

New African Bank Limited – key milestones achieved

1 Background

- 1.1 African Bank Limited (African Bank) was placed under curatorship on Sunday 10 August 2014 by the then Minister of Finance (the Minister), Mr Nhlanhla Nene after consultation with the Registrar of Banks (the Registrar).
- 1.2 The South African Reserve Bank (SARB) developed a resolution plan which was aimed at resolving African Bank's financial position. The salient features of the original resolution plan included the following:
 - The splitting of the African Bank loan book into a 'Good Book' and a 'Bad Book'.
 - The transfer of the operational assets and certain specified operational liabilities of African Bank as well as the Good Book to a new entity referred to as 'Good Bank'.
 - The formation of a newly registered bank holding company referred to as 'New HoldCo' to hold the shares in Good Bank and to acquire the insurance entities within the African Bank Investments Limited (ABIL) group, primarily Stangen.
 - The formation of a Consortium consisting of the participating banks (ABSA, FirstRand, Standard Bank, Investec, Nedbank and Capitec), Public Investment Corporation (PIC) and the SARB.
 - The capitalisation by the Consortium of a R10 billion equity injection into New Holdco, in the following proportions:
 - SARB: R5 billion
 - PIC: R2,5 billion
 - The participating banks: R2,5 billion
 - The transfer of the senior funding liabilities and retail deposits from African Bank to Good Bank, with a 10 per cent haircut on the face value of the senior funding liabilities as at curatorship date.
 - The acquisition of the Bad Book by a vehicle supported by the SARB at a price of R7 billion with a claw-back.
- 1.3 Modifications were made to the original resolution plan during curatorship and it was decided that the Bad Book will no longer be transferred to a separate vehicle but will remain in Residual Bank for collection.

2 Investigation in terms of section 69A of the Banks Act

- 2.1 After the bank was placed under curatorship, the Registrar appointed Adv. JF Myburgh SC on 30 August 2014 as Commissioner, in terms of section 69A(1) of the Banks Act, to investigate the circumstances that gave rise to African Bank being placed under curatorship.
- 2.2 The Commissioner was required to report on whether, in his opinion:
- it is in the interest of the depositors or other creditors of the bank concerned that the bank remains under curatorship;
 - it is in the interest of the depositors or other creditors of the bank concerned that the Registrar, in terms of the provisions of section 68(1)(a), applies to a competent court for the winding-up of the bank concerned;
 - it appears that any business of such bank was carried on recklessly or negligently or with the intent to defraud depositors or other creditors of the bank concerned or any other person, or for any other fraudulent purpose; and
 - should it appear that any business of such bank was carried on in the manner contemplated in paragraph (c), whether or not any person identified by the Commissioner was a party to the carrying on of the business of that bank in such manner.
- 2.3 In terms of section 69A(11) of the Banks Act, the Commissioner was required to complete the investigation within a period of 5 months from the date of appointment, and submit a written report to the Registrar and the Minister within a period of 30 days after completing the investigation.
- 2.4 The Commissioner submitted his report to the Registrar and the Minister in February 2015.
- 2.5 Section 69A of the Banks Act prescribes that both the examination, and all or part of the resultant report, shall be private and confidential unless the Registrar, after consulting with the Minister, directs otherwise.
- 2.6 Following numerous written representations by persons mentioned in the report and, in order to ensure a procedurally fair process, prior to the Registrar taking the decision contemplated in section 69A(13) of the Banks Act, the Registrar communicated with those persons referred to in the Myburgh report, to provide them with the opportunity to review the report.

- 2.7 The SARB instructed the legal firm, Werkmans Attorneys (Werkmans) to request each person referred to in the Myburgh report in writing to review the report and make written representations, should they so elect, regarding the status of the report and more particularly why the Registrar should not direct, after consultation with the Minister, that the Myburgh report should no longer be private and confidential.
- 2.8 Affected parties were afforded the opportunity, against the signing of appropriate confidentiality undertakings, to review the Myburgh report and to make written representations up to and until 20 November 2015.
- 2.9 Of the 37 individuals or entities invited to review the Myburgh report and make written representations, 35 took up the invitation and reviewed the Myburgh report during the aforementioned period, of which 32 were represented by legal representatives and 18 submitted written representations by 20 November 2015.
- 2.10 The Registrar also had to inform the new Minister, Mr Pravin Gordhan appointed in December 2015, of the developments relating to the Commissioner's investigation.
- 2.11 The Registrar duly considered the representations and in the press release dated 3 May 2016, the SARB announced that the Registrar, after consultation with the Minister, considered that it will be in the public interest to direct, with effect from the close of business on 12 May 2016, that the report is no longer private and confidential.
- 2.12 The report was subsequently made publically available on the SARB's website on the close of business on 12 May 2016.
- 2.13 The Commissioner reported that there was no evidence that the business of the bank was conducted with the intent to defraud depositors or other creditors of the bank or any other person or for any other fraudulent purpose. The Commissioner has reported areas where business was conducted negligently or recklessly.

3 Amendment of the Banks Act

- 3.1 Section 69 of the Banks Act 1990 (Act No. 94 of 1990 - the Banks Act), which provides for the appointment of a curator to a bank, contained certain legal impediments to the successful implementation of resolution measures to address the difficulties experienced by a bank under curatorship.
- 3.2 There were restrictions on the powers of the Curator regarding the transfer of assets and the decision making powers for the debt holders. As a result, amendments were made to section 69 of the Banks Act to expand the basis on which the Curator may dispose of all or a part of the business of a bank to enable an effective resolution of a bank under curatorship.

3.3 The Amendment Bill was enacted in parliament in June 2015.

4 Engagements with debt holders

- 4.1 In terms of the resolution plan announced when the bank was placed under curatorship, the debt instruments of the senior creditors were to be transferred to the 'Good Bank' at 90 per cent of face value and all debt instruments of the subordinated debt holders were to remain in African Bank, which meant significant losses to subordinated debt holders.
- 4.2 Furthermore, the subordinated debt holders were opposed to the proposed amendments to section 69 of the Banks Act as mentioned above, and had threatened legal action for such changes to the Banks Act.
- 4.3 Recognising that such legal action would jeopardise the successful implementation of the resolution plan, a compromise offer was reached with senior creditors and sub-ordinated debt holders.
- 4.4 For senior creditors, the terms of the offer included a claim to the 10 per cent stub left in African Bank, including accrued interest up to the date of payment. The claim will rank junior to any claims of the SARB but senior to the claims of the subordinated debt holders. The senior creditors voted in favour of the exchange offer in March 2016.
- 4.5 In May 2015, the subordinated debt holders accepted an offer to exchange their existing debt instruments in African Bank for new Basel 3 compliant instruments in 'Good Bank', totalling R1.45 billion, subject to certain conditions. In addition, the subordinated debt holders would have a claim to African Bank, which will rank junior to any claims of the SARB and all other senior creditors' claims against African Bank. The subordinated debt holders voted in favour of the exchange offer in March 2016.
- 4.6 A 10 per cent cash offer to both senior creditors and subordinated debt holders was made to reduce the liability that will be transferred to 'Good Bank'.

5 Establishment of a cell captive arrangement

- 5.1 As part of the resolution plan, New HoldCo was to acquire Stangen from the ABIL group.
- 5.2 The BEE shareholders of ABIL filed a court interdict to object to the sale of Stangen to New HoldCo. In recognising the impact of delays to the successful implementation of the resolution plan, the acquisition offer of Stangen was terminated and an alternative insurance offering was sought. A cell captive arrangement was entered into with Guardrisk to provide credit life and funeral policies to 'Good Bank' customers.

6 Banking licence

- 6.1 Applications were submitted to the Bank Supervision Department for the establishment and registration of 'Good Bank' as a bank and the registration of New HoldCo as a bank controlling company. After following due process, approvals were granted in March 2016 to 'Good Bank' to operate as a bank and to New HoldCo to register as a bank controlling company. The banking licence was approved subject to condition that, amongst others, the board members of 'Good Bank' may not serve on the boards of any of the participating banks and/or PIC.

7 Board composition

- 7.1 The Curatorship team appointed the Board of New HoldCo and 'Good Bank' which consists of the Chief Executive Officer, Chief Financial Officer and 7 non-executive directors. None of the Board members of the old African Bank were appointed to the Board of 'Good Bank'.

8 Commencement of operations

- 8.1 On 4 April 2016, 'Good Bank' commenced operations and was renamed African Bank. All the identified assets from the old African Bank were transferred to the new African Bank. The banking licence of the old African Bank was cancelled with effect from 3 April 2016 and the name was changed to Residual Debt Services Limited (RDS). RDS continues under curatorship for collection on the bad loan book. As part of the resolution plan, the bad loan book has been ceded as security to the SARB for the financial support provided to RDS.
- 8.2 Since curatorship, the bank has implemented a number of initiatives to reduce risk appetite, which included more conservative lending criteria and more robust provisioning policies. There is a strategic focus to diversify the bank away from a mono-line unsecured lending environment through new product offerings, target market and sources of funding, in an attempt to improve the business performance of the bank.

9 The SARB as a shareholder of African Bank

- 9.1 It is important to note that the purchasing of the shares by the SARB in African Bank was solely for the purpose of facilitating the implementation of the resolution plan and the SARB will not have any involvement in the day-to-day activities of the bank. A new and independent board of directors has been appointed to oversee the new banking group, together with a new chief executive officer and a new chief financial officer.

- 9.2 A listing of New HoldCo [which has been renamed to African Bank Holdings Limited (ABHL)] on the Johannesburg Securities Exchange may be pursued at a later stage once ABHL has demonstrated market stability, at which stage the SARB may be in a position to dispose of its shareholding in the group. A five to eight year time frame for this listing is anticipated.