



FEEDBACK FROM THE INDUSTRY CONSULTATION

FIT AND PROPER GUIDELINES

18 DECEMBER 2023

POLICY UNIT

BANK SUPERVISION DEPARTMENT

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Feedback from the Industry Consultation: Fit and Proper Guidelines & Confidential Statement, 2023

Section	Questions/Comments Received	Central Bank's Response
Definitions	<ul style="list-style-type: none"> • “Controller” means a person: <ol style="list-style-type: none"> a. In accordance with whose directions, instruction 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; <p>Further clarifications required, specifically in instances where there is an outsourced function or matrix reporting.</p> 	<p>The Central Bank duly notes your comment.</p>
	<ul style="list-style-type: none"> • Executive Officer”: means an individual who has the authority to commit an SFI with respect to legal and/or financial transactions of an SFI. Executive Officers include President, Vice President, Secretary, Assistant Secretary and Treasurer. <p>Further clarification is required to determine whether “Executive Officer” extends to Director or head of business lines, wherein regulatory approval is not required. CBOB should note that SFI uses this term internally to identify members of the senior management team, some of whom do not require regulatory approval and whose ability to commit the bank legal or financial dealings may be restricted. Additionally, please provide further guidance on whether Treasurer should be interpreted as CFO or Financial Controller as such require board and CBOB approval.</p>	<p>For the purposes of the Guidelines, regulated functions are positions that require approval by the Central Bank as provided in paragraph 6 of the Guidelines. Section 7 states that <i>“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.”</i></p> <p>Additionally, the Executive Officer does not extend to Director or head of business lines.</p>
Section 6	<ul style="list-style-type: none"> • In the definition of Independent Non-Executive Director, reference is made to categories in 7 (a) and (b). Should the paragraph at the top of page 7 commencing with “For the avoidance of doubt” be numbered as 7 and the existing #7 be renumbered 8. 	<p>Yes, thank you for your observation. The Guidelines have been amended accordingly.</p>



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	<ul style="list-style-type: none"> • Could you please confirm that the requirement for annual returns etc.? Do not apply to sole shareholders that are publicly listed companies? 	<p>Your comment is noted. The Guidelines have been amended and the regulatory filing requirement via the Annual Return Form have been removed.</p>
<p>Section 8 & 9</p>	<ul style="list-style-type: none"> • Upon reviewing these guidelines and drawing from interactions with the Central Bank of The Bahamas, even if CBOB were to exert greater influences in the selection process, it is likely that there would be significant delay in the approval process. This delay raises concerns about its effectiveness of SFI during the waiting period. <p>Will the Central Bank of The Bahamas be prepared to respond in a timely manner, as history has shown that CBOB has been slow in their response? This could be detrimental to a SFIs operation if it is not.</p>	<p>Your comment is noted. Best practice is for applicants to submit all required documents in one complete package. This allows the Central Bank to efficiently assess the applicant’s completeness, which usually results in a more efficient turnaround time to reach a decision. The appointment of approved persons currently has a processing time of 10 working days. The Central Bank reserves the right to request any other document, as necessary, to further process any application.</p>
<p>Section 9 & 10</p>	<ul style="list-style-type: none"> • 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. • 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. <p>Additional clarification is required. Section 10 implies that the SFI cannot appoint an individual to a regulated role with the Central Bank’s approval. The current practice is to obtain board approval and provide the regulator with all other required documents. The individual does not assume any responsibilities until regulatory approval is received. Has this process or requirement changed?</p>	<p>No. The requirement has not changed. 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 based on the submission of documents in support of an application for approval to serve in a regulated function.</p>
<p>Section 10</p>	<ul style="list-style-type: none"> • We recommend that the Central Bank consider a provision for acting appointments in situations where a role of an approved person (i) becomes vacant and (ii) this role is critical to the daily operations of the SFI and (iii) the Supervised Financial Institution (SFI) is in the process of recruiting a suitable replacement. 	<p>Your recommendations are noted. The Central Bank will give consideration to the role being filled by an alternate in an “acting or temporary” capacity, once they are deemed fit and proper based on the Fit and Proper Guidelines.</p>



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	<p>We also recommend that the Central Bank consider a minimum timeframe for providing approvals.</p> <p>Having regard to the provision of Section 10, please clarify the requirement to submit a board resolution as one of the documents in support of an application, as the Supervised Financial Institution (SFI) is precluded from obtaining such approval until the written approval of the Central Bank is obtained.</p>	<p>According to the Quarterly Letter for the 2nd Quarter 2018, in the event of an interim appointment for an Approved Position, SFIs must indicate in their application the interim time period which should not exceed 12 months.</p> <p>Along with the Confidential Statement, Appendix A notes that the Board of Directors' Resolution/Secretarial Certificate... Should be submitted to the Bank Supervision in support of each application. Additionally, the Board's resolution should include the caveat that the appointment is subject to the Central Bank's approval.</p>
<p>Section 11 & 12</p>	<ul style="list-style-type: none"> The prescribed penalties, particularly in Section 11, 17 and 30 are excessively high Based on the fact that persons are elected by the membership at the Annual General Meeting, how will this factor into the Credit Union structure? As per the respective Bye-laws of each Credit Union, the Nomination Committee is responsible to review and consider prospective candidates. Annual reviews of Directors are conducted every three years as per the Bahamas Co-operative Credit Unions Act, 2015. <p>It is suggested that after the approval of the Nomination Committee and the Democratic Control procedures at the Annual General Meeting, a confirmation will follow shortly after the CBOB conducts their Fit and Proper due diligence.</p>	<p>The Central Bank will set out the Fit and Proper framework for credit unions to align with proposed changes to the Bahamas Co-operative Credit Unions Act, 2015.</p>



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	<ul style="list-style-type: none"> This section states, “Where an SFI proposes to change an approved person, or the individual resigns, the SFI is required to notify the Central Bank within seven business days. We suggest that the Central Bank elaborates to make clear the specific time from which the seven (7) business notification is required. We recommend that the clause “following the event” or similar language be added after “business days” to avoid any doubt relating to the filing deadline. <p>Further, this section requires the regulated function be filled within a period not exceeding sixty (60) days. The recruitment process particularly for Senior Officers I and II is sometimes very lengthy due to the specialized skills set and qualifications required. In addition, when an officer resigns, it is customary to provide at least 3 months’ notice to the current employer; therefore, the proposed 60 days would be less than the required notice period.</p> <p>As such, we recommend that the Central Bank extend the timeframe for filing a regulated function to a period not exceeding 180 days.</p>	<p>Your comment and recommendation are noted.</p>
<p>Section 13</p>	<ul style="list-style-type: none"> The Central Bank should consider an option for the SFI or approved person to contest the decision for refusal. States that the Central Bank of The Bahamas has the right to refuse a proposed appointment does an SFI get an additional 60 days’ timeframe. Replacement for high level positions can pose difficulties. There is a concern with regards to Central Bank of The Bahamas authority to refuse applications. 	<p>Your comment is noted.</p> <p>Your comment is noted. Section 8(3) of the Banks and Trust Companies Regulation Act, 2020 , allows the Central Bank to refuse an application, where the Central Bank is of the opinion that the business would not be carried on by a fit and proper person. Therefore, upon the refusal of a proposed appointment, the Central Bank has the right to vary the timeframe, on a case by case basis.</p>



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<p>Section 16</p>	<ul style="list-style-type: none"> Consideration should be given for the SFI to appoint an individual to temporarily 'act' in the position, without Central Bank approval, where the role is critical to the SFI. If the Central Bank makes an order that an approved person is prohibited from carrying out a regulated function, the operations of the SFI could be impacted while the SFI identifies and seeks Central Bank approval of another individual to perform the function. 	<p>The Central Bank will give consideration to the role being filled by an alternate in an "acting or temporary" capacity, once they are deemed fit and proper based on the Fit and Proper Guidelines.</p> <p>In accordance with the Quarterly Letter for the 2nd Quarter 2018, the Central Bank is aware that some instances it may be necessary for SFIs to appoint Approved Persons on an interim basis. When submitting such applications, SFIs are reminded that the interim period should be specified. Please note that interim appointments for Approved Person positions should not exceed 12 months.</p>
<p>Section 17</p>	<ul style="list-style-type: none"> The Bahamas Co-operative Credit Union Act, 2015 Section 117(4) indicates that the person who commits an offence under this section is liable on summary conviction to a fine of two thousand dollars. 	<p>Your comment is noted.</p>
<p>Section 19</p>	<ul style="list-style-type: none"> Resubmission of the Confidential Statement – we suggests that more clarity be provided. Is it the earlier of 3 years or occurrence of any material changes affecting the regulated function? Is this requirement for individuals performing the Corporate Secretary or Assistant Corporate Secretary function? 	<p>The Confidential Statement applies to all regulated functions – which includes Corporate Secretary. Further, the Confidential Statement should be reviewed and resubmitted to the Central Bank every three years or earlier should a material change occur before the three year period.</p>



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	<ul style="list-style-type: none"> 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. <p>Will the Confidential Statement Form be used on a go-forward basis, or are persons currently occupying regulated functions that the Central Bank previously approved required to submit the same? If the latter is applicable, will the Central Bank provide conformance period of 3-6 months?</p>	<p>Yes, the Confidential Statement will continue to be used on a go-forward basis. Individuals currently serving in approved regulated functions should review and resubmit the Confidential Statement every three years or upon occurrence of any material changes</p>
<p>Section 30</p>	<ul style="list-style-type: none"> New penalty for failure to notify of any material information that may negatively affect the fitness and propriety of an approved person in a regulated function. Given that the prescribed fine is so high, consideration should be given to adding clarity on this matter insofar as better defining and/or exemplifying what constitutes “material information”. As worded, this section puts a burden on the SFI to report with or without knowledge of material information. We recommend that this section be reworded to incorporate the SFI’s awareness of the material information. 	<p>Your comment is noted. The following definition will be added as a footnote: <i>“Information is considered material if its omission or misstatement may influence the user in their assessment or decision on the information for the purpose of making economic decisions.”</i></p> <p>Your recommendation is noted. As per Part IV of the Banks and Trust Companies Regulation Act, 2020, SFIs have a duty and obligation to notify the Bank of material information.</p>
	<ul style="list-style-type: none"> This section should be limited to situations where the SFI has knowledge of the event that would affect an approved person’s fitness and propriety. 	<p>Your comment is noted</p>



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	<ul style="list-style-type: none"> There is a pressing need for greater precision and clarity in the language of item number 30 as it leaves room for significant interpretation. Clarification is essential to ensure a more accurate understanding of the intended consequences and repercussions. <p>The incident may be difficult to prove, the SFI must immediately notify the Central Bank of The Bahamas of any material information that may negatively affect the fitness of approved person, one can only notify if one is aware. Once fined, how can the SFI prove that it was unaware, knowledgeable of the process? If material information is disclosed by an external source to the Central Bank of The Bahamas and SFIs, is it still subject to a fine and if so would there be an appeal process?</p>	<p>Administrative Monetary Penalties are imposed primarily to promote high standards of regulatory conduct by deterring persons from committing contraventions under the FTRA and encouraging those who have committed contraventions to take appropriate remedial action. The imposition of penalties is also designed to prevent, or at least reduce recourse to more costly and time consuming enforcement action such as criminal prosecution.</p> <p>The Central Bank’s decision to impose a penalty for a serious or very serious violation may be appealed to the Supreme Court of The Bahamas in accordance with Section 55 of the CBBA.</p>
<p>Section 32</p>	<ul style="list-style-type: none"> Relative to a new Regulatory filing requirement for new appointees – Annual Return- Appendix C – failure to submit will result in the regulated functions approval being revoked – such penalty seems to be disproportionately harsh and recommendation would be to consider applying a monetary fine be considered rather than outright revocation of the regulated functions. Could you please clarify the requirements around Confidential Statements and Annual Returns i.e., is it expected that Confidential Statements would be submitted every 3 years, with annual returns submitted in the intervening years, for the duration of a person’s tenure in a regulated function? Regarding the proposed Fit and Proper Guidelines, 2023, how does the Central Bank intend to treat individuals who currently perform regulated functions, but for whom Central Bank approval was not required at the time of their appointment (i.e. Compliance Officer/MLROs of credit unions)? 	<p>Your comment is noted. The Guidelines have been amended and the regulatory filing requirement via the Annual Return Form has been removed.</p> <p>The Confidential Statement should be reviewed and resubmitted to the Central bank every three years or earlier should a material change occur before the 3 years period. The Guidelines have been amended and the regulatory filing requirement via the Annual Return form has been removed</p> <p>To comply with the guidelines, credit unions will be required to adhere to the prudential requirements and required regulatory reporting. SFIs are currently required to seek approval from the Central Bank for proposed MLROs and following release of the Compliance Officers Guidelines, SFIs will be required to seek approval for proposed Compliance Officers.</p>



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Appendix C	<ul style="list-style-type: none"> The Annual Return Form requires a responses to – When was your last fit and proper assessment? Is this in reference to the fit ad proper assessment conducted by the Central Bank or is that the SFI is now required to complete a fit and proper assessment. Please clarify. 	<p>Your inquiry is noted. The Guidelines have been amended and the regulatory filing requirement via the Annual Return form has been removed.</p>
	<ul style="list-style-type: none"> The reference to 'last fit and proper assessment' – does that refer to the assessment performed by the Central Bank or an internal assessment performed by the SFI? If the latter, is there a prescribed format such an assessment should take? 	<p>See above response.</p>
Question 7 (Confidential Statement)	<ul style="list-style-type: none"> Please clarify whether the response to question 7 of the Confidential Statement is limited to The Bahamas. 	<p>The question has been amended to reflect <i>"in The Bahamas or any other jurisdiction"</i>.</p>