



Ref.: 15/8/1/1

C2/2023

To: All banks, controlling companies, branches of foreign institutions, eligible institutions and auditors of banks or controlling companies

Circular 2/2023 issued in terms of section 6(4) of the Banks Act, 1990:

Application and interpretation of the requirements to submit a duly completed statement and declaration in the form of a form BA 020

Executive Summary

The purpose of this circular is to provide clarity to all banks, controlling companies, branches of foreign institutions, eligible institutions and auditors of banks or controlling companies on the application and interpretation of the requirements to submit a duly completed statement and declaration in the form of a form BA 020 as prescribed in regulation 53, read with regulation 42(1) of the Regulations relating to Banks.

1. Introduction

- 1.1 Section 1(1A) of the Banks Act 94 of 1990 (Banks Act) imposes a duty on the Prudential Authority (PA) to determine whether specified persons are fit and proper persons to hold the office of a director or an executive officer of a bank or controlling company.
- 1.2 Section 60(5) of the Banks Act prescribes that a bank shall give the PA written notice of a nomination of any person for appointment as a chief executive officer, director or executive officer by furnishing the PA with the prescribed information in respect of the nominee.
- 1.3 In this regard, regulation 42(1) of the Regulations relating to Banks (Regulations) requires an institution that is a bank or controlling company to submit a duly completed statement and declaration in the form of a form BA 020 (form BA 020), as prescribed in regulation 53 of the Regulations, in respect of the proposed appointment of a director or an executive officer.
- 1.4 The purpose of this circular is to provide clarity regarding the application and interpretation of section 1(1) of the Banks Act and regulation 53, read with regulation 42(1) of the Regulations.

2. Clarification of requirements specified in section 1(1) of the Banks Act

2.1 An executive officer, in relation to any institution that is a bank, is defined in terms of section 1(1) of the Banks Act to include: "...any employee who is a director or who is in charge of a risk management function of the bank, the compliance officer, the secretary of the company or any manager of the bank who is responsible, or reports, directly to the chief executive officer of the bank."

2.2 Furthermore, in terms of section 1(1) of the Banks Act, an 'employee in charge of a risk management function', in relation to a bank, is defined as:

...that employee of the bank who is ultimately responsible for the management of one or more of the following types of risk to which the bank is exposed, namely –

- (a) solvency risk;
- (b) liquidity risk;
- (c) credit risk;
- (d) currency risk;
- (e) market risk (position risk);
- (f) interest rate risk;
- (g) counterparty risk;
- (h) technological risk;
- (i) operational risk;
- (j) compliance risk; or
- (k) any other risk regarded as material by that bank.

2.3 The PA clarifies to all banks, controlling companies and branches of foreign institutions (hereinafter collectively referred to as 'banks') that each employee that is in charge of a risk management function as contemplated in section 1(1) of the Banks Act, is deemed to be ultimately responsible for such risk management function and is therefore required to complete and submit a form BA 020 to the PA, as prescribed in regulation 42(1) read with regulation 53 of the Regulations. Therefore, a form BA 020 must be submitted for other employees in charge of a risk management function as prescribed and not only be limited to a submission for the Chief Risk Officer of the bank.

2.4 All banks are required to continuously assess adherence to the aforementioned requirements and where instances of non-compliance are identified, the bank must submit a request for condonation in terms of regulation 5(1) of the Regulations within 30 days from the date of this circular, detailing its reasons for its failure or inability to comply with the provisions of regulation 42(1) of the Regulations and provide full details of all instances of non-compliance.

2.5 Where applicable, banks are required to submit the form BA 020 for all incumbents who did not previously submit a form BA 020 as required.

3 Clarification of requirements related to changes of roles in the context of regulation 42(1)(a) of the Regulations

3.1 Regulation 42(1)(a) states that:

...(1) A duly completed statement and declaration in the form of a form BA 020, as prescribed in regulation 53, shall be submitted to the Authority by the chairperson of the board, or the chairperson's duly appointed representative, or, in the case of a new bank, by the auditor, in respect of-

- (a) every person who for the first time accepts an appointment as a director or an executive officer of a bank or a controlling company at least 30 days prior to the appointment becoming effective.

- 3.2 The PA clarifies that the requirements in terms of regulation 42(1)(a) of the Regulations also apply to directors and executive officers who have been appointed in a specific role but are subsequently nominated for a different role for which the individual has not previously been assessed for nor submitted the relevant form BA 020. In these instances, a new form BA 020 for the director or executive officer has to be submitted to the PA, at least 30 days prior to the proposed date of the appointment and will be subject to the PA's normal fitness and propriety assessment processes and formal response to an institution following the outcome of the assessment.
- 3.3 Should a bank identify any discrepancy between the role that was submitted to the PA and the role that the incumbent is fulfilling, the PA needs to be notified thereof accompanied by a request for condonation, as stipulated in paragraph 2.4 of this circular.
- 3.4 The attention of all banks is drawn to the requirement contained in the signed declaration by applicants in the form BA 020, and banks must ensure ongoing compliance with this declaration, more specifically the section below:

...I undertake that, as long as I continue to be a director or executive officer of the institution, I will notify the Authority of any material changes to, or affecting the completeness or accuracy of, the information supplied by me in items 1 to 40 as soon as possible, but in no event later than 21 days from the day that the changes come to my attention.

4 Other

- 4.1 The respective requirements specified in regulations 42(1) and 53 of the Regulations also apply to individuals who are appointed in an acting capacity.
- 4.2 Where applicable, banks will be required to submit the form BA 020, within 21 days from the date of this circular, for all incumbents holding relevant positions in an acting capacity.

5. Acknowledgement of Receipt

- 5.1 Kindly ensure that a copy of this circular is made available to your institution's independent auditors. The attached acknowledgement of receipt duly completed and signed by both the chief executive officer of the institution and the said auditors should be returned to the PA at the earliest convenience of the aforementioned signatories.

Fundi Tshazibana
Chief Executive Officer

Date:

The previous circular issued was Banks Act Circular 1/2023, dated 22 February 2023.