

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.



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THE PRESIDENCY

No. 801

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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.



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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: 10
- “ ‘associate’, in relation to a shareholder—
- (a) if the shareholder is a natural person, means— 15
- (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—
- (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:

“‘**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**’.

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