

REPUBLIC OF SOUTH AFRICA

**GENERAL FINANCE LAWS (OFFICIAL BENCHMARKS AND PROCUREMENT)
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill
and prior notice of its introduction published in Government Gazette...)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

BILL

To amend—

- the Financial Sector Regulation Act, 2017, so as to insert a Chapter to provide for the designation of replacement benchmarks; to provide for the effect of replacement benchmarks on legacy contracts; to provide for the limitation of liability arising from the selection or utilisation of a replacement benchmark or a designated adjustment spread; to provide for a consultation process for actions taken by the Reserve Bank in relation to benchmark replacement;
 - the Public Procurement Act, 2024, so as to extend the timeframes within which the Minister must review the implementation of the Act and make a report public and submit such report to Parliament,
- and to provide for matters connected therewith.

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

Insertion of Chapter 2A in Act 9 of 2017

1. The following Chapter is hereby inserted in the Financial Sector Regulation Act, 2017, after Chapter 2:

“CHAPTER 2A

OFFICIAL BENCHMARKS

Interpretation of Chapter

31A. In this Chapter, unless the context indicates otherwise—

‘adjustment spread’ means, in relation to a replacement benchmark, a spread, which may be positive, negative or zero, which is required to apply to the replacement benchmark in order to reduce or eliminate, to the extent reasonably practicable in the relevant circumstances, any economic prejudice or benefit, as applicable, to the parties to a contract as a result of the replacement of the discontinued benchmark with the replacement benchmark;

‘benchmark cessation date’ in relation to a discontinued benchmark, means—

(a) the date on which the benchmark is permanently discontinued or otherwise ceases to be published or provided;

(b) the date specified by the Reserve Bank by notice on its website as the date on which the benchmark will permanently cease to be provided or published; or

(c) the designated benchmark cession date,

whichever is earlier;

‘benchmark conforming changes’ means essential technical, administrative or operational changes to any legacy contract designated and determined by the Reserve Bank in terms of section 31C(2)(c);

‘designated adjustment spread’ in relation to a designated replacement benchmark, means the adjustment spread, including the methodology or formula for determining such adjustment spread, that is to be applied to the designated replacement benchmark as determined and designated by the Reserve Bank in terms of section 31C(2)(b);

‘designated benchmark cessation date’ means a date that is designated and published by the Reserve Bank as the date from which the designated replacement benchmark applies in terms of section 31C(2)(d);

‘designated replacement benchmark’ means an official benchmark that is designated and published by the Reserve Bank as a replacement benchmark to replace a discontinued benchmark in terms of section 31C(2)(a);

‘determining person’ in relation to a legacy contract, means a person with the authority, right or obligation as identified by the legacy contract, or as identified by the law applicable to the legacy contract, to determine a replacement benchmark;

‘discontinued benchmark’ means any official benchmark in respect of which the Reserve Bank—

- (a)** has issued a statement, or has published information by notice on its website, in which it is announced that that benchmark no longer reflects the underlying market or economic reality; and
- (b)** has issued a statement, or has published information by notice on its website, or such statement has been made or such information has been published, in which it is announced that the Reserve Bank will commence the orderly wind-down of that benchmark or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated permanently or indefinitely;

‘fallback provisions’ mean contractual terms specifying a replacement benchmark, or a methodology for determining a replacement benchmark, in the event that an official benchmark is or becomes, or will become, a discontinued benchmark, including any terms relating to the date on which the replacement benchmark becomes effective;

‘legacy contract’ means a contract, financial agreement or financial instrument that, by its terms, uses an official benchmark that has been discontinued;

‘official benchmark’ means a benchmark administered by the Reserve Bank in fulfilment of its responsibility to protect and enhance financial stability; and

‘replacement benchmark’ means an official benchmark that replaces a discontinued benchmark.

Purpose and application of Chapter

31B. (1) The purpose of this Chapter is to—

- (a) enhance the resilience and stability of the financial system by ensuring the continuity of official benchmarks;
 - (b) provide mechanisms to address the risks posed by discontinued benchmarks on legacy contracts through the designation of replacement benchmarks, the status of fallback provisions and benchmark conforming changes.
- (2) This Chapter applies to—
- (a) official benchmarks used in contracts within the financial sector and financial markets in the Republic; and
 - (b) legacy contracts.

Designation of replacement benchmarks

31C. (1) If the Reserve Bank determines that it is necessary to protect and promote the stability and integrity of the financial markets, the Reserve Bank may, by notice published on its website—

- (a) designate one or more replacement benchmarks for a discontinued benchmark;
- (b) determine a designated adjustment spread;
- (c) determine the corresponding essential conforming technical, administrative or operational changes to any legacy contract that are associated with and reasonably necessary for the use or application of the replacement benchmark and, if applicable, the Reserve Bank-designated adjustment spread; or
- (d) determine and designate the date from which the designated replacement benchmark applies.

(2) In designating a designated replacement benchmark, a designated adjustment spread, any benchmark conforming changes or any date from which the designated replacement benchmark applies in terms of subsection (1), the Reserve Bank must, when exercising its powers in terms of subsection (1), take into account—

- (a) the stability and integrity of the financial markets;
- (b) the impact of the designated replacement benchmark, the designated adjustment spread, such benchmark conforming changes or such date from which the designated replacement benchmark applies in terms of subsection (1) on financial customers and market participants;
- (c) any views expressed and any information reported by the financial sector regulators;
- (d) any views and recommendations of the Financial Stability Oversight Committee; and
- (e) any views and recommendations of any working group or subcommittee established by the Financial System Council of Regulators or the Reserve Bank in relation to the replacement or discontinuation of a benchmark.

(3) In exercising its powers in terms of subsection (1), the Reserve Bank may, by notice published on its website—

- (a) identify and designate different categories of legacy contracts;
- (b) determine that different or alternative designated replacement benchmarks, designated adjustment spreads, benchmark conforming changes or Reserve Bank-designated benchmark cessation dates apply to the different categories of legacy contracts identified by the Reserve Bank in terms of paragraph (a); and
- (c) determine and designate a synthetic benchmark, which is a rate created to replicate the characteristics of a discontinued benchmark, as a replacement benchmark including any necessary adjustment spread to maintain economic equivalence to the discontinued benchmark either on a permanent or temporary basis.

Effect of replacement benchmarks on legacy contracts

31D. (1) On the designated benchmark cessation date, the designated replacement benchmark, as adjusted by the designated adjustment spread, is the replacement benchmark for any category or categories of legacy contract identified by the Reserve Bank in terms of section 31C(3)(a) that, after giving effect to subsection (2)—

- (a) contains no fallback provisions; or
- (b) contains fallback provisions that—
 - (i) do not identify a specific replacement benchmark;
 - (ii) do not identify a determining person;
 - (iii) do not provide for a permanent replacement of the discontinued benchmark; or
 - (iv) require consent from third parties for their application that has not be obtained or granted or that has been denied as of the benchmark cessation date.

(2) On the benchmark cessation date, any references in the fallback provisions of a legacy contract to—

- (a) a replacement benchmark that is based in any way on any discontinued benchmark value, except to account for the difference between the discontinued benchmark and the replacement benchmark; or
- (b) a requirement that a person, other than a benchmark administrator, conduct a poll, survey or inquiries for quotes or information concerning interbank lending or deposit rates,

must be disregarded as if not included in the fallback provisions of such legacy contract and is deemed to be without any force or effect.

(3) Subject to subsection (8)(b), a determining person under a legacy contract may—

- (a) select the designated replacement benchmark as the benchmark replacement for a discontinued benchmark under that legacy contract;

(b) utilise the designated adjustment spread as the spread adjustment for the purposes of that legacy contract; or

(c) utilise the benchmark conforming changes for the purposes of that legacy contract.

(4) A selection by a determining person of the designated replacement benchmark pursuant to subsection (3)—

(a) is irrevocable;

(b) must be made by the earlier of the benchmark cessation date and the latest date for selecting a benchmark replacement according to the terms of such legacy contract; and

(c) must be used in any determinations of the benchmark under or in respect of such legacy contract occurring on and after the benchmark cessation date.

(5) If a determining person selects the designated replacement benchmark under subsection (3) but does not select a replacement benchmark by the date specified in subsection (4)(b), then, on the benchmark cessation date, the designated replacement benchmark is the replacement benchmark for such legacy contract.

(6) If the designated replacement benchmark becomes the replacement benchmark for a legacy contract pursuant to subsection (1) or (3), all benchmark conforming changes are deemed included in the legacy contract.

(7) A determining person is not required to obtain consent from any other person prior to the adoption of any benchmark conforming changes.

(8) Despite any other law or legacy contract, neither—

(a) the selection or use of a designated replacement benchmark as a replacement benchmark; nor

(b) the determination, implementation or performance of benchmark conforming changes,

in terms of subsections (1), (3) or (6) will—

(i) impair or affect the right of any person to receive payment, or to affect the amount or timing of such payment under a legacy contract;

(ii) have the effect of discharging or excusing performance under a legacy contract for any reason or claim;

(iii) constitute a basis for the unilateral termination or suspension of performance of a legacy contract;

(iv) constitute a breach of any legacy contract; or

(v) render void or nullify any legacy contract.

(9) Subsection (8) does not affect the rights of financial customers or consumers in terms of any financial sector law or any other law that protects the rights of financial customers or consumers to be timeously notified of the change of the terms of any contract or the change to any rate of interest under any contract.

(10) This Chapter does not—

(a) alter or impair—

- (i) any written agreement specifying that a legacy contract is not subject to this Chapter;
- (ii) any legacy contract that contains fallback provisions that identify a replacement benchmark that is not based in any way on any discontinued benchmark value, except that such legacy contract is subject to subsection (2);
- (iii) any legacy contract subject to subsection (3) as to which a determining person does not elect to use a designated replacement benchmark pursuant to subsection (3), except to the extent that such legacy contract is subject to subsection (2) or subsection (5); or
- (iv) the application to a designated replacement benchmark of any cap, floor, modifier or spread adjustment to which the discontinued benchmark had been subject pursuant to the terms of a legacy contract; or

(b) apply where all parties or the required majority of the parties to a legacy contract have agreed to apply a different replacement benchmark, which is not a discontinued benchmark, to the designated replacement benchmark whether before or after the benchmark cessation date.

Limitation of liability

31E. (1) A person is not liable for, or in respect of, any loss or damage suffered or incurred by any person, arising out of—

- (a) the selection or use of a designated replacement benchmark or a designated adjustment spread;
- (b) subject to section 31D(9), the implementation or determination of benchmark conforming changes,

in each case, after giving effect to section 31D.

(2) Despite subsection (1), any person, including a determining person, remain bound to the terms of a legacy contract that are not affected by this Chapter.

Consultation requirements

31F. (1) The Reserve Bank must, subject to subsection (3), before taking an action in terms of section 31C—

- (a) publish a notice of the action with a statement that—
 - (i) states the reasons for the proposed action; and
 - (ii) includes information relevant to the matter; and

(b) invite any relevant stakeholders concerned to make representations to the Reserve Bank on the matter within a reasonable period specified in the notice, which period must be at least 30 days.

(2) In deciding whether to take the action, the Reserve Bank must take into account all submissions received by the end of the period specified in terms of subsection (1)(b).

(3) If the Reserve Bank determines that compliance with subsection (1) in respect of a proposed action is likely to affect financial stability adversely, or defeat the object of the proposed action, the Reserve Bank may take the action without complying with those subsections.

(4)(a) If the Reserve Bank takes an action to which this section applies without complying with subsection (1), the Reserve Bank must publish a statement setting out the reasons for non-compliance with subsection (1).

(b) Any person concerned may make submissions to the Reserve Bank within one month after publication of the statement.

(c) The Reserve Bank must consider the submissions and, as soon as practicable, publish a further notice stating what action, if any, the Reserve Bank proposes to take on the matter, including whether the Reserve Bank proposes to rescind or revoke the action or to provide concerned persons with restitution.”.

Amendment of Arrangement of Sections of Act 9 of 2017, as amended by section 61 of Act 23 of 2021, by section 4 read with item 19 of the Schedule to Act 12 of 2022 and by section 65 of Act 22 of 2022

2. The Arrangement of Sections of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after Chapter 2 of the following Chapter:

“CHAPTER 2A

OFFICIAL BENCHMARK

31A. Interpretation

31B. Purpose and application

31C. Designation of replacement benchmarks

31D. Effect of replacement benchmarks on legacy contracts

31E. Limitation of liability

31F. Consultation requirements”.

Amendment of section 68 of Act 28 of 2024

3. Section 68 of the Public Procurement Act, 2024, is hereby amended—

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

“(a) within [24] 12 months after this Act [**is first published as an Act in the *Gazette***] takes effect, review the implementation of this Act and the need for amendments to this Act;” and

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

“(c) within [27] 3 months after this Act [**is first published as an Act in the *Gazette***] takes effect, make public a report on the review and submit it to Parliament.”.

Short title and commencement

4. This Act is called the General Finance Laws (Official Benchmarks and Procurement) Amendment Act, 2025, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON OBJECTS OF GENERAL FINANCE LAWS (OFFICIAL BENCHMARKS AND PROCUREMENT) AMENDMENT BILL, 2025

1. INTRODUCTION

- 1.1 The General Finance Laws (Official Benchmarks and Procurement) Amendment Bill, 2025 ('the Bill'), proposes amendments to the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017 – 'the FSR Act') and Public Procurement Act, 2024 (Act No. 28 of 2024).
- 1.2 In respect of the proposed amendments to the FSR Act:
 - 1.2.1 The South African Reserve Bank ('Reserve Bank') contemplates to transition from the Johannesburg Interbank Average Rate ('Jibar') to the South African Rand Overnight Index Average ('ZARONIA') as a benchmark for financial contracts. The transition will affect markets where Jibar is used as a benchmark. These include the loan market, the derivatives market, bonds, securitised products and short-term instruments. In each of these markets, parties may have entered into contracts which reference Jibar as the applicable benchmark against which to calculate the interest payable. These contracts are commonly referred to as 'tough legacy contracts' which often cannot be amended readily, or at all, in anticipation of the cessation of Jibar.
 - 1.2.2 As part of the transition, it is envisaged that not all contracts will be amended to provide for fallback language to ZARONIA ahead of the cessation of Jibar (envisaged to take place in December 2026, subject to this Bill). Therefore, in order to address tough legacy contracts, it is proposed that the FSR Act be amended.
 - 1.2.3 The proposed amendments will enable the Reserve Bank to identify and designate different categories of legacy contracts, determine the replacement benchmarks, determine and designate a synthetic benchmark and adjustment spreads etc.
 - 1.2.4 The proposed amendments will enhance the resilience and stability of the financial markets by ensuring the continuity of official benchmarks and providing for the designation of replacement benchmarks.

- 1.3 The Public Procurement Act is proposed to be amended to extend the periods within which the Minister must review the implementation of the Act and make a report public and submit the report to Parliament.

2. SUMMARY OF BILL

- 2.1 Clause 1 proposes to insert Chapter 2A into the FSR Act to regulate “Official benchmarks” so as to enhance the resilience and stability of the financial system by ensuring the continuity of official benchmarks; to provide for the designation of replacement benchmarks; to provide for the effect of replacement benchmarks on legacy contracts; to provide for the limitation of liability arising from the selection or utilisation of a replacement benchmark or a designated adjustment spread; to provide for a consultation process for actions taken by the Reserve Bank in relation to benchmark replacement.
- 2.2 Clause 2 proposes amendments to the arrangements of sections to insert clauses of Chapter 2A in the FSR Act.
- 2.3 Clause 3 proposes to amend section 68 of the Public Procurement Act to extend the timeframes within which the Minister must review the implementation of the Act and make a report public and submit such report to Parliament.
- .
- 2.4 Clause 4 provides for the short title and commencement of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following organisations have been consulted:

- (a) Reserve Bank;
- (b) National Credit Regulator; and
- (c) Financial Sector Conduct Authority.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution of the Republic of South Africa, 1996 ('the Constitution') regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.
- 5.2 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the "test for determining how a Bill is to be tagged must be broader than that for determining legislative competence'. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence (see paragraphs 70-72 of the judgment). The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.
- 5.3 We have considered the Bill in light of Schedules 4 and 5 to the Constitution and found that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary to consider sections 74 and 77 of the Constitution.
- 5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 77 of the Constitution applies.
- 5.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 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 traditional or Khoi-San

communities or customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.