

CHAPTER 4

DEVELOPMENTS RELATED TO BANKING LEGISLATION

The purpose of this chapter is to provide a brief overview of the most important developments regarding banking legislation in South Africa during 1996.

AMENDMENTS TO THE BANKS ACT, 1990

The most significant amendments to the Banks Act, 1990, that were implemented during 1996 are the following:

□ Concept of registration as a bank

The provisions of the Banks Amendment Act, 1994 (Act No. 26 of 1994), except for sections 6 to 10, 12 to 14, 15(a), (b), (d) and (e), 16 to 22, 23(a), (b), (c) and (d), 24 to 26, 34, 35, 37, 38 and 53(a) thereof, came into operation on 1 May 1995, by means of a proclamation by the President, published in *Government Gazette* No. 16380 of 28 April 1995. The aforementioned sections, which were not put into operation on that date, provided for the concepts of provisional and final registration as a bank, as provided for by the Banks Act, 1990 (Act No. 94 of 1990), to be replaced by the single concept of registration as a bank.

The putting into operation of the sections in question was kept in abeyance in order to allow for the drafting of suitable regulations, which were regarded as necessary for the proper application of the amendments in question. After the drafting of the required regulations, the aforementioned sections of the 1994 Banks Amendment Act were put into operation on 1 June 1996, by means of a proclamation by the President, published in *Government Gazette* No. 17181 dated 23 May 1996.

□ Banks Amendment Act, 1996

The proposed amendments to the Banks Act reported on in the 1995 issue of the Annual Report were presented to Parliament during the latter half of 1996 and were promulgated as the Banks Amendment Act, 1996 (Act No. 55 of 1996). In contradistinction to the 1994 Banks Amendment Act, the provisions of the 1996 Banks Amendment Act came into operation on the date of publication of the last-mentioned Amendment Act in *Government Gazette* No. 17531 on 1 November 1996.

In view of the fact that, during recent years, the amendments to the Banks Act may be regarded as having been rather comprehensive, the Bank Supervision Department does not intend to propose further amendments to the Banks Act during 1997. The Department does, however, intend to address the provisions of the Mutual Banks Act, 1993 (Act No. 124 of 1993), in order, *inter alia*, to bring about conformity, wherever possible, between consonant provisions of the Mutual Banks Act and the Banks Act.

□ Regulation of representative offices

Section 34 of the Banks Act provides for the establishment, by a foreign bank, of a representative office in the Republic of South Africa. Prior to 1 November 1996, section 34 did not provide for the Registrar of Banks to obtain sufficient information in order for him to discharge his duties in terms of the minimum supervisory standards set by the Basle Committee on Banking Supervision. The provisions of section 34, therefore, had to be amended in order to provide not only for the necessary information to be obtained by the Registrar, as part of the authorisation process, but also to provide for the Registrar to obtain information from representative offices after their establishment.

Consequently, certain amendments to section 34 of the Banks Act were introduced in the 1996 Banks Amendment Act. The most significant of these amendments are the following:

- The Registrar may require a foreign institution applying for authorisation to establish a representative office to furnish him with such information and documents as he may deem necessary, in addition to any information and documents that have to be furnished in terms of the Banks Act.
- The Registrar may grant the application, either unconditionally or subject to such conditions as he may determine, if he is satisfied that-
 - the foreign institution concerned lawfully conducts a business similar to the business of a bank in a foreign country;
 - the foreign authority responsible for the supervision of the foreign institution concerned has duly authorised the institution's proposed establishment of a representative office in the Republic; accepts, is committed to and complies with the proposals, guidelines and pronouncements of the Basle Committee on Banking Supervision; is not legally precluded from fulfilling its obligations in the aforementioned regard; and will furnish the Registrar, on a continuous basis, with all material information regarding the institution's financial soundness;
 - the establishment of a representative office in the Republic by the foreign institution will not be detrimental to the public interest.
- Approved representative offices have to furnish the Registrar with such prescribed information as he may reasonably require in order to perform his functions under the Banks Act.

During the course of 1997, the Registrar intends issuing regulations pertaining to the furnishing of prescribed information by representative offices of foreign banks. Proposals in this regard have already been considered and approved by the Standing Committee for the Revision of the Banks Act, 1990, and copies of *pro forma* regulations have been circulated to existing authorised representative offices in South Africa for their information and possible comments.

AMENDMENTS TO THE REGULATIONS UNDER THE BANKS ACT, 1990

The amendments to the Regulations relating to Banks that were reported on in the 1995 issue of the Annual Report were incorporated into a new set of the Regulations, which was promulgated in *Government Gazette* No. 17115 on 26 April 1996 and which came into operation on 1 July 1996.

REINCORPORATION OF DEPOSIT-TAKING INSTITUTIONS IN THE FORMER SELF-GOVERNING AND INDEPENDENT STATES UNDER LEGISLATION OF THE REPUBLIC OF SOUTH AFRICA

As is generally known, the states previously regarded as self-governing and independent states, which were generally known as the TBVC states, again became constitutionally part of the sovereign state of the Republic of South Africa on the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993 - "the 1993 Constitution"). As part of the general and transitional provisions of the 1993 Constitution, laws pertaining, *inter alia*, to the regulation and supervision of financial institutions in the former TBVC states that immediately before the commencement of the 1993 Constitution were in force in those states continued to be in force in such areas, subject to any repeal or amendment of such laws by a competent authority.

Since the Registrar of Banks derives his authority and responsibilities from the Banks Act, 1990, and the Mutual Banks Act, 1993, his Office may legally accept responsibility only for matters that fall within the jurisdiction of the

Banks Act and the Mutual Banks Act. Therefore, financial institutions such as banks and mutual building in the former TBVC states did not fall within the regulatory ambit of the Registrar's Office for as long as the laws of the former TBVC states laws pertaining to such institutions remained in force in those areas.

The promulgation of the Supervision of Financial Institutions Rationalisation Act, 1996 (Act No. 32 of 1996 - "the SFIR Act"), however, had a substantial influence on the legal status of, *inter alia*, banks and building societies in the former TBVC states. The SFIR Act came into operation on 1 July 1996, by virtue of a proclamation by the President published in *Government Gazette* No. 17286 dated 28 June 1996.

In terms of section 2 of the SFIR Act, all the respective laws of the former TBVC states pertaining to banks and building societies were repealed. Banks and building societies that derived their respective legal rights to carry on business in the former TBVC states from legislation that was repealed by the SFIR Act were granted the legal dispensation to continue operating as banks and building societies, respectively, but only in the territories within the borders of the former TBVC states in which they were previously authorised to operate. Subject to these restrictive provisions, registrations as banks and building societies in the former TBVC states are deemed to be registrations in terms of either the Banks Act or the Mutual Banks Act. Furthermore, a bank or building society that continues to conduct its business within the aforementioned restricted area may expand or relocate its business to other territories in South Africa only with the prior written approval of the Registrar.

In terms of section 4 of the SFIR Act, the provisions of the Banks Act and of the Mutual Banks apply to the whole national territory of the Republic of South Africa. Important legal consequences of this provision are that, with effect from 1 July 1996, all institutions in the Republic that are duly registered to take deposits from the general public/to conduct "the business of a bank" fall within the regulatory ambit of the Registrar and that all such institutions are legally compelled to adhere to the provisions of either the Banks Act or the Mutual Banks Act, depending on the status of the deposit-taking institution concerned.