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8 June 2007

Dear Sir

## **STANDARD BANK'S COMMENTS ON ASPECTS OF THE BANKS AMENDMENT BILL**

Your letter of 31 May 2007 to Mr. Simon Ridley, Chief Financial Officer of Standard Bank, inviting submissions to the hearings on the Banks Amendment Bill, refers.

The comments of The Standard Bank of South Africa ("SBSA") on aspects of the Banks Amendment Bill (the "Banks Bill") are summarised below. We classified our comments as follows:

- Key issues
- Other issues

References are made to the following:

- Companies Bill, 2007 (the "Companies Bill") (as intended to be introduced into parliament during 2007 by the Minister of Trade and Industry)
- Corporate Laws Amendment Act 24 of 2006 (the "Corporate Act")
- Banks Act (current Banks Act 94 of 1990)

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The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services provider. Registered credit provider (NCRCP15)

Directors: D E Cooper (Chairman), J H Maree\* (Chief Executive), D D B Band, E Bradley, T S Gcabashe, D A Hawton, S E Jonah KBE##, Sir Paul Judge#, S J Macozoma, R P Menell, Adv K D Moroka, A C Nissen, M C Ramaphosa, S P Ridley\*, M J D Ruck, M J Shaw, Sir Robert Smith#, E M Woods  
Secretary: L Wulfsohn \*Executive Director #British ##Ghanaian 17/05/2007

<u>Comment</u> [Act / Bill ref]	<u>Page</u> <u>No</u>	<u>Issue</u>	<u>Proposal</u>
<b>Key issues:</b>			
#1 [Banks Act sec 79 (1)]		Abolition of par value shares and nominal value in Companies Bill  The Companies Bill abolishes the concept of par value shares and nominal value (although transitional provisions continue for existing par value shares for as long as they are extant). If this principle is eventually passed and becomes part of our corporate law, then it will be in direct conflict with section 79 (1) (a) of the Banks Act which states that "A bank shall not issue shares of no par value...".	Consider amendment of Banks Act section 79(1) to allow for the abolition of par value shares and nominal value as proposed in the Companies Bill.
#2 [Banks Bill sec 64]	32	Composition of the Audit Committee  The Banks Bill requires that <b>all</b> members (at least 3) of the audit committee shall be persons who are not employees of the controlling company nor any of its subsidiaries, the bank in respect of which it is the controlling company or any subsidiary of the bank.  The Corporate Act requires that the audit committee must consist only of non-executive directors of the company, each of whom must "act independently". The Companies Bill requirement is phrased slightly differently and requires that the audit committee must have at least two members, each of whom must act independently. In the Companies Bill it can therefore be interpreted that two of the members of the audit committee must act independently, implying that there may be other non-independent members on the audit committee. The non-executive requirement in both the Corporate Act and Companies Bill is more stringent than the Banks Bill as it states that "a director is a non-executive if the director is not involved in the day-to-day management of the business, is not a full-time salaried employee of the company or the group in the last 3 financial years".	The membership of the audit committee should comprise candidates that are best suited to the job at hand i.e. financial literacy is of utmost importance especially in the context of a bank.  We intend to make this same argument in the Company Law Reform process as we are not convinced that the provisions of the Corporate Act and Companies Bill are attainable without compromising the audit committee's effectiveness.

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		<p>In addition, the Corporate Act takes the composition of the audit committee a step further by requiring that the non- executive directors must act independently and the Companies Bill requires that at least two of the members of an audit committee must act independently.</p> <p>In the South African context, taking into account the lack of skills and pool of candidates available, it is a harsh reality that the Corporate Act and the Companies Bill requirements may prove to be unfeasible. This is particularly relevant for the audit committee of a bank or controlling company, where the membership should have some reference to competency and not just independence.</p>	
#3 [Banks Bill sec 64B (2) (e)]	37	<p>Scope of duties of the Directors' Affairs Committee</p> <p>The section states that the function of the directors' affairs committee shall be to assist the board of directors "in ensuring that the bank or controlling company, as the case may be, is at all times in compliance with <u>all applicable laws</u>, regulations and codes of conduct and practices".</p> <p>The scope of duties of the directors' affairs committee, in particular the highlighted portion, needs to be limited to ensure that there is no overlap with the responsibilities of the other board committees such as the audit and risk committees as it leads to confusion regarding responsibilities.</p>	<p>The responsibilities of the directors' affairs committee should be limited to corporate governance issues and similar issues impacting the board as opposed to operational issues which the reference to "all applicable laws" alludes to.</p>
#4 [Banks Act sec 72 (1); sec 1]		<p>Definition of liquid assets as it relates to gold coin and bullion</p> <p>It is a requirement of Section 72(1) of the Act that a bank ".. shall hold <u>in the Republic</u> liquid assets ..", and <u>gold coin and bullion</u> are included in the definition of securities that constitute "liquid assets".</p>	<p>The words ".. in the Republic .." in Section 72(1) of the Act should be amended to read ".. in the Republic or an OECD country .."</p>

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		<p>With the continued growth in banks' balance sheets, and the consequent increase in liquid asset requirements, a continuous review of the utilisation of the various qualifying liquid asset classes has become necessary from a financial efficiency viewpoint. The increased use of gold as a qualifying liquid asset has become an alternative proposition for banks. However, owing to security considerations and the ability to transact efficiently through the London market, bullion holdings must be kept in London under the custodial services of major banks in OECD countries such as HSBC, JP Morgan, UBS and Bank of New York.</p> <p>Moreover, it is an internationally accepted legal practice for ownership of assets to be evidenced by documents of title, and for the location of these documents of title to determine associated jurisdictional issues. This principle is established in the legislative jurisdictions of OECD countries, and therefore the physical location of the gold bullion is of little consequence given that <u>each bar is specifically identified through a serial number and registered in the name of the account holder. Also, these holdings can be verified by the South African banks' external auditors or their offshore offices.</u></p>	<p>This is congruent with the exemption accorded OECD country banks in the Regulations, for example, the deduction in respect of "amounts owing by banks in OECD countries" in banks' prudential calculations</p>
<b>Other issues:</b>			
#1 [Banks Act sec 1]		<p>References to other legislation may soon be redundant</p> <p>Any references/cross-references to the Companies Act No. 61 of 1973.</p> <p>The Co-operatives Act No. 91 of 1981 is being replaced by the Co-operatives Act No. 14 of 2005, the commencement date of which is yet to be proclaimed.</p>	<p>Consider amendment of definitions to provide clarity.</p>

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		<p>The definition of "Land Bank" may need to be revised, as the Land and Agricultural Development Bank Act No. 15 of 2002 repealed the Land Bank Act No. 13 of 1944 and provided for a juristic person known as the Land and Agricultural Development Bank.</p> <p>Reference to the "Land Bank" also occurs under the definition of "liquid assets" in subsection (g) and under section 2 (b) (ii).</p> <p>The definition of "liquid assets" subsection (g) (ii) refers to the Marketing Act, 1968 (Act No. 59 of 1968). We are not aware of any such act.</p> <p>The Co-operative Banks Bill, 2007 aims to amend section 2 of this Bill, when enacted, to make reference to a co-operative bank.</p> <p>The Public Investment Corporation Act No. 23 of 2004 repealed the Public Investment Commissioners Act No. 45 of 1984.</p>	

Kind regards



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