

2004-04-26

TO ALL BANKS, BRANCHES OF FOREIGN BANKS AND MUTUAL BANKS
BANKS ACT CIRCULAR 5/2004

**TRILATERAL DISCUSSIONS TO BE HELD DURING THE 2004 AND 2005
CALENDAR YEARS**

EXECUTIVE SUMMARY

This circular serves to inform all reporting banks of the broadening of the scope of trilateral discussions for the calendar years 2004 and 2005 to include, in addition to the activities of the Audit Committee, the activities of both the Risk Committee and Directors Affairs Committee, as prescribed in section 64A and 64B of the Banks Act 1990 (Act No. 94 of 1990 – “the Act”).

1. Background

In order to enhance corporate governance within banks, section 64 of the Act was amended on 5 August 2003 (Banks Amendment Act No. 19 of 2003), requiring the board of directors of a bank to appoint a Risk Committee and a Directors Affairs Committee.

2. Introduction

- 2.1 As set out in section 64A and 64B of the Act, the establishment of a Risk Committee and a Directors Affairs Committee, by banks, has become mandatory. This Office therefore deems it necessary to broaden the scope of annual tri-lateral discussions, in respect of the 2004 and 2005 calendar years, to include discussions pertaining to the activities of these committees.
- 2.2 Since these committees have been appointed to assist the board of directors in fulfilling their duties, and to further enhance corporate governance within banks, this Office therefore also deems it necessary to discuss with committee members the issues emanating from the said committee meetings.

- 2.3 In order to assist this Office in evaluating the functioning of these committees, and in turn compliance with the Act, the scope of trilateral discussions to be held during the 2004 and 2005 calendar years will, accordingly, in addition to the discussion of any specific flavour of the year topic chosen for any bank, include discussions relating to the activities of the Audit Committee, the Risk Committee and the Directors Affairs Committee.

3. Format of Trilateral Discussions

- 3.1 The discussions, with respect to the activities of each of the above-mentioned committees, will, *inter alia*, include the committees presenting to this Office the following:
- 3.1.1 terms of reference, as set out in the approved committee charter document;
 - 3.1.2 the composition and membership of the committee;
 - 3.1.3 functioning of the committees, including details pertaining to the frequency of meetings, issues discussed and compliance with the attainment of duties and responsibilities as prescribed in the Act; and
 - 3.1.4 key decisions taken and implemented by the committees.
- 3.2 Each institution must, at least one month prior to the date of the trilateral discussions, supply this Office with the following documents:
- 3.2.1 certified copies of the minutes of meetings held by the respective committees since 1 January 2004;
 - 3.2.2 details of the composition and membership of the committees, together with certified copies of board resolutions confirming the appointment of the committee members; and
 - 3.2.3 any other information which the committees may deem to be of relevance.
- 3.3 This Office will, at least one month prior to the date of the trilateral discussions, provide each institution with a detailed agenda, incorporating additional issues to those outlined above, such as, the specific flavour of the year topic chosen for the bank and feedback required from the Audit Committee.

4. Attendees and Duration

All members of the Audit Committee, Risk Committee and Directors Affairs Committee are required to attend the trilateral discussions. The external auditors, head of internal audit, head of risk and head of compliance would, as in the past, continue to attend. In an *ex officio* capacity, as in the past, the chief executive officer and financial director would also attend. The duration of the discussions is expected to be approximately three hours.

5. 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 of the institution and the said auditors should be returned to this Office at the earliest convenience of the afore-mentioned signatories.

**E M KRUGER
REGISTRAR OF BANKS**

ENCL. 3

The previous circular issued was Banks Act Circular 4/2004 dated 19 April 2004.