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GENERAL NOTICES

NOTICE 167 OF 2007

NATIONAL TREASURY

PUBLICATION OF EXPLANATORY SUMMARY OF THE BANKS AMENDMENT BILL, 2007

The Minister of Finance intends tabling the Banks Amendment Bill, 2007, in Parliament during the current Parliamentary term. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly. Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 16 March 2007.

All submissions must be addressed to:

The Secretary to Parliament
c/o Mr. A Hermans
Committee Section
Parliament of the RSA
P.O. Box 15
CAPE TOWN
8000

You can contact Mr. A Hermans:

Fax: (021) 403 2182

Tel: (021) 403 3776

Email: ahermans@parliament.gov.za

Explanatory Summary of the Banks Amendment Bill, 2007

The draft Bill primarily contains amendments to the Banks Act necessitated by the revised Framework on International Convergence of Capital Measurement and Capital Standards published by the International Basel Committee on 26 June 2004. Additional amendments that have become necessary since the Banks Act was last amended in 2003 due to industry developments or to clarify certain provisions, are also proposed.

In summary the Basel II amendments aim to create a sufficiently robust regulatory environment that will enable the Registrar to properly discharge his/her respective roles and responsibilities in respect of banks, controlling companies and banking groups on a solo, cross-border or consolidated basis. The Banks Act pertaining to the supervision of banks and in particular as it relates to the following aspects are strengthened -

- regulation of all relevant banks and banking groups on a consolidated basis;
- stating the respective roles and responsibilities of consolidating and host supervisors;
- providing for cooperation and sharing of information between supervisors;

- clarifying the responsibilities of banks, banking groups, boards of directors of banks and banking groups;
- increasing the reporting requirements of and providing comprehensive disclosure requirements for banks and banking groups;
- facilitating the various options available to banks and banking groups in calculating minimum capital requirements in respect of credit risk exposure, market risk exposure and operational risk exposure; and
- elaborating the supervisory review process in order to, amongst other things, assess the capital adequacy and control environment of banks and banking groups.

The other proposed amendments are largely of a technical nature and include the following:

- **extending the regulatory authority** of the Registrar to divisions and controlling companies of banks in certain respects where his or her regulatory authority is currently limited to banks;
- clarifying and strengthening the **powers of the Registrar** to ensure compliance with the Act. The Registrar is authorised to issue circulars, guidance notes and directives, request information from relevant institutions, impose administrative penalties and the like. The power of the Registrar to object to the appointment of directors and executive officers is also clarified;
- imposing an **obligation on the Registrar** to keep a register of registered controlling companies, branches, eligible institutions, representative offices of foreign institutions or the subsidiaries and branches of banks; and
- effecting a number of **technical and editorial amendments** such as –
 - correcting references to Acts repealed since the last amendment to the Act (for instance, replacing the reference to the Insurance Act, No 27 of 1943 with a reference to the Long-term Insurance Act, No 52 of 1998);
 - clarifying that the reference to a “bank” includes a reference to a “branch”; and
 - clarifying the meaning of the term “assets and liabilities” when such is transferred.

NOTICE 168 OF 2007**NATIONAL TREASURY****PUBLICATION OF EXPLANATORY SUMMARY OF THE DIVISION OF REVENUE BILL, 2007**

The Minister of Finance intends tabling the Division of Revenue Bill, 2007, in the National Assembly on 21 February 2007. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

The Bill is intended to provide for the equitable division of revenue anticipated to be raised nationally among the national, provincial and local spheres of government for the 2007/08 financial year and the responsibilities of all three spheres pursuant to such division; and to provide for matters connected therewith.

A copy of the Bill will be obtainable from the Department's website at <http://www.treasury.gov.za> after introduction of the Bill on 21 February and also at:

Mr MV Parma
Parliament
PO Box 15
Cape Town
8000
Telephone: (021) 403 2078.

NOTICE 169 OF 2007**NATIONAL TREASURY****PUBLICATION OF EXPLANATORY SUMMARY OF THE PENSION FUNDS
AMENDMENT BILL, 2007**

The Minister of Finance intends tabling the Pension Funds Amendment Bill, 2007, in Parliament during the current Parliamentary term. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly. Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 16 March 2007.

All submissions must be addressed to:

**The Secretary to Parliament
c/o Mr. A Hermans
Committee Section
Parliament of the RSA
P.O. Box 15
CAPE TOWN
8000**

You can contact Mr. A Hermans:

Fax: (021) 403 2182

Tel: (021) 403 3776

Email: ahermans@parliament.gov.za

Explanatory Summary of the Pension Funds Amendment Bill, 2007

The primary objective of the Amendment Bill is to further protect the pension interest of members that often extends across their lifetimes following dedicated contribution by members, or employers on behalf of members. A number of amendments over time have had this objective at their nexus, for example, the establishment of the Pension Funds Adjudicator, the amendments passed by Parliament in 2001 regarding pension fund surpluses and the determination of minimum benefits. Over time however, not only have certain references in the Pension Funds Act, 1956 ('the Act') gradually become misaligned with provisions in other legislation, but more seriously, certain provisions of the Act have been challenged by those seeking in many instances to circumvent the spirit of the original legislation passed by Parliament through creative legal interpretations.

The proposed amendments to the Act are largely urgent technical amendments, which need to be made in order to clarify existing provisions in the Act, to bring it in line with

other legislation and to clarify the applications of surplus provisions contained in the Pension Funds Second Amendment Act, 2001.

The amendments proposed should be seen as distinct from the process of retirement fund reform, which is a longer term process that will result in an entirely new Pension Funds Act. The amendments proposed here deal with urgent issues which, in the interest of protecting members and former members of retirement funds, cannot wait for the broader retirement fund review.

The Amendment Bill broadly addresses the following areas:

- clarifying the surplus utilised improperly in terms of section 15B of the Act and other provisions regarding the surplus apportionment process. These amendments are necessary to provide clarity to boards of trustees when apportioning surplus, and to close loopholes that allow for creative interpretations not aligned with the intention of the legislature in the promulgation of the Pension Funds Second Amendment Act, 2001;
- bringing the regulation of bargaining council retirement funds under the regulatory auspices of the Registrar of Pension Funds. It is further proposed that bargaining council funds not yet registered under the Act must register on or before 1 January 2008. This amendment is necessary to ensure consistency in fund governance and dispute resolution across both bargaining council funds and other occupational funds;
- increasing the powers of the Registrar of Pension Funds so as to increase regulatory effectiveness;
- providing for specific duties of pension fund administrators;
- clarifying the jurisdiction of the Pension Funds Adjudicator. Provision is also made for the appointment of a deputy and acting adjudicator, when necessary, and the alignment of the Act with the Prescription Act;
- providing clarity on the treatment of divorce orders and maintenance claims in respect of pension benefits; and
- updating provisions in the Act which are no longer aligned to recently promulgated legislation.