



Consultation paper:

Joint Standard on Fit and Proper Person Requirements for Significant Owners

This document is published in accordance with section 98 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017). It includes:

1. a notice inviting submissions in relation to the Joint Standard, stating where, how and by when submissions are to be made;
2. statements explaining the need for, the expected impact of, and the intended operation of the Joint Standard; and
3. the draft Joint Standard.

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1. Purpose of this consultation paper

The consultation paper relates to the standards the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA) (collectively referred to as the financial sector regulators) must make under section 159(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA) in respect of:

- fit and proper person requirements for significant owners of eligible financial institutions¹; mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers; and
- section 157(1) and section 158(4) of the FSRA, regarding 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".

A draft Joint Standard is proposed to address the above. The draft Joint Standard is attached as Annexure A. The draft Joint Standard aims to establish consistent fit and proper person requirements for significant owners of eligible financial institutions; mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers, and to define 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".

The consultation paper also relates to the necessary amendments to Prudential Standard GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers (GOI 4) prescribed under the Insurance Act, 2017 (Act No. 18 of 2017). The draft Joint Standard includes amendments to GOI 4.

2. Notice inviting submissions in relation to the Joint Standard

The financial sector regulators, in accordance with section 98(1)(a)(iv) of the FSRA, invite submissions in relation to the draft Joint Standard, attached as Annexure A, which they intend to make under section 159 of the FSRA.

Submissions on the draft Joint Standard, using the submission template attached as Annexure B may be submitted in writing on or before 16 November 2018 to the financial sector regulators, at FSCA.JointStandardComments@fsc.co.za and PA-Standards@resbank.co.za. The submission template consists of two parts. Part A relates to comments on the drafting, substance and other details of the Joint Standard, and Part B relates to comments on the expected impact

¹ Section 1 of the FSRA defines 'eligible financial institution' as each of the following:

- a financial institution licensed or required to be licensed as a bank in terms of the Banks Act;
- a financial institution licensed or required to be licensed as an insurer under the Insurance Act;
- a market infrastructure; and
- a financial institution prescribed in Regulations for the purposes of this definition.

of the draft Joint Standard.

3. Statement explaining the need for the draft Joint Standard

3.1 Regulation of significant owners not a new concept, but not consistent across financial sector laws

The regulation of direct and indirect significant owners, specifically in respect of licensing, acquisitions and transfers, is not new to the South African regulatory landscape, specifically in respect of banks; insurers; market infrastructures; mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers. This regulation is entrenched in financial sector law requirements relating to the control of these financial institutions. See Annexure C, which summarises the South African regulatory landscape.

However, the South African regulatory landscape does not consistently define what constitutes significant owners of financial institutions or have consistent requirements as to the fit and proper person requirements of significant owners.

Requirements relating to the control of these financial institutions and their significant owners have been entrenched in international standards and international financial sector regulation best practices for some time.

3.2 Twin Peaks and significant owners

The financial sector reform that saw the implementation of the Twin Peaks model of financial sector regulation recognises the importance of significant owners of financial institutions being persons that must have integrity, good reputation and a sound financial position.

The FSRA therefore has a dedicated chapter, Chapter 11, which addresses significant owners.

Chapter 11 defines a significant owner² and requires approvals or notifications relating to

² Section 157(1) and (2) of the FSRA 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 interrelated person, has the ability to control or influence materially the business or strategy of the financial institution. Without limiting the aforementioned, a person has this ability if the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint 15% of the members of the governing body of the financial institution; the consent of the person, alone or together with a related or interrelated person, is required for the appointment of 15% of the members of a governing body of the financial institution; or the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the financial institution. Section 1 of the FSRA defines a 'qualifying stake' as follows:

- (a) is a company, that a person, directly or indirectly, alone or together with a related or interrelated person:
 - (i) holds at least 15% of the securities of the financial institution;
 - (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the financial institution;
 - (iii) has the ability to dispose of or control the disposal of at least 15% of the financial institution's securities; or
 - (iv) holds rights in relation to the financial institution that, if exercised, would result in the person, directly or indirectly, alone or together with a related or interrelated person:
 - (aa) holding at least 15% of the securities of the financial institution;
 - (bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the financial institution; or
 - (cc) having the ability to dispose of or direct the disposal of at least 15% of the financial institution's securities;

significant owners of eligible financial institutions; managers of collective investment schemes; or financial institutions prescribed in regulations made under the FSRA, if any.

As stated above, the regulation of significant owners, specifically in respect of licensing, acquisitions and transfers, is not new to the South African regulatory landscape, specifically in respect of banks; insurers; market infrastructures; mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers. However, the FSRA does change the following:

- The manner in which reference is made to persons controlling these financial institutions. Going forward reference is made to significant owners of financial institutions as opposed to persons controlling financial institutions.
- The criteria for qualifying as a significant owner. The criteria is extended to, among other things, include persons who have the ability to dispose of or control the disposal of at least 15% of the financial institution's securities, and persons who hold rights in relation to the financial institution that, if exercised, would result in the person, directly or indirectly, alone or together with a related or interrelated person holding at least 15% of the securities of the financial institution, having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the financial institution or having the ability to dispose of or direct the disposal of at least 15% of the financial institution's securities.
- Requiring approval or notification if no longer qualifying as a significant owner of eligible financial institutions; managers of collective investment schemes; or financial institutions prescribed in regulations made under the FSRA, if any.

The application of section 158 of the FSRA is not limited to significant owners who have a direct interest in the financial institution, but also finds application in respect of significant owners who indirectly, alone or together with another person, have an interest in a financial institution.

The FSRA therefore obliges the financial sector regulators to make standards on fit and proper person requirements for significant owners. The FSRA also obliges the financial sector regulators to make a Joint Standard on 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", as referred to in section 157(1) and section 158(4) of the FSRA.

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- (b) is a close corporation, that a person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;
 - (c) is a trust, that a person has, directly or indirectly, alone or together with a related or interrelated person:
 - (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;
 - (ii) the power to appoint at least 15% of the trustees; or
 - (iii) the power to appoint or change any beneficiaries of the trust.

3.3 The role of significant owners

Significant owners of financial institutions are in a position to influence critical decisions by which the business and affairs of the financial institution are carried out.

The significant owners of a financial institution must therefore be persons with integrity, good reputation and a sound financial position in order to minimise risks that could threaten the:

- safety and soundness of the financial institution;
- ability of the financial institution to meet its obligations to its financial customers; and
- fair treatment of the financial customers of the financial institution.

A draft Joint Standard that provides for consistent fit and proper person requirements for significant owners is therefore appropriate and will facilitate clarity and consistency as to what constitutes fit and proper person requirements for financial institutions.

4. The draft Joint Standard

The draft Joint Standard is attached as Annexure A.

A single Joint Standard (SO JS 1) is proposed to address both:

- fit and proper person requirements for significant owners of eligible financial institutions; mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers; and
- 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" for purposes of section 157(1) and section 158(4) of the FSRA.

4.1 The application of the Joint Standard

The draft Joint Standard does not apply to all financial institutions. This is because of the nature of certain types of financial institutions and the need to do further work on appropriate fit and proper person requirements best suited for certain types of financial institutions that conduct similar financial service activities, but vary significantly across the nature, scale and complexity of those services.

The draft Joint Standard applies to the significant owners of the following financial institutions only:

- eligible financial institutions, defined in section 1 of the FSRA as financial institutions licensed or required to be licensed as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), a

financial institution licensed or required to be licensed as an insurer under the Insurance Act, and a market infrastructure³;

- managers of collective investment schemes registered under the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- financial institutions licensed or required to be licensed as mutual banks under the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- credit rating agencies registered under the Credit Rating Services Act, 2012 (Act No. 24 of 2012); and
- controlling companies of banks and insurers required to be licensed as such under the Banks Act and Insurance Act respectively.

The draft Joint Standards do not apply to the financial institutions listed in column 1 of the table below. The rationale for not including these financial institutions is set out in column 2 of the table below.

Type of financial institution	Rationale for not including these institutions in the scope of the statement and draft Joint Standard
Pension funds	These financial institutions are member-based institutions. They do not have significant owners within the meaning of the FSRA. The Pension Funds Act, 1956 (Act No. 24 of 1956) regulates and safeguards members' rights.
Friendly societies	These financial institutions are member-based institutions. They do not have significant owners within the meaning of the FSRA. The Friendly Societies Act, 1956 (Act No. 25 of 1956) regulates and safeguards members' rights. Also, National Treasury is considering the incorporation of these institutions into the Co-operatives Act, 2005 (Act No. 14 of 2005).
Co-operative financial institutions (CFIs)	These financial institutions are member-based institutions. These financial institutions must be co-operatives registered under the Co-operatives Act. This Act regulates and safeguards members' rights. They do not have significant owners within the meaning of the FSRA.

³ Section 1 of the FSRA defines a 'market infrastructure' as meaning each of the following, as they are defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012):

- (a) a central counterparty;
- (b) a central securities depository;
- (c) a clearing house;
- (d) an exchange; and
- (e) a trade repository.

<p>Co-operative banks</p>	<p>These financial institutions are member-based institutions. These financial institutions must be co-operatives registered under the Co-operatives Act. This Act regulates and safeguards members' rights. They do not have significant owners within the meaning of the FSRA.</p>
<p>Financial services providers</p>	<p>These financial institutions vary significantly in nature, scope, size, complexity and the type of services provided. Further work on appropriate fit and proper person requirements best suited for these types of financial institutions will be undertaken. Once this work is completed financial service providers will be included in the standard.</p>
<p>Holding company of a financial conglomerate</p>	<p>A dedicated project to develop the regulatory framework for financial conglomerates has been initiated by the PA.</p>
<p>Branches of foreign reinsurers referred to in the Insurance Act and branches of foreign institutions referred to in the Banks Act</p>	<p>The structure and characteristics of branches differ from those of other reinsurers and banks. Branches are not legal entities separate from the foreign reinsurers or institutions, but are operating entities of the foreign reinsurers or institutions located in the Republic of South Africa. The business conducted in the Republic by branches therefore forms part of the balance sheets of the foreign institutions. As these foreign institutions are subject to regulatory and supervisory regimes in their home jurisdictions that are equivalent to the Insurance Act and Banks Act, the financial sector regulators may place reliance on that regulatory and supervisory regime in relation to the fitness and propriety of the significant owners of these foreign institutions.</p>
<p>Insurers that are co-operatives</p>	<p>These financial institutions are member-based institutions. These financial institutions must be co-operatives registered under the Co-operatives Act. This Act regulates and safeguards members' rights. They do not have significant owners within the meaning of the FSRA.</p>
<p>Other financial product or service providers (within the meaning of the FSRA) not regulated under a financial sector law other than the FSRA</p>	<p>The scope of regulation of these financial institutions by the PA and the FSCA respectively is still under consideration.</p>

4.2 The substance of the draft Joint Standard

In conceptualising the fit and proper person requirements of the draft Joint Standard, care was taken to include only those requirements that are regarded as essential minimum requirements that significant owners must meet. However, it is recognised that the non-discretionary application of the requirements may result in unfair outcomes. The draft Joint Standard therefore provides for the proportional application of the requirements by allowing discretion to financial institutions and the financial sector regulators. The discretion must, however, be exercised in accordance with the criteria provided for in the draft Joint Standard.

The draft Joint Standard proposes that any 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 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” for purposes of sections 157(1) and 158(4) of the FSRA. This percentage appears to be reasonable as such an increase or decrease may impact on the business and affairs of the financial institution.

In developing the draft Joint Standard the existing South African regulatory landscape was considered, specifically existing requirements provided for in GOI 4 and Notice 910 of 2010: Determination for Fit and Proper Requirements and Conditions for Managers of Collective Investment Schemes made under the Collective Investment Schemes Control Act. See Annexure C.

The making of the draft proposed Joint Standard under section 159 of the FSRA requires the amendment of GOI 4 to be aligned with the Joint Standard. GOI 4 is therefore amended by the draft Joint Standard to remove requirements relating to significant owners.

In addition, international standards and international financial sector regulation best practices were considered. See Annexure D that sets out the international standards landscape as well as insights and lessons from other jurisdictions.

4.3 The proposed effective date of the draft Joint Standard

Chapter 11 of the FSRA will commence on 1 January 2019. It is therefore important to have appropriate standards in place as soon as possible to enhance the implementation of Chapter 11, specifically section 158 of that chapter.

The proposed effective date of the draft Joint Standard is therefore 1 January 2019 or as soon as possible thereafter. However, it is recognised that transitional arrangements may be required to facilitate the effective implementation of the draft Joint Standard. The submission template attached as Annexure B, specifically Part B thereof, calls for inputs on appropriate transitional arrangements.

5. Statement of the expected impact of the draft Joint Standard

As stated above, section 159 of the FSRA obliges the financial sector regulators to make standards in respect of the matters addressed in the draft Joint Standard.

As the application of the draft Joint Standard is limited to banks; insurers; market infrastructures; mutual banks; managers of collective investments schemes; credit rating agencies; and controlling companies of banks and insurers, it is the view of the PA and the FSCA that the draft Joint Standard will not have a significant regulatory impact on these financial institutions. This is because, as stated earlier, these financial institutions are familiar with regulatory frameworks relating to significant owners.

It is, however, recognised that the implementation of the draft Joint Standard may have additional resource implications for these financial institutions. However, the PA and FSCA is of the view that these additional resource implications are justified, as fit and proper significant owners are essential and in the interest of financial customers.

6. Statement explaining the intended operation of the draft Joint Standard

The financial sector laws relating to banks; insurers; market infrastructures; mutual banks; managers of collective investments schemes; credit rating agencies; and controlling companies of banks and insurers are not inconsistent with the draft Joint Standard.

The Insurance Act builds on the provisions of Chapter 11 of the FSRA and is therefore consistent with the FSRA.

The Collective Investment Schemes Control Act is also consistent with the FSRA and can therefore be applied concurrently.

The Banks Act and the Financial Markets Act provide for the Minister of Finance to approve certain transactions relating to significant owners. This is not inconsistent with the FSRA. The FSRA can be applied concurrently with the above-mentioned Acts. This means that from 1 January 2019, the PA or the FSCA, as the case may be, will approve significant owners in accordance with the FSRA and the relevant financial sector law, and where Minister's approval is required under the financial sector laws, the Minister will also have to approve.

In the event of any inconsistencies that may arise on implementation of the draft Joint Standard, the draft Joint Standard will prevail. This is because section 9 of the FSRA (Inconsistencies between the Act and other financial sector laws) provides that in the event of any inconsistency between a provision of the FSRA, other than a regulation or a regulatory instrument made under the FSRA, and a provision of another Act that is a financial sector law, the provision of the FSRA prevails. In the event of any inconsistency between a provision of a regulation or a regulatory instrument made in terms of the FSRA and a provision of a regulation or a regulatory instrument made in terms of a specific financial sector law, the provision of the regulation or regulatory instrument made in terms of the FSRA prevails.

7. The way forward

Subsequent to receiving submissions on the draft Joint Standard and careful consideration of the submissions on the draft Joint Standard, the financial sector regulators will submit the draft Joint Standard to Parliament for a period of at least 30 days while Parliament is in session, together with this consultation paper and a report on the consultation process.

The consultation paper to be submitted to Parliament may be updated to better reflect the expected impact of the draft Joint Standard based on the submissions received under Part B of the submission template.

Once the above documents have been submitted to Parliament, the financial sector regulators will develop processes and procedures as well as forms to assist with the implementation of the draft Joint Standard.

Annexure A: Joint Standard SO 1

Fitness and Propriety of Significant Owners

Objectives and key requirements of Joint Standard

This Standard only applies to eligible financial institutions (banks, insurers, market infrastructures); mutual banks; managers of collective investment schemes; credit rating agencies; and controlling companies of banks and insurers.

Prudent business management of these financial institutions is heavily dependent on the fitness and propriety of individuals or institutions that influence the critical business decisions of these financial institutions. In the case of significant owners, fitness and propriety is linked to financial standing, competence and integrity.

The financial sector regulators require these financial institutions to have a board-approved policy and related procedures for testing and assessing the fitness and propriety of its significant owners.

This Joint Standard sets out the matters that these financial institutions must consider when assessing the fitness and propriety of their significant owners. With respect to the integrity and financial standing, the Joint Standard identifies matters that constitute prima facie evidence against fitness and propriety. The financial sector regulators recognise that assessing fitness and propriety requires some judgement, and provides guidance on matters to consider when exercising that judgement.

This Joint Standard also sets out 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" for purposes of section 158(4) and section 158(7) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

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Attachment 1: Definitions used in the Joint Standard and other interpretational matters

1. Commencement and transition provisions

This Joint Standard commences on 1 January 2019.

Version number	Commencement date
1	1 January 2019

2. Legislative authority

This Joint Standard is issued under section 159 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA) read with section 105, 106 and 107 of the FSRA.

3. Application

3.1 This Joint Standard applies to all:

- a. eligible financial institutions as defined in section 1 of the FSRA;
- b. managers of collective investment schemes as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- c. financial institutions licensed or required to be licensed as mutual banks under the Mutual Banks Act, 2003 (Act No. 124 of 1993);
- d. credit rating agencies registered or required to be registered as credit rating agencies Credit Rating Services Act, 2012 (Act No. 24 of 2012); and
- e. controlling companies of banks and insurers required to be licensed as such under the Banks Act, 1990 (Act No. 94 of 1990) or the Insurance Act, 2017 (Act No. 18 of 2017) respectively.

3.2 This Joint Standard does not apply to branches of foreign reinsurers referred to in the Insurance Act, 2017, or branches of foreign institutions referred to in the Banks Act, 1990, because the structure and characteristics of these financial institutions differ from that of other insurers and banks. Branches are not legal entities separate from the foreign reinsurers or institutions, but are operating entities of the foreign reinsurers or institutions located in the Republic of South Africa (Republic). The business conducted in the Republic by branches therefore forms part of the balance sheets of the foreign institutions. As these foreign institutions are subject to regulatory and supervisory regimes in their home jurisdictions that are equivalent to the Insurance Act, 2017, and Banks Act, 1990,

the financial sector regulators may place reliance on that regulatory and supervisory regime in relation to the fitness and propriety of the significant owners of these foreign institutions.

- 3.3 This Joint Standard does not apply to insurers that are co-operatives within the meaning of the Co-operatives Act, 2005 (Act No. 14 of 2005) because these insurers are member-based institutions and do not have significant owners within the meaning of the FSRA.
- 3.4 This Joint Standard does not apply to Lloyd's or Lloyd's underwriters referred to in the Insurance Act, 2017, because the specific nature and characteristics of the Lloyd's insurance market. As Lloyd's and Lloyd's underwriters are subject to the regulatory and supervisory regime in the United Kingdom that is equivalent to the Insurance Act, 2017, the financial sector regulators may place reliance on that regulatory and supervisory regime in relation to the fitness and propriety of the significant owners of Lloyd's and Lloyd's underwriters.
- 3.5 Unless otherwise indicated, all references to 'financial institution' in this Joint Standard must be read as a reference to the institutions referred to in paragraph 3.1.

4. Roles and responsibilities

- 4.1 A financial institution's board of directors is ultimately responsible for ensuring that the financial institution complies with the fitness and the propriety principles and requirements of this Joint Standard.
- 4.2 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.

5. Principles

- 5.1 Prudent business management of a financial institution also depends on the suitability of its owners. Where a financial institution has one or more significant owners, the risks arising from unsuitability are accentuated. When applied to the significant owners of a financial institution, the concept of fitness and propriety includes integrity and financial resources. The latter arises from the potential need, under certain circumstances, for significant owners to support the financial institution's business with additional financial resources.
- 5.2 A financial institution must therefore ensure that significant owners are fit and proper for their roles.
- 5.3 In practical terms, this requires that significant owners have integrity, competence and the financial resources commensurate with supporting the financial institutions' business.

- 5.4 A financial institution must have a board-approved policy and related procedures for testing and assessing the fitness and propriety of its significant owners. The sections below set out minimum matters that should be considered in the policy and procedures.
- 5.5 Notwithstanding that primary responsibility for assessing fitness and propriety of significant owners resides with the financial institution, the FSRA, under section 158, requires the significant owners of financial institutions to be approved by the responsible authority for the financial sector law in terms of which the financial institution is required to be licensed. 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.

6. Fitness and propriety policy and procedures

- 6.1 A financial institution's fitness and propriety policy and procedures as required under section 5.4 must be consistent with this Joint Standard.
- 6.2 The policy and procedures must:
- a. clearly define and document the fitness and propriety criteria required for a significant owner, having regard to the requirements set out in this Joint Standard;
 - b. require periodic, but at least annual, fit and proper assessments for significant owners;
 - c. require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of significant owners;
 - d. set out the processes to be undertaken in assessing whether a significant owner is fit and proper;
 - e. specify the actions to be taken where the financial institution assesses an existing significant owner to no longer be fit and proper, including notifying the responsible authority of such an assessment and the actions taken;
 - f. include adequate provisions to allow for confidential reporting by any person who believes that a significant owner does not meet the financial institution's fit and proper criteria, and for the protection of such a person;
 - g. require that significant owners consent to being subject to the fitness and propriety policy; and
 - h. provide that the financial institution consents to any former significant owner disclosing information to the responsible authority.
- 6.3 The policy may form part of or be incorporated into the broader fit and proper policy of the financial institution applicable to key persons and/or other persons performing functions

on behalf of the staff of the financial institution.

- 6.4 In the context of controlling companies, the significant owners who must be included in the fit and proper policy are the significant owners of the insurance group or banking group (not the significant owners of each entity within the insurance group or banking group).

7. Fitness and propriety requirements

- 7.1 A significant owner of a financial institution must be in good financial standing and have competence and integrity. Given that competence and integrity is difficult to establish according to objective criteria, fitness and propriety tests generally approach the assessment from the negative, by identifying criteria that indicate a potential lack of integrity.
- 7.2 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:
- a. The person has been convicted (and that conviction has not been expunged) of a financial crime or is the subject of pending proceedings which may lead to such a conviction for a financial crime.
 - 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.
 - c. The person has been convicted (and that conviction has not been expunged) 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.
 - d. 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.

- e. The person has been the subject of frequent or severe preventative, remedial or enforcement actions by a designated authority.
- f. The person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty.
- g. The person has breached a fiduciary duty.
- h. 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.
- i. 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 be the subject of any pending proceedings which may lead to such a judgment, in respect of an unpaid debt and which debt remains unpaid; or
 - ii. having been sequestered, or be the subject of pending 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.
- j. The person has been, or is being, suspended, dismissed or disqualified from acting as a key person under any law.
- 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.
- l. 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 business conduct.
- m. The person has been, or is being, disciplined, reprimanded, disqualified or removed in relation to matters relating to honesty, integrity or business conduct by a professional body or a designated authority.
- n. 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.
- o. The person has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards.
- p. The person has been found to be not 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.

- q. 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.
- r. 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.
- 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 the subject of any matter referred to in paragraphs (a), (b), (c), (d), (e), (k), (m), (n), (o), (q) or (r).

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:

- a. Any of its direct or indirect significant owners who are natural persons fail to meet the requirements relating to integrity referred to in section 7.2 above.
- 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, or a corresponding law of a foreign country.
- d. In the case of a systemically important financial institution, it has not successfully implemented its recovery plan or has been placed in resolution.

7.4 In the case of a significant owner that is a legal person, competence and integrity must be demonstrated through its corporate behaviour.

7.5 Subject to section 8 below, any of the following constitutes prima facie evidence that a significant owner may not be in good financial standing:

- a. The significant owner does not have adequate financing or funding and future access to capital.
- b. The significant owner is not able or likely to be able to meet any of its financial obligations (including debts) as they fall due.
- 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.

8. Matters to be considered when assessing fitness and propriety

- 8.1 Despite section 7 above, a financial institution should, in assessing whether a significant owner is fit and proper, have due regard to the:
- a. nature and scope of the significant owner's business; and
 - b. structure of any group of companies that the significant owner is part of.
- 8.2 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 met, the financial institution must, when notifying the responsible authority of the proposal for the person to become a significant owner, 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 the person is fit and proper.

9. Regulatory approvals

- 9.1 In considering whether or not to approve a significant owner, the responsible authority will be guided by the principles set out in this Standard.
- 9.2 Where a financial institution proposes a significant owner subject to the conditions referred to in section 8.2 above, in considering its approval, the responsible authority will pay particular attention to the factors identified in section 8.1 above in addition to any other considerations the responsible authority deems relevant.

10. Standard relating to section 159(1)(b) of the FSRA

- 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 together with a related or interrelated person, to control or influence materially the business or strategy of the financial institution".
- 10.2 The following 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" 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 shareholder of the financial institution.

11. Regulatory intervention

The FSRA establishes trigger points for regulatory intervention. The FSRA, including section 159(3), and other financial sector laws detail actions that the responsible financial sector regulator may take in the event that it reasonably believes that a significant owner of a financial institution is no longer fit and proper.

12. Amendment of other regulatory instruments

- 12.1 GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers made by the Prudential Authority under the Insurance Act, 2017, is amended by:
- a. the deletion of the term 'significant owner' wherever it appears; and
 - b. the repeal of section 7.

Attachment 1: Definitions used in the Joint Standard and other interpretational matters

1. The following terms used in the Joint Standard on the Fitness and Propriety of Significant Owners of Financial Institutions are defined in the FSRA and have the same meaning in this Joint Standard:
 - designated authority
 - eligible financial institution
 - financial crime
 - financial institution
 - financial sector regulator
 - interrelated
 - joint standard
 - related
 - responsible authority
 - significant owner
 - systemically important financial institution
2. The 'Objectives and key requirements of Joint Standard SO 1' printed in italics at the start of this Joint Standard must not be used in the interpretation of any section of this Joint Standard.

Annexure B: Submission template

SUBMISSION	
JOINT STANDARD ON FIT AND PROPER PERSON REQUIREMENTS FOR SIGNIFICANT OWNERS	
DATE	DD/MM/YYYY
NAME OF ORGANISATION	
TYPE OF ORGANISATION	
CONTACT DETAILS	
PART 1: Comments on the drafting, substance and other details of the draft Joint Standard	
Section of the Standard	Issue/Comment/ Recommendation
(please add more rows)	
Part 2: Comments on the expected impact of the draft Joint Standard	
Question	Response
Q1: What do you see as the main costs arising from or risks associated with the making of the draft Joint Standard? (Where possible, please quantify expected costs.)	
Q2: What aspects of the proposed Joint Standard will increase or reduce costs? Where costs will increase, how can these costs be managed, mitigated or reduced?	

<p>(Please be specific and where possible make reference to specific aspects of the draft Joint Standard.)</p>	
<p>Q3: What aspects of the proposed Joint Standard will increase or reduce risks? Where risks will increase, how can these risks be managed, mitigated or reduced? (Please be specific and where possible make reference to specific aspects of the draft Joint Standard.)</p>	
<p>Q4: Overall, what is the expected change in costs and anticipated costs (on aspects such as staffing, systems, processes, contracts etc.) in respect of implementing the draft Joint Standard? (Please refer to expected costs that are a direct result of or closely linked to the draft Joint Standard.)</p>	
<p>Q5: What do you see as the main benefits of the draft Joint Standard?</p>	
<p>Q6: Are there any other issues relating to the draft Joint Standard that you think the financial sector regulators need to be cognisant of?</p>	
<p>Q7: The proposed effective date for the draft Joint Standard is 1 January 2019. Are transitional arrangements necessary to implement the Standard. If yes, what transitional arrangements do you propose? (Please provide a justification for your response.)</p>	

Annexure C: The South African regulatory landscape

1. Banks Act and Mutual Banks Act

The regulatory landscape in respect of deposit-taking institutions is set out with reference to the Banks Act and the Mutual Banks Act only. As stated in the table above, the rationale for not including Co-operative Banks and co-operative financial institutions is due to the nature of these institutions.

Banks Act

The Banks Act requires all banks to have a controlling company that controls the bank. The Act therefore regulates indirect interests in a bank. Section 37 of the Banks Act requires permission from the PA for the acquisition of shares in a bank or its controlling company. Section 42 places restrictions on the right to control a bank. Section 52 deals with the acquisition of subsidiaries, branch offices, other interests, and representative offices of banks and controlling companies, which requires notification to the PA and section 55 deals with reconstruction within a group of companies.

Regulation 21 and form BA 125 of the Regulations relating to Banks also require banks to complete and submit to the PA an annual return on significant shareholding.

Mutual Banks

Section 57 of the Mutual Banks Act deals with shareholding, but the Act does not specifically deal with the issue of significant owners.

2. Insurance Act

The regulatory landscape in respect of insurers and controlling companies of insurers is set out with reference to the Insurance Act only. This is because on 1 July 2018 matters relating to fit and proper person requirements for significant owners were repealed from the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

The Insurance Act defines ‘fit and proper requirements’ in relation to significant owners as qualities of honesty, and integrity and financial standing, as may be prescribed.

Chapter 3 of the Insurance Act deals with key persons and significant owners. Section 13 of the chapter (Fit and Proper Requirements for Key Persons and Significant Owners) authorises the PA to prescribe fit and proper requirements for significant owners of an insurer or a controlling company. Significant owners must at all times comply with the prescribed fit and proper requirements. Section 17 (Changes in control of insurer or controlling company) provides that it applies in addition to the FSRA. The section sets out the responsibilities of insurers, significant owners and potential significant owners, and authorises the PA to take regulatory action where a significant owner is not fit and proper or no longer fit and proper.

On 1 July 2018 the PA made Prudential Standards under section 63 of the Insurance Act. The Prudential Standards, as part of the Governance and Operational Standards for Insurers, includes GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers. Also, as part of the full set of Governance and Operational Standards, the following dedicated draft Standards were published: GOM: Governance and Operational Standard for Microinsurers, GOB: Governance and Operational Standard for Branches of Foreign Reinsurers, GOL: Governance and Operational Standard for Lloyd's and GOG: Governance and Operational Standards for Insurance Groups. These Prudential Standards incorporated GOI 4 into the latter standards in an appropriate and proportionate manner.

GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers requires insurers to have a board-approved policy and related procedures for testing and assessing the fitness and propriety of its key persons and significant owners. The Standard sets out the matters that insurers should consider when assessing the fitness and propriety of key persons and significant owners. With respect to integrity and financial standing, the Standard identifies matters that constitute prima facie evidence against fitness and propriety. The PA recognises that assessing fitness and propriety requires some judgement, and provides guidance on matters to consider when exercising that judgement. The Standard provides that an insurer's board of directors is ultimately responsible for ensuring that the insurer complies with the fitness and propriety principles and requirements of this Standard. The Standard also provides that an insurer's auditor must provide assurance to the insurer and the PA, if requested, that the insurer complies with the requirements of this Standard or part thereof.

The Standard sets out the following principles with which an insurer must comply:

- An insurer should ensure that significant owners are fit and proper for their roles.
- In practical terms, this requires that significant owners have integrity and the financial resources commensurate with supporting the insurer's business.

The Standard, notwithstanding that primary responsibility for assessing the fitness and propriety of significant owners, resides with the insurer. The Act requires the PA to approve significant owners. The Standard further provides that an insurer's fitness and propriety policy and procedures must be consistent with the Standard and sets out the minimum matters that the policy and procedures must address.

The Standard also sets out, in relation to significant owners, what constitutes prima facie evidence of integrity and good financial standing.

3. Collective Investment Schemes Control Act

The Act does not reference 'significant ownership'; however, it does reference a change of shareholding on a manager of a collective investment scheme.

Section 43 of the Collective Investment Schemes Control Act deals with a change in shareholding of a manager of a collective investment scheme. A manager may not change its shareholding (not only shareholding by a significant owner) without the prior approval of the FSCA.

Notice 910 of 2010: Determination for Fit and Proper Requirements and Conditions for Managers of Collective Investment Schemes, paragraph 6 of Part VI, addresses the financial soundness of a manager and its shareholders (direct and indirect). It requires that a manager and its shareholder(s) must not be under liquidation or provisional liquidation, and that the assets of any shareholder (direct and/or indirect) of the manager as well as that of the manager must exceed the liabilities of the shareholder or manager, as the case may be.

4. Financial Markets Act

Section 67 of the Financial Markets Act prescribes in which circumstances a person will be deemed to control a market infrastructure.

Section 67(3) provides that a person may not, without the prior approval of the PA, acquire or hold shares or any other interest in a market infrastructure, if the acquisition or holding results in that person, directly or indirectly, alone or with an associate, exercising control as set out in subsection (1) over market infrastructures. Subsection (7) empowers the Minister of Finance or the FSCA, as the case may be, to apply to Court, if satisfied on reasonable grounds that the retention of a particular shareholding or other interests by a particular person will be prejudicial to the market infrastructure for an order compelling that person to reduce, within a period determined by the court:

- the shareholding or other interests in the market infrastructure to a shareholding with a total nominal value not exceeding 15% or 49%, as the case may be, of the total nominal value of all the issued shares of the market infrastructure; and
- limiting, with immediate effect, the voting or other rights that may be exercised by such person by virtue of his/her shareholding or other interest in the market infrastructure, to 15% or 49% of the voting or other rights attached to the shares or other interests, as the case may be.

5. Credit Rating Services Act

The Credit Rating Services Act requires a credit rating agency, when applying for registration, to provide details of its ownership structure, organizational structure and corporate governance. The Act also requires a registered credit rating agency to inform the FSCA of any change to the information submitted when it applied to be registered.

The Act also requires credit rating agencies to be organized in a way that ensures its business interests does not impair the independence and integrity of credit ratings or the accuracy of credit rating services.

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 is consistent with international best practice.

Annexure D: The international standards landscape, and insights and lessons from other jurisdictions

Since the 2008 global financial crisis, the Group of Twenty (G20) (of which South Africa is a member), guided by the International Monetary Fund and the Financial Stability Board (of which South Africa is a member by virtue of its membership of the G20), has led the process to make the global financial sector safer. As a member of the G20, South Africa has committed to meeting international standards to the extent practicable and with due consideration to the South African context. Given that financial institutions operate globally, but are regulated nationally, it is imperative that national regulators coordinate the supervision of multinational institutions by setting and applying international standards. Also, by committing to international standards, South African financial institutions are able to operate in other countries with greater ease, as the different country regulators work together.

In respect of banks, the international standard-setting body is the Basel Committee on Banking Supervision, which has issued the Core Principles on Effective Banking Supervision with which all jurisdictions must comply.

In respect of insurers, the international standard-setting body is the International Association of Insurance Supervisors (IAIS), which has issued Insurance Core Principles (ICPs) with which all jurisdictions must comply.

In respect of market infrastructures and collective investment schemes, the international standard-setting body is the International Organization of Securities Commissions (IOSCO), which has issued Objectives and Principles of Securities Regulation with which all jurisdictions must comply. In addition, in respect of market infrastructures the Committee on Payments and Market Infrastructures (CPMI) and IOSCO have issued Principles for Financial Market Infrastructures with which payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories must comply.

1. The international standards landscape

1.1 Core Principles on Effective Banking Supervision⁴

The most relevant Core Principles relating to banks are Principle 5: Licensing criteria, Principle 6: Transfer of significant ownership, and Principle 7: Major Acquisitions.

Principle 5: Licensing criteria

The licensing authority has the power to set criteria and reject applications for establishments that do not meet the criteria. At a minimum, the licensing process consists of *an assessment of*

⁴ The full set of Core Principles on Effective Banking Supervision is available at <https://www.bis.org/publ/bcbs230.htm>

the ownership structure and governance (including the fitness and propriety of board members and senior management) of the bank and its wider group, and its strategic and operating plan, internal controls, risk management and projected financial condition (including capital base). Where the proposed owner or parent organisation is a foreign bank, the prior consent of its home supervisor is obtained.

Principle 6: Transfer of significant ownership

The supervisor has the power to review, reject and impose prudential conditions on any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties.

Principle 7: Major acquisitions

The supervisor has the power to approve or reject (or recommend to the responsible authority the approval or rejection of), and impose prudential conditions on, major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross-border operations, and to determine that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.

Principle 12: Consolidated supervision

An essential element of banking supervision is that the supervisor supervises the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential standards to all aspects of the business conducted by the banking group worldwide.

Additional criteria: For countries which allow corporate ownership of banks, the supervisor has the power to establish and enforce fit and proper standards for the owners and senior management of parent companies.

1.2 Insurance Core Principles⁵

The three most relevant Core Principles relating to insurers are Principle 4: Licensing, Principle 5: Suitability of persons, and Principle 6: Changes in Control and Portfolio Transfers. Only the relevant sub-standards are referred to below.

Note that in respect of the application of ICPs and standards to group-wide supervision, the Insurance Core Principles provide that for the purpose of these ICPs, the term ‘insurer’ means insurance legal entities, insurance groups and insurance-led financial conglomerates. The ICPs and standards apply to the supervision of insurance legal entities and, unless otherwise specified, to insurance groups and insurance-led financial conglomerates, including the head of the insurance group and/or the head of the insurance-led financial conglomerate.

ICP 4: Licensing

⁵ The full set of Insurance Core Principles is available at <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles>

A legal entity which intends to engage in insurance activities must be licensed before it can operate within a jurisdiction. The requirements and procedures for licensing must be clear, objective and public, and be consistently applied.

ICP 4.3: Licensing requirements and procedures are clear, objective and public, and are consistently applied. At a minimum, the applicant is required to:

- have sound business and financial plans;
- have a corporate or group structure that does not hinder effective supervision;
- establish that the applicant's board members, both individually and collectively, and senior management, key persons in control functions and significant owners are suitable;
- have an appropriate governance framework; and
- satisfy capital requirements.

ICP 5: Suitability of persons

The supervisor requires board members, senior management, key persons in control functions and significant owners of an insurer to be and remain suitable to fulfil their respective roles.

ICP 5.2: The supervisor requires that in order to be suitable to fulfil their roles:

- board members (individually and collectively), senior management and key persons in control functions possess competence and integrity; and
- significant owners possess the necessary financial soundness and integrity.

ICP 5.3: The supervisor requires the insurer to demonstrate initially and on an ongoing basis, the suitability of board members, senior management, key persons in control functions and significant owners. The suitability requirements and the extent of review required by the supervisor depend on the person's role.

ICP 6: Changes in control and portfolio transfers

Supervisory approval is required for proposals to acquire significant ownership or an interest in an insurer that results in that person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer. The same applies to portfolio transfers or mergers of insurers.

ICP 6.5: The supervisor is satisfied that those seeking control meet the same criteria as they would be required to meet if they sought a new licence (see ICP 4 above).

ICP 6.8: To assess applications for proposed acquisitions or changes in control of insurers, the supervisor establishes requirements for financial and non-financial resources.

ICP 6.10: The transfer of all or a part of an insurer's business is subject to approval by the supervisor, taking into account, among other things, the financial position of the transferee and

the transferor. The supervisor satisfies itself that the interests of the policyholders of both the transferee and transferor will be protected.

1.3 Objectives and Principles of Securities Regulation⁶

The three most relevant Core Principles relating to insurers are Principle 4: Licensing, Principle 5: Suitability of persons, and Principle 6: Changes in control and portfolio transfers. Only the relevant sub-standards are referred to below.

A: Principles relating to the Regulator

8. The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.

G: Principles for collective investment schemes

24. The regulatory system should set standards for the eligibility, governance, organisation and operational conduct of those who wish to market or operate a collective investment scheme.

25. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes, and the segregation and protection of client assets.

H: Principles for market intermediaries

29. Regulation should provide for minimum entry standards for market intermediaries.

30. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.

I: Principles for secondary and other markets

33. The establishment of trading venues, including securities exchanges, should be subject to regulatory authorisation and oversight.

34. There should be ongoing regulatory supervision of exchanges and trading venues that should aim to ensure that the integrity of the markets are maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

J: Principles relating to clearing and settlement

38. Securities settlement systems, central securities depositories, trade repositories and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient, and that they reduce settlement and/or systemic risk.

⁶ The full set of Objectives and Principles of Securities Regulation is available at https://www.iosco.org/about/?subsection=display_committee&cmtid...principles

2. Insights and lessons from other jurisdictions

In considering the substance of the proposed Joint Standard, a detailed international financial sector regulation best practices desktop assessment of the international regulatory landscape was undertaken.

Valuable insights were gleaned from the following jurisdictions in as far as these jurisdictions address significant owners, control of financial institutions, and acquisitions and transfers in respect of financial institutions in the European Union, the United Kingdom, Australia, Canada, Jersey, Ireland and Malaysia.

The most informative insights were:

- the Policy Document on shareholder suitability issued by Bank Negara Malaysia (the central bank of Malaysia) in August 2016 pursuant to the Financial Services Act, 2013 (FSA) and section 103(1) of the Islamic Financial Services, 2013 (IFSA). The Policy Document applies to all persons who hold an aggregate interest of 5% or more in the shares of a licensed person (banks and insurers); and
- Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC⁷ with regard to procedural rules and evaluation criteria for the prudential assessment of acquisitions and the increase of holdings in the financial sector; and
- European Securities and Markets Authority guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (effective October 2017) that informs each of the assessment criteria referred to in the directives referred to above.

⁷ Directive 92/49/EEC of 18 June 1992 relates to the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance directive). Directive 2002/83/EC of 5 November 2002 relates to life assurance. Directive 2004/39/EC of 21 April 2004 relates to markets in financial instruments. Directive 2005/68/EC of 16 November 2005 relates to reinsurance. Directive 2006/48/EC of 14 June 2006 relates to the taking up and pursuit of the business of credit institutions and to regulating situations in which a natural or legal person has taken a decision to acquire or increase a qualifying holding in a credit institution, assurance, insurance or reinsurance undertaking or an investment firm.