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THE PRESIDENCY

No. 799 23 May 2019

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 18 of 2019: Financial Matters Amendment Act, 2019

DIE PRESIDENSIE

No. 799 23 Mei 2019

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 18 van 2019: Wysigingswet op Finansiële Aangeleenthede, 2019

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(Engelse teks deur die President geteken)
(Goedgekeur op 22 May 2019)

ACT

To amend—

- **the Insolvency Act, 1936, so as to provide for a process when a creditor realizes his or her security in terms of a master agreement and for a power for the Master to deal with disputes raised by the trustee and other creditors regarding preference of that secured creditor;**
- **the Military Pensions Act, 1976, so as to provide for all categories of spouses and for life partners of members by amending, inserting and deleting certain definitions; and by providing for both genders throughout the Act and regulating the registration of a spouse to qualify for benefits upon the death of a member;**
- **the Banks Act, 1990, so as to regard national state-owned companies as public companies for purposes of the application of the Banks Act; to determine prerequisites for these companies and their holding companies to qualify to apply for establishment as a bank; and to provide for inconsistencies between the Banks Act and certain other legislation with respect to state-owned companies; and**
- **the Government Employees Pension Law, 1996, so as to replace the divorce debt approach with a pensionable service reduction approach to adjust the benefit of a member of the Government Employees Pension Fund following a pension interest assigned to a former spouse of the member as result of a decree of divorce or for the dissolution of a customary marriage; and to provide for a transitional measure.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 83 of Act 24 of 1936, as amended by section 24 of Act 16 of 1943, section 27 of Act 99 of 1965, section 30 of Act 54 of 1991 and section 290 of Act 9 of 2017

1. Section 83 of the Insolvency Act, 1936, is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

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ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
______	Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(English text signed by the President)
(Assented to 22 Mei 2019)

WET

Tot wysiging van—

- **die Insolvensiewet, 1936, ten einde voorsiening te maak vir 'n proses wanneer 'n skuldeiser sy sekuriteit ingevolge 'n meestersooreenkoms te gelde maak, en vir 'n bevoegdheid vir die Meester om geskille wat die trustee en ander skuldeiser aanhangig maak betreffende preferensie van daardie versekerde skuldeiser, te hanteer;**
- **die Wet op Militêre Pensioene, 1976, ten einde vir alle kategorieë van gades en vir lewensmaats voorsiening te maak deur sekere woordomskrywings te wysig, in te voeg en te skrap; en deur in die hele Wet vir beide geslagte voorsiening te maak en die regulering van die registrasie van 'n gade om by die dood van 'n lid vir voordele te kwalifiseer;**
- **die Bankwet, 1990, ten einde nasionale maatskappye in staatsbesit vir doeleindes van die Bankwet as openbare maatskappye te ag; om voorvereistes vir hierdie maatskappye en hul beheermaatskappye te bepaal om te kwalifiseer om aansoek te doen vir oprigting van 'n bank; om voorsiening te maak vir teenstrydighede tussen die Bankwet en sekere ander wetgewing ten opsigte van maatskappye in staatsbesit; en**
- **die "Government Employees Pension Law", 1996, ten einde die egskeidingskuldbenadering met 'n pensioendraende diensverminderingsbenadering te vervang om die voordeel van 'n lid van die Pensioenfonds vir Regeringswerknemers te bepaal wat volg op die toekenning van 'n belang in pensioen aan 'n voormalige gade van die lid as gevolg van 'n egskeidingsbevel of ontbinding van 'n gebruiklike huwelik; en voorsiening te maak vir 'n oorgangsmaatreël.**

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 83 van Wet 24 van 1936, soos gewysig deur artikel 24 van Wet 16 van 1943, artikel 27 van Wet 99 van 1965, artikel 30 van Wet 54 van 1991 en artikel 290 van Wet 9 van 2017

1. Artikel 83 van die Insolvensiewet, 1936, word hierby gewysig—

(a) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) The creditor shall, as soon as possible after he has realized such property, 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 Financial Sector Regulation Act, 2017 (Act 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.";

(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 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 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 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 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 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;

(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 claim, pay to the trustee or the Master the balance, after payment of that claim, 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 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 subsection (10A)*(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 preference.

"(5) Die skuldeiser moet, so spoedig moontlik nadat hy bedoelde goed, behalwe goed gehou as sekuriteit ten gunste van 'n versekerde skuldeiser vir verpligtings na aanleiding van 'n meestersooreenkoms omskryf in artikel 35B(2) (met inbegrip van kwalifiserende aanvullende sekuriteit ingevolge die toepaslike standaarde gestel kragtens die 'Financial Sector Regulation Act', 2017 (Wet No. 9 van 2017), of die 'Financial Markets Act', 2012 (Wet No. 19 van 2012)), te gelde gemaak het, die daardeur versekerde vordering volgens artikel *vier-en-veertig* bewys, en hy moet aan die beëdigde verklaring wat hy tot bewys van sy vordering indien, 'n opgawe heg van die opbrings van die tegeldemaking en van die feite waarop sy preferensie steun.";

(b) deur subartikel (10) deur die volgende subartikel te vervang:

"(10) Wanneer 'n skuldeiser sy sekuriteit volgens voorgaande bepalings te gelde gemaak het, behalwe goed gehou as sekuriteit ten gunste van 'n versekerde skuldeiser vir verpligtinge na aanleiding van 'n meestersooreenkoms omskryf in artikel 35B(2) (met inbegrip van kwalifiserende aanvullende sekuriteit kragtens die 'Financial Sector Regulation Act', 2017 (Wet No. 9 van 2017), of die 'Financial Markets Act', 2012 (Wet No. 19 van 2012)), moet hy onverwyld die netto-opbrings van die tegeldemaking oorbetaal aan die kurator, of as daar geen kurator is nie, aan die Meester en daarop is die skuldeiser geregtig op betaling, uit daardie opbrings, van sy preferente vordering as daardie vordering volgens voorskrif van artikel *vier-en-veertig* bewys en toegelaat is en die kurator of die Meester van oordeel is dat die vordering inderdaad deur die aldus tegeldegemaakte goed verseker was. As die kurator die preferensie betwis, dan kan die skuldeiser òf volgens artikel *honderd-en-elf* by die Meester verset teen die kuratorsrekening aanteken, òf die hof versoek, na kennisgewing van die mosie aan die kurator, om 'n bevel dat die kurator hom onverwyld moet betaal. Op daardie versoek kan die hof beskik soas hy billik ag."; en

(c) deur die volgende subartikels na artikel (10) in te voeg:

"(10A) *(a)* Wanneer 'n skuldeiser goed wat as sekuriteit gehou is ten opsigte van vorderings voortspruitend uit 'n meestersooreenkoms omskryf in artikel 35B(2) (met inbegrip van kwalifiserende aanvullende sekuriteite ingevolge die toepaslike standaarde kragtens die 'Financial Sector Regulation Act', 2017 (Wet No. 9 van 2017), of die 'Financial Markets Act', 2012 (Wet No. 19 van 2012)), te gelde maak, kan sodanige skuldeiser die opbrings behou van die tegeldemaking vir die vereffening van die versekerde vordering en moet so gou as moontlik na tegeldemaking—

(i) skriftelik kennis gee van daardie feit aan die trustee of die Meester en die trustee of die Meester voorsien van 'n gesertifiseerde afskrif van die meestersooreenkoms en 'n beëdigde verklaring wat bevestig—

(aa) dat die meestersooreenkoms aangegaan is;

(bb) die aard en besonderhede van die eis, met inbegrip van die netto-bedrag bereken op die datum van sekwestrasie; en

(cc) die aard en besonderhede van die te gelde gemaakte sekuriteit,

as bewys van die versekerde vordering;

(ii) indien die netto-opbrings van die tegeldemaking meer is as die waarde van die vordering, die oorskot aan die trustee of die Meester betaal, na betaling van daardie vordering, en sodanige bedrag word bygevoeg by die vry oorskot van die betrokke boedel; en

(iii) indien die netto-opbrings van die tegeldemaking minder is as die waarde van die vordering, is die skuldeiser geregtig om teen daardie boedel gerangskik te word as 'n onversekerde skuldeiser ten opsigte van die oorskot.

(b) By ontvangs van die kennisgewing kragtens subartikel (10A)*(a)*(i) voorgelê, stel die Meester alle skuldeisers by die tweede byeenkoms van skuldeisers in kennis van die tegeldemaking van die goed as sekuriteit gehou en verwittig hulle van hul reg om 'n verset aan te teken waarin die versekerde skuldeiser se preferensie betwis word.

(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 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)*.

(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 (10B)*(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);

(10B) *(a)* Die trustee of enige ander skuldeiser kan die preferensie skriftelik betwis by die Meester en moet redes daarvoor verstrek teen nie later nie as 14 dae na die tweede byeenkoms van skuldeisers.

(b) Die Meester stel die skuldeiser wat die eiendom te gelde gemaak het kragtens 'n meestersooreenkoms as sekuriteit gehou het soos in subartikel (10A)*(a)* beoog, onmiddellik van die geskil in kennis.

(c) Die skuldeiser wat die eiendom te gelde gemaak het, kan 'n verset en antwoord op die geskil oor die preferensie binne 14 dae vanaf ontvangs van die kennisgewing in paragraaf *(b)* beoog, aan die Meester voorlê.

(d) Die Meester beslis binne 21 dae vanaf ontvangs van sodanige verset oor die geskil oor die preferensie en kan enige wesenlike inligting van die partye aanvra om in verband met die geskil voorgelê te word.

(e) Die Meester bestudeer die dokumente ingevolge subartikel (10A)*(a)*(i) voorgelê met die doel om vas te stel of die geskil teen die preferensie enige gronde het.

(f) Indien die Meester van mening is dat die geskil teen die preferensie ingevolge subartikel (10B)*(a)* goeie gronde het, moet die trustee by die hof aansoek doen nadat kennisgewing van mosie aan die versekerde skuldeiser gegee is vir 'n bevel om die versekerde skuldeiser se terughouding van die netto-opbrings ingevolge subartikel (10A)*(a)* tersyde te stel, met inbegrip van enige rente wat toeval en die hof kan by sodanige aansoek sodanige bevel gee wat die hof regverdig ag.

(g) By die toepassing van hierdie subartikel, beteken 'goeie gronde' die Meester is oortuig dat die redes wat deur die trustee of enige ander skuldeiser verstrek is, die geldigheid van die dokumente ingevolge subartikel (10A)*(a)*(i) voorgelê as bewys van die versekerde vordering, voldoende uitdaag.

(h) Die skuldeiser wat die eiendom gehou ingevolge subartikel (10A)*(a)* te gelde gemaak het, hetsy die skuldeiser 'n vordering teen die boedel bewys het ingevolge subartikel (10A)*(a)*(i) al dan nie, is, behoudens paragraaf (i), verantwoordelik om nie minder by te dra nie as wat die skuldeiser aldus moes bydra indien daardie skuldeiser die vordering bewys het.

(i) Waar die skuldeiser, in paragraaf *(h)* bedoel, tot voldoening van sy of haar vordering alleenlik op die opbrings van die goed wat sy of haar sekuriteit uitmaak, staatmaak, is hy of sy nie aanspreeklik vir enige koste van sekwestrasie behalwe die koste in artikel 89(1) bedoel en behalwe vir die koste waarvoor hy of sy kragtens paragraaf *(a)* of *(b)* van die voorbehoudsbepaling by artikel 106 aanspreeklik kan wees.''.

Wysiging van artikel 1 van Wet 84 van 1976, soos gewysig deur artikel 1 van Wet 26 van 1977, artikel 4 van Wet 97 van 1980, artikel 17 van Wet 96 van 1983, artikel 11 van Wet 75 van 1998 en artikel 8 van Wet 21 van 2003

2. Artikel 1 van die Wet op Militêre Pensioene, 1976, word hierby gewysig—

(a) deur in subartikel (1) die woordomskrywing van ''afhanklike'' deur die volgende woordomskrywing te vervang:

'' **'afhanklike'**, met betrekking tot 'n lid, sy **[vrou]** of haar gade of kind;'';

(b) deur in subartikel (1) die woordomskrywing van ''Direkteur-generaal'' deur die volgende woordomskrywing te vervang:

'' **'Direkteur-generaal'** die Direkteur-generaal: **[Gesondheid en Welsyn]** Nasionale Tesourie;'';

(c) deur in subartikel (1) na die woordomskrywing van ''formule II'' die volgende woordomskrywing in te voeg:

'' **'gade'**, met betrekking tot 'n lid—

(a) 'n man of vrou ingevolge die Huwelikswet, 1961 (Wet No. 25 van 1961), die Wet op die Erkenning van Gebruiklike Huwelike, 1998 (Wet No. 120 van 1998), of die ''Civil Union Act'', 2006 (Wet No. 17 van 2006);

(b) 'n lewensmaat (ook 'n lewensmaat van dieselfde geslag);

(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:

''*(c)* **[the widow]** a spouse of a deceased member who, immediately prior to his or her 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—

(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

(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;'';

(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 or her 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—

(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

(c) 'n man of vrou ooreenkomstig die gebruike van enige geloof van die lid ten tyde van die lid se afsterwe;

(d) 'n persoon wat die natuurlike ouer is van 'n kind onder die ouderdom van agtien jaar wat gereeld deur die lid onderhou word; of

(e) 'n persoon met wie die lid vir 'n tydperk van minstens vyf jaar onmiddellik voor die aanvang van sy of haar militêre diens, binne die bedoeling van artikel 2(3), as man, vrou of lewensmaat saamgeleef het;'';

(d) deur in subartikel (1) die woordomskrywing van ''Minister'' deur die volgende woordomskrywing te vervang:

'' **'Minister'** die Minister **[van Gesondheid en Welsyn]** verantwoordelik vir finansies;'';

(e) deur in subartikel (1) die woordomskrywing van ''vrou'' te skrap; en

(f) deur in subartikel (1) die woordomskrywing van ''weduwee'' te skrap.

Wysiging van artikel 3 van Wet 84 van 1976, soos gewysig deur artikel 2 van Wet 26 of 1977 en artikel 5 van Wet 97 van 1980

3. Artikel 3 van die Wet op Militêre Pensioene, 1976, word hierby gewysig deur paragraaf *(b)* deur die volgende paragraaf te vervang:

''*(b)* aan die **[weduwees]** gades, ouers of kinders van afgestorwe lede pensioene betaal''.

Wysiging van artikel 4 van Wet 84 van 1976, soos gewysig deur artikel 3 van Wet 26 van 1977 en artikel 5 van Wet 123 van 1984

4. Artikel 4 van die Wet op Militêre Pensioene, 1976, word hierby gewysig—

(a) deur paragraaf *(c)* deur die volgende paragraaf te vervang:

''*(c)* is **[die weduwee]** 'n gade van 'n afgestorwe lid wat onmiddellik voor sy of haar afsterwe 'n pensioen ingevolge paragraaf (*b*) ontvang het, geregtig op sodanige pensioen met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin die lid gesterf het, en word sodanige pensioen met ingang van bedoelde datum aangevul—

(i) in die geval van **[die weduwee]** 'n gade van 'n afgestorwe lid wat weens sy of haar pensioengewende ongeskiktheid gesterf het, met 'n bedrag wat gelykstaan met die helfte van die bedrag van die jaarlikse pensioen waarop hy of sy ingevolge paragraaf (*a*) geregtig sou gewees het indien die mate van sy of haar pensioengewende ongeskiktheid op honderd persent vasgestel was; en

(ii) in die geval van **[die weduwee]** 'n gade van 'n afgestorwe lid wat weens 'n ander oorsaak as sy of haar pensioengewende ongeskiktheid gesterf het, met 'n bedrag wat gelykstaan met die helfte van die bedrag van die jaarlikse pensioen wat onmiddellik voor sy of haar dood ingevolge paragraaf (*a*) aan die lid betaalbaar was'';

(b) deur paragraaf *(d)* deur die volgende paragraaf te vervang:

''*(d)* is **[die weduwee]** 'n gade van 'n afgestorwe lid wat op die datum van sy of haar dood nie 'n pensioen ingevolge paragraaf (*b*) ontvang het nie, geregtig op die pensioen waarop die lid ingevolge daardie paragraaf geregtig sou gewees het as hy of sy nie gesterf het nie, en word laasgenoemde pensioen aangevul—

(i) in die geval van die **[die weduwee]** 'n gade van 'n afgestorwe lid wat weens sy of haar pensioengewende ongeskiktheid gesterf het, met 'n bedrag wat gelykstaan met die helfte van die bedrag van die jaarlikse pensioen waarop hy of sy ingevolge paragraaf (*a*) geregtig sou gewees het indien die mate van sy of haar pensioengewende ongeskiktheid op honderd persent vasgestel was; en

(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

(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.

(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.''.

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:

''*(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:

''*(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;''.

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:

''*(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;''.

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

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:

(ii) in die geval van die **[die weduwee]** ’n gade van ’n afgestorwe lid wat weens ’n ander oorsaak as sy of haar pensioengewende ongeskiktheid gesterf het, met ’n bedrag wat gelykstaan met die helfte van die bedrag van die jaarlikse pensioen wat onmiddellik voor sy of haar dood ingevolge paragraaf (*a*) aan die lid betaalbaar was of waarop hy of sy ingevolge daardie paragraaf geregtig sou gewees het as hy of sy nie gesterf het nie;’’; en

(c) deur paragraaf *(e)* deur die volgende paragraaf te vervang:

‘‘*(e)* is die kinders van ’n afgestorwe lid wat onmiddellik voor sy of haar afsterwe ’n pensioen ingevolge paragraaf (*a*) ontvang het of wat op sodanige pensioen geregtig sou gewees het as hy of sy nie gesterf het nie en wat nie deur ’n **[weduwee]** gade oorleef word nie of wie se **[weduwee]** gade na sy of haar afsterwe te sterwe kom, geregtig op ’n jaarlikse pensioen wat ooreenkomstig formule II bereken word;’’.

Invoeging van artikel 4B in Wet 84 van 1976

5. Die volgende artikel word hierby na artikel 4A in die Wet op Militêre Pensioene, 1976, ingevoeg:

‘‘**Registrasie van gade**

4B. *(a)* ’n Lid moet sy of haar gade by die Direkteur-generaal, soos deur die Direkteur-generaal bepaal, registreer.

(b) Registrasie van ’n persoon as gade is *prima facie* bewys dat die persoon ’n gade is.

(c) ’n Persoon wat nie as gade geregistreer is nie, mag wanneer ’n eis ingevolge die Wet ingedien word, bewys dat hy of sy ’n gade is tot bevrediging van die Direkteur-generaal voorlê.’’.

Wysiging van artikel 10 van Wet 84 van 1976, soos gewysig deur artikel 5 van Wet 26 van 1977 en artikel 9 van Wet 100 van 1979

6. Artikel 10 van die Wet op Militêre Pensioene, 1976, word hierby gewysig—

(a) deur paragraaf *(b)* in subartikel (2) deur die volgende paragraaf te vervang:

‘‘*(b)* in die geval van ’n **[weduwee]** gade in artikel 4(*d*) bedoel, voor die eerste dag van die maand waarin die betrokke lid gesterf het;’’; en

(b) deur paragraaf *(c)* in subartikel (2) deur die volgende paragraaf te vervang:

‘‘*(c)* in die geval van die afhanklikes van ’n afgestorwe lid in artikel 4(*e*) bedoel, voor die eerste dag van die maand wat onmiddellik volg op die maand waarin die betrokke lid gesterf het of voor die eerste dag van die maand wat onmiddellik volg op die maand waarin die **[weduwee]** gade van daardie lid gesterf het;’’.

Wysiging van artikel 11 van Wet 84 van 1976, soos gewysig deur artikel 9 van Wet 97 van 1980 en artikel 5 van Wet 117 van 1990

7. Artikel 11 van die Wet op Militêre Pensioene, 1976, word hierby gewysig deur paragraaf *(b)* in subartikel (1) deur die volgende paragraaf te vervang:

‘‘*(b)* dat daar na die toekenning van die pensioen ’n verandering in die **[huwelikstaat]** staat as gade van die betrokke lid of van ’n afhanklike van hom of haar of in die geval van sy of haar afhanklikes of, in die geval van ’n **[weduwee]** gade, in sy of haar **[huwelikstaat]** staat as gade ingetree het;’’.

Wysiging van artikel 12 van Wet 84 van 1976, soos gewysig deur artikel 6 van Wet 26 van 1977, artikel 10 van Wet 97 van 1980 en artikel 7 van Wet 123 van 1984

8. Section 12 van die Wet op Militêre Pensioene, 1976, word hierby gewysig deur paragraaf *(b)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(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;".

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

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

" **'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

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.

(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).

(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;

(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).

(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

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.

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

“*(b)* in die geval van ’n **[weduwee]** gade van ’n lid, tot en met die laaste dag van die maand waarin hy of sy te sterwe kom;”.

Invoeging van sekere woorde in Wet 84 van 1976

9. Die Wet op Militêre Pensioene, 1976, word hierby gewysig deur—

(a) na die woord “hy”, die woorde “of sy”, waar dit ook al voorkom; en

(b) na die woord “hom”, die woorde “of haar”, waar dit ook al voorkom,

in te voeg.

Wysiging van artikel 1 van Wet 94 van 1990, soos gewysig deur artikel 1 van Wet 42 van 1992, artikel 1 van Wet 9 van 1993, artikel 1 van Wet 26 van 1994, artikel 1 van Wet 55 van 1996, artikel 1 van Wet 36 van 2000, artikel 1 van Wet 19 van 2003, artikel 1 van Wet 20 van 2007, artikel 1 van Wet 22 van 2013 en artikel 290 van Wet 9 van 2017

10. Artikel 1 van die Bankwet, 1990, word hierby gewysig deur die woordomskrywing van “openbare maatskappy” deur die volgende woordomskrywing te vervang:

“ **‘openbare maatskappy’** dit wat in artikel 1 van die Maatskappywet daaraan toegeskryf word, en ook ’n nasionale maatskappy in staatsbesit soos beoog in paragraaf *(a)* van die woordomskrywing van ‘maatskappy in staatsbesit’ in artikel 1 van die Maatskappywet;”.

Wysiging van artikel 12 van Wet 94 van 1990, soos gewysig deur artikel 5 van Wet 9 van 1993, artikel 8 van Wet 19 van 2003 en artikel 6 van Wet 20 van 2007

11. Artikel 12 van die Bankwet, 1990, word hierby gewysig deur die volgende subartikel by te voeg:

“(4) *(a)* Hierdie subartikel is slegs van toepassing op ’n nasionale maatskappy in staatsbesit soos omskryf in paragraaf *(a)* van die woordomskrywing van ’n ‘maatskappy in staatsbesit’ in artikel 1 van die Maatskappywet.

(b) ’n Maatskappy in staatsbesit mag slegs met die goedkeuring van die Minister, met die instemming van die Minister verantwoordbaar aan die Parlement vir daardie maatskappy in staatsbesit, toegestaan, aansoek doen om magtiging om ’n bank ingevolge subartikel (1) op te rig.

(c) ’n Aansoek ingevolge paragraaf *(b)* moet ’n verklaring insluit van die ouditeur van die maatskappy in staatsbesit, beoog in artikel 61, waarin gesertifiseer word dat vir ’n tydperk van 24 maande onmiddellik voor die datum van die aansoek, die bates van—

(i) die maatskappy in staatsbesit sy laste oorskry het;

(ii) die beheermaatskappy van die maatskappy in staatsbesit, die laste van die beheermaatskappy oorskry het; en

(iii) die beheermaatskappy van die maatskappy in staatsbesit se beheermaatskappy die laste van eersgenoemde beheermaatskappy oorskry het (indien van toepassing).

(d) Vir doeleindes van die toepassing van hierdie Wet op maatskappye in staatsbesit, geniet ’n bepaling van hierdie Wet wat strydig is met ’n bepaling van ’n ander Wet, behalwe die ‘Financial Sector Regulation Act’, voorrang.”.

Wysiging van artikel 24A van “Government Employees Pension Law”, 1996, soos ingevoeg deur artikel 3 van Wet 19 van 2011

12. Artikel 24A van die “Government Employees Pension Law”, 1996, word hierby in die Engelse teks gewysig deur in subartikel (2) paragraaf *(d)* deur die volgende paragraaf te vervang:

“*(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.

(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

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—

(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.

Short title

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

Oorgangsmaatreël van toepassing op "Government Employees Pension Law", 1996

13. (1) Indien die bedrag van die pensioenvoordeel betaalbaar aan 'n lid onderhewig is aan vermindering beoog in artikel 24A(2)*(d)* van die "Government Employees Pension Law", 1996, voor die wysigings deur artikel 12 van hierdie Wet, moet die lid, binne 12 maande na die inwerkingtreding van hierdie artikel, skriftelik die Fonds in kennis stel of die vermindering ingevolge artikel 24A(2)*(d)* van die "Government Employees Pension Law", 1996—

(a) voor die wysigings deur artikel 12 van hierdie Wet; of

(b) soos gewysig deur artikel 12 van hierdie Wet,

hanteer moet word.

(2) Indien 'n lid nie die Fonds in kennis stel soos deur subartikel (1) vereis nie, moet die vermindering ingevolge artikel 24A(2)*(d)* van die "Government Employees Pension Law", 1996, soos gewysig deur artikel 12 van hierdie Wet, hanteer word.

Kort titel

14. Hierdie Wet heet die Wysigingswet op Finansiële Aangeleenthede, 2019.