REPUBLIC OF SOUTH AFRICA

# BANKS AMENDMENT BILL

*(As introduced)*

(MINISTER OF FINANCE)

**[B 53—96]**

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REPUBLIEK VAN SUID-AFRIKA

# BANKWYSIGINGSWETSONTWERP

*(Soos ingedien)*

(MINISTER VAN FINANSIES)

**[W 53—96]**

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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 Banks Act, 1990, so as to define or further define certain expressions; to make further provision for the furnishing of information to the Registrar of Banks by a foreign banking institution applying for consent to establish a representative office in the Republic and to provide for the periodical furnishing of prescribed information by representative offices generally; to regulate investments by banks or controlling companies in joint ventures within or outside the Republic; to further regulate the amalgamation of two or more banks and the transfer by a bank of all or any part of its assets and liabilities to another bank or person and provide for the waiver, with the consent of the Minister of Finance, of certain duties, fees or charges payable in connection with the transfer of assets and liabilities necessitated by an amalgamation of banks or the disposal by a bank of the whole or any part of its business; to abrogate the suspension of the operation of set-off in respect of any amount owing by a creditor to a bank under curatorship, and make the provisions of sections 35A, 35B and 46 of the Insolvency Act, 1936, applicable in relation to a bank under curatorship; and to provide for incidental matters.**

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

**Amendment of section 1 of Act 94 of 1990, as amended by Government Notice R.1765 of 30 July 1991, section 1 of Act 42 of 1992, sections 1 and 25 of Act 9 of 1993 and section 1 of Act 26 of 1994**

**1.** Section 1(1) of the Banks Act, 1990 (hereinafter referred to as the principal Act), is hereby amended—

*(a)* by the substitution for paragraph *(a)* of the definition of ''deposit'' of the following paragraph:

''*(a)* an equal amount or any part thereof will be conditionally or unconditionally repaid, either by the person to whom the money has been so paid or by any other person, with or without a premium, on demand or at specified or unspecified dates or in circumstances

agreed to by or on behalf of the person making the payment and the person receiving it; and'';

*(b)* by the insertion after the definition of ''domestic shareholder'' of the following definition:

'' 'employee in charge of a risk management function', in relation to a bank, means that employee of the bank who is ultimately responsible for the management of one or more of the following types of risk to which the bank is exposed, namely—

*(a)* solvency risk;
*(b)* liquidity risk;
*(c)* credit risk;
*(d)* currency risk;
*(e)* market risk (position risk);
*(f)* interest rate risk;
*(g)* counterparty risk;
*(h)* technological risk;
*(i)* operational risk; or
*(j)* any other risk regarded as material by that bank;'';

*(c)* by the substitution for the definition of ''executive officer'' of the following definition:

'' 'executive officer', in relation to any institution—

*(a)* that is not a bank, includes any manager of such an institution **[and, in relation to an institution]**;

*(b)* that is a bank, includes any employee of the bank who is in charge of a risk management function of **[that]** the bank, and any manager of the bank who is responsible, or reports, directly to the chief executive officer of the bank;''; and

*(d)* in the definition of ''the business of a bank''—

(i) by the deletion of the word ''or'' where it occurs at the end of paragraph *(ee)*;

(ii) by the substitution for paragraph *(ff)* of the following paragraph:

''*(ff)* the effecting, subject to the provisions of any other Act of Parliament and to such conditions, if any, as the Registrar may from the time to time determine by notice in the *Gazette*, of a money lending transaction directly between a lender and a bank as borrower through the intermediation of a third party who does not act as a principal to the transaction (hereinafter in this paragraph referred to as the agent), provided the funds to be lent in terms of the money lending transaction are entrusted by the lender to the agent subject to a written contract of agency in which, in addition to any other terms thereof, at least the following matters shall be recorded:

(i) Confirmation **[by the lender]** that the agent acts as **[his]** the agent of the lender; and

(ii) that the lender assumes, except in so far as **[he]** there may in law **[have]** be a right of recovery against the agent, all risks connected with the administration of the entrusted funds by the agent **[of the funds entrusted to him by the lender]**, as well as the responsibility to ensure that the agent executes **[his]** the instructions as recorded in the written contract of agency**[:**

**Provided that, notwithstanding the preceding provisions of this paragraph, an agent that—**

**(i) is a natural or juristic person registered or established in terms of, by or under any other Act of Parliament and the main business activities of whom or of which are regulated or controlled in terms of, by or under such other Act of Parliament; and**

**(ii) has been designated by the Registrar by notice in the *Gazette*,**

**may, for the purposes of the effecting of the money lending transaction and subject to such conditions as the Registrar may determine in the relevant notice, pool the funds**

**entrusted by the lender to such agent with funds entrusted to such agent by other lenders]**; or''; and

(iii) by the addition after paragraph *(ff)* of the following paragraph:

''*(gg)* the activities, set forth in subparagraphs (A) and (B) hereunder, of a person (hereinafter in this paragraph referred to as the mandatary) that—

(i) is a natural or juristic person registered in terms of, or a juristic person established by or under, any other Act of Parliament and the main business activities of whom or of which are regulated or controlled in terms of, by or under such other Act of Parliament; and

(ii) has been designated by the Registrar by notice in the *Gazette*,

which mandatary, for purposes of effecting a money lending transaction with a bank—

(A) accepts money from the mandator in terms of a prescribed contract of mandate; and

(B) in the execution of the mandate, and subject to such conditions as the Registrar may determine in the notice referred to in subparagraph (ii) above, deposits such money into an account maintained by the mandatary with a bank, irrespective as to whether or not such money is so deposited together with money so accepted by the mandatary from other mandators.''.

**Amendment of section 34 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993 and section 27 of Act 26 of 1994**

**2.** Section 34 of the principal Act is hereby amended—

*(a)* by the substitution for subsection (2A) of the following subsection:

''(2A) **[If the Registrar grants an application in terms of subsection (2) for his consent to the establishment of a representative office in the Republic he shall on the prescribed form issue to the foreign institution concerned a certificate of authorization for the establishment of a representative office in the Republic]** A foreign institution applying in terms of subsection (2) may be required by the Registrar to furnish him with such information and documents as he may deem necessary, over and above any information and documents which have been furnished by such foreign institution by virtue of that subsection.'';

*(b)* by the insertion of the following subsections after subsection (2A):

''(2B) After having considered all information and documents furnished to him for the purposes of an application in terms of subsection (2), the Registrar may grant the application, either unconditionally or subject to such conditions as he may determine, if satisfied that—

*(a)* the foreign institution making that application lawfully conducts a business similar to the business of a bank in a country other than the Republic;

*(b)* the competent authority responsible in that other country for the supervision of that foreign institution—

(i) has duly authorized the proposed establishment of a representative office in the Republic by that foreign institution;

(ii) accepts, is committed to and complies with the proposals, guidelines and pronouncements of the Basle Committee on Banking Supervision;

(iii) is not legally precluded from fulfilling its obligations in terms of subparagraph (ii); and

(iv) will on a continuous basis furnish the Registrar with all material information regarding the financial soundness of that foreign institution; and

*(c)* the establishment of a representative office in the Republic by that foreign institution will not be detrimental to the public interest.

(2C) Upon granting an application for consent to the establishment of a representative office in the Republic, the Registrar, against payment of the prescribed fee by the foreign institution, shall issue to the foreign institution, on the prescribed form, a certificate of authorization for the establishment of a representative office in the Republic.''; and

*(c)* by the addition of the following subsection after subsection (4):

''(5) Representative offices established in accordance with the provisions of this section shall furnish the Registrar, at such time or times or at such intervals or in respect of such period or periods and in such form as may be prescribed, with such prescribed information as he may require reasonably for purposes of the performance of his functions under this Act.''.

**Amendment of section 52 of Act 94 of 1990**

**3.** Section 52 of the principal Act is hereby amended—

*(a)* in subsection (1)—

(i) by the insertion after paragraph *(a)* of the following paragraph:

''*(a*A) invest in a joint venture within or outside the Republic if the investment, or the investment together with one or more investments already made by the bank in that joint venture, results in the bank being exposed to an amount representing more than five per cent of its capital and reserves: Provided that for as long as the bank is exposed to the aforementioned extent, such approval must be obtained whenever it seeks to make a further investment in that joint venture;''; and

(ii) by the substitution for paragraph *(c)* of the following paragraph:

''*(c)* acquire an interest in any undertaking **[conducting business]** having its registered office or principal place of business outside the Republic;''; and

*(b)* by the addition after subsection (5) of the following subsection:

''(6) For the purposes of this section and section 53 ''joint venture'' means a contractual arrangement between two or more persons, one or more of whom is a bank or a controlling company, in terms whereof the parties undertake an economic activity that is subject to their joint control.''.

**Amendment of section 53 of Act 94 of 1990**

**4.** Section 53 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph *(a)*:

''*(a*A) any joint venture contemplated in section 52(1)*(a*A);''.

**Amendment of section 54 of Act 94 of 1990, as substituted by section 6 of Act 42 of 1992 and amended by sections 12 and 25 of Act 9 of 1993, Proclamation 132 of 1994 and section 36 of Act 26 of 1994**

**5.** Section 54 of the principal Act is hereby amended—

*(a)* by the substitution for subsection (3) of the following subsection:

''(3) Upon the coming into effect of a transaction effecting the amalgamation of one bank with another bank as contemplated in subsection (2)*(b)* or **[a transaction]** effecting the transfer of all or part of the assets and liabilities of one bank to another bank or person as contemplated in subsection (2)*(c)*—

*(a)* all the assets and liabilities of the amalgamating banks or, in the case of such transfer of assets and liabilities, those assets and liabilities of the transferor bank **[by which the transfer is effected]** that are transferred in terms of the transaction, shall vest in and become binding upon the amalgamated bank or, as the case may be, the bank or person taking **[over]** transfer of such assets and liabilities;

*(b)* the amalgamated bank or, in the case of such transfer of assets and liabilities, the bank or person taking **[over]** transfer of such assets and liabilities, shall have the same rights and be subject to the same obligations as those which **[immediately before the amalgamation or transfer]** the amalgamating banks or, as the case may be, the transferor bank **[by which the transfer has been effected]** may have had or to which they or it may **[then]** have been subject **[to]** immediately before the amalgamation or transfer;

*(c)* all agreements, appointments, transactions and documents entered into, made, drawn up or executed with, by or in favour of any of the amalgamating banks or, as the case may be, the transferor bank **[by which the transfer has been effected]**, and in force immediately prior to the amalgamation or transfer, but excluding such agreements, appointments, transactions and documents that, by virtue of the terms and conditions of the amalgamation or transfer, are not to be retained in force, shall remain of full force and effect and shall be construed for all purposes as if they had been entered into, made, drawn up or executed with, by or in favour of the amalgamated bank or, as the case may be, the bank or person taking **[over]** transfer of the assets and liabilities in question; and

*(d)* any bond, pledge, guarantee or instrument to secure future advances, facilities or services by any of the amalgamating banks or, as the case may be, by the transferor bank **[transferring such assets and liabilities]**, which was in force immediately prior to the amalgamation or transfer, shall remain of full force and effect and shall be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated bank or, as the case may be, the bank or person taking **[over]** transfer of such assets and liabilities, as security for future advances, facilities or services by that bank or person except where, in the case of such transfer, any obligation to provide such advances, facilities or services is not included in the transfer.'';

*(b)* in subsection (4), by the substitution for paragraph *(b)* of the following paragraph:

''*(b)* in the case of a transaction effecting the transfer of assets and liabilities of one bank to another bank or a person as contemplated in subsection (2)*(c)*, to confirmation at a general meeting of shareholders of the transferor bank **[by which the transfer is effected]** and the bank or person taking **[over]** transfer of such assets and liabilities,'';

*(c)* by the substitution for subsection (5) of the following subsection:

''(5) Notice of the passing of the resolution confirming, as contemplated in subsection (4), any compromise, amalgamation or arrangement, or any arrangement for the transfer of assets and liabilities, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the **[chairman]** chairperson of the meeting at which such resolution was passed and by the secretary of the bank or person concerned, shall be sent to the Registrar by each of the banks involved or, in the case of a transaction effecting the transfer of assets and liabilities of one bank to another bank or a person as contemplated in subsection (2)*(c)*, by the relevant transferor bank **[by**

**which the transfer is effected]** and the bank or person taking **[over]** transfer of such assets and liabilities, and **[the Registrar shall]** after having received such notices from all the parties to the relevant agreement or arrangement, the Registrar shall register **[such]** those notices.'';

*(d)* by the substitution for subsection (8) of the following subsection:

''(8) The Registrar of Companies, every Master of the Supreme Court and every officer or person in charge of a deeds registry or any other office **[in which]**, if, in his office or any register under his control there—

*(a)* is registered any title to property belonging to, or any bond or other right in favour of, or any appointment of or by;

*(a*A*)* is registered any share, stock, debenture or other marketable security in favour of; or

*(b)* has been issued any licence to or in favour of,

any bank which has amalgamated with any other bank or any bank which has transferred all or part of its assets and liabilities to any other bank or person **[or any bank which has transferred part of its assets and liabilities to a wholly owned subsidiary of the transferor bank's controlling company]**, shall, if **[he is]** satisfied—

(i) that the Minister has consented in terms of subsection (1) **[consented]** to the amalgamation or transfer; and

(ii) that such amalgamation or transfer has been duly effected,

and upon **[the]** production to him of any relevant deed, bond, share, stock, debenture, certificate, letter of appointment, licence or other document, make such endorsements thereon and effect such alterations in his registers as may be necessary to record the transfer **[thereof]** of the relevant property, bond or other right, share, stock, debenture, marketable security, letter of appointment or licence and of any rights thereunder to the amalgamated bank or, as the case may be, to the bank or person **[or the said wholly owned subsidiary which]** that has **[so]** taken **[over]** transfer of the said assets and liabilities.''; and

*(e)* by the insertion after subsection (8) of the following subsection:

''(8A) No transfer duty, stamp duty, registration fees, licence duty or other charges shall be payable in respect of—

*(a)* a transfer contemplated in subsection (8) taking place in the execution of a transaction entered into at the instance of the Registrar in the interest of the effective supervision of banks or the maintenance of a stable banking sector; or

*(b)* any endorsement or alteration made to record such transfer,

upon submission to the Registrar of Companies, or the Master, officer or person referred to in subsection (8), as the case may be, of a written confirmation by the Registrar of Banks that the Minister, on the recommendation of the last-mentioned Registrar and after consultation with the Commissioner for Inland Revenue, has consented to the waiver of such duties, fees or charges.''.

**Amendment of section 69 of Act 94 of 1990, as amended by section 8 of Act 42 of 1992, sections 17 and 25 of Act 9 of 1993 and section 43 of Act 26 of 1994**

**6.** Section 69 of the principal Act is hereby amended—

*(a)* by the deletion of paragraph *(b)* of subsection (6); and

*(b)* by the insertion after subsection (6A) of the following subsection:

''(6B) Notwithstanding any provision to the contrary contained in this Act, sections 35A, 35B and 46 of the Insolvency Act, 1936 (Act No. 24 of 1936), shall *mutatis mutandis* apply to the curator of any bank under curatorship and to such a bank as if the curator were a trustee of an insolvent estate and the bank were an insolvent or a sequestrated estate as contemplated in those sections.''.

**Short title**

**7.** This Act shall be called the Banks Amendment Act, 1996.

## MEMORANDUM ON THE OBJECTS OF THE BANKS AMENDMENT BILL, 1996

During the period since the promulgation of the Banks Amendment Act, 1994 (Act No. 26 of 1994), the Office for Banks, in the process of its administration of the Banks Act, 1990 (Act No. 94 of 1990, ''the principal Act''), and in its day to day consultations and contact with the banks, has identified certain further aspects in which the principal Act is in need of improvement. In order to effect such improvements, certain amendments of the principal Act are proposed in the present Bill, the most significant of which may be explained as follows:

**Clause 1*(a)*: Amendment of the definition of ''deposit''.**

The definition of the noun ''deposit'' in the principal Act, tersely stated, is ''an amount of money paid by one person to another person subject to an agreement in terms of which an equal amount or any part thereof will be . . . repaid . . .''. The purpose of the proposed amendment is to make it clear that an amount of money so paid and to be repaid remains a deposit irrespective of whether the repayment is made by the person originally accepting the deposit or by any other person.

**Clause 1*(b)*: Definition of ''employee in charge of a risk management function''.**

The expression ''executive officer'', in relation to a bank, is defined in the principal Act as also including ''an employee in charge of a risk management function''. Clause 1*(b)*, in aid of legal certainty, now provides a definition also for ''employee in charge of a risk management function''.

**Clause 1*(c)*: Amendment of the definition of ''executive officer''.**

The object of this clause is the further elucidation of the defined expression ''executive officer'' inasmuch as it is proposed, as far as managers of a bank are concerned, that such a manager is to be regarded as an executive officer of a bank only if he or she is responsible to, or reports to, the chief executive officer of the bank, directly.

**Clause 1*(d)*: Amendment of the definition of ''the business of a bank''.**

The activities of certain financial intermediaries who themselves are not banks but who render services as facilitators of money lending transactions between investors, as lenders, and banks, as borrowers, are singled out in paragraph *(ff)* of the definition of ''the business of a bank'' as being permissible and not in contravention of the general prohibition on the acceptance of deposits from the public by persons other than banks. Although the premise basic to this concession is that the said financial intermediaries, in effecting a money lending transaction directly between the investor and the bank, act purely as agents, the proviso to the said paragraph *(ff)* also permits certain financial intermediaries, that are to be designated by the Registrar of Banks by notice in the *Gazette*, to pool funds entrusted to them by their several clients. This latter proviso, in which the person permitted to pool funds is still referred to as an agent, has now, on reconsideration, been found to be inherently contradictory, for the following reasons:

A financial intermediary administering a lump sum of pooled funds can hardly place or otherwise deal with such funds other than in his or her own name, thereby becoming a principal to any transaction effected by him or her in the execution of the mandates in terms of which the constituent amounts of the pooled funds were entrusted to him or her. Where, in the concluding phrases of the proviso to paragraph *(ff)* of the definition of ''the business of a bank'', the ''agent'' is authorized to pool funds entrusted to him or her by different investors and, further, to pool such funds ''for the purposes of the effecting of the money lending transaction'' (i.e. ''a money lending transaction directly between a lender and a bank as borrower''), one has to do with a discrepancy that is untenable in law.

The sole purpose of the proposed amendments to be effected to the definition of ''the business of a bank'' by clause 1*(d)* of the Bill, is to separate the two different legal relationships, namely agency and mandate, currently intermixed in paragraph *(ff)* of that definition, from each other and to address the authorization to pool funds in a separate paragraph [the proposed paragraph *(gg)* that is to be added to the definition of ''the business of a bank''].

**Clause 2: Amendment of section 34 of principal Act so as to extend the powers of the Registrar of Banks to obtain information in connection with local representative offices of foreign banking institutions.**

Section 34 of the principal Act provides for the establishment of a representative office in the Republic by a foreign banking institution. However, in its current form that section does not provide for the furnishing of sufficient information to the Registrar of Banks so as to enable that Registrar, when considering an application for his or her consent to the establishment of such a representative office, to discharge his or her duties in terms of the minimum requirements laid down by the Basle Committee on Banking Supervision. In addition, section 34 is in need of amplification so as to empower the said Registrar to obtain information, the nature of which is to be prescribed by regulation, from representative offices after their establishment. Clause 2 effects the necessary amendments to section 34.

**Clause 3: Amendment of section 52 of principal Act so as to regulate the investment by banks in joint ventures.**

Section 52 of the principal Act lists various corporate activities within or outside the Republic, such as the establishment of subsidiaries, the opening of branch offices, the acquisition of interests in foreign undertakings, the creation of trusts, etc., into which banks and bank controlling companies may not expand without the prior written approval of the Registrar. The said activities as so listed leave a measure of uncertainty as to the freedom of banks and controlling companies to invest in so-called joint ventures, that is to say, a contractual arrangement between a bank or controlling company and one or more other parties to undertake an economic activity jointly.

It is deemed advisable that the entry of a bank or controlling company into such a joint venture likewise be made subject to the prior written approval of the Registrar of Banks in any case where the joint venture will expose the bank or controlling company to an amount exceeding five per cent of its capital and reserves.

The amendments proposed in clause 3 of the Bill entail the insertion of references to such joint ventures in section 52 of the principal Act as well as the addition of a new subsection (6) in which the expression ‘‘joint venture’’ is defined.

**Clause 4: Consequential amendment of section 53 of principal Act.**

Clause 4, by inserting a new paragraph *(a*A*)* in section 53 of the principal Act, effects a consequential amendment arising from the amendment of section 52.

**Clause 5*(a)*: Amendment of section 54(3) of principal Act.**

Section 54(3) of the principal Act regulates the transition of assets and liabilities and rights and obligations attendant upon an amalgamation of banks or the transfer of some or all of its assets and liabilities by a bank to another bank or to a person approved by the Registrar of Banks. However, as currently worded, section 54(3), in a rather generalized manner, refers to the transfer of all assets and liabilities, rights and obligations, etc., to the amalgamated bank or the bank or person taking transfer of the assets and liabilities, and does not address actualities such as a partial only transfer of assets and liabilities or a lapse of rights, obligations or other legal relationships necessitated by the terms and conditions of the relevant amalgamation or transfer. Clause 5*(a)* of the Bill is intended to remedy this shortcoming in section 54(3) of the principal Act. In addition, this clause effects adjustments to section 54(3) which are similar to those effected by clauses 5*(b)* and 5*(c)* to sections 54(4) and 54(5), respectively.

**Clauses 5*(b)* and 5*(c)*: Amendment of sections 54(4) and 54(5) of principal Act.**

In section 54(2) and (8) of the principal Act the expression ''transferor bank'' is used where reference is made to the bank the assets and liabilities of which are being transferred, whereas elsewhere, namely in section 54(4) and (5), the reference to such a bank is framed as ''the bank by which the transfer is effected''. The purpose of clauses 5*(b)* and 5*(c)* is to change, to ''transferor bank'', the relevant references in sections 54(4) and 54(5), respectively, so as to ensure consistency and uniformity with sections 54(2) and 54(8). In addition, clauses 5*(b)* and 5*(c)* substitute for the reference, in sections 54(4) and 54(5), respectively, to a bank or person ''taking over (the) assets and liabilities'' a reference to a bank or person ''taking transfer'' of the assets and liabilities in question.

**Clause 5*(d)*: Amendment of section 54(8) of principal Act.**

Section 54(8) of the principal Act provides for the endorsement of title deeds, bonds or other documents recording rights, and for the alteration of registers to record the transfer of rights, in the event of an amalgamation of banks or the transfer by a bank of all or part of its assets and liabilities. The officers charged with the duty of effecting such endorsements or alterations are the Registrar of Companies, the various Masters of the Supreme Court and the officers in charge of deeds registries. Due to the growing involvement of banks in the capital market, an hiatus has developed in the provisions of section 54(8) in that no mention is made therein of the transfer of rights to shares, stock, debentures or other marketable securities. Clause 5*(d)* of the Bill supplements section 54(8) in this respect.

**Clause 5*(e)*: Insertion of new subsection (8A) in section 54 of principal Act so as to provide for the waiver of certain duties, fees or charges.**

Situations unique to the banking sector have indicated a need for some form of cost relief to banks becoming involved in amalgamations or the transfer of their assets and liabilities. Certain transactions, entailing the amalgamation of banks or the transfer by a bank of its assets and liabilities to another institution, are occasionally entered into at the instance of the Registrar of Banks in the interest of effective supervision of banks or the maintenance of a stable banking sector, and as such may be regarded as being of an involuntary nature. It is considered that such transactions merit exemption from standard dues payable to the State, such as transfer duty, stamp duty, registration fees and licence duty. Clause 5*(e)* of the Bill inserts the mechanisms for such cost relief in section 54 of the principal Act, provided, however, that each case is considered individually on its merits and that the costs be waived only with the express consent of the Minister of Finance, granted on the recommendation of the Registrar of Banks and after consultation with the Commissioner for Inland Revenue.

**Clause 6*(a)*: Amendment of section 69(6) of the principal Act.**

Paragraph *(b)* of section 69(6) of the principal Act currently provides that whilst a bank is under curatorship, the operation of set-off in respect of any amount owing by a creditor to such bank shall be suspended. The object of this provision is self-evident, namely, to create the most favourable circumstances in which the curator may attempt to restore the bank to a state of financial well-being.

However, it is now realized that the relevant provision may have the same deleterious effect on the effective functioning of, and the risk exposure of participants in, the financial markets as that which the provisions of the Insolvency Amendment Act, 1995 (Act No. 32 of 1995), seek to eliminate in the case of the insolvency of a participant in those markets. Consequently, clause 6*(a)* of the Bill, in accordance with a recommendation received from the Council of Southern African Bankers to that effect, proposes that paragraph *(b)* of section 69(6) of the principal Act be deleted.

**Clause 6*(b)*: Insertion of new subsection (6B) in section 69 of principal Act so as to make certain provisions of Insolvency Act, 1936, applicable in respect of a bank under curatorship.**

Clause 6*(b)* renders the arrangements in sections 35A and 35B of the Insolvency Act, 1936 (Act No. 24 of 1936), made in regard to any obligations of an insolvent arising from stock exchange transactions or agreements on certain informal markets such as the currency, money, financial or metals-markets and which remain unfulfilled upon his or her sequestration, applicable in relation to a bank under curatorship. In addition thereto, the arrangements made in section 46 of the Insolvency Act, 1936, in respect of certain instances of set-off in which an insolvent was involved prior to his or her sequestration, are made applicable by that clause in relation to a bank under curatorship.

**Persons or bodies consulted.**

The Bill was laid before and considered by—

*(a)* the Standing Committee for the Revision of the Banks Act, 1990, being the committee appointed under and functioning in terms of section 92 of the principal Act; and

*(b)* the Policy Board for Financial Services and Regulation established by section 2 of the Policy Board for Financial Services and Regulation Act, 1993 (Act No. 141 of 1993).

Inputs to the Bill were also received from the Council of Southern African Bankers, either directly or through the intermediation of the above-mentioned Standing Committee.