



FSCA COMMUNICATION 12 OF 2023 (CIS)

CHANGES TO CRIMINAL VERIFICATION CHECKS IN RESPECT OF COLLECTIVE INVESTMENT SCHEMES (CIS)

1. PURPOSE

The purpose of this Communication is to inform CIS managers and trustees about changes to the Financial Sector Conduct Authority's (FSCA) approach to conducting criminal verification checks in respect of directors and significant owners, who are natural persons, of CIS managers.

2. BACKGROUND

- 2.1 In terms of the Determination of Fit and Proper Requirements and Conditions for Managers of Collective Investment Schemes, published under Notice 910 of 2010 in Government *Gazette* No. 33571 on 21 September 2010 (N 910), any manager authorised to administer a CIS in terms of the Collective Investment Schemes Control Act, No. 45 of 2002 (CISCA) must adhere to the fit and proper requirements and conditions set out in N 910.
- 2.2 Pursuant to paragraph 4(a) of N 910, the fit and proper requirements include a provision stipulating that directors of CIS managers must be persons who are honest and who have integrity.
- 2.3 Paragraph 4(d)(i) of N 910 provides, among others, that if a director has within a period of five years preceding the date of application or the proposed date of appointment for approval, as the case may be, been found guilty in any criminal proceedings of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, such criminal conviction constitutes *prima facie* evidence that such director is not honest and/or does not have integrity.
- 2.4 In terms of sections 157 to 159 of the Financial Sector Regulation Act, No. 9 of 2017, read with Joint Standard 1 of 2020: Fitness, Propriety and other matters related to Significant Owners (the Joint Standard), a significant owner of a CIS manager must have the necessary integrity, competence and financial standing required to support the business of the manager of which it is a significant owner.
- 2.5 The Joint Standard, similar to N 910, describes circumstances that, *prima facie*, constitute evidence that a significant owner who is a natural person lacks honesty, integrity or competency, which circumstances include criminal convictions for various offences as listed in the Joint Standard.

- 2.6 Previously, the FSCA and its predecessor the Financial Services Board (FSB), conducted criminal verification checks on directors and board members of supervised entities based on the submission of police clearance certificates. Such certificates needed to be provided together with the application for registration of a CIS manager in terms of section 42 of CISCA or approval for a change in director or shareholding of a CIS manager in terms of section 43 of CISCA.
- 2.7 The aforementioned process was set out in CISCA Circular No. 16 to Managers and Trustees of Collective Investment Schemes – Verification Checks dated 12 January 2012 (Circular 16).

3. REVISED APPROACH TO CRIMINAL VERIFICATIONS CHECKS

- 3.1 The FSCA has implemented a revised process for conducting criminal verification checks through the use of an independent service provider, namely Managed Integrity Evaluation (Pty) Ltd (MIE).
- 3.2 Accordingly, upon receipt of an application for registration as a CIS manager in terms of section 42 of CISCA, or approval of a change in the directors or shareholding of the CIS manager in terms of section 43 of CISCA, all verification checks in respect of such applications will now be conducted by MIE.
- 3.3 In order for MIE to conduct such verification checks the FSCA will, instead of the submission of police clearance certificates, require the fingerprints of the following persons:
 - 3.3.1 all directors of the entity that is applying for registration as a CIS manager; or
 - 3.3.2 the new director(s) in respect of which approval is sought in terms of section 43(1)(a) of CISCA; and/or
 - 3.3.3 all significant owners, who are natural persons, of the-
 - (i) entity applying for registration as a CIS manager; or
 - (ii) CIS manager requesting approval for a change in shareholding in terms of section 43(1)(a) of CISCA.
- 3.4 MIE has more than 100 fingerprint zones across the country and therefore the vetting process will be conducted manually in all these designated zones on an appointment basis.
- 3.5 The FSCA will schedule an appointment with the nearest MIE agent on behalf of the person/s referred to in paragraph 3.3 to have their fingerprints taken.
- 3.6 Should the MIE fingerprint zone not be conveniently located for a person referred to in paragraph 3.3, such person will be required to visit their nearest South African Police Services (SAPS) station to have their fingerprints captured in ink on the SAPS 91(a) form. Once the fingerprints have been captured, the person should courier the original SAPS 91(a) form containing the set of fingerprints, together with a copy of the person's identity document or passport, to the MIE offices at the following address:

Unit 1, Jean Park Chambers
252 Jean Avenue
Centurion
0157

- 3.7 A person referred to in paragraph 3.3 that is not a South African citizen, residing either within or outside the Republic of South Africa, must contact the FSCA directly for guidance on the steps to be followed for purposes of these verification checks.
- 3.8 The cost of verifying criminal records by MIE will be borne by the FSCA, except fees payable to the SAPS to have a person's fingerprints captured on the SAPS 91(a) form and fees to courier the documents to the MIE office for verification purposes.

4. PROTECTION OF PERSONAL INFORMATION

- 4.1 The processes for collecting of fingerprints and conducting of criminal background checks as described in this Communication will be undertaken in line the FSCA's obligations under the Protection of Personal Information Act, No. 4 of 2013 (POPIA) and the principles for safeguarding personal information contained in the FSCA's Privacy Statement.
- 4.2 The FSCA's Privacy Statement may be accessed on the FSCA website by clicking [here](#).

5. WITHDRAWAL OF CIRCULAR 16

Circular 16 is no longer applicable and is hereby withdrawn.

6. ENQUIRIES

For further information regarding this Communication, please contact Ms. Susan Schutte at Susan.Schutte@fsca.co.za.



FARZANA BADAT
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Date of publication: 4 May 2023