

THE PRUDENTIAL AUTHORITY

DRAFT: FOR PUBLIC COMMENT: JULY 2023

BANKS ACT, 1990

DESIGNATION OF AN ACTIVITY NOT FALLING WITHIN THE MEANING OF “THE BUSINESS OF A BANK” (COMMERCIAL PAPER)

Under paragraph (cc) of the definition of “the business of a bank” in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), I, Fundi Tshazibana, Chief Executive Officer of the Prudential Authority (herein referred to as “the Authority”), hereby designate with the approval of the Minister of Finance, and with effect from January 2025 (proposed)¹ the activity set out in paragraph 2 of the Notice, and which is performed in accordance with the conditions set out in paragraph 3, 7 and 8 of the Notice, as an activity that does not fall within the meaning of “the business of a bank”.

1. Definitions and interpretation

In this Notice unless the context indicates otherwise:

“**auditor**” means an auditor as defined in section 1 of the Auditing Profession Act, 2005 (Act No.26 of 2005);

“**Authority**” means the Prudential Authority, a juristic person within the administration of the SARB, established in terms of section 32 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); “**Banks Act**” means Banks Act, 1990 (Act No. 94 of 1990);

“**central government**” means the central government as defined in Regulation 67 of the Regulations

“**commercial paper**” means-

- (a) A short-term secured or unsecured promissory note with a fixed or floating maturity;
- (b) Any call bond;
- (c) Any other secured or unsecured written acknowledgement of debt;
- (d) Debentures or any interest-bearing written acknowledgement of debt issued for a fixed term in accordance with the provisions of the Companies Act No. 71 of 2008

On the conditions that

- (e) The maturity period does not exceed 364 days; and
- (f) is issued to acquire operating capital;

“**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);

¹ Subject to change based on operational requirements and comments received from the public consultation.

“company” means a company as defined in section 1 of the Companies Act;

“general public” means the general public as defined in section 1 of the Banks Act

“holding company” means a holding company as defined in section 1 of the Companies Act;

“issuer” means a person issuing commercial paper under the provisions of this Notice;

“licenced exchange” means a licenced exchange as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“listed company” means a company, to which the securities must meet the listing requirements of a listed exchange in accordance with the Financial Markets Act, 2012 (Act No. 19 of 2012);

“municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

“Notice” means this document;

“operating capital” means the capital acquired for the principal revenue producing activities of the issuer on a day-to-day basis, other than investing activities or financing activities;

“other central government” means such other government, other than the government departments of the Republic of South Africa, as the Authority may determine in writing;

“placing document” means the prospectus, pricing supplements, or final terms relevant to the programme memorandum, whether public or private placement;

“public company” means a public company as defined in section 1 of the Companies Act;

“private company” means a private company as defined in section 1 of the Companies Act;

“recognised financial exchange” means an external exchange or an exchange that is recognised as a licensed exchange in terms of its Listing Requirements as approved in terms of the Financial Markets Act, 2012 (Act No. 19 of 2012);

“state-owned company” means a state-owned company as defined in section 1 of the Companies Act;

“subsidiary” means a subsidiary as defined in section 1 of the Companies Act.

“the Regulations” means the Regulations relating to Banks, made under section 90 of the the Banks Act;

“ultimate borrower” means an ultimate borrower as contemplated in paragraph 4 of this Notice;

“unlisted company” means a company as defined in the Companies Act and that participates in transactions of securities as defined in the Financial Markets Act (Act No. 19 of 2012);

“wholly owned subsidiary” means a wholly owned subsidiary as defined in section 1 of the Companies Act;

CONDITIONS OF THE NOTICE

2. Designated activity

The acceptance of money from the general public against the issue of commercial paper in accordance with the conditions set out in this Notice.

3. General conditions for the issuance of commercial paper

The issuance of commercial paper in terms of this Notice shall be subject to the following conditions:

Minimum denominations and related matters

- (1) Commercial paper may-
 - (a) be issued or transferred only in minimum denominations equal to or greater than R1 million ; and
 - (b) be issued only by –
 - (i) a listed company ;
 - (ii) an unlisted company;
 - (iii) a public company;
 - (iv) a private company;
 - (v) a juristic person;
 - (vi) state-owned company;
 - (vii) municipality
 - (c) be issued by issuers specified in subparagraphs (1)(b)(i-vii),
that at a point in time not earlier than 18 months prior to the proposed issuance of the commercial paper held net assets, as certified by its auditors and reflected in its audited financial statements, to a total value exceeding R100 million: Provided that in the calculation of the value of such net assets -
 - (aa) intangible assets that are not readily marketable shall be excluded.
 - (bb) the total amount of the company's off-balance-sheet liabilities and contingent liabilities shall be excluded.
 - (viii) any other juristic person authorised by the Authority in writing to issue commercial paper in accordance with the provisions of this Notice (as amended) and subject to such other conditions as the Authority may determine in such written authorisation.

subject to the conditions set out in this Notice;

Unless the commercial paper –
 - (A) is issued by the Central Government; or
 - (B) is backed by an explicit Central Government guarantee or other central governments specified in writing by the Authority,

in which event, the issuance of commercial paper does not have to comply with the conditions set out in paragraph 3(1)(a), (b) or (c) above.

4. Ultimate borrower

- (1) Only the following entities or persons may be the ultimate borrower of funds obtained from the general public against the issue of commercial paper, namely –
 - (a) the issuer;
 - (b) in the case where the issuer is a company -
 - (i) a wholly owned subsidiary of the issuer;
 - (ii) a holding company of the issuer; or
 - (c) in the case where the issuer is a juristic person other than a company, any other juristic person that would have been a wholly owned subsidiary or holding company of the issuer -
 - (i) had the issuer been a company; or
 - (ii) in the case where such other juristic person, too, is not a company, had both the issuer and the other juristic person been a company; or
 - (d) a juristic person of which the board of directors, or in the case where such juristic person is not a company, of which the governing body, is controlled by and customarily acts in accordance with the directions or instructions of the issuer.

5. Purpose

- (1) The funds raised by the ultimate borrower, through the issuance of commercial paper, must be raised solely for the purpose of operating capital; and
- (2) may not, be applied, directly or indirectly, for the granting of money loans or credit, except for customary credit in relation to the sale of goods or the provision of services by the issuer of such commercial paper, to the general public.
- (3) Paragraph 5(1) and (2) do not apply to the the Central Government or explicit Central Government guarantee or other central governments.

6. Disclosure in placing document

- (1) An issuer of commercial paper, except an issuer referred to in subparagraphs 3(1)(c)(B) or (C) shall, in a placing document relating to such issuance of commercial paper, whether by private or public placement, disclose at least the following information –
 - (a) Details of the Issuer
 - (i) The name, type, registration number, date and place of incorporation of the issuer, as a heading on the face of the placing document, and, in the case where the issuer is not the ultimate borrower, the name of the ultimate borrower, as a heading on the face of the placing document;
 - (ii) The full names of the issuer's company secretary (if a company) and the registered address of the registered office (if a company). In relation to an issuer that is not a company full disclosure must be made in relation to the person with corresponding secretarial powers and duties;

- (iii) The full name, registered address of the auditors, attorneys, advisers, dealers, arrangers, managers, calculation agent, paying agent, transfer secretary, and any other parties as may be determined by the Authority;
 - (iv) The specific operational purpose to which the funds to be raised through the issue of the commercial paper is assigned;
 - (iv) A description of the material risk factors of the issuer of commercial paper must be provided. The risk factors must include matters concerning the business and financial condition of the issuer, and may include other matters (as may be determined by the Authority) relating to the absence of an operating history and the absence of profitable operations, among others;
 - (v) Whether there has been any material adverse change in the issuer's annual financial position since the date of its last audited financial statements and details thereof;
 - (vi) The aggregate authorised amount of commercial paper that may be issued by the issuer during the current financial year and;
 - (viii) A description of the register of issued commercial paper.
- (b) Details of Issued Commercial Paper
- (i) The total amount of commercial paper outstanding;
 - (ii) Whether or not the particular issue is to be listed, including details of the licensed or recognised exchange;
 - (iii) Whether the commercial paper is to be secured or unsecured; and where the commercial paper is secured, the type of security;
 - (iv) Details of any legal restrictions under which the commercial paper will be offered, sold, transferred or delivered and;
 - (v) Details of the redemption rights of the issuer and/or holders of the commercial paper.
- (c) Details of guarantee
- (i) Where the commercial paper to be issued is guaranteed or secured, the placing document must be accompanied by copies of:
 - (aa) The guarantee or security agreement; as the case may be; and
 - (bb) A duly executed board resolution of the guarantor or appropriate legal authority authorizing the provision of the guarantee or security document;
 - (ii) Details of the guarantee or security document as may be the case must be disclosed in the placing document including but not limited to -
 - (aa) Salient terms of the guarantee or security including:
 - (A) the name(s) and designation(s) of the signatories thereto;

- (B) the name of the administrator(s) or trustee(s) holding the guarantee or security if any;
 - (C) whether the guarantee or security is conditional or unconditional and whether revocable or irrevocable; and
 - (D) whether the guarantor undertakes to make payment of the amounts payable in terms of the guarantee or security upon receipt of a written request from the trustee or holder of the instrument.
- (d) Obligations of the issuer
- (i) Financial Information
 - (aa) The placing document must be accompanied by the issuer's latest interim or audited financial statements, provided that such financial statements -
 - (A) shall be no older than 12 months prior to the date of issue of the placing document ; or
 - (B) shall comply with International Financial Reporting Standards (IFRS). In the instance where the issuer is a newly established entity with no financial history, a statement in which the auditor of the issuer confirms that the issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments, thereby reflecting the adequacy of the liquidity and solvency of the issuer; and
 - (C) All other information that may be reasonably necessary to enable the investor to ascertain the nature of the financial and commercial risk of his investment.
 - (ii) Responsibility
 - (aa) The issuer must accept full responsibility for the accuracy of the information contained in the placing document and provide the necessary confirmation in which the issuers confirms the accuracy of the information in the relevant documentation and accepts full responsibility for the accuracy of the information as set out in the placing document, the annual financial reports or any such amendments or supplementary documentation.
- (e) Continuing obligations of issuer
- (i) An issuer must –
 - (aa) within 12 months of the end of every financial year make its audited annual financial statements available to investors for inspection;
 - (bb) where interim financial statements are prepared, they must be made available to investors for inspection within six months of the end of the period to which they related;
 - (cc) confirm in each new issuance that the placing documents are up to date and that in the instance where information is outdated in a

material respect the issuer shall undertake to update the placing documents within six months of the most recent issue; and

- (dd) Issuers to ensure information such as placing documents, financial statements and other relevant information are at all times available on the issuer's website.
- (f) Obligations of the auditors
- (i) Initial obligations
 - (aa) The auditor of the issuer must confirm that the issuer and the issuance of the commercial paper reasonably complies with the provisions of this Notice at the time of initial issuance, and thereafter report to the Authority in the event of non-compliance; and
 - (bb) In the instance where the issuer is a newly established entity with no financial history, a statement in which the auditor of the issuer confirms that the issuer holds net assets, which are reflected in its audited financial statements, of a total value exceeding R100 million: Provided that in the calculation of the value of such net assets –
 - intangible assets that are not readily marketable shall be excluded.
 - the total amount of the company's off-balance-sheet liabilities and contingent liabilities shall be excluded.
 - (ii) Continuing obligations
 - (aa) Where there has been a material change to the placing documents the auditors must re-confirm that the issuer and the issuance of the commercial paper still complies in all respects with the provisions of this Notice;
- (g) Signing and date of placing document
- (i) A placing document relating to the issuance of commercial paper must-
 - (aa) in the case where the issuer is a company, be signed by two directors of the company, or if the company has only one director, by that director and by a senior official of the company; or
 - (bb) in the case where the issuer is a juristic person other than a company, be signed by two authorised senior officials of the entity; or
 - (cc) in the case where the signatories outlined in items (aa) and (bb) above are not available, the placing documents can be signed by a duly authorised senior signatory of the issuer in terms of a valid delegation of authority document to be included in the placing documents.
 - (ii) Where a placing document has been signed by the persons as provided in subparagraph (6)(a)(i); (6)(a)(ii) or (6)(a)(iii) of this paragraph, such signatories of the placing document shall be deemed to have authorised the issue of such placing document.
 - (iii) Every signature to a placing document shall be dated and the latest of such dates shall be deemed to be the date of the placing document.

- (iv) Any reference to signing and dating as contemplated in paragraph (6), includes electronic signatures.

7. Additional disclosures on the terms and conditions of commercial paper instrument for investors

- (1) The terms and conditions of the commercial paper issuance, as contained in the placing document, must provide an investor, on request, with sufficient information that includes, at a minimum the following information (as applicable):
 - (a) Issuer;
 - (b) Issue date;
 - (c) Issue price;
 - (d) Nominal value;
 - (e) ISIN (if applicable)
 - (f) Ultimate borrower;
 - (g) Purpose of issue;
 - (h) Name of listing (if applicable)
 - (i) If applicable, date from which interest accrues
 - (j) Day and method for interest calculation methodology
 - (k) First settlement date
 - (l) Interest payment date(s)
 - (m) Date of Maturity
 - (n) Value of total notes in issue
 - (o) Specified currency of issue
 - (p) Responsibility statement by issuer
 - (q) Date convention
 - (r) Final amount payable if different from nominal
 - (s) If applicable, credit rating for the applicant issuer, guarantor, or debt security, if applicable
 - (t) Covenants and events of default (if applicable); and
 - (u) Any other relevant information

8. Statutory returns

- (1) A bank that guarantees, endorses or provides any other form of support to the issuer of commercial paper must clearly indicate in its relevant BA statutory return prescribed in accordance to the Banks Act, or as determined in writing by the Authority, that component of its business that relates to such guarantee, endorsement or other form of support.

9. Returns by issuers of commercial paper

- (1) All new issuers and arrangers of commercial paper must, before issuance, furnish for approval, to the Authority the placing documents, in accordance with paragraph (6) of this Notice.
- (2) All issuers and arrangers, of commercial paper must furnish the Authority on a quarterly basis, within fifteen business days of the quarter-end, with a return in the layout contained in Annexure A of this Notice.

10. Repeal of Notice

- (1) Government Notice No. 2172 published in Government Gazette 16167 of 14 December 1994 is hereby repealed and substituted by this notice.

RETURNS CONCERNING COMMERCIAL PAPER ISSUANCE

(Confidential and not available for inspection by the public)

This return is used for supervisory purposes and enforcement of the Banks Act, 1990. The return is further used for the collation of economic statistics.

Quarter Ended

A. Primary disclosures

Name of reporting institution

Currency of issue

Name of Auditor

Aggregate Authorised Amount

Purpose of issue

Address

Contact person

Telephone number

Email address

B. Commercial paper: Issued, redeemed, outstanding

	Volumes		Total value	
	Endorsed	Not endorsed	Nominal	Market

(i) Part 1

Outstanding at reporting date

- Listed
- Unlisted

Issued during the quarter

- Listed
- Unlisted

Redeemed during the quarter

- Listed
- Unlisted

(ii) Part 2 ***

New issuances

- Remaining term of new issues

- Listed
- Unlisted

- Rate of return on new issuances (Percentage)

- Listed
- Unlisted

Completed returns to be sent to:

The Prudential Authority

PA-licence@resbank.co.za

*A return must be completed for each quarter in which commercial paper issued is outstanding, whether or not any other transactions occurred during the reporting quarter, and must be furnished within fifteen business days immediately following upon the quarter-end to which the return relates

***"endorsed" includes any underwriting or guarantee by a bank

***If required, attach placing documents