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GOVERNMENT NOTICE

SOUTH AFRICAN RESERVE BANK

No. R. 1370

13 December 2001

BANKS ACT, 1990 (ACT NO. 94 OF 1990)

**REGULATIONS RELATING TO REPRESENTATIVE OFFICES
OF FOREIGN BANKING INSTITUTIONS**

The Minister of Finance has under section 90 of the Banks Act, 1990 (Act No. 94 of 1990), made the regulations contained in the Schedule.

SCHEDULE**INFORMATION TO BE FURNISHED TO THE REGISTRAR OF BANKS BY A REPRESENTATIVE OFFICE OF A FOREIGN BANKING INSTITUTION****Definitions**

1. In these Regulations, "the Act" means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Act or the Regulations relating to Banks shall bear the meaning so assigned thereto and, unless the context otherwise indicates;

"chief representative officer", in relation to a representative office, means a natural person as envisaged in section 34(2) of the Act;

"representative office" means a representative office as defined in paragraph (a) of the definition of a "representative office" in section 1(1) of the Act.

Operational information

2. (1) A representative office shall, for purposes of enabling the Registrar to perform his/her function under the Act, within twenty business days immediately following the last day of the reporting period to which the required information relates, furnish the Registrar with information in the format of the form **RO 001**, prescribed in **ANNEXURE A** to these Regulations.
- (2) The information required to be reported shall be reflected against the appropriate items, and in the columns, specified in form **RO 001**.
- (3) Except where otherwise indicated, form **RO 001** shall be completed in US dollars.
- (4) The chief representative officer of the representative office shall sign and certify form **RO 002**, prescribed in **ANNEXURE B** to these Regulations, in respect of each form **RO 001** return rendered in terms of these Regulations, whether such return is rendered on a prescribed form or by means of an electronic facility: Provided that, in the event of the chief representative officer of the representative office not being available to sign the completed form **RO 002**, the officer performing the functions of the chief representative officer shall sign the said form in an acting capacity and not on behalf of the absent officer, and the normal office of the officer so acting shall be clearly indicated on form **RO 002**.
- (5) The furnishing of the returns prescribed in these Regulations, whether by way of the completion of the prescribed form or by electronic means, shall be done at the intervals prescribed in these Regulations, and such returns shall be forwarded to the Registrar at P O Box 8432, Pretoria, 0001. Additional facilities are provided by the Office for Banks for the electronic rendition of the information required to be contained in the prescribed return, and further details can be obtained from that Office.

Management

3. A representative office shall-

- (a) not later than seven days immediately following the date of the expiration of the term of office of its chief representative officer inform the Registrar in writing of such expiration;
- (b) at least thirty days prior to the appointment of a new chief representative officer furnish the Registrar with information pertaining to the person designated for such appointment in the format of form **RO 003**, prescribed in **ANNEXURE C** to these Regulations; and
- (c) at least thirty days prior to the appointment of a new chief representative officer submit a statement and declaration in the format of form **RO 004**, prescribed in **ANNEXURE D** to these Regulations, duly completed by-
 - (i) the chairperson of the board of directors of the foreign institution in question; or
 - (ii) an authorised executive officer of the foreign institution in question,

to the Registrar in respect of each form **RO 003** presented to the Registrar that relates to the proposed appointment of a chief representative officer to such institution's representative office.

Material changes

4. A representative office shall inform the Registrar in writing, within seven days of the occurrence thereof, of-

- (a) any material restriction on or amendment to the authorisation to conduct business similar to the business of a bank granted to the foreign institution of which it is a representative office;
- (b) the withdrawal of the authorisation to conduct business similar to the business of a bank granted to the foreign institution of which it is a representative office; and
- (c) any change in the legal status of the foreign institution of which it is a representative office.

Financial statements

5. A representative office shall submit to the Registrar, on an annual basis, not later than six months after the end of the financial year of the foreign institution of which it is a representative office, a copy of that foreign institution's latest annual financial statements.

Failure or inability to comply with the provisions of these Regulations

6. (1) A representative office that fails or is unable to comply with a provision of these Regulations shall report its failure or inability to comply in writing to the Registrar, stating the reasons for such failure or inability to comply.
- (2) The Registrar may summarily take action under the Act or these Regulations against a representative office referred to in subregulation (1) or, if in the circumstances, the Registrar deems it fit to do so, condone the failure or inability and afford the representative office concerned an opportunity, subject to such conditions as the Registrar may determine, to comply with the relevant provision within a specified period.

COMMENCEMENT

7. These Regulations shall be called the Regulations relating to Representative Offices and shall come into operation on 1 January 2002.

ANNEXURE A

Form RO 001
QuarterlyINFORMATION TO BE FURNISHED TO THE REGISTRAR OF BANKS
BY A REPRESENTATIVE OFFICE OF A FOREIGN BANKING INSTITUTION

(Confidential and not available for inspection by the public)

Name of representative office:

Country of origin:

Quarter ended:

(All amounts to be rounded off to the nearest US\$'000)

| | Line no. | Total |
|--|-------------|-------|
| | | 1 |
| Number of personnel employed by and attached to the representative office | | |
| - Residents | 1 | |
| - Non-residents | 2 | |
| Total expenditure relating to the representative office in the Republic | 3 | |
| Number of delegations, visits or missions arranged by the representative office during the reporting period - | | |
| - for directors or senior managers from the head office of the foreign institution, its foreign subsidiaries or its foreign branches to the Republic | 4 | |
| - for South African business people to the head office of the foreign institution, its foreign subsidiaries or its foreign branches situated outside the Republic | 5 | |
| Main areas of business being facilitated or promoted by the representative office in the Republic (Mainly = 1; often = 2; seldom = 3; never = 4) | | |
| Advisory services to network customers | 6 | |
| Asset management | 7 | |
| Asset securitisation and principal finance | 8 | |
| Corporate finance | 9 | |
| Correspondent banking | 10 | |
| Private banking | 11 | |
| Project finance | 12 | |
| Property finance | 13 | |
| Structured/specialised finance | 14 | |
| Syndicated lending | 15 | |
| Trade/export finance | 16 | |
| Other | 17 | |
| (Please specify) | | |

Directives and interpretations for completion of quarterly return (Form RO 001)

- (1) The content of the relevant return is confidential and not available for inspection by the public.
- (2) The purpose of the return is to determine:
 - (a) the size of the representative office in terms of the number of personnel employed by and attached to the representative office;
 - (b) the aggregate amount of all costs incurred by the foreign institution, including all salaries, to maintain its representative office in the Republic;
 - (c) the number of delegations, visits or missions arranged by the representative office -
 - (i) for directors or senior managers from the head office of the foreign institution, its foreign subsidiaries or its foreign branches to the Republic;
 - (ii) for South African business people to the head office of the foreign institution, its foreign subsidiaries or its foreign branches situated outside the Republic; and
 - (d) the main areas of business being facilitated and promoted by the representative office.
- (3) Form RO 001 shall be submitted to the Registrar within twenty business days immediately following the last day of each quarter of each year.

ANNEXURE B

**DECLARATION IN RESPECT OF PRESCRIBED RETURN FORM RO 001
SUBMITTED BY REPRESENTATIVE OFFICE**

RO 002

(To accompany all form RO 001 returns submitted in terms of the Regulations relating to Representative Offices of Foreign Banking Institutions)

Name of representative office

Quarter ended..... 2...

A. DECLARATION

I, the undersigned, hereby declare as follows:

1. In respect of the prescribed return form RO 001 submitted herewith

- (i) The information contained in form RO 001 is to the best of my knowledge and belief correct.
- (ii) The aforesaid return has been compiled in accordance with the Regulations relating to Representative Offices of Foreign Banking Institutions.

2. In respect of the activities of the representative office

- (i) The representative office has not at any stage during the reporting period conducted the business of a bank in the Republic.

B. CERTIFICATION BY CHIEF REPRESENTATIVE OFFICER

Signed at, this day of 2...

.....
Chief Representative Officer

ANNEXURE C

Form RO 003

If insufficient space is provided, please attach a separate sheet.

STATEMENT BY INDIVIDUAL WHO PROPOSES TO HOLD THE OFFICE OF CHIEF REPRESENTATIVE OFFICER OF A REPRESENTATIVE OFFICE OF A FOREIGN BANKING INSTITUTION

(Confidential and not available for inspection by the public)

1. Name of foreign banking institution in connection with which this questionnaire is being completed ("the institution"):

.....

2. Your surname:

.....

3. Your full forename(s):

.....

4. Former surname(s) and or forename(s) by which you may have been known:

.....

5. Please state in which capacity you are completing this questionnaire, that is, as a current or prospective director, executive officer, chief representative officer or a combination thereof. Please state your full title and describe the particular duties and responsibilities attaching to the position(s) that you hold or will hold. If you are completing this form in the capacity of a chief representative officer whilst you are also a current or prospective director, indicate whether, in your position as director, you have or will have executive responsibility for the management of the institution's business. In addition, please provide a copy of your *curriculum vitae*, unless it has already been provided:

.....

6. Residential address:

.....

7. Any previous residential address(es) during the past 10 years:

.....

8. Date and place of your birth (including country and town or city):

.....

9. Your nationality and how it was acquired (birth, naturalisation or marriage):

.....

10. Name(s) and address(es) of your bankers during the past 10 years:

.....

11. Your professional qualifications and year in which they were obtained:

.....

12. Your occupation and employment now and during the past 10 years, including the name of your employer in each case, the nature of the business, the position held and relevant dates:

.....

13. Of which bodies corporate (other than the institution) are you a director, executive officer or chief representative officer and since when?

.....

14. Do you have any direct or indirect interest representing 15 per cent or more of the issued capital of any body corporate (other than the institution) that is now registered, or has applied for authorisation, under the Act? If so, give particulars:

.....

15. Of what bodies corporate other than the institution and those listed in reply to question 13 have you been a director, executive officer or chief representative officer at any time during the past 10 years? Give relevant dates:

.....

16. Do any of the bodies corporate listed in reply to questions 12, 13, 14 and 15 maintain a business relationship with the institution? If so, give particulars:

.....

17. Do you hold or have you ever held or applied for a licence or equivalent authorisation to conduct any business activity in the Republic of South Africa ("the Republic") or elsewhere? If so, give particulars. If any such application was refused or withdrawn after it was made or any authorisation was revoked, give particulars:

.....

18. Does any institution with which you are, or have been, associated as a director, executive officer or chief representative officer hold, or has it ever held or applied for, a licence or equivalent authorisation to conduct any business activity? If so, give particulars. If any such application was refused, or was withdrawn after it was made or an authorisation was revoked, give particulars:

.....

- 19.** Have you at any time been convicted of any offence, excluding -
- (i) any offence committed when you were under 18 years, unless the same offence was committed within the last 10 years;
 - (ii) any road traffic offence; or
 - (iii) any political offence?

If so, give particulars of the court by which you were convicted, the offence, the penalty imposed and the date of conviction:

.....

- 20.** Have you, in the Republic or elsewhere, been censured, disciplined, warned as to future conduct, or made the subject of a court order at the instigation of any regulatory authority or any professional body to which you belong or belonged, or have you ever held a practising certificate subject to conditions? If so, give particulars:

.....

- 21.** Have you, or has any body corporate, partnership or unincorporated institution with which you are, or have been, associated as a director, executive officer or chief representative officer, been the subject of an investigation relating to a time when you were so associated, in the Republic or elsewhere, by or at the instigation of a government department or agency, professional association or other regulatory body? If so, give particulars:

.....

- 22.** Have you, in the Republic or elsewhere, been dismissed from any office or employment, or been subject to disciplinary proceedings by your employer or been barred from entry to any profession or occupation? If so, give particulars:

.....

- 23.** Have you failed to satisfy any debt adjudged due and payable by you, as a judgement-debtor under an order of a court in the Republic, or elsewhere, or made any compromise arrangement with your creditors within the last 10 years? If so, give particulars:

.....

- 24.** Have you ever been declared insolvent (either provisionally or finally) by a court in the Republic or elsewhere, or has a bankruptcy petition ever been served on you? If so, give particulars:

.....

- 25.** Have you, in connection with the formation or management of any body corporate, partnership or unincorporated institution, been adjudged by a court in the Republic or elsewhere civilly liable for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof? If so, give particulars:

.....

26. Has any body corporate, partnership or unincorporated institution with which you were associated as a director, executive officer or chief representative officer, in the Republic or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading, either while you were associated therewith or within one year after you ceased to be associated therewith, or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:

.....

27. Have you been concerned with the management or conduct of the affairs of any institution that, by reason of any matter relating to a time when you were so concerned, has been censured, warned as to future conduct, disciplined or made the subject of a court order at the instigation of any regulatory authority in the Republic or elsewhere? If so, give particulars:

.....

28. In carrying out your duties will you be acting on the directions or instructions of any other individual or institution other than the institution? If so, give particulars:

.....

29. Do you, or does any related party of whom you are aware, undertake business with the institution in respect of which particulars were given in response to Question 28 above? If so, give particulars:

.....

30. Which proportion of the voting power at any general meeting of the institution (or of another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or to control the exercise of?

.....

31. If the exercise of the voting power at any general meeting of the institution, or of another body corporate of which it is a subsidiary, is or may be controlled by one or more of your associates or any related party, give the proportion of the voting power so controlled in each case and the identity of each associate:

.....

32. Are you currently, or do you, other than in a professional capacity, expect to be, engaged in any litigation in the Republic or elsewhere? If so, give particulars:

.....

33. Do you, at all times while acting in your capacity as director or executive officer or chief representative officer of the institution, undertake to:

- act in good faith towards the institution;
- avoid conflict between your other interests and the interests of the institution; and
- place the interest of the institution above all other interests?

.....

34. Have you acquainted yourself with, and do you understand, the extent of the rights and powers, as well as your responsibilities and duties as a chief representative officer of the institution, as contained in the Act and the Regulations?

.....

.....

DECLARATION

I,, hereby declare the following:
This statement consists of pages, each signed by me. The content of this declaration is true to the best of my knowledge and belief. I am aware that should it be submitted as evidence and I know that something appears therein that I know to be false or believe not to be true, I may be liable to prosecution.

I undertake that, as long as I continue to be a director or executive officer or chief representative officer of the institution, I will notify the Registrar of any material changes to, or affecting the completeness or accuracy of, the information supplied by me in items 1 to 34 as soon as possible, but in no event later than 21 days from the day that the changes come to my attention.

I know and understand the content of this declaration. I have*/do not have* objections to taking the prescribed oath.

I consider the prescribed oath to be binding*/not binding* on my conscience.

..... SIGNATURE OF DEPONENT

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the content of this statement. This statement was sworn to/affirmed before me and the deponent's signature was placed thereon in my presence aton this day of 2...

.....
COMMISSIONER OF OATHS

FULL NAMES:

EX OFFICIO:

AREA:

ADDRESS:

* Delete whichever is not applicable

ANNEXURE D

Form RO 004

**DECLARATION IN RESPECT OF COMPLETED FORM RO 003 BY CHAIRPERSON* OR
AUTHORISED EXECUTIVE OFFICER* OF FOREIGN INSTITUTION THAT MAINTAINS A
REPRESENTATIVE OFFICE IN THE REPUBLIC**

I, the undersigned,, being the chairperson of the board of directors*/authorised executive officer* of, confirm that I have carefully studied all information supplied in the accompanying form RO 003 and, after discussion with the deponent and all other members of the board*, and after having taken into account any other information at my disposal or that has come to my attention, am of the opinion that the deponent is a fit and proper person to take up office in this institution with effect from In the case of the appointment of a director as chief representative officer, I confirm that there has been compliance with the appropriate conditions of the articles of association of the company. Similarly, in the case of the appointment of an executive officer as chief representative officer, I confirm that there has been compliance with company policy.

NAME

SIGNED

DATE

* *Delete whichever is not applicable*