

South African Reserve Bank Amendment Bill

National Treasury response to the Standing
Committee on Finance
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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



APOLOGIES

- Minister of Finance, Deputy Minister of Finance and DG of NT
- Presenters from National Treasury: Ismail Momoniat and Errol Makhubela
- Supported by legal officials from SA Reserve Bank

WHAT WAS THE RULING PARTY'S RESOLUTION THAT IS DRIVING THE DEBATE ON OWNERSHIP



- The concept of nationalisation of SARB was proposed in the ruling party's national conference (ANC's 53rd National Conference), at which the following was adopted in relation to the Reserve Bank:
 - The South African Reserve Bank is the central bank of the Republic. It performs its functions independently, but in regular consultation with the Minister of Finance. The right to issue paper money, set interest rates and regulate the financial system resides wholly with the Reserve Bank.
 - It is, however, a historical anomaly that there are private shareholders of the Reserve Bank. Conference resolves that the Reserve Bank should be 100% owned by the state.
 - Government must develop a proposal to ensure full public ownership in a manner that does not benefit private shareholder speculators."
- Treasury is aware that opposition parties have different views, some similar to the ruling party and going beyond, and some different
- This presentation does not engage on the political perspective of any of the political parties. All political parties will have their own views and resolutions
- This presentation provides a more legal and technical perspective, on the implications of such policy as outlined in the Bill.

Introduction

- South African Reserve Bank is an organ of state established in terms of Section 223 of the Constitution
- SARB's primary objective is -
 - “to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic”* and
 - “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”*
- Section 224 of the Constitution

WHAT PROBLEM IS THE BILL TRYING TO SOLVE?

- What problem is the SARB Amendment Bill trying to solve?
 - Ensuring ownership of all 2 million shares are owned by the state, in line with central banks of most countries
 - Bill changes the shareholding structure by making the state the sole shareholder
 - Rights of the shareholder to be exercised by the Minister of Finance
- Bill goes further and also changes the governance arrangements, including that all directors are appointed by the Minister of Finance, from a list confirmed by a Panel
- Minister will also appoint the auditors for the Bank
- Whilst the Bill does not directly change the mandate and independence of the SARB, there is no comfort to current and future investors and savers that this is not the first step towards changing the mandate of the SARB.
- The mere PERCEPTION that this MAY happen sometime in the future sends a powerful negative signal to investors on how monetary policy will function in the future, on the value of the currency etc.
- Key concerns with the Bill is what it does not do
 - It ignores the rights of shareholders as codified in the SARB Act, and the adverse signal to all investors in the SA economy of any forced take-over of SARB shares
 - It is silent on how to fund the purchase of such shares, and assumes they can simply be appropriated
 - It does not take into account Bilateral Investment Treaties, and rights of foreign shareholders

WHAT PROBLEM IS THE BILL TRYING TO SOLVE?

- What problem is the SARB Amendment Bill really solving?
 - Changing the composition of ownership will not result in any material change in the current role of Government in respect of the SARB
- How does current ownership structure impact on the mandate and independence of the SARB?
 - It does not impact on the mandate and operational independence of the SARB, but signaling otherwise
 - Powers of Board of SARB are limited to corporate governance
 - All other powers in terms of SARB Act and other legislation vest with Governor and 3 Deputy-Governors
- Majority of directors on SARB Board appointed by President
 - Governor, 3 Dep Governors and four other directors are appointed by Govt
 - Shareholders appoint 7 of the 15 directors, subject to confirmation by Panel
 - So Govt has majority control over corporate governance, without owning a single share!
- Are there any consequences for changing the ownership structure?
 - Yes, even if all shareholders voluntarily agree to be bought out by the state at its nominal value, as it will generate fears that it is a first step towards changing the mandate of the SARB
 - Yes, as it also generates fears that it will lead to more corruption or capture
 - Yes, as it will generate fears amongst investors about expropriation and more uncertainty on property rights beyond land ownership

SARB AMENDMENT BILL HAS NOT BEEN PROCESSED LIKE GOVT BILLS

- No SEIS has been conducted on the Bill, as it is a private members bill
- Impact on economy, investment or fiscus has not been assessed
- No assessment on whether the Bill transgresses the Constitution
- No assessment on whether the Bill conflicts with other policy objectives of Government, and what trade-offs are involved in achieving the full ownership objective

SARB Ownership Structure

- SARB Act allows for two million ordinary shares – section 21(1) SARB Act
- Share capital may be increased with consent of the Board – section 21(3)
- About 12.65% of shares held by foreign nationals
- Shareholder Index is compiled annually and available to the public

SARB Act – Ownership

Limitations on Ownership

Section	Provision
Section 22(1)(a)	No shares to be held in aggregate or otherwise of more than 10 000 by any person or their associate
Section 22(1)(b)	Shareholder holding more than 10 000 shares will have to dispose by order of court
Section 23(1)	Shareholders restricted to 1 vote per 200 shares held
Section 23(2)	Shareholders & associates may not circumvent section 23(1) vote restriction by aggregating total votes held

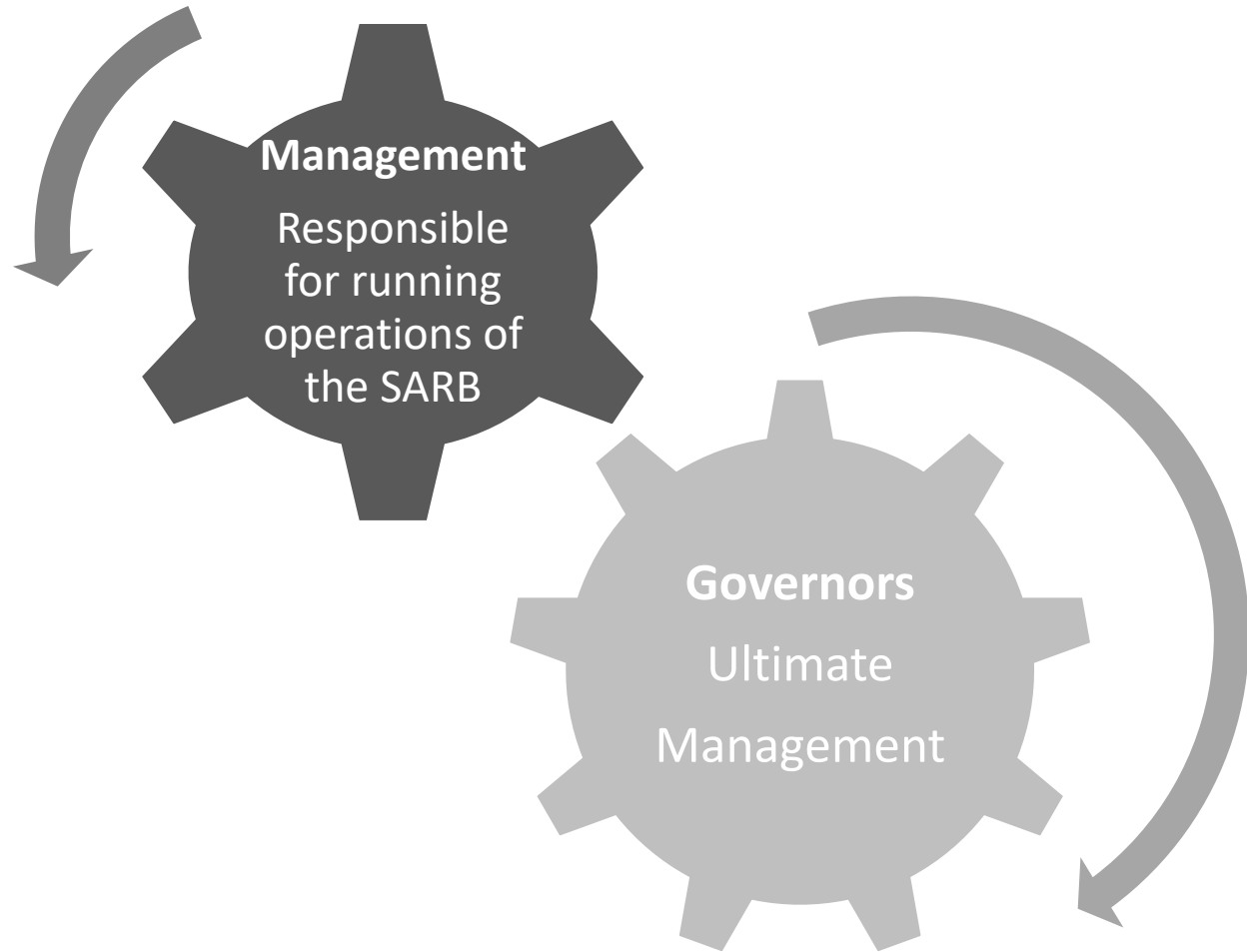
Current Management and Governance

- Section 224(2) provides that –
 - SARB to discharge duties and functions independently
 - Regular consultation with Minister of Finance who does not have a say on operations
 - SARB management appointment process has checks and balances –
 - Governor, 3 Deputy Governors and 4 Directors appointed by the President
 - Seven directors elected by shareholders from candidates confirmed by an independent panel (Governor, retired judge, NEDLAC)
- Given our experience the last ten years where some SOEs were captured, because Govt had the sole power to appoint directors and auditors, the amendments to the SARB Bill will make it easier to capture the SARB
 - Proposed amendments in the Bill do not motivate why it makes it easier, and not more difficult, to protect the SARB from any potential capture

Management and Governance cont....

Board

Board and shareholders have no say on the management or operations of the SARB



Ruling Party Position

No nationalisation of Reserve Bank — ANC top six

President announces that nationalising the Reserve Bank is ‘simply not prudent’



<https://mg.co.za/article/2019-06-06-no-nationalisation-of-reserve-bank-anc-top-six/>

GOVERNMENT OBJECTIONS TO THE BILL

- Government has fundamental objections to the Bill based on:
 - its constitutionality;
 - Its impact on future investment and on the economy and jobs
 - its lack of detail on funding and cost implications
 - Its conflict with other legislation

The Bill also does not align with the current policy objectives and funding priorities of government.

Key Proposals of the Bill

1. SARB to be owned by the State
2. Shareholders to be divested of shares
3. Minister of Finance to appoint Directors
4. Minister of Finance to exercise rights of shareholders
5. Divestment of shares to result in non-payment of dividends
6. Restriction on SARB to form shares in a payment, clearing and settlement system/juristic person

Section 25 of the Constitution

- Deprivation of property in terms of laws of general application
- Property may be expropriated for a public purpose or in the public interest
- Expropriation subject to agreed compensation or approved by a court
- Amount of compensation must be just and equitable
- Amount of compensation to include a consideration of its market value

Provision of Bill

- No provision in the bill for compensation
- No transparent administrative process is outlined where:-
 - Compensation can be agreed
 - Compensation can be determined in just and equitable manner
 - Compensation can be agreed subject to the market value of the shares

Economic implications

- Foreign shareholders may be entitled to claim compensation under bilateral investment treaties entered into by the Republic
 - Indeed, there are some shareholders who have actively instigated nationalisation so they can have access to a share of assets of the SARB, including foreign reserves
- Fragile fiscus would be exposed to monetary claims under any bilateral investment treaty
- More economic and policy uncertainty and risks will impact adversely on future investment

MONEY BILL CONCERNS

A government policy proposal of state expropriation of private property requires an appropriation from the fiscus.

An appropriation of state funds would have to be authorised by the Minister of Finance via a Money Bill.

“...only a the Cabinet member responsible for national financial matters may introduce.....a money Bill” –

Section 73(2)(a) of the Constitution

Specific Legal Concerns

Clause 7 proposes to prohibit the SARB from forming shares in a payment, clearing and settlement company

The proposal contradicts the Reserve Bank's resolution powers and functions as contained in the Financial Sector Laws Amendment Bill [B15 – 2020] (FSLAB) for

- Systemically Important Financial Institutions (SIFIs) or
- Systemically Important Payment Systems (SIPS)

The contradiction with the policy proposals in FSLAB could raise legal interpretation issues for the SARB/RAs powers

CONCLUSION

- Full ownership may be desirable, but it will have huge costs and significant trade-offs, including impacting:
 - Negatively on investment and on economic growth
 - Any change to the Bill cannot escape the context that we are making these changes after our experience of state capture
- Bill does not address many key questions, including on funding and economic impact
- SA is stuck in a low growth trap, with great fiscal challenges to stabilize its debt, so why risk slowing growth even more?
- Governance arrangements will be significantly weaker, and weakens our defences to protect SARB
- Government does not support the bill

End

Thank you