
GOVERNMENT NOTICE

NATIONAL TREASURY

No. R. 261

27 March 2015

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), made the regulations contained in the Schedule.

SCHEDULE

Definitions

1. In this Schedule, "the Regulations" means the Regulations published under Government Notice No. R. 1029, in *Government Gazette* No. 35950 on 12 December 2012.

Amendment of regulation 23 of the Regulations

2. Regulation 23 of the Regulations is hereby amended:
 - (a) by the deletion of footnote 3 below Table 3 of subregulation (6)(h)(i), which currently reads "3. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds."
 - (b) by the substitution of sub-item (ii) of subregulation (6)(h)(iii)(B) with the following sub-item (ii):

"(ii) when the bank is unable to determine the risk weights assigned to the underlying assets or credit exposures, the bank shall assign to the relevant amount related to the said unrated most senior position a risk weight of 1250 per cent."
 - (c) by the substitution of sub-item (ii) of subregulation (6)(h)(vii)(A) with the following sub-item (ii):

"(ii) a facility other than a facility with an external rating, irrespective of the maturity of the facility, apply a credit-conversion factor of 50 per cent in respect of the said eligible liquidity facility, which credit-conversion factor shall be applied to the highest risk weight assigned to any of the underlying individual exposures covered by the liquidity facility."
 - (d) by the substitution of the entries in column 2 of Table 7 of subregulation (6)(j) in respect of a risk weight of 20% relating to exposures to banks in the RSA and a securities firm in the RSA, with the following entries:

"Banks in the RSA, provided that the claim on the bank has an original maturity of three months or less and is denominated and funded in Rand, excluding any claim on a RSA bank that is renewed or rolled resulting in an effective maturity of more than three months

A securities firm in the RSA, provided that such a firm is subject to comparable supervisory and regulatory arrangements than banks in the RSA, including, in particular, risk-based capital requirements and regulation and supervision on a consolidated basis and the claim on the securities firm has an original maturity of three months or less and is denominated and funded in Rand, excluding any claim on a securities firm in the RSA that is renewed or rolled resulting in an effective maturity of more than three months"

- (e) by the deletion of footnote 1 of Table 7 of subregulation (6)(j) directly below the entry that specifies a risk weight of 1250% in column 1, which footnote currently reads "1. Or such imputed percentage that effectively results in a risk weighted exposure amount equivalent to a deduction against capital and reserve funds."
- (f) by the substitution of footnote 3 below Table 8 of subregulation (8)(a) with the following footnote 3:

"3. Claims with an original maturity of three months or less and denominated and funded in Rand, excluding a claim which is renewed or rolled, resulting in an effective maturity of more than three months."
- (g) by the deletion of footnote 2 below Table 11 of subregulation (9)(d)(ii)(C)(i), which currently reads "2. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds."
- (h) by the substitution of sub-item (ii) of subregulation (9)(d)(ii)(C) with the following sub-item (ii):

"(ii) In the case of unrated exposures, the protection seller shall maintain capital against each of the reference assets, reference entities or underlying assets in the basket by aggregating the risk weights of the assets included in the basket up to a maximum of 1250 per cent and multiplying the aggregated risk weight with the notional amount of the protection provided."
- (i) by the substitution of subparagraph (vii) of subregulation (11)(a) with the following subparagraph (vii):

"(vii) shall risk weight such amounts as specified in paragraph (q) below."
- (j) by the substitution of subparagraph (ii) of subregulation (11)(b) with the following subparagraph (ii):

"(ii) For a minimum period of three years prior to a bank's implementation of the foundation IRB approach for the measurement of the bank's exposure to credit risk, the rating and risk estimation systems and processes of the bank should have-"
- (k) by the substitution of sub-sub-item (aa) of subregulation (11)(b)(v)(B)(i) with the following sub-sub-item (aa):

"(aa) the bank shall in the case of concentrations within a single grade or grades have convincing empirical evidence that-

 - (i) the grade or grades cover sufficiently narrow PD bands;
 - (ii) the default risk posed by borrowers in a particular grade falls within the specific band;"

- (l) by the substitution of sub-sub-item (bb) of subregulation (11)(b)(v)(D)(i) with the following sub-sub-item (bb):

“(bb) transaction risk, which transaction risk shall include matters relating to product and collateral types such as loan-to-value or lending-to-value measures, guarantees and seniority, and any cross-collateral provision where present;”.
- (m) by the substitution of sub-item (iii) of subregulation (11)(b)(v)(I) with the following sub-item (iii):

“(iii) shall duly indicate any differences between the bank's risk estimates for purposes of complying with the IRB approach and for internal risk management purposes, such as pricing, provided that when a bank does not use the same estimates for both IRB and internal purposes, the bank shall not only document such differences but shall also be able to demonstrate their reasonableness to the satisfaction of the Registrar;”.
- (n) by the substitution of sub-sub-item (cc) of subregulation (11)(b)(vi)(A)(i) with the following sub-sub-item (cc):

“(cc) Statistical default models, that is, the bank may use a simple average of default-probability estimates in respect of individual borrowers assigned to a particular grade, which estimates were generated by statistical default prediction models, provided that the statistical model shall comply with the relevant minimum requirements specified in subparagraph (v)(H) above;”.
- (o) by the substitution of sub-sub-item (dd) of subregulation (11)(b)(xii)(D)(iii) with the following sub-sub-item (dd):

“(dd) a facility in respect of which neither the bottom-up approach nor the top-down approach can be applied to calculate the K_{IRB} amount specified in paragraph (k) below, obtain the prior written approval of the Registrar to temporarily apply the highest risk weight assigned in terms of the standardised approach to any of the underlying individual exposures covered by the liquidity facility and a credit-conversion factor of 100 per cent;”.
- (p) by the substitution of sub-sub-item (ee) of subregulation (11)(b)(xii)(D)(iii) with the following sub-sub-item (ee):

“(ee) all liquidity facilities other than the liquidity facilities envisaged above, assign to the relevant notional amount of the said liquidity facility a risk weight of 1250 per cent;”.
- (q) by the substitution of sub-item (v) of subregulation (11)(b)(xii)(D) with the following sub-item (v):

“(v) none of the approaches specified in sub-items (i) or (ii) above can be applied to a securitisation exposure other than a liquidity facility, the bank shall assign to the relevant exposure amount a risk weight of 1250 per

cent.”.

- (r) by the substitution of proviso (i) of subregulation (11)(c)(iv)(A)(iii) with the following proviso (i):
 - “(i) the total exposure of the reporting banking group to the said small business borrower, which shall be determined or calculated on a consolidated basis, shall at no time exceed an amount of R7,5 million;”.
- (s) by the substitution of sub-sub-item (ee) of subregulation (11)(c)(iv)(B)(ii) with the following sub-sub-item (ee):
 - “(ee) shall exhibit low volatility in loss rates relative to their average level of loss rates, especially in the low PD bands.”.
- (t) by the substitution in subregulation (11)(d)(ii)(C) of the words “the Registrar may specify in writing a different threshold amount or base, such as assets instead of sales.” with the words “the Registrar may specify in writing a different threshold amount and/or specify in writing to substitute sales for assets as the base.”.
- (u) by the deletion of the words “or deduct from the bank’s capital and reserve funds,” in subregulation (11)(d)(vi)(D)(i).
- (v) by the deletion of the words “, or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds” contained in the entry in column 2 of Table 12 of subregulation (11)(e)(i) to (iv)(A) directly opposite the entry “Below BB- and unrated” in column 1, in order for that entry to state only:
 - “1250%”.
- (w) by the deletion of the words “, or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds” contained in the entry in column 2 of Table 13 of subregulation (11)(e)(i) to (iv)(B) directly opposite the entry “All other ratings or unrated positions” in column 1, in order for that entry to state only:
 - “1250%”.
- (x) by the substitution of subparagraph (v) of subregulation (11)(f) with the following subparagraph (v):
 - “(v) the external rating of the reference securitisation exposure shall comply with the relevant requirements specified in regulation 38(6).”.
- (y) by the substitution of proviso (B) of subregulation (11)(k)(i) and (ii) with the following proviso (B):
 - “(B) when the risk weight relating to the relevant securitisation exposure is equal to 1 250 per cent, the bank shall risk weight the relevant securitisation exposure in accordance with the relevant requirements specified in paragraph (q) read with the relevant provisions of subregulation (6)(j);”.

- (z) by the substitution of item (A) of subregulation (11)(m)(ii) with the following item (A):

“(A)” the potential future exposure arising from an interest-rate contract or currency swap contract calculated in accordance with the relevant provisions of the current exposure method, specified in subregulation (17);”.

- (aa) by the substitution of paragraph (q) of subregulation (11) with the following paragraph (q):

“(q) *Other specified risk weighted exposure*

A bank that adopted the foundation IRB approach for the measurement of the bank's exposure to credit risk shall in addition to any relevant exposure and/or amount specified in subregulation (6)(j), risk weight such exposures as may be specified in table 14 below at a risk weighting of 1250 per cent.”.

- (bb) by the deletion of footnote 1 below Table 14 of subregulation (11)(q), which currently reads “1. Or such imputed percentage that effectively results in a risk weighted exposure amount equivalent to a deduction against capital and reserve funds”.

- (cc) by the substitution of subparagraph (vi) of subregulation (13)(a) with the following subparagraph (vi):

“(vi) shall risk weight at 1250% the relevant amounts specified in subregulations (6)(j) and (11)(q) above.”.

- (dd) by the substitution of subparagraph (ii) of subregulation (13)(b) with the following subparagraph (ii):

“(ii) For a minimum period of three years prior to a bank's implementation of the advanced IRB approach for the measurement of the bank's exposure to credit risk, the rating and risk estimation systems and processes of the bank should have-”.

- (ee) by the addition of subregulation (13)(b)(ii)(G), as follows:

“(G) been broadly in compliance with the relevant minimum requirements relating to own estimates of LGD and EAD specified in this subregulation (13).”.

- (ff) by the substitution of subparagraph (viii) of subregulation (15)(d) with the following subparagraph (viii):

“(viii) *Method 2: calculation in respect of default fund exposure*

A bank that acts as a clearing member may apply a risk weight of 1250 per cent to its default fund exposures to the relevant qualifying central counterparty, provided that-”.

- (gg) by the substitution of subparagraph (ii) of subregulation (15)(e) with the following subparagraph (ii):

“(ii) default fund contributions to a non-qualifying central counterparty, which default fund contributions shall for purposes of this paragraph (e) include both the funded and the unfunded contributions to be paid when required by the relevant central counterparty, the bank shall apply a risk weight of 1250 per cent, provided that in respect of any liability for unfunded contributions, that is, any relevant unlimited binding commitment, the Registrar shall specify in writing the relevant amount of unfunded commitment to which the bank shall apply the aforesaid risk weight of 1250 per cent.”.

- (hh) by the substitution of Table 17 in subregulation (17)(a)(ii) with the following Table 17:

“Table 17
Credit conversion factor^{1,2,3,4}

Remaining maturity	Interest rates	FX and gold	Equities	Precious metals except gold	Other commodities
One year or less	0,0%	1,0%	6,0%	7,0%	10,0%
More than one year to five years	0,5%	5,0%	8,0%	7,0%	12,0%
More than five years	1,5%	7,5%	10,0%	8,0%	15,0%

Notes:

1. For contracts with multiple exchanges of principal, the bank shall multiply the factors by the number of remaining payments in the contract.
2. For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity shall be set equal to the time until the next reset date. In the case of interest rate contracts with remaining maturities of more than one year that meet the specified criteria, the add-on factor shall be subject to a floor of 0,5 per cent.
3. Forwards, swaps, purchased options and similar derivative contracts not covered by Columns 2 to 5 shall be treated as “other commodities”.
4. The bank shall not calculate a potential future credit exposure for single currency floating for floating interest rate swaps, but shall evaluate the credit exposure on these contracts solely on the basis of the relevant mark-to-market value.”.

- (ii) by the substitution of proviso (ii) of subregulation (20)(b)(ii) with the following proviso (ii):
 - “(ii) when five business days have lapsed following the second contractual payment or delivery date and the second leg has not effectively taken place, the bank that made the first payment leg shall assign to the full amount of value transferred plus any relevant replacement cost a risk weight of 1250 per cent, until the said second payment or delivery leg is effectively made;”.

Amendment of regulation 28 of the Regulations

3. Regulation 28 of the Regulations is hereby amended:

- (a) by the deletion of footnote 2 below Table 2 of subregulation (7)(b)(ii)(C)(i), which currently reads “2. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
- (b) by the substitution of the entry in column 2 of Table 3 of subregulation (7)(b)(ii)(C)(ii) directly opposite the entry “Below BB-” in column 1, which currently reads “100%, or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds”, with the following entry:
“100%”.
- (c) by the substitution of the entry in column 2 of Table 3 of subregulation (7)(b)(ii)(C)(ii) directly opposite the entry “Below A-3/P-3-” in column 1, which currently reads “100%, or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds”, with the following entry:
“100%”.
- (d) by the substitution of sub-sub-sub-item (ii) of subregulation (7)(b)(ii)(C)(iii)(cc) with the following sub-sub-sub-item (ii):
 - “(ii) multiply the aforesaid product, calculated in accordance with the provisions of sub-item (i) above, with a concentration ratio, which concentration ratio shall be calculated as the sum of the nominal or notional amounts of all the relevant tranches divided by the sum of the nominal or notional amounts of the tranches junior to or ranking *pari passu* with the tranche in which the position is held, including that tranche itself, provided that when the said concentration ratio is equal to 12.5, or higher, the bank shall assign to the relevant position a risk weight of 1250 per cent;”.
- (e) by the substitution of sub-item (v) of subregulation (7)(b)(ii)(C) with the following sub-item (v):
 - “(v) any position risk weighted at 1250 per cent in accordance with the provisions of sub-items (i) to (iii) of this item (C) may be excluded from the bank's calculation of its required amount of capital and reserve funds for

general market risk, irrespective whether the bank applies the standardised measurement method or internal models method;”.

- (f) by the substitution of the entire item (B) of subregulation (7)(c)(v) with the following item (B):

“(B) the bank shall in respect of any relevant net long or short position relating to an index contract maintain a specific risk capital requirement of 8 per cent in addition to the general market risk requirement of 8 per cent and the further capital requirement of 2 per cent to make provision for factors such as execution risk,”.

- (g) by the substitution of item (C) of subregulation (7)(c)(v) with the following item (C):

“(C) when the reporting bank implements a futures related arbitrage strategy, that is, when the bank-

(i) enters into an opposite position in exactly the same index at different dates, or in different market centres; or

(ii) established an opposite position in contracts at the same date in different but similar indices, and the two indices contain sufficient common components that justify offsetting,

the bank may apply the additional two per cent capital requirements specified in item (B) only to one index, that is, the opposite position shall be exempted from the said capital requirement;”.

- (h) by the addition of the following proviso at the end of subregulation (8)(g):

“Provided that the provisions of this paragraph (g) do not in any way derogate from the general requirement imposed on banks that wish to obtain the approval of the Registrar to adopt the internal models approach for the measurement of their exposure to market risk to ensure that the accuracy of their internal models is subject to a robust process of external validation.”.

Amendment of regulation 31 of the Regulations

4. Regulation 31 of the Regulations is hereby amended by the substitution of subparagraph (viii) of subregulation (6)(c) with the following subparagraph (viii):

“(viii) the maximum risk weight in respect of any relevant equity exposure shall be 1250 per cent;”.

Amendment of regulation 33 of the Regulations

5. Regulation 33 of the Regulations is hereby amended:

- (a) by the substitution of item (F) of subregulation (8)(b)(ii) with the following item (F):

“(F) shall ensure that-

- (i) the bank's operational risk management processes and assessment systems are subject to regular independent review; and
- (ii) the scope of the aforesaid independent review shall include both the activities of the business units and of the relevant operational risk management function;”.

- (b) by the substitution of paragraph (c) of subregulation (9) with the following paragraph (c):

“(c) When a bank wishes to apply an allocation mechanism in order to determine the capital requirements relating to operational risk for the bank's internationally active subsidiaries, the bank shall include in its application to the Registrar sufficient details, including details relating to the empirical process to calculate the capital requirements of the said subsidiaries, in order for the Registrar to determine and assess-

- (i) the significance and the risk profile of the said subsidiaries; and
- (ii) the appropriateness of the allocation methodology with consideration at least being given to matters such as the stage of development of risk-sensitive allocation techniques and the extent to which it reflects the level of operational risk in the legal entities and across the relevant banking group;”.

- (c) by the addition of subregulation (9)(d)(i)(G), as follows:

“(G) that the bank has in place a credible, transparent, well-documented and verifiable approach for weighting the fundamental elements as specified in item (D) above in its overall operational risk measurement system, and in all cases the bank's approach for weighting these four fundamental elements shall be internally consistent and avoid double counting of qualitative assessments or risk mitigants already recognised in other elements of these Regulations;”.

- (d) by the addition of subregulations (9)(d)(v)(B)(v), (9)(d)(v)(B)(vi) and (9)(d)(v)(B)(vii), as follows:

“(v) shall treat operational risk losses that are related to credit risk and that have historically been included in the bank's credit risk databases, such as collateral management failures, as credit risk for the purposes of calculating the bank's relevant minimum required amount of capital and

reserve funds, that is, such losses shall not be subject to the operational risk capital requirement specified in these Regulations;

- (vi) shall flag material operational risk-related credit risk losses separately within the bank's internal operational risk database;
- (vii) shall treat operational risk losses that are related to market risk as operational risk for the purposes of calculating the bank's relevant minimum required amount of capital and reserve funds, that is, such losses shall be subject to the relevant operational risk capital requirement specified in these Regulations."

Amendment of regulation 36 of the Regulations

6. Regulation 36 of the Regulations is hereby amended:

- (a) by the substitution of subparagraph (i) of subregulation (7)(a) with the following subparagraph (i):
 - "(i) shall in the case of any majority owned or controlled bank, security firm or other financial subsidiary or entity, irrespective whether or not the said bank, security firm, subsidiary or entity is regulated, based on the relevant requirements specified in Financial Reporting Standards issued from time to time, fully consolidate the said bank, security firm, subsidiary or entity, as the case may be, provided that the Registrar may require a bank or controlling company, in its method towards calculating group capital adequacy, in addition to full consolidation that may be applied in cases such as, for example, the completion of the form BA 700, to apply-".
- (b) by the deletion of subregulation (10)(d).
- (c) by the deletion of the instructions for the completion of line item numbers 2 and 11 of the form BA 600, specified in subregulation (19).

Amendment of regulation 38 of the Regulations

7. Regulation 38 of the Regulations is hereby amended:

- (a) by the substitution of paragraph (a) of subregulation (13) with the following paragraph (a):
 - "(a) The proceeds of any share that as a minimum meets or complies with all the conditions specified below, may rank as common equity tier 1 capital:".

- (b) by the substitution of subparagraph (i) of subregulation (13)(a) with the following subparagraph (i):

“(i) The share-”.
- (c) by the substitution of item (A) of subregulation (13)(a)(i) with the following item (A):

“(A) shall be issued directly by the relevant bank or controlling company and paid in full by the relevant investor, and the bank or controlling company shall not directly or indirectly fund the purchase of the share;”.
- (d) by the substitution of subparagraph (iii) of subregulation (13)(a) with the following subparagraph (iii):

“(iii) Neither the bank nor the statutory or contractual terms of the share shall create an expectation at issuance that the share may be bought back, redeemed or cancelled.”.
- (e) by the substitution of subparagraph (iv) of subregulation (13)(a) with the following subparagraph (iv):

“(iv) Any distribution in respect of the share shall be paid out of distributable reserves, such as retained earnings, provided that the level of distribution shall not be tied or linked to the amount paid at issuance and shall not be subject to a contractual cap except to the extent that a bank or controlling company may be unable to pay distributions that exceed the level of distributable items.”.
- (f) by the substitution of subparagraph (v) of subregulation (13)(a) with the following subparagraph (v):

“(v) Distribution in respect of the share shall not be obligatory, that is, non payment of a distribution shall not constitute an event of default.”.
- (g) by the substitution of subparagraph (vi) of subregulation (13)(a) with the following subparagraph (vi):

“(vi) Any distribution in respect of the share shall be paid only after all legal and contractual obligations have been met and all relevant payments on more senior capital instruments have been made, that is, there shall be no preferential distribution, including in respect of other instruments or elements that may be classified as the highest quality issued capital.”.

Amendment of regulation 39 of the Regulations

8. Regulation 39 of the Regulations is hereby amended:

- (a) by the substitution of item (C) of subregulation (13)(a)(iv) with the following item (C):

“(C) to ultimately ensure that the bank's valuation estimates provide the bank's board of directors, senior management and the Registrar with sufficient certainty that the said valuation estimates are prudent and reliable;”.

- (b) by the addition of subregulation (13)(a)(x)(C), as follows:

“(C) documented policies and procedures for the process of valuation, including procedures for adjusting valuations, end-of-the-month and ad hoc verification procedures;”.

- (c) by the addition of subregulation (13)(c)(i)(D), as follows:

“(D) the valuation adjustments or reserves specified below:

- (i) unearned credit spreads;
- (ii) closeout costs;
- (iii) operational risks;
- (iv) early termination;
- (v) investing and funding costs;
- (vi) future administrative costs; and
- (vii) where appropriate, model risk;”.

- (d) by the addition of subregulation (13)(c)(iii), as follows:

“(iii) the bank shall ensure that any relevant adjustment to the current valuation of less liquid positions is duly reflected in the bank's common equity tier 1 capital and unimpaired reserve funds, which adjustment may exceed the valuation adjustments made under any relevant financial reporting standard issued from time to time”.

- (e) by the addition of subregulation (14)(b)(viii)(E), as follows:

“(E) as a minimum, where appropriate, shall demonstrate to the satisfaction of the Registrar that the bank's stress testing process factored in:

- (i) illiquidity/gapping of prices;
- (ii) concentrated positions (in relation to market turnover);
- (iii) one-way markets;
- (iv) non-linear products and deep out-of-the money positions;
- (v) events and jumps-to-defaults;
- (vi) significant shifts in correlations; and
- (vii) other risks that may not be captured appropriately in VaR, such as recovery rate uncertainty, implied correlations, or skew risk;”.

- (f) by the addition of subregulation (14)(b)(viii)(F), as follows:

“(F) shall demonstrate to the satisfaction of the Registrar that the bank has sufficient capital and reserve funds to not only meet the relevant specified minimum required amount of capital and reserve funds, but also to withstand a range of severe but plausible market shocks.”.

Amendment of regulation 43 of the Regulations

9. Regulation 43 of the Regulations is hereby amended by the deletion of subregulation (2)(a)(ii)(A).

Amendment of BA forms

10. Form BA 200 is hereby amended by the deletion of footnote 3 directly below Line no. 69, which footnote currently reads “3. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
11. Form BA 500 is hereby amended:
- (a) by the deletion of footnote 2 directly below Line no. 80, which footnote currently reads “2. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
 - (b) by the deletion of footnote 3 directly below Line no. 157, which footnote currently reads “3. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
 - (c) by the deletion of footnote 3 directly below Line no. 186, which footnote currently reads “3. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
 - (d) by the deletion of footnote 5 directly below Line no. 205, which footnote currently reads “5. Or such imputed percentage that will effectively result in an amount equivalent to a deduction against capital and reserve funds.”.
12. Form BA 600 is hereby amended by the shading of Line no. 2 column 4 and Line no. 11 columns 1 to 4.

13. **Date of commencement**

These Regulations shall come into operation on 1 April 2015.