

REPUBLIC OF SOUTH AFRICA

**FINANCIAL SECTOR AND
DEPOSIT INSURANCE LEVIES
(ADMINISTRATION) AND DEPOSIT
INSURANCE PREMIUMS BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 45791 of 20 January 2022)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 4—2022]

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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.

BILL

To provide for the collection and administration of levies imposed in terms of the Financial Sector and Deposit Insurance Levies Act, 2022; to amend the Financial Sector Regulation Act, 2017, in order to provide for the administration of levies imposed in terms of the Financial Sector and Deposit Insurance Levies Act, 2022; to provide for the imposition, collection and administration of deposit insurance premiums; to amend the Pension Funds Act, 1956, the Banks Act, 1990, the Mutual Banks Act, 1993, and the Financial Advisory and Intermediary Services Act, 2002, to align them with the Financial Sector Regulation Act, 2017, in respect of the financing of financial sector bodies; and to provide for matters connected therewith.

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

Definitions

1. In this Act, words and expressions, excluding the expression “this Act”, have the meaning ascribed to them in section 1 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and section 1 of the Financial Sector and Deposit Insurance Levies Act, 2022. 5

Administration of levies

2. (1) (a) The Financial Sector Conduct Authority is responsible for the collection and administration of the financial sector levy and the special levy referred to in sections 2 to 8 and 12 of the Financial Sector and Deposit Insurance Levies Act, 2022, read with Schedules 2 to 5 to that Act, to provide for the funding of the Financial Sector Conduct Authority, the Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers. 10

(b) The financial sector levy referred to in section 4(1)(a) of the Financial Sector and Deposit Insurance Levies Act, 2022, and the special levy referred to in section 8(2)(a) of that Act, must be collected and administered by the Financial Sector Conduct Authority and paid to the financial sector bodies referred to in paragraph (a) in accordance with section 246 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017). 15

(2) (a) The Reserve Bank is responsible for the collection and administration, on behalf of the Prudential Authority, of the financial sector levy and the special levy referred to in sections 2 to 8 and 11 read with Schedule 1 to the Financial Sector and Deposit Insurance Levies Act, 2022, to provide for the funding of the Prudential Authority. 20

(b) The Reserve Bank is responsible for the collection and administration, on behalf of the Corporation, of the deposit insurance levy referred to in section 9 read with Schedule 6 to the Financial Sector and Deposit Insurance Levies Act, 2022, to provide for the funding of the operations of the Corporation and the administration of the Fund.

(c) The financial sector levy referred to in section 4(1)(b) of the Financial Sector and Deposit Insurance Levies Act, 2022, the special levy referred to in section 8(2)(b) and the deposit insurance levy referred to in section 9 of that Act, must be collected and administered by the Reserve Bank in accordance with section 246 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017). 5

Administration of deposit insurance premiums 10

3. (1) The Reserve Bank is responsible for the collection and administration, on behalf of the Corporation, of the deposit insurance premiums imposed in terms of section 166BG of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

(2) The deposit insurance premiums must be collected and administered by the Reserve Bank in accordance with section 246 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017). 15

Amendment of laws

4. The laws listed in the Schedule are amended to the extent set out in the Schedule.

Short title and commencement

5. (1) This Act is called the Financial Sector and Deposit Insurance Levies (Administration) and Deposit Insurance Premiums Act, 2022, and comes into effect on a date determined by the Minister by notice in the *Gazette*. 20

(2) Different dates may be determined by the Minister in respect of the coming into effect of—

- (a) different provisions of this Act and the Schedule to this Act; and 25
- (b) the amendment of different provisions of a law amended by this Act.

SCHEDULE
AMENDMENT OF LAWS: SECTION 4

Act No. and year of law	Short Title	Extent of amendment or repeal
24 of 1956	Pension Funds Act	<p>1. The amendment of section 30R by the substitution for subsection (1) of the following subsection: “(1) The funds of the Adjudicator consist of the funds contemplated in section 247(1) of the Financial Sector Regulation Act, and such funds may only be applied in terms of section 247(2) of that Act.”.</p>
94 of 1990	Banks Act	<p>1. The following section is hereby substituted for section 35: “Annual licence 35. A bank, a branch by means of which a foreign institution is under section 18A authorized to conduct the business of a bank in the Republic and a representative office established in terms of section 34 [shall] must obtain from the Authority a business licence pertaining to its particular business in respect of each year ending on the thirty-first day of December [against payment of the prescribed licence fees].”.</p> <p>2. The amendment of section 90 by the deletion in subsection (1) of paragraph (c).</p>
124 of 1993	Mutual Banks Act	<p>1. The following section is hereby substituted for section 31: “Annual licence 31. A mutual bank [shall] must obtain from the Registrar a business licence pertaining to its particular business in respect of each year ending on the thirty-first day of December [against payment of the prescribed licence fee].”.</p> <p>2. The amendment of section 91 by the deletion in subsection (1) of paragraph (c).</p>
37 of 2002	Financial Advisory and Intermediary Services Act	<p>1. The amendment of section 22 by the substitution for subsection (1) of the following subsection: “(1) The funds of the Office consist of the funds contemplated in section 247(1) of the Financial Sector Regulation Act, and such funds may only be applied in terms of section 247(2) of that Act.”.</p>
9 of 2017	Financial Sector Regulation Act	<p>1. Section 1 is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the definition of “deposit insurance premium” of the following definition: “‘deposit insurance premium’ means a premium imposed [by legislation,] in [accordance with] terms of section 166BG and Schedule 5;”;</p> <p>(b) by the insertion in subsection (1) after the definition of “financial product provider” of the following definition: “‘Financial Sector and Deposit Insurance Levies Act’ means the Financial Sector and Deposit Insurance Levies Act;”;</p> <p>(c) by the substitution in subsection (1) for the definition of “levy” of the following definition: “‘levy’ means a levy imposed [by a financial sector body] in terms of [legislation that empowers the imposition of a levy] the Financial Sector and Deposit Insurance Levies Act, and includes interest payable on an unpaid levy;”;</p> <p>(d) by the insertion in subsection (1) after the definition of “Medical Schemes Act” of the following definition: “‘member’ means a member of the Corporation, in accordance with section 166AG;”;</p> <p>(e) by the insertion in subsection (1) after the definition of “placing a designated institution in resolution” of the following definition: “‘premium period’ means the period from the first day of a calendar month to the last day of that calendar month, in respect of which a deposit insurance premium is determined in terms of section 166BG and Schedule 5;” and</p> <p>(f) by the substitution in subsection (1) for the definition of “special levy” of the following definition: “‘special levy’ means a levy imposed as a special levy [by a financial sector body] in terms of [legislation that empowers the imposition of a levy] the Financial Sector and Deposit Insurance Levies Act, and includes interest payable on an unpaid special levy;”.</p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p>2. The amendment of section 58 by the deletion in subsection (1) of paragraph (g).</p> <p>3. The following section is hereby substituted for section 166BG:</p> <p>“Deposit insurance premiums</p> <p>166BG. (1) There shall be charged, imposed and collected by the Corporation, in accordance with this Act, a premium to be known as the deposit insurance premium, to ensure that the Fund is able to make payments required by this Chapter.</p> <p>(2) The deposit insurance premium is payable by each member.</p> <p>(3) The amount of the deposit insurance premium payable by each member in respect of a premium period is determined in accordance with Schedule 5.</p> <p>(4) Where a member becomes a member during a premium period, or ceases to be a member during a premium period, the premium payable must be proportional to the remainder of the premium period during which the entity is a member or ceases to be a member.”.</p> <p>4. The following section is hereby substituted for section 237:</p> <p>“Fees, [and] levies and deposit insurance premiums</p> <p>237. (1) (a) Fees may be charged by a financial sector body in accordance with this Part to fund the performance of [specific] any functions under this Act [and], the relevant financial sector laws and the Financial Sector and Deposit Insurance Levies Act, including in relation to the performance of functions in terms of a financial sector law which does not explicitly authorise the charging of fees.</p> <p>(b) Levies may be imposed [by a financial sector body] in accordance with this Part, read with [legislation that empowers the imposition of levies] the Financial Sector and Deposit Insurance Levies Act, to fund the operations of the financial sector [body] bodies and, in the case of the deposit insurance levy, to fund the operations of the Corporation and the administration of the Fund in terms of section 166BC.</p> <p>(2) A financial sector body must publish fees that have been determined [and levies that have been imposed] in the Register and on its website.</p> <p>(3) Fees [and levies] are payable to the financial sector body at the time specified by the financial sector body, or at a time agreed to by the financial sector body.</p> <p>(3A) (a) The levies referred to in sections 2 to 8 and 12 of the Financial Sector and Deposit Insurance Levies Act, 2022, read with Schedules 2 to 5 to that Act, which provide for the funding of the Financial Sector Conduct Authority, the Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator, and the Office of the Ombud for Financial Services Providers, are payable to the Financial Sector Conduct Authority on the dates and in the manner specified by the Financial Sector Conduct Authority in terms of section 242, or on the date agreed to by the Financial Sector Conduct Authority.</p> <p>(b) Levies referred to in sections 2 to 8 and 12 of the Financial Sector and Deposit Insurance Levies Act, 2022, read with Schedule 1 to that Act, which provide for the funding of the Prudential Authority, are payable to the Prudential Authority, through the Reserve Bank, on the dates and in the manner specified by the Prudential Authority in terms of section 242, or on the date agreed to by the Prudential Authority.</p> <p>(c) The deposit insurance levy referred to in sections 9 and 12 of the Financial Sector and Deposit Insurance Levies Act, read with Schedule 6 to that Act, and section 166BC is payable to the Corporation, through the Reserve Bank, on the dates and in the manner specified by the Corporation, or on the date agreed to by the Corporation.</p> <p>(3B) (a) The deposit insurance premium referred to in section 166BG and Schedule 5 is payable to the Corporation, through the Reserve Bank, on the dates and in the manner specified by the Corporation, or on the date agreed to by the Corporation.</p> <p>(b) The Corporation must publish the deposit insurance premiums that have been collected in the Register and on its website.</p> <p>(4) Different fees may be determined [and different levies may be imposed] for different types or categories of persons or supervised entities.</p> <p>(5) Different levies may be imposed for different types or categories of supervised entities or members in accordance with the Financial Sector and Deposit Insurance Levies Act, 2022.</p> <p>(6) Different deposit insurance premiums may be determined for different types or categories of members.”.</p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p>5. Section 238 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Fees, [and] levies and deposit insurance premiums to be debts”; and</p> <p>(b) by the substitution for subsection (1) of the following subsection: “(1) A fee, [or] levy or deposit insurance premium payable to a financial sector body in terms of section 237 is a debt due to the financial sector body.”.</p> <p>6. Section 239 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Budget, fees, [and] levies and deposit insurance premium proposals”;</p> <p>(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) a proposal for the fees that will be charged and the levies and deposit insurance premiums that will be imposed by the financial sector body; and”;</p> <p>(c) by the substitution for subsection (5) of the following subsection: “(5) The financial sector body must submit the finalised budget, together with the fees, [and] levies and deposit insurance premium proposals, to the Minister.”;</p> <p>(d) by the substitution for subsection (7) of the following subsection: “(7) (a) In respect of the fees [and levies] proposals for the first financial year following the commencement of this section, the Minister must approve the proposals for all the financial sector bodies. (b) In respect of levies proposals, the Minister may amend the Schedules to the Financial Sector and Deposit Insurance Levies Act, as contemplated in section 10 of that Act.”; and</p> <p>(e) by the insertion after subsection (7) of the following subsection: “(7A) (a) In respect of deposit insurance premium proposals by the Corporation, the Minister must approve the proposals for each financial year following the commencement of this section. (b) In respect of deposit insurance premium proposals, the Minister may amend Schedule 5, with the concurrence of the Corporation, either by submitting an amended Schedule to Parliament for approval, in accordance with paragraphs (c) to (j), or in accordance with paragraphs (k) to (m)— (i) to give effect to a proposal for deposit insurance premiums made by the Corporation and which proposal has been submitted to the Minister in terms of subsection (5); or (ii) to specify the meaning of any terms contained in the formulae set out in Schedule 5. (c) Parliament must approve, adopt amendments to or reject an amended Schedule within three months of the date of tabling of the amended Schedule. (d) If Parliament does not approve, adopt amendments to or reject the amended Schedule within three months of the date of tabling, Parliament is deemed to have approved the amended Schedule, and— (i) the Minister may then publish the amended Schedule in the <i>Gazette</i>; and (ii) the amended Schedule takes effect from the date of publication in the <i>Gazette</i>. (e) An amendment to Schedule 5 that is submitted to Parliament for approval must be referred to the respective committees on finance. (f) The committee on finance must— (i) conduct public hearings on the proposed amended Schedule 5; and (ii) report on the proposed amended Schedule 5 to the relevant House. (g) If a committee on finance proposes amendments to the amended Schedule 5 that has been tabled for approval by Parliament, the Minister must be given at least 14 days to respond to the proposed amendments before the committee reports to the House. (h) The report of a finance committee referred to in this subsection must indicate the manner in which the proposed amendments are consistent with the Fund being able to make the required payments in terms of Chapter 12A and referred to in section 166BG(1).</p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p>(i) The report of a committee on finance must include the comments of the Minister on any proposed amendments to the proposed amended Schedule 5 as tabled.</p> <p>(j) If Parliament approves or adopts amendments to the amended Schedule as tabled, the Schedule approved or adopted by Parliament takes effect on the date of such approval or adoption by Parliament, and the Minister must then publish the Schedule, as approved or adopted, in the <i>Gazette</i>.</p> <p>(k) The deposit insurance premiums in Schedule 5 will be increased annually by the arithmetic mean of the Consumer Price Index as published by Statistics South Africa in the preceding calendar year, unless the Minister by notice determines that there must be no increase or an increase less than that annual rate of increase.</p> <p>(l) Schedule 5 may be amended by the Minister, by notice in the <i>Gazette</i>, to give effect to an increase in deposit insurance premiums referred to in paragraph (k), and does not require submission to Parliament for approval, but a copy of the notice must be tabled in Parliament for information purposes.</p> <p>(m) An amended Schedule 5 referred to in paragraph (k) takes effect on the date of the publication of the notice, referred to in paragraph (l), in the <i>Gazette</i>.”.</p> <p>7. The following section is hereby substituted for section 240:</p> <p>“Consultation requirements</p> <p>240. (1) Part 1 of Chapter 7, with the exception of section 100, applies with the necessary changes, to the adoption of the budget, the estimates of expenditure as well as the fees, [and] levies and deposit insurance premium proposals as provided for in section 239.</p> <p>(2) The documents that must be published under section 98 include—</p> <p>(a) the budget, estimates of expenditure and the fees, [and] levies and deposit insurance premium proposals provided for in section 239 for the relevant financial year; and</p> <p>(b) an explanation by the financial sector body of the budget, estimates of expenditure and the fees, [and] levies and deposit insurance premium proposals, and of the variation of the budget, estimates of expenditure and the fees [and], levies and deposit insurance premium proposals against the budget, estimates of expenditure and the fees, [and] levies and deposit insurance premium proposals adopted for the previous financial year.”.</p> <p>8. Section 241 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Determinations of information required for assessment of levy or deposit insurance premium”; and</p> <p>(b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:</p> <p>“(1) A financial sector body may, in writing, require a supervised entity or member to provide it with information relevant to any assessment of the supervised entity’s or member’s liability for any levy or deposit insurance premium as specified in the requirement.</p> <p>(2) A requirement in terms of subsection (1) may be published in the Register or provided to the supervised entity or member from whom information is required, and must specify the manner in which, and the date by when, the information must be provided.</p> <p>(3) A supervised entity or member must not fail or refuse to comply with a requirement issued in terms of subsection (1).”.</p> <p>9. The following section is hereby substituted for section 242:</p> <p>“Assessments of levy or deposit insurance premium</p> <p>242. (1) A financial sector body must issue to each supervised entity or member that is liable to pay a levy or deposit insurance premium for the financial year an assessment of a levy or deposit insurance premium payable by the supervised entity or member.</p> <p>(2) The assessment notice issued to a supervised entity or member must state the date on which the levy or deposit insurance premium is due and must be paid, which period must not be less than 30 days from the date of receipt of the notice of assessment by the supervised entity or member.”.</p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p>10. The following section is hereby substituted for section 243:</p> <p>“Payment of fee, [or] levy, deposit insurance premium, or deposit insurance levy by instalments</p> <p>243. (1) A person who has been charged a fee, or a supervised entity who has been charged a levy, or a member who has been charged a deposit insurance premium, or a deposit insurance levy, may offer to pay the fee, [or] levy, deposit insurance premium or deposit insurance levy by specified instalments, and if an offer is made, the financial sector body to which the fee, levy, deposit insurance premium, or deposit insurance levy must be paid, must—</p> <p>(a) accept the offer;</p> <p>(b) accept a modified offer; or</p> <p>(c) reject the offer,</p> <p>and must notify the person who made the offer accordingly.</p> <p>(2) A person who wishes to make an offer to pay a fee, [or] levy, deposit insurance premium or deposit insurance levy by instalments must make an offer—</p> <p>(a) immediately after being notified of the fee, [or] levy, deposit insurance premium, or deposit insurance levy charged, if the fee, [or] levy, deposit insurance premium or deposit insurance levy must be paid within 14 days after the date on which notification is received; or</p> <p>(b) at least 14 days before the date on which the fee, [or] levy, deposit insurance premium or deposit insurance levy must be paid, if paragraph (a) does not apply.</p> <p>(3) The financial sector body to which the offer to pay the fee, levy, deposit insurance premium or deposit insurance levy by instalments, referred to in subsection (1), was made, must notify the person who made an offer in terms of subsection (1) of its decision—</p> <p>(a) immediately after receipt of the offer, in respect of an offer referred to in subsection (2)(a); or</p> <p>(b) within seven days after the receipt of the offer, in respect of an offer referred to in subsection (2)(b).”.</p> <p>11. Section 244 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Interest on late or non-payment of fees, [and] levies, deposit insurance premiums and deposit insurance levies”;</p> <p>(b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:</p> <p>“(1) If a fee, [or] levy, deposit insurance premium or deposit insurance levy is not paid, or not paid in full, within the period specified for payment, and an offer to pay the fee, [or] levy, deposit insurance premium or deposit insurance levy by instalments has not been accepted as referred to in section 243(1)(a) or (b), the person liable to pay the fee, [or] levy, deposit insurance premium or deposit insurance levy in question must pay interest at the rate referred to in subsection (2), on the amount of the fee, [or] levy, deposit insurance premium or deposit insurance levy that remains unpaid 30 days after the due date.</p> <p>(2) Interest due and payable on an outstanding fee, [or] levy, deposit insurance premium or deposit insurance levy amount must be calculated based on the interest rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).</p> <p>(3) Interest charged on an outstanding fee amount is a debt due to the financial sector body, and may be recovered by a judicial process in a competent court.”; and</p> <p>(c) by the addition of the following subsections:</p> <p>“(4) (a) Interest charged on an outstanding levy amount, referred to in section 237(3A)(a), is a debt due and payable to the Financial Sector Conduct Authority and must be paid into the account referred to in section 246(2)(a).</p> <p>(b) Interest charged on an outstanding levy amount, referred to in section 237(3A)(b), is a debt due to the Prudential Authority and payable to the Prudential Authority through the Reserve Bank, and must be paid into the account referred to in section 246(2)(b).</p> <p>(c) Interest charged on an outstanding levy amount, referred to in section 237(3A)(c), is a debt due to the Corporation and payable to the Corporation through the Reserve Bank, and must be paid into the account referred to in section 246(2)(c).</p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p><u>(d) Any overpayment of a levy amount or interest on a levy amount is a debt owed and payable, from the account referred to in section 246(2)(a), (b) or (c) to which the overpayment was made, to the supervised entity or member which made the overpayment.</u></p> <p><u>(5) (a) Interest charged on an outstanding deposit premium amount, referred to in section 237(3B)(a), is a debt due to the Corporation and payable to the Corporation through the Reserve Bank, and must be paid into the account referred to in section 246(2)(d).</u></p> <p><u>(b) Any overpayment of a deposit insurance premium amount or interest on a deposit insurance premium amount is a debt owed and payable, from the account referred to in section 246(2)(d) to which the overpayment was made, to the member which made the overpayment.”.</u></p> <p>12. Section 245 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Exemption from fee or deposit insurance premium”; and</p> <p>(b) by the addition of the following subsections:</p> <p><u>“(4) The Corporation may in writing, on application by a member, exempt a member from the payment of all or part of the deposit insurance premiums specified in Schedule 5, in respect of the premium period referred to in section 166BG(3), or a part of that period.</u></p> <p><u>(5) A member must, in the application referred to in subsection (4), provide the information that the Corporation may determine, in the form and manner so determined.</u></p> <p><u>(6) The Corporation may only exempt a member if the Corporation is satisfied that the exemption from the deposit insurance premium—</u></p> <p><u>(a) will alleviate undue financial or other hardship or prejudice to the member, or financial customers due to circumstances outside the control of that member;</u></p> <p><u>(b) is not contrary to the public interest;</u></p> <p><u>(c) is necessary for—</u></p> <p><u>(i) developmental and financial inclusion, as well as transformation objectives to facilitate progressive or incremental compliance with the Act, or another financial sector law; or</u></p> <p><u>(ii) other sound reasons; and</u></p> <p><u>(d) is necessary to facilitate the affordability of the deposit insurance premium for the member.</u></p> <p><u>(7) The Corporation must publish, in accordance with the requirements under this Act, each exemption that is issued by the Corporation in terms of this section.”.</u></p> <p>13. Section 246 is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Management of fees, [and] levies, deposit insurance premiums and deposit insurance levies”; and</p> <p>(b) by the substitution for subsections (2) and (3) of the following subsections, respectively:</p> <p><u>“(2) (a) Levies imposed in accordance with [section 237(1)(b),] the Financial Sector and Deposit Insurance Levies Act, which are referred to in section 237(3A)(a), and interest accrued on those levies in terms of section 244(4)(a), must be collected by the Financial Sector Conduct Authority and paid into a bank account designated for that purpose, which is in the name and control of the Financial Sector Conduct Authority.</u></p> <p><u>(b) Levies imposed in accordance with the Financial Sector and Deposit Insurance Levies Act, which are referred to in section 237(3A)(b), and interest accrued on those levies in terms of section 244(4)(b), must be collected by the Reserve Bank and paid into a bank account designated for that purpose, which is in the name and control of the Prudential Authority.</u></p> <p><u>(c) Deposit insurance levies imposed in accordance with the Financial Sector and Deposit Insurance Levies Act, which are referred to in section 237(3A)(c), and interest accrued on those levies in terms of section 244(4)(c), must be collected by the Reserve Bank and paid into a bank account designated for that purpose, which is in the name and control of the Corporation.</u></p> <p><u>(d) Deposit insurance premiums imposed in accordance with section 166BG, which are referred to in section 237(3B)(a), and interest accrued on those premiums in terms of section 244(5), must be collected by the Reserve Bank and paid into the bank account of the Fund referred to in section 166BD(3).</u></p>

Act No. and year of law	Short Title	Extent of amendment or repeal
		<p>(3) Each financial sector body's allocation of the levies [collected] in terms of section 12 of the Financial Sector and Deposit Insurance Levies Act and interest contemplated in subsection (2)(a), must be transferred by the Financial Sector Conduct Authority to the financial sector body's designated account in accordance with a payment schedule agreed between the financial sector body and the Financial Sector Conduct Authority."</p> <p>14. The amendment of section 247 by the insertion in subsection (2) after paragraph (a) of the following paragraph: “(aA) in respect of deposit insurance levies received by the Corporation, to the general administrative and operating costs of the Fund;”.</p> <p>15. Section 248 is hereby amended— (a) by the insertion after subsection (5) of the following subsection: “(5A) (a) The Corporation must prepare an annual budget and estimates of expenditure for the financial year in accordance with section 239 and in compliance with subsection (4)(b), and financial accounts, financial statements and an annual report as contemplated in sections 166AU and 166AV. (b) The financial accounts and financial statements of the Corporation must also include the financial accounts and financial statements of the Fund, and the annual report of the Corporation must also report on the activities, operations and performance of the Fund. (c) The Chief Executive Officer of the Corporation is responsible for ensuring that the expenditure of the Corporation is in accordance with its approved budget.”; (b) by the substitution for subsection (6) of the following subsection: “(6) The [Prudential Authority, the] Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator, and the Office of the Ombud for Financial Services Providers must provide the Financial Sector Conduct Authority with its levies that will be imposed for the operation of the financial sector body two months prior to the start of a financial year in respect of which the levies will be imposed.”; (c) by the insertion after subsection (8) of the following subsection: “(8A) In addition to the matters which must be included in the financial accounts, financial statements and annual reports of the Corporation referred to in subsection (5A), the annual reports of the Corporation must contain a statement showing— (a) the total number of members who paid deposit insurance levies and deposit insurance premiums imposed in that financial year; (b) the total deposit insurance levies collected by the Reserve Bank on behalf of and received by the Corporation; (c) the total deposit insurance premiums collected by the Reserve Bank on behalf of the Corporation and which were paid to the Fund; and (d) any other matter determined by the Minister.”; and (d) by the substitution for subsection (9) of the following subsection: “(9) A financial sector body must publish its annual budget on [their] its website, and must publish its determined fees and imposed levies and deposit insurance premiums in the Register and on its website.”.</p> <p>16. The amendment of section 288 by the insertion in subsection (1) after paragraph (a) of the following paragraphs: “(aA) to prescribe banking and financial accounting arrangements for the administration of levies, including any interest thereon, imposed in accordance with the Financial Sector and Deposit Insurance Levies Act; (aB) to prescribe banking and financial accounting arrangements for the administration of deposit insurance premiums, including any interest thereon, imposed in terms of section 166BG; (aC) to prescribe banking and financial accounting arrangements in respect of the management and administration of the Fund.”.</p> <p>17. The amendment of section 301 by the addition of the following subsection: “(8) (a) A determination of fees in terms of a financial sector law remains in force for the purposes of this Act, and that financial sector law, despite the repeal of the empowering provision in the financial sector law. (b) A determination referred to in paragraph (a) may be amended or revoked in terms of a new determination of fees made by the financial sector body in terms of section 237(2).”.</p>

Act No. and year of law	Short Title	Extent of amendment or repeal																																										
		<p data-bbox="646 262 1203 286">18. The following Schedule is hereby inserted after Schedule 4:</p> <p data-bbox="778 304 1123 387" style="text-align: center;">SCHEDULE 5 DEPOSIT INSURANCE PREMIUM (Section 166BG)</p> <table border="1" data-bbox="671 398 1235 1025"> <thead> <tr> <th colspan="7" data-bbox="671 398 1235 427">Monthly deposit insurance premium</th> </tr> <tr> <th data-bbox="671 427 754 506">Type of supervised entity</th> <th data-bbox="754 427 831 506">Premium Frequency</th> <th data-bbox="831 427 914 506">Minimum Amount</th> <th data-bbox="914 427 991 506">Variable Amount(s)</th> <th data-bbox="991 427 1074 506">Description of variable</th> <th data-bbox="1074 427 1150 506">Formula</th> <th data-bbox="1150 427 1235 506">Maximum</th> </tr> </thead> <tbody> <tr> <td data-bbox="671 506 754 633">Bank</td> <td data-bbox="754 506 831 633">Monthly</td> <td data-bbox="831 506 914 633">0</td> <td data-bbox="914 506 991 633">0.2%/12 x A</td> <td data-bbox="991 506 1074 633">A = covered deposits as at the end of each calendar month</td> <td data-bbox="1074 506 1150 633">Levy = Variable amount</td> <td data-bbox="1150 506 1235 633">Not applicable</td> </tr> <tr> <td data-bbox="671 633 754 761">Co-operative bank</td> <td data-bbox="754 633 831 761">Monthly</td> <td data-bbox="831 633 914 761">0</td> <td data-bbox="914 633 991 761">0.2%/12 x A</td> <td data-bbox="991 633 1074 761">A = covered deposits as at the end of each calendar month</td> <td data-bbox="1074 633 1150 761">Levy = Variable amount</td> <td data-bbox="1150 633 1235 761">Not applicable</td> </tr> <tr> <td data-bbox="671 761 754 889">Mutual bank</td> <td data-bbox="754 761 831 889">Monthly</td> <td data-bbox="831 761 914 889">0</td> <td data-bbox="914 761 991 889">0.2%/12 x A</td> <td data-bbox="991 761 1074 889">A = covered deposits as at the end of each calendar month</td> <td data-bbox="1074 761 1150 889">Levy = Variable amount</td> <td data-bbox="1150 761 1235 889">Not applicable</td> </tr> <tr> <td data-bbox="671 889 754 1025">Branch</td> <td data-bbox="754 889 831 1025">Monthly</td> <td data-bbox="831 889 914 1025">0</td> <td data-bbox="914 889 991 1025">0.2%/12 x A</td> <td data-bbox="991 889 1074 1025">A = covered deposits as at the end of each calendar month</td> <td data-bbox="1074 889 1150 1025">Levy = Variable amount</td> <td data-bbox="1150 889 1235 1025">Not applicable</td> </tr> </tbody> </table> <p data-bbox="646 1025 667 1048">”.</p> <p data-bbox="646 1055 1126 1079">19. The Arrangement of Sections is hereby amended—</p> <p data-bbox="646 1079 1241 1104">(a) by the substitution for items 237 to 239 of the following items:</p> <p data-bbox="692 1104 1193 1128">“237. Fees, [and] levies and deposit insurance premiums</p> <p data-bbox="692 1128 1241 1153">238. Fees, [and] levies and deposit insurance premiums to be debts</p> <p data-bbox="692 1153 1209 1205">239. Budget, fees, [and] levies and deposit insurance premium proposals”;</p> <p data-bbox="646 1205 1241 1229">(b) by the substitution for items 241 to 246 of the following items:</p> <p data-bbox="692 1229 1251 1254">“241. Determinations of information required for assessment of levy or deposit insurance premium</p> <p data-bbox="692 1254 1193 1279">242. Assessments of levy or deposit insurance premium</p> <p data-bbox="692 1279 1251 1330">243. Payment of fee, [or] levy, deposit insurance premium, or deposit insurance levy by instalments</p> <p data-bbox="692 1330 1251 1382">244. Interest on late or non-payment of fees, [and] levies, deposit insurance premiums and deposit insurance levies</p> <p data-bbox="692 1382 1193 1406">245. Exemption from fee or deposit insurance premium</p> <p data-bbox="692 1406 1251 1458">246. Management of fees, [and] levies, deposit insurance premiums and deposit insurance levies”; and</p> <p data-bbox="646 1458 1241 1482">(c) by the insertion after the item relating to Schedule 4 of the following item:</p> <p data-bbox="692 1482 1098 1507">“Schedule 5: Deposit Insurance Premium”.</p>	Monthly deposit insurance premium							Type of supervised entity	Premium Frequency	Minimum Amount	Variable Amount(s)	Description of variable	Formula	Maximum	Bank	Monthly	0	0.2%/12 x A	A = covered deposits as at the end of each calendar month	Levy = Variable amount	Not applicable	Co-operative bank	Monthly	0	0.2%/12 x A	A = covered deposits as at the end of each calendar month	Levy = Variable amount	Not applicable	Mutual bank	Monthly	0	0.2%/12 x A	A = covered deposits as at the end of each calendar month	Levy = Variable amount	Not applicable	Branch	Monthly	0	0.2%/12 x A	A = covered deposits as at the end of each calendar month	Levy = Variable amount	Not applicable
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MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SECTOR AND DEPOSIT INSURANCE LEVIES (ADMINISTRATION) AND DEPOSIT INSURANCE PREMIUMS BILL

1. BACKGROUND TO BILL

- 1.1 On 22 August 2017, the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSRA”), was assented to by the President.
- 1.2 The object of the FSRA is to achieve a stable financial system that works in the interests of financial customers and supports balanced and sustainable economic growth in the Republic.
- 1.3 Under the funding model that will be established by the Financial Sector and Deposit Insurance Levies Bill, 2022 (“Levies Bill”), the operations and functioning of the Prudential Authority (“PA”), the Financial Sector Conduct Authority (“FSCA”), the Financial Services Tribunal and the Ombud Council, which are established in terms of the FSRA, as well as the Office of the Pension Funds Adjudicator (“OPFA”) and the Office of the Ombud for Financial Services Providers (“OFSP”), will be funded by levies, which are imposed on the financial sector in terms of the Levies Bill, as well as through fees which may be charged in accordance with Chapter 16 of the FSRA in relation to functions or services that they may perform.
- 1.4 In terms of the Financial Sector Laws Amendment Bill, 2020 (B15B of 2020) (“proposed FSLA Act”) that Parliament has sent to the President for assent, the funding of the operations of the Corporation for Deposit Insurance (“Corporation”) that will be established in terms of the envisaged section 166AE of the FSRA, as proposed in the proposed FSLA Act, and the funding of the administration of the Deposit Insurance Fund (“Fund”) that will be established in terms of the envisaged section 166BD of the FSRA, the insertion of which is proposed in the proposed FSLA Act, will be provided by a deposit insurance levy in terms of the envisaged section 166BC, as proposed in the proposed FSLA Act.
- 1.5 The Levies Bill is the money bill that provides for the imposition of levies on supervised entities in order to fund the PA, the FSCA, the Financial Services Tribunal, the Ombud Council, the OPFA, the OFSP and the Corporation.
- 1.6 The Financial Sector and Deposit Insurance Levies (Administration) and Deposit Insurance Premiums Bill (“Administration Bill”) provides for refinements to the FSRA, and in particular Chapter 16 of the FSRA, which deals with fees and the administration of levies, to ensure that the Chapter is appropriately aligned with the Levies Bill and appropriately provides for the administration of levies.
- 1.7 The Administration Bill also provides for the imposition of deposit insurance premiums that will finance the Fund. The premiums will be imposed on members of the Corporation, which are licensed banks, mutual banks, co-operative banks, and branches of foreign banks which conduct business in the Republic. The deposit insurance premiums would help to ensure that holders of covered deposits at a member of the Corporation will have access to their funds; to limit severe financial hardship for depositors; and to limit the exposure of public funds to the cost of a failure of a member of the Corporation.

2. OBJECTIVE OF BILL

- 2.1 The Administration Bill seeks to ensure that the FSRA, and in particular Chapter 16 of the FSRA, will provide for the appropriate and effective administration of the levies that are proposed to be imposed in terms of the Levies Bill.

- 2.2 The Administration Bill further provides for the imposition of deposit insurance premiums in terms of the envisaged section 166BG of the FSRA, as proposed in the proposed FSLA Act. The Administration Bill proposes to amend the envisaged section 166BG and to insert a Schedule 5 in the FSRA. The Administration Bill further seeks to ensure that Chapter 16 of the FSRA provides for the appropriate and effective administration of the deposit insurance premiums.
- 2.3 The Administration Bill proposes to align the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PFA”), and the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (“FAISA”), with the FSRA in respect of the funding of the OPFA and the OFSP.
- 2.4 Finally, the Administration Bill will delete requirements in the Banks Act, 1990 (Act No. 94 of 1990) (“Banks Act”), and the Mutual Banks Act, 1993 (Act No. 124 of 1993) (“Mutual Banks Act”), relating to the requirement to pay licensing fees. The Administration Bill further provides that licence fees will no longer be imposed by the PA in terms of the Banks Act and the Mutual Banks Act. Once Chapter 16 of the FSRA, as proposed in the FSLA Bill and amended in terms of the Administration Bill, is brought into operation, simultaneously with the Levies Bill, fees will be imposed by the financial sector bodies in terms Chapter 16 of the FSRA and not by the Minister of Finance (“Minister”) in terms of regulations.

3. STRUCTURE OF BILL

3.1 Clause 1

This clause provides that words and expressions used in the Administration Bill have the same meaning ascribed to them in the FSRA and the Levies Bill.

3.2 Clause 2

- 3.2.1 This clause provides that the FSCA is responsible for the collection and administration of the financial sector levy and the special levy, referred to in clauses 2 to 8 and 12 of the Levies Bill, read with Schedules 2 to 5 to that Bill, to provide for the funding of the financial sector bodies referred to in paragraphs (b) to (f) of the definition of “financial sector body” in section 1(1) of the Financial Sector Regulation Act. The financial sector levy referred to in clause 4(1)(a) of the Levies Bill, and the special levy referred to in clause 8(2)(a) of the Levies Bill, must be collected and administered by the FSCA and paid to the financial sector bodies in accordance with section 246 of the FSRA.
- 3.2.2 The South African Reserve Bank (“Reserve Bank”) is responsible for the collection and administration of the financial sector levy and the special levy, referred to in clauses 2 to 8 and 12 of the Levies Bill, read with Schedule 1 to that Bill, to provide for the funding of the PA.
- 3.2.3 The Reserve Bank is responsible for the collection on behalf of the Corporation and administration of the deposit insurance levy referred to in clause 9 of the Levies Bill, read with Schedule 6 to that Bill, to provide for the funding of the operations of the Corporation and the administration of the Fund.
- 3.2.4 The financial sector levies referred to in clause 4(1)(b) of the Levies Bill, the special levies referred to in clause 8(2)(b) of that Bill and the deposit insurance levy referred to in clause 9 of that Bill, must be collected and administered by the Reserve Bank in accordance with section 246 of the FSRA.

3.3 *Clause 3*

Clause 3 provides that the Reserve Bank is responsible for the collection on behalf of the Corporation and administration of the deposit insurance premiums imposed in terms of the envisaged section 166BG, as proposed in the proposed FSLA Act, read with the proposed Schedule 5 to the FSRA. The deposit insurance premiums must be collected and administered by the Reserve Bank in accordance with section 246 of the FSRA.

3.4 *Clause 4*

Clause 4 provides that the legislation listed in the Schedule to the Administration Bill are amended to the extent as set out in the Schedule.

3.5 *Clause 5*

This clause provides for the short title and commencement.

3.6 *Schedule*

3.6.1 The Administration Bill proposes the substitution of section 30R(1) of the PFA to provide that the funds of the OPFA consist of the funds contemplated in section 247(1) of the FSRA, and such funds may only be applied in terms of section 247(2) of that Act. The proposed amendment is a consequential amendment in accordance with the Administration Bill's proposed amendments to the FSRA.

3.6.2 The Administration Bill proposes amendments to section 35 of the Banks Act and section 31 of the Mutual Banks Act to remove the requirement that an annual licence fee must be paid by banks and mutual banks, as banks and mutual banks will pay levies to the PA in terms of the Levies Bill.

3.6.3 The Administration Bill further proposes amendments to section 90 of the Banks Act and section 91 of the Mutual Banks Act to remove the power of the Minister to make regulations in relation to fees, as in terms of Chapter 16 of the FSRA, which will be brought into operation with the Levies Bill, the power to set fees will reside with the PA, the FSCA and the other financial sector bodies.

3.6.4 The Administration Bill proposes to amend section 22 of the FAISA in order to align the section with how the OPFA and OFSP will be funded in terms of the Levies Bill and the FSRA.

3.6.5 The Schedule to the Administration Bill provides for the amendment and insertion of certain definitions in section 1(1) of the FSRA.

3.6.6 The Schedule further proposes the deletion of section 58(1)(g) of the FSRA, as the FSCA will not be the sole entity responsible for the collection of levies in terms of the Levies Bill. The Reserve Bank will collect levies that are payable to the PA and deposit insurance levies that are payable to the Corporation.

3.6.7 Section 166BG of the FSRA, the insertion of which is proposed in the proposed FSLA Act, is amended to explicitly provide for the imposition of deposit insurance premiums in accordance with Schedule 5 to the FSRA, the insertion of which is proposed in the Administration Bill.

3.6.8 The Administration Bill proposes to amend section 237 of the FSRA to appropriately refer to the Levies Bill and correctly refer to the imposition and collection of levies imposed in terms of the Levies Bill. Levies referred to in clauses 2 to 8 and clause 12 of the Levies Bill,

read with Schedules 2 to 5 of the Levies Bill, to provide for the funding of the financial sector bodies referred to in paragraphs (b) to (f) of the definition of “financial sector body” in section 1(1) of the Financial Sector Regulation Act, are payable to the FSCA on the dates and in the manner specified by the FSCA in terms of section 242 of the FSRA, or on the date agreed to by the FSCA. Levies referred to in clauses 2 to 8 and clause 12, read with Schedule 1 to the Levies Bill, to provide for the funding of the PA, are payable to the PA through the Reserve Bank on the dates and in the manner specified by the PA in terms of section 242, or on the date agreed to by the PA. Different levies may be imposed for different types or categories of supervised entities in accordance with the Levies Bill.

- 3.6.9 The deposit insurance levy referred to in clauses 9 and 12 of the Levies Bill, read with Schedule 6 to that Bill, and the envisaged section 166BC of the FSRA, as proposed in the proposed FSLA Act, is payable to the Corporation through the Reserve Bank on the dates and in the manner specified by the Corporation in terms of section 242 of the FSRA, or on the date agreed to by the Corporation. The deposit insurance premium referred to in section 166BG, as proposed in the proposed FSLA Act, and Schedule 5 to the FSRA, the insertion of which is proposed in the Administration Bill, is payable to the Corporation through the Reserve Bank on the dates and in the manner specified by the Corporation, or on the date agreed to by the Corporation. The Corporation must publish the premiums that have been collected in the Register and on its website.
- 3.6.10 The Administration Bill proposes a consequential amendment to section 238(1) of the FSRA due to the Bill’s proposed amendments to section 237 of the FSRA in order to appropriately cater for deposit insurance premiums.
- 3.6.11 The Administration Bill proposes amendments to section 239 of the FSRA to appropriately provide for deposit insurance premium proposals, in addition to fees and levies proposals. Section 239(7) of the FSRA is amended by the insertion of paragraph (b), which provides that in respect of levies proposals, the Minister may amend Schedule 5 to the Levies Bill as contemplated in clause 10 of the Levies Bill. The Administration Bill further proposes the insertion of section 239(7A), which provides that in respect of deposit insurance premium proposals by the Corporation, the Minister must approve the proposals for each financial year following the commencement of the section.
- 3.6.12 The Administration Bill proposes amendments to sections 240 to 243 of the FSRA to appropriately provide for deposit insurance premiums.
- 3.6.13 The Administration Bill further proposes an amendment to section 244 of the FSRA to properly address interest arising from the non-payment of levies and deposit insurance premiums.
- 3.6.14 An amendment to section 245 of the FSRA is proposed in the Administration Bill to enable exemptions to be granted by the Corporation in relation to deposit insurance premiums.
- 3.6.15 The Administration Bill further proposes to amend section 246 of the FSRA to provide that levies imposed in accordance with the Levies Bill, which are referred to in section 237(3A)(a) of the FSRA, the insertion of which is proposed in the Administration Bill, and interest accrued on those levies in terms of section 244(4)(a) of the FSRA, must be collected by the FSCA and paid into a bank account designated for that purpose, which is in the name and control of the FSCA. Levies imposed in accordance with the Levies Bill, which are

referred to in section 237(3A)(b) of the FSRA, and interest accrued on those levies in terms of section 244(4)(b) of the FSRA, must be collected by the Reserve Bank and paid into a bank account designated for that purpose, which is in the name and control of the PA. Each financial sector body's allocation of the levies, in terms of clause 12 of the Levies Bill, and interest, must be transferred by the FSCA to the financial sector body's designated account, in accordance with a payment schedule agreed between the financial sector body and the FSCA.

- 3.6.16 Deposit insurance premiums imposed in accordance with the envisaged section 166BG, which are referred to in section 237(3B)(a) of the FSRA and interest accrued on those levies in terms of section 244(5), must be collected by the Reserve Bank and paid into the bank account for the Fund referred to in the envisaged section 166BD(3), as proposed in the proposed FSLA Act.
- 3.6.17 The Administration Bill proposes an amendment to section 247 of the FSRA to appropriately reflect the purposes for which the deposit insurance levies may be applied by the Corporation.
- 3.6.18 Section 248 of the FSRA is amended by the Administration Bill to appropriately address financial management by the Corporation of the deposit insurance levies, as well as the deposit insurance premiums paid into the Fund.
- 3.6.19 The Administration Bill proposes amendments to section 288 of the FSRA to empower the Minister to make regulations in relation to the banking and financial accounting arrangements in relation to the administration of levies, deposit insurance premiums and the Fund.
- 3.6.20 Furthermore, the Administration Bill proposes an amendment to section 301 of the FSRA by the addition of subsection (8), which provides that a determination of fees in terms of a financial sector law remains in force for the purposes of the envisaged Act and that financial sector law. In addition, an aforementioned determination may be amended or revoked in terms of a new determination of fees made by the financial sector body in terms of section 237(2) of the FSRA.
- 3.6.21 The Administration Bill further proposes the insertion of Schedule 5 to the FSRA which lists various deposit insurance premiums.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

- 4.1 The National Treasury has engaged the FSCA, the PA and the Reserve Bank in the development of the Administration Bill.
- 4.2 The Administration Bill was developed in conjunction with the finalisation of the Levies Bill, subsequent to the consultation processes that were undertaken in respect of the Levies Bill. The Administration Bill effects consequential amendments to the FSRA arising from the Levies Bill as finalised.
- 4.3 On 1 September 2020, the Reserve Bank published the funding paper titled "*The deposit insurance funding model and the implications for banks*" for comment, which outlined the funding model proposed for the deposit insurance scheme in the Republic, including details of its premiums and levies. The policy proposals contained in the funding paper were developed subsequent to significant consultation with banks, by considering country-specific characteristics as well as applicable international standards, such as the Core Principles for Effective Deposit Insurance Systems and other guidance issued by the International Association for Deposit Insurers. The funding model and comments received on the funding model, when published

for comment, informed the content of Schedule 5 to the FSRA, as proposed in the Administration Bill, which provides for the formulas for the deposit insurance premiums.

5. FINANCIAL IMPLICATIONS OF BILL

Financial implications for the State:

There are no significant financial implications envisaged for the fiscus.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.
- 7.2 The State Law Advisers and the National Treasury have considered the Administration Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 7.3 A Bill falling within a functional area listed in Schedule 4 to the Constitution must be dealt with in accordance with the procedure set out in section 76 of the Constitution. Schedule 4 lists the functional areas of concurrent national and provincial legislative competence. Schedule 5 to the Constitution lists the functional areas of exclusive provincial legislative competence. Therefore, those areas not falling within Schedule 4 or Schedule 5, fall within the exclusive national legislative competence.
- 7.4 The test for the classification of a Bill, as established in the Constitutional Court judgment of *Tongaone and Others v National Minister for Agriculture and Land Affairs and Others*¹ (“Tongaone judgment”), is that any Bill with provisions which, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule.² The Tongaone judgment therefore laid down the substantial measures test for the tagging of a Bill, which requires one to determine whether, to a substantial extent, the legislation under consideration actually regulates matters falling within Schedule 4 to the Constitution. If so, the Bill must be tagged in terms of section 76 of the Constitution.
- 7.5 As the Administration Bill does not deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we submit that section 44(1)(a)(ii) of the Constitution is applicable with regard to the power of the National Assembly to pass legislation on “any matter”.
- 7.6 It is therefore the opinion of the State Law Advisers and the National Treasury that the Bill must be dealt with in accordance with the legislative procedure outlined in section 75 of the Constitution as it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

1. CCT 100/09 [2010] ZACC 10.

2. *Ibid* paragraph 72.

- 7.7 The State Law Advisers are of the opinion that it is not necessary to refer the Administration Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as the Administration Bill does not contain any provisions which directly affect traditional or Khoi-San communities, or provisions which pertain to customary law or customs of traditional or Khoi-San communities.

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