

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 banking legislation, including the Banks Act, 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 94 of 1990

As was reported in the Department's 2013 *Annual Report*,⁴¹ the Banks Act was amended by the Banks Amendment Act 22 of 2013, published as Notice No. 992 in *Government Gazette* No. 37144 on 10 December 2013 mainly to enable compliance with Basel III requirements and prescriptions. During the year under review efforts were focused on providing input to and comments on the proposed FSR Bill issued by National Treasury in order to establish the Twin Peaks financial regulatory architecture. A media statement was issued by National Treasury on 11 December 2014 which addresses various aspects of the FSR Bill.⁴² Public comments on the FSR Bill closed on 2 March 2015.

During the curatorship of African Bank it became increasingly evident that certain provisions of section 69 of the Banks Act unduly limited the curator's powers to effectively deal with the various issues in order to resolve the difficulties that presented itself within African Bank. In order to address these difficulties, the Minister issued the Banks Amendment Bill, 2014 (Banks Act Bill) for public comment during November 2014. The objects of the Banks Act Bill are to:

- provide an alternative to the recovery of a bank within the existing corporate entity;
- facilitate the transfer of all or part of a bank's business to a successor entity pursuant to a transfer under section 54 of the Banks Act; and
- facilitate the implementation of the above steps by the curator.

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. The essential information relating to the amendments that were implemented with effect from 1 January 2013 is set out in the 2013 *Annual Report*.⁴³

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 and 2014, including specific amendments and enhancements to the Basel III framework, the Department continued with its

41. Section 3.2.

42. Available at http://www.treasury.gov.za/comm_media/press/2014/2014121201%20-%20Media%20release%20FSR%20Bill%20and%20MCP.pdf.

43. Section 3.3.



processes to draft further proposed amendments to the Regulations during 2014. Furthermore, during 2014 the Department took various internal policy decisions in respect of specific matters that would impact the regulation and supervision of banks, and the Department is in the process of incorporating the outcome of these policy decisions into the Regulations. In addition, specific cases in the Regulations were identified that require further clarification and these areas are also being addressed accordingly.

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 continued to convene internal Policy Committee meetings during 2014 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 or refinements to the Regulations.

The Department expects to conclude its processes of consultation and to finalise the proposed amended Regulations during 2015, following which the Department will make the necessary recommendations to the Minister of Finance to consider and approve the proposed amended 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

The Banks Act mandates the Registrar to control certain activities of persons who are not registered as a bank or authorised to carry on the business of a bank.

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 person(s) and/or company(ies) that were suspected of conducting the business of a bank by accepting deposits from the general public as a regular feature of their business without being registered as a bank.

In fulfilling its mandate, it should be noted that the Department's involvement is limited to potential contraventions of the Banks Act in the Republic of South Africa and does not extend to fraud or other related white-collar crime. Such matters are referred to the relevant regulator. It should also be noted that the Department is not a prosecuting authority and can only report the alleged contravention to the South African Police Service and National Prosecuting Authority for criminal investigation and prosecution.

In most cases, when a matter is reported to the Department the funds are already depleted or the scheme is insolvent as the investors often only complain when they are no longer receiving their promised returns, which typically only happens once a scheme collapses. However, in the period under review the Department successfully applied for and was granted court orders in respect of two large schemes, which orders effectively froze considerable assets pending the outcome of investigations into the respective schemes.

The Department is concerned about the prevalence of illegal schemes in South Africa and again cautions the general public to be vigilant and prudent with their investment choices.

The Department has compiled a five-year review of schemes investigated from January 2010 to December 2014 (refer to Table 3.1 and Figure 3.1). During this period, the Department appointed temporary inspectors and in some cases repayment administrators in respect of 102 cases relating to illegal deposit-taking schemes. A total of 52 schemes were carried over from previous years and 74 schemes were finalised during the above-mentioned five years. In

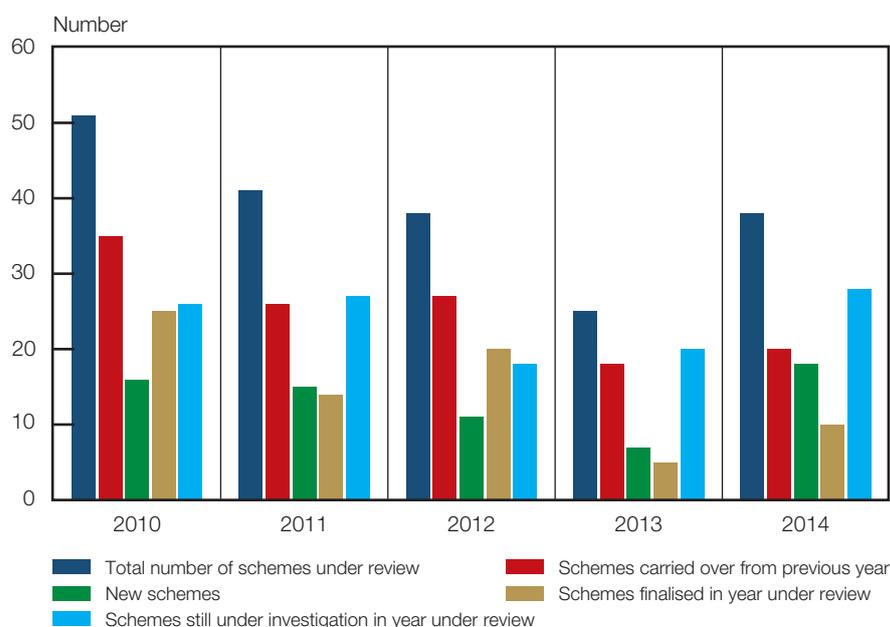
2014 the Department investigated 38 schemes, consisting of 20 schemes that were carried over from previous years and 18 new schemes initiated in 2014. On 31 December 2014, 28 schemes were still current after the finalisation of 10 schemes during the year under review.

Table 3.1 Inspections relating to illegal deposit-taking schemes

Year	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
2010.....	51	35	16	25	26
2011.....	41	26	15	14	27
2012.....	38	27	11	20	18
2013.....	25	18	7	5	20
2014.....	38	20	18	10	28

* Includes schemes carried over from previous years

Figure 3.1 Inspections relating to illegal deposit-taking schemes



3.5 Developments regarding Postbank

The Department is currently in the process of considering the section 12 application in terms of the Banks Act (i.e. 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 9 of 2010 and the Public Finance Management Act 1 of 1999.

