

South African Reserve Bank
From the Office of
the Registrar of Banks

Ref: 15/8/1

Mutual Banks Act C1/2014

2014-10-28

To mutual banks, eligible institutions and auditors of banks or controlling companies

Mutual Banks Act Circular 1/2014 issued in terms of section 4(4) of the Mutual Banks Act, 1993 (Act No. 124 of 1993 – the Act)

Interpretation of specified provisions of the Act

Executive summary

The Office of Banks (this Office) hereby aims to clarify the interpretation of the provisions of section 37(7) of the Act, read with Section 1(2) of the Act in relation to the duty imposed on the Registrar of Banks (the Registrar) to determine whether a particular person is a fit and proper person to hold the office of a director or an executive officer of a mutual bank.

The provisions of the Act should be interpreted by considering the Act as a whole as well as the provisions of other relevant legislation. It is the opinion of this Office that in considering, amongst others, the provisions of section 37(7) of the Act, read with section 1(2) thereof as well as regulation 39 of the Regulations relating to Mutual Banks (the Regulations) and section 1(1A) of the Banks Act, 1990 (Act No. 94 of 1990 – the Banks Act) it is critically important to ultimately ensure that only persons who, in the opinion of the Registrar, are fit and proper persons to hold the office of a director or an executive officer of a mutual bank may be appointed to such positions.

1. Introduction

1.1 In terms of Section 4(4) of the Act, the Registrar may from time to time by means of a circular furnish mutual banks with guidelines regarding the application and interpretation of the provisions of the Act.

2. Interpretation of section 37(7) of the Act read with section 1(2) of the Act

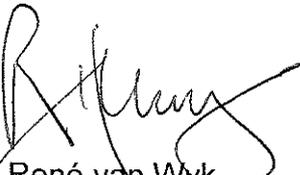
2.1 In terms of Section 37(7) of the Act a mutual bank shall within 14 days of the appointment or election of a director, send to the Registrar a notice of the appointment or election, signed by the director appointed or elected and by the secretary of the mutual bank.

- 2.2 In the context of section 1(2) of the Act, the Registrar has a duty to determine whether a particular person is a fit and proper person to hold the office of a director or an executive officer of a mutual bank. For this purpose regulation 39(1)(a) of the Regulations provides for the submission of the form DI 020 to the Registrar at least 30 days prior to such an appointment becoming effective to enable the Registrar to make such a determination.
- 2.3 Regulation 39(1)(b) of the Regulations provides that the Registrar may request a completed form DI 020 from any serving director or executive officer of a mutual bank.
- 2.4 In terms of section 1(2) of the Act the Registrar shall proceed, *mutatis mutandis* as prescribed in section 1(1A) of the Banks Act to determine for purposes of the Act whether a person is a fit and proper person to hold office of a director or an executive officer of a mutual bank.
- 2.5 When interpreting Statutes, however, one of the guiding principles is to consider the Statute as a whole, including other relevant secondary legislation such as Regulations and other relevant legislation.
- 2.6 Regulations 32, 33 and 39 of the Regulations clearly require that a form DI 020 be completed by individuals who are holding, or are proposing to hold, the office of a director or executive officer of a mutual bank. In terms of section 1(2) of the Act, in accordance with section 1(1A)(c) of the Banks Act, the Registrar may request information in addition to the information supplied on the form DI 020 to enable the Registrar to form an opinion regarding the qualities of that person.
- 2.7 In this regard, for example, regulation 39(1) of the Regulations specifically provides that a duly completed form DI 020 shall be submitted to the Registrar by the Chairman of the Board (or duly appointed representative) in respect of every person who for the first time accepts an appointment as a director of a mutual bank at least 30 days prior to the appointment becoming effective.
- 2.8 In this context, the recent global financial crisis that commenced in 2007 revealed the dire consequences of directors and executive officers who failed in their fiduciary duty to ensure the maintenance of sound corporate governance within their institutions.
- 2.9 Therefore it is critically important for the articles of association of a mutual bank to ensure that only persons who are assessed to be fit and proper persons to hold the office of a director or an executive officer of a mutual bank, are appointed in such positions.
- 2.10 When the articles of association of a mutual bank, for example, fail to ensure that only persons who are assessed to be fit and proper persons to hold the office of a director or an executive officer of a mutual bank, are appointed in such a position, section 34 of the Act, makes provision for the Registrar to at any time in writing direct the mutual bank to effect such alterations to its articles as the Registrar may deem desirable. When a mutual bank refuses or fails to alter its articles accordingly, the Registrar may deal with the alteration contained in the direction as if it were contained in a resolution adopted by the mutual bank.
- 2.11 Finally, when a mutual bank continues to fail in its duty to ensure that only persons who are assessed to be fit and proper persons to hold the office of a director or an executive officer of a mutual bank, are appointed in such a position, the Registrar may, in accordance with section 23 of the Act, *inter alia*, by way of application on notice of motion apply to a competent court for an order cancelling or suspending the registration of a mutual bank.

3. Acknowledgement of receipt

- 3.1 Two additional copies of this circular are enclosed for the use of your institution's independent auditors. The attached acknowledgement of receipt, duly completed and signed by both the chief executive officer and the said auditors, must be returned to this Office at the earliest convenience of the aforementioned signatories.

Yours sincerely



René van Wyk
Registrar of Banks

The previous circular issued was Mutual Banks Act Circular 9/1997, dated 1 January 1997.