



## **MEMORANDUM OF UNDERSTANDING**

**between**

**The South African Reserve Bank**

**and**

**The Financial Sector Conduct Authority**

**Jointly hereinafter referred to as the "Parties"**

**Contents**

1. Introduction..... 3

2. Purpose ..... 3

3. Interpretation and Definitions ..... 4

4. Roles and Responsibilities..... 6

5. Co-operation and collaboration..... 7

6. Minimising the duplication of effort and expense ..... 7

7. Specific areas of co-operation and collaboration ..... 8

8. Resolution of conflicts ..... 10

9. Limitation ..... 11

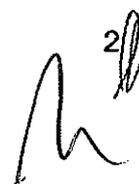
10. Review and Amendment ..... 11

11. Publication of the Memorandum of Understanding..... 11

12. Commencement..... 11

**ANNEXURE A: FSCA and NPSD**

**ANNEXURE B: FSCA and FinStab**



**1. Introduction**

1.1 Section 26, 27, 76 and 77 of the Financial Sector Regulation Act, 2017 (Act No.9 of 2017) (FSR Act) requires the Financial Sector Conduct Authority (FSCA) and the South African Reserve Bank (SARB) to cooperate and collaborate with one another when performing their functions in terms of financial sector laws and on matters relating to financial stability. The SARB and the FSCA must enter into one or more Memoranda of Understanding (MoU) to give effect to such co-operation and collaboration.

1.2 This MoU is entered into between the Parties as so required.

1.3 This MoU acknowledges that the Currency and Exchanges Act, 1933 (Act No. 9 of 1933) (Currency Act) and the National Payment System Act, 1998 (Act No. 78 of 1998) (NPS Act) are not financial sector laws under the FSR Act. The Parties nevertheless agree that this MoU will also apply to co-operation and collaboration between them when performing their respective functions under the Currency Act, the NPS Act and financial sector laws in relation to payment services and services related to the buying and selling of foreign exchange.

**2. Purpose**

2.1. This MoU is intended to:

2.1.1. strengthen and formalise a relationship of trust, good faith, mutual co-operation, support, assistance, information sharing, and appropriate co-ordination of actions in terms of relevant financial sector laws, The Currency Act and the NPS Act between the Parties, on matters relating to financial stability, payment services and services related to the buying and selling of foreign exchange;

2.1.2. enable the Parties to reach a common understanding on areas where their respective regulatory and supervisory objectives and responsibilities may overlap.

2.2. This MoU includes separate co-operation and collaboration arrangements, addressing the regulatory, supervisory and enforcement responsibilities of the Parties in terms of the FSR Act, the NPS Act, the Currency Act and relevant

financial sector laws as set out in this MoU and in the Annexures as listed below:

- 2.2.1. Arrangements between the NPSD and the FSCA in relation to payment services - Annexure A.
- 2.2.2. Arrangements between the FinStab and the FSCA in relation to financial stability matters - Annexure B.

### **3. Interpretation and Definitions**

- 3.1. Words and/or expressions used in this MoU and the annexures thereto that are defined in the FSR Act shall have the same meaning as in the FSR Act, unless the context indicates otherwise.
- 3.2. The singular includes the plural and vice versa.
- 3.3. Any gender includes the other genders.
- 3.4. A person includes a legal or a natural person.
- 3.5. Definitions-In this MoU and in the annexures thereto, unless the context indicates or requires otherwise:
  - 3.5.1. FinStab means the Financial Stability Department of the South African Reserve Bank;
  - 3.5.2. FinSurv means the Financial Surveillance Department of the South African Reserve Bank, authorised to regulate Exchange Control Regulations, issued in terms of section 9 of the Currency Act;
  - 3.5.3. FSCA means the Financial Sector Conduct Authority established in terms of Section 56 of the FSR Act;
  - 3.5.4. FSR Act means the Financial Sector Regulation Act 9 of 2017 (No.9 of 2017);
  - 3.5.5. NPSD means the National Payment System Department of the South African Reserve Bank, authorised to perform the functions in respect of the powers and

duties contemplated in section 10(1)(c) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989) and the NPS Act;

- 3.5.6. Payment Systems Financial Market Infrastructure (payment system FMI) means a multilateral system among participating institutions, including the operator of the system, that is used for the purposes of clearing, settling or recording payments, and includes the following:
- 3.5.6.1. A large-value payment system known as the South African Multiple Option Settlement (SAMOS) system, which is a real-time gross settlement (RTGS) system owned and operated by the SARB (including the participants, instruments, procedures, and rules);
  - 3.5.6.2. A retail payment system, which clears retail transactions, owned and operated by BankservAfrica (including the participants, instruments, procedures, and rules);
  - 3.5.6.3. A retail payment system, which clears retail transactions, owned and operated by VISA (including the participants, instruments, procedures, and rules);
  - 3.5.6.4. A retail payment system, which clears retail transactions, owned and operated by MasterCard Southern Africa (including the participants, instruments, procedures, and rules);
  - 3.5.6.5. A large-value payment system which clears the delivery and payment legs of equities, bonds, and money-market transactions, owned and operated by Strate (including the participants, instruments, procedures, and rules). The SARB is only responsible for the regulation and oversight of the clearing of the payment leg, while the FSCA and Prudential Authority are responsible for the regulation, supervision and oversight of the clearing of the delivery leg;
  - 3.5.6.6. A large-value payment system, known as Continuous Linked Settlement (CLS) system, which settles foreign-exchange transactions in designated currencies, including the South African rand, owned and operated by the CLS Bank International (including the participants, instruments, procedures, and rules); and

- 3.5.6.7. A large-value payment system, known as the Southern African Development Community (SADC) Real Time Gross Settlement System (SADC-RTGS), which settles cross-border transfers that require immediate settlement within SADC, owned by SADC central banks and operated by the SARB (including the participants, instruments, procedures, and rules).
- 3.5.7. Authority means the Prudential Authority, a juristic person within the administration of the SARB, established in terms of section 32 of the FSR Act;
- 3.5.8. Regulatory instruments for the purposes of this MoU include directives issued in terms of the NPS Act, information papers, position papers, guidance notes, interpretation notes and notices issued by the NPSD;
- 3.5.9. SARB means the South African Reserve Bank as referred to in section 223 of the Constitution of the Republic of South Africa and established in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), and includes FinStab, NPSD, FinSurv and any other department thereof.
- 3.6. The annexures to this MoU form an integral part hereof and words and expressions defined in this MoU shall bear, unless the context otherwise requires, the same meaning in such Annexures.

#### **4. Roles and Responsibilities**

- 4.1. The Parties acknowledge their respective roles as specified in the financial sector laws, The Currency Act and the NPS Act.
- 4.2. The Parties agree to execute and fulfil their concomitant legislative roles and responsibilities with utmost good faith and trust.
- 4.3. The Parties further agree to take reasonable steps to endeavour to secure and maintain sufficient and appropriate resources in order to meet their concomitant roles and responsibilities in terms of this MoU and all the relevant legislation and will together explore appropriate funding resources in respect of joint projects.



**5. Co-operation and collaboration**

5.1. The Parties acknowledge their mutual responsibilities to effectively and efficiently co-operate, collaborate, assist each other and exchange information, in the fulfilment of their concomitant legislative responsibilities and obligations as prescribed by the financial sector laws, the NPS Act and the Currency Act, and endeavour to take the necessary steps to achieve such.

5.2. 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 of financial sector laws, The Currency Act and the NPS Act, in furtherance of their respective mandates.

5.3. The Parties will endeavor to take steps to ensure effective communication of information identified in terms of 5.2, including by holding regular meetings, maintaining on-going operational relationships and communicating on an *ad hoc* basis where necessary. Any means of communication will be acceptable, but should preferably be in writing, or subsequent to communication be reduced to writing and may be transmitted by electronic means.

5.4. The Parties agree to share and exchange the relevant information required in terms of this MoU as prescribed in section 251 of the FSR Act to the extent that it may be applicable.

5.5. The details and format of the information required in terms of this section may be agreed in protocols between the SARB and the FSCA.

**6. Minimising the duplication of effort and expense**

6.1. The Parties, through the mechanisms outlined in this MoU and in general, will make every effort to minimise the duplication of effort and expense in the performance of their functions, both as between the Parties and also in relation to any obligations they respectively impose on financial institutions.

7  


**7. Specific areas of co-operation and collaboration**

7.1. Without limiting the generality of this MoU, the Parties agree that the FSCA and NPSD will specifically co-operate and collaborate on the following matters, in the manner as set out in Annexure A:

7.1.1. Annexure A1: Consistent policy positions and regulatory strategies and international representation;

7.1.2. Annexure A2: Regulatory instruments;

7.1.3. Annexure A3: Licensing of payment service providers;

7.1.4. Annexure A4: Supervisory onsite inspections and investigations;

7.1.5. Annexure A5: Enforcement and administrative action;

7.1.6. Annexure A6: Anti-money laundering (AML) and combating the financing of terrorism (CFT).

7.2. Without limiting the generality of this MoU, the Parties agree that the FSCA and FinStab will specifically co-operate and collaborate on the following matters, in the manner as set out in Annexure B:

7.2.1. Statutory co-operation in relation to the SARB's financial stability responsibilities;

7.2.2. Monitoring of financial stability risks;

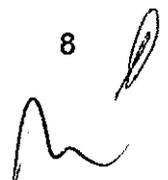
7.2.3. Designation of systemically important financial institutions (SIFI's);

7.2.4. Resolution, winding up and/or similar steps in respect of SIFIs;

7.2.5. Actions that require concurrence;

7.2.6. Information exchange;

7.2.7. General matters.



7.3. **Services related to the buying and selling of foreign exchange** - The Parties agree that the FSCA and FinSurv will specifically co-operate and collaborate in the following manner in respect of any service related to the buying and selling of foreign exchange:

7.3.1. FinSurv is mandated to fulfil its obligations to supervise and enforce compliance with the provisions of the exchange control regulations issued in terms of the Currency Act;

7.3.2. FinSurv and the FSCA will engage each other and collaborate and co-ordinate on overlapping mandates and develop a framework for licensing, regulation and supervision of any service related to the buying and selling of foreign exchange, to the extent that such functions may be applicable to both the FSCA and FinSurv in relation to such services.

7.4. **Observance of international principles for market infrastructures and payment system FMI's** - The Parties agree that the FSCA, NPSD and FinStab will specifically co-operate and co-ordinate arrangements on the assessment of the observance of international principles for market infrastructures and payment system FMI's in the following manner:

7.4.1. The SARB must in terms of Section 12(c) regularly assess the observance of principles in the Republic of South Africa developed by international standard setting bodies for market infrastructures, and report its findings to the financial sector regulators and the Minister, having regard to the circumstances and the context within the Republic. In order to achieve this:

7.4.1.1. This MoU acknowledges that the PA and the FSCA, in terms of another MoU between them, will jointly undertake assessments in accordance with section 12(c) of the FSR Act on the observance by market infrastructures of principles as developed by international standard setting bodies for market infrastructures. To the extent that market infrastructures are assessed by the NPSD, co-ordination shall include the NPSD, in order to submit a coherent and consistent assessment report on a market infrastructure to FinStab for review.

7.4.2. It is acknowledged by the Parties that to the extent that payment system FMI's (the latter being excluded from the definition of market infrastructures in the

9  


FSR Act and thus from the scope of section 12(c)) are assessed by both the FSCA and NPSD, the FSCA and NPSD shall engage and co-ordinate and collaborate in order to submit a coherent and consistent assessment report of payment system FMI's to FinStab for review.

7.4.3. The Parties agree that FinStab will provide feedback to the FSCA and NPSD on the findings of its review of such assessments submitted by them to FinStab.

7.4.4. The Parties agree that FinStab, The FSCA and NPSD will further co-operate and collaborate to ensure that such findings present a coherent and consistent view of the observance of the relevant international principles by market infrastructures and/or payment system FMIs and to ensure an appropriate and consistent response to such findings.

7.5. **Additional or Supplementary Protocols** - The Parties agree that, in order to facilitate the implementation and execution of this MoU, additional or supplementary processes and procedures between the Parties may be documented in Protocols, which will prescribe detailed practical steps and/or arrangements between the Parties. The Protocols will not form part of this MoU.

7.6. **Recovery and Resolution** - The Parties agree to co-operate and collaborate on the recovery and resolution of financial institutions.

## 8. **Resolution of conflicts**

8.1. The Parties will maintain open communication between one another in accordance with the purpose of this MoU and strive to ensure early resolution of any points of disagreement arising out of the interpretation, operation and implementation of this MoU.

8.2. The Parties understand and acknowledge that they have a mutual interest in resolving disagreements in a timely and efficient manner.

8.3. If a disagreement between the Parties cannot be resolved through the mechanisms and principles provided for in this MoU, the Parties will each ensure that appropriate escalation mechanisms are in place within their respective organisations, with the Governor of the SARB and the Commissioner

of the FSCA respectively being the highest levels to which resolution of a disagreement are to be escalated.

**9. Limitation**

9.1. This MoU supersedes and substitutes any prior MoU entered into between the Parties.

9.2. The Parties agree that this MoU does not impose any more onerous or additional obligations on the Parties than those provided for in the financial sector laws, the NPS Act, and The Currency Act, respectively.

9.3. No provision of this MoU shall directly or indirectly confer a right on any person or entity other than the Parties, to obtain any information, to demand any action or to challenge any act performed in the execution of this MoU.

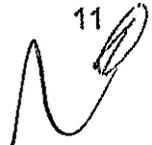
**10. Review and Amendment**

10.1. The terms, operation and implementation of this MoU will be subject to periodic review by the Parties at least once every three years, in accordance with the relevant subsections of the FSR Act.

10.2. Any amendment agreed to by the Parties must be reduced to writing, shall form part of this MoU and shall come into effect on a date agreed upon by the Parties.

**11. Commencement**

11.1. This MoU will come into effect on the date of signature by the last Party thereto or 1 October 2018, whichever is the earlier.

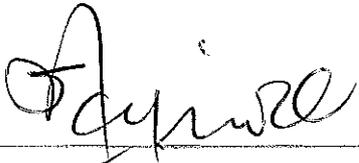
11  


Signed and agreed to at Pretoria on this 25<sup>th</sup> day of September 2018.



**Deputy Governor F E Groepe  
For and on behalf of the SARB**

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



**Commissioner Mr A M Sithole  
For and on behalf of the Financial  
Sector Conduct Authority**



**Co-operation and Collaboration Arrangement**

**The Financial Sector Conduct Authority**

**and**

**The South African Reserve Bank acting through the  
National Payment System Department**

---

In this Co-operation and Collaboration Arrangement, unless the context indicates or requires otherwise, the phrase "Parties to this Annexure" means FSCA and NPSD and "Party" or "Party to this Annexure" means either one of them.

A handwritten signature in black ink, consisting of a stylized 'P' followed by a large, sweeping flourish.

**Contents**

ANNEXURE A: FSCA and NPSD..... 1

Annexure A1: Consistent policy positions, regulatory and supervisory strategies and international representation..... 3

    1. Scope and purpose ..... 3

    2. The Parties to this Annexure agree to the following principles and processes:.... 3

    3. International representation ..... 4

Annexure A2: Regulatory Instruments..... 5

    1. Scope and purpose ..... 5

    2. General co-operation and collaboration regarding regulatory instruments..... 5

Annexure A3: Licensing of payment service providers..... 8

Annexure A4: Supervisory onsite inspections and investigations..... 9

    1. Scope and Purpose..... 9

    2. On-site inspections..... 9

    3. Investigations ..... 10

Annexure A5: Enforcement and administrative action..... 12

Annexure A6: Anti-money laundering (AML) and combating the financing of terrorism (CFT)..... 13

Responsible officials..... 14



**Annexure A1: Consistent policy positions, regulatory and supervisory strategies  
and international representation**

**1. Scope and purpose**

1.1 This section of the MoU outlines the principles to be followed by the Parties to this Annexure to strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges, agreeing on the attendance at relevant international forums and, where appropriate, developing consistent policy positions, including in relation to international forums.

**2. The Parties to this Annexure agree to the following principles and processes**

2.1. Within a reasonable time before the prescribed publication date of any regulatory strategy, or before the publication of any amendment to its regulatory strategy, each Party will provide the other with a draft of the proposed strategy or amendment, requesting comment within one month.

2.2. The Parties to this Annexure will regularly communicate, share and where possible agree on the following matters:

2.2.1. "policy positions", whereby the Parties to this Annexure will discuss policy matters, including policy developments at international standard setting bodies and agree on aligned approaches where appropriate;

2.2.2. "regulatory and supervisory matters", whereby the Parties to this Annexure will discuss matters of mutual interest, including challenges that they are experiencing as well as any co-operation that may be required to overcome such challenges. Such co-operation may include appropriate alignment of standards or other regulatory instruments made by the Parties to this Annexure and potentially the making of joint standards; and

2.2.3. "regulatory strategy progress", whereby the Parties to this Annexure will discuss matters of mutual interest regarding the implementation of regulatory strategies of the FSCA and the strategy documents and reports of the NPSD and any anticipated amendments to their strategies.



**3. International representation**

3.1. The Parties to this Annexure further agree to cooperate on matters of common interest and share information with each other regarding:

3.1.1. Representation on international and regional forums by way of a list of international and regional bodies and forums, continuously updated and shared amongst the Parties to this Annexure.

3.1.2. Collaboration on presenting, where appropriate, a uniform SA policy position at international forums, by way of the individual subject matter experts employed by the Parties to this Annexure collaborating, sharing their respective policy positions and, where appropriate, agreeing on such positions prior to international, regional and local engagements.

3.2. The Parties to this Annexure may develop a data sharing platform to facilitate communication between themselves in the following respect:

3.2.1. Meeting documents such as agendas, minutes, discussion papers, etc. from international, regional, and applicable domestic forums as well as details of the respective representatives of each Party at such forums, will be uploaded on the data platform by relevant staff members from each Party;

3.2.2. Usage of the data platform will be access controlled whereby specific staff members of each Party will be granted access to add and delete information.

3.3. The relevant staff members from each Party will endeavour to meet or otherwise communicate, including through regularly scheduled coordination meetings and ad hoc engagements, to share ideas, notes, and/or positions on matters of common interest.

A handwritten signature in black ink, consisting of a stylized, cursive name.

## **Annexure A2: Regulatory Instruments**

### **1. Scope and purpose**

- 1.1. Chapter 7 of the FSR Act empowers the FSCA to make conduct standards and in terms of section 109(1), the FSCA may not make a standard that imposes requirements on providers of payment services without the concurrence of the SARB.
- 1.2. The NPSD issues the following instruments for participants in the NPS and payment service providers:
  - 1.2.1. Directives in terms of the NPS Act,
  - 1.2.2. Non-binding (yet morally persuasive) position and information papers, notices, guidance notes and interpretative notes ('soft standards').
- 1.3. For purposes of this Annexure, "instruments" includes all of the instruments referred to in 1.1 and 1.2.

### **2. General co-operation and collaboration regarding regulatory instruments**

- 2.1. Each Party to this Annexure will make regulatory instruments in pursuit of its objective and functions as outlined in the FSR Act, the NPS Act and relevant financial sector laws.
- 2.2. The Parties to this Annexure will seek to avoid making incompatible or inconsistent regulatory instruments. To this end, the Party making the regulatory instrument concerned must, as part of its planning and taking into account the extent of the potential impact of the planned instrument on the other Party's objective, consider:
  - 2.2.1. the earliest reasonable opportunity to start consultation with the other Party;
  - 2.2.2. 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 Parties to this Annexure, to deliberate on the proposed instrument, and
  - 2.2.3. initiate consultation with the other Party accordingly.



- 2.3. The Party making the regulatory instrument will ensure that adequate records of the consultation and deliberations between the Parties to this Annexure are maintained and are made available to the other Party. This includes, where a working group as envisaged in 2.2 is set up, ensuring that meetings of the working group are properly documented, administered and minuted in relation to the working group.
- 2.4. Either Party to this Annexure may, with the agreement of the other Party, invite other interested authorities or key stakeholders to participate in any consultation process between them as referred to in 2.2. This does not however in any way limit the maker of a regulatory instrument from engaging in any consultations with any person in addition to any consultations envisaged in this MoU and/or Annexure.
- 2.5. Over and above any prior consultation that may take place between the Parties to this Annexure, the Party who is the maker of a regulatory instrument will provide the other party with a copy of the draft instrument and other consultation documents.
- 2.6. The Party to this Annexure making the regulatory instrument will grant the other Party a reasonable time to provide formal submissions on the draft instrument and the other Party will ensure that it adheres to such timeframe.
- 2.7. The Party to this Annexure making the regulatory instrument will consider any submissions made by the other Party and, where any such submissions are not accepted, provide the other Party with reasons. The Party concerned will make every reasonable effort to provide such reasons before the regulatory instrument is made, in order to provide the other Party with an opportunity to seek to resolve the difference of opinion before the regulatory instrument is made.
- 2.8. Where the Party to this Annexure making the regulatory instrument intends to make an instrument that is materially different from the draft provided to the other Party in accordance with 2.5, the maker will repeat the process set out in 2.6 and 2.7.
- 2.9. The Parties to this Annexure acknowledge that where a regulatory instrument is to be made on an urgent basis as contemplated in section 100 of the FSR Act,

6  


full adherence to the consultation processes set out in this Annexure will not be possible. Nevertheless, the Party making the regulatory instrument concerned will make every reasonable effort to consult with the other Party in relation to the making of the instrument as soon as possible in the circumstances.

A handwritten signature in black ink, appearing to be the initials 'ME' or similar, located in the bottom right corner of the page.

### **Annexure A3: Licensing of payment service providers**

1. In terms of section 10(1)(c) of the South African Reserve Bank Act, 1989 (Act No.90 of 1989), as amended (SARB Act), the SARB is required to 'perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems'. Furthermore, the NPS Act provides for the 'management, administration, operation, regulation and supervision of payment, clearing and settlement systems in South Africa and for connected matters'.
2. The current regulatory framework within the National Payment System will prevail under the regulatory ambit of the NPSD. The NPS Act prescribes the types of participants that may participate in the National Payment System and the NPSD remains responsible for the implementation of the NPS Act framework.
3. The FSR Act extends the mandate of the FSCA to include the licensing and supervision of payment service providers, by including a payment service in the definition of a 'financial service'. Section 111 of the FSR Act places the responsibility for the licensing of payment service providers, to the extent that their activities fall outside the remit of the NPS Act, on the FSCA.
4. The NPSD and FSCA agree to continue working together to identify the role and scope of the FSCA in the National Payment System, including in relation to an appropriate licensing framework for payment service providers. It is envisaged that the agreed scope will be included in relevant legislation developed in the future, such as the proposed Conduct of Financial Institutions Act, the NPS Amendment Act or through consequential amendments of the FSR Act. The Parties to this Annexure agree that this Annexure will be amended to reflect such arrangements at the appropriate time.



8

## **Annexure A4: Supervisory onsite inspections and investigations**

### **1. Scope and Purpose**

- 1.1 Section 132(1) of the FSR Act empowers the FSCA to conduct a supervisory on-site inspection at the business premises of a supervised entity. Section 134(1) of the FSR Act empowers the FSCA to conduct investigations in relation to contravention of a financial sector law for which the FSCA is the responsible authority.
- 1.2 Section 10(1)(c)(i) of the South African Reserve Bank Act, 1989 (Act No. 90, 1989) provides that the SARB may perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise the payment, clearing or settlement systems. Such powers of the SARB are in practice exercised by the NPSD.
- 1.3 This section of the Annexure governs the relationship between the Parties to this Annexure with reference to conducting on-site inspections and investigations of payment service providers.

### **2. On-site inspections**

- 2.1. The Parties to this Annexure agree that the each Party will:
  - 2.1.1. Conduct on-site inspections independently but consult and co-ordinate the timing of the visits to the extent practicable and appropriate.
  - 2.1.2. Share each Party's approved on-site inspection plans (both general and thematic visits) as early as reasonably practicable, to enable the Parties to this Annexure to co-ordinate and for information sharing purposes.
  - 2.1.3. Consult with the other Party, where there are overlapping concerns or if the nature of the situation requires it, to decide whether or not to do a joint visit.
  - 2.1.4. Notify the other Party when material concerns are picked up that could result in supervisory or regulatory action.
  - 2.1.5. Notify the other Party if material concerns relating to the other Party's object are picked up.



2.1.6. Share information and documentation related to the on-site inspection.

### 3. Investigations

3.1. The Parties to this Annexure agree that each Party will conduct their investigations independently of one another, but with the following courtesies in mind:

3.1.1. The investigating Party will inform the other Party of any investigation, at commencement. Such notice shall include a short summary of the scope of the investigation.

3.1.2. The other Party will inform the investigating Party in writing if it requires updates (including a final report) on the investigation. If no such notice is given, it will be assumed that the other Party does not require to be updated.

3.1.3. In the event of a Party requiring documentation, information or assistance during an investigation, the requesting Party shall communicate the request in writing to a person or persons identified at the other Party to deal with such requests.

3.1.4. The requested Party shall take all reasonable steps to assist the requesting Party, and shall do so within a reasonable time frame, taking into account the nature of the information requested and the level of the urgency. The requested Party shall provide a full exchange of information, and bring to the requesting Party any additional information that it deems to be relevant or helpful to the investigation.

3.1.5. When providing the information or documentation, the requested Party shall indicate whether the information or documentation may be utilised for investigative, regulatory action and or enforcement action, without further permission, or whether such further permission should be obtained. This includes proper disclosure in the normal course and scope of the supervisory functions of the requesting Party.

3.1.6. If the requested Party is not in possession of the requested information but is able to obtain such information, the requested Party shall do so.

10  


3.1.7. If the Parties are of the view, that in any particular matter it will be effective and advantageous to conduct a joint investigation, they may agree to do so. In such instance, it is incumbent on the staff members of both Parties to this Annexure to conduct the investigation in a cooperative fashion with due regard to the staff members and objective of the other Party.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of a series of connected loops and lines.

### **Annexure A5: Enforcement and administrative action**

1. The Parties to this Annexure agree to collaborate and coordinate in the event of enforcement and administrative actions concerning payment service providers as provided for in the FSR Act and NPS Act.
2. The Parties to this Annexure agree to share information with each other on the following:
  - 2.1. Regulatory instruments: Prior to them being made public or shared with the payment service providers;
  - 2.2. Directives issued under the NPS Act and FSR Act: After the consultation requirements have been met but before a final decision to issue a directive is taken;
  - 2.3. Enforceable undertakings: Before acceptance thereof;
  - 2.4. Court orders: Prior to the issue of any process for obtaining such orders;
  - 2.5. Leniency agreements: After the conclusion thereof irrespective of whether or not the agreement is published.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of a large initial letter followed by a series of loops and a final flourish.

**Annexure A6: Anti-money laundering (AML) and combating the financing of terrorism (CFT)**

1. The NPSD is and will continue to be the supervisory body for the National Payment System as designated in terms of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (FIC Act). The NPSD is mandated to fulfil its obligation to supervise and enforce compliance with the provisions of the FIC Act or any order, determination or directive made in terms thereof, by accountable institutions regulated or supervised by the NPSD.
2. The Financial Intelligence Centre (FIC) and SARB have entered into an MOU regulating matters of common interest, mutual co-operation, collaboration, assistance and exchange of information, in the fulfilment of their concomitant legislative responsibilities and obligations in terms of the financial sector legislation, including supervision and enforcement responsibilities in terms of the FIC Act and/or the financial sector legislation.
3. Furthermore, the NPSD and FSCA agree to collaborate and coordinate on AML and CFT matters for payment service providers where appropriate.

### **Responsible officials**

1. The responsible officials from each Party to this Annexure accountable for ensuring implementation of this Annexure A are as follows:
  - 1.1. For the NPSD: The Head of the Policy and Regulation Unit, Oversight Division.
  - 1.2. For the FSCA: The Divisional Executive: Regulatory Policy.
2. Each Party may change the responsible officials noted above at any time and will notify any such change to the other Party as soon as practicable.
3. The responsible officials will, through a Protocol between the Parties, identify specific staff members to be responsible for the performance of specific functions in terms of this Annexure.

14 

**Co-operation and Collaboration Arrangement**

**The Financial Sector Conduct Authority**

**and**

**The South African Reserve Bank acting through the  
Financial Stability Department**

---

A handwritten signature in black ink, consisting of a stylized capital letter 'P' followed by a horizontal line and a small flourish.

## **Annexure B: Financial stability matters**

In this Co-operation and Collaboration arrangement, unless the context indicates or requires otherwise, the phrase "Parties to this Annexure" means the FSCA and FinStab and "Party" means either one of them.

### **1. Statutory co-operation in relation to the SARB's financial stability responsibilities**

1.1. In terms of section 26(1) of the FSR Act, the FSCA must:

1.1.1. co-operate and collaborate with the SARB to maintain, protect and enhance financial stability;

1.1.2. provide such assistance and information to the SARB to maintain or restore financial stability as the SARB and the Financial Stability Oversight Committee (FSOC) as the SARB and/or FSOC may reasonably request;

1.1.3. promptly report to the SARB any matter of which they become aware that poses or may pose a risk to financial stability; and

1.1.4. gather information from, or about, financial institutions that concerns financial stability.

1.2. In terms of section 26(2) of the FSR Act, the SARB must when exercising its powers under the FSR Act in relation to financial stability, take into account any views expressed and any information reported by the FSCA.

### **2. Monitoring of financial stability risks**

2.1. In terms of section 12 (a) and (b) of the FSR Act, the SARB must monitor risks to financial stability and take steps to mitigate risks to financial stability, including advising the FSCA of the steps to take to mitigate those risks.

- 2.1.1. When the SARB determines that risks to financial stability are elevated, it will in terms section 12 (b) advise the FSCA in writing of steps to take in the domain of the FSCA to address those risks.
- 2.1.2. The FSCA will take into account the steps recommended by the SARB and will consider the best ways to implement such steps and in return report to the SARB in writing on progress made on such implementation.
- 2.1.3. The FSCA will advise the SARB of any risks that it has become aware of that may pose a risk to financial stability.
- 2.1.4. The SARB agrees to consider such proposals and promptly report back its decision, with reasons, to the FSCA.

### **3. Determination and management of systemic events**

- 3.1. The Governor may in terms of section 14 make a determination whether a systemic event has occurred or is imminent and, in terms of section 14 (6), the SARB must notify the financial sector regulators of a determination in terms of this section, and of an amendment or revocation of such a determination.
  - 3.1.1. The SARB undertakes to promptly notify the Commissioner of the FSCA, in writing, whether a systemic event has occurred or is imminent, and is amended or revoked.
  - 3.1.2. The FSCA will acknowledge receipt of such notifications.
- 3.2. If the Governor has in terms of section 14(4) determined that a systemic event has occurred or is imminent, the FSCA must in terms of section 17 (a) provide to the SARB, any information in the FSCA's possession which may be relevant for the SARB to manage the systemic event or the effects of the systemic event and in terms of section 17(b) consult with the SARB, before exercising any powers in a way that may compromise steps taken or proposed to manage the systemic event or the effects thereof. In addition, the Governor may in terms of section 18, in writing, direct the FSCA 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, curatorship 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.

3.2.1. The SARB undertakes to issue such a directive in writing to the Commissioner of the FSCA when necessary and will specify the details of information requested in terms of such directives.

3.2.2. The FSCA hereby undertakes to promptly and reasonably carry out their duties and obligations in terms of such directives and report back to the SARB in writing on steps the FSCA has taken in this regard.

3.2.3. The FSCA 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 the systemic event or the effects thereof.

#### **4. Designation of systemically important financial institutions**

4.1. Section 29 of the FSR Act provides for the designation of systemically important financial institutions. The FSCA agrees to provide advice to the SARB in relation to making determinations whether a financial institution should be designated a SIFI.

4.2. The FSCA will notify and engage with the FinStab on a financial institution that may be designated as a SIFI, but is not yet designated as such. The SARB agrees that the FinStab will consider such proposals and promptly report back its decision to the FSCA, with reasons.

**5. Resolution, winding up and/or similar steps in respect of SIFIs**

- 5.1. In terms of section 31 of the FSR Act, no recovery and resolution decision referred to in that section may be taken in relation to a systemically important financial institution (SIFI) without the concurrence of the SARB.
- 5.1.1. The FSCA undertakes to promptly obtain the concurrence of the SARB in terms of section 31(1)(a) and section 126(1)(b) of the FSR Act before suspending, varying, amending or cancelling a licence issued to a SIFI or a SIFI within a financial conglomerate.
- 5.1.2. The Parties to this Annexure agree that they will cooperate and collaborate at an early stage when dealing with the resolution of SIFIs.
- 5.1.3. The Parties to this Annexure will invite each other to meetings relating to the resolution, or which may result in the resolution, of SIFIs.
- 5.1.4. 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).

**6. Actions that require concurrence**

- 6.1. Concurrence of the SARB is required in respect of the following actions taken by the FSCA under a financial sector law for which the FSCA is the responsible authority:
- 6.1.1. In respect of a SIFI, issuing, varying, suspending, or revoking a licence;
- 6.1.2. making of a standard contemplated in section 109(2), aimed at assisting in maintaining financial stability;
- 6.1.3. issuing a directive in terms of Section 144(1)(d)(iv) read with section 144 (4) of FSR Act;

- 6.1.4. In respect of an eligible financial institution that is a market infrastructure, granting of an approval to significant ownership arrangements in terms of section 158(2) read with section 158(8); and
- 6.1.5. in respect of an eligible financial institution that is a market infrastructure, granting of an approval in terms of section 158(4) to control or influence materially the business or strategy of the financial institution read with section 158(8).
- 6.2. A reference to a "licence" in this Annexure B:
- 6.2.1. Refers to a licence of a financial institution, which is designated as a SIFI, to act as a financial institution under a financial sector law; and
- 6.2.2. excludes any other registration, approval, recognition, permission, consent or authorisation granted in respect of the financial institution designated as a SIFI.
- 6.3. The SARB, in terms of section 282(3), may waive concurrence on certain matters, subject to the conditions contained in this section of the FSRA.
- 6.4. The SARB hereby agrees that the FSCA may take any actions which it is empowered to take under any financial sector law for which it is the responsible authority, without the concurrence of the SARB, other than the actions specified in section 5 (resolution), section 6.1 read together with section 6.2 of this Annexure B, and any other action that the FSCA and/or the SARB reasonably believes may affect financial stability.
- 6.5. The SARB is satisfied that its concurrence is not necessary in relation to actions by the FSCA other than the actions specified in this agreement as requiring concurrence and that this agreement does not prejudice the achievement by the FinStab of its objectives under the FSR Act.

**7. Information Exchange**

7.1. The Parties to this Annexure agree to share and exchange the relevant information as contained in paragraph 5.4 of the MoU.

**8. General**

8.1. The Parties to this Annexure undertake to promptly and reasonably cooperate, collaborate, and share relevant information with each other to maintain, protect and enhance financial stability.

8.2. The FSCA will seek the input of the SARB on draft documentation or policy documents that have an impact, or which it reasonably believes may have an impact, on the maintenance of financial stability.

8.3. The classification on matters that impact the maintenance of financial stability will be decided between the Parties to this Annexure. Criteria to consider for such purposes, other than those already included in this MOU and its Annexures, which could have a negative system-wide impact on the financial system may include:

8.3.1. Poor regulatory and supervisory systems.

8.3.2. Decrease in the resilience of the financial system and/or a SIFI operating in the domestic financial system.

8.3.3. Inefficient financial intermediation.

8.3.4. Ineffective markets or market failure.

8.3.5. Excessive risk-taking.

8.3.6. General decline of confidence in the financial system.



- 9. Responsible officials**
- 9.1. For purposes of this Annexure, the responsible officials from each Party accountable for ensuring implementation of the Annexure are as follows:
- 9.1.1. For the SARB and Finstab: Head of FinStab.
- 9.1.2. For the FSCA: The Divisional Executive: Regulatory Policy.
- 9.1.3. Each Party may change the responsible officials noted above at any time, and will notify any such change to the other Party as soon as practicable.
- 9.1.4. The responsible officials will, through a Protocol between the Parties to this Annexure, identify specific staff members to be responsible for the performance of specific functions in terms of this Annexure.
- 9.1.5. Until such Protocol is concluded, the contact person for all communications required in terms of this Annexure will be:
- 9.1.5.1. For the SARB and Finstab: the Head of FinStab.
- 9.1.5.2. For the FSCA Divisional Executive Regulatory Policy.

8  
