

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 543

Cape Town

9 September 2010

No. 33538

THE PRESIDENCY

No. 801

9 September 2010

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

No. 4 of 2010: South African Reserve Bank Amendment Act, 2010.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 4 of 2010 SOUTH AFRICAN RESERVE BANK AMENDMENT ACT, 2010

- [] 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.

BE 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— | 10 |
| | (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— | 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; | |

- (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:
- “‘**electd 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: 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 15
 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: 20
 “(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 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 45
 (b) a quorum shall comprise of the Governor and three other members 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— 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

- 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

- (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

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;”; 30
 - (b) by the insertion after paragraph (a) of subsection (1) of the following paragraph:
 - “(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”; 35
 - (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 - “(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.”; 40 45 50
 - and
 - (d) by the substitution for subsection (2) of the following subsection:
 - “(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**]— 55
 - (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

- (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
 (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.” 25 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

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*.