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MBC2/2023

To: All mutual banks and auditors of mutual banks

Circular 2/2023 issued in terms of section 4(4) of the Mutual Banks Act 124 of 1993:

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

Executive Summary

The purpose of this circular is to provide clarity to all mutual banks and auditors of mutual banks on the application and interpretation of the requirements to submit a duly completed statement and declaration in the form of a form DI 020 as prescribed in regulation 33, read with regulation 39(1) of the Regulations relating to Mutual Banks.

1. Introduction

1.1 Chapter 1(2) of the Mutual Banks Act 124 of 1993 (Mutual Banks Act) states that -

in order to determine, for the purposes of this Act, whether a particular person is a fit and proper person to hold the office of a director or an executive officer of a mutual bank, the Registrar shall proceed *mutatis mutandis*, as prescribed in section 1(1A) of the Banks Act, 1990 (Act No. 94 of 1990).

1.2 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.

1.3 Section 37(7) of the Mutual Banks Act prescribes that a mutual bank shall within 14 days of the appointment under subsection (5) or the election under subsection (6) of a director, send to the PA a notice of the appointment or election signed by the director appointed or elected and by the secretary of the mutual bank.

1.4 In this regard, regulation 39(1) of the Regulations relating to Mutual Banks (Regulations) requires a mutual bank to submit a duly completed statement and declaration in the form of a form DI 020 (form DI 020), as prescribed in regulation 33 of the Regulations, in respect of the proposed appointment of a director or an executive officer.

1.5 The purpose of this circular is to provide clarity regarding the application and interpretation of section 1(1) of the Mutual Banks Act and regulation 39(1), read with regulation 33 of the Regulations.

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

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

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

...that employee of the mutual bank who is ultimately responsible for the management of one or more of the following types of risk to which the mutual 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; or
- (j) any other risk regarded as material by that mutual bank.

2.3 The PA clarifies to all mutual banks that each employee that is in charge of a risk management function as contemplated in section 1(1) of the Mutual Banks Act, is deemed to be ultimately responsible for such risk management function and is therefore required to complete and submit a form DI 020 to the PA, as prescribed in regulation 33 read with regulation 39(1) of the Regulations. Therefore, a form DI 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 mutual bank.

2.4 All mutual banks are required to continuously assess adherence to the aforementioned requirements and where instances of non-compliance are identified, the mutual bank must report such non-compliance to the PA within 30 days from the date of this circular, detailing its reasons for its failure or inability to comply with the provisions of regulation 39(1) of the Regulations and provide full details of all instances of non-compliance.

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

3. Clarification of requirements related to changes of roles in the context of regulation 39(1)(a) of the Regulations

3.1 Regulation 39(1)(a) states that:

(1) A duly completed statement and declaration in the form of a form DI 020 as prescribed by regulation 33 shall be submitted to the Registrar by the chairman of the board, or his duly appointed representative, or, in the case of a new mutual 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 mutual bank at least 30 days prior to the appointment becoming effective; and
- (b) any serving director or executive officer of a mutual bank at the request of the Registrar.

3.2 The PA clarifies that the requirements in terms of regulation 39(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 DI 020. In these instances, a new form DI 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 mutual 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 together with reasons for such non-compliance, as stipulated in paragraph 2.4 of this circular.

3.4 The attention of all mutual banks is drawn to the requirement contained in the signed declaration by applicants in the form DI 020, and mutual 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 Registrar of any material changes to, or affecting the completeness or accuracy of, the information supplied by me in items 1-39 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 33 and 39(1) 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 DI 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 Mutual Banks Act Circular 1/2023, dated 22 February 2023.