Financial Sector Conduct Authority

SOUTH AFRICAN RESERVE BANK
Prudential Authority

FINANCIAL SECTOR REGULATION ACT, 2017

DRAFT JOINT STANDARD [-] OF 202[-] –
REQUIREMENTS PERTAINING TO BENEFICIAL OWNERS

The Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA) (Authorities), under sections 107 and 159B(1) read with sections 105, 106 and 159B(2) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), hereby make the 'Joint Standard [-] of 202[-] – Requirements Pertaining to Beneficial Owners' as per the Schedule below.

Unathi Kamlana
Commissioner
FINANCIAL SECTOR CONDUCT AUTHORITY

Fundi Tshazibana
Chief Executive Officer
PRUDENTIAL AUTHORITY

Date of publication: [insert date]

SCHEDULE

JOINT STANDARD [-] OF 202[-]

REQUIREMENTS PERTAINING TO BENEFICIAL OWNERS

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1. Legislative authority

This Joint Standard is made under sections 107 and 159B of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

2. Definitions and natural persons excluded from the definition of beneficial owner

(1) In this Joint Standard, "**the Act**" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it unless the context indicates otherwise, and –

"Authority" means the Financial Sector Conduct Authority or the Prudential Authority and **"Authorities"** mean both the Financial Sector Conduct Authority and the Prudential Authority;

"beneficial owner" subject to subsection (2), has the meaning assigned to the term in section 159A(1) of the Act; and

"financial institution" has the meaning assigned to the term in section 1 of the Act but-

(a) excludes financial institutions that are not an accountable institution as defined in section 1 of the Financial Intelligence Centre Act, 2001 (Act No. 38 2001); and

(b) notwithstanding paragraph (a), includes a co-operative financial institution as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007).

(2) The following persons are excluded from the definition of beneficial owner as contemplated in section 159A(1) of the Act:

(a) A natural person that acquired an ownership interest in a financial institution through listed securities as defined in section 1(1) of the Financial Markets Act;

(b) a natural person that directly or indirectly acquired an ownership interest in a financial institution- as-
    (i) a member of a pension fund as defined in section 1(1) of the Pension Funds Act; or
    (ii) an investor as defined in section 1(1) of the Collective Investment Schemes Control Act; and

(c) a natural person that acquired an ownership interest in a financial institution through an employee share scheme as defined in section 95(1)(c) of the Companies Act.

3. Application

This Joint Standard applies to financial institutions and the beneficial owners of financial institutions.

4. Beneficial owner honesty and integrity requirements

(1) A beneficial owner of a financial institution must be honest and have integrity.

(2) Subject to subsection (4), the existence of any of the following constitutes *prima facie* evidence that a beneficial owner may lack honesty and integrity:

(a) The natural person has been convicted (and that conviction has not been expunged) of a financial crime as defined in section 1 of the Act or an offence similar to financial crime in a foreign country;

(b) the natural person has been convicted (and that conviction has not been expunged) of:
    (i) an offence under a law relating to the regulation or supervision of a financial institution as defined in the Act involving theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or
    (ii) an offence similar to an offence referred to in subsection (i) above under the law of a foreign country;

where the penalty for the offence was, or may be, imprisonment or a fine;

(c) the natural person has been convicted (and that conviction has not been expunged) of any other offence committed after the Constitution of the Republic of South Africa, 1996 took effect, where the penalty imposed for the offence was imprisonment without the option of a fine;

(d) the natural person has been convicted of a criminal offence which may lead to a conviction for theft, fraud, forgery, uttering a forged document, money laundering, terrorist financing, proliferation financing, or where the offence contains elements of misrepresentation or dishonesty, under any law of any jurisdiction;

(e) the natural person has accepted civil liability for, or has been the subject of a civil judgment in respect of, theft, fraud, forgery, uttering a forged document, money laundering, terrorist financing, proliferation financing, or where the civil liability contains elements of misrepresentation or dishonesty under any law of any jurisdiction;

(f) the natural person has been the subject of frequent or severe preventative, remedial or enforcement actions by a designated authority;

(g) the natural person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, money laundering, terrorist financing, proliferation financing, misrepresentation or dishonesty;

(h) the natural person has breached a fiduciary duty;

(i) the natural person has an impaired ability to discharge his or her duties in respect of the business of the financial institution because of a conflict of interest or any other reason;

(j) the natural person has been suspended, dismissed or disqualified from acting as a key person under any law;

(k) the natural person has been refused a registration, authorisation or licence to carry out a trade, business or profession, or has had that registration, authorisation or licence revoked, withdrawn, suspended or terminated by the Authorities because of matters relating to honesty, integrity, or poor business or professional conduct;

(l) the natural person has been refused registration or membership of any professional body or has had that registration or membership revoked, withdrawn, suspended or terminated by a professional body because of matters relating to honesty, integrity, or poor business or professional conduct;

(m) the natural person has been disciplined, disqualified or removed in relation to matters relating to honesty, integrity or poor business conduct by a professional body or a designated authority;

(n) the natural person has knowingly been untruthful or provided false or misleading information to, or been obstructive in any dealings with a designated authority;

(o) the natural person, as a result of a court order, is listed on the register of excluded persons in terms of section 14 of the National Gambling Act, 2004 (Act No.7 of 2004);

(p) the natural person, as a result of a court order, is declared to be mentally unfit or has diminished mental capacity;

(q) the natural person has been found to not be fit and proper by the responsible authority or another designated authority in any previous assessments of fitness and propriety, and the reasons for being found not fit and proper have not been remedied;

(r) the natural person has been involved, or is involved, as a director or a member of the senior management of a business that has been placed under statutory management or curatorship, resolution, in business rescue or in liquidation while the natural person has been connected with that organisation, or within one year of that connection;

(s) the natural person has been involved, or is involved, as a director or a member of the senior management of a systemically important financial institution that initiated the implementation of its recovery plan or has been placed in resolution while the natural person has been connected with that organisation, or within one year of that connection; or

(t) the natural person has been involved, or is involved, as a director or a member of the senior management of a business that has been the subject of any matter referred to in paragraphs (a), (b), (d), (e), (f), (h), (i), (k), (m), (n), or (q).

(3) When assessing the honesty and integrity of a beneficial owner of a financial institution, the Authorities must consider the existence of any of the factors specified in subsection (2), in addition to any other reasonable considerations that the Authorities deems relevant.[1]

(4) If a natural person wishes to assert that he or she is honest and has integrity, despite the existence of one or more of the factors specified in subsection (2), the natural person must submit a declaration for consideration by the Authorities, indicating the existence of one or more of the specified factors and providing reasons as to why the natural person believes it he or she is, notwithstanding the existence of such factors, fit and proper to be a beneficial owner.

5. Beneficial owner requirements applicable to financial institutions

(1) A financial institution must establish appropriate governance policies, processes and procedures –

(a) to ensure compliance with this Joint Standard; and

(b) that reflect how it will comply with this Joint Standard.

(2) A financial institution must take all reasonable steps to adequately, actively and timeously –

(a) identify;

(b) obtain relevant information regarding; and

(c) verify;

its beneficial owners.

(3) A financial institution must take reasonable steps to assess and confirm that its beneficial owners comply with section 4.

(4) The assessment and confirmation referred to in subsection (3) must occur –

(a) as soon as reasonably possible after a beneficial owner was identified; and

(b) on an ongoing periodic basis by adopting a risk-based approach which includes re-screening of beneficial owner(s), provided that the period of assessment should

[1] Such as the following: Whether there are any sanctions issued in terms of the United Nations Security Council Targeted Sanctions List in line with the Financial Action Task Force's Recommendations 6 and 7 and sections 26A, 26B and 26C of the Financial Intelligence Centre Act.

occur at a minimum of every 2 years to ensure that the information is up to date and accurate.

(5) A financial institution must –

(a) record appropriate details of its beneficial owners in a repository;

(b) ensure that the repository referred to in paragraph (a) is accurate and kept up to date; and

annually submit the register from the repository referred to in paragraph (a) to the responsible Authority.

(6) The Authorities may determine the details that must be reflected in the repository referred to in subsection (5)(a).

(7) A financial institution must, –

(a) upon application for a licence or authorisation in terms of a financial sector law, provide the Authorities with details of all its beneficial owners; and

(b) after it has been granted a licence in terms of a financial sector law, notify the Authorities –

(i) of a new or potential beneficial owner within 30 calendar days of it identifying such new or potential beneficial owner; or
(ii) within 30 calendar days if a beneficial owner ceases to be a beneficial owner.

(8) The Authorities may determine the format, content and manner of a submission or notification referred to in subsection (7).

6. Ultimate ownership and effective control

(1) For purposes of this section, “materially influence” means exerting power, capacity or any other form of influence on a person that materially effects or impacts the actions or decisions such a person takes.

Direct ownership

(2) A natural person has direct ultimate ownership of a financial institution if that natural person holds 5% or more ownership in such financial institution.

Direct effective control

(3) A natural person exercises direct effective control of a financial institution if that natural person has the ability to –

(a) exercise or control the exercise of 15% of voting rights, or any other material rights, in relation to the financial institution;

(b) appoint or remove 15% of members of the governing body of the financial institution, or have a material impact on the decision to appoint or remove 15% of members of the governing body of the financial institution;

(c) otherwise materially influence –
(i) the management or operations of;
(ii) a key person of; or
(iii) significant decisions made by;
a financial institution; or

(d) otherwise materially influence decisions relating to, or take advantage of, capital, assets or debts of the financial institution.

Indirect effective control

(4) A natural person exercises indirect effective control if that natural person, alone or together with other persons, has the ability to materially influence another person who –

(a) has the ability to exercise effective control as contemplated in subparagraph (3); or

(b) holds 5% or more ownership in a financial institution.

7. Administration, short title and commencement

(1) Any matter determined by the Authorities in accordance with this Joint Standard must be determined by notice on the websites of the Authorities.

(2) This Joint Standard is called Requirements pertaining to Beneficial Owners, 202[-].

(3) This Joint Standard comes into effect within 6 months after the date of publication.

Version number	Commencement date
1	[-] [-] 202[-]