



South African Reserve Bank  
From the Office of  
the Registrar of Banks

D3/09

2009-02-05

**To: Banks, Controlling companies and Branches of Foreign Institutions**

**Directive 3/2009 issued in terms of section 6 (6) of the Banks Act, 1990**

**Limit in respect of effective net open foreign-currency position, and matters related to the unencumbered assets to be held by branches of foreign institutions**

#### **Executive summary**

Previously, a specific limit in respect of a bank, controlling company or branch of a foreign institution's effective net open foreign currency position(s) was prescribed in the Regulations relating to Banks, whilst the Regulations relating to branches contained specific requirements related to the endowment capital of branches of foreign institutions.

During the past few years the Regulations relating to Banks and the Regulations relating to branches were comprehensively amended in accordance with the latest international regulatory, supervisory and market best practices and specific policy related proposals or developments.

The directives specified below provide further clarity relating to a bank, controlling company or branch of a foreign institution's effective net open foreign currency position(s) and matters related to the unencumbered assets to be held by branches of foreign institutions.

#### **1. Introduction**

1.1 Previously, regulation 33(7) of the Regulations relating to Banks stated that the aggregate effective net open position of-

1.1.1 the reporting bank in the Republic, together with its foreign operations, calculated in the manner prescribed in the form DI 600, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any one day exceed an amount equal to 10 per cent, or such

a lower percentage as may be specified in writing by the Registrar, of the net qualifying capital and reserve funds of the said reporting bank, as shown in line item number 39 on the form DI 100 as at the reporting date preceding the previous reporting date for which the relevant statement was submitted;

- 1.1.2 a branch of a foreign institution that conducts the business of a bank through its branch in the Republic, calculated in the manner prescribed in the form DI 600, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any one day exceed an amount equal to 10 per cent, or such a lower percentage as may be specified in writing by the Registrar, of the qualifying capital and reserve funds of the said foreign institution at the month-end preceding the previous reporting date for which the relevant statement was submitted.

The reason for allowing branches of foreign banks to base their aggregate effective net open foreign-currency position on the capital and reserve funds of their respective parent institutions, instead of on the local branches' capital and reserve funds, is to facilitate the branches' increased participation in the South African financial markets and to promote business flows and transactions through the South African branch or operation.

- 1.2 Subsequently, branches of foreign institutions requested that the definition of endowment capital be amended. Following extensive discussions with representatives of branches of foreign institutions agreement was reached on the so-called 60:40 rule in terms of which a foreign branch is required to invest a substantial portion (60 per cent was agreed to at the time) of its specified liabilities to the advantage of the local economy. The Regulations relating to branches were subsequently amended to include an enabling provision as set out and explained in paragraph 2.2 below.
- 1.3 During the past few years the Regulations relating to Banks and the Regulations relating to branches were comprehensively amended in accordance with the latest international regulatory, supervisory and market best practices and specific policy related proposals or developments. Based on the latest international regulatory, supervisory and market best practices, and in order to effectively and speedily accommodate future developments impacting banks' foreign exposure or investments, it was decided that an enabling provision be inserted in the amended Regulations relating to Banks, and on the newly introduced form BA325, as set out and explained in paragraph 2.1 below.

## **2. Amended Regulations relating to Banks and amended Regulations relating to branches**

- 2.1 Regulation 29(3) of the amended Regulations relating to Banks states that the aggregate effective net open position of the reporting bank in the Republic, together with its foreign operations, calculated in the manner prescribed in the form BA 325, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any day exceed an amount specified in writing by the Registrar.

In accordance with the aforesaid directive, the form BA325, item 71, states "Limit specified by the Registrar."

- 2.2 Furthermore, paragraph 1(3)(f) of the amended Regulations relating to branches states that the value of the unencumbered assets of a branch shall not amount to less than such a percentage of its liabilities in the Republic as specified in writing by the Registrar, provided that the branch shall calculate the relevant required amount of its unencumbered assets and its liabilities in the Republic on a daily basis and shall report such amounts to the Registrar, in writing, every calendar month.
- 2.3 Finally, paragraph 1(3)(g) of the amended Regulations relating to branches states that the aggregate effective net open foreign currency position of a branch shall be calculated in the manner prescribed in the form BA 325 of the Regulations relating to Banks and shall not at the close of business on any day exceed an amount specified in writing by the Registrar.

### **3. Other relevant references**

- 3.1 During October 2006, the Basel Committee on Banking Supervision published the amended Core Principles for Effective Banking Supervision (Core Principles). The Core Principles have become de facto the standard for sound prudential regulation and supervision of banks and banking groups. Banking supervisors the world over concur that the adoption of the Core Principles enhances not only a banking supervisory system, but also the banking and financial sector in general.

In this regard-

- 3.1.1 Core Principle 13 of the Core Principles, which Core Principle deals with matters related to market risk, contains the requirements or principles specified below:
- 3.1.1.1 Supervisors must be satisfied that banks have in place policies and processes that accurately identify, measure, monitor and control market risks and supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposures, if warranted.
- 3.1.1.2 The supervisor determines that a bank has suitable policies and processes that clearly articulate roles and responsibilities related to the identification, measuring, monitoring and control of market risk. The supervisor is satisfied that policies and processes are adhered to in practice and are subject to appropriate Board and senior management oversight.
- 3.1.1.3 The supervisor determines that the bank has set market risk limits that are commensurate with the institution's size and complexity and that reflect all material market risks. Limits should be approved by the Board or senior management. The supervisor confirms that any limits (either internal or imposed by the supervisor) are adhered to.

- 3.1.2 Core Principle 25 of the Core Principles, which Core Principle deals with matters related to home-host relationships, contains the requirement or principle specified below:
- 3.1.2.1 A host supervisor's national laws or regulations require that the cross-border operations of foreign banks are subject to prudential, inspection and regulatory reporting requirements similar to those for domestic banks.
- 3.2 The aforesaid requirements and/or principles have been incorporated into the amended Regulations relating to Banks and the amended Regulations relating to branches.

#### **4. Directives**

- 4.1 Based on the aforesaid and the comments received from interested persons following the earlier extensive consultation process, the Bank Supervision Department hereby issues the directives specified in paragraphs 4.2 and 4.3 below.
- 4.2 The aggregate effective net open foreign-currency position of-
- 4.2.1 a bank in the Republic, together with its foreign operations, calculated in the manner prescribed in and reported in item 70 of the form BA325, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any day exceed an amount equal to 10 per cent, or such a lower percentage as may be specified in writing by the Registrar, of the net qualifying capital and reserve funds of the reporting bank, as shown in line item 104 of the form BA700 as at the reporting date preceding the reporting date for which the relevant form was submitted;
- 4.2.2 a controlling company, together with its foreign operations, calculated in the manner prescribed in the form BA325 read with and reported in the form BA600, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any day exceed an amount equal to 10 per cent, or such a lower percentage as may be specified in writing by the Registrar, of the net qualifying capital and reserve funds of the reporting controlling company, as shown in line item 104 of the form BA700 as at the reporting date preceding the reporting date for which the relevant form was submitted;
- 4.2.3 a branch of a foreign institution that conducts the business of a bank through its branch in the Republic as envisaged in section 18A of the Act, calculated in the manner prescribed in and reported in item 70 of the form BA325, in any one foreign currency and in all foreign currencies taken together, shall not at the close of business on any day exceed an amount equal to 10 per cent, or such a lower percentage as may be specified in writing by the Registrar, of the qualifying capital and reserve funds of the said foreign institution at the month-end preceding the reporting date for which the relevant form was submitted.

Provided that the Registrar may issue in writing such further conditions or requirements relating to a bank, controlling company or branch of a foreign institution's exposure to and/or transactions in foreign currency as the Registrar deems appropriate.

- 4.3 A branch of a foreign institution shall manage its affairs in such a manner that the value of the unencumbered assets of the branch at no time amounts to less than 60 per cent of item 79 of the form BA100, which item relates to the reporting branch's total liabilities in the Republic, as at the latest reporting date for which the relevant statement was submitted.
- 4.4 "Assets of a branch" as defined in the Conditions for the conducting of the business of a bank by a foreign institution by means of a branch in the Republic means assets of a foreign institution that are situated in the Republic, and which –
- (a) have been allocated and provided by the foreign institution to its branch; or
  - (b) are otherwise maintained in the possession or under the control of the management of a branch of the foreign institution in question.

## 5. Acknowledgement of receipt

- 5.1 Two additional copies of this directive 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.



E M Kruger  
**Registrar of Banks**

The previous directive issued was Directive 2/2009 dated 5 January 2009.