DRAFT 4

May 2011
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.

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B I L L

To amend the Banks Act, 1990 so as to define or further define certain expressions; to clarify certain provisions in line with their practical application; to update references to legislation and institutions; to extend the use of the name bank to representative offices; to provide that a contravention of the Financial Intelligence Centre Act is a cause for the suspension or cancellation of the registration as a bank; to provide for the alignment with the new Companies Act; and to provide for matters connected therewith.

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

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

(a) by the insertion in subsection (1) after the definition of "banking group" of the following definition:

"""**Basel Committee on Banking Supervision**""" means a committee of the Bank for International Settlements, the secretariat of which consists of supervisors from central banks and other authorities of member countries and is located in Basel, Switzerland;"; 

(b) by the insertion in subsection (1) after the definition of "close relative" of the following definition:

"""**Commission**""" means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;"; 

(c) by the insertion in subsection (1) after the definition of "Commission" of the following definition:

"""**Commissioner**""" means the Commissioner appointed in terms of section 189 of the Companies Act;"; 

(d) by the substitution in subsection (1) for the definition of “Companies Act” of the following definition:

“""**Companies Act**’ means the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);"; 

(e) by the insertion in subsection (1) after the definition of “consolidating supervisor” of the following definition" 

“""**control**” and any derivative thereof includes the meaning as provided for in section 2(2) of the Companies Act;";
(f) by the substitution in subsection (1) for the definition of “co-operative” of the following definition:

“‘co-operative’ means a co-operative incorporated in terms of the Co-operatives Act, [1981 (Act No. 91 of 1981)] 2005 (Act No. 14 of 2005) [, and includes a co-operative society or co-operative company deemed in terms of section 2 of that Act to be incorporated in terms of the said Act];”;

(g) by the substitution in subsection (1) for the definition of “director” of the following definition:

“‘director’, means a director as defined in section 1 the Companies Act, and includes an executive director and a non-executive director, unless expressly stated otherwise;”;

(h) by the substitution in subsection (1) for the definition of "domestic shareholder" of the following definition:

“"domestic shareholder", in relation to a bank or controlling company, means a shareholder of the bank or controlling company—

(a) who is resident in the Republic;

(b) which is a company controlled, [mutatis mutandis as contemplated in paragraph (a), (b) or (c) of the definition of "controlling company" in section 1 of the Companies Act.] by a person or persons who is or are resident in the Republic or, in the case of a juristic person or persons, was or were formed, established or incorporated by or under a law of the Republic;

(c) which is a juristic person other than a company and was formed, established or incorporated by or under a law of the Republic, excluding a pension fund registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), where the head office of the association which carries on the
business of that fund, or of every employer who is a party to that fund, is outside the Republic; or

(d) that is a person belonging to a category of persons recognized by the Registrar as domestic shareholders for the purposes of this Act;"

(i) by the substitution in subsection (1) for the definition of "financial statements" of the following definition:

``"financial statements" means annual financial statements referred to in [sections 286 and 288] section 30 of the Companies Act;";"

(j) by the substitution in subsection (1) for the definition of “holding company” of the following definition:

``"holding company" means a holding company as defined in [section 1 (4)] section 1 of the Companies Act;";"

(k) by the substitution in subsection (1) for sub-paragraph (g)(i) of the definition of “liquid assets” of the following sub-paragraph:

``“(g) bills issued by the Land Bank for purposes of extending short-term financing -

(i) to an agricultural co-operative [or a special farmers' co-operative] formed and incorporated under the Co-operatives Act, [1981 (Act No. 91 of 1981)] 2005 (Act No. 14 of 2005), or deemed thereunder to be so formed and incorporated, for the purchase of agricultural products from farmers and of agricultural implements, equipment and other means of production for resale to farmers for the production of agricultural products;";"
(l) by the insertion in subsection (1) after the definition of "public" of the following definition:

"'public company' means a public company as defined in section 1 of the Companies Act";

(m) by the deletion in subsection 1 of the definition of "Registrar of Companies";

(n) by the substitution in subsection (1) for the definition of “Regulations relating to branches” of the following definition:

“‘Regulations relating to branches’ means the Regulations titled “Conditions for the conducting of the business of a bank by a foreign institution by means of a branch in the Republic” as published by Government Notice No. [R. 1414 of 28 December 2000] 30627 of 1 January 2008, and amended from time to time;”;

(o) by the substitution in subsection (1) for the definition of "subsidiary" of the following definition:

"'subsidiary' means a subsidiary as [defined] provided for in [section 1 (3)] section 3 of the Companies Act;

(p) by the substitution in subsection (1A) for paragraph (b)(iii) of the following paragraph:

“(iii) was a director, who has been indicated, as contemplated in section 421(2) of the Companies Act, 1973 (Act 61 of 1973), as the effective cause of a particular company having been unable to pay its debts;”;}
Amendment of section 2 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993

2. Section 2 of the principal Act is hereby amended by the substitution for sub-paragraph (b) of the following sub-paragraph:

“(b) in the lawful carrying on of the business of a bank, shall not apply to -

(i) the Reserve Bank;

(ii) the Land Bank;

(iii) the Development Bank of Southern Africa;

(iv) the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);

(v) [the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984)] the Public Investment Corporation Limited established by section 2 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004);

(vi) any mutual bank; or

(vii) any other institution or body designated by the Minister by notice in the Gazette.”;


3. Section 6 of the principal Act is hereby amended by -
(a) the substitution for subsection (4) the following subsection:

“(4) The Registrar may from time to time by means of a circular furnish banks, controlling companies, representative offices, eligible institutions or auditors of banks or controlling companies with guidelines regarding the application and interpretation of the provisions of this Act.”;

(b) the substitution for subsection (5) the following subsection:

“(5) The Registrar may from time to time by means of a guidance note furnish banks, controlling companies, representative offices, eligible institutions and auditors of banks or controlling companies with information in respect of market practices or market- or industry developments within or outside the Republic.”;

(c) the substitution for subsection (6) the following subsection:

“(6) (a) The Registrar may from time to time, in writing, after consultation with the relevant bank, controlling company, representative office, eligible institution or auditor of a bank or controlling company, issue a directive to such a bank, controlling company, representative office, eligible institution or auditor of a bank or controlling company, either individually or collectively, regarding the application of the Act;

(b) The directive contemplated in paragraph (a) may include the issuing of a non-financial sanction or a directive requiring a bank, a controlling company, an eligible institution or an auditor of a bank or controlling company, either individually or collectively, within the period specified in the directive, to-
(i) cease or refrain from engaging in any act, omission or course of conduct or perform such acts necessary to remedy the situation;

(ii) perform such acts necessary to comply with the directive or to effect the change required to give effect to the directive; or

(iii) provide the Registrar with such information and documents, relating to the matter as specified in the directive.

(c) The Registrar may after consultation with the relevant bank, controlling company, representative office, eligible institution or auditor of a bank or controlling company, subject to the directive, cancel in writing a previously issued directive;

(d) No directive issued by the Registrar shall have retroactive effect;

(e) Any bank, controlling company, representative office, eligible institution or auditor of a bank or controlling company that neglects, refuses or fails to comply with a directive issued under this subsection shall be guilty of an offence.”.

Amendment of section 10 of Act 94 of 1990 as amended by section 7 of Act 19 of 2003

4. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) the following subsection:
“(2) The Minister shall lay table a copy of the report referred to in subsection (1) upon the Tables in Parliament within 14 days after receipt of such report, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.”;


5. Section 13 of the principal Act is hereby amended by the insertion of paragraph (i) after paragraph (h) in subsection (2):

“(i) in the case of a foreign institution being the applicant, that the responsible consolidating supervisor of the foreign institution –

(i) has duly authorized the proposed establishment, by the foreign institution, of a bank in the Republic;

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

(iii) is not legally impeded from complying with the provisions of sub-paragraph (ii);

(iv) accepts its responsibilities in terms of the above-mentioned provisions as a consolidating supervisor;

(v) as far as may be reasonably possible, ensures that the members of the board and the executive management of the foreign institution at all times consist of fit and proper persons;
(vi) is satisfied with the standard of risk management maintained by the foreign institution;

(vii) is committed to keeping the Registrar informed of any material information regarding the financial soundness of the foreign institution and its bank in the Republic.”;


6. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) the following subsection:

“(3) Notwithstanding anything to the contrary contained in the Companies Act, the [Registrar of Companies] Commissioner shall not register in terms of that Act the memorandum of [association and articles of association] incorporation of a public company formed for the purpose of conducting the business of a bank, unless the application for such registration is accompanied by the approval referred to in subsection (1).”;

Amendment of section 16 of Act 94 of 1990, as substituted by section 8 of Act 26 of 1994 and section 12 of Act 19 of 2003

7. Section 16 of the principal Act is hereby amended by the substitution for subsection (2)(b)(i) the following subsection:

“(b) be accompanied by -
   (i) two copies each of the institution's memorandum of [association and articles of association] incorporation.”;
Amendment of section 17 of Act 94 of 1990, as substituted by section 9 of Act 26 of 1994 and section 13 of Act 19 of 2003

8. Section 17 of the principal Act is hereby amended by the substitution for subsection (1)(c) the following subsection:

“(c) that the memorandum of [association and articles of association] incorporation of the institution are consistent with this Act and are not undesirable for any reason.”;

Amendment of section 18 of Act 94 of 1990, as substituted by section 10 of Act 26 of 1994 and section 14 of Act 19 of 2003

9. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) the following subsection:

“(2) In addition to any other condition which the Registrar may impose under subsection (1), he or she may impose a condition requiring the institution concerned to take within a specified period such steps in terms of the Companies Act as may be necessary to alter its memorandum of [association and articles of association] incorporation in accordance with the requirements of the Registrar.”;


10. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) the following subsection:
“(1) Subject to the provisions of subsection (2), an institution which is registered as a bank or a foreign institution which is authorized under section 18A to conduct the business of a bank by means of a branch in the Republic or an institution which is registered as a representative office of a foreign institution under section 34 shall not-

(a) in the case of such bank use, or refer to itself by, a name other than the name under which it is so registered, [or]

(b) in the case of such foreign institution, in respect of the branch concerned use, or refer to the branch by, a name other than the name under which the conduct of the business of a bank in the Republic was so authorised, or

(c) in the case of such foreign institution, in respect of the representative office use, or refer to the representative office by, a name other than the name under which the representative office was so registered,

or any literal translation or abbreviation of such name which has been approved by the Registrar: Provided that the Registrar may, if he or she deems it desirable, authorise the use of a name by which such bank or foreign institution is otherwise generally known.”;

Amendment of section 23 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993 and as substituted by section 16 of Act 26 of 1994

11. Section 23 of the principal Act is hereby amended by the substitution of the following section:
“(1) The Registrar may subject to the provisions of section 24, in the case of a bank registered as such, after consultation with the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if the institution has not conducted any business as a bank during the period of six months commencing on the date on which the institution was registered as a bank.

(2) The Registrar may, subject to the provisions of section 24, in the case of a bank registered as such, after consultation with the Minister and by notice in writing to the institution concerned cancel, or suspend on such conditions as the Registrar may deem fit, such registration if -

(a) it has, in the opinion of the Registrar, been obtained on the strength of untrue or misleading information furnished by any person and such person has, on account of having so furnished such information, been convicted of an offence in terms of section 21;

(b) in the case of a bank of which the main place of business is situated in a country other than the Republic, the authorization in terms of which the institution concerned is authorized to conduct business in such other country similar to the business of a bank, is revoked by the competent authority in such other country; [or]

(c) the institution concerned has failed to comply -

   (i) with a prescribed condition or a further condition, contemplated in section 18(1), to which its registration is subject; or
(ii) with a condition imposed by the Registrar under section 18(2); or

(d) the institution concerned has contravened and has been convicted of a material provision of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(3) The Registrar may, subject to the provisions of section 24, in the case of a bank registered as such, [with the consent of] after consultation with Minister and by notice in writing to the institution concerned cancel such registration if the institution has ceased to conduct the business of a bank or is no longer in operation.”.


12. Section 24 of the principal Act is hereby amended by the substitution of the following section:

“(1) The Registrar [shall, before cancelling or suspending under section 23 the registration of a bank, in a written notice addressed to the chairperson or chief executive officer of the institution concerned] may by written notice to the chairperson or chief executive officer of the institution concerned suspend the registration of a bank under section 23 with immediate effect, provided that the Registrar must -

(a) inform the institution of his or her intention to cancel [or suspend, as the case may be,] such registration;
(b) furnish the institution with the reasons for the intended cancellation [or suspension]; and

(c) call upon the institution to show cause within a period specified in the notice, which shall not be less than 30 days as from the date of the notice, why its registration should not be so cancelled [or suspended].

(2) After considering any representations received within the specified period from the institution concerned by virtue of the provisions of subsection (1)(c), the Registrar may in his or her discretion -

(a) proceed with the cancellation [or suspension] in terms of section 23, of the registration; or

(b) refrain from taking any further steps in terms of section 23,

and the Registrar shall in writing inform the chairperson or chief executive officer of the institution concerned of his or her decision in terms of this subsection.”.

Amendment of section 27 of Act 94 of 1990, as substituted by section 20 of Act 26 of 1994 and section 20 of Act 19 of 2003

13. Section 27 of the principal Act is hereby substituted for the following section:

“27. Cancellation of registration at request of bank

The Registrar shall cancel the registration of a bank upon submission to him or her by the institution concerned of a special resolution [contemplated in section 200 of the Companies Act] approved by the shareholders holding
no less than seventy five per cent of the voting rights entitled to vote on the
decision authorizing such cancellation.”;

Amendment of section 28 of Act 94 of 1990, as substituted by section 21 of
Act 26 of 1994 and section 21 of Act 19 of 2003

14. Section 28 of the principal Act is hereby substituted for the following
section:

“28. Cancellation of registration upon winding up
When the affairs of a bank have been completely wound up as
contemplated in [section 419 (1)] section 82(1) of the Companies Act, the
responsible Master of the High Court shall transmit to the Registrar a copy
of the certificate referred to in that section, and the Registrar shall upon
receipt of such copy cancel the registration of the bank concerned.”;

Amendment of section 30 of Act 94 of 1990, as substituted by section 8 of
Act 9 of 1993 and amended by section 23 of Act 26 of 1994 and section 22 of
Act 19 of 2003

15. Section 30 of the principal Act is hereby amended by the substitution in
subsection (1) for paragraph (e) of the following paragraph:

"(e) permission granted in respect of the [compromise,] amalgamation,
merger or arrangement referred to in [Chapter XII] Chapter 5 of the
Companies Act, where a bank is the principal party to such compromise,
amalgamation, merger or arrangement”;

16. Section 32 of the principal Act is hereby amended by the substitution for subsection (1)(b) the following subsection:

“(b) to change its name and its memorandum of association and articles of association and registration of incorporation within the period and in the manner required by the Registrar.”;


17. Section 38 of the principal Act is hereby amended by the substitution of subsection (2) for the following subsection:

“(2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer, of shares in a bank or controlling company -

(a) [in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;] in the name of the manager or trustee of a collective investment scheme as defined by section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or of a nominated company of the manager or trustee approved by the Registrar of Collective Investment Schemes;

(b) in the name of any executor, administrator, trustee, curator, guardian or liquidator [in the circumstances mentioned in section 103(3) of the Companies Act] in respect of the estate of a
deceased member of the bank or controlling company or of a member whose estate has been sequestrated or of a member who is otherwise under disability or as the liquidator of any body corporate in the course of being wound up which is a member of the bank or controlling company;

(c) for a period of not more than six months, in the name of a stock-broker [or of a company established by such stock-broker for a purpose mentioned in section 12(3) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), or of a company controlled by the bank or of an employee of the bank, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares or where the beneficiary is not known;

(d) in the name of a person in other special circumstances determined by the Minister by notice in the Gazette; or

(e) in the name of a central securities depository as defined in section 1 of the Safe Deposit of Securities Act, 1992.


18. Section 43 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) the following paragraph:

“(b) which is a [controlling] holding company, as defined in section 1 of the Companies Act, in respect of any other public company which has applied in terms of section 16 for registration as a bank.”;
Amendment of section 44 of Act 94 of 1990, as amended by section 10 of Act 9 of 1993 and section 31 of Act 19 of 2003

19. Section 44 of the principal Act is hereby amended by the substitution for subsection (2)(c) the following subsection:

“(c) that no provision of the memorandum of [association and articles of association] incorporation of the applicant is inconsistent with a provision of this Act or is undesirable in so far as it concerns banks;”;

Amendment of section 47 of Act 94 of 1990, as substituted by section 32 of Act 19 of 2003

20. Section 47 of the principal Act is hereby amended by the substitution for section 47 the following section:

“The Registrar shall cancel the registration of the controlling company upon submission to him or her by the controlling company of a special resolution [contemplated in section 200 of the Companies Act] approved by the shareholders holding no less than seventy five per cent of the voting rights entitled to vote on the decision authorising such cancellation”.


21. Section 51 of the principal Act is hereby amended by -

(a) the deletion of paragraph (b) of subsection (1);
(b) the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the administration of which vests in the [Registrar of Companies] Commissioner, shall in respect of companies registered as banks or as controlling companies vest in the Registrar.

Amendment of section 52 of Act 94 of 1990, as amended by section 3 of Act 55 of 1996 and section 35 of Act 19 of 2003

22. Section 52 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) acquire an interest in any undertaking having its registered office or principal place of business outside the Republic: Provided that the Registrar may issue a directive, with or without conditions, specifying the circumstances under which a bank will be permitted to notify the Registrar of the acquisition of an interest in any undertaking having its registered office or principal place of business outside the Republic without having to obtain the prior written approval of the Registrar.”;


23. Section 54 of the principal Act is hereby amended by –

(a) the substitution for the title of the following title:

“54 Amalgamations, mergers and arrangements”
(b) the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) an [compromise,] amalgamation, merger or arrangement referred to in [Chapter XII] Chapter 5 of the Companies Act and which involves a bank as one of the principal parties to the relevant transaction; and";

(c) the substitution in subsection (4) of the following subsection:

“(4) Any [compromise,] amalgamation, merger or [arrangement or] any arrangement for the transfer of assets, liabilities or assets and liabilities, referred to in subsections (1) or (1B) excluding a transfer other than a transfer referred to in subsections (2)(c) or (2A)(c) shall be subject –";

(d) the substitution in subsection (5) of the following paragraph:

“(5) Notice of the passing of the resolution confirming, as contemplated in subsection (4), any [compromise,] amalgamation, merger or [arrangement or] any arrangement for the transfer of assets, liabilities or assets and liabilities referred to in subsections (1) or (1B), respectively, together with a copy of such resolution and the terms and conditions of the relevant agreement or arrangement, duly certified by the 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, liabilities or assets and liabilities of one bank to another bank or a person as contemplated in subsection (2)(c) or 2(A)(c), respectively, by the relevant transferor bank and the bank or person taking transfer of such assets, liabilities or assets and liabilities, and after having received such
notices from all the parties to the relevant agreement or arrangement, the Registrar shall register those notices."

(e) the substitution for subsection (8) of the following subsection:

"(8) The [Registrar of Companies] Commissioner, every Master of the High Court and every officer or person in charge of a deeds registry or any other office, if, in the office of such [Registrar] Commissioner, Master, officer or person or any register under the control of such [Registrar] Commissioner, Master, officer or person 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; or

(aA) 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, liabilities or assets and liabilities referred to in subsections (1) or (1B) to any other bank or person shall, if satisfied -

(i) that the Minister has consented in terms of subsection (1) to the amalgamation of transfer or that the Registrar has consented in terms of subsection (1B) to the transfer; and

(ii) that such amalgamation or transfer has been duly effected,
and upon production to such [Registrar] Commissioner, Master, officer or person 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 the registers of such [Registrar] Commissioner, Master, officer or person as may be necessary to record the transfer 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 that has taken transfer of the said assets, liabilities or assets and liabilities in question.”;

(f) the substitution for subsection (8A) of the following subsection:

“(8A) No transfer duty, securities transfer tax, 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] Commissioner, 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 of the South African Revenue Service has consented to the waiver of such tax, fees or charges.”;

(g) the deletion of subsection (10) in its entirety;
(h) by the substitution in subsection (11) for paragraph (a) of the following paragraph:

“(a) **[Chapter XVA]** Chapter 5 of the Companies Act;”

(i) by the substitution in subsection (11) for paragraph (b) of the following paragraph:

“(b) “the Takeover Regulations published by **[Note: the final regulations have not yet been published- to be inserted once finalised]**”;

(j) by the deletion of paragraph (c) in subsection 11 in its entirety;

(k) by the substitution of the wording at the end of subsection (11) of the following paragraph:

“neither the **[Securities Regulation]** Takeover Regulation Panel established in terms of section 196 **[by section 440B of]** the Companies Act nor its executive committee or its executive director shall furnish any clearance, decision or ruling in respect of a matter submitted to it or such executive director in terms of the provisions of **[the above-mentioned Code or Rules.]** Chapter 5 of the Companies Act and the Takeover Regulations and which matter relates to an affected transaction, as defined in section **[440A (1)]** 117 of the Companies Act involving—“;

**Amendment of section 55 of Act 94 of 1990**

24. Section 55 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:
“(a) in respect of which annual financial statements are required to be made out in terms of [section 288 (1)] section 30 of the Companies Act; and”;


25. Section 56 of the principal Act is hereby amended by -

(a) the substitution for the heading of the following heading:

“56. Alteration of memorandum of incorporation, and change of name”;

(b) the substitution of subsection (1) for the following subsection:

“(a) alteration, in terms of [section 55, 56 or 62] section 16 of the Companies Act, of the memorandum of [association or articles of association] incorporation of a company registered as a bank; or

(b) change, in terms of [section 44] section 16(8) of the Companies Act, of the name of any such company,

shall have legal force for the purposes of this Act or any other law unless to the registration thereof by the [Registrar of Companies] Commissioner.”;

(c) the substitution in subsection (4) for the following subsection:

“(4) A bank shall within 21 days of the registration by the [Registrar of Companies] Commissioner of an alteration of its memorandum of [association or articles of association] incorporation or a change of its
name, furnish the Registrar with a certified copy of the special resolution which sets out the alteration or change of name, as the case may be.”;

(d) the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) in the case of a special resolution relating to an alteration of a memorandum of [association or articles of association] incorporation, register the alteration in question and issue to the bank concerned a certificate to the effect that the said alteration has been registered by the Registrar with effect from a date specified in the certificate; or”;

(e) the substitution for subsection (7) of the following subsection:

“(7) The provisions of subsections (1), (2) and (3) shall not apply with respect to any alteration of a bank's memorandum of [association or articles of association] incorporation in accordance with a direction by the Registrar under this Act.”;


26. Section 57 of the principal Act is hereby amended by -

(a) the substitution for the heading of the following heading:

“57. Alteration of memorandum of incorporation in accordance with direction of Registrar”;

(b) the substitution of subsection (1) for the following subsection:
“(1) The Registrar may at any time in writing direct a bank to effect such alteration, not contrary to a provision of this Act, to its memorandum of incorporation as the Registrar may deem desirable in order to remove anomalies or undesirable divergences in the activities of different banks.”;

(c) the substitution of subsection (2) for the following subsection:

“(2) An alteration directed by the Registrar under subsection (1) shall on or before the day of the first annual general meeting, referred to in [section 179] section 61(7) of the Companies Act, following upon the date of such direction, be submitted for consideration to the shareholders of the bank concerned.”;

(d) the substitution of subsection (3) for the following subsection:

“(3) If a bank refuses or fails to alter its memorandum of incorporation in accordance with a direction of the Registrar under subsection (1), the Registrar may submit a copy of that direction to the [Registrar of Companies] Commissioner, who shall thereupon deal with the proposed alteration contained therein in accordance with the Companies Act as if it were contained in a special resolution adopted by the bank concerned and submitted to the [Registrar of Companies] Commissioner by that bank in accordance with that Act.”;

Amendment of section 58 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993 and substituted by section 37 of Act 26 of 1994

27. Section 58 of the principal Act is hereby amended by the substitution of section 58 for the following section:
“Every bank and every controlling company shall within 30 days of its registration as such, furnish the Registrar with a copy of its [register] record of directors and officers referred to in [section 215] section 24(3)(b) of the Companies Act.”;


28. Section 60 of the principal Act is hereby amended by -

(a) the substitution for subsection (1) of the following paragraph:

“(1) Subject to the provisions of section 77 of the Companies Act, each [Each] director, chief executive officer and executive officer of a bank owes a fiduciary duty and a duty of care and skill to the bank of which such person is a director, chief executive officer or executive officer.”;

(b) the substitution for subsection (1A) of the following paragraph:

“(1A) Subject to the provisions of section 77 of the Companies Act, each [Each] director, chief executive officer and executive officer of a bank owes a duty towards the bank to -

(a) act bona fide for the benefit of the bank;

(b) avoid any conflict between the bank’s interests and the interests of such a director, chief executive officer or executive officer, as the case may be;
possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment and carrying out similar functions as are carried out by the director, chief executive officer or executive officer of that bank; and

exercise such care in the carrying out of his or her functions in relation to that bank as may reasonably be expected of a diligent person who holds the same appointment under similar circumstances, and who possesses both the knowledge and skill mentioned in paragraph (c) and any such additional knowledge and skill as the director, chief executive officer or executive officer in question may have.”;

the substitution in subsection (1B) for paragraph (a) of the following paragraph:

“(a) the Registrar may institute action in terms of Section 77 of the Companies Act or Section 424 of the Companies Act, 1973 (Act 61 of 1973), against any director, chief executive officer or executive of the Bank who was knowingly a party to the carrying out of the business of the bank in the manner envisaged in that section.”;

the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) The Registrar may object to the proposed appointment by means of a written notice, stating the grounds for the objection, given to the chairperson of the board of directors of the bank and to the nominee, within 20 working days of receipt of the notice referred to in paragraph (b)[.] Provided that the Registrar may return the written notice to the bank concerned on the grounds that it is incomplete or
that it contains an error, in which case the requirement for the Registrar to object to the appointment within a period of 20 working days will not apply.”;

(e) the insertion of subsection (8) after subsection (7):

“(8) A bank or a controlling company shall not appoint any person to a position of or refer to any employee as a director unless such an employee has been appointed as a director of that bank or controlling company in terms of section 66 of the Companies Act.”;


29. Section 61 of the principal Act is hereby amended by -

(a) the substitution for subsection (1) of the following subsection:

“(1) notwithstanding the provisions of [Chapter X] Part C of Chapter 3 of the Companies Act –

(a) no person shall hold office as auditor of a bank or a controlling company unless the appointment of such person and such an auditor has been approved by the Registrar; and

(b) any person contemplated in paragraph (a) shall be appointed for such period and on such conditions that may be prescribed.”;

(b) the substitution for subsection (2) of the following subsection:

“(2) A bank or a controlling company shall within 30 days of the appointment in accordance with the provisions of [Chapter X] Part C of
Chapter 3 of the Companies Act of a person as auditor thereof, apply to the Registrar on the prescribed form for the Registrar's approval of such appointment.

(c) the substitution of sub-paragraph (b)(iii) of subsection (3) for the following sub-paragraph:

“(iii) is under investigation by the [Public Accountants’ and Auditors’ Board] Independent Regulatory Board for Auditors.”;

(d) the substitution for subsection (5) of the following subsection:

“(5) A person appointed under subsection (4) as auditor of a bank shall for the purpose of [Chapter X] Part C of Chapter 3 of the Companies Act be deemed to have been so appointed as auditor at the immediately preceding annual general meeting of the bank.”;

Amendment of section 62 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993

30. Section 62 of the principal Act is hereby amended by the substitution of subsection (1) for the following subsection:

“(1) if a bank for any reason fail to appoint an auditor the Registrar may, notwithstanding the provisions of [Section 269(4) and 271(1)] sections 90 and 91 of the Companies Act make the necessary appointment.”;

31. Section 63 of the principal Act is hereby amended by the substitution of paragraph (a) of subsection (1) for the following paragraph:

“(a) shall, whenever such auditor furnishes, in terms of section 20(5)(b) of the first-mentioned Act, the [Public Accountants’ and Auditors’ Board] Independent Regulatory Board for Auditors with copies of the report, acknowledgement of receipt and reply and with the other particulars referred to in that section, relating to an irregularity or suspected irregularity in the conduct of the affairs of the bank for which such auditor has been appointed as auditor, also furnish the Registrar with such copies and particulars;”;


32. Section 64 of the principal Act is hereby amended by the substitution for section 64 for the following section:

“64 Audit committee

(1) Subject to the provisions of subsection (3), (3A) and (4), the board of directors of a bank and controlling company shall appoint at least three of its members to form and serve on an audit committee.

(2) The audit committee shall—

(a) assist the board of directors—
(i) in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within that bank or controlling company, as the case may be in the day-to-day management of its business;

(ii) to facilitate and promote communication, regarding the matters referred to in subparagraph (i) or any other related matter, between the board of directors and the executive officers of, the auditor appointed under section 61 or 62 for, and the employee charged with the internal auditing of the transactions of, the bank or controlling company, as the case may be; and

(iii) to introduce such measures as in the committee’s opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the bank or controlling company, as the case may be;

(b) perform such further functions as may be prescribed[.];

(c) have the following additional duties in relation to the auditor

(i) to nominate, for appointment as an auditor of the bank or controlling company, as the case may be, under section 90 of the Companies Act, a registered auditor who, in the opinion of the audit committee, is independent of the bank or controlling company:
(ii) to determine the fees to be paid to the auditor and the auditor’s terms of engagement;

(iii) to ensure that the appointment of the auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors;

(iv) to determine, subject to the provisions of the Companies Act, the nature and extent of any non-audit services that the auditor may provide to the bank or controlling company, as the case may be, or that the auditor must not provide to the bank or controlling company, or a related company as defined in the Companies Act;

(v) to pre-approve any proposed agreement with the auditor for the provision of non-audit services to the bank or controlling company;

(vi) to prepare a report, to be included in the annual financial statements for that financial year—

(aa) describing how the audit committee carried out its functions;

(bb) stating whether the audit committee is satisfied that the auditor was independent of the bank or the controlling company, as the case may be; and

(cc) commenting in any way the committee considers appropriate on the financial statements, the accounting
practices and the internal financial control of the bank or the controlling company, as the case may be;

(vii) to receive and deal appropriately with any concerns or complaints, whether from within or outside the bank or controlling company, as the case may be, or on its own initiative, relating to—

(aa) the accounting practices and internal audit of the bank or controlling company;

(bb) the content or auditing of the bank’s or controlling company’s financial statements;

(cc) the internal financial controls of the bank or controlling company; or

(dd) any related matter;

(viii) to make submissions to the board on any matter concerning the bank’s or controlling company’s accounting policies, financial control, records and reporting; and

(ix) to perform other functions determined by the board, including the development and implementation of a policy and plan for a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes within the bank or controlling company.
(d) In considering whether, for the purposes of this subsection (2), a registered auditor is independent of a company, the audit committee of that company must—

(i) ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the bank or controlling company, except—

(aa) as auditor; or

(bb) for rendering other services to the bank or controlling company, to the extent permitted in terms of subsection (6)(d);

(ii) consider whether the auditor’s independence may have been prejudiced—

(aa) as a result of any previous appointment as auditor; or

(bb) having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and

(cc) consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, in relation to the bank or controlling company, and if the company is a member of a group of companies, any other company within that group; and
(e) Nothing in this section precludes the appointment by a company at its annual general meeting of an auditor other than one nominated by the audit committee, but if such an auditor is appointed, the appointment is valid only if the audit committee is satisfied that the proposed auditor is independent of the company.

(f) Neither the appointment nor the duties of an audit committee reduce the functions and duties of the board or the directors of the company, except with respect to the appointment, fees and terms of engagement of the auditor.

(g) A company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

(3) (a) All of the members of the audit committee of a bank shall be persons who are not employees of the bank nor of any of its subsidiaries, its controlling company or any subsidiary of its controlling company: Provided that the chairperson of the board of directors of the bank or the controlling company shall not be appointed as a member of the audit committee.

(b) All of the members of the audit committee of a controlling company shall be persons who are not employees of the controlling company nor of any of its subsidiaries, the bank in respect of which it is the controlling company or any subsidiary of that bank: Provided that the chairperson of the board of directors of the controlling company or the bank in respect of which it is the controlling company shall not be appointed as a member of the audit committee.
(3A) Notwithstanding the provisions of the Companies Act, the board of a bank or controlling company, as the case may be, must appoint a person to fill any vacancy on the audit committee within 90 business days after the vacancy arises.

(4) The Registrar may upon written application exempt the board of directors of a bank from the duty to appoint an audit committee in respect of a bank if the Registrar is satisfied that the audit committee appointed in respect of the relevant controlling company, in addition to its responsibilities respect of that controlling company, is able to also adequately assume the responsibilities of an audit committee in respect of that bank.”;

**Insertion of section 64C in Act 94 of 1990**

33. The following section is hereby inserted in the principal Act after section 64B:

“**64C. Remuneration committee**

(1) The board of directors of a bank or controlling company shall establish a remuneration committee, consisting only of non-executive directors of the bank or controlling company.

(2) The functions of the remuneration committee shall be to assist the board of directors—

(a) to oversee the compensation system's design and operation;

(b) to exercise competent and independent judgment on compensation policies, processes and practices and the incentives created for managing risk, capital and liquidity;
(c) to carefully evaluate practices by which compensation is paid for potential future revenues in respect of which the timing and likelihood of realization remain uncertain;

(d) to ensure that all relevant decisions are consistent with an assessment of the bank or controlling company’s financial condition and future prospects;

(e) to work closely with the bank or controlling company’s risk and capital management committee in the evaluation of the incentives created by the compensation system;

(f) to ensure that the bank or controlling company’s compensation policy, processes and procedures are in compliance with the relevant requirements specified in the Regulations and such further requirements as may be specified in writing by the Registrar;

(g) by conducting an annual compensation review independently of management, which review shall, among other things, assess the bank or controlling company’s compliance with the Regulations and such further requirements as may be specified in writing by the Registrar;

(h) to ensure that the remuneration of employees in the risk control and compliance functions is determined independently of all relevant business areas, and is adequate to attract qualified and experienced staff;

(i) to ensure that performance measures are based principally on the achievement of the board approved objectives of the bank or controlling company and its relevant functions.
(3) The Registrar may upon written application exempt the board of directors of a bank from the duty to appoint a remuneration committee in respect of a bank if the Registrar is satisfied that the remuneration committee appointed in respect of the relevant controlling company, in addition to its responsibilities in respect of that controlling company, is able to also adequately assume the responsibilities of a remuneration committee in respect of that bank.”;

Amendment of section 65 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993

34. Section 65 of the principal Act is hereby amended by -

(a) by the substitution for subsection (1) of the following subsection:

“(1) whenever a bank or controlling company –

(a) forwards a notice of a meeting or of the declaration of a dividend or a report on its activities during a financial year or part of such year to its shareholders;

(b) gives notice to the [Registrar of Companies] Commissioner in terms of [section 170(2)] section 23(3)(b)(ii) of the Companies Act of any intended change in the situation of its registered office [or of its postal address];

(c) forwards in terms of [section 216(2)] section 70(6) of the Companies Act a [return] notice referred to in that section regarding its directors to the [Registrar of Companies] Commissioner; or

(d) forwards in terms of [section 302(4)] section 33 of the Companies Act, financial statements to the [Registrar of
Companies] Commissioner, it shall simultaneously forward a copy of such notice, report, return or statement to the Registrar.”;

(b) by the substitution of subsection (2) of the following subsection:

“(2) A bank or controlling company shall within 30 days after a general meeting with shareholders, forward to the Registrar a copy of the minutes to be kept in respect of such meeting in terms of Section [204] section 24(3)(d) of the Companies Act.”;

Amendment of section 68 of Act 94 of 1990, as amended by section 16 of Act 9 of 1993 and section 42 of Act 26 of 1994

35. Section 68 of the principal Act is hereby amended by -

(a) the substitution for the title of the following title:

“68 Special provisions relating to winding-up of a bank”

(b) by the substitution in subsection (3) for paragraph (a) of the following first paragraph:

“(a) [of section 346 of the Companies Act, subsection (4) of that section shall be deemed to have been amended to read as follows:

“(4) (a) Before an application for the winding-up of a company which is a bank is presented to the Court, a copy of the application and of] a copy of any resolution or application for such winding up, together with all accompanying documentation including every affidavit confirming the facts stated therein, shall be lodged with the Registrar [of Banks] and with the Master, or if there is no Master at the seat of the Court, an officer in a
public service designated for such purpose by the Master by notice in the Gazette.

[(b)] (aA) The Registrar [of Banks] or the Master or any such officer may report to the court any facts ascertained by such Registrar, Master or officer which appear to such Registrar, Master or officer to justify the Court in postponing the hearing or dismissing the application, and shall transmit a copy of that report to the applicant or the agent of such applicant and to the said company; and”;

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) of section 357 of the Companies Act, 1973 (Act 61 of 1973), subsection (3) of that section shall be deemed to have been amended to read as follows:

“(3) A copy of every special resolution for the voluntary winding-up of any company which is a bank, passed under [section 349] section 80 of the Companies Act, and of every order of court, amending or setting aside the proceedings in relation to the winding up shall, within 14 days after registration of the resolutions with the Commission [in terms of section 200] or the making of an order, be transmitted by that company to the officers and registrars referred to in paragraph (a), (b) and (c) of subsection (1) as well as to the Registrar [of Banks].”;

(d) by the substitution for subsection (5) of the following subsection:

“(5) Notwithstanding anything to the contrary contained in any law, the suspension, cancellation or termination of the registration of
a bank while such bank, as a result of an application brought by the Registrar, is being wound up in terms of this section, shall not affect—

(a) any order or appointment made, direction issued or any other thing done under this section or in terms of the Companies Act, in respect of such bank; or

(b) any power to be exercised, duty to be executed or right to be enforced in respect of such bank by the Registrar, the Master of the High Court or the provisional liquidator or liquidator, respectively, by virtue of the provisions of this section or the provisions of the Companies Act, and the Registrar, the Master of the High Court, the provisional liquidator or liquidator, respectively, shall, until the affairs of the public company of which the registration as a bank has been so suspended, cancelled or terminated have been completely wound up as contemplated in [section 419 (1)] section 82(1) of the Companies Act or until the winding-up is stayed or set aside by an order of a competent court continue to exercise their respective powers and to perform their respective duties under this section or in terms of the Companies Act, in respect of the public company of which the registration as a bank has been so suspended, cancelled or terminated, as if such suspension, cancellation or termination had not taken place.”;

36. Section 69 of the principal Act is hereby amended by –

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

“(a) If, in the opinion of the Registrar, any bank will be unable to repay, when legally obliged to do so, deposits made with it or will probably be unable to meet any other of its obligations, the [Minister] Governor of the South African Reserve Bank may, if he or she deems it desirable in the public interest, [with the written consent of] by notifying the chief executive officer or the chairperson of the board of directors of that bank in writing, appoint a curator to the bank.”;

(b) the substitution in subsection (2) of the following subsection:

“(2) The [Minister] Governor of the South African Reserve Bank shall appoint a curator by letter of appointment which shall set out—

(a) the name of the bank in respect of which the curator is appointed and the address of its head office;

(b) directions in regard to the security which the curator has to furnish for the proper performance of his or her duties;

(c) directions in regard to the remuneration of the curator; and

(d) such other directions as to the management of the bank concerned or any matter incidental thereto, including directions in regard to the
raising of money by that bank, as the [Minister] Governor of the South African Reserve Bank may deem necessary.”;

(c) the substitution in subsection (2C) for paragraph (b) of the following paragraph:

“(b) except in the circumstances contemplated in paragraph (a) the curator may not, notwithstanding the provisions of [section 228] section 112 of the Companies Act”;

(d) the substitution in subsection (3) of the following subsection:

“(3) The [Minister] Governor of the South African Reserve Bank may, in the letter of appointment or at any time subsequent thereto, empower the curator in his or her discretion, but subject to any condition which the Minister may impose—“;

(e) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

“(f) to make and carry out, in the course of the curator’s management of the bank concerned, any decisions which in terms of the provisions of the Companies Act or the bank’s memorandum of incorporation would have been required to be made by way of a special resolution, contemplated in [section 199] section 65 of the said Act and in terms of the bank’s memorandum of incorporation.”;
(f) by the substitution in subsection (4) of the following subsection:

“(4) The [Minister] Governor of the South African Reserve Bank may, at any time and in any manner, amend the directions in the letter of appointment, and the powers granted by the [Minister] Governor of the South African Reserve Bank under subsection (3) to the curator.”;

(g) by the substitution in subsection (8) of the following subsection:

“(8) Notwithstanding anything to the contrary contained in any law, the suspension, cancellation or termination of the registration of a bank while such bank is under curatorship in terms of this section shall not affect—

(a) any appointment made, direction issued, or any other thing done under this section in respect of such bank; or

(b) any power to be exercised or duty to be executed in respect of that bank under curatorship by the [Minister] Governor of the South African Reserve Bank, the Registrar or the curator, by virtue of the provisions of this section,

and the [Minister] Governor of the South African Reserve Bank, the Registrar and the curator, respectively, shall until such time as the curatorship is terminated continue to exercise their respective powers and to execute their respective duties under this section in respect of the public company of which the registration as a bank has been so suspended, cancelled or terminated, as if such suspension, cancellation or termination had not taken place.”;

(h) by the substitution in subsection (9) of the following subsection:

“(9) The [Minister] Governor of the South African Reserve Bank may—

(a) at any time withdraw the appointment of a curator;
(b) upon application by the Registrar withdraw the appointment of a curator.”;

(i) by the substitution in subsection (10) of the following subsection:

“(10) Curatorship of a bank shall lapse upon—

(a) the issue by the [Minister] Governor of the South African Reserve Bank of written notification to that effect to the curator; or

(b) the winding-up of the bank in terms of the provisions of section 68.”.

Amendment of section 79 of Act 94 of 1990, as amended by section 51 of Act 26 of 1994 and substituted by section 26 of Act 20 of 2007

37. Section 79 of the principal Act is hereby amended by -

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

“(a) [sections 74 and 75] sections 35(2) and 36 of the Companies Act notwithstanding, issue shares of no par value or convert any of its shares into shares of no par value.”;

(b) by the deletion in subsection (1) of paragraph (d);

(c) by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding anything to the contrary containing any contract or in the memorandum of [association or articles of association] incorporation of any bank or controlling company, there shall be no
differentiation in the voting rights attached to any of the ordinary shares of a
bank or controlling company \[\text{and such voting rights shall be exercised}
\text{in accordance with the determination thereof as provided in section}
\text{195(1) of the Companies Act}\] for members of ordinary shares and a
holder of an ordinary share in a bank or controlling company shall be
entitled and each holder of an ordinary share in a bank or controlling
company shall be entitled to that proportion of the total votes in the bank or
controlling company which the aggregate amount of the nominal value of
the shares held by him bears to the aggregate amount of the nominal value
of all the shares issued by such bank or controlling company.

Amendment of section 84 of Act 94 of 1990, as amended by section 60 of
Act 19 of 2003

38. Section 84 of the principal Act is hereby substituted by the following
section:

"(1) Simultaneously with the issuing of a direction under section 83(1), or
as soon thereafter as may be practicable, the Registrar shall by a letter of
appointment signed by him or her appoint a person (hereinafter in this
section referred to as the \[\text{manager}\] repayment administrator) to manage
and control the repayment of money in compliance with the direction by the
person subject thereto: Provided that the Registrar may afford the person
subject to the directive a reasonable period of time to devise and implement
an alternative plan of action that is in the interests of the investors and to
which the Registrar has no objection.

(1A) (a) The \[\text{manager}\] repayment administrator shall at the request
of the Registrar, as soon as may be practical report to the Registrar
whether or not the person subject to the relevant direction is, in the
\[\text{manager's}\] repayment administrator's opinion, solvent, and if the
[manager] repayment administrator finds that the person subject to the direction is insolvent, the [manager] repayment administrator shall comment on whether such person is technically or legally insolvent.

(b) On appointment of a [manager] repayment administrator and whilst the person is subject to the relevant direction [is under management] as contemplated in this section -

(i) the [manager] repayment administrator shall recover and take possession of all the assets of the person subject to the relevant direction; and

(ii) all actions, legal proceedings, the execution of all writs, summonses and other legal process against the person subject to the relevant direction shall be stayed and not be instituted or proceeded with without the leave of the court and without also serving the [application] legal process documentation on the Registrar.

(c) If the report referred to in subsection (a) concludes that the person subject to the directive is insolvent, the Registrar may, notwithstanding anything contrary contained in any law relating to liquidation or insolvency apply to a competent court for the winding-up in terms of the Companies Act or the sequestration in terms of the Insolvency Act, 1936, as the case may be, of the person subject to the directive, and the Registrar shall have the right to oppose any such application made by any other person.
(d) the Master shall, subject to section 370 of the Companies Act, 1973 (Act 61 of 1973), appoint the person nominated by the Registrar as liquidator or trustee.

(e) Any written report to the Registrar by an inspector appointed in terms of section 83 or any report by a [manager] repayment administrator appointed in terms of section 84 is confidential and shall not be disclosed to any person: Provided that the Registrar may, notwithstanding the provisions of section 33(1) of the South African Reserve Bank Act, 1989, furnish such a report to-

(i) the person subject to an investigation in terms of section 83 or that is subject to a directive in terms of section 84;

(ii) any person or institution contemplated in section 89;

(iii) any appropriate division of the South African Police Services or the National Prosecuting Authority;

(iv) any other person that can prove, to the satisfaction of the Registrar, a legitimate interest in the matter and only upon payment of a prescribed fee and with the written consent of the person or persons subject to the directive; or

(v) any duly appointed provisional liquidator or provisional trustee of the person subject to the directive.

(f) If the Registrar has issued an instruction in terms of section 84(6) of the Act and a provisional liquidator or provisional trustee of the person subject to the direction is subsequently duly appointed,
the Registrar shall be regarded as a creditor of the person subject to the direction and the Registrar shall have the same rights of a creditor in terms of the laws relating to liquidation and insolvency.

(2) The Registrar shall serve a copy of the letter of appointment referred to in subsection (1) upon the person subject to the relevant direction, and such person shall, with effect from the date of the letter of appointment, be prohibited from disposing of or otherwise dealing with such of the assets of such person as are specified in the letter of appointment, except with the written permission of the [manager] repayment administrator.

(3) The [manager] repayment administrator shall act under the control of the Registrar, and the [manager] repayment administrator may from time to time apply to the Registrar for instructions in regard to any matter arising out of or in connection with the performance of his or her duties in terms of subsection (4).

(4) It shall be the duty of the [manager] repayment administrator -

(a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the [manager] repayment administrator may deem necessary in order to establish -

(i) the true amount of money unlawfully obtained by that person as contemplated in section 83(1);

(ii) the identities of all persons from whom such money was so unlawfully obtained;

(iii) where any such money or any assets into which such money was converted, is kept or can be located; or
(iv) any other fact which in the opinion of the Registrar or the [manager] repayment administrator needs to be established in order to facilitate the repayment of such money in terms of the relevant direction;

(b) to take all reasonable steps (including the liquidation of assets into which money unlawfully obtained as contemplated in section 83(1) has been converted) which may serve to expedite and ensure the repayment of money in accordance with the requirements of and within the period specified in the relevant direction;

(c) to report the suspected commission by any person of any offence of which the [manager] repayment administrator becomes aware in the course of the performance of his duties as [manager] repayment administrator in terms of this section, to the responsible prosecuting authorities having jurisdiction in the area in which such offence is so suspected of having been committed; and

(d) to perform any other function assigned to the [manager] repayment administrator by the Registrar in connection with the finalization of the repayment of money in accordance with the relevant direction.

(5) For the purposes of the performance of the duties as set out in subsection (4), the [manager] repayment administrator shall, in relation to the person subject to the relevant direction and in relation to the affairs of that person, have the powers conferred by sections 4 and 5 of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), upon an inspector contemplated in those sections, as if the [manager] repayment administrator were an inspector and the person subject to the direction were a financial institution contemplated in those sections.
(6) The [manager] repayment administrator shall in respect of the services rendered by him or her in terms of this section and the responsible inspector or inspectors shall in respect of an inspection referred to in section 83(1) conducted under section 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), be paid such remuneration by the Registrar as the Registrar may determine, and the Registrar may recover an amount equal to the remuneration so paid from the person subject to the direction or the inspection, as the case may be.

(7) The [manager] repayment administrator shall hold office until the relevant direction has been fully complied with, but the Registrar may at any time in writing withdraw the appointment of the [manager] repayment administrator on good cause shown, whereupon the [manager] repayment administrator shall vacate his or her office.

(8) Any person who -

(a) when requested by the [manager] repayment administrator to take an oath or to make an affirmation, refuses to do so;

(b) without lawful excuse refuses or fails to answer to the best of his or her ability a question put to such person by the [manager] repayment administrator in the exercise of the [manager's] repayment administrator's powers or the performance of the [manager's] repayment administrator's duties, even though the answer may tend to incriminate that person;

(c) wilfully furnishes the [manager] repayment administrator with any false information;
(d) refuses or fails to comply to the best of his or her ability with any reasonable request made to such person by the [manager] repayment administrator in the exercise of the [manager’s] repayment administrator’s powers or the performance of the [manager’s] repayment administrator’s duties;

(e) wilfully hinders the [manager] repayment administrator in the exercise of the powers or the performance of the duties of the [manager] repayment administrator; or

(f) commits any other deed designed to obstruct, or to enable any person to evade, the repayment of money as required by a direction under section 83(1),

shall be guilty of an offence: Provided that no answer given to a question put by the [manager] repayment administrator to a person in terms of this section and no information derived therefrom may be used against such person in any criminal proceedings.”.

Amendment of section 86 of Act 94 of 1990, as substituted by section 61 of Act 19 of 2003

39. Section 86 of the principal Act is hereby amended by the substitution in subsection (2) for the following subsection:

“(2) The documents referred to in subsection (1) are -

(a) certificates of provisional or final registration or of the registration of an alteration of the memorandum of association or articles of association applied for in terms of the Companies Act,
1973 (Act 61 of 1973) or of the memorandum of incorporation or of a change of name of banks and of controlling companies;

(b) memorandums of association or articles of incorporation approved under the Companies Act, 1973 (Act 61 of 1973) or memorandums of incorporation of banks and of controlling companies; and

(c) returns and copies of notices, reports, returns, statements or minutes lodged with the Registrar in terms of section 59, 65 or 75, excluding any return or statement so lodged by means or under cover of a prescribed form which, in terms of the regulation prescribing it, is to be treated as confidential and not available for inspection by the public.

Amendment of section 87 of Act 94 of 1990, as amended by section 25(b) of Act 9 of 1993

40. Section 87 of the principal Act is hereby amended in subsection (1) for the following subsection:

“(1) Notwithstanding anything to the contrary contained in any law or the common law, and unless otherwise provided in the memorandum of association or articles of association incorporation of a bank, a minor over the age of 16 years or a married woman, whether or not under marital power, may be a depositor with a bank and may without the consent or assistance of his guardian or her husband, as the case may be, execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against, and generally deal with, his or her deposit as he or she thinks fit, and shall enjoy all the privileges and be liable to all the obligations and conditions applicable to depositors.”;
Amendment of section 88 of Act 94 of 1990, as substituted by section 62 of Act 19 of 2003

41. The following section is hereby substituted for section 88 of the principal Act:

“88. Limitation of liability
“No liability shall attach to the South African Reserve Bank or, either in his or her official or personal capacity, to any member of the board of directors of the said Bank, the Registrar or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Registrar or such other officer or employee in the bona fide performance of any function or duty under this Act: Provided that the reference to “other officer” shall include a reference to an inspector duly appointed in terms of section 11 or 12 of the South African Reserve Bank Act, 1989 or to a manager duly appointed in terms of section 84 of this Act.”;


42. Section 91 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) contravenes or fails to comply with a provision of section 7(3), (4) or (5), 34, 35, 37(1), 38(1), 39, 41, 42(1), 52(1) or (4), 53, 55, 58, 59, 60(5)(a) [(i)], 60(5)(b) [(i)], 61(2), 65, 66, 67, 70(2), (2A) or (2B), 70A, 72, 73, 75, 76, 77, 78(1) or (3), 79, 80, 84(1A) or 84(2),”;


Short title

43. This Act is called the Banks Amendment Act, 2010.