

FIT AND PROPER GUIDELINE 2019

Industry Comment Matrix and Responses

	SECTION	PROVISION	COMMENT	RESPONSE
1.		Personal Questionnaire and Declaration From Corporate Questionnaire and Declaration Form	<p>The draft Guideline envisages the use of two new pro forma documents, the Personal Questionnaire and Declaration Form (PQD) and the Corporate Questionnaire and Declaration Form (CQD). These are important documents and the CBTT is urged to consult on their content before the texts are finalised.</p> <p>The amended PQDs and CQDs should form part of the guideline as an appendix.</p>	<p>The relevant forms will be circulated for consultation.</p> <p>The forms will be accessible on the Central Bank's website and will not form part of the Guideline.</p>
2.		Form for attestation.	Is it the intention of The Regulator to prepare a questionnaire for Nominees to complete and attest to?	The existing PQD and CQD Forms will be amended to reflect the Guideline.
3.		Company assessments	Are assessments to be written? Should they accompany the PQD form how is this to be administrated?	Financial institutions are expected to document their assessments to evidence what was done to determine the suitability of the individual for the position. Such internal assessments should not be submitted with the PQD form but should be made available to the regulator upon request.
4.		General timeframe for Fit and Proper approvals.	What is the CBTT's timeframe for approving Fit & Proper Applications?	The general service standard for approving fit and proper applications is 15 working days from the receipt of all required documentation.
5.		Terminology	Use of the terms licensee and FI on pages 19, 26 and 27 of the document. Throughout the document, the term regulated entity is used to	Agreed. The terminology will be standardized accordingly.

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			refer to a licensed institution. If licensee and FI refer to the same licensed institution then for the sake of clarity the term regulated entity should be used instead.	
6.		General comment on proportionality and due process.	<p>Inadequate provision on the principles of proportionality and due process</p> <p>Readers of the Guideline need to appreciate that passing the fit and proper test is not a process of applying listed considerations in a binary, pass or fail process. Part 7 of the Guideline goes some way towards conveying this important message, but not far enough. Moreover, just as the Guideline introduces best practice on conflicts of interest and other issues seemingly borrowed from the European Central Bank (“ECB”), it should also reflect best practice on the overarching principles of proportionality and due process, as the ECB has done in its guidance.</p>	As a statutory authority, the Central Bank is subject to all judicial review considerations (including proportionality; procedural fairness; right to be heard etc.) contained in the Judicial Review Act Chap. 7:08.
7.		General comment on enforceability of the Guideline	<p>Status of the Guideline</p> <p>The Introduction should confirm that the Guideline does not have the force of law. This could be achieved by inserting at the end of paragraph. 1.3:</p> <p>“It should be understood, however, that the Guideline does not have the force of law. It is a document for guidance only.”</p>	Reference is made to Section 278(3) of the Insurance Act, 2018 which states: “Where a person has failed to comply with Guidelines issued by the Central Bank under subsection (1), the Central Bank shall direct that person to— (a) cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or (b) perform such acts as in the opinion of the Central Bank are necessary to remedy the situation; and

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				<p>(c) perform such acts as are required to give effect to a declared agreement”</p> <p>Similarly, section 10 of the FIA empowers the Central Bank to issue Guidelines on any matter it considers necessary to give effect to the Act. Section 12 states that contravention of the Guideline, while not an offence shall not prevent the Central Bank or the Inspector from taking action under section 86. Section 86 pertains to the issuance of a compliance direction by the Central Bank, noncompliance with which can be enforced through the Court.</p>
8.	2.3 (iii)	The responsibility of the senior management of the regulated entity for applying the fit and proper policy and implementing related procedures for ensuring persons who direct, manage, control or perform a key regulated function are fit and proper at the time of appointment or recruitment and on an ongoing basis.	The Term “senior management” is not defined in the guideline. Unless the term is consistently defined in all “relevant legislation” we suggest that it be defined in the guideline.	The use of the term senior management in the Guideline will be reviewed.
9.	3.3	Regulated entities are required to reflect the elements of this Guideline in their internal policies, procedures and controls and apply this guidance in their assessment of persons who manage, control, direct, own or perform key functions at the regulated entity.	Because the Guidelines provide that a regulated entity is responsible for ensuring that proposed appointees to certain positions are fit and proper, where appointees are either not exclusive to an institution or are external service providers (e.g. insurance brokers, external auditors) the process could be cumbersome to applicants who have to obtain executed forms and supporting documents and information from third parties, and in addition, could be repetitive in respect of	<p>Persons are to be assessed in their own right for any new position to which they are being appointed.</p> <p>In respect of an insurance broker for example, who may be retained as a service provider, the due diligence process to be applied will be different to one which applies to a director, officer or controlling shareholder.</p> <p>The Central Bank will also take in consideration in its assessment whether the external service</p>

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			each person seeking the adjudication as fit and proper multiple times, even where the Central Bank has approved their designation. In the case of external auditors Section 81 of the FIA provides that the appointee should be CBTT approved. We therefore suggest that some hybrid approval process be designed to prevent repeat applications in respect of these classes of persons and prevent FI's from having to make unnecessary applications where persons will already have been adjudicated Fit and Proper.	provider is a regulated entity or satisfies other legal requirements.
10.	3.1	This Guideline applies to the following persons: v. External and/or outsourced auditors and actuaries of regulated entities;	<p>We note that actuaries and outsourced auditors are now included in the category of persons who are required to be fit and proper. Regarding External Auditors, we assume that the test applies to the firm which is to be appointed according to the licensee's guideline for appointing third parties however, we ask that you confirm if our interpretation is correct.</p> <p>Regarding outsourced auditors, we are of the view that this would not include persons employed by other entities within a group but is limited to anyone that is not an employee of the licensee (local or otherwise). Please confirm.</p>	<p>External auditors have to meet specific requirements in law and therefore will not be subject to this Guideline. Separate Guidelines for External Auditors may be issued.</p> <p>Whether or not the person is designated as an officer, once performing a key function for a regulated entity, even in a group context, they would need to be assessed as fit and proper.</p> <p>Where the internal audit function is outsourced, the person/partner at the firm carrying out the function has to be assessed as an officer of the institution.</p>
11.	3.1	This Guideline applies to the following persons....	Consider clarifying that the "officers" referred to are those of managerial level, if that is the intention. In its current form, it may be interpreted that the Guideline applies to all officers. It would also be useful if guidance was	The term 'officer' is defined in both the FIA and the IA. Similarly, a controlling and significant shareholder is defined in the FIA and the IA. Please be guided by these definitions.

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			<p>provided on the level of management or the positions subject to the Guideline.</p> <p>It is recommended that, for the avoidance of doubt in its application, the Guideline specifies what amounts to a “controlling” and “significant” shareholder. For example, the 2005 Guideline states that a controlling shareholder is “under the FIA, any person who controls twenty-five per cent or more of the voting power at any general meeting.”</p> <p>It is being recommended that consideration be given to expanding the scope of application of the Guidelines to include the deemed Systemically Important Financial Institutions (“SIFIs”).</p>	<p>While the recommendation is noted, the Central Bank is unable to do so at this time as the deemed SIFIs, that is the systemically important financial institutions that do not fall under the FIA or IA, are governed by their own statutes.</p>
12.			<p>As the CBTT will recall, the insurance sector previously raised serious objections about the extension of the fit and proper test to controlling and significant shareholders. These objections were based on concerns about the potential inability of shareholders to comply with certain aspects of the fit and proper requirements. The implications were that if shareholders failed to comply, their dividends could be suspended and they could even be compelled to dispose of their shares. There was no justification for such a requirement given that shareholders have little if any influence over the conduct of the business.</p>	<p>While the Central Bank will make a determination as to the fitness and propriety of controlling and significant shareholders, any divestment of shares for persons not fit are held to the process outlined in sections 71(13) of the FIA and 52(12) of the IA for controlling shareholders and sections 72 (11) of the FIA and 53 (10) of the IA 2018 for significant shareholders.</p>

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			<p>Those objections were cogent but they were not reflected in the provisions of the Insurance Act 2018. There remains, however, an overriding obligation on the CBTT to respect a shareholder's right under section 4 of the Constitution to the enjoyment of its property (including its shares), and the right not to be deprived thereof except by due process of law. That right is preserved notwithstanding the application of section 13(1) of the Constitution to the 2018 Act, because the relevant provisions in the Act cannot be reasonably justified in "a society that has a proper respect for the rights and freedoms of the individual".</p> <p>17. The net result is that this is an unresolved issue. The overarching principles of proportionality and due process, addressed below, will need to be applied with particular sensitivity in relation to shareholder subjects of the fit and proper test, ensuring that any practical obstacles to complying with the established considerations are not unreasonably held against the subject.</p>	

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13.	3.3	Regulated entities are required to reflect the elements of this Guideline in their internal policies, procedures and controls and apply this guidance in their assessment of persons who manage, control, direct, own or perform key functions at the regulated entity.	We also noted that under guideline 3.3 regulated entities are required to reflect in their “assessments” of certain officers. Kindly clarify what the expectations are in this regard. Is it that this will form part of the person’s performance appraisal and/or is this a one off assessment.	The fit and proper assessments are to be guided by the elements in the law and the guideline. A fit and proper assessment therefore is not a performance appraisal and as stated in the guideline, the entity is tasked with ensuring that persons are fit and proper on an ongoing basis.
14.	3.3	Regulated entities are required to reflect the elements of this Guideline in their internal policies, procedures and controls and apply this guidance in their assessment of persons who manage, control, direct, own or perform key functions at the regulated entity.	Paragraph 3.3 of the draft Guideline states: “Regulated entities are required to reflect the elements of this Guidance in their internal policies... and apply this guidance in their assessment of persons...”. This language overstates the position. Regulated entities are not legally required to do anything set out in the Guideline that is not a requirement set out in the legislation and regulations. The core requirement in the legislation is the requirement to meet the fit and proper test, applying the considerations set out in the legislation and the Guideline. While it may be best practice to have policies and procedures that reflect the Guideline, regulated entities are not acting unlawfully if they fail to do so. Any other approach would involve elevating the Guideline to a normative act, which it is not.	Guidelines build on legislative requirements. As a statutory authority, the Central Bank is subject to all judicial review considerations (including proportionality; procedural fairness; right to be heard etc.) contained in the Judicial Review Act Chap. 7:08. However, for clarity and transparency, a statement to this effect will be included in the revised Guideline.
15.	4		Propose a definition of controlled function be included	The definition of regulated function will apply and the word “controlled” will be replaced by “regulated” in all instances.

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16.	4	4.1 "IA" means the Insurance Act, 2018	Propose the Insurance Act reflect the legislation in effect (If referenced by Chapter then as an Act is repealed and replaced there will be no need to amend the Guideline)	The reference will be amended.
17.	5.1	Persons must be assessed as having satisfied the following minimum criteria initially and on an ongoing basis.	Consider specifying here the time frame within which assessments must be done, for example, "on an ongoing basis and at least annually" or "in accordance with Table 1".	Table 1 already indicates the required frequency for some aspects of the ongoing assessment and the other instances would be determined by the entity in relation to significant events that trigger a reassessment.
18.	5.1.1 (ix)	Probity, honesty, integrity and reputation	It is our respectful view that this Clause should be amended to "Has ever been a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Trinidad and Tobago while the person was connected with that business"	No change. The activities of directors or those directly concerned in the management of an entity that has been wound up do not only affect the entity while connected with the business. The proposed treatment in the Guideline is also consistent with the requirements of section 33(1) and (2) of the FIA and section 65 of the IA 2018.
19.	5.1.1(a)(vi)	Probity, honesty, integrity and reputation	Identifies the following consideration as relevant to a person's probity, honesty, integrity and reputation:- "Has ever been dismissed, asked to resign, or has resigned from employment or a position of trust, fiduciary appointment or similar position because of questions about his/her honesty, integrity or financial propriety". Maritime recommends that the words "asked to resign" are omitted. As it stands, the decision-maker would need to consider any requests to resign made by any person on any ground, even if an unwarranted request to resign were made by	No change. The Central Bank needs to be appraised of all relevant circumstances surrounding a separation from an entity so that it may be considered and where necessary conduct relevant investigations that may affect probity, honesty, integrity and reputation.

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			someone who had no authority to ask the person to resign.	
20.	5.1.1.(ix)	Has ever been a director of or directly concerned in the management of any corporation which is being or has been wound up by the court or other authority competent to do so within or outside of Trinidad and Tobago.	For an individual directly concerned in the management of any corporation which is being or was wound up by the court or other authority competent outside of Trinidad and Tobago - does this automatically disqualify him from being appointed to a Senior/Board member position within the Company? Also, how does this requirement apply i.e. is the due diligence and application required retrospectively or present at the initiation of the relationship or position and/or where there is a change?	The fact that a person may have been involved in a financial institution that was wound up does not automatically disqualify the person as fit and proper but is a factor that will be taken into consideration. The Central Bank has to assess and approve after due consideration. See section 65 (1) of the IA, 2018 and section 33 (1) of the FIA.
21.	5.1.1(a)	i.) Is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;	Suggest refine the term “proceedings of a disciplinary nature” to make reference to according to the rules of any professional body or tribunal or any other body with judicial or quasi-judicial authority.	No change. The proceedings may be internal to the entity and not necessarily related to a professional body or tribunal.
22.	5.1.2 (b)(v)	When assessing whether a person is competent and capable of performing a controlled function (see Appendix 2) the following should be taken into consideration: (v) the collective competence and experience of those who will govern the regulated entity.	While assessment of the collective competence of a governing body is important, an applicant ought not to be found not fit and proper because of the composition of the body of which he or she forms part, particularly as a negative adjudication may have to be declared in future similar applications. Suggest that the Corporate Governance Guidelines take account of the requirement for governing bodies to possess requisite skills and experience and this removed as a consideration as to an individual’s fitness. There will be a consequential deletion of item 9 on page 20.	Agreed. This requirement will be removed in relation to individual competence and experience.

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23.	5.1.2 (c)(iv)	Has any health issues which may affect performance or whether the person is mentally ill within the meaning of the Mental Health Act, 1975	A licensee does not assess the suitability of its directors based on the status of their health due to strict privacy policies. We believe that this is a very sensitive area and in some countries there are laws which prohibit requesting this information. We therefore recommend that this clause be removed from the draft guidelines.	Agreed. The provision will be removed.
24.	5.1.3 (a)	The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria.	Suggest the sentence "The fact that a person may be of limited financial resources...." instead read "Financial means is not a measure of financial integrity"	Agreed. The provision will be reviewed and amended.
25.	5.1.3 (a)	The assessment of financial integrity and soundness is aimed at determining whether the person can meet its/his personal liabilities when they become due and mitigate financial risks on a continuous basis. Financial integrity and soundness is demonstrated by a person who manages its/his own financial affairs properly and prudently or those of an entity in which he had a controlling interest or was involved with at a managerial level. The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria.	How is this determined and can this be done by a written representation from the individual that he/she is able to meet financial obligations as they become due? This clause has a high degree of subjectivity associated with it.	This will be determined based on the personal declaration of the individual on the Personal Questionnaire and Declaration Form and this would constitute a written representation.
26.	5.1.3 (b)	Financial Integrity & Soundness In the case of legal persons and shareholders, the criteria pertaining to assessment of their	If the shareholdings of the Company does not change, is there still a requirement to submit the financial statements every three years considering that the annual audited financial	There is no requirement to submit financial statements every three years in the Guideline. Appendix I of the Guideline requires the submission of audited financials for the three

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		financial integrity and soundness are set out in Appendix I.	statements are submitted to the regulator based on a legislative requirement? The submission of same should suffice once there has been no material change in the status of legal persons and/or shareholders. Additionally, consideration should also be given where in the event the shareholding percentage does not change, the profits/losses can be deducted to indicate an increase/decrease in the financial integrity/soundness of the Company's shareholders.	years preceding an application upon initial assessment of the application and not on an ongoing basis. This is different from the regulatory requirement to submit audited financials on a periodic basis.
27.	5.1.3 (b)	Financial Integrity & Soundness	Suggest replacement of “shareholders” with “significant shareholders and acquirers” for clarity as shareholders are not subject to fit and proper assessment generally.	No change. Section 3 specifies the shareholders to whom the guideline applies.
28.	5.1.3 (c)	Financial Integrity & Soundness The credit report provided by the person in accordance with the requirements set out in Table 1 shows satisfactory evidence of how his financial indebtedness has been managed;	We consider this to be intrusive and believe that this should be only applicable to Public institutions or Institutions controlled by PEPs or other high-risk personnel. What guarantee does the regulator provide to ensure the security of personal data which has been received? In addition, consideration must also be made to Shareholders and Directors from foreign jurisdictions who may not be willing to disclose their personal data in addition to GDPR legislations. Can you advise how this will be treated?	The credit report requirement has been reconsidered and it will be removed.
29.	5.1.3(c)	Financial Integrity & Soundness	Clarification is required on whether reference to “Central Bank” should instead be “the Board	Agreed. The section will be amended.

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		"In determining a person's sound management of financial affairs, the Central Bank will consider..."	and/or the Nomination Committee" or "the regulated entity".	
30.	5.1.3 (c) (iii) & (iv)	Financial Integrity & Soundness	Sub-section (c) ((iii)- clarity is required on what the Central Bank considers to be a substantial period. Sub-section (c) (iv): Please provide clarity on "persistently". Provide qualifying language around "financial affairs".	Agreed. The section will be amended.
31.	5.1.3.(c)(iii)	Financial Integrity and Soundness	It is noted that one of the considerations by the Central Bank will be whether the person has been subject to any judgement of debt payment that remained outstanding for a substantial period of time. We would like to propose that clarification or guidance be provided by the Central Bank regarding what would be a "substantial period of time".	The provision will be reviewed and clarified accordingly.
32.	5.1.3.(c) (v)	Financial Integrity and Soundness The person has met applicable capital and/or solvency requirements;	What "applicable capital and solvency requirements" is this section intended to refer to for a natural person?	This provision is not applicable to an individual or natural person. Regarding capital and solvency requirements, these thresholds are set out in legislation and regulations.
33.	5.1.3.(c) (vi)	The person was able to manage any previous business dealings in a sound and prudent manner.	How would this be evidenced?	This provision may be evidenced via information coming to the Central Bank's attention from investigations and relevant sources including other regulatory bodies where applicable. Notably, the answers to questions 18-22 on the revised PQD Form will also serve as an attestation from the person.

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34.	5.2.1 (a)	Conflicts of Interest Having a conflict of interest does not necessarily mean that a person cannot be considered suitable. This will only be the case if the conflict of interest poses a material risk and if it is not possible to prevent, adequately mitigate or manage the conflict of interest under the written policies of the regulated entity.	Consideration must be given to the Summary of a Conflict of Interest or Conflict of Interest Statement be included as an appendix in the Guideline.	Appendix 3 provides examples of conflicts and actual situations of conflict, which cannot all be envisaged and listed and should be assessed on a case by case basis.
35.	5.2.1 (d)	Conflicts of Interest Each regulated entity shall be responsible, on an ongoing basis, for assessing the materiality of the risk posed by a conflict of interest as each situation arises. If a conflict of interest is considered to be material, the regulated entity must adopt adequate measures. Namely it must: (i) &(ii)	Materiality is subjective and as such, what is considered material for one person may not be considered material for another. What does the CBTT deem to be material, is there a list or guide?	Each institution should have a documented Conflict of Interest or Code of Conduct Policy. The Central Bank cannot be expected to list every material conflict of interest. Appendix 3 provides examples which should serve as a guide.
36.	5.2.1(e)	Conflicts of Interest	We recommend that upon an initial fit and proper application the regulated entity should notify the Central Bank of all actual, potential or perceived conflicts of interest not the person as stated in line 1. We also seek advice on whether the form of the “Conflict of Interest Statement” will be provided to act as a guide to regulated entities who need to report any conflicts of interest.	The Conflict of Interest Statement is a declaration of the applicant but the guideline will be revised to require that it be signed by both the applicant and a representative of the regulated entity.
37.	5.2.1 (f)	Possible conditions include but are not limited to:	Suggest replacing “Specific approval by the entire board” with “Board approval” firstly because	In these circumstances the Central Bank requires unanimous approval of the board of directors.

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		(viii) Specific approvals by the entire board for a certain situation to continue and in accordance with an approved conflict of interest management policy.	board approval need not be unanimous to be valid and effectual, and moreover, the conflicted director will not himself vote on the matter therefore the “entire board” won’t be approving. Also suggest replace “certain situation” with the “conflict matter being deliberated by the Central Bank”	
38.	5.2.1 (f)(v)	Conflicts of Interest Cooling-off period for the person.	What is deemed to be a cooling off period?	This cannot be specified but will depend on the specific situation and would be determined on a case by case basis.
39.	5.2.1 (f)(vi)	Conflicts of Interest Obligation on the regulated entity to publish the conflict of interest.	What is the CBTT's interpretation of the publication of the conflict of interest? What when and where is this required to be published?	The Central Bank will advise, on a case by case basis, where and what will be required to be published. In certain instances, auditing standards may require publication of certain conflicts of interest for instances, where directors and senior management hold shares in a financial institution.
40.	5.2.1 (g)	If the measures taken by the regulated entity or the imposition of a condition by the Central Bank are not considered sufficient to adequately mitigate or manage the risks posed by the conflict of interest situation, the person cannot be considered suitable and approved as fit and proper.	What if there is a difference in opinion as it relates to the management of the conflict of interest by the CBTT and management..., that is, if management believes that the measures are appropriate to mitigate the conflict and the opinion of the CBTT differs; what's the recourse?	As is customary, the Central Bank will engage with the institution but the final determination will be made by the Central Bank.
41.	5.2.1	Conflicts of Interest A conflict of interest is a set of circumstances which creates a risk that a person’s ability to apply judgment or act in one role is, or could	The definition of a conflict of interest in para. 5.2.1(a) is not entirely satisfactory and lacks precision:- “A conflict of interest is a set of circumstances which creates a risk that a person’s ability to	The definition will be revised to align with the definition set out in the Integrity In Public Life Act Chap. 22:01.

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		be, impaired or influenced by a secondary interest (such as personal gain or the interests of others e.g. his relatives or friends).	apply judgment or act in one role is, or could be, impaired or influenced by a secondary interest (such as personal gain or the interests of others e.g. his relatives or friends)." A conflict of interest arises where two interests are or may be in conflict, so any attempt at a definition should acknowledge and identify the conflicting interests. The existing definition does not do so.	
42.	5.2.1	Conflicts of Interest 5.2.1 (f) a. The Central Bank may impose a condition(s) in respect of the individual application if it is felt that the measures set out in the Conflict of Interest Statement are not adequate or appropriate. Possible conditions include but are not limited to: i. <i>Prohibition in the participation of meeting or decision-making concerning a particular disclosed interest;</i> ii. <i>Resignation from a certain position;</i> iii. <i>Specific monitoring by the regulated entity;</i>	Conditional approval Paragraph 5.2.1(f) envisages the CBTT imposing conditions on a fit and proper approval if it is not satisfied with the regulated entity's Conflict of Interest Statement. These include a prohibition on the subject participating in certain decision-making processes and a requirement that the subject resign from a particular position. The CBTT's legal authority to impose such conditions comes into question. The CBTT has not been given such a power, and it cannot assign new powers to itself in its Guidelines. If the CBTT has legitimate concerns about the regulated entity's Conflict of Interest Statement, it should tell the entity so that the Statement can be improved.	Part of the process of the maintenance of the conditions in the financial market referred to in sections 5 (2) and (3) of the FIA and 7 (2) and (3) of the IA 2018 would necessarily involve the imposition of conditions that may be required to mitigate or address any factors that may affect the actual of perceived conflict of interest of a person subject to the guideline. This does not go beyond the scope of the legal authority of the Central Bank but rather, as has been held by the court, is a power implicit in its ability to effectively carry out said authority.

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		<ul style="list-style-type: none"> iv. <i>Specific reporting to the Central Bank on a particular situation;</i> v. <i>Cooling-off period for the person;</i> vi. <i>Obligation on the regulated entity to publish the conflict of interest;</i> vii. <i>Any application of the “at arm’s length” principle; and</i> viii. <i>The requirement for unanimous agreement Specific approvals by the entire board for a certain situation to continue and in accordance with an approved conflict of interest management policy.</i> 		
43.	5.2.3	Collective Suitability of the Board of a Regulated Entity	(b) Requires that the regulated entity has the primary responsibility for identifying gaps in the collective suitability of the board. The expectation is that the Board will develop and maintain a suitability matrix and ensure that board self-assessments are conducted regularly. As it relates to this licensee, the Board is elected by the Bank’s shareholders and there is a process which includes the assessment of the person’s character as well as their qualifications (it should	Section 7.2.15 of the Corporate Governance Guideline speaks to the financial entity having in place a governance framework which includes the conduct of periodic self-assessments by the board of the entity. As such licensees should seek to re-look their corporate governance framework and bring it in line with that Guideline as well as best practices in corporate governance.

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			be noted that internal board members who are also members of staff are assessed generally during the hiring stage and on an ongoing basis.) This licensee therefore does not perform Board self-assessments and, in the context of this licensee, we are not sure who would make these assessments and what the expectation of the Central Bank is in this regard.	
44.	5.2.3	Collective Suitability of the Board Where the Central Bank identifies gaps in the collective suitability of a board it may, among other things, request the result of the periodic self-assessment conducted by the regulated entity's board.	How would these gaps be identified by the Central Bank? Would a meeting be held or would this be done via a review of the minutes of the meeting of the Board of Directors in determining what steps have been taken regarding the overall operations of the Company?	Gaps will be identified thorough the supervisory process and where identified, the institution would be engaged.
SECTION 6 - OBLIGATIONS OF THE REGULATED ENTITY				
45.	6.2	It is expected that the assessment conducted by the regulated entity will take place at the recruitment stage and on an ongoing basis.	<p>Sub-section 6.2 – This sub-section requires that the assessment be conducted by the regulated entity at the recruitment stage and on an ongoing basis. It is unreasonable for a licensee to be required to conduct such extensive fit and proper assessments including checks on criminal history, sanctions, legal proceedings and other matters on an ongoing basis.</p> <p>Consider specifying here the time frame within which assessments must be done, for example, “on an ongoing basis and at least annually” or “in accordance with Table 1”.</p> <p>Sub-section 6.2 – Is there a difference between a “key function” and a “controlled function”? We</p>	<p>It is expected that a re-assessment or review will be triggered by events such as media reports or new information or negative news.</p> <p>The Guideline will amended accordingly.</p>

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			note that the terms are being used interchangeably in the document. Refer to sections 3.3, 5.1.1 (a) (xv) and 5.1.2	
46.	6.2	It is also expected that the regulated entity will conduct probity checks on criminal history, sanctions, legal proceedings, and other similar matters.	Will reference checks suffice for sanctions, legal proceedings and other matters? While services such as World Check have some data, it is not always current or accurate.	The Central Bank expects the regulated entity to use all reasonable measures and sources in conducting probity checks.
47.	6.3	The Central Bank expects that where a third party is submitting the fit and proper documentation on behalf of a regulated entity or person (for e.g. in the case of a licensing application when an attorney or other representative is submitting the application), that the third party shall obtain and submit all relevant information as required and ensure that only complete applications are submitted to the Central Bank.	Would this requirement differ if the third party is not regulated by the Central Bank and as such has no obligation regarding the reporting of information or must this be the responsibility of management who have contracted the relevant third party? This must be stated explicitly as it is currently unclear.	The requirement would not differ.
48.	6.4	The responsibilities of the Board of a regulated entity with respect to fitness and propriety	We noted that this guideline provides that the Board is directly responsible for conducting fit and proper assessments of directors, the CEO and the Company Secretary. Kindly provide some clarity as in the case where a licensee is ultimately a subsidiary of a foreign bank. While the processes are robust, they are different and may not easily facilitate the Board performing these assessments.	Financial institutions established in Trinidad and Tobago and regulated by the Central Bank must adhere to the laws of Trinidad and Tobago.
SECTION 7 - APPROACH TO FIT AND PROPER ASSESSMENTS				
49.	7.1	In addition, the Central Bank will determine the suitability of significant and controlling	Will a grandfathering provision apply for existing shareholders?	The requirement is to be fit and proper on an on-going basis.

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		shareholders via in-depth due diligence assessments which would involve examination of the transparency of ownership structures, financial resources, financial soundness and probity as well as conformity with laws and ethical standards that govern business conduct.		There will be no grandfathering of provisions in the Guideline.
50.	7.1	The Central Bank will evaluate probity, integrity and reputation; competency, capability and soundness of judgment; financial integrity and soundness; time commitment; and collective suitability.	Consider including “conflict of interest” and “honesty” in this list to maintain consistency with the factors listed at section 5.	Agreed. The guideline will be revised accordingly.
51.	7.5	The Bank’s approach will be informed by all available evidence taken together, including third-party evidence. Where evidence becomes available which puts into question the fitness and propriety of a person already assessed as fit and proper, the regulated entity is required to notify the Central Bank as soon as possible as well as internally re-assess the person’s fitness and propriety. The Central Bank is also expected to consider this information and re-evaluate the person where relevant.	It is noted that the Central Bank’s approach to fit and proper assessments will include a review of third party evidence. Clarification is required on whether the regulated entity or the Central Bank will be responsible for gathering the third party evidence, as well as what type of evidence will meet the criteria for third party evidence.	All relevant sources of information will be considered and the reference to “third party evidence” will be revisited.
SECTION 8 - FIT AND PROPER INTERVIEWS BY THE CENTRAL BANK				
52.	8		We noted that under this guideline, where the Central Bank has a concern about a proposed appointee who is to be a director or officer, the CBTT may request an interview. Thus far the process has been that once an officer has been	The Central Bank has the power to determine fitness and propriety and where necessary, remove someone deemed not fit and proper under the relevant legislation, whether or not appointed prior to or after an application is made.

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			appointed (either as a new hire or through promotion) the Central Bank is notified within (7) days in accordance with section 21(8)(b) of the Financial Institutions Act, 2008 (“the FIA”). In light of this guideline please clarify whether we would need to obtain the Central Bank’s approval prior to appointing an officer.	
53.	8.3		It is our recommendation that “adequate notice” should be clarified and the period of notice that will be given should be expressly stated in the Guideline. It is our further recommendation that a reasonable period of notice would be twenty (20) working days.	The word ‘adequate’ will be replaced with ‘reasonable’ but a specific period will not be stated as it will depend on the specific circumstances.
54.	8.3		What right of legal/company representation does the applicant have? In the event of an adverse decision, what is the appeal process? What criteria will be used for selection of the interview panels in terms of minimum knowledge and experience?	Persons called for an interview will have a right to legal/company representation. Section 112 of the FIA 2008 and 253 of the IA 2018 sets out the appeals process. The panel will comprise of officers of the Central Bank.
SECTION 9 - ONGOING OBLIGATION S OF APPROVED PERSONS				
55.		9.1	In sub-section 9.1, provide a definition for “regulated person”. We suggest that the requirement to notify the CBTT of changes to the PQDs apply only to material changes (which should be defined or guidance provided as a table) and that all other	The reference to ‘regulated person’ will be amended to ‘person’. Material change in the context of the Guideline is any change that will significantly impact the fitness and propriety of a person.

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			<p>changes (e.g. change of address or title) can be captured during the annual confirmation of information in the PQD.</p> <p>Please define what constitutes a reportable/material change. If a person is not changing functions, but has gained an additional qualification, completing an updated PQD does not seem to add value.</p>	Table 1 will also be amended to more clearly state when updated PQDs will be required.
10 - WHISTLEBLOWING				
56.		Sub-section 10.1	Provide some clarity relating to ‘reasonable basis to believe’. To avoid a “witch hunt” we suggest that the sub-section be reworded to require a Whistleblowing Policy with adequate provisions to allow any person to report when a prospective or approved person does not meet the fit and proper criteria.	While the intention is not one of a ‘witch hunt’ we consider the wording of 10.1 to be appropriate. The Whistleblowing Policy of the regulated entity should contain provisions to address or prevent potential instances of a ‘witch hunt’.
TABLE 1				
57.	#1	Updated PQD forms	<p>"This is subjective. What is considered a material change?</p> <p>Also, it is onerous for non-resident Directors and Shareholders to submit a PQD form on an annual basis or for example, where there is a change in shareholdings of less than 5%."</p>	Material change in the context of the Guideline is any change that will significantly impact the fitness and propriety of a person. Table 1 will also be amended to more clearly state when updated PQDs will be required.
58.	#1	Submission of updated PQD forms	If there has been a material change and the form is submitted, is it necessary to submit another copy at the end of the year?	Table 1 will be amended to more clearly state when updated PQDs will be required.

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			<p>Also, if there has been no material change, what value is there to submitting another form on an annual basis?</p> <p>If CBTT insists on annual submissions, can a form not be created for batch reporting?</p> <p>We suggest that reference to “changes” be expanded to refer to “material changes” wherever it appears.</p>	
59.	#4	Certificate of Character from the Trinidad and Tobago Police Service (TTPS) dated within 6 months of a fit and proper application.	A certificate of Character is required as part of the ongoing Fit and Proper assessment of persons every three (3) years. Having regard to the practical challenges experienced within the local jurisdiction to obtain the COC, as well as the lengthiness of the process, we propose that this requirement be amended to every five (5) years.	Agreed. The Guideline will be amended to submission at a longer frequency – possibly every 5 years.
60.	#4	Submission of Original Certificate of Character	<p>Trinidad and Tobago is a small market and as such, subsidiary licensees operating here have certain Directors serving on multiple boards of directors. We therefore ask that consideration be given to changing the guideline to read as follows:</p> <p><i>The bank requires the submission of the original certificates or a copy certified by the Corporate Secretary of the regulated entity of the certificates issued by the Trinidad and Tobago Police Service.</i></p>	Agreed. The Table will be updated accordingly.
61.	#5	Overseas Law Enforcement Clearance Reports This requirement applies to persons who have	We suggest that the ambit of this requirement is too wide in application.	Agreed. The ambit of the requirement will be reviewed and revised.

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		at any time worked, studied or habitually resided in overseas jurisdictions for six or more months, since attaining the age of eighteen years. These clearance reports are required to be requested by the licensee from the law enforcement agency within each applicable jurisdiction. The overseas law enforcement agency is to be requested to submit their report (in English) when submitting an initial application for the person.	Applying this to any person who has resided overseas for more than 6 months will capture an undergraduate who worked on a work visa for a short period of time 45 years ago. This surely could not be the intention. We suggest that the period of time a person resides abroad should be changed from 6 months to two (2) years. We also suggest that the reportable period should be for persons who resided abroad within 10 years of the initial fit and proper application and not beyond. This would be consistent with other areas of the PQD (e.g. address or past associations).	
62.	#5	Overseas law enforcement clearance reports Initially or every three years or when there is a change that may impact a person's status on the law enforcement clearance report.	Consideration must also be given where for foreign Directors, Shareholders or Officers, the CBTT may be required to liaise directly with the foreign law enforcement authority or regulatory bodies to receive the Certificate of Character based on foreign laws or requirements. This can be extremely time consuming.	The onus will be on the applicant and/or regulated entity and not the Central Bank to ensure that the required documentation is obtained. While the process for obtaining such may at times be time consuming, all requirements must be met for an application to be processed. Generally, the ambit of the requirement will be reviewed and revised.
63.	#5	Overseas law enforcement clearance reports	Where a regulated entity has multiple directors serving on multiple boards, we ask that consideration be given to changing the guideline to read as follows: <i>The submission of Overseas Law Enforcement Clearance Reports or a copy of the Report certified by the Corporate Secretary of the regulated entity.</i>	The Central Bank agrees that copies certified by the Corporate secretary will be acceptable. The Guideline will be revised to reflect this.

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64.	#4 & #5	4 - Certificate of Character from the Trinidad and Tobago Police Service (TTPS) dated within 6 months of a fit and proper application. 5- Overseas law enforcement clearance reports	Please provide clarity as to what may impact a person's status on the certificate of character (CoC). Similar to the European Central Bank's Guide to Fit & Proper Assessments on which several parts of this draft Guideline are based, we suggest that CBTT provides further guidance on situations that may trigger submission of updated information.	The Guideline currently does not specify a trigger for either the Certificate of Character or the Overseas Law Enforcement Clearance Reports. Resubmission of either of these will be on a periodic basis and the current requirement of three (3) years is being changed to five (5) years.
65.	#6	Valid work permit This requirement applies to a person who is not a citizen of Trinidad and Tobago.	"Does this apply to non-resident Directors who make decisions for the T&T operations outside of T&T and from time to time visit the jurisdiction? Is there any consideration for foreign nationals who are holders of the CSME certificate? Also consideration should be given to changing the guideline to read as follows: <i>Valid Work Permit (where applicable) certified by the Corporate Secretary of the regulated entity.</i>	The CARICOM/CSME skills Certificate will be included in the reference. With regard to the work permit, this will apply where the person's presence in Trinidad and Tobago meets the requirements for a work permit. Agreed. Copies certified by the Corporate Secretary will be included in the reference.
66.	#7	A certified or notarised copy of government issued photo identification in colour	The reason for submission of a certified or notarized copy of government issued photo identification every five years for persons resident overseas is not clear. We suggest that the Central bank only requires that updates be provided for expired identification.	The submission of government issued photo identification will assist the Central Bank in its assessment and background checks. The requirement will however be revised to specify photo identification upon initial application and thereafter upon expiration and will be expanded to all applicants, not just overseas residents.

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67.	#8	Conflict of Interest Statement (where applicable)	Please advise if the CBTT will be providing the format of the statement.	A template form will not be provided by the Central Bank for this statement.
68.	#9	Collective Suitability Statement on the current composition of the board This statement should provide information on how the person will complement or contribute to the regulated entity's current board composition and its collective suitability needs.	Will this be a standard form? Who should provide this certification?	A template form will not be provided by the Central Bank for this statement. The certification is to be provided by the regulated entity.
69.	#10	Credit Report dated within 3 months of the application	It is noted that credit reports from a reputable credit assessment/rating agency are required. Please advise whether the Central Bank will provide a list of reputable credit assessment/rating agencies from whom credit reports should be commissioned. Additionally, we wish to note our concern that there is the potential for this requirement to act as a deterrent to persons wishing to apply to perform the functions identified in the Guideline as some persons may be hesitant to provide particulars of their credit ratings to the Company or the Central Bank.	The concern is noted and the credit report requirement will be removed from the Guideline.
70.	#9 & 10	Collective Suitability Statement and Credit Report	Given that some of the supporting documentation in support of a Fit and Proper designation will be new, clarification is needed on whether institutions will be required to provide such documentation for current Directors or will such Directors who had previously been deemed "Fit and Proper" under the 2005 Guideline be	The Guideline will not be applied retroactively. Supporting documentation that is a requirement in this new Guideline will be required going forward if or when a person or entity is being assessed or re-assessed.

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			exempt from this requirement until a further assessment is required.	
APPENDICES				
71.	Appendix 1	Probity, honesty, integrity and reputation Where the company is not an entity regulated by a financial regulator, the Central Bank will look to open sources of information such as internet searches and news sources as well as World Check to obtain information as to the integrity and reputation of the company	We suggest that the CBTT ensure that it has a transparent set of criteria developed with which it will assess the result of social media and internet searches to determine probity, honesty, integrity and reputation. This will ensure that the decisions of fitness and propriety by the CBTT is not only transparent but consistently applied.	Negative news on the internet or other media are sources of information which will trigger further probing. Any decision made by the Central Bank will be determined by a reasonable weighing of evidence before it.
72.	Appendix 1	Probity, honesty, integrity and reputation	As World Check is a brand, suggest replacement with “accepted databases noting persons of heightened risk from an AML/CFT perspective”	Noted.
73.	Appendix 1	Competency and capability The Company will be required to provide an organizational chart of the legal structure of the group (where necessary) showing shareholdings as well as the individual organizational chart of the entity showing the governance structure. Approved statutory filings regarding the ownership of the entity would also be required to be presented.	What is required in a “governance structure”?	The Section will be reworded for clarity.
74.	Appendix 1	Financial Integrity and Soundness	Please indicate what documents must be submitted as evidence of financial resources.	Evidence of financial resources may include bank/financial institution statements and/or other documents which indicate the sources of funding of an entity that may be newly established or in the process of being established

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				and where the documents requested in (i) to (iii) of this section do not exist.
75.	Appendix 1	Disclosure of historic legal proceedings	<p>Part I of Appendix 1 requires corporate shareholders subject to the fit and proper test to disclose “any past and current legal proceedings brought or upheld against it...”. This casts the net too wide. It is disproportionate and unreasonable to require a corporate subject to disclose what may run into thousands of historic civil, employment or other proceedings, even if they were resolved in favour of the company. There should at least be a backstop limit of, say, three years, beyond which any non-criminal or non-disciplinary proceedings should cease to be relevant. This would be consistent with the approach set out in Schedule 5 of the Insurance Act, Subhead B, which is not concerned with historic legal proceedings that were resolved in favour of the company.</p> <p>Suggest a materiality qualifier be applied to past and current legal proceedings. Long standing international institutions will invariably be the subject of litigation for a wide range of matters arising in the ordinary course of business. It is virtually impossible to report on, and totally unnecessary for the Central Bank to be aware of all litigation matters. A dollar value or matter type would assist in narrowing down this list to a relevant and useful body of information.</p>	<p>The Bank should be aware of any past and current legal proceedings brought or upheld against the Company involving fraud, insider trading, money laundering, terrorist financing, bankruptcy, winding-up, malpractice or other dishonesty, without any time limits. These proceedings may be relevant factors for the Bank to consider in assessing fitness and propriety and so, they ought to be disclosed.</p> <p>However, there should be a time limit of 10 years for the disclosure of all other proceedings. The Bank still needs to know if, for example, persons are making numerous claims against insurance companies which may be symptomatic of a larger issue within the company.</p>

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76.	Appendix 3	Personal category of conflict Financial category of conflict	In the personal and financial categories the degree and type of connection references “close personal relation”. What constitutes “close”? This needs to be clearly defined.	The footnote to Appendix 4 states: <i>“A close personal relationship includes a parent, grandparent, brother, sister, spouse, son-in-law or daughter-in-law or a stepchild. A spouse in relation to the person means a person to whom the person is married or living with in conjugal relationship outside of marriage.”</i>
77.	Appendix 4	Terminology	There is a drafting error in the second bullet point at the top of page 26 of the draft Guideline. The first sentence in Appendix 4 refers to “the FI” (financial institution). This should probably be a reference to “the regulated entity”, assuming this Appendix is also intended to apply to insurers.	Reference will be amended accordingly.