



Financial Sector Regulation Act, 2017

Draft Joint Standard * of 2019

Fitness and propriety of significant owners

Objectives, applicability and key requirements of Joint Standard

This Joint Standard applies to a person who directly or indirectly, alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of a financial institution. This Joint Standard also places specific reporting obligations on financial institutions.

Prudent business management of financial institutions is dependent on the fitness and propriety of persons that influence the critical business decisions of these financial institutions. In the case of significant owners, fitness and propriety is linked to financial standing, competence and integrity.

This Joint Standard sets out the criteria that must be met by significant owners in order to be considered fit and proper as well as factors that would constitute, on a prima facie basis, evidence of the absence of fitness and propriety. The Authorities recognise that the assessment of fitness and propriety requires an application of judgement, therefore this Joint Standard sets out the factors to be considered when exercising such judgement.

In order to assist the Authorities to have oversight of the fitness and propriety of significant owners, this Joint Standard also places certain reporting obligations on financial institutions, to the extent practical and appropriate.

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1. Commencement

This Joint Standard commences on [insert date].

Version number	Commencement date
1	[Insert date]

2. Legislative authority

- 2.1 This Joint Standard is issued under sections 107 and 159(1) of the Act, read with sections 105, 106 and 108 of the Act.

3. Application

- 3.1 This Joint Standard applies to significant owners of financial institutions and to financial institutions.

4. Definitions and interpretation

- 4.1 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 shall have the meaning so assigned to it unless a different meaning is assigned elsewhere in this Joint Standard.
- 4.2 “Authority” means the Financial Sector Conduct Authority or the Prudential Authority and “Authorities” means both the Financial Sector Conduct Authority and the Prudential Authority.
- 4.3 The ‘Objectives and key requirements of Joint Standard’ printed in italics at the start of this Joint Standard must not be used in the interpretation of any section of this Joint Standard.

5. Roles and responsibilities

- 5.1 A significant owner must have procedures in place for assessing and attesting to, on an annual basis, its fitness and propriety as per the requirements of this Joint Standard.
- 5.2 A financial institution must notify the Authorities within 30 days of it becoming aware of significant ownership or potential significant ownership in respect of the financial institution.
- 5.3 A financial institution must notify the Authorities within 30 days of it becoming aware of non-compliance with this Standard by a significant owner.
- 5.4 A significant owner or financial institution must, upon request by an Authority, provide independent confirmation to the Authority on any matters related to compliance with this Joint Standard, in the manner and form requested.

6. Fitness and propriety requirements

- 6.1 A significant owner must have the necessary integrity, competence and financial resources required to support the business of a financial institution of which it is a significant owner.
- 6.2 Subject to section 7, the existence of any of the following constitutes prima facie evidence that a significant owner, who is a natural person, may lack integrity or competence:
 - (a) the person has been convicted (and that conviction has not been expunged) or is the subject of criminal proceedings which may lead to a conviction of a financial crime as defined in section 1 of the Act;
 - (b) the person has been convicted (and that conviction has not been expunged) or is the subject of criminal proceedings which may lead to a conviction, of an offence:
 - (i) under a law relating to the regulation or supervision of a financial institution as defined in the Act or a corresponding offence under the law of a foreign country involving theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or
 - (ii) a corresponding offence under the law of a foreign country to that of a financial crime as defined in section 1 of the Act;

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

- (c) the person has been convicted (and that conviction has not been expunged) or is the subject of criminal proceedings which may lead to a conviction 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, or may be, imprisonment without the option of a fine;
- (d) the person has been convicted of a criminal offence or is the subject of criminal proceedings which may lead to a conviction for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty under any law;
- (e) the 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, misrepresentation or dishonesty under any law;
- (f) the person has been the subject of frequent or severe preventative, remedial or enforcement actions by a designated authority;
- (g) the person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty;
- (h) the person has breached a fiduciary duty;
- (i) the 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 person has seriously or persistently failed to, or is failing to, manage any of his or her financial obligations (including debts) satisfactorily, including:
 - (i) having been the subject of a civil judgment, or is the subject of any proceedings which may lead to such a judgment, in respect of an unpaid debt and which debt remains unpaid; or
 - (ii) having been sequestrated, or is the subject of proceedings which may lead to sequestration under the Insolvency Act, 1936 (Act No. 23 of 1936) or a corresponding law of a foreign country, and has not been rehabilitated in terms of that Act or law;
- (k) the person has been suspended, dismissed or disqualified from acting as a key person under any law;

- (l) the 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 or terminated by a designated authority because of matters relating to honesty, integrity; or poor business or professional conduct.
- (m) the person has been refused registration or membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters relating to honesty, integrity, or poor business or professional conduct;
- (n) the person has been disciplined, reprimanded, disqualified or removed in relation to matters relating to honesty, integrity or poor business conduct by a professional body or a designated authority;
- (o) the person has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, the responsible authority or a designated authority;
- (p) the person has failed to comply with applicable legal, regulatory or professional requirements and standards;
- (q) the 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 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, in business rescue or in liquidation while the person has been connected with that organisation, or within two years of that connection;
- (s) the 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 person has been connected with that organisation, or within two years of that connection; or
- (t) the 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), (c), (d), (e), (k),

(m), (n), (o), (q) or (r).

6.3 Subject to section 7, the existence of any of the following constitutes prima facie evidence that a significant owner that is a legal person, may lack integrity or competence:

- (a) any of its direct or indirect significant owners meet any of the criteria referred to in section 6.2 or 6.3, as applicable;
- (b) it has been placed in business rescue or is the subject of any pending action to place it into business rescue within the meaning of the Companies Act, 2008 (Act No. 71 of 2008) or a corresponding law of a foreign country;
- (c) it has entered into, or is entering into, a scheme of arrangement with creditors within the meaning of the Companies Act, 2008 (Act No. 71 of 2008), or a corresponding law of a foreign country; or
- (d) in the case of a financial institution, it has not successfully implemented its recovery plan or has been placed in resolution.

6.4 Subject to section 7, the existence of any of the following constitutes prima facie evidence that a significant owner may not have the necessary financial resources to support the business of the financial institution:

- (a) the significant owner does not have adequate funding or future access to capital enabling it to support the business of the financial institution of which it is a significant owner;
- (b) the significant owner is not able or not likely to be able to meet any of its financial obligations (including debts) as they fall due; or
- (c) the significant owner has been the subject of a civil judgment in respect of an unpaid debt, which debt remains unpaid, or is the subject of pending proceedings which may lead to such a judgment.

7. Matters to be considered when assessing fitness and propriety

7.1 When assessing the fitness and propriety of a significant owner, the responsible authority must consider the existence of any of the factors specified in section 6, in addition to any other considerations that the responsible authority deems relevant, having due regard to the:

- (a) nature and scope of the significant owner's business; and

(b) structure of any group of companies of which the significant owner is part.

7.2 If a person wishes to assert that it is fit and proper despite the existence of one or more of the factors specified in section 6, the person must, when seeking the approval of the responsible authority in terms of section 158(2) of the FSRA, submit a declaration indicating the existence of one or more of the specified factors and providing reasons as to why the person believes it is, notwithstanding the existence of such factors, fit and proper to be a significant owner.

8. Increase or decrease in the extent of ability to control or influence

8.1 For the purposes of section 159(1)(b), an increase or decrease of 5% or more of the percentages specified in section 157(2)(a), (b) and the definition of 'qualifying stake' contemplated in section 157(2)(c), constitutes "an increase or a decrease in the extent of the ability of the person, alone or together with a related or inter-related person, to control or influence materially the business or strategy of the financial institution".

8.2 For the purposes of paragraph (c)(iii) of the definition of 'qualifying stake', it will constitute a decrease "in the extent of the ability of the person, alone or together with a related or inter-related person, to control or influence materially the business or strategy of the financial institution", if a person no longer has the power to appoint or change any beneficiaries of the trust.

8.3 For the purposes of this paragraph, "an increase or decrease" includes an incremental or single increase or decrease "in the extent of the ability of the person, alone or together with a related or inter-related person, to control or influence materially the business or strategy of the financial institution".

9. Amendment of other regulatory instruments

9.1 This Joint Standard amends *GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers* made by the Prudential Authority under the Insurance Act, 2017 by:

- (a) deleting the term 'significant owner' wherever it appears; and
- (b) repealing sections 7, 8.2 and 8.4.