

Banks to reform conveyancing practices

Standard Bank, Investec, FNB and Nedbank have committed to reforming their conveyancing practices in response to concerns raised by the Competition Commission on the relationship between banks and conveyancers.



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In February 2018, the commission conducted the advocacy engagements following a complaint that was filed by Michael Monthe against Standard Bank. In the complaint, he alleged that he had approached about several law firms in the area where he resides for assistance to institute legal action against Standard Bank. Monthe alleged all the law firms that he had approached refused to take on his matter on the basis that they are part of the the bank's panel of attorneys and that they are conflicted in terms of their service level agreements ("SLAs) with Standard Bank. Further, the commission established that the practice of restrictive SLAs for conveyancing services extended to other major banks, namely, Investec, FNB and Nedbank.

Following the engagements between the commission and the four banks, it was agreed that contractual clauses that prevented law firms appointed to provide conveyancing services from acting against the banks on any matter should be removed. These exclusionary clauses created barriers for small and particularly firms owned by historically disadvantaged persons to expand in the market. This is evidenced by various complaints the commission received over the years regarding the issuing of conveyancing instructions by banks.

Restrictions in SLAs

Consequently, the commission embarked on advocacy to mainly address three key areas of concern regarding the SLAs between the affected banks and law firms.

The first relates to conflict of interest provisions in SLAs whereby law firms who formed part of the banks' panel of conveyancers were prevented from acting against the banks on any matter. The problem with such clauses is that consumers would have limited choices of law firms in matters involving banks, especially if they are broad and not only limited to conveyancing matters. In this regard, Standard Bank has committed to removing the conflict of interest clauses from their SLAs with conveyancers. While FNB, Investec and Nedbank have committed to clearly indicate in their SLAs that the conflict of interest provision is only limited to conveyancing work. This implies that law firms who are on the banking panels of the aforesaid banks will no longer be bound by the SLAs when deciding to represent clients in respect of matters that are not related to conveyancing work.

The second area relates to the duration of the SLAs the banks have with law firms which are indefinite. Such agreements which are indefinite and have no system built for a proper review are of concern as they restrict competition in the market. FNB and Investec have committed to monitoring SLAs on an annual basis. In particular, the aforesaid banks have committed to review their existing SLAs and possibly appoint new conveyancers unto their panel on an annual basis. Standard Bank on the other hand has committed to limiting the duration of these SLAs to five years.

The last area of concern relates to certain banks that require minimum investment amounts as criteria in the attorneys' performance scorecards, which is used to determine which firms are allocated work. The investment criteria can be a barrier to entry for small conveyancing firms seeking to enter this market, particularly if they do not have the requisite trading history or financial capital. Standard Bank, Investec, FNB and Nedbank have either committed to removing the investment criteria for small firms or entirely exempt members of the Black Conveyancers Association (BCA) from their investment requirement.

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