
GOVERNMENT NOTICE

SOUTH AFRICAN RESERVE BANK

No. R. 1

1 January 2008

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

AMENDMENT OF REGULATIONS

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

SCHEDULE

1. CONDITIONS FOR THE CONDUCTING OF THE BUSINESS OF A BANK BY A FOREIGN INSTITUTION BY MEANS OF A BRANCH IN THE REPUBLIC

(1) *Definitions*

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-

"assets of a branch" means assets of a foreign institution that are situated in the Republic, and which -

- (a) have been allocated and provided by the foreign institution to its branch; or
- (b) are otherwise maintained in the possession or under the control of the management of a branch of the foreign institution in question;

"associate" -

- (a) in relation to a juristic person-
 - (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
 - (ii) which is a co-operative or a corporation, means any member thereof;
 - (iii) which is not a company, co-operative or corporation as contemplated in this definition; means another juristic person that would have been a subsidiary of the first-mentioned juristic person-
 - (aa) had such first-mentioned juristic person been a company; or
 - (bb) in the case where that other juristic person is also not a company, had both the first-mentioned juristic person and that other juristic person been a company;
 - (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where

such juristic person is not a company, the governing body of such juristic person is accustomed to act; and

- (b) in relation to any person -
 - (i) means any juristic person of which the board of directors or, in the case where such person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph; and
 - (ii) includes any trust controlled or administered by that person;

“branch capital” means the amount, expressed in the monetary unit of the Republic, that has been allocated and provided by the foreign institution to its branch and includes funds obtained from actual earnings or by way of recoveries and which have been set aside as a general or special reserve of the branch and shall for purposes of the Act, the Regulations relating to Banks and these Regulations, be deemed to comprise primary capital of the branch: Provided that the amount so allocated and provided by the foreign institution-

- (a) is unencumbered;
- (b) is not provided subject to a guarantee for repayment by the branch to the foreign institution;
- (c) may not be revoked without the prior written approval of the Registrar; and
- (d) shall be held in the Republic.

“foreign institution” means an institution which -

- (a) has been lawfully established in a country other than the Republic;
- (b) lawfully conducts in such other country a business similar to the business of a bank; and
- (c) is not registered as a bank in terms of the Act;

(2) *Conditions*

The conducting, by a foreign institution, of the business of a bank by means of a branch in the Republic, as contemplated in section 18A of the Act, shall be subject to the conditions set forth in subregulations (3), (4), (5), (6), (7) and (8) hereunder.

(3) *Prudential requirements*

- (a) A foreign institution on its own, or a foreign institution and the banking group of which such foreign institution forms part, shall at a point in time not earlier than 18 months prior to such foreign Institution's application to establish a branch have held, and at all times during the operation of its branch hold, net assets, as certified by its/their auditors and reflected in its/their audited financial statements (which financial statements shall comply with internationally generally accepted accounting standards, and which shall have been audited in accordance with (International Financial Reporting Standards), to a total value of at least US\$1 billion: Provided that-
 - (i) in the calculation of the value of such net assets, intangible assets that are not readily marketable shall be excluded; and
 - (ii) in the event of a foreign institution having to rely on net assets of the banking group to which it belongs in order to meet the aforementioned requirement of net assets of at least US\$1 billion, such foreign institution shall hold net assets of its own, calculated in the manner and held in accordance with the provisions of this paragraph, of not less than US\$400 million.
- (b) The foreign institution shall have been afforded a long-term investment grade debt rating, acceptable to the Registrar, by an internationally recognised external credit assessment institution.
- (c) The branch in question shall manage its affairs in such a way that the sum of its branch capital shall not at any time amount to less than the greater of -
 - (i) an amount of R250 million; or
 - (ii) a minimum of 8 per cent, or such a higher percentage as may be determined by the Registrar in consultation with the Governor of the Reserve Bank, of the amount of the assets and other risk exposures of the branch, calculated, *mutatis mutandis*, as in the case of a bank, in accordance with the provisions of sections 70(2), 70(2A), or 70(2B) of the Act, whichever section may be applicable having regard to the nature of such a branch's business:

Provided that, in the event of the sum of the branch capital being in excess of the prescribed minimum, the sum of such branch capital shall not be decreased without the prior written approval of the Registrar.

And further provided that the Registrar may, in respect of a branch that has been registered as such prior to these amendments coming into force and upon receiving a written application from such a branch, in writing, approve an amount of branch capital to be held by that branch to be less than R250 million subject to such conditions as the Registrar may determine.

- (d) The provisions of section 72 of the Act shall, *mutatis mutandis* apply to a branch.
- (e) The provisions in respect of the maintenance by banks of minimum reserve balances in accounts with the South African Reserve Bank in terms of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), shall, *mutatis mutandis*, apply to a branch.
- (f) The value of the unencumbered assets of a branch shall not amount to less than such a percentage of its liabilities in the Republic as specified in writing by the Registrar, provided that the branch shall calculate the relevant required amount of its unencumbered assets and its liabilities in the Republic on a daily basis and shall report such amounts to the Registrar, in writing, every calendar month.
- (g) The aggregate effective net open foreign currency position of a branch shall be calculated in the manner prescribed in form BA 325 of the Regulations relating to Banks and shall not at the close of business on any day exceed an amount specified in writing by the Registrar.

(4) *Management*

- (a) Every person who holds, or stands to hold, the office of an executive officer of a branch shall be a person who is fit and proper to hold that particular position.
- (b) The provisions of sections 1(1A) and 60 of the Act shall, *mutatis mutandis*, apply to the appointment of an executive officer of a branch.
- (c) The foreign institution shall appoint at least two natural persons residing in the Republic who are authorised to conduct the management of the business of the branch, at least one of which shall be appointed as the chief executive officer of the branch: Provided that the Registrar shall be informed by the foreign institution of the particulars of such persons prior to such persons being appointed.
- (d) Unless expressly otherwise provided in the Act or these Regulations, the persons referred to in paragraph (c) shall be responsible for fulfilling the responsibilities of the board of

directors of a bank in terms of the provisions of regulations 39 and 40 of the Regulations relating to Banks.

(5) *Business operations*

- (a) A branch may accept deposits from any person.
- (b) A foreign institution, having been granted authorisation to establish a branch in the Republic, may conduct such business by means of more than one branch within the Republic: Provided that-
 - (i) the written approval of the Registrar shall be obtained before any additional branch is opened; and
 - (ii) in the event of such foreign institution maintaining more than one branch, such different branches shall, for purposes of the Act, the Regulations relating to Banks and these Regulations, be deemed to constitute a single entity.
- (c) The business operations of a branch shall at all times be covered and supported by a valid letter of comfort and undertaking issued by the relevant foreign institution, in which letter of comfort and undertaking, to the satisfaction of the Registrar, such foreign institution duly -
 - (i) confirms its understanding and acceptance of the ultimate objective of the maintenance of financially sound branches in the interests of an efficiently functioning overall financial system in the Republic;
 - (ii) confirms its understanding and acceptance thereof that the pursuit of the ultimate objective set forth in subparagraph (i) above requires that the performance of the supervisory functions in respect of a branch, assigned to the management thereof, shall be directed primarily towards the promotion of the standard of risk management practised by a branch;
 - (iii) confirms its understanding and acceptance of, and its adherence to, the relevant –
 - (A) core principles for effective banking supervision;
 - (B) minimum standards in respect of consolidated supervision of banking groups and their cross-border establishments;
 - (C) recommendations relating to the supervision of cross-border banking; and

(D) proposals, guidelines and pronouncements,

issued by the Basel Committee on Banking Supervision;

- (iv) confirms its understanding and acceptance of, and its adherence to, the relevant provisions, in respect of the branch, of the Act, the Regulations relating to Banks and these Regulations;
- (v) undertakes, within reasonable standards, to ensure that the management of a branch at all times consists of individuals considered as fit and proper to fulfil their respective responsibilities and tasks;
- (vi) undertakes, within reasonable standards, to strive towards enhancing the standards of risk management being applied in respect of the business of a branch by its management;
- (vii) confirms its acceptance of, its responsibility for the operations of a branch; and
- (viii) undertakes to safeguard the financial soundness and stability, including the maintenance of the branch capital, of a branch.

(6) *Supervisory obligations*

- (a) The Registrar shall be satisfied that the foreign institution lawfully conducts business similar to the business of a bank in a country other than the Republic.
- (b) The Registrar shall be satisfied that the responsible consolidating supervisor of the foreign institution -
 - (i) has duly authorised the proposed establishment, by the foreign institution, of a branch in the Republic;
 - (ii) accepts, is committed to and complies with the proposals, guidelines and pronouncements of the Basel Committee on Banking Supervision;
 - (iii) is not legally impeded from complying with the provisions of subparagraph (ii);
 - (iv) accepts its responsibilities in terms of the aforementioned provisions as the consolidating supervisor;
 - (v) as far as may be reasonably possible, ensures that the members of the board and the executive management of

the foreign institution at all times consist of fit and proper persons;

- (vi) is satisfied with the standard of risk management maintained by the foreign institution;
 - (vii) is committed to keeping the bank supervisory authorities in the Republic informed of any material information regarding the financial soundness of the foreign institution and its branch.
- (c) As far as may be reasonably possible, the foreign institution and its branch shall ensure that the relevant consolidating supervisor and host supervisor are at all times enabled to adhere to the relevant -
- (i) core principles for effective banking supervision;
 - (ii) minimum standards in respect of consolidated supervision of banking groups and their cross-border establishments;
 - (iii) recommendations relating to the supervision of cross-border banking; and
 - (iv) proposals, guidelines and pronouncements,
- issued by the Basel Committee on Banking Supervision.
- (d) In addition to sections 1(1A), 18A, 60, 70(2), 70(2A), 70(2B) (whichever section of the latter three sections of the Act may be applicable having regard to the nature of such a branch's business), and 72 of the Act, the other provisions of the Act shall, in so far as they can be applied and except where they are inconsistent with the context or clearly inappropriate, *mutatis mutandis*, apply to a branch as if a branch were a bank.
- (e) A branch shall, with the exception of the forms numbered BA 125, BA 600 and BA 610, respectively, contained in the Regulations relating to Banks, furnish the Registrar with all other statutory returns, in respect of such periods, as prescribed in regulation 7 of the Regulations relating to Banks.
- (f) Subject to the provisions of paragraphs (g) and (h) the provisions of the Regulations relating to Banks shall, in so far as they can be applied and except where they are inconsistent with the context or clearly inappropriate, *mutatis mutandis*, apply to a branch as if a branch were a bank.
- (g) The provisions of regulations 41 and 45 of the Regulations relating to Banks shall not apply to a branch.

- (h) In the case of regulations 43 and 44 of the Regulations relating to Banks, a branch shall disclose to the public such information and hold annual financial statements available for inspection by the Registrar, as determined by the Registrar in writing.

(7) *Name*

- (a) A branch shall not use, or refer to itself by, a name other than the name under which it was authorised, or any literal translation or abbreviation thereof or any other name which has been approved by the Registrar.
- (b) The name of a branch shall not -
 - (i) be identical to a name under which an existing bank or mutual bank has already been registered;
 - (ii) so closely resemble the name of an existing bank or mutual bank that the one is likely to be mistaken for the other; or
 - (iii) be identical to, or closely resemble, the name under which any bank or any other institution that was registered under any law repealed by the Act, or any mutual bank or mutual building society, was previously registered to the extent that reasonable ground exists for objection against the use of the name by a branch.
- (c) The Registrar shall be satisfied that the name of a branch is not likely to mislead the public.

(8) *Application procedure, fees and annual licence*

- (a) Form BA 002, prescribed in regulation 52, read with the provisions of regulation 53 of the Regulations relating to Banks, shall be used, in accordance with section 18A of the Act, as an application for authorisation to establish a branch, and the application form, unless a prescribed item is inconsistent with the application or clearly inappropriate, shall include every prescribed item, numbered as indicated on the form.
- (b) The application for authorisation to establish a branch shall be accompanied by such an application fee as prescribed by regulation 58 of the Regulation relating to Banks.
- (c) In the event of the Registrar granting authorisation for the establishment of a branch, a certificate of authorisation to conduct the business of a bank by means of a branch shall be issued on payment of such a registration fee as prescribed by regulation 58 of the Regulation relating to Banks.

- (d) The provisions of regulation 60 of the Regulations relating to Banks, pertaining to the licence fee contemplated in section 35 of the Act, shall, *mutatis mutandis*, apply to a branch.

2. Failure or inability to comply with the provisions of these Regulations

- (1) Subject to the provisions of section 74 of the Act, a branch that fails or is unable to comply with a provision of these Regulations shall report its failure or inability to comply to the Registrar, in writing, 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 branch 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 branch concerned an opportunity, subject to such conditions as the Registrar may determine, to comply with the relevant provision within a specified period.

3. Commencement

These Regulations shall come into operation on 1 January 2008.
