



SOUTH AFRICAN RESERVE BANK  
Prudential Authority

# **Statement\* explaining the need for intended operation and expected impact of the proposed prudential standard for designated institutions in respect of transfer powers in resolution**

**(Draft for Consultation)**

**November 2022**

\*This statement is prepared and published in accordance with and in fulfilment of the requirements under section 98(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

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## **1. Introduction**

- 1.1. In terms of the Financial Sector Regulation Act No. 9 of 2017 (FSR Act), a regulatory instrument (i.e., a prudential, conduct or joint standard) must not be made unless the maker, in this case, the Prudential Authority (PA) has published:
- (a) the draft of the regulatory instrument;
  - (b) a statement explaining the need for and the intended operation of the regulatory instrument;
  - (c) a notice inviting submissions in relation to the regulatory instrument and stating where, how and by when submissions are to be made; and
  - (d) a statement of the expected impact of the regulatory instrument.
- 1.2. In line with the requirements under the FSR Act, the PA has prepared this statement to explain the need for the proposed prudential standard (the Standard), the expected impact as well as the intended operation of the Standard on the transfer of assets and liabilities of designated institution in resolution (Statement).

## **2. Background**

- 2.1 Following the 2008 global financial crisis, the Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes), issued by the Financial Stability Board (FSB) in 2011 and revised in 2014, were formally adopted as an international standard in 2015. Transfer powers are one of the general resolution powers stipulated in the Key Attributes.
- 2.2 The Key Attributes set out the core elements that the FSB considers necessary for an effective resolution regime. As such, their implementation should enable authorities to resolve financial institutions in an orderly manner, without unduly exposing taxpayers to loss from solvency support, while maintaining continuity of their critical economic functions.
- 2.3 As a member of the G20, South Africa committed to implementing the Key Attributes and ending the Too-Big-To-Fail phenomenon. To this end, the South

African authorities embarked on a review of the existing framework against the Key Attributes and that process culminated in the development of the recently enacted Financial Sector Laws Amendment Act 23 of 2021 (FSLA Act) to strengthen the South African resolution framework in line with the Key Attributes and to designate the South African Reserve Bank (SARB) as the resolution authority.

- 2.4 The Standard relating to the transfer of assets and liabilities of designated institutions in resolution gives effect to the requirements of the FSR Act as amended by the FSLA Act.
- 2.5 The Standard provides for the SARB's powers to transfer some or all the assets and liabilities of a designated institution in resolution, to a new acquiring institution, a bridge institution or an Asset Management Company. This would be despite any law or agreement that would otherwise restrict or prevent it from doing so, including a law or agreement that requires consent or approval by any specified person.
- 2.6 The Standard is issued in terms of section 105(2)(c) of the FSR Act with an objective to stipulate the requirements to be complied with by designated institutions to enable the SARB to execute transfer powers, in line with the international standards and principles, for the orderly resolution of designated institutions.

### **3. The need for the Standard**

- 3.1 In terms of the Key Attributes, resolution transfer tools represent one of the key general resolution powers necessary for the SARB, as the resolution authority, to undertake an orderly resolution of financial institutions.
- 3.2 Resolution transfer powers include the power to:
  - a) transfer or sell the assets and liabilities, legal rights and obligations, including deposit liabilities to a solvent third-party acquirer, without any requirements for consent;

- b) establish a bridge institution to take over and continue certain critical functions and viable operations of the designated institution in resolution; and
  - c) establish a separate Asset Management Company to transfer the non-performing or impaired assets of the designated institution in resolution.
- 3.3 Section 166S(2)(a) of the FSLA Act confers the power to transfer, create an interest in or deal with the assets and liabilities of the designated institution in any other way, to the SARB. However, the provisions in the FSLA Act are set at a principle level which necessitates further guidance, directives, and standards to be made to clarify their practical meaning and effect.
- 3.4 Therefore, the Standard is necessary to set-out the following:
- a) requirements that designated institutions need to comply with, including capabilities to build; and
  - b) safeguards that will apply in executing transfer powers.
- 3.5 This will enable the SARB to prepare for an orderly resolution and to execute resolution transfer powers effectively.

#### **4. The intended operation of the Standard**

- 4.1 The Standard shall apply to all designated institutions, unless exempted by the PA, based on the resolution strategy set by the SARB.
- 4.2 The Standard will set out minimum requirements, for a Separability Analysis and a Transfer Playbook, to be performed by designated institutions.
- 4.3 A Separability Analysis aims to ensure that the separation of critical functions or core business lines contained in the assets and liabilities that will be transferred can be achieved, under appropriate continuity arrangements so that the designated institutions' complexities, structures, and interdependencies do not present barriers to the implementation of the identified transfer tool(s).
- 4.4 In the Separability Analysis, the designated institution should comply with the following requirements:

- a) identify the proposed assets and liabilities to be transferred (transfer perimeter);
- b) identify the interconnections of the transfer perimeter with the rest of the designated institution and include interconnections which are too costly or too difficult to mitigate or remove in the transfer perimeter;
- c) put measures in place to ensure continuity of the transfer perimeter once separated from the rest of the designated institution;
- d) identify potential buyers and market capacity for the transfer perimeter; and
- e) build capabilities in management information systems to have the ability to provide sufficient, readily available, information pertaining to the transfer perimeter to comply with the following:
  - i. valuation requirements;
  - ii. access to necessary data to all relevant stakeholders (i.e. bidders); and
  - iii. provide sufficient information to conduct a buyer due diligence and to meet expectations of the sale process.

4.5 Designated institutions will also be expected to prepare a Transfer Playbook, which will be an internal document to be used by the designated institution to operationalise the implementation ability of the resolution transfer tool. This document will include, at a minimum, governance processes, implementation timelines, mitigating strategies for barriers and communication plans to be followed in executing the transfer tool.

4.6 The Standard will also set out general and reporting requirements for designated institutions pertaining to transfers.

4.7 The Standard is envisaged to come into effect in line with the implementation schedule to be published by the Minister of Finance in due course.

## **5. Expected impact of the Standard**

5.1 It is expected that the Standard will at a minimum, place an additional

administrative burden on designated institutions.

- 5.2 The SARB and the PA cannot ascertain the full extent of the expected impact or any other unintended consequences, therefore a set of questions to solicit industry inputs on the expected impact of implementing the Standard are included under Section C of the Comments template.
- 5.3 The responses to Section C of the Comments template, in particular, will be used to ascertain the full extent of the expected impact or any other unintended consequences of the Standard.
- 5.4 A revised Statement will be prepared, taking into account the feedback that will be received from the industry.
- 5.5 Designated institutions that fall within the definition of a designated institution in terms of section 29A(1)(a) to (d) of the Financial Sector Laws Amendment Act 23 of 2021 are encouraged to respond to the questions under Section C of the Comments template and to identify any potential risks or unintended consequences that might arise from the implementation of the Standard and submit those to the PA as part of this consultation process.

## **6. Conclusion**

- 6.1 The resolution transfer powers provided for in the Standard are a key element of South Africa's resolution framework because they enable the SARB, as the resolution authority, to execute the relevant resolution strategy by transferring the assets and liabilities of designated institutions to ensure an orderly resolution.
- 6.2 Following the public consultation process, the PA will make the necessary changes to the Standard as well as this Statement.