



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

Ref: 15/8/3

D3/2014

2014-09-16

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

Directive 3/2014 issued in terms of section 6(6) of the Banks Act, 1990 (Act No. 94 of 1990)

Process in respect of specific capital issuances and redemptions

Executive summary

In terms of section 79(1) of the Banks Act, No. 94 of 1990 (the Banks Act) and regulation 38(18) of the Regulations relating to Banks (the Regulations), banks, controlling companies or branches of a foreign institutions (hereinafter collectively referred to as 'banks') need to apply to this Office to issue and redeem specified instruments qualifying as capital.

The aim of this directive is to specify further requirements in respect of applications regarding certain capital issuances and redemptions.

1. Introduction

1.1 The purpose of this directive is to specify further requirements regarding the submission of applications in terms of section 79(1) of the Banks Act and regulation 38(18) of the Regulations regarding specified capital issuances and redemptions. It also aims to clarify what information is required from banks when submitting the above-mentioned applications for approval by this Office.

2. Applications in terms of section 79(1) of the Banks Act in respect of the issuing of instruments to qualify as capital

2.1 Applications shall be submitted timeously ahead of the proposed issuances, to enable this Office to review the nature, extent and structure of the capital of the applicant bank and all other applicable documentation. Provided, that the application is complete and that this Office had been advised of the applicant bank's capital plan the application will be considered within six weeks from the date of submission.

- 2.2 Applications shall include the following information or attachments:
- a. A three-year capital plan indicating all planned capital issuances and redemptions.
 - b. Benchmarking against the relevant requirements specified in section 79 of the Banks Act, applicable requirements specified in regulation 38 of the Regulations and other relevant directives, circulars and guidance notes. Depending on the tier of capital being applied for, one of the attached Annexures A or B (as appropriate) shall be completed and attached to the application.
 - c. When applicable, draft pricing supplement (terms and conditions), including any relevant risk factors, shall be included.
- 2.3 Applications shall be signed off by the applicant bank's head of capital and head of compliance.
- 3. Applications in terms of regulation 38(18) of the Regulations in respect of the redemption or repayment of instruments qualifying as capital**
- 3.1 Applications shall be submitted timeously ahead of the proposed issuances, to enable this Office to review the nature, extent and structure of the capital of the applicant bank and all other applicable documentation. Provided, that the application is complete and that this Office had been advised of the applicant bank's capital plan the application will be considered within six weeks from the date of submission.
- 3.2 Applications should include the following:
- a. A three-year capital plan indicating all planned capital issuances and redemptions.
 - b. The impact of the applicable redemption or repayment on capital ratios (all three capital tiers), including board-approved buffers and capital add-ons.
 - c. Copy of board approvals in respect of the capital redemption or repayment.
 - d. Benchmarking against the relevant requirements stipulated in regulation 38 of the Regulations (Annexure C).
- 3.3 Applications shall be signed off by the applicant bank's head of capital and head of compliance.
- 4. Finalisation of applications**
- 4.1 Within two weeks of finalisation of the issuance, redemption or maturity of capital instruments, banks shall submit the updated main features disclosure template to this Office in Excel format. Please refer to paragraph 6.2.2 of Directive 8/2013 for a copy of the main features disclosure template.

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.



René van Wyk
Registrar of Banks

Encl. 3

The previous directive issued was Directive 2/2014, dated 28 July 2014.

Confirmation (benchmark) of compliance with the Banks Act, the Regulations and other relevant directives, circulars and guidance notes

Annexure A: To be submitted to the Bank Supervision Department in case of issuances of additional tier 1 capital:

Requirements specified in the Banks Act	Condition	Confirmation of adherence
Section 79(1)		
Section 79(2)		
Section 79(3)		
<p>Requirements specified in regulation 38(13)(b) of the Regulations</p> <p>Regulation 38(13)(b) of the Regulations: Subject to the provisions of paragraphs (c) and (d) below, the relevant proceeds of any instrument or share that as a minimum meets or complies with all the conditions specified below may rank as additional tier 1 capital. Therefore, please indicate compliance or non-compliance with the following:</p>		
(i) The terms and conditions of the instrument shall contain a provision that requires such instrument, at the option of the Registrar, to either be written off or converted into the most subordinated form of equity upon the occurrence of the trigger event specified in writing by the Registrar, unless duly enforceable legislation is in place:		
(A) that requires the instrument to be written off upon the occurrence of the aforesaid event; or		
(B) that otherwise requires the instrument to fully absorb loss before taxpayers or ordinary depositors are exposed to loss, and the bank or controlling company complies with such further requirements as may be directed by the Registrar in writing.		
- Guidance Note 7/2013 in general		
- Guidance Note 7/2013 section 3		
- Guidance Note 7/2013 section 3.1 – at the date of application or issuance are adequate authorised unissued shares available		
Provided that:		
(i) any compensation paid to the instrument holders as a result of the aforesaid write-off shall be paid immediately and in the form of the most subordinated form of equity of the relevant bank or its controlling company, and the bank or controlling company, as the case may be, shall at all times maintain all prior authorisation necessary to immediately issue the relevant number of shares specified in the instrument's terms and conditions should the trigger event occur;		
(ii) the issuance of any new shares as a result of the trigger event shall occur prior to any public sector injection of capital so that the capital provided by the public sector shall not be diluted;		
(iii) as a minimum, the aforesaid trigger event shall be the earlier of:		

	(aa) a decision that a write-off, without which the bank or controlling company would become non-viable, is necessary, as determined by the Registrar; or
	(bb) the decision to make a public sector injection of capital, or equivalent support, without which the bank or controlling company would have become non-viable, as determined by the Registrar.
	(ii) The bank or controlling company, as the case may be, shall obtain the prior written approval of the Registrar before the instrument or share is issued;
	(iii) The key features of the relevant instruments or shares shall be duly disclosed in the annual financial statements and other relevant disclosures to the general public;
	(iv) The instrument or share:
	(A) shall be issued by the relevant bank or controlling company and shall be paid in full by the relevant investor;
	(B) shall be neither secured nor covered by a guarantee of the issuer or any related entity, or another arrangement that legally or economically enhances the seniority of the claim;
	(C) shall be perpetual, that is, the instrument or share shall have no maturity date, and there shall be no provision for step-up or other incentive to redeem the instrument or share;
	(D) may be callable at the sole initiative of the issuer only after a minimum period of five years, provided that:
	(i) the relevant bank or controlling company, as the case may be, shall obtain the prior written approval of the Registrar before exercising the said call;
	(ii) neither the bank nor the controlling company shall create any expectation that such call will be exercised;
	(iii) the bank or controlling company shall not exercise the call unless the bank or controlling company:
	(aa) concurrently replaces the called instrument with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for the income capacity of that bank or controlling company; or
	(bb) demonstrates to the satisfaction of the Registrar that its capital position shall be well above the relevant specified minimum capital requirements after the call option is exercised;
	(E) shall not be held or acquired by the bank or any person related to or associated with the bank, or over which the bank exercises or may exercise control or significant influence;
	(F) shall not be funded directly or indirectly by the relevant bank or controlling company;
	(G) shall not contain any feature that may hinder any potential future recapitalisation, such as, for example, a provision that requires the issuer to compensate investors if a new instrument is issued at a lower price during a specified time frame;
	(H) shall under no circumstances constitute a liability of the bank or controlling company in terms of, for example, any insolvency law or insolvency proceedings, provided that any instrument classified as a liability in terms of a Financial Reporting Standard shall have principal loss absorption through either:
	(i) conversion to common or ordinary shares at an objective prespecified trigger point; or

	(ii) a write-down mechanism that allocates losses to the instrument at a pre-specified trigger point, which write-down mechanism, as a minimum:	
	(aa) shall reduce the claim of the instrument in liquidation;	
	(bb) shall reduce the amount re-paid when a relevant related call is exercised; and	
	(cc) shall partially or fully reduce any relevant coupon or dividend payments on the instrument.	
	(v) The relevant bank or controlling company shall obtain the prior written approval of the Registrar before any repayment of principal is considered by way of, for example, repurchase or redemption, provided that the bank or controlling company shall not assume or create market expectation that the Registrar will grant approval.	
	(vi) The relevant bank or controlling company shall at all times have full discretion regarding any relevant distribution or payment of dividend, provided that:	
	(A) a cancellation of a discretionary payment shall not constitute an event of default;	
	(B) the relevant bank or controlling company shall have full access to cancelled payments to meet any relevant obligation as it falls due;	
	(C) any cancellation of a distribution or payment of dividend shall not impose any restriction on the bank or controlling company, except in relation to a distribution to holders of more deeply subordinated shares or instruments;	
	(D) any dividend or coupon payment shall be paid out of distributable reserves, such as retained earnings;	
	(E) the relevant underlying instrument shall not have any credit sensitive dividend feature, that is, a dividend or coupon that is periodically reset based in whole or in part on the bank or controlling company's credit standing or rating;	
	(vii) When the instrument or share is issued by a special purpose vehicle or institution, instead of by an operating entity, that is, an entity established to conduct business with clients with the intention of earning a profit in its own right, or the relevant controlling company in the consolidated group, the proceeds shall be immediately available without limitation to an operating entity or the controlling company in a form that meets or exceeds all the relevant criteria for inclusion in additional tier 1 capital specified above	

Confirmation (benchmark) of compliance with the Banks Act, the Regulations and other relevant directives, circulars and guidance notes

Annexure B: To be submitted to the Bank Supervision Department in case of issuances of tier 2 capital:

Requirements specified in the Banks Act	Condition	Confirmation of adherence
Section 79(1)		
Section 79(2)		
Section 79(3)		
Requirements specified in regulation 38(14) of the Regulations		
Regulation 38(14)(a) of the Regulations: The proceeds of issued instruments or shares contemplated in section 1 (1) of the Act that comply with all the conditions specified below shall rank as tier 2 capital . Therefore, please indicate compliance or non-compliance with the following:		
Regulation 38(14)(a)(i) of the Regulations:		
(i) the terms and conditions of the instrument shall contain a provision that requires such instrument, at the option of the Registrar, to either be written off or converted into the most subordinated form of equity upon the occurrence of the trigger event specified in writing by the Registrar, unless duly enforceable legislation is in place that:		
(A) requires the instrument to be written off upon the occurrence of the aforesaid event; or		
(B) otherwise requires the instrument to fully absorb loss before tax payers or ordinary depositors are exposed to loss, and the bank or controlling company complies with such further requirements as may be directed by the Registrar in writing.		
- Regulation 38(14)(a)(i)(B)(i to iii) of the Regulations		
- Guidance Note 7/2013 in general		
- Guidance Note 7/2013 section 3		
- Guidance Note 7/2013 section 3.1 – at the date of application/or issuance are adequate authorised unissued shares available		
(ii) the bank or controlling company, as the case may be, shall obtain the prior written approval of the Registrar before the instrument or share is issued;		
(iii) the key features of the relevant instruments or shares shall be duly disclosed in the annual financial statements or other relevant disclosures to the general public		
(iv) the instrument or share:		
(A) shall be issued and fully paid;		
(B) shall be neither secured nor covered by any guarantee of the issuer or related or associated entity, or be subject to any other arrangement that legally or economically enhances the seniority of the claim		

(C)	shall have a minimum original maturity of more than five years, provided that during the fifth year preceding the maturity of the relevant instrument the amount qualifying as tier 2 capital shall be reduced by an amount equal to 20 per cent of the amount so obtained and, annually thereafter, by an amount that in each successive year is increased by 20 per cent of the amount so obtained;	
(D)	shall not contain any provision for step-up or other incentive to redeem	
(E)	shall not have any credit sensitive dividend feature, that is, a dividend or coupon that is periodically reset based in whole or in part on the bank's credit standing or rating;	
(F)	shall not be held or acquired by the bank or any person related to or associated with the bank or over which the bank exercises or may exercise control or significant influence;	
(G)	shall not be funded directly or indirectly by the relevant bank or controlling company;	
(H)	may be callable at the sole initiative of the issuer only after a minimum period of 5 years	
	(i) the bank shall obtain the prior written approval of the Registrar before exercising the said call;	
	(ii) the bank shall not create any expectation that such call will be exercised;	
	(iii) the bank shall not exercise the call unless the bank:	
	(aa) concurrently replaces the called instrument with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for/with the income capacity of the bank; or	
	(bb) demonstrates to the satisfaction of the Registrar that its capital position shall be well above the relevant specified minimum capital requirements after the call option is exercised;	
(v)	the investor shall not have any right to accelerate the repayment of future scheduled payments, such as coupon or principal, except in the case of bankruptcy and/or liquidation;	
(vi)	when the instrument or share is issued by a special purpose vehicle or institution, instead of by an operating entity, that is, an entity established to conduct business with clients with the intention of earning a profit in its own right, or the relevant controlling company in the consolidated group, the proceeds shall be immediately available without limitation to an operating entity or the controlling company in a form that meets or exceeds all the relevant criteria for inclusion in tier 2 capital specified above.	

Confirmation (benchmark) of compliance with the Banks Act, the Regulations and other relevant directives, circulars and guidance notes

Annexure C: To be submitted to the Bank Supervision Department in case of repayment of capital:

Condition	Confirmation of adherence
Repayment in respect of CET1/AT1 and T2	
Requirements specified in regulation 38(18) – Repayment of capital Regulation 38(18)(a) of the Regulations: A bank shall not without the prior written approval of the Registrar or otherwise than in accordance with conditions approved by the Registrar in writing repay any of its common equity tier 1 capital or additional tier 1 capital or, before the maturity thereof, redeem any of the instruments issued that qualify as tier 2 capital.	
Repayment in respect of CET1/AT1	
Regulation 38(18)(b) of the Regulations: A written application by a bank under paragraph (a) for the permission of the Registrar: (i) to repay any of its common equity tier 1 capital or additional tier 1 capital shall contain written confirmation by the board of directors of the bank that:	
(A) the repayment of tier 1 capital is consistent with the bank's strategic and operating plans;	
(B) the remaining common equity tier 1 capital and additional tier 1 capital shall be sufficient to ensure continued compliance by the relevant bank with the relevant requirements specified in subregulation (9), including, among others, that the bank's common equity tier 1 capital adequacy ratio shall exceed the relevant specified percentage;	
(C) the repayment of tier 1 capital is consistent with the bank's strategic and operating plans;	
(D) the repayment of tier 1 capital takes into account any possible acquisitions, increased capital requirements of subsidiary companies or branches of the said bank and the possibility of exceptional losses;	
(E) the repayment of tier 1 capital is included in the bank's ALCO process regarding the management of liquidity risk;	
(F) all shares acquired back by the bank from the repayment of capital shall immediately be cancelled.	
Repayment in respect of AT1 specifically	
Regulation 38(13)(b)(iv)(D)(iii) of the Regulations: The bank or controlling company shall not exercise the call unless the bank or controlling company: (aa) concurrently replaces the called instrument with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for the income capacity of that bank or controlling company; or (bb) demonstrates to the satisfaction of the Registrar that its capital position shall be well above the relevant specified minimum capital requirements after the call option is exercised;	

<p>Repayment in respect of T2 specifically</p>	
<p>Regulation 38(18)(b) of the Regulations: A written application by a bank under paragraph (a) for the permission of the Registrar- (ii) to repay any of its tier 2 capital before the maturity thereof shall contain written confirmation by the board of directors of the bank that:</p>	
<p>(A) the bank shall simultaneously with the redemption of instruments issue further tier 2 capital that shall be of a quantity and quality similar to or higher than the instruments to be redeemed when the period that lapsed since the issue date of the instruments to be redeemed is or will be less than or equal to five years;</p>	
<p>(B) the capital adequacy ratio of the bank concerned shall be at least one percentage point higher than the relevant percentage determined in terms of subregulations (8) and (9), after the repayment of the said tier 2 capital, without relying on any new capital issues;</p>	
<p>(C) the repayment of tier 2 capital is included in the bank's ALCO process regarding the management of liquidity risk;</p>	
<p>Regulation 38(14)(a)(iv)(H) of the Regulations: May be callable at the sole initiative of the issuer only after a minimum period of five years, provided that:</p>	
<p>(iii) the bank shall not exercise the call unless the bank:</p>	
<p>(aa) concurrently replaces the called instrument with capital of similar or better quality and the replacement of capital is done at conditions that are sustainable for/with the income capacity of the bank; or</p>	
<p>(bb) demonstrates to the satisfaction of the Registrar that its capital position shall be well above the relevant specified minimum capital requirements after the call option is exercised.</p>	