

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)  
(Assented to 8 September 2010.)

## ACT

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 10

(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— 15

(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;

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

(Engelse teks deur die President geteken.)  
(Goedgekeur op 8 September 2010.)

## WET

Tot wysiging van die Wet op die Suid-Afrikaanse Reserwebank, 1989, ten einde voorsiening te maak vir die wysiging van sekere omskrywings, nuwe omskrywings in te voeg en 'n omskrywing te skrap; voorsiening te maak vir die instelling van 'n Paneel vir die verkiesing van direkteure tot die Raad en vir die werksaamhede van die Paneel; die vereistes betreffende die beperking op aandeelhouding in die Suid-Afrikaanse Reserwebank te versterk en die misbruik van daardie bepalings te voorkom; voorsiening te maak vir die benoeming van direkteure deur 'n breër basis van die Suid-Afrikaanse publiek en om verteenwoordiging op die Raad van die Suid-Afrikaanse Reserwebank uit te brei; duidelike maatstawwe daar te stel betreffende die diskwalifikasie van persone om op die Raad te dien; voorsiening te maak vir bevestiging dat persone wat tot die Raad benoem is geskikte en gepaste persone is en aan vertrouensmaatstawwe voldoen; die bevoegdheede en werksaamhede van die Raad te verduidelik; voorsiening te maak dat die President en vise-presidente heraaangestel kan word vir ampstermyne van minder as vyf jaar; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 90 van 1989, soos gewysig deur artikel 1 van Wet 10 van 1993 en artikel 1 van Wet 2 van 1996

1. Artikel 1 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van 'finansiële instrument' in te voeg:

“ 'genoot' met betrekking tot 'n aandeelhouer—

- (a) indien die aandeelhouer 'n natuurlike persoon is—
- (i) 'n naverwant van die aandeelhouer; of
- (ii) enige persoon wat 'n ooreenkoms of reëling met die aandeelhouer aangegaan het in verband met die verkryging, besit of beskikking oor, of die uitoefening van stemregte ten opsigte van, aandele van die Bank;
- (b) indien die aandeelhouer 'n regs persoon is—
- (i) wat 'n maatskappy is, enige filiaal of beheermaatskappy van daardie maatskappy, enige ander filiaal van daardie beheermaatskappy en enige ander maatskappy waarvan daardie beheermaatskappy 'n filiaal is;

- (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**’.

- (ii) wat 'n beslote korporasie is wat kragtens die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), geregistreer is, enige lid daarvan soos in artikel 1 van daardie Wet omskryf;
- (iii) wat nie 'n maatskappy of 'n beslote korporasie soos in hierdie paragraaf bedoel is nie, 'n ander regspersoon wat 'n filiaal van die eersgenoemde regspersoon sou gewees het—  
 (aa) indien die eersgenoemde regspersoon 'n maatskappy was; of  
 (bb) ingeval daardie ander regspersoon ook nie 'n maatskappy is nie, sowel as die eersgenoemde regspersoon as daardie ander regspersoon 'n maatskappy was;
- (iv) enige persoon ooreenkomstig wie se opdragte of instruksies die raad van direkteure van die regspersoon of, in gevalle waar die regspersoon nie 'n maatskappy is nie, die beheerliggaam van die regspersoon, gewoon is om op te tree; en
- (c) ten opsigte van alle aandeelhouders, hetsy natuurlike of regspersone—  
 (i) enige regspersoon waarvan die raad van direkteure of, indien die regspersoon nie 'n maatskappy is nie, waarvan die beheerliggaam gewoon is om ooreenkomstig die opdragte of instruksies van die aandeelhouer op te tree; en  
 (ii) sluit enige trust in wat deur die aandeelhouer beheer of geadministreer word;”;
- (b) deur die volgende omskrywings na die omskrywing van ‘Minister’ in te voeg:  
 “naverwant’, met betrekking tot 'n aandeelhouer—  
 (a) 'n gade, met inbegrip van 'n saamwoon- of lewensmaat of 'n party in enige erkende verbintenis volgens gewoonte of die leerstelling van enige geloof—  
 (i) van die aandeelhouer; of  
 (ii) van 'n persoon in paragraaf (b) hieronder genoem; en  
 (b) 'n kind, broer of suster, stiefkind, ouer of stiefouer van die aandeelhouer;  
 ‘NEDLAC’ die Nasionale Ekonomiese, Ontwikkelings- en Arbeidsraad ingestel by artikel 2 van die Wet op die Nasionale Ekonomiese Ontwikkelings en Arbeidsraad, 1994 (Wet No. 35 van 1994);”;
- (c) deur die volgende omskrywing na die omskrywing van ‘onderlinge bank’ in te voeg:  
 “Paneel’ 'n paneel bedoel in artikel 4(1C);”;
- (d) deur die volgende omskrywing na die omskrywing van ‘Raad’ in te voeg:  
 “regering’ die nasionale, provinsiale en plaaslike regeringsfere in die Republiek, soos bedoel in artikel 40(1) van die Grondwet van die Republiek van Suid-Afrika, 1996;”;
- (e) deur die volgende omskrywing na die omskrywing van ‘tesourie’ in te voeg:  
 “verkose direkteur’ 'n lid van die Raad wat deur aandeelhouders verkies is;”;
- (f) deur die omskrywing van ‘verteenwoordiger van aandeelhouders’ te skrap; en
- (g) deur die volgende omskrywing na die omskrywing van ‘voorgeskryf’ in te voeg:  
 “werknemer van die regering’ enige persoon wat in diens van die regering staan of vir die regering werk en wat 'n salaris ontvang of op 'n salaris geregtig is ten opsigte van sodanige diens of werk, of wat die grootste deel van sy of haar inkomste aan sodanige diens of werk ontleen.”.

**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: 5

“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: 10

“(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 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”; 15

- (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.”; 20

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

“(1A) Any shareholder, current director of the Bank or any member of the general public may nominate persons to serve as elected directors of the Bank in the manner as may be prescribed. 25

(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 be submitted at least three calendar months before the ordinary general meeting of shareholders at which directors are due for election. 30

(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, the relevant ordinary general meeting of shareholders at which an election of directors is due to take place. 35

(1D) The Panel shall comprise of—

- (a) the Governor as chairperson;  
(b) a retired judge and one other person, both nominated by the Minister; and  
(c) three persons nominated by NEDLAC. 40

(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)—

- (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 of the Panel. 45

(1G) Subject to subsection (1F)(b), the Panel shall consider all nominations duly received in a manner as may be prescribed, and— 50

- (a) in respect of each candidate—  
(i) verify eligibility in terms of this Act and recognised central 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; 55  
(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 later than 30 days before the date of the relevant ordinary general meeting of shareholders. 60

(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

**Wysiging van artikel 4 van Wet 90 van 1989, soos gewysig deur artikel 9 van Wet 51 van 1991, artikel 2 van Wet 10 van 1993, artikel 72 van Wet 129 van 1993 en artikel 3 van Wet 2 van 1996**

**2. Artikel 4 van die Hoofwet word hierby gewysig—**

- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 5  
 “Die Bank [word bestuur deur] het ’n raad van [veertien] vyftien direkteure, bestaande uit—”;
- (b) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang: 10  
 “(a) ’n President[, en drie Vise-presidente (van wie een deur die President van die Republiek as Senior Vise-president aangewys word) [en drie ander direkteure, welke President, Vise-presidente en ander direkteure] deur die President van die Republiek aangestel, [word] na oorleg met die Minister en die Raad, asook vier ander direkteure deur die President van die Republiek aangestel na oorleg met die Minister; en”; 15
- (c) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang: 20  
 “(b) sewe direkteure deur die aandeelhouers gekies uit kandidate wat deur die Paneel bevestig is.”;
- (d) deur die volgende subartikels na subartikel (1) in te voeg: 20  
 “(1A) Enige aandeelhouer, huidige direkteur van die Bank of enige lid van die algemene publiek kan persone op die voorgeskrewe wyse benoem om as verkose direkteure van die Bank te dien.  
 (1B) Benoemings in subartikel (1A) beoog moet skriftelik aan die Paneel gedoen word en ’n omvattende *curriculum vitae* van die benoemde persoon asook ’n motivering vir sy of haar benoeming insluit, en moet ten minste drie kalendermaande voor die gewone algemene vergadering van aandeelhouers waartydens direkteure verkies staan te word, ingedien word. 25  
 (1C) Die President moet ’n Paneel— 30  
 (a) saamstel ten minste drie maande voor; en  
 (b) byeenroep ten minste twee maande voor, die betrokke gewone algemene vergadering van aandeelhouers waarop direkteure verkies staan te word.  
 (1D) Die Paneel moet bestaan uit— 35  
 (a) die President as voorsitter;  
 (b) ’n afgetrede regter en een ander persoon, beide deur die Minister benoem; en  
 (c) drie persone wat deur NEDLAC benoem is.  
 (1E) Die lede van die Paneel waarna in subartikel (1D)(b) en (c) verwys word, moet van tyd tot tyd deur die President aangestel word. 40  
 (1F) In die uitvoering deur die Paneel van die werksaamhede in subartikel (1G) beskryf—  
 (a) het die President ’n beraadslagende stem en, in geval van ’n staking van stemme, ’n beslissende stem; en 45  
 (b) vorm die President en drie ander lede van die Paneel ’n kworum.  
 (1G) Behoudens subartikel (1F)(b) moet die Paneel alle benoemings, na behore ontvang, op die voorgeskrewe wyse oorweeg, en—  
 (a) ten opsigte van elke kandidaat— 50  
 (i) verkiesbaarheid ingevolge hierdie Wet en erkende sentrale bankstandaarde verifieer; en  
 (ii) na goeddunke bepaal of die kandidaat ’n geskikte en gepaste persoon is om ingevolge hierdie Wet as direkteur van die Bank te dien;  
 (b) behoudens subartikel (1H), ’n lys saamstel van al die kandidate wat geskik vir moontlike verkiesing tot die Raad bevind is; en 55  
 (c) ’n afskrif van die lys van kandidate na die aandeelhouers laat aanstuur nie later nie as 30 dae voor die datum van die betrokke gewone algemene vergadering van aandeelhouers.  
 (1H) Indien, met betrekking tot enige vakature op die Raad wat ge vul staan te word, meer as drie benoemings aan die maatstawwe vermeld in subartikel (1G)(a) voldoen, moet slegs die drie kandidate wat die Paneel as mees geskik vir die vakature ag, bevestig word.”; 60

- three candidates deemed most suitable by the Panel in relation to the 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;
  - (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.”;
- (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;
  - (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
  - (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
  - (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 [—
    - (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
  - (i) is an employee of Government.”; and

(e) deur die volgende paragraaf na subartikel (2)(a) in te voeg:

“(aA) Elke direkteur moet ’n geskikte en gepaste persoon met toepaslike vaardighede en ervaring wees, wat te alle tersaaklike tye—

- (i) *bona fide* tot voordeel en in die belang van die Bank sal optree;
- (ii) enige botsing van belange tussen sy of haar belange en die belange van die Bank sal vermy;
- (iii) oor die kennis en vaardighede beskik, en dit onderhou, wat redelikerwys van ’n persoon verwag kan word wat dieselfde posisie beklee en dieselfde werksaamhede verrig as dié wat die betrokke direkteur met betrekking tot die Bank verrig; en
- (iv) die sorg toepas in die uitvoering van sy of haar werksaamhede met betrekking tot die Bank, wat redelik verwag kan word van ’n toegewyde persoon wat dieselfde posisie onder soortgelyke omstandighede beklee en wat oor die kennis en die vaardighede bedoel in subparagraaf (iii) beskik, en oor enige bykomende kennis en vaardighede wat die betrokke direkteur mag hê.”;

(f) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Van die direkteure wat die aandeelhouders kies, moet—

- (a) [vier] twee persone wees [wat hulle aktief en in hoofsaak] met kennis en vaardighede in die handel of [met] finansiewese;
- (b) een ’n persoon wees [wat hom aldus] met kennis en vaardighede in die landbou; [en]
- (c) twee persone wees [wat hulle aldus] met [industriële] kennis en vaardighede in die nywerheid [bedrywighe];
- (d) een ’n persoon wees met kennis en vaardighede in arbeid; en
- (e) een ’n persoon wees met kennis en vaardighede in die mynweese. [besig hou of besig gehou het.]”;

(g) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Niemand word as ’n direkteur aangestel of gekies of bly as sodanig aan nie, indien daardie persoon—

- (a) [indien hy of sy] nie [sy of haar] verblyf in die Republiek het nie; of
- (b) [indien hy of sy] ’n direkteur, beampete of werknemer van ’n bank, bankbeheermaatskappy, [of ’n] onderlinge bank, of koöperatiewe bank is; of
- (bA) [indien hy of sy] ’n Minister of ’n Adjunk-minister in die Regering van die Republiek is; of
- (c) [indien hy of sy] ’n lid is van [—
  - (i)] die Parlement, [; of
  - (ii)] ’n provinsiale wetgewer [bedoel in artikel 125 van die Grondwet.] of ’n munisipale raad; of
- (d) ’n ongerehabiliteerde insolvent is; of
- (e) as gevolg van sy of haar wangedrag uit ’n vertrouensposisie ontslaan is of op grond van sy of haar professionele wangedrag vir die uitoefening van enige beroep gediskwalifiseer of daaruit geskors is; of
- (f) skuldig bevind is aan ’n misdryf gelys in Deel 1 of 2 van Bylae 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977), ’n misdryf kragtens hierdie Wet, die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighe, 2004 (Wet No. 12 van 2004), die Wet op die Voorkoming van Georganiseerde Misdad, 1998 (Wet No. 121 van 1998), die Wet op Voorkoming van Vervalsing van Betaal-middele, 1965 (Wet No. 16 van 1965), meened, of enige ander misdryf waarvan oneerlikheid ’n element is ten opsigte waarvan hy of sy tot tronkstraf gevonnissen is sonder die keuse van ’n boete of tot ’n boete van meer as R1 000; of
- (g) verstandelik of fisiek nie daartoe in staat is om die pligte van ’n direkteur te verrig nie; of
- (h) handelingsonbevoegd is; of
- (i) ’n werknemer van die regering is.”; en



(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; 5
- (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; 10
- (c) if the director fails to declare to the Bank any direct or indirect interest in any agreement or proposed agreement with the Bank;
- (d) if the director unlawfully discloses to any person any information described in section 33 of this Act; or
- (e) if the director is disqualified on the grounds described in subsection (4).” 15

#### Insertion of section 4A in Act 90 of 1989

3. The following section is hereby inserted in the principal Act after section 4:

#### “Functions and powers of Board

4A. (1) The Board shall be responsible for the corporate governance of the Bank by— 20

- (a) ensuring compliance with principles of good corporate governance;
- (b) adopting rules and determining policies for the sound accounting, administration and functioning of the Bank;
- (c) approving the— 25
  - (i) budget of the Bank;
  - (ii) annual reports and financial statements of the Bank required for submission to the meeting of shareholders, the Minister and Parliament;
  - (iii) appointment or the termination of service of a secretary and an assistant secretary of the Bank; 30
  - (iv) general remuneration policy of the Bank; and
  - (v) allocation of funds to the retirement fund of the Bank for purposes of making good any actuarial shortfall as well as the appointment of any employees’ trustee in respect of such fund; 35
- (d) authorising— 40
  - (i) any actions and procedures by the Bank as contemplated in sections 10(1)(c)(ii), (d), (u) and 24;
  - (ii) the establishment or closing of any branch of the Bank within or outside the Republic; and
  - (iii) the acquisition of any building or the causing of any building to be erected by the Bank;
- (e) making recommendations to the Minister in respect of regulations as contemplated under section 36 and in connection with any possible liquidation of the Bank in terms of section 38; and 45
- (f) performing any other function specifically assigned to the Board in terms of this Act.

(2) All other powers and duties of the Bank under this Act shall vest in and be exercised by the Governor and Deputy Governors.”

#### Amendment of section 5 of Act 90 of 1989, as amended by section 1 of Act 39 of 1997 50

4. Section 5 of the principal Act is hereby amended—

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

“(1) The [Governor and the Deputy Governors shall hold office for a period of five years, and the directors who are Government

(h) deur na subartikel (4) die volgende subartikel in te voeg:

“(5) Die ampstermyn van ’n direkteur sal, tensy die Raad andersins aandui of ooreenkom, outomaties en onmiddellik eindig—

- (a) indien die direkteur skriftelik kennis gee aan die sekretaris van die Bank van sy of haar bedanking as ’n direkteur; 5
- (b) indien die direkteur, sonder redelike oorsaak, van drie agtereenvolgende vergaderings van die Raad afwesig is sonder verlof tot afwesigheid deur die voorsitter verleen: Met dien verstande dat die voorsitter nie verlof tot afwesigheid mag verleen van meer as drie agtereenvolgende vergaderings van die Raad nie; 10
- (c) indien die direkteur versuim om aan die Bank enige direkte of indirekte belang by enige ooreenkoms of voorgestelde ooreenkoms met die Bank te verklaar; 10
- (d) indien die direkteur wederregtelik enige inligting in artikel 33 van hierdie Wet vermeld aan enige persoon openbaar maak; of 15
- (e) indien die direkteur op enige van die gronde in subartikel (4) bedoel, gediskwalifiseer is of word.”.

### Invoeging van artikel 4A in Wet 90 van 1989

3. Die volgende artikel word hierby in die Hoofwet na artikel 4 ingevoeg:

#### “ Werksaamhede en bevoegdhede van Raad ” 20

**4A. (1)** Die Raad is verantwoordelik vir die korporatiewe beheer van die Bank deur—

- (a) voldoening aan die beginsels van goeie korporatiewe beheer te verseker; 25
- (b) reëls te aanvaar en beleid te bepaal vir goeie boekhouding, administrasie en funksionering van die Bank; 25
- (c) die goedkeuring van—
  - (i) die Bank se begroting; 30
  - (ii) die jaarverslae en finansiële state van die Bank soos vereis vir inhandiging aan die vergadering van aandeelhouers, die Minister en die Parlement; 30
  - (iii) die aanstelling of afdanking van ’n sekretaris of ’n assistentsekretaris van die Bank; 30
  - (iv) die algemene vergoedingsbeleid van die Bank; en 35
  - (v) die toewysing van fondse aan die aftreefonds van die Bank om enige aktuariële tekort aan te suiwer, asook die aanstelling van enige werknemertrustee ten opsigte van sodanige fonds; 35
- (d) magtiging te verleen vir—
  - (i) enige handeling en prosesse deur die Bank soos in artikels 10(1)(c)(ii), (d), (u) en 24 beoog; 40
  - (ii) die opening of sluiting van enige tak van die Bank binne of buite die Republiek; en 40
  - (iii) die verkryging of oprigting van enige gebou deur die Bank; 40
- (e) aanbevelings aan die Minister te doen ten opsigte van regulasies in artikel 36 beoog en in verband met enige moontlike likwidasië van die Bank ingevolge artikel 38; en 45
- (f) enige ander funksie te verrig wat spesifiek ingevolge hierdie Wet aan die Raad opgedra word. 45

(2) Enige ander bevoegdhede en pligte van die Bank kragtens hierdie Wet berus by en word uitgeoefen deur die President en Vice-presidente.”. 50

### Wysiging van artikel 5 van Wet 90 van 1989, soos gewysig deur artikel 1 van Wet 39 van 1997

4. Artikel 5 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die [President en die Vice-presidente beklee hul amp vir ’n tydperk van vyf jaar, en die direkteure wat Regeringsverteeen-

representatives shall hold office for a period of three years] terms of office of directors of the Bank shall be as follows:

- (a) The Governor and Deputy Governors shall hold office for a period of five years: Provided that the President of the Republic may, after consultation with the Minister and the Board, on any re-appointment of a Governor or Deputy Governor at the end of his or her term of office, appoint such officer for a term not exceeding five years. 5
- (b) The directors who are Government representatives shall hold office for a period of three years.
- (c) Elected directors shall hold office for a period commencing on the first day after the date of their election as such at an ordinary general meeting of shareholders held during a specific calendar year and terminating on the date of the ordinary general meeting of the shareholders held during the third calendar year following upon the ordinary general meeting at which the director was elected.”; 10 15
- (b) by the deletion of subsection (1A);
- (c) by the deletion of subsection (1B); and
- (d) by the substitution for subsection (2) of the following subsection:
- “(2) A director shall be eligible for re-appointment or re-election, as the case may be, after expiration of his or her term of office: Provided that in the case of an elected director, such person has been confirmed by the Panel as a candidate as contemplated in this Act.”. 20

**Amendment of section 6 of Act 90 of 1989, as amended by section 9 of Act 51 of 1991 and section 4 of Act 2 of 1996**

5. Section 6 of the principal Act is hereby amended— 25
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) in the case of the Governor or a Deputy Governor [or of a Government representative, by] through the appointment by the President of the Republic of another person, after consultation with the Minister and the Board [; and], in an acting capacity for a temporary period until such time as the position is filled in accordance with the applicable provisions of section 5;”;
- (b) by the insertion after paragraph (a) of subsection (1) of the following paragraph: 30 35
- “(aA) in the case of a Government representative, through the appointment by the President of the Republic, after consultation with the Minister, of another person; and”;
- (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 40 45
- “(b) in the case of [a shareholders’ representative] an elected director, by the election by the shareholders at an ordinary general meeting of shareholders of a person, [who would be qualified to be elected] confirmed by the Panel as a candidate as contemplated in this Act, in the place of the director whose office has become vacant, or by the appointment by the Board, subject to [confirmation] his or her subsequent election by shareholders at the next ordinary general meeting of the shareholders, of a person [so qualified] confirmed by the Panel as a person suitable for possible election to the Board.”; 50
- and
- (d) by the substitution for subsection (2) of the following subsection: 55
- “(2) Any person appointed or elected under subsection (1) shall hold office[, in the case of the Governor or a Deputy Governor, for a period of five years, and in the case of any other director, for the unexpired portion of the period for which the director whose office has become vacant, was appointed or elected]—
- (a) in the case of a person temporarily acting as Governor or Deputy Governor, for such a term, but not exceeding five years, as the President of the Republic, after consultation with the Minister and the Board, may determine; and 60

**woordigers is, beklee hul amp vir 'n tydperk van drie jaar]**  
**ampstermyne van direkteure van die Bank is soos volg:**

- (a) Die President en Vise-presidente beklee hul amp vir 'n tydperk van vyf jaar: Met dien verstande dat die President van die Republiek, na oorleg met die Minister en die Raad, by enige heraanstelling van 'n President of Vise-president aan die einde van sy of haar ampstermyn, sodanige beampte kan aanstel vir 'n termyn wat nie vyf jaar te bowe gaan nie. 5
- (b) Die direkteure wat regeringsverteenvoorders is, beklee hul amp vir 'n tydperk van drie jaar. 10
- (c) Verkose direkteure beklee hul amp vir 'n tydperk wat begin op die eerste dag na die datum van hul verkiesing as sodanig by 'n gewone algemene vergadering van aandeelhouders gehou tydens 'n spesifieke kalenderjaar en wat eindig op die datum van die gewone algemene vergadering van aandeelhouders gehou tydens die derde kalenderjaar wat volg op die gewone algemene vergadering waarby die direkteur verkies is.”; 15
- (b) deur subartikel (1A) te skrap;
- (c) deur subartikel (1B) te skrap; en
- (d) deur subartikel (2) deur die volgende subartikel te vervang: 20
- “(2) 'n Direkteur kan na die verstryking van sy of haar ampstermyn weer aangestel of gekies word, na gelang van die geval: Met dien verstande dat in die geval van 'n verkose direkteur, so 'n persoon deur die Paneel bevestig is as 'n kandidaat soos in hierdie Wet beoog.”.

**Wysiging van artikel 6 van Wet 90 van 1989, soos gewysig deur artikel 9 van Wet 51 van 1991 en artikel 4 van Wet 2 van 1996** 25

5. Artikel 6 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang: 30
- “(a) in die geval van die President of 'n Vise-president [of van 'n Regeringsverteenvoorder,] deur die aanstelling deur die President van die Republiek van 'n ander persoon, na oorleg met die Minister en die Raad [; en], in 'n waarnemende hoedanigheid totdat die posisie ooreenkomstig die toepaslike bepalings van artikel 5 gevul is;”;
- (b) deur na paragraaf (a) van subartikel (1) die volgende paragraaf in te voeg: 35
- “(aA) in die geval van 'n regeringsverteenvoorder, deur die aanstelling deur die President van die Republiek, na oorleg met die Minister, van 'n ander persoon; en”;
- (c) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang: 40
- “(b) in die geval van ['n verteenwoordiger van aandeelhouders] 'n verkose direkteur, deur die verkiesing deur die aandeelhouders by 'n gewone algemene vergadering van 'n persoon wat deur die Paneel bevestig is as 'n kandidaat soos in hierdie Wet beoog, [wat] in die plek van die direkteur wie se amp vakant geword het, [gekies sou kon word,] of deur die aanstelling deur die Raad, onderworpe aan [bekragtiging] sy of haar daaropvolgende verkiesing deur aandeelhouders op die eersvolgende gewone algemene vergadering van die aandeelhouders, van 'n persoon [wat aldus gekies sou kon word] deur die Paneel bevestig as 'n persoon wat tot die raad verkies sou kon word.”; en 45
- (d) deur subartikel (2) deur die volgende subartikel te vervang: 50
- (2) 'n Kragtens subartikel (1) aangestelde of verkose persoon beklee sy amp[, in die geval van die President of 'n Vise-president, vir 'n tydperk van vyf jaar, en in die geval van 'n ander direkteur, vir die onverstreke gedeelte van die tydperk waarvoor die direkteur wie se amp vakant geword het, aangestel of gekies was]— 55
- (a) in die geval van 'n persoon wat tydelik waarneem as President of Vise-president, vir sodanige termyn, maar nie langer as vyf jaar nie, wat die President van die Republiek, na oorleg met die Minister en die Raad, kan bepaal; en 60

- (b) in the case of any other director, in accordance with the applicable provisions of section 5: Provided that the term of office of a director appointed by the Board, and who is not subsequently elected by shareholders at the next ordinary general meeting of shareholders, shall expire on the day of such ordinary general meeting.” 5

#### Amendment of section 8 of Act 90 of 1989

6. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Governor or any Deputy Governor may [assign] delegate the exercise of any power delegated to him or her by the Board under subsection (1) or any of his or her original powers, to a Deputy Governor or an officer of the Bank for a particular period or purpose, and any power the exercise of which has been so [assigned] delegated, shall be exercised subject to the same terms, conditions or restrictions imposed by the Board when delegating the power to the Governor or Deputy Governor or, in the case of original powers of the Governor or Deputy Governor, on such terms, conditions or restrictions as he or she may determine.” 10 15

#### Amendment of section 22 of Act 90 of 1989, as amended by section 16 of Act 85 of 1992 and section 8 of Act 2 of 1996 20

7. Section 22 of the principal Act is hereby amended—

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

“(1) Subject to the provisions of subsection (2) [no shareholder shall hold more than 10 000 shares in the Bank]—

(a) no shareholder shall hold, or hold in aggregate with his, her or its associates, more than 10 000 shares in the Bank; and 25

(b) if it appears that a shareholder holds, or holds in aggregate with his, her or its associates more than 10 000 shares in the Bank in contravention of this section or any other provision of this Act, the Bank may approach a court with jurisdiction for an appropriate order to redress the matter, which order may include, but is not limited to, an order for the disposal of shares in the Bank at a price per share and subject to such terms, conditions and restrictions as the court may determine.”; 30

(b) by the substitution for subsection (2) of the following subsection: 35

“(2) A shareholder [holding] who holds, or holds in aggregate with his, her or its associates, more than 10 000 shares in the Bank at the commencement of [this Act] the South African Reserve Bank Amendment Act, 2010, [may continue to hold those shares, but shall not, as long as he holds more than 10 000 of those shares, acquire any further shares in the Bank] shall disclose in a manner as may be prescribed to the Bank the names of all his, her or its associates, as well as the number of shares held by each of them.”; 40

(c) by the insertion of the following subsection after subsection (2):

“(2A) A shareholder who discloses information as contemplated in subsection (2) may continue to hold, or hold in aggregate with his, her or its associates, those shares: Provided that for as long as such shareholding, or aggregate shareholding, as the case may be, exceeds 10 000 shares, neither the shareholder nor his, her or its associates, as the case may be, shall acquire any further shares in the Bank.”; and 45 50

(d) by the substitution for subsection (3) of the following subsection:

“(3) If at any time the number of shares in the Bank held by a shareholder referred to in subsection (2), or held by that shareholder in aggregate with his, her or its associates, as the case may be, is reduced to 10 000 or less, the restriction laid down in subsection (1) shall apply also to that shareholder.” 55

- (b) in die geval van enige ander direkteur, ooreenkomstig die toepaslike bepalings van artikel 5: Met dien verstande dat die ampstermyn van 'n direkteur wat deur die Raad aangestel is, en wat nie vervolgens by die volgende gewone algemene vergadering van aandeelhouders deur die aandeelhouders verkies word nie, op die dag van sodanige gewone algemene vergadering verstryk.” 5

#### Wysiging van artikel 8 van Wet 90 van 1989

6. Artikel 8 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die President of 'n Vise-president kan die uitoefening van 'n bevoegdheid wat kragtens subartikel (1) deur die Raad aan hom of haar gedelegeer is of enige van sy of haar oorspronklike bevoegdhede, aan 'n Vise-president of 'n beampte van die Bank [opdra] delegeer vir 'n bepaalde tydperk of doel, en 'n bevoegdheid waarvan die uitoefening aldus [opgedra] gedelegeer is, word uitgeoefen onderworpe aan dieselfde bedinge, voorwaardes of beperkings wat deur die Raad by die delegasie van die bevoegdheid aan die President of Vise-president, opgelê is of, in die geval van oorspronklike bevoegdhede van die President of Vise-president, onderworpe aan die bedinge, voorwaardes of beperkings wat hy of sy mag bepaal.” 10 15 20

#### Wysiging van artikel 22 van Wet 90 van 1989, soos gewysig deur artikel 16 van Wet 85 van 1992 en artikel 8 van Wet 2 van 1996

7. Artikel 22 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Behoudens die bepalings van subartikel (2)[, mag 'n aandeelhouer nie meer as 10 000 aandele in die Bank hou nie]— 25

(a) mag 'n aandeelhouer, of 'n aandeelhouer tesame met die aandeel van sy of haar genote, nie meer as 10 000 aandele in die Bank hou nie; en

(b) indien dit blyk dat 'n aandeelhouer, of 'n aandeelhouer tesame met die aandele van sy of haar genote, meer as 10 000 aandele in die Bank hou in stryd met die bepalings van hierdie artikel of enige ander bepaling van hierdie Wet, kan die Bank 'n hof met regsbevoegdheid nader vir 'n gepaste bevel om die aangeleentheid reg te stel, welke bevel kan insluit, maar nie beperk is nie tot, 'n bevel vir die van die handsetting van aandele in die Bank, teen 'n prys per aandeel en onderworpe aan die bedinge, voorwaardes en beperkings wat die hof mag bepaal.”; 30 35

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) 'n Aandeelhouer wat by die inwerkingtreding van [hierdie Wet] die Wysigingswet op die Suid-Afrikaanse Reserwebank, 2010, alleen, of tesame met die aandele van sy of haar genote, meer as 10 000 aandele in die Bank hou, [kan daardie aandele bly hou, maar mag, solank hy meer as 10 000 van daardie aandele hou, geen verdere aandele in die Bank verkry nie] moet, op die voorgeskrewe wyse, die name van al sy of haar genote, asook die getal aandele wat elkeen van hulle hou, aan die Bank openbaar.”; 40 45

(c) deur die volgende subartikel na subartikel (2) in te voeg:

“(2A) 'n Aandeelhouer wat soos in subartikel (2) beoog inligting verstrek, kan voortgaan om die betrokke aandele te hou, of tesame met sy of haar genote te hou: Met dien verstande dat solank sodanige aandeelhouding, of totale aandeelhouding, na gelang van die geval, 10 000 aandele oorskry, die aandeelhouer of sy of haar genote, na gelang van die geval, geen verdere aandele in die Bank mag bekom nie.”; en 50

(d) deur subartikel (3) deur die volgende subartikel te vervang: 55

“(3) Indien die getal aandele in die Bank wat 'n aandeelhouer bedoel in subartikel (2) hou, of tesame met die aandele van sy of haar genote hou, na gelang van die geval, te eniger tyd verminder word tot 10 000 of minder, is die beperking in subartikel (1) opgelê ook op daardie aandeelhouer van toepassing.”. 60

**Amendment of section 23 of Act 90 of 1989, as amended by section 9 of Act 2 of 1996**

8. Section 23 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No shareholder, or his, her or its associates, referred to in subsection (2), [or] (6) or (2A) of section 22 shall either directly or indirectly exercise any vote as a shareholder in respect of the number of shares in the Bank held by him [or], her or it, either alone, or in aggregate with his, her or its associates, in excess of 10 000, and no group of companies with interlocking directorates shall either directly or indirectly exercise any vote as shareholders in respect of the total number of shares in the Bank held by those companies in excess of 10 000.”

**Short title and commencement**

9. This Act is called the South African Reserve Bank Amendment Act, 2010, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**Wysiging van artikel 23 van Wet 90 van 1989, soos gewysig deur artikel 9 van Wet 2 van 1996**

8. Artikel 23 van die Hoofwet word hierdeur gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Aandeelhouer, of sy of haar genote, bedoel in subartikel (2), 5  
[of] (6) of (2A) van artikel 22 mag nie as aandeelhouer direk of indirek  
ten opsigte van die getal aandeel in die Bank bo 10 000 wat hy of sy,  
hetsy alleen of tesame met die aandeel van sy of haar genote, hou, ’n  
stem laat geld nie, en ’n groep maatskappye wat deur aaneengeskakelde  
direksies verbind is, mag nie as aandeelhouers direk of indirek, ten 10  
opsigte van die totale getal aandeel in die Bank bo 10 000 wat daardie  
maatskappye hou, ’n stem laat geld nie.”.

**Kort titel en inwerkingtreding**

9. Hierdie Wet heet die Wysigingswet op die Suid-Afrikaanse Reserwebank, 2010, en tree in werking op ’n datum wat die Staatspresident by proklamasie in die *Staatskoerant* 15 bepaal.