

## Chapter 3

### Developments related to banking legislation

ensure that legal framework remains relevant

A key responsibility of the Department is to ensure that the legal framework for the regulation and supervision of banks and banking groups in South Africa remains relevant and current. Consequently, the legal framework pertaining to banking regulation has to take account of local and international developments relating to the markets and the applicable regulatory standards. The Department, therefore, has to review the banking legislation – that is, the Banks Act, 1990, the Mutual Banks Act, 1993, the regulations thereto and other related banking legislation – on an ongoing basis and to effect the necessary amendments.

proposed amendments to Banks Act

In its previous *Annual Report* the Department provided an exposition of the proposed amendments to the Banks Act together with the reasons and motivations for such amendments. The proposed amendments were drafted by members of the Department and debated at a number of meetings of the Regulatory Framework Subcommittee (the Regulatory Subcommittee) of the Accord Implementation Forum (AIF). This process culminated in draft five of the proposed Banks Amendment Bill, 2006 (the Bill) being discussed and approved in principle by the Standing Committee for the Revision of the Banks Act (the Standing Committee), subject to certain changes that had to be affected, at a meeting held on 26 May 2006.

The Bill (draft six) was duly adapted in accordance with the directions of the Standing Committee and was submitted to the Minister of Finance for his consideration and approval to publish for comment. In September 2006 the Department was informed by the National Treasury that the Bill may be published on the Internet websites of both the National Treasury and the South African Reserve Bank for comment.

The Bill (draft six) was published on the above-mentioned websites on 7 September 2006 and the Department received comments up to and including 7 November 2006.

The Bill (draft six), together with the comments received, was debated at a meeting of the Standing Committee which was held on 15 November 2006. The Standing Committee made determinations about the (non)acceptability of individual comments received and approved the Bill on condition that the necessary amendments be effected. Feedback regarding the comments received and the determinations made by the Standing Committee was provided to the Regulatory Subcommittee at a meeting held on 24 November 2006. Feedback was also provided to the Steering Committee of the AIF at a meeting held on 27 November 2006. Both committees were satisfied with the Bill and the determinations that were made by the Standing Committee and no objections were raised.

Bill scheduled to be tabled in Parliament during 2007

The relevant determinations that were made by the Standing Committee were incorporated into the Bill which resulted in the production of draft seven of the Bill. The memorandum on the objectives of the Bill was also adapted accordingly. The date of the Bill was amended to refer to 2007, as the Bill is scheduled to be tabled in Parliament during 2007.

The Department has taken due care to produce a Bill that will not only serve as a basis for the successful implementation of the prescriptions of the new Capital Accord, Basel II, but will also continue to keep the legal framework pertaining to the regulation and supervision of banks in South Africa in compliance with international standards.

The Department is furthermore satisfied that the Bill is the product of thorough research that has been augmented by an extensive consultation process involving the banking industry, the auditing profession and the National Treasury, ensuring the attainment of broad consensus on the provisions and principles embodied in the Bill.

extensive consultation process

Although the short title of the Bill proposes that it comes into operation on 1 January 2008, this is merely stated to indicate the proposed implementation date of Basel II. It is hoped that the Bill will be promulgated much sooner to provide legal certainty not only to the banking industry, but also to the Department as the banking supervisor. Advance certainty about the legal framework would assist greatly in ensuring a smooth transition from the current Capital Accord to Basel II on 1 January 2008. In order to be prepared for the transition, all stakeholders involved in the process will be required to implement and adopt a vast number of current and new policies, processes and procedures in 2007.

new policies, processes and procedures

### Regulations relating to Banks

As indicated in the previous *Annual Report*, the prescriptions contained in Basel II have necessitated a complete review of the Regulations relating to Banks (Regulations). The process of drafting amendments to the Regulations has been managed via the AIF (refer also to the section on Basel II in Chapter Two) and its various subcommittees. On 31 August 2006 draft three of the proposed amendments to the Regulations (proposed Regulations) was submitted to the Minister of Finance for initial review and evaluation. Draft three of the proposed Regulations was also circulated to the AIF on 31 October 2006 for further testing and to facilitate discussion of high-priority issues.

review of Regulations

The Department received comments on draft three up to the end of December 2006. The comments received will be incorporated into the proposed Regulations and it is envisaged that draft four of the proposed Regulations will be available during the first quarter of 2007.

The proposed Regulations will be tabled at the Standing Committee during 2007 for its approval, after which it will be finalised and submitted to the Minister of Finance for his consideration and approval.

will be submitted to the Minister of Finance