



South African Reserve Bank

**MEMORANDUM OF UNDERSTANDING**

between

**The South African Reserve Bank**

**and**

**The Prudential Authority**

**and**

**The National Credit Regulator ("NCR")**

**Collectively referred to as the "Parties"**

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## **1. Introduction**

- 1.1 Sections 26 and 27 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) requires financial sector regulators, being the Prudential Authority (PA) and the National Credit Regulator (NCR), to co-operate and collaborate with the South African Reserve Bank (SARB), and with each other to maintain, protect and enhance financial stability and to enter into a memorandum of understanding (MoU) to give effect to such co-operation and collaboration.
- 1.2 Sections 76 and 77 of the FSR Act requires the SARB and financial sector regulators to co-operate and collaborate when performing their functions in terms of financial sector laws, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (FIC Act) and the National Credit Act, 2005 (Act No. 34 of 2005) (NCA) and to enter into a written MoU to give effect to such co-operation and collaboration.
- 1.3 The FSR Act generally governs the relations between the PA and the NCR as well as the SARB and the NCR.
- 1.4 This MoU will seek to achieve the required co-operation and collaboration required by the FSR Act.
- 1.5 The Parties record that the provisions of this MoU will not impose any more onerous or other obligations on the Parties than those provided for in the FSR Act or that may reasonably be required for co-operation and collaboration.

## **2. Definitions**

- 2.1 Words and phrases defined in the FSR Act shall have the same meaning in this agreement unless otherwise stated.
- 2.2 Regulatory instrument - as defined in the FSR Act but for the purpose of this MoU includes guidelines and registration conditions issued by the NCR.

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### **3. Purpose**

- 3.1 This MoU records the understanding of the Parties with regard to a relationship of mutual co-operation, support and assistance, and serves to strengthen and formalise the existing relationships between the Parties in areas of financial stability, information sharing, regulation, supervision, inspections, investigations, enforcement and training with regard to the relevant financial sector laws.
- 3.2 The Parties agree to provide mutual assistance and to exchange information, subject to relevant laws, and to endeavour to reach a common understanding on areas where their respective supervisory responsibilities may overlap.
- 3.3 The Parties agree that, in order to assist and facilitate the implementation and execution of this MoU, additional or supplementary processes and procedures between the Parties may be documented in order to prescribe detailed practical steps and/or arrangements between the Parties.

### **4. Statutory co-operation and collaboration in relation to financial stability**

#### **4.1 General co-operation and collaboration on financial stability**

- 4.1.1 In terms of section 26(1) of the FSRA, the PA and the NCR agree to co-operate and collaborate with each other to maintain, protect and enhance financial stability.
- 4.1.2 The NCR agrees in terms of section 26(1) of the FSRA to:
- 4.1.2.1 co-operate and collaborate with the SARB to maintain, protect and enhance financial stability.
- 4.1.2.2 provide such assistance and information to the SARB and the Financial Sector Oversight Committee (FSOC) to maintain or restore financial stability as the SARB or the FSOC may reasonably request.

- 4.1.2.3 promptly report to the SARB any matter of which it becomes aware that poses or may pose a risk to financial stability.
- 4.1.2.4 gather information from, or about, financial institutions that concerns financial stability.
- 4.1.3 The SARB, in terms of section 26(2) of the FSR Act, will take into account any views expressed and any information reported by the NCR.

#### 4.2 Monitoring of risks by the SARB

- 4.2.1 The SARB will, in terms of section 12 of the FSR Act, monitor risks and take steps to mitigate risks to financial stability, including advising the NCR to take steps to mitigate those risks.
- 4.2.2 The NCR hereby undertakes to promptly and reasonably act on a request from the SARB to take steps to mitigate risks to financial stability.

#### 4.3 Systemic events

- 4.3.1 In terms of section 14 of the FSR Act, the Governor may determine systemic events and must notify the NCR of such a determination and of an amendment or revocation of such a determination.
- 4.3.2 The SARB hereby undertakes to as soon as reasonably possible notify the NCR of such a determination or of its amendment or revocation.
- 4.3.3 The NCR hereby, in terms of section 17(a) of the FSR Act, undertakes to promptly provide the SARB with any information in its possession which may be relevant for the SARB to manage a systemic event or the effects thereof.
- 4.3.4 The NCR hereby, in terms of section 17(b) of the FSR Act, undertakes to consult with the SARB before exercising any of its powers in a way that may compromise steps taken or proposed to manage a systemic event or its effects.



4.3.5 In terms of section 18 of the FSR Act the Governor may issue a written directive to the NCR to provide the SARB with information specified in the directive that the Governor or the SARB needs for the determination of systemic events, that is in the possession of the NCR or obtainable by it. The NCR hereby undertakes to promptly and fully comply with such a directive.

4.3.6 In terms of section 18(2), if the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, the Governor may, in writing, direct the NCR to assist the SARB with its functions in relation to systemic events by acting in accordance with the directive when exercising its powers. The directive may include directions aimed at supporting the restructuring, resolution or winding-up of any financial institution; preventing or reducing the spread of risk, weakness or disruption through the financial system or increasing the resilience of the financial institutions to risk, weakness and disruption. The NCR hereby undertakes to promptly and fully comply with such a directive.

#### 4.4 Systemically important financial institutions

4.4.1 The Governor may in terms of section 29(1) of the FSR Act designate a financial institution as a systemically important financial institution (SIFI).

4.4.2 The NCR acknowledges that in terms of section 31 of the FSR Act that none of the following steps may be taken in relation to a SIFI or a SIFI within a financial conglomerate without the concurrence of the SARB:

4.4.2.1 suspending, varying, amending or cancelling a licence issued to that financial institution;

4.4.2.2 adopting a special resolution to wind up the financial institution voluntarily;

4.4.2.3 applying to a court for an order that the financial institution be wound up;

4.4.2.4 appointing an administrator, trustee or curator for the financial institution;

- 4.4.2.5 placing the financial institution under business rescue or adopting a business rescue plan for the financial institution;
- 4.4.2.6 entering into an agreement for amalgamation or merger of the financial institution with a company; and
- 4.4.2.7 entering into a compromise arrangement with creditors of the financial institution.

4.5 The details and structure of the information required in terms of this section will be decided between the SARB and the NCR.

4.6 Communication pertaining to this section must be in writing and will be issued or received by the Governor of the SARB or the Deputy Governor responsible for financial stability, the CEO of the NCR and the CEO of the PA or their delegated officials.

## **5. Regulatory strategies**

5.1 Section 76(1)(c) of the FSR Act requires the Parties to strive to adopt consistent regulatory strategies, including strategies to address regulatory and supervisory challenges.

5.2 The NCR will provide its approved Annual Performance Plan to the PA and SARB within one month after its adoption by Parliament.

5.3 The SARB and PA shall provide their regulatory strategy to the NCR within one month after its approval by the relevant authorities to whom the SARB and PA are accountable.

5.4 The Parties acknowledge that their regulatory strategies and annual performance plans are prepared in accordance with their respective legislation, and the Public Finance Management Act in the case of the NCR.

5.5 The documents to be shared in terms of this clause will be issued or received by the Deputy Governor responsible for financial stability, the CEO of the PA and the CEO of the NCR or the delegated officials.



**6. Statutory co-operation in general**

**6.1 Sections 76(1) of the FSR Act provides that the Parties must co-operate and collaborate when performing their functions in terms of financial sector laws, the NCA, and the FIC Act, and must for this purpose:**

**6.1.1 Generally, assist and support each other in pursuing their objectives in terms of financial sector laws, the FIC Act and the NCA;**

**6.1.2 Inform each other about, and share information about, matters of common interest;**

**6.1.3 Co-ordinate, to the extent appropriate, actions in terms of financial sector laws, FIC Act and the NCA, including in relation to:**

**6.1.3.1 regulatory instruments;**

**6.1.3.2 licensing;**

**6.1.3.3 supervisory on-site inspections and investigations;**

**6.1.3.4 actions to enforce financial sector laws, FIC Act and the NCA;**

**6.1.3.5 information sharing;**

**6.1.3.6 recovery and curatorship; and**

**6.1.3.7 reporting by financial institutions, including statutory reporting and data collection measures.**

**6.1.4 Minimise the duplication of effort and expense, including by establishing and using, where appropriate, common shared databases and other facilities.**



- 6.1.5 Develop, to the extent that is appropriate, consistent policy position, including for the purpose of presentation and negotiation at relevant South African and international forums.
- 6.2 The Parties hereby undertake to promptly and reasonably carry out their statutory duties and obligations by:
- 6.2.1 ensuring that statutory reporting and data collected from financial institutions are shared between the Parties as far as is reasonable and in accordance with applicable law;
- 6.2.2 exploring the viability of shared databases where the financial institutions submit their statutory reports;
- 6.2.3 actively identifying matters at international and regional forums which may be of mutual interest and sharing the information with each other; and
- 6.2.4 agreeing, where there might be an overlap in international attendance, on the representation from South Africa as well as the policy stance of South Africa at the forum.
- 6.2.5 regularly communicate, share and, where possible, agree on policy positions regarding matters of mutual interest
- 6.2.6 presenting a uniform message at international and domestic forums, by way of the individual subject matter experts employed by the Parties agreeing on policy positions prior to international, regional and local engagements.
- 6.3 The areas noted in paragraphs 6.1.3.1 to 6.1.3.7 will covered separately in subsequent paragraphs.
- 6.4 Communication regarding statutory co-operation and collaboration will be issued or received by the Head of the Policy, Statistics and Industry Support Department, the Head of the Financial Stability Department of the SARB and the CEO of the NCR.

## **7. Regulatory instruments**

- 7.1 In terms of sections 98(3) and 99 of the FSR Act, when the PA is the maker of a regulatory instrument or a regulatory instrument that is materially different from the draft thereof it must comply with section 98(1)(a) of the FSR Act and must provide a copy of the documents specified therein to the NCR.
- 7.2 The PA will make regulatory instruments in pursuit of its objective and functions as outlined in the FSR Act and other financial sector laws.
- 7.3 The NCR will issue guidelines and conditions of registrations in pursuit of its objectives and functions as outlined NCA.
- 7.4 The NCR and the PA will seek to avoid making incompatible or inconsistent regulatory instruments, guidelines and conditions of registration. To this end, the party making the regulatory instrument, guidelines, and conditions of registration as the case may be (hereinafter collectively referred to as 'instruments') must, as part of its planning for making such instruments and taking into account the extent of the potential impact of such instruments on the other regulator's objective.
- 7.5 The PA and the NCR will at the earliest reasonable opportunity start consultation with each other and utilise the most effective and convenient form of consultation with the other party, including telephonic, electronic or face-to-face engagement and, where practicable and appropriate, setting up a working group of representatives of both parties, to deliberate on the proposed instrument. The SARB will be kept informed of the progress made with the development of regulatory instruments and may be invited to working groups where necessary.
- 7.6 In terms of section 100(3) of the FSR Act, when the PA is the maker of an urgent regulatory instrument it must comply with sections 100(1) and 100(2) of the FSR Act and must not later than within 30 days of making the instrument submit a report of the consultation process to Parliament and provide a copy of the documents referred to in section 103(1)(a) to the NCR.



7.7 All communication pertaining to regulatory instruments will be issued and received by the Head of the Policy, Statistics and Industry Support Department of the PA, the Head of the Financial Stability Department of the SARB and the CEO of the NCR or their delegated officials.

## **8. Licensing**

8.1 The PA is empowered by the provisions of the FSR Act (Chapter 8) and the provisions of relevant financial sector laws to:

8.1.1 Issue a licence;

8.1.2 Vary, suspend or revoke a licence; and

8.1.3 Grant an exemption.

8.2 The PA and the NCR agree to inform each other and the SARB of licence applications received and outcomes thereof on a quarterly basis. Information sharing on licensing will be limited to financial institutions that are prudentially regulated by the PA.

8.3 The PA and the NCR agree to inform each other and the SARB of variation, suspension or revocation of a licence and the granting of any exemption in terms of a financial institution that is a credit provider.

8.4 The NCR acknowledges the provisions of section 31 of the FSR Act when dealing with licensing or registration of a SIFI.

8.5 Licensing information will be shared electronically by the Head of the Legal Administration Division of the PA, the CEO of the NCR and the Head of the Financial Stability Department of the SARB.



**9. Onsite inspections and investigations**

- 9.1 Under normal circumstances the PA and the NCR will not conduct joint on-site inspections or investigations.
- 9.2 The parties agree to share information on, and notify each other of, investigations and outcomes of investigations only to the extent permitted by their respective legislation.
- 9.3 The PA will conduct the on-site inspections and investigations in terms of the FSR Act.
- 9.4 If during an inspection or investigation the PA or the NCR uncovers a matter that is of interest to the other party or is of mutual interest, such the information will be shared between the Parties.
- 9.5 The information sharing will be governed by the provisions of section 251 of the FSR Act.
- 9.6 Information shared with the PA will also be made available to the SARB.
- 9.7 The SARB may be invited to observe when on-site inspections and investigations are conducted.
- 9.8 All communications pertaining to on-site inspections and investigations must be issued or received by the CEO of the NCR, the Head of Financial Stability of the SARB and the Head of the Enforcement and Resolution Division of the PA or their delegated officials.

**10. Enforcement and administrative action**

- 10.1 The PA's Sanctions and Enforcement Committee makes all recommendations regarding enforcement action to the CEO of the PA unless certain powers have been delegated to the Heads of Department or the Divisional Head responsible for enforcement. The PA effects enforcement action and administration action as provided for in the FSR Act, financial sector law and other relevant legislation.



- 10.2 The NCR wishes to record that:
- 10.2.1 The National Consumer Tribunal makes all decisions regarding enforcement action to be taken in terms of the NCA.
- 10.2.2 The National Consumer Tribunal makes decisions to declare a particular conduct as prohibited conduct, and may cancel registration and impose an administrative fine.
- 10.2.3 The NCR is empowered to issue compliance notices to correct a particular conduct or omission and give limited redress to consumers. The NCR can also deregister a disqualifying registrant.
- 10.3 The Parties agree to notify each other when enforcement and administrative action is taken in relation to a SIFI.
- 10.4 The NCR may in terms of Section 57(2)(c) of the NCA at the request of the PA or with the consent of the PA request the National Consumer Tribunal to cancel the registration of the financial institution as a credit provider.
- 10.5 The Parties acknowledge that administrative fines under the NCA are imposed by the National Consumer Tribunal where the matter is not resolved by negotiation.
- 10.6 The Parties agree to inform each other of administrative fines imposed on financial institutions under their respective legislation.
- 10.7 Nothing in this clause shall be construed or deemed as taking away the regulatory independence of the NCR, PA and SARB to take enforcement actions or impose administrative fines under their respective legislation.
- 10.8 Any communication in relation to this clause will be done through the Head of Enforcement and Resolution Division of the PA and the CEO of the NCR.

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**11. Recovery and resolution**

- 11.1 In terms of section 31 of the FSR Act, no recovery and resolution decision may be taken in relation to a SIFI without the concurrence of the SARB.
- 11.2 The PA is responsible for the recovery framework and curatorship, winding-up or similar proceedings (hereinafter referred to as resolution) of financial institutions for which it is the responsible authority.
- 11.3 The PA and the NCR will co-operate and collaborate at an early stage when dealing with the recovery and failure or likely failure of financial institutions that are credit providers including SIFIs.
- 11.4 The NCR agrees to co-operative and collaborate with the SARB with regard to the recovery and resolution of SIFIs that are credit providers and where necessary the recovery and resolution of financial institutions that are credit providers.
- 11.5 Managing the failure or likely failure of a financial institution will follow the process set out in terms of the relevant sectoral law (for example, the Banks Act No. 94 of 1990) until such time as the SARB is designated as the Resolution Authority. The SARB will then, as Resolution Authority, consider the resolution of all SIFIs and banks.
- 11.6 Communication and consultation on recovery and managing the failure of an entity pursuant to paragraph 11.4 will take place through the Head of Department of the PA responsible for supervision of the entity or the Head of Enforcement and Resolution Division, the CEO of the NCR and the Head of the Financial Stability Department or their delegated officials.



**12. Reporting by financial Institutions, including statutory reporting and data collection measures**

12.1 The Parties acknowledge that they have the statutory mandates to request information from their regulated entities under their respective legislation.

12.2 The Parties agree to share information and documents only on the vetting of directors and other persons responsible for the management and control of the regulated entities.

12.3 The Parties acknowledge that they have the statutory powers to receive data through statutory returns under their respective legislation.

12.4 The NCR undertakes to provide the PA and SARB with copies of published Credit Bureau Monitor and Consumer Credit Market Reports on a quarterly basis.

12.5 The SARB and PA undertake to provide the NCR with their published reports on the credit market on a quarterly basis.

12.6 Nothing in this clause shall be construed or deemed as taking away the regulatory independence of the NCR, PA and SARB to receive data or information from their regulated entities and publish their statistical reports.

12.7 Communication pertaining to reporting by financial institutions must be issued or received by the Head of the Policy, Statistics and Industry Support Department, the Head of the Financial Stability Department of the SARB and the CEO of the NCR or their delegated officials.

**13. Delegation of powers**

13.1 The PA and the NCR agree to use their best endeavours to advise each other and the SARB timeously when a function or duty that may potentially affect or have an impact on the function of either party, has been delegated to another regulator.



13.2 Communications pertaining to delegation of power must be issued or received by the CEO of the PA, the Head of the Financial Stability Department of the SARB and the CEO of the NCR or their delegated officials.

**14. Significant owners**

14.1 The PA will advise the NCR on a quarterly basis on developments regarding the significant owners of financial institutions that are credit providers.

14.2 The NCR, where possible, will share information on the significant owners of financial institutions with PA and the SARB.

14.3 All information pertaining to significant owners will be issued and delivered to the Head of Department of the PA responsible for the relevant financial institution, the Head of the Financial Stability Department and the CEO of the NCR or their delegated officials.

**15. Financial conglomerates**

15.1 In terms of section 160(1) of the FSR Act, the PA may designate members of a group of companies as a financial conglomerate.

15.2 The PA undertakes to share information with the NCR upon such a designation.

15.3 The PA will inform the NCR when there are material changes to the structure of the financial conglomerate and will share information on any material risks that are uncovered through the supervisory approach, to the extent that such changes may affect the objective of the NCR.

15.4 All communications pertaining to financial conglomerates will be issued and received by the Head of the Financial Conglomerate Department and the CEO of the NCR or their delegated officials.



**16. Sharing of information and general support**

- 16.1 The Parties will on an ongoing basis, and with due regard to the provisions of section 251 of the FSR Act share information.
- 16.2 The Parties will proactively identify types of information which, if shared, would enhance appropriate co-operation and collaboration between them, including but not limited to information obtained or in the possession of one Party that would be likely to assist the other Party in administering, supervising or enforcing financial sector laws.
- 16.2.1 With specific reference to paragraph 16.2, the PA will endeavour to notify the NCR in instances where it has identified a significant rise in bad debts and where there are serious concerns in respect of the governance structure of financial institutions regulated by the PA that also fall under the ambit of the NCA.
- 16.3 Any means of communication will be acceptable, but preferably it should be in writing, or subsequent to communication be reduced to writing and may be transmitted by electronic means.
- 16.4 The Parties agree to:
- 16.4.1 establish integrated processes to enable seamless flow of information identified for sharing, including through continuously investigating available cost-effective IT platforms and solutions, subject to appropriate ICT security policies; and
- 16.4.2 consult one another regarding changes or improvements in their business processes and ICT systems that may have a direct impact on information sharing.
- 16.4.3 meet at least quarterly or as is necessary to give effect to this MoU.
- 16.4.4 rotate the venue of the meeting between the offices of the Parties. The meeting host will be responsible for issuing the agenda prior to the meeting and will also take notes of the meeting.



**17. General provisions**

- 17.1 As provided for in subsection 77(3) of the FSR Act, any failure by any Party to comply with this MoU does not affect the validity of any action by that Party in accordance with a financial sector law.
- 17.2 No provision of this MoU shall confer, whether directly or indirectly a right to any person or entity other than the Parties, to obtain any information, demand any action or challenge any act performed in the execution of this MoU.
- 17.3 Differences arising out of the interpretation, operation and implementation of this MoU will be settled amicably through consultation between the Parties.
- 17.4 The operation and implementation of this MoU will be subject to a periodic review by the Parties. Any amendment agreed to by the Parties must be reduced to writing, shall form part hereof and shall come into effect on a date agreed upon among the Parties.
- 17.5 This MoU will come into effect on the date of signature by the last Party thereto.
- 17.6 The termination or replacement of this MoU in accordance with section 77 of the FSR Act will not prejudice the completion, in accordance with its terms, of any on-going projects or activities under this MoU.
- 17.7 In terms of cost efficiencies, the parties agreed to the following:
- 17.7.1 The Parties shall continuously investigate available cost-effective solutions such as cloud-based platforms or block-chain technologies.
- 17.7.2 In initiating projects to implement new systems and or business processes having an impact on any of the business processes identified to enable and support the collaboration, the Parties will consult each other with respect to execution of such projects.

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17.8 Any conflicts or disagreements will be escalated to the CEO of the PA, the CEO of the NCR and the Governor of the SARB for guidance or resolution.

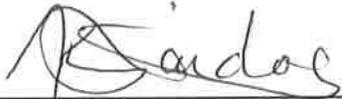
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Signed and agreed to at PRETORIA on this 28<sup>th</sup> day of September 2018.



**Deputy Governor of the South African Reserve Bank Mr FG Groepe**  
**For and on behalf of the South African Reserve Bank**

Signed and agreed to at PRETORIA on this 28 day of SEPTEMBER 2018.



**Deputy Governor of the South African Reserve Bank and Chief Executive Officer of the Prudential Authority Mr Kuben Naldoo**  
**For and on behalf of the Prudential Authority**

Signed and agreed to at MIDRAND on this 29<sup>th</sup> day of SEPTEMBER 2018.



**Chief Executive Officer Ms N Motshegare**  
**For and on behalf of the National Credit Regulator**