

**Prudential Standard: Transfer of assets and liabilities of a designated institution in resolution**

**Consultation Report**

**February 2023**

1. **Purpose**

1.1 Section 104 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) states that with each regulatory instrument, the maker must publish a consultation report which must include:

(a)     a general account of the issues raised in the submissions made during the consultation; and

(b)     a response to the issues raised in the submissions.

1.2 The purpose of this document is to set out, as required in terms of section 104 of the FSR Act, a report on the consultation process undertaken in respect of the **Prudential Standard: Transfer of assets and liabilities of a designated institution in resolution.**

1. **Summary of consultation process and general account of issues raised**

2.1 On 4 November 2022, the Prudential Authority published the following documents for public comment, with comments being due on 20 December 2022:

1. Notice regarding the publication of the draft Prudential Standard (“the Standard”) on Transfers of assets and liabilities of a designated institution in resolution inviting comments on the Standard;
2. The Standard;
3. Statement of the need, intended operation and expected impact of the Standard (“the Statement”); and
4. Comments template.

2.2 The Prudential Authority received approximately 162 comments from 8 respondents. Following the public consultation process, certain comments resulted in amendments being made to the Standard by the Authorities (the Prudential Authority as directed by the Reserve Bank). The Authorities also made amendments out of their own accord upon further review of the Standard. None of the amendments made were deemed material.

2.3 A general account of issues raised by respondents on the Standard during the consultation process and the response of the Authorities are summarised in Table 1 below. Table 2 contains the amendments initiated by the Authorities. Details of the respondents and the full set of comments and responses are detailed in Table 3 and Table 4 respectively.

2.5 Only one respondent requested a bilateral regarding the Standard, which was held on 2 February 2023.

**Table 1: General account of issues raised by respondents**

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| --- | --- | --- |
| **Area** | **Summary of comments** | **Response from the Authorities** |
| Commencement | No comments from any of the respondents. | N/A |
| Legislative Authority | No comments from any of the respondents. | N/A |
| Definitions and Interpretation | One respondent requested that the definition for designated settlement systems be included in the definitions and interpretation section.  The other comments on the definitions were more clarity seeking regarding some of the definitions in the Standard. | The Authorities agree with the recommendation and as a result added the following definitions:   * designated settlement systems; and * settlement systems.   Clarity was provided on the other comments raised. |
| Roles and Responsibilities | No comments from any of the respondents. | N/A |
| Application | ***Part 1:*** Respondents raised comments on whether the Standard applies to banks with open-bank strategies (i.e., DSIBs) and what the impact on Flac would be if some assets and labilities were transferred.  ***Part 2:*** Respondents also raised clarity seeking comments around the scope of the Standard, specifically:   * whether the Standard applies to non-bank institutions; and * if a bank or a Systemically Important Financial Institution (SIFI) is a member of a conglomerate, whether the other members of the conglomerate need to comply with the requirements of the Standard. This linked to the definition of a designated institution per section 29(A)(1)(e) of the Act. | ***Part 1:*** The Authorities provided clarity that resolution tools can be used on a stand-alone basis or in conjunction with each other. Therefore, the application of resolution tools is not binary (i.e., if bail-in is the main resolution tool for the strategy, that does not preclude transfers from being used in conjunction with bail-in).  ***Part 2:*** Clarity was provided that the Standard is applicable to all designated institutions as defined in section 29A (1) of the Act (which is the FSR Act as amended by the Financial Sector Laws Amendment Act No 23 of 2021).  In addition, confirmation was provided that the Authorities will follow a process for the Governor to indicate which entities (members) within a conglomerate will be exempted for resolution purposes as per section 29A (2) of the Act.  Overall:  The Authorities perceived that there is a general misunderstanding with regards to the application of the Standard to designated institutions.  To avoid future scoping issues and to account for the fact that transfers can be used as a stand-alone resolution tool or in conjunction with other tools (depending on the resolution strategy), the Standard is applicable to all designated institutions.  To overcome misinterpretation of this section, the Authorities fleshed **out** the **application section (section 5)** of the Standard, to clarify that the Standard is applicable to all designated institutions. However, only the designated institutions that have been informed by the Reserve Bank that transfer tools will form part of their resolution strategy (and the extent thereof) will have to comply with the requirements contained in the Standard. |
| Statutory transfer powers | The general comments raised by respondents were to refrain from referring to the “FSLA Act”, and rather refer to “the Act” which is the FSR Act, as amended by the FSLA Act. | The Authorities agree with the recommendation and has removed all references to the FSLA Act and only refer to “the Act” in the Standard. |
| Planning and execution of a resolution transfer tool | One respondent raised comments around the business plan requirements, specifically relating to their interpretation of what a business plan entails and the drivers thereof.  Respondents also raised concerns around the perceived onerous requirements of producing a Transfer Playbook as well as the possibility of complying to the same requirements in other Standards such as the Operational Continuity in Resolution (OCIR). | The Authorities provided clarification on the purpose of a business plan and provided further clarity on what determines the inputs to the business plan.  The Authorities assured the respondents that where there are similar requirements amongst resolution Standards, designated institutions will not be expected to duplicate efforts. |
| Requirements | **Part 1:** One respondent recommended that a requirement be added to the financial interconnections which would pose an obligation to the designated institution to also identify any transactions within a settlement system and obligations owed to a designated settlement system.  **Part 2**: One respondent enquired whether the interconnections required in the Standard are the same as interconnectedness in the Large Exposure Framework (LEX Framework).  **Part 3:** Most of the remaining comments under requirements related to the following:   * Clarification of certain terms under the requirements section; * Questions to gain a deeper understanding and clarity regarding some of the requirements (i.e. Management Information Systems, market capacity, fair market value, cross default-clauses in legal interconnections etc.); * Concerns raised regarding the application of the Standard on all designated institutions (concerns regarding the amount of work that would be required); * Concerns about requirements for the entire designated institution vs applicability of the requirements only as they relate to the transfer perimeter. | **Part 1:** The Authorities agree with the recommendation and have added a new requirement to the financial interconnections section, for designated institutions to identify any settlement obligations in a settlement system and any obligations due to a designated settlement system.  **Part 2:** The Authorities provided context on the purpose of identifying interconnections for the Standard in comparison to the purpose for interconnectedness in the LEX Framework. The two serve different purposes.  **Part 3:** The Authorities provided clarification on certain terms and requirements in the Standard (as per comments received on this section).  Furthermore, the Authorities re-emphasised the amendment to the section 5 to clarify which designated institutions would be required to comply with the requirements in the Standard and that the requirements relate to the transfer perimeter and not necessarily to the entre institution. |
| Protected arrangements | One respondent recommended that protected arrangements be applied to settlement systems and obligations owed to designated settlement systems. | The Authorities agree that there should be safeguards to transactions in settlement systems, however the safeguards to be applied will be as stipulated in section 5 of the National Payment System Act No. 78 of 1998 (NPS Act). |
| Requirements to define transfer perimeter | The comments raised by respondents mainly revolved around the following:   * Referencing to “the Act” instead of the FSLA Act; * Clarity around the relevance of core business lines in a transfer resolution strategy; * Clarity around including liabilities that might give rise to the No Creditor Worse Off than in Liquidation (NCWOL) principle. | The Authorities agree with the recommendation to remove any references to the FSLA Act and only refer to “the Act” in the Standard and has amended the Standard accordingly.  The Authorities provided clarityon the relevance of core business lines in a transfer strategy and clarity on the purpose of including liabilities that might give rise to NCWOL if they remained in the residual institution. |
| Governance requirements | One respondent enquired whether there would be external audit requirements on the requirements. | The Authorities’ stance is that if there are any resolution related audit requirements (internal or external) they will be dealt with separately and at a later stage. |
| General compliance requirements | One respondent required clarity around the frequency of monitoring and the reporting format. | The Authorities pointed the respondent to section 13.2 (now section 12.2) of the Standard which states “the form, manner and period for regulatory reporting on this Standard will be determined by the Authorities and published on the Prudential Authority’s website”.  In addition, the Authorities clarified that the monitoring, should be ongoing (and not periodic) as per section 11 of the Standard. |
| Reporting requirements | One comment requested that the Prudential Authority consider publishing the format of the requirements for public comments prior to finalisation. | The Authorities’ will consider the respondent’s request to have a consultation process on the prescribed reporting requirements, taking other internal factors into consideration, before finalisation. |

**Table 2: General account of amendments to the Standard initiated by the Authorities**

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| --- | --- | --- |
| **Area** | **amendment** | **Reason** |
| Definitions and Interpretation | Addition of Master Agreement definition | To ensure the definition of Master Agreements is consistent (and can be interpreted the same) across all resolution Standards. |
| Replacing the abbreviation ‘SARB’ with ‘the Reserve Bank’ | To align the Standard with the language used in Chapter 12A of the Act. |
| Statutory Transfer powers and Planning and execution of a resolution transfer tool | The Authorities merged the following two sections:   * Statutory transfer powers (the old section 6); and * Planning and execution of a resolution transfer tool (the old section 7).   These two sections are now the new section 6. | To simplify the flow of the Standard, post further review. |
| Protected arrangements | Protected arrangements section (the old section 9) has now beenmoved up to section 7. | This was to simplify the flow of the document and to aggregate all the requirements sequentially.  This change was important to facilitate the understanding of the amendment(s) made to section 5 (the “application section “) by separating the requirements to comply with the Standard from the rest of the document.  As per the comments in table 1 above, the Authorities perceived a general confusion with regards to the application of the Standard and extent of the application for each designated institution. Therefore, amendments were made to the application section in the Standard (section 5) to make it clear which designated institutions would have to comply with the requirements contained in the Standard. |
| Requirements for Management Information Systems | **Changed** the words “readily available” under section 8.5 to “timely information, upon request by the Reserve Bank”. | The term “readily available” could be interpreted to mean that a separate management information system or a technological solution needs to be built and always be kept on, so to provide the information required (this automatically implies additional resources).  The change in the wording creates flexibility in the requirement and allows the Reserve Bank to deal with the compliance of this requirement on a case-by-case basis. |
| Identified interconnections to the transfer perimeter | Section 8.2(g) was fleshed out to clearly articulate how designated institutions should deal with the identified interconnections. | Upon a further review and some comments raised on section 8.2(g), the Authorities deemed it appropriate to separate the different types of interconnections and add more detail on how the designated institutions are expected to deal with them (to avoid misinterpretation of the section). |

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**Table 3: Details of the Commentors**

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| **No.** | **Name of organisation** | **Acronym** | **Contact person** |
| **1.** | CLS Bank International (“CLS”) | CLS | Eveline Coman – Senior Legal Counsel  Lauren Alter-Baumann - Head of Legal and Regulatory Projects |
| **2.** | FirstRand Bank | FirstRand | Greig Wilson – Head of Recovery and Resolution Planning |
| **3.** | Grinrod Bank Limited | Grinrod | Nivashen Naicker - Chief Risk Officer |
| **4.** | Habib Overseas Bank | Habib Bank | Raazia Carrim  Mandra Hillie |
| **5.** | JSE Group | JSE | Anne Clayton, Head: Public Policy & Regulatory Affairs |
| **6.** | Momentum Metropolitan Holdings | MMH | Lance Raftesath – Deputy HAF |
| **7.** | Nedbank Limited | Nedbank | Michelle Frederick |
| **8.** | The Banking Association of South Africa | BASA | Benjamin April |

**Table 4: Full set of comments and responses on the Standard**

| **No** | **Commentator** | **Paragraph of the Standard** | **Comment** | **Responses** |
| --- | --- | --- | --- | --- |
| 1. **Commencement** | | | | |
| 1 | CLS | - | No comment | Noted |
| 2 | FirstRand | - | No comment | Noted |
| 3 | Grinrod | - | No comment | Noted |
| 4 | Habib Bank | - | No comment | Noted |
| 5 | JSE | - | No comment | Noted |
| 6 | MMH | - | No comment | Noted |
| 7 | Nedbank | - | No comment | Noted |
| 8 | BASA | - | No comment | Noted |
| 1. **Legislative authority** | | | | |
| 9 | CLS | - | No comment | Noted |
| 10 | FirstRand | - | No comment | Noted |
| 11 | Grinrod | - | No comment | Noted |
| 12 | Habib Bank | - | No comment | Noted |
| 13 | JSE | - | No comment | Noted |
| 14 | MMH | - | No comment | Noted |
| 15 | Nedbank | - | No comment | Noted |
| 16 | BASA | - | No comment | Noted |
| 1. **Definitions and interpretation** | | | | |
| 17 | CLS | 3.1 | It is proposed that the following terms are added in the definitions and interpretation section:   * the “*National Payment System Act 78 of 1998, as amended (the "NPS Act")”,* * the “*Financial Sector Regulation Act 9 of 2017, as amended (the "FSR Act")”* and   "*designated settlement system*" *as defined in the NPS Act*”. | The Authorities have amended the Standard to include the following definitions under section 3.1:   * Settlement systems; and * Designated settlement systems. |
| 18 | FirstRand | - | No comment | Noted |
| 19 | Grindrod | - | No comment | Noted |
| 20 | Habib Bank | - | No comment | Noted |
| 21 | JSE | - | No comment | Noted |
| 22 | MMH | - | No comment | Noted |
| 23 | Nedbank | - | No comment | Noted |
| 24 | BASA | 3. Definitions and Interpretations:  “Hard Interconnections”; “Critical shared services”; “Essential services” | The Banks whole strategic and operating models are based on the tight integration and interconnections of the Banking Group from a product, intellectual property, and systems point of view. Whilst its theoretically possible, it would be a costly exercise and substantial challenge for the Bank to separate this and continue as to offer its differentiated retail banking offering  Bank Operating System enables all products across the South Africa composite to operate on Bank apps, and therefore ecosystems are highly entrenched throughout the Bank Groups. | Noted |
| 25 | BASA | 3. Definitions and Interpretations:  ‘Transitional service agreement (TSA)’ | **Clarify,** what is the minimum set period that the designated institution needs to continue certain services. | The period for a transitional service agreement (TSA) will be driven by various factors, unique to each transfer perimeter, such as the complexity of the requirements, resources needed and time for the acquirer to put the capabilities in place.  Therefore, the TSA period will vary on a case-by-case basis. |
| 26 | BASA | 3.1 | “The Act”: we **recommend** deleting “as amended by FSLA act” as it is implied, as are all other amendments to the FRSA, 2017.  “Asset management company” and “bridge institution”: kindly provide clarification on whether the asset management company will be registered at CIPC with a Collective Investment Scheme license? Additional clarity requested whether the bridge bank is not also “a company incorporated in terms of section 166F of the Act” like the “bridge institution”.  “Financial contracts”: financial contracts have also been defined in the Stays and Moratoria draft standard. **Recommended** to remove this from the draft Stays and Moratoria standard and including here only. Additionally, it should be noted that master agreements are only referenced in this definition, whereas in the Stays and Moratoria discussion paper it is a separate definition. **Recommend** removing this reference from the Standard as it is not referred to again elsewhere.  “Residual institution”: the definition of residual institution does not consider the possibility of an institution to return to a business-as-usual scenario as that contemplated in the “Ending too big to fail:  South Africa’s intended approach to bank resolution” discussion paper page 20 “Open and closed resolution strategies”. **Clarify** the difference in meaning between “liquidation” and “wind down”. | ***Recommendation to delete “as amended by the FSLA Act”:***  The implementation of the FSLAA has not yet come into effect, therefore until such time, it is necessary to define “the Act” as the existing FSR Act, as amended by the FSLA Act.  Disagree with the recommendation.  **Asset Management Company**:  As per the definition in the Standard, the purpose of this particular asset management company is to manage impaired or non-performing assets to maximise their value (i.e., ‘sweat’ the assets). Therefore, its function will not be that of an ‘ordinary’ Asset Management Company that might require a Collective Investment Scheme licence.  **Bridge institution:**  A Bridge institution is a company incorporated in terms of section 166F of the Act. The Standard defines it as such, and the Standard only refers to a *bridge institution* and not *bridge bank*.  **Financial contracts definition:**  The Stays and Moratoria Standard has ‘covered contracts’ not ‘financial contracts’ under definitions. In addition, referencing definitions to another Standard opens the risk of edits and or deletions in another Standard which may not be applicable for the purposes of this Standard. In addition, the revised Standard now includes the definition for Master Agreements  Disagree with the recommendation.  **Residual institution:**  The definition of a residual institution in the Standard bears the meaning necessary for correct interpretation and context for the Standard. The Authorities would like to point the respondent to note the difference between a residual institution and a surviving institution.  **SA’s intended approach to bank resolution paper - difference between liquidation and wind-down**:  Liquidation is a specific process governed by legislation that results in a company being deregistered. A wind-down entails any process that any business may use to reduce or cease some or all operations that may or may not result in the deregistration of the said business. Therefore, a liquidation is always a wind-down but not every wind-down is a liquidation. |
| **4.Roles and responsibilities** | | | | |
| 27 | CLS | - | No comment | Noted |
| 28 | FirstRand | - | No comment | Noted |
| 29 | Grindrod | - | No comment | Noted |
| 30 | Habib Bank | - | No comment | Noted |
| 31 | JSE | - | No comment | Noted |
| 32 | MMH | - | No comment | Noted |
| 33 | Nedbank | - | No comment | Noted |
| 34 | BASA | - | No comment | Noted |
| **5.Application** | | | | |
| 35 | CLS | - | No comment | Noted |
| 36 | FirstRand | - | No comment | Noted |
| 37 | Grindrod | - | No comment | Noted |
| 38 | Habib Bank | - | No comment | Noted |
| 39 | JSE | - | No comment | Noted |
| 40 | MMH | - | No comment | Noted |
| 41 | Nedbank | - | No comment | Noted |
| 42 | BASA | 5. This Standard applies to all designated institutions, unless exempted by the Prudential Authority. | **Clarify**, if this includes non-bank designated institutions, e.g., insurance companies.  **Clarify**, does the Standard apply to banks to which Open Bank Resolution would be applied, i.e., D-SIBs?  Should there be a transfer of assets and liabilities, rather than retaining a bank in its current form under Open Banking, **clarify** what would the implications for FLAC calibration be? | **Non-bank designated institution:**  The Standard is applicable to all designated intuitions as defined in section 29(A) of the Act.  **Applicability to open-bank resolution**:  The Standard is applicable to all designated intuitions (as defined in section 29(A) of the Act) unless the Reserve Bank determines that this specific resolution tool will not be suitable for the specific designated institutions’ resolution strategy.  It is to be noted that resolution tools (in a resolution strategy) such as bail-in, transfers and other general tools may be used on a stand-alone basis or in conjunction with each other to achieve an orderly resolution.  For example, if bail-in is the preferred resolution strategy for an open-bank strategy for a particular designated institution, it doesn’t mean that partial transfers, asset separation and other general resolution tools cannot be used in conjunction with bail-in to deal with the issues that led to resolution.  The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  **Implications for Flac calibration (transfers in an open-bank resolution):**  The purpose of Flac is to enable recapitalisation of a designated institution (currently only applicable to SIFI Banks) using a bail-in tool, so that the bank in resolution can meet its operating minimum capital requirements.  Using a bail-in tool does not preclude the use of other resolution tools to deal with, amongst other things, the issues that led to resolution and the restructuring of the designated institution.  The application of resolution tools is not binary. |
| 43 | BASA | 5.1 | The draft Prudential Standard (“Standard”) is intended to apply to designated institutions (as defined in the Financial Sector Regulation Act 9 of 2017 (“FSRA”), as amended by the Financial Sector Laws Amendment Act 23 of 2021), unless exempted by the Prudential Authority (“PA”) based on the resolution strategy set by the South African Reserve Bank (“SARB”).  In terms of section 29A(1)(e) of the FSRA; subject to any determination in terms of subsection 29A (2) of the FSRA, if a bank or a systemically important financial institution (“SIFI”) is a member of a financial conglomerate, each of the other members of the financial conglomerate are designated institutions. The definition of a designated institution in the context of the draft Prudential Standard has the effect of scoping in entities associated with a bank or a SIFI where these entities sit in the same financial conglomerate as a bank or a SIFI, thus broadening the application of the Standard.  Only in instances where the Governor has by written notice to a person or body determined that such a person is not a designated institution or where the PA has exempted a person from the Standard based on the SARB’s resolution strategy, will the draft Prudential Standard not apply to the person.  As Section 29A(1)(e) of the FSRA broadens the application of the Standard, it may have the unintended consequence of applying to members of a financial conglomerate that are neither banks, SIFIs nor significant and thus requiring these entities to comply with onerous requirements as set out in the Standard, which requirements may not be reasonable and commensurate with their risk profiles in terms of their nature, scale, and complexity. The sectoral laws that regulate these other entities may already provide for resolution mechanisms that are appropriate to the nature, scale, and complexity of these entities. Given this context, the PA is requested to **clarify** if written notice will be provided to all entities that have been determined as not being designated institutions in accordance with section 29A (2) of the FSRA.  The Standard further defines the resolution strategy as a strategy that the SARB shall deploy to manage the affairs of a designated institution in resolution. Therefore, a designated institution may upon its resolution, be exempted from compliance with the Standard despite having directed costly operational efforts towards compliance with the Standard prior to being placed in resolution. In this instance, such a designated institution may not realise the value of the costly efforts it directed towards compliance with the Standard. **Recommend** that the PA consider the exemption provision against this backdrop. | **Designated institutions for resolution purposes:**  As per section 29(A)(2) of the Act, the Authorities will follow a process for the Governor to indicate which entities within a conglomerate will be exempt for resolution purposes.  **Recommendation to amend the exemption provision:**  Designated institutions will be informed, by the Reserve Bank, during the resolution planning phase, whether the Reserve Bank envisages any transfer tool(s) to be part of their resolution strategy. |
| 44 | BASA | 5.2 | **Recommend** deleting this, as it is already covered in Section 2.1. | Disagree with the recommendation. Section 2.1 talks to the making of the Standard whilst section 5.2 requires that the reading of the Standard in conjunction with other applicable laws. |
| **6.Statutory transfer powers** | | | | |
| 45 | CLS | - | No comment | Noted |
| 46 | FirstRand | - | No comment | Noted |
| 47 | Grindrod | - | No comment | Noted |
| 48 | Habib Bank | - | No comment | Noted |
| 49 | JSE | 6.1 and 6.2 | Incorrect reference to the FSLA Act. Should be “the Act” | Section 6.1 and 6.2 have been amended to reference section 166S(1) and section 166S(2)(a) to” the Act”. |
| 50 | MMH | - | No comment | Noted |
| 51 | Nedbank | - | No comment | Noted |
| 52 | BASA | 6.1. Statutory Transfer Powers | “Section 166S (1) of the **FSLA Act** confers powers to the SARB to enter into a particular transaction it deems necessary for the orderly resolution of a designated institution in resolution, without consent or approval from any specified person and despite law or agreement that would otherwise prevent the SARB from doing so.”  This should refer to the FSR Act Section 166S (1), not the FSLAA. **Update** | Section 6.1 has been amended to reference section 166S(1) and section 166S(2)(a) to” the Act”. |
| 53 | BASA | 6.3 (c) | The definition of the asset separation tool and what it entails are not clear. Consider **rephrasing or providing further clarification**, as the definition of the asset separation tool and what it entails are not clear. | The correspondent did not provide the exact area in which they consider the definition of the asset separation tool to be unclear. However, the Authorities made refinements to the definition post their own further review of the Standard. |
| **7.Planning and execution of a resolution transfer tool** | | | | |
| 54 | CLS | - | No comment | Noted |
| 55 | FirstRand | 7.3(c) and (d) | The provision of a business plan for the transfer perimeter entity would be problematic since such business plans will depend on the existing capabilities of a potential new acquisition entity and how the assets/liabilities within the transfer perimeter fit with the acquirer. The business plan approach implies that the asset/liabilities within the transfer parameter are continued/sold as a whole and does not consider the continuation/sale as separate modules/business lines.  In addition, depending on the resolution strategy adopted by the resolution authority, it could create additional complexities around identification of the transfer perimeter. To also consider where operations span across jurisdictions and currencies. | **Provisions of a business plan:**  The business plan is not dependent on the existing capabilities of the acquirer. Section 8.3 States that the designated institution must provide a historical financial analysis in the form of a business plan. Therefore, the business plan is the format to present the historical financial performance of the assets and liabilities being transferred based on the records of the designated institution in resolution.  The business plan does not determine the size of the transfer perimeter. The size of the transfer perimeter can be anything from a single asset and/or liability to a portfolio, business unit (similar to disposals in a Recovery Plan) or an entire institution, based on the objective of the resolution strategy.  **Complexity regarding identification of the transfer perimeter:**  Noted. |
| 56 | FirstRand | 7.3(e) | The assessment of interconnections can be quite widely interpreted – while a comprehensive list has been provided in the draft standard, additional guidance will be required to perform this assessment and understand the practicalities around this | Noted |
| 57 | FirstRand | 7.3(e) | Market interest and capacity are difficult to analyse since in a highly concentrated industry the capacity for absorption by a single competing entity is likely to be limited, especially considering the requirement in section 10.1 (d). | Noted |
| 58 | Grindrod | - | No comment | Noted |
| 59 | Habib Bank | - | No comment | Noted |
| 60 | JSE | - | No comment | Noted |
| 61 | MMH | - | No comment | Noted |
| 62 | Nedbank | - | No comment | Noted |
| 63 | BASA | 7.4 and 8.6 | This paragraph indicates that the financial institutions will be responsible for drafting the “transfer playbook”. This will create a more onerous burden than is required, unless the “Resolution Plan” is shared with the institution and scenarios that do not need to be catered for can be excluded.  The OCIR discussion paper indicates that there will be a “OCIR playbook”, yet the contents thereof are listed as a portion of the “transfer playbook”. **Clarify** (i) what playbooks will need to be drafted or if institutions can look at what is appropriate to them under the supervision of the Resolution Authority (ii) how the “transfer” “OCIR” playbooks are meant to interact if different documents are expected for both. | Designated institutions will be informed by the Reserve Bank, during the resolution planning phase whether the Reserve Bank intends on using transfer tool(s) as part of the resolution strategy for that institution (and the extent of the use of that tool in the resolution strategy).  Where there are similar requirements between this Standard and other Standards to follow such as the Operational Continuity in Resolution (OCIR), designated institutions will not be expected to duplicate efforts. |
| **8.Requirements** | | | | |
| 64 | CLS | 8.2(c)(v)  As a new insertion | The following further sub-paragraph is proposed:  "*any settlement obligations in the settlement system and any obligations owed to designated settlement systems"* | The Authorities agree with the recommendation and have added 8.2(c)(v) to the list of financial interconnections for designated institutions to identify.  The new insertion reads as follows:  “any settlement obligations in a settlement system and any obligations due to a designated settlement system”. |
| 65 | FirstRand | 8.2 (f)(ii) | It is unclear what is meant by “franchise impact”?  Clarification needed on the requirement for assessing cross organisational business links and franchise impact. What is the scope, purpose, and the expected output of such assessments? Guidance on how franchise impact on unknow potential acquirer might be considered? | **Franchise impact** includes the actual or perceived effect on:   * the brand/ business/operations/customers/cross-activity customers/synergies etc. of the designated institution as a result of no longer having the assets and liabilities that will be transferred out); * the business of the acquirer due to certain assets and liabilities being /not being included in the transfer perimeter.   **Clarification on cross organisational business links:**  The purpose of identifying cross organisational business links is to ensure that the designated institution takes full account of the impact of the assets and liabilities in the transfer perimeter that will transferred out, on the remaining institution (when it is meant to be a surviving institution) and the impact of the designated institution on the assets and liabilities, to ensure that the activities within the perimeter and the performance thereof, are not hampered because of business dependencies or arrangements with remaining parts of the designated institution.  After a further review, the Authorities expanded the considerations under section 8.2(f)(i) to provide clarity on cross organisational business links. |
| 66 | FirstRand | 8.2 (c)(iii) | Will this also consider other intragroup credit exposures?  Does this align to the same definition of interconnectedness used for the recent large exposure framework? | **Intragroup credit exposures:**  The purpose of section 8.2(c) is for the designated institution to identify any financial interconnections that the transfer perimeter might have with the rest of the designated institution that could cause a barrier to separability for the transfer perimeter. The identification is done so that the interconnections that are too difficult or complex can be included in the transfer perimeter.  Section 8.2(b) states that the lists provided in 8.2(c) to (f) are not exhaustive considerations, therefore if the designated institution deems intragroup credit exposures related to the transfer perimeter to have potential separability barriers, then those credit exposures (and other financial considerations beyond the provided lists) should be assessed and be treated accordingly to enable efficient execution of the transfer tool.  **Large exposure framework:**  The high-level purpose of the large exposure framework (LEX) is to limit interconnectedness and concentration risk. Therefore, the interconnectedness in the LEX would most likely relate to limiting concentration and interconnectedness between entities within a group.  The context of identifying interconnections in the Standard, is for the designated institution to identify economic relationships between the transfer perimeter and the rest of the designated institution, to ensure that they are treated appropriately to enable the transfer perimeter to continue post separation. |
| 67 | FirstRand | 8.3(a) | Historic financial analysis/business plan for the transfer perimeter which includes items (i) to (iv) implicitly assumes that segments or portfolios under (i) are included as whole units. However, if these segments/portfolios were the cause of the designated entity entering a resolution, management actions taken by the designated entity prior to the entry in resolution would have resulted in significant changes that will render a business plan of limited use.  Need to also under the purpose of a ‘historical’ business plan and how far back, given that the financial analysis/plan at the point of resolution will differ quite materially. | The resolution strategy is based on the best available information at any point in time and the purpose of resolution planning is to facilitate an orderly resolution. The purpose of this Standard is to outline transfer requirements so that where a transfer tool is envisaged (as the main or complementary resolution tool) there is adequate preparation to resolve a designated institution in an orderly manner.  However, at the point of resolution the Reserve Bank will consider whether all the steps laid out in the resolution plan are implementable and if they are not, the Reserve Bank can implement a variant resolution strategy to achieve the objective of an orderly resolution and financial stability. |
| 68 | FirstRand | 8.3(c) | Alternative perimeters proposals appear to be limited to deviations based on treatment of interconnections. Removal of the text in brackets *(which may deviate based on how the assessed interconnections could be addressed)* allows for greater flexibility in proposing appropriate transfer parameters.  We would request additional clarity on S8.3(c) regarding the proposal of alternative perimeters. Perhaps we need more guidance on the need for those alternative perimeters – it appears to be alluding to creating alternative scenarios etc. Is this the case? | The Authorities disagree with the removal of the wording in brackets because of the following:  The designated institution identifies the first layer of the transfer perimeter and assesses the relevant interconnections that will form the second layer of the transfer perimeter.  There could be instances (based on the outcomes of the interconnections assessed and financial analysis) where there are significant or complex separability issues that were not envisaged, or the financial outcomes of the transfer perimeter are not deemed “attractive” enough for prospective acquirers. Therefore, the designated institution could be required to propose an alternative perimeter to improve the credibility and feasibility of the transfer tool.  The word “may” does not necessarily put a restriction on the reasons to propose an alternative transfer perimeter.  In addition, there could be perimeter shifts/movements due to changing economic conditions or evolution of the designated institutions’ business, which may require an alternative perimeter or an updated shift in the perimeter. |
| 69 | FirstRand | 8.4(a) | In the event of a DSIB require to go into Resolution, it is the probable scenario that there would be a Global systemic issue that result in such a crisis. Any analysis relating to potential buyers would more than likely be unreliable at that point. The usefulness of this analysis is questionable.  The requirement for market capacity and interest is very complex since it requires the designated institution to make assumptions about potential buyers in terms of appetite, strategic fit, capital access and operational capacity. These would likely be significantly different during a crisis compared to normal market conditions. Consideration must be given to limiting the scope of this requirement. | In a resolution scenario, time is of the essence to prevent further losses in the designated institution and its constituents (regardless of the resolution tool to be implemented). Having a plan and a reasonable pool of potential acquirers (where required) is imperative to enable a speedy execution of any resolution strategy and preservation of value (the resolution plan is a base to work from in a resolution scenario).  Should the circumstances in a resolution scenario not be conducive for the resolution strategy set, the Reserve Bank can always implement a variant resolution strategy to achieve an orderly resolution and financial stability. However, that does not discount the necessity and importance of having a resolution plan. |
| 70 | Grindrod | - | No comment | Noted |
| 71 | Habib Bank | - | No comment | Noted |
| 72 | JSE | - | No comment | Noted |
| 73 | MMH | 8.2(d)(iv) | While transfer pricing arrangements would normally be concluded on a fair market basis, this may not always be practical for smaller entities or business units. This requirement therefore places additional constraints on the normal business operation that may not be practical to implement in all cases. | The requirement for fair market basis on pricing structures is to ensure that operational continuity is not threatened by resolution measures.  Where a transfer tool is envisaged to be used in a resolution strategy and the relevant designated institution cannot provide the market related costs (or the services are not reasonably priced) for the services to be continued, then the Resolution Authority will assess whether that is a barrier to resolvability and on a case by case discuss possible mitigants to remove the barriers to resolvability with the designated institution. |
| 74 | Nedbank | - | No comment | Noted |
| 75 | BASA | 8 | Section 8 overall details that an institution needs to be ready to execute a transaction at any stage and will be difficult and costly to implement, requiring internal and external advisor costs (for example: to review and assess all legal contracts that will be impacted on transfer to the transaction perimeter).  Our interpretation is that banks are required to compile a very detailed Virtual Data Room (VDR) (more than what would ordinarily be disclosed in a merger and acquisition process) for carve-outs, which requires detailed analysis of interconnectedness and constant updating between financial periods. It should be noted that carve-outs, compilation, and maintenance of VDR’s are very onerous and costly from a human resources and finance resource perspective. **Clarify**, if our interpretation is in line with the PA’s expectations.  **Recommend** detailed process requirements so that a VDR can be set up in case of resolution and would be available for the documents to be uploaded onto (rather than physically compiling and having to update every year). | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  Section 8.5 of the Standard stipulates requirements for Management Information Systems (MIS), the overriding principle being that designated institutions should have accurate and timely information necessary for transfer of the related assets and liabilities.  Depending on the state of the designated institutions’ MIS, some designated institutions might need an overhaul of their MIS systems, whilst others might be able to use existing MIS to fulfil the requirements.  In addition, the Reserve bank will engage each designated institution during the resolution planning phase to determine what is possible with regards to the MIS requirements and ensure that proportionality (due to the size of the institution or the transfer perimeter etc.) is applied in meeting the requirements. |
| 76 | BASA | 8.1 Requirements for the transfer perimeter | Separation of all assets and liabilities for all the hard interconnections and essential services would be a challenge as this would require involvement across the Group. The Bank as stand-alone entity would with be able to identify these assets and liabilities but including the broader perimeters would involve considerable work. | Noted.  The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard. |
| 77 | BASA | 8.2(a) | **Clarify** what is meant by “interconnections that need to be included in or excluded from the transfer perimeter”. | The Authorities simplified section 8.2(a) to clarify the meaning intended.  The sentence “interconnections that need to be included in or excluded from the transfer perimeter” has been replaced by “to ensure a clean separation without unnecessary complexity”. |
| 78 | BASA | 8.2(c)(i) | **Recommend** the use of **“material”** instead of “any”. This will make the requirement more specific and focused on the relevant information to be provided instead of large amounts of information that changes on a monthly or quarterly basis. | Materiality is relative depending on the relevant party and it introduces complexity due to definitions and quantification.  In addition, the Authorities would like to emphasise that this requirement (and all the other requirements in the Standard) only relates to the assets and liabilities included in the transfer perimeter and is not necessarily a blanket application to the entire institution. |
| 79 | BASA | 8.2 (d) | The legal interconnectivity requirements will result in changes in wording of control and cross-default clauses in existing loan and bond documentation, which may impact investor appetite. **Recommend** setting standardised wording (potentially on a BASA level) to promote investor indifference. | The FSLA Act requires cross-default clauses in contracts to be amended to ensure that resolution (or a resolution action) is not automatically considered a default event.  The purpose of this Standard is to facilitate the execution of the FSLA Act to ensure that the relevant assets and liabilities can be transferred (as part of a resolution strategy) without triggering a default event when the parties are meeting their performance obligations. |
| 80 | BASA | 8.2(d)(ii)(aa) to (cc) | We are concerned about the number of contracts and subsequently the time and resources that could be required to analyse the third-party contracts and identify the mentioned aspects. The extent of the concern would be determined by the expectations in terms of the transfer parameter | The comment is noted, and the Authorities would like to emphasise that this requirement (and all the other requirements in the Standard) only relates to the assets and liabilities included in the transfer perimeter and is not necessarily a blanket application to the entire institution. |
| 81 | BASA | 8.2 (d) (iii) legal | **Clarify** whether it is expected that in-house legal transactional and advisory services utilised be benchmarked to industry costs.  **Recommend** identifying the legal aspects with potential **material** impact on the transfer of including third country law contracts. | **Clarity regarding benchmarking in-house legal fees to industry:**  The Authorities do not make any reference to legal costs or benchmarking costs to industry in the Standard, therefore the Authorities cannot comment on the respondents’ query.  **Recommendation for ‘material’ contracts:**  The Authorities re-iterate that this requirement (and all the other requirements in the Standard) only relates to the assets and liabilities included in the transfer perimeter and is not a blanket application to the entire institution. |
| 82 | BASA | 8.2 (e) (i) | **Clarify** what constitutes “critical staff”. | The wording in section 8.2(e)(i) has been amended to ‘relevant staff or roles’ to align with section 8.2(e)(ii)(cc). |
| 83 | BASA | 8.2 (d) (ii) (cc) | **Recommend** identifying the staff that are required (do) support a critical function / core business line, but it will not be feasible to move staff with the function if that staff member is also supporting a function that will stay with the “residual institution”. To address this, we would like to outline that it is not feasible to create roles that only cater to one business activity as this undermines cost containment and economy of scale that are important in ensuring a sustainable firm that can compete with peers. As a mitigating action we **recommend** that a transitional service agreement can be entered into. | The reference to section 8.2(**d**)(ii)(cc) seems incorrect.  Section 8.2(e)(ii)(cc) speaks to ensuring the relevant roles and required expertise are properly mapped and labour law liabilities are identified. This is part of to ensuring that the transfer perimeter has operational continuity (by having the expertise required for the activities in the transfer perimeter) post separation from the designated institution.  A residual institution is the remaining institution (‘left-over’ parts) after the transfer of assets and liabilities, which will be subject to liquidation or an orderly wind down.  A scenario that leads to a residual institution will most likely mean that what is critical, or core is transferred out to an acquiring institution or bridge institution. |
| 84 | BASA | 8.2(e)(ii) (aa) | **Clarify** whether critical functions and core business lines would be transferred to the acquirer or bridge entity vs being kept in the surviving institution. | The treatment of critical functions and core business lines is dependent on the resolution strategy for each individual designated institution. Therefore, critical functions and core business lines could be transferred (to an acquiring institution/ bridge institution) or they could remain in the surviving institution.  The key requirements of 8.2 (c)(ii)(aa) is to ensure continuity of the critical functions and core business lines, whether they are transferred out or remain in the surviving institution. |
| 85 | BASA | 8.2(e)(ii)(cc) | We believe that the events/scenario leading up to the bank being placed in resolution, as well as the specific bank’s resolution strategy, would determine the relevant staff or roles and expertise required to contribute to orderly resolution. | Noted. |
| 86 | BASA | 8.2(f)(i) | **Clarify** the level of the analyses required | The application of a resolution transfer tool can be at various levels such as entity level, business unit, portfolio etc. Therefore, the level or extent of analysis will be driven by how the Reserve Bank intends to use the transfer tool (if at all) on the specific designated institution. |
| 87 | BASA | 8.2 (g) (i) | **Recommend** the deletion of “and whether the designated institution can remove or mitigate them”. | All interconnections that the transfer perimeter has with the rest of the designated institution have to be dealt with by removal, mitigation or by including them as part of the perimeter to be transferred (because they are too costly or too complex to remove or mitigate).  The Authorities expanded on section 8.2(g) to simplify the requirement on how the designated institution can deal with the identified interconnections, depending on whether the interconnection is hard or soft. |
| 88 | BASA | 8.3 | **Recommended** that this only be a requirement when a residual institution (critical and / or core business lines within the perimeter) that is expected to be a going concern is contemplated in the Resolution Plan of the designated institution.  **Clarify** what needs to be included in the financial analysis (i.e., portfolios, segments, etc).  In addition, section 8.3 suggests detailed financial analysis and compiling a business plan covering separation cost as well. It should be noted that a business plan will change according to the set of events resulting in needing to dispose of assets as well as be dependent on state of other institutions which makes this challenging to achieve. | The purpose of the Standard is to cover all transfers (whole or partial) across all resolution strategies.  A residual institution will be subject to liquidation or an orderly wind-down as per the definitions under section 3 of the Standard.  Section 8.3(a)(i) to (iv) details what should be included in the analysis as a minimum.  The Authorities disagree with the recommendation. |
| 89 | BASA | 8.3(a) | **Clarify** the purpose of including historical sources of funding in the financial analysis and business plan. Should a funding plan be required for future/resolution sources of funding, consideration should be given to the Recovery Plan which encompasses available sources of funding under a stress.  The nature and severity of the stress event which leads to the invocation of the Recovery Plan, will determine the extent of utilisation of sources of funding, with the residual amount that can potentially be available in resolution being difficult to ascertain at this stage. Considering this, **recommend** guidance on how to determine the potential funding sources in resolution. | Section 8.3(a)(iv) requires the designated institution to include capitalisation and liquidity and/or funding of the **transfer perimeter** (including potential sources of funding).  The transfer perimeter is what will be transferred out to a third party (be it a new acquiring entity or a bridge institution) therefore, the understanding of the capitalisation and liquidity/funding needs of the transfer perimeter is of importance for the acquirer and for the Resolution Authority’s assessment for the perimeter to continue operating post separation from the rest of the designated institution.  The requirement should not be determined on what the designated institution has or not at any point intime, but rather what the needs of the transfer perimeter will be should the transfer tool be executed.  A Funding in Resolution Standard will be developed in the future. |
| 89 | BASA | 8.4 | Performing a full-scale in-depth assessment of all the potential suitors, including financial capacity, etc. for all options identified in the perimeter assessment (on an annual basis) will be a very time consuming and costly exercise. A more typical merger and acquisition approach would involve sharing a brief Teaser document with a wider range of prospective bidders at the start of the disposal process.  **Recommend** that a list of potential bidders should be sufficient. Consideration should be given to potential competition consequences due to other banks being potential bidders. **Recommend** for the RA to keep and maintain these lists.  Given that there has not been sufficient mergers or acquisition transactions over the past 24 months to reference, we question the DI’s ability to meet the requirements that have been set out | The Resolution Authority should not wait for resolution to occur in order to prepare for it. In addition, in a resolution scenario time is of the essence to prevent further loss of value. Therefore, pre-knowledge of and capabilities of “potential suitors” are imperative for proper planning of a transfer tool in a resolution strategy.  The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  The lists of potential suitors will be contained in the resolution plans of the relevant designated institutions (using the base identification performed by the designated institution). |
| 91 | BASA | 8.5 Requirements for management information systems | A growing bank, continuously launch new products that require much development effort for inclusion in their current systems. With additional information requirements in terms of interconnections entities with the wider Group that would need to be spec’d and built on already strained resources. | Noted |
| 92 | BASA | 8.5 (a) | **Clarify** what is meant by “readily available”. | Upon further review of the Standard, the Authorities amended section 8.5(a) to state that the designated institution must have the ability to provide accurate and **timely** information. The term “readily available” has been deleted, to avoid varying interpretations. |
| 93 | BASA | 8.5 (a) and (b) | The Standard provides extensive detail of the requirements at a principal level, without specifying the associated control requirements. It seems to be a scenario agnostic standard, but some of the requirements may have very specific controls and processes to be considered when looking at specific scenarios such as:   * 8.5 (a) speaks to the provisioning of data. In a cyber scenario, this may not be possible or safe. * 8.5 (b) (iv) speaks of operational continuity of the transfer perimeter, the approach to ensure operational continuity for a scenario that may have been brought about by financial stress, is very different to what may be required as part of a cyber or technology failure scenario.   Therefore, it should be noted that all requirements might not be applicable in all scenarios. | Noted |
| 94 | BASA | 8.5 (b) (iii) | **Recommend amendment** to reflect “hard interconnections within the perimeter” and “soft interconnections outside the transfer perimeter”. | All the interconnections to be identified, have to do with the transfer perimeter's connection with the rest of the designated institution. The treatment of the hard vs the soft is different. The hard ones have to be included in the transfer perimeter, whilst the soft ones should be removed or mitigated.  Disagree with the recommendation. |
| 95 | BASA | 8.5 (c) | **Recommend** the use of a descriptor other than “item”. | The introduction paragraph under 8.5(c) has already pre-introduced the “items” to be the assets and liabilities in transfer perimeter. The recommendation does not change the essence or the meaning of the requirement.  Disagree with the recommendation. |
| 96 | BASA | 8.5 (c) (i) | The “mapping of core critical functions and core business lines” implies that core business lines enjoy the same protection as critical functions in all instances.  Core business lines would only be protected in creating a residual institution that will not be liquidated. This is not in line with the “residual institution” definition provided. Clarify what is expected, e.g., is this only for core business lines and critical functions to be transferred?  **Recommend** that the interconnectedness assessment not be required for activities within the transfer perimeter, as this will not assist with successful separation and transfer of assets, while introducing significant operational requirements and costs. | Section 8.5(c)(i) states “mapping of critical functions and core business lines to each item in the transfer perimeter”. That means the critical functions and core business lines referred to in this section are associated with what will be transferred out to the acquirer.  The Authorities do not agree with the recommendation. The whole point of identifying the interconnections related to the transfer perimeter is to ensure that the transfer perimeter continues post separation. |
| 95 | BASA | 8.5(c)(iv) | Consideration should be given to how interconnection will play out with regards to intra-group loans in different jurisdictions. It should be noted that there are complexities around transferability and cancelling of intra-group loans and issuing of new loans. | Noted |
| 96 | BASA | 8.6 Requirements for the transfer playbook  (a)(i) to (iii)  (b)(i) to (v) | We are concerned about the amount of time and resources that could be required to fulfil this requirement, depending on the scale of the transfer perimeter. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard. |
| 97 | BASA | 8.6 Requirements for the transfer playbook | This section provides details on what is required of a playbook, but the creation of this playbook would require many manhours to design and complete. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard. |
| **9.Protected arrangements** | | | | |
| 98 | CLS | 9.2  (as a new insertion) | The following additional sub-paragraph is proposed under paragraph 9 (protected arrangements):  *“The SARB must, in all circumstances, including in the event of a partial transfer, apply safeguards to protect the integrity of transactions in a settlement system and in a designated settlement system, including financial arrangements relating to the participation of the designated institution in such systems, such as finality, netting arrangements, collateralization, and fulfillment of the participant’s obligations to such systems, as contemplated in section 166S(9) of the FSR Act.”* | The Authorities will apply safeguards stipulated in section 5 of the NPS Act to transactions in a settlement system (including a designated settlement system) to safeguard or protect those transactions, where relevant, in a partial transfer strategy.  A new insertion has been made under protected arrangements to include the above safeguard. |
| 99 | FirstRand | - | No comment | Noted |
| 100 | Grindrod | - | No comment | Noted |
| 101 | Habib Bank | - | No comment | Noted |
| 102 | JSE | - | No comment | Noted |
| 103 | MMH | - | No comment | Noted |
| 104 | Nedbank | - | No comment | Noted |
| 105 | BASA | - | No comment | Noted |
| **10.Requirements to define the transfer perimeter** | | | | |
| 106 | CLS | - | No comments | Noted |
| 107 | FirstRand | - | No comment | Noted |
| 108 | Grindrod | - | No comment | Noted |
| 109 | Habib Bank | 10.2(d) | Incorrect reference to the FSLA Act. Should be “the Act” | Section 10(2)(d) of the Standard has been amended to reference section 166S to “the Act”. |
| 110 | JSE | - | No comment | Noted |
| 111 | MMH | - | No comment | Noted |
| 112 | Nedbank | - | No comment | Noted |
| 113 | BASA | 10.1 | **Recommend** that the PA should consider also adding a requirement that in an open resolution strategy, the designated institution should be assessed to remain financially viable in future by generating sufficient returns for capital providers post the transfer of a perimeter.  This could be linked to the Valuation process. | The Standard is meant to specifically deal with transfer requirements.  Disagree with the recommendation. |
| 114 | BASA | 10.1 (a) | **Recommend** amendment of wording to “preserve the continuity of critical functions and / or core business lines” is recommended.  **Clarify** the scope of the Standard, i.e., typically core business lines are of interest for Recovery Planning but have been included in this resolution Standard.  **Clarify** in terms of the inclusion of core business lines | **Recommendation to change wording:**  The Authorities considered the recommendation and has changed the wording to the now section 9.1(a) to read as follows:  “Preserve the continuity of critical functions and/ or core business lines”.  **Clarity regarding core business lines:**  The relevance of core business lines in a transfer perimeter definition is dependent on the type of resolution transfer tool being used. For example, in a scenario of separating bad bank from the good bank, a resolution authority could transfer critical functions and core business lines to a bridge institution (instead of transferring the bad bank out and leaving a surviving institution). This is just one of many resolution scenarios where core business lines could be relevant.  In addition, it is to be noted that the transfer perimeter should be attractive to prospective buyer and therefore areas of a designated institution that represent a material source of revenue for the designated institution in resolution become relevant (depending on the transfer strategy). |
| 115 | BASA | 10.2 (c) | The residual institution is defined as an institution that will ultimately be liquidated or face an orderly wind down. **Clarify** what assessment is expected to be done as the NCWOL would be materialised in this scenario. | The principle under section 10.2(c) (now section 9.2(c)) is to safeguard creditors’ claims.  Liquidation of an institution under normal insolvency proceedings is different from liquidation of a residual institution. Where a partial transfer has been effected by the Reserve Bank (as part of the resolution strategy), the creditors’ claims that have not been transferred should receive at least as much as what they would have received, had the institution been liquidated under normal insolvency proceedings.  Therefore, in formulating the transfer perimeter (for a partial transfer strategy), if there are any liabilities that would receive less (by remaining in the residual institution) than they would (under normal insolvency proceedings), then the designated institution should as far as possible include those liabilities in the transfer perimeter. |
| **11.Governance requirements** | | | | |
| 116 | CLS | - | No comments | Noted |
| 117 | FirstRand | - | No comment | Noted |
| 118 | Grindrod | - | No comment | Noted |
| 119 | Habib Bank | - | No comment | Noted |
| 120 | JSE | - | No comment | Noted |
| 120 | MMH | - | No comment | Noted |
| 121 | Nedbank | - | No comment | Noted |
| 122 | BASA | 11 | The magnitude of the work is of great concern. Banks would further need to define all our functions/services and ensure all governance processes/policies are updated to reflect this.  **Clarify** if a review by External Audit be necessary to meet these requirements | The Standard only deals with the requirements to effect a resolution transfer tool in a designated institution.  Any resolution related audit requirements (internal or external) will be dealt with separately and the Authorities will deal with those requirements, if any, in due course. |
| **12.General compliance requirements** | | | | |
| 123 | CLS | - | No comments | Noted |
| 124 | FirstRand | - | No comment | Noted |
| 125 | Grindrod | - | No comment | Noted |
| 126 | Habib Bank | - | No comment | Noted |
| 127 | JSE | - | No comment | Noted |
| 128 | MMH | - | No comment | Noted |
| 129 | Nedbank | - | No comment | Noted |
| 130 | BASA | 12 | Ongoing monitoring. The directive also states monitoring on an ongoing basis which would entail additional resources to deliver on these tasks.  **Clarify** would this be a monthly requirement and when would the PA issue the format to show how information should be submitted.  Additional reporting would require system enhancements and IT development. | Section 13.2 of the Standard states that the form, manner and **period** for regulatory reporting on this Standard will be determined by the Authorities and be published on the Prudential Authority’s website. Therefore, this information will be communicated in due course.  The monitoring, should be ongoing (and not periodic) as per section 12 of the Standard. |
| **13.Reporting requirements** | | | | |
| 131 | CLS | - | No comment | Noted |
| 132 | FirstRand | - | No comment | Noted |
| 133 | Grindrod | - | No comment | Noted |
| 134 | Habib Bank | - | No comment | Noted |
| 135 | JSE | - | No comment | Noted |
| 136 | MMH | - | No comment | Noted |
| 137 | Nedbank | - | No comment | Noted |
| 138 | BASA | 13.2 | **Request** the PA to consider publication of the prescribed format for industry consultation prior to its finalisation and publication of the reporting requirements on the PA’s website. | Noted. The Authorities will consider the respondents’ request to have a consultation process on the prescribed reporting requirements before finalisation.  The form, manner and period for regulatory reporting will be published on the Prudential Authority’s website, as stated under 13.2 (now section 12.2) of the Standard. |
| GENERAL COMMENTS | | | | |
| 139 | CLS |  | CLS welcomes the opportunity to comment on the draft Prudential Standard RA02 – “Transfers of assets and liabilities of designated institution in resolution” published by the South African Authorities.  CLS understands that the South African Reserve Bank’s (SARB) approach to ensuring access to critical infrastructures is aligned to the standards and guidance issued by the FSB, including the FSB’s Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution, published in July 2017. As previously indicated by the SARB, maintaining access to critical financial market infrastructures (FMIs) is essential to ensure that a bank’s critical functions can be maintained during resolution. CLS fully supports this goal and recognizes that designated institutions will need to assess their FMI services, map their activities and instruments to different FMIs, and put in place arrangements with the operators of these infrastructures to ensure they continue to meet the requirements during resolution. CLS is mindful of the important role it plays as the operator of a systemically important financial market infrastructure (i.e., the CLS System) with respect to the operations and activities of its members, as well as within the broader financial system  On this basis, CLS notes that the draft Prudential Standard only relates to the resolution tool of transfer in connection with participation in financial market infrastructures and does not address participation in settlement systems (including designated settlement systems). Accordingly, CLS has proposed certain amendments, reflected above, to bring these systems within scope of the draft Prudential Standard, so that designated institutions will plan for continued participation in these systems in a resolution scenario.  In addition, CLS notes that in addition to the transfer of assets and liabilities, the FSR Act contemplates other 'resolution tools' including bail-in, amalgamation, merger or a scheme of arrangement. CLS believes that it would be helpful to ensure that appropriate safeguards are likewise extended with respect to the participation of designated institutions in settlement systems.  Accordingly, CLS suggests that to the extent that the SARB proposes to publish separate prudential standards relating to other resolution tools, the position of designated settlement systems is taken into account for each of these relevant prudential standards. | The Authorities agree that the Standard should also cover interconnections that the Transfer Perimeter might have with settlement systems (including designated settlement systems) and not only market infrastructures.  Therefore, the following sections of the Standard have been amended to capture the recommendations:   * Definitions; * Protected arrangements; and * Requirements for Financial Interconnections. |
| 140 | FirstRand | - | No comment | Noted |
| 141 | Grindrod | - | No comment | Noted |
| 142 | Habib Bank | - | No comment | Noted |
| 143 | JSE | general | We appreciate that the Standard gives effect to the requirements of the FSR Act, as amended by the FSLA Act, and we are supportive of requirements set out in the Standard to ensure that the SARB is provided with the necessary tools, to undertake an orderly resolution of designated institutions. | Noted |
| 144 | JSE | 13 | Market infrastructures have a regulatory interest in the recovery and orderly resolution of designated institutions that are authorised users, clearing members, and or central security depository participants (‘users/members/participants’). We believe that it essential that a market infrastructure is provided with the Separability Analysis and Transfer Playbooks (or appropriate sections thereof) developed by the designated institutions that are users/members/participants of that market infrastructure.  This can be achieved through –   1. the reporting requirements as provided for in paragraph 13.2 of the Draft Standard; 2. market infrastructure rules; or 3. though sharing of relevant information between the SARB/Prudential Authority and the market infrastructures provided for in the Standard or under a MoU.   Our preference would be (a) above, in which the Prudential Authority directs designated institutions to provide the relevant market infrastructures with the Separability Analysis and Transfer Playbooks (or appropriate sections thereof), any amendments thereto and the outcome of ongoing reviews and testing.  We would welcome an opportunity to discuss the most effective solution to ensure that market infrastructures have the necessary information to assess the risk to the functioning of the market infrastructure and its other users/members/participants in the circumstances where a designated institution enters into resolution. | Resolution Plans are confidential. Market Infrastructures should rather discuss the contracts and contingency plans with designated institutions to ensure that the contracts and contingency plans can continue with the new “user/member/participant” for as long as the relevant obligations are fulfilled by the counterparty..  It is to be noted that requirements for access to market infrastructures and the arrangements that designated institutions should have with market infrastructures for an orderly resolution will be covered in another Standard that is still to be developed and published in the future. |
| 145 | MMH | Section 166 / Paragraph 6 – Resolution Transfer Tools | Income Tax:  Entities in distress typically hold large tax losses and deficits (both I-E and Transfers) which are valuable to potential acquirors. Provision should be made to allow SARB to designate/effect the transfer of tax losses to new entity or venture - similar to Section 50 of the old Bank’s Act. The untaxed policyholder funds of insurers typically hold significant investments and are usually excluded from any relief exemption in the Income Tax Act. Breaking up an insurance group would also typically lead to foreign subsidiaries incurring deemed exit taxes.  Provision should be made for these to “rollover” to the new acquiror and only be realized if a normal exit event occurs. | Noted. The principle of the comment is understood, however this falls outside the mandate of the Prudential Authority to address as it relates to historical tax legislative amendments. This aspect of the Banks Act was amended by Act 20 of 2007. |
| 146 | MMH | Section 166 / Paragraph 6 - Resolution Transfer Tools | Indirect Taxes;  Transferring books and assets leads to significant frictional costs (VAT / UST / Transfer Duty) where Group Relief or Going Concern exemptions under the Income Tax Act are unavailable. **Provision should be made to empower SARB to exempt resolution transactions from these specific taxes to facilitate efficient and effective restructuring of distressed entities**. The scope should include outsource transactions that usually create VAT inefficiencies. | Noted. The principle of the comment is understood, however this fall outside the mandate of the Prudential Authority to address as it relates to historical tax legislative amendments. This aspect of the Banks Act was amended by Act 20 of 2007. |
| 147 | Nedbank | - | No comment | Noted |
| 148 | BASA | General | The application of the Standard will make the No Creditor Worse Off (NCWO) valuation requirement more complex as liabilities are transferred across a bridge institution and/or new acquiring institution.  **Clarify** if vendors liabilities need to be associated to the services they provide, and these services linked to the assets/businesses that utilise these associated services. I.e., transfer of assets will need to be linked to associated linked liabilities and transferred together.  **Clarify** if guidance will be given as to how liabilities are transferred in terms of insolvency rankings to prevent any creditors being prejudiced?  Depending on the complexity of the requirement in respect to above, the impact will be large and costly in terms of mapping and the required MIS.  Additionally, although the SARB has the powers to effect transfers, the current wording suggests the “receiving entity” may be coerced as well. Can the PA **clarify**?  -------------------------------------------------------------------------------------------------------  Assuming that interconnections include procedural, technological and people related interconnections, **recommend** including a detailed specification of what the minimum and preferred content of such mapping would be to ensure consistency.  Continuity measures should be implemented for the transfer perimeter, but the documentation does not specify what the minimum requirement for continuity would be. **Recommend** that consideration be given to:   * a proposed recovery time objective that would need to be achieved, * a minimum business continuity objective or maximum tolerable period of disruption consideration that should be used to define the continuity measures required,   **Clarify**, in respect of data, whether a minimum Recovery Point Objective will be required. | Section 9.2(c) requires designated institutions to include, as far as possible, liabilities that would give rise to NCWOL if they remained in the residual institution.  The requirements (under section 8) to identify financial, legal, operational and business interconnection related to the transfer perimeter are to enable the designated institution to deal with these interconnections appropriately i.e., hard interconnections will be included in the transfer perimeter, whilst soft interconnections are mitigated or removed.  Save for transfers to an Asset Management Company (which will be used to maximise the returns on the non-performing assets), transfers will be made to a new acquiring institution or a bridge institution (pending a future sale). Therefore, because these transfers are essentially sale transactions, they have to make economic sense (and transfers include processes such as due diligence and valuations). Therefore, the Authorities are not clear on the respondents’ statement that there is wording that suggest coercion.  ------------------------------------------------------------------------------------  Identification of the interconnections that the transfer perimeter has with the rest of the designated institution and dealing with those interconnections appropriately is what enables a smooth and clean separation and continuity of the perimeter post separation.  The requirement of the Standard relates to ensuring that the assets and liabilities that will be transferred out can continue post separation. Therefore, the continuity required by the Standard is different from business or operational continuity requirements under normal circumstances (which would involve recovery time objectives, maximum tolerable period of disruption etc). |
| 149 | BASA | Implementation timeframe | **Clarify** the implementation timeframe of the Standard. | The Standard excluding all the requirements sections (as per the amended application section) will be applicable from the date that the resolution related provisions in the FSLA Act come into effect (which will be in the commencement schedule to be published by the Minister of Finance).  The Reserve Bank will then inform the relevant designated institutions, during the resolution planning phase, whether transfer tools will form part of their resolution strategy and the extent thereof.  Once the designated institutions have been informed that a transfer tool will form part of their resolution strategy, they will be given a minimum of 2 years to fulfil requirements stipulated in the Standard. |
| 150 | BASA | Sequencing of requirements/timing of other standards | Sequencing/timing to be articulated in the standard. **Recommend** that consideration should be given to the timing of other elements and associated Standards. | Refer to comment 149 above regarding the implementation timeframe. |
| 151 | BASA | Transfer perimeter | Please provide an indication of the frequency required to update the transfer perimeter. | Reporting requirements will include updating the assets and liabilities in the transfer perimeter.  Section 13.2 (now section 12.2) states that the form, manner and period for regulatory reporting will be determined by the Authorities and published on the Prudential Authority’s website, once finalised. |
| 152 | BASA |  | The assumption is that the resolution plan will not be made available to designated institutions and hence the institution will not be aware of the resolution tool being applied to them. **Clarify** if a transfer perimeter should be compiled per resolution tool? | The assumption is incorrect. The Reserve Bank will inform the designated institution of the envisaged resolution strategy.    The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard. |
| 153 | BASA |  | The assumption is that the resolution plan will not be made available to designated institutions and hence the institution will not be aware of the core business lines, critical functions and essential services detailed in the resolution plan. In the Operational Continuity in Resolution discussion paper section 2.7 mentions that although there may be material similarities between the core business lines, critical functions and essential services identified for recovery planning and business continuity, it cannot be assumed that it will be the same for resolution planning.  **Clarify** if the core business lines, critical functions and essential services will be disclosed to designated institutions to ensure that the scope of the transfer perimeter is in line with resolution planning expectations. | The assumption is incorrect. The Reserve Bank will inform the designated institution of the envisaged resolution strategy. |
| 154 | BASA | Segregation of distressed assets | **Recommend** that this be aligned to approved transactions in the South African market observed in the recent past, which has been very limited in the South African market. Therefore, we see limited scope for this activity being undertaken in the open South African market/by private institutions. | Noted |
| 155 | BASA | General | There is uncertainty whether systemic banks (D-SIBs) also need to comply with this paper. If Transfer tools 1 and 2 are for closed resolutions, then it won’t apply to SIFI’s that will follow an open resolution strategy. **Clarify** | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  Resolution tools can be used in conjunction with each other. Bail-in as the main resolution tool does not preclude transfers from being used as part of the tools to achieve an orderly resolution. |
| 156 | BASA | General | It is also unclear potential synergies and/or duplication of efforts between this paper, recovery plans and resolution plans. It will thus be difficult at this stage to quantify potential impacts from a cost perspective, however the administrative burdens attached to developing playbooks appears significant. | Where there are similar requirements between this Standard and other Standards to follow designated institutions will not be expected to duplicate efforts. |
| 157 | BASA | Scope of the paper | As stated in the National Treasury and SARB paper, Strengthening South Africa’s Resolution Framework for Financial Institutions: “When a DRI reaches the POR, a simple wind-down or liquidation process (i.e., a closed resolution) is very unlikely, for the reasons discussed in Chapter 1. It is more likely that some form of an open resolution will be followed in terms of which the institution will be stabilised before embarking on a longer-term restructuring or winding-down process”. It is envisaged that the intention is for DSIB’s in South Africa to follow an open bank resolution strategy with bail in as the preferred resolution tool and not transfer. This implies that the bank and its critical functions would remain operational and as such, the key assets and liabilities would remain within the institution and not be transferred.  The following is stated in the Bank of England’s paper, “The Bank of England’s approach to resolution October 2014”: “The size and complexity of most global banks and investment firms greatly increases the difficulty of rapidly separating critical economic functions from the rest without causing systemic disruption. For such large firms, a transfer of part or all the business is likely to be difficult to achieve during a short period, such as a resolution weekend. This has led to the development of the concept of bail-in.”  This then poses the question of whether this proposed standard is not intended for smaller and less complex, less interconnected banks, where transfers are more likely to be successful and is not applicable to DSIB’s. **Clarify** | The Resolution authority has always envisaged bail-in to be the preferred resolution tool to stabilise SIFIs in resolution. However, that does not preclude a transfer tool from being used in conjunction with bail-in (i.e., to remove non-core or problematic portfolios, business units etc). The application of resolution tools is not binary. |
| 158 | BASA | Defining the transfer parameter before the resolution strategy is complete | Is the intention that banks define their own transfer perimeters or would the Resolution Authority/SARB not have to do this or at least agree it? It is our understanding that the resolution authority/SARB would, as part of the resolution planning process, look at all the banks individually and define their individual resolution strategy. This would then determine if the transfer of some or all the bank assets and liabilities forms part of the intended resolution strategy for the banking group. That would in turn then ensure that the transfer perimeter is clearly defined and once defined and agreed by the RA, the proposed standards would be applied to that transfer perimeter only.  As stated in the SARB paper, “Proposed valuation requirements for resolution-planning purposes”, “The RA will inform the DI whether an open or closed resolution strategy will apply to it and, in line with the strategy, indicate whether the intention during a resolution will be to keep an asset (hold value) or sell it (disposal value).” This again implies that banks will, after working closely with the RA, be informed what the resolution strategy will be and what if any assets should be transferred.  This standard appears to not apply until such time as the resolution strategy has been determined by the RA and the transfer perimeter that forms part of that strategy is clear. **Clarify** if this this assumption is correct. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  Compliance with the requirements in the Standard will provide the Authorities with a base and inputs into the envisaged resolution strategy (because the designated institutions should have a more intimate understanding of their business).  The Authorities will then analyse the submissions and provide recommendations to ensure that the requirements are adequately met, and separability barriers are addressed to meet the objectives of the resolution strategy. |
| 159 | BASA | General: This Standard sets out the requirements for designated institutions to comply with. | The proposed standard is set for all designated institutions. As the current proposed framework has stated that all institutions within a banking group are deemed to be designated institutions unless they are specifically exempt as such by the Governor of SARB. Until such time as the governor has reviewed all SA banking groups and all the designated institutions have been defined, we must assume that this proposed standard would need to be applied to every entity within the banking group regardless of size, materiality, or complexity. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  In addition, as per section 29(A)(2) of the Act, the Authorities will follow a process for the Governor to indicate which entities within a conglomerate will be exempted for resolution purposes. |
| 160 | BASA | General: Recovery plans and operational reliance detail | Recovery planning is seen to be the foundation for the resolution planning process but recovery planning in South Africa has focused on the South African economy and entities that fall within the South African bank entities largely. This proposed standard is aimed at all designated institutions which will require a lot of duplication of processes for every entity to ensure all entities have detailed recovery plans with core business line and critical function analysis, operational interconnectedness mapping etc performed before this resolution planning process was performed.  Also, the detail of the operational continuity mapping of core business lines and critical functions as suggested in the proposed standard appears to be required at an even more granular level as to what is currently required for recovery planning purposes which will require a lot of additional work to be performed on the existing recovery plan mapping to be able to meet these requirements. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard.  Where there are similar requirements between this Standard and other Standards to follow designated institutions will not be expected to duplicate efforts. |
| 161 | BASA | General: Timeframe | **Clarify** the process to consider the comments raised by the industry regarding the proposed standards?  **Clarify** how many further iterations or drafts are likely to be publicly released for comment before any proposed standard will then become an official standard?  **Clarify** the consultation process for this standard and timeline going forward.  Considering the queries raised above around first clearly defining the scope based on the resolution strategy and transfer perimeter,  **recommend** more guidance on the envisaged timeframe that is expected before any of the proposed standard would be enforced. This timeframe will materially impact the costs required to ensure the industry are able to make the enhancements required to meet any proposed standard. **Clarify** the envisaged timeframe for compliance, as well as submission of the impact assessments?  The release of other regulatory standards, amendments to regulations and reporting requirements need to also be considered in managing timelines and deadlines for submissions from banks. | The process to consider the public comments and the way forward:  The comments raised together with Authority’s response will be consolidated in a consultation report and amendments will be made to the Standard and the Statement, where relevant.  The amended Standard and Statement together with the Consultation report (and other supporting documentation) will have another round of being tabled at governance committees within the Prudential Authority and then be tabled in Parliament by the Minister of Finance, before the Standard can be made (or be promulgated) by the Prudential Committee..  Refer to comment 149 regarding the time frames. |
| 162 | BASA | General | Banks are concerned about the amount of work required to execute on this proposed standard. Regular workshops should be scheduled to ensure the banking industry interpret the standards similarly and to provide opportunity to share ideas. | The Authorities amended the Application section (section 5), to clarify that the Standard is applicable to all designated institutions, however only institutions that will have been informed by the Reserve Bank that transfers will form part of their resolution strategy, will need to comply with the requirements in the Standard. |