



**Central Bank of The Bahamas**

**PUBLIC CONSULTATION**

on the

Fit and Proper Guidelines, 2023

## I. INTRODUCTION

- a. The Central Bank of The Bahamas (“the Central Bank”) initially released the Guidelines for Assessing the Fitness and Propriety of Applicants for Regulated Functions on the 15<sup>th</sup> August 2003. In March 2016, amendments were made to the Guidelines which assisted in providing supervisory enhancements for the assessment of applicants for regulated functions. Additionally, with the inclusion of the changes made to the Bank Supervision Department’s: Application Manual and the Central Bank of The Bahamas Act, 2020, the proposed amendments seek to strengthen the fit and proper regime.

## II. DETAILS OF THE PROPOSED GUIDELINES

- a. Revisions to the Guidelines include, inter alia, the enhanced approval and refusal criteria for regulated functions; reporting and disclosure of relevant information, enhancements to the Confidential Statement and the introduction of the Annual Return Form for Approved Persons.

## III. CONSULTATION PERIOD AND NEXT STEPS

- a. The Central Bank invites your comments on the proposed guidelines, which should be submitted no later than 31<sup>st</sup> January 2024. Your comments and questions regarding the proposals and amendments should be directed via email to the following:

Policy Unit  
Bank Supervision Department  
Central Bank of The Bahamas  
Email: [policy@centralbankbahamas.com](mailto:policy@centralbankbahamas.com)

Upon receiving feedback from interested parties, the Central Bank intends to finalise the Fit and Proper Guidelines by 28<sup>th</sup> February 2024, to become effective by 1<sup>st</sup> March 2024. The Bank reserves the right to vary this timeline based upon information received through consultation on this Guideline.



## SUPERVISORY AND REGULATORY GUIDELINES: 2023

Fit & Proper

Issued: 15 August 2003

Revised: 202X

### GUIDELINES FOR ASSESSING THE FITNESS AND PROPRIETY OF APPLICANTS FOR REGULATED FUNCTIONS

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## INTRODUCTION

1. The Central Bank of The Bahamas (“the Central Bank”) is responsible for the licensing, regulation and supervision of Supervised Financial Institutions (“SFIs”) operating in and from within The Bahamas pursuant to the Banks and Trust Companies Regulation Act, 2020 (“the BTCRA”), The Bahamas Co-operative Credit Unions Act, 2015 (“the BCCUA”), the Payments Instruments (Oversight) Regulations, 2017, the Bahamian Dollar Digital Currency Regulations, 2021, and the Central Bank of The Bahamas Act, 2020 (“the CBA”).
2. All SFIs are required to adhere to the Central Bank’s licensing, regulation and prudential requirements and on-going supervisory programmes, including periodic onsite examinations and required regulatory reporting. SFIs are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

## PURPOSE

3. 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.

## APPLICABILITY

4. These Guidelines are applicable to all applications relating to regulated functions of an SFI and should be read in conjunction with the documents listed in Appendix C.

## DEFINITIONS

5. For the purpose of these Guidelines:

**“Approved Person”** means a person who has been approved by the Central Bank to perform a regulated function in an SFI.

**“Compliance Officer”** or **“CO”** means an individual responsible for ensuring that the SFI is in full compliance with relevant laws and regulations of The Bahamas.

**“Controller”** means a person:

- a. in accordance with whose directions, instructions or wishes the directors or officers of an SFI, or of another company of which the SFI 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 an SFI or of another company of which it is a subsidiary by virtue of—
  - i. the holding of shares or other securities in the SFI or such other company; or
  - ii. an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the SFI, or such other company.
- c. who is in a position to determine the policy of the SFI, but who is not—
  - i. a director or officer of the SFI 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 SFI are accustomed to act by reason only that they act on advice given by such person in a professional capacity.

**“Director”** means a member of the board of an SFI or of an applicant for a licence from the Central Bank of The Bahamas.

**“Executive Officer<sup>1</sup>”**: means an individual who has the authority to commit an SFI with respect to legal and/or financial transactions of an SFI.

**“Money Laundering Reporting Officer”** or **“MLRO”** means an individual who is required to be registered with the Financial Intelligence Unit and to whom employees must report their knowledge or suspicion of transactions involving money laundering, the financing of terrorism or proliferation financing in addition to being responsible for receiving Suspicious Transaction Reports (STRs) from SFI employees.

**“Regulated Function<sup>2</sup>”** means a position that is regulated by the Central Bank of The Bahamas as provided in paragraph 6 of these Guidelines. .

**“Senior Official I<sup>3</sup>”** or **“SOI”** means the Chief Executive of an SFI or applicant who is designated by the Central Bank as the primary contact relative to the institution’s responsibilities.

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<sup>1</sup> Executive Officers include President, Vice President, Secretary, Assistant Secretary and Treasurer.

<sup>2</sup> The regulated function for branches only include Senior Officials I and II and MLRO.

<sup>3</sup> Senior Official I includes Managing Director and General Manager.

**“Senior Official II”** or “SOII” means a senior level executive who normally holds the second highest senior position in the SFI or applicant entity, which the Central Bank approved as the second primary contact relative to the institution’s responsibilities.

**“Shareholder”** means a person who owns shares in an SFI.

**“Supervised Financial Institution”** or “SFI” means all institutions licensed, registered and regulated by the Central Bank.

**“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 in an SFI’s home country.

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

- a. Serving as a Director;
- b. Serving as a Senior Official<sup>4</sup>/Officer;
- c. Serving as an Executive Officer;
- d. Serving as a Compliance Officer and/or Money Laundering Reporting Officer (“MLRO”);
- e. Serving as a Controller;
- f. Owning, holding or exercising voting control over 5% or more of the share capital (significant shareholders);
- g. Holding any portion of the issued share capital of an SFI in a nominee capacity (as in the case of a trustee of the parent company or beneficial shareholder); and
- h. Performing any other function in or for an SFI which requires approval, supervision or monitoring by the Central Bank.

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<sup>4</sup> Refer to [Bank Supervision Department's Applications Manual](#).

For the avoidance of doubt, the following definitions of the various categories of Directors should be noted:

- a. An Executive Director (ED) is a Director that is employed by the institution, such as the SOI or Chief Financial Officer of the subject SFI;
  - b. A Non-Executive Director (NED) is a Director that is not employed with the subject SFI. For example, Bank A LTD. is applying to appoint John Doe as a Director however, John Doe is employed with some other non-related institution; and
  - c. An Independent Non-Executive Director (INED) must not be an officer or employee of the SFI and must not have any business or other relationship, which could interfere with the exercise of his/her independent judgement<sup>5</sup>. While persons in categories 7 (a.) and (b.) may be referred to as “Director”, persons who fall within category (c.) should be explicitly referred to as “INEDs”.
7. 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.

#### **APPROVAL OF REGULATED FUNCTIONS**

8. In carrying out its duty to regulate and supervise SFIs, 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, executives, SOI/II, CO/MLRO and controllers are critical to the achievement of the objectives of supervision.
9. 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*. It is important to note that the effective date of the approval is the date the Central Bank advises of the approval<sup>6</sup>.
10. SFIs must be in receipt of the Central Bank’s prior written approval before a person is appointed to perform a regulated function in an SFI.

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<sup>5</sup> Please review Sections 7 and 8 of the [Corporate Governance Guidelines](#)

<sup>6</sup> Retroactive approval to a position is no longer granted by the Central Bank.

11. The Central Bank may impose a penalty against an SFI not exceeding **fifty thousand dollars** where there is failure to obtain prior written approval from the Central Bank for the appointment or replacement of an approved person.
12. Where an SFI proposes to change an approved person, or the individual resigns, the SFI is required to notify the Central Bank within seven (7) business days. Additionally, regulated functions given their importance must be filled within a period not exceeding sixty (60) days.

#### **REFUSAL OF AN APPLICATION FOR A REGULATED FUNCTION**

13. The Central Bank has the right to refuse to approve a proposed appointment of a person to a regulated function where the Central Bank is of the view that the candidate does not meet the Central Bank's standard of fitness and propriety. The Central Bank will consider the following when refusing applications for a regulated function:
  - a) whether the individual satisfies the relevant requirements of the Central Bank in relation to the regulated function the individual performs or is intended to perform;
  - b) whether the individual has the experience and qualification levels necessary for performing the regulated function;
  - c) whether the individual has demonstrated in the past appropriate functional and behavioural competencies in the fulfilment of prior regulated functions;
  - d) whether the applicant/SFI has submitted the relevant documents to support the application within the timeframe required by the Central Bank;
  - e) whether the interests of the depositors or potential depositors of the SFI are, or are likely to be in any way threatened by the individual holding the position;
  - f) whether the individual has any mental or physical incapacities; and
  - g) whether the appointment of an individual to perform a regulated function is in the best interest of the public.



## ASSESSING FITNESS AND PROPRIETY

- 14.** 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 based on the applicant's:
- a) Honesty, integrity and reputation;
  - b) Competence and capability, given the nature and scope of the business activities of the SFI and the type of licence held;
  - c) Financial soundness; and
  - d) Previous disciplinary record, general compliance history including whether the Central Bank, or any other domestic regulatory authority, a Supervisory Authority, or other foreign regulatory body has previously imposed a disciplinary sanction on the person.
- 15.** The Central Bank reserves the right to assess the fitness and propriety of an approved person on an on-going basis and where there is a trigger that brings into question an individual's fitness and propriety, the Central Bank will conduct an assessment. The Central Bank will consider the following as triggers:
- a) Any negative news in the public domain;
  - b) Any civil or criminal matters in the courts;
  - c) Anything that negatively affects the operations of the SFI; and
  - d) Anything the Central Bank deems as a cause for concern.
- 16.** The Central Bank may, where it is of the view that a person is not or is no longer a fit and proper person to perform a regulated function, make an order prohibiting such individual from performing a regulated function.
- 17.** An individual, who is in breach of a prohibition order commits an offence and shall be liable on a summary conviction to a penalty not exceeding **fifty thousand dollars**. In the case of a continuing breach, a further penalty not exceeding **five hundred dollars** for each day, or part of a day, during which the offence continues will be levied.

## HONESTY, INTEGRITY AND REPUTATION

18. 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.
19. Individuals applying to perform a regulated function in a SFI should inform the Central Bank of these matters via the [Confidential Statement](#), along with other supporting documents outlined in Appendix A. The Confidential Statement of all approved regulated functions should be reviewed and resubmitted to the Central Bank, **every three (3) years** or upon occurrence of any material changes affecting the regulated function. **Failure to resubmit the Confidential Statement would result in the approval being revoked for that regulated function.**
20. Individuals that are serving in the same regulated function for a banking group which includes two or more institutions supervised by the Central Bank, are required to only submit one Confidential Statement. Whereas, individuals serving in the same regulated function for different banking groups, are required to submit separate Confidential Statements.
21. In assessing honesty, integrity and reputation the Central Bank will consider the following:
- a) Whether an applicant or approved person has been convicted of any criminal offence, excluding:-
    - i. Any minor offence committed by the applicant when he/she was under the age of 18, unless the same offence was committed within the last ten years; or
    - ii. 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.
  - b) Whether the individual, body corporate, partnership or unincorporated institution with whom an applicant or approved person is or was associated has been the subject of an investigation, in The Bahamas or any other jurisdiction, by or at the instigation of a government department or agency, professional association, or other regulatory body.

- c) Whether an applicant or approved person has been dismissed from any office or employment, or been subject to disciplinary proceedings by the individual's employer or been barred from entry to any profession or occupation whether in The Bahamas or in any other jurisdiction.
  - d) Whether an applicant or approved person in connection with the formation or management of any body corporate, partnership or unincorporated institution, has been adjudged by a court, in The Bahamas or any other jurisdiction to be liable for any fraud, misfeasance, or other misconduct by the individual towards such a body or company or towards any members thereof.
  - e) Whether any body corporate, partnership or unincorporated institution in The Bahamas or any other jurisdiction, has been compulsorily wound up, made subject to an administration order or made any compromise or arrangement with its creditors or ceased trading or whether any equivalent action has been taken in another jurisdiction while an applicant or an approved person was associated therewith.
  - f) Whether an applicant or approved person has been candid and truthful in all his/her dealings with any regulatory body, in The Bahamas or any other jurisdiction and whether the individual 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.
  - g) Whether an applicant or approved person is or expects to be, other than in a professional capacity, engaged in any litigation in The Bahamas or any other jurisdiction.
  - h) Whether an applicant or approved person has at any time shown strong opposition or lack of willingness to maintain effective internal control systems and risk management practices.
  - i) Whether an applicant or approved person has ever contributed significantly to the failure of an SFI.
  - j) How an applicant's or approved person's reputation may impact upon an SFI for which the regulated function is to be performed.
- 22.** To further assess an individual's honesty, integrity and reputation, sanctions list are checked every three (3) years or after the occurrence of any material matters that would raise concerns with the Central Bank.

## COMPETENCE AND CAPABILITY

- 23.** In determining an applicant's competence and capability, the Central Bank will consider whether the individual has demonstrated by experience, training and qualification that if approved, he/she would be capable of performing the regulated function.
- 24.** Applicants for regulated functions 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 an SFI, and be able to respond to inquiries from the Central Bank about all relevant aspects of an SFIs operations; and
  - c) be qualified and able to perform, and capable of assuming, the responsibilities associated with the full administration and management of the SFIs business.
- 25.** These factors will be considered in relation to the particular duties and responsibilities of the function for which the applicant has been nominated.

## FINANCIAL SOUNDNESS

- 26.** In determining an applicant's financial soundness, the Central Bank will consider factors including, but not limited to:
- a) Whether an 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 any other jurisdiction, or made any compromise arrangements with the individuals creditor within the past 10 years; and
  - b) Whether an applicant has been declared insolvent (either provisionally or finally) by a court in The Bahamas or any other jurisdiction, or has had a bankruptcy petition served on him/her.
- 27.** With respect to persons who are applying to own, hold or exercise voting control over 5% or more of the share capital of an SFI or applicant for an SFI licence, the Central Bank requires the submission of a statement of assets and liabilities, source of wealth and source of funds certified by a public accountant.

## PREVIOUS DISCIPLINARY RECORD AND GENERAL COMPLIANCE HISTORY

28. 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 Guidelines. The Central Bank should be informed of these matters via the Confidential Statement, along with other supporting documents outlined in Appendix A.
29. In assessing an applicant's previous disciplinary record and general compliance history, the Central Bank will also consider whether a person, in The Bahamas or any other jurisdiction, 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 license subject to conditions.

## REPORTING AND DISCLOSURE OF RELEVANT INFORMATION

30. An SFI shall immediately notify the Central Bank of any material information that may negatively affect the fitness and propriety of an approved person in a regulated function. An SFI that fails to comply with the aforementioned commits an offence and shall be liable on summary conviction to a penalty not exceeding **one hundred thousand dollars**.
31. Individuals who report or disclose information that would be considered relevant for a fit and proper assessment to the Central Bank shall not be subjected to any discriminatory actions by the SFI for disclosing this information. SFIs shall not prohibit any person, directly or indirectly from disclosing this information or providing documents to the Central Bank relevant to the fitness and propriety of a past, current or prospective applicant for a regulated function.
32. Individuals serving in a regulated function are required to complete and submit the Annual Returns Form in Appendix C to the Central Bank annually following their approval date for a period not exceeding three years. Failure to submit the form will result in the regulated functions approval being revoked.

## ASSESSMENT OF PREVIOUSLY APPROVED INDIVIDUALS

33. Individuals that are being considered for a new regulated function and who previously (within the past 3 years) filed documents with the Central Bank may be considered as "*known to the Central Bank*" and are assessed on a case by case basis.

- 34.** A waiver for the submission of the applicant's Curriculum Vitae, Passport Copy and Character and Financial References<sup>7</sup> may be requested by the SFI.
- 35.** In cases where approved persons are being considered for a new regulated function, and have previously filed the aforementioned documents with the Central Bank, Curriculum Vitae, Passport Copy, Confidential Statements, Character and Financial References, will be valid for a period of three years, except in cases where the proposed appointee(s) (i) is known to the Central Bank for at least 10 years and (ii) where the appointee(s) are part of the same SFI.
- 36.** The Central Bank may request additional information on an on-going basis to ensure individuals in regulated functions remain fit and proper. This may require individuals to provide credit reports and/or whatever the Central Bank deems necessary.

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<sup>7</sup> See Appendix B.

**APPENDIX A****SUBMISSION IN SUPPORT OF AN APPLICATION**

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

1. Board of Directors' Resolution/Secretarial Certificate (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);
2. A Curriculum Vitae, a comprehensive description of the background of an applicant. Details should include, but are not limited to:
  - i. Previous management level or equivalent experience in the range of activities that may be conducted by the SFI;
  - ii. Other management/administrative experience;
  - iii. Special language skills (if appropriate to the SFI or its business);
  - iv. Knowledge of pertinent Bahamian laws and supervisory and regulatory requirements; and
  - v. Other relevant skills and experience.
3. Two Character Reference Letters;
4. Financial Reference Letter;
5. Police 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 involving dishonesty shall be required;
6. Certified copy of Passport (or Certified National Identification Card which includes full name, date and place of birth, nationality and domicile);
7. Certified Net Worth statement by a public accountant (in the case of applications to acquire and own, hold or exercise voting control of share capital);
8. A notarized Confidential Statement;

9. A detailed Job Description (in the case of the two Senior Executive Officers/Senior Official/Officer 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. Certified copies of relevant diplomas in support of the MLRO appointment (CO/MLRO appointment only);
12. Organizational chart showing the reporting relationship (CO/MLRO appointment only);
13. In cases where the MLRO and/or CO are being proposed as a Senior Official/Officer I/II of an SFI, the application should also include a request for a waiver to Section 5.8 of the Corporate Governance guidelines, which prohibits a Senior Official/Officer I/II from functioning as Compliance Officer ("CO") and/or Money Laundering Reporting Officer ("MLRO"); and
14. Any other document that the Central Bank deems necessary.



**APPENDIX B****CHARACTER AND FINANCIAL REFERENCES ACCEPTANCE CRITERIA**

1. References must be dated within three months of receipt of the application;
2. References in the case of an SFI, must be provided on official company letterhead with the name and title of the signatory clearly presented;
3. References from individuals must be signed and give the signatory's name, title, address ( including mailing and street addresses) email addresses and telephone number(s);
4. The referee must be independent, without an interest in the acceptability of the reference and should not have a familial relationship to the applicant;
5. Referees must be acceptable to the Central Bank;
6. **Character References should meet the following additional minimum standards:**
  - (i) The referee should have known the applicant for a period of not less than five years and the nature of the relationship should be disclosed;
  - (ii) References should address the applicant's honesty, integrity and reputation as well as the competence and capability of the applicant for the proposed role; and
  - (iii) Where a character reference is provided by an individual, that individual should be known to the Central Bank or his/her identity should be verifiable.
7. **Financial References should meet the following additional minimum standards:**
  - (i) References should be provided by an SFI licensed by the Central Bank to conduct business in The Bahamas or in another jurisdiction which conducts supervision in accordance with the Basel Core Principles for Effective Banking Supervision;
  - (ii) References should provide a description of the nature and conduct of the financial relationship; and
  - (iii) The relationship must have been in existence for at least three years.

**APPENDIX C**

**ANNUAL RETURN FORM FOR APPROVED PERSONS**

NAME: .....

INSTITUTION NAME: .....

POSITION HELD: .....

DATE APPROVED: .....

EMAIL ADDRESS: .....

ADDRESS OF INSTITUTION: .....

**TELEPHONE DETAILS**

HOME: .....

CELL: .....

WORK: .....

EXT: .....

**MAIN RESPONSIBILITIES**

**WHEN WAS YOUR LAST FIT & PROPER ASSESSMENT?** .....

**WHEN WAS YOUR LAST CONFIDENTIAL STATEMENT FILED?** .....

By signing this, I certify that the above-mentioned information is true to the best of my knowledge and I am aware that should I supply false or misleading information, I may be liable to prosecution.

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## APPENDIX D

## RELEVANT LEGISLATION AND GUIDELINES

1. [Administrative Monetary Penalties Guidelines;](#)
2. [A Guide to the Central Banks Ladder of Supervisory Intervention;](#)
3. [Bank Supervision Department's Application Manual;](#)
4. [General Information and Application Guidelines for Private Trust Companies and Their Registered Representatives;](#)
5. [General Information and Guidelines for Licence Applications for Banks and/or Trust Companies;](#)
6. [Guidelines for the Corporate Governance of Bank and Trust Companies Licensed to do Business within and from within The Bahamas;](#)
7. [Guidelines for the Corporate Governance of Credit Unions;](#)
8. [Guidelines for Supervised Financial Institutions on the Prevention of Money Laundering, Countering the Financing of Terrorism & Proliferation Financing;](#)
9. [Guidelines for Assessing the Fitness and Propriety of Money Laundering Reporting Officers \(MLRO\) in The Bahamas;](#) and
10. [Payment Systems Act, 2012.](#)