

2003-04-22

TO ALL BANKS, BRANCHES OF FOREIGN BANKS AND MUTUAL BANKS

BANKS ACT CIRCULAR 8/2003

ISSUE OF CERTAIN CAPITAL INSTRUMENTS

1. INTRODUCTION

It has come to the attention of this Office that banks appear to be issuing an increasing number of non-redeemable non-cumulative preference shares of which the proceeds rank as primary share capital. The purpose of this circular is to advise the banking industry of a policy decision to amend the Banks Act (Act No. 94 of 1990 – “the Banks Act”), and the Regulations relating to Banks (“the Regulations”), which amendment may directly affect the capital expansion strategies of banks in the future.

2. PROPOSED AMENDMENTS TO THE LEGISLATION

Following worldwide concern about the safety and soundness of financial systems as a result of, amongst other things, volatility in financial markets, and the subsequent issue of various types of capital instrument by banks in order to strengthen their capital bases, this Office has decided to amend the Banks Act and, subsequently, the Regulations to ensure that the ratio of ordinary shares to non-redeemable non-cumulative preference shares (“the preference shares”), forming part of the total primary share capital and primary unimpaired reserve funds of a bank, shall at no time be less than 80:20.

Any future decision on the issue of the preference shares should take the aforementioned proposed amendment to the Banks Act and the Regulations into consideration in order for the proceeds of the issue of the preference shares to qualify as primary share capital of a bank.

The intention is that, should a bank not meet the proposed ratio, approval for the issue of further non-redeemable, non-cumulative preference shares ranking as primary share capital will not be granted until the bank aligns itself with the aforementioned ratio, and the amount of non-redeemable, non-cumulative preference shares that have already been issued will qualify as primary share capital only to the extent that the amount falls within the required ratio.

Furthermore, a policy decision has been made to amend the required ratio of primary capital to secondary capital to 75:25. A description of the types of instrument that will qualify as primary capital and secondary capital, as well as the types of instrument that may be taken into consideration when a bank calculates its compliance with the prescribed ratio of 75:25, will be included in subsequent circulars and will be discussed with banks. Further details of the policy decision and proposed amendments to the Banks Act and the Regulations will be released in due course.

3. ACKNOWLEDGEMENT OF RECEIPT

Two additional copies of this circular are enclosed for the use of your institution's external auditors. The attached acknowledgement of receipt, duly completed and signed by both the chief executive officer of the institution and the said auditors, should be returned to this Office at the earliest convenience of the aforementioned signatories.

C F Wiese
Registrar of Banks

The previous circular issued was Banks Act Circular 7/2003 dated 13 March 2003.