



The Parliament of the Republic of South Africa

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16 November 2020

Dear Sirs

Submissions to Parliament: Private Members Bill - South African Reserve Bank Amendment Bill

We refer to the Private Members Bill entitled the "South African Reserve Bank Amendment Bill" published for comment on 30 October 2020 ("Bill") proposing amendments to the South African Reserve Bank Act 1989 ("SARB Act"). On behalf of HSBC Bank plc Johannesburg Branch Registration Number 2003/004613/10 ("HSBC", "we", "our") we wish to provide our submissions on the Bill for consideration.

Information about HSBC

HSBC is a branch of HSBC Bank plc (incorporated in the United Kingdom and registered as a branch under the South African Banks Act, 1990 and as an external company under the South African Companies Act, 2008. HSBC has been operating in South Africa since 28 February 2003.

At the outset, HSBC wishes to express its strong commitment to the meaningful transformation of South Africa to address the legacy of prior injustices and prejudices perpetrated during the Apartheid era. HSBC also wishes to play a meaningful role in promoting the achievement of the constitutional right to equality and economic unity.

The Bill

The Bill seeks the following main amendments to sections of the SARB Act:

- **Section 4 (Board of Directors)** – amendments empowering the Minister to appoint directors of the board of South African Reserve Bank ("SARB") and provide for the methodology of determining nominations.
- **Section 4A (Functions and Powers of Board)** – amendments to provide that the annual and financial statements should be submitted to the Minister and Parliament and not to the shareholders.
- **Section 5 (Tenure and Powers of Board)** – amendments to provide for the tenure of office of directors;
- **Section 6 (Casual vacancies)** – amendments to place the power over the appointment process for casual vacancies of directors with the Minister.
- **Section 10 (Powers and Duties of Bank)** – amendments to remove SARB's power to issue certain shares.
- **Section 21 (Share Capital of Bank)** – amendments to provide for ownership of the SARB to be held solely by the State and shareholder rights to be exercised by the Minister on behalf of the State.

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- **Section 30 (Audit and Inspection)** – amendment to give the power to the Minister to appoint the auditors of the SARB.
- **Section 32 (Furnishing of information to Department of Finance and to Parliament)** - amendments to grant power to the Minister to make regulations (delegated legislation) relating to the appointment of directors.

Executive summary

HSBC is cognisant of the important role that Central Banks, such as the SARB play and the International Monetary Fund (“IMF”) has stated the following:

“Central banks play a crucial role in ensuring economic and financial stability. They conduct monetary policy to achieve low and stable inflation. In the wake of the global financial crisis, central banks have expanded their toolkits to deal with risks to financial stability and to manage volatile exchange rates. Central banks need clear policy frameworks to achieve their objectives. Operational processes tailored to each country’s circumstances enhance the effectiveness of the central banks’ policies. The IMF supports countries around the world by providing policy advice and technical assistance.”¹

For this reason, HSBC is supportive of efforts to engage in much needed reform of South Africa’s economic landscape including re-examining macro-prudential and financial policy, including interrogating core institutions such as the SARB, to enable reform. However, erosions on the independence of the SARB will negatively effect public and investor sentiment and will challenge long-standing views on the importance of central bank independence.

The main thrust of the Bill deals with changing the shareholding structure of the SARB from a diverse shareholding held privately to one in which the Government is the sole shareholder and, more importantly, changing the mechanisms relating to the appointment and tenure of key decision-makers of the SARB.

We believe that the SARB has demonstrated an excellent track record in managing monetary policy in South Africa through periods of extreme turmoil and any decision to interfere with the SARB should only be taken with careful consideration of the important legal provisions underpinning well-functioning central banks.

The key pillar of a well-functioning central bank is the concept of central bank independence (“CBI”). While this is not an absolute concept and has become increasingly fluid in its interpretation, CBI is important in managing the inherent conflict of interest between government and central banks. Governments (being publicly elected) have an inherent bias towards short-term gains to maintain their elected status and prospects of re-election. This bias can potentially be at the expense of monetary policy (the focus of which should be overall price stability).

While it is important to reduce a central bank’s ties to large financial corporates, the Bill regrettably attempts to erode the key principal of CBI by concentrating ownership of the SARB in the hands of the Government. More importantly, the Bill attempts to concentrate all powers of appointment and dismissal of key decision-makers (i.e. Governor and Board of the Directors) in the Government rather than a range of stakeholders.

We believe that a re-examination of the SARB Act would be a beneficial exercise, however, we feel that the Bill does not achieve that objective and would ultimately be damaging to the real and perceived view of the SARB’s independence resulting in a substantial reduction in investor confidence at a time when investment is critical to the re-building of South Africa, particularly in the post-Covid 19 economy.

Inflation in South Africa has moderated since the adoption of inflation targeting, from an average of 9.4% in the 1990s, to 6.1% in the 2000s, 5.2% in the 2010s and 3.3% in 2020². Low inflation supports low interest rates and the rate is currently at an all-time low of 3.5% following the 300bp of rate cuts this year, most in response to the effects of COVID-19 on the economy. Low inflation provides the space for monetary policy to respond aggressively to the economic fallout from the lockdown.

¹ Factsheet issued by the IMF dated 28 March 2019. <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/20/Monetary-Policy-and-Central-Banking>

² During the 1990s the policy rate averaged 15.6%, before averaging 9.9% in the 2000s and 6.1% in the 2010s.

High inflation disproportionately hurts the poor by reducing their purchasing power and worsens inequality because poor households (defined as the bottom three income deciles) hold few assets and liabilities. These direct effects from inflation on poverty are much larger than any gain coming from higher economic growth and job gains.³

Argument for the independence of central banks

The importance of both *de jure* and *de facto* central bank independence (“CBI”), and the separation of the relationship between central banks and governments, has been stressed by central bank commentators over several decades with CBI generally being considered to be the primary solution for the inflationary bias of governments. Empirically backed research has shown that countries with higher CBI have lower inflation levels and improved economic performance compared to those with a lower degree of CBI. In other words there is “robust evidence that that central bank independence (CBI) reduces inflation”⁴. CBI discourages government from using monetary policy to stimulate growth in an effort to secure re-election in the mistaken hope that revisions can be made before the next election cycle, rather than stimulating growth through fiscal and structural reform. This can be summarised as follows:

“[I]literature points out that decision-makers who are subject to political election cycles tend to act in a more short-sighted manner when exercising their mandate. This short-termism creates an inflation bias, making it difficult to credibly promise actions which will validate low inflation expectations over time. To overcome this time-inconsistency problem, monetary policy needs to be delegated to an institution which is sufficiently detached from these cycles. However, independence does not mean isolation, which is why it is important for a dialogue between the central bank and the democratically elected institutions, as well as directly with the public at large, to be maintained.”⁵

CBI removes the ability for governments to use monetary policy stimulus as a political tool, boosting growth in ahead of elections and responding to the inflationary consequences and macroeconomic instability of frequent boom-bust cycles that follows. It also takes away government’s ability to use the central bank as a source of revenue through simply printing money (creating bank deposits) to be spent. The associated inflation acts as a currency tax by reducing the purchasing power of cash balances.

CBI entails the elected government of the day placing monetary policy in the hands of a central bank but with clearly defined objectives and checks and balances ensuring that decisions made by the central bank with regard to monetary policy are based on independent decision-making.

However, while CBI may have served governments well in the decades prior to the 2007 – 2008 global financial crisis (“GFC”), the fallout from the GFC has resulted in a challenge to the notion of CBI as an absolute and immutable concept. The GFC had the global effect of pushing central banks closer to government including devising new goals for financial stability as well as emphasising goal setting, transparency and accountability. As a result, current commentators are starting to view CBI as a more fluid concept.

Rather than viewing CBI as a country’s weapon to counter the indiscriminate printing of money, CBI means devolving responsibility for monetary policy to an independent central bank with clearly defined powers to consider public interest within its mandate. It is argued that this fosters an environment where the interests of both the public and the elected government are upheld and successive governments are not left to deal with the problems that result from the indiscriminate printing of money.

However, despite this recent trend to question the absolute notion of CBI, the overwhelming majority of academic and central bank practitioners continue to support the concept of CBI. In particular, central bank researchers have stressed that while a more flexible and fluid notion of CBI may be arguable in mature economies, the importance of CBI in emerging or transition economies should be prioritised as central bank independence has real benefits in an emerging economy. Commentators have also stressed that CBI can be real or perceived and the public’s view of a particular central bank as being independent is critical.

³ Loewald, C and Makrelov, K, “The impact of inflation on the poor”, SARB Occasional Bulletin of Economic Notes, October 2019

⁴ Crowe, C and Meade, E, “Central Bank Independence and Transparency: Evolution and Effectiveness IMF Working Paper, May 2018, Page 3

⁵ <https://www.ecb.europa.eu/press/key/date/2017/html/sp170330.en.html>

Measures of Central bank independence

Several measures of CBI have been proposed by academics over the past few decades (Bade and Parkin, 1982; Grilli, Masciandaro and Tabellini, 1991; Alesina and Summers, 1993; Cukierman, Webb and Neyapti, 1992 (CWN Index). The CWN index has 4 main components:

- Appointment procedures for the head of the central bank;
- Resolution of conflict between the central bank and the executive branch of government;
- The use of an explicit policy targets;
- Rules limiting lending to Government.

However, these measures of CBI have been criticised as being too focused on *de jure* measures compared to *de facto* measures and have proposed new measures of CBI⁶. In other words, the criticism is that the measures of CBI have been too focused on the letter of the law and rather than the *de facto* management of the relationship between government and the central bank. Current commentators seek to measure the following criteria⁷:

- Setting of central bank objectives – favouring price stability as the sole or main objective of the central bank;
- Policy formulation – the extent to which policy decisions are independent from government namely:
 - *Who formulates monetary policy*;
 - *The existence of a conflict mechanism* that provides the central bank with the final authority in disputes over its legally defined objectives;
 - *Whether the central bank's charter allows the government to overrule the central bank* or not;
- Governor – assessing the autonomy of the central bank governor from potential political pressure, namely:
 - Term of office of the governor (it is thought that the term of office of the governor should not align with election cycles and the rapid turnover of governors indicates lower *de facto* independence);
 - Reappointment possibilities (it is thought that CBI is enhanced when central banks are composed of officers serving nonrenewable terms);
 - Appointment procedures (it is thought that if political authorities are able to appoint the governor and other officials, they are likely to select those who are less likely to challenge their policies);
 - Dismissal procedures (it is thought that decision-makers who are only able to be removed from office within clearly defined parameters and not the whim of the government of the day is a good indicator of CBI);
 - Incompatibility clause - Central bank charters that do not incorporate an explicit incompatibility clause for the governor are penalised in recognition of the practice that this might produce conflict of interest concerns which impair CBI
- Central bank board – the same five criteria as above but with an additional criteria concerning the composition of the board of directors of the central bank. A central bank with a board with no government or private sector representation is assigned the highest degree of independence;
- Limitations on credit to government – prohibitions on direct and indirect credit to government or the impositions of limitations on such credit;
- Lender of last resort – limiting lender of last resort facilities to the banking sector;

⁶ Fouad, J, Fayed, M and Emam, H, "A New Insight into the Measurement of Central Bank Independence" (Journal of Central Banking Theory and Practice, 2018).

⁷ *Ibid.*

- Financial Independence – the right of the central bank to utilise its financial resources without external involvement. The highest degree of CBI is awarded to central banks that own their capital, determine their budget internally and self-finance their losses without resorting to the government;
- Accountability – accountability procedures support CBI. Having the proper accountability measures in place ensures appropriate checks and balances and enhances the credibility of monetary policy eg, the periodic disclosure of central bank financial statements certified by an external independent auditor as well as external monitoring of the central bank.
- Transparency – whether the law necessitates the publishing of periodic reports on monetary policy and inflation reports as it is regarded that transparency enhances the effectiveness and credibility of monetary policy.
- Foreign exchange policy – central banks that are in charge of formulating and implementing exchange rate policy are given the highest score on CBI.

It is noted that the Bill proposes amendments with regard to the role of the governor and the board of directors of the SARB which we believe substantially reduce the current CBI scores for the SARB.

The table below sets out current thinking of the criteria for measuring CBI in the key areas of the role of the governor and composition of the board, known as “personal independence” – constraints on the capacity of members of a central bank’s decision-making bodies to take decisions without external influence.

Measures of CBI in the areas of the Governor and Board of central bank ⁸			CBI*	CBI de facto Methodology
*Values of 1 or closer to demonstrate greater CBI				
Governor	Term of office	Exceeds election cycle (ie over 5 years)	1	Calculating the turnover rate of the governor
		Same as election cycle	0.5	
		Less than election cycle or at discretion of appointer.	0	
	Reappointment possibilities	Not allowed	1	Is there any case of a reappointment of the governor?
		Only one reappointment is possible in addition to first appointment	0.67	
		Central bank charter does not include any provision concerning reappointment	0.33	
		Central bank charter permits governor’s reappointment with no limits.	0	
	Who appoints the governor	Double veto arrangement whereby central bank central bank board nominates and the president or the legislature appoints	1	Analysing practical procedures related to appointment
		Appointment carried out exclusively by central bank board	0.83	
		Appointment carried out by a council composed of members from the central bank board, executives and legislatures	0.67	
		Appointment done exclusively by legislature;	0.5	
		Appointment done exclusively by president	0.33	
		Appointment exclusively by executive branch (collectively – i.e. cabinet)	0.17	
		Appointment exclusively by some members of executive branch.	0	
	Dismissal of governor	Dismissal allowed only for reasons not related to policy (i.e. incapacity or breach of law or misconduct) by rule of court or independent tribunal	1	Analysing practical procedures related to dismissal
Dismissal allowed only for reasons related to policy (i.e. incapability or breach of law or misconduct) after the approval of both the nominator and the appointer in a 2-step process, dismissal clause.		0.83		

⁸ Fouad, J, Fayed, M and Emam, H, “A New Insight into the Measurement of Central Bank Independence” (Journal of Central Banking Theory and Practice, 2018), 78-83.

		Dismissal allowed at discretion of central bank board	0.67	Is politically inspired dismissal allowed or not allowed
		Dismissal allowed at the discretion of the president	0.5	
		Dismissal allowed at discretion of president	0.33	
		Dismissal allowed at discretion of government for policy reasons	0.17	
		Unconditional dismissal permitted at government's discretion or charter does not include dismissal clause.	0	
	<i>Incompatibility clause</i>	Governor prohibited from holding any other office in government while in office	1	Does the governor hold office in government while in office/
		Governor generally not allowed to hold any other office in government unless authorised by executive branch	0.5	
		Central bank charter does not prohibit governor from holding other office in government while in office	0	
	Central Bank Board	<i>Term of Office</i>	Exceeds election cycle (i.e. over 5 years)	1
Same as election cycle			0.5	
Less than election cycle or at discretion of appointer			0	
<i>Reappointment possibilities</i>		Not allowed	1	Is there any case of the board's reappointment?
		Only one reappointment possible in addition to first appointment	0.67	
		Central bank charter does not include any provision concerning reappointment	0.33	
		Central bank charter permits reappointment with no limit	0	
<i>Who appoints central bank board</i>		double veto arrangement whereby central bank central bank board nominates and the president or the legislature appoints	1	Analysing practical procedures related to dismissal Is politically inspired dismissal allowed or not allowed?
		appointment carried out exclusively by legislature	0.75	
		appointment done exclusively by president	0.5	
		appointment exclusively by executive branch (collectively – i.e. cabinet)	0.25	
		appointment exclusively by some members of executive branch.	0	
<i>Dismissal of board members</i>		Dismissal allowed only for reasons not related to policy (i.e. incapability or breach of law or misconduct) by rule of court or independent tribunal	1	
		Dismissal allowed only for reasons not related to policy (i.e. incapacity or breach of law or misconduct) after the approval of both the nominator and the appointer in a 2-step process	0.83	
		Dismissal allowed at discretion of central bank board	0.67	
		Dismissal allowed at discretion of legislature	0.50	
		Dismissal allowed at discretion of president	0.33	
		Dismissal allowed at discretion of the government for policy reasons	0.17	
		Unconditional dismissal permitted at government's discretion or charter does not include dismissal clause	0	
<i>Incompatibility clause</i>		Board members prohibited to hold other offices in government while in office	1	Does any board member hold office in government?
		Board members not allowed to hold other offices in government, unless authorised by the executive branch	0.5	
		Central bank charter does not prohibit board members from holding other office in government while in office	0	

	<i>Composition of central bank board</i>	No representation for government or private sector (except for minister of finance without voting right)	1	Analysing the composition of the board and voting rights
		Direct government participation with voting rights.	0.5	
		Direct government and private sector participation with voting rights	0	

We consider that the following aspects of CBI are severely compromised by the Bill and should be re-examined:

- Concentrating ownership of the SARB in the hands of the Government as sole shareholder with no diverse shareholding;
- The concentration of the power to appoint and dismiss key decision-makers solely in the Minister;
- Providing for short-term tenures of 3 years of key decision-makers (i.e. less than the election cycle);
- No restraints on the possibility of re-appointment so that decision-makers can be appointed for an unlimited period;
- No constraints on the Minister to dismiss key-decision makers only on serious grounds (as opposed to the whim of the Minister);
- No prohibition on decision-makers from holding office in Government;
- Affording the Minister the sole right to vote on behalf of the Government; and

Central Bank transparency

Along with CBI, transparency is a critical to ensuring sound monetary policy. CBI increases transparency as there is an incentive for independent central banks (the members of which are not elected by the electorate) to objectively justify their decisions). Transparency relates to⁹:

- Political transparency – the relationship between the executive and central bank (particularly ensuring that roles and responsibilities are transparently codified and embodied in measurable objectives);
- Economic transparency – the release of economic information including forecasts by the central bank to allow independent assessment and scrutiny of decisions;
- Procedural transparency - the internal decision-making of the central bank (achieved through the publication of transcripts, minutes or voting decisions of the relevant policy committees);
- Political transparency – the release of information on policy decision including the rationales therefor.
- Operational transparency – the publication of information on the accuracy of the central bank’s past forecasts and accounting for past errors in policy.

We consider that as the Bill erodes CBI, this will lead to the undesirable result of an erosion in transparency. What is needed is an independent central bank comprising members who are not subject to the influence of the government of the day and who will be motivated to be transparent about the decisions they take.

The SARB

The SARB is constituted as a juristic person by the SARB Act. Its primary objective is to protect the value of the currency in the interest of balanced and sustainable economic growth (Section 3):

“3. **Primary objectives of Bank**

- (1) The primary objective of the Bank shall be to protect the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic.
- (2) In addition, the Bank is responsible for protecting and maintaining financial stability as envisaged in the Financial Sector Regulation Act 2017.”

The objectives of the SARB are further enshrined in the Constitution in section 224:

⁹ Geraats, P, “Central Bank Transparency” (Economic Journal, 2002, Vol 112).

“the Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters”.

As with the central banks of Switzerland, Italy, Belgium and other countries, the SARB is owned by some 750 private shareholders including shareholders from the banking industry.

There are current limits to the SARB’s institutional, functional and personal independence as the bank is managed by a Board of 14 Directors (Section 4 of the SARB Act), seven members of which are elected by the SARB’s private shareholders. However, monetary policy decisions are taken by the Monetary Policy Committee (“MPC”) consisting of the Governor, three Deputy Governors and three senior SARB officials. The Governor is appointed directly by the President for a five-year term.

The Minister of Finance may make regulations relating to the election of Directors by shareholders, the conditions of appointment of Directors, and the circumstances in which a Director must vacate their office (Section 36). The SARB may lend to the government but within legal limits (Sections 10(f)(i), 10(g) and 13(f)).

The SARB is also accountable to the Minister of Finance (Section 31) and, ultimately, to Parliament (Section 32).

Accordingly, there are already limits on the independence of the SARB in the SARB Act particularly as the President of South Africa has the statutory right to solely appoint (and ultimately dismiss the governor) (section 4(1)(a)). By further stripping out the checks and balances in the SARB Act which enable the appointment of directors by the diverse shareholders of the SARB will endanger the CBI measure of the SARB which will result in a loss of confidence by the public and investors and potentially make the SARB vulnerable to manipulation by the executive arm of government.

If any amendment to the SARB Act is to be considered, we believe it would be useful to analyse the composition and functioning of certain central banks which have a proven track record of maintaining stable monetary policy and that elements of their structure can be considered for implementation in South Africa. Any revisions to the composition and functioning of the SARB should result in a central bank which strong enough to counter opposition from the financial industry and be independent from political interference.

German Bundesbank¹⁰

The independence of the German Bundesbank is enshrined through the Bundesbank Act which was adopted in 1957. And the Bundesbank’s mandate is enshrined in law – it is compelled by law to the task “of safeguarding the currency.” and is considered to be a central bank with “a relative maximum of independence.”¹¹ However, the Bundesbank’s independence is not total, but it is relatively high when compared to other central banks.

Members of the Government may attend and propose motions at meetings of the Central Bank Council. They even have the right to ask Council decisions to be delayed for up to two weeks. But this has, so far, never led to any serious problem regarding the conduct of monetary policy. The German Government has never used this veto right and it is considered that the Government can only use it to delay action by the Central Bank Council, not to block it.

The members of the Central Bank Council are appointed upon nomination by the Federal and the Länder (state) Governments. Their terms are for a relatively long period (maximum eight years), during which they cannot be removed from office.

The Bundesbank Act specifically states the following with regard to its independence: “[w]ithout prejudice to the performance of its functions, the Deutsche Bundesbank is required to support the general economic policy of the Federal Government.” This is generally interpreted to mean that understood to mean that the Bundesbank is free to pursue its primary objective of price stability in the case of a conflict between the demands of the government and the Bundesbank.

¹⁰ Downes, P and Vaez-Zadeh, R, “The Evolving Role of an Independent Central Bank in Europe” (International Monetary Fund, Central Banking Department, 1991).

¹¹

The successful performance of the Bundesbank over several decades in managing financial (including in situations of hyper-inflation) and this supports the argument of the importance of CBI. Inflation rates in Germany have remained far below the average rates of most other industrial countries. Stable prices and low inflation have contributed to increased export competitiveness and a fairly stable social climate, which is felt to have favored growth of the German economy; this has strengthened its role in the world economy. It has been said that “[t]he Bundesbank has acquired its reputation as an inflation fighter after a long period of skillful monetary management, and it is this that gives the Bundesbank its credibility and legitimacy”¹².

European Central Bank (ECB)

Although the ECB is a supra national central bank managing monetary policy across a large free trade zone, it is a useful case study in promoting the functional independence of a central bank.

The legal foundation of ECB independence is enshrined at the highest possible level in European law. It is enshrined in primary law, in the form of the Treaty on the Functioning of the European Union (“**TFEU**”) (Article 30). From a legal perspective, the Treaty on the Functioning of the European Union established the European System of Central Banks (“**ESCB**”), consisting of the ECB and the national central banks (NCBs) of all EU member states. Independence is also enshrined in the Statute of the ESCB. Since primary EU law can only be modified with the agreement of all EU member states, this independence enjoys quasi-constitutional status.

Article 283(2) TFEU provides that the governor of the ECB and can only be removed from office by the Court of Justice of the EU (“**CJEU**”) in two cases:

- if they no longer fulfil the conditions required for the performance of their duties; or
- if they have been guilty of serious misconduct.

Article 11.4 of the Statute of the ESCB provides for a minimum term of office of five years for the NCB governors^[5].

The tenure of Members of the Executive Board of the ECB is 8 years and their dismissal on grounds of either inability or serious misconduct is pronounced by the CJEU.

The TFEU and the Statute of the ESCB also provide a powerful judicial remedy against arbitrary dismissals allowing the ECB and the governors to refer a dismissal to the Court of Justice of the European Union.

The ECB is formally of the view that the independence of the ECB is conducive to maintaining price stability which the ECB considers is supported by extensive theoretical analyses and empirical evidence on central bank independence. The ECB has shown success in navigating the fallout after the GFC and the Eurozone crisis and has had to navigate some very troubles and uncharted waters over the past decade and longer.¹³

ECB governors have a minimum terms of office of five years. Security of tenure is considered important. However, members of the Executive Board of the ECB have a non-renewal term of office of 8 years.

The Swiss Central Bank¹⁴

The Swiss Central Bank (“**SNB**”) is bound by the Federal Constitution of Switzerland to act in accordance with the interests of the country as a whole (Article 99, para 2) but its primary goal is to ensure price stability but at the same time it is obliged to take account of economic developments. The SNB seeks to retain financial, institutional and personnel independence.

¹²

¹³ ECB website: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op248-28bebb193a.en.pdf>

¹⁴ SNB website: <https://www.snb.ch/en/i/about/snb>

Institutional independence - shareholding

The SNB's institutional independence rests on it being an independent legal entity. The SNB is established by the National Bank Act 2003 ("NBA") and is a special-statute joint-stock company. Unless defined otherwise in the NBA, the provisions of the Code of Obligations relating to joint-stock companies apply. The SNB is also administered with the cooperation and under the supervision of the Confederation. This mixed legal form uniting elements from private and public law, was selected with the SNB's establishment in 1907.

Around half the SNB's share capital is held by the cantons in Switzerland, the cantonal banks and other public authorities and institutions, with the remainder in the hands of private individuals. The SNB carries out its monetary policy mandate independently of the Swiss Federal Council, parliament or other bodies. Consequently, its legal form is a combination of private and public law elements, and the rights of its shareholders are also limited accordingly.

Personal independence – appointment and dismissal of Governing Board

The personal independence of the SNB is secured by the fact that members of the Governing Board and their deputies may be removed from office during their term of office only if they no longer fulfil the requirements of their office, or if they have committed a grave offence.

Members of the Governing Board hold office for 6 years and are appointed by the Federal Council, based on the recommendation of the Bank Council. The Chairperson and Vice Chairperson are also appointed by the Federal Council. Candidates for the Governing Board must have an impeccable reputation and a recognised expertise in monetary, banking and financial issues. They must also hold Swiss citizenship and be resident in Switzerland.

The financial reporting of the SNB is not comparable with that of a joint-stock company under private law. The SNB's purpose is not to earn profits which are then distributed to its shareholders, but rather to fulfil its mandate as laid out in the Constitution. The distribution of profits is also defined in the NBA. It renders account of the fulfilment of its tasks to parliament and the public in the accountability report. It provides information on organisational and operational developments, as well as its financial result, in its financial report, which includes the business report and the annual financial statements. The financial report requires the approval of the Federal Council before it can be put before the General Meeting of Shareholders.

The participatory and property rights of SNB shareholders are severely constrained by law. Furthermore, voting rights of shareholders outside the Swiss public sector are limited to a maximum of 100 shares. Foreign shareholders have numbered among the private shareholders since the beginning of the 1990s. At end-2019, they accounted for 13% of registered shares, although their voting share was just 2.7%.

The Central Bank of Chile

The Central Bank of Chile is generally considered to be a good example of a well-functioning independent central bank and has navigated the country through periods of crisis.

The central bank has a Council on Financial Stability (CFS) which is a consultative body reporting to the Ministry of Finance. The CFS consists of the Minister of Finance as chair, as well as 3 relevant financial supervisors, including the Superintendent of Banks and Financial Institutions.

The law establishing the Central Bank of Chile specifies that the CFS must rely on the permanent advisory services of the Central Bank. For that purpose, the Chairman of the Central Bank is allowed to participate in all meetings of the CFS with the right to be heard and be informed of all matters and materials being considered by the council.

However, the CFS does not impose limits on the powers of the central bank.

Conclusion

We consider CBI to be a fundamental pillar in ensuring stable monetary policy and ensuring public benefit from that stability. We consider that the Bill, while welcomed as an attempt to engage in a review of the SARB's structure and accountability, unfortunately does not achieve that objective and is rather severely damaging to the SARB's independence, a concept in which much-needed investor confidence depends on.

We trust that this submission will be considered by Parliament in its important decision-making with regard to the Bill

Yours sincerely



For and on behalf of HSBC Johannesburg Branch

Liesel Glass

Chief Compliance Officer

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