

FSCA COMMUNICATION 27 OF 2023 (GENERAL)

CRIMINAL RECORD VERIFICATION OF CERTAIN DESIGNATED PERSONS AND SIGNIFICANT OWNERS

1 PURPOSE AND SCOPE

1.1 The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (FSCA) will be initiating a process to verify certain information about financial institutions, including criminal records of specific individuals.

1.2 This verification process will be undertaken in respect of:

1.2.1 Significant owners, key individuals, directors, shareholders, members, and trustees of authorised Financial Services Providers (FSPs) as defined in the Financial Advisory and Intermediary Services Act, No. 37 of 2002, excluding those FSPs referred to in paragraph 1.3; and

1.2.2 Significant owners and directors of collective investment scheme (CIS) managers as defined in the Collective Investment Schemes Control Act, No. 45 of 2002.

1.3 The following financial institutions are excluded from the scope of the verification process described in this Communication:

1.3.1 Banks, mutual banks and insurers licensed by the Prudential Authority (PA), as the verification process for these entities will be undertaken in a form and manner determined by the PA; and

1.3.2 FSPs that are authorised for non-life and/or health service benefit products only, sole proprietors, partnerships and members of the controlling body and senior management of Over the Counter Derivative Providers (ODPs). The verification process for these entities will be undertaken as a separate phase, details of which will be communicated by the FSCA at a later date.

2. BACKGROUND

- 2.1 In support of the FSCA's objectives under the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act) to enhance and support the efficiency and integrity of financial markets, protect financial customers and support financial stability, as well as its obligations as a supervisory body in terms of Schedule 2 of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act), the FSCA plays an important role in reducing the risk of financial institutions engaging in conduct that is, or may contribute to, financial crime¹.
- 2.2 In some instances the significant owners, key individuals, directors, shareholders, members and trustees of a financial institution are able to influence and control the business of the financial institution. A financial institution may thus unwittingly be used by such persons as a mechanism or channel to facilitate criminal activity.
- 2.3 Section 58(5)(e) of the FSR Act requires that when performing its functions, the FSCA must, to the extent practicable, have regard to regulatory and supervisory standards set by international standard setting bodies. South Africa is, among others, a member of the Financial Action Task Force (FATF), which is the global watchdog for money laundering and terrorist financing. This inter-governmental body sets international standards that aim to prevent these illegal activities and reduce the risk of harm they cause to society.
- 2.4 As a member of FATF, South Africa must adhere to the FATF Recommendations by implementing measures to effectively detect and prevent misuse of the financial system for such activities.
- 2.5 FATF Recommendation 26 states that (emphasis added): "Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution ..."
- 2.6 The principle behind the aforementioned FATF requirement is not new within the South African financial sector regulatory framework. In terms of the financial sector laws applicable to FSPs and CIS managers, certain persons (e.g. key individuals, directors,

¹ Also see, for example, sections 7(1)(e), 81(1), 106(2)(d), 144(1)(d), 145(b) and 253(1)(c) of the FSR Act.

shareholders, members, trustees and so forth) must meet specific criteria to demonstrate their fitness and propriety, including in respect of their honesty and integrity. This requirement also applies to significant owners of financial institutions.

- 2.7 As previously communicated in Information Request 6 of 2022: *Request for information relating to ownership of certain financial institutions* (RFI 6/2022)², the FSCA has embarked on an information gathering exercise to scrutinise the ownership and management of its supervised entities more closely aimed at mitigating the risk of financial institutions being used to facilitate criminal activity.
- 2.8 The e-portals through which information requested under RFI 6/2022 was submitted are still accessible at this [link](#). They may be still be used to continuously update any changes to the information initially provided in response to RFI 6/2022.
- 2.9 Additionally, the FSCA has been verifying information, including criminal records, relating to all new licence applicants, since 1 June 2022. New licence applicants are required to provide all the necessary verification information relating to sole proprietors, significant owners, key individuals, directors, shareholders, members, trustees and partners of FSPs as well as significant owners and directors of CIS managers as part of the licence application process.
- 2.10 Going forward, the FSCA also intends to continuously verify existing information on its system in respect of currently licensed entities, including criminal records of significant owners, directors, shareholders, members and trustees of FSPs as well as significant owners and directors of CIS managers.

3. PROVISION OF INFORMATION

- 3.1 The FSCA has appointed an independent service provider, namely Managed Integrity Evaluation (Pty) Ltd (MIE), to undertake the verification of records such as qualifications and criminal records, on its behalf.
- 3.2 In order to conduct the verification process as agreed with the FSCA, MIE may need to directly contact impacted individuals as recorded on the FSCA system to present

² Click [here](#) to access RFI 6/2022, published on 12 August 2022.

themselves at an agreed MIE fingerprint zone or satellite office closest to their location for the submission of fingerprints.

- 3.3 Impacted individuals will receive a link from MIE via the latest contact details as recorded on the FSCA system in order to make a booking at the closest zone or office on a suitable date and time. Individuals are reminded to bring along their official identification documents (ID book/card or passport) to the appointment.
- 3.4 It is expected that the verification process and contacting of impacted individuals as described above will commence on **1 November 2023**.

4. CONFIDENTIALITY OF INFORMATION

- 4.1 In terms of section 251 of the FSR Act, the FSCA is required to preserve the confidentiality of information collected and may only use information to the extent necessary to properly perform its functions.
- 4.2 In addition, the FSCA is a responsible party as defined under the Protection of Personal Information Act, No. 4 of 2013 (POPIA). The processes for collecting and verifying information as described in this Communication will be undertaken strictly in line with the FSCA's obligations under POPIA and the principles for safeguarding personal information contained in the FSCA's Privacy Statement.
- 4.3 The FSCA's Privacy Statement may be accessed on the FSCA website by clicking [here](#).

5. ENQUIRIES

Enquiries regarding this Communication must be sent to the following email address:
RFI@fsc.co.za



**FARZANA BADAT
DEPUTY COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

DATE: 17 October 2023