



JOINT STANDARD 1 OF 2020

FINANCIAL SECTOR REGULATION ACT, 2017

FITNESS, PROPRIETY AND OTHER MATTERS RELATED TO SIGNIFICANT OWNERS

The Financial Sector Conduct Authority and the Prudential Authority, under sections 107 and 159(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), hereby publish a Joint Standard setting out requirements on fitness, propriety and other matters related to significant owners, as set out in the Schedule hereto.

FINANCIAL SECTOR CONDUCT AUTHORITY

PRUDENTIAL AUTHORITY

Date of publication: 1 June 2020

SCHEDULE



Financial Sector Regulation Act, 2017

Joint Standard 1 of 2020

Fitness, propriety and other matters related to significant owners

Objectives, applicability and key requirements of Joint Standard

This Joint Standard applies to a person who 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 a financial institution. This Joint Standard also places specific reporting obligations on significant owners.

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.

This Joint Standard sets out the criteria that must be met by significant owners in order to be considered fit and proper as well as factors that would constitute, on a prima facie basis, evidence of the absence of fitness and propriety. The Authorities recognise that the assessment of fitness and propriety requires an application of judgement, therefore this Joint Standard sets out the factors to be considered when exercising such judgement.

In order to assist the Authorities to have oversight of the fitness and propriety of significant owners, this Joint Standard also places certain reporting obligations on financial institutions, to the extent practical and appropriate.

This Joint Standard also prescribes what constitutes an increase or a decrease in the extent of the ability of the person, alone or together with a related or interrelated person, to control or influence materially the business or strategy of the financial institution in terms of 159(1)(b) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

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1. Commencement

This Joint Standard commences on 1 December 2020.

Version number	Commencement date
1	1 December 2020

2. Legislative authority

This Joint Standard is issued under sections 107 and 159(1) of the Act, read with sections 105, 106 and 108 of the Act.

3. Application

This Joint Standard applies to significant owners of financial institutions and financial institutions.

4. Definitions and interpretation

- 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.

'Authority' means the Financial Sector Conduct Authority or the Prudential Authority and "Authorities" mean both the Financial Sector Conduct Authority and the Prudential Authority;

'member of the senior management' means -

- (a) in the context of the business of a financial institution, a person referred to in the definition of 'key person'; and
- (b) in the context of a business other than a financial institution, a person that, in respect of such business, holds a similar position or performs a similar role or function to that of a key person; and

'significant owner' has the meaning set out in section 157(1) of the Act.

4.2 The 'Objectives 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 section of this Joint Standard.

5. Roles and responsibilities

- 5.1 A significant owner must have procedures in place for assessing and attesting to, on an annual basis and also upon written request by an Authority, its fitness and propriety as per the requirements of this Joint Standard. The assessment and attestation must be conducted within one year of the date of commencement of this Joint Standard and annually thereafter.
- 5.2 A financial institution must notify the Authorities, in the manner and form determined by the Authorities, within 30 days of it becoming aware of significant ownership or potential significant ownership in respect of the financial institution.
- 5.3 A significant owner must notify the Authorities, in the manner and form determined by the Authorities, within 30 days of it becoming aware of non-compliance with this Joint Standard or a change in the fit and proper status of the significant owner occurring.
- 5.4 A financial institution must notify the Authorities, in the manner and form determined by the Authorities, within 30 days of it becoming aware of non-compliance with this Joint Standard by a significant owner.
- 5.5 A significant owner or financial institution must, upon written 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.

6. Fitness and propriety requirements

- 6.1 A significant owner must be honest and have the necessary integrity, competence and financial standing required to support the business of a financial institution of which it is a significant owner.
- 6.2 Subject to section 7 below, the existence of any of the following constitutes prima facie evidence that a significant owner, who is a natural person, may lack honesty, integrity or competence:
- (a) the person has been convicted (and that conviction has not been expunged) of a financial crime as defined in section 1 of the Act or an offence similar to financial crime in a foreign country;
 - (b) the person has been convicted (and that conviction has not been expunged) of:
 - (i) an offence under a law relating to the regulation or supervision of a financial institution as defined in the Act involving theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or
 - (ii) an offence similar to an offence referred to in subsection (i) above under the law of a foreign country;where the penalty for the offence was, or may be, imprisonment or a fine;
 - (c) the person has been convicted (and that conviction has not been expunged) 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 imprisonment without the option of a fine;
 - (d) the person has been convicted of a criminal offence which may lead to a conviction for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty under any law of any jurisdiction;
 - (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 of any jurisdiction;
 - (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 an 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 in respect of an unpaid debt and which debt remains unpaid; or
 - (ii) having been sequestrated 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;
- (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, 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 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 relating to honesty, integrity, or poor business or professional conduct;
- (n) the person has been disciplined, disqualified or removed in relation to matters relating 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 been obstructive in any dealings with, the responsible authority or a designated authority;
- (p) the person, as a result of a court order, is listed on the register of excluded persons in terms of section 14 of the National Gambling Act, 2004 (Act No.7 of 2004);
- (q) the person, as a result of a court order, is declared to be mentally unfit or disordered;
- (r) the person has been found to not be fit and proper by the responsible authority

or another designated authority in any previous assessments of fitness and propriety, and the reasons for being found not fit and proper have not been remedied;

- (s) 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 one year of that connection;
- (t) 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 one year of that connection; or
- (u) 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), (d), (e), (f), (h), (i), (l), (n), (o), or (r).

6.3 Subject to section 7 below, the existence of any of the following constitutes prima facie evidence that a significant owner that is a juristic person, may lack integrity or competence:

- (a) any of its 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. 71 of 2008), or a corresponding law of a foreign country; or
- (d) in the case of a financial institution, it has not successfully implemented its recovery plan or has been placed in resolution.

6.4 Subject to section 7 below, the existence of any of the following constitutes prima facie evidence that a significant owner may not have the necessary financial standing to support the business of the financial institution:

- (a) the significant owner does not have access to adequate funding or future access to capital enabling it to support the business of the financial institution when required;

- (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
- (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.

7. Matters to be considered when assessing fitness and propriety

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 reasonable considerations that the responsible authority deems relevant, having due regard to the:

- (a) nature and scope of the significant owner's business; and
- (b) structure of any group of companies of which the significant owner is part.

7.2 If a person wishes to assert that it is fit and proper despite the existence of one or more of the factors specified in section 6 above, the person must, when seeking the approval of the responsible authority in terms of section 158(2) of the Act, submit a declaration indicating the existence of one or more of the specified factors and providing reasons as to why the person believes it is, notwithstanding the existence of such factors, fit and proper to be a significant owner.

8. Increase or decrease in the extent of ability to control or influence

8.1 For the purposes of section 159(1)(b) of the Act, an increase or decrease of 5 or more in the percentages specified under section 157(2)(a), (b) and the definition of "qualifying stake" contemplated in section 157(2)(c) of the Act, constitutes "an increase or a 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".

8.2 For the purposes of paragraph (c)(iii) of the definition of "qualifying stake", it will constitute a 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", if such person no longer has the power to appoint or change any beneficiaries of the trust.

8.3 For the purposes of this section, "an increase or decrease" includes a cumulative increase or decrease over a period of time or a single 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".

9. Amendment of other regulatory instruments

- 9.1 This Joint Standard amends the regulatory instruments tabled in Attachment 1.
- 9.2 Any reference to significant owners contained in Prudential Standards, amended by this Joint Standard, must, unless a contrary intention appears, be read together with the provisions of this Joint Standard.

Attachment 1: Amendments to other regulatory instruments

Standard	Name	Extent of repeal or amendment
GOI 4	Fitness and Propriety of Key Persons and Significant Owners of Insurers	<ol style="list-style-type: none"> 1. By deleting 'and Significant Owners' in the title of the Standard. 2. By deleting the sentence: 'In the case of significant owners, it is linked to financial standing and integrity.' Captured in paragraph 1 of the table titled Objectives and Key Requirements of this Prudential Standard 3. By deleting the phrase 'and significant owners wherever it occurs.' 4. By substituting sub-section 4.2 with 'In practical terms this requires that key persons have integrity and the competence to meet the demands of their roles.' 5. By repealing section 7 6. By deleting sub-section 8.2 7. By deleting sub-section 8.4 8. By deleting subsection 9.4 9. By deleting the phrase 'or a significant owner' from sub-section 10.1
GOB	Governance and Operational Standard for branches of foreign reinsurers	By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it may occur.
GOG	Governance and Operational Standard for Insurance Groups	<ol style="list-style-type: none"> 1. By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it may occur. 2. By deleting 'and significant owners' wherever it may occur. 3. By deleting the sentence 'Significant Owners are as defined in section 1 of the Financial Sector Regulation Act, 2017' in footnote 1. 4. By deleting the term 'significant owner' in Attachment 1.
GOL	Governance and Operational Standard for Lloyd's	By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it may occur.
GOI 1	Framework for Governance and Operational Standards for Insurers	<ol style="list-style-type: none"> 1. By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it may occur. 2. By deleting the words 'and significant owners' wherever it may occur.

		<ol style="list-style-type: none"> 3. By the deletion of footnote 3. 4. By deletion of the words 'significant owners and' in sections 7.5 and 7.6 5. By deletion of the term 'significant owners' in section 7.6.
GOI 3	Risk Management and Internal Controls for Insurers	By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it may occur.
GOI 5	Outsourcing by Insurers	By deleting the words 'and Significant Owners' from the title of GOI 4 in section 7.2(f)
GOM	Governance and Operational Standard for Microinsurers	<ol style="list-style-type: none"> 1. By deleting the words 'and Significant Owners' from the title of section 8. 2. By deleting the words 'and Significant Owners' from the title of GOI 4 wherever it occurs.