

**SUPERVISORY AND REGULATORY GUIDELINES: 2003-03****Licensing: Fit & Proper****15th August, 2003****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 and trust companies 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, 2001, and The Central Bank of The Bahamas Act, Chapter 351 of the revised Statute Laws of The Bahamas, 2001. Additionally, The Central Bank has the duty, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the provision of banking and trust services.

All licensees are expected to adhere to the Central Bank’s licensing and prudential requirements and ongoing supervisory programmes, including periodic on-site inspections, and required regulatory reporting. Licensees are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

These Guidelines should be read along with the “Confidential Statement by Individuals who are Proposing to Hold the Position of Director and/or Executive Officer of a Bank or Trust Company Licensed by The Central Bank of The Bahamas (Confidential Statement)”, the “Guidelines for the Minimum Standards of Character and Financial References” and the “General Information and Guidelines for Licence Applications”.

II. Purpose

These Guidelines outline and describe the criteria that The Central Bank will consider in assessing the fitness and propriety of an applicant for 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 licensee or licence applicant;
- (2) Serving as an executive officer of a licensee or licence applicant;
- (3) Serving as a senior officer of a managed licensee;

- (4) Owning, holding or exercising voting control over 5% or more of the share capital of a licensee or a licence applicant (significant shareholders); and
- (5) Any other function in or for a bank or trust company [deemed regulated by the Governor] which requires approval, supervision or monitoring by the Central Bank.

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 significant shareholders, 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 the licensee 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 for a *regulated function*. The most important considerations will be the applicant's:

- (1) Honesty, integrity and reputation;
- (2) Competence, capability and qualification, given the nature and level of the business activities of the licensee and the type of licence held; and,
- (3) Financial soundness.

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 this guideline. The Central Bank should be informed of these matters via the *Confidential Statement by Individuals*

who are Proposing to Hold the Position of Director and/or Executive 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 five (5) 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 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, 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.
- (3) Whether the applicant or any body corporate, partnership or unincorporated institution which the applicant is or was associated 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.
- (4) 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.
- (5) 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.
- (6) 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.

- (7) 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.
- (8) 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.
- (9) Whether the applicant is or expects to be, other than in a professional capacity, engaged in any litigation in The Bahamas or elsewhere.
- (10) How the applicant's reputation may impact upon the licensee for which the *regulated function* is to be performed.

VI. Competence, Capability and Qualification

In determining the applicant's competence, capability and qualification, 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 and qualifications in banking, trust administration, corporate administration, business administration, law or accounting;
- (b) Be fully conversant with the business affairs and activities of the licensee, and be able to respond to inquiries from the Inspector of Banks and Trust Companies (the "Inspector") about all aspects of the licensee'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 licensee'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 licensee or licence applicant, the Central Bank requires the submission of a statement of assets and liabilities, certified by a public accountant.

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 shareholder, director and senior or executive officer, sufficient to allow a determination that they satisfy the qualifications to carry out the responsibilities, as indicated above. Such information should relate to previous management level or equivalent experience in the range of activities that may be conducted by the licensee; other management/administrative experience; special language skills (if appropriate to the licensee or its business); knowledge of pertinent Bahamian laws and supervisory and regulatory requirements; and, other relevant skills and experience;
2. Two Character Reference Letters*
3. Two Financial Reference Letters*
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 by Individuals who are Proposing to Hold the Position of Director and/or Executive Officer of a Bank or Trust Company Licensed by The Central Bank of The Bahamas*
7. A police certificate issued within the last 6 months.
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).
9. Any other document that the Central Bank deems necessary.

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