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FSCA
Financial Sector
Conduct Authority

South African Reserve Bank
Prudential Authority

CONSULTATION REPORT[1]

FINAL

Draft Joint Standard: Fitness, propriety and other matters related to significant owners

November 2019

[1] This report is issued in terms of the requirements under section 104, read with 103(1)(b) of the Financial Sector Regulation Act, 2017 (Act No.9 of 2017).

Introduction

1. The Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) (jointly refered to as the Authorities) have undertaken two rounds of public consultation on the *'draft Joint Standard on Fit and Proper Person Requirements for Significant Owners institutions'* (Joint Standard). The comments received and responses to the latest public consultation process are attached in **Annexure A** while the comments and responses to the intial public consultation process are attached in **Annexure B**.

2. In October 2018, Authorities published, in accordance with section 98 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), a Joint Standard for a six (6) week public consultation period until 16 November 2018. The Joint Standard was published together with accompanying documents as required under section 98(1)(a) of the FSR Act and the Authorities invited submissions in relation to the draft Joint Standard in accordance with section 98(1)(a)(iv) of FSR Act.

3. At the close of the public consultation period, the Authorities received written submissions from 11 institutions that included banks, insurers and industry representative bodies.

4. The following key concerns were raised during the initial public consultation process:

   - the practicality and reasonableness of the fact that the requirements in the draft Joint Standard, which relates to significant owners, apply directly to the financial institution and not the significant owner;
   - requirement for annual assessment or reviews of fitness and propriety of significant owners;
   - requirement for compliance assurance by external auditors;

- definition of “significant owner”; and
- application of the draft Joint Standard to credit ratings agencies and significant owners of credit ratings agencies.

5. The detailed comments and responses to the initial public consultation process are attached as part of this consultation report in Annexure B. The Authorities carefully considered the initial comments received and consequently made material revisions to the draft Joint Standard to accommodate the comments to the extent deemed appropriate. This process prompted a second round of public consultation in terms of section 99 of the FSR Act which requires the maker to repeat the public consultation process where a regulatory instrument becomes materially different from the one consulted on, whether or not as a result of the consultation process.

6. Consequently, the Authorities published a second version of the draft Joint Standard, namely the draft Joint Standard on ‘*Fitness and Propriety of Significant Owners*’ (Joint Standard), together with the required accompanying documents, for another round of public consultation on 23 July 2019 for a period of 6 weeks until 4 September 2019. A summary of the comments received as well as the Authorities’ responses to the second round of public consultation are attached in annexure A.

7. At the close of the second round of public consultation process, the Authorities received written submissions from 7 institutions that included a bank, the Road Accident Fund as well as industry representative bodies. The submissions received were considered in revising the draft Joint Standard which is now being submitted to Parliament.

8. The following key issues were raised during the second round of public consultation and in the main, these issues were raised predominantly for clarification purposes:

- It was proposed that a transitional period of between 6 and 12 months is allowed in order to provide time for significant owners to prepare for compliance with the requirements. Reponse: In the revised Joint Standard a period of 6 months will be granted between the date of publication and the effective date of the revised Joint Standard.
- The extent to which the Joint Standard applies to existing Significant Owners. Response: The Joint Standard applies to existing significant owners unless specifically exempt.
- Clarity was sought regarding the indirect level of significant ownership to which the Joint Standard applies. Response: The definition of a significant owner must be carefully considered when assessing whether a natural or juristic person is a significant owner.
- Clarity was requested on the meaning of ‘independent confirmation’. Response: Independent confirmation may be provided by an internal auditor or an external auditor. The Authorities will, however provide direction in this regard when requesting an independent confirmation.
- Concerns were raised with the criteria for fit and proper in respect of natural persons, particularly the issue around the pending criminal proceedings in the assessment of integrity. Response: The provisions regarding involvement in proceedings that have not been finalised where removed from the revised Joint Standard standard.
- Clarity was sought in respect of different scenarios for incremental increases of the 5 percent prescription. Response: The Joint Standard dealt with a once-of increases as well as cumulative increases. The Joint Standard was amendment to clarify this position.
- Clarity was requested regarding certain fit and proper criteria for natural persons. Response: Where appropriate amendments were made to the Joint Standard to promote clarity e.g. a definition for ‘senior management’ was inserted.
- Clarity was requested on whether financial standing requirements should apply to significant owners who are captured by the definition because of their voting rights and not because of a significant sharing holding in a financial institution. Response:

Significant owners are subjected to the requirements of the Financial Sector Regulation Act, 2007 and the Joint Standard because of the ability to materially influence the strategy and business of a financial institution. It is thus, necessary for significant owners to be honest, have integrity and competence as well as a good financial standing. Significant ownership is not limited to significant shareholders and all significant owners irrespective of type must have a good financial standing.

- Concerns were raised on the requirements to have adequate funding and future access to capital. The requirements were interpreted as a capital requirement for significant owners. Response: It is not the intention of the Joint Standard for significant owner of financial institutions to hold capital in the event that such capital is needed by the financial institution. A significant owner should be able to demonstrate that it can access funding and access future capital if such is required by the financial institution.
- Reporting to the Authorities on annual assessments and attestations, compliance with the Joint Standard and the change in fit and proper status of the significant owner. Response: The Joint Standard was amended to clarify the reporting requirements to the Authorities.
- Concerns on the applicability of the Joint Standard to Collective Investments Schemes. Response: The Authorities were of the view that managers of Collective Investment Schemes fall within the definition of a significant owner as prescribed by the FSR Act and that any request for an exemption from the Joint Standard will be dealt with on a case-by-case basis.

9. The Authorities are of the opinion that the comments received during the second round of public consultation did not raise any signficiant policy concerns and has not necessitated any material changes to the draft Joint Standard that was published for consultation. As such, the Authorities will not publish the draft Joint Standard for a third round of public consultation and will proceed to submit the draft Joint Standard to Parliament in terms of section 103 of the FSR Act.

10. This consultation report is therefore drafted in fulfilment of section 104 of the FSR Act and provides a general account of the issues raised in the submissions and sets out the Authorities' response to the issues raised in the submissions made during the public consultation period. The detailed comments and responses to the second and first round of public consultation process are set out in Annexures A and B below.

Annexure A: Responses to the submissions received on the 2nd round of public consultation process

	Source	Paragraph of the Standard	Comment	Response
			1. COMMENTS ON STANDARD	
			Commencement	
1.	Home Loan Guarantee Company NPC		No comment	***Noted.***
2.	World Focus 314		The joint standard commences on 01 July 2018	***It is anticipated that the joint standard would be finalised by the first quarter of 2020.***
3.	BASA		Clarity is sought on the intended commencement date (if possible, at this stage), in order for the necessary measures to be put in place.	***It is anticipated that the joint standard would be finalised by the first quarter of 2020 with the effective date being six months after publication.***
4.	ASISA	1.	In the "Statement of the Need" document, the Authorities state that "it is recognised that transitional arrangements may be required…". ASISA members are of the view that such transitional provisions are definitely required. As previously submitted, ASISA proposes an effective date 6 -12 months after publication of the final Joint Standard. Existing significant owners will need to assess their compliance/become compliant with applicable requirements. In a large organisation, this can take a lengthy period of time. If there is uncertainty, or if exemptions need to be applied for, there will need to be consultations with the Authorities, the submission of applications to the Authorities for exemptions and the Authorities will need to consider these applications. The time that this will all	***Noted. The standard will become effective six months post publication.*** ***The effective date of GOI4 will coincide with the effective date of the joint standard. Prudential Standard GOG must be read with GOI4 and the proposed Joint Standard.*** ***The provisions of Chapter 11 of the Financial Sector Regulation Act (FSRA) is***

	Source	Paragraph of the Standard	Comment	Response
			take should not be underestimated. Please note: In respect of significant owners of insurers, the transitional provisions need only apply to the Joint Standard requirements that are not already requirements in GOI 4. It is also important to note that the effective date of the amended GOI 4 and related amendments to paragraph 7 of the Prudential Standard GOG – Governance and Operational Standard for Insurance Groups, will need to co-incide with the effective date of the Joint Standard. Another reason why there should be a reasonable period of time between the publication of the final Joint Standard and its effective date is so that awareness regarding the Joint Standard can be raised. Not all significant owners are financial institutions themselves, and therefore may not keep abreast of regulatory requirements in respect of financial institutions. Those significant owners that were not subject to the authority of the Financial Sector Conduct Authority or the Prudential Authority prior to the effective date of Chapter 11 of the Act will need to be made aware of the provisions of the Joint Standard. It is therefore suggested that the Authorities consider issuing communications in appropriate media in order to raise the awareness of non-financial institution significant owners in respect of these new requirements.	***effective and are currently applicable to significant owners.*** ***The provisions of GOI 4 are also applicable. It is advised however that a period of 6 months will be given between the date of publication of the standard and the effective date.***
5.	ASISA	1.	How is it envisaged that the fit and proper requirements of the Joint Standard will be applied to those who are existing significant owners as at the commencement date? Is it envisaged that the significant owner should just do its own assessment and engage with the applicable Authority on any issues that may arise? Presumably it is not intended that all existing significant owners will need to apply to the relevant Authority for approval. This will need to be specifically dealt with and clarified in the transitional provisions. It is also presumed that where appropriate, exemptions (possibly conditional) will be entertained by the Authorities should an existing significant owner not	***Existing significant owners are required to comply with the requirements of the FSRA and will be required to comply with the proposed Joint Standard.*** ***Section 158(2) of the FSRA did not apply to significant owners that became significant owners prior to the effective date of section 158(2) as the section states that "A person may not effect any arrangement that will result in the person…" becoming a significant owner.***

	Source	Paragraph of the Standard	Comment	Response
			meet the requirements of the Joint Standard.	***However, please note that section 158(2) has been in effect since 1 January 2019.*** ***In terms of ceasing to be a significant owner of a financial institution, section 158(3)(b) requires prior notification to the PA for non-systemically important financial institutions and applies to existing significant owners.*** ***Applications made by significant owners will be considered in terms of the provisions of the FSRA and the proposed standards on a case-by-case basis.***
6.	ASISA	1.	As stated in the ASISA comments on the first draft of the Joint Standard, consideration will also need to be given to changes in significant ownership that are already in progress at the effective date and where agreements for such transactions have been concluded prior to the effective date, but the transactions have not yet been completed.	***As mentioned above, section 158(2) has been effective since 1 January 2019. Arrangements effected after 1 January 2019 could only be concluded with the permission of the relevant Authority. Any arrangement without prior approval is void in terms of section 158(6) of the FSRA.***
7.	ASISA	1.	A reasonable period between the date that the Joint Standard is published and its effective date will also be required for processes and controls to be put in place by significant owners and by financial institutions where required. On page 7 of the Public Comments matrix document, in response to ASISA's comment (comment number 5) the Authorities point out that "Any practical concerns with the approval and notification requirements contained in the FSRA cannot be addressed through the Joint Standard." Section 158(9) of the Act provides for standards to be made in order to prescribe procedures in respect of applications for approvals and notifications relating to significant	***A six month period between the date of publication of the Joint Standard and the effective date is envisaged.*** ***Practical concerns of the financial institution and procedures in respect of applications and notifications are viewed differently.*** ***The proposed joint standard in***

	Source	Paragraph of the Standard	Comment	Response
			owners. It is submitted that these standards are urgently required so that the information that will be required for approvals and notifications as well as other aspects of these processes can be understood.	***compliance with the requirements of section 159(1)(b) prescribes what constitutes an 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. In addition, it is stated that section 158(9) provides that a joint standard <u>may</u> prescribe procedures in respect or applications for approvals and notification in terms of section 158 and as such the prescription is not mandatory. The Authorities will, in due course consider whether it is necessary to, in terms of section 158(9), prescribe procedures in respect of applications for approvals and notifications relating to significant owners.***
Legislative authority				
8.	Home Loan Guarantee Company NPC		No comment.	***Noted.***
9.	ASISA		No comments other than those on sections 6.1 and 6.4 in relation to the financial "support" requirement.	***Noted. Refer to responses to comments on clauses 6.1 and 6.4 of the Joint Standard.***
10.	World		2.1 This Joint Standard is issued under sections 107 and 159 (1) of the	***Agreed.***

	Source	Paragraph of the Standard	Comment	Response
	Focus 314		Act,read with sections 105,106 and 108 of the Act.	
11.	World Focus 314		As amended by Joint Standard 1 of 2019 –Fitness and Proprietary of Significant Owners	***GOI 4 will be amended by the proposed Joint Standard.***
Application				
12.	Home Loan Guarantee Company NPC		No comment	***Noted.***
13.	BASA	3.1 "*This Joint Standard applies to significant owners of financial institutions and to financial institutions*."	Where a juristic person has significant ownership in a financial institution and the significant owner in turn has persons who qualify as significant owners, clarity is sought on the indirect level of ownership to which the obligations imposed by the Joint Standard will be applicable to significant owners.	***Reference must be made to the definition of a significant owner. Those entities or natural persons that meet the criteria of the definition must comply with FSRA and the proposed Joint Standard.***
14.	SAIA	3.1	One member has requested for the exemption of the application of the Joint Standard to a trust fund where the trust fund "owns" the financial institution on behalf of policyholders and where the main function of the trust fund is to facilitate the issue and repurchase of shares to and from policyholders. As a result of the structure, no single body or person controls the financial institution, as the company is non-beneficially owned by its mutual policyholders who hold the majority of the issued shares.	***Noted. A separate exemption application will have to be submitted to the Authorities and the Authorities will have to consider the exemption based on the content of the exemption application and the relevant criteria as provide for in the FSRA.***
15.	ASISA		No comment.	***Noted.***
16.	World Focus 314		3.1 This Joint Standard applies to significant owners of financial institutions and to financial institutions.	***Agreed.***

	Source	Paragraph of the Standard	Comment	Response
Definition and interpretation				
17.	Home Loan Guarantee Company NPC		No comment.	***Noted.***
18.	ASISA	4.3	It is noted that the "Objectives and key requirements of Joint Standard" printed in italics at the start of the Draft Joint Standard must not be used in its interpretation. Nevertheless, consistency with the language used in the Act is proposed where it is reasonable to do so. In this regard, the changes indicated below are suggested, without which the wording may imply wider application, even if unintended. At the least, it is suggested that "materiality" be included: *"Prudent business management of financial institutions is dependent on the fitness and propriety of persons that <u>materially</u> influence the ~~critical~~ business <u>or strategy</u> ~~decisions~~ of these financial institutions. In the case of significant owners, fitness and propriety is linked to financial standing, competence and integrity"*	***Noted and agreed.*** ***The Joint Standard has been amended to reflect the following:*** ***"Prudent business management of financial institutions is dependent on the fitness and propriety of persons that influence materially the business or strategy of these financial institutions. In the case of significant owners, fitness and propriety is linked to financial standing, competence and integrity."***
19.	World Focus 314	4	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.	***Agreed.***
20.	World Focus 314	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.	***Agreed.***
21.	World	4.3	The 'Objective 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	***Agreed.***

	Source	Paragraph of the Standard	Comment	Response
	Focus 314		section of this Joint Standard.	
22.	Investec	Definition of "Significant Owner"	We note the response from the Regulators that the definition of significant owners and certain requirements surrounding significant owners are contained in the FSRA and a Joint Standard cannot change the requirements that are contained in the FSRA. However, it leaves us with the same dilemma raised in our initial comments in that a CIS Manager and its Trustee could be regarded as significant owners based on the shares held across several portfolios, while they have no economic interest in the shares. We are therefore of the view that the Regulator should consider exempting CIS Managers and its Trustees from the significant owners' definition.	***We remain of the view that the cause of this issue is inherent in the definition of significant owner as contained in the FSRA and cannot be addressed through the Joint Standard. We will engage with ASISA regarding the exemption proposed through their comments which will constitute a process separate from the Joint Standard.***
			Roles and responsibilities	
23.	Home Loan Guarantee Company NPC		No comment	***Noted.***
24.	BASA	5.1 determines "*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*."	1. Is it the intention that the obligation to assess the fitness & propriety of significant owners will be limited to the significant owner i.e. that the financial institution will not have an obligation to review the information regarding fitness & propriety received from the significant owner?	***As per the content of the Joint Standard, the obligation to assess the fitness and propriety of a significant owner rests with the significant owner. This requirement does not detract or limit in any way the requirements placed on a financial institution in terms of financial sector laws as well as the exercising of effective risk management.***
25.	BASA	*5.2 A financial institution must notify the Authorities within 30*	1. Clarity is sought on how financial institutions must notify the Authorities of potential significant ownership within 30 days, if significant ownership is acquired by means of trading in listed shares.	***1. The requirement in terms of the proposed Joint Standard is that the financial institution must notify the Authorities within 30 days of it***

	Source	Paragraph of the Standard	Comment	Response
		days of it becoming aware of significant ownership or <u>potential</u> significant ownership in respect of the financial institution.	2. It will be helpful to have guidance/clarity what 'aware of' and 'potential significant ownership' may mean in this circumstance? 3. Clarity is sought on 30 days (calendar or business days).	***becoming aware of significant ownership or potential significant ownership in respect of the financial institution. When shares are purchased on an exchange, the obligation is only triggered when the financial institution becomes aware for example, that a person has acquired 15% of the issued shares of the financial institution.*** ***2. 'Aware of' – must be interpreted literally. 'Potential significant owner' means that there is an indication that a person will or maybecome a significant owner.*** ***3. 30 days means 30 calendar days***
26.	BASA	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."*	1. Will guidance or a process be provided for financial institutions to meet this reporting obligation .i.e. what format and manner of reporting must be followed in this regard? 2. Kindly provide guidance on whether there is an equivalent obligation on the significant owner (specifically for natural persons)? 3. Clarity is sought on 30 days (calendar or business days).	***1. The Joint Standard has been amended to state that the notification must be made in the form and manner to be determined by the Authorities.*** ***2. Please note that the notification requirements for significant owner (both natural and juristic persons) are contained in Chapter 11 of the FSRA.*** ***3. 30 days means 30 calendar days***
27.	BASA	5.4*"A significant owner* ***or*** *financial institution must, upon request by*	1. Clarity is sought on the intended timeframe within which a response to such a request is to be submitted.	***1. A reasonable time period will be determined by the Authorities via the***

	Source	Paragraph of the Standard	Comment	Response
		an Authority, provide independent confirmation to the Authority on any matters related to compliance with this Joint Standard, in the manner and form requested"	2. Clarity is sought on "independent confirmation" – would the significant owner or financial institution require this information be confirmed by for example internal/external auditors?	***request that is issued.*** ***2. Independent confirmation may be provided by an internal auditor or an external auditor. It advised however, that the Authorities will in the request specify the type of independent confirmation that is required. The type of independent confirmation will be dependent on the nature, scale and complexity of the financial institution or the nature of the significant owner.***
28.	ASISA	5.1	Section 7.1 provides for the Authority, when assessing fitness and propriety of significant owners under section 6, to take into account the nature and scope of a significant owner's business and the structure of a group of which the significant owner is part. In order to provide flexibility where appropriate, it is proposed that a similar principle be applied to section 5. Suggested wording: *"5.1 A significant owner must have procedures in place <u>that are commensurate with the nature of such significant owner,</u> for assessing and attesting to, on an annual basis, its fitness and propriety as per the requirements of this Joint Standard.* Section 5.1 requires an annual assessment and attestation, whereas the Public Comments matrix document suggests this may not need to occur as frequently, in any event not for all types of significant owners. We therefore propose that more flexibility be provided in respect of timing.	***Disagree. The assessment of a significant owner will be dependent on characteristics or the significant owner and the nature and scope of it's business as well as the financial institution itself. It is not necessary to qualify that the procedure for executing this assessment must be commensurate to the nature of the significant owner.***
29.	ASISA	5.4	It is not clear what "independent confirmation" is intended to entail. Given that the onus is now largely on the significant owner to comply with the	***Independent confirmation may be provided by an internal auditor or an***

	Source	Paragraph of the Standard	Comment	Response
			Joint Standard, (which is supported) it is submitted that it would not be necessary for a financial institution to provide confirmation on compliance by the significant owner with the Joint Standard. We therefore propose the addition of "its" (as indicated below) to avoid an interpretation that the financial institution could be responsible for providing confirmation regarding the significant owner's compliance (or vice versa). It is further proposed that this section should provide for: • the Authority's request to be written, • a reasonable response time and • an element of reasonableness in regard to both manner and form. Proposed wording amendments: *"A significant owner or financial institution must, upon written request by an Authority, provide independent confirmation to the Authority, within a reasonable period, on any matters related to its compliance with this Joint Standard, in the manner and form as may be reasonably requested."*	***external auditor. It advised however, that the Authorities will in the request specify the type of independent confirmation that is required. The type of independent confirmation will be dependent on the nature, scale and complexity of the financial institution or the nature of the significant owner..*** ***The Authorities will provide, in the request, a reasonable period within which to respond.*** ***Agree, the request should be written. The Joint Standard has been amended to include reference to a written request.*** ***The Joint Standard has been been amended to include a requirement on significant owners in terms of compliance with this Joint Standard.*** ***The form and manner prescribed by the Authority would be reasonable so it is not necessary to state this in the Joint Standard.***
30.	World Focus 314	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.	***Agreed.***
31.	World Focus 314	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	***Agreed.***

	Source	Paragraph of the Standard	Comment	Response
			the financial institution.	
32.	World Focus 314	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.	***Agreed.***
33.	World Focus 314	5.4	A significant owner of 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.	***Agreed.***
34.	Investec	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.' It is difficult to appreciate the full impact of the notification period without an example on what needs to be contained in the notification form. We therefore propose that this period be increased to 30 or 90 days to make sure that there is enough time to provide the information that may be requested in the form.	***Disagree. A 30 day period is a sufficient timeframe for the submission of the required notification.***
Fitness and propriety requirements				
35.	Home Loan Guarantee Company NPC		No comment	***Noted.***
36.	BASA	6.2(a)-(d)	1. The scenarios in (a) to (d) set out that if a person is the subject of criminal proceedings which may lead to a conviction, it will be regarded as prima facie proof that the significant owner lacks integrity or competence. However, it does not take into account a person's right to be presumed innocent in terms of section 35(3)(h) of the Constitution, 1996. We do not support the stance that merely being subject to criminal proceedings which may lead to a criminal offence is sufficient to constitute prima facie proof and/or evidence of a lack of integrity or competence. The evidence standard used in criminal cases is beyond reasonable doubt and not	***1. Agreed. Joint Standard amended accordingly.*** ***2. See above. The wording 'subject of criminal proceedings which may lead to a conviction' has been deleted from clauses 6.2 (a) to (d).*** ***3. Noted. The word 'significant' has***

	Source	Paragraph of the Standard	Comment	Response
			merely having a case pending against a person. 2. It is suggested that these scenarios in (a) to (d) be limited to actual convictions. 3. In scenario (b), the measurement of a 'significant fine' should perhaps be defined in monetary value it is open to a wide interpretation and 'significant' may differ between institutions (based on size for example) and jurisdictions. Guidance is sought from the Authorities in this respect.	***been deleted from paragraph (b), thus any fine issued will be considered.***
37.	BASA	*6.2(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;*	1. The same principle as above would apply, until a final order is made by a court. Merely accepting civil liability (often in settlement of disputes) does not necessarily mean that a court order has been granted against the person (matter could still be pending at court) and it may be unfair to prejudice a person where there is no finality on a matter. 2. Another consideration would be that settlement negotiations which may include acceptance of civil liability are often subject to legal privilege and this standard cannot force the disclosure of such information. This may make it practically impossible to enforce without breaching the person's rights to legal professional privilege. 3. It is suggested that the reference to "*has accepted civil liability for, or"* should be removed.	***1. Disagree. Accepting civil liability in relation to theft, fraud, forgery, misrepresentation and dishonesty points to some form of improper action and therefore could constitue prima facie evidence that such person is not fit and proper. Such actions would also influence the integrity of the significant owner. The significant owner would still be able to provide evidence why he/she is fit and proper notwithstanding the fact that such liability was accepted (see clause 7 of the Joint Standard).*** ***2. Disagree. The doctrine of legal professional privilege relates to the client / legal practitioner relationship and prohibits a legal practitioner from disclosing confidential client information. This doctrine does not impede the client's rights to disclose information relating to such client.*** ***3. Disagree for the reasons detailed above.***

	Source	Paragraph of the Standard	Comment	Response
38.	BASA	*6.2(f) the person has been the subject of frequent or severe preventative, remedial or enforcement actions by a designated authority;*	1. It is unclear what is meant by this statement as it is set out too vaguely. 2. It is suggested that clarity be provided around the intention of this statement. There should be a qualifying statement added (i.e.: that person has neglected or intentionally failed to take any measures to become compliant or that a Court has found the person to be in contravention of a particular section of the Act and perhaps even that the person has failed to comply with such order).	***1. Disagree. 'Designated authority' is defined by the FSRA. Frequent or severe preventative, remedial action or enforcement action is clear.*** ***2. Disagree. In our opinion the wording in clause 6.2(f) is sufficiently clear.***
39.	BASA	*6.2(g) the person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty;*	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: 2. This may be too broad and should be defined more specifically, i.e. removed in respect of certain legislation.	***Disagree. The competence and integrity of the significant owner is subjective and is based on the nature of the significant owner and the nature, scale and complexity of the financial institution. It is not practicable to prescribe every possible factor that may affect the integrity and competent of the significant owner. It is also advised that the proposal made to address the concern is not clear.***
40.	BASA	*6.2(h) the person has breached a fiduciary duty;*	1. The provision is, as it currently reads may be too broad. 2. We suggest that this requirement provide for the fiduciary duty to be linked to particular legislation.	***Disagree. The concept of fiduciary is well understood in the context of the Companies Act and common law..***
41.	BASA	*6.2(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;*	1. It is unclear what is meant by "*impaired ability*". 2. Additionally, the phrase "*or any other reason*" is too broad and could encompass an endless number of factors. 3. We suggest that clarity be provided on what constitutes an "*impaired ability*". 4. Additionally, the phrase "*or any other reason*" should be deleted. Alternatively, the phrase should be linked to a specific legislative	***1. The literal meaning must be considered.*** ***2. The reason(s) are limited to those that affects the ability of the significant owner to discharge his/her duties in respect of the business of the financial institution. One of the reasons could be a conflict of interest but there can***

	Source	Paragraph of the Standard	Comment	Response
			requirement. 5. Conflicts of interests should not be seen in isolation as they are intrinsically linked to the governance of a company and that the company should have rules or policies that deal with conflicts of interests. Conflicts of interest may not necessarily lead to a person having an impaired ability but bias and that conflicts of interests should be declared and the person should not partake in any matter where their conflict has been declared. 6. A person should not be sanctioned for declaring a conflict of interest as this may prevent people from declaring same.	***also be a wide array of other reasons, hence the reason why the wording proposed is necessary.*** ***3. See response under 1 above.*** ***4. Disagree. It is unclear why you propose that it should be linked to specific legislative requirements.*** ***5. Disagree. It is not practicable to prescribe all possible reasons and hence the need for the wording 'ny other reason'.*** ***6. A person is not being sanction for declaring a conflict of interest. This provision will be relevant where a conflict of interest is of such a nature that it will impair the ability of the significant owner to discharge his/her duties.***
42.	BASA	*6.2(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*	1. We submit that in subparagraph (j), the phrase "*has seriously or persistently failed to, or is failing to, manage any of his or her financial obligations (including debts) satisfactorily*" is subjective in nature. 2. In terms of (i) – being subject to a civil judgment is too wide and specific circumstances should be provided in this respect, not all instances of civil litigation affect a person's integrity or competence. In the current consumer credit market, the strain on consumers is evidenced from the percentage of impaired credit consumers and this should be considered as it may affected unintended people. 3. In (i) and (ii), the phrase "*or is the subject of any proceedings which may*	***1. Agreed. It is subjective in nature.*** ***2. The civil judgment is only in relation to 'unpaid debt and which debt remains unpaid'. Please note that a significant owner will still be able to provide evidence or reasons why he/she is fit and proper notwithstanding the civil judgement (see clause 7 of the Joint Standard).*** ***3. Agreed, the phrase has been removed***

	Source	Paragraph of the Standard	Comment	Response
		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;*	*lead to* …" implies that pending court proceedings have the same effect and status as a court order. This also ignores the audi alteram partem rule (no party should be judged without a fair hearing). 4. Sequestration has been specifically highlighted as an instance where the significant owner is unable to manage his/her financial obligations. We suggest that Debt Review and Debt Intervention also be specifically highlighted in this context. 5. We suggest that the phrase "*or is or is the subject of any proceedings which may lead to …"* be removed.	***from the proposed. Joint Standard.*** ***4. Noted. However, the debt intervention provisions of the National Credit Act, 2005 (Act No. 34 of 2005) have not come into effect. In addition, the provisions of 6.5(j) is sufficiently broad to capture the inability to service debt.*** ***5. Agreed. Phrase has been removed.***
43.	BASA	*6.2(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;*	1. The mere fact that one has been uncooperative with a respective Authority should not constitute prima facie proof that they lack integrity or competence. 2. We suggest that this requirement be reworded to remove the reference to uncooperative and that the word "*obstructive*" be used in this context. 3. Alternatively, that it be reworded as follows: "…*or been directly or indirectly intentionally uncooperative in any dealings with, the responsible authority or a designated authority;*"	***Agreed. The word 'uncooperative' has been substituted with 'obstructive'.***
44.	BASA	*6.2(p) the person has failed to comply with applicable legal, regulatory or professional*	1. We suggest that the requirement, as it currently reads, is set out too broadly. It should be limited to requirements and standards set by the respective Authority. 2. Alternatively, that there should be a formal finding made by the applicable	***Agreed. Clause 6.2(p) has been removed.***

	Source	Paragraph of the Standard	Comment	Response
		requirements and standards;	industry or professional body that the person has been found to be in breach of such applicable legal, regulatory or professional requirement and standard.	
45.	BASA	*6.2(r) and (s)* *(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*	1. The requirements, as it currently reads, are too stringent. 2. Additionally, the reference to senior management is too broad. 3. We suggest that this requirement be reworded to apply only if and/or when such person has breached a fiduciary duty (in the case of a director in terms of the Companies Act). The inclusion of "*within 2 years of that connection"* may be unfair as the necessary control or decision made do not vest in that person anymore and they should not be held accountable for decisions made whilst not in their control.	***1. Disagree. The requirements relates to the competence of the significant owner in business dealings. Please note that a significant owner will still be able to provide evidence or reasons why he/she is fit and proper (see clause 7 of the Joint Standard).*** ***2. Senior management must be interpreted in the similar context to a key person of a financial institution. The joint Standard has been amended to reflect this interpretation*** ***3. Disagree as this will be limiting the application of the provision. The two year period, however, has been reduced to 1 year.***

	Source	Paragraph of the Standard	Comment	Response
		connection; or		
46.	BASA	*6.2(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).*	1. The term senior management has also been used in this context and may be too broad. 2. We suggest that senior management be limited to executive management.	***1. Disagree. The requirement relates to the competent of a significant when occupying a key position in an institution. Please note that a significant owner will still be able to provide evidence or reasons why he/she is fit and proper notwithstanding provision (see clause 7 of the Joint Standard).*** ***2. See definition of senior management that has been inserted in the Joint Standard.***
47.	BASA	6.3(a)-(d)	1. For (a) the inclusion of 'or indirect' may create too wide a scope. Indirect should be limited to a particular level of indirect ownership. Many financial institutions have complex ownership structures and it may indirectly have significant ownership in a far-removed entity that is then subjected to business rescue. 2. In circumstance (b) to (d), we submit that the mere fact that a business has been placed under business rescue, entered into a scheme of arrangement, has not successfully implemented its recovery plan or has been placed under resolution is not sufficient to constitute prima facie proof that a person lacks integrity or competence. It is suggested that this should only apply where there is a breach of fiduciary duty or if the circumstances arose as a result of a breach of fiduciary duty, negligence or ill intent.	***1. 'Direct and indirect' has been deleted from the Joint Standard as by definition a significant owner involves the direct or indirect ability to materially influence the financial institution.*** ***2. Disagree that this is not sufficient to constitute prima facie evidence. Besides, the significant owner would still be able to provide evidence why he/she is fit and proper notwithstanding the business rescue and the like (see clause 7 of the Joint Standard).***
48.	BASA	*6.4(a) the significant*	1. It is unclear what is meant by "*adequate funding*" and "*access to capital*"	***'Adequate funding' must be interpreted in relation to the type of significant***

	Source	Paragraph of the Standard	Comment	Response
		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;	in this context, as different legislation may have different requirements relating to the same concept. It is proposed that "adequate funding" and "adequate capital" be clearly defined in this context.	***ownership. 'Future access to capital' is the ability to access capital if required in the future. Also see amendment to clause 6.4 (a).***
49.	BASA	6.4 (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;"*	1. Regarding a significant owner that is not defined by the holding of issued shares in a financial institution but could meet the criteria of exercising voting rights or has the ability to control or materially influence the business or strategy of the financial institution, should the funding requirements still apply? 2. Does discretion regarding the measurement of '*adequate funding'* lie with the significant owner? It may be prudent to consider an objective test to be applied. 3. "future access to capital" is based on an uncertain future event and perhaps the word "future" should be replaced with reasonable or removed. This may change at any time and may be impractical to enforce.	***1. Yes.*** ***2. Yes. It would not be practical to prescribe a formula or figure for adequate funding as it is dependent on the nature of significant owner as well as the nature, scale and complexity of the financial institution.*** ***3. Disagree. 'Future access to capital' is the ability to access capital if required in the future.See amendment made to clause 6.4(a).***
50.	BASA	6.4(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*	1. Reference is made to a significant owner not being able to meet its financial obligations. 2. We propose that the accompanying calculation be aligned to other legislative requirements so that there is no ambiguity and so that it is applied consistently. For example, if the significant owner is a Company, then it should align with the Companies Act in respect of solvency and liquidity. 3. In the case of natural persons as significant owners, clarity is sought on whether "*its financial obligations (including debts)"* would include debt incurred personally as well and if so that this may be too broad and may need to be limited.	***1. Noted.*** ***It would not be practical to prescribe specifics in terms of these requirements. Yes, it the debt is held in the name of significant owner. Diagree that this provision is too broad.***

	Source	Paragraph of the Standard	Comment	Response
51.	BASA	6.4(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.	1. We submit that a significant owner who simply has a judgment against its name, which remains unpaid, or who is subject to pending proceedings which may lead to such a judgment, is not sufficient to constitute prima facie proof that it does not have financial resources to support the business. It may be that although judgment was taken against the significant owner however, that such judgment has not yet been brought to the attention of the significant owner for some reason or the other. 2. Alternatively, it may be that the significant owner is aware of the judgment but has not yet paid as there are appeals pending and/or arrangements that need to be put in place prior to making payment, which may result in a time delay. 3. Again, the audi alteram partem rule should be considered, as a significant owner should not be disadvantaged for being the subject of pending proceedings which may lead to a judgment but is not yet final. 4. We propose that this provision be removed in its entirety or at least "or is the subject of pending proceedings which may lead to such a judgment."	***1. Noted, however the significant owner can advise the Authorities why despite this it still has financial standing.*** ***2. See above – same response.*** ***3. Agree. This provision will be removed from the Joint Standard.*** ***4. Agree. See response to 3 above.***
52.	SAIA	6.2 (b) (ii)	The measurement of a significant fine may differ amongst financial institutions and jurisdictions. We request clarity/guidance from the Authorities regarding the measurement thereof.	***Noted. The word 'significant' has been deleted from paragraph (b)(ii), thus any fine issued will be considered.***
53.	SAIA	6.2 (t)	The references in 6.2 (t) do not seem to be complete. For example; 6.2 (s) should be included in the references made in 6.2 (t). We suggest that the references in 6.2 (t) should be cross-referenced for accuracy and completeness.	***Noted. The references in 6.2 were reviewed for accuracy.***
54.	SAIA	6.4 (a)	In respect of item 6.4 (a), the Authorities are requested to clarify the following: (i) where a significant owner is not defined by the holding of issued shares in a financial institution but could meet the criteria of exercising voting rights or has the ability to control or materially influence the business or strategy of the	***(i) Yes.*** ***(ii) With the significant owner for assessment purposes, if the significant owner is uncertain, the Authorities can be approached for***

	Source	Paragraph of the Standard	Comment	Response
			financial institution, will the funding requirements still apply? (ii) to whom does discretion regarding the measurement of 'adequate funding' lie?	***guidance.***
55.	ASISA	6.1	This section refers to the significant owner having "the necessary …. financial resources to support the business…". Section 159(1)(a)(iii) of the Act refers to "financial standing". ASISA members do not believe that "financial standing" equates to having sufficient financial resources to support another business. "Financial standing" is understood to be the strength of one's financial situation and can be referenced by factors such as whether or not a person is insolvent or has had his or her debts restructured or been placed under debt review or has accumulated bad debts or has a good credit history. While financial resources may be a factor taken into account when assessing a person's financial standing, a person can have limited financial resources, but nevertheless be considered to be in good financial standing. It is submitted that the Draft Joint Standard, in requiring all significant owners to have "financial resources to support the business" of the financial institution in question goes beyond what is intended under the Act by "financial standing". Please also refer to our comments on sections 6.4 and 6.4(a) below.	***"Financial resources" has been replaced with 'financial standing'. Financial standing must be seen in the context of the significant ownership in the financial institution. Significant owners impact on the business and the strategy of the financial institution by influencing decisions. See amendment made to the Joint Standard.***
56.	ASISA	6.2(a) and (b)	The following amendment is proposed as a drafting improvement. Please note that the proposed deletion in 6.2(b)(i) of the reference to "the law of a foreign country ….." would be covered in the proposed addition to 6.2(d). *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 committing a financial crime as defined in section 1 of the Act or*	***Proposed wording not accepted. Drafting improvements were however made.***

	Source	Paragraph of the Standard	Comment	Response
			of violating a law relating to the regulation or supervision of a financial institution as defined in the Act, or of a corresponding offence under the law of a foreign country~~; or~~ *~~(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;*	
57.	ASISA	6.2(d)	It is proposed that the words "in any jurisdiction" be added to the end of the section, and that consistency be maintained with the preceding sections and those relating to convictions, as proposed below: *"…the person has been convicted of a criminal offence (and that conviction has not been expunged) 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 in any jurisdiction;"*	***Agreed. Amendment made.***
58.	ASISA	6.2(e)	It is proposed that the words "in any jurisdiction" be added to the end of the section: *"…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 in any jurisdiction;"*	***Agreed. Amendment made.***

	Source	Paragraph of the Standard	Comment	Response
59.	ASISA	6.2(h)	This is overly broad and we suggest it is amended to read *"The person has been removed from an office of trust for breaching a fiduciary duty".* This will align with section 6.2(g).	***Disagree. There is no reason why this requirement should be limited to breach of fiduciary duties as proposed.***
60.	ASISA	6.2(n)	Being "reprimanded" is vague and is open to subjective interpretation. ASISA members are of the view that the word "reprimanded" should be removed from this section.	***Agreed. 'reprimanded' was removed from the Joint Standard.***
61.	ASISA	6.2(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 sections (a), (b), (c), (d), (e), (k), (m), (n), (o), (q) or (r).	Section 6.2(k) - *"the person has been suspended, dismissed or disqualified from acting as a key person under any law;"* It is not possible for a person to be involved in a business that has been the subject of "…*suspended/dismissed/disqualified from acting as a key person*", because a key person would be a natural person, not a business. (k) should therefore be removed from the list. Section 6.2(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 …."* ASISA members are not sure that a business can become a member of a professional body. Is such membership not only for individuals? If so, (m) should be removed from the list. Section 6.2(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;"* Including (r) in the list constitutes duplication of the wording in (t) and so (r)	1. ***Agreed. List amended.*** 2. ***Agreed. List amended.*** 3. ***Agreed. List amended.*** 4. ***Agreed. List amended***

	Source	Paragraph of the Standard	Comment	Response
			should be removed from the list. The references to sub-sections "(a), (b), (c), (d), (e),(k), (m), (n), (o),(q) or (r)" do not appear to have been updated to account for all the changes made since the first draft of the Joint Standard, especially as a new requirement was inserted as 6.2(d). ASISA members propose amending the list to refer to "(a), (b), (c), (d), (e), (f), (h), (i), (j), (l), (n), (o), (p) or (q)".	
62.	ASISA	6.3	Reference is made to a "legal person". The Act defines "juristic person" and includes, *inter alia*, partnerships and trusts as juristic persons for the purposes of the Act. Reference should therefore rather be made in the Joint Standard to "juristic persons", as indicated below. This will provide more certainty regarding how vehicles such as partnerships and trusts which are not legal persons should be dealt with. *Subject to section 7, the existence of any of the following constitutes prima facie evidence that a significant owner that is a ~~legal~~ juristic person, may lack integrity or competence*:	***Agreed. Amendment was made to the Joint Standard.***
63.	ASISA	6.3(a)	With regard to the reference to indirect significant owners, ASISA previously raised concerns regarding the scope of the concept of significant owner in the Act (refer to page 4 and the top of page 5 - comment 3 in the Public Comments matrix document). It is agreed that this issue has been dealt with insofar as the ASISA comments relate to the obligations placed on the financial institution itself vis-à-vis compliance by its significant owners. However, ASISA members are of the view that the issues remain of concern in relation to the significant owners themselves. Given the extent of look-through required, in particular because of the Act's inclusion of persons who "*directly or indirectly, alone or together with a related or inter-related person*" have the ability to "*control or influence materially the business or strategy of the financial institution*", it could be very difficult and complex for a direct significant owner of a financial institution to determine the identity of all other significant owners, particularly where the	***The word 'direct' and 'indirect' have been removed from clause 6.3(a). The obligation rests with the significant owner as defined in the FSRA.***

	Source	Paragraph of the Standard	Comment	Response
			financial institution is a listed entity or is part of a group where the holding company in the group is a listed entity.	
64.	ASISA	6.3(a)	The first draft of the Joint Standard read as follows: *"7.3 Subject to section 8 below, any of the following constitutes prima facie evidence that a significant owner who is a legal person may lack competence or integrity:* *…* *b) In the case of a significant owner that is a legal person, any of the following constitutes evidence that it may not have integrity:* *i. any of its direct or indirect significant owners that are natural persons fail to meet the requirements relating to integrity referred to in section 6.3 above;"* However, section 6.3(a) of the Draft Joint Standard of 2019 does not make reference to a natural person. Clarity is sought that this section only applies to natural persons who have a significant ownership in the significant owner of a financial institution that is subject to this Standard.	***Clause 6.3(a) applies to significant owners that are either natural or juristic persons. The first draft did not set integrity or competence criteria for a juristic person. The second draft provided for crtieria and thus 6.3 (a) applies to both a natural and a juristic person.***
65.	ASISA	6.3(a)	"Significant owner" is already defined in the Act as including direct and indirect owners so this is duplication. Section 6.3(a) should therefore be amended as follows: *"any of its ~~direct or indirect~~ significant owners meet any of the criteria referred to in section 6.2 or 6.3, as applicable"*	***Agreed. Amendment made.***
66.	ASISA	6.3(b)&(c)	"Companies Act" is already defined in the Act and it is therefore unnecessary to include the full description in these sub-sections.	***Agreed. Amendment made.***
67.	ASISA	6.4	Please see comment above on section 6.1. It is proposed that this section be amended as follows to align with the wording of the Act. It is also proposed that the wording "to support the business of the financial institution" be	***Disagree. See response on clause 6.1 above.***

	Source	Paragraph of the Standard	Comment	Response
			deleted – please see comments below. "Subject to section 7, the existence of any of the following constitutes prima facie evidence that a significant owner may *lack the requisite financial standing* ~~not have the necessary financial resources .~~"	
68.	ASISA	6.4 & 6.4(a)	Kindly note that the following comment is not intended to detract from our comment made on section 6.1 relating to "financial standing". It is appreciated that the Authorities, in response to comment number 49 in the Public Comments matrix document, state that a significant owner must determine what "*financial resources is adequate and necessary to support the business of the financial institutions, taking into account the context of the business of the significant owner and financial institution"* However, this assumes that every significant owner/potential significant owner has access to sufficient management information of the financial institution of which it is, or is considering becoming, a significant owner, which is unlikely to be the case. Similarly, multiple significant owners cannot be expected to be aware of each other and each other's respective financial standing or resources position in this regard. In this context it is very difficult to understand how a significant owner will at any time have comfort that it is complying with this section. This comment is also relevant to sections 5.1 and 5.4 of the Draft Joint Standard, including how independent confirmation could be provided and what that might involve when instructing the person tasked with providing independent confirmation (if requested by the Authority).	***Noted. It is not the intention of the Joint Standard to require the significant owner to hold capital. The principle that is being captured in the Joint Standard is that significant owners of financial institutions should have the capacity to access funding if required by the financial institution. The adequacy of capital depends on the nature of the significant owner, the nature of the financial insitutions as well as the type of ownership that is held in the financial institution. Thus the adequacy test is subjective in nature. The Joint Standard has been amended to read that 'the significant owner does not have "access to" adequate funding.***
69.	ASISA	6.4 & 6.4(a)	Even if the difficulties set out in the comment above could be overcome, ASISA members refer to the comments made by ASISA in respect of paragraph 7.5.a of the first draft of the Joint Standard. While the Authorities' response to the comments is noted, ASISA members do not believe that the following issues that were raised have been addressed and these remain a	***Noted. See response above.*** ***It is not the intention that a significant owner supports the full capital/funding need of the financial institution.***

	Source	Paragraph of the Standard	Comment	Response
			real concern: *"The requirement for a significant owner to have adequate financing or funding and future access to capital, is very broad/unclear. It is submitted that this requirement in any event could only be appropriate in respect of direct shareholdings in the case of banks and non-linked insurers, not other financial institutions.* *Significant owners that are entities licensed by the authorities will have to meet financial standing requirements regarding their own businesses. It is submitted that in many instances it will not be reasonable for a person who is a significant owner through, for example, the "disposal right" of the definition of "qualifying stake", and which person is not a shareholder in its own right, to be required to hold an additional amount of capital on hand. In addition, the beneficial holders in these instances are often institutional investors such as pension funds, and it is not reasonable to expect such investors to have this capital on hand."* ASISA members remain of the view that this requirement should be limited in order to deal with the above concerns. In addition, while a large financial institution may have numerous owners that are not significant owners, there may be a single person/entity that qualifies as a significant owner. That single person/entity cannot reasonably be expected to have adequate funding or access to capital to support the business of the financial institution. Even if the significant owner has the financial resources referred to, it may not wish to utilise these for the financial institution. Typically it is an institution that will approach its investors/the market when in need, with a motivation for "support" e.g. in the form of a rights offer or corporate bond issue, and investors then assess the merits and act accordingly. ASISA members do not believe that significant owners can or should be forced to contribute	

	Source	Paragraph of the Standard	Comment	Response
			additional capital/funding should they deem such additional investment to be unwise in the particular circumstances. ASISA members are aware of s7 of the GOI 4 re significant owners of Insurers, and that this is based on the IAIS Insurance Core Principles, namely paragraph 5.2.5 of ICP5 which provides that: *"At a minimum, the necessary qualities of a Significant Owner relate to:* • *financial soundness demonstrated by sources of financing/funding and future access to capital; and* • *integrity demonstrated in personal or corporate behaviour."* It is not the principle of a significant owner needing to be financially sound that is objected to, but the implication that funding is potentially to be set aside by a significant owner to "support" another financial institution of which it is significant owner. Financial institutions must already comply with legislated financial soundness requirements. To require all significant owners (in the context of the broad definition of significant owner which also brings into play a multitude of entities with overlapping shareholdings) to 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"* could well result in the substantial inefficient and/or mis-allocation of resources in the economy. It will also mean that investors could be disadvantaged as they could effectively be forced to retain "cash in hand" for the proverbial black swan event. This could act as a disincentive to invest/acquire holdings in financial institutions. For example, where a CIS manager is considering buying additional shares of another financial institution for portfolios into which the CIS manager's clients are invested, because of the consequences discussed above, they may be reluctant to increase these holdings if such increased	

	Source	Paragraph of the Standard	Comment	Response
			investment would result in their becoming significant owners of such other financial institution. The question also arises whether each entity that is a significant owner through a group holding structure will need to be able to "support", and if this "support" is to correlate with the nature/extent of the stake in the financial institution or with reference to the overall business of the financial institution. In the context of listed entities that are significant owners of financial institutions: • a financial institution may be indirectly held by the listed entity, • the financial institution will have to meet its own financial soundness requirements, • there will also then be the financial resource requirement under the Joint Standard for its significant owner (a subsidiary of the listed entity, if not directly owned by the listed entity), as well as for the listed entity, • the Joint Standard appears to also require significant owners of the listed entity to meet the financial resource requirements, and • where there are multiple significant owners of the listed entity, each such significant owner will not be aware of the others (or aware of the position of those other significant owners viz a viz meeting the financial resources requirement under the Joint Standard). The above would be further compounded where a listed entity is the significant owner of more than one financial institution. ASISA PROPOSAL: It is therefore submitted that any "support" requirement should rather only apply, where appropriate, to the holding companies of financial institutions	

	Source	Paragraph of the Standard	Comment	Response
			that are subject to conglomerate supervision and should be imposed through conglomerate supervision. As stated above in relation to paragraph 6.1, ASISA members in any event believe that the support requirement goes beyond what is contemplated in section 159(1)(a)(iii) of the Act.	
70.	World Focus 314	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.	***Noted as verbatim paste from the draft joint standard.***
71.	World Focus 314	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 criminal proceedings which may lead to a conviction, or 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 foreing 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 foregn 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	***Noted as verbatim paste from the draft joint standard.***

	Source	Paragraph of the Standard	Comment	Response
			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 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 the 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 too such a judgement, 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	

	Source	Paragraph of the Standard	Comment	Response
			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, authorization or licence to carry out a trade, business or profession, or has had that registration, authorization or licence revoked, withdrawn or terminated by a designated authority because of the 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 relation to honesty, integrity, or poor business or professional conduct; (n) the person has been disciplined, reprimanded, disqualified or removed in relation to matters relationg 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 has 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 authority or a designated authority; (q) the person has been found to not be fit and proper by the responsible authority or another designated authority in any previous assessment 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	

	Source	Paragraph of the Standard	Comment	Response
			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 organization, 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 organization, 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)	
72.	WORLD FOCUS 314	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. 71of 2008), or a corresponding law of a foreign country; or (d) in the case of a financial institution, it has not successfully	***Noted as verbatim paste from the draft Joint Standard.***

	Source	Paragraph of the Standard	Comment	Response
			implemented its recovery plan or has been placed in resolution.	
73.	Investec	6.2	'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 1of the Act b.a 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: ' 'The presumption of innocence legal principle has been ignored by these clauses. Proposed approach – the clauses highlighted in yellow should be deleted.	***Agreed. The requiremetns was removed from the Joint Standard.***
Matters to be considered when assessing fitness and propriety				
74.	Home Loan Guarantee Company NPC		No comment.	***Noted.***
75.	BASA	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*	1. We submit that for the Authority to consider fitness & propriety based on the content of clause 6 is comprehensive and largely based on existing indicators of fitness & propriety. Inclusion of the word 'reasonable' in the phrase 'any other considerations' ('any other <u>reasonable</u> considerations')may ensure any practical difficulties are reduced as significant owners will be guided based on the content of the Standard.	***Noted. 'Reasonable' has been inserted in the clause 7.1.***

	Source	Paragraph of the Standard	Comment	Response
		regard to the:		
76.	SAIA	7.2	It is proposed that the reference to FSRA in item 7.2 be amended to "the Act" as the Financial Sector Regulation Act is cited as the Act throughout the Joint Standard.	***Agreed. The Joint Standard was amended accordingly.***
77.	ASISA	7.2	It is proposed that this section be amended to replace "the FSRA" with "the Act" to be consistent with the definition in section 4.1.	***Agreed. The Joint Standard was amended accordingly.***
78.	World Focus 314	8.1	Notwithstanding section 6.3 above, an insurer should, in assessing whether a key person is fit and proper, have due regards to: (a) the seriousness and surrounding circumstances of a particular adverse situation (including a situation referred to in section 6.3 above) that has, or could potentially have, a negative impact on assessment of the person's competence or integrity; (b) the relevance of such an adverse situation to the duties that are to be performed and the responsibilities that are to be assumed by the person; and (c) the passage of time since the occurrence of the adverse situation.	***Noted as extracts from GOI4.***
79.	World Focus 314	8.3	Where, in the light of the considerations in section 8.1 above, an insurer is of the view that a person is fit and proper, despite the fact that one or more of the criteria specified in section 6.3 above is met, the insurer must, when notifying the PA of the appointment, or in proposing the appointment in the case of a director or auditor, include a declaration from the board of directors that one of the criteria for fitness and propriety is not met, and justify why the board of directors, despite this is of the opinion that a person is fit and proper.	***Noted as extracts from GOI4.***

	Source	Paragraph of the Standard	Comment	Response
Standard relating to section 159(1)(b) read with section 158(4) and 158(7) of the Act				
80.	Home Loan Guarantee Company NPC		No comment	***Noted.***
81.	ASISA	8.1	In the Public Comments matrix document, the Authorities agreed that this is to be measured with reference to the stake held when application/notification occurred pursuant to crossing the 15% threshold, but this is not clear from the wording. E.g. where X holds 14%, then acquires 3% to increase to 17% - X gets approval. If X wants to increase its holdings to 22%, X must seek approval again, but approval is not required if X wants to increase to 20%. It is therefore proposed that the following wording be added at the end of section 8.1 to make the above principle clear: "….*provided that such 5% is calculated with reference to the percentage that was the subject of a prior approval or notification, as the case may be."* In addition, for consistency purposes, the words: "*of the Act" should be added after "For the purposes of section 159(1)(b)"*	1. ***Incremental increase or decrease it dealt with in the standard. See amendment made to clause 8.3 of the Joint Standard.*** 2. ***Noted – 'Act' has been inserted***
82.	World Focus 314	10.1	Under section 159(1)(b), the financial sector regulators must, as referred to in section 158(4) and section 158(7) of the FSRA, make joint standards specifying what constitutes "an increase or a decrease in the extent of the ability of the person, alone or togather with a related or interrelated person to control or influence materially the business or strategy of the financial institution".	***Noted as an extract from the first draft of the Joint Standard.***
83.	World Focus 314	10.2	The following constitutes an "increase or a decrease in the extent of the ability of the person, alone or togather with a related or interrelated person, to	***Agreed. Noted as an extract from the first draft of the Joint Standard.***

	Source	Paragraph of the Standard	Comment	Response
			control or influence materially the business or strategy of the financial institution" for purposes of sections 158(4) and 158(7); of the FSRA: (a) any once-off or incremental increase or decrease in excess of 5% in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership of a person approved pursuant to section 158(2); or (b) Any increase or decrease in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership of a person that results in that person becoming the majority shareholders of the financial institution.	
Amendment of other regulatory instruments				
84.	Home Loan Guarantee Company NPC		No comment	
85.	ASISA	9.1(b) Joint Standard	Section 4.2(b) should be added to the list of sections of GOI 4 that are being repealed.	***Noted. Amendment was made.***
86.	ASISA	GOG 7.1	Amendments are also required to GOG which references GOI 4 (which is being amended and reference to the term "Significant Owner" is being repealed). The following amendments are proposed: ***GOG - 7. Fitness and Propriety*** *7.1 GOI 4 (Fitness and Propriety of Key Persons ~~and Significant Owners~~ of Insurers) sets out the minimum requirements for an insurer's fit and proper policy and procedures. The requirements applicable to insurers apply also to*	***Noted. GOG must be read with GOI4. GOI 4 refers to the Joint Standard. Amendments to GOG will be made in due course.***

	Source	Paragraph of the Standard	Comment	Response
			the controlling company of the insurance group	
87.	ASISA	GOG 7.2	The Board approved policy required in terms of GOI 4 will not require the inclusion of Significant Owners. The only obligation on Financial Institutions (insurers) in respect of Significant Owners is the specific reporting requirements. The following amendments are proposed: ***GOG - 7. Fitness and Propriety*** *7.2 In the context of insurance groups, the key persons ~~and significant owners~~ that must be included in the insurance group's fit and proper policy are those persons who have the ability to control or influence materially the business or strategy of the overall insurance group (not necessarily persons who can control or influence individual entities within the insurance group).*	***Noted. GOG must be read with GOI4. GOI 4 refers to the Joint Standard. Amendments will be made to GOG in due course.***
88.	World Focus 314	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	***Agreed.***
			2. GENERALCOMMENTS	
89.	Road Accident Fund		The Road Accident Fund (RAF) has reviewed the draft Joint Standard on the fit and proper requirements for significant owners of financial institutions (Joint Standard) and the amendment of the Prudential Standard GOI4 - Fitness and Propriety of Key Persons and Significant Owners of Insurers. The Joint Standard is applicable to significant owners of all "*financial institutions"*, as defined in section 1 of the Financial Sector Regulation Act,	***Noted. The Standard does not apply to RAF. The PA is engaging with the RAF on this matter.***

	Source	Paragraph of the Standard	Comment	Response
			No. 9 of 2017 (FSR Act) as: *"… any of the following, other than a representative—* *(a) A financial product provider;* *(b) a financial services provider;* *(c) a market infrastructure;* *(d) a holding company of a financial conglomerate; or* *(e) a person licensed or required to be licensed in terms of a financial sector law*". Section 157(1) of the FSR Act provides that "… *a person 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*.". The RAF does not meet the definition of a "*financial institution"* nor does the RAF provide a "*financial product"* or *"financial service"* as defined in the FSR Act. In addition, the RAF is not considered a "*market infrastructure"* or "*holding company"* in terms of the FSR Act. Furthermore, although the Financial Supervision of the Road Accident Fund Act, No. 8 of 1993 (FSRAF Act) is included as a "*financial sector law"* in Schedule 1 of the FSR Act, the RAF is not required to be licensed. In 2011, prior to the implementation of the FSR Act, the Financial Services Board (FSB) had issued Directive 1 (RAF), which determined which provisions of the Short-Term Insurance Act, No. 53 of 1998 (STIA) applied to the RAF and provided for matters related to the implementation of certain provisions of the FSRAF Act.	

	Source	Paragraph of the Standard	Comment	Response
			The implementation of the Insurance Act, No. 18 of 2017 (Insurance Act), resulted in a number of amendments being made to the STIA. A number of sections in the STIA that were deemed to be applicable to the RAF in terms of Directive 1 (RAF), have now been amended, repealed, and, or, substituted by the Insurance Act. The Prudential Authority has since confirmed that the Insurance Act does not apply to the RAF. Given the fact that the RAF does not meet the definition of a "*financial institution"*, clarity is required, as to which provisions in the FSR Act are applicable to the RAF, in order for the RAF to ensure it complies with same. It is proposed that the Prudential Authority (PA) withdraws Directive 1 (RAF), which was issued by the FSB and that the PA issues a new directive which provides clarity on which provisions of the FSR Act are applicable to the RAF. The RAF submitted a letter dated 14 March 2019 to the National Treasury, in response to the request for public comments on the draft Conduct of Financial Institutions Bill, 2018, attached hereto as Annexure A. Simultaneously a letter was also submitted to the PA, as set out in Annexure B. No response was received from either entity. Subsequently the RAF addressed a further letter dated 20 May 2019 to the PA requesting a response to the RAF's initial letter, as set out in Annexure C. To date, no formal response has been received, however the RAF was informally advised of the PA's view that the Insurance Act is "…*not applicable to the RAF in its current format*.". The RAF reserves its right to provide further comment once the PA has formally provided clarity in respect of the above.	
90.	Home Loan Guarantee Company		No comment	***Noted.***

	Source	Paragraph of the Standard	Comment	Response
	NPC			
91.	BASA		1. Many of the standards set out in the Draft Joint Standard are contained in other legislation. It is therefore important to ensure that there is alignment between the various legislative requirements. 2. It will be important that the Joint Standard clearly sets out related processes (manner and form) to be followed in relation to, amongst others, required applications, notifications, and other reporting obligations such as the outcome of self-assessments by significant owners: i. Where and to whom must such assessments be sent? ii. When should the self-assessments be done? iii. Processes to be followed in relation to section 159(1)(b) read with section 158 of the Financial Sector Regulation Act, 2017 (FSR Act) – required approvals and notifications. iv. Considering that sections 157 to 159 of the Financial Sector Regulation Act are already effective, is the designation of and approval for the appointment of current significant owners to be made retrospectively? What will the process for this be? 3. It is not clear what is expected from significant owners if any of the criteria relating fitness and propriety changes during periods between assessments? To facilitate compliance, the Joint Standard must be clear and specific on requirements, expectations and related processes. 4. With reference to, and having regard to all related documents published together with this Draft Joint Standard, such as the content of the Statement* of the need **and the draft exemption notices**, it is, in the interest of certainty, recommended that: i. The Authorities also clearly articulate to which persons the Joint Standard will effectively apply. ii. Fit and propriety requirements of significant owners in the Joint	***1.The Joint Standard applies to significant owners and financial institutions. The provisions of financial sector laws still apply to financial institiutions, their boards and other key persons.*** ***2. i. The annual assessment should not be sent to the Authority. The Significant owner must notify the Authority when it fails to comply with the Joint Standard and if there is any change in its fit and proper status. The Authroities may request the fit and proper assessment and at any time may request an attestation from the significant owner that it is fit and proper. The Standard has been amended to reflect this requirement.*** ***ii. the self-assessments must be annually – there is no fixed date. Once the Joint Standard is effective, significant owners must conduct an assessment within one year after the effective date and then annually thereafter. The Joint Standard has been amended to make this requirement clear.*** ***iii.the significant owner will apply/notify the relevant Authority as applicable and the Authority will***

	Source	Paragraph of the Standard	Comment	Response
			Standard will apply to significant owners of all financial institutions unless specifically exempted. Given the magnitude of proposed exemptions, it is recommended that guidance is published which clearly states or confirms, to which financial institutions and their significant owners the Joint Standard will apply. 5. By way of example, matters to consider for more clarity include the FSR Act definition of a "*financial institution*" read with the FSR Act definition of "*license*". A financial institution includes a person licensed or required to be licensed in terms of a financial sector law. The FSR Act definition of license clearly articulates that the purpose of a license relates to the provision of financial products, services or market infrastructures. 6. Questions: Is a registered (non-operating) controlling company in respect of a bank, which is not the holding company of a financial conglomerate, a financial institution as per the FSR Act, 2017 definition? Although controlling companies of banks are authorised (licenced) in terms of the Banks Act, 1990 to exercise control over a bank, such controlling companies are not, with reference to the FSR Act's definition of licence, licenced to provide financial products, services or a market infrastructure. Therefore, and in the interest of legal certainty, the requirements and application of the Joint Standard to entities such as controlling companies of banks and their respective significant owners, should be explicitly expressed and articulated in the Joint Standard. Clearly, the significant owners of controlling companies of banks must be fit and proper. The Joint Standard should therefore also be applicable to them. This is currently unclear. 7. Clarity should be provided on the application of the Joint Standard on significant owners of financial institutions and the relevant financial institutions, forming part of South African banking or insurance groups and/or financial conglomerates, where such financial institutions (and/or their significant owners) are incorporated and domiciled in foreign jurisdictions.	***request further information if required.*** ***iv.Chapter 11 was effective from 1 January 2019 and therefore any approvals or notifications relating to arrangements referred to in Chapter 11 that occurred on or after such date should have been submitted to the relevant Authority. Chapter 11 does not apply retrospectively.*** ***3. Agreed, the joint standard has been amended to reflect that any changes in fitness and propriety should trigger a notification to the Authorities.*** ***4. i. See clause 3. TheJoint Standard applies to significant owners and financial institutions unless specifically exempted.*** ***ii. It is unclear why guidance is required considering that the Joint Standard and exemption notices are very clear in this regard.*** ***5. The comment is very unclear and the concern with the definition of financial institution is not understood.*** ***6. The definition of financial institution includes an institution licenced in terms of a financial sector law. Controlling companies licensed in terms of a financial sector law must***

	Source	Paragraph of the Standard	Comment	Response
			8. Having regard to trusts which are financial institutions in terms of the FSR Act definition of a financial institution (i.e. financial services), read together with the FSR Act definition of a qualifying stake, it is in the interest of legal and regulatory certainty, recommended that the Joint Standard expressly articulate how the Joint Standard applies to such trusts and persons exercising or able to exercise control, as contemplated. 9. It is not clear how the draft Joint Standard provides for the proportional application of the requirements? It is also not clear to what extent it allows financial institutions and the financial sector regulators to take into account the nature and scope of a significant owner's business, and the structure of any group of companies of which the significant owner is part of, when assessing fitness and propriety. 10. With reference to Table 1 of the Statement* of the need and the FSCA proposed exemption notice, financial institutions whose significant owners will be exempted from the requirements of the Joint Standard include all financial service providers, other than financial service providers that are eligible financial institutions (banks, registered insurers, market infrastructures) and managers of collective investment schemes. In the interest of legal and regulatory certainty, it is recommended that the Joint Statement, in view of the fact that most financial institutions and their significant owners will be exempted, rather explicitly state to which financial institutions and their significant owners the Joint Standard will apply. Currently, this is confusing. 11. Possible further considerations may be to take into account when determining whether there is prima facie evidence that a natural person may lack integrity or competence in terms of paragraph 6.2 may be: (a) that the person is under the age of 18 years; (b) as a result of a court order, that person is listed on the register of excluded persons in terms of section 14 of the National Gambling Act,	***comply with the FSRA and the Joint Standard.*** ***7. The standard applies to significant owners as defined in the FSRA.*** ***8. The Joint Standard applies to significant owners of financial institutions. The FSRA defines "financial instituions" and "significant owners". The Joint Standard, which is made under the FSRA, cannot provide clarity on definitions contained in the FSRA.*** ***9. See clause 7.1 of the Joint Standard.*** ***10. Disagree. Section 159(1)(a) of the FSRA requires that financial sector regulator must make fit and proper standards that must be complied with by significant owners of financial institutions. The Joint Standard must therefore apply to all significant owners, unless exempted.*** ***11. Noted. Suggests (b) and (c) have been inserted in the Joint Standard***

	Source	Paragraph of the Standard	Comment	Response
			2004 (Act No. 7 of 2004); (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered;	
92.	ASISA		ASISA members appreciate the fact many of their comments on the first draft of the Joint Standard have been taken into account in the Draft Joint Standard of 2019 read together with the draft exemptions, and so several of their concerns have been suitably addressed. In paragraph 5.16 of the "Statement of Need" document, the Authorities invite further comments on the extent to which the Draft Joint Standard of 2019 has addressed the concerns raised, and we have set these out above in our comments on the specific sections, and in the summary below.	***Noted. See response below.***
93.	ASISA		Concerns regarding the financial institution itself having obligations relating to compliance by its significant owners have been addressed, subject to our proposed change to section 5.4. However, concerns that were raised in ASISA's comments on the first draft of the Joint Standard which arise from the breadth of who is encompassed in the concept of significant owner in the Act and those relating to the trading constraints imposed by the approval and notification requirements of the Act, are not dealt with. The responses to the public comments note that these issues cannot be dealt with through the Joint Standard. If that is the case, ASISA members submit that these matters can and should be dealt with by means of **an exemption or exemptions under section 281(1)** of the Act. Such exemption(s) can be made subject to appropriate conditions. As mentioned above, while the 2019 Draft deals with the issues raised on the first draft regarding the board of a financial institution being responsible for compliance with requirements applicable to its significant owners, the issues raised regarding certain financial institutions **in their capacities as significant owners themselves** are not addressed. More specifically, the	***The Authorities take note of your concern and a separate engagement will be arranged with ASISA to further discuss your concern as well as a possible solution, if deemed appropriate by the Authorities, to address your concern.***

	Source	Paragraph of the Standard	Comment	Response
			issues raised regarding the following are not addressed: • collective investment scheme (CIS) managers in respect of their CIS portfolios; and • custodians of CISs as significant owners. Key concerns in this regard relate to: 1. the "financial resources" requirement (section 6.1 read with section 6.4). 2. the practicalities regarding notifications and approvals where these are required to be made and obtained. Please refer to the following ASISA comments in the Public Comments matrix document: Comment 3, pages 5 – 6; Comment 5, pages 7 – 12. Note further that the entities referred to above and other financial institutions are regulated and are already required to comply with fit and proper requirements relating to honesty, integrity, competence and financial soundness. ASISA members therefore do not believe that approval should be required where appropriately regulated financial institutions (eligible financial institutions and CIS managers) become significant owners or increase their level of significant ownership. An after-the-fact notification should suffice. In addition, ASISA previously raised concerns regarding the scope of the concept of significant owner in the Act - Comment 3 in the Public Comments matrix document (specifically, on page 4 and the top of page 5). ASISA members agree that this issue has been dealt with insofar as the ASISA comments related to the obligations placed on the financial institution itself vis-à-vis compliance by its significant owners. However, the issues remain of concern in relation to significant owners themselves. Given the extent of look-through required, in particular because of the Act's inclusion of persons who "*directly or indirectly, alone or together with a related or inter-related*	

	Source	Paragraph of the Standard	Comment	Response
			person" have the ability to "*control or influence materially the business or strategy of the financial institution*", it could be very difficult and complex for a direct significant owner of a financial institution to determine the identity of all other significant owners, particularly where the financial institution is a listed entity or is part of a group where the holding company in the group is a listed entity. It is submitted that it will be necessary for any exemption that deals with these matters to come into force before or at the same time as the Joint Standard and ASISA would welcome further engagement in this regard.	
94.	ASISA	Draft FSCA Exemption Notice	As stated in paragraph 4.6 of the "Statement of Need" document, the effect of the draft FSCA Exemption Notice is that significant owners of exempted discretionary investment managers will not be subject to the Joint Standard, which is supported and welcomed. Our understanding of the draft Exemption is that it also means that these discretionary investment managers themselves will not be subject to the Joint Standard in their capacities as significant owners of other financial institutions. This is desirable and important so that discretionary investment managers are able to continue to perform their obligations under the mandates given to them by their clients, without the disruptive impacts that the Joint Standard would otherwise entail, as set out in the ASISA comments on the first draft of the Joint Standard. If this were not the case, then all of the concerns expressed in our comments on sections 6.4 and 6.4(a) of the Draft Joint Standard and elsewhere in respect of CIS managers will apply equally to other discretionary investment managers to the extent that they themselves fall into the definition of significant owner in respect of other financial institutions. Please also refer to our General Comment 2, above. Kindly confirm that our aforesaid understanding of the draft Exemption is	***As per clause 2(a) of the draft FSCA Exemption, it is proposed that all FSP's are exempted, except for FSP's that are eligible financial institutions and CIS Managers.***

	Source	Paragraph of the Standard	Comment	Response
			correct.	
95.	ASISA	Public Comments matrix document - response to Comment 14	Exemption notices - there is no reference to holding companies of financial conglomerates. Paragraph 3.1 of the Draft Joint Standard states that it applies to significant owners of financial institutions. Some insurers and banks to which the Joint Standard will apply, may have a significant owner that will be the holding company of a financial conglomerate. On page 19/20 of the Public Comments matrix document, the Authorities' response is: *"Noted. See revised draft Joint Standard and accompanying Exemption Notices. Future publications on the framework for Financial Conglomerates will provide further clarity. Financial conglomerates will be designated and advised of their designation by the Prudential Authority"* However, these significant owners are not mentioned in the exemption notices, whereas according to the response document from the Authorities, it is understood that they should be. As per the previous ASISA submission, it is important that it is clear which framework will be applicable in such an instance.	***Noted. The definition of significant owner must be considered when determining applicability of the Joint Standard.*** ***If a person (juristic or natural) qualifies as a significant owner, such person must comply with the FSRA and the Joint Standard unless such person is exempted.*** ***Financial conglomerates have not been designated by the Prudential Authority.*** ***An application for an exemption from the Joint Standard will be dealt with on a case by case basis.***
96.	ASISA		General formatting comments: • Uses of ' and " interchangeably in the same sections o e.g. 4.3, 8.1, 8.2, 8.3 • Spacing between paragraph, and between words o 5.3: "non- compliance" - remove the space after "non" o 5.3: Insert a paragraph break before 5.4. 6.2(a): "section 1of the Act" – insert space after "1"	***Noted. The amendments have been made to the proposed Joint Standard accordingly.***
97.	World Focus 314		No general comments.	***Noted.***

Annexure B: Responses to the submissions received on the 1st round of public consultation process

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
General				
1.	ASISA	General	ASISA members welcome the regulators' intention, as far as is reasonably possible, to create a single set of standards for Fit and Proper Requirements for Significant Owners across different types of financial institutions. Generally speaking, the principle that significant owners of regulated financial institutions should be fit and proper is supported. However, insofar as the practicalities and implementation regarding section 158 is concerned, the various issues raised with National Treasury by ASISA during the consultation phase on the various draft versions of the Financial Sector Regulation ("FSR") Bill have not been addressed in the Draft Joint Standard, as had been expected. In addition, the Draft Standard introduces new principles which, in ASISA members' view raise additional issues, including in regard to practicalities and implementation. Whilst a number of these issues may be unintended consequences, they have the real potential to cause severe problems for a broad range of stakeholders, and not only the entities in which persons are significant owners.	***Noted. The draft Joint Standard has been significantly amended and the requirements imposed through the draft Joint Standard is now predominantly applicable directly to significant owners as opposed to being applicable to the financial institution itself. We believe that this approach would alleviate a lot of the practical concerns that have been raised.***
2.	ASISA		<u>Duplication of the same activities to be carried out</u> Sections 158(3)(a) & (b) of the FSR Act require the significant owner to obtain prior written approval or give prior notification to the Authority, as the case may be. Section 159(1) requires the Regulator to make standards that "must be complied with by significant owners of financial institutions". The Draft Joint Standard, however, does not appear to constitute a standard for compliance by significant owners. It is a standard for compliance by financial institutions. So the requisite standard that the regulator must make under section 159(1) remains outstanding. If it is intended that the way in which the compliance by significant owners is to be achieved is through indirect enforcement by financial institutions via this Draft Standard, it is submitted that this will be unreasonable and impractical. The Draft Joint Standard places significant obligations on financial institutions to satisfy themselves of the very aspects that one would think that the	***The draft Joint Standard has been significantly revised to address this concern by primarily imposing obligations directly on significant owners. Duplicate obligations have also been deleted to the extent possible.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			regulator is considering or has already considered in granting or refusing the application made to it by the significant owner in terms of section158 of the FSR Act. So whereas this section does refer to "a person" not being permitted to enter into various arrangements which perhaps could include the financial institution itself, the context of Chapter 11 had led ASISA members to understand that this "person" wherever referred to in the Chapter is a person who is a potential significant owner. It is submitted that on reading the Chapter holistically, this is a reasonable (and it is submitted, the correct) interpretation. However, paragraph 8.2 of the Draft Standard refers to the financial institution "notifying the responsible authority of the proposal for the person to become a significant owner" and paragraph 9.2 states that "Where a financial institution proposes a significant owner" (the context indicates that this proposal by the financial institution is to the authority). The FSR Act gives no indication that the financial institution would be required to make any such applications for approval or notifications. The result is that the FSR Act requires the significant owner to make application and the Standard requires the financial institution to make application – for exactly the same purpose. It is submitted that this duplication is unnecessary and burdensome. PROPOSAL: The Joint Standard should set out requirements for significant owners as required by section 159 of the FSR Act, not obligations for financial institutions, many of which it will be impossible for them to carry out.	
3.	ASISA		<u>The definition of "significant owner"</u> The definition of "significant owner" in the FSR Act is extremely broad and clarity is required regarding its application in different contexts. Until such clarity is obtained it is difficult to comment meaningfully on all aspects of the Draft Standard. In a group of companies, "significant owner" can be read to have reference to ultimate beneficial owners of the shares in the ultimate holding company of a financial institution. This exacerbates the difficulties highlighted below in regard to the responsibilities that the draft Joint Standard seeks to impose on the boards of financial institutions. The relevant financial institution does not control ((and in many cases will not have any awareness nor can it reasonably be expected to) who its shareholders are (except where the directors of the Financial Institution are also the major shareholders) and certainly where it is a subsidiary in a group, it does not control who the shareholders of its ultimate holding company are or necessarily have access	***Noted. The revised draft Joint Standard, which now places all obligations directly on the significant owner as opposed to the financial institution, should alleviate a lot of the practical issues you have raised, and should in particular address the concern in as far as it relates to the financial institution. When a person becomes a significant owner, as explained in the specific scenarios you highlighted, predominantly relates to the definition of significant owner as defined in the FSRA. Some of those concerns can potentially not be addressed through the Joint Standard, e.g. where***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			to such shareholders to require them to complete assessments and to monitor their compliance with fit and proper requirements. The situation becomes really problematic in the context of a listed holding company, which could also be included in terms of the draft Standard by virtue of being a controlling company of a financial institution. Clarity is required on who would be regarded as significant owners of a financial institution where such institution is a subsidiary in a group, including where the ultimate holding company in the group is listed and to what extent "look through" may be required. The definition of "significant owner" does not only refer to shareholding but also extends to persons which (directly, or indirectly) have the ability to "control or influence materially" the strategy of the financial institution which ability includes being able to appoint 15% of its governing body. Within the context of a group of companies, this may well refer to various persons and entities throughout the group, which lends further difficulties to practical implementation of the Standard. The definition of "significant owner" can also be read to refer to investment managers acting under discretionary mandates from their clients. An investment manager could be regarded as a significant owner based on shares held across the portfolios of several clients who are unrelated to one another. The investment managers do not have any economic interest in the shares, nor do they control the voting rights in all instances, but may have the power to dispose in terms of client mandates. Both investment managers and their clients could then fall within the ambit of the definition, as could trustees of collective investment schemes, meaning there could be many cases where there is more than one entity that qualifies as a significant owner in a single financial institution and in respect of the same holding or "indirect" interest. In addition, clients may terminate mandates at any time or the holding could exceed a mandate limit due to market movements and it is neither reasonable nor feasible to require an investment manager to obtain the consent of a regulator in these cases. Investment managers are in any event already regulated financial institutions required to meet fit and proper requirements. Clarity is required as to how significant owner investment managers will need to be treated by Financial Institutions in the application of the Joint Standard. This is dealt with in more detail below and a proposal is made in this regard. Similarly, collective investment scheme managers could also fall within the definition based on holdings in their collective investment scheme portfolios (for example, because the buying and selling of shares held in collective investment scheme portfolios is in the first instance a function of the manager, even if this is generally delegated to an investment	***specific requirements relating to significant owners are contained in the FSRA. The concerns pertaining to the wide scope of the term significant owner relates to the definition of significant owner as defined in the FSRA which is outside the scope of the Joint Standard. Some of the concerns you raise in this regard can potentially not be addressed through the Joint Standard, e.g. where specific requirements relating to significant owners are contained in the FSRA.*** ***A distinction must be drawn between issues that can be addressed through the revised Joint Standard and issues that need to be addressed through a separate FSRA process.*** ***We recommend that you consider the revised Joint Standard and assess to what extent the new approach adopted in the Joint Standard influences the positioning of your specific comment, specifically bearing in mind that the –*** • ***definition of significant owner, and certain requirements surrounding significant owners, are contained in the FSRA; and*** • ***Joint Standard cannot change the requirements that are contained in the FSRA.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			manager). As with investment managers, collective investment scheme managers are regulated financial institutions. This concern was raised in ASISA's comments on the FSR Bill, and members had understood that these issues would be resolved through Standards. However, the Draft Standard is not giving the requisite clarity and guidance and in many instances is unfortunately creating greater uncertainty and impracticalities.	
4.	ASISA		Relationship between the Financial Institution and its "significant owners" As stated above, our reading of sections 158 and 159 of the Act is that the onus is on the significant owner/future significant owner to obtain the necessary approvals or give the notifications (as required by the relevant provisions) and to comply/demonstrate compliance with the applicable fit and proper requirements. The regulator would need to assess compliance with fit and proper requirements on receipt of an application or notification. The Draft Joint Standard appears to place these responsibilities on the financial institution/its board and we have difficulty understanding how the directors of a financial institution can be held responsible for something they do not control (i.e. the ownership of the institution). The Draft Joint Standard appears to equate significant owners with key persons and representatives of a financial institution, where compliance is much more within the institution's powers to control and monitor and fails to recognize the material differences between the financial institution's authority (in this case, lack thereof) over its owners and its authority over employees or agents that it appoints. While in some instances, it may be practically possible for the board of directors of a financial institution to assess whether significant owners/potential significant owners meet requirements, more often this will simply not be practically possible. We will refer to the above General Comments in our further comments below as these are relevant in many instances.	***Noted. The draft Joint Standard has been significantly revised to address this concern by primarily imposing obligations directly on significant owners.***
5.	ASISA	General	**Scenarios to consider in the light of significant ownership provisions, with focus on investment management activities** By virtue of the fact that the Draft Standard applies to controlling companies of financial institutions (which in many cases are listed entities), and if "look through" as referred to above is required, it will impose severe trading constraints in respect of the shares of significant owners and financial institutions, constraints that have not been in place up until now. The impact	***Please see our responses to your comment relating to the definition of "significant owner" above.*** ***The specific proposal you make at the end of this comment indicated that it is impractical to require prior approval and in some cases, even prior notification***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			on the efficiency of the market will be serious, and is a deep concern to ASISA members. 1. We have listed below scenarios that will arise and which are not catered for in the Draft Standard, whether generally or specifically. Most of these types of scenarios were raised during the consultation phase on the FSR Bill (if not specifically, then in principle), and we had understood at the time that they would be addressed in the Draft Standard. Please note that in practice it could well transpire that other scenarios will also arise. a. Transitional arrangements ☐ Scenario: Investment managers are not the beneficial holders of the financial institution's securities, nor do they in all cases hold or control the voting rights – sometimes the investment manager's clients do. However, assuming that the investment manager has the power to dispose of the shares held by its clients and assume the aggregated client holding equates to 15.1% or more (i.e. "a qualifying stake"). The investment manager is thus a significant owner as defined, as at 1 January 2019. If the investment manager is so deemed to be a significant owner, what happens when the investment manager wants to dispose of client holdings that will result in the aggregate holding falling below 15% – can it be assumed that all that will be needed in that case will be a notification (unless the entity is a SIFI – section 158(3)) i.e. no condition of approval will have been issued previously that required the investment manager to obtain approval to exit? b. Mandate terminations ☐ Scenario: Assuming that the investment manager has the power to dispose of the shares held by its clients and assume the holding equates to 15.1% or more (i.e. "a qualifying stake"). The investment manager is thus a significant owner as defined as at 1 January 2019. Those clients can terminate their mandate at any point in time (or request that the investment manager immediately dispose of certain holdings in their portfolios), which could result in the investment manager's clients' aggregate holding falling below 15%. At that point, the investment manager is then no longer a significant owner as defined. Whilst notification of this disposal made by the investment manager on or as soon as reasonably possible after adherence to its clients' instructions could work, prior approval (in the limited circumstances provided for in the Chapter on Significant Owners) would be a problem in that a client's ability to terminate a mandate (or to issue such instructions as mentioned) would be frustrated, if not unduly restricted, as the investment manager would not be able to give effect to the instruction until such time as the approval is granted. This could result in a breach of the mandate between the	***that a person will cease to be a significant owner is regarded as problematic. Please note that the revised Joint Standard adopts a different approach with regards to prior approval and notification. As per our previous response, a distinction needs to be drawn between any approval and notification requirements contained in the FSRA, and any approval and notification requirements contained in the Joint Standard. Any practical concerns with the approval and notification requirements contained in the FSRA cannot be addressed through the Joint Standard. Please note that any requirements relating to approval of significant owners has been removed from the Joint Standard. With regards to notification requirements, the Joint Standard has been revised to only require notification by a financial institution to the Authorities within 30 days of a financial institution becoming aware of a significant owner. We believe that this would address the practical concerns from the financial institution's perspective.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			investment manager and the client. c. Corporate Actions e.g. share buy-backs ☐ Scenario: A person (investment manager) has the ability to dispose of or control the disposal of 14% of the financial institution's securities, and does not otherwise fall within the ambit of clause 157(1) (i.e. until it has disposal rights of 15%) but a financial institution decides, in any situation, to embark on a corporate action, such as a share buy-back. This results in the investment manager inadvertently crossing the 15% threshold and thus being a significant owner. This would require the investment manager to obtain prior approval but it is not clear how this could be possible. Also, what if approval is not granted – is the investment manager forced to dispose of client holdings? What does this mean for the financial institution itself - can it not pursue the corporate action until the investment manager has approval? Provision should be made to carve out for situations like this i.e. where circumstances beyond the control of the person/ investment manager result in that person falling within the ambit of section 157(1) and, in particular, section 157 (1)(c) read with section 158. ☐ Scenario: A person (investment manager) holds convertible bonds in a financial institution. When is it envisaged that approvals (assuming the conversion thereof result in the investment manager becoming a significant owner) need to be obtained, if at all? d. Acquisitions / new operating entities ☐ Scenario: An investment manager's clients hold 16% in a listed entity, and none of the listed entity's subsidiaries are financial institutions (or the listed entity holds less than 15% in a financial institution). The listed entity then acquires 100% or establishes a subsidiary which operates as a duly licensed insurer or bank or other financial institution included in the Draft Standard (whether or not the core business of the listed entity is in financial services). Instantly then, the investment manager is deemed to be a significant owner. What must the investment manager do now? What if the investment manager is required to get regulatory approval which is refused (e.g. on account of the regulator's view that such holding is prejudicial to the financial institution – see section 158(7)) and/or doesn't then meet the financial institution's fit and proper requirements? ☐ Scenario: Similar to the above. The investment manager's clients hold* 16% in a listed entity, and in that group there is an insurer/bank/other financial institution subsidiary. The investment manager now wants to hold less than 15% of the listed entity. Where prior notification (or approval) is required for the disposal:	

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			it was unable to dispose of its interest in a group of companies where only one of those companies is an insurer/bank/other financial institution; relevant financial sector regulator's powers would extend to entities that are not insurers/banks/other financial institutions by virtue solely of those entities being related to a financial institution; and regulator to prevent a commercial transaction could materially impact the share price of a group of companies where only one or a few of the companies within the group are insurers/banks/other financial institutions. e. Market movements ☐ Scenario: Investment managers may not be intending to cross the threshold (upwards of 15%, say from 14 to 17%) but the market price movements on any particular day or at any moment can change that in an instant, and the manager wants to act instantly in the best interests of its clients. f. "Cross-shareholdings" ☐ Scenario: A person (investment manager) has the ability to dispose of or control the disposal of 14% of the financial institution's securities, and does not otherwise fall within the ambit of clause 157(1) i.e. until it has disposal rights of 15%. At the same time, a number of portfolios of various collective investment schemes (not managed by the investment manager above) hold about 14% of the financial institution's securities. Assume the trustee of those schemes is the same entity e.g. X, but is not related to the investment manager. Under the Collective Investment Schemes Control Act, the trustee holds the voting rights, meaning the trustee is on the verge of being a significant owner. Assuming the investment manager is managing portfolios of a collective investment scheme whose trustee is X. The investment manager then wants to acquire 1% of the financial institution's securities. On a literal application of the FSR Act and the Draft Standard, it means both X and the investment manager will have to apply for approval, and both do so through the financial institution, and then the authority if the financial institution is comfortable. If this is required of X, it means X must monitor, on an aggregated basis, the holdings of its various CIS managers. It means that until and unless the CIS has sought for and obtained approval (which, importantly, the investment manager would never know is needed to occur), the investment manager will not be able to acquire the intended shares for its portfolio. g. Prior notifications ☐ In cases where only prior notification is required where a significant owner is about to cease to be a significant owner, the process and procedure also	

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			needs to be sufficiently robust and efficient e.g. so as not to bring to the fore some of the various issues noted elsewhere in this submission e.g. proprietary/price-sensitive information; market abuse etc. PROPOSAL: In certain cases, as illustrated by the examples set out above, and especially for disposals, it is impractical to require prior approval and in some cases, even prior notification that a person will cease to be a significant owner is problematic. The Joint Standard should provide for this and we propose that in the case of investment managers, and managers and trustees of collective investment schemes falling into the definition of significant owner, only notification as soon as reasonably possible after the fact should be required - similar to the disclosure requirements set out in section 122 of the Companies Act. A further option to be considered would be for blanket-type approvals to be issued by the regulator on application (under section 157(4)) from such investment manager entities, whether or not they are already significant owners of a financial institution.	
6.	SPGRE	Introductory Statement	S&P Global Ratings Europe Limited ("SPGRE") appreciates the opportunity to comment on the Consultation Paper on a proposed joint standard on fit and proper person requirements for significant owners ("the Draft Joint Standard") as released for comment on 5th October 2018 by the Prudential Authority and the Financial Sector Conduct Authority ("the Authority"). In this response, reference is made to the Financial Sector Regulation Act 9 of 2017 ("the FSRA"), the Credit Rating Services Act 24 of 2012 (as amended, "the CRSA") and Board Notice 166 of 2013 setting out the fit and proper requirements for credit rating agencies ("CRAs") in accordance with section 5(1)(d) of the CRSA. SPGRE, through its branch in the Republic, is registered as an External Credit Rating Agency (as defined in section 1 of the CRSA, "External CRA"). SPGRE is an indirect wholly owned subsidiary of S&P Global Inc. ("SPGI") which is a company incorporated in the State of New York, USA and publicly listed on the New York Stock Exchange. SPGRE is part of S&P Global Ratings, the global CRA operating through a group of affiliated companies performing credit rating services, each of which is a direct or indirect wholly owned subsidiary of SPGI. SPGRE is concerned that, the proposals set out in the Draft Joint Standard as currently drafted do not represent international best practice in CRA policy and would impose an unnecessary and disproportionate burden on SPGRE and its parent(s), notwithstanding the statement in the final sentence of	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			section 5 of Annexure C of the Draft Joint Standard.	
7.	Moody's	General	Moody's Investors Service ("MIS") would like to thank the Financial Sector Conduct Authority ("FSCA") and the Prudential Authority ("PA") for the opportunity to comment on the proposed Joint Standard on Fit and Proper Person Requirements for Significant Owners ("the Joint Standard"). MIS takes note of the proposed Joint Standard and the objective of aligning existing fit and proper requirements on significant owners in sectoral legislation with international standards. With respect to Credit Rating Agencies ("CRAs"), we would like to highlight that there are no fit and proper person requirements on significant owners of CRAs in either the Credit Rating Services Act ("CRS Act") or international standards. As the Joint Standard illustrates, the CRS Act does not provide the FSCA with the requisite authority to regulate fit and proper person requirements for significant owners of CRAs. As such, the Joint Standard is not applicable to CRAs. Given this inapplicability, it would be more appropriate to include CRAs along with the other financial institutions listed as "out of scope" in the table under section 4 of the Joint Standard. It is noted that the FSCA has requested National Treasury to provide it with the necessary authority to regulate fit and proper person standards for significant owners of CRAs. Should amendments to the CRS Act be proposed with respect to fit and proper person requirements on significant owners of CRAs, MIS would welcome the opportunity to provide comment on the proposed standards at this time.	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***
Statement explaining the need for the draft Joint Standard				
8	SPGRE	Explanatory Statement	Regulation of significant owners In section 3.1 of Chapter 1, the Draft Joint Standard refers to the "regulation of significant owners". In our reading, this suggest direct regulation of significant owners. In our view this is not consistent with Chapter 11 of the FSRA which concerns the assessment of the fitness and propriety of actual and proposed significant owners and, where relevant, the approval of such significant owners. In particular in section 5 of Annexure C to the Draft Joint Standard it is stated that the "FSCA has requested the National Treasury to propose amendments to the Act to empower it to specifically regulate significant owners of credit rating agencies." This statement suggests to us that the Authority is seeking powers to directly regulate significant owners of CRAs rather than requiring CRAs to assess the fitness and propriety of their significant owners. Seeking jurisdiction to directly regulate owners of CRAs	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			may significantly and adversely impact the financing of CRAs, in particular in case of groups of CRAs that are domiciled and/or listed in third countries. In case parent entities and holding companies were considered as significant owners, the adverse impact on CRAs would be even more significant and immediate. We therefore suggest that the Authorities clarify this matter.	
9.	SPGRE	3.2	SPGRE is concerned that, the proposals set out in the Draft Joint Standard as currently drafted do not represent international best practice in CRA policy and would impose an unnecessary and disproportionate burden on SPGRE and its parent(s), notwithstanding the statement in the final sentence of section 5 of Annexure C of the Draft Joint Standard. Cross-sector consistency Chapter 1 of the Consultation Paper states that the "draft Joint Standard aims to establish consistent fit and proper person requirements for significant owners" of certain financial sector entities. In our view, however, the stated intent of cross- sector consistency is not achieved, given the inconsistencies in the treatment of branches of External CRAs relative to the treatment of branches of foreign entities in other sectors. In particular, section 3.2 sets out an exemption from the Draft Joint Standard for branches of foreign reinsurers referred to in the Insurance Act, 2017, and for branches of foreign financial institutions referred to in the Banks Act, 1990. As there is no apparent reasons to treat branches of foreign CRAs any different, we request that the Joint Standard to be submitted to Parliament also applies the exemption in section 3.2 also to External CRAs. Besides achieving cross-sector consistency, such exemption would also much better reflect the current size of market for credit rating services and in doing so being more proportionate.	***Noted. This has been addressed in the revised draft Joint Standard and accompanying Exemption Notices.***
10.	ASISA	Section 4.1	We agree with the reasons for excluding certain entities from the ambit of the Draft Standard. However, whilst this section provides for those entities to which the Draft Standard applies and also lists in the Table certain entities in respect of which the Draft Standard does not apply, 3.2 – 3.4 of the Draft Standard itself does not list all those entities expressly included in the Table. To avoid ambiguity, we propose that "only" is added to the introductory sentence of 3.1 of the Draft Standard, so that it reads "This Joint Standard only applies to all:" and/or that section 3 of the Draft Standard be expanded (after clause 3.4) to expressly exclude the entities listed in the Table.	***Noted. Please see revised approach. The draft Joint Standard applies to all financial institutions and significant owners of all financial institutions, and a separate exemption will be issued excluding certain financial institutions and significant owners of certain financial institutions from the draft Joint Standard.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
11.	A2X	6.	Clarity is required on the meaning of the statement "In the event of any inconsistencies that may arise on implementation of the draft Joint Standard, the draft Joint Standard will prevail."	***In context of the FSRA, if there are other requirements in other subordinate legislative or regulatory instruments which are inconsistent with this Joint Standard, then this Joint Standard will prevail.***
Annexure A: Joint Standard SO1				
12.	ASISA	Objectives and key requirements of Joint Standard	The third paragraph refers to a board-approved policy that a financial institution must have to test and assess the fitness and propriety of its significant owners. The above General Comments are relevant to this and we question the appropriateness of requiring such a policy given the difficulties a financial institution could face in implementing and enforcing it. While it is understood that the Governance and Operational Standards for Insurers ("GOI 4") contain a similar requirement, the Joint Standard will replace section 7 and other provisions of GOI 4 relating to significant owners and it is submitted that this presents an opportunity to make amendments to the provisions currently set out in GOI 4 where appropriate.	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
13.	JSE	3	The JSE falls within the scope of the Joint Standard on Fit and Proper Person Requirements for Significant Owners ("the Joint Standard") and is deemed an "eligible financial institution" as a result of this definition including "market infrastructures", which incorporates both exchanges and clearing houses. The shares of the JSE are listed on the exchange and subject to the JSE listing requirements and the direct oversight in terms of these requirements of the FSCA. The JSE proposes that publicly traded companies be included in the exceptions set out in the table on page 7 of the consultation paper and that a further exemption to this effect be added to section 3 of the Joint Standard for the reasons set out below. Section 157(1) of the Financial Sector Regulation Act, No. 7 of 2017 ("FSRA") states that "…*a person is a significant owner of a financial institution <u>if the person</u>* (our emphasis), *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*." It is the view of the JSE that a significant owner of a listed company does not have the ability to materially control or influence the business or strategy of a listed company despite Section 157(2) stating at (c) that a person has the ability referred to in (1) by virtue of the person "…*directly or indirectly, alone*	***Noted. The revised draft Joint Standard, which now places all obligations directly on the significant owner as opposed to the financial institution, should alleviate the concern in as far as it relates to the financial institution as it will no longer be required to monitor significant ownership and assess fit ness and propriety of significant owners. However, the concerns pertaining to the significant owner relates to the definition of significant owner as defined in the FSRA, and this is not something that can necessarily be addressed through the draft Joint Standard, which is subordinate legislation. This concern will therefore have to be addressed through other means. Specific significant owners can potentially be included in the relevant exemption***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			or together with a related or inter-related person, (holding) a qualifying stake in the financial institution." and a "qualifying stake" being defined as inter alia holding "*at least 15% of the issued shares of the financial institution*". Section 66(1) of the Companies Act, Act 71 of 2008, requires that the business and affairs of a company be under the management and direction of its directors and these directors are authorised to exercise all of the powers and perform the functions of the company in accordance with the Companies Act and the Memorandum Of Incorporation of the company. The directors of the company must perform their duties for the company and not in respect of the instructions of a single shareholder, even if that shareholder is a single or a dominant majority shareholder. Directors run the risk of personal liability in respect of losses, damages or costs in the event that the instructions of a dominant or majority shareholder are followed without due consideration being given by them to their duties and functions in respect of the company. While we acknowledge that a company with a single shareholder that holds 51% of its issued share capital may be subject to the will and potentially act in the interests of that dominant shareholder, it is our view that a listed company with a wide shareholder base that is actively traded (possibly in multiple jurisdictions) is by contrast, not subject to the same risk. In public companies with sound governance and risk management practices, a person or entity may be a "significant owner" and hold a "qualifying stake" as defined in the FSRA, the ability of this person or entity to exercise control over the operations of a listed company in terms of strategy and management, is limited. In the event that the financial standing, competence and integrity of a significant owner of the shares of a listed company are called into question, this would not have a discernible impact on the prudential business management of the listed company. This principle holds true for both listed and unlisted public companies, but is more relevant in the context of publicly traded companies, given that the practical elements in terms of the ownership of shares in publicly traded companies make it impractical and costly for listed companies and their shareholders to comply with Chapter 11 of the FSRA and the draft standard: - Trading in listed public companies takes place on all business days and thresholds of ownership could be exceeded in terms of both increases and decreases of shareholding intra-day, which would require daily monitoring (which itself would be impractical); - Given that ownership levels fluctuate in actively traded shares, and following the process of assessment and aggregation that would need to be	***notices. However, please note that we disagree that there should be a blanket exemption for all significant owners of public listed companies as a significant owner of a public company can, through its voting rights, influence the business to some extent. Therefore, in our opinion significant owners of public listed companies should still meet the relevant fit and proper requirements. The authorities are, however, open to further proposals in this regard and the JSE is welcome to propose and phrase specific scenarios where significant owners of listed financial institutions should be exempted.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			undertaken by the issuer, the information that will be produced is likely to be outdated by the time it is submitted to the responsible authority. Transactions in the share that take place on the following trading day could have changed the ownership position, rendering any action on the part of the responsible authority in respect of a particular shareholder either inappropriate or unnecessary; - The ownership of listed companies is for the most part in the hands of institutional clients and shares are held in the nominee companies of the Central Securities Depository Participants ("CSDPs"). Daily interrogation of such would be necessary, as would a secure means of transmission of the shareholder information to the JSE for analysis – the risks associated with such are of concern, given the steep rise in cybersecurity breaches of late; - In instances in which shareholders have mandated Asset Managers to invest on their behalf in terms of discretionary mandates, such shareholdings may be held across a number of CSDPs and the information of all CSDPs in respect of identified shareholders would need to be aggregated on a daily basis in order to obtain an accurate picture of ownership (which would be impractical); - In order for investors that invest directly in listed companies, or their mandatee in the case of managed accounts, to comply with Sections 158(2) and (3), the investor or mandatee would need to obtain written approval from the FSCA (being the responsible authority for the financial sector law in terms of which the JSE is licensed) prior to either becoming a significant owner or decreasing their ownership to such an extent that they cease to be a significant owner. The likelihood of their being able to compute the percentage of their ownership, make an application to the FSCA and obtain written approval prior to effecting a transaction with their authorised user, in a market in which the price of the share may be volatile, is impractical and obviates the purpose and benefits associated with a free market for listed securities.	
14.	ASISA	3.1	The Draft Standard applies to the entities listed in 3.1. On page 8 of the Consultation Paper it is stated that the Draft Standard will not apply to a "holding company of a financial conglomerate", and that "A dedicated project to develop the regulatory framework for financial conglomerates has been initiated by the PA." The entities listed in 3.1 (specifically controlling companies of banks and insurers) may well also be the holding company of a financial conglomerate.	***Noted. See revised draft Joint Standard and accompanying Exemption Notices. . Future publications on the framework for Financial Conglomerates will provide further clarity. Financial conglomerates will be designated and advised of their***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			It is important that it is clear which framework will be applicable in such an instance.	***designation by the Prudential Authority***
15.	ASISA	4.1	See General Comments above. We cannot see how the board of directors can be held responsible for compliance by significant owners. Significant owners are responsible for compliance and must demonstrate compliance with fit and proper requirements to the regulator(s). The board does not decide or control who the shareholders are. The most that can be expected of a board is to notify the relevant regulator of matters, including non-compliance, that come to its attention.	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
16.	BASA		Section 159(1)(a) of the FSRA states that:- "a financial sector regulator must make standards, that must be complied with by significant owners of financial institutions, with respect to fit and proper person requirements..". Recommendation We submit that the primary requirement of the Act is for the significant owner itself to comply with this Joint Standard, as opposed to the financial institution, while the institution's board of directors have the primary responsibility for testing and assessing the fitness and propriety of the significant owner (as set out in paras. 5.4 and 5.5 of the draft Joint Standard).	***Noted. See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
17.	ASISA	4.2	It is not clear whether the external auditor's assurance must be provided on an annual basis or ad hoc. This is a new requirement for CIS management companies and has a cost implication. We would request the paragraph be re-worded as suggested below to make it clear that this requirement is limited to only on request by the regulator and not an annual basis, which we believe is the intention. "4.2 If requested, a financial institution's external auditor must provide assurance to the financial institution and the responsible authority, ~~if requested~~, that the financial institution complies with the requirements of this Joint Standard or part thereof." In any event, we do not believe the onus should be on the board of the financial institution to comply with the significant owner approval, notification and fit and proper requirements and we cannot therefore see how its auditors can provide the assurance referred to. The auditors of the financial institution would not necessarily have access to the relevant significant owners and their data in order to assess compliance.	***Noted. See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial institutions.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
18.	SAIA		The SAIA member recommends that the assurance be provided by the financial institution's internal audit function.	***Noted. See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial institutions.***
19.	Discovery Limited and Discovery Bank Limited	5.1	"The FSRA also requires approval of, or notification to, the responsible authority of any arrangement that will result in a significant owner increasing or decreasing the extent of its ability to control or influence materially the business or strategy of the financial institution." 1) Clarity is required on whether notification or approval is required from the responsible authorities. Clarity is also required on which of the two responsible authorities (i.e. Prudential Authority or Financial Sector Conduct Authority), such notification/approval should be sent to or sought from. In instances where the entity is governed by both the Prudential Authority and the Financial Sector Conduct Authority to which of the two responsible authorities should the notification/approval be sent to or sought from. 2) Clarity is further required on what timelines such notifications or approvals need to be submitted, and in what prescribed manner.	***Noted. See revised draft Joint Standard.***
20.	BASA		We request that "assurance" be clearly defined – is this required as part of a "full statutory audit" or will an "independent review" suffice? Can an organisation require this from their auditors and has IRBA (Independent Regulatory Board for Auditors) agreed to providing this type of assurance?	***Independent confirmation would suffice. See revised draft Joint Standard.***
21.	ASISA	5.2	See General Comments.	***As above.***
22.	A2X	5.3	What constitutes "commensurate" financial resources- how will this assessment of financial fitness be calculated? This will have an impact on the cost implications of compliance.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
23.	ASISA	5.4	Flowing from the issues raised in our General Comments, we question the appropriateness of requiring such a policy given the difficulties a financial institution could face in implementing and enforcing it. As stated above, these requirements apply to significant owners who should be responsible for demonstrating compliance.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
24.	ASISA	5.5	As stated and explained above, we disagree with the first sentence.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
25.	A2X		What is the timeline for such notification to the Authority?	***See revised draft Joint Standard.***
26.	ASISA	6.	See General Comments as well as our comments in relation to 5.4.	***See revised draft Joint Standard.***
27.	ASISA	6.2.b	6.2.b requires an annual assessment for significant owners. This is an amendment to the current requirements for insurers and new for collective investment scheme management companies. GOI 4 only requires annual assessment for key persons and not for significant owners. We believe that this should remain inapplicable to significant owners as it is an extremely onerous requirement and for the reasons explained in the general Comments, in some instances impossible for the financial institution to enforce.	***See revised draft Joint Standard which significantly modifies the requirement and places the onus on the significant owner.***
28.	BASA		We are mindful of the cost implications of annual fit and proper assessments for significant owners. Recommendation Given the scale of conducting a fitness and propriety assessment on significant owners, we suggest that the assessments be done on a two yearly basis or at minimum every 18 months.	***See revised draft Joint Standard which significantly modifies the requirement.***
29.	SAIA		Annual testing may not be practicable considering the potential volumes of significant owners that have to be assessed for fitness and propriety. The SAIA member recommends fit and proper assessments at least every second year for significant owners.	***See revised draft Joint Standard which significantly modifies the requirement.***
30.	ASISA	6.2.f	Clarity is required as to whom such reporting must be done. It is not clear whether this is to the Board or the Authorities. We cannot see how a financial institution can be expected to force significant owners to complete assessments, provide documentation and consent to its policies. As stated above, the financial institution should only be required to report on matters, including non-compliance, that come to its attention. At most a financial institution should be required to have a reasonable process in place to monitor changes in significant ownership (assuming access to such information) and to notify the regulator after the fact, e.g. within 30 days after a change comes to its attention (as per section 17(2) of the Insurance Act). Should a financial institution be found to be non-compliant with the requirements that are being proposed and receive a financial penalty for such non-compliance, this would impact all owners, not just significant owners. It is non-compliant significant owners that should be penalized rather than the institution.	***See revised draft Joint Standard which significantly modifies the requirement.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
31.	BASA	6.2.c	While it is accepted that sufficient documentation be retained for each fit and proper assessment for audit purposes. Recommendation We propose that the related record retention and keeping make provision for electronic storage and attestations to the responsible authority with the undertaking that the documentary evidence of the process will be made available if required.	***Comment is noted, electronic storage of documents is acceptable.***
32.	BASA	6.2.f	Par 6(f) actually reads: "*The policy and procedures must include adequate provisions ……. for the protection of such a person*." It is submitted that a board policy, being a document of internal application to a company, cannot adequately provide protection to a third party, be they a director, or employee of the company, or an external party, who chooses to make a confidential report as envisaged in 6.2.f.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
33.	BASA	6.2.g	Care must be taken to recognise and comply with the Protection of Personal Information Act (POPIA) requirements in this regard.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
34.	ASISA	6.3	For the reasons explained above, there is a material distinction between having fit and proper policies that apply to an institution's key persons or other employees or agents and its owners.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
35.	BASA		We are not sure why there is a need to include this paragraph – if an institution wants to incorporate the Policy in the broader fit and proper policy, it will do so without the Standard giving it "permission".	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
36.	SAIA	6.4	Compliance with this requirement is dependent on the completion of the process for the designation of controlling companies as per Communication 3 of 2018 - Designation of Insurance Groups and controlling company.	***The comment is noted. Also see revised draft Joint Standard.***
37.	SPGRE		Cross-sector consistency Chapter 1 of the Consultation Paper states that the "draft Joint Standard aims to establish consistent fit and proper person requirements for significant owners" of certain financial sector entities. In our view, however, the stated intent of cross- sector consistency is not achieved, given the inconsistencies in the treatment of branches of External CRAs relative to the treatment of branches of foreign entities in other sectors. In addition, section 6.4 sets out that for insurance groups and banking groups the significant owners to be assessed are those of the ultimate parent entity	***See revised draft Joint Standard and accompanying Exemption Notices.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			or holding company rather than those of the direct parent entity, or other entities in the corporate hierarchy. As this is not explicitly stated in relation to other sectors, we request that it be clarified that section 6.4 also applies to groups of CRAs (as defined in section 1 of the CRSA).	
38.	SAIA	7	The SAIA member recommends that the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) provide guidance in respect of credible sources from whom information pertaining to significant owners can be sourced.	***See revised draft Joint Standard.***
30.	ASISA	7.2.b	Clarification is sought regarding (i), (ii) (iii), which we believe should be (i) or (ii), as follows: "b. The person has been convicted (and that conviction has not been expunged) or is the subject of pending proceedings which may lead to such a conviction under any law in any jurisdiction, of an offence: i. under a law relating to the regulation or supervision of a financial institution as defined in the FSRA 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. under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Parts 1 to 4 or sections 17, 20 or 21 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence under the law of a foreign country; ~~(iii)~~ where the penalty for the offence was, or may be, imprisonment or a significant fine."	***See revised draft Joint Standard.***
40.	BASA	7.2. (a) – (c)	Our concern lies in the following parts of section 7: 7.2 a "……. *or is the subject of pending proceedings which may lead to such a conviction for a financial crime*." 7.2.b "……. *or is the subject of pending proceedings which may lead to such a conviction under any law in any jurisdiction, of an offence*." 7.2.c *"…….or is the subject of pending 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*. Merely being the subject of pending proceedings which may lead to a conviction for a financial crime or other offence cannot constitute prima facie	***See revised Joint Standard which places the onus on the significant owner.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			evidence of a lack of competence or integrity. Furthermore, being the subject of pending proceedings is not information that is generally in the public domain, and the financial institution may have difficulty in acquiring sufficient documentary evidence to support a conclusion. Also, even if such information were to come into the possession of the financial institution, using it to come to such a conclusion could amount to prohibited processing in terms of SS26 and 33 of POPIA. Recommendation We suggest that the disqualifications in 7.2 (a-c) be limited to actual convictions of a crime or a civil judgment.	
41.	ASISA	7.2.h	A significant owner is not by virtue of significant ownership involved in the day to day business of a financial institution. This requirement is therefore not relevant in the context of significant owners. Alternatively, if the above is not accepted, then the issue arises of there being a conflict of interest and the individual recuses him/herself. If required to recuse themself on the basis of a disclosed conflict, would that recusal constitute an impairment of ability to discharge their duties? 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 that is unable to be mitigated or any other reason." It is suggested that, if it is to be included, the paragraph be amended by the insertion of the underlined clause as suggested.	***The comment is noted. However it is intentionally drafted in this manner to ensure that where a significant owner discharges any duty in relation to the financial institution, the person must not be impaired for any reason in discharging such duties.***
42.	BASA		Having regard to the fact that par 7 sets out prima facie disqualifications for competence or integrity of significant owners, our concerns include the following: • A significant owner would not typically have any duties to discharge in relation to the business of the financial institution of which they are a significant owner. • "*Impaired ability to discharge his or her duties ……because of……. or any other reason*." We submit that the use of these words is too wide and subjective and may give rise to unfair practices. Recommendation We suggest that par 7.2.h be deleted in totality. • Alternatively, that the drafting be amended as follows: "The person has a conflict of interest".	***The comment is noted, however it is intentionally drafted in this manner to ensure that factors which may impair the ability to discharge duties may be taken into account, it is intentionally not limited to only conflicts of interest. Also see comment above. In addition, this is a specific risk that has been identified in recent group wide failures.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
43.	ASISA	7.2.k	"Subject to section 8 below, any of the following constitutes prima facie evidence that a significant owner who is a natural person, may lack competence or integrity: k. 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 business conduct." The wording should be qualified as the authority may have "refused a registration, authorisation or licence" for reasons unrelated to fitness and propriety. A licence could be revoked for various reasons; this does not necessarily render someone unfit and improper. A recommendation would be to make this specific to circumstances of a lack of fitness and propriety. It is suggested that the paragraph be amended by the insertion of the underlined phrase.	***See revised draft Joint Standard, this has been revised to include "because of matters relating to honesty, integrity, or poor business conduct".***
44.	SAIA		The SAIA member recommends that the refusal, revocation, withdrawal or termination of a registration, authorisation or licence to carry out a trade, business, or profession be qualified such that it relates /links to matters of fitness and propriety (honesty, integrity, financial resources or business conduct) only.	***See revised draft Joint Standard, this has been revised to include "because of matters relating to honesty, integrity, or poor business conduct".***
45.	BASA	7.2.o	The phrase "demonstrated a lack of readiness or willingness to comply" is vague and unclear. Recommendation We suggest the following wording for 7.2.o "The person has failed to comply with legal, regulatory or professional requirements and standards."	***See revised draft Joint Standard.***
46.	SAIA	7.2. (m), (n) and (o)	The SAIA member recommends that: -the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) jointly maintain a list of sanctioned individuals and entities that are not eligible for significant ownership, based on the person having knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, either the PA or the FSCA. -with reference to section 7.2 (n), guidance should be provided by the FSCA and the PA in terms of what would constitute a lack of readiness and willingness to comply with legal and regulatory requirements and standards as these concepts are difficult to establish.	***This comment is potentially academic considering the revisions that has been made to the draft Joint Standard.*** ***Disagree that further guidance is necessary in this regard.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
47.	ASISA	7.3	Would the financial institution be expected to monitor and assess the fit and proper status of the directors of the owner of the significant owner? The Financial Institution in this instance does not have the power to approve the appointments of directors of its significant owners. It will be difficult to obtain the required supporting documentary evidence that the legal person, who is a significant owner, meets competency and integrity requirements - this is especially true where the legal entity is not a listed company or is a foreign legal entity.	***See revised draft Joint Standard which removes the referenced obligations placed on financial institutions.***
48.	ASISA	7.5.a	The requirement for a significant owner to have adequate financing or funding and future access to capital, is very broad/unclear. It is submitted that this requirement in any event could only be appropriate in respect of direct shareholdings in the case of banks and non-linked insurers, not other financial institutions. Significant owners that are entities licensed by the authorities will have to meet financial standing requirements regarding their own businesses. It is submitted that in many instances it will not be reasonable for a person who is a significant owner through, for example, the "disposal right" of the definition of "qualifying stake", and which person is not a shareholder in its own right, to be required to hold an additional amount of capital on hand. In addition, the beneficial holders in these instances are often institutional investors such as pension funds, and it is not reasonable to expect such investors to have this capital on hand. We are also concerned that where the provisions of the Draft Standard would require the financial institution to apply financial standing requirements to the proposed significant owner, the Draft Standard could require confidential and proprietary information of all potential significant owners, which is in any event not relevant to the entity in which shares are to be acquired, to be disclosed by the proposed significant owner to the financial institution and others.	***See revised draft Joint Standard which removes the referenced obligation placed on financial institutions.. The prima facie evidence element is retained however in respect of the significant owner.***
49.	A2X	7.5 (a) and (b)	Clarity on the definition of "adequate" is required for purposes of assessing "good financial standing". These requirements appear to require a full and comprehensive financial assessment? Is this the intention?	***This concern has potentially been alleviated in the light of the revised draft Joint Standard which no longer requires financial institutions to conduct such an assessment. A significant owner must determine what financial resources is adequate and necessary to support the***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
				business of the financial institutions, taking into account the context of the business of the significant owner and financial institution.
50.	SAIA	7.5 (b)	The SAIA member requests the words "is not able or likely to" to be clarified.	***This is a reference to solvency and liquidity.***
51.	ASISA	7.5.c	Where a significant owner is a large organization, it is very likely that at any given time there are a number of pending civil proceedings to which the significant owner is party. This does not mean or result in the significant owner not being in good financial standing.	***This needs to be read in context, this relates specifically to unpaid debts. Business as usual civil proceedings are not included.***
52.	A2X		In what manner must this information be obtained? Through a questionnaire/ attestation by the respective person or entity or through for example, a credit bureau? This may impact on the potential cost of compliance.	***See revised draft Joint Standard.***
53.	ASISA	8.	Clause 8.1 of GOI 4 is missing from this paragraph. We submit that it should be included as the seriousness of the offence and passage of time have to be taken into account for an assessment of fitness and proprietary of natural persons who are significant owners.	***See revised draft Joint Standard.***
54.	ASISA	8.2	We believe that the notification (and approval) requirements of the FSR Act rest on the significant owner, not the financial institution. We do not believe the justification referred to is the duty of the financial institution.	***See revised draft Joint Standard which significantly modifies the referenced obligation placed on financial institutions..***
55.	A2X		It would seem the word "not" is missing in this context: "Where, in light of the considerations in section 7 above, a financial institution is of the view that a prospective significant owner is fit and proper, despite the fact that one or more of the criteria specified in section 7 above is NOT met.	***See revised draft Joint Standard.***
56.		9.2	See previous comments. It is up to the significant owner to approach the regulator and not up to the financial institution to propose the significant owner to the regulator.	***See revised draft Joint Standard.***
57.	SPGRE	9	Approval of significant owners Notwithstanding our comments concerning section 3.2, we also request that section 9 be amended to clarify how regulatory approval of significant owners would apply to branches of foreign entities, including External CRAs. To the best of our knowledge, no other jurisdiction requires regulatory approval in	***See revised draft Joint Standard and accompanying Exemption Notices.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			case a legal or natural person taking an ownership share in a CRA. Typically, CRAs are merely required to notify the competent authority of changes in their ownership. A CRA may also be required to make certain disclosures and may be subject to restrictions relating to the ability to rate significant owners and/or significant holdings of their significant owners. For example, SPGRE makes disclosures concerning its beneficial owners in including in the Annual Report published in accordance with section 15 of the CRSA and Board Notice 168 of 2013. There are also no jurisdictions that we are aware of that require CRAs to submit fit and proper requirements concerning their significant beneficial owners.	
58.	ASISA	10.2.a	Presumably an incremental increase must be measured since the last notification/approval was obtained.	***Agreed.***
59.	Discovery Limited and Discovery bank Limited		"Any once-off or incremental increases or decreases in excess of 5%in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership of a person approved pursuant to section 158 (2)" 1) This section should be aligned to Section 37 of the Bank's Act. 2) Further clarity is required in relation to what constitutes an increase or decrease in excess of 5% "in the interest (securities, voting rights, other rights and the like) that constitutes the significant ownership". Please elaborate and assist with guidance.	***See revised draft Joint Standard.***
60.	ASISA	10.2.b	A "decrease in the interest" that constitutes the significant ownership of a person cannot result in that person becoming a majority shareholder.	***This may result in a significant owner no longer being regarded as a significant owner. However, see revised draft Joint Standard.***
61.	ASISA	10.2 General	a. The wording used in 10.2.a and b re "interest (securities, voting rights, other rights and the like)" is not only ambiguous, but also has the potential to vastly widen the ambit of the broad concept of a significant owner (as per section 157(1) of the FSRA). This is the case not only through the use of 'interest' but also language such as "and the like". We propose certainty to avoid ambiguity and unintended scope-creep, which can be best achieved by rather using the same language as is used in section 157(2) as far as is reasonably possible. b. . Overall, it appears that the intention of the Draft Standard, at least in the context of "qualifying stake" is to cater, in the case of increases in	***See revised draft Joint Standard.***

No.	Review	Reference/ Section/ Paragraph	Comment/ Issue	Response
			the qualifying stake, for multiples of 5% e.g. when crossing 20% of issued shares, 25% and so on. Likewise in the case of a decrease. If so, we believe the wording should be enhanced for purposes of clarity,. Another problem with the proposed wording in this regard is that, on a literal interpretation, "5% of" a holding of, say 15%, is 0.75%. We do not believe that an increase from a qualifying stake of 15% to 15.75% constitutes "material" change such that approval should be required, nor do we believe that it can be the regulator's intention to regulate such changes. The intention might be that approval and/or notification is only required for tranches of 5%, e.g. where a person becomes a significant owner by crossing the 15% threshold and going straight to 17%. If the intention is that thereafter, it would only be required to obtain prior approval when the holding is to subsequently become 22% or more (i.e. increase from 17% to 22%) in which case the wording would also need to be amended. If the intention of the proposed wording is to cover not only "qualifying stake" (which seems not to be the case but, as mentioned, the wording is unclear), but also the "power to appoint 15% of the members of the governing body" [section 157(2)(a)] and/or "consent of the person needed for the appointment of 15% of the members of the governing body" [section 157(2)(b)], it is not clear that this principle can be easily applied, especially in the case of section 157(2)(b). A possible alternative, assuming the intention is for the proposed principle to apply to these scenarios, is that it then provide for the person (significant owner) being able to appoint one additional member of the governing body than was previously the case (or approval being needed from that person for one additional member of the governing body being appointed than was previously the case).	
62.	BASA	11	The purpose of this paragraph is not clear. It seems to be merely stating the obvious, in that what it says is simply a re-stating of the provisions of the FSRA and other financial sector laws themselves. Recommendation We recommend that this paragraph be removed.	***Noted. See revised draft Joint Standard.***