

2015/04/21 PC Finance`

REPUBLIC OF SOUTH AFRICA

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**DRAFT**

**STANDING COMMITTEE AMENDMENTS**

**TO**

**BANKS AMENDMENT BILL**

**[B 17—2014]**

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*(As agreed to by the Standing Committee on Finance*

*(National Assembly))*

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**[B 17A—2014]**

## AMENDMENTS AGREED TO

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### BANKS AMENDMENT BILL

[B 17—2014]

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### NEW CLAUSE

1. That the following be a new clause before clause 1:

**Amendment of section 51 of Act 94 of 1990, as amended by section 11 of Act 9 of 1993, section 34 of Act 19 of 2003 and section 22 of Act 22 of 2013**

1. Section 51 of the Banks Act, 1990 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A company registered as a bank or as a controlling company shall continue to be a company in terms of the Companies Act, and the provisions of that Act shall, subject to the provisions of subsection (2), continue to apply to any such company to the extent to which they are not inconsistent with any provision of this Act: Provided that—

- (a) the provisions of the Companies Act governing the conversion of public companies into other forms of companies shall not apply to any such company; **[and]**
- (b) the provisions of sections 128 to **[155]** 154 of the Companies Act relating to business rescue **[and compromise with creditors]** shall not apply to a bank~~[.]~~;
- (c) the provisions of section 155 of the Companies Act relating to an arrangement or compromise between a company and its creditors shall not apply to a bank unless it is under curatorship in terms of section 69 and the Minister has empowered the curator to propose and enter into an arrangement or compromise in terms of section 69(3)(k); and
- (d) references to the board of a company, the liquidator of a company and an authorised director in section 155 of the Companies Act shall be regarded as a reference to a curator.”.

# CLAUSE 1

1. On page 2, in line 28, after “and”, to insert “the”.
2. On page 3, from line 6, to omit paragraph (d) and to substitute:

(d) The Minister or the Registrar, as the case may be, must, in addition to the requirements of section 54, consider the curator's report as provided in paragraph (c) in making his or her decision in terms of section 54: Provided that the Minister or the Registrar, as the case may be, may consent to the disposal, transfer or disposal and transfer, notwithstanding the fact that the effects in paragraph (c)(i) or (ii) are not achieved if it is reasonably likely to promote the maintenance of—

(i) a stable banking sector in the Republic; or

(ii) public confidence in the banking sector in the Republic.”;

3. On page 3, in line 19, after “provisions of”, to insert “this Act”.
4. On page 3, line 38, to omit “by” and to substitute “by”.
5. On page 3, in line 38, to omit “paragraph” and to substitute “paragraphs”.
6. On page 3, in line 39, after “funding”, to insert: “from the Reserve Bank, or any entity controlled by the Reserve Bank,”.
7. On page 3, in line 40, after “bank,”, to insert: “but without prejudice to real security rights,”.
8. On page 3, in line 46, to omit “security.” and to substitute “security; and”.
9. On page 3, after line 46, to insert:

(k) without limiting any other power of the curator in terms of this section, to propose and enter into an arrangement or compromise between the bank and all its creditors, or all the members of any class of creditors, in terms of section 155 of the Companies Act.”.

# NEW CLAUSE

1. That the following be a new Clause to follow Clause 1:

**Insertion of section 89A in Act 94 of 1990**

3. The following section is hereby inserted in the principal Act, after section 89:

**"Fair administrative action**

**89A. Any administrative action taken in terms of this Act, including any administrative action taken by a curator appointed in terms of section 69, is subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)."**

CLAUSE 2

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

**Short title, commencement and application**

4.(1) This Act is called the Banks Amendment Act, 2015, and takes effect when first published in the *Gazette* as an Act.

(2) If, immediately before this Act takes effect, a bank is under curatorship in terms of section 69 of the principal Act, the provisions of this Act apply to the curatorship.

LONG TITLE

1. On page 2, in the first line, after "as", to insert:

**to enable the application of the provisions on arrangements and compromises in the Companies Act, 2008, to banks under curatorship;**

2. On page 2, in the third line, after "curatorship;", to insert:

**to provide for the application of the Promotion of Administrative Justice Act, 2000, to any administrative action taken in terms of the Banks Act;**