



**MINISTRY: FINANCE  
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Hon. YI Carrim, MP  
Chairperson: Standing Committee on Finance SCoF)  
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Dear Chairperson

**SUBMISSION ON BANKS AMENDMENT BILL [B12 – 2018]**

Thank you for the opportunity to comment on the Banks Amendment Bill [B 12–2018], which has been tabled by Mr N F Shivambu, MP (the private member's Bill).

On substance, the private member's Bill accords with the Government's own objectives, as published in *A safer financial sector to serve South Africa better*, where Government noted that a key principle of Twin Peaks was that all entities that provide financial services should be regulated in the same way.

Indeed, Cabinet has approved for publication a Bill that achieves the same objectives, the Financial Matters Amendment Bill (the executive's Bill). The executive's Bill is currently out for public consultation. I attach a copy for your information.

The amendments to the Banks Act in the executive's Bill propose prerequisites, *not contained in the private member's Bill*, before a state-owned company may apply for a banking licence. The state-owned company must be solvent and have the executive's approval (i.e. from its executive authority and the Minister of Finance). These requirements are proposed to limit the fiscal risks of state-owned banks which may, in terms of their founding legislation, be able to continue to operate despite not being a going concern. If a solvent state-owned company having executive approval apply for a banking licence, the granting of the licence is at the discretion of the Prudential Authority and the Financial Sector Conduct Authority to be exercised in terms of the Financial Sector Regulation Act and the Banks Act. Apart from the Land Bank which operates in terms of its own legislation and a general exclusion from the Banks Act, there are other state banks that operate with exemption from the Banks Act, like the Postbank and Ithala Bank. Bringing these state banks into the Banks Act and Financial Sector Regulation Act framework will strengthen governance and oversight of these entities.

Furthermore, the executive's Bill achieves substantially more than the private member's Bill. In addition to the amendments to the Banks Act, it amends-

- the Auditing Profession Act to enhance the regulatory powers of the Independent Regulatory Board for Auditors (IRBA) over the auditing profession. The proposed amendments result primarily from the current challenges the IRBA faces in discharging its regulatory responsibilities in view of the global spotlight on the South African auditing profession. The current processes and sanctions are no longer

considered sufficient to deter inappropriate auditor behaviour, and for the IRBA to be responsive to the public's expectations that it deals adequately with errant auditors, it requires the ability and the means to do so. The changes are largely required because of the reputational issues currently faced by the auditing profession as a result of recent audit failures locally and abroad;

- the Government Employees Pension Law to introduce the principle of a "service reduction approach" to ensure that member's pension pay-outs to former spouses upon divorce are not converted to a debt obligation as is the case under the current approach;
- the Insolvency Act to ensure that government's international objectives for enabling over-the-counter (OTC) derivatives transactions with international counterparties in accordance with South Africa's G-20 commitments. It provides for a process to be followed when a creditor realises his or her security in terms of a master agreement and for a power for the Master to deal with disputes of the preference by trustees; and
- the Military Pensions Act to introduce gender neutrally and recognise the various forms of legal marriages for purposes of benefits for all military staff in accordance with the right to equality in section 9 of the Constitution.

The amendments to the Auditing Professions Act are particularly urgent, and I request that, once the executive's Bill is tabled in Parliament, envisaged in October 2018, the Standing Committee on Finance process the Bill, at the earliest possible opportunity.

Kind regards



**NHLANHLA MUSA NENE, MP**  
**MINISTER OF FINANCE**  
Date: 28/8/2018

attached: the draft Financial Matters Amendment Bill