

Chapter 3: Developments relating to banking legislation

3.1 Introduction

The Department continues striving 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 2014 *Annual Report*, proposals were made to amend certain provisions contained in section 69 of the Banks Act. During the year under review, the proposed amendments were approved and the Banks Act was amended by the Banks Amendment Act 3 of 2015 (Banks Amendment Act) promulgated on 29 June 2015.

The objectives of the Banks Amendment Act are to:

- enable the application of the provisions on arrangements and compromises in the Companies Act 71 of 2008, to banks under curatorship;
- expand the basis on which a curator may dispose of all or part of the business of a bank to enable an effective resolution of a bank under curatorship; and
- provide for the application of the Promotion of Administrative Justice Act 3 of 2000, to any administrative action taken in terms of the Banks Act.

Additionally, efforts continued to be focused on providing comments on the proposed FSR Bill issued by National Treasury in order to establish the Twin Peaks financial regulatory architecture. Public comments on the FSR Bill closed on 2 March 2015 and the Bill was tabled before Parliament during October 2015. The FSR Bill will result in consequential amendments to the Banks Act, which will be finalised once the Bill has been approved by Parliament and promulgated as an Act of Parliament.

3.3 Update regarding amendments to the Regulations relating to Banks

The framework in terms of which the Department regulates and supervises banks and banking groups is subject to regular assessments and reviews by various international standards-setting bodies, such as the Basel Committee, the Financial Stability Board, the International Monetary Fund and the World Bank, to assess and review the extent to which domestic regulations are aligned to the minimum internationally agreed standards and requirements.

In this regard, the Basel Committee implemented its comprehensive RCAP⁴³ to monitor, assess and evaluate the implementation by member jurisdictions of the respective frameworks (Basel II, Basel 2.5 and Basel III) issued by the Basel Committee, as discussed in section 1.5 of this report.

As part of the assessment phase of South Africa's RCAP during the first quarter of 2015, the RCAP assessment team requested that selected amendments be effected to the Regulations in respect of matters that were regarded by them as sufficiently material to be incorporated into the Regulations instead of forming part of directives, circulars or guidance notes, or the

43. Available online at: <http://www.bis.org/publ/bcbs264.htm>



Department's supervisory review and evaluation processes. These required amendments to the Regulations were effected by means of *Government Gazette* No. 38616⁴⁴ published on 27 March 2015, essentially addressing matters related to banks' risk-based capital, and *Government Gazette* No. 38682,⁴⁵ published on 10 April 2015, essentially addressing matters related to the Basel III standards on liquidity.

The RCAP assessment team found that, overall and in respect of all the key components, the South African prudential regulations were compliant with all the respective components and standards prescribed under the respective Basel frameworks. Specific areas that nevertheless required refinement or further amendments were also identified during the RCAP process.⁴⁶

Furthermore, based on various other requirements, best practices and standards recently finalised by international standard-setting bodies such as the Basel Committee, further proposed amendments to the Regulations were necessary during 2015. In addition, the global financial crisis highlighted the need for enhanced data with regard to international banking statistics, including major banking systems' funding and lending patterns. In this regard, it became necessary to replace the forms BA 940 and BA 950 with a single amended form BA 940. The amended form BA 940 not only combines information required for locational statistics by requesting information on both residence and nationality, but also requires a more granular sectoral breakdown by banks.

Based on the aforesaid, on 2 September 2015 and 5 November 2015, further proposed amendments to the Regulations were published for public comment. The proposed amendments essentially related to:

- composition of capital disclosure requirements - Rules text;
- LCR and liquidity risk monitoring tools;
- LCR disclosure standards;
- LCR and restricted-use committed liquidity facilities;
- monitoring tools for intraday liquidity management;
- Basel III leverage ratio framework and disclosure requirements; and
- amendments to various returns submitted to the Department and the Economic Research and Statistics Department of the Bank, including the amended form BA 940.

In order to ensure that all relevant key players remain updated in respect of all relevant comments submitted, discussions held and questions raised in respect of the proposed amended Regulations, various staff members of the Department attended and actively participate in all relevant working groups, task groups or forums established by key players, such as those by the BASA.

The proposed amended Regulations have accordingly been finalised and it is expected that amended Regulations will be published during 2016.

The Department will continue 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 Financial Stability Board, 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.

44. Available online at: http://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/6670/Amended%20Reg%20re%20Banks_Matters%20excl%20liquidity%20risk.pdf

45. Available online at: http://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/6670/Amended%20Reg%20re%20Banks_%20Liquidity%20risk.pdf

46. The RCAP reports for South Africa are available online at: Assessment of Basel III risk-based capital regulations <https://www.bis.org/bcbs/publ/d322.pdf> and Assessment of Basel III LCR regulations <https://www.bis.org/bcbs/publ/d323.pdf>