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Proposed Banks Act Amendment Bill

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On 25 April 2018, the Economic Freedom Fighters proposed, in parliament, a Banks Act Amendment Bill (the “**Proposed Bill**”) to amend the Banks Act, 1990 (the “**Banks Act**”), which has since been published on the Parliamentary Monitoring Group website. If the Proposed Bill is adopted, it will become possible for state owned companies to register as a bank or a bank controlling company, and to carry out the “business of a bank” in terms of the Banks Act. Essentially, the Proposed Bill aims to achieve this purpose by inserting the words “or a state owned company/companies” into relevant provisions.

As the Banks Act is currently written, only public companies may register as a bank or a bank controlling company. Therefore, state owned companies have been required to undergo the lengthy process of obtaining various exemptions in order to perform certain activities that constitute the “business of a bank”. The proposed amendments remove this barrier and pave the way for entities such as the Postbank to register and operate as a fully-fledged bank.

The Proposed Bill does not contemplate treating a state owned bank any differently from any other bank, and any state owned company that seeks registration as a bank under the Banks Act would seemingly be expected to comply with all of the requirements of a bank under the Banks Act.

Note however that state owned companies remain subject to the Public Finance Management Act, 1999 (“**PFMA**”) which imposes various requirements and limitations on such companies. For example, section 66 imposes restrictions on borrowing, guarantees and other commitments. Consequently, as currently drafted, the PFMA could have the effect of inhibiting the competitiveness of certain activities of state owned company banks.

To view the Proposed Bill, please [click here](#).

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