

FINANCIAL MATTERS AMENDMENT BILL [B1-2019]

Briefing to Standing Committee on Finance

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national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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Background

- Bill seeks to amend
 - Insolvency Act, 1936 by ensuring that government's international objectives for enabling over-the-counter (OTC) derivatives transactions with international counterparties (South Africa's compliance with its G-20 commitments) are met
 - Military Pensions Act, 1976 by introducing gender neutrally and recognising various forms of legal marriages for purposes of benefits for all military staff in accordance with right to equality in section 9 of Constitution
 - Banks Act, 1990 to enable qualifying state-owned companies to apply for banking licences subject to executive approval
 - Government Employees Pension Law, 1996 by introducing principle of "service reduction approach" to ensure that member's pension pay-outs to former spouses upon divorce are not converted to debt obligation as is case under current approach
 - Auditing Profession Act, 2005 to enhance regulatory powers of Independent Regulatory Board for Auditors
- Bill was published for comment on 24 August 2018 with closing date of 14 September 2018
- Bill was introduced in Parliament on 31 January 2019

1. Insolvency Act

- To amend the Insolvency Act to ensure that South Africa complies with its G-20 international obligations on exchange of margin in accordance with the 2015 BCBS-IOSCO Margin Rules Framework
- To ensure that collateral exchanged as margin is easily and readily realisable upon default of one of the counterparties to an OTC Derivatives Transaction and is immediately available to the non-defaulting counterparty
- To alleviate the conflict of laws and align the Insolvency Act with the Draft Margin Notice (to be published in 2019)
- Amendment further provides for a process to be followed when a master agreement creditor realizes his/her security in terms of the master agreement and for the Office of the Master to deal with disputes of preference under those agreements

2. Military Pensions Act

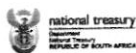
- According to section 9(1) and (3) of Constitution
 - everyone is equal before law and has right to equal protection and benefit of law
 - State may not unfairly discriminate directly or indirectly against anyone on any grounds such as gender, sex and sexual orientation
- Military Pensions Act
 - provides for, among others, pensions and gratuities for certain persons in respect of disability caused or aggravated by military services
 - recognises certain marriages and male gender for purposes of benefits in manner contrary to section 9 of Constitution e.g. section 1 defines "dependant" in relation to member, to be his wife or child. This definition assumes that members are only husbands in heterosexual relationships and furthermore perpetuates discriminatory stereotypes that only heterosexual relationship is acceptable

2. Military Pensions Act (cont..)

- Military Pensions Act disregards fact that military service comprises of both men and women who are in different types of relationships which are treated equally in terms of Constitution and recognised in other laws, such as Marriages Act, 1961 and Civil Union Act, 2006
- Bill proposes, among others, amendment of word "spouse" to include members in different types of relationships and deletion of definition of "wife" and "widow"
- To ensure gender neutrally, Bill also proposes replacing term "widow" for "spouse" and "marital state" for "spousal status"

3. Banks Act

- Under Companies Act, 2008, state-owned companies are no longer classified as public companies
- Currently, Banks Act only allows for public companies to establish a bank. As a result, state-owned companies meeting prudential and other requirements of Banks Act, are unable to apply for authorisation to establish bank
- To limit fiscal risks of state-owned banks which may, in terms of its founding legislation, be able continue to operate despite being not a going concern, it is proposed that only qualifying state-owned companies that are financially sound may apply for authorisation to establish bank
- Bill proposes that
 - state-owned company must first obtain approval of Minister of Finance, acting with concurrence of Minister responsible for state-owned company to apply for authorisation to establish bank
 - assets of company, its holding company and, if applicable, holding company of its holding company, must exceed its liabilities
- Bill limits definition of "public company" in section 1 of Companies Act by excluding enterprise owned by municipality from qualifying to register as bank



3. Banks Act (cont...)

- Major SA state banks and DFIs

Institution	Sector	Funding Model
IDC	Industrial/SMME	Wholesale/Self-Funded
SEFA (Small Enterprise Finance Agency)	SMME and BEE	Government transfer (via IDC)
NEF		Government transfers and self-funded
DBSA (Development Bank of Southern Africa)	Infrastructure	Wholesale/ Self-Funded
NHFC	Housing	Wholesale/Government transfer/ Multilateral and bi-lateral loans
NURCHA		Wholesale/ Government transfers/ Self-Funded
RHLF		Government transfer/ Self-Funded
Land Bank	Rural Development	Wholesale/ Self-Funded
Ithala	Savings/transactional	Government transfers/ Deposits
Postbank		Deposits

