

REPUBLIC OF SOUTH AFRICA

FINANCIAL MATTERS AMENDMENT BILL

*(As presented by the Standing Committee on Finance (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 1B—2019]

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No. 9 of 2017), or the Financial Markets Act, 2012 (Act No. 19 of 2012)),
 prove in terms of section forty-four the claim thereby secured and he
 shall attach to the affidavit submitted in proof of his claim a statement of
 the proceeds of the realization and of the facts on which he relies for his
 preference.”; 5

(b) by the substitution for subsection (10) of the following subsection:

“(10) Whenever a creditor has realized his security, other than
 property held as security in favour of a secured creditor for obligations
 arising out of a master agreement defined in section 35B(2) (including
 eligible collateral in terms of the applicable standards made under the 10
 Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or the
 Financial Markets Act, 2012 (Act No. 19 of 2012)), as hereinbefore
 provided he shall forthwith pay the net proceeds of the realization to the
 trustee, or if there is no trustee, to the Master and thereafter the creditor
 shall be entitled to payment, out of such proceeds, of his preferment 15
 claim if such claim was proved and admitted as provided by section
 forty-four and the trustee or the Master is satisfied that the claim was in
 fact secured by the property so realized. If the trustee disputes the
 preference, the creditor may either lay before the Master an objection
 under section one hundred and eleven to the trustee’s account, or apply to 20
 court, after notice of motion to the trustee, for an order compelling the
 trustee to pay him forthwith. Upon such application the court may make
 such order as to it seems just.”; and

(c) by the insertion after subsection (10) of the following subsections:

“(10A) (a) Whenever a creditor has realized property held as security 25
 in respect of claims arising out of a master agreement defined in section
 35B(2) (including eligible collateral in terms of the applicable standards
 under the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or
 the Financial Markets Act, 2012 (Act No. 19 of 2012)), such creditor may 30
 retain the proceeds of the realization for the settlement of the secured
 claim and shall as soon as possible after realization—

(i) give written notice of that fact to the trustee or the Master and
 provide the trustee or the Master with a certified copy of the
 master agreement and an affidavit confirming—

(aa) that the master agreement had been entered into; 35

(bb) the nature and particulars of the claim, including the net
 amount calculated at the date of sequestration; and

(cc) the nature and particulars of the realized security as proof of
 the secured claim;

(ii) if the net proceeds of the realization exceed the value of the 40
 claim, pay to the trustee or the Master the balance, after payment
 of those claims, and such amount shall be added to the free
 residue of the estate in question; and

(iii) if the net proceeds of the realization are less than the value of the 45
 claim, the creditor shall be entitled to rank against the estate in
 respect of the excess as an unsecured creditor.

(b) Upon receipt of the notice submitted under paragraph (a)(i), the
 trustee or the Master shall notify all creditors at the second meeting of
 creditors of the realization of the property held as security and inform
 them of their right to lodge an objection disputing the secured creditor’s 50
 preference.

(10B) (a) The trustee or any other creditor may dispute the preference
 in writing to the Master and shall provide reasons therefor by no later
 than 14 days of the second meeting of creditors.

(b) The Master shall immediately notify the creditor that has realized 55
 the property held as security under a master agreement as contemplated
 in subsection (10A)(a) of the dispute.

(c) The creditor that has realized the property may lay before the
 Master an objection and response to the dispute of the preference within
 14 days of receipt of the notification contemplated in paragraph (b). 60

(d) The Master shall make a determination on the dispute of the
 preference within 21 days of receipt of such objection and may request

any material information from the parties to be furnished in connection with the dispute.

(e) The Master shall examine the documentation submitted in terms of subsection (10A)(a)(i) for the purpose of ascertaining whether the dispute of the preference is well founded.

(f) If the Master is of the opinion that the dispute of the preference in terms of paragraph (a) is well founded, the trustee shall apply to court after notice of motion to the secured creditor for an order to set aside the secured creditor's retention of the net proceeds in terms of subsection (10A)(a), including any accruing interest and the court may upon such application make such order as to it seems just.

(g) For purposes of this subsection, 'well founded' means the Master shall be satisfied that the reasons provided by the trustee or any other creditor reasonably and sufficiently challenge the validity of the documentation submitted in terms of subsection (10A)(a)(i) as proof of the secured claim.

(h) The creditor that has realized the property held in terms of subsection (10A)(a), whether or not the creditor has proved a claim against the estate in terms of subsection (10A)(a)(i), shall, subject to paragraph (i), be liable to contribute not less than what the creditor would have had to contribute if such creditor had proved the claim.

(i) Where the creditor, referred to in paragraph (h), relies for the satisfaction of his claim solely on the proceeds of the property which constitutes his security, he shall not be liable for any costs of sequestration other than the costs specified in section 89(1) and other than costs for which he may be liable under paragraph (a) or (b) of the proviso to section 106."

Amendment of section 1 of Act 84 of 1976, as amended by section 1 of Act 26 of 1977, section 4 of Act 97 of 1980, section 17 of Act 96 of 1983, section 11 of Act 75 of 1998 and section 8 of Act 21 of 2003

2. Section 1 of the Military Pensions Act, 1976, is hereby amended—

(a) by the substitution in subsection (1) for the definition of "dependant" of the following definition:

"**'dependant'**, in relation to any member, means his [**wife**] or her spouse or child;"

(b) by the substitution in subsection (1) for the definition of "Director-General" of the following definition:

"**'Director-General'** means the Director-General: [**Health and Welfare**] National Treasury;"

(c) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

"**'Minister'** means the Minister [**of Health and Welfare**] responsible for finance;"

(d) by the insertion in subsection (1) after the definition of "previously pensionable disability" of the following definition:

"**'spouse'**, in relation to any member, means—

(a) a husband or wife in terms of the Marriage Act, 1961 (Act No. 25 of 1961), the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), or the Civil Union Act, 2006 (Act No. 17 of 2006)

(b) a life partner (including a same sex life partner)

(c) a husband or wife according to the tenets of any religion of the member at the date of the member's death;

(d) a person who is the natural parent of a child under the age of 18 years who is regularly maintained by the member; or

(e) a person with whom the member lived together as a husband, wife or life partner for a period of at least five years immediately before the commencement of the member's military services within the meaning of section 2(3);"

(e) by the deletion in subsection (1) of the definition of "widow"; and

(f) by the deletion in subsection (1) of the definition of "wife".

Amendment of section 3 of Act 84 of 1976, as amended by section 2 of Act 26 of 1977 and section 5 of Act 97 of 1980

3. Section 3 of the Military Pensions Act, 1976, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) pay pensions to the [widows] spouses, parents or children of deceased members”.

Amendment of section 4 of Act 84 of 1976, as amended by section 3 of Act 26 of 1977 and section 5 of Act 123 of 1984

4. Section 4 of the Military Pensions Act, 1976, is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph: 10

“(c) [the widow] a spouse of a deceased member who, immediately prior to his death, was in receipt of a pension in terms of paragraph (b), shall be entitled to such pension with effect from the first day of the month following immediately on the month in which the member died, and such pension shall with effect from the said date be supplemented— 15

(i) in the case of a [widow] spouse of a deceased member who has died as a result of his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he or she would have been entitled in terms of paragraph (a) if the degree of his or her pensionable disability had been determined at one hundred per cent; and 20

(ii) in the case of a [widow] spouse of a deceased member who died of a cause other than pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his or her death”; 25

(b) by the substitution for paragraph (d) of the following paragraph:

“(d) [the widow] a spouse of a deceased member who, on the date of his death, was not in receipt of a pension in terms of paragraph (b), shall be entitled to the pension to which the member would have been entitled in terms of that paragraph if he or she had not died, and the latter pension shall be supplemented— 30

(i) in the case of a [widow] spouse of a deceased member who has died as a result of his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he or she would have been entitled in terms of paragraph (a) if the degree of his or her pensionable disability had been determined at one hundred per cent; and 35 40

(ii) in the case of a [widow] spouse of a deceased member who has died of a cause other than his or her pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his or her death or to which he or she would have been entitled in terms of that paragraph if he had not died”; and 45

(c) by the substitution for paragraph (e) of the following paragraph:

“(e) the children of a deceased member who immediately prior to his or her death was in receipt of a pension in terms of paragraph (a) or who would have been entitled to such pension if he or she had not died and who is not survived by a [widow] spouse or whose [widow] spouse dies after his or her death, shall be entitled to an annual pension which shall be calculated in accordance with formula II”.

Insertion of section 4B in Act 84 of 1976

5. The following section is hereby inserted in the Military Pensions Act, 1976, after section 4A:

“Registration of spouse

4B. (a) A member shall register with the Director-General his or her spouse as determined by the Director-General. 5

(b) Registration of a person as a spouse shall be *prima facie* evidence of being a spouse.

(c) A person who is not registered as a spouse may, when bringing a claim under the Act, provide proof to the satisfaction of the Director-General that he or she is a spouse.”. 10

Amendment of section 10 of Act 84 of 1976, as amended by section 5 of Act 26 of 1977 and section 9 of Act 100 of 1979

6. Section 10 of the Military Pensions Act, 1976, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 15

“(b) in the case of a [widow] spouse referred to in section 4(d), prior to the first day of the month in which the member concerned died”; and

(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 20

“(c) in the case of the dependants of a deceased member referred to in section 4(e), prior to the first day of the month following immediately on the month in which the member concerned died or prior to the first day of the month following immediately on the month in which the [widow] spouse of that member died”. 25

Amendment of section 11 of Act 84 of 1976, as amended by section 9 of Act 97 of 1980 and section 5 of Act 117 of 1990

7. Section 11 of the Military Pensions Act, 1976, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 30

“(b) that, after the pension has been awarded, a change in the [marital state] spousal status of the member concerned or of any dependant of him or her or in the number of his or her dependants or, in the case of a [widow] spouse, a change in his or her [marital state] spousal status has occurred”. 40

Amendment of section 12 of Act 84 of 1976, as amended by section 6 of Act 26 of 1977, section 10 of Act 97 of 1980 and section 7 of Act 123 of 1984 35

8. Section 12 of the Military Pensions Act, 1976, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) in the case of a [widow] spouse of a member, up to and including the last day of the month in which he or she dies”. 40

Insertion of certain words in Act 84 of 1976

9. The Military Pension Act, 1976 is hereby amended by the insertion—

(a) after the word “he” of the words “or she”, wherever it occurs; and
(b) after the word “him” of the words “or her”, wherever it occurs.

Amendment of section 1 of Act 94 of 1990, as amended by section 1 of Act 42 of 1992, section 1 of Act 9 of 1993, section 1 of Act 26 of 1994, section 1 of Act 55 of 1996, section 1 of Act 36 of 2000, section 1 of Act 19 of 2003, section 1 of Act 20 of 2007, section 1 of Act 22 of 2013 and section 290 of Act 9 of 2017 45

10. Section 1 of the Banks Act, 1990, is hereby amended by the substitution for the definition of “public company” of the following definition: 50

“ ‘**public company**’ has the meaning ascribed to that expression in section 1 of the Companies Act, and includes a national state-owned company as envisaged in paragraph (a) of the definition of ‘state-owned company’ in section 1 of the Companies Act;”.

Amendment of section 12 of Act 94 of 1990, as amended by section 5 of Act 9 of 1993, section 8 of Act 19 of 2003 and section 6 of Act 20 of 2007 5

11. Section 12 of the Banks Act, 1990, is hereby amended by the addition of the following subsection:

“(4) (a) This subsection only applies to a national state-owned company as defined in paragraph (a) of the definition of ‘state-owned company’ in section 1 of the Companies Act. 10

(b) A state-owned company may only with the approval of the Minister, granted with the concurrence of the Minister who is accountable to Parliament for that state-owned company, apply for authorisation to establish a bank in terms of subsection (1). 15

(c) An application in terms of paragraph (b) shall include a declaration by the auditor of the state-owned company, contemplated in section 61, that certifies that for the period of 24 months immediately preceding the date of the application, the assets of—

- (i) the state-owned company exceeded its liabilities; 20
- (ii) the holding company of the state-owned company exceeded the holding company’s liabilities; and
- (iii) the holding company of the state-owned company’s holding company exceeded the liabilities of the first-mentioned holding company (if applicable). 25

(d) For purposes of the application of this Act to state-owned companies, a provision of this Act which is inconsistent with a provision of another Act, other than the Financial Sector Regulation Act, shall prevail.”.

Amendment of section 24A of Government Employees Pension Law, 1996, as inserted by section 3 of Act 19 of 2011 30

12. Section 24A of the Government Employees Pension Law, 1996, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d)(i) The benefit that is subsequently payable to the member shall, as provided in the rules, be decreased by reducing the member’s years of pensionable service to take into account the pension interest of the member which was assigned to any former spouse of the member. 35

(ii) The rules referred to in subparagraph (i) shall be made on the advice of an actuary.”.

Transitional measure applicable to Government Employees Pension Law, 1996 40

13. (1) If the amount of the pension benefit payable to a member is subject to reduction contemplated in section 24A(2)(d) of the Government Employees Pension Law, 1996, before its amendment by section 12 of this Act, the member shall, within 12 months after the commencement of this section, in writing notify the Fund whether the reduction shall be dealt with in terms of section 24A(2)(d) of the Government Employees Pension Law, 1996— 45

(a) before its amendment by section 12 of this Act; or

(b) as amended by section 12 of this Act.

(2) If a member does not notify the Fund as required by subsection (1), the reduction shall be dealt with in terms of section 24A(2)(d) of the Government Employees Pension Law, 1996, as amended by section 12 of this Act. 50

Short title

14. This Act is called the Financial Matters Amendment Act, 2019.

**MEMORANDUM ON THE OBJECTS OF THE FINANCIAL
MATTERS AMENDMENT BILL, 2019**

1. PURPOSE OF BILL

The Financial Matters Amendment Bill proposes amendments to the Insolvency Act, 1936, (Act No. 24 of 1936—“the Insolvency Act”), the Military Pensions Act, 1976 (Act No. 84 of 1976—“the Military Pensions Act”), the Banks Act, 1990 (Act No. 94 of 1990—“the Banks Act”), and the Government Employees Pension Law, 1996 (“Proclamation No. 21 of 1996—“the GEP Law”).

2. AMENDMENTS TO INSOLVENCY ACT

The Insolvency Act is to be amended to provide for a process to be followed when a creditor realizes his or her security and also to provide for a power for the Master of the High Court to deal with disputes raised by the trustee and other creditors regarding preference of the secured creditor.

3. AMENDMENTS TO THE MILITARY PENSIONS ACT

3.1 Section 9(1) of the Constitution of the Republic of South Africa Act, 1996 (“the Constitution”), provides that everyone is equal before the law and has the right to equal protection and benefit of the law. In terms of section 9(3) of the Constitution the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

3.2 The Military Pensions Act provides for, among others, pensions and gratuities for certain persons in respect of disability caused or aggravated by military services. The Military Pensions Act recognises certain marriages and the male gender, for purposes of benefits, in manner that is contrary to section 9 of the Constitution. For example, section 1 of the Military Pensions Act defines “dependant” in relation to a member, to be his wife or child. This definition assumes that members are only husbands in heterosexual relationships and furthermore perpetuates the discriminatory stereotypes that a heterosexual relationship is the only relationship which is acceptable. The Military Pensions Act disregards the fact that the military service comprises of both men and women who are in different types of relationships which are treated equally in terms of the Constitution and recognised in other laws, such as the Marriages Act, 1961 and the Civil Union Act, 2006. The Bill proposes, among others, the amendment of the word “spouse” to include members in different types of relationships and the deletion of the definition of “wife” and “widow”. To ensure gender neutrally, the Bill also proposes the substitution of the word “widow” for the word “spouse” wherever it exists.

4. AMENDMENTS TO THE BANKS ACT

4.1 Under the Companies Act, 2008 (Act No. 71 of 2008), state-owned companies are no longer classified as public companies. Currently, the Banks Act only allows for public companies to establish a bank. As a result, state-owned companies meeting the prudential and other requirements of the Banks Act, are unable to apply for authorisation to establish a bank.

4.2 To limit the fiscal risks of state-owned banks which may, in terms of its founding legislation, be able continue to operate despite being not a going concern, it is proposed that only national state-owned companies that are financially sound may apply for authorisation to establish a bank. For this purpose, the Bill proposes that—

- (a) a state-owned company must first obtain the approval of the Minister of Finance, acting with the concurrence of the Minister responsible for the state-owned company to apply for authorisation to establish a bank; and

- (b) the assets of the company, its holding company and, if applicable, the holding company of its holding company, must exceed its liabilities.

5. AMENDMENTS TO THE GEP LAW

- 5.1 Spouses of members of the Government Employees Pension Fund (GEPF) were denied the enjoyment of their share of the pension benefit immediately upon divorce or on dissolution of a customary marriage. Instead, they had to wait until their former spouses became entitled to their own benefit, whereas the Pension Funds Act, 1956 (Act No. 24 of 1956), entitled non-members spouses to immediate enjoyment of their pension interest in other funds, governed by the Pension Funds Act, upon divorce or dissolution of a customary marriage.
- 5.2 In the matter of *Mathilda Louisa Wiese v GEPP* and others an application was brought before the Western Cape High Court by a former spouse of a member of the GEPF who was unable to realise her pension interest since the GEP Law only allowed for the realisation of such interest as and when an exit takes place in relation to the former spouse, such as resignation, termination of employment or death, and no such event had occurred. The applicant requested the court to declare GEP Law inconsistent with section 9(1) of the Constitution to the extent that it did not allow spouses of former members to realise their pension interest immediately upon divorce or dissolution of a customary marriage.
- 5.3 The Court declared that—
 - (a) the GEP Law is inconsistent with section 9(1) of the Constitution in so far as it fails to afford to former spouses of members of the GEPF the same rights and advantages as are afforded to former spouses of members of funds subject to the Pension Funds Act, more particularly those contained in section 37D(1)(d), (3), (4) and (5), and is invalid to the extent of that inconsistency; and
 - (b) the invalidity is suspended for 12 months to allow Parliament to correct the defect.
- 5.4 The order granted by the Western Cape High Court paved the way for the implementation of a ‘clean break’ principle on divorce which allows division of a pension interest on divorce and not later, only when an exit event occurs. The High Court’s declaration of invalidity was referred to the Constitutional Court for confirmation. While proceedings at the Constitutional Court were pending, Parliament amended the GEP Law by enacting the GEP Law Amendment Act which cured the defect. The parties agreed that the GEP Law Amendment Act disposed of the main issues before the Constitutional Court and submitted that the matter had become moot.
- 5.5 The insertion of section 24A to the GEP Law provided for the payment of pension interest of a member of the GEPF to a former spouse (the non-member spouse) upon divorce or dissolution of a customary marriage (“clean-break principle”). The portion of the member’s pension interest assigned to a non-member spouse is deemed to accrue to the member on the date on which the decree of divorce or for the dissolution of a customary marriage is granted.
- 5.6 The amount paid to the non-member spouse in giving effect to the clean-break principle is regarded by the GEPF rules as a debt due by the member (“the divorce debt approach”) to the GEPF.
- 5.7 The rules of the GEPF (rule 14.10.9) require that a divorce debt be created at the time a member is divorced from his or her spouse or at the dissolution of a customary marriage in respect of the amount paid to the former spouse. Members have the opportunity to settle a portion or all of that debt over their period of membership should they so wish, but if there remains an unsettled amount at the time the member exits the Fund, the debt is deducted from the

benefit payable. On retirement of a member, in terms of the current rules of the GEPPF, the divorce debt is offset against the member's gratuity entitlement. Should the gratuity be less than the outstanding divorce debt, the balance of the debt is recovered by a reduction in the annual pension. In the above scenario, the member will then retire and not receive any cash.

- 5.8 Due to the prejudice suffered by the members as a result of the divorce debt approach, it is proposed that the divorce debt approach be replaced with the reduction of a member's year of pensionable service ("the service reduction approach").

6. SUMMARY OF BILL

6.1 INSOLVENCY ACT, 1936: Clause 1—Amendment of section 83

The proposed amendment—

- (a) excludes collateral security held in terms of a master agreement contemplated in section 35B(2) of the Insolvency Act, including eligible collateral in terms of the standards or rules made under the Financial Sector Regulation Act, 2017, whenever a creditor realizes his security;
- (b) allows a creditor who has realized his collateral security to retain the proceeds of the realization for the settlement of the secured claim;
- (c) empowers the trustee or any other creditor to raise a dispute on the preference, and consequently, empowers the Master to settle the dispute; and
- (d) empowers the trustee to approach a court if the Master is of the opinion that the dispute of preference is well founded.

6.2 MILITARY PENSIONS ACT, 1976

6.2.1 Clause 2—Amendment of section 1

The proposed amendment provides for—

- (a) the amendment of the definition of "dependent" so that instead of "his wife", it refers to "his or her spouse";
- (b) the amendment of the definition of "Director-General" by replacing the words "Health and Welfare" with the words "National Treasury";
- (c) the amendment of the definition of "Minister" by replacing the words "of Health and Welfare" with the words "responsible for finance";
- (d) the insertion of a definition of "spouse" to recognise members of the military in all the various types of relationships that are provided for in law;
- (e) the deletion of the definitions of "widow" and "wife" in view of proposed change elsewhere in the Act to use the gender neutral term "spouse"; and
- (f) the registration of spouses by members.

6.2.2 Clauses 2 to 9— Amendment of sections 1, 3, 4, 10, 11 and 12 and all provisions of the Act

The proposed amendments provide for—

- (a) the substitution of the word "widow" for the word "spouse" wherever it occurs and inserting a reference to the female gender, where necessary;
- (b) throughout the Act to provide for references to both genders; and
- (c) the registration of a spouse by a member with the Director-General.

6.3 BANKS ACT, 1990

6.3.1 Clause 10—Amendment of section 1

An amendment to the definition of “public company” is proposed to include a national state-owned company as envisaged in the Companies Act, 2008 (Act No. 71 of 2008), read with section 12(4) of the Banks Act (as proposed to be amended).

6.3.2 Clause 11 — Amendment of section 12 — proposed subsection (4)

- (a) The amendment stipulates that a national state-owned company must first obtain the approval of the Minister of Finance acting with the concurrence of the Minister responsible for the state-owned company to apply for authorisation to establish a bank. Furthermore, it may only apply for such Ministerial approval if the Prudential Authority certifies that the company’s assets exceed its liabilities and its holding company’s assets exceeds the holding company’s liabilities. If the holding company of the state-owned company has a holding company, the same applies.
- (b) Since conflict between the provisions of—
- (i) the Banks Act and the Companies Act for companies that are banks; and
 - (ii) the Banks Act and the Public Finance Management Act, 1999 (Act No. 1 of 1999), for state-owned companies that are banks and public entities falling under the Public Finance Management Act,
- may arise, the proposed subsection (4)(c) provides that in such event, the provisions of the Banks Act prevail.

6.4 GOVERNMENT EMPLOYEES PENSION LAW, 1996

6.4.1 Clause 12—Amendment of section 24A

The proposed amendment provides for the benefit that is payable to the member, following a divorce or dissolution of a customary marriage, to be decreased by the member’s years of pensionable service taking into account the pension interest of the member which was assigned to any former member. The amendment requires the benefit payable to the member, to be provided for in the rules of the GEPF. These rules are to be made on the advice of an actuary.

6.4.2 Clause 13—Transitional measure for amendment to GEP Law

The Bill proposes a transitional measure to allow members whose amount of the pension benefit payable is subject to section 24A(2)(d) before its amendment as intended in this Bill, to choose whether the reduction must be dealt with in terms of—

- (a) the divorce debt approach (i.e. section 24A(2)(d) before its amendment by this Bill); or
- (b) the service reduction approach (i.e. section 24A(2)(d) as amended by this Bill).

A member must notify the GEPF of his or her choice within 12 months after this amendment takes effect. If a member does not so notify the GEPF, the service reduction approach will be applied.

7. ORGANISATIONS AND INSTITUTIONS CONSULTED

- Department of Telecommunications and Postal Services
- Department of Justice and Constitutional Development
- Government Pensions Administration Agency
- Government Employees Pension Fund
- Financial Sector Conduct Authority

- South African Post Office (SOC) Limited
- KZN Department of Economic Development, Tourism and Environmental Affairs 8
- Ithala (SOC) Limited 9
- South African Reserve Bank

8. FINANCIAL IMPLICATIONS FOR STATE

- 8.1 The amendments to the Insolvency and the Banks Acts will not have financial implications for the State.
- 8.2 The amendments to the Military Pensions Act will result in additional costs to the State since life partners will be included under the scope of the Act.
- 8.3 As to the amendments to the Government Employees Pension Law, the GEPPF will carry the cost of the actuary advising in the rules to be made be for the service reduction approach.

9. PARLIAMENTARY PROCEDURE

- 9.1 The Office of the Chief State Law Adviser and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 9.2 The Office of the Chief State Law Adviser is of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.