Financial Sector Laws Amendment Bill to be tabled in Parliament

Cabinet has approved the tabling of the Financial Sector Laws Amendment Bill, 2020, in Parliament, National Treasury has announced.

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The Bill is part of the Twin Peaks reform of the financial regulatory system applicable to the financial sector, and introduces a critical element to the regulatory system on how to deal with a failing bank or other systemically important financial institutions to protect financial stability in a way that reduces reliance on the fiscus.

It will enable South Africa to meet the basic international standards, following the 2008 Global Financial Crisis, as endorsed by G20 countries and outlined in the Financial Services Board (FSB) document, *Key Attributes of Effective Resolution Regimes for Financial Institutions*. The document sets out the international standard for resolution regimes to address the problem of banks that are considered "too big to fail".

The underlying policy approach to resolution is contained in two policy papers, *Strengthening South Africa's Resolution Framework for Financial Institutions* and *Designing a Deposit Insurance Scheme for South Africa*, which were published by National Treasury and the South African Reserve Bank in 2015 and 2017, respectively.

"The first part of the Bill introduces a comprehensive framework for resolving all banks, as well as non-bank systemically important financial institutions that may be ‘too big to fail’. The second part sets out the provisions to introduce, for the first time, an explicit, industry-funded deposit insurance scheme to protect qualifying depositors’ funds up to a specified limit when a bank fails,” Treasury said.

The resolution and deposit insurance framework contained in the Bill has a number of significant policy objectives, which include:

- Public funds will no longer be the default source of funding used to bail out failing banks and other large financial institutions;
- A deposit insurance scheme will be established and managed by the South African Reserve Bank through a newly established Corporation for Deposit Insurance. Losses incurred due to the failure of a financial institution will in the first instance be borne (through bail-in) by shareholders and creditors, who are able to properly assess their investment risks and who had benefited from profits made by the institution as a going concern;
- The South African Reserve Bank will get additional legal tools to ensure that critical services continue and that stability is maintained in the financial system in the event of a significant failure, and
- Following international best practice, a modified creditor hierarchy for financial institutions, falling within the scope of the envisaged framework, is introduced, in terms of which covered depositors will rank as preferred creditors.

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