Presentation to the Portfolio Committee on Trade, Industry and Competition and the Standing Committee on Finance

4 February 2025

THE BANKING ASSOCIATION SOUTH AFRICA

Introduction

- BASA is the South African banking industry association.

- BASA represents 30 local and international commercial banks licenced by the South African Reserve Bank to operate in South Africa.

- Advocates the views of the banks on legislation, regulation, and social and economic issues that affect the industry.

- Facilitates the sustainable transformation of the banking industry.

- Promotes inclusive economic growth by working with government, regulators, business associations and other stakeholders, to establish a stable and conducive policy and business environment.

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Overview

1. Financial Sector Code (FSC)

   - Nine of the biggest banks in South Africa (83% of industry assets) have already achieved most empowered status (Level one).

   - On key metrics, like black ownership, economic interest and some management targets, banks are ahead of FSC targets.

   - South African banks recognise that poverty and inequality is a legacy of apartheid and are committed to transformation of the economy; the empowerment of the majority of South Africans and the objectives of the FSC.

Overview

2. Discrimination

- Banks are opposed to unfair discrimination of any kind.
- Law and good practice prohibit banks from discrimination and/or victimising customers. These obligations are enforced by supervisors.
- BASA from time to time receives complaints about bank’s operations or products and services. BASA refers these to the member bank or the relevant complaints adjudication body for resolution or adjudication, including the National Financial Ombud Scheme.
- If there are credible allegations of discrimination by banks, they should be fully investigated and the law applied accordingly.
- To date, no BASA member bank has been found guilty in a court of law of systemic or institutionalised racism.

Overview

3. Closure of Bank Accounts

Banks give reasonable prior notice before closing accounts, which provides customers with an opportunity to engage the bank and be heard.

The Conduct Standard for Banks and the Code of Banking Practice, among others, set out the process that must be followed by banks when closing an account.

Each bank has its own risk management policies and processes for closing an account, which must comply with the law.

Each matter is dealt with on its own merits.

Overview

4. Financial Technology

- Financial technology has increased competition in the provision of financial services, between banks, fintechs and other service-providers. This is good for consumers.

- Innovation and competition has resulted in cheaper, better financial products and services being offered to consumers and small businesses.

- Technology has reduced barriers to entry in the financial services industry, enabling the emergence of new businesses and service providers.

- To protect consumers and their funds all financial services providers must be regulated equally.

Overview

5. Islamic Banking

- While Shari'ah compliant products are structured differently, the economic outcome of conventional and Shari'ah products is similar.
- The terminology "interest free" is used to demonstrate that no "interest" is charged. However, there are still charges or premiums that could compare to a similar interest-bearing product.
- All Islamic banks and Islamic banking windows in South Africa are required to comply with conventional South African banking legislation, and regulations.
- Shari'ah compliant products are fully integrated into the banking system and are available to all South Africans at banks that offer them, irrespective of their religion.

The Financial Sector Code

The 2024 Transformation in Banking Report is based on data supplied by 20 participating banks, accounting for 96% of all bank assets.

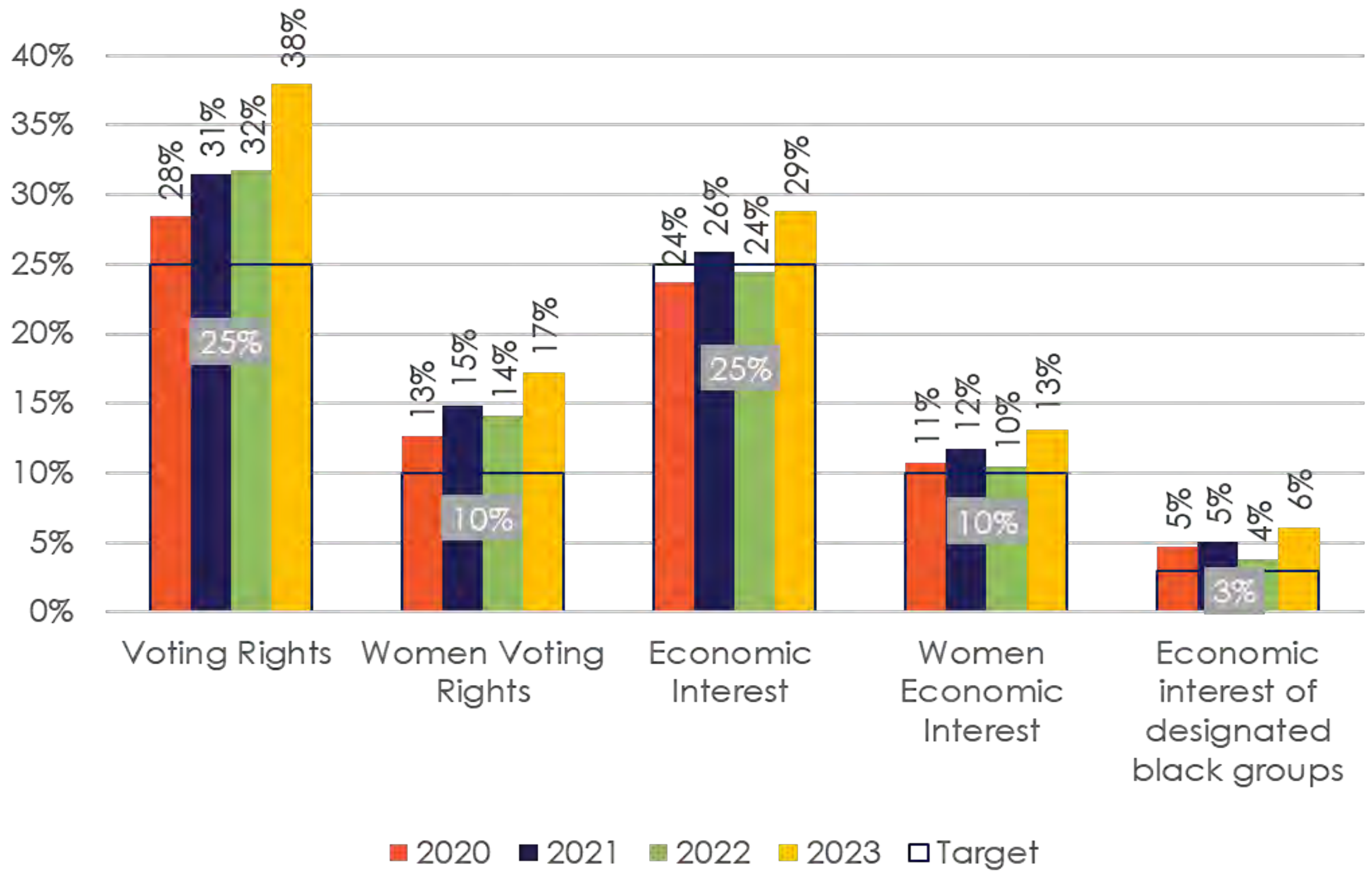
The metrics and targets are set out in the Financial Sector Code (FSC) scorecard. The full report covers four years of data - 2020 to 2023, inclusive.

It shows consistent improvements in key transformation metrics, year-on-year, except for during the Covid-19 pandemic.

For ease of reference and clarity this presentation highlights the 2023 statistics.

Ownership

Black ownership measurement in banks (weighted)



In 2023 the banking industry exceeded targets for voting rights and economic interest for blacks, black women and designated groups.

Weightings are based on each bank's proportion of total assets across all banks. Weightings give a more accurate indication of what proportion of the sector is managed by black people.

Management

The strong pipeline of black junior and middle managers means that senior black managers will better reflect the demographics of South Africa.

Banks spent R5,648 billion on skills development in 2023.

Already 48% of bank directors are black South Africans.

Women Management

Ongoing transformation and skills development, with a focus on women, means that there is an increasing proportion of black women managers.

In 2023, black women were:

- 62% of junior bank managers
- 38% of middle bank managers
- 25% of senior bank managers
- 11% of top senior bank managers
- 24% of bank directors

Empowerment Financing

Banks provided financing for empowerment and transformational infrastructure, including:

- R45 billion for affordable housing.
- R40 billion for black small and medium enterprises.
- R26 billion to finance black agriculture.
- R69 billion in transformational infrastructure.
- R157 billion to finance black economic empowerment transactions and Black Business Growth Funding.

Supplier Development

Supplier development supports businesses that provide banks with goods and services.

Banks spent R1,806 billion on supplier development, in 2023.

Enterprise development supports micro- and small enterprises that are majority black, or black woman, owned.

Banks spent R216 million on enterprise development, in 2023.

Banks preferential procurement spend – the purchase of goods and services from BEE compliant and small black and black women owned businesses - reached R133 billion.

Financial Inclusion

Financial inclusion provides individuals and businesses with access to appropriate and affordable financial products and services that allow them to make payments, save and have responsible access to credit.

Banks had 23 million qualifying product accounts that facilitate economic inclusion in 2023.

Banks spent R237 million on consumer financial education in 2023.

Inclusive Economic Growth

It is the business of banks to finance economic activity which leads to inclusive, sustainable economic growth.

In 2023, banks provided:

- R366 billion for investment in manufacturing.
- R215 billion for investment in infrastructure.
- R209 billion for investment in agriculture.
- R325 billion for investment in sustainable development projects.
- R261 billion to small businesses.

Discrimination and Account Closures

Banks' have a right to close bank accounts:

- In terms of the law.
- To prevent accounts being used to commit crime.
- They have to do so in a manner that complies with the law and respects the rights of customers.

The relationship between a bank and its customer is governed by:

- Contract law
- Common and case law
- Legislative obligations and standards

The relevant legislation, regulation and standards include, among others

- The Constitution
- The Banks Act
- The Financial Intelligence Centre Act
- The National Credit Act
- The Conduct Standard for Banks
- Code of Banking Practice

Contract Law

- A bank has the legal right to refuse to establish or to terminate a business relationship with a customer.
- The bank and customer have an obligation to uphold the terms of the contract.
- The contract must be lawful and not violate public policy or constitutional values.

Common And Case Law

- The courts have confirmed a bank's contractual right to close a bank account on reasonable notice provided the reasons do not violate public policy or constitutional values. [Bredenkamp and Others v SBSA (2010)].

- The courts have confirmed that a third party may not instruct or force a bank to reinstate a banking relationship. [Minister of Finance v Oakbay Investments (Pty) Ltd (2017)].

Legislation

The Constitution

- Contractual terms which are not in accordance with the Constitution are not enforceable.

The Banks Act

- Obliges banks to have comprehensive risk management processes and procedures, in place to identify, monitor, mitigate and report on risks, including client involvement in criminal activity, human rights abuses or avoidance of legislative obligations.

Financial Intelligence Centre Act (FICA)

- Protects the integrity of the financial system against abuse for illicit purposes. Banks must report suspicious transactions but must not tip a customer off.
- Banks must have a Risk Management Compliance Programme that includes an account termination process.

Legislation

National Credit Act (NCA)

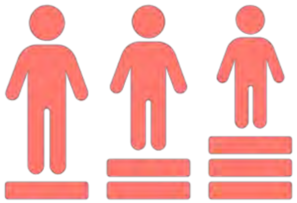
- The credit provider has the right to refuse to enter into a credit agreement on reasonable commercial grounds.
- A customer has the right to request the reasons for being refused credit.
- Customers are protected against unfair discrimination, particularly in terms of race, sex, and class.

Conduct Standard for Banks (Financial Sector Regulation Act)

- Banks must treat customers fairly and have procedures for withdrawing or terminating an account.
- Banks must provide reasonable notice and reasons for the withdrawal or termination of an account, unless otherwise compelled by law.
- Banks can close an account if they have reasonable suspicion that it is being used for illegal purposes; and have made the necessary reports to the appropriate authority.

Legislation

Promotion of Equality and Prevention of Unfair Discrimination Act



- The Act promotes equality and prevents and prohibits unfair discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Code of Banking Practice

- Banks must provide reasonable prior notice of the account closure to the customer’s last address it has on record, unless:
  - Compelled not to do so by law.
  - The account has not been used for a significant period.
  - There is reason to suspect it is being used for illegal purposes.

- Customers must inform their bank of any change in contact details or financial affairs.

Legislation

The Financial Advisory and Intermediary Services Act (FAIS)
General Code of Conduct and Board Notice 194 of 2017:

- Banks must regularly monitor their systems, processes, internal control mechanisms and measures to ensure customers are treated with care, skill and diligence in a fair, honest and professional manner.
- If a customer requests the bank to terminate the financial services agreement, the bank must do so immediately, subject to any contractual obligations.
- If the bank terminates the financial services agreement, the bank must explain the implications of the termination to the customer and provide reasonable prior notice.

Account Closures

Bank accounts are closed for various reasons, including:

- The customer is suspected or was found to be involved in a crime, including fraud, money laundering, terrorism, and corruption.
- Suspicious transactions that cannot be explained to the satisfaction of the bank.
- Reputational risk: when doing business with the customer can damage the trust in the bank, by depositors, shareholders and stakeholders.
- A breach of contractual obligations.
- An actual, perceived or potential conflict of interest.
- Account maintenance rules, for example, dormancy.
- The customer's collateral or security has been compromised or deteriorated, creating credit risk for the bank.
- Abuse of a bank's employees and the behaviour is ongoing without improvement.
- An inability to conduct customer due diligence as prescribed in FICA.

Account Closures

- Each bank has its own business and risk criteria for closing a bank account.
- The closure of a bank account is based on the merits of the individual matter and subject to legislative obligations.
- The merits inform the extent to which reasons and detail for closing an account can be provided. Banks may be required to not provide reasons by investigating authorities, for example.
- Banks provide customers with reasonable notice prior to closing an account. This provides the customer with an opportunity to be heard by the bank.

Account Closures

Banks have internal governance processes that:

Assesses the facts, using a range of risk assessment tools.

Evaluates the matter against the bank's various policies and standards, before making a final decision.

Ensures a "check and challenge" and that the decision is only made in circumstances where it is justifiable, defendable and consistent.

Account Closures

If banks do not adequately manage risk or their accounts are used for criminal activity:

They face fines and sanctions from domestic and international regulators.

Correspondent banks, financial institutions and investors, may restrict their dealings with banks.

Their ability to facilitate investment and fund economic activity will be hampered.

- Providing financial services and products is the business of banks. Closing bank accounts, if not merited, is counterproductive.
- Forty million South Africans have banks accounts.
- In 2024, the Banking Division of the National Financial Ombud Scheme of South Africa received only 316 customer complaints regarding the closure of bank accounts. This is 3,98 % of the total complaints received by the NFO that year.

Financial Technology

Digitisation and technology in the financial services industry has:

- Lowered barriers to entry and market concentration by:
  - Reducing overhead costs.
  - Facilitating innovation in products and services, increasing competition.

- Enhanced accessibility by making banking services available through digital channels, 24/7.

- Improved processes and operations result in lower transaction fees and service costs and reduce paperwork for customers.

- New digital payment methods – like QR codes - support commerce.

- Better analytics improve access to finance by facilitating tailored financial products and services and alternative credit scoring models, especially for small businesses.

Innovation

Technology and digitisation supports financial inclusion and small businesses:

- Greater Accessibility
  - Banking and payment services are available via online banking, apps, and WhatsApp, ensuring engagement, flexibility and reduced branch visits.
  - Banks traditional access points remain available.

- Lending and Access to Credit
  - Data analytics and AI allow the use of alternative credit data - financial, behavioural and risk data – to improve and increase the speed of credit decisions.
  - Digital application mechanisms reducing the burden of paperwork.

- Partnerships
  - Banks are forming strategic partnerships with fintech companies to support them and leverage their innovative technologies and solutions.
  - This can involve joint ventures, investments, or other forms of collaboration.

Small Businesses

- Payment technology allows small business to accept and make payments to wider markets.

- Integrated solutions and small business support – financial and business advisory services, accounting packages – enable banks to make better assessments and credit decisions and offer personalised solutions.

- Bank-run marketplaces, incubators and networks improve and expand market access and enable them to participate in e-commerce.

- Social media gives small businesses a voice.

Regulation

Regulation must keep up with rapid innovation to ensure compliance with data protection, cybersecurity, and financial regulations.

All financial services providers must be regulated equally to protect consumers.

There should be similar regulation for similar products and services.

Regulatory Sandbox Initiatives allow experiments with new technologies and business models under the supervision of regulators. This helps adapt existing regulations to fintech innovation.

Challenges

Data Privacy and Security

Personal information and other data must be processed and stored securely.

Cybercrime is a major global concern for individuals and small businesses and can deter adoption of digital banking.

Biometric authentication and real-time fraud detection, among others, enhances security and trust.

Infrastructure

Limited digital infrastructure.

Cost of access to digital services.

Low levels of digital literacy.

Banks are finding ways to assist customers to overcome these challenges to ensure that the benefits of fintech are inclusive.

Islamic Banking

- Most banking systems treat money as an asset that can be bought and sold at a margin in money market or lent with interest charged.

- Islam prohibits the charging of interest.

- Shari'ah compliant financial products eradicate interest – any premium charged for the use of money.

Islamic Banking

- Shari'ah compliant financial products are structured so that a tangible asset (car or home) is either sold or rented at a margin.
- This margin is calculated using the prevailing market rates. Islamic banking customers do not benefit unduly from preferential pricing, neither are they prejudiced by more expensive products.
- While Shari'ah compliant products are structured differently, the economic outcome of conventional and Shari'ah compliant products is similar.
- The terminology "interest free" used to demonstrate that no "interest" is charged. However, there are still charges or premiums that could compare to a similar interest-bearing product.

Shari’ah Products

Cost plus Financing (Murabaha)

- The bank buys an asset or goods at the request of the customer and sells it to them at a marked-up price, payable in instalments.

Lease (Ijara)

- The bank purchases moveable assets (vehicles and equipment) and leases it to the customer for a rental fee.

Equity Partnership (Diminishing Musharakah)

- The bank and the customer co-own an asset (typically a property). The bank earns a profit through the lease of its share to the customer or the sale of the equity to the customer over a term.

Service Fees

- Islamic banks can charge fees for services, such as account maintenance, money transfers and advisory services.

Shari’ah Products

The benefits of Islamic Finance include:

- Equitable risk and profit sharing.
- Speculative transactions are forbidden.
- Investments must be ethical.

Shari’ah compliant products are fully integrated into the banking system and are available to all South Africans, irrespective of their religion, at banks that offer them.

Islamic Banking in South Africa

- All Islamic banks and Islamic banking windows in South Africa are required to comply with conventional South African banking legislation, and regulations.

- In South Africa, Shari'ah compliant products have been accommodated in legislation, including the Taxation Laws Amendment Act, 2010 and the Income Tax Act.

- These laws deem the 'margin' or 'profit' charged in these products to be similar to 'interest' for purposes of technical accounting and Income Tax.

- Legislation also accommodates the issuance of Sukuk by the government and state-owned companies and Murabaha and Sukuk to listed companies.
  - In 2014, South successfully concluded its debut U$500 million 5.75-year Al Ijara Sukuk issuance in the international capital markets. It was more than four times oversubscribed.
  - In November 2023, the National Treasury launched the first Rand-denominated "The RSA Domestic Sukuk Trustee (RF) Proprietary Limited". This first local currency domestic Sukuk totaled a capital of ZAR20.386 billion and was 1.8 times oversubscribed.

THANK YOU

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