



Ref.: 15/8/2/3

To: All mutual banks and auditors of mutual banks

Proposed Directive issued in terms of section 4(6) of the Mutual Banks Act 124 of 1993

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

Executive summary

The purpose of this Directive is to direct mutual banks and auditors of 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).

Section 37¹ of the Mutual Banks Act 124 of 1993 (Mutual Banks Act) requires that all mutual banks, shall give the PA written notice of the nomination of any person in respect of the appointment as a director or executive officer by furnishing the PA with the information prescribed in regulation 39 of the Regulations relating to Mutual Banks (Regulations).

Regulation 39² of the Regulations requires mutual 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 DI 020) together with a curriculum vitae (CV).

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 persons holding criminal records are not considered for appointment in the aforementioned positions.

¹ Directors of mutual banks

² Statement and declaration relating to attributes of serving or prospective directors or executive officers

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 institutions³ (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 persons holding criminal records or their associates from holding a management function in an FI.

1.3 Legislative requirements

1.3.1 Sections 37 and 38⁴ of the Mutual Banks Act detail certain requirements in respect of directors and executive officers of mutual banks.

1.3.2 Regulation 39 of the Regulations requires mutual 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 DI 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 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 senior management of mutual banks.

1.4.2 The PA requires mutual banks to implement the necessary measures to prevent persons holding criminal records and other unfit persons from being appointed into positions which would allow such individuals to hold a position as a director or

³ financial institution as per The Financial Action Task Force definition means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer: 1. Acceptance of deposits and other repayable funds from the public. 2. Lending. Financial leasing. 4. Money or value transfer services. 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading. 8. Participation in securities issues and the provision of financial services related to such issues. 9. Individual and collective portfolio management. 10. Safekeeping and administration of cash or liquid securities on behalf of other persons. 11. Otherwise investing, administering or managing funds or money on behalf of other persons. 12. Underwriting and placement of life insurance and other investment related insurance. 13. Money and currency changing

⁴ Disqualification of directors

oversee any management function in the mutual bank and undermine the integrity of the mutual bank.

2. Directive

- 2.1 Based on the aforesaid information, and in accordance with the provisions of section 4(6)⁵ 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 follows:
 - 2.1.1 Mutual banks must submit criminal background check reports⁶ (CBCRs) of their existing, interim, and proposed directors and executive officers, in support of the information already prescribed in terms of regulation 39 of the Regulations.
 - 2.1.2 This requirement will come into effect from 1 October 2022. Thus, each form DI 020 submitted to the PA on and after the said date in respect of the appointment of an interim or prospective director or executive officer of a mutual bank must be supported by a CBCR.
 - 2.1.3 CBCRs in respect of all existing directors and executive officers must be furnished to the PA within 6 months of the date of this Directive.
 - 2.1.4 Directors or executive officers unable or unwilling to undergo a criminal background check (CBC) will be disqualified for appointment to such a position.
 - 2.1.5 CBCRs in respect of South African nationals must not be older than 30 calendar days from the date of submission the form DI 020 to the PA.
 - 2.1.6 CBCRs or equivalent document in respect of foreign nationals must not be older than 60 calendar days from the date of submission the form, DI 020 to the PA.
 - 2.1.7 CBCRs can be requested or sourced from CBC service providers nationwide for local directors and executive officers. These CBCRs will contain a unique CBCR reference number⁷. Mutual banks must ensure that this unique CBCR reference number is clearly visible when submitting the documentation to the PA.
 - 2.1.8 CBCRs must be requested or sourced from local or recognised foreign CBC service providers for foreign directors and executive officers.
 - 2.1.9 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.

⁵ Powers of inspection of, guidance notes, directives and guidelines by, the Prudential Authority

⁶ A police clearance certificate issued by a Police Department; or a report issued by a service provider having an arrangement in place with a Police Department to issue a statement in respect of a natural person's criminal status on its behalf will be acceptable

⁷ Unique CBCR reference numbers are only applicable to criminal background check screenings performed against the South African Police Service fingerprint database.

- 2.1.10 Applications in terms of section 10⁸ 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.
- 2.1.11 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;
 - registration number;
 - postal address if available, and domicile address;
 - contact person;
 - telephone number;
 - email address; and
 - website address.
- 2.1.12 The PA may require mutual banks to submit CBCRs periodically and in line with the PA's application of a risk-based approach to supervision. Similarly, mutual banks must re-screen their active directors and executive officers on a periodic basis to ensure that the information they hold is up to date and accurate. The CBCRs should be provided to the PA within 30 calendar days of completing such screenings.

3 Invitation for comment

- 3.1 Mutual banks and other interested parties are hereby invited to submit their comments on the proposed Directive to PA-FitandProper@resbank.co.za by 26 August 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

Date:

⁸ Authorization to establish mutual bank