
REPUBLIC OF SOUTH AFRICA

**FINANCIAL SECTOR LAWS
AMENDMENT ACT**

REPHABOLEKI YA AFORIKA BORWA

**MOLAO WA TLHABOLOLO YA MELAO
YA LEPHATA LA DITŠHELETE**

No 23, 2021

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.

ACT

To amend—

- the Insolvency Act, 1936, to clarify that the provisions of the Financial Sector Regulation Act, 2017, apply to the liquidation or sequestration of the estate of a designated institution; to exclude dispositions made in case of resolution from the application of the Insolvency Act; to clarify and refine the application of certain provisions of the Insolvency Act;
- the South African Reserve Bank Act, 1989, to provide for the performance of resolution functions by the Reserve Bank;
- the Banks Act, 1990, 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 the 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, to exclude transactions in relation to resolution from the application of certain provisions; and to provide for consultation with the Competition Commission in relation to certain transactions;
- the Financial Institutions (Protection of Funds) Act, 2001, to exclude designated institutions in resolution from the application of certain provisions;
- the Co-operative Banks Act, 2007, so as to repeal certain provisions; and to exclude the application of certain provisions to co-operative banks as designated institutions;
- the Companies Act, 2008, 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, 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, to provide for the establishment of a framework for the resolution of designated institutions to ensure that the impact or potential impact of a failure of a designated institution on financial stability is 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

NTLHAKAKARETSE YA TLHALOSO:

[] Mafoko a a kwetsweng ka bontsho jo bo tseneletseng mo masakaneng a sekwere a bontsha tseo di tlogetsweng go tswa mo melaong e e leng teng.

_____ Mafoko a a thaletsweng ka fa tlase ka mola o o kopaneng a bontsha tse di tsenyeleditsweng mo melaong e e leng teng.

MOLAO

Go tlhabolola—

- *Insolvency Act, 1936*, go tlhalosa gore ditaelo tsa Molao wa Taolo ya Lephata la Ditšhelete, 2017, o diriswa mo phedisong kgotsa kgapong ya thoto ya setheo se se tlhomilweng; go se akaretse ditseelothoto tse di dirilweng mo lebakeng la tharabololo mo go dirisweng ga *Insolvency Act*; go tokafatsa tiriso ya ditaelo tse di rileng tsa *Insolvency Act*;
- *South African Reserve Bank Act, 1989*, go laela mabapi le tiragatso ya ditiro tsa tharabololo ka Banka ya Resefe;
- *Banks Act, 1990*, go se akaretse dibanka tse di mo tharabololong mo tirisong ya ditaelo tse di rileng; go laela mabapi le tuelelo mabapi le madi afe a a duetsweng ke Koporasi ya Inšorensense ya Ditipositi; go phimola ditaelo tse di rileng;
- *Mutual Banks Act, 1993*, go laela mabapi le g rebolwa ga dintlhakaelo le ditaelo ke Bothati jwa Tlhokomelo; go laela mabapi le tlolomolao mo lebakeng la botlhokakobamelo ya taelo; go phimola ditaelo tse di rileng; go se akaretse bankatlhakanelo mo tharabololong mo tirisong ya ditaelo tse di rileng;
- *Competition Act, 1998*, go se akaretse ditirisano mabapi le tharabololo mo go diriseng ditaelo tse di rileng; le go laela mabapi le therisano le Khomišene ya Kgaisano mabapi le ditirisano tse di rileng;
- *Financial Institutions (Protection of Funds) Act, 2001*, go se akaretse ditheo tse di tlhomilweng tse di leng mo tharabololong mo tirisong ya ditaelo tse di rileng;
- *Co-operative Banks Act, 2007*, gore go phimolwe ditaelo tse di rileng; le go se akaretse tiriso ya ditaelo tse di rileng mo mo dibankatirisanommogong jaaka ditheo tse di tlhomilweng;
- *Companies Act, 2008*, go laela mabapi le phediso ya setlamo se se mo tharabololong mo mabakeng a a rileng; go se akaretse ditirisano; dikopanyo kgotsa dithakanyo kgotsa dithulaganyetso mabapi le tharabololo mo tirisong ya ditaelo tse di rileng; go se akaretse setheo se se mo tharabololong mo tirisong ya Kgaolo;
- *Financial Markets Act, 2012*, go se akaretse ditheo tse di tlhomilweng mo go diriseng ditaelo tse di rileng; le go se akaretse ditheo tse di tlhomilweng mo tirisong ya ditaelo tse di rileng;
- Molao wa Taolo ya Lephatala Ditšhelete, 2017, go laela mabapi le go tlhomiwa ga letlhomiso la tharabololo ya ditheo tse di tlhomilweng go netefatsa gore kamego ya go retelelwa ga setheo se se tlhomilweng mo tlhomamong ya ditšhelete e laolwa ka nepagalo, go tlhoma Banka ya Resefe jaaka bothati jwa

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, 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:—

Insertion of section 22A in Act 24 of 1936

1. The following section is hereby inserted in the Insolvency Act, 1936, after section 22: 5

“Liquidation of designated institutions

22A. Notwithstanding the provisions of this Act or any other law, the provisions of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), relating to the liquidation of a designated institution as defined in section 1 of that Act, apply to the liquidation or sequestration of the estate of the institution in terms of this Act, and the trustee may not, in terms of this Act or any other law, set aside any action taken or disposition made by the Reserve Bank in the exercise of its resolution functions in terms of the Financial Sector Regulation Act, 2017.” 10

Amendment of section 35A of Act 24 of 1936, as amended by section 1 of Act 32 of 1995, section 2 of Act 104 of 1996, section 117 of Act 36 of 2004, section 111 of Act 19 of 2012 and section 290 of Act 9 of 2017 15

2. Section 35A of the Insolvency Act, 1936, is hereby amended by the substitution for the heading of the following heading:

“Transactions on [exchange] market infrastructure”. 20

Amendment of section 83 of Act 24 of 1936, as amended by section 24 of Act 16 of 1943, section 27 of Act 99 of 1965, section 30 of Act 54 of 1991, section 290 of Act 9 of 2017 and section 1 of Act 18 of 2019

3. Section 83 of the Insolvency Act, 1936, is hereby amended—

(a) by the substitution for subsection (5) of the following subsection: 25

“(5) The creditor shall, as soon as possible after he or she has realized such property, other than property held as security in favour of a secured creditor for obligations arising out of a master agreement defined in section 35B(2) or a transaction referred to in section 35A (including eligible collateral in terms of the applicable standards or rules made under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)), prove in terms of section forty-four the claim thereby secured and **[he] the creditor** shall attach to the affidavit submitted in proof of **[his] the creditor’s** claim a statement of the proceeds of the realization and of the facts on which **[he] the creditor** relies for his or her preference.”; 30

(b) by the substitution for subsection (10) of the following subsection:

“(10) Whenever a creditor has realized his or her security, other than property held as security in favour of a secured creditor for obligations arising out of a master agreement defined in section 35B(2) or a 40

ditharabololo; go tlhoma sekema sa inšorensa ya tipositi, go akaretse le Koporasi ya Inšorensa ya Tipositi le Letlole la Inšorensa ya Tipositi; go laela mabapi le thulaganyo, thusano, tirisano magareng ga Koporasi ya Inšorensa ya Tipositi le ditheo tse dingwe mabapi le tlhomamo ya ditšhelete le ditiro tsa ditheo tseo; go laela mabapi le ditheo tse di tlhomilweng mabapi le merero ya tharabololo; go laela gape mabapi le tshedimosetso e e tlhokegang go sekaseka lekgethwana; go diragatsa ditlhabololo tsa ditlamorago le setegeniki mo ditaelong tse di rileng; go tlhabolola ka nepagalo setlhogo se se leele le Thulaganyo ya dikarolo; le

- *Insurance Act, 2017*, go se akaretse baabainšorensa ba ba rileng mo tirisong ya Kgaolo; le go laela mabapi le merero e e amanang le ona.

O DIRWA MOLAO ke Palamente ya Rephaboleki ya Aforika Borwa, jaana:—

Invoeging van artikel 22A in Wet 24 van 1936

1. Die volgende artikel word hierby ná artikel 22 in die Insolvensiewet ingevoeg:

“Likwidasie van aangewese instellings

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22A. Ongeag die bepalings van hierdie Wet of enige ander wet, is die bepalings van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), rakende die likwidasie van ’n aangewese instelling soos omskryf in artikel 1 van daardie Wet, van toepassing op die likwidasie of sekwestrasie van die boedel van die instelling ingevolge hierdie Wet, en die trustee mag nie, ingevolge hierdie Wet of enige ander wet, enige aksie gedoen of vervaemding gedoen deur die Reserwebank in die uitoefening van die Reserwebank se ontbindingsfunksies ingevolge die ‘Financial Sector Regulation Act, 2017’, tersyde stel nie.”

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Wysiging van artikel 35A van Wet 24 van 1936, soos gewysig deur artikel 1 van Wet 32 van 1995, artikel 2 van Wet 104 van 1996, artikel 117 van Wet 36 van 2004, artikel 111 van Wet 19 van 2012 en artikel 290 van Wet 9 van 2017

2. Artikel 35A van die Insolvensiewet, 1936, word hierby gewysig deur die opskrif deur die volgende opskrif te vervang:

“**Transaksies op [’n beurs] markinsfrastruktuur**”.

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Wysiging van artikel 83 van Wet 24 van 1936, soos gewysig deur artikel 24 van Wet 16 van 1943, artikel 27 van Wet 99 van 1965, artikel 30 van Wet 54 van 1991, artikel 290 van Wet 9 van 2017 en artikel 1 van Wet 18 van 2019

3. Artikel 83 van die Insolvensiewet, 1936, word hierby gewysig—

(a) deur subartikel (5) deur die volgende subartikel te vervang:

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“(5) Die skuldeiser moet, so spoedig moontlik nadat hy of sy bedoelde goed, behalwe goed gehou as sekuriteit ten gunste van ’n versekerde skuldeiser vir verpligtings na aanleiding van ’n meestersooreenkoms omskryf in artikel 35B(2) of ’n transaksie bedoel in artikel 35A (met inbegrip van kwalifiserende aanvullende sekuriteit ingevolge die toepaslike standarde of reëls gestel kragtens die ‘Financial Sector Regulation Act’, 2017 (Wet No. 9 van 2017), of die ‘Financial Markets Act’, 2012 (Wet No. 19 van 2012)), te gelde gemaak het, die daardeur versekerde vordering volgens artikel vier-en-veertig bewys, en [hy] die skuldeiser moet aan die beëdigde verklaring wat [hy] die skuldeiser tot bewys van sy of haar vordering indien, ’n opgawe heg van die opbrings van die tegeldemaking en van die feite waarop sy of haar preferensie steun.”;

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(b) deur subartikel (10) deur die volgende subartikel te vervang:

“(10) Wanneer ’n skuldeiser sy of haar sekuriteit volgens voorgaande bepalings te gelde gemaak het, behalwe goed gehou as sekuriteit ten gunste van ’n versekerde skuldeiser vir verpligtinge na aanleiding van ’n

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- transaction referred to in section 35A (including eligible collateral in terms of the applicable standards or rules made under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)), as hereinbefore provided **[he]** the creditor shall forthwith pay the net proceeds of the realization to the trustee, or if there is no trustee, to the Master and thereafter the creditor shall be entitled to payment, out of such proceeds, of his or her preferment claim if such claim was proved and admitted as provided by section forty-four and the trustee or the Master is satisfied that the claim was in fact secured by the property so realized. If the trustee disputes the preference, the creditor may either lay before the Master an objection under section one hundred and eleven to the trustee's account, or apply to court, after notice of motion to the trustee, for an order compelling the trustee to pay **[him]** the creditor forthwith. Upon such application the court may make such order as to it seems just.”;
- (c) by the substitution in subsection (10A)(a) for the words preceding subparagraph (i) of the following words:
 “Whenever a creditor has realized property held as security in respect of claims arising out of a master agreement defined in section 35B(2) or a transaction referred to in section 35A (including eligible collateral in terms of the applicable standards or rules under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)), such creditor may retain the proceeds of the realization for the settlement of the secured claim and shall as soon as possible after realization—”;
- (d) by the substitution in subsection (10A)(a)(i) for the words preceding item (aa) of the following words:
 “give written notice of that fact to the trustee or the Master and provide the trustee or the Master with a certified copy of the master agreement or contract in terms of a transaction referred to in section 35A and an affidavit confirming—”;
- (e) by the substitution in subsection (10A)(a)(i) for item (aa) of the following item:
 “(aa) that the master agreement or contract in terms of a transaction referred to in section 35A had been entered into;”.

Amendment of Arrangement of Sections of Act 24 of 1936

4. The Arrangement of Sections of the Insolvency Act, 1936, is hereby amended—
- (a) by the insertion after item 22 of the following item:
 “22A. Liquidation of designated institutions”; and
- (b) by the substitution for item 35A of the following item:
 “35A. Transactions on **[exchange]** market infrastructure”.

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

5. 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;”.

meestersooreenkoms omskryf in artikel 35B(2) of 'n transaksie in artikel 35A bedoel (met inbegrip van kwalifiserende aanvullende sekuriteit ingevolge die standaard of reëls kragtens die 'Financial Sector Regulation Act', 2017 (Wet No. 9 van 2017), of die 'Financial Markets Act', 2012 (Wet No. 19 van 2012)), moet [hy] die skuldeiser onverwyld die nettoopbrings van die tegeldemaking oorbetaal aan die kurator, of as daar geen kurator is nie, aan die Meester en daarop is die skuldeiser geregtig op betaling, uit daardie opbrings, van sy of haar preferente vordering as daardie vordering volgens voorskrif van artikel vier-en-veertig bewys en toegelaat is en die kurator of die Meester van oordeel is dat die vordering inderdaad deur die aldus tegeldegemaakte goed verseker was. As die kurator die preferensie betwis, dan kan die skuldeiser òf volgens artikel honderd-en-elf by die Meester verset teen die kuratorsrekening aanteken, òf die hof versoek, na kennisgewing van die mosie aan die kurator, om 'n bevel dat die kurator [hom] die skuldeiser onverwyld moet betaal. Op daardie versoek kan die hof beskik soas hy billik ag.”;

- (c) deur in subartikel (10A)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
 “Wanneer 'n skuldeiser goed wat as sekuriteit gehou is ten opsigte van vorderings voortspruitend uit 'n meestersooreenkoms omskryf in artikel 35B(2) of 'n transaksie in artikel 35A bedoel (met inbegrip van kwalifiserende aanvullende sekuriteite ingevolge die toepaslike standaard of reëls kragtens die 'Financial Sector Regulation Act', 2017 (Wet No. 9 van 2017), of die 'Financial Markets Act', 2012 (Wet No. 19 van 2012)), te gelde maak, kan sodanige skuldeiser die opbrings behou van die tegeldemaking vir die vereffening van die versekerde vordering en moet so gou as moontlik na tegeldemaking—”;
- (d) deur in subartikel (10A)(a)(i) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:
 “skriftelik kennis gee van daardie feit aan die trustee of die Meester en die trustee of die Meester voorsien van 'n gesertifiseerde afskrif van die meestersooreenkoms of kontrak ingevolge 'n transaksie in artikel 35A bedoel en 'n beëdigde verklaring wat bevestig—”;
- (e) deur in subartikel (10A)(a)(i) item (aa) deur die volgende item te vervang:
 “(aa) dat die meestersooreenkoms of kontrak ingevolge 'n transaksie bedoel in artikel 35 aangegaan is;”.

Wysiging van Indeling van Artikels van Wet 24 van 1936

4. Die Indeling van Artikels van die Insolvensiewet, 1936, word hierby gewysig—
- (a) deur die volgende item ná item 22 in te voeg:
 “22A. Likwidasie van aangewese instellings”; en
- (b) deur item 35A deur die volgende item te vervang:
 “35A. Transaksies op [’n beurs] markinsfrastruktuur”.

Wysiging van artikel 10 van Wet 90 van 1989, soos gewysig deur artikel 3 van Wet 10 van 1993, artikel 5 van Wet 2 van 1996, artikel 2 van Wet 39 van 1997 en artikel 290 van Wet 9 van 2017

5. Artikel 10 van die Wet op die Suid-Afrikaanse Reserwebank, 1989, word hierby gewysig deur in subartikel (1) paragraaf (d) deur die volgende paragraaf te vervang:
 “(d) 'n maatskappy vorm of aandele verkry in 'n [beperkte] maatskappy wat ooreenkomstig die bepalings van die Maatskappywet, [1973,] 2008, opgerig en geregistreer is[,]—
- (i) vir die doeleindes van die Reserwebank se ontbindingswerkzaamhede ingevolge die 'Financial Sector Regulation Act, 2017' (Wet No. 9 van 2017); of
- (ii) indien so 'n verkryging, na die oordeel van die Raad, bevorderlik is vir die bereiking van 'n oogmerk van hierdie Wet;”.

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

6. Section 51 of the Banks Act, 1990, is hereby amended by the deletion in subsection (1) of paragraphs (c) and (d). 5

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

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

“(1D) 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 15

8. 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 166AE of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), to or in respect of depositors of the bank; 20
 - (bb) paid to depositors by [the Authority, a deposit insurance scheme,] a financial sector regulator as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) 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; 25
and”.

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

9. (1) Sections 68, 69 and 69A of the Banks Act, 1990, are hereby repealed.

(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, 1990, 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. 30

Amendment of section 89A of Act 94 of 1990, as inserted by section 3 of Act 3 of 2015 35

10. The following section is hereby substituted for section 89A of the Banks Act, 1990:

“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).” 40

Wysiging van artikel 51 van Wet 94 van 1990, soos gewysig deur artikel 11 van Wet 9 van 1993, artikel 34 van Wet 19 van 2003, artikel 22 van Wet 22 van 2013 en artikel 1 van Wet 3 van 2015

6. Artikel 51 van die Bankwet, 1990, word hierby gewysig deur in subartikel (1) paragrawe (c) en (d) te skrap. 5

Wysiging van artikel 54 van Wet 94 van 1990, soos gewysig deur artikel 6 van Wet 42 van 1992, artikel 12 van Wet 9 van 1993, artikel 36 van Wet 26 van 1994, artikel 5 van Wet 55 van 1996, artikel 36 van Wet 19 van 2003, artikel 13 van Wet 20 van 2007, artikel 90 van Wet 17 van 2009, artikel 24 van Wet 22 van 2013 en artikel 25 van Wet 9 van 1993 10

7. Artikel 54 van die Bankwet, 1990, word hierby gewysig deur die volgende subartikel ná subartikel (1C) in te voeg:

“(1D) Hierdie artikel is nie van toepassing op ’n bank wat ontbind word nie.”.

Wysiging van artikel 60 van Wet 94 van 1990, soos vervang deur artikel 1 van Wet 81 van 1991 en gewysig deur artikel 39 van Wet 26 van 1994, artikel 40 van Wet 19 van 2003, artikel 15 van Wet 20 van 2007 en artikel 29 van Wet 22 van 2013 15

8. Artikel 60 van die Bankwet, 1990, word hierby gewysig deur in subartikel (1B)(b) subparagraaf (ii) deur die volgende subparagraaf te vervang:

“(ii) om daaropvolgens enige bedrag te verreken—

(aa) wat deur die ‘Corporation for Deposit Insurance’ ingestel ingevolge artikel 166AE van die ‘Financial Sector Regulation Act, 2017 (Wet No. 9 van 2017), aan of ten opsigte van deposante van die bank betaal is;

(bb) wat deur [die Owerheid, ’n depositoversekeringskema] ’n reguleerder van die finansiële sektor soos omskryf in artikel 1(1) van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), of enige regeringsliggaam aan deposante betaal is, as gedeeltelike of volle vergoeding vir verliese deur deposante gelyk as gevolg daarvan dat die bank nie daartoe in staat was om hul deposito’s terug te betaal nie; en”.

Herroeping van artikels 68, 69 en 69A van Wet 94 van 1990

9. (1) Artikels 68, 69 en 69A van die Bankwet, 1990, word hierby herroep.

(2) Ondanks die wysigings van die Bankwet, 1990, in subartikel (1) vervat, moet ’n ondersoek deur ’n kommissaris ingevolge artikel 69A van die Bankwet, 1990, wat hangende is en onmiddellik voor die datum waarop subartikel (1) in werking tree, nog nie afgehandel is nie, deur die kommissaris voortgesit, afgehandel en oor verslag gedoen word ingevolge daardie artikel asof dit nie herroep is nie. 35

Wysiging van artikel 89A van Wet 94 van 1990, soos ingevoeg deur artikel 3 van Wet 3 van 2015

10. Artikel 89A van die Bankwet, 1990, word hierby deur die volgende artikel 40 vervang:

“Regverdigde administratiewe handeling

89A. Enige administratiewe handeling ingevolge hierdie Wet geneem, [met inbegrip van enige administratiewe aksie deur ’n kurator aangestel ingevolge artikel 69,] is onderhewig aan die ‘Promotion of Administrative Justice Act, 2000’ (Wet No. 3 van 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

11. Section 91 of the Banks Act, 1990, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph: 5

“(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.”. 10

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

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

(a) by the substitution for the heading of the following heading: 15

“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 respectively:

“(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 25

(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.”; and 30

(c) by the addition of the following subsections:

“(5) The Authority may, 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. 35

(6) The Authority may, 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— 40

(a) cease or refrain from engaging in any act, omission or course of conduct or to perform such acts necessary to remedy the situation; 45

(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. 50

(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. 55

Wysiging van artikel 91 van Wet 94 van 1990, soos gewysig deur artikel 23 van Wet 9 van 1993, artikel 56 van Wet 26 van 1994, artikel 16 van Wet 36 van 2000, artikel 65 van Wet 19 van 2003, artikel 32 van Wet 20 van 2007, artikel 47 van Wet 22 van 2013 en artikel 290 van Wet 9 van 2017

11. Artikel 91 van die Bankwet, 1990, word hierby gewysig deur in subartikel (4) 5
paragraaf (b) deur die volgende paragraaf te vervang:

“(b) artikel 17(6), 21, 22(3) of (8), 32(4)(a), [69A(14),] 78(2), 82(3), 83(3)(a), 84(1A), 84(8) of subartikel (1), (2) of (3) van hierdie artikel (uitgesonderd die misdryf ingevolge subartikel (1)(b), waarna in paragraaf (a) verwys word), is strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens vyf 10
jaar of met ’n boete sowel as daardie gevangenisstraf.”.

Wysiging van artikel 4 van Wet 124 van 1993, soos gewysig deur artikel 2 van Wet 54 van 1999 en artikel 290 van Wet 9 van 2017

12. Artikel 4 van die Wet op Onderlinge Banke, 1993, word hierby gewysig—
(a) deur die opskrif deur die volgende opskrif te vervang: 15

“**Inspeksiebevoegdheede van, leidingsnotas, voorskrifte en riglyne deur [Registrateur] Owerheid**”;

(b) deur subartikels (3) en (4) onderskeidelik deur die volgende subartikels te vervang:

“(3) Nóg die bepalings van hierdie artikel nóg enige ander bepaling 20
van hierdie Wet word so uitgelê dat dit die [Registrateur] Owerheid
belet om van tyd tot tyd samesprekings te voer met die hoof- uitvoerende
beampte van ’n onderlinge bank, of met ’n uitvoerende beampte of
werknemer, wat deur so ’n hoof- uitvoerende beampte aangewys is,
van— 25

(a) daardie onderlinge bank; of

(b) enige geassosieerde van daardie onderlinge bank,
met die oog op die bewerkstelling van doelmatige toesighouding deur
die [Registrateur] Owerheid, op ’n individuele of ’n gekonsolideerde
grondslag, oor daardie onderlinge bank of oor daardie onderlinge bank 30
en enige van sy geassosieerdes.

(4) Die [Registrateur] Owerheid kan van tyd tot tyd deur middel van
’n omsendbrief aan onderlinge banke riglyne verstrek met betrekking tot
die toepassing en vertolking van die bepalings van hierdie Wet.”; en

(c) deur die volgende subartikels by te voeg: 35

“(5) Die Owerheid kan, by wyse van ’n leidingsnota, onderlinge
banke en ouditeure van onderlinge banke van inligting oor markpraktyke
of mark- of bedryfsontwikkeling binne of buite die Republiek inlig.

(6) Die Owerheid kan, na oorleg met die tersaaklike onderlinge bank
of ouditeur van die onderlinge bank, ’n skriftelike voorskrif aan sodanige 40
onderlinge bank of ouditeur van ’n onderlinge bank uitreik, hetsy
individueel of gesamentlik, oor die toepassing van die Wet en kan insluit
die uitreiking van ’n niefinansieële straf of ’n voorskrif wat vereis dat ’n
onderlinge bank of ’n ouditeur van ’n onderlinge bank, hetsy individueel
of kollektief, binne die tydperk in die voorskrif gespesifiseer— 45

(a) enige handeling, versuim of gedragspatroom staak of hom of haar
daarvan weerhou of die daede verrig wat nodig is om die situasie reg
te stel;

(b) die daede verrig wat nodig is om te voldoen aan die lasgewing of om
die veranderinge teweeg te bring wat nodig is om aan die voorskrif 50
uitvoering te gee; of

(c) die Owerheid te voorsien van die inligting en dokumente rakende
die aangeleentheid wat in die voorskrif vermeld word.

(7) Die voorskrif in subartikel (6) beoog, kan —

(a) skriftelik deur die Owerheid gekanselleer word, na oorleg met die 55
onderlinge bank of ouditeur van ’n onderlinge bank wat aan die
voorskrif onderhewig is; en

(b) nie terugwerkend deur die Owerheid uitgereik word nie.

(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 5

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

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

14. Sections 73, 74, 75, 76 and 77 of the Mutual Banks Act, 1993, are hereby repealed.

Insertion of section 78A of Act 124 of 1993 10

15. The following section is hereby inserted in the Mutual Banks Act, 1993, after section 78:

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

78A. 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.” 15

Repeal of sections 80 and 81 of Act 124 of 1993

16. Sections 80 and 81 of the Mutual Banks Act, 1993, are hereby repealed.

Amendment of section 92 of Act 124 of 1993, as amended by section 290 of Act 9 of 2017 20

17. Section 92 of the Mutual Banks Act, 1993, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) section 4(8), 14(6), 18, 20(3) or (6), 29(4)(a), 45(22), 59(2) or 84(2) or subsection (1), (2) or (3) of this section, shall be liable to a fine, or to imprisonment for a period not exceeding six months.” 25

Amendment of Arrangement of Sections of Act 124 of 1993

18. The Arrangement of Sections of the Mutual Banks Act, 1993, is hereby amended—

(a) by the insertion after item 78 of the following item:
“78A. Sections 71, 72 and 78 do not apply to mutual banks in resolution”; and 30

(b) by the deletion of items 80 and 81.

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, section 111 of Act 19 of 2012 and substituted by section 13 of Act 18 of 2018 35

19. 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, after consultation with the Competition Commission, 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)— 40

(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;

(8) Enige onderlinge bank of ouditeur van 'n onderlinge bank wat nalaat, weier of versuim om te voldoen aan 'n voorskrif kragtens hierdie artikel uitgereik, is skuldig aan 'n misdryf.’’.

Wysiging van artikel 29 van Wet 124 van 1993, soos gewysig deur artikel 20 van Wet 54 van 1999 5

13. Artikel 29 van die Wet op Onderlinge Banke, 1993, word hierby gewysig deur paragraaf (b) in subartikel (4) te skrap.

Herroeping van artikels 73, 74, 75, 76 en 77 van Wet 124 van 1993

14. Artikels 73, 74, 75, 76 en 77 van die Wet op Onderlinge Banke, 1993, word hierby herroep. 10

Invoeging van artikel 78A in Wet 124 van 1993

15. Die volgende artikel word hierby ná artikel 78 in die Wet op Onderlinge Banke ingevoeg:

“Artikels 71, 72 en 78 is nie van toepassing nie op onderlinge banke wat ontbind word 15

78A. Artikels 71, 72 en 78 is nie van toepassing nie op 'n onderlinge bank ten opsigte waarvan 'n bepaling ingevolge artikel 166J van die 'Financial Sector Regulation Act, 2017' (Wet No. 9 van 2017), van krag is.’’.

Herroeping van artikels 80 en 81 van Wet 124 van 1993 20

16. Artikels 80 en 81 van die Wet op Onderlinge Banke, 1993, word hierby herroep.

Wysiging van artikel 92 van Wet 124 van 1993, soos gewysig deur artikel 290 van Wet 9 van 2017

17. Artikel 92 van die Wet op Onderlinge Banke, 1993, word hierby gewysig deur in subartikel (4) paragraaf (b) deur die volgende paragraaf te vervang: 25

“(b) artikel 4(8), 14(6), 18, 20(3) of (6), 29(4)(a), 45(22), 59(2) of 84(2) of subartikel (1), (2) of (3) van hierdie artikel, is strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.’’.

Wysiging van Indeling van Artikels van Wet 124 van 1993

18. Die Indeling van Artikels van die Wet op Onderlinge Banke, 1993, word hierby gewysig— 30

(a) deur die volgende item ná item 78 in te voeg:

“**78A.** Artikels 71, 72 en 78 is nie van toepassing nie op onderlinge banke wat ontbind word’’; en

(b) deur items 80 en 81 te skrap. 35

Wysiging van artikel 18 van Wet 89 van 1998, soos vervang deur artikel 6 van Wet 39 van 2000 en gewysig deur artikel 90 van Wet 40 van 2007, artikel 111 van Wet 19 van 2012 en vervang deur artikel 13 van Wet 18 van 2018

19. Artikel 18 van die Wet op Mededinging, 1998, word hierby gewysig deur die volgende subartikel by te voeg: 40

“(4) Benewens subartikels (2) en (3), as die President van die Reserwebank, of 'n persoon deur die President gemagtig om dit te doen, na oorleg met die Mededingingskommissie, skriftelik bepaal het dat hierdie artikel van toepassing is op 'n transaksie ingevolge artikel 166S van die 'Financial Sector Regulation Act, 2017' (Wet No. 9 van 2017)— 45

(a) mag die Mededingingskommissie nie 'n besluit ingevolge artikel 13(5)(b) of 14(1)(b) met betrekking tot die transaksie neem nie;

- (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.”.

Insertion of section 9B in Act 28 of 2001

20. The following section is hereby inserted in the Financial Institutions (Protection of Funds) Act, 2001, after section 9A: 5

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

9B. 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.”. 10

Amendment of Arrangement of Sections of Act 28 of 2001

21. The Arrangement of Sections of the Financial Institutions (Protection of Funds) Act, 2001, is hereby amended by the insertion after item 9A of the following item:

“9B. Sections 5 and 6 do not apply to designated institutions in resolution”.

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 15

22. 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 166BD of the Financial Sector Regulation Act;”. 20

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

23. Sections 24, 25, 26 and 30 of the Co-operative Banks Act, 2007, are hereby repealed.

Insertion of section 30A in Act 40 of 2007

24. The following section is hereby inserted in the Co-operative Banks Act, 2007, after section 30: 25

“Co-operative Banks as designated institutions in terms of Financial Sector Regulation Act, 2017

30A. Sections 27, 28, and 29 do not apply to a co-operative bank in respect of which a determination in terms of section 166J of the Financial Sector Regulation Act is in force.”. 30

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

25. Section 55 of the Co-operative Banks Act, 2007, is hereby amended by the deletion in subsection (1) of paragraph (g). 35

Amendment of section 80 of Act 40 of 2007

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

- (b) mag die Medingingskommissie nie 'n bevel ingevolge artikel 16(2) met betrekking tot die transaksie gee nie; en
- (c) is artikel 13(6) en 14(2) nie van toepassing met betrekking tot die transaksie nie”.

Invoeging van artikel 9B in Wet 28 van 2001

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20. Die volgende artikel word hierby ná artikel 9A in die Wet op Finansiële Instellings (Beskerming van Fondse), 2001, ingevoeg:

“Artikels 5 en 6 is nie op aangewese instellings in ontbinding van toepassing nie

9B. Artikels 5 en 6 is nie van toepassing op 'n instelling waarvan 'n besluit, ingevolge artikel 166J van die ‘Financial Sector Regulation Act’, 2017, van krag is nie.”

Wysiging van Indeling van Artikels van Wet 28 van 2001

21. Die Indeling van Artikels van die Wet op Finansiële Instellings (Beskerming van Fondse), 2001, word hierby gewysig deur die volgende item ná item 9A in te voeg: 15

“9B. Artikels 5 en 6 is nie op aangewese instellings in ontbinding van toepassing nie”.

Kwenziwa utshintsho kwicandelo 1 loMthetho 40 ka-2007, owathi wenziwa utshintsho licandelo 240 loMthetho 45 ka-2013 nalicandelo 290 loMthetho 9 ka-2017

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22. Kwenziwa utshintsho kwicandelo 1 loMthetho weeBhanki zeNtsebenziswano, ka-2007, ngokuthi kwicandelwana (1) ukuchazwa kwegama elithi ‘iNgxowa-mali’ indawo yako ithatyathwe kukuchazwa kwegama okulandelayo:

“iNgxowa-mali’ yiNgxowa-mali yeDiphozithi ye-Inshorensi eyasekwa ngokwecandelo 166BD leFinancial Sector Regulation Act;”

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Kutshitshiswa icandelo 24, 25, 26 nelama-30 loMthetho 40 ka-2007

23. Kutshitshiswa icandelo 24, 25, 26 nelama-30 loMthetho weeBhanki zeNtsebenziswano ka-2007.

Kufakelwa icandelo 30A kuMthetho 40 ka-2007

24. Kufakelwa eli candelo lilandelayo kuMthetho weeBhanki zeNtsebenziswano, ka-2007, emva kwecandelo 30: 30

“iBhanki zeNtsebenziswano njengamaziko amiselweyo ngokwe-Financial Sector Regulation Act, ka-2017

30A. Icandelo 27, 28, nelama-29 akasebenzi kwibhanki yentsebenziswano ekusebenza kuyo isigqibo esingokwecandelo 166J se-Financial Sector Regulation Act.”

35

Kwenziwa utshintsho kwicandelo 55 loMthetho 40 ka-2007, owathi wenziwa utshintsho licandelo 251 loMthetho 45 ka-2013 nalicandelo 290 loMthetho 9 ka-2017

25. Kwenziwa utshintsho kwicandelo 55 loMthetho weeBhanki zeNtsebenziswano, ka-2007, ngokuthi kwicandelwana (1) kucinywe isiqendu (g).

Kwenziwa utshintsho kwicandelo 80 loMthetho 40 ka-2007

26. Kwenziwa utshintsho kwicandelo 80 loMthetho weeBhanki zeNtsebenziswano, ka-2007, ngokuthi indawo yesiqendu (b) ithatyathwe sisiqendu esilandelayo:

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

Amendment of section 81 of Act 71 of 2008

27. 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);

and

(b) by the insertion of the word “or” at the end of paragraph (f) and the addition 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

28. 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

29. Section 113 of the Companies Act, 2008, is hereby amended by the insertion after 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

30. 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

31. 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.”.

Amendment of section 3 of Act 19 of 2012, as amended by section 290 of Act 9 of 2017

32. 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 as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).”.

“(b) ophule okanye angathobeli amacandelo 3(2), 10, 21(1)[,] okanye 23 [okanye 25(4)];”.

Wysiging van artikel 81 van Wet 71 van 2008

27. Artikel 81 van die Maatskappywet, 2008, word hierby gewysig—
- (a) deur in subartikel (1) die word “of” aan die einde van paragraaf (e) te skrap; 5
en
- (b) deur die word “of” aan die einde van paragraaf (f) in te voeg en die volgende paragraaf by te voeg:
- “(g) in die geval van ’n aangewese instelling soos omskryf in die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), het die Reserwebank by die hof aansoek gedoen om ’n bevel om die maatskappy te likwideer op die gronde dat die maatskappy ontbind word ingevolge daardie Wet en daar geen redelike vooruitsigte is dat die maatskappy sal ophou ontbind nie.”. 10

Wysiging van artikel 112 van Wet 71 van 2008, soos gewysig deur artikel 69 van Wet 3 van 2011

28. Artikel 112 van die artikel 112 van die Maatskappywet, 2008, word hierby gewysig deur die volgende paragraaf na paragraaf (a) in subartikel (1) in te voeg:
- “(aA) waarop artikel 166S van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), van toepassing is;”.

Wysiging van artikel 113 van Wet 71 van 2008

29. Artikel 113 van die Maatskappywet, 2008, word hierby gewysig deur die volgende subartikel ná subartikel (1) in te voeg:
- “(1A) Hierdie artikel is nie van toepassing op ’n amalgamasie of samesmelting waarop artikel 166S van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), nie.”.

Wysiging van artikel 114 van Wet 71 van 2008, soos gewysig deur artikel 70 van Wet 3 van 2011

30. Artikel 114 van die Maatskappywet, 2008, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 30
- “Tensy [**dit**] die maatskappy in likwidasië is, [**of**] in die loop van ondernemingreddingsverrigtinge ooreenkomstig Hoofstuk 6 is of die reëling een is waarop artikel 166S van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), van toepassing is, mag die direksie van ’n maatskappy voorstel en, behoudens subartikel (4) en goedkeuring kragtens hierdie Deel, enige reëling 35
tussen die maatskappy en houers van enige klas van sy sekuriteite implementeer by wyse van, onder andere—”.

Wysiging van artikel 128 van Wet 71 van 2008, soos gewysig deur artikel 81 van Wet 3 van 2011

31. Artikel 128 van die Maatskappywet, 2008, word hierby gewysig deur die volgende subartikel by te voeg: 40
- “(4) Hierdie Hoofstuk is nie van toepassing op ’n instelling ten opsigte waarvan ’n bepaling ingevolge artikel 166J van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017), van krag is nie.”.

Kuchitjiyelwa kwesigaba 3 seMtsetfo 19 wa 2012, njengoba uchitjiyelwe sigaba 290 seMtsetfo 9 wa 2017

32. Sigaba 3 seMtsetfo Wetimakethe Tetetimali, 2012, siyachitjiyelwa ngekufaka esikhundleni sesigatjana (1) salesigatjana lesiladzelako:
- “(1) Tigaba 100 kuya ku-103 atisebenti macondzana neliBhange Lembuso laseNingizimu Afrika, noma sikhungo lesibekwe [**libhange**] njengoba kuchazwe 50
esigabeni 1(1) seMtsetfo Wekulawulwa Kwemkhakha Wetetimali.”.

Amendment of section 60 of Act 19 of 2012, as amended by section 290 of Act 9 of 2017

33. 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 as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), 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

34. 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 as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).”.

Amendment of section 1 of Act 9 of 2017

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

(a) by the insertion in subsection (1) after the definition of “administrative penalty order” of the following definitions:

“**‘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 branch as defined in the Banks Act;

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

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

(b) by the insertion in subsection (1) after the definition of “benchmark” of the following definitions:

“**‘Board’** means the Board of the Corporation referred to in section 166AI;

‘bridge company’ means a company incorporated in terms of section 166F;”;

(c) by the insertion in subsection (1) after the definition of “Chief Executive Officer” of the following definition:

“**‘Chief Executive Officer of the Corporation’** means the Chief Executive Officer of the Corporation appointed in terms of section 166AL(1), and includes a person acting as the Chief Executive Officer of the Corporation;”;

(d) by the insertion in subsection (1) after the definition of “control function” of the following definition:

“**‘Corporation’** means the Corporation for Deposit Insurance established by section 166AE;”;

(e) by the insertion in subsection (1) after the definition of “Court” of the following definition:

“**‘covered deposit’** means the portion of a qualifying deposit covered by the Deposit Insurance Fund provided for in section 166AB;”;

(f) by the insertion in subsection (1) after the definition of “credit agreement” of the following definitions:

“**‘creditor hierarchy’** means the order in which a liquidator must, in terms of the Insolvency Act, read with sections 166U and 166W, apply property to satisfy claims of creditors;

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

Kuchitjiyelwa kwesigaba 60 seMtsetfo 19 wanga 2012, njengoba uchitjiyelwe sigaba 290 seMtsetfo 9 wa 2017

33. Sigaba 60 seMtsetfo Wetimakethe Tetetimali, 2012, siyachitjiyelwa ngekwengeta lesigatjana lesiladzelako:

“(5) Uma sakhiwoncanti semakethe sikhungo lesicokiwe kuisombululo njengoba kuchazwe esigabeni 1(1) seMtsetfo Wekulawulwa Kwemkhakha Wetetimali, Siphatsimandla kufanele sinikete liBhangengodla satiso ngaphambi kwekutsatsa noma ngusiphi sinyatselo ngekwalesi sigaba.” 5

Kuchitjiyelwa kwesigaba 64 seMtsetfo 19 wa 2012, njengoba uchitjiyelwe sigaba 290 seMtsetfo 9 wa 2017 10

34. Sigaba 64 seMtsetfo Wetimakethe Tetetimali, 2012, siyachitjiyelwa ngekwengeta lesigatjana lesiladzelako:

“(7) Lesigaba asisebenti esikhungweni lesicokiwe ekusombululeni njengoba kuchazwe esigabeni 1(1) seMtsetfo Wekulawulwa Kwemkhakha Wetetimali.”.

Tlhabololo ya karolo 1 ya Molao 9 wa 2017 15

35. Karolo 1 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa jaana—

(a) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “taelo ya kotlhao ya tsamaiso” ga ditlhaloso tse di latelang:

“**‘tumalano’** e akaretsa thulaganyo kgotsa kutlwano, ka go kwala kgotsa nnyaa;

“**‘banka’** e kaya nngwe le nngwe ya tse di latelang:

(a) banka jaaka e tlhalositswe mo *Banks Act*;
(b) lekala jaaka le tlhalositswe mo *Banks Act*;
(c) bankatlhakanelo jaaka e tlhalositswe mo *Mutual Banks Act, 1993* (Molao 124 wa 1993); kgotsa 25

(d) bankatirisanommogo jaaka e tlhalositswe mo *Co-operative Banks Act, 2007* (Molao 40 wa 2007);”;

(b) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “kaelo” ga ditlhaloso tse di latelang: 30

“**‘Boto’** e kaya Boto ya Koporasi e e kailweng mo karolong 166AI; **‘setlamokgolaganyo’** se kaya setlamo se se akareditsweng go ya ka karolo 166F;”;

(c) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “Motlhankedimogolo wa Khuduthamaga” ga tlhaloso e e latelang: 35

“**‘Motlhankedimogolo wa Khuduthamaga wa Koporasi’** o kaya Motlhankedimogolo wa Khuduthamaga wa Koporasi yo o tlhomilweng go ya ka karolo 166AL(1), le go akaretsa motho yo o tshwereng nakwana mo boemong jwa Motlhankedimogolo wa Khuduthamaga wa Koporasi;”;

(d) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “tiro ya taolo” ga tlhaloso e e latelang: 40

“**‘Koporasi’** e kaya Koporasi ya Inšorense ya Tipositi e e tlhomilweng ka karolo 166AE;”;

(e) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “Kgotlatshekelo” ga tlhaloso e e latelang: 45

“**‘tipositi e e sireleditsweng’** e kaya karolo ya tipositi e e siametseng e e sireleditsweng ke Letlole la Inšorense ya Tipositi le le laetsweng mo karolong 166AB;”;

(f) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “tumalano ya sekoloto” ga ditlhaloso tse di latelang: 50

“**‘thulaganyotatelano ya mokolotwa’** e kaya tatelano e ka yona mogapi a tshwanetseng, go ya ka *Insolvency Act*, go e diragatsa mmogo le dikarolo 166U le 166W, go dirisa thoto go kgotsofatsa ditleleime tsa bakolotwa; 55

‘tiro ya botlhokwa’, mabapi le setheo se se tlhomilweng, e kaya tiro e e—

- (a) essential to, or that contributes substantially to, financial stability and is performed by the designated institution; or
- (b) provided to, and essential to the continued operation of, the designated institution;”;
- (g) by the insertion in subsection (1) after the definition of “debarment order” of the following definitions: 5
- “**‘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 166BC; 10
- ‘deposit insurance premium’** means a premium imposed by legislation, in accordance with section 166BG;
- ‘depositor’** means a person that holds a deposit as defined in section 1 of the Banks Act;”;
- (h) by the insertion in subsection (1) after the definition of “Deputy Governor” of the following definitions: 15
- “**‘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; 20
- ‘director’** means a director of the Corporation;”;
- (i) by the addition in subsection (1) to the definition of “financial sector body” of the following paragraphs:
- “(g) the Reserve Bank, in relation to its resolution functions; and 25
- (h) the Corporation;”;
- (j) by the insertion in subsection (1) after the definition of “financial year” of the following definition:
- “**‘flac instrument’** means a financial instrument issued by a designated institution, being an instrument that— 30
- (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— 35
- (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 40
- (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;”;
- (k) by the insertion in subsection (1) after the definition of “Friendly Societies Act” of the following definition: 45
- “**‘Fund’** means the Deposit Insurance Fund established by section 166BD;”;
- (l) by the insertion in subsection (1) after the definition of “industry ombud scheme” of the following definition: 50
- “**‘Insolvency Act’** means the Insolvency Act, 1936 (Act No. 24 of 1936);”;
- (m) by the insertion in subsection (1) after the definition of “ombud scheme” of the following definition: 55
- “**‘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) assists in maintaining financial stability;
- (b) ensures that the critical functions performed by the designated institution continue to be performed; and
- (c) in the case of a bank, protects the interests of depositors;”;
- (n) by the insertion in subsection (1) after the definition of “payment system” of the following definitions: 60
- “**‘payment system operator’** means an operator of a payment system, and includes—

- (a) botlhokwa mo, kgotsa e e tshamekang karolo ya botlhokwa mo, tlhomameng ya ditšhelete e bile e dirwa ke setheo se se tlhomilweng; kgotsa
- (b) laetsweng, e bile e le botlhokwa mo go tsweleng go dira ga, setheo se se tlhomilweng;”;
- (g) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “taelo ya kganelo” ga ditlhaloso tse di latelang:
 “**‘tipositi’** e na le bokao jo e bo neilweng mo karolong 1(1) ya *Banks Act*;
‘lekgethwana la inšorensa ya tipositi’ le kaya lekgethwana la leina leo le le ka pateletswang ka molao, go tsamaelana le karolo 166BC;
‘tuelotshireletso ya tipositi’ e kaya tuelotshireletso e e pateletswang ka molao, go tsamaelana le karolo 166BG;
‘mmayamadi’ o kaya motho yo o nang le tipositi jaaka go tlhalositswe mo karolong 1 ya *Banks Act*;”;
- (h) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “Motlatsammusisi” ga ditlhaloso tse di latelang:
 “**‘setheo se se tlhomilweng’** se kaya setheo se se tlhomilweng jaaka go tlhalositswe mo karolong 29A;
‘setheo se se tlhomilweng se se mo tharabololong’ se kaya setheo se se tlhomilweng seo mabapi le sona tlhomamiso go ya ka karolo 166J(2), e leng mo tirisong;
‘mokaedi’ o kaya mokaedi wa Koporasi;”;
- (i) ka go tsenngwa mo karotlaleletsong (1) mo tlhalosong ya “mokatlho wa lephata la ditšhelete” ga ditemana tse di latelang:
 “(g) *Banka ya Resefe*, mabapi le ditiro tsa yona tsa tharabololo; le
 (h) *Koporasi*;”;
- (j) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya ngwaga wa ditšhelete ga tlhaloso e e latelang:
 “**‘sediriswa sa flac’** se kaya sediriswa sa ditšhelete se se rebotsweng ke setheo se se tlhomilweng, e le sediriswa se se—
 (a) obamelang ditlhokego tse di beilweng ke maemo a botlhokwa a sediriswa sa flac; le
 (b) sa mofuta o o sa balweng mabapi le maitlomo a go tlhomamisa gore setheo se se tlhomilweng se tsamaelana le ditlhokego tsa—
 (i) Kgaolo VI ya *Banks Act*;
 (ii) Kgaolo V ya *Mutual Banks Act*, 1993 (Molao 124 wa 1993);
 (iii) Kgaolo III ya *Co-operative Banks Act*, 2007 (Molao 40 wa 2007); kgotsa
 (iv) Kgaolo 6 ya *Insurance Act*, 2017 (Molao 18 wa 2017), Kgotsa maemo a botlhokwa a a dirilweng mabapi le maitlomo a nngwe le nngwe ya ditaelo tseo;”;
- (k) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “*Friendly Societies Act*” ga tlhaloso e e latelang:
 “**‘Letlole’** le kaya Letlole la Inšorensa ya Tipositi e e tlhomilweng ka karolo 166BD;”;
- (l) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “sekema sa ombud wa bodirelo” ga tlhaloso e e latelang:
 “**‘Molao wa Phuthamo’** o kaya *Insolvency Act*, 1936 (Molao 24 wa 1936);”;
- (m) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “sekema sa ombud” ga tlhaloso e e latelang:
 “**‘tharabololo e e rulaganeng ya setheo se se tlhomilweng’** e kaya taolo ya merero ya setheo se se tlhomilweng jaaka go laetswe mo Kgaolong 12A ka tsela e e—
 (a) thusang mo go tlhokomeleng tlhomamo ya ditšhelete;
 (b) netefatsang gore ditiro tsa botlhokwa tse di dirwang ke setheo se se tlhomilweng di tswelela go dirwa; le
 (c) mo lebakeng la banka, sireletsang dikgatlhagelo tsa babayamadi;”;
- (n) ka go tsenngwa mo karotlaleletsong (1) morago ga tlhaloso ya “thulaganyo ya tuelo” ga ditlhaloso tse di latelang:
 “**‘modirisi wa thulaganyo ya tuelo’** o kaya modirisi wa thulaganyo ya tuelo, le go akaretsa—

- (a) a designated settlement system operator as defined in section 1 of the National Payment System Act; and
- (b) a payment clearing house 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;”;
- (o) by the insertion in subsection (1) after the definition of “person” of the following definition:
“‘placing a designated institution in resolution’ refers to making a determination in terms of section 166J(2) in relation to the designated institution;”;
- (p) by the insertion in subsection (1) after the definition of “Public Finance Management Act” of the following definition:
‘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 the capacity of—
- (i) a financial institution, excluding a financial institution that is a co-operative financial institution as defined in section 1(1) of the Co-operative Banks Act;
- (ii) the national government, a provincial government, a local government or an organ of state;
- (iii) an entity listed in Schedule 2 to 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);”;
- (q) by the insertion in subsection (1) after the definition of “Reserve Bank Act” of the following definitions:
‘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;”;
- (r) by the insertion in subsection (1) after the definition of “service provided by a market infrastructure” of the following definition:
‘share’ means a share as defined in section 1 of the Companies Act;”;
- (s) by the insertion in subsection (1) after paragraph (a) of the definition of “supervised entity” of the following paragraph:
“(aA) a designated institution that is not otherwise a licensed financial institution;”; and
- (t) by the insertion in subsection (1) after the definition of “systemically important financial institution” of the following definition:
“‘systemically important payment system’ means a payment system designated in terms of section 29B;”.

- (a) modirisi wa thulaganyo ya pheleletsotuelo yo o tlhomilweng jaaka go tthalositswe mo karolong 1 ya *National Payment System Act*; le
- (b) tuelo e e tlosang modirisi wa thulaganyo e e phimolang molato wa dintlo jaaka go tthalositswe mo karolong 1 ya *National Payment System Act*; 5
- ‘motsayakarolo mo thulaganyong ya tuelo’** o akaretsa—
- (a) motsayakarolo mo thulaganyong ya pheleletsotuelo jaaka go tthalositswe mo karolong 1 ya *National Payment System Act*;
- (b) motsayakarolo mo thulaganyong ya pheleletsotuelo ya Banka ya Resefe jaaka go tthalositswe mo karolong 1 *National Payment System Act*; le 10
- (c) motsayakarolo mo thulaganyong ya go phimola molato jaaka go tthalositswe mo karolong 1 ya *National Payment System Act*;”;
- (o) ka go tsenngwa mo karotlaleletsong (1) morago ga tthaloso ya “motho” ga tthaloso e e latelang: 15
- “go baya setheo se se tlhomilweng mo tharabololong’ go kaya go dira tlhomamiso go ya ka karolo 166J(2) mabapi le setheo se se tlhomilweng;”;**
- (p) ka go tsenngwa mo karotlaleletsong (1) morago ga tthaloso ya “*Public Finance Management Act*” ga tthaloso e e latelang: 20
- “tipositi e e matshwanedi’** e kaya tipositi e e dirwang le banka, ntle le—
- (a) tipositi e e nang le bosupi jwa sediriswa sa mmei wa tipositi; kgotsa
- (b) tipositi e mmayamadi a tshwereng tipositi mo maemong a— 25
- (i) setheo sa ditšhelete, go sa akaretse setheo sa ditšhelete seo e leng setheo sa ditšhelete sa tirisano jaaka go tthalositswe mo karolong 1 ya *Co-operative Banks Act*;
- (ii) puso ya bosetšhaba, puso ya selegae kgotsa lekala la puso;
- (iii) setheo se se tlagisitsweng mo Šejuleng 2 ya *Public Finance Management Act*; 30
- (iv) Koporasi ya Tipositi ya Setšhaba e e tlhomilweng ka karolo 2 ya *Corporation for Public Deposits Act, 1984* (Molao 46 wa 1984); kgotsa
- (v) Koporasipeeletso ya Setšhaba e e tlhomilweng ka karolo 2 ya *Public Investment Corporation Act, 2004* (Molao 23 wa 2004);”;
- (q) ka go tsenngwa mo karotlaleletsong (1) morago ga tthaloso ya “Molao wa Banka ya Resefe” ga ditthaloso tse di latelang: 35
- “tharabololo’**, ya setheo se se tlhomilweng, e kaya taolo ya merero ya setheo se se tlhomilweng jaaka go laetswe mo Kgaolong 12A;
- ‘kgato ya tharabololo’** e kaya kgato go ya ka karolo 166S;
- ‘tiro ya tharabololo’** e kaya tiro kgotsa thata—
- (a) e e roletsweng mo Bankeng ya Resefe mabapi le maitlhommo a; kgotsa
- (b) e e dirilweng ke Banka ya Resefe mabapi le, tharabololo ya setheo se se tlhomilweng (go akaretsa le tiro kgotsa thata e e roletsweng kgotsa e e dirilweng mabapi le maitlhommo a go fokotsa matshosetsi a gore setheo se se tlhomilweng se ka bewa mo tharabololong); 45
- ‘modiri wa tsa tharabololo’**, mabapi le setheo se se tlhomilweng, o kaya motho yo o thapilweng go ya ka karolo 166O;”;
- (r) ka go tsenngwa mo karotlaleletsong (1) morago ga tthaloso ya “tirelo e e abiwang ke popegotheo ya mmara” ga tthaloso e e latelang: 50
- “šere’** e kaya šere jaaka e tthalositswe mo karolong 1 ya *Companies Act*;”;
- (s) ka go tsenngwa mo karotlaleletsong (1) morago ga temana (a) ya tthaloso ya “setheo se se tlhokometsweng” ga temana e e latelang: 55
- “(aA) setheo se se tlhomilweng se ka mokgwa mongwe e seng setheo sa ditšhelete se se sa abelwang laesense;”;** le
- (t) ka go tsenngwa mo karotlaleletsong (1) morago ga tthaloso ya “setheo sa ditšhelete sa thulaganyo e e botlhokwa” ga tthaloso e e latelang: 60
- “thulaganyotuelo ya thulaganyo e e botlhokwa’** e kaya thulaganyo ya tuelo e e tlhomilweng go ya ka karolo 29B;”.

Amendment of section 7 of Act 9 of 2017

- 36.** Section 7 of the Financial Sector Regulation Act, 2017, is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (g); and
 - (b) by the insertion of the word “and” at the end of paragraph (h) and the addition 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

37. 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

- 38.** Section 26 of the Financial Sector Regulation Act, 2017, is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(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;”;
 - (b) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
 - “(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) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
 - “(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.”.

Tlhabololo ya karolo 7 ya Molao 9 wa 2017

36. Karolo 7 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—
- (a) ka go phimolwa mo karotlaleletsong (1) ga lefoko “le” kwa bofelong jwa temana (g); le
- (b) ka go tsenngwa ga lefoko “le” kwa bofelong jwa temana (h) le go tsenngwa ga temana e e latelang: 5
- “(i) tharabololo e e rulaganeng ya ditheo tse di tlhomilweng tse di mo tharabololong le, mabapi le seo, tshireletso ya babayamadi mo dibankeng ka sekema sa inšorensense ya tipositi le go akaretsa ditshenyegelo tsa Rephaboleki tsa dikgato tse di tserweng.” 10

Kemisetso ya karolo 9 ya Molao 9 wa 2017

37. Karolo e e latelang e tsenngwa mo boemong jwa karolo 9 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017:

“Go sa tsamaelaneng magareng ga Molao le melao e mengwe ya [lephata la ditšhelete] 15

9. (1) Mo lebakeng la fa go na le go sa tsamaelaneng gofe magareng ga taelo ya Molao ono, eo e seng Molawanataolo kgotsa sediriswa sa taolo se se dirilweng ka fa tlase ga Molao ono, le taelo ya Molao o mongwe e e—

(a) leng molao wa lephata la ditšhelete; kgotsa

(b) ka ga go retelelwa kgotsa go phuthama ga setlamo kgotsa go thapiwa ga molaodi wa semolao, motlhomamisi kgotsa motho yo o jalo kwa setheong se se tlhomilweng, 20

ditaelo tsa Molao ono di a diriswa.

(2) Mo lebakeng la fa go na le go sa tsamaelaneng magareng ga taelo ya Molawanataolo kgotsa sediriswa sa taolo se se dirilweng go ya ka Molao ono le taelo ya Molawanataolo kgotsa sediriswa sa taolo se se dirilweng—

(a) go ya ka molao o o rileng wa lephata la ditšhelete; kgotsa

(b) go ya ka molao o mongwe o o ka ga go retelelwa kgotsa go phuthama ga setheo kgotsa go thapiwa ga molaodi wa semolao, motlhomamisi kgotsa motho yo o jalo kwa setheong se se tlhomilweng, 30

taelo ya Molawanataolo kgotsa sediriswa sa taolo se se dirilweng go ya ka Molao ono se a diriswa.”

Tlhabololo ya karolo 26 ya Molao 9 wa 2017

38. Karolo 26 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—
- (a) ka kemisetso mo karotlaleletsong (1) ya ditemana (a) le (b) ka ditemana tse di latelang, ka tatelano: 35
- “(a) go thusana le go dirisanammogo le Banka ya Resefe, go akaretsa le mabapi le ditiro tsa tharabololo, le ka bo tsona, go tlamela, go sireletsa le go maatlafatsa tlhomamo ya ditšhelete;
- (b) go tlamela thuso eo le tshedimisetso kwa Bankeng ya Resefe, go akaretsa le mabapi le ditiro tsa yona tsa tharabololo, le Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete, go tlamela le go busetsa tlhomamo ya ditšhelete jaaka Banka ya Resefe kgotsa Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete e ka kopa ka mabaka a a utlwagalang;” 40
- (b) ka go tsenngwa mo karotlaleletsong (1) morago ga temana (b) ga temana e e latelang: 45
- “(bA) go tlamela thuso eo le tshedimisetso kwa Bankeng ya Resefe mabapi le ditheo tse di tlhomilweng le ditiro tsa tsona tsa tharabololo jaaka Banka ya Resefe e ka kopa ka mabaka a a utlwagalang;” le 50
- (c) ka kemisetso mo karotlaleletsong (1) ya temana (d) ka temana e e latelang: 55
- “(d) kgobokanya tshedimisetso go tswa, kgotsa ka ga, ditheo tsa ditšhelete le ditheo tse di tlhomilweng e e amanang le tlhomamo ya ditšhelete kgotsa e e amang kgotsa e e ka amang tiragatso ya ditiro tsa tharabololo tsa Banka ya Resefe.”

Amendment of section 27 of Act 9 of 2017

39. 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: 5
 “(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 a 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 10
- (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— 15
 (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.”. 20

Substitution of section 28 of Act 9 of 2017

40. 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” 25

- 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; 30
- (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.”. 35

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

41. The following heading is hereby substituted for the heading to Part 6 of Chapter 2 of the Financial Sector Regulation Act, 2017: 40

“Part 6

Systemically important financial institutions and payment systems”.

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

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

“Designated institutions

- 29A.** (1) In this Act, ‘designated institution’ means each of the following:
- (a) A bank;
- (b) a systemically important financial institution;

Tlhabololo ya karolo 27 ya Molao 9 wa 2017

39. Karolo 27 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—
- (a) ka go tsenngwa mo boemong jwa setlhogo ga setlhogo se se latelang:
“Memorantamo wa tumalano [mabapi le tlhomamo ya ditšhelete]”;
- (b) ka go tsenngwa morago ga karotlaleletso (1) ga karotlaleletso e e latelang: 5
“(1A) Mo dikgweding tse di sa feteng tse thataro morago ga karotlaleletso eno e tsenngwa mo tirisong, balaodi ba lephata la ditšhelete le Banka ya Resefe ba tshwanetse go tlhabolola memorantamo gore o akaretse taelo mabapi le gore ba tla thusa le go dirisana mmogo jang le, le go neelana ka thuso, ka bobona le ka mokgwa mongwe go dira ditiro tsa bona le go obamela ditlamego tsa bona tse di amanang le ditheo tse di tlhomilweng.”; le 10
- (c) ka go tsenngwa morago ga karotlaleletso (3) ga karotlaleletso e e latelang:
“(3A) Banka ya Resefe e ka dira memorantamo wa tumalano le ka gongwe kgotsa ka bobedi—
- (a) Koporasi; le
- (b) mokgatlho kwa nageng esele o o nang le ditiro tse di tsamaelanang le ditiro tsa tharabololo tsa Banka ya Resefe, mabapi le gore ba tla thusana le go dirisana mmogo jang, le go neelana ka thuso, magareng ga bona mabapi le ditiro tsa bona tse di amanang le tharabololo go ya ka Molao ono kgotsa molao wa naga esele.”. 15 20

Kemisetso ya karotlaleletso 28 ya Molao 9 wa 2017

40. Karolo e e latelang e tsenngwa mo boemong jwa karolo 28 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017:

“Botsayakarolo jwa maphata a mangwe a puso mabapi le tlhomamo ya ditšhelete le tharabololo 25

28. Lephata la puso, ntle le molaodi wa lephata la ditšhelete, le tshwanetse—

- (a) mo go direng ditiro tsa lona, go tsaya tsia bokao jwa ditiro tsa lona mo tlhomamong ya ditšhelete[;] le ditiro tsa Banka ya Resefe tsa tharabololo; 30
- (b) go neelana ka thuso eo le tshedimosetso go Banka ya Resefe le Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete go tshegetsatshegetsa le go busetsa tlhomamo ya ditšhelete, jaaka Banka kgotsa Komiti e kopa ka mabaka a a utlwagalang[.]; le 35
- (c) go neelana ka thuso eo le tshedimosetso go Banka ya Resefe mabapi le ditheo tse di tlhomilweng le ditirona tsa tsona tsa tharabololo jaaka Banka ya Resefe e ka kopa ka mabaka a a utlwagalang.”. 35

Kemisetso ya setlhogo mo Karolong 6 ya Kgaolo 2 ya Molao 9 wa 2017

41. Setlhogo se se latelang se tsenngwa mo boemong jwa setlhogo sa Karolo 6 ya Kgaolo 2 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017: 40

“Karolo 6

Ditheo tsa ditšhelete tse di botlhokwa mo thulaganyong le dithulaganyo tsa tuelo”.

Go tsenngwa ga dikarolo 29A le 29B mo Molaong 9 wa 2017

42. Dikarolo tse di latelang di tsenngwa mo Molaong wa Taolo ya Lephata la Ditšhelete, 2017, morago ga karolo 29: 45

“Ditheo tse di tlhomilweng

29A. (1) Mo Molaong ono, ‘ditheo tse di tlhomilweng’ di kaya nngwe le nngwe ya tse di latelang:

- (a) Banka;
- (b) setheo sa ditšhelete se se botlhokwa mo thulaganyong;

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- (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) Subsection (1) does not apply to a payment system owned or operated by the Reserve Bank.
- (3) 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 the operator a reasonable period to do so.
- (4) 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 Regulation made in terms of section 288.

Amendment of section 30 of Act 9 of 2017

- 43.** 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 institutions and designated institutions”;
 - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“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:”;
 - (c) by the insertion in subsection (1) of the word “and” at the end of paragraph (g);

- (c) modirisi wa thulaganyo le batsayakarolo ba thulaganyotuelo e e botlhokwa mo thulaganyong;
- (d) setlamo se e leng setlamo se se okameng sa banka, setheo sa ditšhelete se se botlhokwa mo thulaganyong, kgotsa modirisi wa thulaganyotuelo e e botlhokwa mo thulaganyong; le 5
- (e) go latela tlhomamiso efe go ya ka karotlaleletso (2), fa banka kgotsa setheo sa ditšhelete se se botlhokwa mo thulaganyong e le leloko la setheo sa ditšhelete se se kopantsweng go ya ka karolo 160, mongwe le mongwe wa maloko a setlhopha sa ditlamo tse di kopantsweng. 10
- (2) Mmusisi o ka, ka kitsiso e e kwetsweng go motho kgotsa mokgatlo o e leng setheo se se tlhomilweng ka ntlha ya karotlaleletso (1)(e), tlhomamisa gore motho kgotsa mokgatlo ga se setheo se se tlhomilweng.

Go tlhongwa ga dithulaganyotuelo tse di botlhokwa mo thulaganyong

- 29B.** (1) (a) Mmusisi o ka, ka kitsiso e e kwetsweng go modirisi wa thulaganyotuelo e e botlhokwa mo thulaganyong, tlhoma thulaganyotuelo jaaka thulaganyotuelo e e botlhokwa mo thulaganyong. 15
- (b) Thata ya Mmusisi go ya ka temana (a) e ka se rolelwe.
- (2) Karotlaleletso (1) ga e diriswe mo thulaganyotuelong eo e leng ya kgotsa e e tsamaiswang ke Banka ya Resefe.
- (3) Pele go tlhongwa thulaganyotuelo go ya ka karotlaleletso (1) jaaka thulaganyotuelo e e botlhokwa mo thulaganyong, Mmusisi o tshwanetse— 20
- (a) go naya Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete kitsiso ya tlhomo e e tshitsintsweng le polelotlhagiso ya mabaka a gore goreng tlhomo e tshitsintse, le go laletsa Komiti gore e tlamele ka kgakololo mabapi le tshitsinyo mo nakong e e beilweng e e utlwagalang; le 25
- (b) fa, morago ga go tsaya tsia kgakololo ya Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete, Mmusisi o tshitsinya go tlhoma thulaganyotuelo go ya ka karotlaleletso (1), o laletsa motsamaisi wa thulaganyotuelo go dira ditlhagiso mabapi le morero, le go naya modirisi nako e e maleba go dira jalo. 30
- (4) Mo go swetseng ka go tlhoma thulaganyotuelo go ya ka karotlaleletso (1), Mmusisi o tshwanetse go tsaya tsia bonnye tse di latelang:
- (a) Bogolo le tharaano ya thulaganyotuelo;
- (b) ka moo thulaganyotuelo e gokaganegareng le thulaganyo ya ditšhelete; 35
- (c) gore a go na le dikemisetso tse di baakantsweng mabapi le ditirelo tsa tuelo tse thulaganyotuelo e di tlamelang;
- (d) dikatlanegiso tsa Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete;
- (e) ditlhagiso tse di dirilweng ke kgotsa tse di diretsweng modirisi wa thulaganyotuelo; le 40
- (f) Molawanataolo ofe o o dirilweng mabapi le karolo 288.

Tlhabololo ya karolo 30 ya Molao 9 wa 2017

43. Karolo 30 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa— 45
- (a) ka kemisetso ya setlhogo ka setlhogo se se latelang:
- “Maemo a tlhokomelo le ditaello tsa molaodi mabapi le ditheo tsa ditšhelete tse di botlhokwa mo thulaganyong le ditheo tse di tlhomilweng”;**
- (b) ka kemisetso mo karotlaleletsong (1) ya mafoko a a tlang pele ga temana (a) ka mafoko a a latelang: 50
- “Go fokotsa matshoseti a gore ditragalo tse di rulaganeng di ka diragala, Banka ya Resefe e ka, morago ga go rerisana le Bothati jwa Tlhokomelo, [laela] naya taelo go Bothati jwa Tlhokomelo e e lopang gore bo pateletse, ka maemo a tlhokomelo kgotsa ditaello tsa molaodi, ditlhokego tse di diriswang mo go e le nngwe kgotsa go feta ya ditheo tsa ditšhelete tse ka tsepamo di leng botlhokwa mo thulaganyong kgotsa mo ditheong tse di jalo tse ka kakaretso di amanang le efe ya merero e e latelang.”;
- (c) ka go tsenngwa mo karotlaleletsong (1) ga lefoko “le” kwa bofelong jwa temana (g); 55

- (d) by the deletion in subsection (1) of paragraph (h);
- (e) 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) Subsection (1A) does not apply to a designated institution that is an operator of a systemically important payment system.
- (1C) Without limiting the matters that the Reserve Bank must consider in relation to subsection (1A)(b) in a particular case—
- (a) it must consider the—
- (i) capital that the designated institution is required to hold in terms of a financial sector law;
- (ii) assets and liabilities of the designated institution;
- (iii) 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 flac instruments to at least the value proposed; and
- (iv) impact on the viability of the designated institution of holding flac instruments to at least the value proposed; and
- (b) it may also consider international best practice.”; and
- (f) by the substitution for subsection (2) of the following subsection:
- “(2) The Prudential Authority may comply with a directive in terms of subsection (1) or (1A).”.

Repeal of section 31 of Act 9 of 2017

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

Substitution of section 91 of Act 9 of 2017

45. 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.”.

- (d) ka go phimolwa mo karolotlaleletsong (1) ga temana (h);
- (e) ka go tsennngwa morago ga karolotlaleletso (1) ga dikarolotlaleletso tse di latelang:
- “(1A) Go fokotsa matshosetsi a gore setheo se se tlhomilweng se ka tlhoka go bewa ka fa tlase ga tharabololo, Banka ya Resefe e ka, morago ga go rerisana le Bothati jwa Tlhokomelo, naya e le nngwe kgotsa ka bobedi ditaello tse di latelang go Bothati jwa Tlhokomelo:
- (a) Taelo ya go dira e le nngwe kgotsa go feta ya maemo a tlhokomelo a a dirang nngwe ya tse di latelang:
- (i) Totobatsang diponagalo tsa didiriswa tsa flac;
- (ii) neelana ka ditlhokego tsa go dirwa ga dipeotlhotlhwa mabapi le maitlhommo a karolo 166Q; kgotsa
- (iii) neelana ka ditlhokego tsa go tsholwa ga direkoto, taolo ya tshedimosetso le go begela Banka ya Resefe kgotsa Bothati jwa Tlhokomelo; le
- (b) taelo ya go rebola taelo ya molaodi go setheo se se tlhomilweng se se rileng e e lopang setheo se se tlhomilweng go tshola didiriswa tsa flac mo bonnyeng jwa tlhotlhwa e e totobaditsweng mo taelong ya Banka ya Resefe.
- (1B) Karolotlaleletso (1A) ga e diriswe mo setheong se se tlhomilweng seo e leng botsamaisi jwa thulaganyotuelo e e botlhokwa mo thulaganyong.
- (1C) Ntle le go lekanyetsa merero e Banka ya Resefe e tshwanetseng go e tsaya tsia mabapi le karolotlaleletso (1A)(b) segolobogolo mo ntlheng e e rileng—
- (a) e tshwanetse go tsaya tsia—
- (i) khapetlele e setheo se se tlhomilweng se tshwanetseng go e tshola go ya ka molao wa lephata la ditšhelete;
- (ii) dithoto le maikarabelosemolao a setheo se se tlhomilweng;
- (iii) dikgwetlho tse Banka ya Resefe e ka lebaganang le tsona mo go direng ditiro tsa yona tsa tharabololo mabapi le setheo se se tlhomilweng fa setheo se se tlhomilweng se sa tshole didiriswa tsa flac mo bonnyeng jwa tlhotlhwa e e tshitsintsweng; le
- (iv) kutlwalo mo bokgoning jwa setheo se se tlhomilweng jwa go tshola didiriswa tsa flac mo bonnyeng jwa tlhotlhwa e e tshitsintsweng; le
- (b) e ka tsaya tsia gape tiragatso e e manontlhotlho ya boditšhabatšhaba.”; le
- (f) ka kemisetso ya temanatlaleletso (2) ka temanatlaleletso e e latelang:
- “(2) Bothati jwa Tlhokomelo bo ka obamela taelo go ya ka karolotlaleletso (1) kgotsa (1A).”.

Phimolo ya karolo 31 ya Molao 9 wa 2017

44. Karolo 31 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e a phimolwa.

Kemisetso ya karolo 91 ya Molao 9 wa 2017

45. Karolo e e latelang e tsennngwa mo boemong jwa karolo 91 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017:

“Tiragatso ya *Promotion of Administrative Justice Act* [mo tirong ya tsamaiso ka balaodi ba lephata la ditšhelete]

91. Go latela Molao ono le melao e e rileng ya lephata la ditšhelete, *Promotion of Administrative Justice Act* e diriswa mo tirong nngwe le nngwe ya tsamaiso e e dirilweng ke Banka ya Resefe, molaodi wa lephata la ditšhelete kgotsa Koporasi go ya ka Molao ono kgotsa molao o o rileng wa lephata la ditšhelete.”.

Amendment of section 105 of Act 9 of 2017

46. 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

47. 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

48. 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), or a person appointed to assist the investigator.”.

Amendment of section 134 of Act 9 of 2017

49. 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 must be in the possession of the investigator when**.

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

(c) 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

50. The following section is hereby inserted in the Financial Sector Regulation Act, 2017, after section 135:

Tlhabololo ya karolo 105 ya Molao 9 wa 2017

46. Karolo 105 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka kemisetso mo karotlaleletso (3) ya temana (b) ka temana e e latelang:

“(b) merero e mo go yona go ka dirwang sediriso sa bolaodi ke Bothati jwa Tlhokomelo go ya ka Molao ono kgotsa molao wa ditšhelete o o tsepamisitsweng.” 5

Tlhabololo ya karolo 109 ya Molao 9 wa 2017

47. Karolo 109 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka go tsenngwa mo boemong jwa karotlaleletso (2) ga karotlaleletso e e latelang:

“(2) Molaodi wa lephata la ditšhelete o ka se dire maemo a a ikaelelang go thusa go tshegetsatshele tihomamo ya ditšhelete, go akaretse le maemo a a amanang le setheo se se tlhomilweng, ntle le tumalano ya Banka ya Resefe.” 10

Tlhabololo ya karolo 129 ya Molao 9 wa 2017

48. Karolo 129 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka go tsenngwa mo boemong jwa karotlaleletso (1) ga karotlaleletso e e latelang: 15

“(1) Kgaolo eno e diriswa mo—
 (a) kokoanyong ya tshedimotso, ditlathobong tsa botlhokomedi tsa kwa tirong le mo dipatlisisong ka Bothati jwa Tlhokomelo kgotsa Bothati jwa Boitshwaro jwa Lephata la Ditšhelete; le
 (b) dipatlisisong mabapi le setheo se se tlhomilweng se se mo tharabololong ka mmatlisisi yo o thapilweng go ya ka karolo 134(1A), kgotsa mootho yo o thapilweng go thusa mmatlisisi.” 20

Tlhabololo ya karolo 134 ya Molao 9 wa 2017

49. Karolo 134 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—

(a) ka go tsenngwa morago ga karotlaleletso (1) ga karotlaleletso e e latelang: 25

“(1A) Banka ya Resefe e ka, ka go kwala, thapa motho jaaka mmatlisisi go dira dipatlisiso mo kgwebong, kgwebisanong, ditirisanommogong, mererong kgotsa dithotong le maikarabelosemolaong—

(a) a setheo se se tlhomilweng se se mo tharabololong; le 30

(b) fa go thapiwa go laela jalo, mabapi le e le nngwe kgotsa go feta ya ditlamo mo setlhopheng sa ditlamo seo setheo se se tlhomilweng e leng karolo, pele ga setheo se se tlhomilweng se bewa ka fa tlase ga tharabololo, e bile e ka thaba motho ofe go thusa mmatlisisi go dira patlisiso.”; le 35

(b) go tsenngwa mo boemong jwa karotlaleletso (3) ga karotlaleletso e e latelang:

“(3) (a) Molaodi wa lephata la ditšhelete o tshwanetse go rebolela mmatlisisi yo o thapilweng go ya ka karotlaleletso (1) setifikeite sa go thapiwa[**, se mmatlisisi a tshwanetseng go se tshola fa**]. 40

(b) Banka ya Resefe e tshwanetse go rebolela mmatlisisi yo o thapilweng go ya ka karotlaleletso (1A) setifikeite sa go thapiwa.

(c) Fa mmatlisisi a diragatsa thata efe kgotsa a dira tiro efe go ya ka Molao ono, [**le jalo**] mmatlisisi o tshwanetse—

(i) go tshola setifikeite sa go thapiwa; le 45

(ii) go thagisa setifikeite sa go thapiwa fa motho ofe yo mabapi le ena thata eo e diragatswang a kopa.”.

Go tsenngwa ga karolo 135A mo Molaong 9 wa 2017

50. Karolo e e latelang e tsenngwa mo Molaong wa Taolo ya Lephata la Ditšhelete, 2017, morago ga karolo 135: 50

“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— 5

(a) the designated institution should—

(i) be wound up;

(ii) remain in resolution for a specified period or until a specified event occurs; or 10

(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.”. 15

Insertion of Chapter 12A in Act 9 of 2017

51. The following Chapter is hereby inserted in the Financial Sector Regulation Act, 2017, after Chapter 12:

“CHAPTER 12A 20

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. 25

(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. 30

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. 35

(2) To the extent that is practicable and consistent 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— 40

(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 45

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

“Dipatlisiso go ditheo tse di tlhomilweng tse di mo tharabololong

- 135A.** Mmatlisisi yo o thapilweng gore a batlisisa mabapi le setheo se se tlhomilweng se se mo tharabololong o tshwanetse go dira patlisiso go latela Kgaolo eno le, mo nakong e e tobaditsweng ke Banka ya Resefe mo go thapiweng, go begela Banka ya Resefe gore a, mo mogopolong wa mmatlisisi—
- (a) setheo se se tlhomilweng se tshwanetse—
- (i) go fediswa;
 - (ii) go sala go nna mo tharabololong sebaka sa nako e e rileng kgotsa go fitlhela tiragalo e e rileng e diragala; kgotsa
 - (iii) go emisa go nna mo tharabololong;
- (b) kgwebo efe ya setheo se se tlhomilweng e ne e, pele e bewa ka fa tlase ga tharabololo, dirwa ntle le tlhokomelo, botlhaswa kgotsa ka tsietso; le
- (c) ditsamaiso, go akaretsa le ditsamaiso tsa bosenyi, di tshwanetse go dirwa kगतलhanong le motho ofe mabapi le tsamaiso ya kgwebo ya setheo se se tlhomilweng pele se bewa mo tharabololong.”.

Go tsenngwa ga Kgaolo 12A mo Molaong 9 wa 2017

- 51.** Kgaolo e e latelang e tsenngwa mo Molaong wa Taolo ya Lephata la Ditšhelete, 2017, morago ga Kgaolo 12:

“KGAOLO 12A

THARABOLOLO YA DITHEO TSE DI TLHOMILWENG

Karolo 1

Ditaelo ka kakaretso mabapi le ditheo tse di tlhomilweng

Tiragatso ya dithata tsa Banka ya Resefe 25

166A. (1) Banka ya Resefe ke bothati jwa tharabololo; e bile e roletswe ditiro tsa tharabololo ka Molao ono.

(2) Ditiro tsa tharabololo tsa Banka ya Resefe di dirwa ke Mmusisi.

Maikaelelo a Banka ya Resefe a tharabololo

166B. Maikaelelo a Banka ya Resefe mo go diragatseng ditiro tsa yona tsa tharabololo ke go thusa mo go tsholeng tlhomamo ya ditšhelete le go sireletsa dikgatlhago tsa babayamadi ba dibanka ka tharabololo e e rulaganeng ya ditheo tse di tlhomilweng tse di mo tharabololong.

Ditiro tsa tharabololo tsa Banka ya Resefe

166C. (1) Gore e fitlhelele maikaelelo a yona a a tlhagisitsweng mo karolong 166B, Banka ya Resefe e tshwanetse go diragatsa ditiro tsa yona tsa tharabololo mabapi le setheo se se tlhomilweng, le go netefatsa gore merero ya setheo se se tlhomilweng mo tharabololong e a laolwa gore go tshegetswe, ka moo go ka kgonagalang, tlhomamo ya ditšhelete.

(2) Go ya ka bogololo jo bo kgonagalang le go tlhomama mabapi le karotlaleletso (1), Banka ya Resefe e tshwanetse, mo go diragatseng ditiro tsa yona tsa tharabololo mabapi le setheo se se tlhomilweng, go akaretsa le go laola merero ya setheo se se tlhomilweng mo tharabololong—

- (a) go tsaya tsia, le go leka go fokotsa kamego e e sa siamang mo, dikgatlhagong tsa batsholadišere le bakolotwa le maloko a mangwe mo setlhopheng sa ditlamo se setheo se se tlhomilweng e leng karolo ya sona; le
- (b) go obamela le go netefatsa gore setheo se se tlhomilweng mo tharabololong se obamela melao ya tsa bodiri e e diriswang.

(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 5

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; 10
- (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, statutory manager, trustee, liquidator, provisional liquidator or curator for or of the designated institution; 15
- (e) adopting a resolution to begin business rescue proceedings and place the designated institution under supervision;
- (f) 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; 20
- (g) adopting a business rescue plan for the designated institution;
- (h) any step corresponding to, or having the same or a similar effect to a step mentioned in paragraph (f) or (g);
- (i) entering into an agreement for amalgamation or merger as defined in section 1 of the Companies Act of the designated institution with a company; 25
- (j) the designated institution entering into a compromise arrangement referred to in section 155 of the Companies Act with creditors of the designated institution; and 30
- (k) any action by a financial sector regulator to reduce the value of an outstanding claim against the designated institution or to convert an instrument issued by the designated institution to another instrument, whether such action is taken in terms of a financial sector law or agreement. 35

(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 analysis conducted in consultation with a financial sector regulator, take adequate and appropriate steps to plan for the potential need for the orderly resolution of a designated institution. 40

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. 45

(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. 50

(3) Banka ya Resefe e ka, mabapi le tharabololo ya setheo se se tlhomilweng, sekaseka kamego e e ka kgonegang e tiro ya yona e ka nngang le yona mo tlhomamong ya ditšhelete ya lefelotaolo le sele le setheo se se tlhomilweng se kwadisitsweng kwa go lona.

Phatlalatsa le dikgato tse di tshwanang mabapi le ditheo tse di tlhomilweng 5

166D. (1) Go sa nyatswe molao mongwe le mongwe ofe, ga go epe ya dikgato tse di latelang e e tshwanetseng go tsewa mabapi le setheo se se tlhomilweng ntle le tumelelo ya Banka ya Resefe:

- (a) go sekega, go farologanya, go tlhabolola kgotsa go phimola laesense e e reboletsweng setheo seo se se tlhomilweng; 10
- (b) go amogela tharabololo e e kgethegileng go phatlalatsa setheo se se tlhomilweng ntle le pateletso;
- (c) go dira kopo kwa kgotlatshekelong ya taelo ya gore setheo se se tlhomilweng se phatlalatswe; 15
- (d) go thapa motsamaisi, molaodi wa semolao, motlhokomedi, mogapi, mogapi wa nakwana kgotsa motlhomamisi mabapi le kgotsa wa setheo se se tlhomilweng;
- (e) go amogela tharabololo go simolola ditsamaiso tsa phalodiso ya kgwebo le go baya setheo se se tlhomilweng ka fa tlase ga tlhokomelo; 20
- (f) go dira kopo kwa kgotlatshekelong ya taelo go ya ka karolo 131 ya *Companies Act* go baya setheo se se tlhomilweng ka fa tlase ga tlhokomelo le go simolola ditsamaiso tsa phalodiso ya kgwebo;
- (g) go amogela leanophalodiso la kgwebo la setheo se se tlhomilweng;
- (h) kgato efe e e tsamaelanang le, kgotsa e e nang le ditlamorago tse di tshwanang le kgato e e umakilweng mo temaneng (f) kgotsa (g); 25
- (i) go dira tumalano mabapi le kopanyo kgotsa tlhakanyo jaaka e tlhalositswe mo karolong 1 ya *Companies Act* ya setheo se se tlhomilweng le setlamo;
- (j) setheo se se tlhomilweng se se tsenang mo tumalanong ya boineelo e e kailweng mo karolong 155 ya *Companies Act* le bakolotwa ba setheo se se tlhomilweng; le 30
- (k) kgato nngwe le nngwe ka bolaodi jwa lephata la ditšhelete go fokotsa boleng jwa tleleime e e saletseng kgatthanong le setheo se se tlhomilweng kgotsa go fetolela sediriswa se se rebotsweng ke setheo se se tlhomilweng go sediriswa se sengwe, go sa kgathalesege gore kgato eo e tserwe go ya ka molao wa lephata la ditšhelete kgotsa tumalano. 35

(2) Kgato e e kailweng mo karolotlalelettsong (1) e e tserweng ntle le tumalano ya Banka ya Resefe ga se ya nnete. 40

Go rulaganyetsa tharabololo

166E. Banka ya Resefe e tshwanetse, ka ntlha ya tshekatsheko ya matshosetsi e e dirilweng ka therisano le bolaodi jwa lephata la ditšhelete, go tsaya dikgato tse di nepagetseng e bile di le maleba go rulaganya mabapi le tlhokego e e kgonagalang ya tharabololo e e rulaganeng ya setheo se se tlhomilweng. 45

Ditlamokgolaganyo

166F. (1) (a) Banka ya Resefe e ka, mabapi le maitlomo a go dirisa le godiragatsa ditiro tsa yona tsa tharabololo, go akaretsa setlamo go latela *Companies Act*. 50

(b) Setlamo se tshwanetse, fa se sena go akaretswa, go nna mo tsholong ka gotlhe ya Banka ya Resefe.

(2) Banka ya Resefe e ka, mabapi le maitlomo a go nolofatsa tharabololo e e rulaganeng ya tharabololo ya setheo se se tlhomilweng mo tharabololong, sutisetsa dingwe tsa kgotsa dišere tsotlhe tse e nang le tsona mo setlamokgolaganyong go motho ofe. 55

(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 authorities responsible 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 the 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 her 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 terms of this section or the Insolvency Act.

(3) (a) Fa setlamokgolaganyo se diriswa mabapi le tharabololo ya setheo se se tlhomilweng mo tharabololong, Banka ya Resefe e tshwanetse go tlhama leano mabapi le setlamokgolaganyo gore se fitlhelele ditlhokego tsotlhe go ya ka melao ya lephata la ditšhelete e e diriswang.

(b) Leano le tshwanetse go tlangwa ka therisano le balaodi ba ba rwalang maikarabelo mabapi le melao ya lephata la ditšhelete e e maleba.

(4) Setlamokgolaganyo seo Banka ya Resefe e leng motsholadišere ka gotlhe, le motlhankedi kgotsa modiri wa setlamokgolaganyo seo, se golotswe mo ditlhokegong go ya ka molao wa lephata la ditšhelete go fitlhela setlamokgolaganyo se dira kopo ya laesense go ya ka molao wa lephata la ditšhelete.

Kgato ya, le bosup jwa, phutilhamo

166G. (1) Kgato e e tserweng ke Banka ya Resefe, kgotsa ke setheo se se tlhomilweng go ya ka Molao ono, ga se kgato ya phutilhamo e bile ga e amogesege jaaka bosupi jwa phutilhamo ya setheo se se tlhomilweng kgotsa leloko la setlhophha sa ditlamo tseo setheo se se tlhomilweng e leng karolo ya sona.

(2) Kgato e e tserweng ke Banka ya Resefe mo tirong kgotsa tiragatsong ya ditiro tsa tharabololo tsa Banka ya Resefe, le kgato e Banka ya Resefe e dirang gore setheo se se tlhomilweng mo tharabololong se e tseye—

(a) ga se ya nnete fela ka ntsha ya tiro ya *Companies Act* kgotsa Molao mongwe le mongwe ofe o o tsepamisitsweng mo Melawanataolong e e dirilweng mabapi le maitlhamo a karolo eno; e bile

(b) ga se tlolo ya tiro efe e Banka ya Resefe e tshwanetseng go e direla setheo se se tlhomilweng, kgotsa e Banka ya Resefe kgotsa setheo se se tlhomilweng se tshwanetseng go e direla batsholadišere kgotsa bakolotwa ba setheo se se tlhomilweng, go akaretsa le tlamego go ya ka tumalano.

Tswalokgwebo

166H. (1) Go sa nyatswe taelo nngwe le nngwe efe ya Molao ono, *Companies Act* kgotsa *Insolvency Act*—

(a) Banka ya Resefe e ka dira kopo kwa kgotlatshekelong e e nang le bokgoni go ya ka *Companies Act* mabapi le go fediswa ga setheo se se tlhomilweng ka ntsha ya fa setheo se beilwe mo tharabololong e bile go sena diponelopele dipe tse di utlwagalang tsa gore setheo se ka khutlisa go nna mo tharabololong; le

(b) ga go motho ope ntle le motho yo o atlanegisitsweng ke Banka ya Resefe yo o ka thapiwang jaaka mogapi wa nakwana kgotsa mogapi wa setheo se se tlhomilweng.

(2) Banka ya Resefe e ka thapa motho yo, mo mogopolong wa Banka ya Resefe, a nang le maitemogelo le bokgoni jwa go gakolola mogapi wa nakwana kgotsa mogapi wa setheo se se tlhomilweng, go sa kgathalesege gore setheo se se tlhomilweng se ne se le mo tharabololong kgotsa nnyaa ka nako e go neng go thapiwa mogapi kgotsa mogapi wa nakwana ka yona.

(3) Mogapi wa nakwana kgotsa mogapi o tshwanetse go rerisana le motho kgotsa batho ba ba thapilweng go ya ka karolotlaleletso (2), e bile o tshwanetse go tsaya tsia kgakololo ya bona fa a dira tiro ya gagwe jaaka mogapi wa nakwana kgotsa mogapi.

(4) Go sa nyatswe molao mongwe le mongwe ofe, tsekego, phimolo kgotsa phediso ya laesense ya setheo se se tlhomilweng, fa se phatlalatswa ka kopo ya Banka ya Resefe, ga e ame—

(a) taelo epe kgotsa go thapiwa go go dirilweng, taelo e e rebotsweng kgotsa sengwe le sengwe se se dirilweng go ya ka karolo eno kgotsa *Insolvency Act* mabapi le ditheo tseo tse di tlhomilweng; le

(b) thata nngwe le nngwe e e tla diragatswang, tiro e e tla dirwang kgotsa tshwanelo e e tla gatelelwang mabapi le setheo seo se se tlhomilweng ke Banka ya Resefe, Molaodi wa Kgotlatshekelogodimo kgotsa mogapi wa nakwana kgotsa mogapi go ya ka karolo eno kgotsa *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—
- (a) the obligations and liabilities the designated institution has in connection with the licence; or
 - (b) the powers of the Reserve Bank or a financial sector regulator under a financial sector law in relation to the designated institution.
- (6) Notwithstanding anything to the contrary contained in any law, a liquidator or a trustee in liquidation may not cancel or set aside a disposition made, or a transaction or an action taken, by the Reserve Bank in exercising its resolution functions in terms of this Act.

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) must 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, irrespective of 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

- (5) tshekego kgotsa phimolo ya laesense ya setheo se se tlhomilweng ka fa tlase ga molao wa lephata la ditšhelete, go sa kgathalesege gore setheo se se tlhomilweng se mo tharabololong kgotsa se a phatlalatswa, ga e ame—
- (a) ditlamego le maikarabelosemolao a setheo se se tlhomilweng se nang le ona mabapi le laesense; kgotsa 5
- (b) dithata tsa Banka ya Resefe kgotsa bolaodi jwa lephata la ditšhelete ka fa tlase ga molao wa lephata la ditšhelete mabapi le setheo se se tlhomilweng.
- (6) Go sa nyatswe sengwe le sengwe se se sa tsamaelaneng le se se mo molaong ofe, mogapi kgotsa motlhokomedi mo tswalokgwebong o ka se phimole kgotsa a beele kwa thoko tshekegelo e e dirilweng, kgotsa tirisano kgotsa kgato e e tserweng, ke Banka ya Resefe mo go diragatseng ditiro tsa yona tsa tharabololo go ya ka Molao ono. 10

Tholelo ya ditiro tsa tharabololo tsa Banka ya Resefe

- 166I.** (1) Banka ya Resefe e ka, ka go kwala— 15
- (a) rolela nngwe le nngwe ya ditiro tsa tharabololo tsa Banka ya Resefe; le
- (b) ka nako nngwe le nngwe tlhabolola tholelo go ya ka temana (a).
- (2) Go latela karotlaleletso (4), tholelo go ya ka karolo eno e ka direlwa— 20
- (a) Motlatsammusisi;
- (b) leloko la badiri ba Banka ya Resefe;
- (c) modiri wa tsa tharabololo yo o thapilweng mabapi le setheo se se tlhomilweng;
- (d) molaodi wa lephata la ditšhelete; kgotsa 25
- (e) Koporasi.
- (3) Karolo eno ga e neye Banka ya Resefe tetla go rolela—
- (a) thata go ya ka karolo 166J; kgotsa
- (b) thata ya go rolela e e mo karolong eno.
- (4) Tholelo go ya ka karotlaleletso (2)(c) e tshwanetse go lekanyetswa go ditiro tsa tharabololo. 30
- (5) Tholelo go ya ka karolo eno—
- (a) e go ya ka ditekanyetso le dipeelo tse di tlhagisitsweng mo tholelong;
- (b) ga e amoge maikarabelo a Banka ya Resefe mabapi le thata e e roletsweng kgotsa tiro; e bile 35
- (c) e ka phimolwa ka go kwala ka nako nngwe le nngwe.
- (6) Sengwe le sengwe se se dirilweng ke morolelwa go ya ka tholelo se tshwanetse go tsewa jaaka se se dirilweng ke Banka ya Resefe.

Karolo 2

Go baya setheo se se tlhomilweng mo tharabololong 40

Tlhomamiso ka Tona go baya setheo se se tlhomilweng mo tharabololong

- 166J.** (1) Fa go ya ka mogopolo wa Banka ya Resefe—
- (a) setheo se se tlhomilweng se sa, kgotsa se ka se, kgone go fitlhelela ditlamego tsa sona, go sa kgathalesege gore setheo se se tlhomilweng se phuthame kgotsa nnyaa; e bile 45
- (b) go bothokwa go netefatsa tharabololo e e rulaganeng ya setheo se se tlhomilweng go—
- (i) tshegetsatsa tlhomamo ya ditšhelete; kgotsa
- (ii) mo lebakeng la banka kgotsa leloko la setlhopho sa ditheo seo banka e leng leloko la sona, go sireletsa babayamadi ba banka, Banka ya Resefe e ka atlanegisa go Tona gore setheo se se tlhomilweng se bewe mo tharabololong. 50
- (2) Tona o ka, morago ga go sekaseka katlanegiso go ya ka karotlaleletso (1) le fa a tsaya tsia gore— 55
- (a) setheo se se tlhomilweng se ka se kgotsa ka gongwe se ka se kgone go fitlhelela ditlamego tsa sona, go sa kgathalesege gore setheo se se tlhomilweng se phuthame kgotsa nnyaa; e bile

- (b) it is necessary to ensure the orderly resolution of the designated institution—
- (i) to 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. 5
- (3) The ‘obligation’ contemplated in subsections (1) and (2) 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 by the Minister. 10
- (5) The Reserve Bank must publish each determination made in terms of subsection (2).
- (6) Failure to comply with subsection (4) or (5) does not invalidate a recommendation or a determination in terms of this section. 15

When designated institution ceases to be in resolution

166K. (1) If—

- (a) a designated institution is in resolution; and
 - (b) the Reserve Bank is of the opinion that it is no longer necessary that the designated institution remain in resolution—
- (i) to 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 made in terms of section 166J(2) by which the designated institution was placed in resolution. 20
- (2) The Minister may, after considering a recommendation made in terms of subsection (1), revoke the determination.
- (3) The Reserve Bank must publish each revocation, but failure to do so does not invalidate the revocation. 25
- (4) A designated institution also ceases to be in resolution when a liquidator, other than a provisional liquidator, is appointed for the designated institution, unless the court orders otherwise. 30

Placing designated institution in resolution not termination or acceleration event 35

- 166L. (1)** A provision of an agreement is of no effect to the extent that the provision, 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) confers a right, or imposes an obligation, on a person; or
 - (b) accelerates or varies an obligation of a person,
- whether or not the person is a party to the agreement. 40
- (2) Subsection (1) does not apply in relation to an obligation to give notice to a person. 45

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. 50

- (b) go botlhokwa go netefatsa tharabololo e e rulaganeng ya setheo sa ditšhelete—
- (i) go tshegetsatsa tlhomamo ya ditšhelete; kgotsa
 - (ii) mo lebakeng la banka kgotsa leloko la setlhophapha sa ditheo seo banka e leng leloko la sona, go sireletsa babayamadi ba banka, dira tlhomamiso e e kwetsweng, e e lebisitsweng go Mmusisi, e e bayang setheo se se tlhomilweng mo tharabololong.
- (3) 'Tlamego' e e umakilweng mo dikarotlaleletsong (1) le (2) di akaretsa tlamego go ya ka maemo a tlhokomelo.
- (4) Banka ya Resefe e tshwanetse go itsise Mokaeditaolo kgotsa modulasetulo wa boto ya bakaedi ya setheo se se tlhomilweng ka ga tlhomamiso e e dirilweng ke Tona.
- (5) Banka ya Resefe e tshwanetse go phasalatsa tlhomamiso nngwe le nngwe e e dirilweng go ya ka karotlaleletso (2).
- (6) Go reteletswa ke go obamela karotlaleletso (4) kgotsa (5) ga go dire gore katlanegiso kgotsa tlhomamiso e se nne ya boammaruri go ya ka karolo eno.

Fa setheo se se tlhomilweng se khutla go nna mo tharabololong

166K. (1) Fa—

- (a) setheo se se tlhomilweng se le mo tharabololong; e bile
- (b) Banka ya Resefe e le ya mogopolo wa gore ga go sa tlhole go tlhokega gore setheo se se tlhomilweng se nne mo tharabololong—
- (i) go tshegetsatsa tlhomamo ya ditšhelete; kgotsa
 - (ii) mo lebakeng la banka kgotsa leloko la setlhophapha sa ditheo seo banka e leng leloko la sona, go sireletsa babayamadi ba banka, Banka ya Resefe e tshwanetse go atlanegisa go Tona gore Tona a phimole tlhomamiso e e dirilweng go ya ka karolo 166J(2) e ka yona setheo se se tlhomilweng se beilweng mo tharabololong.
- (2) Tona o ka, morago ga go sekaseka katlanegiso e e dirilweng go ya ka karotlaleletso (1), phimola tlhomamiso.
- (3) Banka ya Resefe e tshwanetse go phasalatsa phimolo nngwe le nngwe, fela go reteletswa ke go dira jalo ga go dire gore phimolo e se nne ya boammaruri.
- (4) Setheo se se tlhomilweng se khutlisa go nna mo tharabololong fa mogapi, yo e seng mogapi wa nakwana, a thapiwa mabapi le setheo se se tlhomilweng, ntle le fa kgotlatshekelo e laela ka mokgwa osele.

Go baya setheo se se tlhomilweng mo tharabololong e seng mo tiragalong ya go khutlisa kgotsa ya go ithaganedisa

- 166L. (1) Taelo ya tumalano ga e na kutlwalo epe mo bogolong jwa gore taelo, ka ntlha ya gore setheo se se tlhomilweng se tshitsintse go bewa mo tharabololong, kgotsa ka ntlha ya kgato ya tharabololo kgotsa kgato e e tshitsintsweng ya tharabololo mabapi le setheo se se tlhomilweng—
- (a) e rolela tshwanelo, kgotsa e pateletsa tlamego, mo mothong; kgotsa
 - (b) e ithaganedisa kgotsa e farologantsha tlamego ya motho, go sa kgathalesege gore motho ke karolo ya tumalano kgotsa nnyaa.
- (2) Karotlaleletso (1) ga e diriswe mabapi le tlamego ya go naya motho kitsiso.

Banka ya Resefe e tla tsamaisa le go laola merero ya setheo se se tlhomilweng

- 166M. (1) Fa setheo se se tlhomilweng se le mo tharabololong, Banka ya Resefe e na le thata le taolo go tsamaisa le go laola merero ya setheo se se tlhomilweng, le go diragatsa nngwe le nngwe ya dithata tsa mokgatlo o o busang le batsholadišere kgotsa setlhophapha sa batsholadišere ba setheo se se tlhomilweng, go akaretsa le dithata, ka kgethololo ya mokgatlo o o busang le batlhankedi, le batsholadišere, ba setheo se se tlhomilweng.

- (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; 5
 - (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. 10

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. 15

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. 20

(2) The Reserve Bank may not appoint a person in terms of subsection (1) if the Reserve Bank is of the opinion that, in the circumstances, it is not necessary to do so to achieve the orderly resolution of the designated institution. 25

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

(4) A resolution practitioner appointed for a designated institution in resolution must— 30

- (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 35
- (c) comply with the other terms of his or her appointment.

Transfer 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— 40

- (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

45

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

(2) Ntle le go lekanyetsa karotlaleletso (1), dithata tsa setheo se se tlhomilweng, mokgatlho o busang le batsholadišere ba setheo se se tlhomilweng tse di kailweng mo karotlaleletsong eo di akaretsa dithata tse di latelang:

- (a) Go rulaganya dikopano tsa bakolotwa ba setheo se se tlhomilweng go rerisana le bona mabapi le tiragatso e e tshitsintsweng ya dithata tseo le dithata tsa Banka ya Resefe go ya ka Molao ono; 5
- (b) go buisana le mokolotwa wa setheo se se tlhomilweng ka mogopolo wa pheleletso ya tuelo ya bofelo ya ditheleme tsa mokolotwa kगतलनong le setheo se se tlhomilweng; le 10
- (c) go tshitsinya le go dira dithulaganyo kgotsa boineelo magareng ga setheo se se tlhomilweng le bakolotwa botlhe ba sona, kgotsa bakolotwa botlhe ba sethopho sa setheo se se tlhomilweng, go ya ka karolo 155 ya *Companies Act*.

Banka ya Resefe e seng setlamo se se okameng tse dingwe 15

166N. Banka ya Resefe ga se, fela ka ntlha ya Kgaolo eno, setlamo se se okameng tse dingwe sa setheo se se tlhomilweng se se mo tharabololong.

Badiri ba tsa tharabololo

166O. (1) Banka ya Resefe e tshwanetse, go ya ka karotlaleletso (2), ka bonako jo bo kgonagalang morago ga fa setheo se se tlhomilweng se sena go bewa mo tharabololong, go thapa, ka go kwala, motho yo o tla nnang modiri wa tsa tharabololo wa setheo se se tlhomilweng fa se le mo tharabololong, ka dithata le ditiro tse di tsepamisitsweng tse di roletsweng motho go ya ka karolo 166I. 20

(2) Banka ya Resefe e ka thapa motho go ya ka karotlaleletso (1) fa Banka ya Resefe e le ya mogopolo wa gore, mo maemng ao, ga go tlhokege go dira jalo go fithelela tharabololo e e rulaganeng ya setheo se se tlhomilweng. 25

(3) Banka ya Resefe ka nako nngwe le nngwe e ka, ka go kwala, emisa go thapiwa ga modiri wa tsa tharabololo wa setheo se se tlhomilweng se se mo tharabololong. 30

(4) Modiri wa tsa tharabololo yo o thapilweng mabapi le setheo se se tlhomilweng o tshwanetse—

- (a) go obamela taelo efe go tswa kwa Bankeng ya Resefe mabapi le setheo se se tlhomilweng; 35
- (b) go naya Banka ya Resefe, bonnye kgwedi le kgwedi, pegelo ya ditiro tsa gagwe mabapi le setheo se se tlhomilweng; le
- (c) go obamela dipeelo tse dingwe tsa go thapiwa ga gagwe.

Tshutisetso ya dišere kwa setheong se se tlhomilweng mo tharabololong

166P. (1) Šere ya setheo se se tlhomilweng mo tharabololong ga e ne e rekiswa ntle le thebolo ya Banka ya Resefe. 40

(2) Karotlaleletso (1) ga e thibele tshutiso ya šere—

- (a) fa motsholašere a tlhokofala;
- (b) go obamela taelo ya kgotlatshekelo; kgotsa
- (c) mo maemong a a tsepamisitsweng mo maemong a kelotlhoko. 45

(3) Tshutiso e e tsewang jaaka ya nnete e e sa tsamaelaneng le karotlaleletso (1) ga e ame ka gope.

Karolo 3

Ditsela tsa tharabololo

Tekanyoboleng 50

166Q. (1) (a) Pele Banka ya Resefe e tsaya kgato ya tharabololo mabapi le setheo se se tlhomilweng mo tharabololong, kgotsa setheo se se tlhomilweng mo tharabololong se tsaya kgato, Banka ya Resefe e

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 the resolution action.

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

tshwanetse go fitlhelela tekanyaboleng ya dithoto le maikarabelosemolao a a amegang.

(b) Tekanyaboleng e tshwanetse go tthagisa boleng jo, ka mogopolo wa molekanyaboleng, bo tla fitlhelelwang go tswa mo dithotong, kgotsa tlhlotlwa e, go ya ka mogopolo wa molekanyaboleng, e tla nnang tlhlotlwa e e tla duelelang maikarabelosemolao, mo phedisong ya setheo se se tlhomilweng. 5

(c) Maitlhommo a tekanyaboleng ke go itsise Banka ya Resefe mabapi le kgato ya tharabololo.

(2) Ka bonako jo bo kgonagalang morago ga fa setheo se se tlhomilweng se khutlisa go nna mo tharabololong, Banka ya Resefe e tshwanetse go fitlhelela tekanyaboleng ya dithoto le maikarabelosemolao a a sekasekilweng ka kgato ya tharabololo. 10

(3) Banka ya Resefe, mo go direng tekanyaboleng mabapi le maitlhommo a karolo eno, e tshwanetse go tsepamisa diphopholetso tse molekanyaboleng a tshwanetseng go di dira mo go lekanyeng boleng. 15

(4) Tekanyaboleng go ya ka karolo eno e tshwanetse go dirwa—

(a) ke molekanyaboleng yo o fitlhelelang ditlhokego tse di beilweng mo; le

(b) ka mokgwa osele go latela ditlhokego tse di beilweng mo, maemong a tlhokomelo a a diretsweng karolo eno. 20

(5) Banka ya Resefe e tshwanetse go dira gore tekanyaboleng e e fitlhetsweng go ya ka karolo eno e fitlhelelwe ke bakolotwa le batsholadišere ba setheo se se tlhomilweng.

Dithata

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166R. (1) Fa Banka ya Resefe e tshomamisa gore go botlhokwa go dira jalo mabapi le tharabololo e e rulaganeng ya setheo se se tlhomilweng se se mo tharabololong, Banka ya Resefe e ka dira efe ya tse di latelang:

(a) Go latela karotlaleletso (3), ka kitsiso go matlhakore a mangwe ao e leng karolo ya tumalano e setheo se se tlhomilweng e leng karolo ya yona, e le tumalano e e tseneng mo tirisong pele ga setheo se se tlhomilweng se bewa mo tharabololong, 20 phimola tumalano go simolola ka letlha le le beilweng mo kitsisong, letlha leo le tshwanetseng go nna morago ga letlha la kitsiso; 30

(b) go latela karotlaleletso (4), ka kitsiso e e kwetsweng go matlhakore a a amegang le go dira kitsiso mabapi le seo kwa kgotlatshekelong kgotsa kwa botsereganying, sekega ditsamaiso tsa semolao tse di rileng kgotsa ditsamaiso tsa botsereganyi tseo setheo se se tlhomilweng e leng karolo ya tsona; 35

(c) go sa nyatswe karotlaleletso (3), le go ya ka karotlaleletso (4), ka kitsiso e e kwetsweng go matlhakore a a amegang, sekega setheo mabapi le tleleime efe ya ditshenyegelo mabapi le tatlhegelo e e bonweng ke motho ka ntlha ya phimolo ya tumalano go ya ka temana (a); 40

(d) go latela karotlaleletso (4), ka kitsiso e e kwaletsweng matlhakore a a amegang mo setheong se se tlhomilweng e leng karolo, sekega tlamego ya letlhakore leo e leng karolo ya tumalano; kgotsa 45

(e) go latela karotlaleletso (5), ka kitsiso e e phasaladitsweng mo Rejisetareng, thibela tshimololo ya ditsamaiso tsa semolao tse di rileng kgotsa ditsamaiso tsa botsereganyi kgatlhanong le setheo se se tlhomilweng. 50

(2) Banka ya Resefe e ka diragatsa thata go ya ka karotlaleletso (1)(a) fela—

(a) fa tumalano e tsaya letlhakore la mokolotwa a le esi wa setheo se se tlhomilweng go feta mokolotwa yo mongwe wa setlhophha se se tshwanang; 55

(b) fa tumalano e le matsapa ka mabaka a a sa utlwagaleng mo setheong se se tlhomilweng;

(c) fa tumalano e le ya khiri ya thoto e e sutang kgotsa e e sa suteng e e dirilweng pele setheo se se tlhomilweng se bewa mo tharabololong; kgotsa 60

(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. 5

(3) Cancellation of an agreement in terms of subsection (1)(a) does not affect the rights of the parties to the agreement, which rights 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. 10

(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. 15

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. 20

(2) For the purpose of this section, 'transaction' includes each of the following: 25

(a) Transferring, creating an interest in, or dealing in any other way with, assets and liabilities of a designated institution; and

(b) an amalgamation or merger, or a scheme of arrangement of a kind referred to in Chapter 5 of the Companies Act that involves, as one of the parties, a designated institution. 30

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

(b) A determination made in terms of subsection (1), in respect of a transaction referred to in subsection (2)(b), must be made after consultation with the Competition Commission. 35

(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; 40

(b) a party to the transaction in whom an asset vests, or which is liable 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 may have been bound, immediately before the transfer; and

(c) in the case of an amalgamation or merger— 45

(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 or merged entity; and 50

- (d) go ya ka bogolo jwa gore tumalano ke netefaletso e e rebotsweng ke setheo se se tlhomilweng pele setheo se se thomilweng se bewa mo tharabololong, go sa akaretse netefaletso ya gore setheo se se tlhomilweng se tlhokega gore se dire sentle mo matsatsing a le 30 morago ga fa setheo se se thomilweng se sena go bewa mo tharabololong. 5
- (3) Phimolo ya tumalano go ya ka karolotlaleletso (1)(a) ga e ame ka gope ditshwanelo tsa matlhakore a a amegang mo tumalanong, ditshwanelo tse di fitlheletsweng pele ga letlha le phimolo e simololang ka lona.
- (4) Kitsiso go ya ka karolotlaleletso (1)(b), (c) kgotsa (d) e tshwanetse go tsepamisa paka ya tshekego, eo e tshwanetseng go nna paka e e utlwagalang. 10
- (5) Kitsiso go ya ka karolotlaleletso (1)(e) e tshwanetse go tsepamisa paka ya kganelo, eo e tshwanetseng go nna paka e e utlwagalang.
- (6) Kitsiso go ya ka karolotlaleletso (1)(b), (c), (d) kgotsa (e) e sekega gape go dira ga dipeelo dife tse di beelang nako, e ka tswa e le ka tumalano kgotsa molao, le go akaretsa tshekego ya tiragatso ya tseo di beilweng go ya ka *Prescription Act*, 1969 (Molao 68 wa 1969), mabapi le paka e e rileng. 15

Kgato ya tharabololo, go akaretsa le go rulaganya gape le tuelokgololomolato 20

- 166S.** (1) Fa Banka ya Resefe e tlhomamisa gore go botlhokwa mabapi le tharabololo e e rulaganeng ya setheo se se tlhomilweng mo tharabololong gore setheo se se tlhomilweng se tsene mo tirisano e e rileng, setheo se se tlhomilweng se ka tsena mo tirisano, e bile se ka dira jalo go sa nyatswe molao ope kgotsa tumalano e ka mokgwa mongwe e kganelang kgotsa thibelang go dira jalo, go akaretsa le molao kgotsa tumalano e e tlhokang tumelelo kgotsa tetla ka motho yo o rileng. 25
- (2) Mabapi le karolo eno, 'tirisano' e akaretsa nngwe le nngwe ya tse di latelang:
- (a) Go sutisa, go dira kgatlhego mo, kgotsa go dira ka mokgwa mongwe le mongwe ofe ka, dithoto le maikarabelosemolao a setheo se se tlhomilweng; le 30
- (b) kopanyo kgotsa tlhakanyo, kgotsa sekema sa thulaganyo sa mofuta o o rileng se se kailweng mo Kgaolong 5 ya *Companies Act* e e amanang le, jaaka nngwe ya matlhakore a a amegang, setheo se se tlhomilweng. 35
- (3) (a) Mo go direng tlhomamiso go ya ka karolotlaleletso (1), Banka ya Resefe e tshwanetse go rerisana le Bothati jwa Tlhokomelo.
- (b) Tlhomamiso e e dirilweng go ya ka karolotlaleletso (1), mabapi le tirisano e e kailweng mo karolotlaleletsong (2)(b), e tshwanetse morago ga therisano le Khomišene ya Kgaisano. 40
- (4) Fa tirisano e tsena mo tirisong—
- (a) dithoto le maikarabelosemolao tsa matlhakore a a amegang tse di sutiswang go ya ka tirisano e e newang tetla semolao, le go tlama, matlhakore a a amegang go tsamaelana le dipeelo tsa tirisano; 45
- (b) letlhakore mo tirisano le le neilweng tetla semolao ya thoto, kgotsa le ka fa tlase ga tirisano le rwalang maikarabelo semolao, le na le ditshwanelo tse di tshwanang e bile le bewa ka fa tlase ga ditlamego tse di tshwanang le tseo mosutisi a neng a na le tsona, kgotsa tseo di neng di mo tlama, ka bonako pele ga tshutiso; le 50
- (c) mo lebakeng la kopanyo kgotsa tlhakanyo— 50
- (i) ditumalano tsotlhe, dithapo, ditirisano le dikwalo tse go tsenweng mo tsona, tse di dirilweng, tse di thadilweng kgotsa tse di diragaditsweng le, ke kgotsa ka go tsaya letlhakore la, lengwe le lengwe la matlhakore a kopanyo kgotsa tlhakanyo le go nna mo tirisong ka bonako pele ga tirisano e tsena mo tirisong, di sala go nna mo tirisong le go diriswa e bile di tshwanetse go tsewa, mabapi le maitlhommo otlhe, jaaka e kete tse go tsenweng mo go tsona, tse di dirilweng, tse di thadilweng kgotsa tse di diragaditsweng le, ke kgotsa ka go tsaya letlhakore la setheo se se kopantsweng kgotsa se se tlhakantsweng; le 55 60

- (ii) any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating or merging parties, remains 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 or merged entity as security for future advances, facilities or services by that entity. 5

(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 or merger. 10

(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 of the following: 15

- (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: 20

- (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 166V; or 25
 (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 accrued before the date the cancellation takes effect. 30

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

- (a) An unsettled exchange traded transaction, including a transaction on a licenced exchange; 35
 (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); or 40
 (d) a transaction in the settlement system between two or more settlement system participants as provided for in the National Payment System 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). 45

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. 50

- (ii) bonto efe, maitlamo, netefaletso kgotsa sediriswa sa go sireletsa dituelelopele tsa isago, didiriswa kgotsa ditirelo ka nngwe ya mathakore a a amegang mo kopanyong kgotsa mo tlhakanyong, di sala go nna mo tirisong le go diriswa e bile di tshwanetse go tsewa mabapi le maitlamo a bonto, maitlamo, netefaletso kgotsa sediriswa se se neilweng, setheo se se se kopantsweng kgotsa se se tlhakantsweng jaaka tshireletso mabapi le dituelelopele tsa isago, didiriswa kgotsa ditirelo ka setheo seo. 5
- (5) Karotlaleletso (4)(c)(i) ga e diriswe mo ditumalanong, mo go thapiweng, mo ditirisanong le mo dikwalong tse, go ya ka dipeelo le mabaka tsa tirisano, di sa tleng go busetswa mo tirisong morago ga kopanyo kgotsa tlhakanyo. 10
- (6) Go sa nyatswe molao ope kgotsa tumalano epe, go akaretsa le memorantamo wa kopanyo wa setheo, setheo se se tlhomilweng mo tharabololong se ka, fa Banka ya Resefe e tlhomamisa gore go botlhokwa go dira jalo mabapi le tharabololo e e rulaganeng ya setheo se se tlhomilweng, dira e le esi kgotsa ka bobedi ya tse di latelang: 15
- (a) Phimola šere ya setheo se se tlhomilweng ya, go ya ka karolo 166Q(1), boleng jwa lefela, mo tswalokgwebong; kgotsa 20
- (b) rebola dišere tse dišwa tsa setheo se se tlhomilweng, ka dipeelo tse di rebotsweng ke Banka ya Resefe.
- (7) Fa Banka ya Resefe e tlhomamisa gore go botlhokwa go dira jalo mabapi le tharabololo e e rulaganeng ya setheo se se tlhomilweng se se mo tharabololong, Banka ya Resefe e ka, ka taelo e e kwetsweng, dira efe ya tse di latelang mabapi le tumalano e setheo se se tlhomilweng e leng karolo ya yona: 25
- (a) Ka kitsiso go letlhakore leo le amegang mo tumalanong eo go ya ka yona tlhotlha e kgotsa e ka duelwa ke setheo se se tlhomilweng, go ya ka tumalano kgotsa thulaganyo, fokotsa tlhotlha e e kgotsa e e ka duelwang, go latela dikarolo 166Q le 166V; kgotsa 30
- (b) ka kitsiso e e kwaletsweng mathakore otlhe a mangwe a a amegang mo tumalanong, phimola tumalano.
- (8) Go latela karotlaleletso (7)(a), phimolo ya tumalano go ya ka karotlaleletso (7)(b) ga e ame ka gope ditshwanelo tsa mathakore a a amegang mo tumalanong, ditshwanelo tseo di fitlheletsweng pele ga letlha la phimolo le tsenngwa mo tirisong. 35
- (9) Karotlaleletso (7) ga e diriswa mo go tse di latelang:
- (a) Tirisano ya thekokananyo e e sa duelelwang, go akaretsa le tirisano mo kananyong e e abetsweng laesense; 40
- (b) sediriswa se se tswang jaaka se tlhalositswe mo karolong 1 ya *Financial Markets Act*;
- (c) tipositi e motsholatipositi e leng Koporasi ya Tipositi tsa Setšhaba e e tlhomilweng ka karolo 2 ya *Corporation for Public Deposits Act*, 1984 (Molao 46 wa 1984); kgotsa 45
- (d) tirisano mo thulaganyong ya pheleletsotuelo magareng ga batsayakarolo mo thulaganyong ya pheleletsotuelo ba le ba bedi kgotsa go feta jaaka go laetswe mo *National Payment System Act*.
- (10) Kgato go ya ka karolo eno ga e, ka boyona, dire gore letlhakore le le amegang le tlhagise tshwanelo efe, kgotsa motho yo o nang le kgalhego mo, tumalanong e e kailweng mo karotlaleletsong (7). 50

Ditlamorago tsa dikgato tsa tharabololo

166T. Banka ya Resefe e ka diragatsa le go dira dithata tsa tharabololo tsa yona go ya ka Karolo eno, le dithata tsa yona tse di amanang, mabapi le maikarabelosemolao a setheo se se tlhomilweng se se mo tharabololong ka mokgwa o o bakang gore maikarabelosemolao a emisetswe ka go tshola dišere mo setheong se se tlhomilweng kgotsa mo setlamokgolaganyong. 55

Creditor hierarchy and equality of claims

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. 5

(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. 10

(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 equally. 15

(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 equally. 20

(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. 25

(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). 30

(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). 35

(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 40

(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. 45

(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. 50

Thulaganyetsotatelano ya mokolotwa le tekatekano ya ditleleimi

166U. (1) Banka ya Resefe ga e a tshwanela go tsaya kgato ya tharabololo, e bile e tshwanetse go netefatsa gore setheo se se tlhomilweng mo tharabololong ga se tseye kgato ya tharabololo, fa go lebega mo Bankeng ya Resefe e kete ditlamorago tsa kgato di dira gore boleng jwa tleleimi ya mokolotwa wa setheo se se tlhomilweng bo fokotswe. 5

(2) Karolotlaleletso (1) ga e diriswe mo—

(a) ditleleiming tsa batsholadišere; kgotsa
(b) fa ditleleimi tsa bakolotwa le batsholadišere ba setheo se se tlhomilweng se se mo maemong a a kwa tlase mo thulaganyetsotatelanong ya bakolotwa di fokoleditswe go lefela. 10

(3) Go retelelwa ke go obamela karolotlaleletso (1) ga go dire gore kgato e e tserweng e se nne ya boammaruri.

(4) (a) Mo go tseyeng kgato ya tharabololo mabapi le setheo se se tlhomilweng se se mo tharabololong, Banka ya Resefe e tshwanetse go tshola ka tekatekano ditleleimi tsa bakolotwa le batsholadišere ba setheo se se thomilweng se se mo tharabololong tse di tla nnang le maemo a a tshwanang mo phutlhamong. 15

(b) Banka ya Resefe e tshwanetse go netefatsa gore, fa setheo se se tlhomilweng se se mo tharabololong se tsaya kgato ya tharabololo, ditleleimi tsa bakolotwa le batsholadišere ba setheo se se tlhomilweng tse di tla nnang mo maemong a a tshwanang mo phutlhamong di tsholwa ka go lekana. 20

(c) Ditemana (a) le (b) ga di diriswe fa Banka ya Resefe e tlhomamisa gore go bothokwa go tshola ditleleimi ka go farologana go diragatsa tharabololo e e rulaganeng ya setheo se se tlhomilweng. 25

Molawana wa ‘Ga go mokolotwa yo o tshwanetseng go nna le tatlhegelo e e fetang eo a ka beng a e bone fa setheo se tswalelwa (NCWO)’

166V. (1) Banka ya Resefe ga e a tshwanela go tsaya kgato ya tharabololo mabapi le setheo se se tlhomilweng mo tharabololong e e ka nnang le ditlamorago tsa gore mokolotwa kgotsa motsholadišere wa setheo se se tlhomilweng a amogele kwa tlase ga ka moo mokolotwa kgotsa motsholašere a neng a ka amogela fa setheo se se tlhomilweng se ne se phatlaladitswe. 30

(2) Boleng jwa dithoto tse mokolotwa kgotsa motsholašere a tshwanelang go nna le bona mabapi le kgato bo tshwanetse go tsewa tsia fa go diriswa karolotlaleletso (1). 35

(3) Go retelelwa ke go obamela karolotlaleletso (1) ga go dire gore phitlhelelo ya thoto ka moreki yo o senang maitlthomo a tsietso mabapi le boleng yo o sa itseng ka ga go retelelwa ga kobamelo (mme go ka dira gore go nne le tshwanelo ya phimolakeledi mo mokolotiweng kgotsa motsholašereng). 40

(4) Ka bonako jo bo kgonagalang morago ga fa Banka ya Resefe e sena go amogela tekanyoboleng go ya ka karolo 166Q(2) mabapi le setheo se se tlhomilweng se se mo tharabololong, Banka ya Resefe e tshwanetse— 45

(a) go sekaseka gore, ka kelotlhoko go tekanyoboleng, a mokolotwa kgotsa motsholašere wa setheo se se tlhomilweng o amogetse, mabapi le kgato ya tharabololo, bonnye jo bo kwa tlase ga jo a kabo a bo amogetse fa setheo se se tlhomilweng se ne se phatlaladitswe; le 50

(b) fa e gopola gore mokolotwa kgotsa motsholašere yoo o amaogetse bonnye jo bo kwa tlase ga jo a kabo a bo amogetse fa setheo se se tlhomilweng se ne se phatlaladitswe, go tlhomamisa tlhotlwa ya madi a a tlhaelang. 55

(5) Fa Banka ya Resefe e dira tlhomamiso go ya ka karolotlaleletso (4)(b), mokolotwa kgotsa motsholašere o tshwanetse go fitlhelela go tswa kwa setheong se se tlhomilweng tlhotlwa e e tlhaelang.

(6) Karolotlaleletso (5) ga e lekanyetse tleleimi epe e mokolotwa kgotsa motsholašere a ka tswang a na le yona mabapi le tlhotlwa ya tlaletso.

Ranking of claims

166W. (1) Subject to the provisions of this Act, claims against a designated institution in resolution will rank in the order provided in the Insolvency Act, regardless of whether the claim arose before or during the resolution.

(2) Notwithstanding the provisions of any law, if a designated institution is placed in liquidation, the trustee or liquidator must—

(a) after payment of any preferred creditors provided for in the Insolvency Act, and before the payment of any unsecured creditors, apply the balance of the free residue in liquidation in the payment of any claims proved against the estate in question which were covered as a covered deposit in terms of this Act with interest thereon calculated as provided for in section 103(2) of the Insolvency Act;

(b) after payment of any unsecured creditors, apply the balance of the free residue in liquidation in the payment of any claims proved against the estate in question arising in connection with flac instruments as defined in this Act; and

(c) after the payment of flac instruments or, if no claims in connection with flac instruments have been made, then after the payment of unsecured creditors, apply the balance of the free residue in liquidation in the payment of any claims proved against the estate in question arising in connection with the amounts in terms of debt instruments designated as regulatory capital in terms of a financial sector law in the order prescribed in the financial sector law.

(3) Any payments made by the trustee or liquidator in terms of subsection (2)(c) must be paid in the order prescribed in the financial sector law or, if the financial sector law does not prescribe the order, they must rank equally and abate in equal proportion, if necessary.

(4) Notwithstanding the provisions of any law, the Reserve Bank must apply any money of the designated institution in resolution that becomes available to the resolution authority in paying the cost of the resolution and, subject to the provisions of this Act, in the payment of the claims of creditors which arose before the date of resolution.

Registration of transactions

166X. 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 the Reserve Bank 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

166Y. 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 incurs in exercising and performing its resolution functions in relation to the designated institution while in resolution.

Go baya ditheleimi ka tatelano

166W. (1) Go latela ditaello tsa Molao ono, ditheleimi kgatlhanong le setheo se se tlhomilweng se se mo tharabololong di tla bewa ka tatelano mo taelong e e laetsweng mo *Insolvency Act*, go sa kgathalesege gore a theleimi e ntile teng pele kgotsa ka nako ya tharabololo.

(2) Go sa nyatswe ditaello tsa molao ofe, fa setheo se se tlhomilweng se beilwe mo tswalokgwebong, motlhokomedi kgotsa mogapi o tshwanetse—

(a) morago ga tuelo ya bakolotwa bafe ba ba kgethilweng bao go laelwang ka bona mo *Insolvency Act*, le pele ga tuelo ya bakolotwa bafe ba ba sa sireletsegang, go dirisa tshalelo ya masalela a a sa duelelweng mo tswalokgwebong mo tuelong ya ditheleimi dife tse di netefaditsweng kgatlhanong le thoto e e bolelwang tse di neng tsa duelelwa jaaka tipositi e e dueletsweng go ya ka Molao ono tse morokotso wa tsona o badilweng jaaka go laetswe mo karolong 103(2) ya *Insolvency Act*;

(b) morago ga go duelwa ga bakolotwa bafe ba ba sa sireletsegang, go dirisa tshalelo ya masalela a a sa duelelweng mo tswalokgwebong mo tuelong ya ditheleimi dife tse di netefaditsweng kgatlhanong le thoto e e bolelwang e e nnileng teng mabapi le didiriswa tsa flac jaaka di thalositswe mo Molaong ono; le

(c) morago ga tuelelo ya didiriswa tsa ac kgotsa, fa go se ditheleimi dipe mabapi le didiriswa tsa ac tse di dirilweng, morago ga tuelo ya bakolotwa ba ba sa sireletsegang, go dirisa tshalelo ya masalela a a sa duelelweng mo tswalokgwebong mo tuelong ya ditheleimi dife tse di netefaditsweng kgatlhanong le thoto e e bolelwang e e nnileng teng mabapi le ditlhotlhwa go ya ka didiriswa tsa molato tse di tlhomilweng jaaka bolaodi jwa khapetlele go ya ka molao wa lephata la ditšhelete mo tatelanong e e beilweng mo molaong wa lephata la ditšhelete.

(3) Tuelo efe e e dirilweng ke motlhokomedi kgotsa mogapi go ya ka karolotlaleletso (2)(c) e tshwanetse go duelwa ka tatelano e e beilweng mo molaong wa lephata la ditšhelete, fa molao wa lephata la ditšhelete o sa beye tatelano, di tshwanetse go bewa mo maemong a a lekanang le go tloswa ka tekano, fa go tlhokega.

(4) Go sa nyatswe ditaello tsa molao ofe, Banka ya Resefe e tshwanetse go dirisa madi afe a setheo se se tlhomilweng mo tharabololong a a nnang teng mo bothating jwa tharabololo go duelela ditshenyegelo tsa tharabololo le, go latela ditaello tsa Molao ono, mo tuelong ya ditheleimi tsa bakolotwa tse di nnileng teng pele ga letlha la tharabololo.

Kwadiso ya tirisano

166X. Motho yo o rwalang maikarabelo a rejisetara e e gatisang—

(a) bong jwa thoto e e leng ya ga, kgotsa bonto kgotsa tshwanelo ya, kgotsa go thapiwa ga kgotsa ke, motho ofe; kgotsa

(b) šere, thoto, tibentšhara kgotsa tshireletso e nngwe ya theko, o tshwanetse, mo tlhagisong ka Banka ya Resefe kgotsa motho yo o letleletsweng ke Banka ya Resefe ya setifikeite sa tshutiso e e dirilweng ka tirisano go ya ka Karolo eno, le dikwalo tse di maleba tsa bong jwa thoto, go gatisa thutiso e e dirilweng ka tirisano.

Ditshenyegelo tsa tharabololo

166Y. Banka ya Resefe e ka busetsa go tswa mo setheong se se tlhomilweng mo tharabololong, kgotsa go tswa mo setheong se se tlhomilweng morago ga go khutlisa go nna mo tharabololong, madi a Banka ya Resefe e a kolotang mo go direng le go diragatseng ditiro tsa yona tsa tharabololo mabapi le setheo se se tlhomilweng fa se ne se le mo tharabololong.

*Part 4**Protections***Administrative process for actions taken by Reserve Bank in terms of Chapter**

- 166Z.** (1) This section applies in relation to the following actions taken by the Reserve Bank: 5
- (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. 10
- (2) The Reserve Bank must, subject to subsection (3), before taking an action to which this section applies—
- (a) publish a 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 15
 - (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 may 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). 20
- (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. 25
- (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. 30
- (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. 35
- (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 section 3(2) and section 4(1), (2) and (3) of the Promotion of Administrative Justice Act. 40

*Part 5**Banks in resolution—covered deposits***Corporation to ensure bank depositors have reasonable access to their covered deposits** 45

- 166AA.** (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 reasonable access to their covered deposits:

Karolo 4
Ditshireletso

Mokgwatsamaiso wa dikgato tse di tserweng ke Banka ya Resefe go ya ka Kgaolo eno

- 166Z.** (1) Karolo eno e diriswa mabapi le dikgato tse di latelang tse di tserweng ke Banka ya Resefe: 5
- (a) Kgato go ya ka karolo 166J(1); le
- (b) kgato mabapi le setheo se se tlhomilweng mo tharabololong, e le kgato e e amang bobere ditshwanelo tsa motho ofe ('motho yo o amegang') e bile e na le ditlamorago tse di tlhamaletseng, tsa kwa ntle tsa semolao. 10
- (2) Banka ya Resefe e tshwanetse, go latela karotlaleletso (3), pele e tsaya kgato e karolo eno e diriswang mo go yona—
- (a) go phasalatsa kitsiso ya kgato ka polelotlhagiso e e— 15
- (i) tlhalosang mabaka a kgato e e tshitsintsweng; le
- (ii) akaretsang tshedimosetso e e maleba mo morerong; le
- (b) go laletsa motho ofe yo o amegang go dira ditlhagiso kwa Bankeng ya Resefe ka ga morero mo nakong e e lekaneng e e tsepamisitsweng mo kitsisong, nako eo e ka se feteng matsatsi a le 14. 20
- (3) Mo go swetseng ka go tsaya kgato kgotsa nnyaa, Banka ya Resefe e tshwanetse go tsaya tsia ditlhagiso tsotlhe tse di amogetsweng ka nako ya go ya bokhutlong ga paka e e tsepamisitsweng go ya ka karotlaleletso (2)(b). 20
- (4) Fa Banka ya Resefe e tlhomamisa gore kobamelo ya dikarotlaleletso (1) le (2) mabapi le kgato e e tshitsintsweng e ka ama bobere tlhomamo ya ditšhelete, kgotsa ya se tsamaelane le maitlhomamo a kgato e e tshitsintsweng, Banka ya Resefe e ka tsaya kgato ntle le go obamela dikarotlaleletso tseo. 25
- (5) (a) Fa Banka ya Resefe e tsaya kgato e karolo eno e diriswang mo go yona ntle le go obamela karotlaleletso (1) kgotsa (2), e tshwanetse go phasalatsa polelotlhagiso ya mabaka a gore goreng dikarotlaleletso di sa obamelwa. 30
- (b) Motho mongwe le mongwe yo o amegang o ka dira ditlhagiso kwa Bankeng ya Resefe mo kgweding e le esi morago ga phasalatsa ya polelotlhagiso. 35
- (c) Banka ya Resefe e tshwanetse go sekaseka ditlhagiso le, ka bonako jo bo kgonagalang, go phasalatsa kitsiso e nngwe e e tlhagisang gore ke kgato efe, fa e le teng, e Banka ya Resefe e tshitsinyang go e tsaya mo morerong, go akaretsa le gore a Banka ya Resefe e tshitsinya go tlosa kgotsa go phimola kgato kgotsa go tlamela motho yo o amegang ka puseletso ya ditshwanelo. 40
- (6) Banka ya Resefe ga e a tshwanela go tlosa kgotsa go phimola kgato e e tserweng go ya ka karolo 166J kgotsa 166K.
- (7) Mabapi le kgato e karolo eno e diriswang mo go yona, tsamaiso e e tsepamisitsweng mo karolong eno e a diriswa mo boemong jwa tsamaiso e e beilweng ka karolo 3(2) le karolo 4(1), (2) le (3) ya *Promotion of Administrative Justice Act*. 45

Karolo 5

Dibanka tse di mo tharabololong—ditipositi tse di sireleditsweng

Koporasi go netefatsa gore babayamadi ba banka ba na le phitlhelelo e e rileng go ditipositi tsa bona tse di sireleditsweng 50

- 166AA.** (1) Fa banka e le mo tharabololong, Koporasi e tshwanetse go dirisa Letlole ka e le esi kgotsa go feta ya ditsela tse di latelang go netefatsa gore babayamadi ba banka ba na le phitlhelelo e e rileng go ditipositi tsa bona tse di sireleditsweng: 55

- (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. 5
- (2) An agreement referred to in subsection (1)(c) may include any of the following:
- (a) A secured loan to the bank in resolution; 10
 - (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. 15
- (3) (a) The Corporation may only enter into an agreement referred to in subsection (1)(c) if the Corporation believes that the agreement will contribute to the orderly resolution of the bank in resolution.
- (b) The cost to the Fund in terms of the agreement may not exceed the total amount of covered deposits held by the bank in resolution. 20
- (c) Paragraph (b) does not apply to costs incurred by the Corporation when exercising its functions in terms of section 166AF.

Limit of cover for covered deposits

- 166AB.** (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— 25
- (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 30
 - (b) the amount prescribed by the Minister in Regulations made for the purposes of this section. 35
- (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 result of fraud

- 166AC.** If— 40
- (a) the Corporation makes one or more payments out of the Fund as contemplated by section 166AA in respect of a depositor with a bank in resolution;
 - (b) the total amount paid was more than was permitted by section 166AB; and 45
 - (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, 50

- (a) Go busetsa banka e e mo tharabololong dituelo tse banka e di dirileng fa e ne e le mo tharabololong go babayamadi mabapi le tipositi e sireleditsweng;
- (b) go busetsa babayamadi ba banka e e mo tharabololong mabapi le ditipositi tse di sireleditsweng; kgotsa 5
- (c) go dira dituelo go ya ka tumalano e e amanang le tirisano e e kailweng mo karolong 166S(1), eo e leng tumalano mabapi le ditipositi tse di sireleditsweng tsa banka e e mo tharabololong.
- (2) Tumalano e e kailweng mo karotlaleletsong (1)(c) e ka akaretsa efe ya tse di latelang: 10
- (a) Bolengkadimo jo bo sireleditsweng kwa bankeng e e mo tharabololong;
- (b) tumalano ya karogano ya tathegelo magareng ga Koporasi le banka e e mo tharabololong kgotsa motho yo o rwalang maikarabelo a maikarabelosemolao mabapi le tipositi e e sireleditsweng ya banka e e mo tharabololong; kgotsa 15
- (c) netefaletso e e mo letlhakoreng la banka e e mo tharabololong, Banka ya Resefe kgotsa motho yo mongwe mabapi le ditlamego tsa banka mabapi le ditipositi tse di sireleditsweng tsa banka e e mo tharabololong. 20
- (3) (a) Koporasi e dira fela tumalano e e kailweng mo karotlaleletsong (1)(c) fa Koporasi e dumela gore tumalano e tla etleetsa mo tharabololong e e rulaganeng ya banka e e mo tharabololong.
- (b) Tshenyegelo go Letlole go ya ka tumalano e ka se fete palogotlhe ya tlhlotlwa ya ditipositi tse di sireleditsweng tse di tshotsweng ke banka e e mo tharabololong. 25
- (c) Temana (b) ga e diriswe mo ditshenyegelong tse di kolotwang ke Koporasi fa e diragatsa ditiro tsa yona go ya ka karolo 166AF.

Tekanyetso ya tshireletso mabapi le tipositi

- 166AB.** (1) Palogodimo ya tlhlotlwa e e ka diriswang go tswa mo Letloleng mabapi le mmayamadi wa banka e e mo tharabololong ke bonnye jwa— 30
- (a) palo ya—
- (i) palogotlhe ya boleng jo bo emeng mo sekolotong sa diakhaonto le banka e e tshotsweng ke mmayamadi ka esi; le 35
- (ii) mabapi le akhaonto nngwe le nngwe le banka e e tshotsweng ke mmayamadi mmogo le motho a le esi kgotsa ba bangwe ba le bantsi, boleng jo bo badilweng jaaka boleng jo bo emeng mo sekolotong sa akhaonto bo arogantswe ka palo ya batsholadiakhaonto ba akhaonto; le 40
- (b) boleng jo bo beilweng ke Tona mo Melawanataolong e e dirilweng mabapi le maitlhomo a karolo eno.
- (2) Kaelo mo karotlaleletsong (1) go boleng jo bo emeng mo sekolotong sa akhaonto ka letlha le banka e neng ya bewa mo tharabololong ka lona. 45

Tuelo e e dirilweng ka phoso ka ntlha ya tsietso

- 166AC.** Fa—
- (a) Koporasi e dira tuelo e le esi kgotsa go feta go tswa mo Letloleng jaaka go umakilwe mo karolong 166AA mabapi le mmayamadi le banka e e mo tharabololong; 50
- (b) palogotlhe ya boleng e e duetsweng e ne e feta e e letleletsweng ke karolo 166AB; le
- (c) boleng jo bo feteletseng bo ne bo duetswe ka ntlha ya—
- (i) phoso ka Koporasi kgotsa banka e e mo tharabololong, e ka nna pele kgotsa morago ga fa banka e sena go bewa mo tharabololong, go akaretsa le go retelelwa ga banka go obamela tlamego ya go tlamela tshedimosetso; kgotsa 55
- (ii) tsietso, ntle le tsietso ka motlhankedi kgotsa modiri wa Koporasi,

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

Corporation substituted for depositor in respect of claims

166AD. If the Corporation makes a payment out of the Fund as contemplated by section 166AA in respect of a depositor of a bank in resolution, the Corporation may, in terms of this section, assume and exercise the rights and remedies of the depositor against the bank to the extent of the payment. 5

Part 6

Corporation for Deposit Insurance—establishment, functions and governance 10

Establishment

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

Objective and functions

166AF. (1) The objective of the Corporation is, through the provision of deposit insurance and carrying out its functions in terms of subsection (2), to support the Reserve Bank in fulfilling its objective of, and responsibility for, protecting and maintaining financial stability in terms of section 3(2) of the Reserve Bank Act and for protecting, enhancing and restoring or maintaining financial stability in terms of section 11 of this Act. 15 20

(2) The functions of the Corporation are—

- (a) to establish, maintain and administer the Fund in accordance with this Chapter, in the interest of the holders of covered deposits; and
- (b) to promote awareness among financial customers, of the protections afforded by this Chapter. 25

Membership

166AG. (1) A bank is 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. 30

(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. 35

Governance of Corporation

166AH. 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 to internationally accepted standards. 40

Board

166AI. (1) The affairs of the Corporation are managed and controlled by a Board of directors, which, subject to this Act, exercises the powers and performs the duties conferred or imposed upon the Corporation by this Act and any other law. 45

Koporasi e tshwanetse go busetsa madi a a feteletseng go tswa kwa bankeng e e mo tharabololong.

Koporasi e emiseditswe ka mmayamadi mabapi le ditleleimi

166AD. Fa Koporasi e dira tuelo go tswa mo Letloleng jaaka go umakilwe mo karolong 166AA mabapi le mmayamadi wa banka e e mo tharabololong, Koporasi e ka, go ya ka karolo eno, diriswa le go diragatsa ditshwanelo le dikgopololo tsa mmayamadi kgatlhanong le banka go ya ka bogolo jwa tuelo. 5

Karolo 6

Koporasi ya Inšorensense ya Tipositi—tlhomo, ditiro le taolo 10

Tlhomo

166AE. Koporasi ya Inšorensense ya Tipositi e a tlhongwa fano.

Maitlhomo le ditiro

166AF. (1) Maitlhomo a Koporasi ke, ka tlamelo ya inšorensense ya tipositi le go dira ditiro tsa yona go ya ka karolotlaleletso (2), go tshegetsatsa Banka ya Resefe mo go diragatseng maitlhomo a yona a, le maikarabelo mabapi le, go sireletsa le go tlhokomela tlhomamo ya ditšhelete go ya ka karolo 3(2) ya Molao wa Banka ya Resefe le mabapi le go sireletsa, go godisa le go busetsa kgotsa go tshegetsatsa tlhomamo ya ditšhelete go ya karolo 11 ya Molao ono. 15

(2) Ditiro tsa Koporasi ke—

- (a) go tlhoma, go tshegetsatsa le go tsamaisa Letlole go tsamaelana le Kgaolo eno, mo kgatlhegong ya batshodi ba tipositi tse di sireleditsweng; le 20
- (b) go tswela tsemo mo badirising ba ditšhelete, ya ditshireletso tse di newang ke Kgaolo eno. 25

Botokololo

166AG. (1) Banka ke tokololo ya Koporasi go simolola ka letlha le e abetsweng laesense kgotsa le kwadisitsweng ka lona go ya ka molao o o maleba wa lephata la ditšhelete o o e letlang go tshola tipositi e e sireletsegileng. 30

(2) Fa banka e ne e abetswe laesense kgotsa e kwadisitswe go ya ka molao o o maleba wa lephata la ditšhelete pele ga go tlhongwa ga Koporasi, e tla nna tokololo ya Koporasi go simolola ka letlha le Koporasi e tlhomilweng ka lona. 35

(3) Fa go dirwa kopo ya laesense ya banka kgotsa kwadiso, banka e tshwanetse go tlamela bothati jo bo rwalang maikarabelo ka tshedimose tso e e tla e kgontshang go fitlhelela ditlhokego tsa Koporasi.

Taolo ya Koporasi

166AH. Koporasi e tshwanetse go laola merero ya yona, go akaretsa le Letlole, ka mokgwa o o nonofileng wa matsetseleko, le go tlhoma le go tsenya mo tirisong dithulaganyo le ditsamaiso, ka kelotlhoko mo maemong a a amogelesegang boditšhaba. 40

Boto

166AI. (1) Merero ya Koporasi e tsamaiswa le go laolwa ke Boto ya bakaedi, e, go ya ka Molao ono, e diragatsang dithata le go dira ditiro tse di roletsweng kgotsa tse di pateleditsweng Koporasi ke Molao ono le molao mongwe le mongwe ofe. 45

- (2) The Board consists of no more than eight 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 Chief Executive Officer of the Corporation;
 - (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 of the Board appointed in terms of subsection (2)(g)—
- (a) holds office for a term of no more than five years, as the Governor may determine;
 - (b) is, at the expiry of that term, eligible for re-appointment for one further term of no more than five years; 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 of the Board appointed in terms of subsection (2)(g), inform the director of the Board whether the Governor proposes to seek the re-appointment of the person as a director of the Board.
- (5) The Governor must, subject to due process, remove a director of the Board appointed in terms of subsection (2)(g) from office if the director of the Board becomes a disqualified person.
- (6) The Governor must, subject to due process and with the concurrence of the Minister, remove a director of the Board 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 of the Board 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 members of the Board, except the one mentioned in subsection (2)(e) or (f), as chairperson, and the Board may elect, from among themselves, another director of the Board as vice-chairperson.
- (9) (a) A director of the Board may nominate a person to act as alternate for him or her 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 of the Board is unable to attend, the same rights and obligations as the director of the Board.
- (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

- 166AJ.** The Board of directors 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:

- (2) Boto e bopilwe ka batho ba ba sa feteng ba le robedi, bao e leng—
- (a) moemedi go tswa kwa Matlotlong a Setšhaba yo o thapilweng ke Mokaedikakaretso;
- (b) Motlatsammusisi yo o thapilweng ke Mmusisi;
- (c) Motlhankedimogolo wa Khuduthamaga;
- (d) Khomišenara;
- (e) Motlhankedimogolo wa Khuduthamaga wa Koporasi;
- (f) Motlhankedimogolo wa tsa Ditšhelete wa Setlamo wa Banka ya Resefe; le
- (g) batho ba se fete ba le babedi ba ba thapilweng ke Mmusisi jaaka bakaedi ka tumalano le Tona. 5
- (3) Mokaedi wa Boto yo o thapilweng go ya ka karolotlaleletso (2)(g)—
- (a) o nna mo tirong sebaka sa paka e e sa feteng dingwaga tse tlhano, jaaka Mmusisi a ka tlhomamisa;
- (b) o, ka nako ya go ya bokhutlong ga paka eo, siametse go ka thapiwa gape sebaka sa paka e nngwe gape e le esi e e sa feteng dingwaga di le tlhano; le 15
- (c) o tshwanetse go tswa mo tirong pele go ya bokhutlong ga paka ya tiro fa motho yoo—
- (i) a rola tiro, ka go naya Mmusisi kitsiso e e kwetsweng ya bonnye dikgwedi di le tharo kgotsa paka e e khutshwane e Mmusisi a ka e amogelang; kgotsa 20
- (ii) a ntshitswe mo tirong.
- (4) Mmusisi o tshwanetse, bonnye dikgwedi di le tharo pele ga go ya bokhutlong ga paka ya ntlha ya tiro ya mokaedi wa Boto yo o thapilweng go ya ka karolotlaleletso (2)(g), go itsise mokaedi wa Boto gore a Mmusisi o tshitsinya gore motho a thapiwe gape jaaka mokaedi wa Boto. 25
- (5) Mmusisi o tshwanetse, go latela tsamaiso e e tlhokegang, go tlosa mokaedi wa Boto yo o thapilweng go ya ka karolotlaleletso (2)(g) mo tirong fa mokaedi wa Boto e nna motho yo o ileditsweng. 30
- (6) Mmusisi o tshwanetse, go latela tsamaiso e e tlhokegang le ka tumalano le Tona, go tlosa mokaedi wa Boto yo o thapilweng go ya ka karolotlaleletso (2)(g) mo tirong fa mokaedi—
- (a) a sa kgone go dira ditiro tse a di thapetsweng ka ntlha ya bolwetse kgotsa mabaka a mangwe;
- (b) a reteletswe ka gotlhe go diragatsa efe ya maikarabelo a tiro, go akaretsa le maikarabelo afe ao a a neilweng go ya ka molao; kgotsa 35
- (c) a dirile ka mokgwa o o sa tsamaelaneng le go ka tswelala go nna mo tirong.
- (7) Ntle le go lekanyetsa karolotlaleletso (6)(b), mokaedi wa Boto yo o thapilweng go ya ka karolotlaleletso (2)(g) o tshwanetse go tsewa gore o reteletswe ka gotlhe go diragatsa maikarabelo a tiro fa a ka se tseenele dikopano di le pedi tse di latelanang tsa Boto ntle le tetla ya Boto. 40
- (8) Mmusisi, ka tumalano le Tona, o ka thapa a le mongwe wa ditokololo tsa Boto, ntle le yo o umakilweng mo karolotlaleletsong (2)(e) kgotsa (f), jaaka modulasetulo, e bile Boto e ka tlhopha, go tswa mo go yona, mokaedi yo mongwe wa Boto jaaka motlatsamodulasetulo. 45
- (9) (a) Mokaedi wa Boto o ka tlhopha motho go dira jaaka moemedi wa gagwe kwa kopanong e e rileng ya Boto, kgotsa kwa dikopanong tsa Boto ka kakaretso, fa mokaedi a sa kgone go di tsenela. 50
- (b) Fa Boto e dumela, motlhophiwa o, mabapi le dikopano tse mokaedi wa Boto a sa kgoneng go di tsenela, na le ditshwanelo le ditlamego tse di tshwanang le tsa mokaedi wa Boto.
- (10) Motho o ka se dire jaaka yo o emelelang fa—
- (a) e le motho yo o ileditsweng; kgotsa 55
- (b) e se moagi mo Rephaboleking.

Ditiro tsa Boto

166A.J. Boto ya bakaedi e tshwanetse—

- (a) ka kakaretso go baya leitlho taolo le tsamaiso ya Koporasi go netefatsa gore e na le bokgoni e bile e nonofile; le 60
- (b) go dira mabapi le Koporasi mo mererong e e latelang:

- (i) Authorising the Chief Executive Officer of the Corporation to sign, on behalf of the Corporation, memoranda of understanding and amendments to memoranda of understanding;
- (ii) appointing members of committees contemplated in this Part and giving directions regarding the conduct of the work of a committee; 5
- (iii) determining, in relation to a bank in resolution, how to apply the Fund as contemplated by section 166AA;
- (iv) making determinations of the deposit insurance levy for the purposes of the legislation that imposes the levy; and 10
- (v) any other matter assigned in terms of a financial sector law to the Board of directors.

Meetings of Board and decisions

- 166AK.** (1) Meetings of the Board must be held at such times as the Board or the chairperson of the Board may determine. 15
- (2) An audio or audio-visual conference among a majority of the directors of the Board, which enables each participating director of the Board to hear and be heard by each of the other participating directors of the Board, must be regarded as a meeting of the Board, and each participating director of the Board must be regarded as being present at such a meeting. 20
- (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. 25
- (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 of the Board present must elect one of the directors present to act as the chairperson.
- (7) A quorum for a Board meeting is a majority of the directors of the Board, which must include the person appointed in terms of section 166AI(2)(a) or his or her alternate and a Deputy-Governor appointed by the Governor or his or her alternate. 30
- (8) (a) A decision of a majority of the directors of the Board present and voting at a Board meeting, is taken to be a decision of the Board. 35
- (b) 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. 40
- (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 of the Board, without their being present at any meeting of the Board, of a document containing such a decision, and that decision must be noted in the records of the next ensuing meeting of the Board. 45

Appointment of Chief Executive Officer of Corporation

- 166AL.** (1) The Board must appoint an employee of the Reserve Bank who has appropriate expertise in the financial sector, as Chief Executive Officer of the Corporation. 50
- (2) When appointing a person as Chief Executive Officer of the Corporation, the person and the Board must agree, in writing, on—

- (i) Go rebolela Motlhankedimogolo wa Khuduthamaga wa Koporasi go saena, mo boemong jwa Koporasi, memorantamo wa tumalano le ditlhabololo tsa memorantamo wa tumalano;
- (ii) go thapa maloko a komiti a a umakilweng mo Karolong eno le go naya dikaelo mabapi le boitshwaro jwa tiro ya komiti;
- (iii) go tlhomamisa, mabapi le banka e e mo tharabololong, ka moo Letlole le ka diriswang jaaka go umakilwe mo karolong 166AA;
- (iv) go dira ditlhomamiso tsa lekgethwana la tipositi ya inšorensense mabapi le maitlhomamo a molao o o pateletsang lekgethwana; le
- (v) morero mongwe le mongwe ofe o o neilweng go ya ka molao wa lephata la ditšhelete Boto ya bakaedi.

Dikopano tsa Boto le ditshwetso

- 166AK.** (1) Dikopano tsa Boto di tshwanetse go tshwarwa ka dinako tse di ka tlhomamiswang ke Boto kgotsa modulasetulo wa Boto.
- (2) Khonferense ya kutlo kgotsa ponokutlo magareng ga bontsi jwa bakaedi ba Boto, e e kgontshang mongwe le mongwe wa bakaedi ba Boto ba ba tsayang karolo, e tshwanetse go tsewa jaaka kopano ya Boto, e bile mongwe le mongwe wa bakaedi ba Boto ba ba tsayang karolo o tshwanetse go tsewa jaaka yo o tsenetseng kopano eo.
- (3) Ntle le mo karotlaleletso (2) e diriswang, dikopano tsa Boto di tshwarelwa kwa mafelong a a tlhomamisitsweng ke modulasetulo wa Boto.
- (4) Modulasetulo wa Boto o okama dikopano tsotlhe tsa Boto tse a di tsenetseng.
- (5) Fa modulasetulo wa Boto a seyo kgotsa a sa kgone go dira jaaka modulasetulo, motlatsamodulasetulo o tshwanetse go dira jaaka modulasetulo.
- (6) Fa ka bobedi modulasetulo wa Boto le motlatsamodulasetulo ba sa tsenela kopano ya Boto, bakaedi ba Boto ba ba tsenetseng kopano ba tshwanetse go tlhophisa mongwe wa bakaedi yo o leng teng go dira jaaka modulasetulo.
- (7) Khoramo ya kopano ya Boto ke bontsi jwa bakaedi ba Boto, e e tshwanetseng go akaretsa motho yo o thapilweng go ya ka karolo 166AI(2)(a) kgotsa moemedi wa gagwe le Motlatsammusisi yo o thapilweng ke Mmusisi kgotsa moemedi wa gagwe.
- (8) (a) Tshwetso ya bontsi jwa bakaedi ba ba leng teng le go bouta kwa kopanong ya Boto, e tsewa jaaka tshwetso ya Boto.
(b) Fa diboutu di lekana, motho yo o okametseng kopanong o tla dira boutu e e kgethegileng mo godimo ga boutu e e dirilweng ke botlhe.
- (9) Tshwetso ya Boto kgotsa tiro e e dirilweng ka fa tlase ga bolaodi jwa Boto ga e nne eo e seng ya boammaruri fela ka ntlha ya phatlatiro e e leng teng mo Botong.
- (10) Boto e tshwanetse go dira gore go tsholwe rekoto ya ditsamaiso kwa dikopanong tsa Boto.
- (11) Boto e ka dira melawana mabapi le go tsholwa ga, le tsamaiso kwa, dikopanong tsa Boto.
- (12) Go sa nyatswe karotlaleletso (8), Boto e ka tsaya tshwetso ka tiriso ya go saenwa ka bontsi jwa bakaedi ba Boto, ntle le go nna teng ga bona kwa kopanong efe ya Boto, ga lokwalo le le nang le tshwetso eo, e bile tshwetso eo e tshwanetse go elwa tlhoko mo direktong tsa kopano e e tla tshwarwang ya Boto.

Go thapiwa ga Motlhankedimogolo wa Khuduthamaga wa Koporasi

- 166AL.** (1) Boto e tshwanetse go thapa modiri wa Banka ya Resefe yo o nang le boitseanape jo bo maleba mo lephateng la tsa ditšhelete, jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi.
- (2) Fa go thapiwa motho jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi, motho le Boto ba tshwanetse go dumalana, ka go kwala, ka—

- (a) the performance measures that will be used to assess the Chief Executive Officer of the Corporation'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 Chief Executive Officer of the Corporation if the person—
- (a) is a disqualified person; or
- (b) is not ordinarily resident in the Republic.
- (4) The Chief Executive Officer of the Corporation—
- (a) is responsible for the day-to-day management and administration of the Corporation; and
- (b) except as provided in section 166AJ(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 Chief Executive Officer of the Corporation 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 Chief Executive Officer of the Corporation when the Chief Executive Officer of the Corporation is absent from office or otherwise unable to perform the functions of office.

Term of office of Chief Executive Officer of Corporation

- 166AM.** (1) A person appointed as the Chief Executive Officer of the Corporation—
- (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 Chief Executive Officer of the Corporation, 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 Chief Executive Officer of the Corporation.
- (2) The Board must, at least three months before the end of the first term of office of the Chief Executive Officer of the Corporation, inform the Chief Executive Officer of the Corporation whether the Board proposes to re-appoint him or her as Chief Executive Officer of the Corporation.

Removal of Chief Executive Officer of Corporation

- 166AN.** (1) The Board must, subject to due process, remove the Chief Executive Officer of the Corporation from office if the Chief Executive Officer becomes a disqualified person.
- (2) The Board may remove the Chief Executive Officer of the Corporation from office on the grounds that the Chief Executive Officer—
- (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 166AL(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.

- (a) ditekanyetsotiro tse di tla diriswang go sekaseka tiragatso ya Motlhankedimogolo wa Khuduthamaga wa Koporasi; le
- (b) maemo a tiragatso a a tla fitlhelelwang ka papiso go ditekanyetsotiro.
- (3) Motho o ka se thapiwe kgotsa a dire jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi fa motho— 5
- (a) e le motho yo o ileditsweng; kgotsa
- (b) e se moagi wa mo Rephaboleking.
- (4) Motlhankedimogolo wa Khuduthamaga wa Koporasi—
- (a) o rwala maikarabelo mabapi le taolo le tsamaiso ya letsatsi le letsatsi ya Koporasi; le 10
- (b) ntle le jaaka go tlametswe mo karolong 166AJ(b), o tshwanetse go dira ditiro tsa Koporasi, go akaretsa le go diragatsa dithata le go dira ditiro tse di amanang le ditiro tseo.
- (5) Fa a dira go ya ka karotlaleletso (4), Motlhankedimogolo wa Khuduthamaga wa Koporasi o tshwanetse go tsenya mo tirisong dipholisi le maano a a amogetsweng ke Boto. 15
- (6) Boto e ka thapa mongwe yo mogolo wa badiri ba Koporasi go dira jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi fa Motlhankedimogolo wa Khuduthamaga wa Koporasi a seyo mo tirong kgotsa ka mokgwa ofe a sa kgone go dira ditiro tsa ofisi. 20

Paka ya tiro ya Motlhankedimogolo wa Khuduthamaga wa Koporasi

- 166AM.** (1) Motho yo o thapilweng jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi—
- (a) o dira nako yotlhe mo maemong a khuduthamaga;
- (b) o nna mo tirong sebaka sa paka e e sa feteng dingwaga di e tlhano, jaaka Boto e ka tlhomamisa; 25
- (c) o, ka nako ya go ya bokhutlong ga paka, siametse go ka thapiwa gape sebaka sa paka e nngwe gape e le esi; e bile
- (d) o tshwanetse go tswa mo tirong pele ga paka ya tiro e ya bokhutlong fa a— 30
- (i) rola tiro jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi, ka go naya Boto kitsiso e e kwetsweng ya bonnye dikgwedi di le tharo, kgotsa paka e e khutshwane e Boto e ka e amogelang; kgotsa
- (ii) tloswa mo tirong jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi. 35
- (2) Boto e tshwanetse, bonnye dikgwedi di le tharo pele ga go ya bokhutlong ga paka ya ntlha ya tiro ya Motlhankedimogolo wa Khuduthamaga wa Koporasi, go itsise Motlhankedimogolo wa Khuduthamaga wa Koporasi gore a Boto e tshitsinya go mo thapa gape jaaka Motlhankedimogolo wa Khuduthamaga wa Koporasi. 40

Go tloswa ga Motlhankedimogolo wa Khuduthamaga wa Koporasi

- 166AN.** (1) Boto e tshwanetse, go latela tsamaiso e e maleba, go tlosa Motlhankedimogolo wa Khuduthamaga wa Koporasi mo tirong fa Motlhankedimogolo wa Khuduthamaga e nna motho yo o ileditsweng. 45
- (2) Boto e ka tlosa Motlhankedimogolo wa Khuduthamaga wa Koporasi mo tirong ka ntlha ya mabaka a gore Motlhankedimogolo wa Khuduthamaga—
- (a) ga a kgone go dira ditiro tsa ofisi ka ntlha ya bolwetse kgotsa mabaka a mangwe; 50
- (b) o reteletswe ka gotlhe go fitlhelela maemo a tiragatso ka papiso go ditekanyetsotiragatso tse go dumalanweng ka tsona go ya ka karolo 166AL(2);
- (c) a reteletswe ka gotlhe go dira epe ya maikarabelo a tiro, go akaretsa le maikarabelo afe ao a a neilweng go ya ka molao; kgotsa 55
- (d) a dirile ka mokgwa o o sa tsamaisaneng le go tswela go nna mo tirong.

(3) Without limiting subsection (2)(c), the Chief Executive Officer of the Corporation 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

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166AO. (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.

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

(4) A committee established in terms of this section must be chaired by a director of the Board, other than the Chief Executive Officer of the Corporation.

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(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.

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Duties of directors of Board and members of committees

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

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

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(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.

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Disclosure of interests

166AQ. (1) A director of the Board 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

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

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

(3) A director of the Board 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—

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(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.

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

(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.

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(b) The Chief Executive Officer of the Corporation must ensure that paragraph (a) is complied with.

(3) Ntle le go lekanyetsa karotlaleletso (2)(c), Motlhankedimogolo wa Khuduthamaga wa Koporasi o tshwanetse go tsewa gore o reteletswe ka gothe go diragatsa maikarabelo a tiro fa a sa tsenela dikopano tse pedi tse di latelanang tsa Boto ntle le tetla ya Boto.

Dikomiti

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166AO. (1) Boto e ka tlhoma dikomiti jaaka fa e bona go tlhokega.

(2) Boto e tshwanetse, bonnye, go tlhoma komitipeeletso go thadisa potefolio ya peeletso ya Letlole, komiti e e tshwanetseng go dira dikatlanegiso kwa Botong mabapi le peeletso ya Letlole.

(3) Komiti e e tlhomilweng go ya ka karolo eno e na le bakaedi ba ba jalo jaaka Boto e ka tlhopha le, fa Boto e swetsa jalo, badiri ba ba jalo ba Koporasi jaaka fa Boto e ka tlhopha. 10

(4) Komiti e e tlhomilweng go ya ka karolo eno e tshwanetse go etwa pele ke mokaedi wa Boto, yo mongwe ntle le Motlhankedimogolo wa Khuduthamaga wa Koporasi. 15

(5) Ditiro, ditsamaiso le botokololo jwa komiti e e tlhomilweng go ya ka karolo eno di tlhomamiswa ke Boto.

(6) Modulasetulo wa komiti nngwe le nngwe e e tlhomilweng go ya ka karolo eno o tshwanetse go netefatsa gore metsotso ya kopano nngwe le nngwe ya komiti eo e tsholwa ka mokgwa o o tlhomamisitsweng ke Boto. 20

Ditiro tsa bakaedi ba Boto le ditokololo tsa dikomiti

166AP. Mokaedi wa Boto, le tokololo ya komiti e e tlhomilweng go ya ka karolo 166AO o tshwanetse go—

- (a) dira ka botshepegi mo mererong yotlhe e e amanang le Koporasi; le
- (b) dira ditiro tsa ofisi jaaka mokaedi kgotsa tokololo— 25
 - (i) ka mowa o montle;
 - (ii) mabapi le maitlomo a nnete; le
 - (iii) ka tlhokomelo le matsetseleko ao motho yo o leng mo maemong a mokaedi kgotsa tokololo a ka a dirang.

Tshenolo ya dikgatlhego

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166AQ. (1) Mokaedi wa Boto o tshwanetse go senola, kwa kopanong ya Boto, kgotsa ka go kwalela mongwe le mongwe wa bakaedi ba bangwe, kgatlhego efe mo morerong ofe o kgotsa o o ka tsewang ke Boto gore—

- (a) mokaedi o na le yona; kgotsa
- (b) motho yo o amanang le mokaedi o na le yona. 35

(2) Tshenolo e e kailweng mo karotlaleletsong (1) e tshwanetse go dirwa ka bonako jo bo kgonegang morago ga fa mokaedi wa Boto a sena go lemoga kgatlhego.

(3) Mokaedi wa Boto yo o nang le, kgotsa yo nang le wa losika yo o nang le, kgatlhego e e tshwanetseng go senolwa go ya ka karotlaleletso (1), o ka se tseye karolo mo tshkatshekong, kgotsa mo go swetsweng ka, morero o kgatlhego e amanang le ona ntle le fa— 40

(a) mokaedi a senotse kgatlhego jaaka go tlhokega go ya ka karotlaleletso (1); le

(b) bakaedi ba bangwe ba sweditse gore kgatlhego ga e ame ka gope ka moo mokaedi yoo a diragatsang ditiro tsa gagwe mabapi le morero. 45

(4) Dikarotlaleletso (1) go fitlha go (3) di a diriswa, ka diphetogo tse di tlhokegang go latela bokao, mo ditokololong tsa dikomiti tse di tlhomilweng go ya ka karolo 166AO.

(5) (a) Tokololo nngwe le nngwe ya badiri ba Koporasi le motho mongwe le mongwe yo o roletsweng thata kgotsa tiro ya Koporasi o tshwanetse go dira tshenolo ya kgatlhego ya gagwe ka nako, e e nepagetseng e bile e le maleba, go akaretsa le kgatlhego ya wa losika, eo e ka tsewang jaaka kgatlhego e e ka amang tiragatso e e nepagetseng ya ditiro tsa gagwe tsa ofisi kgotsa thata e e roletsweng. 50 55

(b) Motlhankedimogolo wa Khuduthamaga wa Koporasi o tshwanetse go netefatsa gore temana (a) e a obamelwa.

- (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 Chief Executive Officer of the Corporation 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

- 166AR.** (1) The share capital of the Corporation is R1 000 000, but may be increased by the Board at any time.
- (2) Only the Reserve Bank and 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

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

Surplus funds

- 166AT.** (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 financial year 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

- 166AU.** 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

- 166AV.** (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 166AU(b) in Parliament at the same time as the Minister tables copies of the reports referred to in section 32(3) of the Reserve Bank Act.

Winding up of Corporation

- 166AW.** The Corporation may not be wound up except by, or on authority of, an Act.

- (6) Mabapi le maitlhomō a karolo eno, ga go kgathalesege—
- (a) gore a kgatlhego e tlhamaletse, ga e a tlhamalala, ke ya tšhelete kgotsa ga se ya tšhelete; kgotsa
- (b) kgatlhego e bonwe leng.
- (7) Mabapi le maitlhomō a karolo eno, motho ga a tshwanela go senola—
- (a) ntlha ya gore motho yoo, kgotsa motho wa losika la motho yoo, ke—
- (i) moofisiri kgotsa modiri wa Banka ya Resefe; kgotsa
- (ii) modirisi wa ditšhelete kgotsa setheo sa ditšhelete; kgotsa
- (b) kgatlhego e e seng botlhokwa.
- (8) Motlhankedimogolo wa Khuduthamaga wa Koporasi o tshwanetse go tshola rejisetara ya ditshenolo tsoatlhe tse di dirilweng go ya ka karolo eno le ya ditshwetso tsoatlhe tse di dirilweng go ya ka karolo eno.

Khabetlele ya dišere

- 166AR.** (1) Khabetlele ya dišere ya Koporasi ke R1 000 000, fela e ka oketswa ke Boto nako nngwe le nngwe.
- (2) Ke fela Banka ya Resefe le Rephaboleki di ka tsholang šere ya Koporasi.
- (3) Maikarabelosemolao a Banka ya Resefe jaaka motshodi wa šere mo Koporasing a lekanyeditswe go tlhotlwa e e sa duelwang mabapi le šere.

Ngwaga wa ditšhelete wa Koporasi

166AS. Ngwaga wa ditšhelete wa Koporasi o khutla ka di 31 Mopitlwe.

Matlole a tshalelo

- 166AT.** (1) Tlhotlwa ya matlole afe a tshalelo a Koporasi, morago ga go gogwa ga ditshenyegelo tsa Koporasi le go dira ditlamelo tse di nepagetseng kwa bokhutlong jwa ngwaga mongwe le mongwe wa ditšhelete wa Koporasi, e tshwanetse go duelwa kwa Letloleng.
- (2) Karotlaleletso (1) ga e thibele gore madi a a salatseng a matlole a duelwe mo Letloleng ka dinako tse dingwe.

Palotlotlo le boruni

- 166AU.** Koporasi e tshwanetse—
- (a) go dira gore go nne le botsayamaikarabelo jwa ditirisano tsa ditšhelete, dithoto le maikarabelosemolao tsa Koporasi le tsa Letlole; le
- (b) go dira gore go bewe diteitemente tsa ditšhelete mabapi le ngwaga mongwe le mongwe wa ditšhelete le go romela dikhopi tsa diteitemente tseo, morago ga boruni jo bo tlhokegang go ya ka molao, go Tona le Banka ya Resefe.

Pegelo ya ngwaga

- 166AV.** (1) Koporasi e tshwanetse, mo dikgweding di le thataro morago ga go ya bokhutlong ga ngwaga mongwe le mongwe wa ditšhelete, go romelela Tona le Banka ya Resefe pegelo e e ka ga ditiro tsa yona, le ditiro tsa Letlole, mo ngwageng wa ditšhelete.
- (2) Tona o tshwanetse go tlhagisa khopi ya pegelo e e kailweng mo karotlaleletsong (1) le diteitemente tsa ditšhelete tse di kailweng mo karolong 166AU(b) kwa Palamenteng ka nako e Tona a tlhagisang dikhopi tsa dipegelo tse di kailweng mo karolong 32(3) ya Molao wa Banka ya Resefe.

Phatlalatso ya Koporasi

166AW. Koporasi e ka se phatlalatswe ntle le ka, kgotsa ka taolo ya, Molao.

Staff and resources

166AX. (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 a person 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

166AY. (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 166AX(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

166AZ. (1) A person who is or has been a director of the Board, a member of a committee established in terms of section 166AO 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

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

(2) Without limiting subsection (1), the financial sector regulators must comply with any reasonable request from the Corporation, including requests to

- (i) determine standards;
- (ii) issue directives; and
- (iii) promote awareness among financial customers of the protections afforded by this Chapter.

Badiri le ditlamelo

166AX. (1) Koporasi e tshwanetse go tlhomamisa badiri, bonno, didiriswa, tiriso ya dithoto, ditlamelo le ditirelo tse dingwe tse e di tlhokang gore e dire ka nonofo.

(2) Koporasi e ka—

- (a) dira dithulaganyo tsa tshutisonakwana ya badiri mabapi le batho;
- (b) buisana le batho ba ba leng mo konterakeng ka mokgwa o o sa tshwaneng le jaaka wa badiri;
- (c) dira dikonteraka;
- (d) fitlhelela kgotsa latlha thoto;
- (e) inšora kगतलhanong le tatlhegelo, tshenyego, kotsi kgotsa maikarabelosemolao e e ka n nang ka fa tlase ga yona kgotsa ya e itemogela; le
- (f) go dira sengwe le sengwe se se tlhokegang mabapi le go diragatsa ditiro tsa yona.

(3) Koporasi e ka dira thulaganyo ya tshutisonakwana ya modiri mabapi le motho, kgotsa ya buisana le motho yo o mo konterakeng, ntle le fa motho le Koporasi ba dumalane ka go kwala ka ga—

- (a) ditekanyetsotiro tse di tla diriswang go lekanyetsa tirgatso ya motho yoo; le
- (b) maemo a tiragatsa a a tshwanetseng go fitlhelewa ka papiso go ditekanyetso tseo.

Ditlamelo tse di tlamelwang ka Banka ya Resefe

166AY. (1) Banka ya Resefe e tshwanetse go tlamela Koporasi ka badiri, bonno, didiriswa, tiriso ya dithoto, ditlamelo le ditirelo tse dingwe tse di tlhomamisitsweng go ya ka karolo 166AX(1) le go dumelwa ke Banka ya Resefe.

(2) Banka ya Resefe e tshwanetse go sutisa nakwana modiri yo e mo tlamelang go ya ka karolotlaleletso (1) go Koporasi.

Ditiro tsa bakaedi, ditokololo tsa komiti le badiri

166AZ. (1) Motho yo e leng kgotsa yo o kileng a nna mokaedi wa Boto, tokololo ya komiti e e tlhomilweng go ya ka karolo 166AO kgotsa modiri wa Koporasi, o ka se dirise maemo ao kgotsa tshedimosetso efe e e fitlheletsweng ka ntlha ya go nna mo maemong ao go—

- (a) una molemo ka tsela e e sa siamang mabapi le ena kgotsa motho yo mongwe;
- (b) dira gore Koporasi kgotsa Banka ya Resefe e se kgone go dira ditiro tsa yona ka nepagalo; kgotsa
- (c) utlwiswa motho yo mongwe bothoko.

(2) Mabapi le karolo eno, 'molemo' le 'tshenyo' ga di a lekanyetswa go kunomolemo ya tšhelete kgotsa tshenyo.

Tirisanommogo le thusano le balaodi ba lephata la ditšhelete le Banka ya Resefe

166BA. (1) Koporasi, balaodi ba lephata la ditšhelete le Banka ya Resefe ba tshwanetse go dirisana mmogo le go thusana go thusa Koporasi gore e diragatse dithata tsa yona le go dira ditiro tsa yona go ya ka Molao ono, go akaretsa le go tlamela thuso le tshedimosetso ka bonako mabapi le morero mongwe le mongwe o balaodi le Banka ya Resefe e o lemogang o o amang kgotsa o o ka amang tiragatsa efe ya dithata kgotsa ditiro tseo tsa Koporasi.

(2) Ntle go lekanyetsa karolotlaleletso (1), balaodi ba lephata la ditšhelete ba tshwanetse go obamela kopo nngwe le nngwe e e utlwagalang go tswa kwa Koporasing, go akaretsa le dikopo tsa go—

- (i) tlhomamisa maemo;
- (ii) rebola ditaello; le
- (iii) tswetsa temoso mo badirising ba ditšhelete ka ga ditshireletso tse di tlamelwang ke Kgaolo eno.

Memoranda of understanding

- 166BB.** (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

- 166BC.** (1) The Corporation may charge its members deposit insurance levies in accordance with this Part, read with legislation that empowers the imposition of levies, to fund the operations of the Corporation and administration of the Fund.
- (2) Deposit insurance levies are payable to the Corporation at the time specified by the Corporation in accordance with the legislation that empowers the imposition of the levies.

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

- 166BD.** (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 must be credited to the Fund—
- (a) surplus funds of the Corporation referred to in section 166AT;
 - (b) amounts collected as deposit insurance premiums as envisaged in section 166BG;
 - (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 only be applied as follows:
- (a) To make payments in terms of section 166AA, including in terms of agreements contemplated by that section;
 - (b) by way of investments in terms of section 166BE(1); or
 - (c) to repay amounts paid into the Fund in error.

Investment

- 166BE.** (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 strategy 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

Memorantamo wa tumalano

- 166BB.** (1) Koporasi e ka dira memorantamo wa tumalano le—
- (a) Banka ya Resefe;
 - (b) bolaodi jwa lephata la ditšhelete; kgotsa
 - (c) mokgatlho kwa nageng ya boditšhaba o o nang le dithata kgotsa ditiro tse di tsamaelanang le dithata le ditiro tsa yona.
- (2) Boammaruri jwa kgato e e tserweng ke Koporasi go ya ka Molao ono kgotsa molao wa lephata la ditšhelete ga bo angwe ke go retelelwa ke go obamela karolo eno kgotsa memorantamo wa tumalano o o umakilweng mo karotlaleletsong (1).

Lekgethwana la inšorense ya tipositi

- 166BC.** (1) Koporasi e ka duedisa ditokololo tsa yona makgethwana a inšorense ya tipositi go tsamaelana le Karolo eno, ka puisommogo le molao o o neelanang ka maatla a go pateletsa makgethwana, go thusa ditiro tsa Koporasi ka matlole le tsamaiso ya Letlole.
- (2) Makgethwana a inšorense ya tipositi a duelwa kwa Koporasing mo nakong e e tsepamisitsweng ke Koporasi go tsamaelana le molao o o neelanang ka maatla a go pateletsa makgethwana.

Karolo 7**Letlole la Inšorense ya Tipositi****Letlole la Inšorense ya Tipositi**

- 166BD.** (1) Letlole le le bidiwang Letlole la Inšorense ya Tipositi le a tlhongwa.
- (2) Letlole le tsholwa ke Koporasi.
 - (3) Koporasi e tshwanetse go tlhoma akhaonto kwa Bankeng ya Resefe mabapi le maitlomo a Letlole.
 - (4) Letlole le na le—
 - (a) madi a a tsentsweng mo akhaontong e e tlhomilweng go ya ka karotlaleletso (3);
 - (b) dipeeletso tse di dirilweng ka madi a Letlole; le
 - (c) dithoto tse dingwe tsa Koporasi tse di amanang le Letlole.
 - (5) Go tshwanetse go nna le madi a a tsentsweng mo Letloleng—
 - (a) tshalelo ya matlole a Koporasi a a kailweng mo karolong 166AT;
 - (b) madi a a kgobokantsweng jaaka dituelotshireletso tsa ditipositi jaaka go bonetswe pele mo karolong 166BG;
 - (c) morokotso le madi a mangwe a a bonweng go tswa mo dipeeletsong tsa Letlole;
 - (d) madi a a buseditsweng ke Koporasi a tsewa jaaka madi a a duetsweng go tswa mo Letloleng; le
 - (e) madi a mangwe a a amogetsweng ke Koporasi mabapi le maitlomo a, kgotsa mabapi le, Letlole.
 - (6) Letlole le ka diriswa fela jaana:
 - (a) Go dira dituelo go ya ka karolo 166AA, go akaretsa le go ya ka ditumalano tse di umakilweng mo karolong eo;
 - (b) ka tsela ya dipeeletso go ya ka karolo 166BE(1); kgotsa
 - (c) go duela madi a a duetsweng mo Letloleng ka phoso.

Peeletso

- 166BE.** (1) Koporasi e ka dirisa madi a a tsentsweng mo Letloleng ka mokgwa wa peeletso e e tsamaelanang le leano la peeletso la Letlole.
- (2) Koporasi e tshwanetse go tlhama, go sekaseka nako le nako le go tsenya mo tirisong leano la peeletso la Letlole, leano le le tshwanetseng go lebiswa mo go fitlheleleng maikaelelo a Koporasi ka go netefatsa gore Letlole le kgona go dira dituelo tse di tlhokegang go ya ka Kgaolo eno.
- (3) Mo go tlhameng le go sekasekeng leano la peeletso la Letlole, Koporasi e tshwanetse go tsaya tsia, magareng ga tse dingwe, matshosetsi

making, holding and realising, and the likely return from, the Fund's investments.

Information

166BF. The Prudential Authority, Financial Sector Conduct Authority and members of the Corporation must comply with any request by the Corporation for information relevant to the performance of the Corporation's functions in terms of this Act. 5

Part 8

Contributions to Fund

Deposit insurance premiums 10

166BG. (1) The Corporation may collect deposit insurance premiums from its members 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. 15

(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

166BH. (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. 20

(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

52. Section 241 of the Financial Sector Regulation Act, 2017, is hereby amended— 25
(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." 30

Amendment of section 248 of Act 9 of 2017

53. 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)." 35

Amendment of section 250 of Act 9 of 2017

54. Section 250 of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after paragraph (g) of the following paragraph: 40

"(gA) the Corporation;".

Substitution of section 265 of Act 9 of 2017

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

a a leng teng mo go direng, go tsholeng le go fitlheleleng, le poelo e e ka kgonegang go tswa mo, dipeeletsong tsa Letlole.

Tshedimosetso

166BF. Bothati jwa Tlhokomelo, Bothati jwa Boitshwaro jwa Lephata la Ditšhelete le ditokololo tsa Koporasi di tshwanetse go obamela kopo efe ka Koporasi mabapi le tshedimosetso e e amanang le tiragatso ya ditiro tsa Koporasi go ya ka Molao ono. 5

Karolo 8

Diketleetsong mo Letloleng

Dituelotshireletso tsa ditipositi 10

166BG. (1) Koporasi e ka kgobokanya dituelotshireletso tsa ditipositi go tswa mo ditokololong tsa yona go tsamaelana le Karolo eno go netefatsa gore Letlole le kgona go dira dituelo tse di tlhokegang go ya Kgaolo eno.

(2) Koporasi e tshwanetse go phasalatsa dituelo, tse di setseng di kgobokantswe, mo Rejisetareng le mo webesaeteng ya yona. 15

(3) Dituelo di duelwa kwa Koporasing mo nakong e e tsepamisitsweng ke Koporasi, kgotsa mo nakong e e dumeletsweng ke Koporasi.

Thekisonolo ya Letlole

166BH. (1) Ditokololo tsa Koporasi tseo di tshotseng tipositi e e sireleditsweng di tshwanetse go tshola madi a a rileng mo akhaontong ya Letlole jaaka go laetswe ke Koporasi mo peelong. 20

(2) Koporasi e tshwanetse go duela ditokololo morokotso mo mading a a kailweng mo karotlaleletsong (1), morokotso o o tshwanetseng go tsepamiswa mo peelong.”.

Tlhabololo ya karolo 241 ya Molao 9 wa 2017 25

52. Karolo 241 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—
(a) ka go tsennngwa mo boemong jwa karotlaleletso (3) ga karotlaleletso e e latelang:

“(3) Setheo se se tlhokometsweng ga se a tshwanela go retelelwa kgotsa go gana go obamela tlhokego e e rebotsweng go ya ka karotlaleletso (1).”; le 30

(b) ka go tsennngwa ga karotlaleletso e e latelang:

(4) Mo karolong eno, ‘tshedimosetso’ ga e akaretse tshedimosetso ya dipalopalo ya palogare kgotsa tshedimosetso e e sa senoleng boitshupo jwa motho.”. 35

Tlhabololo ya karolo 248 ya Molao 9 wa 2017

53. Karolo 248 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka 10 kemisetso mo karotlaleletsong (4) ya temana (b) ka temana e e latelang:

“(b) Lekgotla le Koporasi, le fa [e le] di se [a] tsa puso [setheo] ditheo go ya ka *Public Finance Management Act*, di tshwanetse go obamela ditlhokego tse di mo temaneng (a).” 40

Tlhabololo ya karolo 250 ya Molao 9 wa 2017

54. Karolo 250 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka ka go tsennngwa morago ga temana (g) ga temana e e latelang:

“(gA) Koporasi;”. 45

Kemisetso ya karolo 265 ya Molao 9 wa 2017

55. Karolo e e latelang e tsennngwa mo boemong jwa karolo 265 ya Molao wa Taolo ya Lephata la Ditšhelete, 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 166AZ 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.”. 5

Amendment of section 267 of Act 9 of 2017

56. 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 section 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.”. 10

Substitution of section 285 of Act 9 of 2017

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

“Immunities 15

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.”. 20
25
30

Amendment of Schedule 2 to Act 9 of 2017

58. 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:

<p>“This Act, in so far as it relates to matters within the objectives of— (a) the Prudential Authority (b) the Financial Sector Conduct Authority (c) the Reserve Bank</p>	<p>Prudential Authority Financial Sector Conduct Authority Reserve Bank”.</p>	<p>35 40</p>
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Amendment of Schedule 3 to Act 9 of 2017

59. Schedule 3 to the Financial Sector Regulation Act is hereby amended by the insertion after item 20 of the following item: 45

“**20A.** A list of designated institutions, indicating which of them are in resolution”.

“Ditiro tsa ditokololo le badiri ba mekgatlho e e rileng

265. Motho yo o tloang dikarolo 46(1) kgotsa (2), 52, 69(1) kgotsa (2), [kgotsa] 74 kgotsa 166AZ o tlola molao e bile fa a bonwe molato o ka athholelwa tuediso e e sa feteng R5 000 000 kgotsa go tlhatlhelwa kwa kgolegolong sebaka sa paka e e sa feteng dingwaga tse tlhano, kgotsa ka bobedi tuediso le kgolego eo.”. 5

Tlhabololo ya karolo 267 ya Molao 9 wa 2017

56. Karolo 267 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka kemisetso ya karolotlaleletso (1) ka karolotlaleletso e e latelang: 10

“(1) Setheo se se tlhokometsweng se se tloang karolo 131(1)(b) kgotsa karolo 241(3), se tlola molao e bile fa se bonwe molato se ka athholelwa tuediso e e sa feteng R1 000 mabapi le letsatsi lengwe le lengwe le tlolomolao e tswelelang ka lona.”. 15

Kemisetso ya karolo 285 ya Molao 9 wa 2017

57. Karolo e e latelang e tsenngwa mo boemong jwa karolo 285 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017: 20

“Dikgololo

285. Puso, Tona, Banka ya Resefe, Mmusisi le Batlatsammusisi, molaodi wa lephata la ditšhelete, tokololo ya Komitikhuduthamaga[,] kgotsa Komiti ya Kelotlhoko, tokololo ya komititlaleletso ya Bothati jwa Tlhokomelo kgotsa Bothati jwa Boitshwaro jwa Lephata la Ditšhelete, tokololo ya Lekgotla, Khansele ya Ombud, tokololo ya Boto ya Ombud, modiredi wa Puso, tokololo ya boto kgotsa motlhankedi wa Banka ya Resefe, modiredi wa Banka ya Resefe, Koporasi, tokololo ya Boto, modiredi wa Koporasi, modiredi wa tsa tharabololo yo o thapetsweng setheo se se tlhomiweng mo tharabololong le motho yo o thapilweng kgotsa yo o roletsweng ke molaodi wa lephata la ditšhelete, [kgotsa] Banka ya Resefe kgotsa Koporasi go diragatsa thata kgotsa go dira tiro go ya ka molao wa lephata la ditšhelete ga a rwale maikarabelosemolao a, kgotsa mabapi le, tatlhegelo kgotsa tshenyego efe e e bonweng kgotsa e e itemogetsweng ke motho ofe ka ntlha ya tshwetso e e tserweng kgotsa kgato e e tserweng ka mowa montle mo go diragatsweng ga tiro, kgotsa thata go ya ka molao wa lephata la ditšhelete.”. 25 30 35 40

Tlhabololo ya Šejule 2 ya Molao 9 wa 2017

58. Šejule 2 ya Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa ka go tsenngwa morago ga ntlha e e amanang le *Long-Term Insurance Act* le *Short-Term Insurance Act* ga ntlha e e latelang: 45

<p>“Molao, jaaka ga o amana le merero e e mo maikaelelong a— <u>(a) Bothatijwa Tlhokomelo</u> <u>(b) Bothatijwa Boitshwaro jwa Lephata laDitšhelete</u> <u>(c) Bakan va Resefe</u></p>	<p><u>Bothatijwa Tlhokomelo</u> <u>Bothatijwa Boitshwaro</u> <u>jwa Lephata la Ditšhelete</u> <u>Bamnika ya Resefe”.</u></p>	50
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Tlhabololo ya Šejule 3 ya Molao 9 wa 2017

59. Šejule 3 ya Molao wa Taolo ya Lephata la Ditšhelete e tlhabololwa ka go tsenngwa morago ga ntlha 20 ga ntlha e e latelang: 55

“**20A.** Lenane la ditheo tse di tlhomiweng, le le bontshang gore ke dife tsa tsona tse di leng mo tharabololong”.

Amendment of long title of Act 9 of 2017

60. 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 designated institutions to ensure that the impacts or potential impact of a failure of a designated 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 Arrangement of Sections of Act 9 of 2017

61. The Arrangement of Sections of the Financial Sector Regulation Act, 2017, is hereby amended—

- (a) by the substitution for item 9 of the following item:
 - “9. Inconsistencies between Act and other [financial sector] laws”;
- (b) by the substitution for item 27 of the following item:
 - “27. Memoranda of understanding [relating to financial stability]”;
- (c) by the substitution for item 28 of the following item:
 - “28. Roles of other organs of state in relation to financial stability and resolution”;

Tlhabololo ya setlhogho se se leele sa Molao 9 wa 2017

60. Molao wa Taolo ya Lephata la Ditšhelete, 2017, o tlhabololwa ka kemisetso ya setlhogho se se leele ka setlhogho se se leele se se latelang:

“Go tlhoma thulaganyo ya taolo ya ditšhelete ka go tlhoma Bothati jwa Tlhokomelo le Bothati jwa Boitshwaro jwa Lephata la Ditšhelete, le go naya ditheo tseo maatla; go boloka le go oketsa tlhomamo ya ditšhelete mo Rephaboleking ka go naya Banka ya Resefe dithata; go tlhoma Komiti ya Kelotlhoko ya Tlhomamo ya Ditšhelete; go laola mabapi le go tlhongwa ga letlhomeso la tharabololo ya ditheo tse di tlhomilweng go netefatsa gore dikutlwalo kgotsa kutlwalo e e ka kgonegang ya go retelelwa ga setheo se se tlhomilweng mo tlhomamong ya ditšhelete di laolwa ka nepalogo; go tlhoma Banka ya Resefe jaaka bothati jwa tharabololo; go tlhoma sekema sa inšorensense ya tipositi, go akaretsa le Koporasi ya Inšorensense ya Ditipositi; go laola le go tlhokomela batlamedi ba dikuno tsa ditšhelete le batlamedi ba ditirelo tsa ditšhelete; go tokafatsa boitshwaro jwa mmara go sireletsa badirisi ba ditšhelete; go tlamela ka kgolagano, tirisanommogo, kopano le therisano magareng ga Banka ya Resefe, Bothati jwa Tlhokomelo, Bothati jwa Boitshwaro jwa Lephata la Ditšhelete, Koporasi ya Inšorensense ya Ditipositi, Molaodi wa Bosetšhaba wa Sekoloto le ditheo tsa puso mabapi le tlhomamo ya ditšhelete le ditiro tsa ditheo tseno; go tlhoma Khansele ya Balaodi ba Thulaganyo ya Ditšhelete le Khansele ya Ditona ya Lephata la Ditšhelete; go laela mabapi le didirisa tsa taolo, go akaretsa le maemo a tlhokomelo, maemo a boitshwaro le maemo a kopantsweng; go laola mabapi le go abela ditheo tsa ditšhelete dilaesense; go dira taolo e e tsenyeletsang dithata tsa go kgobokanya tshedimosetso le go dira ditlathlho tsa botlhokomedi tsa kwa tirong le dipatlisiso; go laela mabapi le beng ba ba botlhokwa ba ditheo tsa ditšhelete le tlhokomelo ya ditheo tsa ditšhelete tse di kopantsweng mabapi le ditheo tsa ditšhelete tse di matshwanedi tseo e leng karolo ya ditheo tsa ditšhelete tse di kopantsweng; go laela mabapi le ditheo tse di tlhomilweng mabapi le merero ya tharabololo; go tlamela mabapi le dithata tsa go gatelela melao ya lephata la ditšhelete, go akaretsa le go pateletsa dikotlhao tsa tsamaiso; go laela mabapi le tshireletso le tswelotso ya ditshwanelo mo lephateng la ditšhelete jaaka go tlhagisitswe mo Molaotheong; go tlhoma Khansele ya Ombud le go e naya dithata mabapi le dikema tsa ombud; go laela mabapi le tshireletso ya kuno ya ditšhelete le batlamedi ba ditirelo tsa ditšhelete ka dikema tse di maleba tsa ombud; go tlhoma Lekgotla la Ditirelo tsa Ditšhelete jaaka lekgotla le le ikemetseng le go le naya dithata tsa go sekaseka ditshwetso tsa balaodi ba lephata la ditšhelete, Khansele ya Ombud le dithulaganyetso tse di rileng tsa popegotheo ya mmara; go tlhoma Rejisetara ya Tshedimosetso ya Lephata la Ditšhelete le go laela mabapi le go dira ga yona; go laela mabapi le dithulaganyo tsa go arogana tshedimosetso; go tlhama ditlolomolao; go laela mabapi le dithata tsa go dira melawana ga Tona; go tlhabolola le go phimola melao e e rileng ya lephata la ditšhelete; go dira ditaello tsa nakwana le ditshomarelo; le go laela mabapi le merero e e amanang le ona.”.

Tlhabololo ya Thulaganyo ya Dikarolo tsa Molao 9 wa 2017

61. Thulaganyo ya Dikarolo tsa Molao wa Taolo ya Lephata la Ditšhelete, 2017, e tlhabololwa—

- (a) ka kemisetso ya ntlha 9 ka ntlha e e latelang:
 “9. Go sa tsamaelaneng magareng ga Molao le melao e mengwe ya [lephata la ditšhelete]”;
- (b) ka kemisetso ya ntlha 27 ka ntlha e e latelang:
 “27. Memorantamo wa tumalano [mabapi le tlhomamo ya ditšhelete]”;
- (c) ka kemisetso ya ntlha 28 ka ntlha e e latelang:
 “28. Dikarolo tse di tsewang ke ditheo tse dingwe tsa puso mabapi le tlhomamo ya ditšhelete le tharabololo”;

- (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 item 29 of the following items:
“**29A.** Designated institutions 5
29B. Designation of systemically important payment systems”;
- (f) by the substitution for item 30 of the following item:
“**30.** Prudential standards and regulator’s directives in respect of systemically important financial institutions and designated institutions”; 10
- (g) by the substitution for item 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 item 135 of the following item:
“**135A.** Investigations into designated institutions in resolution”; and 15
- (i) by the insertion after item 166 of the following items:

“CHAPTER 12A

RESOLUTION OF DESIGNATED INSTITUTIONS

Part 1

General provisions with respect to designated institutions 20

166A. Exercise of Reserve Bank’s powers	
166B. Reserve Bank’s resolution objectives	25
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 30

Placing designated institutions in resolution

166J. Determination by Minister to place designated institution in resolution	
166K. When designated institution ceases to be in resolution	35
166L. Placing designated institution in resolution not termination or acceleration event	
166M. Reserve Bank to manage and control affairs of designated institution	
166N. Reserve Bank not holding company	
166O. Resolution practitioners	40
166P. Transfer of shares in designated institutions in resolution	

Part 3

Resolution measures

166Q. Valuation	
166R. Powers	45
166S. Resolution action, including restructuring and bail in	
166T. Outcome of resolution actions	
166U. Creditor hierarchy and equality of claims	

- (d) ka kemisetso ya the setlhogo sa Karolo 6 ya Kgaolo 2 ka setlhogo se se latelang:
 “Ditheo tsa ditšhelete tsa botlhokwa jo bo rulaganeng le dithulaganyo tsa tuelo”;
- (e) ka go tsenngwa morago ga ntlha 29 ga dintlha tse di latelang: 5
 “**29A.** Ditheo tse di tlhomilweng
29B. Go tlhongwa ga dithulaganyo tsa tuelo tsa botlhokwa jo bo rulaganeng”;
- (f) ka kemisetso ya ntlha 30 ka ntlha e e latelang: 10
 “**30.** Maemo a botlhokwa le ditaello tsa molaodi mabapi le ditheo tsa ditšhelete tsa botlhokwa jo bo rulaganeng le ditheo tse di tlhomilweng”;
- (g) ka kemisetso ya ntlha 91 ka ntlha e e latelang: 15
 “**91.** Tiriso ya *Promotion of Administrative Justice Act* [mo tirong ya **tsamaiso ka balaodi ba lephata la ditšhelete**]”;
- (h) ka go tsenngwa morago ga ntlha 135 ga ntlha e e latelang:
 “**135A.** Dipatlisiso tsa ditheo tse di tlhomilweng mo tharabololong”; le
- (i) ka go tsenngwa morago ga ntlha 166 ga ntlha e e latelang:

“KGAOLO 12A

THARABOLOLO YA DITHEO TSE DI TLHOMILWENG 20

Karolo 1

Ditaello ka kakaretso mabapi le ditheo tse di tlhomilweng

166A. Tiragatso ya dithata tsa Banka ya Resefe	
166B. Maikaelelo a tharabololo a Banka ya Resefe	25
166C. Ditiro tsa tharabololo tsa Banka ya Resefe	
166D. Phatlalatso le dikgato tse di tshwanang mabapi le ditheo tse di tlhomilweng	
166E. Go rulaganyetsa tharabololo	
166F. Ditlamokgolaganyo	30
166G. Tiro ya, le bosupi jwa, phutlhamo	
166H. Tswalokgwebo	
166I. Tholelo ya dtiro tsa tharabololo tsa Banka ya Resefe	

Karolo 2

Go baya ditheo tse di tlhomilweng mo tharabololong

166J. Tlhomamiso ka Tona go baya setheo se se tlhomilweng mo tharabololong	
166K. Fa setlamo se se tlhomilweng se khutla go nna mo tharabololong	40
166L. Go baya setheo se se tlhomilweng mo tharabololong e seng tiragalo ya go fedisa kgotsa go itlhaganedisa	
166M. Banka ya Resefe go tsamaisa le go laola merero ya setheo se se tlhomilweng	
166N. Banka ya Resefe e seng setlamo se se okameng	
166O. Badiiri ba tsa tharabololo	
166P. Tshutisetso ya dišere kwa ditheong tse di tlhomilweng tse di mo tharabololong	45

Karolo 3

Ditsela tsa tharabololo

166Q. Tekanyoboleng	
166R. Dithata	50
166S. Kgato ya tharabololo, go akaretsa le go rulaganya gape le tuelokgololomolato	
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Karolo 4

Ditshireletso

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Kgaolo 5

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166AB.	Tekanyetso ya tshireletso mabapi le tipositi tse di sireleditsweng	
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Karolo 6

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Karolo 7

Letlole la Inšorensa ya Tipositi

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166BE.	<u>Peeletso</u>

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5

Amendment of section 52 of Act 18 of 2017

62. 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.”. 10

Short title

63. (1) This Act is called the Financial Sector Laws Amendment Act, 2021, and comes into effect on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined by the Minister in respect of the coming into effect of different provisions of this Act. 15

166BF. Tshedimosetso

Karolo 8

Diketleetsa tsa Letlole

166BG. Dituelotshireletso tsa tipositi

166BH. Thekisonolo ya Letlole".

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Wysiging van artikel 52 van Wet 18 van 2017

62. Artikel 52 van die Versekeringswet, 2017, word hierby gewysig deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) Hierdie Hoofstuk is nie van toepassing op ’n tak van ’n buitelandse herversekeraar, ’n Lloyd’s-onderskrywer [**of**], Lloyd’s of ’n versekeraar wat ’n aangewese instelling ingevolge die ‘Financial Sector Regulation Act’ is nie.”.

10

Setlhogo se se khutshwane

63. (1) Molao ono o bidiwa Molao wa Tlhabololo ya Melao ya Lephata la Ditšhelete, 2021, e bile o tseba mo tirisong ka letlha le le tlhomamisitsweng ke Tona ka kitsiso mo Lokwalodikgannyeng la Puso.

15

(2) Matlha a a farologaneng a ka tlhomamiswa ke Tona mabapi le go tsenngwa mo tirisong ga ditaelo tse di farologaneng tsa Molao ono.

