PERSPECTIVES ON PROPOSED CHANGES TO THE SOUTH AFRICAN RESERVE BANK'S SHAREHOLDING AND MANDATE

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"By wisdom a house is built, and through understanding it is established through knowledge its rooms are filled with rare and beautiful treasures. The wise prevail through great power, and those who have knowledge muster their strength." – Proverbs 24: 3-5. Thank you Lord for blessing me with ability and perseverance to complete these studies. It is my prayer that I use all you have blessed me with to honour Your praise and glory.

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SUMMARY

Many facets surrounding the South African Reserve Bank (Reserve Bank) have been topical, but the previous five years have seen increased attention and debate. Nationalisation of the Reserve Bank has been at the heart of this debate. Debate surrounding the nationalisation of Reserve Bank formally began in 2017 by way of a Report from then Public Protector, Busisiwe Mkwhebane's office and has since gained momentum. Further and more materially significant, the calls for the amendment of the Reserve Banks constitutionally entrenched mandate have come to fore, most notably via the Economic Freedom Fighter's (EFF) South African Reserve Bank Amendment Bill Government Gazette No. 41657 of 25 May 2018.

This nationalisation is further unpacked in this research by seeking to understand the theoretical basis and the progressive discourse of nationalisation under the ANC's political reign. The historical and current shareholding is discussed and inferences are drawn from a comparative analysis conducted against the Turkiye Cumhuriyet Merkez Bankasi (TCMB) which enjoys are majority state owned shareholder structure similar to the current nationalisation proposal. The economic effects and feasibility of the nationalisation of the Reserve Bank is further discussed and concluding with a feasible approach to the current nationalisation debate.

Further with regards to the contestation surrounding the mandate which seeks to deviate from the current price stability mandate is critically discussed empirically and statistically with the objective of forecasting if the proposed amendments would serve the South African economy better.

Contents

CHAPTER 1: GENERAL INTRODUCTION

1.1 Background

This research seeks to scrutinise and evaluate the proposed changes to the South African Reserve Bank (Reserve Bank), specifically the call to have the shareholding of the Reserve Bank changed and nationalised. Secondly, the calls from political role players to have the mandate of the Reserve Bank amended from its currently constitutionally-entrenched mandate will be investigated. Thus, the aim of the research paper is to ascertain whether or not the above-mentioned proposals can be deemed viable in the context of South Africa's current socio-economic and socio-political dispensation.

As a point of departure for analysing the effects that nationalisation and the change of its mandate would have on the Reserve Bank, it is important to take cognisance of the evolution of the concept of central banking in South Africa. Prior to the establishment of a South African central bank, commercial banks were issuing and printing banknotes which had the status of legal tender across the Republic.[1] The governing legislation in this regard was scant, with the only requirement being that the printed value on the face of the bill had to be directly linked to the gold standard.[2] This position, however, was not sustainable, due to the lack of uniformity in issuing of these notes, which lead to risks of quantitative easing[3] and, ultimately, an influence on short-term interest rates.[4] Post-World War I, the global imbalances of gold reserves between jurisdictions meant that South African commercial banks were forced to buy gold at higher prices from London, in order to maintain the value of the note to be paid upon presentation thereof. As a result, there was a substantial movement away from the gold standard. The international trend moved

[1] South African Reserve Bank *Background* https://www.resbank.co.za/AboutUs/History/Background/Pages/Background-Home.aspx (2017) (accessed 3 December 2019).

[2] *Ibid.*

[3] Quantitative easing in essence refers to changes in the composition and/or size of a central bank's balance sheet that are designed to ease liquidity and/or credit conditions - Blinder *Quantitative Easing: Entrance and Exit Strategies* (2010) 465.

[4] Yu *Did Quantitative Easing Work?* (2016) 5; Orphanides *Price Stability and Monetary Policy Effectiveness when Nominal Interest Rates are Bounded at Zero* (1998). Tetlow *Implementing Price Stability: Bands, Boundaries and Inflation Targeting* (1998) Clouse *Monetary Policy When the Nominal Short-Term Interest Rate is Zero* (2000); Taylor *Discretion Versus Policy Rules in Practice* (1993).

towards the creation of a central bank which was tasked solely with issuing banknotes and acting as a banker for the government.[5]

South Africa followed suit in 1921, when the Reserve Bank was established in terms of the Currency and Banking Act.[6] It was established to be the sole issuer of bank notes and to act as a custodian of cash reserves for commercial banks within the Republic.[7] Thus, the Reserve Bank became the lender of last resort to the commercial banks.[8] All of the above-mentioned functions placed the Reserve Bank in a position to strengthen the safety and soundness of the banking sector and, ultimately, the financial system.

The current political dispensation (from before election 2019 to the writing hereof) has however been posing a risk to the sanctity and independence of the Reserve Bank. This sanctity is challenged in three aspects: the independence, the mandate, and the current shareholding of the Reserve Bank. These issues have been bundled and convoluted to seem like a single issue (as portrayed in the media), but each carries significant importance when analysed individually. These issues are, however, inextricably linked.

The debate surrounding the current shareholding of the Reserve Bank may seem warranted when it is compared to that of other jurisdictions. South Africa is one of only eight jurisdictions with a central bank with a private shareholders structure.[9] This issue is correctly portrayed by the media as the nationalisation of the Reserve Bank. The two largest political parties in South Africa have repeatedly called for change in the ownership of the Reserve Bank. A further indication of this intention is the tabling of a bill in

[5] De Jager *The South African Reserve Bank: An Evaluation of the Origin, Evolution and Status of a Central Bank (Part 2)*(2006) 275. *Capie The future of central banking: the tercentenary symposium of the Bank of England*. (1994) 276 ;

[6] Currency and Banking Act 31 of 1920.

[7] De Jager *Central Bank, lender of last resort assistance: An elusive concept?* (2010) 231.

[8] A central banks position by their very nature, are deeply involved in systemic risk management and acknowledge that a close correlation exists between monetary and financial stability and thus the duty of a lender of last resort entail the refinancing of the operational liquidity requirements of banks through repurchase agreements and other facilities such as the averaging of cash reserves or marginal lending. - De Kock *Central Banking (4ed)* (1973) 146; South African Reserve Bank *Report on the Operations of the South African Reserve Bank for the year Ended 31 March 2003* (2003) 90 *;* Clark *Financial Stability and Central Banks: A Global Perspective* (2001) 170. De Jager (footnote 7 above) 233.

[9] Belgium, Greece, Italy, Japan, San Marino, Switzerland and Turkey.

Parliament in order to accommodate for the nationalisation of the Reserve Bank.[10] This amendment bill was revived by the National Assembly on 29 October 2019.[11] However, this issue is not very well understood by the public, as they assume that a change in the shareholding of the Reserve Bank will affect the current role and manner in which the Reserve Bank conducts its daily operations. Such a change will however have no effect on the current role of the Reserve Bank, due to the fact that shareholders have no effect on the mandate of the Reserve Bank.[12]

The second issue which is raised refers to the mandate of the Reserve Bank. The current mandate of the Reserve Bank is encapsulated in the South African Reserve Bank Act as follows:

" [The Reserve Bank] in the exercise of its powers and the performance of its duties the Bank shall pursue as its primary objectives monetary stability and balanced economic growth in the Republic, and in order to achieve those objectives the Bank shall influence the total monetary demand in the economy through the exercise of control over the money supply and over the availability of credit."[13]This price stability regime is further constitutionally entrenched and reads as follows: "the primary objective of the Bank shall be to protect the value of the currency of the Republic of South Africa in the interest of balanced and sustainable economic growth in the Republic." [14]

A further mandate that is placed on the Reserve Bank pertains to financial stability, and is derived from the Financial Sector Regulation Act 9 of 2017 (which introduced the South African Twin Peaks model of financial regulation and captured the Reserve Bank's financial stability extensively in legislation for the first time) and the South African Reserve

[10] South African Reserve Bank Amendment Bill Government Gazette No. 41657 of 25 May 2018.
[11]S9 of the of the Reserve Bank Act; Zulu *Malema's bill to nationalise Reserve Bank back in parliament* https://citizen.co.za/news/south africa/government/2203399/malemas-bill-to-nationalise-reserve-bank-back-in-parliament/ (2019) (accessed 3 December 2019).
[12] Van Der Walt ,Deputy General Counsel at South African Reserve Bank *Lecture at the University of Pretoria ;* Russouw *Explainer: South Africa's central bank – ownership, mandate and independence* https://theconversation.com/explainer-south-africas-central-bank-ownership-mandate-and-independence-110365 (2019) (accessed 20 April 2020).
[13] South African Reserve Bank Act 90 of 1989 S3.
[14] S224(1) of the Constitution of the Republic of South Africa, 1996.

Bank Act 90 of 1989.[15] Consequently the Reserve Bank is also tasked with implementing and carrying out monetary policy pertaining to inflation targeting in order to ensure that price stability is maintained and that financial stability is achieved. Aptly explained by Mbuya as "[p]rice stability reduces uncertainty in the economy and, therefore, provides a favourable environment for growth and employment creation".[16] The current parameter set for this is an inflation rate of between 3% and 6%.[17]

The crux of the political parties' argument is that the Reserve Bank should not be tasked solely with inflation targeting, but that it should extend its policies to include those which seek to increase economic development within the Republic. This contention for the change of policies has been rebutted by the Reserve Bank repeatedly in media statements and public speeches, as the institution has publicly stated that the current mandate does seek to increase economic development.[18] The main school of thought regarding maintaining the current, narrower scope of price stability is that if focus and attention is taken away from inflation targeting it may lead to rampant inflation.

Thirdly, the independence of the Reserve Bank can be measured by the ability of the bank to conduct its mandate without interference from politics or government. This independence is based on the premise that a "[c]entral bank[s] independence and autonomy is based on the premise that, *inter alia*, the State is tasked with ensuring a sound financial system". [19] This independence could be threatened if these proposed changes are implemented. This independence is further enforced by the Constitution,

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[15] 9 of 2017, chapter 2.; 90 of 1989, Section 3 (*Primary objective of Bank).*
[16] Mbuya *The Pillars of Banking* (2008) 195.
[17] South African Reserve Bank *The Inflation Target* https://www.resbank.co.za/MonetaryPolicy/DecisionMaking/Pages/InflationMeasures.aspx (accessed 20 April 2020). ; South African Reserve Bank *Inflation Targeting Regime* https://www.resbank.co.za/MonetaryPolicy/DecisionMaking/Pages/default.aspx (accessed 01 April 2020).
[18]Kganyago *Public Lecture by Lesetja Kganyago, Governor of the South African Reserve Bank, At the University of South Africa, Pretoria 24 July 2019 Delivering on our mandate: Monetary policy, inflation, and balanced and sustainable growth* (2019) ; Maeko, Mail & *Guardian Kganyago describes expansion of central bank mandate as 'noise'* https://mg.co.za/article/2019-07-05-kganyago-describes-expansion-of-central-bank-mandate-as-noise/ (2019) (accessed 01 April 2020) ; Kganyago *Governor Lesetja Kganyago: Public Lecture at University of Pretoria* https://www.gov.za/speeches/public-lecture-24-jul-2019-0000 (accessed 01 April 2020). ; Fin 24 *Reserve Bank mandate is enshrined in the Constitution – Kganyago* https://www.fin24.com/Economy/South-Africa/reserve-bank-mandate-is-enshrined-in-the-constitution-kyanyago-20190117 (2019) (accessed 01 April 2019).
[19] De Jager (footnote [5] above) 233.

which states that in the pursuit of the above-mentioned mandates, the bank must exercise its duties and powers without fear, favour, or prejudice.[20]

These changes proposed in relation to the mandate and shareholding of the Reserve Bank may have dire and irreversible effects on the South African economy, especially the risk of inflation, which seems to be disregarded by the public, perhaps due to a lack of economic literacy. In reality, inflation poses the greatest risk to our economy. Unfettered inflation poses material risks as it erodes the purchasing power of consumers as prices rise across the economy for mundane goods and services,[21] and, of importance to the Republic, increases the cost of borrowing which would worsen the already strained government deficit. [22]These political squabbles are merely attritional to the value of the currency and the credit rating of the Republic at this point in time.

Regardless of the fallacy that currently underlies the proposals made for nationalization of the RESERVE BANK, one should seek to analyse the effects of such proposals so that, in the event the proposals materialise, one can foresee challenges and prepare solutions in the interest of financial stability.

1.2 Problem statement

The research problem that will be addressed is to analyse and critically evaluate whether the proposed changes to the Reserve Bank's shareholding and mandate are viable and suitable in the context of South Africa's socio-economic and socio-political dispensation.

1.3 Research questions

The study will pursue answers to the following research questions:

1.3.1 What is the current role, function, and mandate of the South African Reserve Bank and what is the nature and extent of shareholding in the Reserve Bank?

[20] S224(2) of the Constitution Republic of South Africa,1996.
[21] Garrett *Dangers of Inflation* (1923) 50.
[22] *Idem* 54.

1.3.2 What are the socio-political and socio-economic ramifications of the nationalisation of the Reserve Bank?

1.3.3 What are the socio-political and socio-economic ramifications of the proposed change in mandate of the Reserve Bank?

1.4 Methodology

The methodology which will be employed in this study is that of a literature review. The syllogism is to extract information regarding the topic of nationalisation and the change of mandate from sources of other academics, and to debate this information. The information will be extracted from a number of sources including, but not limited to, journal articles, case law, legislations, news publications, books, internet sources, and policy documents. The aim behind the analysis is to construct a well-informed answer to the above-stated research questions.

1.5 Overview of chapters

Chapter One introduces the reader to the research topic. It lays the foundation for the research by providing background pertaining to the proposed changes, as this is what motivated and gave rise to the commencement of this research. It also sets out the research objectives, research methodology and the chapter layout of the dissertation. The second chapter delves into the theoretical basis of nationalisation and the nature of nationalisation in the South African context, as well as recent developments in this regard. Thereafter, the chapter will investigate the Türkiye Cumhuriyet Merkez Bankasi (TCMB) of Turkey and draw comparisons between the Reserve Bank's current shareholder structure and that of the TCMB, in order to make inferences to aid research into the viability of the nationalisation of the Reserve Bank. The third chapter will interrogate the underlying rationale and basis for the proposed changes to the Reserve Bank's mandate. Furthermore, the research will attempt to analyse if these proposed changes are bona fide or merely for the purposes of political gain and vote mongering. Lastly, the chapter will attempt to forecast the implications and effects if the proposed changes are undertaken, if any. The fourth and final chapter will serve as the concluding chapter to the research. The chapter will concisely analyse the viability of the proposed changes to the

Reserve Bank. A further inference will be drawn regarding which of the two proposed changes poses the greatest threat to financial stability and inflation targeting. Lastly, the chapter will put forth recommendations and/or alternatives with regards to the current proposed changes.

CHAPTER 2: ESTABLISHMENT, INDEPENDENCE, SHAREHOLDING AND MANDATE OF THE SOUTH AFRICAN RESERVE BANK

2.1 Introduction

This chapter provides an overview of the historical and legislative foundation of the establishment of the Reserve Bank as South African central bank and discusses the role that is played by the Reserve Bank in the current dispensation. The codified legislative basis from which the Reserve Bank's power is derived can be found in mainly three sources, namely: The Currency and Banking Act in terms of which the Reserve Bank was established,[23] The South African Reserve Bank Act, and the Constitution, as discussed below.[24] Of particular importance to the research is the impact and influence of the Constitution, with specific attention paid to the constitutionally-entrenched mandate of the Reserve Bank, which has the duty to protect the value of the currency and to achieve and maintain the integrity and financial stability of the financial system through inflation targeting as monetary policy objective.

2.1 Establishment of the Reserve Bank

Proposals for the establishment of a central bank in South Africa began some 42 years prior to the inauguration of the Reserve Bank in 1897.[25] The first eminence of these proposals were brought by the Afrikaner Bond, a then political party within the then Cape Colony.[26] The underlying syllogism behind the proposals was the fact that the gold standard was not suspended within the Republic at the beginning of World War I which led to major financial disruptions within the Republic. Subsequent to World War I, despite the embargo placed on gold imports, the British Pound faced rapid depreciation to the dollar and thus it developed a practice in which gold was smuggled from the Republic to

[23] S31 of Currency and Banking Act1920 as amended by Acts 22 of 1923, 26 of 1930, 25 of 1932 and 9 of 1933.
[24] South African Reserve Bank Act ; Constitution of the Republic of South Africa, 1996.
[25] D'Assonville. *J. du Toit van die Paarl (1847 tot 1911). 1st ed.*. (1999) .203 ; De Kock *A history of the South African Reserve Bank (1920-52)* (1954) 3. ;South African Reserve Bank *A short historical review issued in commemoration of the Bank's fiftieth anniversary*. (1971) 9. South African Reserve Bank *Commemorative publication* (2011) 3.
[26] Capie *The Future of Central Banking: The Tercentenary Symposium of the Bank of England* (2012) 179. ; Russouw *A Selective Reflection on the Institutional Development of the South African Reserve Bank since 1921* (2011) 53.; South African Reserve Bank *Commemorative publication* (2011) 3. Arndt *Banking and Currency Development in South Africa (1652-1927)* (1928) 414.

be sold in other jurisdictions.[27] The position imposed an "obligation to trade at a loss" for domestic banks which posed a dire risk to the banks' ability to meet its obligations.[28]

The reliance on the British Pound after the renunciation of the gold standard can be derived from the Kemmerer-Vissering Report titled '*On the Resumption of Gold Payments by the Union of South Africa'*. [29] In this report two recommendations where put forth which hinged between the adoption of the gold standard or the joining of the Sterling arena. The Report itself lent towards the adoption of the gold standard stating that it would "lead to greater stability in the value of [the country's] monetary unit, namely its purchasing power, both internal and external".[30] The final gravitation towards the gold standard was based on Kemmerer-Vissering's view that "[it would be a] benefit to the gold industry in South Africa through encouraging by example the return of other countries to the Gold Standard." [31] This view however proved to be fallacious and subsequent to Britain's departure from the gold standard in 1931, the Transvaal Chamber of Mines passed a resolution in favour of leaving the gold standard and linking to sterling.[32]

This practice placed domestic commercial banks between a rock and a hard place as they had to redeem their notes at a par value but restore their gold at a premium value.[33]

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[27] *Ibid.*

[28] South African Reserve Bank *Background* https://www.resbank.co.za/AboutUs/History/Background/Pages/Background-Home.aspx (accessed 12 May 2020).

[29] Kemmerer *Report Submitted by Dr. Edwin Walter Kemmerer and Dr. Gerard Vissering, President of the Netherlands Bank: On the Resumption of Gold Payments the Union of South Africa*.. (1925) xi.

[30] *Idem* xvii.

[31] *Ibid.*

[32] Feinstein, *An economic history of South Africa: Conquest, discrimination and development.* (2005) 9 ; Munro *South Africa and the gold standard controversy 1925–1932. Paper presented at the fifth Biennial Economic History Conference, Johannesburg, South Africa. July 1988.* (1998) 105; Padayachee *How Global Geo-Politics Shaped South Africa's Post-World War I Monetary Policy: The Case Of Gerhard Vissering And Edwin Kemmerer In South Africa, 1924)* (2015) 187.

[33] This untenable position is best described by the South African Reserve Bank as "during the Great War the South African currency remained on the gold standard and commercial banks were obliged to redeem their notes for gold, in each instance at a fixed exchange rate. This was in terms of an arrangement where the domestic currency was pegged to the British currency (pound sterling) which, in turn, was pegged to the US dollar and, therefore, the gold price. This arrangement ended in March 1919 when the pegging of the pound sterling to the US dollar came to an end, which resulted in the pound sterling depreciating by 1/3 against the US dollar and gold. As a result, gold obtained in South Africa through the conversion of banknotes at commercial banks could be sold at a premium in London. At the same time, domestic commercial banks had to buy gold at the same premium in London to provide the necessary backing for their banknotes in issue in terms of the gold standard." - South African Reserve Bank (footnote 25 above) 4-5.

The practice of maintaining the gold standard exacerbated the domestic depression as the Reserve Bank had to follow a contractionary monetary policy, thereby aggravating economic hardship. [34] This unsustainable position lead to calls for the suspension of the convertibility of bank notes into gold and vice versa.[35]

In order to come to a feasible and sustainable solution, the 'Gold Conference' was held in Pretoria, in October 1919, which sought to address the issues burdening the domestic commercial banks.[36] This conference resolved to establish a South African Mint which was tasked with the manufacturing of all circulation coins issued in South Africa.[37] Secondly it was agreed to lift the economic damaging effects of the suspension of the gold standard by the British on the 21st of September 1931,[38] and thus to naturalise the exchange rates between Britain and South Africa and lastly and most notably, to unify banking legislation and regulations with the aim of reducing the potential for inflation.[39] This final objective of unification was premised on the fact that prior 1919 there existed no uniform banking legislation as issuing of notes and coin were conducted by domestic banks and not subject to any statutes. Thus, preceding the Gold Conference, the Currency and Banking Act as mentioned above, was passed which led to the establishment of the South African Reserve Bank in 1920. The Currency and Banking Act was largely based on the operation of the Central Bank of Java(today the Central Bank of Indonesia), De Nederlandsche Bank which served as the central bank for the Netherlands, as well as the US Federal Reserve System.[40]

[34] South African Reserve Bank (footnote 25 above)9.
[35] Russouw (footnote 26 above) 53..
[36] De Kock (footnote 25 above) 11. ; De Jager *The South African Reserve Bank: An Evaluation of the Origin, Evolution and Status of a Central Bank (Part 1)* (2006) 160.
[37] South African Reserve Bank *Subsidiaries* https://www.resbank.co.za/AboutUs/Structure/Pages/Subsidiaries.aspx (accessed on 12 May 2020).
[38] South African Reserve Bank (footnote 25 above)7.
[39] De Kock (footnote 25 above) 11.
[40] Capie (footnote 26 above) 180. South African Reserve Bank *Comm*(footnote 25 above)5.

2.2 Independence and autonomy of the Reserve Bank.

As a departure point it is important to stress that the premise of central bank independence is based on the duty of the state to formulate and implement monetary policy which seeks to ensure a sound and stable financial system which embodies commensurate resource allocation.[41] In order for the State to achieve this, delegation of authorities pertaining to financial soundness should be conferred upon a central bank and further to provide the institution with clearly defined goals and objectives to work towards.[42] Logically the necessary powers needed to achieve these goals should further be conferred upon the institution. Consequently, the mandate of a central bank is largely dependent on the degree of independence conferred on the central bank which enables it to function autonomously and not within the Government.[43]

This premise gave rise to a school of thought in economics which opined that the degree of independence of a central bank is a vital determinant of monetary policy decision and consequently inflation.[44] It is further argued in this school of thought that the continuance of inflation is due to self-interested short-term goals of politicians and thus, there exists the harrowing possibility that monetary policy decisions may be taken in lieu of short term electoral popularity.[45] Central bank independence and autonomy is considered an effective mitigator against such notions.[46] There exists four theoretical categorisations of

[41] De Jager (footnote 5 above) 283.
[42] *Ibid.*
[43] International Monetary Fund ('IMF') *Working Paper Central Bank Governance: A Survey of Boards and Management* (2004) 9; *Meltzer Origins of the Great Inflation ,prepared for a conference titled 'Reflections on Monetary Policy 25 Years after October 1979', held Federal Reserve Bank of St Louis on 7 Oct 2004* (2004) 11 ; De Jager (footnote 5 above) 283.
[44] Cukierman *Central Bank Strategy, Credibility, and Independence: Theory and Evidence* 2 ed (1994) 349.
[45] De Jager (footnote 5 above) 283
[46] Goodheart *The Central Bank And The Financial System* (1995) 62 ; Cranston *Principles of Banking Law* 2 ed (2003) 113.

a central banks autonomy namely a goal autonomy,[47] target autonomy,[48] instrument autonomy, [49] or a limited autonomy.[50] The Reserve Bank's categorisation is discussed following the constitutionally entrenched independence of the Reserve Bank.

It should be noted that at the inception of the Reserve Bank South Africa enjoyed a small amount of *de jure* independence but by no extent was it a *de facto* independent country due to the fact that there existed substantial ties to Britain.[51] However, come the end of the First World War, the imperial power enjoyed by Britain across the globe was on the decline, forcing the decision makers to focus on the wellbeing of London,[52]consequently loosening the financial grip of the British across the colonies.

The independence of the Reserve Bank has never been formally defined nor has any substantial effort been made to codify arrangements governing the co-operation and co-ordination between the Reserve Bank and the administrative sector of parliament.[53] All through the existence of the Reserve Bank there has existed regular co-operation and consultation between the Bank and the National Treasury in all affairs dealing with monetary policy.[54] In 1956, the Minister of Finance of the time most aptly stated the position of the independence of the Reserve Bank as follows:

[47] Goal autonomy entrusts the central bank with THE responsibility for determining monetary policy and the exchange-rate regime, or simply the monetary policy if the exchange rate is floating. Goal autonomy, in principle, gives the central bank authority to determine its primary objective from among several objectives included in the central bank law, or, to determine the objective if there is no clearly defined objective – IMF (footnote 43 above) 11.
[48] Target autonomy entrusts a central bank with the responsibility for determining monetary policy and the exchange-rate regime, or simply the monetary policy if the exchange rate is floating. In contrast to goal autonomy, target autonomy has one clearly defined primary objective stipulated in the law – *ibid.*
[49] Instrument autonomy implies that government decides the monetary policy target, in agreement with the central bank, but that the central bank retains sufficient authority to implement the monetary policy target by using the instruments it sees fit – *ibid.*
[50] Limited autonomy means the central bank is basically a governmental agency since the government determines the policies (objectives and targets) and influences their implementation – *ibid.*
[51] Padayachee *''A Superior Practical Man'':1 Sir Henry Strakosch, The Gold Standard And Monetary Policy Debates In South Africa, 1920* (2011) *114.*
[52] *Ibid.*
[53] Capie *The development of Central Banking* (2012) 179. ; De Jager (footnote 5 above)283.
[54] S224 (2) of The Constitution ; De Jager (footnote 5 above) 284 ; Capie (footnote 53 above) 181

"The Reserve Bank is an autonomous statutory institution, deliberately divorced from political control, and no Minister of Finance has the right to dictate credit policy to the Reserve Bank, nor has any Minister attempted to do so."[55]

It is trite that the Reserve Bank continues to enjoy a great deal of independence and autonomy in the current political climate.[56] The independence of the Reserve Bank is codified in section 224 of the Constitution which provides that in the pursuit of its primary object the Reserve Bank "must perform its functions without fear, favour or prejudice."[57] The aforementioned section however goes on further to state there needs to exist a regular consultation between the cabinet member who is tasked with financial matters and the bank. [58]

The manner of confirmation of a centrals bank's independence and autonomy is of utmost importance and, if formally codified in the supreme law of the land (the Constitution), it is safeguarded from simple amendments to legislation. In the context of the Reserve Bank this currently denotes that the Reserve Bank is not bound by ordinary legislation which stand in conflict with the Constitution.[59] Thus, practically the Reserve Bank conducts its duties with a price stability regime within an inflation-targeting framework. This tasked is carried out in line with the broad parameters set out by the Government.[60] The Reserve Bank is then entrusted with the autonomy and independence to achieve these parameters. With the aforementioned in mind it is evident that the autonomy enjoyed by the Reserve Bank is only that of instrument autonomy due to the fact that its primary goal is set out in enabling legislation and its targets are determined by the Government.[61]

[55] Capie (footnote 26 above) 180.
[56] De Jager (footnote 5 above)285; Mbuya (footnote 16 above) 190.
[57] S224(2) of the Constitution of the Republic of South Africa, 1996 .
[58] *Ibid.*
[59] Malan *The Reserve Bank, Banks, and Clearing Houses in South African Law: Part 1'* (2001) 39.
[60] De Jager (footnote 5 above) 285
[61] Felix Oelkers *Das Rect der South African Reserve Bank: Ein Beitrag zum neuen Südafrikanischen Verfassungsrecht* (1999) 27 ; Malan & Pretorius (footnote 59 above) 40 ; Cranston (footnote 46 above) 115 ;

This autonomy is based on the premise that the Reserve bank alongside the State is tasked to ensure a durable and sound financial system.[62] De Jager indicates that in order to achieve this objective both the aforementioned parties need to be guided by public policy and thus consequently public interest, in turn this would be the development of financial system which operates in a sustainable manner which most importantly mitigates risk.[63]

2.3 Shareholding of the Reserve Bank

Upon inception of the Reserve Bank in 1920 the bank was founded as a private company with 30 per cent of its capital share apportioned to the commercial banks and the remaining 70 per cent apportioned for the public.[64] The then designated board consisted of eleven directors of whom five were appointed by the Government through the Governor General and the rest elected by the remainder of shareholders.[65]

The shareholding in the bank currently vests in the region of 650 shareholders with an authorised share capital of 2 000 000 shares.[66] There exists a ceiling on the total amount of shares which a single shareholder may hold at any given time and shareholding is capped at 10 000 shares per individual.[67] This cap seeks to ensure the mitigation of concentration risk which may arise when shareholders hold large blocks of shares and could possibly cause disruptions through voting rights and/or alienating large blocks of shares.[68] Mbuya points out further that the dividends accrued on shares are paid out at an amount of not more than 10% a share. Consequently, and contrary to the current public understanding of the shareholding, it can be said that the shares as presented by the Reserve Bank emphatically do not constitute a share bought for profit motives or capitalistic purposes.[69]

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[62] De Jager (footnote 5 above)233 ; De Jager (footnote 53 above) 283.
[63] *Ibid.*
[64] Capie (footnote 26 above) 180.
[65] Ibid.
[66] South African Reserve Bank *Monetary Policy* https://www.resbank.co.za/MonetaryPolicy/Pages/MonetaryPolicy-Home.aspx (2017) (accessed 20 April 2020).
[67] Ibid ; S22 of the South African Reserve Bank Act 90 of 1989.
[68] A risk concentration refers to an exposure with the potential to produce losses large enough to threaten a financial institution's health or ability to maintain its core operations - Basel Committee On Banking Supervision *Risk Concentration Principles* (1999) 2.
[69] Mbuya (footnote 16 above) 171.

Lastly, and most importantly, the shareholding of the Reserve Bank has no influence or has no effect on the banks mandate, policy and regulation.[70] This lack of influence is evident from the plethora of clauses in the Reserve Bank Act which seek to limit same. The first evidence is found in the restriction of rights to hold shares in the central bank as discussed above.[71]The second indication of the intention to curtail the influence of shareholders is evident in the Act where voting rights are restricted.[72] The South African Reserve Bank Amendment Act 2 of 1993 further expressly illustrates this intention in the short title as follows: "… to prescribe corrective steps in the event of the acquisition of shares in the Bank in excess of the permissible maximum shareholding".[73]This sentiment was affirmed by Governor Lesetja Kganyago when political calls began surfacing for the nationalisation of the Reserve Bank in 2017.[74]

2.4 Mandate of the Reserve Bank

The original set of objectives and functions that were assigned to the Reserve Bank as per the Currency and Banking Act were that the Reserve Bank was to assume the role of being the sole issuer of currency within the Country.[75] Further the Reserve Bank was bestowed the duty to be the custodian of the country's foreign and gold reserves.[76]The Reserve Bank further served as a bank of rediscount, a lender of last resort and the

[70] Archer *Central bank Önances. BIS Papers No 71* (2013) 7 ; Russouw *An Institutional comparison of private shareholding in the central banks of South Africa and Turkey* (2018) 7.
[71] S22 of the South African Reserve Bank Act.
[72] S23 of the South African Reserve Bank Act.
[73] South African Reserve Bank Amendment Act 2 Of 1996
[74]Kganyago *Public Lecture by Lesetja Kganyago, Governor of the South African Reserve Bank, At the University of South Africa, Pretoria 24 July 2019 Delivering on our mandate: Monetary policy, inflation, and balanced and sustainable growth* (2019) ; Maeko, Mail & *Guardian Kganyago describes expansion of central bank mandate as 'noise'* https://mg.co.za/article/2019-07-05-kganyago-describes-expansion-of-central-bank-mandate-as-noise/ (2019) (accessed 01 April 2020) ; Kganyago *Governor Lesetja Kganyago: Public Lecture at University of Pretoria* https://www.gov.za/speeches/public-lecture-24-jul-2019-0000 (accessed 01 April 2020). ; Fin 24 *Reserve Bank mandate is enshrined in the Constitution ; Kganyago* https://www.fin24.com/Economy/South-Africa/reserve-bank-mandate-is-enshrined-in-the-constitution-kyanyago-20190117 (2019) (accessed on 01 April 2019).
[75] This role was derived from the short title of the Currency and Banking Act its object was to conserve the specie supplies of the Union by providing for the issue of gold certificates; to provide for the establishment of a central reserve bank for the Union; to regulate the issue of bank notes, and the keeping of reserves with a view to securing greater stability in the monetary system of the Union; and generally to make provision for matters incidental thereto. De Jager (footnote 5 above) fn7.
[76] Kganyago (footnote 74 above).

custodian of capital reserves within the banking sector.[77] This task is undertaken by the Reserve Bank in order to ensure financial stability. This final task consequently meant that the Reserve Bank provided an interbank clearing and settlement system for the economy. [78]

Merely three years after the promulgation of the Currency and Banking Act it was amended in a knee jerk reaction to the near failure of a large commercial bank in 1922, the National Bank.[79] This near failure drew the attention of legislators to the need for substantial lending on behalf of the Reserve Bank in times of bank failure. The reaction was further necessitated by the failure of the local currency to achieve parity with the gold standard and thus maintain the status quo in regard to the inconvertibility of the notes.[80] The consequential amendments included further extensions in regards to types of financial assets which the bank could procure. In addition to these amendments, three of the banking representatives on the board of Reserve Bank's directors were replaced by representatives of the commercial banking sphere.[81] The syllogism behind the change in the board of directors was that it was perceived that the banking representatives hampered the ability of the board to openly and independently discuss the Bank's discount policy.[82]

In 1925 it was held that the local currency would be placed back on the gold standard, which was continued until 1931 in which year, South Africa, along with a multitude of foreign jurisdictions abandoned the gold standard. From this period in 1931 up until the beginning of World War II South Africa essentially remained part of the Sterling currency

[77] A lender of last resort is the liquidity assistance provided by the central bank to a borrower that is not fundamentally insolvent, with the purpose of avoiding o the social costs that would follow from disorderly default or from distressed intermediaries withdrawing or heavily rationing services to the economy, or contagion to other intermediaries via direct or indirect channels that would be likely to lead to such social costs. – Tucker *Solvency As A Fundamental Constraint On Lolr Policy For Independent Central Banks: Principles, History, Law* (2019) 2.
[78] Capie (footnote 26 above) 180.
[79] *Ibid.*
[80] *Ibid.*
[81] Capie (footnote 26 above) 181.
[82] *Ibid* ; Discount policy ate refers to the interest rate charged to the commercial banks and other financial institutions for the loans they take from the Reserve Bank through the discount window loan process. – Investopedia *Discount Rate* https://www.investopedia.com/terms/d/discountrate.asp (2020) (accessed 22 April 2020).

as the local currency enjoyed a fixed parity with that of the British Pound.[83] In 1942 a major revision of the banking regulation occurred with the promulgation of the Banking Act of 1942. The introduction of the Banking Act saw for the first time the imposition of liquidity and supervision requirements on domestic banks .[84] In 1944, one year prior to the expiry of the Reserve Bank's Charter,[85] the renewal thereof occurred and the Currency and Banking Act was repealed by the South African Reserve Bank Act No. 29 of 1944. The introduction of the South African Reserve Bank Act saw the Reserve Bank's currency monopoly extended indefinitely and further the abolishment of existing restrictions relating to its ability to discount and to make advancements and investments.[87]In 1989 the primary objective of the Reserve Bank and it was stated and codified for the first time and was stated to be as follows; "monetary stability and balanced economic growth in the Republic" and in order to achieve those objectives the Bank shall influence the total monetary demand in the economy through the exercise of control over the money supply and over the availability of credit." [88]

Further, as mentioned above the Reserve Bank's duty and role as a lender of last resort is seen as a vehicle to further ensure financial stability within the Republic.[89] This vehicle is present due to the fact that commercial banks within the Republic play a deeply entrenched roll in the risk management within the financial system. This lender of last resort role however creates the risk of moral hazard within the management of a bank,[90]

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[83] Capie (footnote 26 above) 181

[84] *Ibid.*

[85]Since the inception of the SARB it was necessary to amend its enabling legislation from time to time to take cognisance of changed circumstances. After the initial legislation, the Currency and Banking Act, 1920, was amended four times before it was replaced with the South African Reserve Bank Act, 1944 (Act No. 29 of 1944). One of the main considerations in the adoption of new legislation in 1944 was that the Currency and Banking Act, 1920 entrusted the SARB with monopoly powers to issue banknotes for only 25 years, that is, until 1945. As these powers were therefore about to expire, it was necessary to reconsider the SARB's legislative framework. – South African Reserve Bank *South African Reserve Bank History, functions and institutional structure* (2010) 7. ; The expiry of the charter was due to the fact that the Reserve Bank was entrusted with monopoly powers to issue banknotes for only 25 years, that is, until 1945. As these powers were about to expire, it was necessary to reconsider the SARB's legislative framework. - South African Reserve Bank (footnote 25 above) 15.

[87] S8(aC) & S8(d) & (eA) of the South African Reserve Bank Act No. 29 of 1944.

[88]S3 of the South African Reserve Bank Act 90 of 1989 and later entrenched in S224 of the Constitution..

[89] De Jager (footnote 19 above).

[90] Moral Hazard is the fact that the existence of bail out facilities can encourage the managements of banks to engage in risky banking business, because if the bank gets into difficulties and has to be closed, the depositors will be covered by a State funded bail out – South African Reserve Bank *South African Reserve Bank monetary policy in the decade 1989 to 1999* (2011) 95; or more concisely Moral hazard" arises when parties have incentives to accept more risk

which moral hazard could be completely mitigated with the introduction of a deposit guarantee insurance for which the contributions are entirely apportioned banks receiving deposits from the public.[91] However, this role currently adopted by the Reserve Bank is of utmost importance for the economy in the absence presently of a deposit guarantee insurance scheme in South Africa until such time as the envisaged deposit insurance scheme as set out in the Financial Sector Laws Amendment Bill is adopted.[92] The risk of contagion could be substantially mitigated if a liquidity crisis within a commercial bank via the injection of emergency capital to service the liquidity shortfall.[93] This ability to address liquidity will reduce the crippling effect of contagion within the economic system with the possibility of preventing a bank run.[94]

The current mandate of the Reserve Bank as codified in the Constitution is ”protecting the value of the currency in the interest of balanced and sustainable economic growth.”[95] This mandate as set out in the Constitution can be regarded as the umbrella mandate of the Reserve Bank due to the supremacy enjoyed by the Constitution. The Constitution further goes on to state that:

“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 performed subject to the conditions prescribed in terms of that Act.”[96]

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because the costs that arise from the risk are borne, in whole or in part, by others - International Association of Deposit Insurers (IADI) *IADI Core Principles for Effective Deposit Insurance Systems* (2014) 10.

[91] Deposit insurance is defined as a system established to protect depositors against the loss of their insured deposits in the event that a bank is unable to meet its obligations to the depositors – IADI (footnote 90 above) 8.

[92]Financial Sector Laws Amendment Bill introduced in the National Assembly (proposed section 75).

[93] Contagion is the interconnectedness which refers to the extent of exposures and other financial links among financial institutions. This interconnectedness takes into account exposures to and from other financial institutions, activity in the financial markets and participation in financial market infrastructure. Such exposures and links create channels through which the failure of one institution could cause contagion to other institutions, potentially causing a domino effect of failures in the financial system. Interconnectedness in the South African banking sector is high due to the high level of concentration in the sector – South African National Treasury *Strengthening South Africa’s Resolution Framework For Financial Institutions* (2015) 3.

[94] Bank runs are a common feature of the extreme crises that have played a prominent role in monetary history. During a bank run, depositors rush to withdraw their deposits because they expect the bank to fail. In fact, the sudden withdrawals can force the bank to liquidate many of its assets at a loss and to fail. In a panic with many bank failures, there is a disruption of the monetary system and a reduction in production - Diamond *Bank Runs, Deposit Insurance, and Liquidity* (1983)

[95] *Ibid.*

[96] S225 of the Constitution of South Africa, 1996; S10(s) of the South African Reserve Bank.

The Reserve Bank is also tasked with the implementation and formulation of monetary policy within the Republic.[97] This task of monetary policy formulation and implementation is a common duty adopted by many a central bank globally. The goal of controlling monetary policy is widely held to be a hybrid of relative price stability, ensuring satisfactory quantities of gold and foreign reserves (net and gross), ensuring optimal and relative stable economic growth and lastly to provide, and maintain the necessary economic conditions to ensure high levels of employment. [98] It should be noted that monetary policy does not operate in isolation, rather that is concomitant to fiscal policy which is vital in the distribution of revenue within a jurisdiction.[99]

The long term monetary policy objective adopted by the Reserve Bank is the domestic price stability mandate.[100] All subsequent objectives are perceived as legitimate aims which serve as policy constraints on monetary policy authorities in the pursuit of price stability. [101] In comparison to foreign jurisdictions, price stability is the norm for central banks in developing economies. [102] Thus, the Reserve Bank has the duty to ensure the existence of price stability within the economy by pursuing the inflation target. This inflation targeting framework seeks to maintain consumer-price inflation index,[103] with the

[97] Monetary policy may be broadly defined as all deliberate actions by the monetary authorities to influence the monetary aggregates, the availability of credit and interest, and exchange rates with the view of affecting the demand, income, output, prices and the balance of payments - *Final Report of the Commission of Enquiry into the Monetary System and Monetary Policy in South Africa* (1985) 139.
[98]De Jager (footnote 36 above) 164.
[99] *Ibid.*
[100] De Jager (footnote 36 above)165.
[101] Monetary System Report (footnote 97 above) 142.
[102] According to Bank for International Settlements the central banks of at least 49 countries worldwide have either the preservation of the value of their respective currencies or price stability as their primary objective, or as part of their primary objective - Bank for International Settlements ('BIS') *Objectives of the Central Bank as Set out in Legislation* (2002) 1.
[103] Consumer-price inflation is a measure of changes over time in the general level of prices of goods and services that households acquire (use or pay for) for the purpose of consumption. In many countries they were originally introduced to provide a measure of the changes in the living costs faced by workers, so that wage increases could be related to changing levels of prices. However, over the years, CPIs have widened their scope, and now are widely used as a macroeconomic indicator of inflation, as a tool by governments and central banks for monetary policy and for monitoring price stability, and as deflators in the national accounts. With the globalization of trade and production and the liberalization of the markets, national governments, central banks and international organizations place – International Monetary Fund *Consumer Price Index Manual: concepts and methods* (2020) 22.

subsequent interest on mortgages (CIPX),[104] which is all conducted within a designated target range.[105]The rationale behind the inflation targeting is for the Reserve Bank to conduct its implementation of monetary policy with the goal of keeping interest rates at minimum.[106]

The role played by the Reserve Bank changed with the shift from a silo sectoral financial regulation towards an adaptation of Michael Taylor's Twin Peaks model,[107] which was introduced in South Africa via the Financial Sector Regulation Act 9 of 2017 (FSR Act). The shift toward Twin Peaks inter alia saw the introduction of two separate bodies, namely the Prudential Authority, introduced by section 32, and the Financial Sector Conduct Authority, established in terms of section 56 of the Act.[108] These bodies are tasked with prudential regulation and supervision and regulation and supervision of financial market conduct respectively.[109] The object of the FSR Act is to ensure and achieve a stable

[104] Consumer Price Index Excluding Mortgage Costs (CIPX).
[105] De Jager (footnote 36 above) 164.
[106] South African Reserve Bank *The Inflation Target* https://www.resbank.co.za/MonetaryPolicy/DecisionMaking/Pages/InflationMeasures.aspx (accessed 20 April 2020).
[107] Taylor *"Twin Peaks": A Regulatory Structure for the New Century* (1995).
[108] The Prudential Authorities objectives are prescribed by S33. The objective of the Prudential Authority is to (a) promote and enhance the safety and soundness of financial institutions that provide financial products and securities services; (b) promote and enhance the safety and soundness of market infrastructures; (c) protect financial customers against the risk that those financial institutions may fail to meet their obligations; and (d) assist in maintaining financial stability; The functions as prescribed by S34 are as follows . "(1) In order to achieve its objective, the Prudential Authority must— (a) regulate and supervise, in accordance with the financial sector laws— (i) financial institutions that provide financial products or securities services; and (ii) market infrastructures; (b) co-operate with and assist the Reserve Bank, the Financial Stability Oversight Committee, the Financial Sector Conduct Authority, the National Credit Regulator and the Financial Intelligence Centre, as required in terms of this Act; (c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest; (d) support sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission; (e) support financial inclusion; (f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions"
[109] The duties of the FSCA are prescribed in S57 as follows "The objective of the Financial Sector Conduct Authority is to— (a) enhance and support the efficiency and integrity of financial markets; and (b) protect financial customers by— (i) promoting fair treatment of financial customers by financial institutions; and (ii) providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and (c) assist in maintaining financial stability." The functions of the FSCA are prescribed in S58 as follows ". (1) In order to achieve its objective, the Financial Sector Conduct Authority must— (a) regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions; (b) co-operate with, and assist, the Reserve Bank, the Financial Stability Oversight Committee, the Prudential Authority, the National Credit Regulator, and the Financial Intelligence Centre, as required in terms of this Act; (c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest; (d) promote, to the extent consistent with achieving the objective of the

financial systems which seeks to: serve the needs and interests of financial customers, whilst ensuring the system supports economic growth. Lastly, the Act seeks to provide a regulatory and supervisory framework which promotes: financial stability;[110] the safety and soundness of financial institutions;[111] the fair treatment and protection of financial customers;[112] the efficiency and integrity of the financial system;[113] the prevention of financial crime;[114] financial inclusion;[115] transformation of the financial sector and confidence in the financial system.[116]In line with its financial stability objective the Financial Sector Regulation Act captured and expanded the Reserve Bank's mandate to promote and maintain financial stability in South Africa.[117]

The responsibility for financial stability placed on the Reserve Bank is further elaborated in section 11 of the Financial Sector Regulation Act. This section states that the Reserve Bank is responsible for protecting and enhancing financial stability and to mitigate the effects of a systemic event and restore financial stability.[118] The duties of the Prudential Authority and the FSCA are however beyond the scope of this dissertation.[119]

In addition to the history of the establishment alongside the shareholding of the Reserve Bank as discussed in chapter two the powers and rights of shareholders and shareholder activism are of importance in aiding this study.

Financial Sector Conduct Authority, sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission; (e) promote financial inclusion; (f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions; (g) administer the collection of levies and the distribution of amounts received in respect of levies; (h) conduct and publish research relevant to its objective; (i) monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers; and (j) formulate and implement strategies and programs for financial education for the general public."

[110] S7(1)(a) of the Financial Sector Regulations Act 9 of 2017.

[111] S7(1)(b) of the Financial Sector Regulations Act.

[112] S7(1)(c) of the Financial Sector Regulations Act.

[113] S7(1)(d) of the Financial Sector Regulations Act.

[114] S7(1)(e) of the Financial Sector Regulations Act.

[115] S7(1)(f) of the Financial Sector Regulations Act.

[116]S7(1)(h) & (g) of the Financial Sector Regulations Act.

[117] Van Niekerk *A Comparative Analysis of The Role of The Central Bank in Promoting and Maintaining Financial Stability in South Africa* (2018) 101.

[118] S11(1)(a) & (b) of the Financial Sector Regulations Act.

[119] S33 & S57 of the Financial Sector Regulations Act.

2.5 Powers and rights of shareholders

The Reserve Bank issued share capital constituted at an amount of two million Rand which represented 2 million shares, upon its establishment.[120] When the shares were initially offered, there was little to no interest in the purchase thereof. De Kock attributes this disinterest to the relative poverty faced by many after World War I, which led to lack of disposable capital.[121] The issue of maximum shareholding was subject to periodic reviews, and South Africa also has a long history of limiting the voting powers and influence within the Reserve Bank. [122]

Upon inception and initial issuing, the limit placed on maximum shareholding in the Reserve Bank was 20 000 shares, at a rate of one vote for every 50 shares held. Further restrictions placed on the voting rights required that shares needed to be held for six months, and that holders needed to be ordinarily resident within the Republic to exercise a right to vote.[123]

Come 1994, additional restrictions were placed on voting powers, as the shareholding limit was reduced to 10 000 shares from the initially-set 20 000. Those who held more than 10 000 shares at the time of the amendment were allowed to keep the excess shares, but enjoyed no voting rights on shares held over the 10 000 limit.[124] The writer is of the opinion that this position was necessitated by the need to mitigate contagion risk. This position was maintained until 2010, when the South African Reserve Bank Amendment Act No 4 of 2010 was promulgated. The act brought forth an amendment which notably introduced the terms “associates” to replace those of juristic persons and individuals, which served as the basis for limiting the shareholding. It further introduced over-the-counter purchases of shares, with the price fixed at R10.00 a share at the start of 2017. Furthermore, the Reserve Bank paid out a maximum dividend, which was

[120] Union of South Africa. (1920) ; Currency and Banking Act No 31 of 1920, as amended.
[121] De Kock *A history of the South African Reserve Bank (1920 – 52)* (1954) 48.
[122] Russouw, J *An Institutional comparison of private shareholding in the central banks of South Africa and Turkey* (2018) 9.
[123] Russouw (footnote 160 above) 9.
[124] Union of South Africa. (1944) SA Reserve Bank Act No 29 of 1944, as amended.

prescribed by law at a rate of 10% of the nominal value of the share, translating to R0.10 per share per annum. However, dividend payments to South African citizens were subject to a dividend-withholding tax set at a rate of 20%, translating to a yield of 0.8 per cent.[125]

The powers and rights held by shareholders form the crux of this chapter, as they constitute the subject matter in logically evaluating the impact of the call to amend the current shareholding on the economy. Shareholders in the Reserve Bank have the following powers, rights, and obligations: firstly, they enjoy the right to receive dividends in the manner set out above; however, it must be noted that the ceiling placed on dividends is prescribed by law and therefore not subject to revision by shareholders.[126] They further enjoy the right to attend the Ordinary General Meeting (OGM). Attending the OGM sometimes requires shareholders to approve the minutes of the previous OGM and any special meetings. The shareholders are further apportioned a duty to appoint external auditors of the Reserve Bank. The material power of the shareholders is vested in the fact that they are legally entitled and obligated to elect five of the eleven non-executive directors which constitute the board of directors of the Reserve Bank. Their period constitutes a term of three years. The remaining directors are appointed by the President of the Republic of South Africa with consultation with the Board of the Reserve Bank and the Minister of Finance. It is of the utmost importance to stress that the non-executive directors, as elected by the shareholders of the bank, enjoy no influence or power over the implementation and formulation of monetary policy as undertaken by the Reserve Bank.[127] Accordingly, the shareholders enjoy very limited and platonic powers in regard to the operation and policy decisions taken by the bank.[128]

2.6 Shareholder Activism

The influence and reach of shareholders can best be illustrated by the shareholder activism throughout the history of the Reserve Bank. From the outset it must be stated that the Reserve Bank has a long history of interruptive shareholder activism.[129] The first

[126] Russouw (footnote 160 above) 10.
[127] S4A of Reserve Bank Amendment Act No 4 of 2010.
[128] Archer (footnote 70 above) 7.
[129] Russouw (footnote 160 above) 11.

recording of such activism occurred in 1932, with the decision by South Africa to remain on the gold standard after the renouncing of the very same standard by the United Kingdom in 1931.[130] Amongst the then shareholders of the Reserve Bank there existed a large amount of discontent regarding the continuation of the gold standard practice, as it was perceived to be driving South Africa towards undue financial hardship. Upon expiry of the Reserve Bank board's term in 1932, a Mr Parker was elected based on his stance for the abolishment of the gold standard.[131] This period was the last incidence of shareholder activism up until the turn of century.

After the turn of the century, shareholder activism again came to the fore, centred around increasing the dividend payments of the Reserve Bank. This activism was embodied by the altercations put forth at the OGM to increase the dividend rate between 2008 and 2012.[132]However, this was to no avail, as it was held that the dividends are codified and prescribed by law and are therefore not subject to amendment through shareholder activism[133] (It is of importance to note that similar activism is also found in the case of TMCB, further discussed below in Chapter Three.) This vote marked the period in which regular altercations arose between the shareholders and the executive management of the Reserve Bank in the OGMs. Amongst these altercations were further representations with regards to fair value of the Reserve Bank S's share and the dividend policy.[134]

The Reserve Bank adopted the position that the situation had become untenable and out of hand, and therefore necessitated further restrictions and curtailments on the

[130] SA Reserve Bank *A short historical review issued in commemoration of the Bank's fiftieth anniversa*ry (1971). The gold standard implies that "The national monetary unit [is] defined in terms of a given quantity of gold; the central bank or treasury stood ready to buy and sell gold at the resulting fixed price in terms of the national currency; gold was freely coined and gold coins formed a significant part of the circulating medium; and gold could be freely exported and imported – Bloomfield "*Gold Standard," in Douglas Greenwald, ed., Encyclopedia of Economics* (1981) 452.

[131] Meiring *Biographical sketches of directors, SA Reserve Bank* (1994).

[132] SARB (South African Reserve Bank) (2012) *Annual Report 2012. (Minutes of the 91st Ordinary General Meeting of shareholders). Pretoria* (2012) [Online] available at http://www.resbank.co.za/publications/detailitem-view/pages/publications.aspx?sarbweb=3b6aa07d-92ab441f-b7bf-bb7dfb1bedb4&sarblist=21b5222e-7125-4e55-bb65- 56fd3333371e&sarbitem=6770 accessed on 08 March 2020.

[133] SA Reserve Bank (footnote 130 above).

[134] South African Reserve Bank (footnote 132 above).

shareholding of the Reserve Bank. During this period, certain families acquired shares at the Reserve Bank, despite the clear restriction imposed by legislation, which restricted 'individual' shareholding to 10 000 shares if purchased before as prescribed by the South African Reserve Bank Act No. 29 of 1944. The legislation, however, neglected to address the issue of families purchasing shares with the end goal of asserting undue influence on the mandate and the activities of the Reserve Bank. This practice was conducted by way of purchasing shares in the names of children, spouses, siblings, and parents. This deficiency in the legislation was addressed by the introduction of the principle of "associates" to restrict this buying up of shares in the names of family members of an existing shareholder with the purpose of amassing voting rights.

The concept "associates" after the amendment, are defined by the Act as shareholders in the Reserve Bank who are family members (for example, children, spouses, siblings, parents, and parents-in-law), as well as subsidiary companies, close corporations, and trusts controlling one another or under the control of the Reserve Bank shareholders. [135]The practical effect was that the shares enjoyed by the associates were allowed to be retained, but the voting rights were limited to those provided by 10 000 shares. [136]

In 2014 this shareholder activism was observed in the Pretoria High Court. The facts in summation are as follows: In 2010 the Reserve Bank attempted to ensure that no group of shareholders can exercise control over the Reserve Bank .[137] This was brought forth in the form of an application compelling 29 respondents to alienate all shares held above the total of 10 000 shares.[138] Notice was duly tendered to the shareholders in an OGM of the shareholders held on the 25th of July 2014. The notice read as follows "[A]cting on legal advice, the Bank has embarked on a formal process to regularise shareholding in the Bank. This entailed addressing correspondence to all shareholders of the Bank who

[135] S1(1)(a) of the South African Reserve Bank Act 90 of 1989 as amended by South African Reserve Bank Amendment Act No. 4 of 2010.
[136] S22 & 23 of the South African Reserve Bank Act 90 of 1989 as amended by South African Reserve Bank Amendment Act No. 4 of 2010.
[137] Russouw *Forcing the few: Issues from the South African Reserve Bank's legal action against its delinquent shareholders* (2017) 2.
[138] The 30th Respondent (The Master of the High Court) was merely joined for an observatory roll as a number of the shares were held in trusts and thus, was not included in the tally.

hold shares in contravention of section 22 of the Reserve Bank Act. These shareholders, together with their associates, hold more than 10 000 shares in the Bank without having made the prescribed disclosure as required by law. These shareholders were called on to provide the Bank with an irrevocable undertaking that they would dispose of the number of shares in the Bank as may be necessary to ensure that they, together with their associates, would in aggregate hold no more than 10 000 shares. Shareholders were advised that should they fail and/or refuse to provide the required undertaking and fail to dispose of the requisite shares in the Bank, legal proceedings against them in terms of section 22 of the Reserve Bank Act would be instituted for an appropriate order to redress the matter. This order may include the disposal of shares in the Bank at a price per share and subject to such terms, conditions and restrictions as a Court may determine".[139]

This amendment sought to remove the shares held by a number of individuals and their families, the most notable of them being the 3rd Respondent, Michael Durr.[140] The Durr family (of German heritage) held 90 000 shares in the Reserve Bank (which represents 4,5% of the issued share capital).[141].The main contention by the Durr family and many of the Respondents was that the Reserve Bank was aware, for a prolonged period of time, about the fact that shares in excess of 10 000 per family were held,[142] that the proposed price of R1.55 a share was unreasonable, as proposed in Dr JJ De Jager's affidavit,[143] and lastly that they retained the right to sell the shares on the open market.[144]The matter was ajudicated upon by Judge Fabricius on the 4th of November 2016. He granted the prayers 1,2 and 3.[145] The prayers were as follows : (i) directing the respondents to dispose of those Reserve Bank shares which they hold in aggregate with their associates, in

[139]South African Reserve Bank *Annual report 2015* https://nationalgovernment.co.za/entity_annual/791/2015-south-african-reserve-bank-annual-report.pdf (2015) (accessed 15 May 2020) 106..

[140] South African Reserve Bank v Lawrence and Others (88570/2014) [2016] ZAGPPHC 967 (4 November 2016) citation.

[141] Russouw (footnote *137* above) 11.

[142] Russouw (footnote *137* above) 13.

[143] Affidavit by Dr JJ de Jager *In The High Court of South Africa: Gauteng Division, Pretoria, 28 July 2015* (2015) ; South African Reserve Bank *Annual report 2016.* http://www.resbank.co.za/publications/detailitem-view/pages/publications.aspx?sarbweb=3b6aa07d-92ab-441f-b7bfbb7dfb1bedb4&sarblist=21b5222e-7125-4e55-bb65-56fd3333371e&sarbitem=6770 (2016) accessed on 15 May 2020 40.

[144] Russouw (footnote *137* above) 13.

[145] De Jager (footnote 143 above).

excess of 10 000; (ii) appointing Investec Securities Propriety Limited to act as an independent broker to facilitate the disposal of those shares over a period of two years from the date of the order, at a sale price of not less than R1.55; and (iii) directing the General Council of the Reserve Bank to do all things necessary to enable the sale of the shares, including signing all necessary documentation and providing whatever assistance is necessary to the independent broker. [146]This decision is evident of the culture of the courts to protect the sanctity of the Reserve Bank.

As of 2016, the issue of private shareholding has been questioned by a number of political factions and parties, including the Congress of SA Trade Unions (COSATU), the Economic Freedom Fighters (EFF), and the ANC.[147] The basis of their argument is that the current shareholding of the Reserve Bank is not in the best interest of the Republic and the economy thereof and they are lobbying for a change in the shareholding of the Reserve Bank.

2.7 Chapter Summary

As opined by Reserve Bank on the Reserve Bank's 50th anniversary that "[t]he early beginnings of the Bank were modest indeed",[148] these modest beginnings have progressively been transformed in the first fifty years of the banks history, and as Africa's oldest central bank the Reserve Bank has become an internationally respected central bank.[149] The Reserve Bank's institutional structure was subject to periodical revision in order to ensure that it (the Reserve Bank) remains aligned to volatility in international and domestic developments.[150]

This revision was evident from the untenable situation of the mounting pressures on commercial banks which were issuing bank notes, whilst unable to meet the value of the

[146] *Ibid.*
[147] Fin 24 *Cosatu, EFF demand nationalisation of Sarb* http://www.Ön24.com/Economy/cosatu-e§- demand-nationalisation-of-sarb-20160318 (2016) (accessed 08 March 2020).
[148] South African Reserve Bank. A short historical review issued in commemoration of the Bank's fiftieth anniversary (1971) 83.
[149] Russouw A selective reflection on the institutional development of the South African Reserve Bank since 1921 (2011) 18.
[150] *Ibid.*

note, due to the currency being bound by the gold standard, which necessitated the establishment of the Reserve Bank as central bank in 1920. The mandate, as well as the shareholding of the bank, has evolved through time as response to the economic needs of the Republic. The decisions adopted from 2000 onward is evident of the inflation targeting framework which the Reserve Bank utilises to ensure price stability within the republic. This regime further sought to bring forth long-term economic growth. The powers derived from the Constitution as well as legislation has placed the Reserve Bank under self-governance, which governance is not unfettered as the Reserve Bank, remains accountable to Parliament and the Department of Finance.

3. CHAPTER 3: THE NATIONALISATION OF THE SOUTH ARICAN RESERVE BANK AND OF THE TÜRKIYE CUMHURIYET MERKEZ BANKASI

The third chapter investigates the nationalization of the Turkish Central Bank, the Türkiye Cumhuriyet Merkez Bankasi (TCMB), and draws comparisons between the Reserve Bank's current shareholder structure and that of the TCMB, in order to make inferences to aid research on the viability of the nationalisation of the Reserve Bank. Thereafter, the chapter will delve into the theoretical basis of nationalisation and the nature of nationalisation in the South African context, as well as recent developments in this context.

3.1 The TCMB

The motivation behind the selection of the TCMB is that it forms part of the small number of banks across the globe which have any form of private shareholding. From the outset it should be stated that there exists a considerable amount of discrepancies between the institutional constitution of the TCMB and the Reserve Bank.

3.1.1. Historical Overview

In order to place the institutional analysis in perspective, a brief history of the TCMB is apposite. The TCMB is the current central bank of the Republic of Turkey. It had no forerunners and was established as central bank in 1930 after it had initially operated as a commercial bank. This establishment was a reaction to the bankruptcy faced by the state in 1875, brought forward most notably by the Crimean War,[151] amongst other wars. Notably the TCMB was the first commercial bank in Turkey, established in 1856 as the Ottoman Bank.[152] The bank was approached by the government to undertake a number of tasks, including managing the government's unsystematic finances and obtaining funds

[151] The Crimean War was fought between 1853 and 1856. In the war, Russia fought an allied force consisting of the Ottoman Empire, Great Britain, and France. the Russian takeover of Constantinople, a goal of Russia. Besides the quarrel between France and Russia over control of the Ottoman Christians and shrines in Holy Land, another major reason that led to the Crimean War was the conflict between Russia and the Ottoman Empire over certain territories bordering both nations. If the Ottoman Empire did not give in to the Russian demands after that, then the Russian government was prepared to recognize the independence of all of the occupied states, the beginning of the crumbling of the Ottoman Empire – Stikes Crimean War: The Diplomatic March to War to the Destruction of the Turks at Sinope (2006) 1.

[152] Caper *The Future of Central Banking: The Tercentenary Symposium of the Bank of England* (1994) 179. Türkiye Cumhuriyet Merkez Bankasi *The Central Bank Of The Republic Of Turkey From Past To Present* (2012) 4.

to alleviate the States bankruptcy. Subsequently, the bank obtained a charter for the issuing of notes.[153] Shortly thereafter, there was a capital injection from the French, which led to the bank being renamed as the Banque Imperiale Ottamane.[154] After this injection, the bank served as a commercial and investment bank, whilst still being a state bank.

The original objectives of the TCMB, as codified in the Central Bank Law of 1930,[155] imposed the following rights and duties on the TCMB: the right to issue notes, to serve as the government's bank, to serve as a banker to commercial banks, and, consequently, provide oversight and management of the payment system and bank supervision. The bank was initially organised as a joint stock company,[156] with the shares being issued as follows: to the government, restricted at 25%, to special law banks (which incidentally were all owned by the state), to the public, and to commercial banks.

Mustafa Kemal Ataturak (the founding father of Turkey), shortly after its establishment and upon initial offering, called upon the public to invest in the TCMB. This struggle to obtain start-up capital is akin to the issue faced by the Reserve Bank upon its inception discussed above in chapter two. The initial shares were issued with a share capital of 25 000 Turkish Lira (TL) . [157]This share capital is made up of 25 000 shares, each representing a nominal value of TL 0.10.[158] The shareholding of the TCMB is limited to the following parties: the Turkish Government, Turkish commercial institutions, companies, and private individuals. Voting rights are capped at one vote for every share

[153] Caper (footnote 152 above) 179. Türkiye Cumhuriyet Merkez Bankasi (footnote 152 above) 4.
[154] Türkiye Cumhuriyet Merkez Bankasi *Central Bank of the Republic of Turkey History and Duties* (2018) 4.
[155] The law was enacted by the Grand National Assembly of Turkey on 11 June 1930, and published in the Official Gazette of 30 June 1930 under the name "The Law on the Central Bank of the Republic of Turkey No. 1715 - Türkiye Cumhuriyet Merkez Bankasi (footnote 154 above) 8.
[156] A Joint Stock Company is a voluntary association of individuals for profit, having a capital divided into transferable shares. The ownership of which is the condition of membership. From the above definitions, it can be concluded that a company is registered association which is an artificial legal person, having an independent legal, entity with a perpetual succession, a common seal for its signatures, a common capital comprised of transferable shares and carrying limited liability. – Haney *Business Organization and Combination An Analysis of the Evolution and Nature of Business Organization in the United States and a Tentative Solution of the Corporation and Trust Problems* (2003) 39.
[157]Hatipoglu, *Central Bank of Republic of Turkey* https://prezi.com/j6cwgrhqcnip/centralbank-of-republic-of-turkey/ (2015) (accessed 14 May 2020).
[158] 1 South African Rand equals 0,38 Turkish lira at 12 Mar, 06:22 UT

held.[159] The shares, as issued by the TCMB, are further categorised into four classes: Class A represents the shares which are held by the Turkish Treasury on behalf of the state, which is obligated to represent at least 51% of the share capital, consequently making the Turkish State a majority shareholder within the TCMB. Class B comprises the shares reserved for national commercial banks operating within the Republic of Turkey, with a ceiling set at 15 000 shares. Class C represents the shares which may be held by foreign commercial banks, which is also capped at 15 000 shares. Lastly, Class D are the shares which may be held by the Turkish commercial institutions, companies, and private individuals, which is limited to Turkish citizens.[160] An annual report, released in 2018, indicated the share makeup as follows: Class A at 55.12%, Class B at 25.74%, Class C at 0.02%, and Class D at 19.12%.[161] In terms of dividends payments, the TCMB uses a dual dividend payment structure, in which the first annual payment to shareholders may not exceed a dividend of 6 per cent on the nominal value of a share, and the second payment in a different period but at the same rate. [162] This amounts to an annual dividend payment of 12% per annum on the nominal value of a share.

3.1.2 Powers and rights of shareholders

With regards to the rights, duties, and obligations of the shareholders of the TCMB, it must be stressed that the majority shareholding enjoyed by the government puts forth the situation in which, if a decision does not carry the blessing of the Turkish government, it will not pass at the General Assembly of the TCMB.[163] Without derogation from the above, the shareholders still enjoy powers and rights similar to that of the Reserve Bank's shareholders as discussed in chapter 2 above. The rights include the receiving of dividends which are subject to capital reserve levels and profitability of the TCMB. Furthermore, the shareholders have the right to attend the General Assembly, in which they can ask questions in regards to activities conducted by the TCMB. Lastly, subject to a quorum vote being passed, the shareholders have the option to increase the capital of

[159] Hatipoglu (footnote 157 above).
[160] Russouw, J *An Institutional comparison of private shareholding in the central banks of South Africa and Turkey* (2018) 14.
[161] TCMB (2018*) Annual Report. Central Bank of Turkey* http://www3.tcmb.gov.tr/yillikrapor/2018/files/en-full.pdf (2018) (accessed 07 March 2020).
[162] Russouw (footnote 160 above) 14; *Ibid*.
[163] Russouw (footnote 160 above) 14

TCMB, approve the balance sheet, amend the articles of association of the bank, and consider the possible liquidation of the TCMB.[164]

3.1.3 Shareholder Activism

In terms of Turkish history, shareholder activism in Turkey is not nearly as disruptive as in the history of the Reserve Bank. In the 2015/16 financial year, the TCMB was positioned as the most profitable public company within the Republic of Turkey, turning a profit of around TL 17 billion (R 43 230 276,84).[165] However, despite being so profitable, the relevant legislation capped the dividends, which only amounted to TL420 (R 1068,04)[166] for each of the 6 000 private individuals holding these shares.[167] There was discontent with these dividend payments, as they were not indicative of the actual profitability of the bank. This discontent is akin to those challenges faced by the Reserve Bank in 2008 as discussed above. These investors, as reported by Bloomberg, were of the opinion that their dividends payments were inappropriately low, and considered this

> " . . . an insult to the families who heeded Ataturkís call for sacrifice during the depths of the Great Depression. They're demanding the state lift its dividend cap on grounds both moral and economic. The issue is so emotional that while several other central banks have private owners, Turkey is maybe alone in making them weep".[168]

The shareholders in 2016, began calling for the cap placed on dividends to be lifted as the real issue is the anomaly that the shares had depreciated since initial investment despite the profitability. This issue of the perceived unjust dividend payments is such a substantial issue that Millman opines that the issue will only be resolved through a litigious process.[169]

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[164] *Ibid.*
[165] 14 Mar, 05:51 UTC
[166] *Ibid.*
[167] Russouw (footnote 70 above) 15.
[168] Bloomberg *Ataturkís Army of Central Bank Owners in Revolt Over $140 Payout.* https://www.bloomberg.com/news/articles/2016-05-15/ataturk-sarmy-of-central-bank-owners-in-revolt-over-140-payout (2016) (accessed on 08 March 2020). ; Bloomberg *Turkish Central Bank Owners in Revolt Over $140 Payout* https://www.bloomberg.com/news/videos/2016-05-16/turkish-centralbank-owners-in-revolt-over-payout (2016) (accessed 08 March 2020).
[169] Millman *Outrage at Turkish Central Bank*. http://blog.gainesvillecoins.com/ (2016) (accessed 16 May 2020).

3.2 Shareholding comparison of the Reserve Bank and the TCMB

The first discrepancy is the fact that the Reserve Bank does not issue various classes of shares, whereas the TCMB issue four classes of shares as discussed above in 3.2.1. Secondly, the Reserve Bank has no official government shareholding whereas, the TCMB's majority shareholder is the Turkish government. The same difference remains considering the official shareholding by banks where, the Reserve Bank has none and the TCMB enjoys a 24.75% bank shareholdership.[170] In terms of limitations placed on ownership of shares, the Reserve Bank through enabling legislation, places a limit on 10 000 shares for an individual and his or her associates.[171] The final difference is found in terms of dividends payments in which the Reserve Bank releases dividends at 10% of the issue value of the shares, in comparison to the TCMB which utilises a dual dividend payment system which upon first, payment is released at 6% of the nominal value of the shares and thereafter a second dividend capped at 6% and subject to approval of the General Assembly of the TCMB.

In terms of similarities there are a few, namely the fact that general ownership is allowed by both central banks, that voting limitations are in place, there is an annual meeting of shareholders and lastly the rights and powers enjoyed by the respective shareholders are shared.

3.3 The evolution of nationalisation as a discourse within South Africa

Nationalisation, at its heart, is an economic discourse described by Peet as comprising symbolic thought formations arranged around persuasive political ideals.[172] These symbolic formations within the Republic have been brought forth by the African National Congress (ANC), which adopted a leftist basic needs approach as the foundation for its economic policies, since 1994. The previous six elections (1994 – 2019) are indicative of the support for the ANC within the Republic, and therefore the bulk of the discussion herein will centre around the ANC, as they have been the main driver of economic

[170] TCMB (footnote 161 above).
[171] S22 of the South African Reserve Bank Act 90 of 1989.
[172] Peet *Ideology, Discourse, and the Geography of Hegemony: From Socialist to Neoliberal Development in Post-apartheid South Africa* (2002) 55.

discourses pre- and post-apartheid. The rhetoric from the ANC in the past has been repetitive calls that South Africa's abundant wealth will be devoted to those who were previously disadvantaged.[173] In order to understand the nature of nationalism in South Africa, it is of importance to understand the hegemony, cultural economy and discourses which occurred during the apartheid era and thereafter. [174]

Peet describes a "cultural economy" as perceiving "economic rationalities, including the motives, methods, and ethics of production, deriving from interpretations of regional experiences, through the media of social imaginaries, formed within relations of power."[175] This collective perception creates rationalised action which, in turn, provides for the development of economic systems. As explained by Dreyfus and Rabinow, the discourse is best described as a collection of would-be carriers of conviction in the form of careful, rationalised, organised statements, backed by recognised validation procedures, bound into discursive formations, and made within communities of experts.[176] South Africa has had three substantial economic discursive transitions. Firstly, in the 19th century, when the Dutch mercantilists established a system of bonded labour which was progressively transformed towards the notion of universal humanity as held by the British Liberals; secondly, towards the end of the 19th century, there was a movement towards industrial capitalism coupled with regimes of racial segregation, which were employed to limit the political enfranchisement of the black political parties of the time. Lastly, after World War II, a new discourse was adopted, based on the American perception which coupled with universal human right considerations but that still sought to progress and maintain the white dominance.[177] The transformation and adaptations to the discourses paved the way for the development of counter discourses.

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[173] *Ibid.*

[174] In the Gramscian notion of hegemony, the ideological and cultural domination of one class over another in society is achieved by engineering consensus through the control of all cultural forms. Regulatory control in society is an important socio-political mechanism to establish hegemony. In South Africa during the apartheid era, the state and civil society very effectively controlled all cultural forms. – Labuschagne *Power, Ideology and Sport in South Africa: A Narrative of Racial Hegemony* (2016) 1.

[175] Peet *Theories of Development* (1999) 6.

[176] Dreyfus *Beyond Structuralism and Hermeneutics* (1983) 48 ; Escobar A *Encountering Development: The Making and Unmaking of the Third World*. (2011) 110.

[177] Lester *South Africa's current transition in temporal and spatial context*. (2000) 1.

To understand these counter discourses and, in turn, nationalisation, the history of South Africa's liberation in terms of economic policies needs to be considered. In 1955, the ANC released the *Freedom Charter*, which was an elegantly-drafted, counter-hegemonic document which sought to work on behalf of the oppressed.[178] Of importance to this research is the inclusion of sections 4 and 5 in the Freedom Charter, which state the following:

> "The national wealth of our country, the heritage of all South Africans, shall be restored to the people; The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole; all other industries and trade shall be controlled to assist the wellbeing of the people; restriction of land ownership on a racial basis shall be ended, and all the land redivided amongst those who work it, to banish famine and land hunger;"[179]

It is evident that, at that time, the ANC remained a radical modernist organisation based on socialistic principles.[180] In the late 1980s and the early 1990s, intent discussion and research were undertaken to help resolve and develop macro-economic policy issues.[181] These discussions were led by academic experts advising the likes of COSATU and the ANC. An increasing interest in the discussion arose from business, conventional academia, the World Bank, and the IMF produced counterproposals.[182]

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[178] Peet (footnote 172 above) 67.

[179] *Freedom Charter [1955]* In W Esterhuyse and P Nel (eds) *The ANC and Its Leaders (1990)* 158.

[180] The adoption of socialist concepts by African nations in its theoretical sense is primarily idealistically motivated. Africans, too, believe that socialism stands for an egalitarian, just, classless order of society, based on solidarity, encompassing a political system in which the leadership is pledged to the common good, the people are actively involved in the process of determining the will of society, and in which human rights and human dignity - especially the equal rights of different ethnic groups -are guaranteed. A final factor determining the African approach to socialism was a rationalistic motive, that is the faith placed in science by elites which had received modern educations and which were fascinated by the notion of "scientific socialism". They had a genuine belief that it would be possible to shape both economy and society according to scientific methods, and to rapidly transform African states into modern, developed industrial societies.- Dieter *Socialism in Africa* (1990) 300.

[181] Bond *Commanding Heights and Community Control: New Economics for a New South Africa* (1991) ; Sunter *The World and South Africa in the 1990s.* (1987); Schrire *Wealth or Poverty? Critical Choices for South Africa* (1992).

[182] Peet (footnote 172 above) 69.

From these discussions arose two leading organisations, namely The Economic Trends Group (ET), which was established in 1986, and The Macro- Economic Research Group (MERG), founded in 1991. Between these two research bodies, the Reconstruction and Development Plan of 1994 was established and used to advance the ANC's political influence amongst the oppressed.[183] The RDP document, however, was not without any success as for example, in the five years following 1994, safe and drinkable water, in a tap no further than 200 meters from their dwellings, was provided to nearly 3 million people. In these few years preceding the 1994 election it was clear that South Africa was to be a democratic, redistributive, even socialist, society.[184]

This aforementioned statement regarding South Africa being a democratic socialist society was, however, a fallacy. The literature available alludes to the ANC conducting secret meetings with the agenda of adopting neo-liberal policies well before the landmark 1994 elections.[185] This move away from the radicalism that so often characterizes the ANC is aptly illustrated by two conflicting statements by the late Nelson Mandela with regards to nationalisation. Shortly after his release in 1990, Mr Mandela declared that "nationalization of the mines, banks and monopolies is the policy of the ANC and a change or modification of our views in this regard is inconceivable". Shortly thereafter, the Johannesburg Securities Exchange, in a knee-jerk reaction, embarked on a selling spree.[186] Merely a few months thereafter, another statement was released by Mr

[183] *Reconstruction and Development Plan* (1994) https://www.gov.za/sites/default/files/governmentgazetteid16085.pdf (accessed 28 May 2020).

[184] Peet (footnote 172 above) 71.

[185] Neoliberalism is a broad structure of beliefs founded on right-wing, yet not conservative, ideas about political democracy, individual freedom, and the creative potential of unfettered entrepreneurship. In neoliberalism, the main restriction on an inherent tendency for free capitalist economies to grow is market failure resulting from perverse governmental policies. In neoliberal thought, governments may play a productive role in providing public goods, such as infrastructure, while macro-economic (especially monetary) policy may provide stability, but most governments in welfare state societies and developing countries alike have gone too far in interfering with the free play of markets - R Peet (footnote 172 above) 62; Wade *East Asia's economic success: Conflicting perspectives, partial insights, shaky evidence.* (1992) ;Wade *Japan, the World Bank, and the art of paradigm maintenance: The East Asian miracle in political perspective.* ; (1996) Wade *The Asian crisis: The high-debt model versus the Wall Street-Treasury* (1998). Further The orthodox neoclassical view of the priority of markets in economic development rests on three pillars: [1] developing countries should pursue closer integration with the world economy [2] governments should desist from intervening in the economy in general, and particularly in industrial development [3]the privatisation of public enterprises should be a key element of any strategy of growth. – Padayachee *States, development and macroeconomic policy Reflections in a South African context* (2015) 26.

[186] Marais *South Africa Limits to Change: The Political Economy of formation* (1998) 146.

Mandela, in which he held that " the banks, mines and monopolies would be nationalized but the other industries would not". Soon after that, he *further* and *importantly*, stated that nationalisation would only occur if it would be a boost to the economy, and not a detriment. This trepid move away from the notion of nationalisation was completed in 1992 in Davos, Switzerland, at a World Economic Forum, where Mr Mandela renounced the concept of nationalisation.[187] Other factions of influential leaders within the ANC's ranks, including Walter Sisulu, Joe Slovo, and former President Thabo Mbeki, opined that nationalisation was not fundamental to ANC policy. When confronted by the media on the change of policy position, the Minister of Finance at the time (1995), Trevor Manuel, replied that the collapse of the Soviet Union broke the romantic illusions of many leftists in the ANC.[188]

Peet remarks that this departure from the notion of nationalism could further be attributed to so-called "disciplining pressures" placed on the ANC at the time. This pressure mainly had two sources; firstly, business organisations within the Republic at the time and, secondly, pressures from beyond our borders received from the World Bank and the International Monetary Fund (IMF). The micro-economic pressures faced by the ANC came primarily from the South African Chamber of International Commerce and the Afrikaans Trade Institute (which now forms part of the National Business Institute).[189] These lobby groups moved to support negotiated change and pragmatism, rather than ideological economic policies.[190] In the early 1990s there was increasing pressure from the IMF and the World Bank on the ANC. The World Bank was of the mindset that poverty alleviation could be achieved by private sector expansion in labour-intensive industries.[191] Further, the IMF's pressure stressed the need for outward-looking macroeconomic strategies.[192]

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[187] Peet (footnote 172 above) 71.

[188] Habib *Economic policy and power relations in South Africa's transition to democracy*.(2000) 28.

[189] Peet (footnote 172 above)72

[190] *Ibid.*

[191] Fallon *Africa: Economic Performance and Policies. Informal discussion papers on aspects of the economy of South Africa* (1994) 120 ; World Bank *Reducing Poverty in South Africa: Options for Equitable and Sustainable Growth* (1994) 9; World Bank *South Africa—Industrial Competitiveness and Job Creation* (1996) 42 ; Jonsson *A Dynamic Gains from Trade: Evidence from South Africa. IMF Working Paper* (2000) 9.

[192] International Monetary Fund (IMF) *Economic Policies for a New South Africa. Occasional Paper no. 91*. (1992) 75; An outward looking view as one that encourages free trade, free movement of capital, labour, multinational enterprises, students and the adoption of an open system of communications. In other words, outward looking

The ANC's response to these pressures was unveiled through the *Growth, Employment and Redistribution* plan (GEAR) in 1996.[193] The adoption of GEAR was met with resistance from the unions. Their contestation was centred around three perceptions: firstly, that the proposed move to curb government expenditure commensurate to the GDP was not feasible, as the massive needs could only be addressed through state intervention. Secondly, the fact that government, through GEAR, advocated their support for flexible labour markets which, in the unions' reasoning, was merely a vehicle to suppress and nullify the influence of unions. Lastly, the idea of privatisation of state-owned entities, with the goal of reducing state debt, was interpreted as a direct attack on the ability of the government to manipulate the economy for the interest of the poor.[194] In hindsight, GEAR seems to be merely of doctrinal interest now, as the evidence supporting the success of GEAR is scant. The available evidence of economic growth shows that the rate dropped from 3% in 1996 to 1.7% in 1997, 0.6% in 1998, 1.2% in 1999, and a similar rate in 2000;[195] the unemployment rate then stood at 37.6%.[196] The flaw that exists in GEAR, according to Peet, is that South Africa lacks the capital for investment to spur rapid growth within the economy. In order to attract investment capital, the government had to attempt to establish a competitive business climate. Consequently, the creation of this competitive business saw the ANC deviate from its organised labour stance and its militant base of support.[197]

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development policies will focus on export promotion, and integrating with and opening up to the world – Todaro *Economic Development, Eleventh Edition* (2012).

[193] Prepared by the Department of Finance, with Trevor Manuel as Minister, and a team of academics, representatives of the Development Bank of Southern Africa, the South African Reserve Bank, and the World Bank- http://www.treasury.gov.za/publications/other/gear/chapters.pdf (accessed 14 May 2020).

[194] Peet (footnote 172 above) 72.

[195] South African Reserve Bank *Quarterly Bulletin 211 (March)* (1999) 4.

[196] Stats SA *Work and Labour force* http://www.statssa.gov.za/?page_id=737&id=1 (1999) (Accessed 10 March 2020).

[197] Peet (footnote 172 above) 76. An organized labour stance in its theoretical form is derived from the International Labour Organisation (ILO) which was the frontrunner in the syllogism of organised labour around the globe. The ILO's constitutions throughout time have contained five basic tenants relating to an organized labour stance : [1]Lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity.[2] Labour should not be regarded merely as a commodity or an article of commerce. [2]There should be freedom of association, for both workers and employers, along with freedom of expression, and the right to collective bargaining. [3]These principles are fully applicable to all human beings, irrespective of race, creed or sex. [4] Poverty anywhere constitutes a danger to prosperity everywhere, and must be

Thus, the question remains, why did the ANC deviate from its long commitment to structural transformation through democratic developmental ideologies towards a neoliberal approach? Concisely put, the diplomatic and institutional pressures faced by the ANC compelled them to adopt neoliberalist policies. As time progressed, these neoliberalist policies became the image of economic progress, which fuelled stock and currency exchanges speculation locally and globally.[198] The mere duration of the existence of the neoliberalist policies led to a situation wherein the economic disruption caused by the implementation of leftist policies would be systemic.

3.5 Chapter summary

As is evident from the institutional analysis of the TCMB and Reserve Bank, despite the discrepancies between the two, the common thread running through the research is the attempt to restrict influence on the banks' monetary policy by shareholders as alluded to in Chapter two. To quote Meltzer, who aptly and concisely places the importance of independence in context, "[the central bank] should possess sufficient independence and authority to take away the punch bowl at a stage when the party is still going on".[199]It is further acknowledged that codified legislative independence does not automatically guarantee practical independence, but the codification of the Reserve's Bank independence is of utmost importance as it poses a substantial task to amend due to the constitutional supremacy enjoyed by the Reserve Bank

This is of the utmost importance because, if shareholders were allowed to pursue merely capitalist interests the duties of the bank may deviate from its financial stability mandate, possibly leading to a market failure, which would have a country-wide effect. It is further evident that shareholders hold no real power over the duties of the Reserve Bank, which

addressed through both national and international action. -Rodgers *The International Labour Organization and the quest for social justice, 1919–2009* (2009) 7.

[198] Peet (footnote 172 above) 79.

[199] Meltzer *Origins of the Great Inflation* (2004) 11..

position should be sanctimonious to maintain independence to pursue economic policy which seeks to best serve the economy and, in turn, the citizens.

At the time of writing, South Africa is faced with its most turbulent period of socio-economic trials. The combination of extreme levels of unemployment, ailing parastatals, systematic corruption, gender-based violence, unprecedented crime and murder rates,[200]and an Aids epidemic, are all adding to the woes of an already-strained economic system. As nearly 70% of the population currently resides in conditions of dire poverty,[201] socio-economic transformation would require an unprecedented amount of capital injection, which is not possible due to the abovementioned strains on the economy - the Republic in its current state does not constitute an investment attraction. The discourses handed down and pursued by the ANC, in which they deviated from radical leftist policies towards neo-liberal policies, need to stand true in the current market conditions. The writer is of the opinion that any move by the ANC towards nationalisation would result in irreversible damage to the economy. These aforementioned woes have led to a credit down grade placing the Republic in junk status on the 27th of March 2020.[202] Thus, the economy is in its worst state yet, and a further disruption to the market could be the tipping point.

[200] United Nation Office on Drugs and Crime Global Study on Homicide 2019 Homicide trends, patterns and criminal justice response (2019) 26.
[201] R Peet (footnote 172 above) 72.
[202] Bloomberg *South Africa downgraded to full junk status* https://businesstech.co.za/news/finance/385575/south-africa-downgraded-to-full-junk-status/ (2020) accessed on 28 May 2020 ; Wallace *The price SA will pay for being downgraded to junk* (2020) https://www.businesslive.co.za/bd/economy/2020-03-31-the-price-sa-will-pay-for-being-downgraded-to-junk/
accessed on 28 May 2020; Winning *Moody's downgrades South Africa to 'junk' status* (2020) https://www.iol.co.za/business-report/economy/moodys-downgrades-south-africa-to-junk-status-45700334
accessed on 28 May 2020.

4. CHAPTER 4 SOCIO-POLITICAL AND SOCIO-ECONOMICAL VIABILITY OF THE PROPOSED CHANGES TO THE SOUTH AFRICAN RESERVE BANK

4.1 Introduction

The fourth chapter will delve into the underlying rationale and basis for the proposed changes to the Reserve Bank's mandate. Furthermore, the research will attempt to analyse if the proposed changes are bona fide or merely for the purposes of political gain and amassing votes. Lastly, the chapter will attempt to forecast the implications and effects if the proposed changes are undertaken, if any.

It is without doubt that as of time of writing, in the battle against COVID-19 and the subsequent declaration of a national state of disaster, as well as the imposed lockdown of the Republic, the calls for the amendment of the mandate will be moved to the background. It is a further possibility that the Reserve Bank might have adopted a mandate which reflects the economic needs and disparities created by COVID-19.[203] The analysis which follows will focus on the effects of a change of mandate, specifically the adoption of the proposed dual mandate, with the aim to forecast and illustrate the effect on the economy (however in the absence of COVID-19 considerations and implications).

4.1 The Mandate and the calls for amendments

As alluded to in Chapter two the current mandate of the Reserve Bank is stated in the Constitution as follows: "The primary objective of the Bank shall be to protect the value of the currency of the Republic of South Africa in the interest of balanced and sustainable economic growth in the Republic."[204] It was also explained in Chapter two that the Reserve Bank further adheres to an inflation-targeting mandate since 2000. This mandate is currently under fierce debate as the factions of the left-leaning political figures, including the largest trade union in the Republic, argue that the Reserve Bank should not focus

[203] Ghosh *After beating coronavirus, Ramaphosa must face an older foe* https://www.fin24.com/Opinion/opinion-after-beating-coronavirus-ramaphosa-must-face-an-older-foe-20200515 (2020) (accessed 28 May 2020) ; Businesstech *Why the ANC says it is putting the nationalisation of the Reserve Bank on hold* https://businesstech.co.za/news/banking/374482/why-the-anc-is-putting-the-nationalisation-of-the-reserve-bank-on-hold/ (2020) (accessed 28 May 2020).

[204] S224 of the Constitution of the Republic of South Africa, 1996.

solely on inflation targeting, but should further undertake to oversee the employment rate and economic growth.[205] The Reserve Bank has been stern on its stance, commentingthat the Constitutional mandate is encompassing enough, as it states quite clearly that, whilst managing inflation, the Reserve Bank does so "in the interest of balanced and sustainable economic growth in the Republic".[206]

4.1.1 The Public Protector's Interim Report No. 8 and South African Reserve Bank v Public Protector and others 2017 (6)

In terms of the call to amend the current mandate of the Reserve Bank, the strongest and most formal of them is the call for the revision of same from the Public Protector, Busisiwe Mkhwebane. Summarily, the calls emanated from the investigation of the allegation of misappropriation of funds by the Reserve Bank.[207] CIEX were notoriously employed as the investigating entity for same.[208] It was alleged that ABSA Bank received a "lifeboat" [209](in terms of the report referred to as a gift from the post-apartheid government) via the Reserve Bank.[210] The remedy sought was that the Reserve Bank would engage in a

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[205] Magubane, *SARB mandate meltdown: Mboweni contradicts Ace, Godongwana denies plans* https://www.fin24.com/Economy/ancs-finance-minds-deny-lekgotlas-commitment-on-sarb-mandate-20190604 (2019) (accessed 01 April 2020) ; Sidimba *SACP wants mandate of SA Reserve Bank reviewed* https://www.iol.co.za/news/politics/sacp-wants-mandate-of-sa-reserve-bank-reviewed-33440542 (2019) (accessed 01 April 2020); Manyathela, EWN *ANC Lekgotla Resolves To Expand Mandate Of Reserve Bank* https://ewn.co.za/2019/06/04/anc-lekgotla-resolves-to-expand-mandate-of-reserve-bank (2019) (accessed on 01 April 2019) ; Reuters *ANC rifts behind push for new South African central bank mandate* https://www.reuters.com/article/us-safrica-cenbank-mandate-analysis/anc-rifts-behind-push-for-new-south-african-central-bank-mandate-idUSKCN1T813Q (2019) (accessed 01 April 2020).

[206] Maeko *Kganyago describes expansion of central bank mandate as 'noise'* https://mg.co.za/article/2019-07-05-kganyago-describes-expansion-of-central-bank-mandate-as-noise/ (2019) (accessed 01 April 2020) ; Kganyago *Governor Lesetja Kganyago: Public Lecture at University of Pretoria* https://www.gov.za/speeches/public-lecture-24-jul-2019-0000 (accessed 01 April 2020). ; Fin 24 *Reserve Bank mandate is enshrined in the Constitution – Kganyago* https://www.fin24.com/Economy/South-Africa/reserve-bank-mandate-is-enshrined-in-the-constitution-kyanyago-20190117 (2019) (accessed 01 April 2019).

[207] Office if the Public Protector, Report No. 8, *Alleged Failure to Recover Misappropriated Funds* (2017/2018) 3.

[208] `CIEX were an UK based assets recovery entity, [which] was asked by the South African Government, represented by the Director-General of the National Intelligence Agency (now State Security Agency), to investigate and possibly recover public funds and assets misappropriated during the apartheid era. In its final report, CIEX concluded that corruption, fraud and maladministration characterised the financial assistance given by the Reserve Bank to Bankorp and by extension to Absa.- Public Protector v South African Reserve Bank [2019] ZACC 29 par 14.

[209] A life boat is a banking practice emanating out of Britain in the so called secondary banking crisis in which the bank of England would assist commercial banks in time of liquidity shortages and thus is inextricably linked to the task of lender of last resort - Sir Jeremy Morse, Chairman, Lloyds Bank, *A British View of the International Debt Problem* (1993) ; Reid *The Secondary Banking Crisis 1973-1975* (1983).

[210] Amalgamated Banks of South Africa (ABSA) originally constituted of the Allied Bank (South Africa), the Volkskas Bank Group and certain interests of the Sage Group.

recovery process.[211] The lifeboat constituted loans which were advanced to ABSA by the Reserve Bank through Bankorp between the years of 1985 and 1995. A lot of the issues in the report were also centered around the large sum of remuneration paid by the government to CIEX for the undertaking of the investigation, the findings of which were never acted upon at the time.[212] The remedy sought above, namely the initiation of a recovery process was also advised by the CIEX report; however, no recovery process was conducted. There were further contestations around the remuneration payed to CIEX, in the amount of £600 000,[213] which never yielded any return on investment. This omission was viewed as amounting to improper conduct and was tantamount to maladministration.[214]

The liability apportioned to the Reserve Bank was that it had omitted to act in manner which was economically and efficiently viable, as the lifeboat did not constitute value for money objectively speaking.[215] Through an odd inference, the Public Protector was of the opinion that the mandate of the Reserve Bank in section 224 of the Constitution should be amended to the following:

(1) "The primary objective of the South African Reserve Bank is to promote balanced and sustainable economic growth in the Republic, while ensuring that the socio-economic wellbeing of the citizens are protected"

(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, while ensuring that there must be regular consultation between Bank and Parliament to achieve meaningful socio-economic transformation"[216]

This report was received with fierce objection by the Reserve Bank alongside ABSA Bank, and it was contested to such an extent that litigation was pursued. The effect of the

[211] Office of the Public Protector (footnote 207 above) 55.
[212] *Idem* 1.
[213] Office of the Public Protector (footnote 207 above) *3; South African Reserve Bank v Public Protector and Others* 2017 (6) SA 198 para 14.
[214] Office of the Public Protector (footnote 207 above) 3*;* S31 of the Constitution of the Republic of South Africa, 1996.
[215] Office if the Public Protector (footnote 207 above) 8.
[216] Office if the Public Protector (footnote 207 above) 55.

litigation was the handing down of a judgement which was scathingly critical of the Public Protector. The Reserve Bank approached the High Court to set aside the findings of the Public Protector's report. This request was granted by the judiciary, which rendered the following *obiter dictum*: "That the Public Protector had overstepped the boundaries in which she is allowed to operate in."[217]No public complaint dealing with the liability of the Reserve Bank was laid with the office of the Public Protector, with the complaint rather being centred around the unused remuneration advanced to CIEX. [218] Consequently, this complaint had no bearing on the current mandate of the Reserve Bank or the amendment thereof. This deviation from the Public Protector cast doubt over the motive and reasoning underlying the probe into the mandate.[219]

Lastly and importantly, the court opined that "it is doubtful whether the constitutional definition of the Reserve Bank's mandate can ever constitute maladministration, improper or prejudicial conduct."[220] To add to the court's opinion, Lesetja Kganyago, the Governor of the Reserve Bank, stated that the current mandate (as adopted by the Reserve Bank) of the protection of the value of the currency is a global practice undertaken by a plethora of central banks.[221] This is due to the fact that there is a wide-spread consensus that the effects of a stable and low inflation sets the cornerstone for economic growth.

The so-called lifeboat, as discussed to above, is also referred to as a "bailout". Bailouts received from central banks are not uncommon, and are used to mitigate the effects on the economy of systemic risks flowing from the insolvency of a major financial institution.[222] It must be noted that South Africa constitutes a major concentration risk in the sense of only having four major banks, with the possible inclusion of Capitec over its progression. It can be deduced that with five major banks, a fifth of the banked population

[217] *South African Reserve Bank v Public Protector and Others* 2017 (6) SA 198 para 59.
[218] *Idem* para 14.
[219] *South African Reserve Bank v Public Protector and Others* (footnote 217 above) para 41.
[220] *Ibid.*
[221] *Ibid.*
[222] *South African Reserve Bank v Public Protector and Others* (footnote 217216 above) para 20. Avgouleas *Critical Reflections on Bank Bail-ins* (2015) 4.

would be served between each institution. If one of these major banks had to become insolvent it would result in a substantial number of individuals and businesses being left with no recourse for recovery of deposits. Further, the risks of a run on the banks arise, [223]as other depositors with financial institutions which are still solvent will face the situation in which the majority of their depositors flock to withdraw their deposits in fear of bank failure, with the consequence of draining the institution of liquidity and leading to, or increasing, its insolvency. This risk has been recognised by legislation, and these institutions are now deemed too big to fail,[224] which is evident of the importance that these institutions play in the financial stability of the economy. The systemic importance posed by ABSA was used as the defence in the matter as a substantiation of the lifeboat by the Reserve Bank.

As is evident from the above, this was an unjust approach by the Public Protector to call for the amending of the mandate of the Reserve Bank. Furthermore, it is an illustration of the commitment of the judiciary to protecting the sanctity of the Reserve Bank. The Public Protector was critiqued sternly in the judgement for lacking leading authority in her report to substantiate the change in mandate. Her statements wre regarded as indicative of a fundamental lack of understanding of the monetary system and the operations of banking institutions.[225]

4.1.2 Current political calls for the amendment of the mandate

More recent calls for the change of the mandate of the Reserve Bank have come from political factions, with those emanating from the ANC being contradictory to other party

[223] Diamond (footnote 94 above) ; Postlewaite *Bank Runs as an Equilibrium Phenomenon* (1987) 485. ; Diamond *Bank Runs, Deposit Insurance, and Liquidity* (1983) 401.

[224]Too big to fail is one of the most troubling legacies of the global financial crisis is the widely held notion that some banks are simply "too important to fail" (TITF). These banks are known as systemically important banks (SIBs) because of their size, complexity, and systemic interconnectedness. The TITF concept is based on the belief that the failure of SIBs would have such a negative impact on the financial system and the economy as a whole that the government would do whatever it takes to prevent such a failure. - Financial Stability Board (FSB), *Reducing the Moral Hazard Posed by Systemically Important Financial Institutions* (2018) 1 ; IMF *Global Financial Stability Report: Moving from Liquidity- to Growth-Driven Markets (March 2014); Chapter 3: How Big is the Implicit Subsidy for Banks Considered Too Important to Fail* (2014) 102.

[225] *South African Reserve Bank v Public Protector and Others* (footnote 217 above) para 53.

members' statements. In the course of the ANC Lekgotla[226], ANC Secretary General Ace Magashule, stated that the National Executive Committee (NEC) had come to a decision that the Reserve Bank's mandate should be expanded.[227] This was in stark contrast to the statements released by the Minister of Finance, Tito Mboweni, and Enoch Godongwana, in his capacity as the party's chair of the ANC's sub-committee on economic transformation. Mboweni resorted to Twitter to allude to the state of affairs via a tweet which read as follows: "Government sets the mandate for the Reserve Bank. There is no quantitative easing thing here. The primary mandate of the SA Reserve Bank is to "protect the value of the currency in the interest of balanced economic growth and development." [228] Later that same day, and in light of Magashule's statement, Godongwana affirmed that the ANC NEC had not come to a decision about expanding the Reserve Bank's mandate.[229] Additionally, in President Cyril Ramaphosa's State of the Nation Address in 2019, he emphatically stated that "Today we reaffirm this constitutional mandate, which the Reserve Bank must pursue independently, without fear, favour or prejudice."[230]

The Reserve Bank's response was encapsulated in a speech given by the Governor on the 24th of July 2019. He highlighted the issue of the adoption of a dual mandate in the sense that it draws valuable resources from valuable priorities.[231] He described the obsession shared by many in the ANC faction by pointing out that to amend the mandate is interfering with more pertinent issues pertaining to economic growth, job creation, and

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[226] A Lekgotla is a formal meeting to decide what to do, especially one that involves public officials https://www.macmillandictionary.com/dictionary/british/lekgotla (accessed on 01 April 2020).

[227] Magubane *SARB mandate meltdown: Mboweni contradicts Ace, Godongwana denies plans* https://www.fin24.com/Economy/ancs-finance-minds-deny-lekgotlas-commitment-on-sarb-mandate-20190604 (2019) (accessed 01 April 2020).

[228] Mboweni 4 June 2019 19:59 https://twitter.com/tito_mboweni?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1135969349926346752&ref_url=https%3A%2F%2Fwww.fin24.com%2FEconomy%2Fancs-finance-minds-deny-lekgotlas-commitment-on-sarb-mandate-20190604 (2019) (accessed on 01 April 2020).

[229] Magubane (footnote 227227 above).

[230] Presence, *#SONA2019: Ramaphosa says SARB mandate won't change* https://www.iol.co.za/news/politics/sona2019-ramaphosa-says-sarb-mandate-wont-change-26879868 (2019) (accessed 01 April 2020).

[231] Kganyago *Public Lecture by Lesetja Kganyago, Governor of the South African Reserve Bank, At the University of South Africa, Pretoria 24 July 2019 Delivering on our mandate: Monetary policy, inflation, and balanced and sustainable growth* (2019) 1.

eradicating inequality.[232] He further highlighted that the current stunted growth is a result of structural shortcomings, which are beyond the reach of monetary policy. He aptly described it as follows: "And if we as a country obsess about the Reserve Bank and monetary policy as the only answer to our growth problems, we will fail to discuss the difficult but vital reforms that might actually rescue us from our growth malaise."[233]

In his address, he welcomed the engagement in the mandate of the Reserve Bank and the fact that a certain amount of disagreement is the *status quo*. He stressed the fact that the drafters of the Constitution, through section 224, did not intend for inflation to run rampant in the Republic, and that this intention should be upheld.[234] The discussion then centred around the inflation-targeting mandate as adopted in 2000, specifically the inflation target set between 3% and 6%, which has been the target since the inception of inflation targeting, with 4.5% being the more precise aim of the Reserve Bank.[235] In 2015, the Reserve Bank had an in-depth and critical evaluation of their monetary policy, and deduced that they had a tendency of pursuing the upper parameters of the interest rate being 6% . However, this was not a result of demand and supply shocks.[236] This fact led to the situation where everyone was content with inflation around 6%. Consequently, indexation had set on prices, and wages across the economy and were locked in to grow at this pace.[237] This had placed the Republic in the predicament as described by the Governor: "This left us in a trap: nominal interest rates had to be high because inflation expectations were anchored at around 6% but high interest rates meant there was always pressure to cut. Meanwhile, the indexation bias meant that inflation never fell much, and so in turn interest rates stayed structurally high."[238] The Governor goes on to describe the catch-22 position that the Reserve Bank has been placed in, as the bank has been criticised by many for being too hawkish and maintaining inflation rates too high, when in actuality the Reserve Bank has tolerated as much inflation as is reasonably possible. This

[232] *Ibid.*
[233] Kganyago (footnote 231 above) 2.
[234] Kganyago (footnote 231 above) 4.
[235] Kganyago (footnote 231 above) 7.
[236] Kganyago (footnote 231 above) 5.
[237] Kganyago (footnote 231 above) 6 ;
[238] *Ibid.*

position of constant comparison to jurisdictions which enjoy low inflation and low-interest rate economies is unreasonable, as the Republic is not in that category of economy. Despite the defence for the 6% inflation rate, the bank decided that a target of 4.5% should be pursued for the benefit of the economy as a whole. 2017 brought forth its own change, which alleviated the pressure on the interest rate. Inflation began to stagnate at the 4.5% target as a result of positive supply shocks, most notably in the food industry, alongside the stabilisation of the exchange rate.[239]

The crux of the Governor's address was centered around this inflation targeting in the face of much criticism by scholars and economists. He stated unambiguously that the current operation is completely compliant with the Constitutional mandate apportioned to the Reserve Bank.[240] He referred to a letter by then Minister of Finance, Pravin Gordhan, addressing the call for the Reserve Bank to conduct its inflation-targeting mandate in a flexible manner.[241] He pointed out that flexibility in the sense of monetary policy has a different definition. This is due to the fact that there exists major lags in return on investment after the implementation of the policy. Therefore, too much flexibility would result in lags, which "may act counter indicatively to one another and attritionaly to the economy". Flexibility in the sense of monetary policy implementation however implies the need to avoid excessive volatility in growth and interest rates.[242]

The issue of the adoption of a dual mandate was discussed in terms of growth versus employment. The Governor recognised that the two are inextricably linked, as better growth results in increased employment.[243] The lack of reliance on employment is based on the technical issues in the calculation of the employment data, which creates difficulties in interpretation.[244] An illustration of this occurred in the first quarter of 2019, when the Republic experienced a negative GDP growth and the available employment data averred that 49 000 jobs had been created within the economy, which is untenable.

[239] Kganyago (footnote 231 above) 7.
[240] Kganyago (footnote 231 above) 8.
[241] *Ibid,*
[242] *Ibid.*
[243] Kganyago (footnote 231 above) 11.
[244] *Ibid.*

The Governor went on to refer to the calculations and statistical scenarios used by the Reserve Bank, which were imputed to the Taylor Rule and the experiences of the neutral interest rate which is discussed at length below.[245] In his conclusion, he categorically stated that "We don't have balanced and sustainable growth in South Africa".[246] This is a consequence of ailing parastatals requiring regular bailouts and government's debt to GDP ratio being unbalanced,[247] emphasising that the real effect of monetary policy is truly limited, and a change to the situation would require a substantial contribution from many parts of the government sphere and from society. Before a change in mandate deviating from inflation targeting, the Reserve Bank needs to continue to maintain prudent macroeconomic policies, in order to make substantial progress on a spectrum of structural inefficiencies. Governor Lesetja Kganyago concluded that "We are but one part of the orchestra; we are not soloists. We are doing our best but we can't put on a show alone".[248]

4.2 Statistical and empirical analysis on the adoption of a dual mandate

There exists a plethora of literature, both statistical and empirical, which indicates that this propsed adoption of a dual mandate is flawed, with the dual mandate being to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic, alongside overseeing and ensuring economic growth and alleviation of the unemployment rate. [249]This major shortcoming is mostly found in developing economies. Both the quantitative and the empirical findings are discussed below.

In terms of empirical findings, one can find evidence of the shortcomings of the adoption of a dual mandate in South African banking history. In the 1980s, the impact of political

[245] The Taylor Rule provides an extremely clear framework, which provides a method for analysing how a short-run interest-rate policy might be undertaken to balance the trade-offs necessitated through a dual mandate - Putnam Putnam *A Bayesian interpretation of the Federal Reserve's dual mandate and the Taylor Rule* (2012) 112

[246] Kganyago (footnote 231 above) 12.

[247] Bail outs given to the likes of Eskom, South African Airlines , South African Reserve Bank *Financial Stability Review Second edition November 2019* (2019) 2, 8, 10 & 33 ,.

[248] Kganyago (footnote 231 above) 14.

[249] Itau *Macro Vision, Central Bank: questions of autonomy and the mandate* (2018); Putnam (footnote 245 above) ;Kaya *The Federal Reserve's Dual Mandate and the Inflation Unemployment Tradeoff* (2019); Reserve Bank of New Zealand *Estimated policy rules for different monetary regimes: Flexible inflation targeting versus a dual mandate* (2019) 6. Kganyago (footnote 231 above); Schwartz et al *Why a Dual Mandate is Wrong for Monetary Policy* (2008).

interference was observed. In this period inflation rose rapidly, which consequently placed South Africa in its period of highest recorded inflation, which was on average 15% per the decade.[250] Despite the repeated calls for the bank to take mitigating action, it omitted to do so under orders received by the government. This omission was brought to the fore prior to a by-election held in 1984 and, consequently, the bank reduced the interest rate under orders from government. This subsequently became known as the "Primrose Prime incident".[251] Although this can be theoretically classified as an issue with the autonomy of the bank, it is *prima facie* that a lack of autonomy can lead to political interference in the carrying out of a central bank's mandate.

The debate around the adoption of a dual mandate has been prevalent in a number of major markets, including the US with its Federal Reserve (The Fed)[252] and the central banks of Australia and New Zealand.[253] These central banks have adopted dual mandates through which they seek to bolster employment while maintaining price stability. Advocates for this dual-mandate approach are of the opinion that it ensures that central banks' fiscal policies do not undermine employment growth, while further enabling transparent communication with the general public, as the benchmark for economic wellbeing is normally gauged on inflation and unemployment. Those opposed to this school of thought however opine that the existence of a dual mandate can detract the bank from its most vital duties, one of which is price stability. [254]

In comparison to the adopted mandates of central banks operating in developed markets, the following can be deduced: usually, central banks operating in emerging markets have mandates which deviate from those in developed markets. Due to the challenges of being an emerging/developing economy, there exist more volatile financial markets and currencies, which has forced central banks to act as custodians of financial stability and mitigators of inflation. This mandate is, however, susceptible to change in emerging

[250] South African Reserve Bank *Monetary Policy Review October 2001* 16.
[251] Russouw *The Independence of the South African Reserve Bank: Coming full circle in 25 years?* (2019) 7.
[252] Putnam (footnote 245 above) 118; Kaya (footnote 249 above) 641 ; Itau (footnote 249 above) 1.
[253] Reserve Bank of New Zealand (footnote 249 above) 6.
[254] Steelman *The Federal Reserve's "Dual Mandate": The Evolution of an Idea* (2011) 3.; Thorebeck *A Dual Mandate for the Federal Reserve The Pursuit of Price Stability and Full Employment* (2000) 4. Itau (footnote 249 above) 1.

markets, and occurs once inflation is largely under control and there is less reliance on external capital injection. The correct market environment is needed for a dual mandate. Independence/autonomy is a vital issue in the change of a central bank's mandate. The independence of central banks operating in emerging/developing economies differs slightly. [255]One of the risks of the adoption of a dual mandate is that it could open the floodgates for political meddling, which South Africa has an illustrious history of. The risks brought forth by this were observed in Turkey and the TCMB, where independence has come into question due to political interference. This was in light of a decision made by Turkish President Recep Tayyip Erdogan to replace the Governor of the TCMB with a more pliant Governor. The reason for replacement was that the former governor refused to lower interest rates. This led to confidence shocks in the Turkish markets as discussed above in Chapter Three.[256] In terms of numbers, only five central banks that enjoy no formal autonomy exist globally: Thailand, Poland, Norway, China, and Brazil.[257]

If one looks in comparison to foreign jurisdictions, there exist a number of countries which are facing or have faced similar calls for the adoption of a dual mandate. They include Malaysia, Ukraine, Iraq, The Czech Republic, Hungary, Russia, Brazil, and Turkey. It is notable that the TCMB has been strongly criticised for its handling of the current economic failings. The TCMB has a hybrid dual mandate in the sense that it seeks to ensure employment and growth policies of the state, with the caveat that "it shall not conflict with the objective of maintaining price stability" being unsustainable.[258]

In 2018, Brazil faced the most recent and strongly-contested debates around the adoption of a so-called dual mandate. The government sought to reduce state expenditure in the hope of strengthening the economy by overhauling the Brazilian Central Bank (BCB). These discussions included the possible addition of monitoring the employment rate and

[255] Grilli *Political and Monetary Institutions and Public Financial Policies in the Industrial Countries* (1991) 375.
[256] Ekonamik Nordic Macroeconomic Intelligence *TCMB Slashes Rates While ECB Holds On* http://ekonamik.com/2019/07/tcmb-slashes-rates-while-ecb-holds-on/ (2019) (accessed02 April 2020); Coskun *Turkey's central bank governor was sacked after resisting 300 point rate cut: sources* https://www.reuters.com/article/us-turkey-cenbank-governor/turkeys-central-bank-governor-was-sacked-after-resisting-300-point-rate-cut-sources-idUSKCN1UH142 (2019) (accessed 28 May 2020).
[257] Itau (footnote 249 above) 2
[258] Putnam (footnote 245 above) 114.

employment growth to the price-stability mandate. As mentioned above, the BCB enjoys no formal autonomy, despite working with *de facto* autonomy. In other words, the President of Brazil pledges not to interfere in technical and operational decisions; however, this is not codified in any statute.[259]

It is evident from the available quantitative literature that the measuring stick for evaluating the effectiveness of a dual mandate is the Taylor Rule.[260] The balancing occurs between the financial and price-stability mandate and encouraging full employment. The Taylor Rule in its simplest form can be summarised as follows:

$$i = \Pi^M + r^* + 1.5\,(\Pi^E - \Pi^M) - 0.5\,(u - u^*) \qquad (1)$$ [261]

Which variables are constituted as follows: *I* is the nominal interest rate, r* is the neutral real interest rate, [262]Π^M and Π^E are the inflation target and expected inflation respectively, and u and u* are the unemployment rate and NAIRU.[263]

With the Taylor Rule conceptualised above, it is important to note that even in the absence of a central bank with an unemployment and/or economic-growth target, the central bank still reacts to changes in those variables, despite the absence of targets. This occurs for two main reasons: firstly, monetary policy-setting authorities tend to reflect the socio-economic preferences, which consequently makes them susceptible to fluctuations in

[259] Itau (footnote 249 above)3. ; Bloomberg *Father of Brazil's Inflation Targets Wants to Change the System* https://www.bloomberg.com/news/articles/2019-07-18/father-of-brazil-s-inflation-targets-wants-to-change-the-system (2019) (accessed 02 April 2020.)

[260] Itau (footnote 249 above); Putnam , (footnote 245 above); Kaya (footnote 249); Reserve Bank of New Zealand (footnote 249 above) ; Kganyago (footnote 231 above). Schwartz (footnote 249 above)..

[261] Nominal interest rate = inflation target + neutral interest rate + 1.5 (inflation target – expected inflation) – 0.5 (unemployment rate – NAIRU).

[262] The neutral interest rate can be defined as one which possesses a consistent potential output and thus on target inflation (with the assumption of an inflation-targeting regime which is credible). The inclusion of this variable is due to its usefulness in helping to establish and characterise the stance adopted with regards to monetary policy over a period of time. It allows the user to deduce that when the interest is set below the neutral level, it will in turn make monetary policy expansive and stimulate aggregate demand, which leads to a GDP performing above potential. On the contrary, if the interest rate is set above the neutral interest rate, the monetary policy will be contractionary, leading to a reduced aggregate demand and leading to a negative output gap and below-target inflation targeting. – (footnote 249 above) 3.

[263] Non-acceleration inflation rate of unemployment (NAIRU). This variable keeps inflation constant.

employment levels.[264] Secondly, it occurs due to the fact that unemployment is one of the main drivers of inflation, even when a single price-stability mandate is adopted.[265]

Without derogation from the above, the issue with the expansion of the bank's mandate to include economic and employment growth is that, in the long term, the monetary authority is only able to influence the nominal variables, and not real variables. This can be attributed to the neutrality of money principle.[266] In essence, if monetary policy had the ability to affect unemployment in the long term, the logical approach would be to set targets for them, which would likely contribute positively to social welfare. This, however, is not the situation, as monetary policy does not possess the ability to affect these variables.[267] Evidence of this can be obtained from the BCB as, in this situation, it has clearly indicated that a greater tolerance for inflation cannot purchase economic growth
Despite the fact that central banks have an influence on long-term inflation rates, they have no control over the following variables, which prove to be problematic as deduced below in the Taylor Rule: firstly, they possess no control of the neutral interest rate, as depicted by r* in the equation, as the variable is dependent on the propensity to save and fiscal policy. Secondly, the long-term interest rate, depicted by *u*,* which is dependent on labour legislation and labour-market competitiveness. Lastly, they have no control over the economic-growth rate, which is dependent on productivity and demographic variables.[268]

Therefore, in order to place this dissertation in context, let us assume that the Reserve Bank begins to pursue a dual mandate in which it would address both an inflation target and an unemployment target, represented by u^M in the below adaption of the Taylor Rule, which is indicative of a central bank pursuing a dual mandate .

[264] Itau (footnote 249 above) 4.
[265] Thorebeck (footnote 254 above) 7; Vermeulen *Inflation and unemployment in South Africa: Is the Phillips curve still dead?* (2017) 27. Phillips *The Relation between Unemployment and the Rate of Change of Money Wage Rates in the United Kingdom, 1861–1957*. (1958) 283.
[266] The neutrality of money principle states that the fluctuations in the volume of money solely affect nominal variables such as inflation, and has no influence on employment, income, or production levels.
[267] Itau (footnote 249 above) 4.
[268] *Ibid.*

$$I = \Pi^{M} + r^{*} + 1.5\,(\Pi^{M} - \Pi^{E}) - 0.5\,(u - u^{M}) \quad (2)$$ [269]

A further adaption of the rule indicates the effect of the neutrality of money principle, with the consideration that $u = u^{M}$ and $I = r^{*} + \Pi^{E}$ equation 2 above can be rewritten as:

$$(\Pi^{M} - \Pi^{E}) = (u^{*} - u^{M}) \quad (3)$$ [270]

Equation 3 is evidence of the most profound risk in the adoption of a dual mandate, which is the setting of an unemployment target (u^{M}) set below the neutral employment rate (*u*).* Thus, in essence, setting an unemployment target or economic-growth target would ultimately be inflationary. In summation, the pursuit of below-neutral unemployment would ultimately lead to higher inflation and de-anchored expectations in the absence of long-term employment gains.[271]

It is not implied through the research that the Reserve Bank would seek to develop and implement policies which aim to provide and maintain a low level of unemployment. It is a given that persistently-high unemployment rates entail substantial and far-reaching implications on economic policy and social costs. The endeavour to achieve low unemployment rates should be forever present on the authorities' agenda, and can be implemented through a number of vehicles, including (but not limited to) the strengthening of the current education framework and streamlining the labour legislation in order to ensure a competitive business market.

4.3 Chapter Summary

The writer is of the opinion that the adoption of a dual mandate would not provide desirable results, due to the inability of central banks to influence real variables, as explained above. The combination of empirical and statistical findings above is evidence that adopting a dual mandate counteracts its own goals, when, in fact, the protection of the value of the currency is inextricably linked to employment growth, and through inflation targeting done correctly that should lead to employment growth. Consequently, the

[269] Nominal interest rate = Inflation target + Neutral interest rate + 1.5 (Inflation target – Expected inflation) – 0.5(Unemployment rate – Unemployment target).
[270] (Inflation target - Expected inflation) = (Neutral interest rate – Unemployment target).
[271] Itau (footnote 249 above) 4.

adoption of a dual mandate will most likely produce higher inflation rates and de-anchored expectations in the absence of employment-rate gains. The approach which should be adopted by the Reserve Bank and which would best serve the economy should mimic that of the Risk Based Approach (RBA)[272] adopted by the banking industry, in that resources should be devoted to the areas which pose the most risk to the economy; concisely put, that resources devoted should be commensurate to risk.

[272] A [Risk Based Approach] RBA to [anti-money laundering and counter-terrorist financing] AML/CFT means that countries, competent authorities and financial institutions8, are expected to identify, assess and understand the ML/TF risks to which they are exposed and take AML/CFT measures commensurate to those risks in order to mitigate them effectively - Financial Action Task Force *Risk-Based Approach Guidance For The Banking Sector* (2014) 6.

5. CHAPTER 5: CONCLUDING REMARKS, ALTERNATIVES AND RECOMMENDATIONS

5.1 Calls for the nationalisation of the Reserve Bank and the independence of same

The calls for the nationalisation of the Reserve Bank from a number of political factions can be understood to be the result of the hegemony experienced by the parties. The intention of the ANC and other parties can be deduced as twofold: firstly, to use it as a vehicle to advance political transformation with the end goal of ensuring state sovereignty, and secondly using it to enhance an economic-transformation agenda which seeks to serve those who were previously disadvantaged. The EFF seeks to bring forth the nationalisation of the Reserve Bank using the South African Reserve Bank Amendment Bill. [273]In essence, the Bill seeks to pave the way for a state-owned central bank which possesses an all-encompassing license in which the Reserve Bank will be allowed to compete with commercial banks.[274]

There is growing support within the ANC factions for the implementation of a state-owned bank alongside the nationalisation of the Reserve Bank.[275] This position was reaffirmed by President Ramaphosa in a statement given at the ANC NEC on the 8th of January 2020, in which he stated "We also welcome the work underway, including the drafting of the necessary legislation, towards the establishment of a state bank that will improve access for all South Africans to affordable financial services." The underlying syllogism behind this was the reviewing of the Financial Sector Charter as discussed above in Chapter Two. Through the review process, the ANC consented that the charter is a viable vehicle with which to advance financial inclusion and support those businesses in the informal sector. This movement falls in line with the ANC's move to enhance financial

[273] South African Reserve Bank Amendment Bill Government (footnote 10 above).

[274] De Wet *Here it is: The simple Bill with which the EFF wants to revolutionise the banking industry* https://www.businessinsider.co.za/here-is-the-floyd-shivambu-eff-draft-bank-amendment-bill-text-2018-5 (2018) (accessed 10 April 2020).

[275] *Phakathi Cyril Ramaphosa supports the creation of a state bank* https://www.businesslive.co.za/bd/national/201805-09-cyril-ramaphosa-supports-the-creation-of-a-state-bank/ (2018) (accessed 10 April 2020).; Padayachee *Evolution of ANC economic policy sheds light on squabble over the central bank* https://www.fin24.com/Opinion/evolution-of-anc-economic-policy-sheds-light-on-squabble-over-the central-bank-20190704 (2019) (accessed 10 April 2020).

access and inclusion. The ANC seeks to rely on the current legislation regulating stokvels,[276] construction banks, and co-operative banks to bring forth the change.[277]

The ANC has taken a firm stance herein. This is evident in the due commissioning of a viability and feasibility study, conducted at a provincial level. The subject matter of the study was centred around a strategy to grow the economy through funding the informal business sector.[278] Due to the serious nature of the proposal, it is of importance to evaluate the effects of the implementation of a state-owned bank on the economy and on financial inclusion and access to finance. Beginning with financial inclusion, the introduction of a state-owned bank to serve the general populace would definitely enhance same. The state will seek to use the capital of the bank to make strategic acquisitions and/or establish a bank, with the goal of serving those in marginalised populations. The deviation from the current status quo would see the state intervene in areas where other financial institutions deem the market too volatile which includes the informal enterprise sector.[279] This approach is undoubtedly in line with the ANC's financial-inclusion plans. There exists a plethora of infrastructure that the state could use to roll out a state-owned central bank, with the best being the effective use of the resources of the South African Post Office (SAPO) through its subsidiary Postbank. The current infrastructure includes the estimation of the Postbank that, due to the large amount of branches available through post offices, 75% of current social-grant recipients live within 10 kilometres of a branch.[280] Through inference and the support of research indicating that the Postbank is the sole provider of financial services to many informal sectors, this number is predicted to increase as SAPO is mandated to establish 50 new

[276] A stokvel is in essence a type of informal credit-rotating association in which a group of people enter into an agreement to contribute a fixed amount of money to a common pool on a weekly or monthly basis or as frequently as the members may agree upon. The contributions or a portion of them are paid out by the association in rotation or in a time of need, depending on the rules of the particular stokvel. The essence of a stokvel is the mutual financial assistance which underpins it. Stokvels are sometimes referred to as an example of a voluntary association. - Schulze, *The Origin and Legal Nature of the Stokvel (Part 1)* (1997) 21.
[277] De Wet (footnote 274 above).
[278] *Malete A state-owned bank would ensure financial inclusion in Gauteng* https://city-press.news24.com/Voices/a-state-owned-bank-would-ensure-financial-inclusion-in-gauteng-20180703 (2018) (accessed 10 April 2020).
[279] The World Bank *Achieving Effective Financial Inclusion in South Africa: A payment perspective* http://www.treasury.gov.za/publications/other/Achieving%20Effective%20Financial%20Inclusion%20in%20South%20Africa.pdf (2018) (accessed 10 April 2020) .
[280] *Idem* 71.

access points annually.[281] In terms of payment-system infrastructure, it is important to note that the Reserve Bank is the apex of the payment system and the banking system in its entirety, and is therefore a crucial player in the settlement layer of the National Payment System (NPS).[282] Secondly, from a legal perspective the NPS finds its powers in the South African Reserve Bank Act.[283] The Reserve Bank is empowered to issue directives, designations, position papers, operational rules, and procedures governing the payments system it operates, as well as the activities of various NPS participants.[284] The payment-system management body is a private sector institution known as the Payments Association of South Africa (PASA). The institution's duties include the implementation and supervision of all payment systems currently under PASA's regulation. The Postbank currently constitutes a member of PASA, representing one of the two entities which are currently not commercial banks.[285] The utilisation of the South African Multiple Option Settlement System (SAMOS), which is owned and managed by the Reserve Bank, constitutes the core system for final obligation stemming from payment-clearing houses, as well as for settling large interbank payments.[286] Therefore, no major infrastructure barriers in the establishment of a state-owned central bank exist.

Without derogation from above, the writer is of the opinion that the current banking market does not need a state-owned bank to enhance financial inclusion, and that the establishment of same would pose major risks to the systemic health of the economy. Of late, the emergence of various new banks which seek to target the more marginalised population have come to the fore. TymeBank released a media statement on the 26th of February 2019 aptly titled "Meaningful financial inclusion is at the heart of TymeBank's plans to make banking more accessible to all South Africans".[287] Through a purely digital platform it will promote access to financial products. According to research conducted by

[281] *Idem* 72.
[282] *Idem* 43.
[283] S10 (1)(c)(iii) of the South African Reserve Bank Act 90 of 1989.
[284] The World Bank (footnote 279 above) 43.
[285] The latter being Diners Club.
[286] The World Bank (footnote 279 above) 45.
[287] TymeBank *TymeBank*: *South Africa's first digital bank goes live : Meaningful financial inclusion is at the heart of TymeBank's plans to make banking more accessible to all South Africans* https://www.tymebank.co.za/wp-content/uploads/2019/02/TymeBank-Business-Story.pdf (2019) (accessed 11 April 2020) 1.

Finscope in 2014, and as of that same year, 90% of the South African populace used a mobile device as a communication instrument.[288]

Further risks are posed by the establishment of a state-owned bank, as is currently evident in the financial disarray faced by a plethora of State-Owned Entities (SOE). Due to the deeply-rooted state capture that currently grips the Republic the risk of abuse is high, considering that the assets on the balance sheet of the state-owned bank would be mainly made up of deposits. If the bank fell into financial disarray parallel to that of other SOE's, it would pose a substantial risk to financial stability. This lack of financial direction, coupled with the possibility of the fact that all government employees would be obligated to keep their deposits with the bank, poses a concentration risk. In 2014, 2,16 million civil servants were under the employment of the government.[289] This would constitute a large portion of the banking population. A further risk arises from lack of experience and stress testing the current infrastructure of SAPO to handle such large onboarding and servicing of clients in a short period of time. The possibility of state capture of the deposits of those most marginalised and of civil servants would be systematic to the economy and would most likely lead to contagion. On a small scale the effects of such capture can be observed through the experience of the Venda Building Society Mutual Bank (VBS), which was the centre of state-capture chatter in 2018 to such an extent that the bank was placed under liquidation due to the large-scale systematic looting of management.[290] This is evidence of the material risks that currently exist in the implementation of a state-owned bank.

The Banking Association of South Africa (BASA), when delivering comments on the Reserve Bank Amendment Bill, had no objections to the inauguration of a state-owned

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[288] Finscope *FinScope South Africa 2014 Consumer Survey* (2014) 14.
[289] Statistics South Africa *Quarterly Employment Statistics (QES) June 2014* (2014).
[290] Motau *The Great Bank Heist* (2018); Van Wyk *Five VBS robbers-in chief — R2.7bn gone (R800m more than previously thought) — still zero criminal prosecutions* https://www.dailymaverick.co.za/article/2019-11-07-five-vbs-robbers-in-chief-r2-7-bn-gone-r800-million-more-than-previously-thought-still-zero-criminal-prosecutions/ (2019) (accessed 11 April 2020).;Van Wyk *A year in the curatorship, creditors gather to prove VBS owes them money* https://www.dailymaverick.co.za/article/2019-03-13-a-year-in-the-curatorship-creditors-gather-to-prove-vbs-owes-them-money (accessed on 11 April 2020).

bank,[291] with the caveat that these state-owned banks are subject to the stringent regulatory framework as enforced by the Reserve Bank and international best standards.[292] If the banks do adhere to these practices, especially those relating to capital adequacy ratios and liquidity, the effects of state capture and corruption would be greatly avoided. However, it is submitted that the current political culture of corruption makes any complete transparency highly unlikely.

SAPO's infrastructure, specifically the branches, may be abrogated by disuse in the near future. The current trends of the banking sector are rapidly leaning towards electronic-based products and customer services. This shift is evident in the fact that the four traditional big banks have, between themselves, closed 695 branches as of July 2019.[293] The syllogism hereto is the adoption of a new banking model to favour self-service banking channels, allowing them to reduce costs imposed by branch floor rentals.[294] This movement, coupled with the establishment of TymeBank (which seeks to advance financial inclusion and access to finance), which seems to be the underlying reason for the creation of a state-owned bank makes the proposal less feasible. TymeBank has further increased its footprint and there are now 14 000 additional contact points, as Pick n Pay is accepting withdrawals and deposits at its tills.[295] In terms of the issue of stringent compliance and documentation procedures which prevent some members of society from participating, the introduction of a risk-based approach to customer identification and verification has been simplified for these populations, as they do not pose a high risk of money laundering or terrorism funding. This position is illustrated by the requirements set out by TymeBank, which state that no documentation is required.[296]

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[291] The Banking Association of South Africa *Annual Report 2018* (2018) 19.
[292] Basel III, Financial Action Task Force Forty Recommendations.
[293] Tarrant *SA's 'big four' banks have shut down almost 700 branches this decade* https://citizen.co.za/business/2140329/sas-big-four-banks-have-shut-down-almost-700-branches-this-decade/ (2019) (accessed 2 April 2020).
[294] Omarjee *Standard Bank branch closures: Here's how you will be affected* https://www.fin24.com/Companies/Financial-Services/standard-bank-branch-closures-heres-how-you-will-be-affected-20190604 (2019) (accessed 12 April 2020).
[295] TymeBank (footnote 287 above) 2.
[296] *Ibid.*

Another issue is the high expenditure by the state on SOE's and the increasing government debt. One must therefore question if this would constitute the correct time for the state to launch an expensive and lengthy compliance process in the pursuit of practicing as a fully-fledged commercial bank as averred to Chapter One. The alternative to nationalisation (i.e. the introduction of state-owned bank) is not in and of itself unfeasible, but in the current market situation and the uphill battle with currently-insolvent SOE's it is not feasible This position is further affirmed in light of the increased government expenditure in the fight against COVID-19.

The crux of the matter surrounding the nationalisation of the Reserve Bank is not the possible move of adopting a dual mandate, as this is a separate issue. Rather, it is whether the nationalisation poses any threat to the independence of the Reserve Bank. This separation of issues was encapsulated during a media briefing held by the Governor of the Reserve Bank on the 7th of August 2019, in which he described the current narration as "This conversation ... confuses ownership with the mandate of the institution and the independence of the institution,".[297] He succinctly stated that if nationalisation is to take place, he and the Reserve Bank would "go to war" if its independence was threatened.[298]

In summary of the nationalisation debate, it can be held that nationalisation poses the least threat to financial stability if it does not pose a risk to the independence of the Reserve Bank – rather, the risk related to the nationalisation of the Reserve Bank will materialise if political interference occurs. Further, due to constraints placed on dividend pay outs and maximum shareholding, the shares themselves do not appear to be a good investment. The above, coupled with the poor condition of the economy and the cost related to the repurchasing of all the current shares and re-distribution of same, places the nationalisation at risk of failure. Nationalisation of the Reserve Bank will not be to the benefit of the economy at this time.

[297] Smout *South Africa's central bank governor says will go to war to protect independence* https://fr.reuters.com/article/africaTech/idAFKCN1UX1M7-OZABS (2019) (accessed 12 April 2020).
[298] *Ibid.*

5.2 Calls for the adoption of a dual mandate to include an employment target

The current calls for the addition of an employment target to the bank's current mandate should be held true to the doctrine of responsibility for real outcomes. In essence, this doctrine implies that monetary-setting authorities, when making decisions, should attempt to avoid contributing to unnecessary volatility in real variables.[299] This doctrine is consistent with a price-stability mandate. This mandate would obligate the central bank to pursue price stability until there existed substantial economic disruptions which threatened the economic outcomes of other variables.[300] Thus, the presumptive path which should be taken until a substantial disruption is posed, is that of a price-stability mandate. It can be held that this is the current approach taken by the Reserve Bank, and the writer is of the opinion that same should be continued until substantial disruptions are posed.

The current calls regarding the mandate of the Reserve Bank have little to do with real economic policies. Instead, they are emblematic of intensely-polarised levels of political distrust that currently exist within the ANC.[301] This distrust added to the woes the lack of any coherent grand vision from the post-apartheid leadership. These woes are prohibiting the ANC from bringing a feasible call. This lack of unity has a damaging effect on the currency, as is evident from the period preceding Ace Magashule's tweet regarding the confirmed change of mandate.[302] The rand weakened as much as 1% against the dollar before paring losses to trade little changed at 14.6789 per dollar. Further, it dropped 1.5% the following day and left a long-lasting negative market sentiment.[303] Rather than

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[299] Schwartz (footnote 249 above)179.
[300] *Ibid.*
[301] Padayachee *Wits academic trio tackle ANC on Reserve Bank "policy"* https://www.biznews.com/thought-leaders/2019/07/08/anc-reserve-bank-policy-wits (2019) (accessed 20 April 2020).
[302] Mboweni 4 June 2019 19:59 https://twitter.com/tito_mboweni?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1135969349926346752&ref_url=https%3A%2F%2Fwww.fin24.com%2FEconomy%2Fancs-finance-minds-deny-lekgotlas-commitment-on-sarb-mandate-20190604 (accessed on 01 April 2020).
[303] Naidoo *Battle over South African Reserve Bank's role spooks rand* https://www.fin24.com/Markets/Currencies/battle-over-south-african-reserve-banks-role-spooks-rand-20190605-2 (2019) (accessed on April 2020).

engaging in a serious rational debate regarding the mandate, the ANC has used the issue to resolve its in-fighting.

The ANC has come to an agreement between its ranks, which was released in an annual policy document. In the policy document, the current role, independence, and shareholding of the Reserve Bank were affirmed.[304] Further, the mandate was confirmed in Mr. Ramaphosa's State of the Nation Address held on the 20th of June 2019 , wherein he added that the mandate should be pursued without "fear, favour or prejudice".[305] These assurances should mitigate any future squabbles over the Reserve Bank. The mandate was further re-affirmed by the Governor of the Reserve Bank in a public lecture held at the University of Pretoria.[306] He stated unambiguously that the current operation is completely compliant with the constitutional mandate apportioned to the Reserve Bank.[307]

In terms of the quantitative research and the deduced results from the Taylor Rule in Chapter four, it can be held that the adoption of a dual mandate to include an employment target would not produce positive effects for the economy. This is solely due to the fact that, in the long run, monetary policy authorities have no influence over real variables.[308] Thus, the adoption of a dual mandate would most likely produce higher inflation and de-anchor expectations on the absence of any gain in employment.[309]

The average level of employment is determined by its own natural rate. Monetary policy cannot change it. The writer is of the opinion that careful thought about how to proceed is required if we wish to avoid gravitation towards policy instruments normally associated with central economic planning. This gravitation should be avoided if we wish to retain the

[304] Vollgraaff *ANC commits to Reserve Bank mandate, independence* https://www.fin24.com/News/anc-commits-to-reserve-bank-mandate-independence-20200112 (2020) (accessed 20 April 2020).
[305] Marrian *Ramaphosa's Sona affirms Reserve Bank mandate* https://mg.co.za/article/2019-06-20-ramaphosas-sona-affirms-reserve-bank-mandate/ (2019) (accessed 20 April 2020).
[306] Kganyago (footnote 231 above)1.
[307] *Idem* 8.
[308] Putnam(footnote 245 above); Kaya (footnote 249 above); Itau (footnote 249 above)1; Reserve Bank of New Zealand (footnote 249 above) 6.
[309] Itau (footnote 310 above) 5.

aggregate economic benefits of the inflation-targeting regime objectives of the Reserve Bank's effort over the past two decades.

The writer is however not of the opinion that the current mandate of the Reserve Bank should be absolute and not subject to change. All central banks' mandates should be somewhat flexible to mitigate shortfalls in the economy where possible. However, the debate surrounding the sought-after amendments needs to be conducted in a more informed and formal environment, and should be substantiated by specialists in the fields of economic growth and financial institutions. In essence, the debate needs to take place in an articulated and academic environment. The debate should further be a unified and coherent call from within the ANC or any other party seeking to do same. The vision should not only be a vision, but should include viable mechanisms to bring forth the sought-after amendments.

Further and without derogation from the above, the writer is not of the opinion that monetary policy authorities should not pursue policies which would lead to low employment. On the contrary, considering the fact that the current persistently-high employment entails substantial economic and social costs,[310] the alleviation thereof should be on the forefront of all economic policy priorities. This strengthening should be pursued through strengthening the education regime and streamlining labour legislation to provide for a competitive labour market. This view is held due to the fact that attempting to use monetary policy to address these shortcomings tends to deliver innocuous results in terms of employment, which, importantly, is counterproductive in terms of long-term inflation.[311]

In finality, the writer is of the opinion that the adoption of a dual mandate would result in de-anchored expectations and higher inflation without long-term gains in employment. Thus, price stability achieved through an inflation-targeting regime, and not through the

[310] Itau *(*footnote 249 above) 4.
[311] *Ibid.*

use of a dual mandate, would best serve the South African population and contribute to sustainable economic growth.

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