

Financial Sector Regulation Act No. 9 of 2017

Joint Communication 8 of 2020

Joint Standard for significant owners, effective from 1 December 2020

1. Purpose

The purpose of this Joint Communication is to emphasise the effective date of Joint Standard 1 of 2020: Fitness, propriety, and other matters relating to significant owners, being 1 December 2020, and to convey certain information with regard to matters related thereto.

2. Background

Chapter 11 of the Financial Sector Regulation Act No. 9 of 2017 (Act) was brought into effect on 1 January 2019 and makes provision for the regulation of significant owners of financial institutions.

Section 157 of the Act defines a significant owner:

Subsection (1) provides that a person¹ is a significant owner of a financial institution if the person, 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 the financial institution.

Subsection (2) states that without limiting subsection (1), a person has the ability referred to in that subsection if:

- (a) the person, directly or indirectly, alone or together with a related or inter-related person, has the power to appoint 15% of the members of the governing body of the financial institution;
- (b) the consent of the person, alone or together with a related or inter-related person, is required for the appointment of 15% of the members of a governing body of the financial institution; or
- (c) the person, directly or indirectly, alone or together with a related or inter-related person, holds a qualifying stake² in the financial institution.

¹ Means a natural person or a juristic person, and includes an organ of state.

² Section 1 of the Act defines a 'qualifying stake', in respect of financial institution that-

- (a) is a company, that a person, directly or indirectly, alone or together with a related or inter-related person:-
 - (i) holds at least 15% of the issued shares of the financial institution;
 - (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the financial institution;
 - (iii) has the ability to dispose of or control the disposal of at least 15% of the financial institution's securities;
- or

Section 158 of the Act applies to significant owners of eligible financial institutions and managers of collective investment schemes, and requires –

- prior approval by the relevant Authority (Financial Sector Conduct Authority or Prudential Authority) to become a significant owner;³
- prior approval by the relevant Authority to cease being a significant owner of a systemically important financial institution;⁴
- prior notification to the relevant Authority to cease being a significant owner of a non-systemically important financial institution;⁵
- prior approval of or notification to the relevant Authority, depending on what the relevant Authority requires, to increase or decrease the extent of the ability of the significant owner, alone or together, with a related or inter-related person, to control or influence materially the business or strategy of the financial institution.⁶

Section 159 of the Act requires the Financial Sector Conduct Authority and the Prudential Authority (Authorities) to make standards in relation to fit and proper requirements to be complied with by significant owners of financial institutions. In addition, section 159 also requires the Authorities to make a joint standard on what constitutes an increase or a decrease in the extent of the ability of a person, alone or together, with a related or inter-related person, to control or influence materially the business or strategy of the financial institution.

3. Joint Standard and accompanying exemption Notices

To give effect to section 159 of the Act, the Authorities on 1 June 2020, published Joint Standard 1 of 2020: Fitness, propriety, and other matters relating to significant owners (Joint Standard). The Joint Standard will become effective on 1 December 2020 and will apply to significant owners (as defined in the Act) of financial institutions as well as financial institutions.

Although the Joint Standard applies to significant owners of all financial institutions as required in terms of section 159 of the Act, the Authorities exempted significant owners of certain financial institutions from the application of the Joint Standard. The reasons why significant owners of these particular institutions were exempted are set

-
- (iv) holds rights in relation to the financial institution that, if exercised, would result in the person, directly or indirectly, alone or together with a related or inter-related person:-
 - (aa) holding at least 15% of the securities of the financial institution;
 - (bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the financial institution; or
 - (cc) having the ability to dispose of or direct the disposal of at least 15% of the financial institution's securities;
 - (b) is a close corporation, that a person, directly or indirectly, alone or together with a related or inter-related person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;
 - (c) is a trust, that a person has, directly or indirectly, alone or together with a related or inter-related person:-
 - (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;
 - (ii) the power to appoint at least 15% of the trustees; or
 - (iii) the power to appoint or change any beneficiaries of the trust.

³ See section 158(2) of the Act.

⁴ See section 158(3)(a) of the Act.

⁵ See section 158(3)(b) of the Act.

⁶ See section 158(4) of the Act.

out in the “Statement of the need for, expected impact and intended operation of a regulatory instrument” as published together with the final Joint Standard.

The Joint Standard and exemption notices are available on the website of the Authorities at:

<https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Standards.aspx> and;

<https://www.resbank.co.za/en/home/publications/publication-detail-pages/prudential-authority/PA-financial-sector-regulation/sector-regulation-joint-standards/2020/9970>

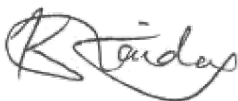
4. Format of application forms and notifications under section 158 of the Act

As explained in paragraph 2 above, section 158 of the Act requires various prior approvals and notifications relating to significant owners. Since the effective date of section 158, these applications and notifications were dealt with on a case by case basis, and a standardised format for such applications and notifications applicable were not yet determined by the Authorities.

Application and notification forms for significant owners of financial institutions registered under financial sector laws for which the Prudential Authority is the responsible authority⁷ are available at:

[https://www.resbank.co.za/en/home/what-we-do/Prudentialregulation/Significant owners Applications and Notifications](https://www.resbank.co.za/en/home/what-we-do/Prudentialregulation/Significant%20owners%20Applications%20and%20Notifications)

The Financial Sector Conduct Authority will publish the application and notification forms for significant owners of financial institutions registered under financial sector laws for which it is responsible in due course. In the interim, applicants must submit applications in terms of section 158 in a format of their choice.



Kuben Naidoo
Deputy Governor and CEO:
Prudential Authority

Date: 2020-11-26



Olano Makhubela
Commissioner:
Financial Sector Conduct Authority

Date: 27.11.2020

⁷ Refer to Schedule 2 of the Act.