MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SECTOR AND DEPOSIT INSURANCE LEVIES BILL, 2022

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 and the Office of the Ombud for Financial Services Providers ("the statutory ombuds"), 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 specific functions or services that they may perform.

1.4 In terms of the Financial Sector Laws Amendment Bill, 2020 that is currently being processed by Parliament, the funding of the operations of Corporation for Deposit Insurance (“the Corporation”) that will be established in terms of the newly inserted 166AE of the FSRA and the administration of the Deposit Insurance Fund (“the Fund”) that will be established in terms of the newly inserted 166BD of the FSRA, is envisaged to be provided by a deposit insurance levy, in terms of a newly inserted section166BC.

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, and the statutory ombuds, the Corporation ("the financial sector bodies"), as well as the administration of the Fund.

2. OBJECTIVE OF BILL

2.1 Currently, the prudential regulation of banks by the PA is funded from the general revenue of the South African Reserve Bank, which includes revenue generated from the unremunerated cash reserves held by commercial banks with the South African Reserve Bank. The operations of the former Office of the Registrar of Banks were also funded in this manner.

2.2 The regulation and supervision of financial institutions by the former Financial Services Board ("FSB") were funded by levies authorised by section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990) (“FSB Act"). The institutions that the FSB regulated and supervised included financial services providers, pension funds, insurance companies, collective investment schemes (unit trusts), and credit ratings services companies.

2.3 The FSCA and the statutory ombuds are currently funded by levies raised in terms of section 302 of the FSRA, read with regulation 2(6) of the Financial Sector Regulations in terms of that Act, and section 15A of the FSB Act.

2.4 Currently, the Financial Services Tribunal is funded through transitional arrangements provided for in regulation 4(1) of the FSRA, between the PA, the FSCA, and the Financial Intelligence Centre. These arrangements are in place until after the Levies Bill is enacted.

2.5 The Levies Bill provides for the imposition of levies to provide for the funding of the financial sector bodies, and in respect of the deposit insurance levy, for the administration of the Fund, a mechanism to grant exemptions from such levies under certain circumstances and the allocation of amounts levied to the financial sector bodies.

2.6 The accompanying Financial Sector Levies (Administration) and Deposit Insurance Premiums Bill, 2022, and Chapter 16 of the FSRA, as it is proposed to be amended by that Bill, provide for the administration of the levies and for a mechanism to recover these levies and interest on unpaid amounts from the financial institutions that will be regulated.

3. STRUCTURE OF BILL

3.1 *Clause 1* provides for the definition of relevant terms that are used in the Levies Bill, including in the Schedules to the Bill.

3.2 *Clause 2* provides for the imposition of a financial sector levy and a special levy for the funding of the financial sector bodies.

3.3 *Clause 3* provides that a supervised entity is liable to pay the financial sector levy in an amount determined in accordance with clause 4, in respect of each levy year or levy period, in relation to that supervised entity.

3.4 *Clause 4* sets out how the amount of the financial sector levy that is payable by a supervised entity is determined.

3.5 *Clause 5* defines the term "levy year", which is used in the determination of the financial sector levy and special levy.

3.6 *Clause 6* defines the term "levy period", which is used in the determination of the financial sector levy and special levy.

3.7 *Clause 7* specifies how the financial sector levy and special levy must be apportioned if the Levies Bill comes into operation after the commencement of a levy year or a levy period, if a supervised entity becomes licensed after the commencement of a levy year or a levy period, or if the licence of a supervised entity is withdrawn or cancelled during a levy year or a levy period for whatever reason.

3.8 *Clause 8* provides that a supervised entity must pay a special levy, in respect of the first two levy periods immediately following the date of the commencement of this Act, and specifies how the special levy is determined.

3.9 *Clause 9* provides for the imposition of a deposit insurance levy to fund the operations of the Corporation and the administration of the Fund, which is payable by members of the Corporation.

3.10 *Clause 10* empowers the Minister to amend the Schedules to the Levies Bill, in accordance with the requirements and procedures set out in the clause.

3.11 *Clause 11* provides that the FSCA, on application by a supervised entity, may exempt the supervised entity from the payment of a levy or a part of a levy specified in Schedules 2 to 5, or the special levy referred to in clause 8(2)*(a)*, for a specific levy period, if the FSCA is satisfied that the exemption from the levy would satisfy the specified conditions in clause 10(3). The PA is similarly authorised to grant exemptions from the payment of a levy or part of a levy specified in Schedule 1, or the special levy referred to in clause 8(2)*(b)*. The Corporation is authorised to grant exemptions from the payment of a deposit insurance levy specified in Schedule 8. The Financial Sector Conduct Authority, the Prudential Authority and the Corporation must publish in accordance with the requirements under the Financial Sector Regulation Act each exemption that is issued by them.

3.12 *Clause 12* specifies how the FSCA must allocate the financial sector levies and special levies that are paid to and collected by it to the FSCA, the Tribunal, the Ombuds Council, the Office of the Pension Fund Adjudicator, and the Office of the Ombud for Financial Services Providers. The clause also specifies that the financial sector levies and special levies that are payable to the PA and collected through the

South African Reserve Bank are allocated to the Prudential Authority. The deposit insurance levies that are payable to the Corporation and collected through the South African Reserve Bank are allocated to the Corporation.

3.13 *Clause 13* provides for the short title and commencement of the Levies Bill.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

4.1 The National Treasury has engaged the former FSB, the FSCA, and the PA in the development of the Levies Bill.

4.2 On 22 September 2016, the National Treasury made a presentation to the Standing Committee on Finance in the National Assembly, regarding the costing for the implementation of the FSRA, which was being processed by the Committee, and that costing informed the development of the Levies Bill, with significant subsequent refinements being made to the Schedules to the Levies Bill, as budgeting and costing were rigorously and repeatedly assessed.

4.3 On 23 November 2016, a draft version of the Levies Bill was published for comment on the National Treasury website, with a deadline for submission of comments on 31 January 2017. On 6 June 2017, a revised version of the draft Levies Bill was published on the National Treasury website, as well as a document summarising comments received and responses to comments to the earlier draft version of the Levies Bill.

4.4 After that process, significant further work was undertaken in refining the costing and budgeting underpinning the determination of the levy formulas contained in the Schedules to the Levies Bill, and the formulas were refined and rechecked extensively.

4.5 On 17 April 2018, the National Treasury provided a further revised version of the Levies Bill to the Standing Committee on Finance, and published a revised version of the Levies Bill on the National Treasury website.

4.6 Further engagements were undertaken and refinements were made to develop a subsequent version of the Levies Bill, which was published on 24 February 2021 for a further round of comment. Comments received on the Bill were considered in preparing the current version of the Bill.

4.7 On 1 September 2020, the South African Reserve Bank ("SARB") published for comment the paper titled *"The deposit insurance funding model and the implications for banks"*, which outlined the funding model proposed for the deposit insurance scheme in South Africa, 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 ("Core Principles") 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 inform the content Schedule 6 of the Levies Bill.

5. FINANCIAL IMPLICATIONS OF BILL

5.1 Financial implications for the State:

There are no significant financial implications envisaged for the fiscus.

5.2 Financial implications for regulated financial institutions:

The financial implications for regulated financial institutions are detailed in the Socio-Economic Impact Assessment that is tabled along with the Levies Bill.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill is a money bill contemplated in section 77 of the Constitution of the Republic of South Africa, 1996 ("Constitution") and must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of 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 customary law or customs of traditional communities or matters referred to in section 154(2) of the Constitution .