

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN RESERVE BANK AMENDMENT BILL

(As amended by the Portfolio Committee on Finance (National Assembly))



(MINISTER OF FINANCE)

[B 21B—97] ,,

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE SUID-AFRIKAANSE RESERWEBANK

(Soos gewysig deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering)).

(MINISTER VAN FINANSIES)

[W 21B—97]

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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 accomplish the synchronization of the election of shareholders' representatives to vacancies on the board of directors of the South African Reserve Bank with the dates of ordinary general meetings of the shareholders of the Bank; to further regulate the powers and duties of the said Bank with regard to the establishment regulation and supervision of, and participation in, payment, clearing and settlement systems; and to provide for the disclosure of certain confidential information; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 90 of 1989

1. Section 5 of the South African Reserve Bank Act, 1989 (hereinafter referred to as 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 **[other]** directors who are Government representatives shall hold office for a period of three years.”; and

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

“(1A) The directors who are shareholders' representatives 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 the shareholders held during a specific calendar year and terminating on the first day after the date of the ordinary general meeting of the shareholders held during the third calendar year after the calendar year first-mentioned in this subsection.

(1B) In order to give effect to the provisions of this section as amended by the South African Reserve Bank Amendment Act, 1997, the term of office of a director who is a shareholders' representative and who holds office as such on the date immediately preceding the date of commencement of the South African Reserve Bank Amendment Act, 1997, shall, in the case of such a director whose term of office is, in terms of the

provisions of this section as those provisions existed immediately prior to the amendment thereof by the South African Reserve Bank Amendment Act, 1997, due to expire during a specific calendar year on a date—

- (a) preceding the date of the ordinary general meeting of shareholders to be held during that calendar year, be extended up to and terminate on the first day after the date of that ordinary general meeting;
- (b) after the date of the ordinary general meeting of shareholders to be held during that calendar year, be curtailed so as to terminate on the first day after the date of that ordinary general meeting.”.

Amendment of section 10 of Act 90 of 1989, as amended by section 3 of Act 10 of 1993 and section 5 of Act 2 of 1996

2. Section 10 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

- “(c) (i) **[establish, organize and participate in a clearing system and take up shares in a company formed for the management and operation of any such system]** perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, “monitor, regulate and supervise payment, clearing or settlement systems;
- (ii) form, or take up shares or acquire an interest in, any company or other juristic person that provides—
- (aa) a service for the purpose of or associated with;
 - (bb) any facility for or associated with,
- the utilization of any such payment, clearing or settlement systems;
- (iii) perform the functions assigned to the Bank by or under any law for the regulation of such payment, clearing or settlement systems; and
- (iv) participate in any such payment, clearing or settlement systems;”.

Amendment of section 33 of Act 90 of 1989

3. Section 33 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) No director, officer or employee of the Bank, and no officer in the Department of Finance, shall disclose to any person, except to the Minister or the Director-General: Finance or for the purpose of the performance of his or her duties or the exercise of his or her functions or when required to do so before a court of law or under any law—
- (a) any information relating to the affairs of—
- (i) the Bank; **[or]**
 - (ii) a shareholder [or customer] of the Bank; **or**
 - (iii) a client of the Bank,
- acquired in the performance of his or her duties or the exercise of his or her functions; or
- (b) any other information acquired by him or her in the course of his or her participation in the activities of the Bank,
- except, in the case of information referred to in paragraph (a)(iii), with the written consent of the Minister and the Governor, after consultation with the client concerned.”.

Short title

4. This Act shall be called the South African Reserve Bank Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN RESERVE BANK AMENDMENT BILL, 1997

The above-mentioned Bill contains proposals for the amendment of the South African Reserve Bank Act, 1989 (hereinafter referred to as the principal Act), in three respects, which amendments can be explained as follows:

Clause 1(a) and (b) of Bill

Of the fourteen members of the board of directors of the South African Reserve Bank ("the Bank"), seven directors, known and defined in section 1 of the principal Act as the "shareholders' representatives", are in terms of section 4(1)(b) of the principal Act elected by the shareholders of the Bank. Section 5(1) of the principal Act currently provides that the term of office of, *inter alia*, the shareholders' representatives is three years.

Due to the shifting from time to time of the date of the ordinary annual general meeting of the shareholders of the Bank, the dates of expiry of the three-year terms of office of the shareholders' representatives do not coincide with the date of such an ordinary general meeting of shareholders. It consequently happens from time to time that the office of a shareholders' representative whose three-year term of office has expired, remains vacant for a considerable period of time pending the election of his or her successor at a first-ensuing ordinary general meeting of the shareholders. This state of affairs is not conducive to the proper functioning of the board of directors of the Bank and at times may even threaten the availability of the prescribed quorum at meetings of the said board.

The principal Act only provides for the interim filling (by appointment by the said board subject to confirmation at the next ordinary general meeting of the shareholders of the Bank) of casual vacancies in the office of shareholders' representative, i.e. vacancies not due to normal expiration of terms of office.

To remedy the unsatisfactory situation sketched above, it is proposed in clause 1(a) and (b) of the Bill that the three-year term of office of a shareholders' representative be calculated in future by reference to the dates of ordinary general meetings of the shareholders of the Bank, thus permitting the expeditious filling of a vacancy in the shareholders' representative membership of the board by election of a new member.

Clause 2 of Bill

Due to factors such as the Republic's re-entry into the international financial arena, the growth in values transferred through the national payment system and the systemic risk inherent in the clearing and settlement of payments, the Bank has, in line with international developments, identified the need to reform the national payment system. It is envisaged that the adoption and implementation of such a reformed national payment system will require appropriate legislative provisions in the form of a separate Act, but in the meantime the powers and duties of the Bank in respect of the preparation for and eventual implementation of such a system need to be spelled out in greater detail. Currently the Bank is only empowered by section 10(1)(c) of the principal Act to-

"establish, organize and participate in a clearing system and to take up shares in a company formed for the management and operation of any such system".

Whereas the national payment system entails considerably more than just the clearing (i.e. the exchange of payment instructions between banks) phase thereof, the said section 10(1)(c) needs to be amplified, *inter alia* by the incorporation therein of references to the other phases of the payment process, such as settlement, and the supportive facilities and services associated with the payment process. The proposed amplification of section 10(1)(c) of the principal Act is effected by clause 2 of the Bill.

Clause 3 of Bill

The disclosure of information relating to, *inter alia*, the affairs of a client of the Bank is currently prohibited by section 33(1) of the principal Act, except where such disclosure is made to the Minister of Finance or the Director-General: Finance or for the purpose of the performance of official duties or when required to do so before a court of law or under any law. The Bank has become increasingly uneasy with this duty of secrecy, especially in the context of its actions in the field of central bank assistance to banks experiencing liquidity problems. The relevant prohibition has on more than one occasion thwarted the Bank in its pursuit of greater transparency or rendered it powerless to furnish a correct perspective in response to inaccurate media speculation.

It is consequently proposed that the current strict prohibition on the disclosure of the relevant information be relaxed to the extent of permitting such disclosure if the written consent thereto of the Minister of Finance and the Governor of the Bank after consultation with the client concerned. Clause 3 of the Bill effects the required amendment of section 33(1) of the principal Act.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 75 of the Constitution.

Institutions and bodies consulted

The preparation of the Bill took place under the guidance of the board of directors of the Bank and, with regard to clause 2 thereof, in consultation with representatives of the banking sector. In addition, the Bill has been submitted to the following bodies for comment:

- National Economic, Development and Labour Council.
- South African Chamber of Business.
- Council for Southern African Bankers.
- Association of Law Societies of SA.
- General Council of the Bar of SA.