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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

No. 370. 10 March 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 10 of 1993: South African Reserve Bank Amendment Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 370. 10 Maart 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 10 van 1993: Wysigingswet op die Suid-Afrikaanse Reserwebank, 1993.

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.

ACT

To amend the South African Reserve Bank Act, 1989, so as to define a certain expression and to delete certain definitions; and to provide for the maintenance by banks of minimum reserve balances in accounts with the South African Reserve Bank; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 26 February 1993.)*

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

Amendment of section 1 of Act 90 of 1989

1. Section 1 of the South African Reserve Bank Act, 1989 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion, after the definition of “Bank”, of the following definition:
- “ ‘bank’ means a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), and, for the purposes of section 10A, includes a permanent mutual building society referred to in section 4(2)(a) of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965);” 10
- (b) by the deletion of the definition of “banking institution”;
- (c) by the deletion of the definition of “building society”; and
- (d) by the insertion, after the definition of “mutual building society”, of the following definition: 15
- “ ‘prescribed’ means prescribed by regulation;”.

Amendment of section 4 of Act 90 of 1989

2. Section 4 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph: 20
- “(b) No person who is a director, officer or employee of a **[banking institution]** bank or mutual building society **[or building society]** shall be appointed as or remain Governor or Deputy Governor.”; and
- (b) by the substitution for paragraph (b) of subsection (4) of the following paragraph: 25
- “(b) if he is a director, officer or employee of a **[banking institution]** bank or mutual building society **[or building society]**; or”.

ALGEMENE VERDUIDELIKENDE NOTA:

- [** **]** Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op die Suid-Afrikaanse Reserwebank, 1989, ten einde 'n sekere uitdrukking te omskryf en sekere woordskrywings te skrap; en voorsiening te maak vir die instandhouding deur banke van minimum reserwsaldo's in rekeninge by die Suid-Afrikaanse Reserwebank; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 26 Februarie 1993.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 90 van 1989

1. Artikel 1 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur na die omskrywing van "Bank" die volgende omskrywing in te voeg:
- 10 " 'bank' 'n bank soos omskryf in artikel 1(1) van die Bankwet, 1990 (Wet No. 94 van 1990), en, by die toepassing van artikel 10A, ook 'n permanente onderlinge bouvereniging bedoel in artikel 4(2)(a) van die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965);";
- (b) deur die omskrywing van "bankinstelling" te skrap;
- (c) deur die omskrywing van "bouvereniging" te skrap; en
- 15 (d) deur die volgende woordskrywing by te voeg:
- " 'voorgeskryf' by regulasie voorgeskryf."

Wysiging van artikel 4 van Wet 90 van 1989

2. Artikel 4 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:
- 20 "(b) Geen persoon wat 'n direkteur, beamppte of werknemer van 'n **[bankinstelling]** bank of onderlinge bouvereniging **[of bouvereniging]** is, kan as President of Vice-president aangestel word of as sodanig aanbly nie."; en
- (b) deur paragraaf (b) van subartikel (4) deur die volgende paragraaf te vervang:
- 25 "(b) indien hy 'n direkteur, beamppte of werknemer van 'n **[bankinstelling]** bank of onderlinge bouvereniging **[of bouvereniging]** is; of".

Amendment of section 10 of Act 90 of 1989

3. Section 10 of the principal Act is hereby amended by the substitution for paragraph (v) of subsection (1) of the following paragraph:

“(v) perform the functions assigned to the Bank by the Banks Act, [1965 (Act No. 23 of 1965)] 1990 (Act No. 94 of 1990), and the Mutual 5
Building Societies Act, 1965 (Act No. 24 of 1965) [and the Building Societies Act, 1986 (Act No. 82 of 1986)].”.

Insertion of section 10A in Act 90 of 1989

4. The following section is hereby inserted in the principal Act after section 10:

**“Maintenance by banks of minimum reserve balances in accounts with 10
Bank**

10A. (1) Subject to the provisions of subsection (3), a bank shall maintain an account with the Bank into which account that bank shall from time to time deposit at least such amounts as may be necessary to comply with the requirements of subsection (2) and from which it may, subject to that subsection, from time to time withdraw amounts. 15

(2) The credit balance in an account maintained in terms of subsection (1) by a bank, together with the average daily amount of that bank's Reserve Bank notes and subsidiary coin calculated according to the total amounts of those assets held by the bank on all the days of the latest month in respect of which it furnished a return in terms of subsection (11) to the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No. 94 of 1990), may at no time during any month amount to less than an amount equal to the sum of amounts representing the percentages, determined in accordance with the provisions of subsection (4) by the Governor, of the amounts of such different categories of the bank's liabilities as may be specified by the Governor by notice in the *Gazette* with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities. 20 25 30

(3) (a) A bank shall, when required to do so by virtue of a determination contemplated in paragraph (b), in addition to the account referred to in subsection (1) maintain an account with the Bank (hereinafter in this subsection referred to as a special deposit account) into which account that bank shall from time to time deposit at least such amounts as may be necessary to comply with the requirements of paragraph (b). 35

(b) For the purposes of the maintenance by a bank of a credit balance in a special deposit account referred to in paragraph (a), the Governor may from time to time determine further percentages, in addition to percentages determined by him in terms of subsection (2), of the bank's liabilities as contemplated in subsection (2). 40

(c) When making a determination in terms of paragraph (b), the Governor may at his discretion direct that interest at a rate determined by him shall be payable to a bank on the daily credit balances in a special deposit account maintained by such bank in terms of paragraph (a): Provided that the provisions of this paragraph shall not derogate from the power conferred by section 10(1)(e) upon the Bank to allow interest on any deposit or on a portion of a deposit. 45

(4) (a) The percentages determined by the Governor in terms of subsection (2) or (3)(b) shall be such percentages as the Governor may, having regard to the national economic interest, deem desirable to determine from time to time. 50

(b) Whenever the Governor has made a determination under

Wysiging van artikel 10 van Wet 90 van 1989

3. Artikel 10 van die Hoofwet word hierby gewysig deur paragraaf (v) van subartikel (1) deur die volgende paragraaf te vervang:

- 5 “(v) die werksaamhede verrig wat deur die Bankwet, **[1965 (Wet No. 23 van 1965)]** 1990 (Wet No. 94 van 1990), en die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), **[en die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986)]** aan die Bank opgedra word.”.

Invoeging van artikel 10A in Wet 90 van 1989

- 10 4. Die volgende artikel word hierby in die Hoofwet na artikel 10 ingevoeg:

“Instandhouding deur banke van minimum reserwesaldo's in rekeninge by Bank

15 **10A. (1)** Behoudens die bepalings van subartikel (3) moet 'n bank 'n rekening by die Bank in stand hou in welke rekening daardie bank van tyd tot tyd minstens die bedrae moet stort wat nodig is om aan die vereistes van subartikel (2) te voldoen en waaruit hy van tyd tot tyd, behoudens daardie subartikel, bedrae kan onttrek.

20 (2) Die kredietsaldo in 'n rekening wat ingevolge subartikel (1) deur 'n bank in stand gehou word, tesame met die gemiddelde daaglikse bedrag van daardie bank se Reserwebanknote en pasmunt, bereken volgens die totale bedrae van daardie bates wat die bank voorhande gehad het op al die dae van die jongste maand ten opsigte waarvan hy ingevolge subartikel (11) 'n opgawe aan die Registrateur van Banke aangewys kragtens artikel 4 van die Bankwet, 1990 (Wet
25 No. 94 van 1990), verstrek het, mag op geen tydstip gedurende 'n maand minder bedra nie as 'n bedrag gelyk aan die som van bedrae wat die persentasies, ooreenkomstig die bepalings van subartikel (4) deur die President vasgestel, verteenwoordig van die bedrae van die verskillende kategorieë van die bank se verpligtings wat by kennisgewing in die *Staatskoerant* deur die President gespesifiseer word met verwysing na die tydstip waarop sodanige verpligtings opeisbaar word of met verwysing na enige ander aspek wat op daardie verpligtings betrekking het.

35 (3) (a) 'n Bank moet, wanneer dit uit hoofde van 'n vasstelling beoog in paragraaf (b) van hom vereis word om dit te doen, benewens die rekening bedoel in subartikel (1) 'n rekening by die Bank in stand hou (hieronder in hierdie subartikel 'n spesiale depositorekening genoem) in welke rekening daardie bank van tyd tot tyd minstens die bedrae moet stort wat nodig is om aan die vereistes van paragraaf (b) te voldoen.

40 (b) Vir die doeleindes van die instandhouding deur 'n bank van 'n kredietsaldo in 'n spesiale depositorekening bedoel in paragraaf (a), kan die President van tyd tot tyd verdere persentasies vasstel, benewens persentasies ingevolge subartikel (2) deur hom vasgestel, van die bank se verpligtings soos beoog in subartikel (2).

45 (c) Wanneer hy 'n vasstelling ingevolge paragraaf (b) doen, kan die President na goeddunke bepaal dat rente teen 'n koers deur hom vasgestel, aan 'n bank betaalbaar is op die daaglikse kredietsaldo's in 'n spesiale depositorekening wat ingevolge paragraaf (a) deur so 'n bank in stand gehou word: Met dien verstande dat die bepalings van hierdie paragraaf nie afbreuk doen nie aan die bevoegdheid by
50 artikel 10(1)(e) aan die Bank verleen om rente op enige deposito of 'n gedeelte van 'n deposito toe te staan.

55 (4) (a) Die persentasies wat ingevolge subartikel (2) of (3)(b) deur die President vasgestel word, is die persentasies wat die President, met inagneming van die nasionale ekonomiese belang, wenslik ag om van tyd tot tyd vas te stel.

(b) Wanneer die President 'n vasstelling kragtens paragraaf (a)

paragraph (a), he shall in writing inform the Registrar of Banks referred to in subsection (2) of such a determination, and the said Registrar shall as soon as is practicable give written notice of the determination to every bank and cause the determination to be published by notice in the *Gazette*.

(c) Any such determination shall take effect on a date mentioned in the notice whereby the determination is published in the *Gazette* in terms of paragraph (b).

(5) A bank's liabilities referred to in subsection (2) shall be calculated in such manner and determined at such times as may be determined by the Governor by notice in the *Gazette*.

(6) Any person who contravenes or fails to comply with a provision of subsection (1), (2), (3)(a) or (5) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding six months.

(7) If a bank fails to comply with a provision of this section, or is unable to comply with any such provision, it shall forthwith in writing report its failure or inability to the Governor, stating the reasons for such failure or inability.

(8) The Governor may summarily bring a charge in terms of subsection (6) against a bank referred to in subsection (7) or, if in the circumstances he deems it fit to do so, condone the failure or inability and afford the bank concerned an opportunity, subject to such conditions as the Governor may determine, to comply with the relevant provision within a specified period.

(9) Irrespective of whether criminal proceedings in terms of subsection (6) have been or may be instituted against a bank in respect of any failure or inability referred to in subsection (7), the Governor may, subject to any condonation granted under subsection (8), by way of a written notice impose upon that bank, in respect of such failure or inability, a fine not exceeding one-tenth of one per cent of the amount of the shortfall for each day on which such failure or inability continues.

(10) A fine imposed under subsection (9) shall be paid to the Governor within such period as may be specified in the relevant notice, and if the bank concerned fails to pay the fine within the specified period, the Governor may by way of civil action in a competent court recover from that bank the amount of the fine or any portion thereof which he may in the circumstances consider justified.

(11) A bank shall, in order to enable the Governor to determine whether the bank is complying with the provisions of this section, furnish the Registrar of Banks referred to in subsection (2), subject to the provisions of subsection (12), with a return on the prescribed form and in respect of the prescribed period.

(12) A return referred to in subsection (11) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar of Banks referred to in subsection (2) not later than the fifteenth business day following upon the last business day of the period to which the return relates."

Amendment of section 11 of Act 90 of 1989

5. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Bank may appoint inspectors (in either a permanent or a temporary capacity) to carry out inspections of the affairs, or of any part thereof, of a **[banking institution] bank** as defined in the Banks Act, **[1965 (Act No. 23 of 1965)]** 1990 (Act No. 94 of 1990), or a mutual building society

gedoen het, moet hy die Registrateur van Banke bedoel in subartikel (2) skriftelik van so 'n vasstelling in kennis stel, en genoemde Registrateur moet so gou doenlik elke bank skriftelik van die vasstelling in kennis stel en die vasstelling by kennisgewing in die *Staatskoerant* laat afkondig.

(c) So 'n vasstelling word van krag op 'n datum vermeld in die kennisgewing waarby die vasstelling ingevolge paragraaf (b) in die *Staatskoerant* afgekondig word.

(5) 'n Bank se verpligtings bedoel in subartikel (2) moet bereken word op die wyse en bepaal word op die tye wat die President by kennisgewing in die *Staatskoerant* bepaal.

(6) 'n Persoon wat 'n bepaling van subartikel (1), (2), (3)(a) of (5) oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(7) Indien 'n bank versuim om aan 'n bepaling van hierdie artikel te voldoen of nie in staat is om aan so 'n bepaling te voldoen nie, moet hy onverwyld die President skriftelik in kennis stel van sy versuim of onvermoë, met vermelding van die redes vir sodanige versuim of onvermoë.

(8) Die President kan sonder meer ingevolge subartikel (6) 'n aanklag teen 'n bank bedoel in subartikel (7) aanhangig maak of, indien hy in die omstandighede dit goedvind om dit te doen, die versuim of onvermoë kondoneer en die betrokke bank 'n geleentheid gee om, op die voorwaardes wat die President bepaal, binne 'n bepaalde tydperk aan die betrokke bepaling te voldoen.

(9) Ongeag of enige strafregtelike stappe ingevolge subartikel (6) ten opsigte van 'n versuim of onvermoë in subartikel (7) bedoel teen 'n bank gedoen is of gedoen kan word, kan die President, behoudens enige kondonاسie kragtens subartikel (8) verleen, daardie bank by wyse van 'n skriftelike kennisgewing ten opsigte van so 'n versuim of onvermoë 'n boete oplê van hoogstens een tiende van een persent van die bedrag van die tekort vir elke dag waarop die versuim of onvermoë voortduur.

(10) 'n Boete kragtens subartikel (9) opgelê, moet aan die President betaal word binne die tydperk in die tersaaklike kennisgewing vermeld, en indien die betrokke bank versuim om die boete binne die vermelde tydperk te betaal, kan die President die bedrag van die boete of dié gedeelte daarvan wat hy onder die omstandighede geregverdig ag, by wyse van 'n siviele aksie in 'n bevoegde hof op daardie bank verhaal.

(11) 'n Bank moet, ten einde die President in staat te stel om te bepaal of die bank voldoen aan die bepalings van hierdie artikel, behoudens die bepalings van subartikel (12), aan die Registrateur van Banke bedoel in subartikel (2) 'n opgawe verstrek op die voorgeskrewe vorm en ten opsigte van die voorgeskrewe tydperk.

(12) 'n Opgawe bedoel in subartikel (11) moet ooreenkomstig algemeen aanvaarde rekeningkundige praktyk opgestel word en moet aan die Registrateur van Banke bedoel in subartikel (2) verstrek word nie later nie as die vyftiende besigheidsdag wat volg op die laaste besigheidsdag van die tydperk waarop die opgawe betrekking het."

Wysiging van artikel 11 van Wet 90 van 1989

5. Artikel 11 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Bank kan inspekteurs aanstel (hetsy in 'n vaste of tydelik hoedanigheid) om die sake, of enige gedeelte daarvan, van 'n **[bankinstelling]** bank soos omskryf in die Bankwet, **[1965 (Wet No. 23 van 1965)]** 1990 (Wet No. 94 van 1990), of 'n onderlinge bouvereniging soos omskryf in die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), **[en 'n**

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)].”.

Substitution of section 12 of Act 90 of 1989

6. The following section is hereby substituted for section 12 of the principal Act: 5

“Inspection of affairs of person, partnership, close corporation, company or other juristic person not registered as bank or mutual building society

12. (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)] 1990 (Act No. 94 of 1990), as a [banking institution] bank or 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] bank or a mutual building society [or a building society], he may 10

- [(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] 4 of the Banks Act, [1965] 1990, [or 20
- (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] 25

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 11(1), in order to establish whether or not the business of a [banking institution] bank or 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. 30

(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).” 35

Amendment of section 13 of Act 90 of 1989

7. Section 13 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) without the consent of the Minister, purchase the shares of any [banking institution or building society] bank or grant loans or advances upon the security thereof;” 40

Amendment of section 36 of Act 90 of 1989

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

- (a) by the deletion of the word “and” at the end of paragraph (d); and
 - (b) by the insertion of the following paragraph after paragraph (d): 45
- “(dA) any matter which is required or permitted to be prescribed by regulation under this Act;”.

Short title and commencement

9. This Act shall be called the South African Reserve Bank Amendment Act, 1993, and shall come into operation on the date of commencement of the Deposit-taking Institutions Amendment Act, 1993. 50

bouvereniging soos omskryf in die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986)] te inspekteer.”.

Vervanging van artikel 12 van Wet 90 van 1989

6. Artikel 12 van die Hoofwet word hierby deur die volgende artikel vervang:

5 “Inspeksie van sake van persoon, vennootskap, beslote korporasie, maatskappy of ander regspersoon wat nie as bank of onderlinge bouvereniging geregistreer is nie

10 12. (1) Indien die President of ’n Vise-president rede het om te vermoed dat ’n persoon, vennootskap, beslote korporasie, maatskappy of ander regspersoon wat nie ingevolge die Bankwet, [1965 (Wet No. 23 van 1965)] 1990 (Wet No. 94 van 1990), as ’n [bankinstelling] bank of ingevolge die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), as ’n onderlinge bouvereniging [of ingevolge die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), as ’n bouvereniging] geregistreer is nie, die besigheid van ’n [bankinstelling] bank of ’n onderlinge bouvereniging [of ’n bouvereniging] dryf, kan hy

20 [(a) indien daar aldus vermoed word dat die besigheid van ’n bankinstelling gedryf word] die Registrateur van Banke bedoel in artikel [3] 4 van die Bankwet, [1965] 1990, [of (b) indien daar aldus vermoed word dat die besigheid van ’n onderlinge bouvereniging of ’n bouvereniging gedryf word, die Registrateur van Bouverenigings bedoel in artikel 5 van die Wet op Bouverenigings, 1986]

25 gelas om die sake of enige deel van die sake van so ’n persoon, vennootskap, beslote korporasie, maatskappy of ander regspersoon deur ’n inspekteur aangestel kragtens artikel 11(1) te laat inspekteer ten einde vas te stel of die besigheid van ’n [bankinstelling] bank of onderlinge bouvereniging [of bouvereniging], na gelang van die
30 geval, deur daardie persoon, vennootskap, beslote korporasie, maatskappy of ander regspersoon gedryf word al dan nie.

(2) Die bepalings van artikels 4, 5, 8 en 9 van die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), is *mutatis mutandis* van toepassing ten opsigte van ’n inspeksie wat ingevolge
35 subartikel (1) uitgevoer word.”.

Wysiging van artikel 13 van Wet 90 van 1989

7. Artikel 13 van die Hoofwet word hierby gewysig deur paragraaf (b) deur die volgende paragraaf te vervang:

40 “(b) sonder toestemming van die Minister die aandele van ’n [bankinstelling of ’n bouvereniging] bank koop of lenings of voorskotte teen sekuriteit daarvan toestaan nie;”.

Wysiging van artikel 36 van Wet 90 van 1989

8. Artikel 36 van die Hoofwet word hierby gewysig—

45 (a) deur die woord “en” aan die einde van paragraaf (d) te skrap; en
(b) deur die volgende paragraaf na paragraaf (d) in te voeg:

“(dA) enige aangeleentheid wat kragtens hierdie Wet by regulasie voorgeskryf moet of kan word;”.

Kort titel en inwerkingtreding

9. Hierdie Wet heet die Wysigingswet op die Suid-Afrikaanse Reserwebank,
50 1993, en tree in werking op die datum van inwerkingtreding van die Wysigingswet op Depositonemende Instellings, 1993.