

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN RESERVE BANK AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 41657 of 25 May 2018)
(The English text is the official text of the Bill)*

(Mr J S Malema, MP)

[B 26—2018]

ISBN 978-1-4850-0506-3

No. of copies printed 800

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 delete certain definitions; to insert a definition; to provide for the appointment of certain Board directors by the Minister; to provide for the tenure of office of appointed directors; to deal with the filling of casual vacancies for appointed directors; to make the State the sole holder of the shares in the Bank; to repeal certain sections; to give the Minister the power to appoint auditors of the Bank; to give the Minister the power to make regulations relating to the appointment of appointed directors; 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, section 1 of Act 2 of 1996, and section 1 of Act 4 of 2010

1. Section 1 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), 5
(hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “associate” of the following definition:

“ **‘appointed director’** means a member of the Board appointed by the 10
Minister;”;

(b) by the deletion of the definition of “associate”;

(c) by the deletion of the definition of “close relative”;

(d) by the deletion of the definition of “elected director”; and

(e) by the deletion of the definition of “shareholder”.

**Amendment of section 4 of Act 90 of 1989, as amended by section 9 of Act 51 of 15
1991, section 2 of Act 10 of 1993, section 72 of Act 129 of 1993, section 3 of Act 2 of
1996 and sections 2, 3 and 4 of Act 4 of 2010**

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

(a) by the substitution in subsection (1) for paragraph (b) of the following 20
paragraph:

“(b) seven appointed directors **[elected]** who shall be appointed by the
[shareholders] Minister from candidates confirmed by the
Panel.”;

- (b) by the substitution for subsection (1A) of the following subsection:
 “(1A) **[Any shareholder,]** A current director of the Bank or any member of the general public may nominate persons to serve as **[elected appointed]** directors of the Bank in the manner as may be prescribed.”;
- (c) by the substitution for subsection (1B) of the following subsection: 5
 “(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]** expiry of the term of office of an appointed director.”;
- (d) by the substitution in subsection (1C) for the words following paragraph (b) of the following words:
 “the **[relevant ordinary general meeting of shareholders at which an election of directors is due to take place]** expiry of the term of office of an appointed director.”;
- (e) by the substitution in subsection (1G) for paragraph (c) of the following paragraph:
 “(c) cause a copy of the list of candidates to be sent to **[shareholders]** the Minister no later than 30 days before the **[date of the relevant ordinary general meeting of shareholders]** expiry of the term of office of an appointed director.”;
- (f) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “Of the directors **[elected by the shareholders]** appointed by the Minister—”; and
- (g) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 “No person shall be appointed **[or elected]** as or remain a director, if that person—”. 30

Amendment of section 4A of Act 90 of 1989, as inserted by section 3 of Act 4 of 2010

3. Section 4A of the principal Act is hereby amended by the substitution in subsection (1)(c) for subparagraph (ii) of the following subparagraph:

- “(ii) annual reports and financial statements of the Bank required for submission to **[the meeting of shareholders,]** the Minister and Parliament;”. 35

Amendment of section 5 of Act 90 of 1989, as amended by section 1 of Act 39 of 1997 and section 4 of Act 4 of 2010

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

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 40
 “(c) **[Elected]** Appointed 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]** of three years.”; and
- (b) 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 50
 that in the case of an **[elected]** appointed director, such person has been confirmed by the Panel as a candidate as contemplated in this Act.”.

Amendment of section 6 of Act 90 of 1989, as amended by section 9 of Act 51 of 1991, section 4 of Act 2 of 1996 and section 5 of Act 4 of 2010

5. Section 6 of the principal Act is hereby amended— 55
 (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) in the case of an **[elected]** appointed director, by the **[election by the shareholders at an ordinary general meeting of shareholders]** appointment by the Minister, of a person, confirmed by the Panel as a candidate as contemplated in this Act, in the place of **[the] an appointed** director whose office has become vacant, or by the appointment by the Board, subject to his or her subsequent **[election by shareholders at the next ordinary general meeting of the shareholders]** appointment by the Minister, of a person confirmed by the Panel as a person suitable for possible **[election] appointment** to the Board.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “Any person appointed **[or elected]** under subsection (1) shall hold office—”; and
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(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]** appointed by the Minister within a period of six months from the date of such appointment by the Board, shall expire on the day **[of such ordinary general meeting]** immediately following that six-month period.”.

Amendment of section 9 of Act 90 of 1989

6. Section 9 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) a disqualified person or a person with respect to whose **[election] appointment** as director the provisions of the regulations had not been observed, sat or acted as a director.”.

Amendment of section 10 of Act 90 of 1989, as amended by section 3 of Act 10 of 1993, section 5 of Act 2 of 1996, section 2 of Act 39 of 1997 and section 290 read with Schedule 4 of Act 9 of 2017

7. Section 10 of the principal Act is hereby amended by the substitution in subsection (1)(c) for subparagraph (ii) of the following of subparagraph:

- “(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; or
 (bb) any facility for or associated with,
 the utilisation of any such payment, clearing or settlement systems;”.

Amendment of section 13 of Act 90 of 1989, as amended by section 7 of Act 10 of 1993 and section 53 of Act 45 of 2013

8. Section 13 of the principal Act is hereby amended by the deletion of paragraph (a).

Substitution of section 21 of Act 90 of 1989

9. The following section is hereby substituted for section 21 of the principal Act:

“Share capital of Bank

(1) **[The share capital of the Bank shall be two million rand, and shall be divided into two million ordinary shares of one rand each]** The State is the sole holder of shares in the Bank.

(2) **[The liability of a shareholder shall be limited to the amount unpaid on the shares held by him]** The rights attached to the shares in the Bank must be exercised by the Minister on behalf of the State.

[(3) The Bank may, from time to time, with the consent of the Board, increase its share capital by the issue of shares upon such terms as the Board may approve.

(4) The premium obtained on any issue of shares shall be added to the reserve fund of the Bank.]”.

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Repeal of section 22 of Act 90 of 1989

10. Section 22 of the principal is hereby repealed.

Repeal of section 23 of Act 90 of 1989

11. Section 23 of the principal Act is hereby repealed.

Amendment of section 24 of Act 90 of 1989

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12. Section 24 of the principal Act is hereby amended—

- (a) by the addition of “and” at the end of paragraph (c) and the deletion of “and” at the end of paragraph (d); and
- (b) by the deletion of paragraph (e).

Amendment of section 30 of Act 90 of 1989

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13. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) For every financial year of the Bank, the **[shareholders] Minister shall [at the general meeting elect] appoint** two firms of public accountants, to act during that year as auditors of the Bank.”.

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Amendment of section 32 of Act 90 of 1989

14. Section 32 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) of “and” at the end of paragraph (b); and
- (b) by the deletion of paragraph (c).

Amendment of section 33 of Act 90 of 1989, as amended by section 3 of Act 39 of 1997 and section 46 of Act 12 of 2003

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15. Section 33 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1)(a) of “or” at the end of subparagraph (i); and
- (b) by the deletion in subsection (1)(a) of subparagraph (ii).

Amendment of section 36 of Act 90 of 1989, as amended by section 8 of Act 10 of 1993

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16. Section 36 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph:
“(a) the **[election of directors by shareholders] appointment of the directors by the Minister;**”;
- (b) by the deletion of paragraph (d).

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Amendment of section 38 of Act 90 of 1989

17. Section 38 of the principal Act is hereby amended by the deletion of subsections (2) and (3), respectively.

Short title and commencement

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18. This Act is called the South African Reserve Bank Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN RESERVE BANK AMENDMENT BILL, 2018

1. INTRODUCTION

The South African Reserve Bank Act, 1989 (Act No. 90 of 1989) (“Act”), amongst other things, provides for the share capital of the South African Reserve Bank (“Bank”). The provision of share capital of the Bank, and the increase of the share capital by issuing shares, enable private individuals including foreign nationals to buy and own shares in the Bank. The Bank currently has some 650 shareholders other than government.

2. OBJECTS OF THE BILL

The Bill seeks to amend the Act to make the State the sole holder of the shares in the Bank and to give powers to the Minister to exercise the rights attached to the shares in the Bank of which the State is the owner. The Bill further seeks to provide for the appointment process of directors of the Board that instead of being elected at an ordinary general meeting of shareholders, will now be appointed by the Minister.

3. CONTENTS OF THE BILL

- 3.1** Clause 1 amends section 1 of the Act by deleting certain definitions and adding a definition for an appointed director.
- 3.2** Clause 2 amends section 4 of the Act. The proposed amendment seeks to empower the Minister to appoint the directors of the Board and to provide for how nominations of those directors should be done.
- 3.3** Clause 3 amends section 4A of the Act. In terms of the proposed amendment, the annual and financial statements should be submitted to the Minister and Parliament only and not to the shareholders as the Bill proposes the shareholder to be the State, represented by the Minister.
- 3.4** Clause 4 amends section 5 of the Act to align the Act with the proposal that the State be the sole holder of the shares in the Bank. The clause does this by providing a fixed term of appointment for the directors appointed by the Minister and by providing for re-appointment of directors.
- 3.5** Clauses 5 and 6 amend sections 6 and 9 of the Act, respectively. The proposed amendments seek to align the appointment process with the proposal that the State be the sole holder of the shares in the Bank.
- 3.6** Clause 7 amends section 10 of the Act. The amendment seeks to remove the power of the Bank to form certain shares.
- 3.7** Clause 8 amends section 13 of the Act by deleting a paragraph. The amendment is consequential to the proposal that the State be the sole holder of shares in the Bank.
- 3.8** Clause 9 amends section 21 of the Act. This amendment deals with the share capital of the Bank. The proposed amendment makes the State the sole holder of shares in the Bank and proposes that the rights attached to those shares be exercised by the Minister on behalf of the State.
- 3.9** Clauses 10 and 11 repeal sections 22 and 23 of the Act, respectively. The repeals are consequential to the proposal that the State be the sole holder of shares in the Bank.
- 3.10** Clause 12 amends section 24 of the Act by deleting a paragraph. The amendment is consequential to the proposal that the State be the sole holder of shares in the Bank.

3.11 Clause 13 amends section 30 of the Act. The proposed amendment gives the power to the Minister to appoint firms of public accountants to act as auditors of the Bank.

3.12 Clauses 14 and 15 amend sections 32 and 33 of the Act by deleting certain provisions, respectively. The amendments are consequential to the proposal that the State be the sole holder of shares in the Bank.

3.13 Clause 16 amends section 32 of the Act by giving the Minister the power to make regulations for the appointment of directors.

3.14 Clause 17 amends section 38 of the Act by deleting provisions. The amendment is consequential to the proposal that the State be the sole holder of shares in the Bank.

3.15 Clause 18 provides for the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Member proposes that the Bill be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

5.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0506-3