



SUPERVISORY AND REGULATORY GUIDELINES: 2003-03
Fit & Proper
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**GUIDELINES FOR ASSESSING THE
FITNESS AND PROPRIETY OF APPLICANTS
FOR REGULATED FUNCTIONS**

I. INTRODUCTION

The Central Bank of The Bahamas (*“the Central Bank”*) is responsible for the licensing, regulation and supervision of banks, trust companies, Registered Representatives, non-bank money transmission businesses and money transmission agents operating in and from within The Bahamas pursuant to The Banks and Trust Companies Regulation Act, Chapter 316 of the revised Statute Laws of The Bahamas, 2009, and The Central Bank of The Bahamas Act, Chapter 351 of the revised Statute Laws of The Bahamas, 2009 as these may be amended from time to time.

All financial institutions which are supervised by the Central Bank are expected to adhere to the Central Bank’s licensing/approval and prudential requirements and ongoing supervisory programmes, including periodic on-site inspections, and required regulatory reporting. These financial institutions are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

These Guidelines should be read in conjunction with the following Guidelines:

- a. *Guidelines for the Minimum Standards of Character and Financial References;* and
- b. *General Information and Guidelines for Licence Applications for Banking and/or Trust Companies.*

II. Purpose

These Guidelines outline and describe the criteria that The Central Bank will consider in assessing the fitness and propriety of a person seeking approval to perform a regulated function. These Guidelines are also relevant in assessing the continuing fitness and propriety of persons already performing *regulated functions*.

For the purpose of these Guidelines, *Regulated Functions* include:-

- (1) Serving as a director of a financial institution which is supervised by the Central Bank or of an applicant for a licence, approval or registration;

- (2) Serving as a senior executive officer (i.e., an individual who has been given the authority by the Board to commit the licensee with respect to legal and/or financial transactions) of a financial institution which is supervised by the Central Bank or of an applicant for a licence, approval or registration;
- (3) Serving as a Senior Officer of a managed licensee;
- (4) A controller of a financial institution which is supervised by the Central Bank;
- (5) Owning, holding or exercising voting control over 5% or more of the share capital of a licensee or a licence applicant (significant shareholders);
- (6) Holding any portion of the issued share capital of a licensee in a nominee capacity (as in the case of a trustee of the parent company or beneficial shareholder); and
- (7) Performing any other function in or for a financial institution that is supervised by the Central Bank and which requires approval, supervision or monitoring by the Central Bank.

Executive Officers include the two officers to be directly responsible for the licensee's management and day-to-day operations in The Bahamas (Senior Officials I/II), other senior members of management and/or the corporate officers described under the Companies Act (for example, as in the case of Chairman or Deputy Chairman of the board of directors, President, Managing Director, Vice President, General Manager, Secretary or Treasurer).

The criteria listed in these Guidelines are *guidance* and will be applied in general terms when the Central Bank is determining an applicant's fitness and propriety. It would be impossible to produce a definitive list of all matters which would be relevant to a determination of fitness and propriety.

III. Approval for Regulated Functions

In carrying out its duty of promoting and maintaining high standards, The Central Bank is charged with the responsibility of assessing the fitness and propriety of persons nominated to perform *regulated functions*. The probity and competence of directors, executive and senior officers and controllers, are critical to the achievement of the objectives of supervision. The Central Bank will grant approval for an individual to perform a *regulated function* only if satisfied that the candidate is fit and proper to perform the *regulated function*.

The Central Bank may require the substitution of any director or officer of a financial institution which it supervises if, inter alia, the director or officer is considered not to be fit and proper to continue to perform the regulated function.

IV. Assessing Fitness and Propriety

The Central Bank will consider a number of factors when assessing the fitness and propriety of an applicant seeking approval to perform a *regulated function*. The most important considerations will be the applicant's:

- (1) Honesty, integrity and reputation;
- (2) Competence and capability, given the nature and level of the business activities of the licensee and the type of licence held;
- (3) Financial soundness; and
- (4) Previous disciplinary record, general compliance history and whether the Central Bank, or any other domestic regulatory authority or a Supervisory Authority, has previously imposed a disciplinary sanction on the person.

V. Honesty, Integrity and Reputation

In determining an applicant's honesty, integrity and reputation, the Central Bank will consider matters including, but not limited to, those set out in these guidelines. Individuals applying to serve in the capacity of Controller, Shareholder, Director, Executive Officer, Senior Officer and/or Money Laundering Reporting Officer of a financial institution should inform the Central Bank of these matters via the *Confidential Statement by Individuals who are Proposing to Function as a Shareholder or Hold the Position of Director, Executive Officer, Senior Officer and/or Money Laundering Reporting Officer of a Bank or Trust Company Licensed by The Central Bank of The Bahamas* (Confidential Statement), along with other supporting documents outlined in Appendix A. The Confidential Statement should be reviewed and resubmitted to the Central Bank every three (3) years.

In assessing honesty, integrity and reputation the Central Bank will consider the following:

- (1) Whether the applicant has been convicted of any criminal offence, excluding:-
 - (a) any minor offence committed by the applicant when he was under the age of 18, unless the same offence was committed within the last ten years; or
 - (b) any minor road traffic offence.

Particular consideration will be given to offences of dishonesty, fraud, financial crime or other offences relating to banking, trust and other financial services.

- (2) Whether the applicant or any body corporate, partnership or unincorporated institution which the applicant is or was associated with as a director or executive

officer, has been the subject of an investigation, in The Bahamas or elsewhere, by or at the instigation of a government department or agency, professional association, or other regulatory body.

- (3) Whether the applicant in The Bahamas or elsewhere, has been dismissed from any office or employment, or been subject to disciplinary proceedings by the applicant's employer or been barred from entry to any profession or occupation.
- (4) Whether the applicant, in connection with the formation or management of any body corporate, partnership or incorporated institution, has been adjudged by a court, in The Bahamas or elsewhere, civilly liable for any fraud, misfeasance, or other misconduct by the applicant towards such a body or company or towards any members thereof.
- (5) Whether any body corporate, partnership or unincorporated institution with which the applicant was associated as a director or executive officer, in The Bahamas or elsewhere, has been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading, while the applicant was associated therewith, or whether anything analogous to any of these events occurred under the laws of any jurisdiction.
- (6) Whether the applicant has been concerned with the management or conduct of the affairs of any institution that, by reason of any matter relating to a time when the applicant was so concerned, has been censured, warned as to future conduct, disciplined, or made the subject of a court order at the instigation of any regulatory authority, in The Bahamas or elsewhere.
- (7) Whether, in the past, the applicant has been candid and truthful in all his dealings with any regulatory body, in The Bahamas or elsewhere and whether the applicant demonstrated a readiness and willingness to comply with the requirements and standards of these regulatory systems and with other relevant legal and professional requirements and standards.
- (8) Whether the applicant is or expects to be, other than in a professional capacity, engaged in any litigation in The Bahamas or elsewhere.
- (9) How the applicant's reputation may impact upon the financial institution for which the *regulated function* is to be performed.

VI. Competence and Capability

In determining the applicant's competence and capability, the Central Bank will consider whether the applicant has demonstrated by experience, training and qualification that if approved, he/she will be capable of performing the regulated function.

Applicants for the positions of directors and senior and executive officers must:-

- (a) Have appropriate experience as well as qualifications in disciplines associated with financial and commercial matters;
- (b) Be fully conversant with the business affairs and activities of the financial institution, and be able to respond to inquiries from the Inspector of Banks and Trust Companies (the “Inspector”) about all aspects of the financial institution’s operations; and
- (c) Be qualified and able to perform, and capable of assuming, the responsibilities associated with the full administration and management of the financial institution’s business.

These factors will be considered in relation to the particular duties and responsibilities of the function for which the applicant has been nominated.

VII. Financial Soundness

In determining an applicant’s financial soundness, the Central Bank will consider factors including, but not limited to:

- (1) Whether the applicant has failed to satisfy any debt adjudged due and payable by the applicant, as a judgement under an order of a court, in The Bahamas or elsewhere, or made any compromise arrangement with the applicant’s creditors within the past 10 years.
- (2) Whether the applicant has been declared insolvent (either provisionally or finally) by a court in The Bahamas or elsewhere, or has had a bankruptcy petition served on him.

With respect to persons who are applying to own, hold or exercise voting control over 5% or more of the share capital of a bank or trust company licensee or applicant for a bank or trust company licence, the Central Bank requires the submission of a statement of assets and liabilities, certified by a public accountant.

VIII. Previous Disciplinary Record and General Compliance History

In determining an applicant’s previous disciplinary record and general compliance history, the Central Bank will consider matters including, but not limited to those set out in this guideline. The Central Bank should be informed of these matters via the Confidential Statement, along with other supporting documents outlined in Appendix A. The Confidential Statement should be reviewed and re-submitted to the Central Bank every three (3) years.

In assessing an applicant's previous disciplinary record and general compliance history, the Central Bank will consider whether the applicant, in The Bahamas or elsewhere, has been censured, disciplined, warned as to future conduct, or made the subject of a court order at the instigation of any regulatory authority or any professional body or held a practicing certificate or licence subject to conditions.

IX. Definitions

“Controller” means a person

- (a) in accordance with whose directions, instructions or wishes the directors or officers of a licensee, or of another company of which the licensee is a subsidiary, are accustomed or are under an obligation, whether formal or informal, to act;
- (b) who is able to exercise a significant influence over the management of a licensee or of another company of which it is a subsidiary by virtue of—
 - (i) a holding of shares or other securities in the licensee or such other company; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of, the licensee, or such other company;.
- (c) who is in a position to determine the policy of the licensee, but who is not—
 - (i) a director or officer of the licensee whose appointment has been approved by the Central Bank; or
 - (ii) a person in accordance with whose directions, instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by him in his professional capacity.

“Supervisory Authority” in relation to a country or territory outside The Bahamas means a foreign entity charged with the responsibility of conducting consolidated supervision of banking and trust business by organizations licensed in its home country.

Appendix A. Submissions in Support of An Application

The following documents should be submitted to the Bank Supervision Department in support of each application:-

1. A Curriculum Vitae, including a comprehensive description of the background of each proposed controller, shareholder, director, senior and executive officer, or money laundering reporting officer, sufficient to allow a determination that they satisfy the qualifications to carry out the responsibilities, as indicated above. Such information should relate to:
 - a. previous management level or equivalent experience in the range of activities that may be conducted by the licensee;
 - b. other management/administrative experience;
 - c. special language skills (if appropriate to the licensee or its business);
 - d. knowledge of pertinent Bahamian laws and supervisory and regulatory requirements; and
 - e. other relevant skills and experience.
2. Two Character Reference Letters*
3. One Financial Reference Letter*
4. Copy of passport or other official identification document
5. A recent net worth statement certified by a public accountant. (In the case of applications to acquire and own, hold or exercise voting control of share capital)
6. A certified Confidential Statement
7. A police certificate or other certificate issued within the last 6 months from a jurisdiction where the applicant has resided within the previous two years. In cases where a jurisdiction does not issue police certificates (e.g. India, Hong Kong), an affidavit confirming that the person has not been convicted of a serious crime or any offences shall be required
8. The appropriate Board Resolution (s) (in the case of subsidiaries or stand alone entities) or the relevant approval(s) issued by the parent bank (in the case of branches of foreign banks)

* Please refer to *Guidelines on the Minimum Standards for Character and Financial References* and *General Information and Guidelines for Licence Applications*.

9. A detailed job description (in the case of the two senior executive officers/Senior Official I/II)
 10. A certified copy of a valid Work Permit evidencing the right to engage in gainful employment in The Bahamas (as applicable to foreign applicants who reside in The Bahamas)
 11. Any other document that the Central Bank deems necessary
- In cases where applicants are being considered for a new regulated function, and have previously filed the aforementioned documents with the Central Bank, Police Certificates, Confidential Statements, Character and Financial References as previously submitted, will be valid for a period of three years, except in cases where the proposed appointee (i) is known to the Central Bank for at least 10 years and (ii) where the appointments are part of the same group.