

Chapter 3

Developments relating to banking legislation

A key responsibility of the Department is to ensure that the legal framework for the regulation and supervision of banking groups in South Africa remains relevant and current. Consequently, the legal framework pertaining to banking regulation has to reflect local and international market developments, and has to comply with the applicable international regulatory standards and best practices. The Department is, therefore, required to review the banking legislation, that is, the Banks Act, the Mutual Banks Act, 1993, the Regulations relating to Banks issued in respect thereof and other pieces of related banking legislation on an ongoing basis, and to make recommendations to the Minister of Finance to effect the necessary amendments thereto.

The Banks Act, the Regulations relating to Banks, the Branch Regulations and the Securitisation Notice

The Banks Act was substantially amended during the period under review, in the main, to comply with the principles of Basel II. After an extensive consultation process involving all stakeholders and the requisite parliamentary process, the Banks Amendment Act, 2007 (Act No. 20 of 2007) was assented to by the President of the Republic of South Africa and published as Notice No. 1080 in *Government Gazette* No. 30474 on 15 November 2007. The provisions of the Banks Amendment Act, 2007 became effective on 1 January 2008, which amendments were discussed in detail in the Department's *Annual Report 2007*.

subordinate legislation amended

The following pieces of subordinate legislation were also amended during the period under review, in the main, to comply with the principles of Basel II:

- The Regulations relating to Banks, 2008 were published in *Government Gazette* No. 30629 dated 1 January 2008
- The "Conditions for the conducting of the business of a bank by an international institution by means of a branch in the Republic" (Branch Regulations) were published in *Government Gazette* No. 30627 dated 1 January 2008
- The Notice for the "Designation of an activity not falling within the meaning of 'the business of a bank' (securitisation schemes)" was published in *Government Gazette* No. 30628 dated 1 January 2008.

The provisions of the above-mentioned regulations and notice became effective on 1 January 2008.

identify possible amendments to the legal framework

As part of an ongoing project to keep the legal framework for the regulation and supervision of banks relevant and current, however, the Department will be researching the areas and/or developments described below in order to identify possible amendments to the legal framework.

During 2006 the Basel Committee substantially amended the Core Principles. The Department subscribes to the Core Principles, which is also reflected in the legal framework (effective 1 January 2008) for the regulation and supervision of banks. Ongoing reviews by the Department of the legal framework may reveal certain areas where further amendments to the framework are necessary in order to be fully compliant with the Core Principles as amended.

During 2008 the Department was subjected to, or involved in, the following international assessments (also referred to, and explained in more detail, in Chapter 2 of this report):

- A voluntary pilot project by the IMF/World Bank to assess the Department's implementation of Basel II
- A scheduled FSAP by the IMF/World Bank
- An IMF/World Bank Article IV Consultation
- A scheduled assessment of the Department's compliance with AML/CFT recommendations made by the FATF.

Although the reports pertaining to the assessments above have been favourable in general as they relate to the legal framework for banking regulation and supervision, there are some areas that may need to be amended.

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Following the sub-prime crisis in the USA and the resultant crisis in the securitisation markets in Europe, the Financial Stability Board, a standard-setting body comprising senior representatives of national financial authorities, international financial institutions and committees of central bank experts, issued a paper on the causes, effects and regulatory response to the crisis. The Department is studying the recommendations of the Financial Stability Board report in order to augment the legal framework where necessary or appropriate. Further recommendations by the Basel Committee and the G-20 will also have to be considered in this regard.

Apart from the international developments, the Department has also taken cognisance of the developments within the banking industry, the markets and new or amending legislation that might have an effect on banks and/or banking regulation or supervision.

On 1 January 2008 the Department reissued a number of previously issued Circulars as Directives, Circulars or Guidance Notes in terms of the amended Banks Act. These, together with newly issued Directives, Circulars or Guidance Notes, will also be studied and considered for inclusion in the legal framework for the regulation and supervision of Banks.