

Chapter 3: Developments relating to banking legislation

3.1 Introduction

The Department continually strives to ensure that the legal framework for the regulation and supervision of banks and banking groups in South Africa remains relevant and current. Ideally the legal framework pertaining to banking regulation has to reflect local and international market developments, and should comply with the applicable international regulatory and supervisory standards, and best practices. The Department therefore reviews all banking legislation, including the Banks Act, the Mutual Banks Act, 1993 (Act No. 124 of 1993), the Regulations issued in terms thereof and other pieces of related banking legislation on an ongoing basis. The Department makes recommendations to the Minister of Finance to effect the necessary amendments thereto.

3.2 The Banks Act, 1990

As reported in the Department's 2012 *Annual Report*,⁴² the Banks Act was last amended on 1 January 2008, mainly to comply with the requirements and principles of the Basel II framework. Since then, the Department has been monitoring the developments relating to the G-20 discussions, publications and prescriptions issued by the Basel Committee and the FSB. Other developments relating to the Companies Act, 2008 (Act No. 71 of 2008), the King III *Report on Corporate Governance for South Africa 2009* and certain court decisions were also observed in order to identify possible areas that would necessitate further amendments to the Banks Act.

The proposed amendments to the Banks Act were discussed comprehensively in the Department's 2009 *Annual Report*⁴³ and further supplemented in the Department's 2012 *Annual Report*.⁴⁴

The Banks Amendment Bill, 2012 (the Banks Bill) was tabled in Parliament during the second half of 2012 and was subjected to rigorous debate and interrogation in both the Standing Committee on Finance of the National Assembly and the National Council of Provinces. After being approved by the relevant Parliamentary committees, the President assented to the Banks Bill after which it was published as the Banks Amendment Act, 2013 (Act No. 22 of 2013) by Notice No. 992 in *Government Gazette* No. 37144 on 10 December 2013.

3.3 Update regarding amendments to the Regulations relating to Banks

On 1 January 2013 South Africa implemented amended Regulations which, in line with the Basel III framework, essentially address both bank-specific and broader, systemic risks by:

- raising the quality of capital, with a focus on common equity and the quantity of capital to ensure banks are better able to absorb losses;
- enhancing the risk coverage of the regulatory framework, including exposures related to counterparty credit risk;
- introducing capital buffers which should be built up in prosperous times so that they can be drawn down during periods of stress;
- introducing a leverage ratio to serve as a backstop to the risk-based capital requirement and to prevent the build-up of excessive leverage in the financial system;
- raising standards for supervision and risk management (Pillar 2) and public disclosures (Pillar 3);

42. Section 3.2.

43. Available at <http://www.resbank.co.za/Publications/Reports/Pages/BankSupervisionAnnualReports.aspx>.

44. Available at <http://www.resbank.co.za/Publications/Reports/Pages/BankSupervisionAnnualReports.aspx>.



- introducing the monitoring of proposed minimum liquidity standards to improve banks' resilience to acute short-term stress and to improve longer-term funding; and
- introducing additional capital buffers for the most systemically important institutions to address the issue of such institutions being 'too big to fail'.

The implementation period for several of the Basel III requirements that were incorporated into the Regulations commenced on 1 January 2013 and includes transitional arrangements which will be phased in until 1 January 2019. The transitional arrangements are available to give banks time to meet the higher standards while still supporting lending to the economy.

Based on the requirements, best practices and standards that were finalised by international standard-setting bodies such as the Basel Committee during 2013, including specific amendments and enhancements to the Basel III framework, the Department commenced its processes to draft further proposed amendments to the Regulations during 2013. Furthermore, during 2013 the Department took various internal policy decisions in respect of specific matters that would impact the regulation and supervision of banks and is in the process of incorporating them into the Regulations. Areas that required amendment or further clarification were also identified and are being addressed accordingly.

In addition, in order to ensure that all relevant proposals and comments in respect of the proposed amended Regulations are duly considered, researched and debated, the Department continues to hold the necessary internal Policy Committee meetings as and when required.

The Department also continues to monitor, among other things, the developments relating to the G-20 discussions, and the press releases, publications and directives issued by the Basel Committee and the FSB, including further work being conducted by the Basel Committee related to the Basel III framework, in order to identify possible further areas that would necessitate amendments to the Regulations.

The Department is committed to remaining fully compliant with international standards and market best practices relating to the regulation and supervision of banks and banking groups.

3.4 Illegal deposit-taking

During the year under review the Department received a number of enquiries and complaints, with supporting documentary evidence, pertaining to the business activities of certain persons and/or companies that were suspected of accepting deposits from the general public as a regular feature of their business without being registered as a bank.

It should be noted that the Department's mandate in this regard is limited to potential deposit-taking in South Africa in contravention of the Banks Act only. It therefore follows that the Department's mandate does not extend to fraud or other related white-collar crime. In cases where the complaints are not related to illegal deposit-taking, but fall within the mandate of other regulators, the Department refers these matters to the relevant regulators.

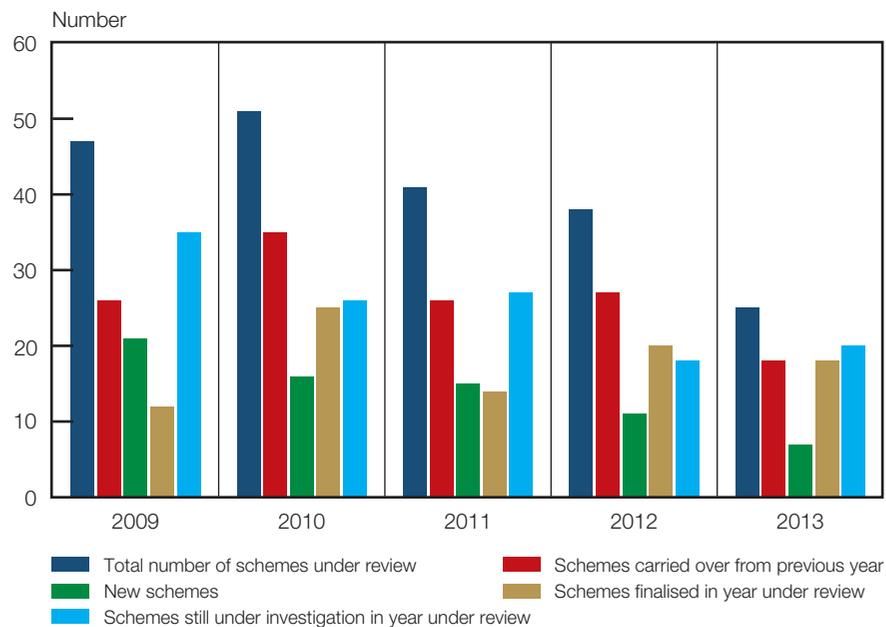
In the case where a scheme has already been liquidated, the Insolvency Act, 1936 (Act No. 24 of 1936), generally takes precedence over the Banks Act. Therefore, with regard to a scheme under liquidation or where the remedial measures in the Banks Act in respect of such a scheme have been exhausted and the matter has been referred to the South Africa Police Service for criminal investigation, the Department is not legally empowered to provide further assistance.

The Department compiled a review of schemes investigated from January 2009 to December 2013 (refer to Table 3.1 and Figure 3.1 on the next page). During this period, the Department appointed temporary inspectors in respect of 70 cases related to illegal deposit-taking schemes. A total of 132 schemes were carried over from previous years and 76 schemes were finalised during the above-mentioned five years. In 2013 the Department investigated 25 schemes, consisting of 18 that were carried over from previous years and 7 new schemes initiated in 2013. As at 31 December 2013, 20 schemes were still under investigation after the finalisation of 5 schemes during 2013.

Table 3.1 Inspections relating to illegal deposit-taking schemes

	Total number of schemes under review	Schemes carried over from previous years	New schemes in year under review	Schemes finalised in year under review	Schemes still under investigation in year under review
2009.....	47	26	21	12	35
2010.....	51	35	16	25	26
2011.....	41	26	15	14	27
2012.....	38	27	11	20	18
2013.....	25	18	7	5	20

Figure 3.1 Inspections relating to illegal deposit-taking schemes



On 26 September 2013 the Group Strategy and Communications Department of the Bank, in conjunction with the Department and the Financial Services Board, conducted a public awareness campaign titled “Don’t say bye-bye to your money”, emphasising the message that as a general rule, if an offer sounds too good to be true, it usually is.

During the campaign the Department was questioned by members of the general public as to what they should look out for and how they should protect themselves against the harmful effects of Ponzi and pyramid schemes. The Department accordingly provided the following guidelines:

- Conduct sufficient research when looking for an investment opportunity.
- Be particularly cautious of ‘opportunities’ that promise unrealistic returns in a short period of time.
- Beware of being pressurised to invest and of being afforded little time to analyse, review or understand the information given without a suitable cooling-off period. Do not put your money into an investment that you do not understand.
- If advised to keep an investment confidential, be wary as this is usually done to eliminate the possibility that someone may advise against such an investment.
- Remember the golden rule: If it sounds too good to be true, it probably is.



Ponzi and pyramid schemes mostly do not generate an income because they merely 'roll' the money, meaning that new investors' funds are used to pay the returns of the initial investors. It is usually impossible to maintain such a scheme, partly because when the scheme becomes larger in size, more investors are needed to service the initial investors. The fact that the promised returns are usually absurdly high and utterly unattainable means that the repayments thereof become impossible to maintain as the number of investors increases. In addition, funds collected from investors are normally used to finance the living costs of the schemes' operators.

In conclusion, experience has shown that Ponzi and pyramid schemes benefit a few individuals only, that is, the operators of the scheme, their agents (who earn commission from attracting investments) and a few individuals who invested with the scheme during the initial stages.

3.5 Developments regarding Postbank

During the fourth quarter of 2013 the Department received a section 12 application in terms of the Banks Act (that is, an application for authorisation to establish a bank) from the Postbank (a division of the South African Post Office). At present the Postbank is regulated under the South African Postbank Limited Act, 2010 (Act No. 9 of 2010) and the Public Finance Management Act, 1999 (Act No. 1 of 1999). The Department is accordingly in the process of considering the application.