DRAFT MEMORANDUM ON THE OBJECTS OF THE FINANCIAL SECTOR LEVIES BILL, 2018

1. BACKGROUND TO THE BILL

1.1 On 22 August 2017, the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) ("the FSRA") was assented to by the President.

1.2 The operations and functioning of the Prudential Authority, the Financial Sector Authority, the Financial Services Tribunal and the Ombud Council which are established in terms of the Financial Sector Regulation Act will be funded by levies which are imposed on the financial sector, as well as through fees which may be charged in relation to specific functions or services that they may perform.

1.3 The Office of the Pension Fund Adjudicator and the Office of the Financial Services Ombud (collectively referred to as "the statutory ombuds"), are currently funded through the Financial Services Board by levies raised in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990). After the disestablishment of the Financial Services Board in terms of the FSRA, these statutory ombuds will be funded through fees, and through levies that will be raised in terms of the Levies Bill.

1.4 The Levies Bill is the money bill that provides for the imposition of levies on certain supervised entities in order to fund the Prudential Authority, the Financial Sector Authority, the Financial Services Tribunal, the Ombud Council, and the statutory ombuds ("the financial sector bodies").

1.5 It is desired for the Levies Bill to be processed in Parliament and enacted prior to 1 April 2019, so that the funding of the financial sector bodies can commence with the 2019/2020 financial year.

2. OBJECTIVE OF THE BILL.

2.1 The prudential regulation of banks by the South African Reserve Bank is currently funded from the general revenue of the Reserve Bank, which includes revenue generated from the unremunerated cash reserves held by commercial banks with the central bank.

2.2 For all other financial institutions (including long and short-term insurance companies, retirement funds, collective investment schemes, intermediaries, service providers, exchanges, depositories, and credit rating agencies), which are regulated by the Financial Services Board, the costs of regulation are covered by fees and levies which are paid to the Financial Services Board.

2.3 The proposed Levies Bill provides for a mechanism to recover these levies from the financial institutions that will be regulated.

2.4 The Levies Bill provides for the imposition of levies to provide for the funding of the financial sector bodies.

3. STRUCTURE OF THE BILL

3.1 *Clause 1* provides for the definition of relevant terms that are used in the Bill.

3.2 *Clause 2* provides that the Minister of Finance is responsible for the administration of the Levies Bill.

3.3 *Clause 3* provides for the imposition of levies on supervised entities for the funding of the financial sector bodies, which is determined in accordance with the levy formulae set out in—

3.3.1 Schedule 1 in respect of the Prudential Authority;

3.3.2 Schedule 2 in respect of the Financial Sector Conduct Authority;

3.3.3 Schedule 3 in respect of the Tribunal;

3.3.4 Schedule 4 in respect of the Ombud Council; and

3.3.5 Schedule 5 in respect of the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers.

3.4 *Clause 4* provides that a special implementation levy may be payable by supervised entities that are liable to pay a levy in terms of clause 3, in the first two levy periods (1 April to 31 March) following the enactment and commencement of the Bill, to provide for the initial costs associated with the establishment of the Prudential Authority, the Financial Sector Conduct Authority, the Financial Services Tribunal and the Ombud Council. The implementation special levy that may be payable by a supervised entity is a maximum of 15 per cent of the levy that is payable by that supervised entity in terms of clause 3(3)*(a)* to *(d)* (as determined in terms of the formulas in Schedules 1 to 4).

3.5 *Clause 5* empowers a financial sector body may, subject to sections 239 and 240 of the FSRA, annually adjust any amount or percentage of the levy formulae, including the base or maximum amounts, that are set out in the relevant Schedule for a levy that is imposed for the benefit of that financial sector body.

3.6 *Clause 6* provides that a financial sector body may exempt from the payment of a levy or a part of a levy for a specific levy period—

3.6.1 on its own initiative, a type, kind or category of supervised entity; or

3.6.2 on application from a supervised entity, that supervised entity.

3.7 *Clause 7* provides for the short title and commencement of the Bill.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

4.1 The National Treasury has engaged the Financial Services Board and the South African Reserve Bank in the development of the 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 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 intensively.

5. FINANCIAL IMPLICATIONS OF THE 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 that must be dealt with in accordance with the procedure prescribed by section 77 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 Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.