
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 211 OF 2018

NOTICE OF INTENTION TO INTRODUCE PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON DRAFT BANKS AMENDMENT BILL, 2018

Mr Nyiko Floyd Shivambu, MP acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Banks Amendment Bill, 2018 ("Bill"), in Parliament during the first quarter of 2018/2019. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The Banks Act, 1990 (Act No. 94 of 1990) ("Banks Act"), amongst other things, imposes certain requirements which an institution must comply with before it may carry on the business of a bank or in the lawful carrying on, of the business of a bank. In terms of the Banks Act, no person may conduct the business of a bank unless such person is a public company and is registered as a bank in terms of the Banks Act. A public company is defined in the Companies Act, 2008 (Act No. 71 of 2008) ("Companies Act"), as a profit company that is not a state-owned company, a private company or a personal liability company. Further in the Companies Act a state owned company is defined as an enterprise that is registered in terms of that Act as a company, and either is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("PFMA"), or is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and is otherwise similar to an enterprise listed in the PFMA.

The requirements imposed by the Banks Act before a person may conduct the business of a bank, and register as such, makes it impossible for a state-owned company registered in terms of the Companies Act to conduct the business of a bank. The Bill seeks to amend the Banks Act to make it possible for state owned companies to register in terms of that Act and to conduct the business of a bank.

The draft Bill will provide:

- For a state-owned company to be able to register and conduct the business of a bank in terms of the Banks Act.
- For a state-owned company to be able to register with the Commissioner, appointed in terms of section 189 of the Companies Act, a memorandum of incorporation of a state-owned company formed for the purposes of conducting the business of a bank.
- For a state-owned company to be able to exercise control over a bank.
- For a state-owned company to be eligible to apply for registration as a controlling company.
- For a state-owned company registered as a bank or as a controlling company to be able to continue to be a company in terms of the Companies Act, and the provisions of that

Act to, subject to the provisions of section 51(2)¹ of the Banks Act, continue to apply to such company to the extent to which they are not inconsistent with any provision of the Banks Act, provided that the provisions of the Companies Act governing the conversion of state-owned companies into other forms of companies shall not apply to any such company.

The draft Bill will be available on the website of the Economic Freedom Fighters (<http://effighters.org.za>), once it has been certified by the Chief Parliamentary Legal Adviser or a parliamentary legal adviser designated by her or him as required by Rule 279(4) of the Rules of the National Assembly (9th Edition). It may also, after introduction, be obtained from:

Economic Freedom Fighters
78 De Korte, Braamfontein,
Johannesburg
Attention: Mr Gumani Tshimomola
Tel: 011 403 2313
Fax: 011 403 2264
Email: gumanitk@gmail.com

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to Speaker, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to gumanitk@gmail.com.

¹ 51(2) (2) The Minister may with the concurrence of the Minister of Trade and Industry by notice in the *Gazette* declare that a provision of the Companies Act specified in such notice—

(a) shall not apply to any company registered as a bank or as a controlling company;

(b) shall only apply to any such company subject to such adjustments and qualifications as may be specified in the notice; or

(c) the administration of which vests in the Commissioner, shall in respect of companies registered as banks or as controlling companies vest in the Authority.