

**SOUTH AFRICAN RESERVE  
BANK AMENDMENT BILL 2010**

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## PURPOSE OF THE BANK

- Maintain the value of the currency in the interest of sustainable growth and development
- The Bank is there to serve the public interest
- Co-responsible for stable macro-economic environment of country
- International and national obligations
- Responsibilities include currency, payment systems, bank regulation, financial markets, banker to Government, managing country reserves, exchange controls and monetary policy
- Not suitable to be done by privately owned company
- Purpose is not to maximise profits for shareholders

## **ROLE OF GOVERNMENT**

- Government establishes the Central Bank
- Government sets policy goal, the Bank has operational independence regarding the implementation thereof
- Government receives 90% of Bank's profits
- Government appoints Governors and independent directors
- Country's reserves are held in trust by the Bank
- Government ultimate guarantor to central bank, not shareholders

## SHAREHOLDING

- SARB is not a private company and shareholders have limited rights. The SARB Act sets out limitations
- Widest possible representation. Limitation on shareholding whether individual or corporate – intention is no block of opinion or influence
- Limitation of ownership of shares aimed at preventing actions in concert with the intent of undue influence
- Fixed return confirms not for profit but public interest role
- Shareholding in central bank does not equate to ownership (legal person)
- The SARB Act restricts persons not ordinarily resident in RSA from voting irrespective of nationality
- SARB Act prohibits shareholding by nominees

## CONSTITUTIONALITY AND INDEPENDENCE

- Established in terms section 223 of the Constitution read with the SARB Act
- Independent within Government
- Act without fear, favour or prejudice (s224)
- Regular consultation with the Minister of Finance
- Not a private company and not governed by the Companies Act or PFMA (specifically exempt)
- Creature of statute as set out in the SARB Act – ss223 to 225 of the Constitution

## CENTRAL BANKS: FEATURES

**IMF Survey of Boards and Management (2004):**  
**9 out of 101 Central Banks Surveyed – Joint Stock Companies**

**All have strict limitations on profit allocation to private shareholders**  
**Fundamentally different from ordinary company: CB**  
**Non profit public interest motive**

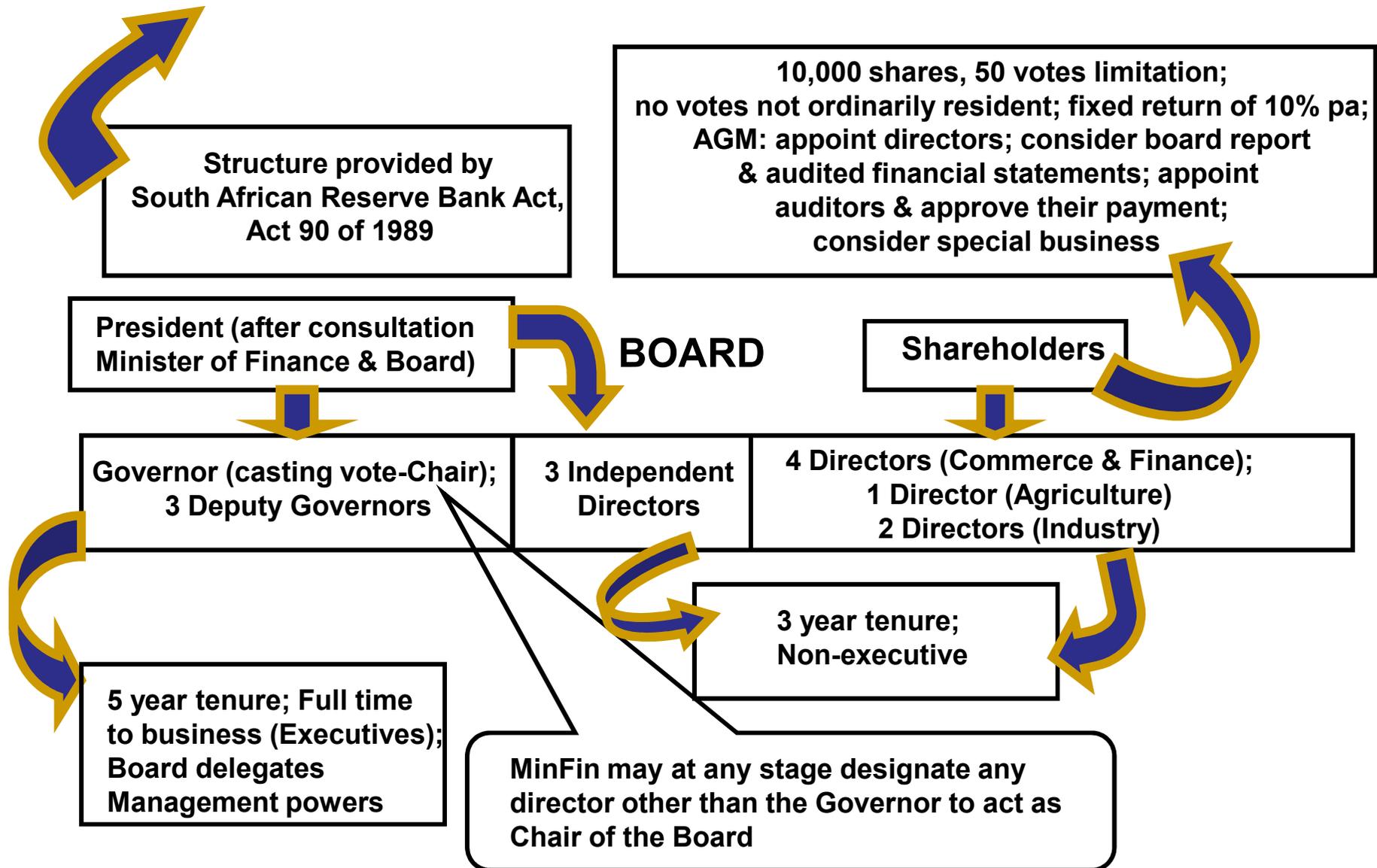
**More representative board on central bank of wider community:**  
**More likely the support and acceptance of monetary policy**

**Central Banks with private shareholders:**  
**Austria; Belgium; Greece; Italy; Japan; Pakistan; Switzerland; United States & RSA**

**Realignment rights of private shareholders in central banks:**  
**Public interests dictate that they may not own and control**

**President Bank Council**  
**Swiss National Bank:**  
**Main role of shareholders to safeguard independence of central bank**  
**Therefore shareholders are custodians of central bank independence**

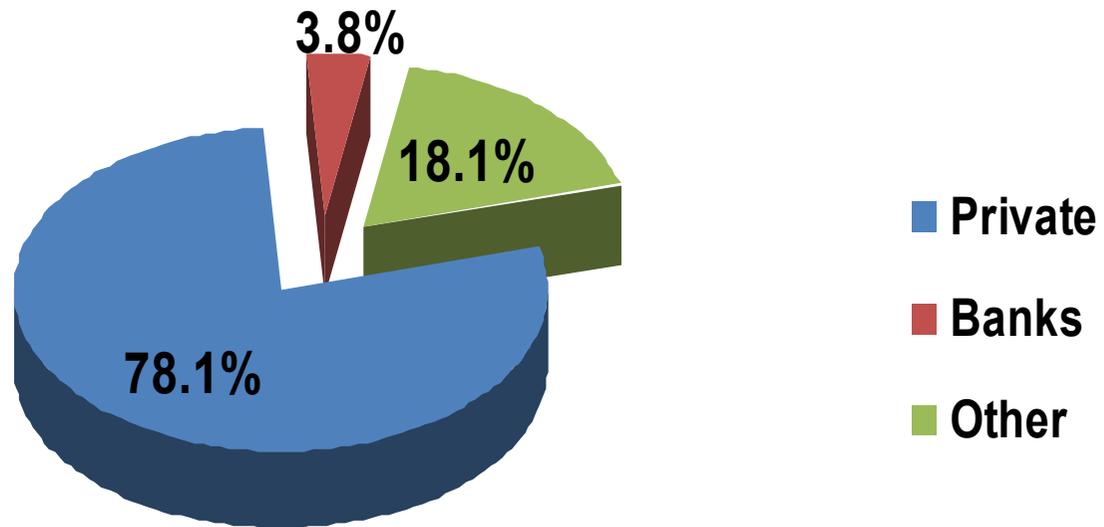
# SA RESERVE BANK: CURRENT CONTROL & MANAGEMENT



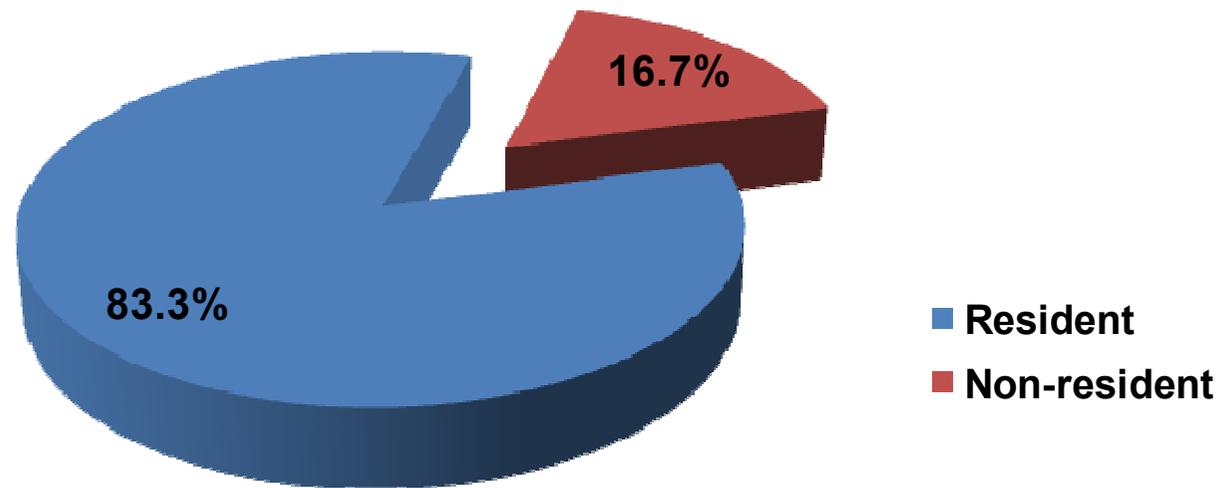
## ABUSE BY SHAREHOLDERS

- Acquisition of shares above the legal limit through associates with the intent to exercise undue influence
- Offers of payment for votes in favour of appointment as director
- Manipulation of beneficial ownership to exercise undue influence
- Shareholders demanding share in the profits of the Bank, including by adopting resolutions to try to give effect to this
- Manipulation of share price – highest price R6,400 low R1
- Demanding special extraordinary general meeting to further their profit agenda and in so doing disregarding the provisions of the SARB Act
- Allegations shareholder register inaccurate – unfounded – has been audited externally and internally
- Unsubstantiated allegations of fraud, corruption, bank bailouts etc
- Spurious allegations taking extraordinary time to deal with

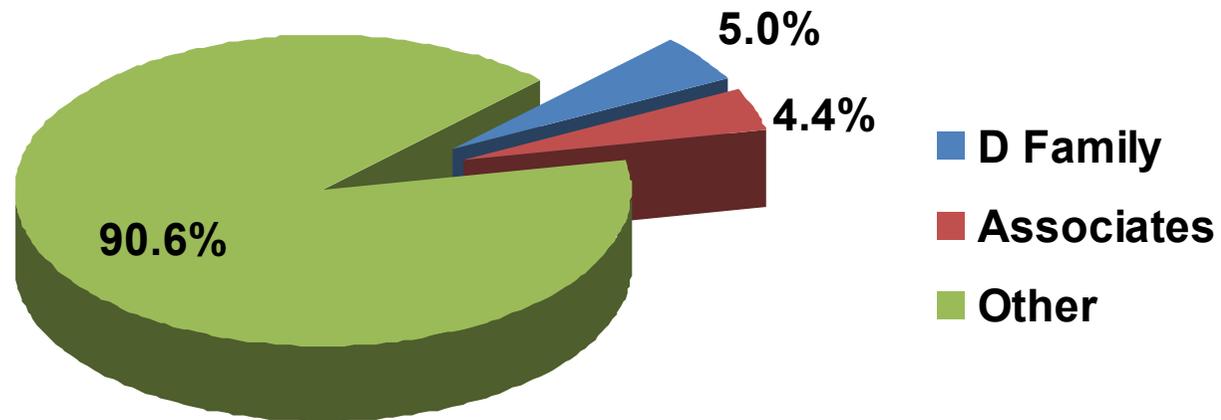
## SHAREHOLDING AS A PERCENTAGE OF ISSUED SHARE CAPITAL



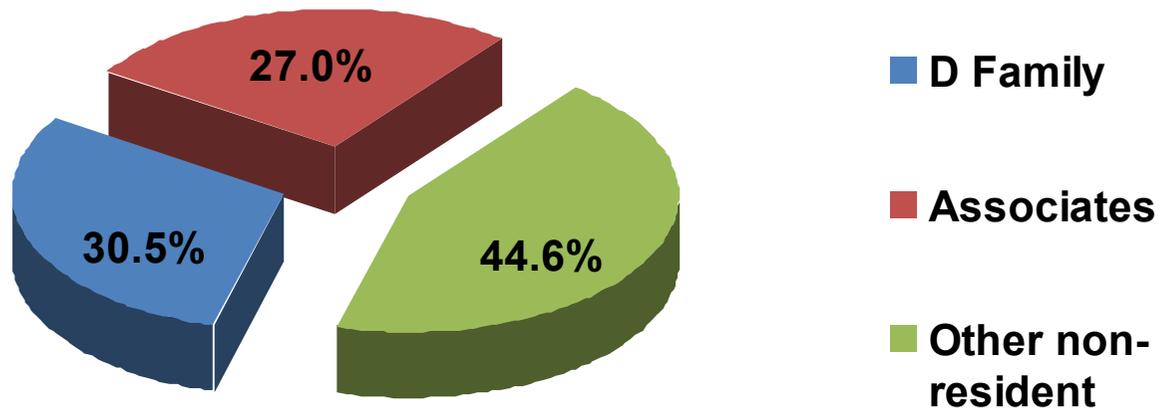
## RESIDENT / NON-RESIDENT SHAREHOLDING AS A PERCENTAGE OF ISSUED SHARE CAPITAL



## D FAMILY AND ASSOCIATES' SHAREHOLDING AS A PERCENTAGE OF TOTAL ISSUED SHARE CAPITAL



# PERCENTAGE OF TOTAL NON-RESIDENT SHAREHOLDING



## OBJECTIVES OF BILL

**By means of least intrusive measures, to:**

1. Stop shareholders of the Bank from circumventing the Act's current limitation of a maximum of 10 000 shares per shareholder

2. Allow for the nomination of directors by a broader base of the RSA public and to broaden representation on the Board

3. Provide for the establishment of a Panel for the election of directors

4. Define clear criteria when persons are disqualified from serving on the Board

5. Provide for the confirmation of the Board nominees against 'fit and proper' criteria

## **OBJECTIVES OF BILL (cont.)**

**6.** Clarify the powers and functions of the Board, which will primarily be those of governance, with all remaining powers and duties of the Bank being vested in and being exercised by the Governor and Deputy Governors

**7.** Provide for the possibility of the Governor and Deputy Governors to be re-appointed to serve a term of less than five years

## **CLAUSE 1: AMENDS S1 DEFINITIONS**

Definition of associate: Natural & Legal persons

Link between shareholders based on authority, control and influence  
When such link ('deemed associates'): shareholding of all added up to  
determine limit of 10 000

Definition of elected director: In current Act referred to as shareholders' representative – creates erroneous impression that directors elected by shareholders owe duty to them instead of to the Bank (*clause 2(e)*).

Therefore definition shareholders' representative deleted

Government and employee of Government defined since  
such a person disqualified (*clause 2(g)*) from being appointed  
as a director by shareholders (Government already appoints 8 directors)

NEDLAC defined since it nominates 3 members of Panel

Concept of Panel introduced to confirm suitable candidates as directors

## **CLAUSE 2: AMENDS S4 BOARD OF DIRECTORS**

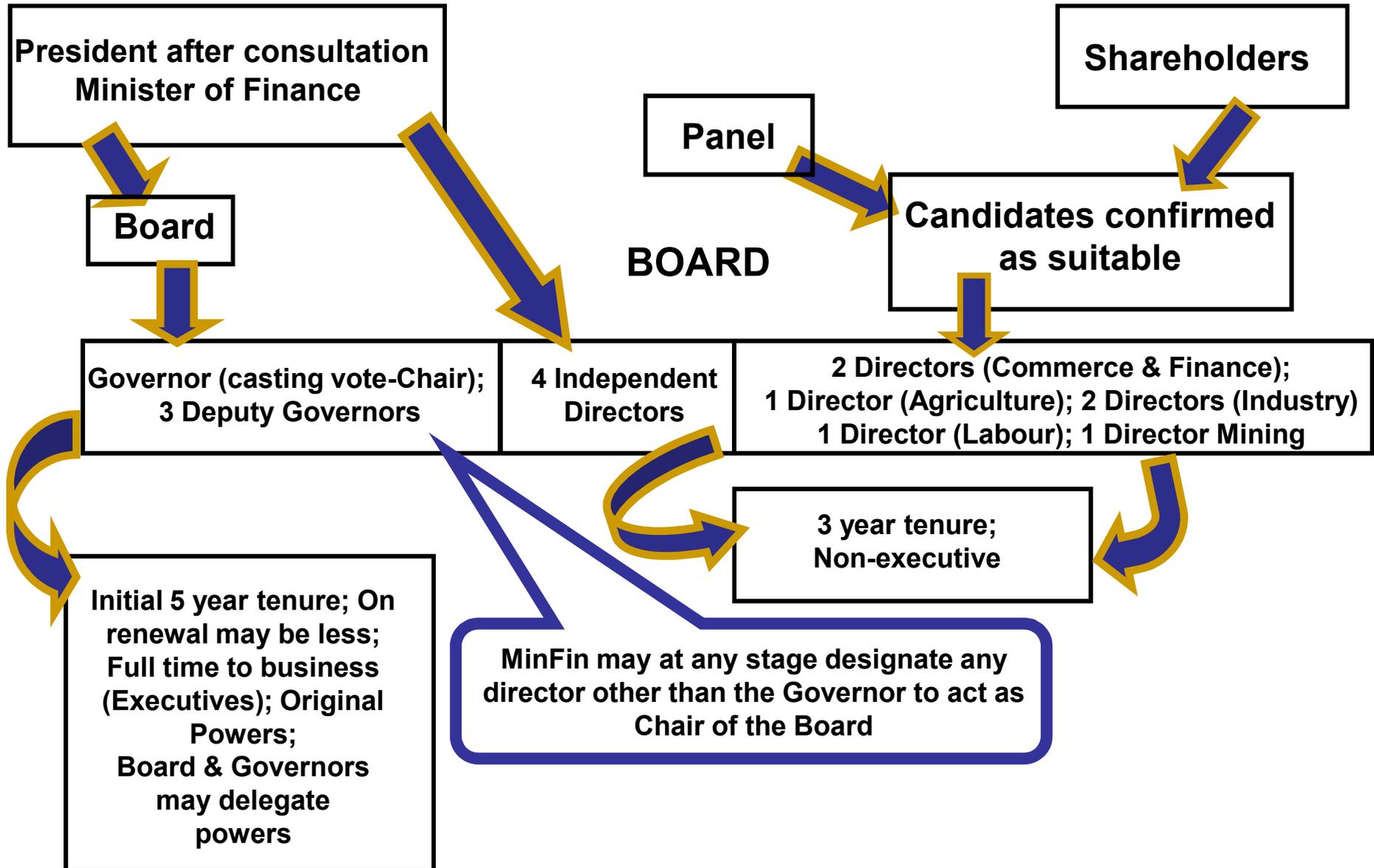
(a) The Bank shall now have a Board of 15 instead of being managed by a Board of 14. The Board's supervisory role is codified under Functions and Powers in *clause 3*. The size of the Board is increased with one director appointed by Minister to guard against domination by directors elected by shareholders (for example when chairperson is not the Governor and additional member enhances cohesion vis-à-vis Governor's casting vote)

(b) As in the past the Governor and Deputy Governors will be appointed by the President after consultation with the Minister and the Board. The President will now appoint a further four directors (instead of three) after consultation with the Minister only. Diminishes the influence of directors appointed by shareholders

(c) The seven directors elected by shareholders must now be approved by the Panel before they are eligible for election as directors. This ensures that they meet the "fit and proper" test

# BOARD

## SUPERVISORY BOARD

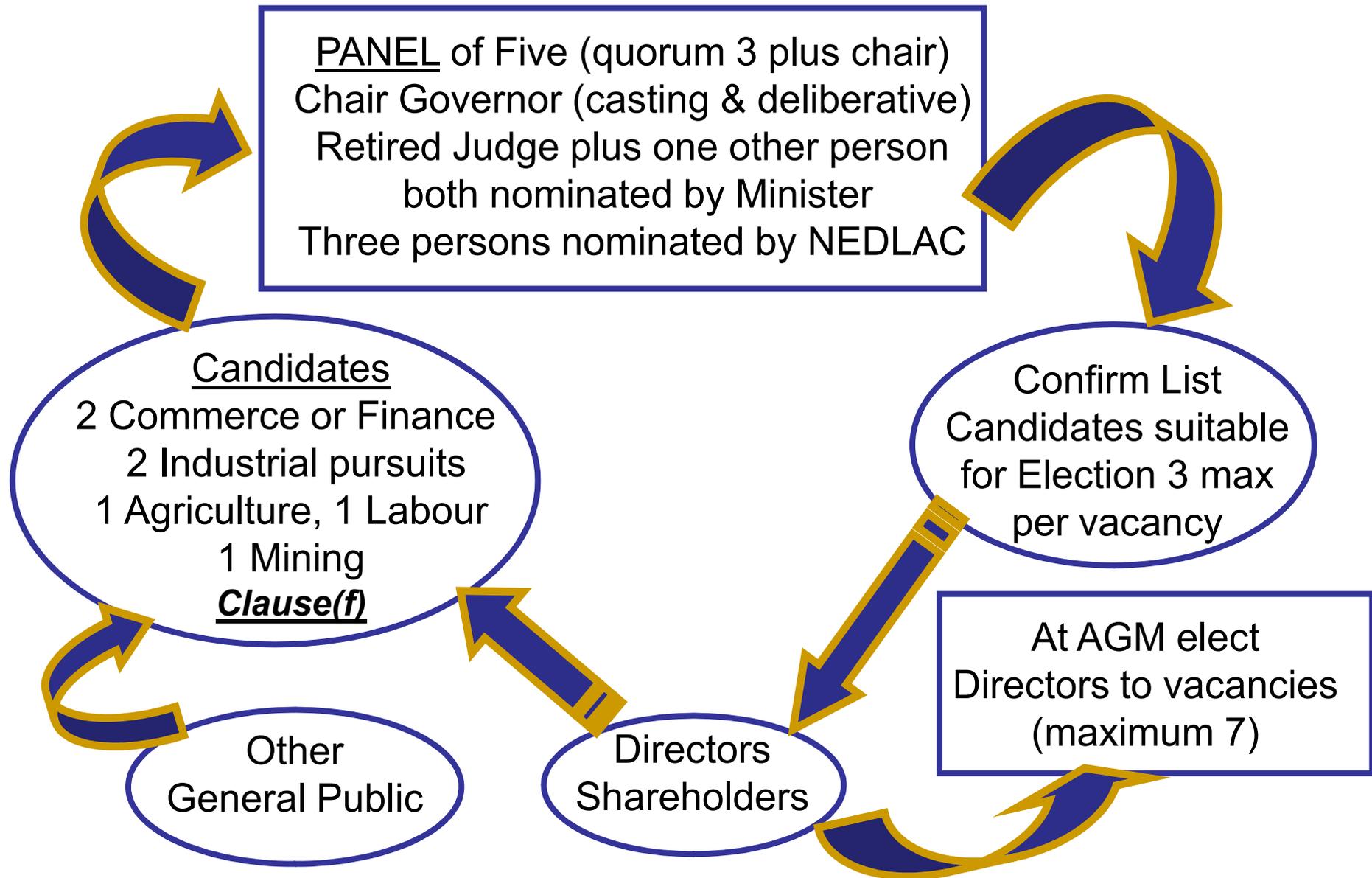


## NATURE OF THE BOARD

- Governance not policy and management board
- Distinction between governance and the day-to-day running of the Bank, as well as policy implementation
- The Bill entrenches the prevailing practice but does not rely on delegation – creates original powers of the executive of the SARB
- Attendance, knowledge, accountability and evaluation individually, per committee and the board as a whole
- Committees: Audit, Risk, Nedcom, Remco – annual review by Board of Terms of Reference of all committees
- Example: Remco with HR develop HR strategy, remuneration policy etc, board approves

## Clause 2(d)

### PANEL TO SCREEN POTENTIAL DIRECTORS

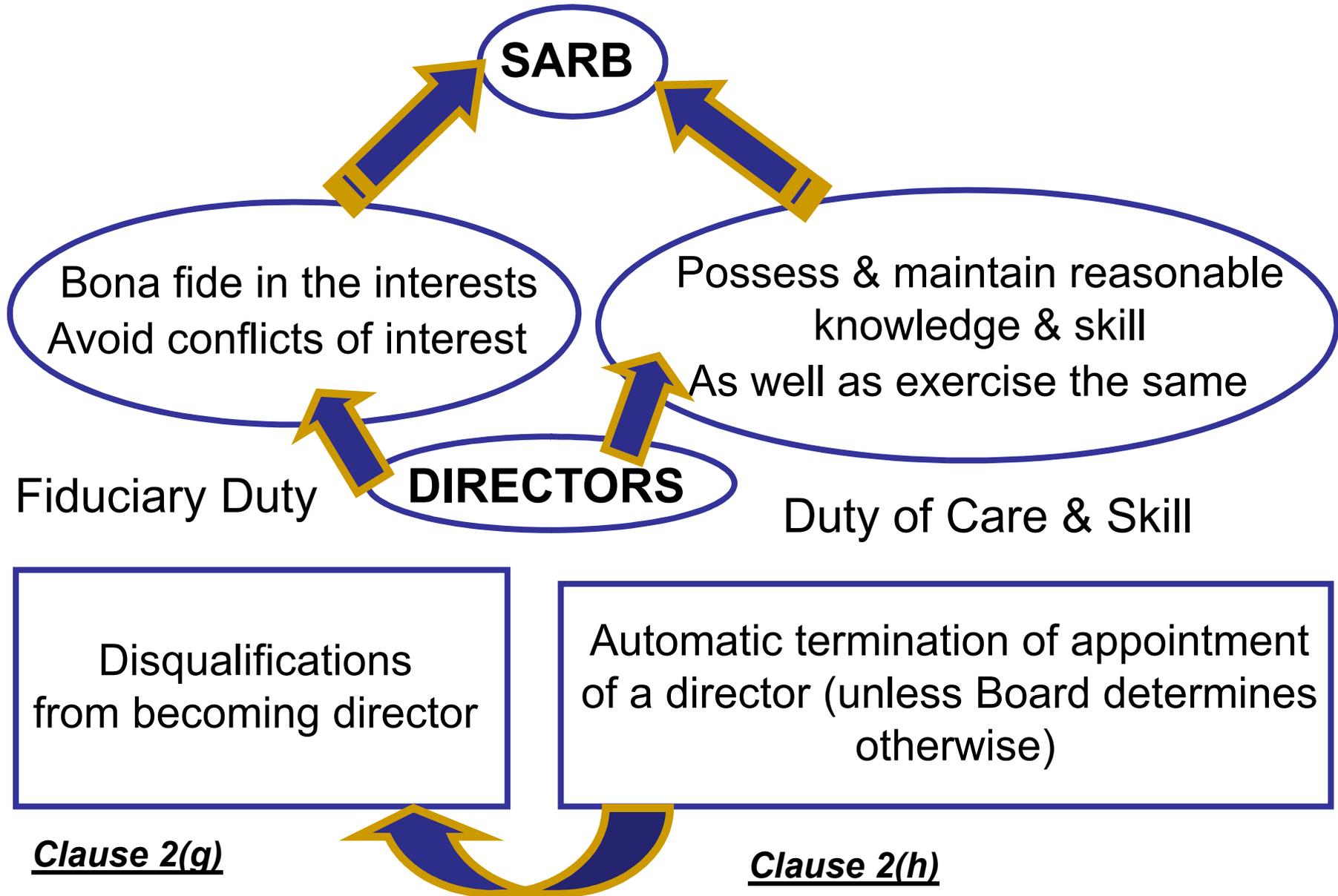


## **CONSIDERATIONS: PANEL**

- Broadens the pool from which directors are nominated and elected
- Requirement for Panel to ensure fit and proper, knowledgeable directors
- Panel system used in other sectors and Central Banks
- The Panel enhances independence
- Nedlac is a statutory body representing organised business, labour, community and development interests and Government. It is therefore unique in nature and best placed to represent all interests
- Parliament has an oversight role

# Clause 2(e)

## CODIFICATION: FIT AND PROPER CRITERIA FOR DIRECTORS



## **CLAUSE 3: INSERTS NEW SECTION FUNCTIONS & POWERS OF BOARD**

New section 4A of the Act inserted by this clause sets out and codifies the Functions and Powers of the Board:

In accordance with internationally recognised principles and standards the Board fulfils a corporate governance role

In practice the Board in the past delegated virtually all its management powers to the Governors, with the exception of powers reserved by the Act and certain designated other powers.

In its current format the new section codifies the prevalent position

The Governor and Deputy Governors, being the executives of the Bank, are vested with all powers of management of the Bank

The new section clearly delineates the powers and functions of the organs of the Bank. It prevents the potential usurping of powers by stakeholders

## **CLAUSE 4: AMENDS S5 TENURE & CONDITIONS OF OFFICE OF DIRECTORS**

(a) Governors and Deputy Governors are first appointed for a period of 5 years. The amendment now provides for them on their potential re-appointment to be appointed for terms shorter than 5 years. The current Act does not allow for such flexibility

The terms of office of directors who are Government representatives are in the current Act grouped together with Governors. The amendment separates them without any change to the term of office of Government representatives

Apart from a rearrangement of the section and reference to elected directors, instead of directors who are shareholders' representatives, the term of office of such directors remains unchanged

(b) Owing to the rearrangement mentioned in (a) above, section (1A) of the Act is superfluous and therefore repealed

(c) Section (1B) constituted a provisional arrangement iro terms of office after 1997  
Amendment: superfluous and therefore repealed

(d) The amendment makes it clear that a director appointed by shareholders may only be re-elected if he or she has been confirmed by the Panel as suitable

## **CLAUSE 5: AMENDS S6 CASUAL VACANCIES**

(a) Currently in the Act the Governors and Government representatives are grouped together. The amendment separates them and provides for a person to be appointed in an acting capacity into the vacant office of Governors until the position is filled by a permanent appointment. The Act currently does not provide for this

(b) The amendment now provides separately for the appointment of a Government representative director into a casual vacancy. As in the past the appointment is done by the President but after consultation with the Minister only and no longer with the Board as well

(c) The amendment makes provision for an “elected director” instead of a director who is a “shareholders’ representative” without any change to the legal implications of the current Act

(d) In the case of an acting Governor or Deputy Governor the term of office may be for any term not exceeding 5 years. Similar to the current position, an elected director appointed by the Board to fill a casual vacancy expires on the day of the next Annual General Meeting of shareholders if not elected by shareholders

## **CLAUSE 6: AMENDS S8 DELEGATION OF POWERS\_**

The current provisions of the Act do not provide for original powers of Management for Governors: They have deconcentrated powers delegated to them by the Board

Current section 8 provides for the delegation by the Board of its management powers to Governors and other officers of the Bank as well as for on-delegation by Governors of their delegated powers to such officials

Assigned powers constitute decentralised (original) powers. Amendments in clause 3 now confirm and vest Governors with decentralised original powers of management

Owing to the legal principle that one cannot transfer more powers than one is vested with: delegated powers may thus not legally be assigned

Amendment allows for the Board as well as the Governors to delegate their original powers to other officials in the Bank

## CONCEPT OF “ASSOCIATES” WITH REGARD TO SHAREHOLDING

The prohibition on shareholdings in excess of 10 000 extended to include holdings by an associate (an associate being any relative, company or other entity with a close link to a shareholder)

Based on similar provisions in the Banks Act, 1990  
Already utilised with some success in the OTCSTF system

Shareholders who hold more than 10 000 shares  
in association with his her or its associates:  
Choice either to disclose the collective holding,  
or to dispose of shares in excess of that number of shares

Circumvention of voting right restrictions  
prevented by including the holdings of associates  
in the calculation of maximum voting rights

**CLAUSE 7: AMENDS S22 RESTRICTION TO HOLD  
OR ACQUIRE SHARES IN BANK**

(a) No shareholder together with his or her associates may now hold in aggregate more than 10 000 shares in Bank

If appears that shareholder holds shares in contravention of Act: Bank may approached Court for appropriate relief. May include, but not limited to, order to dispose of shares on terms and conditions determined by Court

(b) Shareholder who discloses his, her or its associates as prescribed and who holds in aggregate more than 10 000 shares may continue to hold

(c) Such shareholder and his, her or its shareholders may not acquire any more shares

(d) If the number of shares held by shareholder and associates reduces to less than 10 000, restriction in (a) applies

## **CLAUSE 8: AMENDS S23 VOTES**

No shareholder or his, her or its associates who holds, alone or in aggregate with his, her or its shareholders more than 10 000 shares shall exercise any vote in respect of shares in excess of 10 000

One vote for every 200 shares held to a maximum of 10 000 shares:  
equal to maximum of 50 votes

Any shareholder and his, her or its associates shall not be able to exercise more than 50 votes at any meeting of shareholders  
Currently applies to companies with interlocking directorates

Thank  
You