

Chapter 3: Developments relating to banking legislation

3.1 Introduction

BSD continued striving to ensure that the legal framework for the regulation and supervision of banks and banking groups in South Africa remained relevant and current. Ideally, the legal framework pertaining to banking regulation should reflect both local and international market developments and should comply with applicable international regulatory and supervisory standards and best practice. BSD 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. If applicable, the department then makes recommendations to the Minister of Finance to effect the necessary amendments.

3.2 The Banks Act 94 of 1990

The FSR Bill necessitates consequential amendments to the Banks Act. These will be finalised once the FSR Bill is approved by Parliament and promulgated as an Act of Parliament. Please refer to subheading 1.5.1 for an update on the implementation of the Twin Peaks system of financial regulatory architecture in South Africa.

3.3 Update regarding the amendments to the Regulations relating to Banks

In its 2015 annual report²⁶, BSD had reported that proposed amendments to the Regulations had been published for public comment during the latter part of 2015. These proposed amendments related to:

- the 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;
- the Basel III leverage ratio framework and disclosure requirements; and
- amendments to the various returns submitted to BSD and the Economic Research and Statistics Department of the SARB, including the amended BA 940 form.

BSD had subsequently worked through all the comments and finalised the proposed amendments to the Regulations for consideration and approval by the Minister of Finance. On 20 May 2016, the aforementioned amendments to the Regulations were published in *Government Gazette No. 40002* and implemented with effect from 1 July 2016.²⁷

Furthermore, as part of the internationally agreed post-crisis regulatory reform programme, the G20 had initiated a reform programme in 2009 to reduce the systemic risk associated with OTC derivative instruments.²⁸ This reform programme originally comprised four elements:

- All the standardised OTC derivative instruments should be traded on exchanges or electronic platforms, as and where appropriate.
- All the standardised OTC derivative instruments should be cleared through central counterparties.
- OTC derivative contracts should be reported to trade repositories.

26. Available at <http://www.resbank.co.za/Publications/Detail-Item-View/Pages/Publications>

27. Available at <http://www.gov.za/documents/banks-act-regulations-amendment-20-may-2016-0000>

28. G20 Pittsburgh Summit declaration (<http://www.g20.utoronto.ca/2009/2009communique0925.html#system>)



- Non-centrally cleared OTC derivative contracts should be subject to higher capital requirements.

In 2011, the G20 agreed to add margin requirements on non-centrally cleared OTC derivative instruments to the reform programme.²⁹

In this regard, South Africa has made substantial progress in the past few years in preparing for the implementation of the appropriate regulatory and legislative frameworks that are based on, among other things, the recommendations from the Financial Stability Board and other relevant international standard-setting bodies, including the BCBS, the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO).³⁰

As part of the aforementioned, relevant and required, ongoing amendments to the legislative and regulatory frameworks, BSD drafted a proposed directive and various proposed amendments to the Regulations during the latter part of 2016 in order to incorporate applicable international regulatory and supervisory standards and best practice. The proposed directive and the latest set of the proposed amendments to the Regulations relate to:

- the margin requirements for non-centrally cleared derivatives;
- the capital standard for bank exposures to central counterparties;
- the STA for measuring counterparty credit risk exposures; and
- the capital requirements for banks' equity investments in funds.

In November 2016, the department issued a directive in respect of the proposed implementation of the margin requirements for non-centrally cleared derivatives, inviting comments from all interested parties to be submitted by 2 December 2016.

In order to ensure that all relevant stakeholders remain updated in respect of all the comments submitted, discussions held and questions raised on the proposed directive and proposed amended Regulations, various BSD staff members attend and actively participate in all relevant working groups, task groups and/or forums established by such stakeholders, including those organised by BASA. The proposed directive and the latest set of proposed amended Regulations dealing with the matters specified above will be published for final review and consultation during the first part of 2017. They will then be finalised and submitted to the Minister of Finance for consideration and approval for implementation.

In order to identify more possible areas that could necessitate amendments and/or refinements to the Regulations, BSD continues to monitor, among other things, the developments relating to G20 discussions as well as the press releases, publications and directives issued by the BCBS and the Financial Stability Board.

29. G20 Cannes Summit declaration (<http://www.g20.toronto.ca/2011/2011-cannes-declaration-111104-en.html>)

30. Refer to the explanatory memorandum issued in 2016 by National Treasury for further information in this regard.