



SOUTH AFRICAN RESERVE BANK

Prudential Authority

The Prudential Authority is a regulatory entity within the South African Reserve Bank (SARB) and is responsible for the prudential regulations of banks and insurance companies protecting depositors. Although Ithala SOC Limited (Ithala) is colloquially referred to as a bank, it is not a bank. Rather, Ithala has operated under several exemption notices granted in terms of section 1(1)(cc) of the Banks Act 94 of 1990 (Banks Act) since it was established. The last of these exemption notices (Final Exemption Notice) was issued in July 2022 and lapsed on 15 December 2023. Below are responses to frequently asked questions about the Prudential Authority's regulatory oversight of Ithala.

1. Why is Ithala not a registered bank?

The Banks Act does not allow provincially owned state-owned entities to be registered as banks. The Banks Act requires a bank to be a public company incorporated or registered as a national state-owned company under the Companies Act 71 of 2008 (Companies Act).

Ithala is not registered as a bank and has not successfully applied to be established as a bank. Rather, Ithala has accepted deposits based on the exemptions granted to it under the Banks Act.

2. What is an exemption notice?

Under the Banks Act, an exemption notice is a formal declaration issued by the Prudential Authority with the approval of the Minister of Finance that grants certain entities relief from specific regulatory requirements outlined in the Banks Act. Prior to the Prudential Authority's establishment in 2018, exemption notices were granted by the Minister of Finance.

Exemption notices are usually granted under specific conditions and have their own compliance requirements (conditions) to ensure the overall integrity and stability of the financial institution.

Exemption notices are granted for a limited period as a temporary mechanism to enable the regulated institution to apply for and comply with the full regulations (i.e. regularise its operations).

Operating a business of a bank without a banking licence or an exemption is an offence under the Banks Act.

3. Why was Ithala's application to register as a bank declined?

The Final Exemption Notice was granted to Ithala to afford it a final opportunity to regularise its deposit-taking activities following a series of non-compliance issues recorded as supervisory concerns by the Prudential Authority.

One of the conditions contained in the Final Exemption Notice required Ithala to obtain authorisation to establish a bank, which precedes the actual application for a banking licence, before 30 June 2023. Ithala failed to comply with this specific condition and all other conditions contained in the Final Exemption Notice, which were all linked.

Ithala's application for authorisation to establish a bank did not sufficiently demonstrate how it would address the numerous supervisory concerns raised by the Prudential Authority with which Ithala remained non-compliant.

Furthermore, and contrary to numerous representations that Ithala made over a considerable period of time to the Prudential Authority – and which the institution relied on in granting exemptions, including the Final Exemption Notice – Ithala failed to restructure to meet the requirements of the Banks Act for authorisation to establish a bank or a mutual bank under the Mutual Banks Act 124 of 1993.

4. Why is Ithala no longer covered by an exemption notice?

The Final Exemption Notice was issued pursuant to representations that Ithala made to the Prudential Authority in June 2022. Ithala failed to comply with all of the conditions imposed in the Final Exemption Notice. Ithala also unsuccessfully launched various court processes to review and set aside the conditions imposed in the Final Exemption Notice.

The Final Exemption Notice lapsed on 15 December 2023. This was confirmed by a court order.

5. What concerns has the Prudential Authority flagged with regard to Ithala?

Ithala has failed to comply with all of the conditions of the Final Exemption Notice, including submitting its annual financial statements on time and being audited in accordance with the provisions of the Financial Sector Regulation Act 9 of 2017.

Moreover, the Prudential Authority has raised numerous supervisory concerns regarding Ithala's corporate governance, prudential compliance and risk management, which have persisted since its early years.

Over the years, the Prudential Authority has also expressed concerns regarding the effectiveness of Ithala's boards, particularly regarding:

- compliance with the exemption notice and applicable legislation and Ithala's adherence to banking practices;
- prolonged vacancies;
- challenges in attracting experienced and skilled banking executives; and
- challenges in establishing a succession planning framework, which have contributed to the complexities faced by Ithala.

Ithala has also experienced instability at the executive management level due to high rates of attrition.

Moreover, there have been several instances of non-compliance associated with anti-money laundering and combating the financing of terrorism. These could not be resolved without significant investment into a new information technology system.

Ithala was also the subject of a Prudential Authority investigation into alleged mismanagement in relation to its initiative to modernise its core banking system.

The project, contracted to Tech Mahindra, was unsuccessful and clouded by maladministration, resulting in R34.97 million in wasteful expenditure in 2020. The Prudential Authority's investigation found that Ithala did not act to recover the lost funds beyond reporting a criminal case to the police.

The Prudential Authority communicated all matters of non-compliance to Ithala through various correspondence and provided the entity with several opportunities to make representations. While Ithala has used such opportunities, the entity's comments and representations remained largely unchanged.

6. What is Ithala's financial position?

Between 31 March 2008 and 31 March 2024, Ithala's losses amounted to R520 million. Committed capital injections have merely absorbed losses, hindering capital deployment

to grow Ithala's balance sheet. Ithala has a high cost structure relative to its nature, size, complexity and risk profile.

The tables below depict Ithala's capital injection and financial performance since 2008.

Financial Year Period	Mar-08	Mar-09	Mar 2010	Mar 2011	Mar 2012	Mar 2013	Mar 2014	Mar 2015	Mar 2016
	R '000	R '000	R '000	R '000	R '000	R '000	R '000	R '000	R '000
Profit / (loss) for the year	24,126	1,112	(46,717)	(41,040)	(7,746)	(24,384)	(69,980)	543	24
Capital injections received				115			105,000	50,000	29,900
Financial Year Period	Mar 2017	Mar 2018	Mar 2019	Mar 2020	Mar 2021	Mar 2022	Mar 2023	Mar 2024	Accumulated Total since Mar 2008
	R '000	R '000	R '000	R '000	R '000	R '000	R '000	R '000	R '000
Profit / (loss) for the year	(46,327)	(32,684)	(25,726)	(5,726)	(43,572)	(53,916)	(57,332)	(90,548)	(519,893)
Capital injections received		60,000	74,788	89,760	59,000	65,123	65,000	51,142	649,828
Net capital injected (Capital injected less profit/(loss))									129,935

7. What happened after Ithala's final exemption expired?

In a letter dated 8 December 2023, the Prudential Authority advised Ithala that it would appoint a Repayment Administrator to take control of the deposits held by the entity. Ithala would be holding deposits unlawfully after the Final Exemption Notice's expiration on 15 December 2023.

Together with the Repayment Administrator, Ithala was required to devise a plan for safeguarding and/or repaying the deposits in the interests of the depositors beyond 15 December 2023.

In anticipation of the deadline, the Prudential Authority initially appointed the Repayment Administrator on 12 December 2023 under the provisions of the Final Exemption Notice. Ithala was requested to provide an undertaking that it would cooperate with the appointed Repayment Administrator. Ithala failed to do so.

The Prudential Authority approached the Pretoria High Court and obtained an order confirming that Final Exemption Notice had lapsed and ordering Ithala to cooperate with the appointed Repayment Administrator.

The Repayment Administrator was appointed in terms of the provisions of the Banks Act on 18 December 2023.

The powers of the Repayment Administrator became the subject of litigation. The court ruling on the powers of the Repayment Administrator, which limited the said powers, is currently a subject of a leave to appeal.

Ithala also launched proceedings in the Pretoria High Court in February 2024 seeking, among others, an order that it is allowed (in terms of the previous court order granted in December 2023) to continue taking deposits under the supervision of the appointed Repayment Administrator despite the Final Exemption Notice having lapsed.

The Pretoria High Court dismissed Ithala's application and its subsequent application for leave to appeal was also dismissed by the Supreme Court of Appeal (SCA). Ithala requested that the Judge President of the SCA reconsider the decision and was subsequently granted an opportunity to argue its application for leave to appeal.

On 18 July 2024, Ithala filed another application in the Pretoria High Court asking that the court direct the Prudential Authority to issue a notice permitting the entity to continue taking deposits for a period of 12 months. The matter is still pending.

In Ithala's latest application, the Prudential Authority and the Repayment Administrator have argued that this issue has already been determined by the Pretoria High Court and cannot be determined a second time.

8. Has Ithala taken the PA to court before?

Yes. Ithala has launched at least six litigation matters challenging the Prudential Authority's implementation of its mandate.

The court has consistently ruled in favour of the Prudential Authority in these cases and Ithala has been obligated to cover the associated costs. Despite these rulings, Ithala has pursued appeals, which have been dismissed and resulted in additional costs to entity.

The Prudential Authority is significantly concerned that Ithala's conduct regarding litigation, particularly the cost of litigation, has the potential to erode the funding available to repay deposits. In this regard, the Prudential Authority has filed an application to have the directors of Ithala joined to the latest proceedings in the Pretoria High Court. If successful, they could be held personally liable for the costs incurred arising from the litigation.

9. What is the role of the Financial Sector Conduct Authority in relation to Ithala?

While Ithala was never granted a banking licence, the entity was authorised in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) to act as a category 1 financial services provider.

However, through its supervision of Ithala, the Financial Sector Conduct Authority (FSCA) found that the entity failed to meet certain financial soundness requirements aimed at protecting the interests of financial customers.

Thus, the FSCA suspended Ithala's licence effective from 26 July 2024. The suspension will remain in place until Ithala meets the conditions for it to be lifted.

The suspension of Ithala's licence means that the entity is prohibited from concluding any new business as envisaged by the FAIS Act. Ithala must, in consultation with stakeholders, take reasonable steps to ensure that any outstanding business is transferred to another authorised financial services provider.

Under the suspension, Ithala is permitted to continue providing financial services for existing business. To read more about the FSCA's supervision of Ithala, [click here](#).

10. Why has the Prudential Authority applied for the liquidation of Ithala?

Following an assessment of the entity's financial position, the appointed Repayment Administrator established that Ithala was both technically and legally insolvent. The Prudential Authority subsequently applied to the Pietermaritzburg High Court for Ithala to be liquidated. This was to protect the approximately 257 000 Ithala depositors. Liquidation allows for the appointed liquidator to utilise insolvency legislation to recover and fairly distribute depositors' funds to the that is extent possible.

11. Has Ithala applied for a banking licence?

Ithala has applied for a banking licence; however, the entity's application to establish a bank did not adequately address the various supervisory concerns raised by the Prudential Authority. Ithala also remained non-compliant.

It is important to note that the Banks Act prohibits provincially owned state entities from being registered as banks. According to the Banks Act, a bank must be a public company incorporated or registered as a national state-owned company under the Companies Act. Ithala previously maintained that it would be able to amend the Banks Act through the appropriate channels to allow it to properly apply for a banking licence.

12. Does Ithala qualify for a banking licence?

The Banks Act does not allow provincially owned state-owned entities to be registered as banks. It requires a bank to be a public company incorporated or registered as a national state-owned company under the Companies Act. Therefore, Ithala does not currently qualify for a commercial banking licence.

13. Why did the Prudential Authority freeze depositors' accounts?

Following the solvency report issued by the Repayment Administrator, the Prudential Authority directed Ithala to repay the deposits the entity held unlawfully. However, Ithala failed to do so. In line with the Prudential Authority's mandate to ensure financial integrity and protect depositors, it was prudent to freeze their accounts to minimise a potential run on Ithala, which would be damaging to the depositors.

14. What will happen to my funds deposited with Ithala?

Depositors must note that National Treasury has written to the Prudential Authority, advising that the government will guarantee their funds. You can read National Treasury's media release [here](#).

15. When will the court hear the matter?

It is important to note that there may be two separate legal processes. Ithala has lodged an urgent interdict against the closure of the accounts, which is likely to be heard on 28 January 2025. Meanwhile, the Prudential Authority's liquidation case is scheduled for 30 January 2025. However, court processes can sometimes change or be delayed, so these dates may change.

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