



2003-03-12

TO ALL BANKS, BRANCHES OF FOREIGN BANKS AND MUTUAL BANKS

BANKS ACT CIRCULAR 5/2003

PROPOSED AMENDED LEGISLATION: DESIGNATION OF AN ACTIVITY NOT FALLING WITHIN THE MEANING OF "THE BUSINESS OF A BANK" - SECURITISATION SCHEMES, INCLUDING TRADITIONAL SECURITISATION SCHEMES AND SYNTHETIC SECURITISATION SCHEMES

EXECUTIVE SUMMARY

On 13 December 2001, an amended framework relating to asset securitisation was published in Government Notice No. 1375 ("the securitisation notice"), in *Government Gazette* No. 22948.

Following the publication of regulations to provide for the regulation and supervision of credit-derivative instruments, in Government Notices No. R.1464 and No. R.1465, in *Government Gazette* No. 24088 on 22 November 2002, it became necessary to amend the securitisation notice in order to distinguish between traditional and synthetic securitisation schemes.

Following extensive research of the best international regulatory and market practices, subsequent to the issue of the securitisation notice in 2001 and the regulations that provide for the regulation and supervision of credit-derivative instruments in 2002, this Office drafted a proposed amended securitisation notice in order to make a distinction between and to regulate both traditional and synthetic securitisation schemes.

The proposed amended securitisation notice was released for comment, at the beginning of March 2003, and is available at the South African Reserve Bank's Internet Website, at www.reservebank.co.za, under Bank Supervision, South African banking legislation, Proposed amendments to legislation.

Comments on the proposed amended securitisation notice should reach this Office by no later than 30 April 2003.

1. INTRODUCTION

On 13 December 2001, an amended framework relating to asset securitisation was published in Government Notice No. 1375 ("the securitisation notice"), in *Government Gazette* No. 22948. In terms of the securitisation notice, banks may participate in, amongst other things, a securitisation scheme in a primary role, that is, as an originator, a remote originator, a sponsor or a repackager, or in a secondary role, that is, as a servicing agent, a provider of a credit-enhancement facility or a liquidity facility, an underwriter or a purchaser of senior commercial paper.

Following the publication of regulations to provide for the regulation and supervision of credit-derivative instruments, in Government Notices No. R.1464 and No. R.1465, in *Government Gazette* No. 24088 on 22 November 2002, it became necessary to amend the securitisation notice in order to distinguish between traditional and synthetic securitisation schemes.

A traditional securitisation scheme involves the legal and economic transfer of assets to a special-purpose institution that issues asset-backed securities that are claims against a specific asset pool. Different classes of asset-backed security are issued, and each class has a different priority claim on the cash flows originating from the underlying pool of assets.

A synthetic securitisation scheme, on the other hand, refers to a structured transaction whereby an institution uses a portfolio credit-derivative instrument to tranche and transfer the credit risk and/or market risk associated with a specified pool of assets to a special-purpose institution. The resulting credit exposures have different levels of seniority.

2. ISSUE OF PROPOSED AMENDED SECURITISATION NOTICE

Following extensive research of the best international regulatory and market practices subsequent to the issue of the securitisation notice in 2001 and the regulations that provide for the regulation and supervision of credit-derivative instruments in 2002, this Office drafted a proposed amended securitisation notice in order to make a distinction between and to regulate both traditional and synthetic securitisation schemes.

This Office is of the opinion that the proposed amendment to the securitisation notice creates an environment that will allow for a strong corporate-debt market to develop in the South African capital market.

3. COMMENTS ON PROPOSED AMENDED SECURITISATION NOTICE

The proposed amended securitisation notice was released for comment at the beginning of March 2003 and is available at the South African Reserve Bank's Internet Website, at www.reservebank.co.za, under Bank Supervision, South African banking legislation, Proposed amendments to legislation.

Comments on the proposed amended securitisation notice should reach this Office by no later than 30 April 2003.

4. ACKNOWLEDGEMENT OF RECEIPT

Two additional copies of this circular are enclosed for the use of your institution's independent 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 4/2003 dated 12 February 2003.