

REPUBLIC OF SOUTH AFRICA

FINANCIAL MATTERS AMENDMENT 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. 46705 of 12 August 2022)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 20—2022]

ISBN 978-1-4850-0803-3

No. of copies printed 150

- (b) by the substitution for the definition of “Minister” of the following definition:
 “**Minister**” means the Minister [of Social Welfare and Pensions] responsible for finance;”;
- (c) by the insertion after the definition of “Minister” of the following definition:
 “**National Treasury**” means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”; and
- (d) by the deletion of the definition of “Secretary”.

Amendment of section 2 of Act 41 of 1963, as amended by section 1 of Act 86 of 1970, section 2 of Act 97 of 1972, section 1 of Act 97 of 1980, section 1 of Act 106 of 1986, section 1 of Act 89 of 1988 and section 1 of Act 117 of 1990

2. Section 2 of the Associated Institutions Pension Fund Act, 1963, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “Notwithstanding anything to the contrary in any other law contained, the Minister may from time to time, [with the concurrence of the Minister of Finance and] after consultation with the Minister [of National Education] responsible for higher education and training, make regulations providing—”; and
- (b) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
 “(g) provide for the cession to the [Secretary] Director-General on behalf of the fund of any policy of assurance which formed part of the provision made for a member of the technical colleges provident fund or the university institutions provident fund in terms of the regulations governing such fund, if such member elects in terms of the regulations to become a member of and contribute to the fund, and prescribe the conditions subject to which such cession shall take place;”.

Amendment of section 3bis of Act 41 of 1963, as inserted by section 27 of Act 84 of 1964 and amended by section 23 of Act 29 of 1979

3. Section 3bis of the Associated Institutions Pension Fund Act, 1963, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) [Notwithstanding] Notwithstanding anything contained [in subsection (1) or] in any other law—
- (a) any amount which is payable by a member of the fund, at the date of his retirement or discharge—
- (i) to the Government; or
- (ii) to the council in whose service he is at that date; or
- (b) any amount which the Government or such council is liable to pay in respect of such member at that date,
- may be deducted from any benefit payable from the fund to the said member in a lump sum or in such instalments as the [Secretary] Director-General may determine.”.

Amendment of section 4 of Act 41 of 1963, as amended by section 15 of Act 91 of 1967 and section 2 of Act 40 of 1978

4. Section 4 of the Associated Institutions Pension Fund Act, 1963, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may, [after consultation with the Minister of Finance,] by notice in the *Gazette*, declare any institution, organization or body established by or under any law, including any company incorporated in terms of the laws relating to companies, which is not an associated institution, to be such an institution as from a date specified in such notice.”.

Substitution of section 6A of Act 41 of 1963, as amended by section 2 of Act 86 of 1970

5. The following section is hereby substituted for section 6A of the Associated Institutions Pension Fund Act, 1963:

“(1) (a) The Minister may, in writing, delegate any of the powers conferred on him or her by this Act (other than the powers conferred on him by sections 2 and 4) to the **[Secretary] Director-General** or any other officer of the **[Department of Social Welfare and Pensions] National Treasury** and may authorize the **[Secretary] Director-General** or such other officer to perform any of the functions or duties thus entrusted to or imposed on the Minister. 5 10

(b) A delegation in terms of paragraph (a) to the Director-General or an officer of the National Treasury—

- (i) is subject to any limitations or conditions that the Minister may impose;
- (ii) may authorize the Director-General or officer to sub-delegate, in writing, the delegated power, function or duty, to any other officer of the National Treasury; and 15
- (iii) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the function or duty.

(c) The Minister may vary or revoke any decision taken by an official as a result of a delegation, subject to any rights that may have vested as a consequence of the decision. 20

(2) The **[Secretary] Director-General** may[, **with the approval of the Minister,**] delegate to any officer **[in his Department]** of the National Treasury any of the powers conferred on him by this Act and may authorize any such officer to perform any of the functions or duties thus entrusted to or imposed on the **[Secretary] Director-General**, provided that subsection (1)(b) and (c) also apply with the necessary changes in respect of a delegation under this subsection.”. 25

Amendment of section 21 of Act 84 of 1976, as amended by section 10 of Act 26 of 1977 and section 13 of Act 97 of 1980

6. Section 21 of the Military Pensions Act, 1976, is hereby amended by the addition of the following subsection: 30

“(3)(a) The amendment of this Act by sections 2 to 9 of the Financial Matters Amendment Act, 2019 (Act No. 18 of 2019), insofar as it provides for a life partner of a member, is deemed to have come into operation on 27 April 1994.

(b) Any member with a spouse or a deceased spouse or the spouse of a deceased member who, by virtue of paragraph (a), qualifies for a pension, gratuity or allowance in terms of this Act may, within 12 months from the effective date of the Financial Matters Amendment Act, 2022— 35

- (i) register in terms of section 4B of this Act; and
- (ii) submit claims for the period 27 April 1994 up to the date immediately before the effective date of the Financial Matters Amendment Act, 2019.”. 40

Amendment of section 1 of Act 75 of 1979

7. Section 1 of the Temporary Employees Pension Fund Act, 1979, is hereby amended—

(a) by the insertion after the definition of “benefit” of the following definition: 45
 “**‘Director-General’** means the Director-General of the National Treasury;”;

(b) by the substitution for the definition of “Minister” of the following definition: 50
 “**‘Minister’** means the Minister **[of Social Welfare and Pensions]** responsible for finance;”;

(c) by the insertion after the definition of “Minister” of the following definition: 55
 “**‘National Treasury’** means the National Treasury established by section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

(d) by the deletion of the definitions of “Secretary” and “Treasury”. 55

Amendment of section 5 of Act 75 of 1979

8. Section 5 of the Temporary Employees Pension Fund Act, 1979, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) is a member of any group or category of persons approved by the Minister **[with the concurrence of the Minister of Finance]** as a group or category for the purposes of membership of the Fund;”.

Substitution of section 7 of Act 75 of 1979

9. The following section is hereby substituted for section 7 of the Temporary Employees Pension Fund Act, 1979:

“Delegation 10

7. (1) (a) The Minister may delegate to the **[Secretary] Director-General** or any officer **[in the Department of Social Welfare and Pensions]** of the National Treasury any of the powers conferred upon the Minister by this Act, except the power conferred by section 8, and may authorize the **[Secretary] Director-General** or such an officer to perform any of the functions or to carry out any of the duties which are assigned to or imposed upon the Minister by this Act. 15

(b) A delegation in terms of paragraph (a) to the Director-General or an officer of the National Treasury—

- (i) is subject to any limitations or conditions that the Minister may impose; 20
- (ii) may authorize the Director-General or officer to sub-delegate, in writing, the delegated power, function or duty to any other officer of the National Treasury; and
- (iii) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the function or duty. 25

(c) The Minister may vary or revoke any decision taken by an official as a result of a delegation, subject to any rights that may have vested as a consequence of the decision. 30

(2) The **[Secretary] Director-General** may **[with the approval of the Minister]** delegate to any officer **[in that Department]** of the National Treasury any of the powers conferred upon the **[Secretary] Director-General** by this Act and may with such approval authorize any such officer to perform or carry out any function or duty assigned to or imposed upon the **[Secretary] Director-General** by this Act, provided that subsection (1)(b) and (c) also apply with the necessary changes in respect of a delegation under this subsection.”. 35

Amendment of section 8 of Act 75 of 1979, as amended by section 11 of Act 106 of 1986, section 19 of Act 89 of 1988 and section 35 of Act 47 of 1997 40

10. Section 8 of the Temporary Employees Pension Fund Act, 1979, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (i) of the following paragraph:

“(i) provide for the exercise or performance by the **[Secretary, the Treasury] Director-General** or the Minister responsible for **[the Public Service and Administration]** public service and administration, of such powers or functions as the Minister may deem necessary for the achievement of the objects of this Act.”; 45

(b) by the substitution for subsection (3) of the following subsection: 50

“(3) Notwithstanding the provisions of subsections (1) and (2), the regulations made thereunder may provide that any annuity which is payable thereunder may be supplemented by an amount which the Minister may from time to time determine **[in consultation with the Minister of Finance]** in a written notice to the **[Secretary] Director-** 55

General, or that such annuity shall in a specified case not be less than an amount so determined.”; and

(c) by the substitution for subsection (6) of the following subsection:

“(6) Regulations made under this section shall be made by the Minister **[with the concurrence of the Minister of Finance and]** after consultation with the Ministers responsible for **[the Public Service and Administration]** public service and administration, **[Education and higher education and training, [Posts, Telecommunications and Broadcasting]** and communications and digital technologies.”.

Amendment of section 1 of Proclamation 21 of 1996, as amended by section 1 of Act 35 of 2003, section 1 of Act 21 of 2004, section 1 of Act 19 of 2011 and section 53 of Act 11 of 2013

11. Section 1 of the Government Employees Pension Law, 1996, is hereby amended by the insertion after the definition of “approved retirement fund” of the following definition:

“**‘Associated Institutions Pension Fund’** means the fund referred to in section 2(1)(b) of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963);”.

Amendment of section 4 of Proclamation 21 of 1996

12. Section 4 of the Government Employees Pension Law, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Every person who on a date determined by the Minister in terms of section 15(1) is employed in the service of the employer and who immediately before that date was a member of the Temporary Employees Pension Fund or the Associated Institutions Pension Fund, and every person who on that date is a pensioner at that fund who at the time of his or her retirement was employed in the service of the employer, shall with effect from that date be a member or pensioner, as the case may be, of the Fund.”.

Amendment of section 5 of Proclamation 21 of 1996

13. Section 5 of the Government Employees Pension Law, 1996, is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) who is employed under a contract providing for payment of a pension or similar benefit from a source other than the Fund or a previous fund or the Temporary Employees Pension Fund or the Associated Institutions Pension Fund;”.

Substitution of section 15 of Proclamation 21 of 1996

14. The following section is hereby substituted for section 15 of the Government Employees Pension Law, 1996:

“Transfer to Fund of [certain] members and pensioners of [the] Temporary Employees Pension Fund and Associated Institutions Pension Fund”

15. (1) All members and pensioners of the Temporary Employees Pension Fund and the Associated Institutions Pension Fund who are employed in the service of the employer and all pensioners of that Fund who at the time of their retirement were employed in such service shall with effect from a date determined by the Minister become members or pensioners of the Fund.

(2) The Temporary Employees Pension Fund and the Associated Institutions Pension Fund shall, in respect of members and pensioners of that Fund who in terms of subsection (1) become members and pensioners of the Fund, pay to the Fund an amount, whether in cash or in *specie*, equal to the funding percentage of that fund multiplied by the actuarial obligation of that fund in respect of such members or pensioners

on the date determined in terms of subsection (1) in respect of them, plus interest thereon calculated at the bank rate from that date until the date on which the amount is paid to the fund.

(3) For purposes of this section—

- (a) ‘actuarial obligation’ means the obligation of the Temporary Employees Pension Fund and the Associated Institutions Pension Fund in respect of the members or pensioners concerned on the date determined in terms of subsection (1), as calculated by an actuary; 5
- (b) ‘bank rate’ means the rate determined from time to time in terms of section 10(2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); and 10
- (c) ‘funding percentage’ means the market value of the net assets of the Temporary Employees Pension Fund and the Associated Institutions Pension Fund as on the date determined in terms of subsection (1), expressed as a percentage of the calculated aggregate actuarial obligation.”. 15

Substitution of section 16 of Proclamation 21 of 1996

15. The following section is hereby substituted for section 16 of the Government Employees Pension Law, 1996:

“Certain persons to be released from, and to forfeit certain obligations, rights and privileges when becoming members of, Fund 20

16. In any case where a person who is a member or pensioner of a previous fund, the Temporary Employees Pension Fund, the Associated Institutions Pension Fund or an approved retirement fund, becomes a member of the Fund in terms of section 4(3) or (4), or 15 or the rules, as the case may be, such person shall forfeit all rights and privileges in respect of, and shall be released from all obligations towards, the fund in question, except an obligation to pay to the fund in question an amount which was due immediately before the date determined by the Minister or relevant authority in terms of section 14(1) or 15(1) or the rules, as the case may be, in respect of the previous fund, the employees concerned of the Temporary Employees Pension Fund, the Associated Institutions Pension Fund or that approved retirement fund, as the case may be.”. 25 30

Amendment of section 20 of Proclamation 21 of 1996

16. Section 20 of the Government Employees Pension Law, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 35

“(1) Save as is otherwise provided in this Law, no award of a benefit or any increase thereof and no alteration of any condition or condonation of a breach of any condition upon which such benefit is by law earned or to be earned in respect of a pensioner of the Fund, the Temporary Employees Pension Fund, the Associated Institutions Pension Fund or a previous fund, shall be lawful unless the award, increase, alteration or condonation is authorized by an Act of Parliament.”. 40

Amendment of section 30 of Proclamation 21 of 1996

17. Section 30 of the Government Employees Pension Law, 1996, is hereby amended— 45

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

“Protection of rights of members of previous funds [and], Temporary Employees Pension Fund and Associated Institutions Pension Fund”; and

(b) by the substitution for subsection (2) of the following subsection: 50

“(2) The provisions of subsection (1) shall apply mutatis mutandis to a member of the Temporary Employees Pension Fund or the Associated Institutions Pension Fund who becomes a member of the Fund in terms of section 15, and any such application references in subsection (1) to a previous fund and date determined by the Minister in terms of section 55

14(1) shall be construed as references to the Temporary Employees Pension Fund or the Associated Institutions Pension Fund, as the case may be, and the date determined in terms of section 15(1) respectively.”.

Amendment of section 19 of Act 99 of 1997, as amended by section 12 of Act 4 of 2015

5

18. Section 19 of the Financial and Fiscal Commission Act, 1997, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) The Commission must, in accordance with section 4(1)(a) and for a renewable period not exceeding five years at a time, appoint a suitably qualified and experienced person as the chief executive officer, who must also be the accounting officer of [and the Secretary to] the Commission.”.

10

Amendment of section 1 of Act 15 of 2002

19. Section 1 of the Land and Agricultural Development Bank Act, 2002, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister responsible for [agriculture] finance;”.

15

Substitution of section 45 of Act 15 of 2002

20. The following section is hereby substituted for section 45 of the Land and Agricultural Development Bank Act, 2002:

“Business rescue of Bank and compromise

45. (1) The business rescue and compromise provisions of Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008), apply to the Bank, subject to subsections (2) and (3).

20

(2) An order of court for the commencement of business rescue proceedings in terms of section 131 of the Companies Act, 2008, in respect of the Bank, may be granted by a competent court only on application by the Minister or the Board.

25

(3) Liquidation as envisaged in Chapter 6 of the Companies Act, 2008, does not apply to the Bank.”.

Amendment of section 49 of Act 26 of 2005, as substituted by section 17 of Act 5 of 2021

30

21. Section 49 of the Auditing Profession Act, 2005, is hereby amended—

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

“(2) The enforcement committee must furnish a charge sheet to the registered auditor concerned by electronic means [and] or registered mail.”; and

35

(b) by the substitution for subsection (4) of the following subsection:

“(4) If a registered auditor admits guilt to the charge—

(a) the registered auditor is considered to have been found guilty as charged; and

(b) the enforcement committee must, if it believes that the improper conduct of the registered auditor—

(i) does not warrant a sanction contemplated in section 51B(3)(a)(iv) or (v), deal with the matter in accordance with section 51; or

(ii) warrants a sanction contemplated in section 51B(3)(a)(iv) or (v), refer the matter to the disciplinary committee for a hearing on the sanction.”.

45

Substitution of section 23 of Act 5 of 2021

22. The following section is hereby substituted for section 23 of the Auditing Profession Amendment Act, 2021:

50

“Transitional measures

- 23.** (1) If a registered auditor or registered candidate auditor has committed an act of improper conduct before the commencement of this Act and has—
- (a) been charged but the matter has not been concluded before the commencement of this Act; or
 - (b) not been charged before the commencement of this Act,
- the matter must be dealt with in terms of the principal Act, after its amendment by this Act, except that the sanctions applicable at the time of the act of improper conduct must be applied in the case of a guilty finding.
- (2) For purposes of subsection (1), when an admission of guilt process as provided for in section 49(1)(a) of the principal Act, after its amendment by this Act, is followed, the sanctions referred to in section 51(3)(a)(iii) or (iv) of the principal Act, before its amendment by this Act, are not applicable.”

Short title and commencement

- 23.** (1) This Act is called the Financial Matters Amendment Act, 2022.
 (2) This Act takes effect on a date determined by notice in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL MATTERS AMENDMENT BILL, 2022

1. PURPOSE OF BILL

The Financial Matters Amendment Bill (the Bill) proposes amendments to the following Acts:

- The Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963);
- the Military Pensions Act, 1976 (Act No. 84 of 1976);
- the Temporary Employees Pension Fund Act, 1979 (Act No. Act 75 of 1979);
- the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996);
- the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997);
- the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002);
- the Auditing Profession Act, 2005 (Act No. 26 of 2005); and
- the Auditing Profession Amendment Act, 2021 (Act No. 5 of 2021).

2. SUMMARY OF AMENDMENTS

2.1 Associated Institutions Pension Fund Act (clauses 1–5 of the Bill)

- 2.1.1 The proposed amendments in clause 1 of the Bill to section 1 of the Associated Institutions Pension Fund Act, 1963, insert the definition of “Director-General” to mean the “Director-General of National Treasury”, change the definition of “Minister” to refer to the “Minister responsible for finance” and insert the definition of “National Treasury”, as established in terms of section 5 of the Public Finance Management Act, 1999, since these Acts are administered by the Minister of Finance. This clause further deletes the definition of “Secretary”.
- 2.1.2 The proposed amendment in clause 2 of the Bill to section 2(1) of the Associated Institutions Pension Fund Act, 1963, deletes the requirement for concurrence with the Minister of Finance, since the Act now expressly provides that the Minister of Finance is responsible for the administration thereof. The proposed amendment further substitutes the reference to “National Education” with “higher education and training”. The Bill further proposes to delete the reference to “Secretary” to correctly reflect the “Director-General” as head of department in section 2(1)(g) of the Associated Institutions Pension Fund Act, 1963.
- 2.1.3 The proposed amendment in clause 3 of the Bill to section 3*bis* of the Associated Institutions Pension Fund Act, 1963, corrects the spelling of “notwithstanding” and substitutes the reference to “Secretary” with “Director-General”.
- 2.1.4 The proposed amendment in clause 4 of the Bill to section 4 of the Associated Institutions Pension Fund Act, 1963, deletes the requirement of “after consultation with the Minister of Finance”.
- 2.1.5 The proposed amendment in clause 5 of the Bill to section 6A of the Associated Institutions Pension Fund Act, 1963, substitutes the reference to “Secretary” with “Director-General” and further substitutes the reference to the “Department of Social Welfare and Pensions” with a reference to “National Treasury”.

2.2 **Military Pensions Act (clause 6 of Bill)**

Section 21 of the Military Pensions Act, 1976, is proposed, in clause 10 of the Bill, to be amended to provide for the benefits for life partners of members retrospectively, namely from 27 April 1994, when the interim Constitution of 1993 took effect. This will eliminate the discrimination against members in life partner relationships.

2.3 **Temporary Employees Pension Fund Act (clauses 7–10 of Bill)**

- 2.3.1 The proposed amendments in clause 6 of the Bill to the Temporary Employees Pension Fund Act, 1979, insert the definition of “Director-General” to mean the Director-General of National Treasury, change the definition of “Minister” to refer to the “Minister responsible for finance” and insert a definition of “National Treasury”, since the Act is administered by the Minister of Finance, and delete the definition of “Secretary”, which referred to head of the Department of Social Welfare and Pensions at the time.
- 2.3.2 The proposed amendment in clause 7 of the Bill to the Temporary Employees Pension Fund Act, 1979, replaces the requirement of “with the concurrence of the Minister of Finance”.
- 2.3.3 The proposed amendment in clause 8 of the Bill to the Temporary Employees Pension Fund Act, 1979, substitutes the reference to “Secretary” with “Director-General” and substitutes the reference to the “Department of Social Welfare and Pensions” with “National Treasury”.
- 2.3.4 The proposed amendment in clause 9 of the Bill to section 8(2) of the Temporary Employees Pension Fund Act, 1979—
- substitutes, in subsection (2), the reference to “Secretary” with “Director-General”;
 - deletes, in subsection (3), the requirement of “in consultation with the Minister of Finance”;
 - deletes, in subsection (6), the requirement of with the “concurrence of the Minister of Finance”; and
 - substitutes references to the Ministers of National Education and telecommunications and broadcasting with the Ministers responsible for higher education and training and communications and digital technologies”, respectively.

2.4 **Government Employees Pension Law (clauses 11–17 of Bill)**

The proposed amendments in clauses 11 to 17 of the Bill to sections 1, 4, 5, 15, 16, 20 and 30 of the Government Employees Pension Law, 1996, provide for the amalgamation of the Associated Institutions Pension Fund (“AIPF”) into the Government Employees Pension Fund (“GEPF”). This will, among others, entail that the so-called clean-break principle applicable to GEPF members also applies to (former) members of the AIPF. The latter allows a spouse of a member to realise their pension interest immediately upon divorce or dissolution of a customary marriage and not to await the member becoming entitled to his or her pension. The Government Employees Pension Law, 1996, was amended to provide for the clean-break principle following a High Court judgment.

2.5 Financial and Fiscal Commission Act (clause 18 of Bill)

Clause 18 of the Bill proposes to amend section 19 of the Financial and Fiscal Commission Act, 1997, by omitting the provision of Chief Executive Officer (“CEO”) of the Financial and Fiscal Commission to be its Secretary. Excluding this as a function of the CEO, who is also the accounting officer of the Commission, will enhance good corporate governance. Provision for a secretary for the Commission should be discretionary and may be implemented through an appropriate staffing arrangement. Its regulation in legislation is therefore not necessary.

2.6 Land and Agricultural Development Bank Act (clause 19 of Bill)

2.6.1 Clause 19 of the Bill proposes an amendment to section 1 of the Land and Agricultural Development Bank Act, 2002 (“the Land Bank Act”), by amending the definition of “Minister” to refer to the Minister responsible for finance.

2.6.2 Clause 20 of the Bill proposes an amendment to section 45 of the Land Bank Act, to replace the provision for judicial management for the Land and Agriculture Development Bank (“Land Bank”), with business rescue in terms of the Companies Act, 2008.

2.6.3 The Land Bank was established by section 3 of the Land Bank Act and is not incorporated as a company. However, section 45 of the Land Bank Act provides for judicial management of the Land Bank in terms of the Companies Act, 1973. Such judicial management may only be granted by a court on application by the Minister of Finance or the Board of Directors of the Land Bank.

2.6.4 The Companies Act, 2008, repealed most of the Companies Act, 1973, including the provisions relating to judicial management and replaced it with business rescue. Business rescue, as contained in Chapter 6 of the Companies Act, 2008, did not replace, by implication, judicial management, as referenced in section 45 of the Land Bank Act. Therefore, to provide for the application of business rescue provisions of the Companies Act, 2008, section 45 of the Land Bank Act must be amended accordingly.

2.6.5 Section 132(2)(a)(ii) of the Companies Act, 2008, provides that business rescue ends if the proceedings are converted into liquidation proceedings. Section 141(2)(a)(ii) empowers the business rescue practitioner to apply to court for an order placing “the company” (now including the Land Bank) into liquidation. Section 141(3) empowers the court to grant an order applied for by the business rescue practitioner. Section 44 of the Land Bank Act provides that the Bank may not be wound up except by or in terms of an Act of Parliament. Therefore, the Bill proposes that sections relating to liquidation as contemplated in the Companies Act, 2008, should not apply to the Land Bank.

2.7 Auditing Profession Act (clause 21 of Bill)

Section 49 of the Auditing Profession Act, 2005, is proposed to be amended, in clause 21 of the Bill, to adjust the powers of the enforcement committee where an auditor admits guilt. Clause 21 of the Bill proposes that if the enforcement committee is of the view that if the conduct—

- (a) does not warrant a sanction of deregistration or disqualification from registration as an auditor, it must follow an admission of guilt process; or
- (b) warrants such a sanction, it must refer the matter to the disciplinary committee for sanctioning.

2.8 Auditing Profession Amendment Act (clause 22 of Bill)

Clause 22 of the Bill proposes an amendment to section 23 of the Auditing Profession Amendment Act, 2021 (the “Amendment Act”), to provide that acts of alleged improper conduct, not dealt with before the effective date of the Amendment Act, be dealt with in terms of the Auditing Profession Act, 2005 (the “principal Act”), after its amendment by the Amendment Act, with the exception of sanctions. This will entail that the relevant committees, dealing with alleged improper conduct of auditors, are constituted under the principal Act, as amended, and not as it was prior to its amendment by the Amendment Act. The sanctions that may be imposed will remain those permissible before the amendment of the principal Act by the Amendment Act.

2.9 Clause 23 of the Bill provides for the short title and commencement of the Bill.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

- Financial and Fiscal Commission
- Government Pensions Administration Agency
- Land and Agriculture Development Bank
- Independent Regulatory Board for Auditors

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 The amendments to the Military Pensions Act, 1976, will result in additional costs to the State since the benefits of life partners of members will be included under the scope of the Act, effective 1 April 1994. The financial implications will only be known after affected members have submitted claims in respect of life partners.

4.2 The amendments to other Acts in the Bill are not envisaged to have any material financial implications.

5. PARLIAMENTARY PROCEDURE

5.1 The Constitution of the Republic of South Africa, 1996 (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.

5.2 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*”. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence (see paragraphs 70–72 of the judgment). The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

5.3 We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution and found that the Bill does not provide for the

amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary, to consider sections 74 and 77 of the Constitution.

- 5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or KhoiSan communities or customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.

Printed by Creda Communications

ISBN 978-1-4850-0803-3