

Banking and finance law - big changes on the cards

By [Bridgett Majola](#) and [Rui Lopes](#)

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The National Treasury, together with the Prudential Authority and the Financial Sector Conduct Authority, recently published the Financial Sector Laws Amendment Bill of 2018 (the Bill), which was open for public comment until 7 November 2018. The Bill, which has been approved by Cabinet, aims to give effect to proposals contained in the documents: "Strengthening South Africans resolution framework for financial institutions" and "Designing a deposit insurance scheme for South Africa". The Bill will most likely be promulgated during the course of next year, alongside sweeping amendments to the Banks Act, 1990. Together, these will provide some of the biggest amendments to South Africa's banking and financial industry sectors in recent years.



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The amendments in the Bill aim to strengthen the ability of the South African Reserve Bank to manage the orderly winding down or resolution of a financial institution, with minimum disruption to the broader economy and the "social fabric" at large. This disruption in the social fabric is sometimes referred to as "contagion" in the banking and finance sector. Interestingly, these amendments come off the back of news of VBS Bank and the allegations surrounding its mismanagement.

Furthermore, these amendments seek to ensure that depositors' funds will be protected and paid out in a speedily manner. This has been done in order to protect the most vulnerable customers in the event of a financial institution's failure. These amendments will apply to all banks registered in terms of the Banks Act, which includes mutual banks.

The Bill also aims to provide for amendments to the Insolvency Act of 1936, which would result in over-the-counter (OTC) derivative transactions, for which pledged collateral has been realised on the insolvency of the posting party, becoming a statutorily limited form of recourse. The OTC derivatives in these instances will be limited to the extent of the initial margin and/or variation margin posted and no further unsecured claim by the secured party will be permitted.

Should these amendments be made, South Africa will be one step closer to compliance with its G-20 commitments to regulate OTC derivatives in South Africa.

Lastly, proposed amendments to the Banks Act, if promulgated, will allow state-owned entities to obtain licenses to operate as fully fledged banks (something previously not permitted). Currently, the Banks Act only allows public companies to register as a bank or bank controlling company. Up until now, state-owned companies had to obtain numerous exemptions in order to operate as a bank. The proposed amendments to the Banks Act would remove the need for these exemptions and would allow entities such as the Postbank and the Land Bank to register and operate as fully operational banks.

This is an exciting time in the banking and financial services sector. It is hoped that the amendments will be both sustainable and that they will encourage transactions within South Africa, as well as increase the reach of banks and their respective services to members of the public.

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