

ISSN 0933-7806

No 15
Central Bank Acts
of
Botswana, Kenya, Lesotho, South Africa,
Swaziland, Tanzania, Zambia, Zimbabwe,
and the Federal Republic of Germany
Materials to Working Document No 14

compiled by

Dianne Hubbard
Jerome Thomas
Regine Winter

Bremen
Centre for African Studies / Namibia Project
University of Bremen
1989

Preface

Following the Namlaw workshop, held at the Faculty of Law of the University of Zimbabwe,¹ the Namlaw Project set out on the task of preparing a comparative study of the Central Bank Laws of various countries. The aim of the study was to provide some guidelines in drafting a Central Bank Act² for Namibia after independence.

The laws of nine countries were chosen for purposes of this study. The choices were made on the basis of various considerations. In some cases the countries are similarly situated as or closely linked to Namibia. In other cases the view was that certain aspects of the countries' laws might be useful in Namibia even though the countries chosen do not have either similarity or particular ties or even proximity to Namibia.

The Central Bank Acts of Botswana, Swaziland and Lesotho were chosen because these countries are - or used to be - members of the "Rand Monetary Zone". The Reserve Bank of Zimbabwe Act and the Statute of Zambia were chosen because these countries play a specific role in the Frontline family and in their efforts to overcome the dependency on South Africa. The Tanzanian and Kenyan Statutes which are similar even though the two East African states have different economic systems were taken into account; it was the considered opinion that the laws may be useful in the Namibian situation. Reference was made to the West-German Statute as this statute contains provisions which could serve as guides in developing the structure and role of financial institutions. The Reserve Bank of South Africa was also considered because the South African law has been applying in Namibia. The use of the laws of the German Democratic Republic, and those of Yugoslavia were considered; but unfortunately the statutes of these countries were not available in English.

Edited by : Centre for African Studies /
Namibia Project
Prof Dr Manfred O Hinz
Helgard Patemann (editor-in-charge)

Production : Uni-Copy

Copyright : Centre for African Studies / Namibia Project

Distributor : Centre for African Studies /
Namibia Project, FB 6
P O Box 330440
University of Bremen
D-2800 Bremen 33
Tel. (0421) 2182387
Fax (0421) 219807

ISSN : 0933-7806

Bremen, June 1989

/25

Prof Dr Manfred O Hinz
Director Centre for African Studies

Tosfatsion Medhanic (LL B, LL M)
Research Fellow

-
- 1 H Streitberger (compiler), Namlaw Project Workshop. Harare 28 - 30 June 1988. Documentation, Part I (Namibia Papers. Working Documents No 5. Bremen 1988)
 - 2 The reference here is to the "possible policy guidelines" for the "formulation and implementation of sound monetary and fiscal policies". The need for such guidelines was pointed out in the comprehensive study on Namibia by the United Nations Institute for Namibia. See United Nations Institute for Namibia, Namibia: Perspectives for National Reconstruction and Development. Lusaka 1986:692ff

REPUBLIC OF SOUTH AFRICA:

South African Reserve Bank Act

**SOUTH AFRICAN RESERVE BANK ACT
NO. 29 OF 1944**

[ASSENTED TO 10 MAY, 1944]

[DATE OF COMMENCEMENT: 1 JULY, 1944]

(Signed by the Officer Administering the Government in English)

as amended by

Second Finance Act, No. 49 of 1948

[with effect from 12 October, 1948—see title FINANCE]

Finance Act, No. 36 of 1950

[with effect from 23 June, 1950—see title FINANCE]

South African Reserve Bank Amendment Act, No. 45 of 1956

South African Reserve Bank Amendment Act, No. 24 of 1960

South African Reserve Bank Amendment Act, No. 5 of 1961

Banking Amendment Act, No. 61 of 1964

[with effect from 1 January, 1965]

Prevention of Counterfeiting of Currency Act, No. 16 of 1965

General Law Amendment Act, No. 70 of 1968

[with effect from 21 June, 1968—see title GENERAL LAW AMENDMENT ACTS]

South African Reserve Bank Amendment Act, No. 87 of 1969

General Law Further Amendment Act, No. 92 of 1970

[with effect from 9 October, 1970—see title GENERAL LAW AMENDMENT ACTS]

South African Reserve Bank Amendment Act, No. 49 of 1973

South African Reserve Bank Amendment Act, No. 92 of 1977

South African Reserve Bank Amendment Act, No. 98 of 1981

South African Reserve Bank Amendment Act, No. 47 of 1984

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]

Financial Institutions Amendment Act, No. 6 of 1987

Finance Act, No. 88 of 1988

[with effect from 13 July, 1988—see title FINANCE]

South African Reserve Bank, Banking Institutions, Mutual Building Societies
and Building Societies Amendment Act, No. 96 of 1988

[with effect from 22 July, 1988—see title BUILDING SOCIETIES]

ACT

**To consolidate and amend the laws relating to the South African Reserve Bank, and
to make provision for matters incidental to the regulation of the monetary system of the
Union.**

1. Definitions.—In this Act—

“banking institution” means a commercial bank or a discount house or a general bank
or a hire-purchase bank or a merchant bank or a savings bank as defined in section 1 of
the Banks Act, 1965 (Act No. 23 of 1965);

[Definition of “banking institution”, previously definition of “commercial bank”, sub-
stituted by s. 1 (a) of Act No. 87 of 1969.]

"Government representative" means a member of the board, other than the Governor or Deputy-Governor, appointed under section *three or five*;

"Minister" means the Minister of Finance;

"special drawing right" means a unit of an international reserve asset provided for in the Articles of Agreement of the International Monetary Fund;

[Definition of "special drawing right" inserted by s. 1 (b) of Act No. 87 of 1969 and substituted by s. 1 of Act No. 92 of 1977.]

"stockholder" means any holder of stock of the bank;

"stockholders' representative" means a member of the board elected under section *three or five*;

"territory" means the territory of South-West Africa;

[Definition of "territory" inserted by s. 1 (a) of Act No. 5 of 1961.]

"the bank" means the South African Reserve Bank established by section *nine* of the Currency and Banking Act;

"the board" means the board of directors referred to in sub-section (1) of section *three*;

"the Currency and Banking Act" means the Currency and Banking Act, 1920 (Act No. 31 of 1920);

"the Treasury" means the Minister or any officer in the Department of Finance authorized by the Minister to perform any function assigned to the Treasury in this Act;

"Union" includes the territory.

[Definition of "Union" added by s. 1 (b) of Act No. 5 of 1961.]

2. South African Reserve Bank a body corporate.—The bank shall be a body corporate capable of suing and being sued in its corporate name, and of performing all such acts as are necessary for, incidental or conducive to or usual in the carrying on of its business, the exercise of its powers and the performance of its duties.

3. Board of directors.—(1) The bank shall be managed by a board of twelve directors, consisting of a Governor, three Deputy-Governors (of whom one shall be designated by the State President as Senior Deputy-Governor) and two other directors appointed by the State President, and six directors elected by the stockholders.

[Sub-s. (1) amended by s. 1 of Act No. 24 of 1960 and substituted by s. 3 of Act No. 92 of 1970.]

(2) (a) The Governor shall be a person of tested banking experience.

(b) No person shall be appointed as or remain Governor or Deputy-Governor if he has any interest in any banking institution.

[Para. (b) substituted by s. 2 (a) of Act No. 87 of 1969.]

(3) Of the directors elected by the stockholders, three shall be persons who are or have been actively and primarily engaged in commerce or finance, one shall be a person who is or has been so engaged in agriculture, and two shall be persons who are or have been so engaged in other industrial pursuits.

(4) A Government representative may, subject to the approval of the Minister, nominate any person, and a stockholders' representative may, subject to the approval of the board, nominate any person who would be qualified to be elected in his stead, as an alternate director to act in his place on the occasions and in the circumstances and subject to the conditions set forth in the regulations.

(5) An alternate director, when acting in the place of any director, shall in all respects have all the powers and discharge all the duties of that director.

(6) No person shall be appointed or elected or remain a director or an alternate director—

(a) if he is not a Union national resident in the Union; or

(b) if he is a director, officer or employee of a banking institution; or

[Para. (b) substituted by s. 2 (b) of Act No. 87 of 1969.]

(c) if he is a senator or a member of the House of Assembly or of the Legislative Assembly of the territory or a provincial councillor.

[Para. (c) amended by s. 2 of Act No. 5 of 1961.]

4. Tenure and conditions of office of directors.—(1) The Governor and Deputy-Governors shall hold office for a period of five years and other directors for a period of three years.

[Sub-s. (1) amended by s. 2 of Act No. 24 of 1960.]

(2) A director shall be eligible for re-appointment or re-election, as the case may be, after the expiration of his term of office.

(3) Directors (including the Governor and Deputy-Governors) shall hold office upon such conditions as to remuneration (including allowances, other than allowances referred to in sub-section (4)) as may be determined by the board with the approval of the Minister, and upon such other conditions as may be prescribed by regulation.

[Sub-s. (3) amended by s. 2 of Act No. 24 of 1960.]

(4) Directors may, in addition to their remuneration, be paid such allowances in respect of expenses incurred in connection with the performance of their functions, as the board may from time to time determine.

(5) The Governor and Deputy-Governors shall devote the whole of their time to the business of the bank: Provided that nothing in this sub-section contained shall be construed as precluding the Governor or the Deputy-Governors from accepting or holding any office to which he may be appointed by or with the approval of the Governor-General or the Minister.

[Sub-s. (5) amended by s. 1 of Act No. 45 of 1956 and by s. 2 of Act No. 24 of 1960.]

5. Casual vacancies.—(1) A casual vacancy on the board shall be filled—

(a) in the case of the Governor or a Deputy-Governor or of a Government representative, by the appointment by the Governor-General of another person; and

[Para. (a) amended by s. 3 (a) of Act No. 24 of 1960.]

(b) in the case of a stockholders' representative, by the election by the stockholders of a person who would be qualified to be elected in the place of the director whose office has become vacant, or by the appointment by the board, subject to confirmation at the next ordinary general meeting of the stockholders, of a person so qualified.

(2) Any person appointed or elected under sub-section (1) shall hold office, in the case of the Governor or a Deputy-Governor, for a period of five years, and in the case of any other director, for the unexpired portion of the period for which the director, whose office has become vacant, had been appointed or elected.

[Sub-s. (2) amended by s. 3 (b) of Act No. 24 of 1960.]

6. Procedure and quorum.—(1) The Governor shall preside at the meetings of the board, and in his absence from any meeting, the Deputy-Governor designated by the Governor shall preside: Provided that the Minister may designate any other director to act as chairman of the board during the Minister's pleasure and that such director shall in that capacity preside at such meetings at which he is present.

[Sub-s. (1) amended by s. 4 (a) of Act No. 24 of 1960 and by s. 46 of Act No. 97 of 1986.]

(2) If the chairman of the board, where a director has been designated as such, as well as the Governor and the Deputy-Governors are absent from any meeting, the directors who are present may elect from amongst themselves a chairman to preside at that meeting.

[Sub-s. (2) amended by s. 4 (b) of Act No. 24 of 1960.]

(3) Six directors shall form a quorum at any meeting.

(4) The decision of the majority of directors present at any meeting shall constitute the decision of the board.

(5) The person presiding at any meeting shall have a deliberative vote and, in addition, in the event of an equality of votes, a casting vote.

[Sub-s. (5) amended by s. 4 (c) of Act No. 24 of 1960.]

6bis. Delegation of powers.—The board may from time to time delegate to the Governor or any Deputy-Governor or any officer of the bank any of its powers under this Act and may delegate such powers for such period and for such purposes and upon such terms and conditions and subject to such restrictions as it may deem fit.

[S. 6bis inserted by s. 2 of Act No. 45 of 1956, amended by s. 5 of Act No. 24 of 1960 and substituted by s. 1 of Act No. 49 of 1973.]

7. Validity of board's decisions and acts.—No decision or act of the board or act done under the authority of the board, shall be invalid by reason only of the fact that the board did not consist of the full number of directors for which provision is made in section three, or that a disqualified person or a person with respect to whose election the provisions of the regulations had not been observed, sat or acted as a director at the time the decision was taken or the act was done or authorized; Provided that if such a person sat or acted as a director, the decision or act was taken, done or authorized, by a majority of the directors present at the time who were entitled to sit or act as directors.

8. Powers and duties of the bank.—(1) The bank may, subject to the provisions of section nine—

(a) make or cause bank notes to be made, coin or cause coins to be coined and issue bank notes and coins for use in the Republic;

[Para. (a) substituted by s. 7 (a) of Act No. 88 of 1988.]

(aA) with the object of making banknotes or coining coins, and with any object incidental thereto, form companies in accordance with the provisions of the Companies Act, 1973 (Act No. 61 of 1973);

[Para. (aA) inserted by s. 2 (a) of Act No. 49 of 1973 and substituted by s. 7 (b) of Act No. 88 of 1988.]

(aB) establish, organize and participate in a clearing system and take up shares in a company formed for the management and operation of any such system;

[Para. (aB) inserted by s. 2 (a) of Act No. 49 of 1973.]

(aC) with the consent of the Treasury, acquire shares in a limited company if the board is of opinion that any such acquisition shall be conducive to the attainment of any of the objects of this Act;

[Para. (aC) inserted by s. 2 (a) of Act No. 49 of 1973.]

(aD) make or cause bank notes, to be issued for use in another State, to be made and coin or cause coins, to be so issued, to be coined;

[Para. (aD) inserted by s. 7 (c) of Act No. 88 of 1988.]

(b) accept money on deposit, allow interest on any deposit or on a portion of a deposit and collect money for other persons;

[Para. (b) substituted by s. 1 of Act No. 47 of 1984.]

(c) grant loans and advances: Provided that—

(i) an unsecured loan may only be granted to the Government of the Republic or, with the approval of the Minister, to any company in which the bank has acquired shares in accordance with the provisions of paragraph (aC);

(ii) an unsecured advance may only be made to the Government of the Republic;

[Para. (c) substituted by s. 2 (h) of Act No. 49 of 1973.]

(d) buy, sell, discount or re-discount bills of exchange or promissory notes issued or drawn for commercial, industrial or agricultural purposes, or bills of the Union Government or of the Government of any other country or of a local authority in the Union;

(e) buy and sell securities;

(eA) issue its own interest-bearing securities for purposes of monetary policy and buy, sell, discount or re-discount, or grant loans or advances against, such securities;

[Para. (eA) inserted by s. 3 (a) of Act No. 87 of 1969.]

(f) -----

[Para. (f) deleted by s. 3 (b) of Act No. 87 of 1969.]

(g) buy, sell or deal in precious metals and hold in safe custody for other persons gold, securities or other articles of value;

(h) buy and sell foreign currencies;

(hA) buy, sell, accept or deal in special drawing rights;

[Para. (hA) inserted by s. 3 (c) of Act No. 87 of 1969.]

(i) open credits and issue guarantees;

(j) effect transfers by telegram or letter and sell drafts on its branches and correspondents;

(k) establish branches or appoint agents and correspondents in or outside the Union;

(l) open accounts in foreign countries and act as agent or correspondent of any bank carrying on business in or outside the Union;

(l)bis make arrangements or enter into agreements, subject to the consent of the Minister, with any bank or financial institution in a foreign country to borrow, in such manner, at such rates of interest and upon such other terms and conditions as the bank may deem fit, any foreign currency, which the bank may consider it expedient to acquire;

[Para. (l)bis inserted by s. 32 (b) of Act No. 36 of 1950.]

(m) perform such other functions of bankers and financial agents as central banks customarily may perform;

(n) lend or advance money on mortgage of immovable property or on notarial or other bond or cession thereof, to any officer or employee of the bank for the purpose of enabling any such officer or employee to acquire a dwelling for his own use: Provided that—

(i) if the board is of opinion that the value of any security held against any loan or advance is insufficient, the bank may accept as additional security a mortgage bond on immovable property or any other security approved by the board; and

(ii) if any immovable property so mortgaged is sold for the purpose of satisfying the mortgage debt and the purchase price obtainable is insufficient to cover the whole of the bank's claim in connection with the mortgage, the bank may buy in that property and realise it at such time and in such manner as the board may determine;

[Para. (n) added by s. 2 (d) of Act No. 49 of 1973.]

(o) acquire immovable property required by the bank for business purposes or for the purpose of providing a dwelling for any officer of the bank, and sell, dispose of, donate or otherwise alienate any such immovable property: Provided that a donation of such immovable property may only be made with the approval of the Minister of Finance;

[Para. (o) added by s. 2 (d) of Act No. 49 of 1973.]

(p) exercise the powers assigned to the bank by the Banks Act, 1965 (Act No. 23 of 1965), the Mutual Building Societies Act, 1965 (Act No. 24 of 1965) and the Building Societies Act, 1986 (Act No. 82 of 1986).

[Para. (p) added by s. 1 of Act No. 6 of 1987.]

(2) The bank shall fix and publish from time to time the rates at which it will discount the various classes of bills.

8A. Appointment of inspectors.—(1) The bank may appoint inspectors (in either a full-time or a temporary capacity) to carry out inspections of the affairs, or any portion thereof, of a banking institution as defined in the Banks Act, 1965 (Act No. 23 of 1965), a mutual building society as defined in the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and a building society as defined in the Building Societies Act, 1986 (Act No. 82 of 1986).

(2) The provisions of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), except sections 2 and 7, shall *mutatis mutandis* apply to an inspection carried out in terms of subsection (1).

(3) Every inspector so appointed shall be furnished with a certificate stating that he has been appointed as an inspector under this Act.

[S. 8A inserted by s. 2 of Act No. 6 of 1987.]

8B. Inspection of affairs of person, partnership, close corporation, company or other juristic person not registered as banking institution, mutual building society or building society.—(1) If the Governor or a Deputy Governor has reason to suspect that any person, partnership, close corporation, company or other juristic person who or which is not registered in terms of the Banks Act, 1965 (Act No. 23 of 1965), as a banking institution, in terms of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), as a mutual building society or in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), as a building society, is carrying on the business of a banking institution, a mutual building society or a building society, he may—

- (a) if it is so suspected that the business of a banking institution is being carried on, direct the Registrar of Banks referred to in section 3 of the Banks Act, 1965; or
- (b) if it is so suspected that the business of a mutual building society or a building society is being carried on, direct the Registrar of Building Societies referred to in section 5 of the Building Societies Act, 1986,

to cause the affairs or any part of the affairs of such person, partnership, close corporation, company or other juristic person to be inspected by an inspector appointed under section 8A (1), in order to establish whether or not the business of a banking institution, mutual building society or building society, as the case may be, is being carried on by that person, partnership, close corporation, company or other juristic person.

(2) The provisions of sections 4, 5, 8 and 9 of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), shall apply *mutatis mutandis* in respect of an inspection carried out in terms of subsection (1).

[S. 8B inserted by s. 1 of Act No. 96 of 1988.]

8bis.

[S. 8bis inserted by s. 3 of Act No. 45 of 1956, amended by s. 3 of Act No. 5 of 1961 and repealed by s. 28 of Act No. 61 of 1964.]

8ter.

[S. 8ter inserted by s. 4 of Act No. 5 of 1961 and repealed by s. 28 of Act No. 61 of 1964.]

9. Prohibited business.—The bank may not—

- (a) purchase its own stock or grant loans or advances upon the security thereof;
- (b) without the consent of the Treasury, purchase the shares of any banking institution or grant loans or advances upon the security thereof;
- (c) subject to the provisions of section 8 (1) (n) and (o), lend or advance money on mortgage of immovable property or on notarial or other bond or cession thereof or acquire immovable property;

[Para. (c) amended by s. 4 of Act No. 45 of 1956 and substituted by s. 3 (a) of Act No. 49 of 1973.]

(d)

[Para. (d) deleted by s. 2 of Act No. 47 of 1984.]

(e)

[Para. (e) deleted by s. 3 (b) of Act No. 49 of 1973.]

- (f) lend or advance moneys to the Union Government whether by the purchase from the said Government of stock, debentures or bills, or the grant of unsecured loans or advances or otherwise to an amount exceeding that which the said Government is authorized to borrow under the provisions of section thirty-two of the Exchequer and Audit Act, 1911 (Act No. 21 of 1911), and the provisions of sections one to and including four of the General Loans Consolidation and Amendment Act, 1917 (Act No. 22 of 1917);
- (g) buy or discount bills of exchange or promissory notes issued or drawn for commercial and industrial purposes, which have a maturity exceeding one hundred and twenty days;
- (h) buy or discount bills of exchange or promissory notes issued or drawn for agricultural purposes which have a maturity exceeding six months;

- (i) hold in stocks of the Union Government which have been acquired directly from the Treasury by subscription to new issues, the conversion of existing issues or otherwise a sum exceeding its paid-up capital and reserve fund plus one-third of its liabilities to the public in the Union.

[Para. (i) amended by s. 5 of Act No. 5 of 1961.]

10. Issue of bank notes.—(1) The bank shall have the sole right to issue bank notes in the Union.

(2) The bank shall not issue any bank notes of a denomination, form or material not approved by the Treasury.

(3) The bank shall not re-issue any note which is torn or wholly or partially defaced or soiled, or which has not been disinfected and sterilized before re-issue.

(4) The bank shall not be obliged to make any payment in respect of a torn or in the opinion of the bank mutilated bank note which may be tendered to it, but may, in its discretion, make a payment in respect of such bank note.

[Sub-s. (4) added by s. 4 of Act No. 87 of 1969.]

11. Notes to be legal tender.—(1) A tender of a note of the bank shall be a legal tender of payment for the amount expressed in the note, except by the bank itself which shall, subject to the provisions of sub-section (2), redeem its notes and the outstanding notes of other banks for which it has assumed liability under paragraph (c) of sub-section (3) of section fifteen of the Currency and Banking Act, or under any agreement entered into before or after the commencement of this Act with any bank, on demand in gold in such form and subject to such conditions as the Governor-General may determine by proclamation.

[Sub-s. (1) amended by s. 6 of Act No. 5 of 1961.]

(2) The Governor-General may by proclamation suspend the requirements imposed upon the bank by sub-section (1), either until the proclamation is withdrawn or for a period specified in the proclamation.

(3) During the period of any suspension under sub-section (2), a tender of a note of the bank shall be a legal tender of payment for the amount expressed in the note, also by the bank itself.

12. Bank exempt from note tax.—The bank shall, in respect of notes issued by it, be exempt from the payment of any tax or duty upon bank notes.

13. Capital of the bank.—(1) The capital of the bank shall be one million pounds stock.

(2) The liability of a stockholder shall be limited to the amount unpaid on the stock held by him.

(3) The bank may, from time to time, with the consent of the Minister, increase its capital by the issue of stock upon such terms as the Minister may approve.

(4) The premium obtained on any issue of stock shall be added to the reserve fund of the bank.

14. Restriction of right to hold or acquire stock.—(1) Subject to the provisions of sub-section (2), no stockholder shall, either in his own name or through a nominee on his behalf, hold more than five thousand pounds of the stock of the bank.

(2) A stockholder, holding more than five thousand pounds of the stock of the bank at the commencement of this Act, may continue to hold that stock, but shall not, as long as he holds more than five thousand pounds of that stock, acquire any further stock of the bank, either in his own name or through a nominee on his behalf.

(3) If at any time the stock of the bank held by a stockholder referred to in sub-section (2), is reduced to five thousand pounds or less, the restriction imposed in sub-section (1) shall apply also to that stockholder.

15. Votes.—(1) Subject to the provisions of sub-sections (2) and (3) a stockholder shall, at a meeting of stockholders, be entitled to one vote in respect of every hundred pounds of stock of which he has been the registered holder for not less than six months prior to the date of the meeting.

(2) No stockholder referred to in sub-section (2) of section *fourteen* shall either directly or indirectly exercise any vote as a stockholder in respect of stock held by him in excess of five thousand pounds, and no group of companies with interlocking directorates shall either directly or indirectly exercise any vote as stockholders in respect of the total amount of stock held by those companies in excess of five thousand pounds.

(3) No stockholder who is not ordinarily resident in the Union shall be entitled to any vote at any meeting of stockholders.

16. Allocation of surplus to reserve fund, the government and stockholders.—(1) The surplus remaining at the end of a financial year of the bank, after making provision for bad and doubtful debts, depreciation in assets, gratuities or other pension benefits for its officers and employees and all such items as are usually provided for by bankers, and after payment to the stockholders, out of net profits, of a cumulative dividend at the rate of six per cent. per annum on the paid-up capital of the bank, shall, if the reserve fund of the bank does not exceed twenty-five per cent. of the said capital, be allocated to that fund.

(2) If at the end of such financial year the reserve fund of the bank exceeds twenty-five per cent. of but is not equal to the paid-up capital of the bank, one half of the said surplus shall be allocated to that fund, one quarter to the Government and one quarter to the stockholders: Provided that if the amount so allocated to stockholders exceeds four per cent. of the said capital, the excess shall be paid to the Government.

(3) If at the end of such financial year the reserve fund of the bank is equal to or exceeds the paid-up capital of the bank, one tenth of the surplus remaining after payment to the stockholders, out of net profits, of a dividend at the rate of ten per cent. per annum on the said capital, shall be allocated to that fund, and the remainder of the surplus shall be paid to the Government.

17. Reserve against note issue and other liabilities to the public.—(1) The bank shall, subject to the provisions of subsection (4), hold in gold coin or bullion a reserve of at least twenty-five per cent. of the aggregate amount of its note issue (including the outstanding notes of other banks referred to in section 11 (1)) and of its other liabilities to the public: Provided that, for the purposes of this subsection, the bank may deduct from its said liabilities an amount equal to the book value in Union currency of its foreign assets, including special drawing rights.

[Sub-s. (1) amended by s. 9 (a) and (b) of Act No. 49 of 1948 and substituted by s. 5 of Act No. 87 of 1969.]

(2) Gold at the South African Mint or at the Rand Refinery Limited or in transit belonging to the bank, shall be deemed to form part of the reserve referred to in sub-section (1).

[Sub-s. (2) amended by s. 7 of Act No. 5 of 1961.]

(3) One half of the said reserve may consist of gold held by the bank outside the Union and in the custody of branches or agencies of the bank, or of such other central banks or institutions as may be approved of by the Treasury.

(4) The Minister may from time to time suspend the reserve requirements prescribed in this section.

[Sub-s. (4) substituted by s. 2 of Act No. 92 of 1977.]

17A. Statutory price of gold and Gold Price Adjustment Account.—(1) All gold of the bank shall be valued at such price per such mass of fine gold (hereinafter referred to as the statutory price) as may be determined from time to time by the Minister after consultation with the bank and such price shall as soon as may be practicable after such determination be published in the *Gazette*.

(2) All gold of the bank shall be for the profit or loss of the Government.

(3) The bank shall establish a Gold Price Adjustment Account in which it shall account for—

- (a) any profit or loss relating to gold of the bank as a result of a change in the statutory price;
- (b) any difference between the statutory price and the price at which the bank buys or sells gold after due allowance for handling and realization costs.

[S. 17A inserted by s. 3 (1) of Act No. 92 of 1977.]

17B. Foreign Exchange Adjustment Account.—(1) All assets of the bank expressed in currencies other than the currency of the Republic, including special drawing rights but excluding any dividends, discount or interest or the usual exchange margins in connection therewith, shall be for the profit or loss of the Government.

(2) The bank shall establish a Foreign Exchange Adjustment Account in which it shall account for—

- (a) Any loss suffered by the bank on the assets referred to in subsection (1) as a result of the depreciation of the currencies in question in relation to the currency of the Republic;
- (b) any profit made by the bank on the assets referred to in subsection (1) as a result of the appreciation of the currencies in question in relation to the currency of the Republic.

[S. 17B inserted by s. 3 (1) of Act No. 92 of 1977.]

17C. Forward Exchange Contracts Adjustment Account.—(1) Any profit or loss on—

- (a) any current or future forward exchange contract entered into by the bank, but excluding the usual exchange margins earned or paid thereon;
- (b) any amount borrowed by the bank in any currency other than the currency of the Republic, but excluding any interest, commission or other charges or the usual exchange margins earned or paid thereon;
- (c) any agreement entered into by the Minister of Industries, Commerce and Tourism under section 2 of the Export Credit Re-insurance Act, 1957 (Act No. 78 of 1957), with the Credit Guarantee Insurance Corporation of Africa Limited for the reinsurance of any contract, entered into by the said corporation with a person who exports capital services from the Republic, for insuring against risks (not normally insurable) of monetary loss or monetary detriment attributable to any change in the value of the currency of the Republic in relation to the currency of the United States of America,

[Para. (c) inserted by s. 1 (a) of Act No. 98 of 1981.]

shall accrue to the Government.

(2) The bank shall establish a Forward Exchange Contracts Adjustment Account in which it shall account for—

- (a) any loss suffered by the bank on a forward exchange contract or loan referred to in subsection (1) (a) or (b) as a result of the depreciation of the currency of the Republic in relation to the currency in question;
- (b) any profit made by the bank on a forward exchange contract or loan referred to in subsection (1) (a) or (b) as a result of the appreciation of the currency of the Republic in relation to the currency in question; and
- (c) any profit made and loss suffered on an agreement referred to in subsection (1) (c), as a result of any change in the value of the currency of the Republic in relation to the currency of the United States of America.

[S. 17C inserted by s. 3 (1) of Act No. 92 of 1977. Para. (c) added by s. 1 (d) of Act No. 98 of 1981.]

17D. Gold and Foreign Exchange Contingency Reserve Account.—(1) Any credit or debit balance on the Gold Price Adjustment Account, the Foreign Exchange Adjustment Account and the Forward Exchange Contracts Adjustment Account shall, at the close of each financial year of the bank or at such other times as the bank and the Treasury may determine, be transferred to a Gold and Foreign Exchange Contingency Reserve Account established and managed by the bank on behalf of the Treasury.

(2) (a) Any credit balance on the Gold and Foreign Exchange Contingency Reserve Account shall accrue to the Government as a profit and shall be for the benefit of the State Revenue Fund.

(b) Any profit referred to in paragraph (a) shall be carried forward in the Gold and Foreign Exchange Contingency Reserve Account, but any such profit, or any part thereof, may, at such times as the Treasury and the bank may deem desirable, be credited to the State Revenue Fund.

(c) The bank may, at the request of or with the approval of the Treasury, advance any credit balance, or part thereof, on the Gold and Foreign Exchange Contingency Reserve Account to the National Supplies Procurement Fund established by section 12 of the National Supplies Procurement Act, 1970 (Act No. 89 of 1970), and the interest, if any, on any money so advanced, shall, at such times as the Treasury may determine, be paid into the State Revenue Fund.

(3) (a) Any debit balance on the Gold and Foreign Exchange Contingency Reserve Account shall be a loss for the Government and shall be a charge against the State Revenue Fund.

(b) Any loss referred to in paragraph (a) shall be carried forward in the Gold and Foreign Exchange Contingency Reserve Account until the Treasury and the bank deem it desirable to settle the outstanding balance.

(c) Any loss referred to in paragraph (a) shall be defrayed from moneys appropriated by Parliament for such purpose.

[S. 17D inserted by s. 3 (1) of Act No. 92 of 1977.]

17E. Returns in connection with and auditing of certain accounts.—(1) The bank shall, at such times as the Treasury may determine, render to the Treasury returns reflecting the operations on the Gold Price Adjustment Account, the Foreign Exchange Adjustment Account and the Forward Exchange Contracts Adjustment Account.

(2) A certificate by the auditors of the bank stating that any statement to which such certificate relates is a true and complete statement of all transactions, receipts and payments by the bank in terms of sections 17A, 17B, 17C and 17D, may be accepted as correct by the Auditor-General.

[S. 17E inserted by s. 3 (1) of Act No. 92 of 1977.]

18. Audit and inspection.—(1) For every financial year of the bank, the stockholders shall in general meeting elect two firms of qualified accountants, to act during that year as auditors of the bank.

(2) The Minister may at any time cause an investigation to be made into the affairs of the bank by one or more officers authorized thereto by him in writing.

19. Information to be furnished to the Treasury and to Parliament.—(1) The bank shall—

(a) from time to time make up a return in the form set out in the First Schedule, containing a statement of the liabilities and assets of the bank as at the close of business on the last day of every month, or on the nearest preceding business day, and shall forthwith transmit the return to the Treasury;

[Para. (a) substituted by s. 4 of Act No. 92 of 1977.]

(b) within three months after the close of its financial year, transmit to the Treasury a copy in duplicate of its annual accounts signed by the Governor or any Deputy-Governor and the chief accountant of the bank, and certified by the auditors; and

[Para. (b) amended by s. 5 of Act No. 45 of 1956 and by s. 6 of Act No. 24 of 1960.]

(c) within sixty days after the thirty-first day of December in each year, transmit to the Treasury a list in duplicate giving the full names and addresses of stockholders and the amount of stock held by each; and

(d) when called upon to do so by the Treasury by notice in writing, make to the Treasury, within the period specified in the notice, such further returns as may be so specified.

(2) The Treasury shall cause every return received under paragraph (a) of sub-section (1) to be published in the *Gazette* as soon as practicable.

(3) The Minister shall lay a copy of every account or list received under paragraph (b) or (c) of sub-section (1), upon the Tables of both Houses of Parliament within fourteen days after its receipt, if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

20. Preservation of secrecy.—No director, alternate director, officer or employee of the bank, and no officer in the Department of Finance or referred to in sub-section (2) of section eighteen shall disclose to any person, except to the Treasury or for the purposes of the performance of his duties or the exercise of his functions or when required to do so before a court or under any law, any information relating to the affairs of the bank, a stockholder or customer of the bank, acquired in the performance of his duties or the exercise of his functions.

21. Penalties.—Any person who—

(a) forges, alters or unlawfully issues a note of the bank or purporting to be a note of the bank; or

(b) utters, tenders or accepts any such note which has been forged, altered or unlawfully issued, knowing it to be forged, altered or unlawfully issued;

(c) without the authority of the bank, engraves or makes upon any material whatsoever any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or upon any note of the bank; or

(d) without the authority of the bank, uses or knowingly has in his possession any material whatsoever upon which has been engraved or made any such words, figures, letters, marks, lines or devices; or

(e) contravenes the provisions of section twenty; or

(f) wilfully defaces, soils or damages any note of the bank, or writes or places any drawing thereon or attaches thereto anything in the nature of an advertisement,

shall be guilty of an offence and liable on conviction—

(i) in the case of an offence referred to in paragraph (a) or (b), to imprisonment for a period not exceeding fifteen years;

[Para. (i) substituted by s. 8 of Act No. 16 of 1965.]

(ii) in the case of an offence referred to in paragraph (c) or (d), to imprisonment for a period not exceeding five years;

(iii) in the case of an offence referred to in paragraph (e), to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment; and

(iv) in the case of an offence referred to in paragraph (f), to a fine not exceeding twenty-five pounds.

22. Rules by the board.—The board may make rules, not inconsistent with the provisions of this Act or of the regulations made under section twenty-three, for the good government of the bank and the conduct of its business, and the appointment and conditions of service (including remuneration and gratuities or other pension benefits) of officers and employees.

23. Regulations.—The Minister may make regulations as to—

(a) the election of directors by stockholders;

(b) the conditions (other than those relating to remuneration) of appointment of directors and alternate directors, and the circumstances in which a director or alternate director shall vacate his office;

(c) the occasions when, the circumstances in, and the conditions subject to which an alternate director may act in the place of a director;

(d) meetings of the board and the procedure thereat, including the minutes to be kept thereof;

(e) meetings of stockholders, the matters to be dealt with thereat, and the procedure thereat, including the quorum necessary therefor and the minutes to be kept thereof; and

(f) generally, all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[S. 23 amended by s. 46 of Act No. 97 of 1986.]

24. Proceedings by Minister in case of non-compliance by bank with provisions of this Act or the regulations.—(1) If at any time it appears to the Minister that the bank has failed to comply with any of the provisions of this Act or with any regulation made thereunder, he may by notice in writing require the board to make good or remedy the default within a specified time.

(2) If the board fails to comply with the notice, the Minister may apply to a Superior Court having jurisdiction for an order compelling it to make good or remedy the default, and the Court may make such order thereon as it thinks fit.

25. Liquidation.—(1) The bank shall not be placed in liquidation except by Act of Parliament.

(2) In the event of liquidation, the reserve fund and surplus assets (if any) of the bank shall, subject to the provisions of sub-section (3), be divided between the Government and stockholders in the proportion of sixty per cent. and forty per cent. respectively.

(3) If the amount payable to a stockholder under sub-section (2) exceeds the average market price of his holding of the bank's stock over the period of twelve months preceding a day three months prior to the date upon which a Bill providing for such liquidation is introduced in Parliament, so much of that amount as exceeds the said average shall be paid to the Government.

(4) No execution or attachment or process in the nature thereof shall be issued or proceeded with against the bank if the Minister has certified that he has introduced or that it is his intention to introduce in Parliament a Bill placing the bank in liquidation, and has not withdrawn the certificate.

25bis. Application of Act in South-West Africa.—This Act and any amendment thereof shall apply also in the territory including the Eastern Caprivi Zipfel referred to in section three of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).

[S. 25bis inserted by s. 8 of Act No. 5 of 1961 and substituted by s. 9 of Act No. 16 of 1965.]

26. Repeal of laws.—(1) The laws mentioned in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) The Governor and the Deputy-Governor and any director of the bank holding office at the commencement of this Act, shall, for the unexpired portion of the period for which he has been appointed or elected under the Currency and Banking Act, be deemed to hold office under the provisions of this Act, and any rules or regulations made under sub-section (9) of section nine or section twenty-nine of the said Act, shall be deemed to have been made under the corresponding provisions of this Act.

27. Short title and commencement of Act.—This Act shall be called the South African Reserve Bank Act, 1944, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

First Schedule

[First Schedule substituted by s. 6 of Act No. 45 of 1956 and amended by s. 25 of Act No. 70 of 1968.]

South African Reserve Bank Statement of assets and liabilities on the _____ day of _____ 19____

Liabilities				Assets			
	£	s.	d.		£	s.	d.
Capital				Gold			
Reserve Fund							
Notes in circulation							
Deposits:							
Union Government				Foreign:			
Provincial Administrations				Bills			
Bankers				Investments			
Other				Other assets			
Other liabilities							
				Total Gold and Foreign Assets			
				Domestic:			
				Bills discounted			
				Loans and Advances:			
				Union Government			
				Other			
				Securities:			
				Union Government			
				Other			
				Other assets			

Ratio of gold reserve to liabilities to the public less foreign assets _____ per cent.