



South African Reserve Bank
From the Office of
the Registrar of Banks

Confidential

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D3/08

TO ALL BANKS, CONTROLLING COMPANIES AND BRANCHES OF FOREIGN BANKS

**DIRECTIVE 3/2008 ISSUED IN TERMS OF SECTION 6(6) OF THE BANKS ACT, 1990:
APPOINTMENT OF DIRECTORS OR EXECUTIVE OFFICERS AND COMPLETION OF
FORM BA 020**

EXECUTIVE SUMMARY

Banks Act Circular 6/2007 dated 14 November 2007 regarding consultation with banks, controlling companies and branches of foreign banks in respect of directives, circulars and guidance notes refers.

The Banks Act, 1990 (Act No. 94 of 1990 – the Banks Act), as amended, and the Regulations relating to Banks (the Regulations) stipulate that a banking institution shall inform the Registrar of Banks (the Registrar) of any appointment in respect of directors or executive officers. A duly completed statement and declaration, as prescribed in regulation 42 of the Regulations, shall be submitted to the Registrar in respect of such an appointment. In order for this Office to duly consider such a notification in terms of section 60 of the Banks Act, this Office deems it necessary to issue this directive to banks and controlling companies in respect of the correct procedure to be followed when completing and submitting the form BA 020.

1. Introduction

All banks and controlling companies are required in terms of the Banks Act and Regulations to notify the Registrar of the appointment of a director or executive officer. The said notification should be done by means of submitting a duly completed statement and declaration in the form of the form BA 020, as set out in regulation 42 of the Regulations. In order for the Registrar to properly consider the proposed appointment a duly completed BA 020 is required.

2. Banks Act references

Section 60(5) of the Banks Act prescribes that a bank shall give the Registrar written notice of a nomination of any person to be appointed as a chief executive officer, director or executive officer by furnishing the Registrar with the prescribed information. This notification should reach the Registrar at least 30 days prior to the proposed date of appointment.

The Registrar may also in terms of section 1(1A)(c) of the Banks Act, request any person to complete the form BA020.

3. Regulations reference

Regulations 39-42 address corporate governance, conduct of directors and the statement to be completed by directors and executive officers.

4. Directive

A bank/controlling company shall comply with the following requirements for the completion and submission of the form BA 020:

4.1 Completion of form BA 020

The applicant shall answer, in full, all the questions of form BA 020. In addition to the form BA 020, question no. 5 requires from the applicant to submit his/her *curriculum vitae (CV)*. Please note that all the pages of the CV should also be initialed by the applicant, the chairperson of the board of directors and the commissioner of oaths.

The declaration by the applicant shall be completed and signed by the applicant and then sworn to or affirmed by the applicant before a commissioner of oaths. It must be emphasized that the commissioner should properly administer the oath or affirmation and should indicate the manner in which the declaration was made and should indicate and/or delete the words/phrases that are not applicable. A declaration that was not properly completed by the commissioner of oaths renders the statement invalid and the form BA 020 will be returned to the institution to correct.

The form BA 020 also contains a declaration that has to be completed and signed by the chairperson of the board of directors of the banking institution. The declaration by the chairperson shall be properly completed and should reflect the proposed date of appointment of the applicant.

Furthermore, each page of a form BA 020 and each additional page thereto have to be initialed by the applicant, the commissioner of oaths and the chairperson of the board of directors.

In the case where the applicant is to be appointed as a director or an executive officer of a **new** bank, a **new** branch of a foreign bank or a **new** controlling company and when a chairperson has not yet been appointed, the declaration of the form BA 020 has to be completed by the external auditor of the new bank, branch of a foreign bank or controlling company. The external auditor also has to initial every page of the BA 020, including any additional page thereto.

4.2 Submission of form BA 020

The Banks Act and Regulations only requires an institution to submit a form BA 020 in respect of the proposed appointment of a director (non-executive or executive) and executive officer. In this regard all institutions must note that a person only qualifies as a director when such a person is appointed as a statutory director in terms of the Companies Act, 1973 (Act No. 63 of 1973). Furthermore, an executive officer is defined in the Banks Act as follow:

“**executive officer**”, in relation to any institution -

- (a)
- (b) that is a bank, includes any employee who is a director or who is in charge of a risk management function of the bank, the compliance officer, the secretary of the company or any manager of the bank who is responsible, or reports, directly to the chief executive officer of the bank;

The original BA 020, duly completed, should reach this Office at least 30 days prior to the proposed date of appointment. In this regard, the banking institution's Chief Executive Officer or his/her delegate should ensure that the form BA 020 is correctly completed and complies with the provisions of this directive and that the form BA 020 is submitted within the legal timeframe allowed.

5. Acknowledgement of receipt

Two additional copies of this directive are enclosed for the use of your institution's independent auditors. The attached acknowledgement of receipt, duly completed and signed by both the chief executive officer of the institution and the said auditors, should be returned to this Office at the earliest convenience of the aforementioned signatories.



E M Kruger
Registrar of Banks

The previous directive issued was Directive 2/2008 dated 7 May 2008.