
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

SOUTH AFRICAN RESERVE BANK**NOTICE 721 OF 2019****BANKS ACT, 1990 (ACT NO. 94 OF 1990)****Designation by the Prudential Authority of activities of an institution which shall not be deemed to constitute “the business of a bank” under paragraph (cc) in section 1(1) of the Banks Act, 1990 (Act 94 of 1990)**

The Prudential Authority hereby designates with concurrence of the Minister of Finance, under the definition of “the business of a bank” in section 1(1), paragraph (cc) of the Banks Act, 1990 (Act 94 of 1990) that the business of the institution, specified in paragraph 2 of the schedule, shall not be deemed to constitute the business of a bank for the period commencing on 1 January 2020 and expiring on 31 December 2021, subject to the conditions set out in paragraph 3 of the schedule.



Kuben Naidoo
Deputy Governor and CEO: Prudential Authority

Date: 11 DECEMBER 2019

SCHEDULE**1. Definitions**

In this Schedule the words listed in this paragraph 1 shall have the following meaning:

“Banks Act” means the Banks Act, 1990 (Act 94 of 1990), as amended and the Regulations relating to Banks;

“Exemption Notice” this exemption notice as more fully described in paragraph 5 below;

“Companies Act” means the Companies Act, 2008 (Act 71 of 2008), as amended;

“Financial Sector Regulation Act” means the Financial Sector Regulation Act, 2017 (Act 9 of 2017);

“Ithala” means Ithala SOC Limited, a wholly-owned subsidiary of Ithala Corporation and being a state-owned company registered as such in terms of the Companies Act;

“Ithala Act” means the KwaZulu–Natal Ithala Development Corporation Act, 2013 (Act 5 of 2013);

“Ithala Corporation” means the development corporation known as Ithala Development Finance Corporation Limited, referred to in section 2 of the Ithala Act and being a state-owned company registered as such in terms of the Companies Act; and

“Prudential Authority” means the entity established in terms of section 32 of the Financial Sector Regulation Act.

2. Institution

Ithala SOC Limited

3. Conditions

3.1. The activities of Ithala shall, in so far as they correspond to the activities contemplated in sub-paragraphs (a), (b), (c), (d) and (e) of the definition of "the business of a bank" in section 1(1) of the Banks Act, be performed by virtue of the powers conferred in terms of the provisions of the Ithala Act, provided that Ithala may not, in the performance of its activities –

3.1.1. use, or refer to itself or any of its divisions by any name, description or symbol indicating, or calculated to lead persons to infer, that it or such a division is a bank registered as such under the Banks Act; or

3.1.2. use, in respect of itself or any of its divisions or undertakings, a name or description that includes the word "bank", or any derivative thereof, or the words "building society" or any derivative thereof, unless such name or description is composed of words that include the word "bank" as part of the place name or a personal name.

3.2. In addition to the specific conditions set out below, the activities of Ithala shall also comply with-

- (i) the Banks Act and any regulations, directives, circulars, guidance notes and notices issued by the Prudential Authority in terms of the Banks Act; and
- (ii) such other prudential, reporting, and regulatory requirements that may be imposed by the Prudential Authority from time to time.

3.3. Ithala Corporation shall maintain a separation between the lending activities of Ithala Corporation and any deposit-taking activities conducted by Ithala.

3.4. Performance Standards:

3.4.1. Ithala shall maintain the following performance standards in respect of its governance structures:

- (i) A fit and proper board of directors and governance arrangements as required in terms of the Banks Act;
- (ii) A fit and proper executive structure, including having at least a full time appointed chief executive officer, chief risk officer, chief internal auditor, chief compliance officer and company secretary, as required in terms of the Banks Act and other applicable legislation;
- (iii) Ithala shall appoint a chief financial officer, treasurer, chief operating officer, chief information officer, head of credit and anti-money laundering officer, which appointments shall be subject to the approval of the Prudential Authority;
- (iv) A documented allocation of roles and responsibilities between the board of directors and executive management to the satisfaction of the Prudential Authority; and

- (v) The appointment of board members and executive officers, as defined in the Banks Act, shall be undertaken in accordance with a form BA020 process and the conclusion of all appointments, in this regard, shall be subject to the Prudential Authority's approval.

3.4.2. Ithala shall maintain the following performance standards in respect of its prudential requirements, calculated as prescribed by the Regulations relating to Banks:

- (i) A minimum required capital of 15% of risk-weighted assets or as determined by the Prudential Authority;
- (ii) A leverage ratio of not less than 5%; and
- (iii) Liquid assets of at least 7.5% of liabilities.

3.4.3. Ithala shall maintain the following performance standards in respect of its profitability and financial sustainability:

- (i) Ithala shall remain profitable at all times;
- (ii) A positive JAWS ratio (i.e. growth in operating income greater than growth in operating costs);
- (iii) Cost-to-income ratio of not more than 78% (i.e., operating costs divided by operating income excluding credit impairments); and
- (iv) Impaired loans and advances as a percentage of total loans and advances not greater than 8%.

3.5. Outsourcing:

3.5.1. Ithala may, with the prior consent of the Prudential Authority outsource key functions and or executive roles.

3.6. Sanctions and enforcement:

3.6.1. Ithala shall be subject to the provisions of Chapter 10 of the Financial Sector Regulation Act.

3.6.2. Ithala shall be subject to supervision and enforcement by the Prudential Authority to ensure compliance with the provisions of Financial Intelligence Centre Act, 2001 (Act 38 of 2001), as amended.

3.6.3. If Ithala fails (and is not able to show any good cause for such failure):

- (i) to submit any document or information required to be submitted or reported to the Prudential Authority as referred to or issued in terms of this Exemption Notice; and/or
- (ii) to publish any document or information as referred to or issued in terms of this Exemption Notice; and/or
- (iii) to submit or publish any document or information referred to in paragraph (i) or (ii) within the specified period,

Ithala will be liable for the payment of a penalty to the Prudential Authority, which penalty shall not exceed R5 000 for every day, excluding weekends and public holidays, during which the failure continues.

3.6.4. If Ithala fails to comply with any requirement referred to or issued in terms of this Exemption Notice the Prudential Authority may impose an administrative penalty in terms of Chapter 13 of the Financial Sector Regulation Act.

3.7. Application for a banking license:

3.7.1. Ithala shall submit its application for a banking license in terms of the Banks Act by no later than 6 months prior to the date of expiry of this Exemption Notice, i.e. by no later than 30 June 2021.

4. Amendment and withdrawal of Exemption

The Prudential Authority may amend or withdraw this Exemption Notice by notice published on the website of the Prudential Authority.

5. Short title and commencement

This Exemption Notice is called the "Designation by the Prudential Authority of certain activities of Ithala SOC Limited" and comes into operation on 1 January 2020 and expires on 31 December 2021.

This notice substitutes Government Notice No. 633 as published in *Government Gazette* No. 41064 dated 25 August 2017.



Kuben Naidoo
Deputy Governor and CEO: Prudential Authority

Signed at Pretoria on this the 11 day of DECEMBER 2019