation in other countries. All it does is make vague unsubstantiated claims.

66. The proposed s55 is wide ranging. National Treasury does not indicate which portion of s55 is supposed to be in line with 'international standards' not does the National Treasury give any reference where a regulator has been authorized to take over the powers of parliament. It is seriously doubted if the statement of National Treasury is even remotely correct. Even if it is correct so-called international standards cannot over-ride the constitution nor is the track record of so-called international practice very good. It was not so long ago that attempts were made in South Africa to follow the example of the now abolished UK FSA and place banks under the supervision of the FSB. It is now freely admitted that it was a grave mistake to do so – in fact that decision was disastrous – and the supervision of UK banks has now been returned to the supervision of the Bank of England. At the time South Africa refused to follow the so-called best international practice and left the banks to be supervised by the SA Reserve Bank.

In short none of the proposals can be justified on the grounds given by National Treasury.

Reference list

Dicey, AV (1915/1982) Introduction to the Study of the law of the Constitution Liberty Press

Du Plessis, LM (1985) *Interpreting Statutes*

Finsinger, Joeg, Elizabeth Hammond and Julian Tapp *Insurance: Competition or Regulation* Institute of Fiscal Studies Report Series 19

Miller, Sam Scott (1989) 'Regulating Financial Services in the United Kingdom – an American Perspective' Business Lawyer 44 (2) 323-364.

National Treasury (2012) *Presentation to the Standing Committee on Finance* 14th November 2012

Schwarcz, Daniel (2011) 'Reevaluating Standardised Insurance Policies' *University of Chicago Law Review* 78 1263-1348

Van Zyl, Johan (2013) 'Money & Investing' *Financial Mail* 219 (6) February 15-20

Vivian (2012a) 'On my mind – retrograde move' *Financial Mail* July 6

Vivian (2012b) 'Insurance industry is under siege from rule by decree' Business Day November 8