

FEDERAL RESERVE SYSTEM

FirstRand Bank Limited
Johannesburg, South Africa

Order Approving the Establishment of a Representative Office

FirstRand Bank Limited (“FirstRand Bank”), Johannesburg, South Africa, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York (the “New York Representative Office”). The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, April 1, 2022). The time for submitting comments has expired, and any comments received have been considered.

FirstRand Bank, with total assets of approximately \$101.8 billion, is the second largest bank in South Africa by asset size.² FirstRand Bank provides retail, commercial, and corporate and investment banking services. The bank’s foreign operations include branches located in the United Kingdom, Guernsey, and India, and representative offices located in Angola, Kenya, and China.

FirstRand Bank is a wholly-owned subsidiary of FirstRand Limited (“FRL” – consolidated assets of \$135.0 billion), Johannesburg, South Africa, a diversified

¹ 12 U.S.C. § 3107(a).

² Asset and ranking data are as of March 31, 2022.

financial services provider. In addition to FirstRand Bank, FRL has controlling stakes in banks located in nine African countries, has subsidiaries that engage in insurance and investment management activities, and operates a special lender and savings bank and a vehicle finance company in the United Kingdom. FRL also has a U.S. broker dealer subsidiary, RMB Securities (USA) Inc., New York, New York.

FRL's largest shareholder is South Africa's Public Investment Corporation SOC Limited, Pretoria, South Africa, which owns approximately 16.2 percent of FRL's voting shares. The remaining shares of FRL are widely held.

The New York Representative Office would act as a liaison with U.S. clients and prospective clients of FirstRand Bank. The New York Representative Office also would market and solicit new business for banking products and services provided by FirstRand Bank and perform back-office functions.³

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their

³ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

home country supervisor.⁴ The Board also considers additional standards set forth in the IBA and Regulation K.⁵

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of such activities and the operating record of the applicant bank.⁶ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval

⁴ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination. 12 CFR 211.24(c)(1).

⁵ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include the following: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁶ See 12 CFR 211.24(d)(2).

of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, FirstRand Bank has provided commitments that limit the activities of the New York Representative Office. In particular, FirstRand Bank has committed that the New York Representative Office would not solicit deposits, make credit decisions or any other decisions that bind FirstRand Bank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The New York Representative Office would engage only in the activities described in its application to the Board.

As previously noted, FirstRand Bank engages directly in the business of banking outside the United States. FirstRand Bank has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has considered that FirstRand Bank is supervised by the Prudential Authority (“PA”), which operates under the South African Reserve Bank (“SARB”), and the Financial Sector Conduct Authority (“FSCA”). The Board previously has considered the supervisory regime in South Africa for financial institutions in connection with an application involving another South African bank.⁷ FirstRand Bank is supervised by the PA and FSCA on substantially the same terms and conditions as that other bank. Based on all the facts of record, including the commitments provided by FirstRand Bank to limit the activities of the New York Representative Office, it has been determined that FirstRand Bank is subject to a supervisory framework that is consistent with the current and proposed activities of the New York Representative Office, taking into account the nature of such activities.

⁷ See Absa Bank Limited, FRB Order No. 2019-14 (October 1, 2019).

The following additional standards set forth in the IBA and Regulation K have also been considered: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.⁸

South Africa is a member of the Financial Action Task Force ("FATF") international organization, and FirstRand Bank has indicated that FATF recommendations have been implemented through the promulgation and implementation of the Financial Intelligence Centre Act, 2001 ("FIC Act"), and supporting subordinated legislation. The FIC Act requires the PA to ensure that banks have adequate controls in place to combat acts of money laundering and the financing of terrorism. Accordingly, the PA inspects banks, including FirstRand Bank, to assess whether they have appropriate measures in place, including anti-money laundering (AML) policies, as required by the FIC Act and related regulatory requirements. FirstRand Bank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for AML compliance.

FirstRand Bank appears to have the experience and capacity to support the New York Representative Office. FirstRand Bank operates representative offices and branches in several countries outside of South Africa. In addition, FirstRand Bank has established controls and procedures for the New York Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration FirstRand Bank's record of operations in its home country, its overall financial resources, and its standing with its home country

⁸ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

supervisors, financial and managerial factors are considered consistent with approval of FirstRand Bank's application to establish the New York Representative Office.

FirstRand Bank has committed to make available to the Board such information on the operations of FirstRand Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,⁹ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, FirstRand Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the PA may share information on FirstRand Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that FirstRand Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the PA has no objection to the establishment of the New York Representative Office.

Whether FirstRand Bank's proposal would present a risk to the financial stability of the United States has also been considered. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of FirstRand Bank in its home country; the scope of FirstRand Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising FirstRand Bank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are considered consistent with approval.

⁹ 12 U.S.C. § 1841 et seq.

On the basis of all the facts of record and subject to commitments made by FirstRand Bank, FirstRand Bank's application to establish the New York Representative Office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of FirstRand Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by FirstRand Bank or its affiliates with applicable federal statutes, the Board may require termination of any of FirstRand Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by FirstRand Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 11, 2022.

Michele Taylor Fennell (signed)

Michele Taylor Fennell,
Deputy Associate Secretary of the Board

¹⁰ 12 CFR 265.7(d)(3).

¹¹ The Board's authority to approve the establishment of the New York Representative Office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the New York Representative Office in accordance with any terms or conditions that they may impose.