

Ref.: 15/8/1/3

To: All banks, controlling companies, branches of foreign institutions, eligible institutions and auditors of banks or controlling companies

Proposed Directive issued in terms of section 6(6) of the Banks Act 94 of 1990

Matters related to fit and proper assessment requirements pertaining to beneficial owners

Executive summary

The purpose of this Directive is to direct banks, controlling companies, branches of foreign institutions, eligible institutions and auditors of banks or controlling companies to implement processes to identify the beneficial owners of their institutions and to, among other things, subject such beneficial owners to criminal background checks (CBCs).

Both the Financial Action Task Force's (FATF) 40 Recommendations and the Basel Committee on Banking Supervision's (BCBS) Core Principles for Effective Banking Supervision (Core Principles) place an obligation on supervisors to ensure that major shareholders, including the ultimate beneficial owners¹ of financial institutions (FIs), are suitable and have not been involved in any criminal activities.

1. Introduction

1.1 The responsibilities of banks

1.1.1 There are various reasons supporting the duty on various key role players to identify the ultimate beneficial owner(s) in a bank. Fraud, illicit flow of funds and tax evasion can thrive when an entity's ownership is opaque. Furthermore, ownership arrangements can be misused for illicit purposes and other crimes, including money laundering (proceeds of corruption) and terrorist financing. The beneficial owner who is a criminal may have a great degree of influence over an entity and may ultimately control decisions in respect of the entity, which may in turn enable criminal networks to thrive and facilitate the transfer of tainted funds via banks. This thus impacts on the integrity of the financial system.

¹ As per the definition of a 'beneficial owner' recognised by the Financial Action Task Force (FATF), a 'beneficial owner' refers to those persons who exercise ultimate effective control over a legal person or arrangement. Thus, an essential element of the FATF definition of a 'beneficial owner' is that it extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control. In other words, the FATF definition focuses on the natural (not legal) persons who own and take advantage of capital and/or assets of the legal person as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal person) rather than on just the (natural or legal) persons who are legally (on paper) entitled to do so. Please see <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

1.1.2 Banks are ultimately responsible for ensuring that they understand and keep record of their ownership structures, including beneficial owners.

1.2 International standards

1.2.1 The BCBS's Core Principles and, more specifically, the Essential Criteria 5 of Principle 5 states that a licensing authority identifies and determines the suitability of a bank's major shareholders, including its ultimate beneficial owners and others that may exert significant influence. It also assesses the transparency of the ownership structure, the source(s) of the initial capital and the ability of the shareholders to provide additional financial support where needed.

1.2.2 South Africa, as a member of the FATF, has a duty to conform to the FATF's 40 Recommendations against money laundering and terrorism financing. FATF Recommendation 26 states that countries should ensure that FIs are subject to adequate regulation and supervision, and that they are effectively implementing the FATF Recommendations. Furthermore, financial supervisors should take the necessary legal and/or regulatory measures to prevent criminals or their associates from holding a management function in an FI.

1.3 Legislative requirements

1.3.1 Sections 39, 51, 52, 59 and 67 of the Banks Act 94 of 1990 (Banks Act) contain requirements related to information on shareholders and ownership structures of banks and their controlling companies.

1.4 The duties of the Prudential Authority

1.4.1 The Prudential Authority (PA), in the execution of its mandate requires that banks comply with legislative requirements by implementing robust governance arrangements, including processes to ensure that beneficial owners are identified, and adequate records are kept in this regard.

1.4.2 The PA requires banks to implement the necessary measures to prevent criminals and other unfit persons from becoming beneficial owners of the bank or its controlling company.

2 The Directive

2.1 Based on the aforesaid information, and in accordance with the provisions of section 6(6) of the Banks Act, to enable the PA to effectively execute its responsibilities under applicable financial sector legislation and in consideration of its ongoing commitment to adopt international standards prescribed by, among others, the BCBS and the FATF, and to prevent criminals from holding or exerting significant influence over a bank, controlling company or branch of a foreign institution (hereinafter collectively referred to as 'banks'), banks are hereby directed as set out hereunder.

- 2.2 Criminal background check report requirements
- 2.2.1 Banks must, at the written request of the PA, submit criminal background check reports (CBCRs) to the PA for each of their beneficial owners.
- 2.2.2 No shareholding percentage threshold is specified in this Directive for banks to identify a beneficial owner. However, banks must ensure that they undertake a thorough risk assessment across all the levels in their ownership structure and provide the PA with an organogram depicting the said structure and percentage allocations, explaining how the ultimate beneficial owner(s) were identified.
- 2.2.3 The PA will interrogate the information received and may require further information concerning the ownership, influence and/or control structure of the bank, as it may deem fit.
- 2.2.4 Applications in terms of section 12 of the Banks Act, which are for the authorisation to establish a bank, must include CBCRs for each of the beneficial owners.
- 2.2.5 CBCRs should not be older than 30 calendar days from the date of submitting the information to the PA.
- 2.2.6 CBCRs can be requested or sourced from reputable CBC service providers nationwide. These CBCRs will contain a unique CBCR reference number². Banks must ensure that this unique CBCR reference number is clearly visible when submitting the document to the PA.
- 2.2.7 Banks with foreign beneficial owners are advised that some of the domestic CBC service providers have arrangements in place with foreign governments and foreign third-party service providers to source CBCRs from such parties in foreign jurisdictions. Thus, banks may use these domestic service providers to source CBCRs for beneficial owners who are foreign nationals.
- 2.2.8 Foreign CBC service providers may also be approached to provide CBCRs in respect of foreign nationals that are beneficial owners of banks. If not captured on a CBCR, banks must submit the following information in respect of the CBC service provider in support of the CBCR to the PA:
- registered name;
 - postal address and domicile address;
 - contact person;
 - telephone number; and
 - email address.

² Unique CBCR reference numbers are only applicable to criminal background check screenings performed against the South African Police Service fingerprint database.

2.3 Changes to and accuracy of beneficial ownership information

2.3.1 Banks are required to:

- submit updated CBCRs to the PA within 30 calendar days of becoming aware of any changes to their beneficial owner(s); and
- maintain up-to-date and accurate information pertaining to the identity of their beneficial owner(s).

2.4 Periodic re-screening of beneficial owners

2.4.1 Banks are required to re-screen their beneficial owners at least once every 3 years and provide the PA with relevant CBCRs. The PA may also require the submission of CBCRs on an ad hoc basis when deemed necessary and in line with the application of a risk-based approach to supervision.

2.5 Invitation for comment

2.5.1 Banks and other interested parties are hereby invited to submit their comments on the proposed Directive to PA-FitandProper@resbank.co.za by 20 May 2022.

2.5.2 The comments received may be published on the PA's website, unless a respondent specifically requests confidential treatment.

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