

2004-03-05

TO ALL BANKS, BRANCHES OF FOREIGN BANKS, MUTUAL BANKS, REPRESENTATIVE OFFICES OF FOREIGN BANKING INSTITUTIONS OPERATING IN SOUTH AFRICA AND REPRESENTATIVE OFFICES OF SOUTH AFRICAN BANKS OPERATING ABROAD

BANKS ACT CIRCULAR 3/2004

AMENDMENTS TO THE REQUIREMENTS FOR THE CONDUCTING OF THE BUSINESS OF A REPRESENTATIVE OFFICE OF A FOREIGN BANKING INSTITUTION OPERATING IN SOUTH AFRICA AND OF A REPRESENTATIVE OFFICE OF A SOUTH AFRICAN BANK OPERATING ABROAD

1. INTRODUCTION

In this circular, the term chief representative officer ("CRO") refers to both the chief representative officer of a representative office of a foreign banking institution operating in South Africa and the chief representative officer of a representative office of a South African banking institution operating abroad.

The purpose of this circular is to inform CROs of their responsibility to report to this Office, on an annual basis, on the adequacy and effectiveness of the representative offices' internal controls. Should the CRO be the only employee of a representative office, the international division of the head office of the representative office ("international division") will be responsible for furnishing this Office with the aforementioned information.

A secondary purpose of this circular is to inform the CROs of representative offices of foreign banking institutions operating in South Africa of their responsibility to report any change to the information originally submitted to this Office in the forms RO 003 and RO 004.

The attention of the CROs of representative offices of South African banking institutions operating abroad is drawn to the requirement to report any changes to the information originally submitted to this Office in terms of section 52(4)(a) to (c) of the Banks Act, 1990, as soon as any such change occurs.

2. AMENDMENTS TO THE CURRENT REGULATORY FRAMEWORK

2.1 Reporting by a Representative Office of a Foreign Banking Institution Operating in South Africa and by a Representative Office of a South African Banking Institution Operating Abroad on the Adequacy and Effectiveness of the Representative Office's Internal Controls

2.1.1 Internal controls

The CRO, or the international division, is responsible for ensuring that adequate and effective internal controls, consistent with the nature, complexity and risk inherent in the representative office's activities and which respond to changes in the representative office's environment and conditions, are established and maintained.

Furthermore, it shall be the duty of every CRO, or the international division, to ensure that the conduct of the business of the representative office is managed in a prudent manner.

2.1.2 Internal control report

The CRO, or the international division, shall annually, by not later than 31 January of each year, report to the Registrar whether:

- (a) the representative office's internal controls provide reasonable assurance as to the integrity and reliability of the representative office's monthly budgetary statements and safeguard, verify and maintain accountability of the representative office's assets and activities;
- (b) the internal controls are based on established policies and procedures and are implemented by trained, skilled personnel, whose duties have been segregated appropriately;
- (c) adherence to the implemented internal controls is continuously monitored by the representative office or the aforementioned international division;
- (d) all representative office employees have maintained high ethical standards in the execution of their duties, thereby ensuring that the representative office's business practices are conducted in a manner that is above reproach; and
- (e) the system of internal control has functioned effectively throughout the preceding twelve month period, that is, the period from 1 January to 31 December of the previous year.

2.1.3 Auditors' report

The external auditors of the representative office, or the external auditors of the international division, shall annually report to the Registrar whether they concur with the internal control reports mentioned in paragraph 2.1.2 above. If the external auditors do not concur with the said reports, they shall provide reasons therefor.

Please note that in the case of a representative office of a foreign banking institution operating in South Africa, the external auditors' report shall be submitted together with the application for the renewal of the representative office's licence, that is, by not later than 31 January of each year.

In the case of a representative office of a South African banking institution operating abroad, the external auditors' report shall be submitted to this Office by not later than 31 January of each year.

2.1.4 Ad hoc reporting

During reporting periods, the CRO, or the international division, shall immediately report to the Registrar on any matter that has come to the attention of the CRO or the international division to indicate that a breakdown in the aforementioned controls, procedures and systems occurred.

2.2 Changes to Information in Forms RO 003 and RO 004 forwarded by a Representative Office of a Foreign Banking Institution

The CRO, or the international division, shall -

- (a) inform the Registrar in writing, within seven days of the occurrence thereof, of any change to the information originally furnished to this Office in the form RO 003, prescribed in Annexure C to the Regulations relating to Representative Offices ("the Regulations");
- (b) submit a statement and declaration in the format of form RO 004, prescribed in Annexure D to the Regulations, duly completed in the manner as prescribed in regulation 3(c) of the Regulations.

2.3 Changes to Information Furnished by a Representative Office of a South African Banking Institution, in terms of section 52 (4) of the Banks Act, 1990

The CRO, or the international division, shall -

- (a) inform the Registrar in writing, as soon as it occurs, of any change to the information originally furnished to this Office in terms of section 52(4)(a) to (c) of the Banks Act, 1990.

3. ACKNOWLEDGEMENT OF RECEIPT

An additional copy of this circular is enclosed for the use of the international division's external auditors. The attached acknowledgement of receipt, duly completed and signed by the CRO of the representative office, should be returned to this Office at the CRO's earliest convenience.

E M Kruger
Registrar of Banks

The previous circular issued was Banks Act Circular 2/2004 dated 27 February 2004.