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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### SOUTH AFRICAN RESERVE BANK

#### GENERAL NOTICE 1169 OF 2022

#### BANKS ACT, 1990 (ACT 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 the approval 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 until 15 December 2023, subject to the conditions set out in paragraph 4 of the schedule.

*Fundi Tshazibana*

Fundi Tshazibana  
Chief Executive Officer  
Prudential Authority  
Date: 12 July 2022

#### 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;

"**Mutual Banks Act**" means the Mutual Banks Act, 1993 (Act 124 of 1993), as amended and the Regulations relating to mutual banks; and

"**Prudential Authority**" means the authority established in terms of section 32 of the Financial Sector Regulation Act.

2. **Institution**

Ithala SOC Limited

**3. Background and intention**

- 3.1 Ithala is a subsidiary of the Ithala Corporation.
- 3.2 Exemption notices have been granted to Ithala such that its business shall not be deemed to constitute the business of a bank. In this regard, Ithala operates outside of the legal framework that governs the entities that are supervised by the Prudential Authority.
- 3.3 Ithala has been operating under exemption notice.
- 3.4 The intention behind the exemption notices has always been a temporary measure to allow Ithala to regularise its affairs as required and thereafter apply for registration as a deposit-taking institution.
- 3.5 This exemption granted to Ithala in terms of this exemption notice is granted to afford Ithala a final opportunity to regularise its deposit taking activities and accordingly should the conditions stipulated in this exemption notice not be met, in accordance with the terms and on the basis stipulated herein, then Ithala's deposit taking activities shall be subject to wind-down as detailed herein.

**4. Conditions**

- 4.1. 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 –
  - 4.1.1. 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
  - 4.1.2. 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.
- 4.2. In addition to the specific conditions set out below, the activities of Ithala shall also comply with-
  - (a) the Banks Act and any regulations, directives, circulars, guidance notes and notices issued by the Prudential Authority in terms of the Banks Act; and
  - (b) such other prudential, reporting, and regulatory requirements that may be imposed by the Prudential Authority from time to time.
- 4.3. **Authorisation to establish a bank or mutual bank**
  - 4.3.1. Ithala shall obtain authorisation from the Prudential Authority before 30 June 2023 to establish a bank as provided for in section 13 of the Banks Act or a mutual bank as provided for in section 14 of the Mutual Banks Act.
  - 4.3.2. The requirement to obtain authorisation to establish a bank or mutual bank does not in any way imply that Ithala will obtain such authorisation.
  - 4.3.3. Obtaining authorisation to establish a bank or mutual bank is dependent on Ithala complying with the requirements of the Banks Act or the Mutual Banks Act, as applicable.
  - 4.3.4. Ithala shall be required to submit its application for authorisation as referred to in 4.3.1 sufficiently in advance of 30 June 2023 so as to ensure that such application can be considered and a decision taken by the Prudential Authority in relation thereto prior to such date.
- 4.4. **Separation of lending and deposit-taking activities**

Ithala Corporation shall maintain a separation between the lending activities of Ithala Corporation and any deposit-taking activities conducted by Ithala.
- 4.5. **Protection of depositors' interests**

Ithala shall procure that the Provincial Government of KwaZulu-Natal or National

Government provides the following in respect of Ithala's obligations in terms of its deposit-taking activities, before 31 October 2022:

- (a) An irrevocable and unconditional commitment, valid until 31 March 2024, to fund all capital shortfalls of Ithala below the higher of R250 000 000 or 15% of risk-weighted assets, to be settled within 48 hours from the occurrence of the shortfall; and
- (b) an irrevocable and unconditional guarantee, valid until 31 March 2024, in favour of the Prudential Authority for the benefit of the depositors of Ithala equal to R0.75 for every R1.00 of depositor funds to be called on by the Prudential Authority should Ithala breach its minimum capital adequacy requirement of the higher of R250 000 000 or 15% of risk-weighted assets.

**4.6. Performance standards**

- 4.6.1. Ithala shall be subject to the supervision of the Prudential Authority in respect of its deposit-taking activities in terms of the Banks Act as if it is a registered bank.
- 4.6.2. Ithala shall maintain a fit and proper board of directors and governance arrangements as required in terms of the Banks Act and Directive 4/2018 issued in terms of the Banks Act.
- 4.6.3. Ithala shall maintain the following performance standards in respect of its prudential requirements, calculated as prescribed by the regulations in terms of the Banks Act:
  - (a) A minimum required capital of the higher of 15% of risk-weighted assets or R250 000 000 or as determined by the Prudential Authority; and
  - (b) a leverage ratio of not less than 4%.

**4.7. Sanctions and enforcement:**

- 4.7.1. Ithala shall be subject to the provisions of Chapter 10 of the Financial Sector Regulation Act.
- 4.7.2. Ithala shall be subject to supervision and enforcement by the Prudential Authority to ensure compliance with the provisions of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), as amended.
- 4.7.3. If Ithala fails (and is not able to show any good cause for such failure):
  - (a) 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.
- 4.7.4. 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.

**4.8. Wind-down of deposit-taking activities**

- 4.8.1. A wind-down of Ithala's deposit-taking activities shall occur, on written notice to Ithala from the Prudential Authority, if Ithala fails to—
  - (a) comply with any of the conditions or requirements in this Notice and not remedy the same within 48 hours or if the Prudential Authority withdraws this Notice; or
  - (b) obtain authorisation to establish a bank or mutual bank by 30 June 2023.
- 4.8.2. A wind-down will allow for the Prudential Authority to appoint a repayment administrator of its choice to take control of the operations of Ithala to ensure the orderly wind-down of its deposit-taking activities.
- 4.8.3. Ithala shall co-operate with the Prudential Authority and the repayment administrator to effect the orderly settlement and wind-down of its deposit-taking

activities.

4.9.

**Directive to Ithala**

4.9.1

Ithala is directed, in terms of the provision of section 131(1)(a) of the Financial Sector Regulation Act, to provide the Prudential Authority with specified information or a specified document under the control of Ithala, that is relevant to assisting the Prudential Authority in performing its functions in terms of a financial sector law. The specified information and document that the Prudential Authority requires from Ithala is a report to be compiled by an auditor, as selected by the Prudential Authority, by no later than 30 September 2022, at the cost of the Prudential Authority:

- (a) which will detail the manner in which, by no later than 31 March 2024, all depositor claims of Ithala can be settled, if required, through the wind-down of the deposit-taking activities of Ithala in an orderly manner or for the deposit-taking activities of Ithala to be transferred to a registered bank or mutual bank in terms of an alliance banking relationship or similar with minimal disruption to clients of Ithala;
- (b) by giving consideration and priority to the interests of all its stakeholders, in particular depositors and employees.