

16 November 2020

Honourable Mr MJ Maswanganyi, MP
Chairperson
Standing Committee on Finance
National Assembly
Parliament of the Republic of South Africa

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Dear Honourable Chairperson Maswanganyi

RE: BASA Submission – South African Reserve Bank Amendment Bill [B26-2018]

We appreciate the opportunity to submit our comments to the Standing Committee on Finance in respect of the South African Reserve Bank amendment bill 2018, a private members bill, proposed by the Honourable Julius Sello Malema (MP, Economic Freedom Fighters), as set out and called for by the Notice of Intention published in the Government Gazette (No. 4657, Notice 286 of 2018) on 25 May 2018.

The Banking Association South Africa (BASA) recognises that the bill proposes the transfer of ownership of the South African Reserve Bank to the State. The transfer of ownership of itself has no discernible impact on the operations and functions of the South African Reserve Bank, and therefore the impact of the change in ownership will have no impact on the financial sector.

We hold the view that The Constitution of the Republic provides the necessary independence to ensure that the South African Reserve Bank can execute on their primary objectives. An extract from The Constitution is provided below for convenience:

“Establishment

223. The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament

Primary object

224. (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.
- (2) The South African Reserve 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.

Powers and functions

225. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act

of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.”

We are encouraged by President Ramaphosa’s reaffirmation this year that the resolution taken at the ANC’s 54th national conference will be upheld in respect of the role, mandate and independence of the South African Reserve Bank.

Shareholders of the South African Reserve Bank have never been able to influence the Monetary Policy Committee in its determination of monetary policy nor the Prudential Authority in its role as regulator and supervisor of banks. Nor should they. In this regard the amendments to the South African Reserve Bank Act in 2010, specifically introduced additional measures to place limitations on the shareholding in the SARB to, among other things, prevent possible abuse, introduced a panel consisting of the Governor as chair, a retired judge and other members nominated by NEDLAC, to ensure that private shareholder-nominated directors are fit and proper.

It is important to remind ourselves that as the Zondo Commission progresses, the current structure of privately held shareholders brings an important balance to the SARB Board in relation to governance, and provides necessary checks and balances to ensure the South African Reserve Bank is adequately supported and that the government appointed executive and non-executive directors remain accountable. These directors must lend their industry expertise and skills, experience and most importantly, their independence. These independent board members contribute to important functions such as the Audit Committee.

The Basel Committee on Banking Supervision has specifically identified the need for operational independence noting as a principle that “There is no government or industry interference that compromises the operational independence of the supervisor”.

The role assigned to the Minister of Finance in the bill is therefore administrative in nature and supports the independence of the South African Reserve Bank but adds no benefit to the functioning of the South African Reserve Bank.

We do wish to point out that the bill incorrectly presupposes no financial cost to the state under the Memorandum at point 4:

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

The two million shares are currently held by several local and international shareholders and we would expect those shareholders to be paid out for their shareholding in an equitable manner. Any attempt to expropriate these shares without compensation would send a negative signal to the domestic and international financial markets with potential unintended consequences to confidence in the South African banking system, with broader spill over effects.

The constitutionality of expropriating the shares without compensation is highly doubtful and there does not appear to be a clear public interest or public purpose argument that can be advanced for such expropriation. We are also aware that the Chief Legal Advisor to Parliament has previously indicated that expropriation of the shares without compensation would be unconstitutional.

It is our opinion that expropriation without compensation, in this matter, would be constitutionally challenged with additional litigation costs and heightened publicity, at a time when the State is looking to other jurisdictions for investments and the local capital markets to support State initiatives. We simply cannot afford any additional negative shocks.

Constitutionality aside, there are additional complexities within South Africa’s legal framework e.g. the Companies Act 71 of 2008 that affords protection to minority shareholders. There are undoubtedly other legal considerations in proposing the nationalisation of the South African Reserve Bank that have yet to be considered.

In concluding, we see no benefit to the nationalisation of the South African Reserve Bank, there is no public interest that is served and we believe that the cost of redeeming the shares or litigation costs could be better allocated to other important projects.

We remain available to the Standing Committee on Finance should they need further information, but we do not see a need to present on this matter.

Yours sincerely



Mark Brits
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