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No. 38942

THE PRESIDENCY

No. 561

29 June 2015

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 3 of 2015: Banks Amendment Act, 2015

DIE PRESIDENSIE

No. 561

29 Junie 2015

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 3 van 2015: Wysigingswet op Banke, 2015

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)
(Assented to 25 June 2015)*

ACT

To amend the Banks Act, 1990, so as to enable the application of the provisions on arrangements and compromises in the Companies Act, 2008, to banks under curatorship; to expand the basis on which a curator may dispose of all or part of the business of a bank to enable an effective resolution of a bank under curatorship; to provide for the application of the Promotion of Administrative Justice Act, 2000, to any administrative action taken in terms of the Banks Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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: 5

“(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: 10
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 bank¹; 15
- (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.”. 20 25

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vierkantige hakies, dui skrappings uit bestaande verordeninge aan.
— Woerde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.
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(Engelse teks deur die President geteken)
(Goedgekeur op 25 Junie 2015)

WET

Tot wysiging van die Bankwet, 1990, ten einde die toepassing van die bepalings op reëlings en skikkings in die Maatskappywet, 2008, op banke onder kuratele moontlik te maak; die basis waarop 'n kurator die geheel of 'n gedeelte van 'n bank se besigheid mag vervreem om 'n doeltreffende resolusie van 'n bank onder kuratele moontlik te maak; voorsiening te maak vir die toepassing van die "Promotion of Administrative Justice Act", 2000, op enige administratiewe handeling wat ingevolge die Bankwet uitgevoer is; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 51 van Wet 94 van 1990, soos gewysig deur artikel 11 van Wet 9 van 1993, artikel 34 van Wet 19 van 2003 en artikel 22 van Wet 22 van 2013

1. Artikel 51 van die Bankwet, 1990 (hierna die Hoofwet genoem), word hierby 5 gewysig deur subartikel (1) deur die volgende subartikel te vervang:
“(1) 'n Maatskappy wat as 'n bank of as 'n beherende maatskappy geregistreer is, bly voortbestaan as 'n maatskappy ingevolge die Maatskappywet, en die bepalings van daardie Wet bly, behoudens die bepalings van subartikel (2), op so 'n maatskappy van toepassing vir sover hulle nie met 'n bepaling van hierdie Wet 10 onbestaanbaar is nie: Met dien verstande dat—
(a) die bepalings van die Maatskappywet wat die omskepping van publieke maatskappye in ander vorms van maatskappye reël, nie op so 'n maatskappy van toepassing is nie; [en]
(b) die bepalings van artikels 128 tot [155] 154 van die Maatskappywet wat met 15 ondernemingsredding [en skikking met krediteure] verband hou is nie op 'n bank van toepassing nie[.];
(c) die bepalings van artikel 155 van die Maatskappywet oor 'n reëling of skikking tussen 'n maatskappy en sy krediteure nie op 'n bank van toepassing 20 is nie tensy dit ingevolge artikel 69 onder kuratele is en die Minister die kurator bemagtig het om 'n reëling of skikking voor te stel of te sluit ingevolge artikel 69(3)(k); en
(d) verwysings na die raad van 'n maatskappy, die likwidateur van 'n maatskappy en 'n gemagtigde direkteur in artikel 155 van die Maatskappywet geag word 25 'n verwysing na 'n kurator te wees.”.

Amendment of section 69 of Act 94 of 1990, as amended by section 8 of Act 42 of 1992, section 17 of Act 9 of 1993, section 43 of Act 26 of 1994, section 6 of Act 55 of 1996, section 10 of Act 36 of 2000, section 47 of Act 19 of 2003 and section 37 of Act 22 of 2013

- 2. Section 69 of the principal Act is hereby amended—** 5
- (a) by the substitution for subsection (2C) of the following subsection:
- “(2C) (a) Notwithstanding the provisions of subsection (3), the curator may—
- (i) dispose of any of the bank’s assets;
- (ii) transfer any of its liabilities; or
- (iii) dispose of any of its assets and transfer any of its liabilities, in the ordinary course of the bank’s business.
- (b) Except in the circumstances contemplated in paragraph (a) the curator may not, notwithstanding the provisions of section 112 of the Companies Act—
- (i) dispose of any of the bank’s assets [otherwise than in accordance with the provisions of section 54];
- [(ii) effect a disposal referred to in subparagraph (i) unless a reasonable probability exists that such disposal will enable the bank to pay its debts or meet its obligations and become a successful concern.]
- (ii) transfer any of its liabilities; or
- (iii) dispose of any of its assets and transfer any of its liabilities, otherwise than in accordance with the provisions of section 54.
- (c) In seeking consent for a disposal of assets or transfer of liabilities or such disposal and transfer in terms of paragraph (b), the curator shall report to the Minister or the Registrar, as the case may be, on the expected effect on the bank’s creditors and whether—
- (i) the creditors are treated in an equitable manner; and
- (ii) a reasonable probability exists that a creditor will not incur greater losses, as at the date of the proposed disposal, transfer or disposal and transfer, than would have been incurred if the bank had been wound up under section 68 of this Act on the date of the proposed disposal, transfer or disposal and transfer.
- (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.”;
- (b) by the substitution in subsection (3) for paragraph (f) of the following paragraph:
- “(f) to make and carry out [, in the course of the curator’s management of the bank concerned,] any decision in respect of the bank which in terms of the provisions of this Act, the Companies Act, [or] the bank’s memorandum of incorporation or the rules of any securities exchange, on which any securities of the bank or its controlling company are listed, would have [been] required [to be made by way of] an ordinary resolution or a special resolution [contemplated in section 65 of the said Act and in terms of the bank’s memorandum of incorporation] of shareholders of the bank or its controlling company;”;
- (c) by the substitution in subsection (3) for paragraph (i) of the following paragraph:
- “(i) to cancel any guarantee issued by the bank concerned prior to its being placed under curatorship, excluding such guarantee which the bank is required to make good within a period of 30 days as from the date of the appointment of the curator: Provided that, notwithstanding—

Wysiging van artikel 69 van Wet 94 van 1990, soos gewysig deur artikel 8 van Wet 42 van 1992, artikel 17 van Wet 9 van 1993, artikel 43 van Wet 26 van 1994, artikel 6 van wet 55 van 1996, artikel 10 van Wet 36 van 2000, artikel 47 van Wet 19 van 2003 en artikel 37 van Wet 22 van 2013

2. Artikel 69 van die Hoofwet word hierby gewysig—	5
(a) deur subartikel (2C) deur die volgende subartikel te vervang:	
“(2C) (a) Ondanks die bepalings van subartikel (3) kan die kurator—	
(i) enige van die bank se bates vervreem;	
(ii) enige van die bank se laste oordra; of	
(iii) enige van die bank se bates vervreem en enige van die bank se laste oordra,	10
in die gewone loop van die bank se besigheid.	
(b) Behalwe in die omstandighede beoog in paragraaf (a) mag die kurator, ondanks die bepalings van artikel 112 van die Maatskappywet, nie—	15
(i) enige van die bank se bates [op 'n ander wyse as ooreenkomstig die bepalings van artikel 54] vervreem nie;	
[(ii) 'n vervreemding bedoel in subparagraph (i) doen nie tensy dit redelik waarskynlik is dat so 'n vervreemding die bank in staat sal stel om sy skulde te betaal of sy verpligte na te kom en 'n suksesvolle onderneming te word.]	20
(ii) enige van die bank se laste oordra nie; of	
(iii) enige van die bank se bates vervreem en enige van die bank se laste oordra nie, op 'n ander wyse as ooreenkomstig die bepalings van artikel 54.	25
(c) Wanneer toestemming vir vervreemding van bates of oordrag van laste of sodanige vervreemding of oordrag ingevolge paragraaf (b) verlang word, moet die kurator aan die Minister of die Registrateur, na gelang van die geval, verslag doen oor die verwagte uitwerking op die bank se krediteure en—	30
(i) of die krediteure op 'n gelyke wyse hanteer word; en	
(ii) of 'n redelike moontlikheid bestaan dat 'n krediteur nie groter verliese salervaar as op die datum van die voorgestelde vervreemding, oordrag of vervreemding en oordrag nie, as wat ervaar sou wees indien die bank kragtens artikel 68 van hierdie Wet gelikwideer was op die datum van die voorgestelde vervreemding, oordrag of vervreemding en oordrag.	35
(d) Die Minister of die Registrateur, na gelang van die geval, moet bykomstig tot die vereistes van artikel 54, die kurator se verslag soos in paragraaf (c) voorsien, in ag neem in die neem van sy of haar besluit ingevolge artikel 54: Met dien verstaande dat ondanks die feit dat die uitslae in paragraaf (c)(i) en (ii) nie bereik is nie, die Minister of die Registrateur, na gelang van die geval, kan toestem tot die vervreemding, oordrag of vervreemding en oordrag indien dit heelwaarskynlik die handhawing sal bevorder van—	40
(i) 'n bestendige banksektor in die Republiek; of	
(ii) openbare vertroue in die banksektor in die Republiek.”;	45
(b) deur in subartikel (3) paragraaf (f) deur die volgende paragraaf te vervang:	
“(f) [in die loop van die kurator se bestuur van die betrokke bank,]	50
enige besluit ten opsigte van die bank te neem en uit te voer wat ingevolge die bepalings van hierdie Wet, die Maatskappywet [of], die bank se akte van oprigting [by wyse van] of die reëls van enige effektebeurs, waarop enige sekerhede van die bank of sy beheermaatskappy gelys is, 'n gewone besluit of 'n spesiale besluit [beoog in artikel 65 van genoemde Wet en ingevolge die bank se akte van oprigting geneem] van aandeelhouers van die bank of sy beheermaatskappy sou [moes word] vereis;”;	55
(c) deur in subartikel (3) paragraaf (i) deur die volgende paragraaf te vervang:	
“(i) enige waarborg deur die betrokke bank uitgereik voordat dit onder kuratele geplaas is, uitgesonderd so 'n waarborg wat die bank vereis word om gestand te doen binne 'n tydperk van 30 dae vanaf die datum van die aanstelling van die kurator, op te sê: Met dien	60

ing the provisions of subsection (6), a claim for damages in respect of any loss sustained by or damage caused to any person as a result of the cancellation of a guarantee in terms of this paragraph, may be instituted against the bank after the expiration of a period of one year as from the date of such cancellation[.];”;

(d) by the addition in subsection (3) of the following paragraphs:

“(j) to raise funding from the Reserve Bank, or any entity controlled by the Reserve Bank, on behalf of the bank and, notwithstanding any contractual obligations of the bank, but without prejudice to real security rights, to provide security over the assets of the bank in respect of such funding: Provided that, notwithstanding the provisions of subsection (6), any claim for damages in respect of any loss sustained by, or damage caused to any person as a result of such security, may be instituted against the bank after the expiration of a period of one year as from the date of such provision of security;

(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.”.

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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).”.

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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.

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(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.

verstande dat, ondanks die bepalings van subartikel (6), 'n eis om skadevergoeding ten opsigte van enige verlies gely deur of skade berokken aan enige persoon ten gevolge van 'n opseggings van 'n waarborg ingevolge hierdie paragraaf, teen die bank ingestel kan word na verloop van 'n tydperk van 'n jaar vanaf die datum van sodanige opseggings[.];' en

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(d) deur in subartikel (3) die volgende paragrawe by te voeg:

"(j) fondse by die Reserwebank, of enige entiteit deur die Reserwebank beheer, namens die bank in te samel en, ondanks enige kontraktuele verpligte van die bank, sonder benadeling van werklike sekerheidsregte, om sekerheid te voorsien oor die bates van die bank ten opsigte van sodanige fondse: Met dien verstande dat, ondanks die bepalings van subartikel (6), enige eis vir skadevergoeding ten opsigte van enige verlies gely deur, of skade veroorsaak vir enige persoon ten opsigte van sodanige sekerheid, teen die bank ingestel mag word na die verstryking van een jaar vanaf die datum waarop die sekerheid voorsien is;

(k) sonder om enige ander bevoegdheid van die kurator ingevolge hierdie artikel te beperk, om 'n reëling of skikking tussen die bank en al sy krediteure of al die lede van enige klas van krediteure voor te stel en aan te gaan, ingevolge artikel 155 van die Maatskappy-wet."

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Invoeging van artikel 89A in Wet 94 van 1990

3. Die volgende artikel word hierby na artikel 89 in die Hoofwet ingevoeg:

"Regverdig administratiewe handeling

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89A. Enige administratiewe handeling ingevolge hierdie Wet geneem, met inbegrip van enige administratiewe aksie deur 'n kurator aangestel ingevolge artikel 69, is onderhewig aan die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000)."

Kort titel, inwerkingtreding en toepassing

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4. (1) Hierdie Wet heet die Wysigingswet op Banke, 2015, en tree in werking wanneer dit die eerste keer as 'n Wet in die Staatskoerant gepubliseer word.

(2) Indien 'n bank onmiddellik voor die inwerkingtreding van hierdie Wet ingevolge artikel 69 van die Hoofwet onder kuratele is, is die bepalings van hierdie Wet van toepassing op die kuratele.

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