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28 January 2022

No. 45825

THE PRESIDENCY

No. 789 **28 January 2022**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 23 of 2021: Financial Sector Laws Amendment Act, 2021

MOPRESIDENTE

No. 789 **28 January 2022**

Go itsisiwi fano gore MoPresidente o saennwe Molao o o latelang o o phasalediwang kitso ya botlhe fano:—

Molao 23 wa 2021: Molao wa Thlabololo ya Melao ya Lephata la Ditšhelete, 2021

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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

(English text signed by the President)
(Assented to 25 January 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.
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ACT

To amend—

- the Insolvency Act, 1936, to clarify that the provisions of the Financial Sector Regulation Act, 2017, apply to the liquidation or sequestration of the estate of a designated institution; to exclude dispositions made in case of resolution from the application of the Insolvency Act; to clarify and refine the application of certain provisions of the Insolvency Act;
- the South African Reserve Bank Act, 1989, to provide for the performance of resolution functions by the Reserve Bank;
- the Banks Act, 1990, to exclude banks in resolution from the application of certain provisions; to provide for set-off against any amounts paid by the Corporation for Deposit Insurance; to repeal certain provisions;
- the Mutual Banks Act, 1993, to provide for the issuing of guidance notes and directives by the Prudential Authority; to provide for an offence in the case of non-compliance with a directive; to repeal certain provisions; to exclude a mutual bank in resolution from the application of certain provisions;
- the Competition Act, 1998, to exclude transactions in relation to resolution from the application of certain provisions; and to provide for consultation with the Competition Commission in relation to certain transactions;
- the Financial Institutions (Protection of Funds) Act, 2001, to exclude designated institutions in resolution from the application of certain provisions;
- the Co-operative Banks Act, 2007, so as to repeal certain provisions; and to exclude the application of certain provisions to co-operative banks as designated institutions;
- the Companies Act, 2008, to provide for the winding up of a company in resolution in certain circumstances; to exclude transactions, amalgamations or mergers or arrangements in relation to resolution from the application of certain provisions; to exclude an institution in resolution from the application of a Chapter;
- the Financial Markets Act, 2012, to exclude designated institutions from the application of certain provisions; and to exclude designated institutions in resolution from the application of certain provisions;
- the Financial Sector Regulation Act, 2017, to provide for the establishment of a framework for the resolution of designated institutions to ensure that the impact or potential impact of a failure of a designated institution on financial stability is managed appropriately; to designate the Reserve Bank as the resolution authority; to establish a deposit insurance scheme, including a Corporation for Deposit Insurance and a Deposit Insurance Fund; to provide for co-ordination, co-operation, collaboration and consultation between the

(English text signed by the President)
(Assented to 25 January 2022)

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NTLHAKAKARETISO YA TLHALOSO:

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

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

MOLAO

Go tlhabolola—

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

Corporation for Deposit Insurance and other entities in relation to financial stability and the functions of these entities; to make provision for designated institutions in connection with resolution matters; to further provide for information required to assess a levy; to effect consequential and technical amendments to certain provisions; to accordingly amend the long title and the Arrangement of Sections; and

- the Insurance Act, 2017, to exclude certain insurers from the application of a Chapter; and to provide for matters connected therewith.

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

Insertion of section 22A in Act 24 of 1936

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

“Liquidation of designated institutions

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

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

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

“Transactions on [exchange] market infrastructure”.

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

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

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

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

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

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

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

- *Insurance Act, 2017*, go se akaretse baabainšorensa ba ba rileng mo tirisong ya Kgaolo;

le go laela mabapi le merero e e amanang le ona.

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

Invoeging van artikel 22A in Wet 24 van 1936

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

“Likwidasie van aangewese instellings

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

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

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

“Transaksies op [’n beurs] markinfrastruktuur”.

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

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

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

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

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

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

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