



## Media Statement

### Cabinet approves the South African Reserve Bank Amendment Bill

Pretoria, 3 May 2010

1. The South African Reserve Bank (SARB) is a crucial national institution which is required by the Constitution to serve the economic interests of all South Africans.
2. The Constitution mandates the SARB to perform its functions independently and Government will continue to ensure that this independence is not compromised.
3. Section 224(2) of the Constitution requires that the SARB “in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice...”
4. The Bank was established in 1921, and is still governed by an Act of Parliament (1989) that precedes the Constitution. The Bank also has private shareholders. This requires Government to regulate the activities of the private shareholders to ensure that their interests do not undermine public interest and that the SARB’s independence is not interfered with.
5. It has come to the attention of Government that a number of shareholders are involved in activities which could undermine the Bank’s independence. The Governor of the Reserve Bank had conveyed these concerns to shareholders in March this year, stating that “Profit making should never be a motive for holding shares in the Bank. The Bank is neither desired nor expected to maximize profits. The fixed dividend paid and the limited voting rights available to private shareholders underline the fact that the bank – like its counterparts in other countries – is a public entity that acts in the public interest... self-interested profit motive of a very small

minority of shareholders... does not appear to care about the national interests of the Republic of South Africa.”

Cabinet considers this to be unacceptable and has agreed that urgent legislative steps must be taken to protect the Bank’s independence.

**6. At its last meeting on 21 April 2010, Cabinet decided to:**

6.1 Further secure the independence of the bank and ensure that it continues to serve the national interest

6.2 Approve the South African Reserve Bank Amendment Bill for tabling to Parliament. The Bill proposes amendments to the principal South African Reserve Bank Act of 1989, and introduces measures to prevent negative interference in the operations of the SARB;

6.3 Initiate a total review of the legislative framework of the SARB with a view to entrench the independence of the SARB and its role in enhancing South Africa’s national economic interests.

**7. The Bill proposes the following—**

7.1 Reinforcing the requirements on the limitation on shareholding to prevent abuse by shareholders;

7.2 Amending certain definitions in the principal SARB Act;

7.3 Clarifying the powers and functions of the SARB Board;

7.4 Providing for the establishment of a Panel for the election of directors to the SARB board;

7.5 Providing for the nomination of directors by a broader base of the South African public;

7.6 Broadening representation on the SARB Board;

7.7 Defining clear criteria to disqualify persons from serving on the Board, and

7.8 Providing for the possible re-appointment of the Governor and Deputy Governor to serve terms of office of less than five years.

**8. Details of amendments—**

**8.1 Limit the scope of circumventing shareholder rules**

The Act currently limits shareholding to a maximum of 10 000 shares per shareholder. The amendments to the Act seek to curb circumvention of this limit by introducing the concept of “associate” and “close relative” and extend the restriction to such associates and close relatives. The purpose is to ensure that no shareholder can create a “bloc” of voting interests; thereby exerting influence that was clearly intended to be limited by setting a maximum number of shares that could be owned and voted on by any individual or institution.

## **8.2 Broaden the base for nomination of directors on the Board**

The Act currently provides for the election of seven independent directors by the shareholders. The amendments broaden the base from which to draw independent directors by enabling nominations to be made by the general public. The Act also requires four directors with expertise in commerce and finance. The amendments reduce the number of directors with expertise in commerce or finance to two and substitute the same with expertise in labour and mining. The number of government appointed directors will be increased from three to four, taking the size of the Board to 15.

## **8.3 Defining clear criteria for disqualification as director**

The grounds for disqualification of serving directors provided for in the Act are insufficient for corporate governance purposes. The amendments seek to extend the grounds to include unrehabilitated insolvents, persons dismissed from positions of trust for misconduct, persons with criminal records and persons with mental and other incapacities. The amendments provide for termination of directorship as a result of unexcused absenteeism, failure to disclose conflicts of interests, unlawful disclosure of confidential information and breach of duty.

## **8.4 Introduction of fit and proper requirements for directors**

The lack of criteria for the appointment to the Board could lead to the appointment of unsuitable directors adversely affecting the governance of the Bank and impairing independence. The amendments introduce fit and proper requirements based on an objective assessment commensurate with skills and experience. The amendments further make it clear that directors owe their fiduciary duties and duties of care and skill to the

Bank. The Amendments also introduce a screening process for the appointment of directors.

#### **8.5 Clarification of the role of the Board**

The amendments reinforce the corporate governance role of the Board and firmly vest the Bank's other powers and duties in the Governor and Deputy Governors.

#### **8.6 Term of office of the Governor and Deputy Governors**

The Act currently prescribes tenure of five years for the appointment of the Governor and Deputy Governors. The amendments introduce flexibility when a second or subsequent terms are considered, enabling reappointment to be for an agreed period of not more than five years per term.

### **9. Legislative Process**

These amendments will be submitted to the Speaker of Parliament and will be gazetted for public comment during the course of the week starting on 3 May 2010. Public hearings are envisaged to be held from mid-May 2010.

Interested persons and institutions are invited to submit written representations on the Bill to the Secretary to Parliament by no later than **17 May 2010**. Further documents will be available electronically on the National Treasury website – [www.treasury.gov.za](http://www.treasury.gov.za)

Public submissions must be addressed to:

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**ENDS.**

**For further media enquires please contact Government Spokesperson, Mr. Thebma Maseko, on 083 645 0810**