

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 directors and executive officers

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 make available criminal background check reports when submitting a statement relating to the attributes of a serving or prospective director or executive officer to the Prudential Authority (PA).

Section 60(5)(a) of the Banks Act 94 of 1990 (Banks Act) requires that all banks, controlling companies or branches of foreign institutions (hereinafter collectively referred to as ‘banks’) shall give the PA written notice of the nomination of any person in respect of the appointment as a chief executive officer (CEO), director or executive officer by furnishing the PA with the information prescribed in regulation 42 of the Regulations relating to Banks (Regulations).

Regulation 42 of the Regulations requires banks to submit to the PA particulars of each person to be appointed in a key position, in the form of a completed statement relating to the attributes of a serving or prospective director or executive officer (form BA 020) together with a curriculum vitae (CV).

1. Introduction

1.1 The responsibilities of banks

1.1.1 Banks are ultimately responsible for ensuring that they select, nominate and appoint fit and proper individuals to the board of directors (board) or for senior management positions. Banks are required to conduct their due diligence and assessment of the members of the board and senior management not only prior to their appointment but also on a regular basis.

1.1.2 Such due diligence and assessment must include processes to ensure that the above-mentioned individuals have no criminal records.

1.2 International standards

1.2.1 The Core Principles for Effective Banking Supervision (Core Principles) of the Basel Committee on Banking Supervision (BCBS) and, more specifically, the Essential Criteria 7 of Principle 5 states that a licensing authority, at authorisation, should evaluate a bank's proposed board members and senior management as to their expertise and integrity (a fit and proper test) as well as any potential for conflict of interest. The fit and proper criteria should include:

- an assessment of the skills and experience in relevant financial operations commensurate with the intended activities of the bank; and
- confirmation that no record of criminal activities and/or adverse regulatory judgments exists that would make the person unfit to hold important positions in a bank.

1.2.2 South Africa, as a member of the Financial Action Task Force (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 financial institutions (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 Section 60(5)(a) of the Banks Act requires that every bank give the PA written notice of the nomination of any person in respect of the appointment as CEO, director or executive officer by furnishing the PA with the information prescribed in regulation 42 of the Regulations.

1.3.2 Regulation 42 of the Regulations requires banks to submit to the PA, particulars of each person to be appointed in a key position, in the form of a completed statement relating to the attributes of a serving or prospective director or executive officer (form BA 020) together with a CV.

1.4 The duties of the Prudential Authority

1.4.1 The PA in the execution of its mandate requires that banks comply with legislative requirements by implementing robust governance arrangements, including fit and proper requirements for the appointment of directors or persons responsible for the management of banks.

1.4.2 The PA requires banks to implement the necessary measures to prevent criminals and other unfit persons from being appointed into positions which would allow such individuals to hold a position as a director or oversee any management function in the bank.

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 best practice prescribed by, among others, the BCBS and the FATF, banks are hereby directed as set out hereunder.
- 2.2 Banks must at the written request of the PA submit criminal background check reports (CBCRs) of their existing and proposed directors and executive officers, in support of the information already prescribed in terms of regulation 42 of the Regulations.
- 2.3 Banks are required to submit CBCRs in support of the form BA 020 effective from 1 July 2022. Thus, each BA 020 form submitted to the PA on and after the said date needs to be accompanied by a CBCR.
- 2.4 Directors or executive officers unable or unwilling to undergo a criminal background check (CBC) will be disqualified for appointment to such a position.
- 2.5 CBCRs should not be older than 30 calendar days from the date of submitting the form BA 020 form to the PA.
- 2.6 CBCRs can be requested or sourced from reputable CBC service providers nationwide for local directors and executive officers. These CBCRs will contain a unique CBCR reference number¹. Banks must ensure that this unique CBCR reference number is clearly visible when submitting the documentation to the PA.
- 2.7 CBCRs need to be requested or sourced from local or recognised foreign CBC service providers for foreign directors and executive officers. Banks with foreign nationals as directors and executive officers 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 directors and executive officers who are foreign nationals.
- 2.8 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 prospective directors and executive officers.
- 2.9 The CBCR requirement is also applicable to all appointments of directors and executive officers in respect of any cross-border banking operations established by banks in terms of section 52 of the Banks Act.

¹ Unique CBCR reference numbers are only applicable to criminal background check screenings performed against the South African Police Service fingerprint database.

2.10 Foreign CBC service providers may be approached to produce CBCRs in respect of foreign nationals serving in key positions at banks. If not already 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.

2.11 Banks are required to conduct CBC screening of its active directors and executive officers at least once every 3 years. 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.

3. Invitation for comment

3.1 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.

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

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