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## **'Fit and Proper' Guideline**

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## **'FIT AND PROPER' GUIDELINE**

### **1. INTRODUCTION**

- 1.1 The Financial Institutions Act, 1993, (FIA) and the Insurance Act, 1980 (IA) (governing legislation) require persons holding key positions in financial institutions<sup>1</sup>, including insurance salesmen, brokers, adjusters, and agents, to be fit and proper persons.
- 1.2 The Companies Act, Ch. 81:01 provides that “every director and officer of a company shall in exercising his powers and discharging his duties -
- (a) Act honestly and in good faith with a view to the best interests of the company; and
  - (b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances<sup>2</sup>.”
- 1.3 The directors of the company, therefore, are required to direct the management of the business and affairs of the company and they do so directly or indirectly through the employees and agents of the company<sup>3</sup>. Accordingly, they have the primary responsibility for appointing persons that are fit and proper to hold key positions within the organization<sup>4</sup>. (*Key positions are defined in Paragraph 4*).
- 1.4 The Central Bank of Trinidad and Tobago (“the Central Bank”), as regulator and supervisor of banks, nonbanks, insurance companies and pension funds, has a duty to ensure that licensees under the FIA and registrants under the IA are compliant with the provisions of the FIA and IA regarding the fitness and propriety of persons who either manage the affairs of, or exert material influence, on those institutions.
- 1.5 In developing the Guideline, the fit and proper provisions contained in the Second Schedule of the FIA and in the IA have been followed and international best practice<sup>5</sup>, where relevant, has been considered.

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<sup>1</sup> In this Guideline, financial institution refers to a licensed commercial bank, and registered insurance companies and pension funds. Nonbanks refer to institutions licensed under the FIA to conduct business of a financial nature as defined in Section 5(2) of the FIA.

<sup>2</sup> Companies Act S. 99

<sup>3</sup> Companies Act. S.60.

<sup>4</sup> Section 20(5) of the FIA bestows this obligation on licensed commercial banks and non-banks. In addition it is essential that licensees understand that they bear the primary responsibility for operating prudently, which requires that they have fit and proper persons in all key positions.

<sup>5</sup> See Guidance papers published by the Based Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO) and the Financial Services Authority, UK (FSA).

## 2. PURPOSE OF THE GUIDELINE

- 2.1 The purpose of this Guideline is to set out a framework which can be used by financial institutions in determining whether a person is fit and proper to hold a key position within the organization.

## 3. 'FIT AND PROPER' DEFINED

- 3.1 In accordance with governing legislation a person is considered to be fit and proper if the person essentially is of good character, competent, honest, financially sound, reputable, reliable and discharges and is likely to discharge his/her responsibilities fairly.
- 3.2 In some cases, controlling shareholders<sup>6</sup> may be corporate entities and in these instances, similar fit and proper tests should be applied to those entities. (See 7.2)

## 4. WHO SHOULD BE FIT AND PROPER?

- 4.1 According to governing legislation<sup>7</sup> the following persons referred to in this Guideline as holding "key positions" are required to be fit and proper: -

4.1.1 *Directors of financial institutions.*

4.1.2 *Trustees/ Management Committees of pension funds.*

4.1.3 *Controllers of financial institutions, namely:-*

- (i) *A Managing Director of the financial institution or of another financial institution of which it is a subsidiary.*
- (ii) *A Chief Executive (CE) of the financial institution or of another company of which it is a subsidiary.*

4.1.4 *Controlling Shareholder – may be an individual or a corporate entity*

- (i) *Under the IA, any person who is entitled to control at least one-third of the voting power at any general meeting of the company.*
- (ii) *Under the FIA, any person who controls twenty five per cent or more of the voting power at any general meeting.*

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<sup>6</sup> In this Guideline a controlling shareholder is defined as a person who either alone or with an affiliate or relative or connected person, is entitled to exercise or control twenty-five percent or more of the voting power at any general meeting of the licensed institution or another company of which the licensee is a subsidiary. For insurance companies a one third shareholding is applicable.

<sup>7</sup> See Sections 20(1)(f) and 39(5) of the FIA and Sections 17(1), 19(3) and 91 of the IA.

- 4.1.5 *Managers<sup>8</sup> of financial institutions.*
- 4.1.6 *Insurance agents, salesmen, adjusters, and brokers.*
- 4.1.7 *Actuaries<sup>9</sup>.*

## **5. ROLE OF THE BOARD OF DIRECTORS**

- 5.1 To effectively discharge its responsibilities, the Board of Directors of a financial institution should:-
  - 5.1.1 *Establish a fit and proper person policy, taking into account the fit and proper criteria stated in governing legislation;*
  - 5.1.2 *Have documented the process used to assess whether a person is fit and proper and reasons for any decisions made; and*
  - 5.1.3 *Make the documentation available to the Central Bank, as required.*
- 5.2 The Board's responsibilities also include ensuring that: -
  - 5.2.1 *Candidates who are being considered for appointment to key positions meet the fit and proper test before appointments are made;*
  - 5.2.2 *Processes are implemented to keep under constant review the capacity of Directors, controllers, managers, controlling shareholders, registrants under the IA and others with significant influence on the operations of the financial institution to continue to meet the fit and proper test; and*
  - 5.2.3 *The CEO applies the fit and proper test to middle and lower level management positions within the organization and reports to the Board periodically on the results of the tests. The test should guide the recruitment of personnel in the institution.*

## **6. ROLE OF THE EXTERNAL AUDITORS**

- 6.1 The Board shall request the external auditors to advise and provide all necessary details if they become aware of information that points to non-compliance or potential non-compliance with the fit and proper requirements of this Guideline.

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<sup>8</sup> A manager in relation to a financial institution under the FIA is defined as a person (excluding a chief executive), who is under the immediate authority of a director or CEO of an institution and who either exercises managerial functions or is responsible for maintaining the accounts or other records of the institution. Notwithstanding, this definition, proposals to amend the FIA seek to ensure that any person 'concerned with the management of the institution or who occupies a key position within the institution' must be fit and proper.

<sup>9</sup> Section 112(4) of the IA requires actuaries to be fit and proper. Actuaries are required for every company carrying on long-term insurance business in Trinidad and Tobago.

## **7. ASSESSING FITNESS AND PROPRIETY**

7.1 The Board of Directors should consider the following criteria when assessing the fitness and propriety of key personnel within the organization: -

7.1.1 *Good character i.e. honesty, integrity, fairness and reputation;*

7.1.2 *Competence, diligence, capability, soundness of judgment; and*

7.1.3 *Financial soundness.*

7.2 In regard to corporate entities, which are controlling shareholders, the Board should review the following: -

7.2.1 *Financial soundness and strength;*

7.2.2 *The nature and scope of the business;*

7.2.3 *Fitness and propriety of key functionaries (key functionaries include directors, managers, controllers, controlling shareholders; and*

7.2.4 *Group structure (if applicable) and organization chart.*

7.3 It should be noted that this list is not exhaustive and accordingly, the Board should consider all other relevant matters on a case-by-case basis.

## **8. GOOD CHARACTER**

8.1 Good character i.e. honesty, integrity fairness and reputation are qualities that are demonstrated over time. In determining a person's good character, and to guide the hiring criteria to be applied by the Board and management, the Board of Directors should consider all appropriate factors, including, but not limited to:-

8.1.1 *Whether the person has been convicted of a criminal offence, particularly an offence relating to dishonesty, fraud or financial crime;*

8.1.2 *Whether the person has been convicted or found guilty in any proceedings of a disciplinary or criminal nature;*

8.1.3 *Whether the person has been the subject of any adverse findings or any settlement in civil proceedings, particularly in connection with banking or other financial business, misconduct, or fraud;*

- 8.1.4 *Whether the person, or any business in which the person is controlling shareholder or has controlling interest or exercises significant influence, has been investigated and disciplined or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately;*
- 8.1.5 *Whether the person has been the owner, manager or director of a company, partnership or other organization that has been refused registration, authorization, membership or a licence to conduct trade, business or profession, or has had that registration, authorization, membership or licence revoked, withdrawn or terminated;*
- 8.1.6 *Whether, as a result of the removal of the licence, registration or other authority the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorization;*
- 8.1.7 *Whether the person has been a director, partner, or otherwise involved in the management of a business that has gone into receivership, insolvency, or compulsory liquidation while the person was connected with that organization or within a reasonably short period (e.g. one year) after the person's departure from the institution;*
- 8.1.8 *Whether the person has been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about honesty and integrity;*
- 8.1.9 *Whether the person has ever been disqualified from acting as a director or serving in a managerial capacity because of wrongdoing;*
- 8.1.10 *Whether the person has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities within the past ten years and has been the subject of any justified complaint relating to regulated activities; and*
- 8.1.11 *Whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.*
- 8.2 Additionally, in the case of a trustee, no person may be appointed as trustee if there is material conflict of interest between the person's role as a trustee and his/her role in any other capacity<sup>10</sup>. For example, conflict of interest may arise where a trustee is an officer or employee, or a shareholder of a company issuing a debenture<sup>11</sup> or other debt that may be held by the trust.

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<sup>10</sup> Section 269(1) and (2) of the Companies Act refers

<sup>11</sup> Section 4 of the Companies Act 1995 defines debenture to include debenture stock and any bond or other instrument evidencing any indebtedness or guarantee of a company in respect of indebtedness whether secured or not, but shall not include a cheque, promissory note or bill of exchange or endorsement thereon, a letter of credit issued by a bank nor an instrument evidencing a deposit account issued by a financial institution or credit union within the meaning of the Co-operative Society Act or an insurance company.

**9. COMPETENCE AND CAPABILITY**

9.1 A person must demonstrate the competence and ability to understand the technical requirements of the business, the inherent risks therein and the management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.

9.2 In assessing the competence and capability of a person, all relevant factors should be considered, including, but not limited to: -

9.2.1 *Whether the person has demonstrated, through qualifications and experience, the capacity to successfully undertake the responsibilities of the position;*

9.2.2 *Whether the person is mentally ill, within the meaning of the Mental Health Act, 1975;*

9.2.3 *Whether the person has ever been disciplined by a professional, trade or regulatory body, dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; and*

9.2.4 *Whether the person has a sound knowledge of the business and the responsibilities of the position.*

**10. FINANCIAL SOUNDNESS**

10.1 As an indication of a person's capacity to contribute to the safety and soundness of a financial institution and protection of the interests of depositors and other stakeholders, a person should demonstrate the prudent management of his/her own financial affairs.

10.2 In determining a person's financial soundness, all relevant factors should be considered, including but not limited to: -

10.2.1 *Whether the person has been the subject of any judgment or award that remains outstanding or was not satisfied within a reasonable period;*

10.2.2 *Whether the person has made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings relating to any of the aforementioned.*

10.3 The fact that a person may be of limited financial means will not, in itself, affect the person's ability to satisfy the financial soundness criteria.



**11. APPLICATION OF FIT AND PROPER TESTS BY THE CENTRAL BANK<sup>12</sup>**

- 11.1 Fit and proper tests will be applied by the Central Bank at the authorization stage, that is, when a person or a company either applies for a licence under the FIA or to be registered in accordance with the IA, and thereafter on the occurrence of specified events. The latter include, but are not limited to, new appointments<sup>13</sup> of any such persons listed under Section 4 of this Guideline.
- 11.2 The application of fitness, propriety or other qualification tests to managers, directors, trustees and controlling shareholders may vary depending on the degree of their influence and on their responsibilities in the affairs of financial institutions. It is recognized that an individual considered fit for a particular position within an institution may not be considered fit for another position with different responsibilities, or for a similar position within another institution. Conversely, an individual considered unfit for a position in a particular institution may be considered fit in different circumstances.
- 11.3 The Central Bank may have regard to current, past and prospective matters when conducting fit and proper assessments of persons or entities. Each case will be considered on its own merit, taking into account all relevant factors including, but not limited to, the fit and proper criteria set out in this Guideline. Accordingly, certain matters which do not fall precisely within these specified factors may also be taken into account, for example, abuse of alcohol, drugs or other narcotic substances. In these circumstances, the Central Bank will consider whether such conduct is relevant to the person's fitness and propriety.
- 11.4 The Central Bank will assess the fulfillment of fit and proper criteria in a holistic manner after due consideration of all relevant areas. For instance, the Central Bank may determine that a person may not qualify on the basis of several instances of misconduct which, if taken individually, may lead to a different conclusion. However, certain offences (e.g. if a person is convicted of a crime under banking or insurance legislation or other financial impropriety) may lead to automatic disqualification.
- 11.5 In cases where those being assessed are known to have connections in other jurisdictions, the Central Bank will communicate with supervisors in the relevant jurisdictions as part of the assessment procedure, to the extent permitted by law.

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<sup>12</sup> See Appendix for the list of documents that should be submitted to the Central Bank for fit and proper assessments.

<sup>13</sup> New appointments include job transfers, promotions, or hiring of a known individual by another financial institution.

**12. PERSONS EXERTING A MATERIAL INFLUENCE**

12.1 Any other person exerting a material influence on the operations of the financial institution should be fit and proper, for example: -

- (i) Auditors; and
- (ii) Investment advisors.

**APPENDIX I**

**Documents to be submitted on application**

1. On application, or as otherwise requested, the following documents should be submitted to the Central Bank in order to assess the fitness and propriety of persons: -
  - a) Personal Questionnaire and Declaration (PQD) form.
  - b) An updated, signed Curriculum Vitae.
  - c) A Certificate of Good Character or Conduct from the Police Service of Trinidad and Tobago or from the relevant authority of the relevant jurisdiction in the case of foreign directors, controlling shareholders, controllers and managers.
  - d) Criminal Record (if applicable).
  - e) Any other document that the Central Bank deems necessary.
  
2. In the case of corporate entities, the following documents should be submitted:-
  - a) Corporate Questionnaire and Declaration (CQD) form.
  - b) Copy of the company's Memorandum of Association and Articles of Association *or* Articles of Incorporation or Continuance and By-laws *or* other instrument of incorporation *and* certificate of incorporation.
  - c) Copies of audited financial statements of the company concerned, for three consecutive years immediately preceding its application or for each year it has been in operation, if less than three years.
  - d) Any other document that the Central Bank deems necessary.