

REPUBLIC OF SOUTH AFRICA

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# **SOUTH AFRICAN RESERVE BANK AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Gazette No. 33156 of 3 May 2010)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**[B 10—2010]**

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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.

**BILL**

To amend the South African Reserve Bank Act, 1989, so as to provide for the amendment of certain definitions, the insertion of new definitions and the deletion of a definition; to provide for the establishment of a Panel for the election of directors to the Board and the functions of the Panel; to reinforce the requirements regarding the limitation on shareholding in the South African Reserve Bank and to prevent the abuse of those provisions; to provide for the nomination of directors by a broader base of the South African public and to broaden representation on the Board of the South African Reserve Bank; to define clear criteria regarding when persons are disqualified from serving on the Board; to provide for the confirmation of Board nominees against “fit and proper” and fiduciary criteria; to clarify the powers and functions of the Board; to provide for the possibility of the Governor and Deputy Governors being re-appointed to serve terms of office of less than five years; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 90 of 1989, as amended by section 1 of Act 10 of 1993 and section 1 of Act 2 of 1996**

**1.** Section 1 of the South African Reserve Bank Act, 1989 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of ‘**Bank**’ of the following definition:

“ ‘**associate**’, in relation to a shareholder—

(a) if the shareholder is a natural person, means—

- (i) a close relative of the shareholder; or
- (ii) any person who has entered into an agreement or arrangement with the shareholder, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares of the Bank;

(b) if the shareholder is a juristic person—

- (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

- (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
  - (iii) which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person—
    - (aa) had such first-mentioned juristic person been a company; or
    - (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
  - (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where the juristic person is not a company, the governing body of the juristic person is accustomed to act; and
- (c) in respect of all shareholders, being either natural or legal persons—
  - (i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the shareholder; and
  - (ii) includes any trust controlled or administered by the shareholder;”;
- (b) by the insertion before the definition of ‘**Currency and Banking Act**’ of the following definition:
  - “‘**close relative**’, in relation to a shareholder, means—
    - (a) a spouse, including a domestic or life partner or a party to any recognised union in terms of custom or the tenets of any religion—
      - (i) of the shareholder; or
      - (ii) of a person mentioned in paragraph (b) below; and
    - (b) a child, sibling, step-child, parent or step-parent of the shareholder;”;
- (c) by the insertion after the definition of ‘**Deputy Governor**’ of the following definitions:
  - “‘**elected director**’ means a member of the Board elected by shareholders;
  - ‘**employee of Government**’ means any person who is employed by or works for Government and who either receives or is entitled to receive a salary in respect of such employment or work, or derives the major part of his or her income from such employment or work;”;
- (d) by the insertion after the definition of ‘**financial instrument**’ of the following definition:
  - “‘**Government**’ means the national, provincial and local spheres of government in the Republic, as envisaged in section 40(1) of the Constitution of the Republic of South Africa, 1996;”;
- (e) by the insertion after the definition of ‘**mutual bank**’ of the following definition:
  - “‘**NEDLAC**’ means the National Economic, Development and Labour Council, established in terms of section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);”;
- (f) by the insertion before the definition of ‘**prescribed**’ of the following definition:
  - “‘**Panel**’ means a panel as referred to in section 4(1C);”;
- (g) by the deletion of the definition of ‘**shareholders’ representative**’.

**Amendment of section 4 of Act 90 of 1989, as amended by section 9 of Act 51 of 1991, section 2 of Act 10 of 1993, section 72 of Act 129 of 1993 and section 3 of Act 2 of 1996**

2. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
  - “The Bank shall [**be managed by**] have a board of [**fourteen**] fifteen directors, consisting of—”

- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) a Governor[,] and three Deputy Governors (of whom one shall be designated by the President of the Republic as Senior Deputy Governor) **[and three other directors, which Governor, Deputy 5**  
**Governors and other directors]** who shall be appointed by the President of the Republic, after consultation with the Minister and the Board, as well as four other directors appointed by the President, after consultation with the Minister; and”;

- (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) seven directors elected by the shareholders from candidates confirmed by the Panel.”;

- (d) by the insertion of the following subsections after subsection (1):

“(1A) Any shareholder, current director of the Bank or any member 15  
of the general public may nominate persons to serve as elected directors of the Bank in the manner as may be prescribed.

(1B) Nominations in terms of subsection (1A) must be made in writing to the Panel and shall include a comprehensive *curriculum vitae* of the person nominated as well as a motivation for his or her nomination, and 20  
be submitted at least three calendar months before the ordinary general meeting of shareholders at which directors are due for election.

(1C) A Panel shall be—

- (a) established by the Governor at least three months before; and  
(b) convened by the Governor at least two months before, 25  
the relevant ordinary general meeting of shareholders at which an election of directors is due to take place.

(1D) The Panel shall comprise of—

- (a) the Governor as chairperson;  
(b) a retired judge and one other person, both nominated by the 30  
Minister; and  
(c) three persons nominated by NEDLAC.

(1E) The members of the Panel referred to in subsection (1D)(b) and (c) shall be appointed by the Governor from time to time.

(1F) In the performance by the Panel of the functions described under subsection (1G)— 35

- (a) the Governor shall have a deliberative vote and, in the event of an equality of votes, a casting vote; and  
(b) a quorum shall comprise of the Governor and three other members 40  
of the Panel.

(1G) Subject to subsection (1F)(b), the Panel shall consider all nominations duly received in a manner as may be prescribed, and—

- (a) in respect of each candidate—  
(i) verify eligibility in terms of this Act and recognised central 45  
banking standards; and  
(ii) determine, in its discretion, whether the candidate is fit and proper to serve as a director of the Bank in terms of this Act;  
(b) subject to subsection (1H), compile a list of all the candidates confirmed as suitable for possible election to the Board; and  
(c) cause a copy of the list of candidates to be sent to shareholders no 50  
later than 30 days before the date of the relevant ordinary general meeting of shareholders.

(1H) If, in relation to any vacancy on the Board to be filled, more than three nominees meet the criteria listed in subsection (1G)(a), only the three candidates deemed most suitable by the Panel in relation to the 55  
vacancy, shall be confirmed.”;

- (e) by the insertion of the following paragraph after subsection (2)(a):

“(aA) Each director of the Bank shall be a fit and proper person with appropriate skills and experience, who shall at all relevant times—  
(i) act *bona fide* for the benefit of and in the interest of the Bank; 60  
(ii) avoid any conflict of interest between his or her interests and the interests of the Bank;

- (iii) possess and maintain the knowledge and skill that may reasonably be expected of a person holding the same appointment and carrying out the same functions as are carried out by the director in question in relation to the Bank; and
- (iv) exercise such care in the carrying out of his or her functions in relation to the Bank as may be reasonably expected of a diligent person holding the same appointment under similar circumstances and who possesses both the knowledge and skill mentioned in subparagraph (iii), and any such additional knowledge and skill as the director in question may have.”; 5 10
- (f) by the substitution for subsection (3) of the following subsection:  
“(3) Of the directors elected by the shareholders—  
(a) **[four]** two shall be persons **[who are or have been actively and primarily engaged]** with knowledge and skill in commerce or finance; 15  
(b) one shall be a person **[who is or has been so engaged]** with knowledge and skill in agriculture; [and]  
(c) two shall be persons **[who are or have been so engaged in industrial pursuits]** with knowledge and skill in industry;  
(d) one shall be a person with knowledge and skill in labour; and 20  
(e) one shall be a person with knowledge and skill in mining.”;
- (g) by the substitution for subsection (4) of the following subsection:  
“(4) No person shall be appointed or elected as or remain a director, if that person—  
(a) **[if he or she]** is not resident in the Republic; or 25  
(b) **[if he or she]** is a director, officer or employee of a bank, bank controlling company, **[or a]** mutual bank, or cooperative bank; or  
(bA) **[if he or she]** is a Minister or a Deputy Minister in the Government of the Republic; or  
(c) **[if he or she]** is a member of [— 30  
(i)] Parliament, [; or  
(ii)] a provincial legislature **[referred to in section 125 of the Constitution.]** or a Municipal Council; or  
(d) is an unrehabilitated insolvent; or  
(e) was dismissed from a position of trust as a result of his or her misconduct or has been disqualified or suspended from practising any profession on the grounds of his or her professional misconduct; or  
(f) was convicted of an offence listed in Part 1 or 2 of Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), an offence under this Act, the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), the Prevention of Counterfeiting of Currency Act, 1965 (Act No. 16 of 1965), perjury, or any other offence involving an element of dishonesty in respect of which he or she has been sentenced to imprisonment without the option of a fine or to a fine exceeding R1 000; or  
(g) is mentally or physically incapable of performing the duties of a director; or  
(h) is contractually incapacitated; or 50  
(i) is an employee of Government.”; and
- (h) by the insertion of the following subsection after subsection (4):  
“(5) The tenure of a director shall, unless otherwise indicated or agreed by the Board, automatically terminate forthwith—  
(a) if the director gives notice in writing to the secretary of the Bank of his or her resignation as a director; 55  
(b) if the director, without reasonable cause, absents himself or herself from three consecutive meetings of the Board without leave of absence granted by the chairperson: Provided that the chairperson may not grant leave of absence from more than three consecutive meetings of the Board; 60  
(c) if the director fails to declare to the Bank any direct or indirect interest in any agreement or proposed agreement with the Bank;