

—
P O Box 427 Pretoria 0001 South Africa

370 Helen Joseph Street Pretoria 0002

+27 12 313 3911 / 0861 12 7272

www.resbank.co.za



SOUTH AFRICAN RESERVE BANK
Prudential Authority

Ref.: 15/8/1/3

To: All mutual banks

Proposed Notice: Matters related to fit and proper assessment requirements pertaining to directors and executive officers

Executive summary

The purpose of this Notice is to direct mutual banks to perform and 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).

1. Introduction

1.1 The responsibilities of mutual banks

1.1.1 Mutual 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. Mutual 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 South Africa is a member of the Basel Committee on Banking Supervision (BCBS). The Core Principles for Effective Banking Supervision (Core Principles) of the 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 131 of the Financial Sector Regulation Act 9 of 2017 as well as section 5(1) of the Mutual Banks Act 124 of 1993 (Mutual Banks Act) determines that the PA may by way of written notice direct mutual banks to provide information or a document which is reasonably required by the PA to perform its functions.

1.3.2 Sections 37 and 38 the Mutual Banks Act contains requirements related to directors and executive officers of mutual banks.

1.4 The duties of the Prudential Authority

1.4.1 The PA in the execution of its mandate requires that mutual 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 mutual banks.

1.4.2 The PA requires mutual 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 mutual bank.

2. The Notice

2.1 Based on the aforesaid information, and in accordance with the provisions of section 5(1) of the Mutual 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, mutual banks are hereby directed as set out hereunder.

2.2 Mutual banks must at the written request of the PA submit criminal background check reports (CBCRs) of their existing and proposed directors and executive officers.

2.3 This requirement will come into effect from 1 July 2022. Thus, each appointment of a director or executive officer of a mutual bank must be supported 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 When CBCRs are submitted to the PA, the CBCRs should not be older than 30 calendar days from the date of submission 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. Mutual 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 and recognised foreign CBC service providers for foreign directors and executive officers. Mutual 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, mutual 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 10 of the Mutual Banks Act, which are for the authorisation to establish a mutual bank, must include CBCRs for each of the prospective directors and executive officers.
- 2.9 Foreign CBC service providers may be approached to produce CBCRs in respect of foreign nationals serving in key positions at mutual banks. If not already captured on a CBCR, mutual 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.
- 2.10 Mutual banks are required to conduct criminal background check 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.

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

3. Invitation for comment

- 3.1 Mutual banks and other interested parties are hereby invited to submit their comments on the proposed Notice 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.

Fundi Tshazibana
Chief Executive Officer: Prudential Authority

Date: 2022-04-21