



South African Reserve Bank

From the Office of  
the Registrar of Banks

D1/2013

2013-02-25

**To: All banks, controlling companies, branches of foreign institutions, eligible institutions and auditors of banks or controlling companies**

**Directive 1/2013 issued in terms of section 6(6) of the Banks Act, 1990**

**Matters related to qualifying capital instruments issued by subsidiaries of banks or controlling companies**

### Executive summary

The amended Regulations relating to Banks (the Regulations), which set out, among other things, the qualifying criteria for common equity tier 1 capital instruments, additional tier 1 capital instruments and tier 2 capital instruments were implemented with effect from 1 January 2013.

This directive serves to inform banks, controlling companies and auditors of banks or controlling companies (hereinafter collectively referred to as 'banks') of further considerations and requirements pertaining to the approval of qualifying additional tier 1 capital instruments and qualifying tier 2 capital instruments issued out of subsidiaries for inclusion into the consolidated amount of qualifying capital and reserve funds.

## **1. Introduction**

1.1 According to regulation 38(16) of the Regulations, no bank may include in its consolidated amount of qualifying capital and reserve funds any minority interest arising from the issuance of shares or instruments by a fully consolidated subsidiary of the reporting bank or controlling company in respect of third-party investors, unless such shares or instruments adhere to specific conditions set out in regulations 38(16)(a), 38(16)(b) and 38(16)(c) of the Regulations.

- 1.2 Furthermore, the relevant proceeds from the issuances of shares or instruments may be included in the total consolidated amount of qualifying common equity tier 1, additional tier 1 or tier 2 capital only when the relevant instruments would, if issued by the bank or controlling company, comply with all the relevant criteria or requirements specified in regulations 38(13)(a), 38(13)(b) or 38(14) respectively of the Regulations, provided that the amount of capital to be included in the relevant category of capital shall be determined in accordance with the relevant requirements specified in regulation 38(16) of the Regulations.

## **2. Directive**

- 2.1 Banks are hereby directed, with effect from 1 January 2013, to furnish this Office with the information specified below, prior to the inclusion of any relevant amount related to shares or instruments in the consolidated amount of qualifying capital and reserve funds, in terms of the provisions of regulation 38 of the Regulations:
  - 2.1.1 The prior written approval of the applicant bank's host-country authority (in the case of a foreign subsidiary) for the issuance of the shares or instruments (except in the case of ordinary shares).
  - 2.1.2 The applicant bank's duly motivated arguments on whether the instruments meet the qualifying criteria specified in the Regulations, specifically regulation 38(13)(a) for the proceeds of instruments to qualify as common equity tier 1 capital, regulation 38(13)(b) for the proceeds of instruments to qualify as additional tier 1 capital, and regulation 38(14)(a) for the proceeds of instruments to qualify as tier 2 capital.
- 2.2 Furthermore, in respect of all instruments issued and included in the total consolidated amount of qualifying capital, banks shall provide this Office with prior notification in respect of the following:
  - 2.2.1 If the shares or instruments are called, a notification to this effect shall be submitted to this Office, together with a copy of the prior written approval of the applicant bank's host-country authority.
  - 2.2.2 The aforementioned notification of redemption shall also demonstrate that the applicant bank adhered to the relevant requirements specified in regulations 38(13)(b)(iv)(D) and (38)(14)(a)(iv)(H) of the Regulations.
- 2.3 With regard to shares or instruments that were issued and included in banks' total consolidated amount of qualifying capital prior to 1 January 2013, but which do not comply with the criteria set out in regulations 38(13)(a), 38(13)(b) or 38(14)(a) of the Regulations, such shares or instruments shall be phased out from 1 January 2013 in accordance with the relevant requirements specified in regulations 38(13)(c) and 38(13)(d) for tier 1 capital instruments, and regulations 38(14)(b) and 38(14)(c) for tier 2 capital instruments.

2.4 Finally, this Office reserves the right to impose restrictions in respect of the proceeds from the issuance of shares or instruments that may be included in the consolidated amount of qualifying capital and reserve funds of the applicant bank.

**3. Acknowledgement of receipt**

3.1 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.



René van Wyk  
**Registrar of Banks**

The previous directive issued was Directive 3/2012 dated 21 December 2012.