New financial law aligns SA with global markets

The revised draft of the Financial Matters Amendment Bill contains an update of the South African Insolvency Act, aligning it with the new laws that regulate the trading of over-the-counter (OTC) derivatives.

Bridget King, director, finance & banking at Cliffe Dekker Hofmeyr

“The problem with the current Insolvency legislation is that it was drafted nearly 90 years ago, and the size and extent of the global markets trading in financial instruments has changed significantly since then, making the legislation extremely outdated.

Under the current regulations, a secured creditor who held collateral for its claims was, upon the insolvency of its counterparty, obliged to sell the collateral and then to pay the proceeds from the sale of that collateral over to the liquidator. This would be followed by a lengthy winding up process, during which the secured creditor is itself placed at risk of insolvency, and in the interconnected global markets of today, one such incident could potentially lead to a cascade of failing institutions in its wake," says Bridget King, director, finance & banking at Cliffe Dekker Hofmeyr.

The draft Bill introduces an number of new regulations to ensure that the OTC derivatives markets are safer and more efficient. “The revised draft bill aligns with new regulations that are being introduced in all of the G20 member states, specifically meant to increase the stability of the derivatives market and the banking system as a whole. It is a change that has been welcomed by banks as well as other financial institutions, and it is something that South Africa is in dire need of at this time,” King says.