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Banks Amendment Bill, 2007

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Background
The Basle Committee (Committee on Banking Regulations and supervisory Practices) was established by the Central Bank Governors of the Group of Ten countries at the end of 1974. The establishment was in the aftermath of serious disturbances in international currency and banking markets. Meetings have been held regularly, three to four times a year since then. The Governor of the Bank of Spain is currently the chairperson.
The Committee provides a forum for co-operation on matters of banking supervision of the member countries. Initially, it discussed modalities for international cooperation in order to close gaps in the supervisory net. Its wider objective has been to improve supervisory understanding and the quality of banking supervision worldwide.
The topic to which the Committee has devoted most time in recent years is capital adequacy. The Committee is concerned that the deterioration in the capital ratios of the main international banks at the time of international risks was increasing, notably those vis-à-vis heavily-indebted countries. The Committee resolved to halt the erosion of capital standards in their banking systems and undertook to work towards greater convergence in the measurement of capital adequacy.
The Basle Capital Accord – widely known as Basle I – was released in July 1988. This required banks to set aside eight cents for every one rand taken in loan. Ten years later, the Committee issued a proposal for a new capital adequacy framework and in this way replaced Basle I. This culminated in the revised Framework on International Convergence of Capital Measurement and Capital Standards published by the International Basle Committee on 26 June 2004. Amendments in South African banking system have become necessary, since the Banks Act was last amended in 2003. South Africa has set January 1, 2008 as the implementation date for Basle 2.

Objectives of Basle 2
- To develop a framework that would further strengthen the soundness and stability of the international banking system and, simultaneously, maintain consistency in capital adequacy regulation;
- To promote the adoption of stronger risk management practices by the banking industry;
- To ensure that capital adequacy regulation should not be a significant source of unequal competition among rival banks;
- To create a sufficiently robust regulatory environment that enables the Registrar to properly discharge responsibilities in respect of banks, controlling companies and banking companies;
- To set out the details for adopting more-risk-sensitive minimum capital requirements for banking organizations;
- To lay out principles for banks to assess the adequacy of their capital and for supervisors to review such assessments to ensure banks have adequate capital to support their risks;
- To strengthen market discipline by enhancing transparency in banks' financial reporting;
- To increase financial stability, competitiveness and improving the efficiency of the banking sector.

Contents
Basle 2 has been tasked with the promotion of adequate capitalization of banks and the improvement of risk management in order to strengthen the stability of the financial system. This goal will be accomplished through 'three pillars', each reinforcing the other so as to create incentives for banks to enhance the quality of their control processes.
Pillar 1 represents a significant strengthening of the minimum requirements set out in the 1998

FROM Pg1

Accord. It aligns the minimum capital requirement to the actual risk of economic loss in a bank. Basle 2 requires higher levels of capital for those borrowers who present higher levels of credit risks.

Pillar 2 of the framework recognizes the necessity of exercising effective supervisory review of banks' internal assessment of their overall risks in order to ensure that bank management exercises sound judgment. Supervisors will evaluate the activities and risk profiles of individual banks to determine whether those banks should hold higher levels of capital than the minimum requirements that Pillar 1 specifies.

Pillar 3 leverages the ability of the finance market to motivate prudent management by enhancing the degree of transparency in banks' public reporting. It sets out the nature of public disclosure that banks should make in order to lend greater insight into the capital adequacy of their capitalization.

Political implications

South African banks have been focusing their efforts mainly on becoming Basle 2 compliant. Relatively little attention has been paid to the likely impact of Basle 2 on the services and facilities that banks offer. Basle 2 is likely to have a major impact on the way in which a bank conducts its business, with whom the bank does business and how a bank accounts for that business. A related but unanswered question is whether the new regulations, setting out how much money lenders should put aside in order to cover losses, have an adverse effect on access to credit. The difficulty that smaller banks may face would need to be assessed, as well as other financial institutions. In addition the impact of Basel 2 on access to finance by SMMEs needs to be determined.

Similarly an assessment of the possibility of interest rates and bank charges dramatically increasing as a consequence of the implementation of Basle 2 needs to be looked at. Since Basle 2 requires favourable capital requirements for the retail and mortgage markets, consideration needs to be given to the impact on the property market. The possibility of property valuation escalating in price should be assessed.

Diamond Export Levy Bill, 2007

The Diamonds Act, 1986 (Act No. 56 of 1986), as amended, sought to promote local beneficiation of rough diamonds by imposing a 15 per cent levy on rough diamonds exported from South Africa.

The original version of the 1986 Diamonds Amendment Act (before the 2005 amendments) contained key exemptions from the 15 per cent export levy.

Firstly, agreements in terms of section 59 allowed for an exemption if the exporting party could demonstrate the promotion of local beneficiation via other means (such as the long-term contractual supply of rough diamonds to local cutters).

Secondly, all parties (miners and dealers) could escape the 15 per cent levy merely by proving that the rough diamonds had been offered for sale on a local bourse before export.

As a result, the 15 per cent export levy has rarely been applied over almost 20-year history.

The government sought to address this situation by introducing legislation that would ensure the local beneficiation of rough diamonds by enacting the 2005 Diamond Amendment Act (Diamond Amendment Act (Act No. 29 of 2005) and Diamond Second Amendment Act (Act No. 30 of 2005) to create a State Diamond Trader.

These Acts require producers to sell a certain percentage of their rough diamonds to the State Diamond Trader at market value. This prescribed percentage of sales is set by the Minister of Minerals and Energy.

The State Diamond Trader in turn will sell these diamonds to local cutters for polishing.

This process should create a steady long-term supply for local cutters.

Content

The export levy on rough diamonds will be retained at a reduced rate and will be subject to slightly different procedures and exemptions. The objective of the export levy on rough diamonds is similar what it was in the past and will complement the intentions of the State Diamond Trader, also ensuring that diamonds sold by the State Diamond Trader are polished and cut locally and not merely exported by local purchasers.

The 5 per cent diamond export levy is enacted through the Diamond Export Levy Bill for Constitutional reasons. As of 1996, all taxes and levies must be imposed or amended by Money Bills and this Money Bill thus introduces the levy. This levy applies to all rough diamonds exported and is triggered by section 69 of the

FROM Pg 2

Diamonds Amendment Act (No 29 of 2005), which states that an unpolished diamond, intended for export will be subject to a 5 percent levy. The 5 per cent levy applies to the value of exported rough diamonds.
In order to prevent artificial under-valuations, the 5 per cent levy will be imposed on the greater of the following two values:
(a) The value specified by an exporter on a return as required by section 69 of the Diamonds Amendment Act of 2005, or(b) A value assessed by the Diamond and Precious Metals Regulator (i.e. the government diamond valuator)
The Bill contains relief measures that may offset the levy in full or in part. Such relief measures exist to minimise any potential distortionary and unintended negative impacts of the proposed export levy.
It is important to note that only producers will qualify for the proposed relief measures. Independent diamond dealers and cutters who intend exporting rough diamonds will have to account for the 5 per cent export levy without being able to resort to any relief provisions since relief provisions for independent dealers and cutters could effectively undermine the original intent of the levy.

Political Considerations

The Freedom Charter is explicit in its requirements that all people must share in the country's wealth. It also states that all trade and industry shall be controlled to assist the well-being of the people. This Bill is introduced in the spirit of these provisions.
The big diamond producers have for too long been able to avoid the state- imposed levy on exporting rough diamonds and could thus export their diamonds at maximum profit, which brought no benefit to the people of South Africa.
This Bill, together with the Diamonds Amendment Act of 2005 should ensure that the levy is imposed more than it was under principle Act of 1986 and that South Africans see jobs and income creating benefits through local beneficiation.

Diamond Export Levy (Administration) Bill, 2007

The Second Diamond Export Levy Bill introduces administrative provisions to the Diamond Export Levy Bill. All importers and exporters of unpolished diamonds must register with the South African Revenue Service.
These importers and exporters (hereinafter referred to registered persons) include producers, dealers, diamond beneficiators (cutters) and persons holding an export permit granted by the Regulator.
Registered persons must pay the export levy twice per year.
Registration is critical to the administration of this Bill.
According to the South African Police Service, most diamond smuggling stems from record defects at the importer/exporter level.
Once a diamond is officially recorded, smuggling that diamond offshore presents a far greater compliance risk.
Hence, compelled registration at the importer/exporter level initiates an audit document trail that is easily traceable, thereby deterring illegal activities.
Lastly, it should be noted that the producer definition (contained in section 1 of the Diamond Export Levy Bill) extends beyond holders of mining rights.
Other companies within the same consolidated financial group can be treated as a producer if that consolidated group company sells diamonds purchased from or on behalf of that producer.
This extension of the term producer reflects the economic reality for group operations, which often separate pure extraction from sales into different companies.

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