



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 relating to domestic money or value transfer services

Executive summary

The purpose of this Directive is to direct mutual banks and auditors of mutual banks to (1) register all existing and future domestic money or value transfer service (MVTs) agency arrangements with the Prudential Authority (PA), to (2) maintain an up-to-date schedule of all MVTs agency arrangements and (3) submit MVTs agency returns, attached hereto as Annexure A, to the PA.

The Financial Action Task Force (FATF) Recommendation 14 requires countries, among others, to take measures to ensure that natural or legal persons that provide MVTs are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the measures specified in the respective FATF Recommendations.

Furthermore, any natural or legal person acting as an agent must also be licensed or registered by a competent authority, or the MVTs provider must maintain a current list of its agents accessible by competent authorities in the countries in which the MVTs provider and its agents conduct business. Countries must also implement measures to ensure that MVTs providers that use agents include them in their anti-money laundering and counter terrorism financing (AML/CFT) programmes and monitor them for compliance with these programmes.

1 Introduction

1.1 As a member of the FATF, South Africa has committed to conform to the FATF's 40 Recommendations against money laundering and terrorism financing. FATF Recommendation 14 requires countries to implement measures to ensure that natural or legal persons that provide MVTs¹ are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures specified in the respective FATF Recommendations.

¹ The Financial Action Task Force definition of MVTs refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer or through a clearing network to which the MVTs provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, such as hawala, hundi and fei-chen.

- 1.2 Furthermore, FATF Recommendation 14 also requires that any natural or legal person acting as an agent must also be licensed or registered by a competent authority, or the MVTs provider must maintain a current list of its agents accessible by competent authorities in the countries in which the MVTs provider and its agents conduct business. Countries must also implement measures to ensure that MVTs providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes.
- 1.3 Within South Africa, only registered mutual banks, being licensed deposit taking institutions in terms of the Mutual Banks Act 124 of 1993 (Mutual Banks Act, 1993) may engage in and provide MVTs activities and are regarded as domestic MVTs providers.

2 Directive

- 2.1 Based on the aforesaid and in accordance with the provisions of section 4(6) of the Mutual Banks Act, 1993 mutual banks are hereby directed to comply with the respective requirements specified in paragraphs 3 to 7 below:

3 Maintenance of schedules by mutual banks engaging in domestic MVTs

- 3.1 Juristic persons doing business as mutual banks may offer or engage in domestic MVTs.
- 3.2 All mutual banks that actively engage in domestic MVTs are directed to maintain an up-to-date schedule of all MVTs agency arrangements and to submit the schedule in writing to the PA upon written request. The schedule must at least provide the detailed information specified in items (a) to (k) of paragraph 4.1 below, accompanied by item (l). This requirement must be implemented by no later than 31 August 2022.

4 Registration of domestic MVTs agency relationships

- 4.1 Mutual banks that have appointed or wish to appoint third parties to act as domestic MVTs agents on their behalf are directed to register such arrangements with the PA and to provide the PA with the following information:
- a. name of the mutual bank;
 - b. full name of the agent/s together with details of any trading names;
 - c. company registration number of the agent or identity number of the agent if the agent is a natural person;
 - d. business address of the agent;
 - e. confirmation that domestic MVTs services will be provided by that agent on behalf of the mutual bank;
 - f. a list of MVTs products and services to be provided by the agent on behalf of the mutual bank;
 - g. transaction threshold(s) per product/service offering;

- h. name(s), domicile(s) and identity numbers or passport numbers of the beneficial owner(s)² of the agent;
- i. names, domicile, identity numbers or passport numbers of relevant senior management³ of the agent;
- j. roles and responsibilities of the agent regarding the AML/CFT related obligations in terms of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). For example, record keeping arrangements, client transaction monitoring, adequate risk management practices in line with that of the applicant mutual bank's risk appetite and risk mitigation practices as is appropriate given that these are ultimately the clients of the mutual bank;
- k. details as to the oversight role performed by the mutual bank. For example, degree of integration of systems, client transaction monitoring responsibilities, onboarding of clients as well as the risk assessment by the mutual bank and the risk assessment of the agent in terms of sections 42(2)(a)(i) and (ii) of the FIC Act;
- l. a copy of the signed contractual agreement between the mutual bank and the agent. The agreement must make provision for the AML/CFT roles and responsibilities of the two parties, including a provision that the PA may engage with the agent on matters of an AML/CFT nature; and
- m. ease of access by the mutual bank to AML/CFT related information maintained by the agent to enable the mutual bank to discharge its AML/CFT obligations in terms of, among others, the FIC Act.

4.2 In addition to the above required information, mutual banks must confirm in writing that they are satisfied with the fitness and propriety of the executives or senior managers and beneficial owner(s) of existing and prospective domestic MVTs agent arrangements. This confirmation must include detail as to whether any of the aforementioned persons hold criminal records.

4.3 Changes to beneficial owners or relevant senior management of the domestic MVTs agent must be communicated to the PA in writing within 20 business days of such changes taking place.

4.4 A mutual bank's risk management and compliance programme implemented in terms of, among others, the FIC Act and the Money Laundering and Terrorist Financing Control Regulations, 2002, as amended must include details pertaining to the management and monitoring of MVTs agency arrangements.

² As per the definition of a beneficial owner, as recognised by the FATF, 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 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 Financial Action Task Force definition focuses on the natural (not legal) persons who actually own and take advantage of capital 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 just the (natural or legal) persons who are legally (on paper) entitled to do so. <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

³ relevant senior management means (a) a member of the governing body of the institution; (b) the chief executive officer or other person in charge of the institution; (c) a person other than a member of the governing body of the institution who makes or participates in making decisions that – (i) affect the whole or a substantial part of the business of the institution; or (ii) have the capacity to affect significantly the financial standing of the institution; (d) a person other than a member of the governing body of the institution who oversees the enforcement of policies and the implementation of strategies approved or adopted by the governing body of the institution; and (e) the head of a control function of the institution (equivalent of the definition of a key person in terms of the Financial Sector Regulation Act 9 of 2017)

5 Registration of existing domestic MVTs agency relationships

- 5.1 Mutual banks with existing domestic MVTs arrangements with an agent(s), must register such arrangement(s) with the PA by submitting the information specified in paragraphs 4.1 and 4.2 of this Directive, by no later than 30 November 2022, and confirm same in writing to the PA at email address: SARB-PA@resbank.co.za.

6 MVTs agent return submissions

- 6.1 On a bi-annual basis, i.e., the six-month period from January to June and from July to December, respectively, mutual banks must submit specified information relating to domestic MVTs agency arrangements to the PA, as set out in the MVTs agent return attached hereto as Annexure A. Where mutual banks have entered into more than one domestic MVTs agency arrangement, a separate return for each of their MVTs agency arrangements must be completed.
- 6.2 MVTs agency returns need to be submitted to the PA within 30 business days post the preceding six-month period.

7 Effective date

- 7.1 Unless specifically otherwise stated hereinbefore, the respective requirements specified in this Directive must be implemented and complied with, with effect from 1 September 2022.

8 Invitation for comment

- 8.1 Mutual banks and other interested persons are hereby invited to submit their comments with respect to the proposed Directive to PA-MVTs@resbank.co.za for the attention of Ms Nompumelelo Mbongo by 5 August 2022.
- 8.2 All comments received may be published on the website of the PA, unless a respondent specifically requests confidential treatment.

Fundi Tshazibana
Chief Executive Officer

Date:

Encl.1.