

MEMORANDUM ON THE OBJECTS OF THE DEDICATED BANKS BILL, 2004

In the Financial Sector Summit held in August 2002, the constituencies of the National Economic and Development Labour Council (Nedlac) agreed on broad the principles on the reform of the South African financial sector. One of the elements of the agreement signed by the principals of the Nedlac constituencies in the said Summit was the need to “Ensure Access to Basic Financial Services”.

These agreements triggered debates and discussions within the Policy Board for Financial Services and Regulation (“the Policy Board”) and within the Standing Committee for the Revision of the Banks Act (“the Standing Committee”) on ways of implementing the Nedlac agreements. Sub-committees were consequently set-up within the Policy Board and the Standing Committee, which respectively produced a policy paper on core and narrow banks and a Dedicated Banks Bill.

The object of the Dedicated Banks Bill is to make banking services available in areas where or to consumers to whom such services have up to the present not been readily available.

The promulgation of this Bill will create an enabling environment for companies interested in entering the banking system as Savings and Savings and Loans Banks (hereinafter referred to as “Dedicated Banks”) by lowering the entry requirements as currently prescribed in the Banks Act, (94 of 1990). The licensing of interested companies as Savings and Savings and Loans banks and their consequent provision of financial services will assist the banking industry and the nation with improving access to financial services to a broader market.

In order to create an enabling environment for the Dedicated Banks to operate profitably yet sustainably, the following provisions are proposed:

1. CHAPTER I: INTERPRETATION OF ACT, Clause 1:

Definitions

The following clauses explain meanings of the terms used in the Bill and are mainly based on and derived from the Banks Act. Clauses 1 and all its sub-clauses, Clauses 2 and all its sub-clauses and clause 3.

2. CHAPTER II: OBJECT OF THIS ACT AND NATURE OF DEDICATED BANKS, clauses defining the objects of this Act

Given the limited reach of the banking industry in providing financial services to the wider communities in South Africa, this clause (clause 2 (1) seeks to define the objects of this Act, which is to increase widening and deepening of the financial services provided by the banking industry to the wider communities.

Clause 2 (2) explains that this object will be achieved through creating the medium of banks that, in view of the prescribed nature of the business that such banks are permitted to conduct, are called dedicated banks. The dedicated banks (clause 2(2)), comprise the savings banks and the savings and loans banks, both taking deposits and providing payment services. In contrast to the savings bank, and in addition to providing savings deposit accounts services, the savings and loans bank may also open an account in the name of a depositor from which the depositor may withdraw or pay money by cheque, bill or debit order; open a money-market deposit account in the name of a depositor; provide trust or custody services to clients and grant

secured loans to individuals and small and medium-sized enterprises, provided that an amount equal to 15 per cent of the amount of such loan shall be deposited with the savings and loans bank by the borrower; and the amount of any loan granted in terms of this paragraph shall not exceed 85 per cent of the value of the security furnished in respect of such loan by the borrower.

A savings and loans bank may invest money deposited with it and constituting a liability of such bank with a maturity not exceeding three months, only in securities referred to in clause 3(2) with, as near as possible, a corresponding maturity; and exceeding three months, in loans not exceeding, per individual loan, a prescribed amount, to other borrowers from the public sector or borrowers from the private sector.

3. CHAPTER III: POWERS OF THE REGISTRAR

This chapter, and all its constituent clauses explain the functions; duties and powers assigned to the Registrar, such as the powers of inspection, powers of the Registrar to require dedicated banks to furnish to him or her information he may so require for regulatory purposes and powers of the Registrar to review certain periods. All these clauses are based on, and are derived from the Banks Act.

Clause 10.(1) indicates that any person aggrieved by a decision taken by the Registrar under a provision of this Act may within the prescribed period and in the prescribed manner and upon payment of the prescribed fees apply for a review of that decision by the board of review established by section 9(2) of the Banks Act.

**4. CHAPTER IV: AUTHORIZATION TO ESTABLISH, AND
REGISTRATION AND CANCELLATION OF REGISTRATION OF
DEDICATED BANKS**

Any person that wishes to conduct the business of a dedicated bank is required to obtain a banking licence to do so, in terms of clause 12 of Chapter IV. Clause 13 of this chapter provides a detailed process and conditions by which an application is to be made. This procedure is similar as that required of the banks in the Bank Act. Clause 14 details conditions under which the Registrar may grant or refuse an application for the banking license. It also spells out conditions under which the Registrar can revoke the banking license. All these conditions are based on and derived from the Banks Act.

The rest of the clauses are administrative and in short address the following matters:

Clause 15: **Revocation of authorization.** This clause empowers the Registrar to revoke the authorization granted for the establishment of dedicated bank if such dedicated bank fails to meet certain prescribed conditions or has performed certain prescribed acts which the Registrar may not be satisfied that with, such as false or misleading information furnished by in the application by the said dedicated bank for such authorization or success has not been achieved within a period of twelve months as from the date of the granting of the said authorization

Clause 16: **Formation of certain companies prohibited except with approval of Registrar.** This clause prohibits any other company established in terms of the Companies Act to conduct the business of a bank without the of approval the Registrar.

Clause 18: Granting or refusal of application for registration.

This clause specifies conditions under which the Registrar may grant or refuse an application for a bank license. For the Registrar to grant approval, these conditions include the fact that the business the applicant proposes to conduct is that of a dedicated bank of the class to which the application relates and that the applicant does not propose to adopt undesirable methods of conducting business. For the Registrar to refuse an application, the conditions include the fact that that the institution concerned, when registered as a dedicated bank, will probably not be able to comply with a provision of this Act, or is likely to pursue a practice contrary to a provision of this Act; that an interest which any person has in the institution concerned is inconsistent with a provision of this Act and that the interests of potential depositors with the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason.

Clause 20: Use of name of dedicated bank. This clause prohibits persons to refer to themselves as “Dedicated Bank”, other than those registered in terms of this Act. This clause also compels those entities registered as Dedicated Banks in terms of this Act to disclose to those they interact with that they are Dedicated Banks.

Clause 31: Repayment of deposits upon lapse of registration. This clause empowers the Registrar to order that institution to repay all money due by it to members of the public in respect of deposits accepted by it while registered as a dedicated bank, including any interest or any other amounts owing by it in respect of such money; and to change its name and its memorandum of association and articles of association within the period and in the manner required by the Registrar. The Registrar can order such repayments whenever an institution, which is registered as a dedicated bank ceases to be registered as such, regardless of whether the

cancellation was due to the Registrar's orders, or the courts orders or by any other means.

6. CHAPTER V: SHAREHOLDING IN, AND REGISTRATION OF CONTROLLING COMPANIES IN RESPECT OF, DEDICATED BANKS

Clause 33: **Permission for acquisition of shares in dedicated bank or controlling company.** This clause prohibits a person (and his associates) to acquire more than 15 per cent of the total nominal shares of a dedicated bank without the Registrar's approval. Any one wishing to obtain more than 15 per cent of the total nominal shares of a dedicated bank shall apply to the Registrar, who grant, or refuse to grant approval on the basis of, amongst other factors, the interests of the public and the interests of the depositors.

Clause 38: **Restriction of right to control bank.** This clause prescribes that any person other than a dedicated bank or a bank wishing to exercise control over a dedicated bank, shall be a public company and be registered as a controlling company in respect of such dedicated bank.

7. CHAPTER VI: FUNCTIONING OF DEDICATED BANKS AND CONTROLLING COMPANIES WITH REFERENCE TO COMPANIES ACT

Clause 50: **Compromises, amalgamations, arrangements and affected transactions.** The provisions of section 54 of the Banks Act shall *mutatis mutandis* apply to a dedicated bank but only in so far as those provisions can be so applied having regard to the nature of the business a dedicated bank is permitted to conduct in terms of the provisions of section 3 of this Act in the case of a savings bank, or section

4 of this Act in the case of a savings and loans bank. This implies that a bank wishing to transfer any of its assets and/or liabilities shall get the approval of the Minister prior for that transaction to have legal effect.

Clause 56: Appointment of auditor. This clause prescribes that the appointment of an auditor of a dedicated bank or its controlling company shall be approved by the Registrar. It further prescribes that a dedicated bank of which the total assets as at the close of its last preceding financial year exceeded an amount as prescribed shall appoint not less than two auditors who are independent of each other.

8. CHAPTER VII: PRUDENTIAL REQUIREMENTS

Clause 66: Minimum share capital and unimpaired reserve funds. In terms of this clause, a dedicated bank is expected to maintain a minimum capital such that the sum of its primary and secondary capital and its primary and secondary unimpaired reserve funds in the Republic does not at any time exceed an amount prescribed by regulation, which is to be matched by assets and other risk exposures in the conduct of its business.

Clause 67: Minimum liquid assets for savings and loans banks. This clause prescribes that the Minimum liquid assets for savings and loans banks shall be prescribed by regulation, but shall not be less than 40 per cent, or such other percentage as may be prescribed from time to time, of the savings and loans bank's total liabilities.

9. CHAPTER IX: CONVERSION OF DEDICATED BANKS

Clause 76: Conversion of savings bank into savings and loans bank or of savings and loans bank into bank. This Clause empowers

the Registrar with approval powers in respect of the conversion of a Savings bank to a Savings and Loans bank, and not the other way round. This is because a good Savings bank can improve into a Savings and Loans bank. The reversal of this trend will imply a failing bank, which should not be allowed in the banking system as any kind of a bank.

10. CONSULTATION AND PARLIAMENTARY PROCESS

10.1 Consultation

The provisions of the Bill have been debated by the Standing Committee for the Revision of the Banks Act. Consultation with various stakeholders was undertaken on various of the proposals. The stakeholders include:

- The South African Reserve Bank;
- The Banking Council;
- Individual banks;
- Auditing firms; and
- The Financial Sector Task-Team on NEDLAC
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10.2 Parliamentary process

The Bill should be dealt with in terms of the provisions of section 76 of the Constitution of the Republic of South Africa (Act 108 of 1996).
