

REPUBLIC OF SOUTH AFRICA

FINANCIAL SECTOR LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF FINANCE)

[B — 2018]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL**To amend—**

- the Insolvency Act, 1936, so as to exclude dispositions made in case of resolution from the application of certain provisions;
- the South African Reserve Bank Act, 1989, so as to provide for the performance of resolution functions by the Reserve Bank;
- the Banks Act, 1990, so as to exclude banks in resolution from the application of certain provisions; to provide for set-off against any amounts paid by the Corporation for Deposit Insurance; to repeal certain provisions;
- the Mutual Banks Act, 1993, to provide for the issuing of guidance notes and directives by the Prudential Authority; to provide for an offence in case of non-compliance with a directive; to repeal certain provisions; to exclude a mutual bank in resolution from the application of certain provisions;
- the Competition Act, 1998, so as to exclude transactions in relation to resolution from the application of certain provisions;
- the Financial Institutions (Protection of Funds) Act, 2001, so as to exclude designated institutions in resolution from the application of certain provisions;
- the Co-operative Banks Act, 2007, so as to repeal certain provisions;

- the Companies Act, 2008, so as to provide for the winding up of a company in resolution in certain circumstances; to exclude transactions, amalgamations or mergers or arrangements in relation to resolution from the application of certain provisions; to exclude an institution in resolution from the application of a Chapter;
 - the Financial Markets Act, 2012, so as to exclude designated institutions from the application of certain provisions; and to exclude designated institutions in resolution from the application of certain provisions;
 - the Financial Sector Regulation Act, 2017, so as to provide for the establishment of a framework for the resolution of banks and systemically important non-bank financial institutions to ensure that the impacts and potential impacts of a failure of a bank or systemically important financial institution on financial stability are managed appropriately; to designate the Reserve Bank as the resolution authority; to establish a deposit insurance scheme, including a Corporation for Deposit Insurance and a Deposit Insurance Fund; to provide for co-ordination, co-operation, collaboration and consultation between the Corporation for Deposit Insurance and other entities in relation to financial stability and the functions of these entities; to make provision for designated institutions in connection with resolution matters; to further provide for information required to assess a levy; to effect consequential and technical amendments to certain provisions; to accordingly amend the long title and the Arrangement of sections; and
 - the Insurance Act, 2017, so as to exclude certain insurers from the application of a Chapter;
- and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Part 1

Amendments to the Insolvency Act, 1936 (Act No. 24 of 1936)

Amendment of section 32 of Act 24 of 1936, as amended by section 5 of Act 122 of 1993

1. Section 32 of the Insolvency Act, 1936, is hereby amended by the addition of the following subsection:

"(4) Sections 27, 28, 29, 30, 31 and 32 do not apply to any disposition made by the Reserve Bank in exercising its resolution functions in terms of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and the trustee shall not have any right in terms of this section in respect of those dispositions."

Insertion of section 98AA in Act 24 of 1936

2. The Insolvency Act, 1936, is hereby amended by the insertion after section 98A of the following section:

"Cost of resolution of designated institutions

98AA. After the resolution of a designated institution as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), any balance of the

free residue shall be applied in defraying costs reasonably and properly incurred by the South African Reserve Bank in performing the resolution functions in relation to the designated institution."

Insertion of section 102A in Act 24 of 1936

3. The Insolvency Act, 1936, is hereby amended by the insertion after section 102 of the following section:

"Preference in terms of covered deposits

102A. (1) Thereafter any balance of the free residue shall be applied in the payment of any claims proved against the estate in question which were covered as a covered deposit with interest thereon calculated as provided in section 103(2).

(2) For the purposes of this section, 'covered deposit' has the meaning ascribed to it in section 1 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)."

Amendment of section 103 of Act 24 of 1936, as amended by section 15 of Act 101 of 1983

4. Section 103 of the Insolvency Act, 1936, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Any balance of the free residue after making provision for the expenditure mentioned in sections [*ninety-six to one hundred and two*] 96 to 103B inclusive, shall be applied—".

Insertion of section 103A in Act 24 of 1936

5. The Insolvency Act, 1936, is hereby amended by the insertion after section 103 of the following section:

"Flac instruments

103A. Thereafter any balance of the free residue shall be applied in the payment of any claims proved against the estate in question arising in connection with flac instruments as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)."

Insertion of section 103B in Act 24 of 1936

6. The Insolvency Act, 1936, is hereby amended by the insertion after section 103A of the following section:

"Regulatory capital

103B. (1) Thereafter any balance of the free residue shall be applied in the payment of any claims proved against the estate in question arising in

connection with the amounts designated as regulatory capital in terms of a financial sector law.

(2) As between themselves, the claims referred to in subsection (1) shall rank as prescribed in a financial sector law or, if there is no such financial sector law, they shall rank *pari passu* and abate in equal proportion, if necessary."

Amendment of Arrangement of sections of Act 24 of 1936

7. The Arrangement of sections of the Insolvency Act, 1936, is hereby amended by the insertion after the item relating to—

(a) section 98A of the following item:

"98AA. Cost of resolution of designated institutions";

(b) section 102 of the following item:

"102A.Preference in terms of covered deposits"; and

(c) section 103 of the following items:

"103A. Flac instruments

103B. Regulatory capital".

Part 2***Amendments to the South African Reserve Bank Act, 1989 (Act No. 90 of 1989)***

Amendment of section 10 of Act 90 of 1989, as amended by section 3 of Act 10 of 1993, section 5 of Act 2 of 1996, section 2 of Act 39 of 1997 and section 290 of Act 9 of 2017, read with Schedule 4 to that Act

8. Section 10 of the South African Reserve Bank Act, 1989, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

- "(d) form a company or acquire shares in a **[limited]** company formed and registered in accordance with the provisions of the Companies Act, **[1973,] 2008—**
- (i) for the purposes of the performance of its resolution functions in terms of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); or
- (ii) if the Board is of the opinion that any such acquisition will be conducive to the attainment of any of the objects of this Act;"

Part 3***Amendments to the Banks Act, 1990 (Act No. 94 of 1990)***

Amendment of section 51 of Act 94 of 1990, as amended by section 11 of Act 9 of 1993, section 34 of Act 19 of 2003, section 22 of Act 22 of 2013 and section 1 of Act 3 of 2015

9. Section 51 of the Banks Act, 1990, is hereby amended by the repeal in subsection (1) of paragraph (c).

Amendment of section 54 of Act 94 of 1990, as amended by section 6 of Act 42 of 1992, section 12 of Act 9 of 1993, section 36 of Act 26 of 1994, section 5 of Act 55 of 1996, section 36 of Act 19 of 2003, section 13 of Act 20 of 2007, section 90 of Act 17 of 2009, section 24 of Act 22 of 2013 and section 25 of Act 9 of 1993

10. Section 54 of the Banks Act, 1990, is hereby amended by the insertion before subsection (1) of the following subsection:

"(1A) This section does not apply to a bank in resolution."

Amendment of section 60 of Act 94 of 1990, as substituted by section 1 of Act 81 of 1991 and amended by section 39 of Act 26 of 1994, section 40 of Act 19 of 2003, section 15 of Act 20 of 2007 and section 29 of Act 22 of 2013

11. Section 60 of the Banks Act, 1990, is hereby amended by the substitution in subsection (1B)(b) for subparagraph (ii) of the following subparagraph:

"(ii) thereafter to set off against any amount—

(aa) paid by the Corporation for Deposit Insurance established in terms of section 166AD of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), to or in respect of depositors of the bank;

(bb) paid to depositors by **[the Authority, a deposit insurance scheme,]** a financial sector regulator or any governmental body[,], as part or full compensation for the losses suffered by depositors as a result of the bank being unable to repay their deposits; and".

Repeal of sections 68, 69 and 69A of Act 94 of 1990

12. (1) The Banks Act, 1990, is hereby amended by the repeal of sections 68, 69 and 69A.

(2) Despite the amendments to the Banks Act, 1990, contained in subsection (1), an investigation by a commissioner in terms of section 69A of the Banks Act that is pending and not concluded immediately before the date on which

subsection (1) comes into effect must be continued, concluded and reported on by the commissioner in terms of that section as if it had not been repealed.

Amendment of section 89A of Act 94 of 1990, as inserted by section 3 of Act 3 of 2015

13. The Banks Act, 1990, is hereby amended by the substitution for section 89A of the following section:

"Fair administrative action

89A. Any administrative action taken in terms of this Act[, **including any administrative action taken by a curator appointed in terms of section 69,**] is subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).".

Amendment of section 91 of Act 94 of 1990, as amended by section 23 of Act 9 of 1993, section 56 of Act 26 of 1994, section 16 of Act 36 of 2000, section 65 of Act 19 of 2003, section 32 of Act 20 of 2007, section 47 of Act 22 of 2013 and section 290 of Act 9 of 2017, read with Schedule 4 to that Act

14. Section 91 of the Banks Act, 1990, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) section 17(6), 21, 22(3) or (8), 32(4)(a), **[69A(14),]** 78(2), 82(3), 83(3)(a), 84(1A), 84(8) or subsection (1), (2) or (3) of this section

(excluding the offence in terms of subsection (1)(b), referred to in paragraph (a)), shall be liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."

Part 4

Amendments to the Mutual Banks Act, 1993 (Act No. 124 of 1993)

Amendment of section 4 of Act 124 of 1993, as amended by section 2 of Act 54 of 1999 and section 290 of Act 9 of 2017, read with Schedule 4 to that Act

15. Section 4 of the Mutual Banks Act, 1993, is hereby amended—

(a) by the substitution for the heading of the following heading:

"Powers of inspection of, guidance notes, directives and guidelines by, [Registrar] Authority";

(b) by the substitution for subsections (3) and (4) of the following subsections:

"(3) Neither the provisions of this section nor any other provision of this Act shall be construed as prohibiting the [Registrar] Authority from holding discussions, from time to time, with the chief executive officer of any mutual bank, or with any executive officer or employee, designated by such chief executive officer, of—

(a) that mutual bank; or

(b) any associate of that mutual bank,

with a view to achieving effective supervision by the [Registrar] Authority, on an individual or a consolidated basis, of that mutual bank or of that mutual bank and any of its associates.

(4) The **[Registrar]** Authority may from time to time by means of a circular furnish mutual banks with guidelines regarding the application and interpretation of the provisions of this Act.";

(c) by the addition of the following subsections:

"(5) The Authority may from time to time by means of a guidance note furnish mutual banks and auditors of mutual banks with information in respect of market practices or market or industry developments within or outside the Republic.

(6) The Authority may from time to time, in writing, after consultation with the relevant mutual bank or auditor of the mutual bank issue a directive to such a mutual bank or auditor of a mutual bank, either individually or collectively, regarding the application of the Act and may include the issuing of a non-financial sanction or a directive requiring a mutual bank or an auditor of a mutual bank, either individually or collectively, within the period specified in the directive, to—

(a) cease or refrain from engaging in any act, omission or course of conduct or to perform such acts necessary to remedy the situation;

(b) perform such acts necessary to comply with the directive or to effect the changes required to give effect to the directive; or

(c) provide the Authority with such information and documents relating to the matter specified in the directive.

(7) The directive contemplated in subsection (6) may—

(a) be cancelled in writing by the Authority, after consultation with the mutual bank or auditor of a mutual bank that is subject to the directive; and

(b) not be issued by the Authority with retroactive effect.

(8) Any mutual bank or auditor of a mutual bank that neglects, refuses or fails to comply with a directive issued under this section shall be guilty of an offence."

Amendment of section 29 of Act 124 of 1993, as amended by section 20 of Act 54 of 1999

16. Section 29 of the Mutual Banks Act, 1993, is hereby amended by the repeal in subsection (4) of paragraph (b).

Repeal of sections 73, 74, 75, 76 and 77 of Act 124 of 1993

17. The Mutual Banks Act, 1993, is hereby amended by the repeal of sections 73, 74, 75, 76 and 77.

Substitution of section 80 of Act 124 of 1993

18. The following section is hereby substituted for section 80 of the Mutual Banks Act, 1993:

"Sections 71, 72, and 78 do not apply to mutual banks in resolution

80. Sections 71, 72, and 78 do not apply to a mutual bank in respect of which a determination, in terms of section 166J of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), is in force."

Repeal of section 81 of Act 124 of 1993

19. The Mutual Banks Act, 1993, is hereby amended by the repeal of section 81.

Amendment of section 92 of Act 124 of 1993, as amended by section 290 of Act 9 of 2017, read with Schedule 4 of that Act

20. Section 92 of the Mutual Banks Act, 1993, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) contravenes or fails to comply with a provision of section 4(6), 20(7), 31, 40(2), 44(8), 48(2), 50(1) or (3), 51, 53, 54(2), 55(1), 56(1), 58(1), 59(1) or (3) or 60; or".

Amendment of Arrangement of sections of Act 124 of 1993

21. The Arrangement of sections of the Mutual Banks Act, 1993, is hereby amended by the substitution for the item relating to section 80 of the following item:

"80. Sections 71, 72 and 78 do not apply to mutual banks in resolution".

Part 5***Amendment to the Competition Act, 1998 (Act No. 89 of 1998)***

Amendment of section 18 of Act 89 of 1998, as substituted by section 6 of Act 39 of 2000 and amended by section 90 of Act 40 of 2007 and section 111 of Act 19 of 2012

22. Section 18 of the Competition Act, 1998, is hereby amended by the addition of the following subsection:

"(4) In addition to subsections (2) and (3), if the Governor of the Reserve Bank, or a person authorised by the Governor to do so, has determined in writing that this section applies to a transaction in terms of section 166S of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)—

(a) the Competition Commission may not make a decision in terms of section 13(5)(b) or 14(1)(b) in relation to the transaction;

(b) the Competition Tribunal may not make an order in terms of section 16(2) in relation to the transaction; and

(c) sections 13(6) and 14(2) do not apply in relation to the transaction."

Part 6

***Amendment to the Financial Institutions (Protection of Funds) Act, 2001 (Act
No. 28 of 2001)***

Insertion of section 8A in Act 28 of 2001

23. The Financial Institutions (Protection of Funds) Act, 2001, is hereby amended by the insertion of the following section:

"Sections 5 and 6 do not apply to designated institutions in resolution

8A. Sections 5 and 6 do not apply to an institution of which a determination, in terms of section 166J of the Financial Sector Regulation Act, 2017, is in force."

Amendment of Arrangement of sections of Act 28 of 2001

24. The arrangement of sections of the Financial Institutions (Protection of Funds) Act, 2001, is hereby amended by the insertion of the following item:

"8A. Sections 5 and 6 do not apply to designated institutions in resolution"

Part 7

Amendments to the Co-operative Banks Act, 2007 (Act No. 40 of 2007)

Amendment of section 1 of Act 40 of 2007, as amended by section 240 of Act 45 of 2013 and section 290 of Act 9 of 2017, read with Schedule 4 of that Act

25. Section 1 of the Co-operative Banks Act, 2007, is hereby amended by the substitution in subsection (1) for the definition of 'Fund' of the following definition:

" 'Fund' means the Deposit Insurance Fund established in terms of section 166BC of the Financial Sector Regulation Act;".

Amendment of section 55 of Act 40 of 2007, as amended by section 251 of Act 45 of 2013 and section 290 of Act 9 of 2017, read with Schedule 4 of that Act

26. Section 55 of the Co-operative Banks Act, 2007, is hereby amended by the repeal in subsection (1) of paragraph (g).

Repeal of sections 24, 25, 26 and 30 of Act 40 of 2007

27. The Co-operative Banks Act, 2007, is hereby amended by the repeal of sections 24, 25, 26 and 30.

Amendment of section 80 of Act 40 of 2007

28. Section 80 of the Co-operative Banks Act, 2007, is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) contravene or fail to comply with section 3(2), 10, 21(1) or 23 [**or** 25(4)];".

Part 8

Amendments to the Companies Act, 2008 (Act No. 71 of 2008)

Amendment of section 81 of Act 71 of 2008

- 29.** Section 81 of the Companies Act, 2008, is hereby amended—
- (a) by the deletion in subsection (1) of the word "or" at the end of paragraph (e);
 - (b) by the substitution in subsection (1) for the full stop at the end of paragraph (f) of the expression "; or"; and
 - (c) by the addition in subsection (1) of the following paragraph:

"(g) in the case of a designated institution as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), the Reserve Bank has applied to the court for an order to wind up the company on the grounds that the company has been placed in resolution in terms of that Act and there are no reasonable prospects that the company will cease to be in resolution."

Amendment of section 112 of Act 71 of 2008, as amended by section 69 of Act 3 of 2011

30. Section 112 of the Companies Act, 2008, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

"(aA) to which section 166S of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), applies;".

Amendment of section 113 of Act 71 of 2008

31. Section 113 of the Companies Act, 2008, is hereby amended by the insertion before subsection (1) of the following subsection:

"(1A) This section does not apply to an amalgamation or merger to which section 166S of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), applies."

Amendment of section 114 of Act 71 of 2008, as amended by section 70 of Act 3 of 2011

32. Section 114 of the Companies Act, 2008, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Unless **[it]** the company is in liquidation, **[or]** in the course of business rescue proceedings in terms of Chapter 6 or the arrangement is one to which

section 166S of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), applies, the board of a company may propose and, subject to subsection (4) and approval in terms of this Part, implement any arrangement between the company and holders of any class of its securities by way of, among other things—".

Amendment of section 128 of Act 71 of 2008, as amended by section 81 of Act 3 of 2011

33. Section 128 of the Companies Act, 2008, is hereby amended by the addition of the following subsection:

"(4) This Chapter does not apply to an institution in respect of which a determination, in terms of section 166J of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), is in force."

Part 9

Amendments to the Financial Markets Act, 2012 (Act No. 19 of 2012)

Amendment of section 3 of Act 19 of 2012, as amended by section 290 of Act 9 of 2017, read with Schedule 4 to that Act

34. Section 3 of the Financial Markets Act, 2012, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Sections 100 to 103 do not apply in relation to the South African Reserve Bank, or a [bank] designated institution."

Amendment of section 60 of Act 19 of 2012, as amended by section 290 of Act 9 of 2017, read with Schedule 4 to that Act

35. Section 60 of the Financial Markets Act, 2012, is hereby amended by the addition of the following subsection:

"(5) If the market infrastructure is a designated institution in resolution, the Authority must give notice to the Reserve Bank before taking any action in terms of this section."

Amendment of section 64 of Act 19 of 2012, as amended by section 290 of Act 9 of 2017, read with Schedule 4 to that Act

36. Section 64 of the Financial Markets Act, 2012, is hereby amended by the addition of the following subsection:

"(7) This section does not apply to a designated institution in resolution."

Part 10

Amendments to the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

Amendment of long title of Act 9 of 2017

37. The Financial Sector Regulation Act, 2017, is hereby amended by the substitution for the long title of the following long title:

"To establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority, and conferring powers on these entities; to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank; to establish the Financial Stability Oversight Committee; to provide for the establishment of a framework for the resolution of banks and systemically important non-bank financial institutions to ensure that the impacts and potential impacts of a failure of a bank or systemically important financial institution on financial stability are managed appropriately; to designate the Reserve Bank as the resolution authority; to establish a deposit insurance scheme, including a Corporation for Deposit Insurance; to regulate and supervise financial product providers and financial services providers; to improve market conduct in order to protect financial customers; to provide for co-ordination, co-operation, collaboration and consultation among the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the Corporation for Deposit Insurance, the National Credit Regulator, the Financial Intelligence Centre and other organs of state in relation to financial stability and the functions of these entities; to establish the Financial System Council of Regulators and the Financial Sector Inter-Ministerial Council; to provide for making regulatory instruments, including prudential standards, conduct standards and joint standards; to make provision for the licensing of financial institutions; to make comprehensive provision for powers to gather

information and to conduct supervisory on-site inspections and investigations; to make provision in relation to significant owners of financial institutions and the supervision of financial conglomerates in relation to eligible financial institutions that are part of financial conglomerates; to make provision for designated institutions in connection with resolution matters; to provide for powers to enforce financial sector laws, including by the imposition of administrative penalties; to provide for the protection and promotion of rights in the financial sector as set out in the Constitution; to establish the Ombud Council and confer powers on it in relation to ombud schemes; to provide for coverage of financial product and financial service providers by appropriate ombud schemes; to establish the Financial Services Tribunal as an independent tribunal and to confer on it powers to reconsider decisions by financial sector regulators, the Ombud Council and certain market infrastructures; to establish the Financial Sector Information Register and make provision for its operation; to provide for information sharing arrangements; to create offences; to provide for regulation-making powers of the Minister; to amend and repeal certain financial sector laws; to make transitional and savings provisions; and to provide for matters connected therewith."

Amendment of section 1 of Act 9 of 2017

38. Section 1 of the Financial Sector Regulation Act, 2017, is hereby amended—

- (a) by the insertion in subsection (1) of the following definitions in their respective alphabetical order:

" **'agreement'** includes an arrangement or an understanding, whether in writing or not;

'bank' means each of the following:

(a) a bank as defined in the Banks Act;

(b) a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993); or

(c) a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

'Board' means the Board of the Corporation referred to in section 166AH;

'bridge company' means a company incorporated in terms of section 166F;

'Corporation' means the Corporation for Deposit Insurance established by section 166AD;

'covered deposit' means the portion of a qualifying deposit covered by the Deposit Insurance Fund provided for in section 166AA;

'creditor hierarchy' means the order in which a liquidator must, in terms of the Insolvency Act, apply property to satisfy claims of creditors;

'critical function', in relation to a designated institution, means a function that is—

(a) essential to, or that contributes substantially to, financial stability and is performed by the designated institution; and

(b) provided to, and essential to the continued operation of, the designated institution;

'deposit' has the meaning assigned to it in section 1(1) of the Banks Act;

'deposit insurance levy' means a levy of that name that may be imposed by legislation, in accordance with section 166BB;

'deposit insurance premium' means a premium imposed by legislation, in accordance with section 166BF;

'depositor' means a person that holds a deposit as defined in section 1 of the Banks Act;

'designated institution' means a designated institution as defined in section 29A;

'designated institution in resolution' means a designated institution in respect of which a determination in terms of section 166J(2) is in force;

'director' means a director of the Corporation;

'flac instrument' means a financial instrument issued by a designated institution, being an instrument that—

(a) complies with the requirements prescribed by a prudential standard for a flac instrument; and

(b) is of a kind that is not counted for the purpose of determining whether the designated institution satisfies the applicable requirements of—

(i) Chapter VI of the Banks Act;

(ii) Chapter V of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

(iii) Chapter III of the Co-operative Banks Act, 2007 (Act No. 40 of 2007); or

(iv) Chapter 6 of the Insurance Act, 2017 (Act No. 18 of 2017),

or prudential standards made for the purposes of any of those provisions;

'Fund' means the Deposit Insurance Fund established by section 166BC;

'Insolvency Act' means the Insolvency Act, 1936 (Act No. 24 of 1936);

'Managing Director' means the Managing Director of the Corporation appointed in terms of section 166AK(1), and includes a person acting as the Managing Director;

'orderly resolution of a designated institution' means the management of the affairs of the designated institution as provided in Chapter 12A in a way that—

(a) maintains financial stability; and

(b) in the case of a bank, protects the interests of depositors, including by ensuring that the critical functions performed by the designated institution continue to be performed;

'payment system operator' means an operator of a payment system and includes—

(a) a designated settlement system operator as defined in section 1 of the National Payment System Act; and

(b) a PCH system operator as defined in section 1 of the National Payment System Act;

'payment system participant' includes—

(a) a settlement system participant as defined in section 1 of the National Payment System Act;

(b) a Reserve Bank settlement system participant as defined in section 1 of the National Payment System Act; and

(c) a clearing system participant as defined in section 1 of the National Payment System Act;

'placing a designated institution in resolution' refers to making a determination in terms of section 166J(2) in relation to the designated institution;

'qualifying deposit' means a deposit with a bank, other than—

(a) a deposit evidenced by a bearer deposit instrument; or

(b) a deposit where the depositor holds the deposit in any of the capacity of—

(i) a financial institution;

(ii) the national government, a provincial government, a local government or an organ of state;

(iii) an entity listed in Schedule 2 of the Public Finance Management Act;

(iv) the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984); or

(v) the Public Investment Corporation established by section 2 of the Public Investment Corporation Act, 2004, (Act No. 23 of 2004);

'resolution', of a designated institution, means the management of the affairs of the designated institution as provided for in Chapter 12A;

'resolution action' means action in terms of section 166S;

'resolution function' means a function or a power—

(a) conferred on the Reserve Bank for the purpose of; or

(b) performed by the Reserve Bank in connection with,

the resolution of a designated institution (including a function or power conferred or performed for the purpose of reducing the risk that a designated institution may need to be placed in resolution);

'resolution practitioner', for a designated institution, means a person appointed in terms of section 166O;

'share' means a share as defined in section 1 of the Companies Act;

'systemically important payment system' means a payment system designated in terms of section 29B:";

(b) by the addition to the definition of "financial sector body" in subsection (1) of the following paragraphs:

"(g) the Reserve Bank, in relation to its resolution functions; and

(h) the Corporation;";

(c) by the insertion in subsection (1) after paragraph (b) of the definition of "supervised entity" of the following paragraph:

"(bA) a designated institution that is not otherwise a licensed financial institution; and".

Amendment of section 7 of Act 9 of 2017

39. Section 7 of the Financial Sector Regulation Act, 2017, is hereby amended by the addition to subsection (1) of the following paragraph:

"(i) the orderly resolution of designated institutions in resolution and, in connection with that, protection of depositors in banks through a deposit insurance scheme and containing the cost to the Republic of the steps taken."

Substitution of section 9 of Act 9 of 2017

40. The following section is hereby substituted for section 9 of the Financial Sector Regulation Act, 2017:

"Inconsistencies between Act and other [financial sector] laws

9. (1) In the event of any inconsistency between a provision of this Act, other than a Regulation or a regulatory instrument made under this Act, and a provision of another Act that—

(a) is a financial sector law; or

(b) deals with the failure or insolvency of a company or the appointment of a statutory manager, curator or similar person to a designated institution,

the provision of this Act prevails.

(2) In the event of any inconsistency between a provision of a Regulation or a regulatory instrument made in terms of this Act and a provision of a Regulation or a regulatory instrument made—

(a) in terms of a specific financial sector law; or

(b) in terms of another law that deals with the failure or insolvency of a company or the appointment of a statutory manager, curator or similar person to a designated institution,

the provision of the Regulation or regulatory instrument made in terms of this Act prevails."

Amendment of section 26 of Act 9 of 2017

41. Section 26 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The financial sector regulators must—

- (a) co-operate and collaborate with the Reserve Bank, including in relation to its resolution functions, and with each other, to maintain, protect and enhance financial stability;
- (b) provide such assistance and information to the Reserve Bank, including in relation to its resolution functions, and the Financial Stability Oversight Committee, to maintain or restore financial stability as the Reserve Bank or the Financial Stability Oversight Committee may reasonably request;

- (bA) provide such assistance and information to the Reserve Bank in relation to designated institutions and its resolution functions as the Reserve Bank may reasonably request;
- (c) promptly report to the Reserve Bank any matter of which the financial sector regulator becomes aware that poses or may pose a risk to financial stability; and
- (d) gather information from, or about, financial institutions and designated institutions that concerns financial stability or affects or may affect the performance of the Reserve Bank's resolution functions.".

Amendment of section 27 of Act 9 of 2017

42. Section 27 of the Financial Sector Regulation Act, 2017, is hereby amended—

- (a) by the substitution for the heading of the following heading:

"Memoranda of understanding [relating to financial stability]";

- (b) by the insertion after subsection (1) of the following subsection:

"(1A) Not later than six months after this subsection takes effect, the financial sector regulators and the Reserve Bank must amend the memoranda of understanding to include provision with respect to how they will co-operate and collaborate with, and provide assistance to, each other and otherwise perform their roles and comply with their duties relating to designated institutions."; and

- (c) by the insertion after subsection (3) of the following subsection:

"(3A) The Reserve Bank may enter into memoranda of understanding with either or both—
(a) the Corporation; and
(b) a body in a foreign country that has functions corresponding to the resolution functions of the Reserve Bank,
with respect to how they will co-operate and collaborate with, and provide assistance to, each other in connection with their functions in relation to a resolution in terms of this Act or the law of the foreign country."

Substitution of section 28 of Act 9 of 2017

43. The following section is hereby substituted for section 28 of the Financial Sector Regulation Act, 2017:

"Roles of other organs of state in relation to financial stability and resolution

- 28.** An organ of state, other than a financial sector regulator, must—
- (a) in performing its functions, have regard to the implications of its activities on financial stability and the Reserve Bank's resolution functions; [and]
 - (b) provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee so as to maintain and restore

financial stability as the Bank or the Committee may reasonably request[.]; and

(c) provide such assistance and information to the Reserve Bank in relation to designated institutions and its resolution functions as the Reserve Bank may reasonably request."

Substitution of heading to Part 6 of Chapter 2 of Act 9 of 2017

44. The following heading is hereby substituted for the heading to Part 6 of Chapter 2 of the Financial Sector Regulation Act, 2017:

"Part 6

Systemically important financial institutions and payment systems".

Insertion of sections 29A and 29B in Act 9 of 2017

45. The following sections are hereby inserted in the Financial Sector Regulation Act, 2017, after section 29:

"Designated institutions

29A. (1) In this Act, 'designated institution' means each of the following:

(a) A bank;

(b) a systemically important financial institution;

- (c) the payment system operator and participants of a systemically important payment system;
- (d) a company that is a holding company of a bank, a systemically important financial institution, or a payment system operator of a systemically important payment system; and
- (e) subject to any determination in terms of subsection (2), if a bank or a systemically important financial institution is a member of a financial conglomerate in terms of section 160, each of the other members of the financial conglomerate.

(2) The Governor may, by written notice to a person or body that is a designated institution because of subsection (1)(e), determine that the person or body is not a designated institution.

Designation of systemically important payment systems

29B. (1) (a) The Governor may, by written notice to the payment system operator of a payment system, designate the payment system as a systemically important payment system.

(b) The power of the Governor in terms of paragraph (a) may not be delegated.

(2) Before designating a payment system in terms of subsection (1) as a systemically important payment system, the Governor must—

- (a) give the Financial Stability Oversight Committee notice of the proposed designation and a statement of the reasons why the designation is

proposed, and invite the Committee to provide advice on the proposal within a specified reasonable period; and

(b) if, after considering the Financial Stability Oversight Committee's advice, the Governor proposes to designate the payment system in terms of subsection (1), invite the payment system operator of the payment system to make submissions on the matter, and give it a reasonable period to do so.

(3) In deciding whether to designate a payment system in terms of subsection (1), the Governor must take into account at least the following:

(a) The size and complexity of the payment system;

(b) the interconnectedness of the payment system with the financial system;

(c) whether there are readily available substitutes for the payment services that the payment system provides;

(d) recommendations of the Financial Stability Oversight Committee;

(e) submissions made by or for the payment system operator; and

(f) any other matters that may be prescribed by Regulation."

Amendment of section 30 of Act 9 of 2017

46. Section 30 of the Financial Sector Regulation Act, 2017, is hereby amended—

(a) by the substitution for the heading of the following heading:

**"Prudential standards and regulator's directives in respect of
[systemically important financial] designated institutions";**

(b) by the substitution for subsection (1) of the following subsection:

"(1) To mitigate the risks that systemic events may occur, the Reserve Bank may, after consulting the Prudential Authority, **[direct]** give a directive to the Prudential Authority requiring it to impose, either through prudential standards or regulator's directives, requirements applicable to one or more specific systemically important financial institutions or to such institutions generally in relation to any of the following matters:

- (a) Solvency measures and capital requirements, which may include requirements in relation to counter-cyclical capital buffers;
- (b) leverage ratios;
- (c) liquidity;
- (d) organisational structures;
- (e) risk management arrangements, including guarantee arrangements;
- (f) sectoral and geographical exposures;
- (g) required statistical returns; and

[(h) recovery and resolution planning; and]

- (i) any other matter in respect of which a prudential standard or regulator's directive may be made that is prescribed by Regulations made for this section on the recommendation of the Governor.";

(c) by the insertion after subsection (1) of the following subsections:

"(1A) To mitigate the risk that a designated institution may need to be placed in resolution, the Reserve Bank may, after consulting the Prudential Authority, give either or both of the following directives to the Prudential Authority:

(a) A directive to make one or more prudential standards that do any of the following—

(i) specify the characteristics of flac instruments;

(ii) prescribe requirements for the conduct of valuations for the purposes of section 166Q; or

(iii) prescribe requirements for record keeping, data management and reporting to the Reserve Bank or the Prudential Authority; and

(b) a directive to issue a regulator's directive to a specified designated institution requiring the designated institution to hold flac instruments to at least the value specified in the Reserve Bank's directive.

(1B) Without limiting the matters that the Reserve Bank must consider in relation to subsection (1A)(b) in a particular case, it must consider the—

(a) capital that the designated institution is required to hold in terms of a financial sector law;

(b) assets and liabilities of the designated institution;

(c) difficulties that the Reserve Bank may face in performing its resolution functions in relation to the designated institution if the

designated institution does not hold financial instruments to the at least the value proposed; and

(d) impact on the viability of the designated institution of holding financial instruments to at least the value proposed, and it may also consider international best practice."; and

(d) by the substitution for subsection (2) of the following subsection:

"(2) The Prudential Authority must, and has power to, comply with a directive in terms of subsection (1) or (1A)."

Repeal of section 31 of Act 9 of 2017

47. Section 31 of the Financial Sector Regulation Act, 2017, is hereby repealed.

Substitution of section 91 of Act 9 of 2017

48. The following section is hereby substituted for section 91 of the Financial Sector Regulation Act, 2017:

"Applicability of Promotion of Administrative Justice Act [to administrative action by financial sector regulators]

91. **[The]** Subject to this Act and to the specific financial sector laws, the Promotion of Administrative Justice Act applies to any administrative

action taken by the Reserve Bank, a financial sector regulator or the Corporation in terms of this Act or a specific financial sector law."

Amendment of section 105 of Act 9 of 2017

49. Section 105 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) matters on which a regulatory instrument may be made by the Prudential Authority in terms of this Act or a specific financial sector law;"

Amendment of section 109 of Act 9 of 2017

50. Section 109 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A financial sector regulator may not make a standard aimed at assisting in maintaining financial stability, including a standard related to designated institutions in resolution, without the concurrence of the Reserve Bank."

Amendment of section 129 of Act 9 of 2017

51. Section 129 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) This Chapter applies to—

- (a) information gathering, supervisory on-site inspections and investigations by the Prudential Authority or the Financial Sector Conduct Authority; and
- (b) investigations in relation to a designated institution in resolution by an investigator appointed in terms of section 134(1A)."

Amendment of section 134 of Act 9 of 2017

52. Section 134 of the Financial Sector Regulation Act, 2017, is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:

"(1A) The Reserve Bank may, in writing, appoint a person as an investigator to conduct an investigation into the business, trade, dealings, affairs or assets and liabilities—
(a) of a designated institution in resolution; and
(b) if the appointment so provides, of one or more companies in the group of companies of which the designated institution is part, before the designated institution was placed in resolution, and may appoint any person to assist the investigator in carrying out the investigation."; and

- (b) by the substitution for subsection (3) of the following subsection:

"(3) (a) The financial sector regulator must issue an investigator appointed in terms of subsection (1) with a certificate of appointment~~], which]~~.

(b) The Reserve Bank must issue an investigator appointed in terms of subsection (1A) with a certificate of appointment.

(c) [must be in the possession of the investigator when] When an investigator exercises any power or performs any duty in terms of this Act, **[and such]** the investigator must—

- (i) be in possession of a certificate of appointment; and
- (ii) produce the certificate of appointment at the request of any person in respect of whom such power is being exercised."

Insertion of section 135A in Act 9 of 2017

53. The Financial Sector Regulation Act, 2017, is hereby amended by the insertion after section 135 of the following section:

"Investigations into designated institutions in resolution

135A. The investigator appointed to conduct an investigation in relation to a designated institution in resolution must conduct the investigation in accordance with this Chapter and, within the period specified by the Reserve Bank in the appointment, report to the Reserve Bank whether, in the investigator's opinion—

(a) the designated institution should—

- (i) be wound up;

- (ii) remain in resolution for a specified period or until a specified event occurs; or
- (iii) cease to be in resolution;
- (b) any business of the designated institution was, before it was placed in resolution, carried on negligently, recklessly or fraudulently; and
- (c) proceedings, including criminal proceedings, should be instituted against any person in connection with the conduct of the business of the designated institution before it was placed in resolution."

Insertion of Chapter 12A in Act 9 of 2017

54. The Financial Sector Regulation Act, 2017, is hereby amended by the insertion after Chapter 12 of the following Chapter:

"CHAPTER 12A

RESOLUTION OF DESIGNATED INSTITUTIONS

Part 1

General provisions with respect to designated institutions

Exercise of Reserve Bank's powers

166A. (1) The Reserve Bank is the resolution authority, and has the resolution functions conferred on it by this Act.

(2) The resolution functions of the Reserve Bank are performed by the Governor.

Reserve Bank's resolution objectives

166B. The objective of the Reserve Bank in performing its resolution functions is to assist in maintaining financial stability and protecting the interests of depositors of banks through the orderly resolution of designated institutions that are in resolution.

Reserve Bank's resolution functions

166C. (1) In order to achieve its objective set out in section 166B, the Reserve Bank must perform its resolution functions in relation to a designated institution, and ensure that the affairs of a designated institution in resolution are managed so as to maintain, as far as practicable, financial stability.

(2) To the extent that is practicable to do so consistently with subsection (1), the Reserve Bank must, in performing its resolution functions in relation to a designated institution, including managing the affairs of a designated institution in resolution—

(a) have regard to, and seek to minimise any adverse impact on, the interests of shareholders and creditors of other members in the group of companies of which the designated institution forms part; and

(b) comply with, and ensure that the designated institution in resolution complies with applicable labour laws.

(3) The Reserve Bank may, in relation to the resolution of a designated institution, consider the possible impact that its action may have on the financial stability of a foreign jurisdiction where the designated institution is registered.

Winding up and similar steps in respect of designated institutions

166D. (1) Despite any other law, none of the following steps may be taken in relation to a designated institution without the concurrence of the Reserve Bank:

- (a) Suspending, varying, amending or cancelling a licence issued to that designated institution;
- (b) adopting a special resolution to wind up the designated institution voluntarily;
- (c) applying to a court for an order that the designated institution be wound up;
- (d) appointing an administrator, trustee, liquidator, provisional liquidator or curator for or of the designated institution;
- (f) Adopting a resolution to begin business rescue proceedings and place the designated institution under supervision;
- (g) applying to a court for an order in terms of section 131 of the Companies Act to place the designated institution under supervision and commencing business rescue proceedings;

- (h) adopting a business rescue plan for the designated institution;
- (i) any step corresponding to or having the same or a similar effect to a step mentioned in paragraph (g) or (h);
- (j) entering into an agreement for amalgamation or merger of the designated institution with a company; and
- (k) the designated institution entering into a compromise arrangement with creditors of the designated institution.

(2) A step referred to in subsection (1) that is taken without the Reserve Bank's concurrence is void.

Resolution planning

166E. The Reserve Bank must, on the basis of risk analyses conducted in consultation with the financial sector regulators, take adequate and appropriate steps to plan for the potential need for the orderly resolution of designated institutions.

Bridge companies

166F. (1) (a) The Reserve Bank may, for the purposes of exercising and performing its resolution functions, incorporate a company in accordance with the Companies Act.

(b) The company must, upon incorporation, be wholly owned by the Reserve Bank.

(2) The Reserve Bank may, for the purposes of facilitating the orderly resolution of a designated institution in resolution, transfer some or all of the shares that it holds in a bridge company to any person.

(3) (a) If a bridge company is being used in connection with the resolution of a designated institution in resolution, the Reserve Bank must formulate a plan for the bridge company to meet all requirements in terms of applicable financial sector laws.

(b) The plan must be formulated in consultation with the responsible authorities for the relevant financial sector laws.

(4) A bridge company of which the Reserve Bank is the sole shareholder, and an officer or employee of such a bridge company, are exempt from requirements in terms of a financial sector law until the bridge company applies for a licence in terms of the financial sector law.

Act of, and evidence of, insolvency

166G. (1) An action taken by the Reserve Bank, or by a designated institution in terms of this Act is not an act of insolvency and is not admissible as evidence of the insolvency of a designated institution or member of a group of companies of which a designated institution is part.

(2) An action taken by the Reserve Bank in the exercise or performance of the Reserve Bank's resolution functions, and an action that the Reserve Bank causes a designated institution in resolution to take—

(a) is not invalid merely because of the operation of the Companies Act or any other Act specified in Regulations made for purposes of this section; and

(b) is not a breach of a duty that the Reserve Bank may owe to the designated institution, or that the Reserve Bank or the designated institution may owe to the shareholders or creditors of the designated institution, including an obligation in terms of an agreement.

Liquidation

166H. (1) Despite any other provision of this Act, the Companies Act or the Insolvency Act—

(a) the Reserve Bank may apply to a competent court in terms of the Companies Act for the winding-up of a designated institution on the grounds that the institution has been placed in resolution and there are no reasonable prospects that the institution will cease to be in resolution; and

(b) no person other than a person recommended by the Reserve Bank may be appointed as provisional liquidator or liquidator of a designated institution.

(2) The Reserve Bank may appoint a person who, in the opinion of the Reserve Bank, has suitable experience and expertise to advise the provisional liquidator or liquidator of a designated institution, whether or not the designated institution was in resolution upon the appointment of the liquidator or provisional liquidator.

(3) The provisional liquidator or liquidator must consult the person or persons appointed in terms of subsection (2), and must have regard to his or her advice in performing his or functions as provisional liquidator or liquidator.

(4) Despite any other law, the suspension, cancellation or termination of a licence of a designated institution, while it is being wound up on an application by the Reserve Bank, does not affect—

(a) any order or appointment made, direction issued or any other thing done in terms of this section or the Insolvency Act in respect of such designated institution; or

(b) any power to be exercised, duty to be executed or right to be enforced in respect of such designated institution by the Reserve Bank, the Master of the High Court or the provisional liquidator or liquidator in term of this section or the Insolvency Act.

(5) The suspension or revocation of a licence of a designated institution under a financial sector law, whether or not the designated institution is in resolution or is being wound up, does not affect—

(i) the obligations and liabilities the designated institution has in connection with the licence, or

(ii) the powers of the Reserve Bank or a financial sector regulator under a financial sector law in relation to the designated institution.

Delegation of Reserve Bank's resolution functions

166I. (1) The Reserve Bank may, in writing—

(a) delegate any of the Reserve Bank's resolution functions; and

(b) at any time amend a delegation in terms of paragraph (a).

(2) Subject to subsection (4), a delegation in terms of this section may be made to—

(a) a Deputy Governor;

(b) a staff member of the Reserve Bank;

(c) the resolution practitioner appointed for a designated institution;

(d) a financial sector regulator; or

(e) the Corporation.

(3) This section does not permit the Reserve Bank to delegate—

(a) a power in terms of section 166J; or

(b) the power to delegate contained in this section.

(4) A delegation in terms of subsection (2)(c) is to be limited to resolution functions.

(5) A delegation in terms of this section—

(a) is subject to the limitations and conditions specified in the delegation;

(b) does not divest the Reserve Bank of responsibility in respect of the delegated power or duty; and

(c) may be revoked in writing at any time.

(6) Anything done by a delegate in terms of the delegation must be regarded as having been done by the Reserve Bank.

Part 2

Placing designated institutions in resolution

Determination by Minister to place designated institution in resolution

166J. (1) If in the opinion of the Reserve Bank—

(a) a designated institution is or will likely be unable to meet its obligations
(whether or not the designated institution is insolvent); and

(b) it is necessary to ensure the orderly resolution of the designated
institution to—

(i) maintain financial stability; or

(ii) in the case of a bank or a member of a group of companies of
which a bank is a member, to protect depositors of the bank,

the Reserve Bank may recommend to the Minister that the designated
institution be placed in resolution.

(2) The Minister may, after considering a recommendation in
terms of subsection (1) and if he or she considers that—

(a) the designated institution is or will probably be unable to meet its
obligations, whether or not the designated institution is insolvent; and

(b) it is necessary to ensure the orderly resolution of the designated
institution to—

(i) maintain financial stability; or

(ii) in the case of a bank or a member of a group of companies of
which a bank is a member, to protect depositors of the bank,

make a written determination, addressed to the Governor, placing the designated institution in resolution.

(3) In subsections (1) and (2), 'obligation' includes an obligation in terms of a prudential standard.

(4) The Reserve Bank must notify the Managing Director or the chairperson of the board of directors of the designated institution of the determination.

(5) The Reserve Bank must publish each determination made in terms of this section.

(6) Failure to comply with subsection (4) or (5) does not invalidate a recommendation or a determination in terms of this section.

When a designated institution ceases to be in resolution

166K. (1) If—

(a) a designated institution is in resolution; and

(b) the Reserve Bank considers that it is no longer necessary that the designated institution remain in resolution to—

(i) maintain financial stability; or

(ii) in the case of a bank or a member of a group of companies of which a bank is a member, to protect depositors of the bank,

the Reserve Bank must recommend to the Minister that the Minister revoke the determination in terms of section 166J(2) by which the designated institution was placed in resolution.

(2) The Minister may, after considering a recommendation in terms of subsection (1), revoke the determination.

(3) The Reserve Bank must publish each revocation in terms of this section but failure to do so does not invalidate the revocation.

(4) A designated institution also ceases to be in resolution when a liquidator (and not a provisional liquidator) is appointed for the designated institution, unless the court orders otherwise.

Placing a designated institution in resolution not a termination or acceleration event

166L. (1) A provision of an agreement is of no effect to the extent that the provision would, on the basis that a designated institution has been or is proposed to be placed in resolution, or on the basis of a resolution action or proposed resolution action in relation to a designated institution—

(a) confer a right, or impose an obligation, on a person; or

(b) accelerate or otherwise vary an obligation of a person,

whether or not the person is a party to the agreement.

(2) Subsection (1) does not apply in relation to an obligation to give notice to a person.

Reserve Bank to manage and control affairs of designated institution

166M. (1) While a designated institution is in resolution, the Reserve Bank has the power and authority to manage and control the affairs

of the designated institution, and to exercise any of the powers of the governing body and the shareholders or a class of shareholders of the designated institution, including powers, to the exclusion of the governing body and officers, and the shareholders, of the designated institution.

(2) Without limiting subsection (1), the powers of the designated institution, the governing body and the shareholders of the designated institution referred to in that subsection include the following powers—

- (a) to convene meetings of creditors of the designated institution to consult with them in relation to the exercise and proposed exercise of those powers and the powers of the Reserve Bank in terms of this Act;
- (b) to negotiate with a creditor of the designated institution with a view to the final settlement of the claims of the creditor against the designated institution; and
- (c) to propose and enter into arrangements or compromises between the designated institution and all its creditors, or all the creditors of a class of the designated institution's creditors, in terms of section 155 of the Companies Act.

Reserve Bank not holding company

166N. The Reserve Bank is not, merely because of this Chapter, a holding company of a designated institution in resolution.

Resolution practitioners

166O. (1) The Reserve Bank must, subject to subsection (2), as soon as practicable after a designated institution is placed in resolution, appoint, in writing, a person to be the resolution practitioner for the designated institution while it is in resolution, with specified powers and functions delegated to the person in terms of section 166I.

(2) A person need not be appointed in terms of subsection (1) if the Reserve Bank considers that, in the circumstances, it is not necessary to do so to achieve the orderly resolution of the designated institution.

(3) The Reserve Bank may at any time, in writing, terminate the appointment of the resolution practitioner for a designated institution in resolution.

(4) The resolution practitioner appointed for a designated institution in resolution must—

(a) comply with any instruction from the Reserve Bank in relation to the designated institution;

(b) give the Reserve Bank, at least monthly, a report on his or her activities in relation to the designated institution; and

(c) comply with the other terms of his or her appointment.

Transfers of shares in designated institutions in resolution

166P. (1) A share of a designated institution in resolution may not be traded without the approval of the Reserve Bank.

- (2) Subsection (1) does not prevent a transfer of a share—
- (a) on the death of the shareholder;
 - (b) to comply with an order of a court; or
 - (c) in circumstances specified in a prudential standard.

(3) A purported transfer contrary to subsection (1) is of no effect.

Part 3

Resolution measures

Valuation

166Q. (1) (a) Before the Reserve Bank takes a resolution action in relation to a designated institution in resolution, or a designated institution in resolution takes such action, the Reserve Bank must obtain a valuation of the assets or liabilities involved.

(b) The valuation must state the amount that, in the valuator's opinion, would be realised from the asset, or the amount that, in the valuator's opinion, would be the amount payable on the liability, in a winding up of the designated institution.

(c) The purpose of the valuation is to inform the Reserve Bank in relation to the resolution action.

(2) As soon as practicable after a designated institution ceases to be in resolution, the Reserve Bank must obtain a valuation of the assets and liabilities that were dealt with in resolution action.

(3) The Reserve Bank, in engaging a valuation for the purpose of this section, must specify the assumptions the valuator is to make in conducting the valuation.

(4) A valuation in terms of this section must be carried out—
(a) by a valuator that meets the requirements prescribed in; and
(b) otherwise in accordance with requirements prescribed in,
a prudential standard made for this section.

(5) The Reserve Bank must make valuations obtained in terms of this section available to the creditors and shareholders of the designated institution.

Powers

166R. (1) If the Reserve Bank determines that it is necessary to do so for the orderly resolution of a designated institution in resolution, the Reserve Bank may do any of the following:

(a) Subject to subsection (3), by notice to the other parties to an agreement to which the designated institution is a party, being an agreement that came into effect before the designated institution was

put in resolution, cancel the agreement with effect from the date stated in the notice, which date must be after the date of the notice;

(b) subject to subsection (4), by written notice to the parties and lodging notice to that effect with the court or arbitrator, suspend specified legal proceedings or arbitration proceedings to which the designated institution is a party;

(c) despite subsection (3), and subject to subsection (4), by written notice to the parties, suspend the institution of any claim for damages in respect of loss sustained by a person resulting from a cancellation of an agreement in terms paragraph (a);

(d) subject to subsection (4), by written notice to the parties to an agreement to which a designated institution is a party, suspend an obligation of a party to the agreement; or

(e) subject to subsection (5), by notice published in the Register, prohibit the commencement of specified legal proceedings or arbitration proceedings against the designated institution.

(2) The Reserve Bank may exercise the power in terms of subsection (1)(a) only—

(a) if the agreement prefers one creditor of the designated institution over another creditor of the same class;

(b) if the agreement is unreasonably onerous on the designated institution;

(c) if the agreement is a lease of movable or immovable property entered into before the designated institution was placed in resolution; or

(d) to the extent that the agreement is a guarantee issued by the designated institution before the designated institution was placed in

resolution, excluding a guarantee that the designated institution is required to make good within 30 days after the designated institution was placed in resolution.

(3) Cancellation of an agreement in terms of subsection (1)(a) does not affect the rights of the parties to the agreement, which rights were accrued before the date the cancellation takes effect.

(4) A notice in terms of subsection (1)(b), (c) or (d) must specify the period of the suspension, which must be a reasonable period.

(5) A notice in terms of subsection (1)(e) must specify the period of the prohibition, which must be a reasonable period.

(6) A notice in terms of subsection (1)(b), (c), (d) or (e) further suspends the operation of any time barring terms, whether in an agreement or a law, and includes the suspension of the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the specified period.

Resolution action (including restructuring and bail in)

166S. (1) If the Reserve Bank determines that it is necessary for the orderly resolution of a designated institution in resolution that the designated institution enter into a particular transaction, the designated institution may enter into the transaction, and may do so despite any law or agreement that would otherwise restrict or prevent it from doing so, including a law or agreement that requires consent or approval by a specified person.

(2) For this section, 'transaction' includes each of the following:

- (a) Transferring, creating an interest in or dealing in any other way with assets and liabilities of the designated institution; and
- (b) an amalgamation, merger or arrangement of a kind referred to in Chapter 5 of the Companies Act that involves, as one of the parties, the designated institution.

(3) In making a determination in terms of subsection (1), the Reserve Bank must consult the Prudential Authority.

- (4) When the transaction comes into effect—
 - (a) the assets and liabilities of the parties that are transferred in terms of the transaction vest in, and become binding upon, the parties in accordance with the terms of the transaction;
 - (b) a party to the transaction in whom an asset vests, or whom a liability binds under the transaction, has the same rights and is subject to the same obligations as those that the transferor may have had or to which it or by which it may have been bound immediately before the transfer; and
 - (c) in the case of an amalgamation—
 - (i) all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating or merging parties and in force immediately before the transaction came into effect remain of full force and effect and must be construed for all purposes as if

they had been entered into, made, drawn up or executed with,
by or in favour of the amalgamated entity; and

(ii) any bond, pledge, guarantee or instrument to secure future
advances, facilities or services by any of the amalgamating
parties remain of full force and effect and must be construed for
all purposes as a bond, pledge, guarantee or instrument given to
or in favour of the amalgamated entity as security for future
advances, facilities or services by that entity.

(5) Subsection (4)(c)(i) does not apply to agreements,
appointments, transactions and documents that, by virtue of the terms and
conditions of the transaction, are not to be retained in force after the
amalgamation.

(6) Despite any law or agreement (including the designated
institution's memorandum of incorporation), a designated institution in
resolution may, if the Reserve Bank determines that it is necessary to do so
for the orderly resolution of the designated institution, do either or both the
following:

(a) Cancel a share of the designated institution that is valued, in terms of
section 166Q(1), at zero value (in liquidation); or
(b) issue new shares of the designated institution, on terms approved by
the Reserve Bank.

(7) If the Reserve Bank determines that it is necessary to do
so for the orderly resolution of a designated institution in resolution, the
Reserve Bank may, by written order, do any of the following in relation to an
agreement to which the designated institution is a party:

- (a) By notice to a party to the agreement to which an amount is or may become payable by the designated institution, in terms of the agreement or arrangement, reduce the amount that is or may become payable, subject to sections 166Q and V; or
- (b) by written notice to all the other parties to the agreement, cancel the agreement.

(8) Subject to subsection (7)(a), cancellation of an agreement in terms of subsection (7)(b) does not affect the rights of the parties to the agreement, which rights were accrued before the date the cancellation takes effect.

(9) Subsection (7) does not apply to the following:

- (a) An unsettled exchange traded transaction, including a transaction on a licenced exchange;
- (b) a derivative instrument as defined in section 1 of the Financial Markets Act;
- (c) a deposit where the deposit holder is the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);
- (d) an unsecured transaction between two or more settlement system participants as defined in section 1 of the National Payment System Act, made for the purposes of that Act.

(10) An action in terms of this section does not by itself give rise to any right by a party to, or a person who holds an interest in, an agreement referred to in subsection (7).

Outcome of resolution actions

166T. The Reserve Bank may exercise and perform its resolution powers in terms of this Part, and its associated powers, in relation to a liability of a designated institution in resolution in a way that results in the liability being substituted with a shareholding in the designated institution or in a bridge company.

Creditor hierarchy and *pari passu*

166U. (1) The Reserve Bank must not take a resolution action, and must ensure that a designated institution in resolution does not take a resolution action, if it appears to the Reserve Bank that the result of the action would be that the value of a claim of a creditor of the designated institution would be reduced.

(2) Subsection (1) does not apply—

(a) to the claims of shareholders; or

(b) if the claims of creditors and shareholders of the designated institution that rank lower in the creditor hierarchy have been reduced to zero.

(3) Failure to comply with subsection (1) does not invalidate the action taken.

(4) (a) In taking resolution action in relation to a designated institution in resolution, the Reserve Bank must treat claims of creditors and shareholders of the designated institution that would have the same ranking in insolvency *in pari passu*.

(b) The Reserve Bank must ensure that, when a designated institution in resolution takes resolution action, claims of creditors and shareholders of the designated institution that would have the same ranking in insolvency are treated *in pari passu*.

(c) Paragraphs (a) and (b) do not apply if the Reserve Bank determines that it is necessary to treat the claims differently to effect the orderly resolution of the designated institution.

'No creditor worse off' rule

166V. (1) The Reserve Bank must not take resolution action in relation to a designated institution in resolution that would result in a creditor or shareholder of the designated institution receiving less than the creditor or shareholder would have received if the designated institution had been wound up.

(2) The value of assets to which the creditor or shareholder becomes entitled in relation to the action must be taken into account in applying subsection (1).

(3) Failure to comply with subsection (1) does not invalidate an acquisition of property by a *bona fide* purchaser for value who is not aware of the failure to comply (but may give rise to a right to compensation in the creditor or shareholder).

(4) As soon as practicable after the Reserve Bank receives a valuation in terms of section 166Q(2) in respect of a designated institution in resolution, the Reserve Bank must—

- (a) consider, having regard to the valuation, whether a creditor or shareholder of the designated institution received, in respect of resolution action, less than it would have received if the designated institution had been wound up; and
- (b) if it considers that such a creditor or shareholder received less than it would have received if the designated institution had been wound up, determine the amount of the shortfall.

(5) If the Reserve Bank makes a determination in terms of subsection (4)(b), the creditor or shareholder is entitled to recover from the designated institution the amount of the shortfall.

(6) Subsection (5) does not limit any claim that the creditor or shareholder may have for any additional amount.

Registration of transactions

166W. (1) A person in charge of a register that records—

- (a) title to property belonging to, or a bond or other right in favour of, or any appointment of or by any person; or
- (b) a share, stock, debenture or other marketable security,
- must, on presentation by the Reserve Bank or a person authorised by it of a certificate as to a transfer effected by a transaction in terms of this Part, and the relevant documents of title, record the transfer effected by the transaction.

Costs of resolution

166X. The Reserve Bank may recover from a designated institution in resolution, or from a designated institution after it ceases to be in resolution, amounts that the Reserve Bank reasonably and properly incurs in exercising and performing its resolution functions in relation to the designated institution while in resolution.

Part 4

Protections

Administrative process for actions taken by the Reserve Bank in terms of this Chapter

166Y. (1) This section applies in relation to the following actions taken by the Reserve Bank:

- (a)** An action in terms of section 166J(1); and
- (b)** an action in relation to a designated institution in resolution, being an action that adversely affects the rights of any person (a 'person concerned') and that has a direct, external legal effect.

(2) The Reserve Bank must, subject to subsection (3), before taking an action to which this section applies—

- (a)** publish notice of the action with a statement that—
 - (i)** states the reasons for the proposed action; and
 - (ii)** includes information relevant to the matter; and

(b) invite any person concerned to make representations to the Reserve Bank on the matter within a reasonable period specified in the notice, which period need not exceed 14 days.

(3) In deciding whether to take the action, the Reserve Bank must take into account all submissions received by the end of the period specified in terms of subsection (2)(b).

(4) If the Reserve Bank determines that compliance with subsections (1) and (2) in respect of a proposed action is likely to affect financial stability adversely, or defeat the object of the proposed action, the Reserve Bank may take the action without complying with those subsections.

(5) (a) If the Reserve Bank takes an action to which this section applies without complying with subsection (1) or (2), it must publish a statement of the reasons why the subsections were not complied with.

(b) Any person concerned may make submissions to the Reserve Bank within one month after publication of the statement.

(c) The Reserve Bank must consider the submissions and, as soon as practicable, publish a further notice stating what action, if any, the Reserve Bank proposes to take on the matter, including whether the Reserve Bank proposes to rescind or revoke the action or to provide concerned persons with restitution.

(6) The Reserve Bank must not rescind or revoke an action taken in terms of section 166J or 166K.

(7) In respect of an action to which this section applies, the procedure specified in this section applies instead of the procedure prescribed by sections 3 and 4 of the Promotion of Administrative Justice Act.

Part 5

Banks in resolution – covered deposits

Corporation to ensure bank depositors have access to their covered deposits

166Z. (1) Where a bank is in resolution, the Corporation must apply the Fund in one or more of the following ways to ensure that depositors of the bank have access to their covered deposits:

- (a)** To reimburse the bank in resolution for payments the bank has made while in resolution to depositors in respect of covered deposits;
- (b)** to reimburse depositors of the bank in resolution in respect of covered deposits; or
- (c)** to make payments in terms of an agreement related to a transaction referred to in section 166S(1), being an agreement in relation to the covered deposits of the bank in resolution.

(2) An agreement referred to in subsection (1)(c) may include any of the following:

- (a)** A secured loan to the bank in resolution;
- (b)** a loss sharing agreement between the Corporation and the bank in resolution or a person assuming liability for covered deposits of the bank in resolution; or
- (c)** a guarantee in favour of the bank in resolution, the Reserve Bank or another person in respect of the bank's obligations in relation to the covered deposits of the bank in resolution.

Limit of cover for covered deposits

166AA. (1) The maximum amount that may be applied from the Fund in respect of a depositor of a bank in resolution is the lesser of—

(a) the sum of—

(i) the total of the amounts standing to the credit of the accounts with the bank held by the depositor alone; and

(ii) for each account with the bank held by the depositor together with one or more other persons, an amount calculated as the amount standing to the credit of the account divided by the number of account holders of the account; and

(b) the amount prescribed by the Minister in Regulations made for purposes of this section.

(2) A reference in subsection (1) to the amount standing to the credit of an account is a reference to the amount standing to the credit of the account as at the date the bank was placed in resolution.

Payments made in error or as a result of fraud

166AB. If—

(a) the Corporation makes one or more payments out of the Fund as contemplated by section 166Z in respect of a depositor with a bank in resolution;

(b) the total amount paid was more than was permitted by section 166AA; and

(c) the excess amount paid was paid because of—

(i) an error by the Corporation or the bank in resolution, whether before or after the bank was placed in resolution (including a failure of the bank to comply with an obligation to provide information); or

(ii) fraud, except fraud by an official or employee of the Corporation,

the Corporation is entitled to recover the excess amount from the bank in resolution.

Corporation substituted for depositor in respect of claims

166AC. If the Corporation makes a payment out of the Fund as contemplated by section 166Z in respect of a depositor of a bank in resolution, the Corporation, by force of this section, assumes and may exercise the rights and remedies of the depositor against the bank to the extent of the payment.

Part 6

Corporation for Deposit Insurance

establishment, functions and governance

Establishment

166AD. The Corporation for Deposit Insurance is hereby established.

Functions

166AE. The functions of the Corporation are—

- (a) to establish, maintain and administer the Fund in accordance with this Chapter in the interest of holders of covered deposits; and
- (b) to promote awareness among financial customers of the protections afforded by this Chapter.

Membership

166AF. (1) A bank will be a member of the Corporation from the date it is licensed or registered in terms of the relevant financial sector law that allows it to hold covered deposits.

(2) If a bank was licensed or registered in terms of the relevant financial sector law before the establishment of the Corporation, it will be a member of the Corporation from the date the Corporation is established.

(3) When applying for a bank licence or registration, a bank must provide the responsible authority with information that will enable it to meet the requirements of the Corporation.

Governance of Corporation

166AG. The Corporation must manage its affairs, including the Fund, in an efficient and effective way, and establish and implement

appropriate and effective governance systems and processes, having regard, among other things, to internationally accepted standards in these matters.

Board

166AH. (1) The affairs of the Corporation are to be managed and controlled by a Board of directors, which, subject to this Act, is to exercise the powers and perform the duties conferred or imposed upon the Corporation by this Act and any other law.

(2) The Board consists of no more than 8 persons, namely—

(a) a representative from the National Treasury appointed by the Director-General;

(b) a Deputy-Governor appointed by the Governor;

(c) the Chief Executive Officer;

(d) the Commissioner;

(e) the Managing Director;

(f) the Group Chief Financial Officer of the Reserve Bank; and

(g) no more than two persons appointed by the Governor as directors with the concurrence of the Minister.

(3) A director appointed in terms of subsection (2)(g)—

(a) holds office for a term no longer than five years, as the Governor may determine;

(b) is, at the expiry of that term, eligible for re-appointment for one further term; and

(c) must vacate office before the expiry of a term of office if that person—

(i) resigns from office, by giving at least three months written notice to the Governor or a shorter period that the Governor may

accept; or

(ii) is removed from office.

(4) The Governor must, at least three months before the end of the first term of office of a director appointed in terms of subsection (2)(g), inform the director whether the Governor proposes to seek the re-appointment of the person as a director.

(5) The Governor must, subject to due process, remove a director appointed in terms of subsection (2)(g) from office if the director becomes a disqualified person.

(6) The Governor must, subject to due process and with the concurrence of the Minister, remove a director appointed in terms of subsection (2)(g) from office if the director—

(a) is unable to perform the duties of office for health or other reasons;

(b) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or

(c) has acted in a way that is inconsistent with continuing to hold the office.

(7) Without limiting subsection (6)(b), a director appointed in terms of subsection (2)(g) must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Board without the leave of the Board.

(8) The Governor, with the concurrence of the Minister may appoint one of the Board members (except one mentioned in subsection

(2)(e) or (f) as chairperson, and the Board may elect, from among themselves, another director as vice-chairperson.

(9) (a) A director may nominate a person to act as alternate for the director at a particular Board meeting, or Board meetings generally, where the director is unable to attend.

(b) If the Board agrees, the nominee has, for meetings where the director is unable to attend, the same rights and obligations as the director.

(10) A person may not act as an alternate if the person—
(a) is a disqualified person; or
(b) is not ordinarily resident in the Republic.

Functions of Board

166A1. The Board must—

(a) generally oversee the management and administration of the Corporation to ensure that it is efficient and effective; and

(b) act for the Corporation in the following matters:

(i) Authorising the Managing Director to sign, on behalf of the Corporation, memoranda of understanding and amendments to them;

(ii) appointing members of committees contemplated in this Part and giving directions regarding the conduct of the work of a committee;

- (iii) determining, in relation to a bank in resolution, how to apply the Fund as contemplated by section 166Z;
- (iv) making determinations of the deposit insurance levy for the purposes of the Deposit Insurance Levy Act, 2018; and
- (v) any other matter assigned in terms of a financial sector law to the Board.

Meetings of Board and decisions

166AJ. (1) Meetings of the Board must be held at such times as the Board or the chairperson of the Board may determine.

(2) An audio or audio-visual conference among a majority of the directors, which enables each participating director to hear and be heard by each of the other participating directors, must be regarded as a meeting of the Board, and each participating director must be regarded as being present at such a meeting.

(3) Except where subsection (2) applies, meetings of the Board are held at places determined by the chairperson of the Board.

(4) The chairperson of the Board presides at all meetings of the Board at which he or she is present.

(5) If the chairperson of the Board is absent or is unable to act as chairperson, the vice-chairperson must act as chairperson.

(6) If both the chairperson of the Board and the vice-chairperson of the Board are absent from a meeting of the Board, the

directors present must elect one from among their number to act as chairperson.

(7) A quorum for a Board meeting is three directors, which must include the person appointed in terms of section 166AH(2)(a) or his or her alternate and a Deputy-Governor appointed by the Governor.

(8) The decision of a majority of the directors present and voting at a Board meeting is taken to be a decision of the Board. If the votes are equal, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(9) A decision of the Board or an act performed under the authority of the Board is not invalid merely because there is a vacancy on the Board.

(10) The Board must cause a record to be kept of the proceedings at the meetings of the Board.

(11) The Board may make rules in relation to the holding of, and procedure at, meetings of the Board.

(12) Despite subsection (8), the Board may take a decision by means of the signing by a majority of the directors, without their being present at any meeting of the Board, of a document in writing containing such a decision, and that decision must be noted in the records of the next ensuing meeting of the Board.

Appointment of Managing Director

166AK. (1) The Board must appoint an employee of the Reserve Bank who has appropriate expertise in the financial sector as Managing Director of the Corporation.

(2) When appointing a person as Managing Director, the person and the Board must agree, in writing, on—

(a) the performance measures that will be used to assess the Managing Director's performance; and

(b) the level of performance to be achieved against those performance measures.

(3) A person may not be appointed or hold office as Managing Director if the person—

(a) is a disqualified person; or

(b) is not ordinarily resident in the Republic.

(4) The Managing Director—

(a) is responsible for the day-to-day management and administration of the Corporation; and

(b) except as provided in section 166AI(b), must perform the functions of the Corporation, including exercising the powers and carrying out the duties associated with those functions.

(5) When acting in terms of subsection (4), the Managing Director must implement the policies and strategies adopted by the Board.

(6) The Board may appoint a senior staff member of the Corporation to act as Acting Managing Director when the Managing Director is absent from office or otherwise unable to perform the functions of office.

Term of office of Managing Director

166AL. (1) A person appointed as the Managing Director—

(a) serves in a full-time executive capacity;

(b) holds office for a term no longer than five years, as the Board may determine;

(c) is, at the expiry of that term, eligible for re-appointment for one further term; and

(d) must vacate office before the expiry of a term of office if he or she—

(i) resigns as Managing Director, by giving at least three months written notice to the Board, or a shorter period that the Board may accept; or

(ii) is removed from office as Managing Director.

(2) The Board must, at least three months before the end of the first term of office of the Managing Director, inform the Managing Director whether the Board proposes to re-appoint the person as Managing Director.

Removal of Managing Director

166AM. (1) The Board must, subject to due process, remove the Managing Director from office if the Managing Director becomes a disqualified person.

(2) The Board may remove the Managing Director from office on the grounds that the Managing Director—

(a) is unable to perform the duties of office for health or other reasons;

(b) has failed in a material way to achieve the level of performance against the performance measures agreed to in terms of section 166AK(2);

(c) has failed in a material way to discharge any of the responsibilities of office, including any responsibilities entrusted in terms of legislation; or

(d) has acted in a way that is inconsistent with continuing to hold the office.

(3) Without limiting subsection (2)(c), the Managing Director must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the Board without the leave of the Board.

Committees

166AN. (1) The Board may establish committees as it considers necessary.

(2) The Board must, at least, establish an investment committee to review the investment portfolio of the Fund, which committee

must make recommendations to the Board regarding the investment of the Fund.

(3) A committee in terms of this section consists of such directors as the Board selects and, if the Board so decides, such staff members of the Corporation as the Board selects.

(4) A committee established in terms of this section must be chaired by a director, other than the Managing Director.

(5) The functions, procedures and membership of a committee established in terms of this section are determined by the Board.

(6) The chairperson of each committee established in terms of this section must ensure that minutes of each meeting of that committee are kept in a manner determined by the Board.

Duties of directors and members of committees

166AO. A director, and a member of a committee established in terms of section 166AN, must—

(a) act honestly in all matters relating to the Corporation; and

(b) perform the functions of office as a director or member;

(i) in good faith;

(ii) for a proper purpose; and

(iii) with the degree of care and diligence that a reasonable person in the director's or member's position would exercise.

Disclosure of interests

166AP. (1) A director must disclose, at a meeting of the Board, or in writing to each of the other directors, any interest in any matter that is being or may be considered by the Board that—

(a) the director has; or

(b) a person who is a related party to the director has.

(2) A disclosure referred to in subsection (1) must be given as soon as practicable after the director becomes aware of the interest.

(3) A director who has, or who has a related party who has, an interest that is required to be disclosed in terms of subsection (1) may not participate in the consideration of, or decision on, a matter to which the interest relates unless—

(a) the director has disclosed the interest as required by subsection (1);

and

(b) the other directors have decided that the interest does not affect the proper execution of that director's functions in relation to the matter.

(4) Subsections (1) to (3) apply, with the necessary changes required by the context, to members of committees established in terms of section 166AN.

(5) (a) Each member of the Corporation's staff and each person to whom a power or function of the Corporation has been delegated must make timely, proper and adequate disclosure of his or her interests, including the interests of a related party, that could reasonably be

seen as interests that may affect the proper execution of his or her functions of office or the delegated power.

(b) The Managing Director must ensure that paragraph (a) is complied with.

(6) For the purposes of this section, it does not matter—

(a) whether an interest is direct, indirect, pecuniary or non-pecuniary; or

(b) when the interest was acquired.

(7) For the purposes of this section, a person does not have to disclose—

(a) the fact that that person, or a person who is a related party to that person, is—

(i) an official or employee of the Reserve Bank; or

(ii) a financial customer of a financial institution; or

(b) an interest that is not material.

(8) The Managing Director must maintain a register of all disclosures made in terms of this section and of all decisions made in terms of this section.

Share capital

166AQ. (1) The share capital of the Corporation is to be R1 000 000, but may be increased by the Board at any time.

(2) Only the Reserve Bank or the Republic may hold a share of the Corporation.

(3) The liability of the Reserve Bank as holder of a share in the Corporation is limited to the amount unpaid in respect of the share.

Financial year of Corporation

166AR. A financial year of the Corporation ends on 31 March.

Surplus funds

166AS. (1) The amount of any surplus funds of the Corporation, after deducting expenses of the Corporation and making proper provisions at the end of each of the financial years of the Corporation, must be credited to the Fund.

(2) Subsection (1) does not prevent amounts of surplus funds being credited to the Fund at other times.

Bookkeeping and auditing

166AT. The Corporation must—

- (a) cause proper account to be kept of all financial transactions, assets and liabilities of the Corporation and of the Fund; and
- (b) cause financial statements to be compiled in respect of each financial year and submit copies of those statements, after auditing required by law, to the Minister and the Reserve Bank.

Annual report

166AU. (1) The Corporation must, within six months after the end of each financial year, submit to the Minister and the Reserve Bank a report on its operations, and the operations of the Fund, during the financial year.

(2) The Minister must table a copy of the report referred to in subsection (1) and the financial statements referred to in section 166AT(b) in Parliament at the same time as the Minister tables copies of reports as referred to in section 32(3) of the Reserve Bank Act.

Winding up of Corporation

166AV. The Corporation may not be wound up except by or on authority of an Act.

Staff and resources

166AW. (1) The Corporation must determine the personnel, accommodation, facilities, use of assets, resources and other services that it requires to function effectively.

- (2) The Corporation may—
- (a) enter into secondment arrangements in respect of persons;
 - (b) engage persons on contract otherwise than as employees;
 - (c) enter into contracts;

- (d) acquire or dispose of property;
- (e) insure itself against any loss, damage, risk or liability that it may suffer or incur; and
- (f) do anything else necessary for the performance of its functions.

(3) The Corporation may not enter into a secondment arrangement in respect of a person, or engage persons on contract, unless the person and the Corporation have agreed in writing on—

- (a) the performance measures that will be used to assess that person's performance; and
- (b) the level of performance that must be achieved against those measures.

Resources provided by Reserve Bank

166AX. (1) The Reserve Bank must provide the Corporation with the personnel, accommodation, facilities, use of assets, resources and other services determined in accordance with section 166AW(1) and as agreed to by the Reserve Bank.

(2) The Reserve Bank must second the personnel that it provides in terms of subsection (1) to the Corporation.

Duties of directors, committee members and staff members

166AY. (1) A person who is or has been a director, a member of a committee established in terms of section 166AN or a staff member of the

Corporation may not use that position or any information obtained as a result of holding that position to—

- (a) improperly benefit himself or herself or another person;
- (b) cause improper detriment to the Corporation's or the Reserve Bank's ability to perform its functions; or
- (c) cause improper detriment to another person.

(2) For the purposes of this section, 'benefit' and 'detriment' are not limited to financial benefit or detriment.

Co-operation and collaboration with financial sector regulators and Reserve Bank

166AZ. (1) The Corporation, the financial sector regulators and the Reserve Bank must co-operate and collaborate with each other to assist the Corporation to exercise its powers and perform its functions in terms of this Act, including by providing assistance and information promptly reporting any matter of which it becomes aware that affects or may affect the performance of any of those powers or functions.

(2) Without limiting subsection (1), the financial sector regulators must comply with any reasonable request from the Corporation, including requests to make standards and issue regulator's directives, to promote awareness among financial customers of the protections afforded by this Chapter.

Memoranda of understanding

166BA. (1) The Corporation may enter into memoranda of understanding with—

(a) the Reserve Bank;

(b) a financial sector regulator; or

(c) a body in a foreign country that has powers or functions corresponding to its powers or functions.

(2) The validity of an action taken by the Corporation in terms of this Act or a financial sector law is not affected by a failure to comply with this section or a memorandum of understanding contemplated in subsection (1).

Deposit insurance levy

166BB. (1) The Corporation may charge deposit insurance levies from its members in accordance with this Part, read with legislation that empowers the imposition of such levies, to fund the operations of the Corporation and administration of the Fund.

(2) The Corporation must publish deposit insurance levies that have been imposed in the Register and on its website.

(3) Deposit insurance levies are payable to the Corporation at the time specified by the Corporation, or at a time agreed to by the Corporation.

Part 7**Deposit Insurance Fund****Deposit Insurance Fund**

166BC. (1) A fund called the Deposit Insurance Fund is established.

(2) The Fund is held by the Corporation.

(3) The Corporation must establish an account at the Reserve Bank for the purposes of the Fund.

(4) The Fund consists of—

(a) the amount standing to the credit of the account established in terms of subsection (3);

(b) the investments made with money of the Fund; and

(c) the other assets of the Corporation attributable to the Fund.

(5) There shall be credited to the Fund—

(a) surplus funds of the Corporation referred to in section 166AS;

(b) amounts collected as deposit insurance premiums as envisaged in section 166BF;

(c) interest and other amounts earned from investments of the Fund;

(d) amounts recovered by the Corporation attributable to amounts paid out of the Fund; and

(e) other amounts received by the Corporation for the purposes of or in connection with the Fund.

(6) The Fund may be applied only as follows:

- (a) To make payments in terms of section 166Z (including in terms of agreements contemplated by that section);
- (b) by way of investments in terms of section 166BD(1); or
- (c) to repay amounts paid into the Fund in error.

Investment

166BD. (1) The Corporation may apply money standing to the credit of the Fund by way of investment consistent with the investment strategy for the Fund.

(2) The Corporation must formulate, review regularly and give effect to an investment strategy for the Fund, which must be aimed at achieving the objective of the Corporation by ensuring that the Fund is able to make payments required by this Chapter.

(3) In formulating and reviewing the investment strategy for the Fund, the Corporation must consider, among other things, the risk involved in making, holding and realising, and the likely return from, the Fund's investments.

Information

166BE. (1) The Prudential Authority and Financial Sector Conduct Authority must comply with any request by the Corporation for information relevant to the performance of the Corporation's functions in terms of this Act.

(2) The information must be in the possession of the Prudential Authority or Financial Sector Conduct Authority or obtainable by it, including by the exercise of the Prudential Authority or Financial Sector Conduct Authority's powers in terms of a financial sector law.

Part 8

Contributions to Fund

Deposit insurance premiums

166BF. (1) The Corporation may collect deposit insurance premiums from its members—

(a) as imposed by legislation; and

(b) in accordance with this Part,

to ensure that the Fund is able to make payments required by this Chapter.

(2) The Corporation must publish premiums that have been collected in the Register and on its website.

(3) Premiums are payable to the Corporation at the time specified by the Corporation, or at a time agreed to by the Corporation.

Fund liquidity

166BG. (1) Members of the Corporation that hold covered deposits must maintain a minimum amount in the account of the Fund as specified by the Corporation in a standard.

(2) The Corporation must pay interest to members on the amount referred to in subsection (1) which interest must be specified in the standard.

Amendment of section 241 of Act 9 of 2017

55. Section 241 of the Financial Sector Regulation Act, 2017, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) A supervised entity must not fail or refuse to comply with a requirement issued in terms of subsection (1)."; and

(b) by the addition of the following subsection:

(4) In this section, 'information' does not include aggregate statistical data or information that does not disclose the identity of a person."

Amendment of section 248 of Act 9 of 2017

56. Section 248 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) The Tribunal and the Corporation, although **[it is]** they are not **[a]** public **[entity]** entities in terms of the Public Finance Management Act, must also comply with the requirements in paragraph (a)."

Amendment of section 250 of Act 9 of 2017

57. Section 250 of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after paragraph (g) of the following paragraph:

"(gA) the Corporation;".

Substitution of section 265 of Act 9 of 2017

58. The following section is hereby substituted for section 265 of the Financial Sector Regulation Act, 2017:

"Duties of members and staff of certain bodies

265. A person who contravenes sections 46(1) or (2), 52, 69(1) or (2), [or] 74 or 166AY commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment."

Amendment of section 267 of Act 9 of 2017

59. Section 267 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A supervised entity that contravenes section 131(1)(b) or 241(3) commits an offence and is liable on conviction to a fine not exceeding R1 000 for each day during which the offence continues."

Substitution of section 285 of Act 9 of 2017

60. The following section is hereby substituted for section 285 of the Financial Sector Regulation Act, 2017:

"Immunities

285. The State, the Minister, the Reserve Bank, the Governor and Deputy Governors, a financial sector regulator, a member of the Executive Committee[,], or the Prudential Committee, a member of a subcommittee of the Prudential Authority or the Financial Sector Conduct Authority, a member of the Tribunal, the Ombud Council, a member of the Ombud Board, an employee of the State, a board member or officer of the Reserve Bank, a staff member of a financial sector regulator, a staff member of the Reserve Bank, the Corporation, a Board member, a staff member of the Corporation, a resolution practitioner appointed for a designated institution in resolution and a person appointed or delegated by a financial sector regulator, **[or]** the Reserve Bank or the Corporation to exercise a power or perform a function or duty in terms of a financial sector law is not liable for, or in respect of, any loss or damage suffered or incurred by any person arising from a decision taken or

action performed in good faith in the exercise of a function, power or duty in terms of a financial sector law."

Amendment of Schedule 2 to Act 9 of 2017

61. Schedule 2 to the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after the item relating to the Long-Term Insurance Act and the Short-Term Insurance Act of the following item:

<u>"This Act, in so far as it relates to matters within the objectives of—</u> <u>(a) the Prudential Authority</u> <u>(b) the Financial Sector Conduct Authority</u> <u>(c) the Reserve Bank</u>	<u>Prudential Authority</u> <u>Financial Sector Conduct Authority</u> <u>Reserve Bank".</u>
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Amendment of Schedule 3 to Act 9 of 2017

62. Schedule 3 to the Financial Sector Regulation Act is hereby amended by the insertion after item 20 of the following item:

"20A. A list of designated institutions, indicating which of them are in resolution".

Amendment of Arrangement of sections of Act 9 of 2017

63. The Arrangement of sections of the Financial Sector Regulation Act, 2017, is hereby amended—

(a) by the substitution for the item relating to section 9 of the following item:

- "9. Inconsistencies between Act and other **[financial sector]** laws";
- (b) by the substitution for the item relating to section 27 of the following item:
- "27. Memoranda of understanding **[relating to financial stability]**";
- (c) by the substitution for the item relating to section 28 of the following item:
- "28. Roles of other organs of state in relation to financial stability and resolution";
- (d) by the substitution for the heading to Part 6 of Chapter 2 of the following heading:
- "Systemically important financial institutions and payment systems";
- (e) by the insertion after the item relating to section 29 of the following items:
- "29A. Designated institutions
- 29B. Designation of systemically important payment systems";
- (f) by the substitution for the item relating to section 30 of the following item:
- "30. Prudential standards and regulator's directives in respect of **[systemically important financial]** designated institutions";
- (g) by the substitution for the item relating to section 91 of the following item:
- "91. Applicability of Promotion of Administrative Justice Act **[to administrative action by financial sector regulators]**";
- (h) by the insertion after the item relating to section 135 of the following item:
- "135A. Investigations into designated institutions in resolution"; and
- (i) by the insertion after the item relating to section 166 of the following items:

"CHAPTER 12A

RESOLUTION OF DESIGNATED INSTITUTIONS

Part 1

General provisions with respect to designated institutions

166A. Exercise of Reserve Bank's powers

166B. Reserve Bank's resolution objectives

166C. Reserve Bank's resolution functions

166D. Winding up and similar steps in respect of designated institutions

166E. Resolution planning

166F. Bridge companies

166G. Act of, and evidence of, insolvency

166H. Liquidation

166I. Delegation of Reserve Bank's resolution functions

Part 2

Placing designated institutions in resolution

166J. Determination by Minister to place designated institution in resolution

166K. When a designated institution ceases to be in resolution

166L. Placing a designated institution in resolution not a termination or
acceleration event

166M. Reserve Bank to manage and control affairs of designated institution

166N. Reserve Bank not holding company

166O. Resolution practitioners

166P. Transfers of shares in designated institutions in resolution

Part 3

Resolution measures

166Q. Valuation

166R. Powers

166S. Resolution action (including restructuring and bail in)

166T. Outcome of resolution actions

166U. Creditor hierarchy and *pari passu*

166V. 'No creditor worse off' rule

166W. Registration of transactions

166X. Costs of resolution

Part 4

Protections

166Y. Administrative process for actions taken by the Reserve Bank in terms
of this Chapter

Part 5

Banks in resolution – covered deposits

166Z. Corporation to ensure bank depositors have access to their covered deposits

166AA. Limit of cover for covered deposits

166AB. Payments made in error or as a result of fraud

166AC. Corporation substituted for depositor in respect of claims

Part 6

Corporation for Deposit Insurance—establishment, functions and governance

166AD. Establishment

166AE. Functions

166AF. Membership

166AG. Governance of Corporation

166AH. Board

166AI. Functions of Board

166AJ. Meetings of Board and decisions

166AK. Appointment of Managing Director

166AL. Term of office of Managing Director

166AM. Removal of Managing Director

166AN. Committees

166AO. Duties of directors and members of committees

166AP. Disclosure of interests

166AQ. Share capital

166AR. Financial year of Corporation

166AS. Surplus funds

166AT. Bookkeeping and auditing

166AU. Annual report

166AV. Winding up of Corporation

166AW. Staff and resources

166AX. Resources provided by Reserve Bank

166AY. Duties of directors, committee members and staff members

166AZ. Co-operation and collaboration with financial sector regulators and

Reserve Bank

166BA. Memoranda of understanding

166BB. Deposit insurance levy

Part 7

Deposit Insurance Fund

166BC. Deposit Insurance Fund

166BD. Investment

166BE. Information

Part 8

Contributions to Fund

166BF. Deposit insurance premiums".

Part 11

Amendment to the Insurance Act, 2017 (Act No. 18 of 2017)

Amendment of section 52 of Act 18 of 2017

64. Section 52 of the Insurance Act, 2017, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) This Chapter does not apply to a branch of a foreign reinsurer, a Lloyd's underwriter **[or]**, Lloyd's or an insurer that is a designated institution in terms of the Financial Sector Regulation Act.".

Short title

65. This Act is called the Financial Sector Laws Amendment Act, 2018.