

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 comply with applicable international regulatory and supervisory standards and best practices. BSD therefore reviews banking legislation– including the Banks Act, the Regulations issued in terms thereof, and other pieces of banking-related legislation– on an ongoing basis. If applicable, BSD then makes recommendations to the Minister of Finance to effect the necessary amendments.

3.2 The Banks Act 94 of 1990

The promulgation of the FSR Act in 2017 resulted in a number of consequential amendments having to be effected to the Banks Act. Following the commencement of the FSR Act in 2018, the affected sections of the Banks Act will be repealed or amended accordingly.

3.3 Update on the amendments to the Regulations relating to Banks

As stated in Chapter 1 of this report and in previous annual reports published by BSD,¹² as part of the internationally agreed regulatory reforms to promote the safety and soundness of the international financial system, the BCBS has issued various new or revised frameworks or requirements during recent years, for implementation by member jurisdictions.

In this regard, on 29 March 2017 BSD issued proposed amendments to the Regulations for comment. The proposed amendments essentially incorporated the relevant internationally agreed requirements that related to:

- a capital standard for bank exposures to central counterparties;
- the standardised approach for measuring counterparty credit risk exposures; and
- capital requirements for banks' equity investments in funds.

As part of the broader OTC derivative reforms, it was decided that instead of amending the Regulations, one set of rules that applies to banks and non-banks in respect of margin requirements for non-centrally cleared OTC derivative transactions should be issued in terms of the Financial Markets Act 19 of 2012. In this regard, on 8 August 2017 the FSB issued an updated proposed set of rules related to margin requirements for non-centrally cleared OTC derivative transactions for public consultation. Representatives of the SARB, National Treasury and FSB have subsequently worked through the comments received and are engaging industry further to finalise the draft rules related to margin requirements for non-centrally cleared OTC derivative transactions, for implementation in 2018.

On 25 April 2017 and 18 October 2017 respectively, the BCBS published the twelfth¹³ and thirteenth¹⁴ progress reports on the adoption by member jurisdictions of the relevant Basel regulatory frameworks.

On 4 July 2017, the BCBS published its report to the G20 leaders¹⁵ on the implementation by member jurisdictions of the Basel III regulatory reforms, which also provides some details related to the progress made and the challenges faced by several jurisdictions regarding the timely adoption of certain standards.

12. Available at <http://www.resbank.co.za> (refer to Prudential Authority link)

13. Available at <https://www.bis.org/bcbs/publ/d404.htm>

14. Available at <https://www.bis.org/bcbs/publ/d418.htm>

15. Available at <https://www.bis.org/bcbs/publ/d412.htm>

As stated in the report to the G20 leaders, differences between member jurisdictions in respect of the implementation of certain standards are likely to have implications for banks and regulators from a level playing field perspective.

BSD is in the process of working through the comments received in respect of the proposed amendments to the Regulations issued to date, and is also monitoring and considering, among other things, the impact of delayed implementation of certain standards in other jurisdictions before finalising the proposed amendments to the Regulations and the related proposed implementation dates.

In order to ensure that all relevant stakeholders remain updated in respect of all the comments submitted, discussions held and questions raised on the challenges faced by many jurisdictions in respect of the implementation of the internationally agreed standards, as well as the potential impact thereof on the proposed amendments to the 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.

It is the intention of BSD to publish the updated set of proposed amendments to the Regulations dealing with, among other things, the capital standard for bank exposures to central counterparties, the capital requirements for banks' equity investments in funds, and the standardised approach for measuring counterparty credit risk exposures for final review and consultation during 2018. These will then be finalised and submitted to the Minister of Finance for consideration and approval for implementation.

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

