

REPUBLIC OF SOUTH AFRICA

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# FINANCIAL MATTERS AMENDMENT BILL

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*(As presented by the Standing Committee on Finance (National Assembly))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 1B—2019]

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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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## **BILL**

**To amend—**

- the Insolvency Act, 1936, so as to provide for a process when a creditor realizes his or her security in terms of a master agreement and for a power for the Master to deal with disputes raised by the trustee and other creditors regarding preference of that secured creditor;
- the Military Pensions Act, 1976, so as to provide for all categories of spouses and for life partners of members by amending, inserting and deleting certain definitions; and by providing for both genders throughout the Act and regulating the registration of a spouse to qualify for benefits upon the death of a member;
- the Banks Act, 1990, so as to regard national state-owned companies as public companies for purposes of the application of the Banks Act; to determine prerequisites for these companies and their holding companies to qualify to apply for establishment as a bank; and to provide for inconsistencies between the Banks Act and certain other legislation with respect to state-owned companies; and
- the Government Employees Pension Law, 1996, so as to replace the divorce debt approach with a pensionable service reduction approach to adjust the benefit of a member of the Government Employees Pension Fund following a pension interest assigned to a former spouse of the member as result of a decree of divorce or for the dissolution of a customary marriage; and to provide for a transitional measure.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**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 and section 290 of Act 9 of 2017**

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1. 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 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) (including eligible collateral in terms of the applicable standards made under the Financial Sector Regulation Act, 2017 (Act

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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 shall attach to the affidavit submitted in proof of his claim a statement of the proceeds of the realization and of the facts on which he relies for his preference.”;

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

“(10) Whenever a creditor has realized his 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) (including eligible collateral in terms of the applicable standards made under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)), as hereinbefore provided he shall forthwith pay the net proceeds of the realization to the trustee, or if there is no trustee, to the Master and thereafter the creditor shall be entitled to payment, out of such proceeds, of his preferential claim if such claim was proved and admitted as provided by section forty-four and the trustee or the Master is satisfied that the claim was in fact secured by the property so realized. If the trustee disputes the preference, the creditor may either lay before the Master an objection under section one hundred and eleven to the trustee’s account, or apply to court, after notice of motion to the trustee, for an order compelling the trustee to pay him forthwith. Upon such application the court may make such order as to it seems just.”; and

(c) by the insertion after subsection (10) of the following subsections:

“(10A) (a) Whenever a creditor has realized property held as security in respect of claims arising out of a master agreement defined in section 35B(2) (including eligible collateral in terms of the applicable standards under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)), such creditor may retain the proceeds of the realization for the settlement of the secured claim and shall as soon as possible after realization—

(i) give written notice of that fact to the trustee or the Master and provide the trustee or the Master with a certified copy of the master agreement and an affidavit confirming—

(aa) that the master agreement had been entered into;

(bb) the nature and particulars of the claim, including the net amount calculated at the date of sequestration; and

(cc) the nature and particulars of the realized security as proof of the secured claim;

(ii) if the net proceeds of the realization exceed the value of the claim, pay to the trustee or the Master the balance, after payment of those claims, and such amount shall be added to the free residue of the estate in question; and

(iii) if the net proceeds of the realization are less than the value of the claim, the creditor shall be entitled to rank against the estate in respect of the excess as an unsecured creditor.

(b) Upon receipt of the notice submitted under paragraph (a)(i), the trustee or the Master shall notify all creditors at the second meeting of creditors of the realization of the property held as security and inform them of their right to lodge an objection disputing the secured creditor’s preference.

(10B) (a) The trustee or any other creditor may dispute the preference in writing to the Master and shall provide reasons therefor by no later than 14 days of the second meeting of creditors.

(b) The Master shall immediately notify the creditor that has realized the property held as security under a master agreement as contemplated in subsection (10A)(a) of the dispute.

(c) The creditor that has realized the property may lay before the Master an objection and response to the dispute of the preference within 14 days of receipt of the notification contemplated in paragraph (b).

(d) The Master shall make a determination on the dispute of the preference within 21 days of receipt of such objection and may request

any material information from the parties to be furnished in connection with the dispute.

(e) The Master shall examine the documentation submitted in terms of subsection (10A)(a)(i) for the purpose of ascertaining whether the dispute of the preference is well founded.

(f) If the Master is of the opinion that the dispute of the preference in terms of paragraph (a) is well founded, the trustee shall apply to court after notice of motion to the secured creditor for an order to set aside the secured creditor's retention of the net proceeds in terms of subsection (10A)(a), including any accruing interest and the court may upon such application make such order as to it seems just.

(g) For purposes of this subsection, 'well founded' means the Master shall be satisfied that the reasons provided by the trustee or any other creditor reasonably and sufficiently challenge the validity of the documentation submitted in terms of subsection (10A)(a)(i) as proof of the secured claim.

(h) The creditor that has realized the property held in terms of subsection (10A)(a), whether or not the creditor has proved a claim against the estate in terms of subsection (10A)(a)(i), shall, subject to paragraph (i), be liable to contribute not less than what the creditor would have had to contribute if such creditor had proved the claim.

(i) Where the creditor, referred to in paragraph (h), relies for the satisfaction of his claim solely on the proceeds of the property which constitutes his security, he shall not be liable for any costs of sequestration other than the costs specified in section 89(1) and other than costs for which he may be liable under paragraph (a) or (b) of the proviso to section 106."

**Amendment of section 1 of Act 84 of 1976, as amended by section 1 of Act 26 of 1977, section 4 of Act 97 of 1980, section 17 of Act 96 of 1983, section 11 of Act 75 of 1998 and section 8 of Act 21 of 2003**

2. Section 1 of the Military Pensions Act, 1976, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "dependant" of the following definition:

"**'dependant'**, in relation to any member, means his [**wife**] or her spouse or child;"

(b) by the substitution in subsection (1) for the definition of "Director-General" of the following definition:

"**'Director-General'** means the Director-General: [**Health and Welfare**] National Treasury;"

(c) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

"**'Minister'** means the Minister [**of Health and Welfare**] responsible for finance;"

(d) by the insertion in subsection (1) after the definition of "previously pensionable disability" of the following definition:

"**'spouse'**, in relation to any member, means—

(a) a husband or wife in terms of the Marriage Act, 1961 (Act No. 25 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), or the Civil Union Act, 2006 (Act No. 17 of 2006)

(b) a life partner (including a same sex life partner)

(c) a husband or wife according to the tenets of any religion of the member at the date of the member's death;

(d) a person who is the natural parent of a child under the age of 18 years who is regularly maintained by the member; or

(e) a person with whom the member lived together as a husband, wife or life partner for a period of at least five years immediately before the commencement of the member's military services within the meaning of section 2(3);"

(e) by the deletion in subsection (1) of the definition of "widow"; and

(f) by the deletion in subsection (1) of the definition of "wife".

**Amendment of section 3 of Act 84 of 1976, as amended by section 2 of Act 26 of 1977 and section 5 of Act 97 of 1980**

3. Section 3 of the Military Pensions Act, 1976, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) pay pensions to the [widows] spouses, parents or children of deceased members”.

**Amendment of section 4 of Act 84 of 1976, as amended by section 3 of Act 26 of 1977 and section 5 of Act 123 of 1984**

4. Section 4 of the Military Pensions Act, 1976, is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph: 10

“(c) [the widow] a spouse of a deceased member who, immediately prior to his death, was in receipt of a pension in terms of paragraph (b), shall be entitled to such pension with effect from the first day of the month following immediately on the month in which the member died, and such pension shall with effect from the said date be supplemented— 15

(i) in the case of a [widow] spouse of a deceased member who has died as a result of his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he or she would have been entitled in terms of paragraph (a) if the degree of his or her pensionable disability had been determined at one hundred per cent; and 20

(ii) in the case of a [widow] spouse of a deceased member who died of a cause other than pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his or her death”; 25

(b) by the substitution for paragraph (d) of the following paragraph:

“(d) [the widow] a spouse of a deceased member who, on the date of his death, was not in receipt of a pension in terms of paragraph (b), shall be entitled to the pension to which the member would have been entitled in terms of that paragraph if he or she had not died, and the latter pension shall be supplemented— 30

(i) in the case of a [widow] spouse of a deceased member who has died as a result of his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he or she would have been entitled in terms of paragraph (a) if the degree of his or her pensionable disability had been determined at one hundred per cent; and 35 40

(ii) in the case of a [widow] spouse of a deceased member who has died of a cause other than his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his or her death or to which he or she would have been entitled in terms of that paragraph if he had not died”; and 45

(c) by the substitution for paragraph (e) of the following paragraph:

“(e) the children of a deceased member who immediately prior to his or her death was in receipt of a pension in terms of paragraph (a) or who would have been entitled to such pension if he or she had not died and who is not survived by a [widow] spouse or whose [widow] spouse dies after his or her death, shall be entitled to an annual pension which shall be calculated in accordance with formula II”. 50 55