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SOUTH AFRICAN RESERVE BANK
Prudential Authority

File ref. no.: 15/8/1/3

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

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

Treatment of investments in Flac or similar instruments

Executive summary

Prudential Standard RA03: *Flac Instrument Requirements for Designated Institutions and Guidance Notice 1 of 2025*, issued in terms of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), set out the requirements and further guidelines in relation to Flac instruments.

The purpose of this proposed Directive is to direct banks, bank controlling companies and branches of foreign banks which have not been designated as systemically important financial institutions (SIFIs) (hereinafter collectively referred to as non-designated banks) as well as banks and bank controlling companies that have been designated as SIFIs (hereinafter collectively referred to as designated banks) on the treatment of their investments in Flac or similar instruments.

Interested persons are hereby invited to submit their comments in respect of this proposed Directive to the Prudential Authority by no later than 23 September 2026.

1. Introduction

1.1 The South African Reserve Bank (Reserve Bank), as the Resolution Authority and in its pursuit of the implementation of an open bank resolution strategy, has introduced a new class of unsecured subordinated debt instruments termed ‘Flac instruments’ which are aimed at ensuring that banks that have been designated as a SIFI have sufficient loss-absorbing and recapitalisation capacity in resolution.

1.2 The Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) Prudential Standard RA03: *Flac Instrument Requirements for Designated Institutions* (Flac Standard)[1] sets out, among other things, key definitions, the qualifying criteria for Flac instruments, the calibration of the minimum Flac instrument requirements as well as the principles on loss absorption and recapitalisation in resolution. FSR Act Guidance Notice 1 of 2025 (Flac Guidance)[2] provides further clarity on the principles contained

[1] Available at Prudential Standard RA03_Flac.
[2] Available at Guidance Notice 1 of 2025.

in the Flac Standard to enable a registered bank designated as a SIFI to comply with the requirements outlined therein.

1.3 This proposed Directive sets out the treatment of investments in Flac or similar instruments, outlining the treatment to be adopted by designated and non-designated banks to ensure that it is applied appropriately. This proposed Directive must therefore be read in conjunction with the Flac Standard, the Flac Guidance and Regulation 38 of the Regulations relating to Banks.

2. Proposed Directive

2.1 Designated banks investing in Flac or similar instruments must apply the corresponding deduction approach to their Flac holdings, in line with the requirements set out in paragraph 11.4(c) of the Flac Standard.

2.2 Non-designated banks investing in Flac or similar instruments must deduct:

2.2.1 the aggregate amount of holdings of tier 2 capital, (TLAC)[3] and Flac or similar instruments, net of short positions, that is in excess of the 10% threshold from its tier 2 capital, if the non-designated bank owns 10% or less of the common shares of the designated bank; and

2.2.2 the full investment amount in Flac or similar instruments, net of short positions, from its tier 2 capital, if the non-designated bank owns a significant investment of more than 10% of the common shares of the designated bank.

2.3 Where tier 2 capital is insufficient to allow for the deduction outlined in paragraph 2.2 above, the shortfall must be deducted from the next-higher category of capital.

2.4 Where an exposure to Flac or similar instruments is held through index holding securities, a non-designated bank must look through its holdings of such index securities to determine the actual underlying holdings of Flac or similar instruments of the relevant entity. The afore-determined value of the underlying exposures must then be used as the appropriate amount to be deducted.

2.5 Furthermore, where a non-designated bank finds it operationally burdensome to look through and monitor its exact exposure to the Flac instruments of the relevant entities or institutions as a result of its holdings of index securities, the non-designated bank must obtain prior written approval from the Prudential Authority (PA) to use a conservative estimate, which estimate must be well founded and duly motivated by the relevant applicant.

3. Invitation for comment

3.1 All interested persons are hereby invited to submit their comments on this proposed Directive to PA-ITS-Capital@resbank.co.za for the attention of Ms Sibongile Mbebe, by no later than 23 September 2026.

[3] Total loss-absorbing capacity.

3.2 All comments received may be published on the website of the PA, unless the respondent specifically requests confidential treatment.

Fundi Tshazibana

Fundi Tshazibana
Chief Executive Officer

Date: 20/08/26