



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 related to fit and proper assessment requirements pertaining to beneficial owners

Executive summary

The purpose of this Directive is to direct mutual banks and auditors of mutual banks to implement processes to identify the beneficial owners of their institutions and to, among other things, subject such beneficial owners to criminal background checks (CBCs).

Both the Financial Action Task Force's (FATF) 40 Recommendations and the Basel Committee on Banking Supervision's (BCBS) Core Principles for Effective Banking Supervision (Core Principles) place an obligation on supervisors to ensure that major shareholders, including the ultimate beneficial owners¹ of financial institutions² (FIs), are suitable and have not been involved in any criminal activities.

1. Introduction

1.1 The responsibilities of mutual banks

1.1.1 There are various reasons supporting the duty on various key role players to identify the beneficial owners (BOs) of a mutual bank. Unlawful activity can thrive when an entity's ownership structure is opaque and to uphold the integrity of the financial system it is essential that criminals or their associates are prevented from holding (or being the BO of) a significant or controlling interest in a bank.

¹ As per the definition of a 'beneficial owner' recognised by the Financial Action Task Force (FATF), a '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 a '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 FATF definition focuses on the natural (not legal) persons who own and take advantage of capital and/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 on just the (natural or legal) persons who are legally (on paper) entitled to do so. Please see <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

² A financial institution as per the FATF definition means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer: 1. Acceptance of deposits and other repayable funds from the public. 2. Lending. 3. Financial leasing. 4. Money or value transfer services. 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money). 6. Financial guarantees and commitments. 7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading. 8. Participation in securities issues and the provision of financial services related to such issues. 9. Individual and collective portfolio management. 10. Safekeeping and administration of cash or liquid securities on behalf of other persons. 11. Otherwise investing, administering or managing funds or money on behalf of other persons. 12. Underwriting and placement of life insurance and other investment related insurance. 13. Money and currency changing

1.1.2 Mutual banks are ultimately responsible for ensuring that they understand and keep record of their ownership structures, including BOs.

1.2 International standards

1.2.1 The BCBS's Core Principles and, more specifically, the Essential Criteria 5 of Principle 5 states that a licensing authority identifies and determines the suitability of a bank's major shareholders, including its BOs and others that may exert significant influence. It also assesses the transparency of the ownership structure, the source(s) of initial capital and the ability of the shareholders to provide additional financial support where needed.

1.2.2 South Africa, as a member of the FATF, has a duty to conform to the FATF's 40 Recommendations against money laundering and terrorism financing. FATF Recommendation 26 states that countries should ensure that FIs³ are subject to adequate regulation and supervision, and that they are effectively implementing the FATF Recommendations. Furthermore, financial supervisors should take the necessary legal and/or regulatory measures to prevent criminals or their associates from holding a management function (or being the BO) in a FI.

1.3 Legislative requirements

1.3.1 Sections 13⁴, 32⁵, 57⁶ and 69⁷ of the Mutual Banks Act contains 124 of 1993 (Mutual Banks Act) requirements related to ownership structures of mutual banks.

1.4 The duties of the Prudential Authority

1.4.1 The Prudential Authority (PA) in the execution of its mandate requires that mutual banks comply with legislative requirements by implementing adequate and robust policies and processes, to ensure that BOs do not hold criminal records and adequate records are kept in this regard.

1.4.2 The PA requires mutual banks to implement the necessary measures to prevent persons with criminal records and other unfit persons from becoming BOs of the mutual bank.

2. Directive

2.1 Based on the aforesaid information, and in accordance with the provisions of section 4(6)⁸ of the Mutual Banks Act, to enable the PA to effectively execute its responsibilities under applicable financial sector legislation and in consideration of its ongoing commitment to adopt international best practice prescribed by, among others, the BCBS and the FATF, and to prevent persons holding criminal records from holding or exerting significant influence over a mutual bank, mutual banks are hereby directed as set follows:.

⁴ Application for provisional registration as mutual bank

⁵ Matters to be set forth in articles

⁶ Shares

⁷ Effects of conversion

⁸ Powers of inspection of, guidance notes, directives and guidelines by, Prudential Authority

2.2 Criminal background check report requirements

2.2.1 Mutual banks must, at the written request of the PA, submit criminal background check reports⁹ (CBCRs) to the PA for each of their BOs.

2.2.2 No shareholding percentage threshold is specified in this Notice for mutual banks to identify a BO. However, mutual banks must ensure that they undertake a thorough risk assessment across all the levels in their ownership structure and provide the PA with an organogram depicting said structure and percentage allocations, explaining how the BO(s) were identified.

2.2.3 The PA will interrogate the information received and may require further information concerning the ownership, influence and/or control structure of the mutual bank, as it may deem fit.

2.2.4 Applications in terms of section 13¹⁰ of the Mutual Banks Act, which are for the authorisation to establish a mutual bank, must include CBCRs for each of the BOs.

2.2.5 CBCRs in respect of BOs identified as South African nationals must not be older than 30 calendar days from the date of submitting the information to the PA.

2.2.6 CBCRs in respect of BOs identified as foreign nationals must not be older than 60 calendar days from the date of submitting the information to the PA.

2.2.7 CBCRs can be requested or sourced from CBC service providers nationwide. These CBCRs will contain a unique CBCR reference number¹¹. Mutual banks must ensure that this unique CBCR reference number is clearly visible when submitting the document to the PA.

2.2.8 Mutual banks with foreign BOs are advised that some of the domestic CBC service providers have arrangements in place with foreign governments and foreign third-party service providers to source CBCRs or an equivalent document from such parties in foreign jurisdictions. Thus, mutual banks may use these domestic service providers to source CBCRs for BOs who are foreign nationals.

2.2.9 Foreign CBC service providers may also be approached to provide CBCRs or an equivalent document in respect of foreign nationals that are BOs of mutual banks. If not captured on a CBCR, mutual banks must submit the following information in respect of the CBC service provider in support of the CBCR to the PA:

- registered name
- registration number;
- postal address if available, and domicile address;
- telephone number;
- email address; and
- website address.

⁹ A police clearance certificate or a report issued by a service provider having an arrangement in place with a Police Department to issue a statement in respect of a natural person's criminal status on its behalf will be acceptable

¹⁰ Application for provisional registration as mutual bank

¹¹ Unique CBCR reference numbers are only applicable to criminal background check screenings performed against the South African Police Service fingerprint database.

2.3 Changes to and accuracy of beneficial ownership information

2.3.1 Mutual banks are required to:

- submit updated CBCRs to the PA within the timelines outlined in paragraphs 2.2.5 and 2.2.6 of becoming aware of any changes to their BO(s); and
- maintain up-to-date and accurate information pertaining to the identity of their BO(s).

2.4 Periodic re-screening of BOs

2.4.1 The PA will require banks to submit CBCRs periodically and in line with the PA's application of a risk-based approach to supervision. Banks must re-screen their BOs on a periodic basis to ensure that the information they hold is up to date and accurate. The CBCRs should be provided to the PA within 30 calendar days of completing such screenings.

2.5 Invitation for comment

2.5.1 Mutual banks and other interested parties are hereby invited to submit their comments on the proposed Directive to PA-FitandProper@resbank.co.za by 26 August 2022.

2.5.2 The comments received may be published on the PA's website, unless a respondent specifically requests confidential treatment.

Fundi Tshazibana
Chief Executive Officer

Date: 2022-08-12