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No. 37144

THE PRESIDENCY

No. 992

10 December 2013

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

Act No. 22 of 2013: Banks Amendment Act, 2013

DIE PRESIDENSIE

No. 992

10 Desember 2013

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

Wet No 22 van 2013: Wysigingswet op Banke, 2013



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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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*(English text signed by the President)
(Assented to 9 December 2013)*

ACT

To amend the Banks Act, 1990, so as to define certain expressions and to amend certain definitions; to bring 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, 2001, is a cause for suspension or cancellation of registration as a bank; to align the Banks Act, 1990, with the Companies Act, 2008; and to comply further with the requirements of the Basel Committee of Banking Supervision; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 94 of 1990, as amended by Government Notice R.1765 of 30 July 1991, section 1 of Act 42 of 1992, sections 1 and 25 of Act 9 of 1993, section 1 of Act 26 of 1994, section 1 of Act 55 of 1996, section 1 of Act 36 of 2000, section 1 of Act 19 of 2003 and section 1 of Act 20 of 2007

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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) before the definition of “agency” of the following definitions:

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“**additional tier 1 capital**” means—

(a) those shares that do not represent the most subordinated claim in liquidation but which shares are subordinated to depositors, general creditors and any relevant subordinated debt, and which shares—

(i) do not constitute common equity tier 1 capital; and
(ii) comply with such further criteria or conditions as may be prescribed;

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(b) such component of, percentage of or component and percentage of minority interest in specified issued instruments or shares, and arising from the consolidation of accounts and calculated in such a manner, as may be prescribed;

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(c) capital obtained through the issue of prescribed categories of preferred securities;

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hakies dui skrappings uit bestaande verordeningen aan.
- Woorde met 'n volstreep daaronder dui invoegings in bestaande verordeningen aan.
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(Engelse teks deur die President geteken)
(Goedgekeur op 9 Desember 2013)

WET

Tot wysiging van die Bankwet, 1990, ten einde sekere uitdrukkings te omskryf en bepaalde omskrywings te wysig; sekere bepalings met hul praktiese toepassing in ooreenstemming te bring; verwysings na wetgewing en instellings by te werk; die gebruik van die naam bank na verteenwoordigende kantore uit te brei; te bepaal dat 'n oortreding van die Wet op Finansiële Intelligensiesentrum, 2001, gronde vir opskorting of intrekking van registrasie as 'n bank is; die Bankwet, 1990, met die Maatskappywet, 2008, in ooreenstemming te bring; en om verder te voldoen aan die vereistes van die Basel-komitee oor Banktoesighouding; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 94 van 1990, soos gewysig deur Goewermentskennisgewing R.1765 van 30 Julie 1991, artikel 1 van Wet 42 van 1992, artikels 1 en 25 van Wet 9 van 1993, artikel 1 van Wet 26 van 1994, artikel 1 van Wet 55 van 1996, artikel 1 van Wet 36 van 2000, artikel 1 van Wet 19 van 2003 en artikel 1 van Wet 20 van 2007

1. Artikel 1 van die Bankwet, 1990 (hierna die Hoofwet genoem), word hierby gewysig—

- (a) deur die volgende omskrywings in subartikel (1) voor die omskrywing van 10 "afdeling" in te voeg:
“**addisionele eerste vlak kapitaal**”—
- (a) daardie aandele wat nie die mees ondergeskikte eis in likwidasie is nie, maar welke aandele ondergeskik is aan deposante, algemene krediteure en enige toepaslike ondergeskikte skuld, en welke aandele—
(i) nie gewone ekwiteit eerste vlak kapitaal daarstel nie; en
(ii) voldoen aan sodanige verdere kriteria of voorwaardes wat voorgeskryf mag word;
- (b) sodanige komponent van, persentasie van of komponent en persentasie van minderheidsbelang in bepaalde uitgereikte instrumente of aandele, en voortspruitend uit die konsolidasie van rekeninge en op die voorgeskrewe wyse bereken;
- (c) kapitaal verkry deur die uitreiking van voorgeskrewe kategorieë van voorkeureffekte;

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'additional tier 1 unimpaired reserve funds' means— (a) share premium arising from the issue of instruments or shares constituting additional tier 1 capital; (b) such component of, percentage of or component and percentage of accumulated other comprehensive income and other disclosed reserves arising from compliance with Financial Reporting Standards as may be prescribed;”;	5
(b) 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;”;	10
(c) by the insertion in subsection (1) after the definition of “close relative” of the following definitions: “ ‘Commission’ means the Companies and Intellectual Property Commission established by section 185 of the Companies Act; ‘Commissioner’ means the Commissioner appointed in terms of section 189 of the Companies Act; ‘common equity tier 1 capital’ means— (a) those shares that represent the most subordinated claim in liquidation, and which shares— (i) absorb the first and proportionately greatest share of any losses as the losses occur; (ii) absorb losses proportionately and <i>pari passu</i> on a going concern basis; and (iii) comply with such further criteria or conditions as may be prescribed; (b) such component of, percentage of or component and percentage of minority interest in specified issued instruments or shares, and arising from the consolidation of accounts and calculated in such a manner, as may be prescribed, but does not include shares issued in pursuance of the capitalisation of reserves resulting from a revaluation of assets; ‘common equity tier 1 unimpaired reserve funds’ means— (a) share premium arising from the issue of instruments or shares constituting common equity tier 1 capital; (b) retained earnings; (c) such component of, percentage of or component and percentage of accumulated other comprehensive income and other disclosed reserves arising from compliance with Financial Reporting Standards, as may be prescribed;”;	20 30 35 40
(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);”;	45
(e) by the insertion in subsection (1) after the definition of “consolidating supervisor” of the following definition: “ ‘control’ , with reference to the control of a company, includes the meaning as provided for in section 2(2) of the Companies Act;”;	50
(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), 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] 2005 (Act No. 14 of 2005);”;	55
(g) by the substitution in subsection (1) for the definition of “director” of the following definition: “ ‘director’ has the meaning ascribed to that word in section 1 of the Companies Act, and includes an executive director and a non-executive director, unless expressly stated otherwise;”;	60

'addisionele eerste vlak onaangetaste reserwefondse' —	
(a) aandelepremie na aanleiding van die uitreiking van instrumente of aandele wat addisionele eerste vlak kapitaal uitmaak;	
(b) sodanige komponent van, persentasie van of komponent en persentasie van opgelope ander omvattende inkomste en ander bekendgemaakte reserwes voortspruitend uit nakoming van Finansiële Verslagdoeningstandaarde soos voorgeskryf mag word;	5
(b) deur die volgende omskrywings in subartikel (1) na die omskrywing van "bankgroep" in te voeg:	
"Basel-komitee oor Banktoesighouding" 'n komitee van die Bank vir Internasionale Skikkings, waarvan die sekretariaat uit toesighouers van sentrale banke en ander owerhede van lidlande bestaan en in Basel, Switserland geleë is;	10
'beheer' , met verwysing na die beheer van 'n maatskappy, ook die betekenis soos in artikel 2(2) van die Maatskappypwet omskryf;";	15
(c) deur in subartikel (1) paragraaf (b) van die omskrywing van "binnelandse aandeelhouer" deur die volgende paragraaf te vervang:	
"(b) 'n maatskappy is wat[, <i>mutatis mutandis</i> soos bedoel in paragraaf (a), (b) of (c) van die omskrywing van 'beherende maatskappy' in artikel 1 van die Maatskappypwet,] beheer word deur 'n persoon of persone wat in die Republiek woonagtig is of, in die geval van 'n regspersoon of regspersone, by of kragtens 'n wet van die Republiek opgerig, ingestel of ingelyf is;";	20
(d) deur in subartikel (1) die omskrywing van "direkteur" deur die volgende omskrywing te vervang:	
" 'direkteur' dit wat in artikel 1 van die Maatskappypwet aan daardie woord toegeskryf word, en ook 'n uitvoerende direkteur en 'n nie-uitvoerende direkteur, tensy uitdruklik anders bepaal word;";	25
(e) deur in subartikel (1) die omskrywing van "filiaal" deur die volgende omskrywing te vervang:	
" 'filiaal' 'n filiaal soos [omskryf] voor voorsiening gemaak in [artikel 1(3)] artikel 3 van die Maatskappypwet;";	30
(f) deur in subartikel (1) die omskrywing van "finansiële state" deur die volgende omskrywing te vervang:	
" 'finansiële state' finansiële jaarstate bedoel in [artikels 286 en 288] artikel 30 van die Maatskappypwet;";	35
(g) deur die volgende omskrywings na die omskrywing van "gasheertoesighouer" in subartikel (1) in te voeg:	
"gewone ekwiteit eerste vlak kapitaal" —	
(a) daardie aandele wat die mees ondergesikte eis in likwidasie verteenwoordig, en welke aandele—	40
(i) die eerste en proporsioneel grootste deel van enige verliese absorbeer namate die verliese voorkom;	
(ii) verliese proporsioneel en <i>pari passu</i> op 'n lopende ondernemingsbasis absorbeer; en	45
(iii) aan sodanige verdere kriteria of voorwaardes wat voorgeskryf mag word voldoen;	
(b) sodanige komponent van, persentasie van of komponent en persentasie van minderheidsbelang in bepaalde uitgereikte instrumente of aandele, en voortspruitend uit die konsolidasie van rekeninge en bereken op 'n wyse wat voorgeskryf mag word, maar sluit nie ook aandele in nie wat uitgereik is ter uitvoering van die kapitalisering van reserwes na aanleiding van 'n herwaardering van bates;	50
'gewone ekwiteit eerste vlak onaangetaste reserwefondse' —	55
(a) aandelepremie voortspruitend uit die uitreiking van instrumente of aandele wat gewone ekwiteit eerste vlak kapitaal daarstel;	
(b) teruggehoue verdienste;	
(c) sodanige komponent van, persentasie van of komponent en persentasie van opgelope ander omvattende inkomste en ander bekendgemaakte reserwes na aanleiding van nakoming van Finansiële Verslagdoeningstandaarde, soos voorgeskryf mag word;";	60

- (h) by the substitution in subsection (1) for paragraph (b) of the definition of “domestic shareholder” of the following paragraph:
“(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;”; 5
- (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;”; 10
- (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)] has the meaning ascribed to that expression in section 1 of the Companies Act;”; 15
- (k) by the substitution in subsection (1) for the definition of “liquid assets” of the following definitions:
“**level one high-quality liquid assets**” means— 20
- (a) cash;
- (b) gold coin and bullion;
- (c) such percentage or amount of central bank reserves as may be determined by the Governor of the Reserve Bank from time to time;
- (d) marketable securities representing claims on or claims guaranteed by sovereigns, central banks, non-central government public sector entities, the Bank for International Settlements, the International Monetary Fund, the European Commission or multilateral development banks that comply with such requirements or such conditions as may be prescribed; 25
- “**level two high-quality liquid assets**” means— 30
- (a) marketable securities representing claims on or claims guaranteed by sovereigns, central banks, non-central government public sector entities or multilateral development banks that comply with such requirements or such conditions as may be prescribed; 35
- (b) such corporate bonds that comply with such requirements or such conditions as may be prescribed;”,
- (l) by the deletion of the definitions of “primary share capital” and “primary unimpaired reserve funds”; 40
- (m) by the insertion in subsection (1) after the definition of “public” of the following definition:
“**public company**” has the meaning ascribed to that expression in section 1 of the Companies Act;”; 45
- (n) by the deletion in subsection (1) of the definition of “Registrar of Companies”;
- (o) 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’ published by Government Notice No. [R. 1414 of 28 December 2000] 30627 of 1 January 2008, and amended from time to time;”; 50
- (p) by the deletion in subsection (1) of the definitions of “secondary capital” and “secondary unimpaired reserve funds”; 55
- (q) 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;”;
- (r) by deletion in subsection (1) of the definition of “tertiary capital”;

- (h) deur in subartikel (1) die omskrywing van “houermaatskappy” deur die volgende omskrywing te vervang:
 “**‘houermaatskappy’** [**‘n houermaatskappy soos omskryf in artikel 1(4)]** dit wat in artikel 1 van die Maatskappywet daaraan toegeskryf word;”;
- (i) deur die volgende omskrywings na die omskrywing van “houermaatskappy” in subartikel (1) in te voeg:
 “**‘Kommissie’** die Kommissie vir Maatskappye en Intellekturele Eiendom by artikel 185 van die Maatskappywet gestig;
‘Kommissaris’ die Kommissaris ingevolge artikel 189 van die Maatskappywet, aangestel;”;
- (j) deur in subartikel (1) die omskrywing van “koöperasie” deur die volgende omskrywing te vervang:
 “**‘koöperasie’** ’n koöperasie ingelyf ingevolge die [Koöperasiewet, 1981 (Wet No. 91 van 1981), en ook ’n koöperatiewe vereniging of koöperatiewe maatskappy wat ingevolge artikel 2 van daardie Wet geag word ingevolge genoemde Wet ingelyf te wees] ‘Co-operatives Act, 2005’ (Wet No. 14 van 2005);”;
- (k) deur in subartikel (1) die omskrywing van “Maatskappywet” deur die volgende omskrywing te vervang:
 “**‘Maatskappywet’** die Maatskappywet, [1973 (Wet No. 61 van 1973)] 2008 (Wet No. 71 van 2008);”;
- (l) deur na die omskrywing van “ongewenste praktyk” die volgende omskrywing in subartikel (1) in te voeg:
 “**‘openbare maatskappy’** dit wat in artikel 1 van die Maatskappywet daaraan toegeskryf word;”;
- (m) deur die omskrywings van “primère aandelekapitaal” en “primère onaangetaste reserwefondse” te skrap;
- (n) deur in subartikel (1) die omskrywing van “Registrateur van Maatskappye” te skrap;
- (o) deur in subartikel (1) die omskrywing van “Regulasies aangaande takke” deur die volgende omskrywing te vervang:
 “**‘Regulasies aangaande takke’** die Regulasies met die opskrif ‘Conditions for the conducting of the business of a bank by a foreign institution by means of a branch in the Republic’, soos gepubliseer by Goewermentskennisgowing No. [R.1414 van 28 Desember 2000] 30627 van 1 Januarie 2008, en soos van tyd tot tyd gewysig;”;
- (p) deur in subartikel (1) die omskrywings van “sekondêre kapitaal” en “sekondêre onaangetaste reserwefondse” te skrap;
- (q) deur in subartikel (1) die omskrywing van “tersiêre kapitaal” te skrap;
- (r) deur in subartikel (1) na die omskrywing van “toegewysde kapitaal en reserwefondse” die volgende omskrywings in te voeg:
“‘tweede vlak kapitaal’—
 (a) daardie instrumente of aandele wat ondergeskik is aan deposante en algemene krediteure en welke instrumente of aandele—
 (i) nie gewone ekwiteit eerste vlak of addisionele eerste vlak kapitaal daarstel nie; en
 (ii) voldoen aan sodanige verdere voorwaardes wat voorgeskryf mag word;
- (b) ’n voorgeskrewe persentasie van kapitaal verkry deur die uitreiking, met die vooraf skriftelike goedkeuring van die Registrateur en ooreenkomsdig die voorwaardes skriftelik deur die Registrateur goedgekeur, en sodanige verdere voorwaardes, indien enige, wat voorgeskryf mag word, van gewone aandele, voorkeuraandele of ander kapitaalinstrument uitgereik ter uitvoering van die kapitalisering van reserwefondse na aanleiding van ’n herwaardering van bates;
- (c) sodanige komponent van, persentasie van of komponent en persentasie van minderheidsbelang in bepaalde uitgereikte instrumente of aandele, en voortspruitend uit die konsolidering van rekeninge en bereken op sodanige wyse wat voorgeskryf mag word;

(s) by the insertion in subsection (1) after the definition of “this Act” of the following definitions:

“**tier 2 capital**” means—

(a) those instruments or shares that are subordinated to depositors and general creditors and which instruments or shares—

(i) do not constitute common equity tier 1 or additional tier 1 capital; and

(ii) comply with such further conditions as may be prescribed;

(b) a prescribed percentage of capital obtained through the issue, with the prior written approval of the Registrar and in accordance with conditions approved by the Registrar in writing, and such further conditions, if any, as may be prescribed, of ordinary shares, preference shares or other capital instrument issued in pursuance of the capitalisation of reserves resulting from a revaluation of assets;

(c) such component of, percentage of or component and percentage of minority interest in specified issued instruments or shares, and arising from the consolidation of accounts and calculated in such a manner as may be prescribed;

(d) capital obtained through the issue of instruments or shares constituting common equity tier 1 capital or additional tier 1 capital where the relevant proceeds of such instruments or shares, or any portion thereof, are excluded from qualifying common equity tier 1 capital or additional tier 1 capital as a result of a prescribed limit;

“**tier 2 unimpaired reserve funds**” means—

(a) any premium arising from the issue of instruments or shares that constitute tier 2 capital;

(b) a prescribed percentage of general provision, general loan loss reserve or other reserve held against unidentified and unforeseen losses that comply with such conditions as may be prescribed;”;

and

(t) by the substitution in subsection (1A)(b) for subparagraph (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 2 of Act 26 of 1994 and section 90 of Act 40 of 2007

2. Section 2 of the principal Act is hereby amended by the substitution in paragraph (b) for subparagraph (v) of the following subparagraph:

“(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);”.

Amendment of section 5 of Act 94 of 1990, as amended by section 2 of Act 19 of 2003 45

3. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) delegate to any officer or employee of the Reserve Bank or another financial sector regulator any power conferred upon the Registrar by or under this Act; or.”.

(d) kapitaal verkry deur die uitreiking van instrumente of aandele wat gewone ekwiteit eerste vlak kapitaal of addisionele eerste vlak kapitaal daarstel waar die betrokke opbrengs van sodanige instrumente of aandele, of enige gedeelte daarvan, uitgesluit is van kwalifiserende gewone ekwiteit eerste vlak kapitaal of addisionele eerste vlak kapitaal as gevolg van 'n voorgeskrewe limiet;	5
'tweede vlak onaangetaste reserwefondse' —	
(a) enige premie voortspruitend uit die uitreiking van instrumente of aandele wat tweede vlak kapitaal daarstel;	10
(b) 'n voorgeskrewe persentasie van algemene voorsiening, algemene lenigingsverliesreserwe of ander reserwe gehou teen ongeïdentificeerde en onvoorsiene verliese wat voldoen aan sodanige voorwaardes wat voorgeskryf mag word;'; en	10
(s) deur in subartikel (1) die volgende omskrywings na die omskrywing van "uitvoerende beampte" in te voeg :	15
"vlak een hoë-gehalte likwiede bates" —	
(a) kontant;	20
(b) goudmuntpapier en staafgoud;	20
(c) sodanige persentasie of bedrag van sentralebankreserwes wat van tyd tot tyd deur die President van die Reserwebank bepaal kan word;	20
(d) bemarkbare effekte verteenwoordigend van eise op of eise gewaarborg deur onafhanklike state, sentrale banke, nie-sentrale regering openbaresektorentiteite, die Bank vir Internasionale Skikkings, die Internasionale Monetêre Fonds, die Europese Kommissie of multilaterale ontwikkelingsbanke wat voldoen aan sodanige vereistes of sodanige voorwaardes wat voorgeskryf mag word;	25
'vlak twee hoë-gehalte likwiede bates' —	
(a) bemarkbare effekte verteenwoordigend van eise op of eise gewaarborg deur onafhanklike state, sentrale banke, nie-sentrale regering openbaresektorentiteite of multilaterale ontwikkelingsbanke wat voldoen aan sodanige vereistes of sodanige voorwaardes wat voorgeskryf mag word;	30
(b) sodanige korporatiewe effekte wat voldoen aan sodanige vereistes of sodanige voorwaardes wat voorgeskryf mag word;'; en	35
(t) deur subparagraph (iii) in subartikel (1A)(b) deur die volgende subparagraph te vervang:	
“(iii) 'n direkteur was wat, soos beoog in artikel 421(2) van die Maatskappywet, 1973 (Wet No. 61 van 1973), aangedui is as die deurslaggewende oorsaak dat 'n bepaalde maatskappy nie in staat was om sy skulde te betaal nie;'. ”	40

Wysiging van artikel 2 van Wet 94 van 1990, soos gewysig deur artikel 2 van Wet 26 van 1994 en artikel 90 van Wet 40 van 2007

2. Artikel 2 van die Hoofwet word hierby gewysig deur subparagraph (v) in paragraaf (b) deur die volgende subparagraph te vervang:	45
“(v) [die Openbare Beleggingskommissaris bedoel in artikel 2 van die Wet op die Openbare Beleggingskommissaris, 1984 (Wet No. 45 van 1984)] die 'Public Investment Corporation Limited' gestig by artikel 2 van die Wet op die Openbare Beleggingskorporasie, 2004 (Wet No. 23 van 2004);”.	50

Wysiging van artikel 5 van Wet 94 van 1990, soos gewysig deur artikel 2 van Wet 19 van 2003

3. Artikel 5 van die Hoofwet word hierby gewysig deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:	
“(a) aan 'n beampte of werknemer van die Reserwebank of 'n ander reguleerder van die finansiële sektor 'n bevoegdheid by of kragtens hierdie Wet aan die Registrateur verleen, deleger; of”.	55

Amendment of section 6 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993, section 3 of Act 26 of 1994, section 3 of Act 19 of 2003 and section 3 of Act 20 of 2007

4. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsections (4) and (5) of the following subsections, 5 respectively:

“(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. 10

(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.”; 15

- (b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(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;”; 20

- (c) by the substitution in subsection (6)(b) for the words preceding subparagraph 25
(i) of the following words:

“The directive contemplated in paragraph (a) may include the issuing of a non-financial sanction or a directive requiring a bank, a controlling company, a representative office, an eligible institution or an auditor of a bank or controlling company, either individually or collectively, within the period specified in the directive, to—”; 30

- (d) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

“(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;”; and 35

- (e) by the substitution in subsection (6) for paragraph (e) of the following paragraph:

“(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.”. 40

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

5. Section 10 of the principal Act is hereby amended by the substitution for subsection 45 (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] the 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] the next 50 [ensuing] ordinary session.”.

Amendment of section 13 of Act 94 of 1990, as amended by sections 6 and 25 of Act 9 of 1993 and section 9 of Act 19 of 2003

6. Section 13 of the principal Act is hereby amended by the deletion in subsection (2) of the word “and” at the end of paragraph (g), the insertion of the word “and” at the end 55 of paragraph (h) and the addition of the following paragraph:

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

Wysiging van artikel 6 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993, artikel 3 van Wet 26 van 1994, artikel 3 van Wet 19 van 2003 en artikel 3 van Wet 20 van 2007

4. Artikel 6 van die Hoofwet word hierby gewysig—

(a) deur subartikels (4) en (5) onderskeidelik deur die volgende subartikels te vervang: 5

“(4) Die Registrateur kan van tyd tot tyd deur middel van ’n omsendbrief aan banke, beherende maatskappye, verteenwoordigende kantore, kwalifiserende instellings **[en]** of ouditeurs van banke of beherende maatskappye riglyne verstrek met betrekking tot die toepassing en vertolking van die bepalings van hierdie Wet. 10

(5) Die Registrateur kan van tyd tot tyd deur middel van ’n riglynnota aan banke, beherende maatskappye, verteenwoordigende kantore, kwalifiserende instellings en ouditeure van banke of beherende maatskappye inligting verstrek met betrekking tot markpraktyke of mark- of industrie-ontwikkelings binne of buite die Republiek.”; 15

(b) deur paragraaf (a) in subartikel (6) deur die volgende paragraaf te vervang:

“(a) Die Registrateur kan van tyd tot tyd skriftelik na oorleg met die betrokke bank, beherende maatskappy, verteenwoordigende kantoor, kwalifiserende instelling of ouditeur van ’n bank of beherende maatskappy ’n lasgewing uitreik aan sodanige bank, beherende maatskappy, verteenwoordigende kantoor, kwalifiserende instelling of ouditeur van ’n bank of beherende maatskappy, hetsy individueel of gesamentlik, aangaande die toepassing van hierdie Wet.”; 20

(c) deur in subartikel (6)(b) die woorde wat subparagraph (i) voorafgaan deur die volgende woorde te vervang: 25

“Die lasgewing in paragraaf (a) beoog, kan insluit die uitreiking van ’n nie-finansiële straf of ’n lasgewing wat van ’n bank, beherende maatskappy, verteenwoordigende kantoor, kwalifiserende instelling of ouditeur van ’n bank of beherende maatskappy, hetsy individueel of gesamentlik, vereis om binne die tydperk in sodanige lasgewing vermeld—”;

(d) deur paragraaf (c) in subartikel (6) deur die volgende paragraaf te vervang:

“(c) Die Registrateur kan, na oorleg met die betrokke bank, beherende maatskappy, verteenwoordigende kantoor, kwalifiserende instelling of ouditeur van ’n bank of beherende maatskappy, behoudens die lasgewing, ’n voorheen uitgereikte lasgewing skriftelik kanselleer.”; en 35

(e) deur paragraaf (e) in subartikel (6) deur die volgende paragraaf te vervang:

“(e) ’n Bank, beherende maatskappy, verteenwoordigende kantoor, kwalifiserende instelling of ouditeur van ’n bank of beherende maatskappy wat nalaat, weier of versuom om te voldoen aan ’n lasgewing wat ingevolge hierdie subartikel uitgereik is, is skuldig aan ’n misdryf.”. 40

Wysiging van artikel 10 van Wet 94 van 1990, soos gewysig deur artikel 7 van Wet 19 van 2003

5. Artikel 10 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang: 45

“(2) Die Minister moet ’n afskrif van die verslag bedoel in subartikel (1) in die Parlement ter Tafel lê binne 14 dae na ontvangs van dié verslag, indien die Parlement dan in gewone sessie byeen is, of, indien die Parlement nie dan in gewone sessie byeen is nie, binne 14 dae na die aanvang van **[sy eersvolgende] die daaropvolgende** gewone sessie.”. 50

Wysiging van artikel 13 van Wet 94 van 1990, soos gewysig deur artikels 6 en 25 van Wet 9 van 1993 en artikel 9 van Wet 19 van 2003

6. Artikel 13 van die Hoofwet word hierby gewysig deur die woord “en” aan die einde van paragraaf (g) in subartikel (2) te skrap, die woord “en” aan die einde van paragraaf (h) in te voeg en die volgende paragraaf by te voeg: 55

“(i) indien ’n buitelandse instelling die applikant is, dat die verantwoordelike konsoliderende toesighouer van die buitelandse instelling—

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|---|--|----|
| (i) has duly authorised the proposed establishment, by the foreign institution, of a bank in the Republic; | | |
| (ii) accepts and complies with the proposals, guidelines and pronouncements of the Basel Committee on Banking Supervision; | | 5 |
| (iii) is not legally impeded from complying with the provisions of subparagraph (ii); | | |
| (iv) accepts its responsibilities 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; | | 10 |
| (vi) is satisfied with the standard of risk management maintained by the foreign institution; and | | |
| (vii) keeps the Registrar informed of any material information regarding the financial soundness of the foreign institution and its bank in the Republic.”. | | 15 |

Amendment of section 15 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993, section 7 of Act 26 of 1994 and section 11 of Act 19 of 2003

7. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of 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).”.

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

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

“(i) two copies each of the institution’s memorandum of [association and articles of association] incorporation;”.

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Amendment of section 17 of Act 94 of 1990, as substituted by section 9 of Act 26 of 1994 and amended by section 13 of Act 19 of 2003

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

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

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

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10. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) of 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.”.

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Amendment of section 22 of Act 94 of 1990, as amended by sections 7 and 25 of Act 9 of 1993, section 15 of Act 26 of 1994, section 5 of Act 36 of 2000 and section 17 of Act 19 of 2003

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11. Section 22 of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (a), the insertion of the word “or” at the end of paragraph (b) and the addition of the following paragraph:

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| (i) die voorgestelde stigting van 'n bank in die Republiek deur die buitelandse instelling, na behore gemagtig het; | 5 |
| (ii) die voorstelle, riglyne en uitsprake van die Basel-komitee oor Banktoesighouding aanvaar; | |
| (iii) nie regtens daarvan verhinder word om aan die bepalings van subparagraaf (ii) te voldoen nie; | |
| (iv) sy verantwoordelikhede as 'n konsoliderende toesighouer aanvaar; | |
| (v) so ver dit redelik moontlik mag wees, toesien dat die lede van die raad en die uitvoerende bestuur van die buitelandse instelling te alle tye uit geskikte en gepaste persone bestaan; | 10 |
| (vi) tevrede is met die standaard van risiko-bestuur wat die buitelandse instelling handhaaf; en | |
| (vii) die Registrateur op hoogte hou van enige wesenlike inligting betreffende die finansiële gesondheid van die buitelandse instelling en sy bank in die Republiek.”. | 15 |

Wysiging van artikel 15 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993, artikel 7 van Wet 26 van 1994 en artikel 11 van Wet 19 van 2003

7. Artikel 15 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Ondanks andersluidende bepaling van die Maatskappywet registreer die [Registrateur van Maatskappy] Kommissaris nie ingevolge daardie Wet die akte van oprigting [en statute] van 'n publieke maatskappy nie wat opgerig is vir die doel om die bedryf van 'n bank uit te oefen, tensy die aansoek om sodanige registrasie vergesel gaan van die goedkeuring bedoel in subartikel (1).”.

Wysiging van artikel 16 van Wet 94 van 1990, soos vervang deur artikel 8 van Wet 26 van 1994 en gewysig deur artikel 12 van Wet 19 van 2003

8. Artikel 16 van die Hoofwet word hierby gewysig deur subparagraaf (i) in subartikel (2)(b) deur die volgende subparagraaf te vervang:

“(i) twee afskrifte van elk van die instelling se akte van oprigting [en statute];”.

Wysiging van artikel 17 van Wet 94 van 1990, soos vervang deur artikel 9 van Wet 26 van 1994 en gewysig deur artikel 13 van Wet 19 van 2003

9. Artikel 17 van die Hoofwet word hierby gewysig deur paragraaf (c) in subartikel (1) deur die volgende paragraaf te vervang:

“(c) dat die akte van oprigting [en statute] van die instelling met hierdie Wet versoenbaar is en nie om enige rede ongewens is nie.”.

Wysiging van artikel 18 van Wet 94 van 1990, soos vervang deur artikel 10 van Wet 26 van 1994 en gewysig deur artikel 14 van Wet 19 van 2003

10. Artikel 18 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Benewens enige ander voorwaarde wat die Registrateur kragtens subartikel (1) kan oplê, kan hy of sy 'n voorwaarde oplê wat die betrokke instelling verplig om binne 'n bepaalde tydperk die nodige stappe ingevolge die Maatskappywet te doen om sy akte van oprigting [of statute] ooreenkomsdig die voorskrifte van die Registrateur te wysig.”.

Wysiging van artikel 22 van Wet 94 van 1990, soos gewysig deur artikels 7 en 25 van Wet 9 van 1993, artikel 15 van Wet 26 van 1994, artikel 5 van Wet 36 van 2000 en artikel 17 van Wet 19 van 2003

11. Artikel 22 van die Hoofwet word hierby gewysig deur in subartikel (1) die woord “of” aan die einde van paragraaf (a) te skrap, die woord “of” aan die einde van paragraaf (b) in te voeg en die volgende paragraaf by te voeg:

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“(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,.”.

Amendment of section 23 of Act 94 of 1990, as substituted by section 16 of Act 26 of 1994

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12. Section 23 of the principal Act is hereby amended—

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

“(1) The Registrar may subject to the provisions of section 24, in the case of a bank registered as such, with the consent of the Governor and 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.”;

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(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“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 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—”;

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

“(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 the 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.”.

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Amendment of section 24 of Act 94 of 1990, as amended by section by section 25 of Act 9 of 1993, section 17 of Act 26 of 1994 and section 18 of Act 19 of 2003

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13. Section 24 of the principal Act is hereby amended—

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

“(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—

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(a) inform the institution of his or her intention to cancel [**or suspend, as the case may be,**] such registration;

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(b) furnish the institution with the reasons for the intended cancellation [**or suspension**]; and

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(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**.]”; and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

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

“(c) in die geval van sodanige buitelandse instelling, ’n naam behalwe die naam waaronder die verteenwoordigende kantoor sodanig geregistreer was, ten opsigte van die verteenwoordigende kantoor gebruik of aldus na die verteenwoordigende kantoor verwys.”.

Wysiging van artikel 23 van Wet 94 van 1990, soos vervang deur artikel 16 van Wet 26 van 1994 5

12. Artikel 23 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van ’n bank wat as sodanig geregistreer is, met die instemming van die President en na oorleg met die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige registrasie intrek of onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien die instelling nie gedurende die tydperk van ses maande vanaf die datum waarop die instelling as ’n bank geregistreer is, enige sake as ’n bank gedoen het nie.”;

(b) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van ’n bank wat as sodanig geregistreer is, [**met die instemming van**] na oorleg met die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige registrasie intrek of, onderworpe aan die voorwaardes wat die Registrateur goedvind, opskort indien—”; en

(c) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die Registrateur kan, behoudens die bepalings van artikel 24, in die geval van ’n bank wat as sodanig geregistreer is, [**met die instemming van**] na oorleg met die Minister en by skriftelike kennisgewing aan die betrokke instelling sodanige registrasie intrek indien die instelling opgehou het om die bedryf van ’n bank uit te oefen of nie langer in werking is nie.”.

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Wysiging van artikel 24 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993, artikel 17 van Wet 26 van 1994 en artikel 18 van Wet 19 van 2003

13. Artikel 24 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Registrateur [**moet, voordat hy of sy kragtens artikel 23 die registrasie van ’n bank intrek of opskort, in ’n skriftelike kennisgewing gerig aan die voorsitter of hoof- uitvoerende beampte van die betrokke instelling**] kan die registrasie van ’n bank kragtens artikel 23 onverwyld opskort by skriftelike kennisgewing aan die voorsitter of hoof- uitvoerende beampte van die betrokke instelling, met dien verstande dat die Registrateur—

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(a) die instelling in kennis moet stel van sy of haar voorneme om sodanige registrasie in te trek [**of op te skort, na gelang van die geval**];

(b) aan die instelling die redes moet verstrek vir die voorgenome intrekking [**of opskorting**]; en

(c) die instelling moet aansê om binne ’n tydperk in die kennisgewing vermeld, wat nie minder as 30 dae vanaf die datum van die kennisgewing mag wees nie, redes aan te voer waarom sy registrasie nie aldus ingetrek [**of opgeskort**] behoort te word nie.”;

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(b) deur paragraaf (a) in subartikel (2) deur die volgende paragraaf te vervang:

“(a) voortgaan met die intrekking [**of opskorting**] ingevolge artikel 23 van die registrasie; of”.

Substitution of section 27 of Act 94 of 1990, as substituted by section 20 of Act 19 of 2003

14. The following section is hereby substituted for section 27 of the principal Act:

“Cancellation of registration at request of bank

27. 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 75 per cent of the voting rights entitled to vote on the decision authorising such cancellation.”. 5

Substitution of section 28 of Act 94 of 1990, as substituted by section 21 of Act 19 of 2003 10

15. The following section is hereby substituted for section 28 of the principal Act:

“Cancellation of registration upon winding up

28. 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.”. 15

Amendment of section 30 of Act 94 of 1990, as substituted by section 8 of Act 20 of 2007 20

16. 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;”; 25

Amendment of section 32 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993, section 25 of Act 26 of 1994 and section 23 of Act 19 of 2003

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

“(b) to change its name and its memorandum of [association and articles of association] incorporation within the period and in the manner required by the Registrar.”. 30

Amendment of section 38 of Act 94 of 1990, as amended by section 17 of Act 85 of 1992, section 25 of Act 9 of 1993 and section 26 of Act 19 of 2003 35

18. Section 38 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:

“(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] the trustee or custodian of a collective investment scheme as defined in 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; 40 45”

Vervanging van artikel 27 van Wet 94 van 1990, soos vervang deur artikel 20 van Wet 19 van 2003

14. Subartikel 27 van die Hoofwet word hierby deur die volgende artikel vervang:

“Intrekking van registrasie op versoek van bank

27. Die Registrateur moet die registrasie van 'n bank intrek by voorlegging aan hom of haar deur die betrokke instelling van 'n spesiale besluit [**beoog in artikel 200 van die Maatskappywet**] goedgekeur deur aandeelhouers wat minstens 75 persent van die stemregte hou en wat geregtig is om te stem oor die besluit waarby sodanige intrekking gemagtig word.”. 5
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Vervanging van artikel 28 van Wet 94 van 1990, soos vervang deur artikel 21 van Wet 19 van 2003

15. Artikel 28 van die Hoofwet word hierby deur die volgende artikel vervang:

“Intrekking van registrasie by likwidasie

28. Wanneer die sake van 'n bank heeltemal gelikwideer is soos beoog in artikel [419(1)] artikel 82(1) van die Maatskappywet, moet die verantwoordelike Meester van die Hoë Hof 'n afskrif van die sertifikaat bedoel in daardie artikel aan die Registrateur stuur, en die Registrateur moet by ontvangs van sodanige afskrif die registrasie van die betrokke bank intrek.”. 15
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Wysiging van artikel 30 van Wet 94 van 1990, soos vervang deur artikel 8 van Wet 20 van 2007

16. Artikel 30 van die Hoofwet word hierby gewysig deur paragraaf (e) in subartikel (1) deur die volgende paragraaf te vervang:

“(e) toestemming verleen ten opsigte van [**'n skikking,**] die amalgamasie,₂ 25
samesmelting of reëling in [**Hoofstuk XII**] Hoofstuk 5 van die Maatskappywet bedoel waar 'n bank 'n hoofparty by sodanige [**skikking,**] amalgamasie, samesmelting of reëling is;”.

Wysiging van artikel 32 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993, artikel 25 van Wet 26 van 1994 en artikel 23 van Wet 19 van 2003 30

17. Artikel 32 van die Hoofwet word hierby gewysig deur paragraaf (b) in subartikel (1) deur die volgende paragraaf te vervang:

“(b) om sy naam en sy akte van oprigting [**en statute**] binne die tydperk en op die wyse deur die Registrateur vereis, te verander.”.

Wysiging van artikel 38 van Wet 94 van 1990, soos gewysig deur artikel 17 van Wet 35 van 1992, artikel 25 van Wet 9 van 1993 en artikel 26 van Wet 19 van 2003

18. Artikel 38 van die Hoofwet word hierby gewysig—

(a) deur paragrawe (a), (b) en (c) in subartikel (2) onderskeidelik deur die volgende paragrawe te vervang:

“(a) op naam van [**'n trustee van 'n effekte-trustskema soos omskryf in artikel 1 van die Wet [of] op Beheer van Effekte-trustskemas, 1981** (Wet No. 54 van 1981), of van 'n genomineerde maatskappy van die trustee wat deur die Registrateur van Effekte-trustmaatskappye goedgekeur is] die trustee of bewaarder van 'n kollektiewe beleggingskema soos omskryf in artikel 1 van die Wet op Beheer van Kollektiewe Beleggingskemas, 2002 (Wet No. 45 van 2002), of van 'n benoemde maatskappy van die bestuurder of trustee deur die Registrateur van Kollektiewe Beleggingskemas goedgekeur; 40
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- (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 sequestered 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)] regulated person 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;”; and
- (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
- “(e) in the name of a central securities depository as defined in section 1 of the [Safe Deposit of Securities Act, 1992] Securities Services Act, 2004 (Act No. 36 of 2004).”.

Amendment of section 43 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993, section 34 of Act 26 of 1994, section 30 of Act 19 of 2003 and section 10 of Act 20 of 2007

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19. 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

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

“(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;”.

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

21. The following section is hereby substituted for section 47 of the principal Act: 40

“Cancellation of registration at request of controlling company

47. 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 75 per cent of the voting rights entitled to vote on the decision authorising such cancellation.”.

- (b) op naam van 'n eksekuteur, administrateur, kurator, voog of likwidateur [in die omstandighede in artikel 103(3) van die **Maatskappywet vermeld**] ten opsigte van die boedel van 'n ontslape lid van die bank of beherende maatskappy of van 'n lid wie se boedel gesekwestreer is of van 'n lid wat andersins onbevoeg verklaar is of as die likwidateur van 'n regspersoon wat gelikwider word wat 'n lid van die bank of beherende maatskappy is; 5
- (c) vir 'n tydperk van hoogstens ses maande, op naam van 'n [effektemakelaar of van 'n maatskappy deur so 'n effektemakelaar gestig vir 'n doel vermeld in artikel 12(3) van die Wet op Beheer van Effektebeurse, 1985 (Wet No. 1 van 1985)] gereguleerde persoon soos omskryf in artikel 1 van die 'Securities Services Act, 2004' (Wet No. 36 van 2004), of van 'n maatskappy wat deur die bank beheer word of van 'n werknemer van die bank, indien dit nodig is dat die aandele aldus toegewys, uitgereklik of geregistreer word ten einde lewering aan die koper te vergemaklik of die regte van die begunstigde ten opsigte van daardie aandele te beskerm of waar die begunstigde nie bekend is nie;"; en 10
- (b) deur paragraaf (e) in subartikel (2) deur die volgende paragraaf te vervang:
“(e) op naam van 'n sentrale effektebewaarnemer soos in artikel 1 van die [Wet op die Veilige Bewaring van Effekte, 1992] 'Securities Services Act, 2004' (Wet No. 36 van 2004), omskrywe.”. 15

Wysiging van artikel 43 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993, artikel 34 van Wet 26 van 1994, artikel 30 van Wet 19 van 2003 en artikel 10 van Wet 20 van 2007

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19. Artikel 43 van die Hoofwet word hierby gewysig deur paragraaf (b) in subartikel (1) deur die volgende paragraaf te vervang:

“(b) wat 'n [beherende maatskappy] houermaatskappy, soos omskryf in artikel 1 van die Maatskappywet, is ten opsigte van 'n ander publieke maatskappy wat ingevolge artikel 16 aansoek gedoen het om registrasie as 'n bank.”. 30

Wysiging van artikel 44 van Wet 94 van 1990, soos gewysig deur artikel 10 van Wet 9 van 1993 en artikel 31 van Wet 19 van 2003

20. Artikel 44 van die Hoofwet word hierby gewysig deur paragraaf (c) in subartikel (2) deur die volgende paragraaf te vervang:

“(c) dat geen bepaling van die akte van oprigting [of statute] van die aansoeker met 'n bepaling van hierdie Wet onbestaanbaar is of ongewens is sover dit banke betref nie;”. 35

Vervanging van artikel 47 van Wet 94 van 1990, soos vervang deur artikel 32 van Wet 19 van 2003

21. Artikel 47 van die Hoofwet word hierby deur die volgende subartikel vervang: 40

“Intrekking van registrasie op versoek van beherende maatskappy

47. Die Registrateur moet die registrasie van 'n beherende maatskappy intrek by voorlegging aan hom of haar deur die beherende maatskappy van 'n spesiale besluit [beoog in artikel 200 van die Maatskappywet] goedgekeur deur aandeelhouers wat minstens 75 persent van die stemregte hou en wat stemrgeregtig is oor die besluit waarby sodanige intrekking gemagtig word.”. 45

Amendment of section 51 of Act 94 of 1990, as amended by sections 11 and 25 of Act 9 of 1993 and section 34 of Act 19 of 2003**22. Section 51 of the principal Act is hereby amended—**

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

“(b) the provisions of sections 128 to 155 of the Companies Act relating to business rescue and compromise with creditors shall not apply to a bank.”; and

(b) by 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.”.

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Amendment of section 52 of Act 94 of 1990, as amended by section 3 of Act 55 of 1996, section 35 of Act 19 of 2003 and section 12 of Act 20 of 2007**23. 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 such an acquisition without having to obtain the prior written approval of the Registrar.”.

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Amendment of section 54 of Act 94 of 1990, as substituted by section 6 of Act 42 of 1992 and amended by sections 12 and 25 of Act 9 of 1993, Proclamation No. 132 of 1994, section 36 of Act 26 of 1994, section 5 of Act 55 of 1996, section 36 of Act 19 of 2003, section 13 of Act 20 of 2007 and section 90 of Act 17 of 2009

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24. Section 54 of the principal Act is hereby amended—

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

“**Amalgamations, mergers and arrangements**”;

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

“(a) [a **compromise**,] an 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”;

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(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

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

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

“(5) Notice of the passing of the resolution confirming, as contemplated in subsection (4), any [**compromise**,] amalgamation or merger or [**arrangement or**] any arrangement for the transfer of assets, liabilities or assets and liabilities referred to in subsection (1) or (1B), 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 (2A)(c), 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.”.

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Wysiging van artikel 51 van Wet 94 van 1990, soos gewysig deur artikels 11 en 25 van Wet 9 van 1993 en artikel 34 van Wet 19 van 2003

22. Artikel 51 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (b) in subartikel (1) deur die volgende paragraaf te vervang:

“(b) die bepalings van artikels 128 tot 155 van die Maatskappywet wat met ondernemingsredding en skikking met krediteure verband hou is nie op 'n bank van toepassing nie."; en

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(b) deur paragraaf (c) in subartikel (2) deur die volgende paragraaf te vervang:

“(c) waarvan die uitvoering by die [RegISTRATEUR van Maatskappye Kommissaris berus, ten opsigte van maatskappye wat as banke of as beherende maatskappye geregistreer is, by die RegISTRATEUR berus.”.

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Wysiging van artikel 52 van Wet 94 van 1990, soos gewysig deur artikel 3 van Wet 55 van 1996, artikel 35 van Wet 19 van 2003 en artikel 12 van Wet 20 van 2007

23. Artikel 52 van die Hoofwet word hierby gewysig deur paragraaf (c) in subartikel (1) deur die volgende paragraaf te vervang:

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“(c) 'n belang in 'n onderneming wat sy geregistreerde kantoor of hoofbesigheidsplek buite die Republiek het, verkry nie: Met dien verstande dat die RegISTRATEUR 'n lasgewing kan uitrek, met of sonder voorwaardes, wat die omstandighede spesifiseer waaronder 'n bank toegelaat sal word om die RegISTRATEUR van so 'n verkryging in kennis te stel sonder dat dit nodig is om vooraf skriftelike goedkeuring van die RegISTRATEUR te verkry;”.

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Wysiging van artikel 54 van Wet 94 van 1990, soos gewysig deur artikel 6 van Wet 42 van 1992 en gewysig deur artikels 12 en 25 van Wet 9 van 1993, Proklamasie No. 132 van 1994, artikel 36 van Wet 26 van 1994, artikel 5 van Wet 55 van 1996, artikel 36 van Wet 19 van 2003, artikel 13 van Wet 20 van 2007 en artikel 90 van Wet 17 van 2009

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24. Artikel 54 van die Hoofwet word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“**Amalgamasies, samesmeltings en reëlings**”;

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(b) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:

“(a) 'n [skikking,] amalgamasies, samesmelting of reëling bedoel in [Hoofstuk XIII] Hoofstuk 5 van die Maatskappywet en waarby 'n bank as een van die hoofpartye by die tersaaklike transaksie betrokke is; en”;

(c) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

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“'n [Skikking, amalgamasie] Amalgamasie of samesmelting of [reëling, of] 'n reëling vir die oordrag van bates, laste of bates en laste, bedoel in subartikel (1) of (1B), uitgesonderd 'n ander oordrag as 'n oordrag bedoel in subartikel (2)(c) of (2A)(c), is onderworpe—”;

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(d) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) 'n Kennisgewing dat 'n besluit ter bekratiging, soos beoog in subartikel (4), van 'n [skikking,] amalgamasie of samesmelting of [reëling, of] van 'n reëling vir die oordrag van bates, laste of bates en laste in subartikel (1) of (1B) bedoel, geneem is, moet deur elkeen van die betrokke banke of, in die geval van 'n transaksie waarby die oordrag van bates, laste of bates en laste van een bank aan 'n ander bank of 'n persoon bewerkstellig word soos beoog in subartikel (2)(c) of (2A)(c), deur die betrokke oordraggewende bank en die bank of persoon wat oordrag van sodanige bates, laste of bates en laste neem, aan die RegISTRATEUR gestuur word, tesame met 'n afskrif van sodanige besluit en

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die bedinge en voorwaardes van die betrokke ooreenkoms of reëling wat behoorlik deur die voorsitter van die vergadering waarop dié besluit geneem is en deur die sekretaris van die betrokke bank of persoon gesertifiseer is, en na ontvangs van sodanige kennisgewings van al die partye by die betrokke ooreenkoms of reëling moet die RegISTRATEUR daardie kennisgewings registreer.”;

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“(5) 'n Kennisgewing dat 'n besluit ter bekratiging, soos beoog in subartikel (4), van 'n [skikking,] amalgamasie of samesmelting of [reëling, of] van 'n reëling vir die oordrag van bates, laste of bates en laste in subartikel (1) of (1B) bedoel, geneem is, moet deur elkeen van die betrokke banke of, in die geval van 'n transaksie waarby die oordrag van bates, laste of bates en laste van een bank aan 'n ander bank of 'n persoon bewerkstellig word soos beoog in subartikel (2)(c) of (2A)(c), deur die betrokke oordraggewende bank en die bank of persoon wat oordrag van sodanige bates, laste of bates en laste neem, aan die RegISTRATEUR gestuur word, tesame met 'n afskrif van sodanige besluit en die bedinge en voorwaardes van die betrokke ooreenkoms of reëling wat behoorlik deur die voorsitter van die vergadering waarop dié besluit geneem is en deur die sekretaris van die betrokke bank of persoon gesertifiseer is, en na ontvangs van sodanige kennisgewings van al die partye by die betrokke ooreenkoms of reëling moet die RegISTRATEUR daardie kennisgewings registreer.”;

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- (e) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
“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—”;
- (f) by the substitution in subsection (8) for the words following paragraph (ii) of the following words:
“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.”;
- (g) by the substitution in subsection (8A) for the words following paragraph (b) of the following words:
“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.”;
- (h) by the deletion of subsection (10);
- (i) by the substitution in subsection (11) for paragraphs (a) and (b) of the following paragraphs, respectively:
(a) [Chapter XVA] Chapter 5 of the Companies Act; or
(b) the [Securities Regulation Code on Take-overs and Mergers published by Government Notice No. R.29 dated 18 January 1991, and any amendment thereof; or] Fundamental Transactions and Takeover Regulations contained in Chapter 5 of the Companies Regulations, 2011, published under Government Notice R. 351 in Government Gazette No. 34239 on 26 April 2011,”;
- (j) by the deletion in subsection (11) of paragraph (c); and
- (k) by the substitution in subsection (11) for the words following paragraph (c) and preceding paragraph (ii) of the following words:
“neither the [Securities Regulation] Takeover Regulation Panel established [by section 440B] in terms of section 196 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

25. 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”.

- (e) deur in subartikel (8) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Die **[Registrateur van Maatskappye] Kommissaris**, elke Meester van die Hoë Hof en elke beampete of persoon wat aan die hoof staan van ’n registrasiekantoor van aktes of enige ander kantoor, indien daar, in die kantoor van so ’n **[Registrateur] Kommissaris**, Meester, beampete of persoon of enige register onder die beheer van so ’n **[Registrateur] Kommissaris**, Meester, beampete of persoon—”;

- (f) deur in subartikel (8) die woorde wat op paragraaf (ii) volg deur die volgende woorde te vervang:

“en by voorlegging aan so ’n **[Registrateur] Kommissaris**, Meester, beampete of persoon van ’n tersaaklike akte, verbandakte, aandeel, effek, skuldbrief, sertifikaat, aanstellingsbrief, lisensie of ander stuk, die endossemente daarop aanbring en die veranderings in die registers van so ’n **[Registrateur] Kommissaris**, Meester, beampete of persoon aanbring wat nodig is om die oordrag van die betrokke goed, verband of ander reg, aandeel, effek, skuldbrief, verhandelbare sekuriteit, of lisensie en van enige regte daarkragtens aan die geamalgameerde bank of, na gelang van die geval, aan die bank of persoon wat oordrag van bedoelde onderhawige bates, laste of bates en laste geneem het, te boekstaaf.”;

- (g) deur in subartikel (8A) die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:

“by voorlegging aan die **[Registrateur van Maatskappye] Kommissaris**, of die Meester, beampete of persoon bedoel in subartikel (8), na gelang van die geval, van ’n skriftelike bevestiging deur die Registrateur van Banke dat die Minister op aanbeveling van laasgenoemde Registrateur en na oorleg met die Kommissaris van die Suid-Afrikaanse Inkomstediens tot die kwytskelding van sodanige belasting of gelde toegestem het.”;

- (h) deur subartikel (10) te skrap;

- (i) deur paragrawe (a) en (b) in subartikel (11) onderskeidelik deur die volgende paragrawe te vervang:

“(a) Hoofstuk **[XVA] 5** van die Maatskappywet; of
(b) die **[Sekuriteitereguleringskode vir Oornames en Samesmeltings afgekondig by Goewermentskennisgewing No. R.29 gedateer 18 Januarie 1991, en enige wysiging daarvan; of]** Fundamentele Transaksies en Oornameregulasies vervat in Hoofstuk 5 van die Maatskappyregulasies, 2011, kragtens Goewermentskennisgewing R. 351 in Staatskoerant No. 34239 op 26 April 2011, gepubliseer.”;

- (j) deur paragraaf (c) in subartikel (11) te skrap; en

- (k) deur in subartikel (11) die woorde wat op paragraaf (c) volg en paragraaf (ii) voorafgaan deur die volgende woorde te vervang:

“mag nóg die Paneel oor **[Sekuriteiteregulerering] Oornameregulering** ingestel **[by artikel 440B]** ingevolge artikel 196 van die Maatskappywet nóg die uitvoerende komitee of uitvoerende direkteur daarvan enige uitklaring, beslissing of uitsluitsel verstrek ten opsigte van ’n aangeleentheid wat ingeval die bepalings van **[bogenoemde Kode of Reëls] Hoofstuk 5 van die Maatskappywet en die Oornameregulasies** aan daardie Paneel, komitee of uitvoerende direkteur voorgelê word, en welke aangeleentheid betrekking het op ’n geaffekteerde transaksie, soos omskryf in artikel **[440A(1)] 117** van die Maatskappywet, wat—”.

Wysiging van artikel 55 van Wet 94 van 1990

25. Artikel 55 van die Hoofwet word hierby gewysig deur paragraaf (a) deur die volgende paragraaf te vervang:

“(a) ten opsigte waarvan groeps- finansiële jaarstate opgestel moet word ingevolge **[artikel 288(1)] artikel 30** van die Maatskappywet; en”.

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Amendment of section 56 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993 and section 37 of Act 19 of 2003

- 26.** Section 56 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
“Alteration of memorandum of incorporation, and change of name”; 5
 - (b) by the substitution for subsection (1) of the following subsection:
 - (1) No—
 - (a) alteration, in terms of section [55, 56 or 62] 16 of the Companies Act, of the memorandum of [**association or articles of association**] incorporation of a company registered as a bank; or 10
 - (b) change, in terms of section [44] 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 such alteration or change has been approved in writing by the Registrar prior to the registration thereof by the [**Registrar of Companies**] 15 Commissioner.”;
 - (c) by the substitution for 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.”; 20
 - (d) by 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”; and 25
 - (e) by 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.”. 30

Substitution of section 57 of Act 94 of 1990, as amended by section 25 of Act 9 of 1993 and section 38 of Act 19 of 2003

- 27.** The following section is hereby substituted for section 57 of the principal Act:
- “Alteration of memorandum of [association or articles of association] incorporation in accordance with direction of Registrar”** 40
- 57.** (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 [**association or articles of association**] incorporation as the Registrar may deem desirable in order to remove anomalies or undesirable divergences in the activities of different banks. 45
- (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. 50
- (3) If a bank refuses or fails to alter its memorandum of [**association or articles of association**] 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.”. 55

Wysiging van artikel 56 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993 en artikel 37 van Wet 19 van 2003

- 26.** Artikel 56 van die Hoofwet word hierby gewysig—
- (a) deur die opschrif deur die volgende opschrif te vervang:
“Wysiging van akte van oprigting, en verandering van naam”; 5
- (b) deur subartikel (1) deur die volgende subartikel te vervang:
“(1) Geen—
(a) wysiging, ingevolge artikel [55, 56 of 62] 16 van die Maatskappywet, van die akte van oprigting [of statute] van ’n maatskappy wat as ’n bank geregistreer is; of 10
(b) verandering, ingevolge artikel [44] 16(8) van die Maatskappywet, van die naam van so ’n maatskappy, het vir die doeleindes van hierdie Wet of enige ander wet regskrag nie tensy daardie wysiging of verandering skriftelik deur die Registrateur goedgekeur is voor die registrasie daarvan deur die [Registrateur van Maatskappye] Kommissaris.”;
- (c) deur subartikel (4) deur die volgende subartikel te vervang:
“(4) ’n Bank moet binne 21 dae na die registrasie deur die [Registrateur van Maatskappye] Kommissaris van ’n wysiging van sy akte van oprigting [of statute] of ’n verandering van sy naam, aan die Registrateur ’n gewaarmerkte afskrif verstrek van die spesiale besluit waarin die wysiging of naamsverandering, na gelang van die geval, uiteengesit word.”;
- (d) deur paragraaf (a) in subartikel (5) deur die volgende paragraaf te vervang:
“(a) in die geval van ’n spesiale besluit betreffende ’n wysiging van ’n akte van oprigting [of van statute], die betrokke wysiging registreer en aan die betrokke bank ’n sertifikaat uitrek ten effekte dat genoemde wysiging deur die Registrateur geregistreer is met ingang van ’n datum in die sertifikaat vermeld; of”; en 25
- (e) deur subartikel (7) deur die volgende subartikel te vervang:
“(7) Die bepalings van subartikels (1), (2) en (3) is nie van toepassing nie met betrekking tot ’n wysiging van ’n bank se akte van oprigting [of statute] ooreenkomsdig ’n lasgewing deur die Registrateur kragtens hierdie Wet.”.

Vervanging van artikel 57 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993 en artikel 38 van Wet 19 van 2003 35

- 27.** Artikel 57 van die Hoofwet word hierby deur die volgende artikel vervang:

“Wysiging van akte van oprigting [of statute] ooreenkomsdig lasgewing van Registrateur

- 57.** (1) Die Registrateur kan te eniger tyd ’n bank skriftelik gelas om die wysiging, wat nie met ’n bepaling van hierdie Wet onbestaanbaar is nie, aan sy akte van oprigting [of statute] aan te bring wat die Registrateur wenslik ag ten einde ongerymdhede of ongewenste afwykings in die bedrywigheid van verskillende banke te verwijder. 40
(2) ’n Wysiging kragtens subartikel (1) deur die Registrateur gelas, moet voor of op die dag van die eerste algemene jaarvergadering, bedoel in [artikel 179] artikel 61(7) van die Maatskappywet, wat volg op die datum van sodanige lasgewing, aan die aandeelhouers van die bank vir oorweging voorgelê word. 45
(3) Indien ’n bank weier of versuim om sy akte van oprigting [of statute] te wysig ooreenkomsdig ’n lasgewing van die Registrateur kragtens subartikel (1), kan die Registrateur ’n afskrif van daardie lasgewing aan die [Registrateur van Maatskappye] Kommissaris voorlê, waarop daardie Registrateur met die voorgestelde wysiging daarin vervat ooreenkomsdig die Maatskappywet moet handel asof dit vervat is in ’n spesiale besluit wat deur die betrokke bank aangeneem en deur daardie bank ooreenkomsdig daardie Wet aan die [Registrateur van Maatskappye] Kommissaris voorgelê is.”. 50
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Substitution of section 58 of Act 94 of 1990, as substituted by section 37 of Act 26 of 1994

28. The following section is hereby substituted for section 58 of the principal Act:

“Information regarding directors and officers

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58. 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 of the Companies Act].”.

Amendment of section 60 of Act 94 of 1990, as substituted by section 1 of Act 81 of 1991 and amended by section 25 of Act 9 of 1993, section 39 of Act 26 of 1994, 10 section 40 of Act 19 of 2003 and section 15 of Act 20 of 2007

29. (1) Section 60 of the principal Act is hereby amended—

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

“**(1) [Each]** Without derogating from the application of sections 77 and 78 of the Companies Act, 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) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:

“**[Each]** Without derogating from the application of sections 77 and 78 of the Companies Act, each director, chief executive officer and executive officer of a bank owes a duty towards the bank to—”;

(c) by 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.”;

(d) by the addition in subsection (5) to paragraph (a) of the following proviso:

“: 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 is stayed”; and

(e) by the addition of the following subsection:

“(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 that person or employee has been appointed as a director of that bank or controlling company in terms of section 66 of the Companies Act.”.

(2) The provisions of subsection (1)(e) come into force on a date 12 months after the date on which this Act takes effect.

Amendment of section 61 of Act 94 of 1990, as amended by section 14 of Act 9 of 1993 and section 42 of Act 19 of 2003

30. Section 61 of the principal Act is hereby amended—

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

“Notwithstanding the provisions of [Chapter X] Part C of Chapter 3 of the Companies Act—”;

Vervanging van artikel 58 van Wet 94 van 1990, soos vervang deur artikel 37 van Wet 26 van 1994

28. Artikel 58 van die Hoofwet word hierby deur die volgende artikel vervang:

“Inligting aangaande direkteure en beampies

58. Elke bank en elke beherende maatskappy moet binne 30 dae na sy registrasie as sodanig, die Registrateur voorsien van ’n afskrif van sy [register] rekord van direkteure en beampies [**bedoel in artikel 215 van die Maatskappywet**].”.

Wysiging van artikel 60 van Wet 94 van 1990, soos vervang deur artikel 1 van Wet 81 van 1991 en gewysig deur artikel 25 van Wet 9 van 1993, artikel 39 van Wet 26 van 1994, artikel 40 van Wet 19 van 2003 en artikel 15 van Wet 20 van 2007 10

29. (1) Artikel 60 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) [Elke] Sonder om afbreuk te doen aan die toepassing van artikels 77 en 78 van die Maatskappywet, het elke direkteur, hoof- uitvoerende beampte en uitvoerende beampte van ’n bank [**het**] ’n vertrouensplig en ’n sorgsaamheids- en kundigheidsplig teenoor die bank waarvan so ’n persoon ’n direkteur, hoof- uitvoerende beampte of uitvoerende beampte is.”;

(b) deur in subartikel (1A) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“[Elke] Sonder om afbreuk te doen aan die toepassing van artikels 77 en 78 van die Maatskappywet, het elke direkteur, hoof- uitvoerende beampte en uitvoerende beampte van ’n bank [**het**] ’n plig teenoor die bank om—”;

(c) deur paragraaf (a) in subartikel (1B) deur die volgende paragraaf te vervang:

“(a) Die Registrateur kan ingevolge artikel 77 van die Maatskappywet of artikel 424 van die Maatskappywet, 1973 (Wet No. 61 van 1973), ’n aksie instel teen enige direkteur, hoof- uitvoerende beampte of uitvoerende beampte van ’n bank wat wetens deelgeneem het aan die uitoefening van die bedryf van die bank op die wyse wat in daardie artikel beoog word.”;

(d) deur in subartikel (5) die volgende voorbehoudsbepaling tot paragraaf (a) by te voeg:

“: Met dien verstande dat die Registrateur die skriftelike kennisgewing na die betrokke bank kan terugstuur op grond daarvan dat dit onvolledig is of dat dit ’n fout in het, in welke geval die vereiste vir die Registrateur om binne ’n tydperk van 20 dae teen die aanstelling beswaar te maak, opgeskort word”; en

(e) deur die volgende subartikel by te voeg:

“(8) ’n Bank of beherende maatskappy stel nie enige persoon in ’n posisie van ’n direkteur aan nie, of verwys nie na ’n werknemer as ’n direkteur nie, tensy daardie persoon of werknemer ingevolge artikel 66 van die Maatskappywet as ’n direkteur van daardie bank of beherende maatskappy aangestel is.”.

(2) Die bepalings van subartikel (1)(e) word van krag op ’n datum 12 maande na die datum waarop hierdie Wet in werking tree.

Wysiging van artikel 61 van Wet 94 van 1990, soos gewysig deur artikel 14 van Wet 9 van 1993 en artikel 42 van Wet 19 van 2003

30. Artikel 61 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Ondanks die bepalings van **[Hoofstuk X]** Deel C van Hoofstuk 3 van die Maatskappywet—”;

- (b) by 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) by the substitution in subsection (3)(b) for subparagraph (iii) of the following subparagraph:
“(iii) is under investigation by the [Public Accountants’ and Auditors’ Board] Independent Regulatory Board for Auditors; or”; and
- (d) by 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.”.

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

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

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

Amendment of section 63 of Act 94 of 1990, as amended by section 7 of Act 42 of 1992, sections 15 and 25 of Act 9 of 1993, section 40 of Act 26 of 1994, section 43 of Act 19 of 2003 and section 16 of Act 20 of 2007

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32. Section 63 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of 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; and”.

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Amendment of section 64 of Act 94 of 1990, as substituted by section 17 of Act 20 of 2007

33. Section 64 of the principal Act is hereby amended—

(a) by the deletion in subsection (2) of the word “and” at the end of paragraph (a) and the insertion after paragraph (a) of the following paragraphs:

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“(aA) in accordance with section 90 of the Companies Act, nominate a registered auditor who is independent of the bank or controlling company for appointment as an auditor of the bank or controlling company, as the case may be;
(aB) determine the terms of engagement of, and the fees to be paid to, the auditor;
(aC) 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;
(aD) 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 shall not provide to the bank or controlling company, or a related company as defined in the Companies Act;

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- (b) deur subartikel (2) deur die volgende subartikel te vervang:
“(2) ’n Bank of ’n beherende maatskappy moet binne 30 dae na die aanstelling ooreenkomsdig die bepalings van **[Hoofstuk X] Deel C van Hoofstuk 3** van die Maatskappywet van iemand as ouditeur daarvan, by die Registrateur op die voorgeskrewe vorm aansoek doen om die Registrateur se goedkeuring van sodanige aanstelling.”;
- (c) deur subparagraph (iii) in subartikel (3)(b) deur die volgende subparagraph te vervang:
“(iii) deur die **[Openbare Rekenmeesters- en Ouditeursraad] Onafhanklike Reguleringsraad vir Ouditeure** ondersoek word; of”; en
- (d) deur subartikel (5) deur die volgende subartikel te vervang:
“(5) Iemand wat kragtens subartikel (4) as ouditeur van ’n bank aangestel word, word by die toepassing van **[Hoofstuk X] Deel C van Hoofstuk 3** van die Maatskappywet geag op die onmiddellik voorafgaande algemene jaarvergadering van die bank aldus as ouditeur aangestel te gewees het.”.

Wysiging van artikel 62 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993

31. Artikel 62 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Indien ’n bank om enige rede nalaat om ’n ouditeur aan te stel, kan die Registrateur, ondanks die bepalings van artikels **[269(4) en 271(1)] 90 en 91** van die Maatskappywet, die nodige aanstelling doen.”.

Wysiging van artikel 63 van Wet 94 van 1990, soos gewysig deur artikel 7 van Wet 42 van 1992, artikels 15 en 25 van Wet 9 van 1993, artikel 40 van Wet 26 van 1994, artikel 43 van Wet 19 van 2003 en artikel 16 van Wet 20 van 2007

32. Artikel 63 van die Hoofwet word hierby gewysig deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:

“(a) moet, wanneer so ’n ouditeur ingevolge artikel 20(5)(b) van eersgenoemde Wet aan die **[Raad op Openbare Rekenmeesters en Ouditeurs] Onafhanklike Reguleringsraad vir Ouditeure** afskrifte van die verslag, erkenning van ontvangs en antwoord en die ander besonderhede bedoel in daardie artikel verstrek met betrekking tot ’n onreëlmaticiteit of vermeende onreëlmaticiteit by die bedryf van die sake van die bank waarvoor so ’n ouditeur as ouditeur aangestel is, ook aan die Registrateur sodanige afskrifte en besonderhede verstrek; en”.

Wysiging van artikel 64 van Wet 94 van 1990, soos gewysig deur artikel 17 van Wet 20 van 2007

33. Artikel 64 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (2) die woord “en” aan die einde van paragraaf (a) te skrap en die volgende paragrawe na paragraaf (a) in te voeg:

“(aA) ooreenkomsdig artikel 90 van die Maatskappywet, ’n geregistreerde ouditeur benoem wat onafhanklik van die bank of beherende maatskappy is vir aanstelling as ’n ouditeur van die bank of beherende maatskappy, na gelang van die geval;
(aB) die aanstellingsvooraardes van, en die gelde wat betaal moet word aan, die ouditeur bepaal;
(aC) verseker dat die aanstelling van die ouditeur voldoen aan die bepalings van die Maatskappywet en enige ander wetgewing wat op die aanstelling van ouditeure betrekking het;
(aD) behoudens die bepalings van die Maatskappywet, die aard en omvang van enige nie-ouditdienste bepaal wat die ouditeur aan die bank of beherende maatskappy, na gelang van die geval, kan lewer, of wat die ouditeur nie aan die bank of beherende maatskappy, of ’n verwante maatskappy soos in die Maatskappywet omskryf, mag lewer nie;

<p>(aE) pre-approve any proposed agreement with the auditor for the provision of non-audit services to the bank or controlling company, as the case may be;</p> <p>(aF) prepare a report, to be included in the annual financial statements for that financial year—</p> <ul style="list-style-type: none"> (i) describing how the audit committee carried out its functions; (ii) 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 (iii) commenting on the financial statements, the accounting practices and the internal financial control of the bank or the controlling company, as the case may be; <p>(aG) receive and shall appropriately deal 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—</p> <ul style="list-style-type: none"> (i) the accounting practices and internal audit of the bank or controlling company; (ii) the content or auditing of the financial statements of the bank or controlling company; (iii) the internal financial controls of the bank or controlling company; or (iv) any other related matter; <p>(aH) make submissions to the board of directors on any matter concerning the accounting policies of, financial control of, records of and reporting by the bank or controlling company;</p> <p>(aI) perform any other function determined by the board of directors, 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; and”;</p>	5
<p>(b) by the insertion after subsection (2) of the following subsections:</p> <p>“(2A) 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: Provided that 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.</p> <p>(2B) In considering whether, for the purposes of subsections (2)(aA) and (2A), a registered auditor is independent of a company, the audit committee of that company must—</p> <p>(a) ascertain whether or not that auditor receives any direct or indirect remuneration or other benefit from the bank or controlling company, except—</p> <ul style="list-style-type: none"> (i) as auditor; or (ii) for rendering such other services to the bank or controlling company as are permitted in terms of subsection (6)(d); <p>(b) consider whether or not the auditor’s independence may have been prejudiced—</p> <ul style="list-style-type: none"> (i) as a result of any— <ul style="list-style-type: none"> (aa) previous appointment as auditor; or (bb) consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and (ii) by taking into account any other criteria relating to independence or conflict of interest that are prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of the bank or controlling company and, if the 	30
<p>“(2A) 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: Provided that 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.</p> <p>(2B) In considering whether, for the purposes of subsections (2)(aA) and (2A), a registered auditor is independent of a company, the audit committee of that company must—</p> <p>(a) ascertain whether or not that auditor receives any direct or indirect remuneration or other benefit from the bank or controlling company, except—</p> <ul style="list-style-type: none"> (i) as auditor; or (ii) for rendering such other services to the bank or controlling company as are permitted in terms of subsection (6)(d); <p>(b) consider whether or not the auditor’s independence may have been prejudiced—</p> <ul style="list-style-type: none"> (i) as a result of any— <ul style="list-style-type: none"> (aa) previous appointment as auditor; or (bb) consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and (ii) by taking into account any other criteria relating to independence or conflict of interest that are prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of the bank or controlling company and, if the 	35
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<p>“(2A) 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: Provided that 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.</p> <p>(2B) In considering whether, for the purposes of subsections (2)(aA) and (2A), a registered auditor is independent of a company, the audit committee of that company must—</p> <p>(a) ascertain whether or not that auditor receives any direct or indirect remuneration or other benefit from the bank or controlling company, except—</p> <ul style="list-style-type: none"> (i) as auditor; or (ii) for rendering such other services to the bank or controlling company as are permitted in terms of subsection (6)(d); <p>(b) consider whether or not the auditor’s independence may have been prejudiced—</p> <ul style="list-style-type: none"> (i) as a result of any— <ul style="list-style-type: none"> (aa) previous appointment as auditor; or (bb) consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and (ii) by taking into account any other criteria relating to independence or conflict of interest that are prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of the bank or controlling company and, if the 	45
<p>“(2A) 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: Provided that 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.</p> <p>(2B) In considering whether, for the purposes of subsections (2)(aA) and (2A), a registered auditor is independent of a company, the audit committee of that company must—</p> <p>(a) ascertain whether or not that auditor receives any direct or indirect remuneration or other benefit from the bank or controlling company, except—</p> <ul style="list-style-type: none"> (i) as auditor; or (ii) for rendering such other services to the bank or controlling company as are permitted in terms of subsection (6)(d); <p>(b) consider whether or not the auditor’s independence may have been prejudiced—</p> <ul style="list-style-type: none"> (i) as a result of any— <ul style="list-style-type: none"> (aa) previous appointment as auditor; or (bb) consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and (ii) by taking into account any other criteria relating to independence or conflict of interest that are prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of the bank or controlling company and, if the 	50
<p>“(2A) 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: Provided that 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.</p> <p>(2B) In considering whether, for the purposes of subsections (2)(aA) and (2A), a registered auditor is independent of a company, the audit committee of that company must—</p> <p>(a) ascertain whether or not that auditor receives any direct or indirect remuneration or other benefit from the bank or controlling company, except—</p> <ul style="list-style-type: none"> (i) as auditor; or (ii) for rendering such other services to the bank or controlling company as are permitted in terms of subsection (6)(d); <p>(b) consider whether or not the auditor’s independence may have been prejudiced—</p> <ul style="list-style-type: none"> (i) as a result of any— <ul style="list-style-type: none"> (aa) previous appointment as auditor; or (bb) consultancy, advisory or other work undertaken by the auditor for the bank or controlling company; and (ii) by taking into account any other criteria relating to independence or conflict of interest that are prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of the bank or controlling company and, if the 	55

<p>(aE) enige voorgestelde ooreenkoms met die ouditeur vir die verskaffing van nie-ouditdienste aan die bank of beherende maatskappy, na gelang van die geval, vooraf goedkeur;</p> <p>(aF) 'n verslag voorberei vir insluiting in die jaarlikse finansiële state vir die boekjaar—</p> <ul style="list-style-type: none"> (i) wat beskryf hoe die auditkomitee sy werksaamhede uitgevoer het; (ii) wat stel of die auditkomitee oortuig is dat die ouditeur onafhanklik was van die bank of die beherende maatskappy, na gelang van die geval; en (iii) wat kommentaar lewer oor die finansiële state, die rekeningkundige praktyke en die interne finansiële beheer van die bank of die beherende maatskappy, na gelang van die geval; <p>(aG) enige bekommernisse of klagtes ontvang en dit gepas hanteer, hetsy dit ontvang is van binne of buite die bank of beherende maatskappy, na gelang van die geval, of uit eie beweging, in verband met—</p> <ul style="list-style-type: none"> (i) die rekeningkundige praktyke en interne audit van die bank of beherende maatskappy; (ii) die inhoud of audit van die finansiële state van die bank of beherende maatskappy; (iii) die interne finansiële kontroles van die bank of beherende maatskappy; of (iv) enige ander verwante aangeleentheid; <p>(aH) vertoë aan die raad van direkteure rig oor enige aangeleentheid in verband met die rekeningkundige beleid van, finansiële beheer van, rekords van en verslagdoening deur die bank of beherende maatskappy;</p> <p>(aI) enige ander werksaamheid verrig soos deur die raad van direkteure bepaal, met inbegrip van die ontwikkeling en toepassing van 'n beleid en plan vir 'n sistematiese, gedissiplineerde benadering om die doeltreffendheid van risikobestuur, beheer, en bestursprosesse binne die bank of beherende maatskappy te <u>evalueer en te verbeter; en</u>";</p> <p>(b) deur die volgende subartikels na subartikel (2) in te voeg:</p> <p style="padding-left: 2em;">“(2A) Niks in hierdie artikel belet die aanstelling deur 'n maatskappy by sy algemene jaarvergadering van 'n ander ouditeur as die een wat deur die auditkomitee benoem is nie: Met dien verstande dat indien so 'n ouditeur aangestel word, die aanstelling slegs geldig is indien die auditkomitee oortuig is dat die voorgestelde ouditeur onafhanklik van die maatskappy is.</p> <p style="padding-left: 2em;">(2B) Wanneer oorweeg word of, vir die doeleinades van subartikels (2)(aA) en (2A), 'n geregistreerde ouditeur onafhanklik van 'n maatskappy is, moet die auditkomitee van daardie maatskappy—</p> <p style="padding-left: 3em;">(a) vasstel of daardie ouditeur enige direkte of indirekte besoldiging of ander voordeel van die bank of beherende maatskappy ontvang, buiten—</p> <ul style="list-style-type: none"> (i) as ouditeur; of (ii) vir die verskaffing van sodanige ander dienste aan die bank of beherende liggaam soos ingevolge subartikel (6)(d) toegelaat; <p style="padding-left: 3em;">(b) oorweeg of die ouditeur se onafhanklikheid aangetas kon gewees het al dan nie—</p> <ul style="list-style-type: none"> (i) as gevolg van enige— <ul style="list-style-type: none"> (aa) vorige aanstelling as ouditeur; of (bb) konsultasie, raadgewende of ander werk of beherende maatskappy deur die ouditeur vir die bank onderneem; en (ii) deur enige ander kriteria oor onafhanklikheid of botsing van belangtegnologie in te neem wat deur die Onafhanklike Reguleringsraad vir Ouditeure ingestel is deur die ‘Auditing Profession Act, 2005’ (Wet No. 26 van 2005), voorgeskryf is ten opsigte van die bank of beherende maatskappy en, indien die bank of 	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>
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<p>bank or controlling company is a member of a group of companies, any other company within that group.</p> <p>(2C) Neither the appointment nor the duties of an audit committee reduce the powers and duties of the board or the directors of the company, except in respect of the appointment, fees and terms of engagement of the auditor.</p> <p>(2D) A company shall pay all expenses reasonably incurred by its audit committee, including the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of any of its functions.”; and</p> <p>(c) by the insertion after subsection (3) of the following subsection:</p> <p>“(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.”.</p>	5 10 15
Insertion of section 64C in Act 94 of 1990	

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

“Remuneration committee

64C. (1) Subject to subsection (3), 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 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) to conduct 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; and
- (j) to consult shareholders.

(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.”.

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beherende maatskappy 'n lid van 'n groep maatskappye is,
enige ander maatskappy in daardie groep.

(2C) Nog die aanstelling nog die pligte van 'n auditkomitee verminder
die bevoegdhede en pligte van die raad of die direkteure van die
maatskappy, buiten ten opsigte van die aanstelling, gelde en
aanstellingsvoorwaardes van die ouditeur.

(2D) 'n Maatskappy betaal alle uitgawes redelik deur sy auditkomitee
aangegaan, met inbegrip van die gelde van enige konsultant of spesialis
wat deur die auditkomitee aangestel is om met die verrigting van enige
van sy werkzaamhede te help.”; en

(c) deur die volgende subartikel na subartikel (3) in te voeg:

“(3A) Ondanks die bepalings van die Maatskappywet, moet die raad
van 'n bank of beheerliggaam, na gelang van die geval, 'n persoon
aanstel om enige vakature op die auditkomitee binne 90 besigheidsdae
na die vakature ontstaan, te vul.”.

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Invoeging van artikel 64C in Wet 94 van 1990

34. Die volgende artikel word hierby na artikel 64B in die Hoofwet ingevoeg:

“Besoldigingskomitee

64C. (1) Behoudens subartikel (3), moet die raad van direkteure van 'n
bank of beherende maatskappy 'n besoldigingskomitee instel, bestaande uit
nie-uitvoerende direkteure van die bank of beherende maatskappy.

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(2) Die werkzaamhede van die vergoedingskomitee is om die raad van
direkteure by te staan—

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(a) om toesig te hou oor die ontwerp en bedryf van die besoldigingstelsel;
(b) om bevoegde en onafhanklike oordeel uit te oefen oor besoldigings-
beleid, -prosesse en -praktyke en die aansporings wat geskep is om
risiko, kapitaal en likwiditeit te bestuur;

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(c) om praktyke in die betaling van besoldiging te evalueer vir potensiële
toekomstige inkomstes ten opsigte waarvan die tyd en waarskyn-
likheid van realisering nog onseker is;

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(d) om te verseker dat alle toepaslike besluite verenigbaar is met 'n
assessering van die bank of beherende maatskappy se finansiële
toestand en toekomsvoortsigte;

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(e) om nou met die bank of beherende maatskappy se risiko- en kapitaal-
bestuurkomitee saam te werk in die evaluering van die aansporings
wat deur die besoldigingsisteem geskep is;

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(f) om te verseker dat die bank of beherende maatskappy se besoldigings-
beleid, -prosesse en -procedures voldoen aan die toepaslike vereistes
in die Regulasies vermeld en sodanige verdere vereistes wat skriftelik
deur die Registrateur vermeld kan word;

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(g) om 'n jaarlikse besoldigingsoorsig onafhanklik van bestuur te doen,
welke oorsig, onder andere, die bank of beheermaatskappy se
voldoening aan die Regulasies en sodanige verdere vereistes wat
skriftelik deur die Registrateur bepaal kan word, te assesseer;

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(h) om te verseker dat die besoldiging van werknemers in die risikobeheer
en voldoeningsfunksies onafhanklik van alle toepaslike besigheids-
areas bepaal word, en genoegsaam is om gekwalifiseerde en ervare
personeel te lok;

(i) om te verseker dat prestasiemaatstawwe hoofsaaklik op die behaling
van deur die raad aanvaarde oogmerke van die bank of beherende
maatskappy en sy toepaslike werkzaamhede, gebaseer is; en

(j) om met aandeelhouers oorleg te pleeg.

(3) Die Registrateur kan die raad van direkteure van 'n bank by
skriftelike aansoek vrystel van die plig om 'n besoldigingskomitee ten
opsigte van 'n bank aan te stel indien die Registrateur oortuig is dat die
besoldigingskomitee wat ten opsigte van die betrokke beherende maat-
skappy aangestel is, bykomend tot sy verantwoordelikhede ten opsigte van
daardie beherende maatskappy, in staat is om ook die verantwoordelikhede
van 'n besoldigingskomitee van daardie bank bevredigend op te neem.”.

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

- 35.** Section 65 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs, respectively:
 - “(b) [gives] files a notice [to] with the [Registrar of Companies] Commissioner in terms of section [170(2)] 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] files in terms of section [216(2)] 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] files in terms of section [302(4)] 33 of the Companies Act, financial statements to the [Registrar of Companies] Commissioner; and
 - (b) by the substitution for 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] 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, section 42 of Act 26 of 1994, section 9 of Act 36 of 2000 and section 46 of Act 19 of 2003

- 36.** Section 68 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“Special provisions relating to winding-up [or judicial management] of bank”;
 - (b) by the insertion after subsection (2) of the following subsection:

“(2A) During the winding-up of a company which is a bank—

 - (a) 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 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*; and
 - (b) the Registrar or the Master or officer contemplated in paragraph (a) 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 concerned or the agent of such applicant and to the company concerned.”;
 - (c) by the deletion in subsection (3) of paragraph (a);
 - (d) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) of section 357 of the Companies Act, 1973 (Act No. 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] 80 of the Companies Act, 2008 (Act No. 71 of 2008), 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 [in terms of section 200] with the Commission established in terms of section 189 of the Companies Act, 2008, or the making of an order, be transmitted by that company to the officers and registrars

Wysiging van artikel 65 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993

35. Artikel 65 van die Hoofwet word hierby gewysig—

- (a) deur paragrawe (b), (c) en (d) in subartikel (1) onderskeidelik deur die volgende paragrawe te vervang:
“(b) ingevolge artikel [170(2)] 23(3)(b)(ii) van die Maatskappywet [kennis aan] ’n kennisgewing by die [Registrateur van Maatskappye gee] Kommissaris indien van enige beoogde verandering in die ligging van sy geregistreerde kantoor [of van sy posadres];
(c) ingevolge artikel [216(2)] 70(6) van die Maatskappywet ’n [opgawe] kennisgewing in daardie artikel bedoel betreffende sy direkteure [aan] by die [Registrateur van Maatskappye stuur] Kommissaris indien; of
(d) ingevolge artikel [302(4)] 33 van die Maatskappywet finansiële state [aan] by die [Registrateur van Maatskappye stuur] Kommissaris indien;”; en
(b) deur subartikel (2) deur die volgende subartikel te vervang:
“(2) ’n Bank of beherende maatskappy moet binne 30 dae na ’n algemene vergadering van aandeelhouers ’n afskrif van die notule wat ingevolge artikel [204] 24(3)(d) van die Maatskappywet ten opsigte van daardie vergadering gehou moet word, aan die Registrateur stuur.”.

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Wysiging van artikel 68 van Wet 94 van 1990, soos gewysig deur artikel 16 van Wet 9 van 1993, artikel 42 van Wet 26 van 1994, artikel 9 van Wet 36 van 2000 en artikel 46 van Wet 19 van 2003

36. Artikel 68 van die Hoofwet word hierby gewysig—

- (a) deur die opskrif deur die volgende opskrif te vervang:
“**Besondere bepalings met betrekking tot likwidasie [of geregtelike bestuur] van bank**”;
(b) deur die volgende subartikel na subartikel (2) in te voeg:
“(2A) Tydens die likwidasie van ’n maatskappy wat ’n bank is—
(a) moet ’n afskrif van enige besluit of aansoek om sodanige likwidasie, saam met al die gepaardgaande dokumentasie met inbegrip van elke verklaring wat die feite wat daarin gestel word bevestig, by die Registrateur en by die Meester ingedien word, of as daar geen Meester by die setel van die hof is nie, ’n beampete in ’n staatsdiens vir sodanige doeleinades deur die Meester by kennis in die Staatskoerant aangewys; en
(b) die Registrateur of die Meester of die beampete in paragraaf (a) bedoel kan enige feite by die Hof aanmeld wat deur sodanige Registrateur, Meester of beampete nagegaan is wat vir die Registrateur, Meester of beampete die uitstel van die verhoor of verwering van die aansoek deur die Hof, blyk te regverdig en moet ’n afskrif van daardie verslag na die betrokke aansoeker of die agent van sodanige aansoeker en aan die betrokke maatskappy versend.”;
(c) deur paragraaf (a) in subartikel (3) te skrap;
(d) deur paragraaf (b) in subartikel (3) deur die volgende paragraaf te vervang:
“(b) van artikel 357 van die Maatskappywet, 1973 (Wet No. 61 van 1973), word subartikel (3) van daardie artikel geag gewysig te gewees het om soos volg te lui:
“(3) ’n Afskrif van elke spesiale besluit vir die vrywillige likwidasie van ’n maatskappy wat ’n bank is, geneem kragtens artikel [349] 80 van die Maatskappywet, 2008 (Wet No. 71 van 2008), en van elke hofbevel ter wysiging of tersydestelling van die verrigtinge met betrekking tot die likwidasie, moet binne veertien dae na die besluit [ingevolge artikel 200] by die Kommissie ingestel ingevolge artikel 189 van die Maatskappywet, 2008, geregistreer is of die bevel gegee is, deur daardie maatskappy aan die beampetes en registrateurs in paragrawe (a), (b) en (c) van subartikel (1) vermeld,

- referred to in paragraph (a), (b) and (c) of subsection (1) as well as to the Registrar [of Banks].”; and
- (e) by the substitution in subsection (5) for the words following paragraph (b) of the following words:

“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)] 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.”.

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Amendment of section 69 of Act 94 of 1990, as amended by section 8 of Act 42 of 1992, section 17 of Act 9 of 1993, section 43 of Act 26 of 1994, section 6 of Act 55 of 1996, section 10 of Act 36 of 2000 and section 47 of Act 19 of 2003

37. Section 69 of the principal Act is hereby amended—

- (a) by 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 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 (2B) for paragraph (a) of the following paragraph:

“(a) subject to the supervision of the Registrar, conduct the management contemplated in subsection (2A)(a) in such a manner as the Registrar may deem to best promote the interests of the creditors of the bank concerned and of the banking sector as a whole and the rights of employees in accordance with relevant labour legislation;”;

- (c) the substitution in subsection (2C)(b) for the words preceding subparagraph (i) of the words:

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

- (d) 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 decision 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] 65 of the said Act and in terms of the bank’s memorandum of incorporation.”.

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Amendment of section 70 of Act 94 of 1990, as amended by section 9 of Act 42 of 1992, sections 18 and 25 of Act 9 of 1993, section 45 of Act 26 of 1994, section 12 of Act 36 of 2000, section 49 of Act 19 of 2003 and section 20 of Act 20 of 2007

38. Section 70 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:

“A bank of which the business does not include trading in financial instruments shall manage its affairs in such a way that, subject to the provisions of paragraph (b), the sum of its [primary and secondary capital and its primary and secondary] common equity tier 1 capital, additional tier 1 capital and tier 2 capital and its common equity tier 1

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deurgestuur word, sowel as aan die Registrateur [van Banke].”; en

- (e) deur in subartikel (5) die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:

“en die Registrateur, die Meester van die Hoë Hof, die voorlopige likwidateur of die likwidateur, onderskeidelik, moet, totdat die sake van die publieke maatskappy waarvan die registrasie as ’n bank aldus opgeskort, ingetrek of beëindig is, heeltemal gelikwideer is soos beoog in artikel [419(1)] 82(1) van die Maatskappyywet of totdat die likwidasie opgeskort of opgehef word by ’n bevel van ’n bevoegde hof, voortgaan om hul onderskeie bevoegdhede en pligte kragtens hierdie artikel of ingevolge die Maatskappyywet ten opsigte van die publieke maatskappy waarvan die registrasie as ’n bank aldus opgeskort, ingetrek of beëindig is, uit te oefen en te verrig asof sodanige opskorting, intrekking of beëindiging nie plaasgevind het nie.”.

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Wysiging van artikel 69 van Wet 94 van 1990, soos gewysig deur artikel 8 van Wet 42 van 1992, artikel 17 van Wet 9 van 1993, artikel 43 van Wet 26 van 1994, artikel 6 van Wet 55 van 1996, artikel 10 van Wet 36 van 2000 en artikel 47 van Wet 19 van 2003

37. Artikel 69 van die Hoofwet word hierby gewysig—

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- (a) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:

“(a) Indien ’n bank na die oordeel van die Registrateur nie in staat sal wees om deposito’s by die bank gemaak, terug te betaal wanneer die bank regtens verplig is om dit te doen nie of waarskynlik nie in staat sal wees om enige van die bank se ander verpligte na te kom nie, kan die Minister, indien hy of sy dit in die openbare belang wenslik ag, [met die skriftelike instemming van] deur die hoof- uitvoerende beampete of die voorsitter van die raad van direkteure van daardie bank schriftelik in kennis te stel, ’n kurator oor die bank aanstel.”;

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- (b) deur paragraaf (a) in subartikel (2B) deur die volgende paragraaf te vervang:

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“(a) moet, onderworpe aan die toesig van die Registrateur, die bestuur beoog in subartikel (2A)(a) behartig op die wyse wat die Registrateur ag die belang van die krediteure van die betrokke bank en van die banksektor in sy geheel en die regte van werknemers ooreenkomsdig die toepaslike arbeidswetgewing die beste bevorder;”;

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- (c) deur in subartikel (2C)(b) vir die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“behalwe in die omstandighede beoog in paragraaf (a) mag die kurator, ondanks die bepalings van artikel [228] 112 van die Maatskappyywet, nie—”; en

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- (d) deur paragraaf (f) in subartikel (3) deur die volgende paragraaf te vervang:

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“(f) in die loop van die kurator se bestuur van die betrokke bank, enige besluit te neem en uit te voer wat ingevolge die bepalings van die Maatskappyywet of die bank se akte van oprigting by wyse van ’n spesiale besluit beoog in artikel [199] 65 van genoemde Wet en ingevolge die bank se akte van oprigting geneem sou moes word;”.

Wysiging van artikel 70 van Wet 94 van 1990, soos gewysig deur artikel 9 van Wet 42 van 1992, artikels 18 en 25 van Wet 9 van 1993, artikel 45 van Wet 26 van 1994, artikel 12 van Wet 36 van 2000, artikel 49 van Wet 19 van 2003 en artikel 20 van Wet 20 van 2007

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38. Artikel 70 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (2)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

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“ ’n Bank waarvan die bedryf nie handel in finansiële instrumente insluit nie, moet sy sake so bestuur dat, behoudens die bepalings van paragraaf (b), die som van sy [primêre en sekondêre kapitaal en sy primêre en sekondêre] gewone ekwiteit eerste vlak kapitaal, addisionele eerste vlak kapitaal en tweede vlak kapitaal en sy gewone ekwiteit eerste vlak

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- unimpaired reserve funds, additional tier 1 unimpaired reserve funds and tier 2 unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—”;
- (b) by the substitution in subsection (2)(b)(i) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[primary share]** common equity tier 1 capital and **[primary]** common equity tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (c) by the substitution in subsection (2)(b)(ii) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[secondary]** additional tier 1 capital and **[secondary]** additional tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (d) by the deletion in subsection (2)(b) of the proviso to subparagraph (ii);
- (e) by the addition in subsection (2) to paragraph (b) of the following subparagraph:
- “(iii) the sum of the bank’s tier 2 capital and tier 2 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (aa) taken into account to an amount as may be prescribed; and
- (bb) calculated by deducting from the amount thereof such amounts as may be prescribed.”;
- (f) by the substitution in subsection (2A)(a) for the words preceding subparagraph (i) of the following words:
- “A bank of which the business consists solely of trading in financial instruments shall manage its affairs in such a way that, subject to the provisions of paragraph (b), the sum of its **[primary and secondary capital, its primary and secondary unimpaired reserve funds and its tertiary capital]** common equity tier 1 capital, additional tier 1 capital and tier 2 capital, and its common equity tier 1 unimpaired reserve funds, additional tier 1 unimpaired reserve funds and tier 2 unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—”;
- (g) by the substitution in subsection (2A)(b)(i) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[primary share]** common equity tier 1 capital and **[primary]** common equity tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (h) by the substitution in subsection (2A)(b)(ii) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[secondary]** additional tier 1 capital and **[secondary]** additional tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (i) by the deletion in subsection (2A)(b) of the proviso to subparagraph (ii);
- (j) by the substitution in subsection (2A)(b)(iii) for the words preceding item (aa) of the following words:
- “the sum of a bank’s **[tertiary]** tier 2 capital and tier 2 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (k) by the deletion in subsection (2A)(b) of the proviso to subparagraph (iii);
- (l) by the substitution in subsection (2A)(b) for subparagraph (iv) of the following subparagraph:
- “(iv) the total amount of allocated and qualifying **[secondary]** common equity tier 1 capital, allocated and qualifying **[secondary]** common equity tier 1 unimpaired reserve funds **[and tertiary capital]**,
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- onaangetaste reserwefondse, addisionele eerste vlak onaangetaste reserwefondse en tweede vlak onaangetaste reserwefondse in die Republiek op geen tydstip minder bedra nie as die grootste van—”;
- (b) deur in subartikel (2)(b)(i) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:
“moet die som van die bank se **[primère aandelekapitaal en primère gewone ekwiteit eerste vlak kapitaal en gewone ekwiteit eerste vlak onaangetaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;**
- (c) deur in subartikel (2)(b)(ii) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:
“moet die som van die bank se **[sekondêre] addisionele eerste vlak kapitaal en [sekondêre] addisionele eerste vlak onaangetaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;**
- (d) deur die voorbehoudsbepaling tot subparagraaf (ii) in subartikel (2)(b) te skrap;
- (e) deur die volgende paragraaf by paragraaf (b) in subartikel (2) te voeg:
“(iii) die som van die bank se eerste vlak kapitaal en tweede vlak onaangetaste reserwefondse word, in die berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—
(aa) in ag geneem tot ’n bedrag soos voorgeskryf; en
(bb) bereken deur sodanige bedrae wat voorgeskryf mag word van die bedrag daarvan af te trek;”;
- (f) deur in subartikel (2A)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
“ ’n Bank waarvan die bedryf uitsluitlik uit handel in finansiële instrumente bestaan, moet sy sake so bestuur dat, behoudens die bepalings van paragraaf (b), die som van sy **[primère en sekondêre kapitaal, sy primère en sekondêre onaangetaste reserwefondse en sy tersiêre kapitaal] gewone ekwiteit eerste vlak kapitaal, addisionele eerste vlak kapitaal en tweede vlak kapitaal, en sy gewone ekwiteit onaangetaste eerste vlak reserwefondse, addisionele eerste vlak onaangetaste reserwefondse en tweede vlak onaangetaste reserwefondse in die Republiek op geen tydstip minder bedra nie as die grootste van—”;**
- (g) deur in subartikel (2A)(b)(i) die woerde wat item (aa) voorafgaan deur die volgende woerde te vervang:
“moet die som van die bank se **[primère aandelekapitaal en primère gewone ekwiteit eerste vlak kapitaal en gewone ekwiteit eerste vlak onaangetaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;**
- (h) deur in subartikel (2A)(b)(ii) die woerde wat item (aa) vooraf gaan deur die volgende woerde te vervang:
“moet die som van die bank se **[sekondêre] addisionele eerste vlak kapitaal en [sekondêre] addisionele eerste vlak onaangetaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;**
- (i) deur die voorbehoudsbepaling tot subparagraaf (ii) in subartikel (2A)(b) te skrap;
- (j) deur in subartikel (2A)(b)(iii) die woerde wat item (aa) voorafgaan deur die volgende woerde te vervang:
“moet die som van die bank se **[tersiêre] tweede vlak kapitaal, en tweede vlak onaangetaste reserwefondse by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;**
- (k) deur die voorbehoudsbepaling tot subparagraaf (iii) in subartikel (2A)(b) te skrap;
- (l) deur subparagraaf (iv) in subartikel (2A)(b) deur die volgende subparagraaf te vervang:
“(iv) moet die totaalbedrag van toege wysde en kwalifiserende **[sekondêre] gewone ekwiteit eerste vlak kapitaal, toege wysde en kwalifiserende [sekondêre] gewone ekwiteit eerste vlak onaangetaste**

- allocated and qualifying additional tier 1 capital, allocated and qualifying additional tier 1 unimpaired reserve funds, allocated and qualifying tier 2 capital and allocated and qualifying tier 2 unimpaired reserve funds shall be determined as prescribed.”;
- (m) by the substitution in subsection (2B)(a) for the words preceding subparagraph (i) of the following words:
- “A bank of which the business includes trading in financial instruments shall manage its affairs in such a way that, subject to the provisions of paragraph (b), the sum of its **[primary and secondary capital, its primary and secondary unimpaired reserve funds and its tertiary capital]** common equity tier 1 capital, additional tier 1 capital and tier 2 capital and its common equity tier 1 unimpaired reserve funds, additional tier 1 unimpaired reserve funds and tier 2 unimpaired reserve funds in the Republic does not at any time amount to less than the greater of—”;
- (n) by the substitution in subsection (2B)(b)(i) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[primary share]** common equity tier 1 capital and [primary] common equity tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (o) by the substitution in subsection (2B)(b)(ii) for the words preceding item (aa) of the following words:
- “the sum of the bank’s **[secondary]** additional tier 1 capital and [secondary] additional tier 1 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (p) by the deletion in subsection (2B)(b) of the proviso to subparagraph (ii);
- (q) by the substitution in subsection (2B)(b)(iii) for the words preceding item (aa) of the following words:
- “the sum of a bank’s **[tertiary]** tier 2 capital and tier 2 unimpaired reserve funds shall, in the calculation of the aggregate amount which the bank is in terms of paragraph (a) required to maintain, be—”;
- (r) by the deletion in subsection (2B)(b) of the proviso to subparagraph (iii); and
- (s) by the substitution in subsection (2B)(b) for subparagraph (iv) of the following subparagraph:
- “(iv) the total amount of allocated and qualifying **[secondary]** common equity tier 1 capital, allocated and qualifying [secondary] common equity tier 1 unimpaired reserve funds [and tertiary capital], allocated and qualifying additional tier 1 capital, allocated and qualifying additional tier 1 unimpaired reserve funds, allocated and qualifying tier 2 capital and allocated and qualifying tier 2 unimpaired reserve funds shall be determined as prescribed.”.

Amendment of section 70A of Act 94 of 1990, as substituted by section 21 of Act 20 of 2007

- 39.** Section 70A of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) subject to the provisions of subsection (2), the sum of its **[primary and secondary capital, its primary and secondary unimpaired reserve funds and its tertiary capital]** common equity tier 1 capital, additional tier 1 capital and tier 2 capital, and its common equity tier 1 unimpaired reserve funds, additional tier 1 unimpaired reserve funds and tier 2 unimpaired reserve funds does not at any time amount to less than an amount which represents a prescribed

reserwefondse [en tersi re kapitaal], toegewysde en kwalifiserende addisionele eerste vlak kapitaal, toegegewysde en kwalifiserende addisionele eerste vlak onaangestaste reserwefondse, toegegewysde en kwalifiserende tweede vlak kapitaal en toegegewysde en kwalifiserende tweede vlak onaangestaste reserwefondse bepaal word soos voorgeskryf.”;

(m) deur in subartikel (2B)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“ ’n Bank waarvan die bedryf handel in finansi le instrumente insluit, moet sy sake so bestuur dat, behoudens die bepalings van paragraaf (b), die som van sy [**prim re en sekond re kapitaal, sy prim re en sekond re onaangestaste reserwefondse en sy tersi re kapitaal**] gewone ekwiteit eerste vlak kapitaal, addisionele eerste vlak kapitaal en tweede vlak kapitaal en sy gewone ekwiteit eerste vlak onaangestaste reserwefondse, addisionele eerste vlak onaangestaste reserwefondse en tweede vlak onaangestaste reserwefondse in die Republiek op geen tydstip minder bedra nie as die grootste van—”;

(n) deur in subartikel (2B)(b)(i) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:

“moet die som van die bank se [**prim re aandelekapitaal en prim re gewone ekwiteit eerste vlak kapitaal en gewone ekwiteit eerste vlak onaangestaste reserwefondse**, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;

(o) deur in subartikel (2B)(b)(ii) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:

“moet die som van die bank se [**sekond re**] addisionele eerste vlak kapitaal en [**sekond re**] addisionele eerste vlak onaangestaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;

(p) deur die voorbehoudsbepaling tot subparagraaf (ii) in subartikel (2B)(b) te skrap;

(q) deur in subartikel (2B)(b)(iii) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:

“moet die som van die bank se [**tersi re**] tweede vlak kapitaal en tweede vlak onaangestaste reserwefondse, by berekening van die totaalbedrag wat die bank ingevolge paragraaf (a) in stand moet hou—”;

(r) deur die voorbehoudsbepaling tot subparagraaf (iii) in subartikel (2B)(b) te skrap;

(s) deur subparagraaf (iv) in subartikel (2B)(b) deur die volgende subparagraaf te vervang:

“(iv) moet die totaalbedrag van toegegewysde en kwalifiserende [**sekond re**] gewone ekwiteit eerste vlak kapitaal, toegegewysde en kwalifiserende [**sekond re**] gewone ekwiteit eerste vlak onaangestaste reserwefondse [en tersi re kapitaal], toegewysde en kwalifiserende addisionele eerste vlak kapitaal, toegegewysde en kwalifiserende addisionele eerste vlak onaangestaste reserwefondse, toegegewysde en kwalifiserende tweede vlak kapitaal en toegegewysde en kwalifiserende tweede vlak onaangestaste reserwefondse bepaal word soos voorgeskryf.”.

**Wysiging van artikel 70A van Wet 94 van 1990, soos vervang deur artikel 21 van 50
Wet 20 van 2007**

39. Artikel 70A van die Hoofwet word hierby gewysig—

(a) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:

“(a) behoudens die bepalings van subartikel (2), die som van sy [**prim re en sekond re kapitaal, sy prim re en sekond re onaangestaste reserwefondse en sy tersi re kapitaal**] gewone ekwiteit eerste vlak kapitaal, addisionele eerste vlak kapitaal en tweede vlak kapitaal, en sy gewone ekwiteit eerste vlak onaangestaste reserwefondse, addisionele eerste vlak onaangestaste reserwefondse en tweede vlak onaangestaste reserwefondse op geen tydstip minder bedra nie as ’n bedrag wat ’n voorgeskrewe

- percentage of the sum of amounts relating to the different categories of assets and other risk exposures and calculated in such a manner as may be prescribed;”;
- (b) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
“**[primary share]** common equity tier 1 capital and **[primary]** common equity tier 1 unimpaired reserve funds shall be—”;
- (c) by the substitution in subsection (2)(b) for the words preceding subparagraph (ii) of the following words:
“**[secondary]** additional tier 1 capital and **[secondary]** additional tier 1 unimpaired reserve funds shall be—”;
- (d) by the deletion in subsection (2)(b) of the proviso to subparagraph (ii);
- (e) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words:
“**[tertiary]** tier 2 capital and tier 2 unimpaired reserve funds shall be—”; and
- (f) by the deletion in subsection (2) of the proviso to paragraph (c).

Substitution of section 72 of Act 94 of 1990, as amended by section 10 of Act 42 of 1992, section 25 of Act 9 of 1993, section 14 of Act 36 of 2000 and section 50 of Act 19 of 2003

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40. The following section is hereby substituted for section 72 of the principal Act:

“Minimum liquid assets

72. (1) A bank shall hold in the Republic level one high-quality liquid assets to a value which does not amount to less than the sum of amounts, calculated as prescribed percentages, but which in no instance may exceed 20 per cent, of such different categories of its liabilities as may be specified by regulation with reference to the time when such liabilities fall due or with reference to any other aspect pertaining to such liabilities.

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(2) The amounts of the level one high-quality liquid assets and of the liabilities referred to in subsection (1) shall be calculated in such manner and be determined at such times as may be prescribed.

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(3) A bank shall not pledge or otherwise encumber any portion of the level one high-quality liquid assets held by it in compliance with the provisions of subsection (1): Provided that the Registrar may, exempt a bank from the prohibition contained in this subsection on such conditions and to such an extent and for such a period as the Registrar may determine.

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(4) For the purposes of this section securities which constitute ‘level one high-quality liquid assets’ as defined in section 1 shall be valued as prescribed.”.

Amendment of section 79 of Act 94 of 1990, as substituted by section 26 of Act 20 of 2007

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41. Section 79 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) sections **[74 and 75]** 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 substitution in subsection (1)(b) for the words following subparagraph (iii) of the following words:
“that will qualify as **[primary]** common equity tier 1 capital, **[secondary]** additional tier 1 capital or **[tertiary]** tier 2 capital, as the case may be;”;
- (c) by the deletion in subsection (1) of paragraph (d); and
- (d) by the substitution for subsection (3) of the following subsection:
“(3) Notwithstanding anything to the contrary contained in any contract or in the memorandum of **[association or articles of associa-**

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- persentasie van die som van die bedrae aangaande die verskillende kategorieë bates en ander risikoblootstellings uitmaak en bereken word op 'n manier wat voorgeskryf word;”;
- (b) deur in subartikel (2)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
- “[primêre aandelekapitaal] gewone ekwiteit eerste vlak kapitaal en [primêre] gewone ekwiteit eerste vlak onaangetaste reserwefondse—”;
- (c) deur in subparagraaf (2)(b) die woorde wat subparagraaf (ii) voorafgaan deur die volgende woorde te vervang:
- “[sekondêre] addisionele eerste vlak kapitaal en [sekondêre] 10 addisionele eerste vlak onaangetaste reserwefondse—”;
- (d) deur die voorbehoudsbepaling tot subparagraaf (ii) in subartikel (2)(b) te skrap;
- (e) deur in subartikel (2)(c) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
- “[tersiêre] tweede vlak kapitaal en tweede vlak onaangetaste reserwefondse—”; en
- (f) deur die voorbehoudsbepaling tot paragraaf (c) in subartikel (2) te skrap.

Vervanging van artikel 72 van Wet 94 van 1990, soos gewysig deur artikel 10 van Wet 42 van 1992, artikel 25 van Wet 9 van 1993, artikel 14 van Wet 36 van 2000 en artikel 50 van Wet 19 van 2003 20

40. Artikel 72 van die Hoofwet word hierby deur die volgende artikel vervang:

“Minimum likwiede bates

72. (1) 'n Bank moet in die Republiek vlak een hoë-waarde likwiede bates hou wat in waarde nie minder bedra nie as die som van bedrae, bereken as persentasies, wat voorgeskryf word, maar wat in geen geval 20 persent mag oorskry nie, van die verskillende kategorieë van sy verpligtings wat by regulasie 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. 25

(2) Die bedrae van die vlak een hoë-waarde likwiede bates en van die verpligtings bedoel in subartikel (1) word bereken op die wyse en bepaal op die tye wat voorgeskryf word.

(3) 'n Bank mag nie enige deel van die vlak een hoë-waarde likwiede bates wat die bank ter voldoening aan die bepalings van subartikel (1) hou, verpand of andersins beswaar nie: Met dien verstande dat die Registrateur 'n bank van die verbod in hierdie subartikel vervat, kan vrystel op die voorwaardes en in die mate en vir die tydperk wat die Registrateur bepaal.

(4) By die toepassing van hierdie artikel word sekuriteite wat 'vlak een hoë-waarde likwiede bates' uitmaak soos in artikel 1 omskryf, gewaardeer soos voorgeskryf.”. 40

Wysiging van artikel 79 van Wet 94 van 1990, soos vervang deur artikel 26 van Wet 20 van 2007

41. Artikel 79 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:
“(a) ondanks artikels [74 en 75] 35(2) en 36 van die Maatskappywet, aandele sonder pari-waarde uitrek of enige van sy aandele in aandele sonder pari-waarde omskep nie;”;
- (b) deur in subartikel (1)(b) die woorde wat op subparagraaf (iii) volg deur die volgende woorde te vervang:
“wat as [primêre] gewone ekwiteit eerste vlak kapitaal, [sekondêre] addisionele eerste vlak kapitaal of [tersiêre] tweede vlak kapitaal, na gelang van die geval, sal kwalifiseer;”;
- (c) deur paragraaf (d) in subartikel (1) te skrap; en
- (d) deur subartikel (3) deur die volgende subartikel te vervang:
“(3) Ondanks andersluidende bepaling in enige ooreenkoms of in die akte van oprigting **[of statute]** van enige bank of beherende maatskappy,

tion] 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 [and such voting rights shall be exercised in accordance with the determination thereof as provided in section 195(1) of the Companies Act] for members of ordinary shares 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 or her bears to the aggregate amount of the nominal value of all the shares issued by such bank or controlling company.”.

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Amendment of section 84 of Act 94 of 1990, as amended by section 60 of Act 19 of 2003 and section 28 of Act 20 of 2007

42. Section 84 of the principal Act is hereby amended—

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

“(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 [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.”;

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- (b) by the substitution in subsection (1A) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) The [manager] repayment administrator shall at the request of the Registrar, as soon as may be practicable report to the Registrar whether or not the person subject to the relevant direction is, in the [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.

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(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—

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

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

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“(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.”;

- (d) by the substitution in subsection (1A)(e) for the words preceding the proviso of the following words:

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“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] this section is confidential and shall not be disclosed to any person”;

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- (e) by the substitution for subsections (2) and (3) of the following subsections, respectively:

mag daar geen onderskeid gemaak word met betrekking tot die stemreg verbonde aan enige van die gewone aandele van 'n bank of 'n beherende maatskappy nie, [en sodanige stemreg moet uitgeoefen word ooreenkomsdig die vasstelling daarvan soos bepaal in artikel 195(1) van die Maatskappypwet] aangesien lede van gewone aandele en elke houer van 'n gewone aandeel in 'n bank of beherende maatskappy op daardie verhouding van die totale stemme in die bank of beherende maatskappy geregtig is wat die totaalbedrag van die nominale waarde van die aandele wat hy of sy hou, het teenoor die totaalbedrag van die nominale waarde van al die aandele deur sodanige bank of beherende maatskappy uitgereik.”.

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Wysiging van artikel 84 van Wet 94 van 1990, soos gewysig deur artikel 60 van Wet 19 van 2003 en artikel 28 van Wet 20 van 2007

42. Artikel 84 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Gelyktydig met die uitreiking van 'n lasgewing kragtens artikel 83(1), of so spoedig doenlik daarna, moet die Registrateur per aanstellingsbrief deur hom of haar onderteken 'n persoon (hieronder in hierdie artikel die [bestuurder] terugbetalingsadministrateur genoem) aanstel om die terugbetaling van geld ooreenkomsdig die lasgewing deur die persoon daaraan onderworpe, te bestuur en te beheer: Met dien verstande dat die Registrateur die persoon wat aan die lasgewing onderworpe is 'n redelike tydperk kan gee om 'n alternatiewe plan van aksie te maak en in werking te stel wat in die belang van die beleggers is en waarteen die Registrateur geen beswaar het nie.”;

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(b) deur paragrawe (a) en (b) in subartikel (1A) onderskeidelik deur die volgende paragrawe te vervang:

“(a) Die [bestuurder] terugbetalingsadministrateur moet so gou doenlik aan die Registrateur verslag doen of die persoon wat aan die betrokke lasgewing onderworpe is, na die [bestuurder] terugbetalingsadministrateur se mening solvent is al dan nie, en indien die [bestuurder] terugbetalingsadministrateur bevind dat die persoon wat aan die lasgewing onderworpe is, insolvent is, moet die [bestuurder] terugbetalingsadministrateur kommentaar lewer oor of daardie persoon tegniek of wetlik insolvent is.

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(b) By die aanstelling van 'n [bestuurder] terugbetalingsadministrateur en terwyl die persoon wat aan die betrokke lasgewing onderworpe is [onder bestuur is] soos in hierdie artikel beoog—

(i) moet die [bestuurder] terugbetalingsadministrateur al die bates van die persoon wat aan die betrokke lasgewing onderworpe is, verhaal en in besit neem; en

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(ii) moet alle aksies,regsverrigtinge, die uitvoering van alle lasbriewe, dagvaardings en ander regsprosesse teen die persoon wat aan die betrokke lasgewing onderworpe is, uitgestel word en nie ingestel of voortgesit word nie sonder toestemming van 'n bevoegde hof en ook sonder om die [aansoek] prosesstukke aan die Registrateur te beteken.”;

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(c) deur paragraaf (d) in subartikel (1A) deur die volgende paragraaf te vervang:

“(d) Die Meester moet, behoudens artikel 370 van die Maatskappypwet, 1973 (Wet 61 van 1973), die persoon wat deur die Registrateur benoem is, as likwidator of trustee aanstel.”;

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(d) deur in subartikel (1A)(e) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“ 'n Skriftelike verslag aan die Registrateur deur 'n inspekteur wat kragtens artikel 83 aangestel is of enige verslag deur 'n [bestuurder] terugbetalingsadministrateur wat ingevolge [artikel 84] hierdie artikel aangestel is, is vertroulik en mag aan geen persoon bekend gemaak word nie”;

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(e) deur subartikels (2) en (3) onderskeidelik deur die volgende subartikels te vervang:

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“(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).”;

(f) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“It shall be the duty of the [manager] repayment administrator—”;

(g) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

“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—”;

(h) by the substitution in subsection (4)(a) for subparagraph (iv) of the following subparagraph:

“(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.”;

(i) by the substitution in subsection (4) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(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 or her 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.”;

(j) by the substitution for subsections (5), (6), (7) and (8) of the following subsections, respectively:

“(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]

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“(2) Die Registrateur moet ’n afskrif van die aanstellingsbrief bedoel in subartikel (1) aan die persoon wat aan die betrokke lasgewing onderworpe is, beteken, en dit is met ingang van die datum van die aanstellingsbrief vir so ’n persoon verbode om die deel van die bates van daardie persoon wat in die aanstellingsbrief gespesifieer word, te vervoer of andersins daarvan te handel, behalwe met die skriftelike verlof van die **[bestuurder]** terugbetalingsadministrateur.

(3) Die **[bestuurder]** terugbetalingsadministrateur handel onder die toesig van die Registrateur, en die **[bestuurder]** terugbetalingsadministrateur kan van tyd tot tyd van die Registrateur opdragte aanvraa aangaande enige aangeleenthed wat uit of in verband met die verrigting van sy of haar pligte ingevolge subartikel (4) ontstaan.”;

(f) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Dit is die plig van die **[bestuurder]** terugbetalingsadministrateur—”;

(g) deur in subartikel (4)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende subparagraaf te vervang:

“om na die sake van enige deel van die persoon wat aan die lasgewing onderworpe is, die verdere ondersoek in te stel wat die **[bestuurder]** terugbetalingsadministrateur nodig ag ten einde—”;

(h) deur subparagraaf (iv) in subartikel (4)(a) deur die volgende subparagraaf te vervang:

“(iv) enige ander feit te kan vasstel wat na die oordeel van die Registrateur of die **[bestuurder]** terugbetalingsadministrateur vasgestel moet word ten einde die terugbetaling van sodanige geld ingevolge die betrokke lasgewing te vergemaklik;”;

(i) deur paragrawe (c) en (d) in subartikel (4) onderskeidelik deur die volgende paragrawe te vervang:

“(c) om die vermoedelike pleging deur enige persoon van ’n misdryf waarvan die **[bestuurder]** terugbetalingsadministrateur bewus word in die loop van die verrigting van sy of haar pligte as **[bestuurder]** terugbetalingsadministrateur ingevolge hierdie artikel, mee te deel aan die verantwoordelike vervolgingsgesag wat regsbevoegdheid het in die gebied waarin sodanige misdryf aldus na vermoede gepleeg is; en

(d) om enige ander werksaamheid te verrig wat die Registrateur aan die **[bestuurder]** terugbetalingsadministrateur opdra in verband met die afhandeling van die terugbetaling van geld ooreenkomstig die tersaaklike lasgewing.”;

(j) deur subartikels (5), (6), (7) en (8) onderskeidelik deur die volgende subartikels te vervang:

“(5) Vir die doeleindes van die verrigting van die pligte soos in subartikel (4) uiteengesit, het die **[bestuurder]** terugbetalingsadministrateur, met betrekking tot die persoon wat aan die tersaaklike lasgewing onderworpe is en met betrekking tot die sake van daardie persoon, die bevoegdhede wat by artikels 4 en 5 van die Wet op Inspeksie van Finansiële Instellings, 1998 (Wet No. 80 van 1998), aan ’n inspekteur beoog in daardie artikels verleen word, asof die **[bestuurder]** terugbetalingsadministrateur ’n inspekteur en die persoon wat aan die lasgewing onderworpe is ’n finansiële instelling was soos in daardie artikels beoog.

(6) Daar word aan die **[bestuurder]** terugbetalingsadministrateur ten opsigte van die dienste ingevolge hierdie artikel deur hom of haar gelewer en aan die verantwoordelike inspekteur of inspekteurs ten opsigte van ’n inspeksie bedoel in artikel 83(1), uitgevoer kragtens artikel 12 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), die vergoeding deur die Registrateur betaal wat die Registrateur bepaal, en die Registrateur kan ’n bedrag gelyk aan die vergoeding aldus betaal, op die persoon wat aan die lasgewing of die inspeksie, na gelang van die geval, onderworpe is, verhaal.

(7) Die **[bestuurder]** terugbetalingsadministrateur beklee sy of haar amp totdat die tersaaklike lasgewing ten volle nagekom is, maar die Registrateur kan by aanvoering van goeie gronde die aanstelling van die **[bestuurder]** terugbetalingsadministrateur te eniger tyd skriftelik intrek,

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 amended by section 61 of Act 19 of 2003

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43. Section 86 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(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 No. 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 association approved under the Companies Act, 1973 (Act No. 61 of 1973), or memorandums of incorporation of banks and of controlling companies; and”.

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

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44. Section 87 of the principal Act is hereby amended by the substitution for subsection (1) of 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.”.

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waarop die **[bestuurder]** terugbetalingsadministrateur sy of haar amp ontruim.

(8) 'n Persoon wat—

- (a) wanneer hy of sy deur die **[bestuurder]** terugbetalingsadministrateur versoek word om 'n eed af te lê of bevestiging te doen, weier om dit te doen; 5
- (b) sonder wettige verskoning weier of versuim om na sy of haar beste vermoë 'n vraag wat deur die **[bestuurder]** terugbetalingsadministrateur by die uitoefening van die **[bestuurder]** terugbetalingsadministrateur se bevoegdhede of die verrigting van die **[bestuurder]** terugbetalingsadministrateur se pligte aan so 'n persoon gestel word, te beantwoord, selfs al sou die antwoord daardie persoon aan strafregtelike vervolging kan blootstel; 10
- (c) opsetlik vals inligting aan die **[bestuurder]** terugbetalingsadministrateur verstrek; 15
- (d) weier of versuim om na sy of haar beste vermoë te voldoen aan 'n redelike versoek wat deur die **[bestuurder]** terugbetalingsadministrateur by die uitoefening van die **[bestuurder]** terugbetalingsadministrateur se bevoegdhede of die uitvoering van die **[bestuurder]** terugbetalingsadministrateur se pligte aan hom of haar gerig is; 20
- (e) opsetlik die **[bestuurder]** terugbetalingsadministrateur by die uitoefening van die bevoegdhede of die uitvoering van die pligte van die **[bestuurder]** terugbetalingsadministrateur hinder; of
- (f) enige ander handeling verrig wat daarop gerig is om die terugbetaling van geld soos vereis deur 'n lasgewing kragtens artikel 83(1), te dwarsboom of enige persoon in staat te stel om sodanige terugbetaling te ontduiik, 25
- is aan 'n misdryf skuldig: Met dien verstande dat geen antwoord verstrek op 'n vraag wat ingevolge hierdie artikel deur die **[bestuurder]** terugbetalingsadministrateur aan 'n persoon gerig is en geen inligting wat daarvan afgelei word, in enige strafregtelike verrigting teen so 'n persoon gebruik kan word nie.".
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Wysiging van artikel 86 van Wet 94 van 1990, soos gewysig deur artikel 61 van Wet 19 van 2003

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43. Artikel 86 van die Hoofwet word hierby gewysig deur paragrawe (a) en (b) in subartikel (2) onderskeidelik deur die volgende subparagraphe te vervang:

"(a) sertifikate van voorlopige of finale registrasie of van die registrasie van 'n wysiging van die akte van oprigting of statute waarvoor ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), aansoek gedoen is of van die akte van oprigting of van 'n naamsverandering van banke en van beherende maatskappye;

(b) aktes van oprigting en statute goedgekeur kragtens die Maatskappywet, 1973 (Wet No. 61 van 1973), of aktes van oprigting van banke en van beherende maatskappye; en".

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Wysiging van artikel 87 van Wet 94 van 1990, soos gewysig deur artikel 25 van Wet 9 van 1993

44. Artikel 87 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Ondanks andersluidende bepalings van enige wet of van die gemene reg en tensy die akte van oprigting **[of statute]** van 'n bank anders bepaal, kan 'n minderjarige bo die ouderdom van 16 jaar of 'n getroude vrou, hetsy onder maritale mag al dan nie, 'n depositant wees by 'n bank en sonder die toestemming of bystand van sy voog of haar egenoot, na gelang van die geval, alle nodige stukke verly, alle nodige kwitansies gee en sy of haar deposito sedeer of verpand, teen sy of haar deposito leen en in die algemeen met sy of haar deposito handel soos hy of sy goedvind, en geniet hy of sy al die voorregte en is hy of sy onderworpe aan al die verpligtings en voorwaardes wat vir depositante geld.".

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Substitution of section 88 of Act 94 of 1990, as substituted by section 62 of Act 19 of 2003

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

“Limitation of liability

88. No liability shall attach to the South African Reserve Bank or, either 5
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, including an inspector duly appointed in terms of section 11
or 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989),
or to a repayment administrator duly appointed in terms of section 84 of this
Act, 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.”.

**Amendment of section 89 of Act 94 of 1990, as amended by section 63 of Act 19 of 15
2003 and section 30 of Act 20 of 2007**

46. Section 89 of the principal Act is hereby amended by the addition of the following
subsection, the existing section becoming subsection (1):

“(2) The Registrar must inform the Minister and the Governor of the South
African Reserve Bank of any matter that in the opinion of the Registrar may pose
significant risk to the banking sector, the economy, financial stability or financial
markets more generally.”.

Amendment of section 91 of Act 94 of 1990, as amended by sections 23 and 25 of Act 9 of 1993, section 56 of Act 26 of 1994, section 16 of Act 36 of 2000, section 65 of Act 19 of 2003 and section 32 of Act 20 of 2007 25

47. 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) 30
or (3), 79, 80, 84(1A) or 84(2),”.

Short title

48. This Act is called the Banks Amendment Act, 2013.

Wysiging van artikel 88 van Wet 94 van 1990, soos vervang deur artikel 62 van Wet 19 van 2003

45. Die volgende artikel word hierby deur artikel 88 van die Hoofwet vervang:

“Beperking van aanspreeklikheid

88. Die Suid-Afrikaanse Reserwebank of, hetsy in sy of haar amptelike of persoonlike hoedanigheid, 'n lid van die raad van direkteure van genoemde Bank, met inbegrip van 'n ingevolge artikel 11 of 12 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), behoorlik aangestelde inspekteur of aan 'n ingevolge artikel 84 van hierdie Wet behoorlik aangestelde terugbetalingsadministrator, die Registrateur of 'n ander beampie of werknemer van genoemde Bank is nie aanspreeklik nie vir enige verlies gely deur of skade berokken aan enige persoon ten gevolge van enigiets gedoen of nagelaat deur so 'n lid, die Registrateur of so 'n ander beampie of werknemer by die verrigting te goeder trou van 'n werkzaamheid of plig kragtens hierdie Wet.”.

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Wysiging van artikel 89 van Wet 94 van 1990, soos gewysig deur artikel 63 van Wet 19 van 2003 en artikel 30 van Wet 20 van 2007

46. Artikel 89 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

“(2) Die Registrateur moet die Minister en die President van die Suid-Afrikaanse Reserwebank verwittig van enige aangeleentheid wat na mening van die Registrateur 'n beduidende risiko inhoud vir die banksektor, die ekonomiese, finansiële stabiliteit of finansiële markte meer algemeen.”.

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Wysiging van artikel 91 van Wet 94 van 1990, soos gewysig deur artikels 23 en 25 van Wet 9 van 1993, artikel 56 van Wet 26 van 1994, artikel 16 van Wet 36 van 2000, artikel 65 van Wet 19 van 2003 en artikel 32 van Wet 20 van 2007

47. Artikel 91 van die Hoofwet word hierby gewysig deur paragraaf (b) in subartikel (1) deur die volgende paragraaf te vervang:

“(b) 'n bepaling van artikel 7(3), (4) of (5), 34, 35, 37(1), 38(1), 39, 41, 42(1), 52(1) of (4), 53, 55, 58, 59, 60(5)(a)[(i)], 60(5)(b)[(i)], 61(2), 65, 66, 67, 70(2), (2A) of (2B), 70A, 72, 73, 75, 76, 77, 78(1) of (3), 79, 80, 84(1A) of 84(2) oortree of versuim om daaraan te voldoen.”.

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Kort titel

48. Hierdie Wet heet die Wysigingswet op Banke, 2013.

