

SOUTH AFRICAN RESERVE BANK



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FINANCIAL SECTOR REGULATION ACT, 2017 (ACT NO. 9 OF 2017)

INTERPRETATION RULING RELATING TO RESOLUTION ACTION

In terms of section 142 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSR Act”), I, LESETJA KGANYAGO, Governor of the South African Reserve Bank, hereby issue the Interpretation Ruling in the schedule to promote clarity, consistency and certainty in the interpretation and application of subsections 166S(7) and (9) of the FSR Act.

LESETJA KGANYAGO
Governor
South African Reserve Bank

CONFIDENTIAL

SCHEDULE

1. Preamble

Whereas:

- in terms of subsection 166A(1) of the FSR Act, the South African Reserve Bank (“Reserve Bank”) is the resolution authority, and has the resolution functions conferred on it by the FSR Act;
- the Reserve Bank is a financial sector body in relation to its resolution functions;
- in terms of Schedule 2 of the FSR Act, the Reserve Bank is a responsible authority, in so far as it relates to matters within the objectives of the Reserve Bank; and
- clarity is required regarding the treatment of securities lending transactions and repurchase transactions in resolution proceedings.

2. Purpose

This Interpretation Ruling seeks to provide clarity and certainty to financial sector stakeholders on how the Reserve Bank will interpret and apply the provisions of subsection 166S(9) of the FSR Act which outlines exclusions from the resolution actions provided for under subsection 166S(7) of the FSR Act. To be specific, this Interpretation Ruling clarifies how the Reserve Bank will interpret the provisions under subsection 166S(9)(b).

3. The law

The relevant two subsections of the FSR Act reads as follows:

“Subsection 166S(7)

If the Reserve Bank determines that it is necessary to do so for the orderly resolution of a designated institution in resolution, the Reserve Bank may, by written order, do any of the following in relation to an agreement to which the designated institution is a party:

- (a) by notice to a party to the agreement to which an amount is or may become payable by the designated institution, in terms of the agreement or arrangement, reduce the amount that is or may become payable, subject to sections 166Q and 166V; or
- (b) by written notice to all the other parties to the agreement, cancel the agreement.

Subsection 166S(9)

Subsection (7) does not apply to the following:

- (a) an unsettled exchange traded transaction, including a transaction on a licenced exchange;
- (b) a derivative instrument as defined in section 1 of the Financial Markets Act;
- (c) a deposit where the deposit holder is the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984); or
- (d) a transaction in the settlement system between two or more settlement system participants as provided for in the National Payment System Act.”

4. Application of the law

- a) When taking resolution action under subsections 166S(7) of the FSR Act, the Reserve Bank shall interpret its discretion to exclude the ability to reduce or cancel, as provided for in subsections 166S(7)(a) and (b) respectively, transactions concluded under ‘master agreements’ as defined in subsection 35B(2) of the Insolvency Act, 1936 (Act No. 24 of 1936) (“Insolvency Act”).
- b) For the purposes of subsection 166S(9)(b), read with sections 166U and 166V, of the FSR Act, the Reserve Bank interprets the subsection to extend to transactions concluded under a ‘master agreement’ as defined in subsection 35B(2) of the Insolvency Act.

5. Effective Period

This Interpretation Ruling is effective from 01 June 2023 and shall only cease to be effective upon the occurrence of any of the circumstances described in subsections 142(4) or (5) of the FSR Act.