

Banks Act, 1990 (Act No. 94 of 1990)

1. Section 60 of the Banks Act, 1990 (Act No. 94 of 1990) (Banks Act) states that-

1.1 each director, chief executive officer and executive officer of a bank owes a fiduciary duty and a duty of care and skill to the bank of which such person is a director, chief executive officer or executive officer; and

1.2 not more than 49%, rounded off to the next lower integral number, of the directors of-

1.2.1 a bank shall be employees of that bank or of any of its subsidiaries, or of such bank's controlling company, or of any of such controlling company's subsidiaries; and

1.2.2 a controlling company shall be employees of that company or of any bank in respect of which that company is registered as a controlling company.

The intention of these requirements is to ensure that the majority of the directors of a bank and a controlling company are non-executive directors.

2. In addition

2.1 section 64 of the Banks Act states that all the members of the audit committee of

2.1.1 a bank shall be persons who are not employees of the bank nor of any of its subsidiaries, its controlling company or any subsidiary of its controlling company: Provided that the chairperson of the board of directors (board) of the bank or the controlling company shall not be appointed as a member of the audit committee; and

2.1.2 a controlling company shall be persons who are not employees of the controlling company nor of any of its subsidiaries, the bank in respect of which it is the controlling company or any subsidiary of that bank: Provided that the chairperson of the board of the controlling company or the bank in respect of which it is the controlling company shall not be appointed as a member of the audit committee.

2.2 section 64A of the Banks Act imposes a duty on the Board of a bank and controlling company to appoint at least three of its members, of whom at least two are non-executive directors, to form and serve on a risk and capital management committee.

The intention of these requirements is to ensure that the majority of the directors of the risk and capital management committee of a bank and a controlling company are non-executive directors.

- 2.3 section 64B of the Banks Act imposes a duty on the board of a bank and controlling company to establish a directors' affairs committee, consisting only of non-executive directors of the bank or controlling company.

The functions of the directors' affairs committee include matters such as assisting the board-

- 2.3.1 in its determination and evaluation of the adequacy, efficiency and appropriateness of the corporate governance structure and practices of the bank or controlling company;

- 2.3.2 to establish and maintain a board directorship continuity programme entailing-

- a) measures to ensure continuity of non-executive directors; and
- b) a regular review of the composition of skills, experience and other qualities required for the effectiveness of the board;

- 2.4 section 64C of the Banks Act imposes a duty on the board of a bank or controlling company to establish a remuneration committee, consisting only of non-executive directors of the bank or controlling company;

- 2.5 section 60B(1) of the Banks Act imposes a duty on the board and executive officers of a bank to establish and maintain an adequate and effective process of corporate governance that is consistent with the nature, complexity and risks inherent in the activities and the business of the bank concerned.

In this regard section 60B(2) of the Banks Act states that the process of corporate governance has to be established with the objective of achieving the bank's strategic and business objectives efficiently, effectively, ethically and equitably (within acceptable risk parameters), to ensure, among other things

- 2.5.1 a balance of interests of the shareholders and other interested persons who may be affected by the conduct of directors or executive officers of the bank or controlling company, within a framework of effective accountability;

- 2.5.2 commitment by the executive officers of the bank or controlling company to adhere to corporate behaviour that is universally recognised and accepted as correct and proper;

- 2.5.3 that mechanisms and procedures are established and maintained to minimise or avoid potential conflicts of interests between the business interests of the bank or controlling company and the personal interests of directors or executive officers of the bank or controlling company;
- 2.5.4 responsible conduct by the directors and executive officers of the bank or controlling company; and
- 2.5.5 compliance with all applicable laws and regulations.