



BANK OF MAURITIUS

Guideline

on

Fit and Proper Person Criteria

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1.0 INTRODUCTION

The probity and competence of senior officers, directors and shareholders who exercise significant influence on financial institutions regulated by the Bank of Mauritius are not only of strong interest to the Bank of Mauritius but also to the institutions themselves. As such, persons in these positions must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner.

Market participants and the public at large need to be confident that persons managing the affairs of the institutions are competent, honest, financially sound and will treat them fairly. Financial institutions must, therefore, ensure that such persons are and are seen to be fit and proper.

A person is considered to be fit and proper if he is essentially of good character, competent, honest, financially sound, reliable and discharges and is likely to discharge his or her responsibility fairly.

1.1 Objective

The objective of this Guideline is to set out a framework for assessing a person's capacity to act as a fit and proper person and to provide for a basis for decision in the matter.

1.2 Applicability

This Guideline supersedes the Guideline on Fit and Proper Person Criteria revised by the Bank in March 2005.

The Guideline applies to banks, non-bank deposit taking institutions, foreign exchange dealers and money changers, collectively referred to as financial institutions or institutions. It is issued under the authority of section 50(2) of the Bank of Mauritius Act 2004 which empowers the Central Bank to issue guidelines on or relating to the operations and activities of and standards to be maintained by the financial institutions, section 100 of the Banking Act 2004 which empowers the Central Bank to issue such guidelines as it thinks fit for the purposes of the Act and section 46 of the Banking Act 2004 which requires directors and senior officers to be fit and proper persons.

The criteria outlined in the Guideline are to be applied individually but it is their cumulative effect, which will determine whether a person meets the test. A failure to meet one criterion will not, of its own, necessarily mean failure to meet the test of fit and proper person. The process will involve a good measure of judgment, which must be exercised in a fair and judicious manner, always in the best interests of the institution and the sound conduct of its business.

The application of fitness and probity tests may vary depending on the degree of a person's influence and on the person's responsibilities in the affairs of the financial institution.



2.0 INTERPRETATION

In this Guideline:

“**fit and proper person**” means a person who when subjected to the criteria of the Guideline together with any other criteria prescribed by the board of directors, presents the likelihood of his being in a position to discharge his responsibilities in a competent, honest and correct manner in the best interests of the institution;

“**senior officer**” of a financial institution means:

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor or manager of a significant business unit of the financial institution; or
- (b) a person with a similar position and responsibilities as a person in paragraph (a);

“**significant influence**” means the capacity of a shareholder to influence persuasively, because of his shareholdings, the composition of the board of directors of the financial institution and/or its financial and operating policy decisions.

3.0 RESPONSIBILITIES OF SENIOR OFFICERS, DIRECTORS AND SHAREHOLDERS

Shareholders with significant interest¹, directors and senior officers of financial institutions shall at all times be and be seen as fit and proper. It is incumbent on the board of directors of the institution to ensure that this is actually the case.

3.1 Role of the Board of Directors

To effectively discharge its responsibilities, the board of directors of a financial institution shall:

- establish fit and proper person policy, taking fully into account the criteria stated in the Guideline (the board may need to expand the criteria to provide for the requirements of any special situation);
- apply the policy to directors, senior officers, and shareholders that are in a position to exercise significant influence on the institution;
- ensure creation of appropriate documentation on the process implemented and decisions made; and
- make the documentation available for inspection by the Bank of Mauritius, as required.

The board’s further responsibilities are to ensure that:

- nominations, initiated by the Board, of persons for election to the board of directors meet the test of fit and proper person set out in the Guideline before such nominations are placed before the shareholders’ meeting;



- candidates for appointment to the senior officer level, meet the test of fit and proper person before the appointments are made;
- acquisition of shares by persons who are likely to be in a position to exercise significant influence on the financial institution meet the test of fit and proper person before their shares are registered in the register of shareholders, and to advise the Bank of Mauritius if events have occurred that put into question their ability to meet the test;
- requirements of section 46 of the Banking Act 2004 are complied with, including those with respect to prior notice to the Central Bank for the appointment of a senior officer; the notice shall be accompanied by a completed questionnaire outlined in the Annexure to the Guideline and complete information on any objections or contrary views expressed by any director;
- processes are implemented to keep under constant review the continuing capacity of directors, senior officers, and shareholders with significant influence to meet the fit and proper person test; and
- the chief executive officer applies the fit and proper person test to other management positions below the senior officer level and reports to the board periodically on the result achieved.

3.2 Responsibility of Persons Subject to Fit and Proper Person Test

In the first instance, the onus is on senior officers, directors, and shareholders with significant influence to demonstrate that they are fit and proper persons. They must, accordingly, complete the Fit and Proper Person Questionnaire, outlined in the Annexure, and provide any additional information that the board of directors may require to complete its investigation. They are further obliged to notify the board forthwith of any events or circumstances that have occurred subsequent to their initial assessment of fit and proper person that might change the assessment or at least have a material bearing on it. The board shall investigate the information, on a priority basis, and decide on the individual's fit and proper person status.

Even when a person subject to fit and proper person test fails to observe the above notification responsibility, the board shall remain vigilant about all information that may be otherwise publicly available and which might throw light on his fit and proper person status, and take action as appropriate. It remains the board's responsibility to keep under constant review the fitness and probity of all persons covered under the Guideline.

3.3 Role of the External Auditors

If during the course of their statutory audit of a financial institution, the external auditors become aware of information that points to non-compliance or potential non-compliance by a person with the fit and proper person requirements of the Guideline, they shall forthwith advise the board of directors of the matter and provide all relevant information. The board shall, on a priority basis, take a decision in the case and initiate whatever action is necessary. The board's proceedings shall be properly documented. The board shall advise the Bank of Mauritius of the matter and its decision.



3.4 Establishment of a New Institution

Any person, group of persons or entity applying for a licence to establish the business of a bank, non-bank deposit taking institution, foreign exchange dealer or money changer, shall be subjected to the fit and proper person criteria specified in the Guideline. Based on the information provided by the applicant(s), the Bank of Mauritius will assess their fitness and probity for the purpose of granting a licence under the Banking Act. The criteria will be applicable on an on-going basis if the applicant(s) is successful in obtaining the licence.

4.0 ASSESSING FITNESS AND PROBITY

Criteria for assessing fitness and probity of a person are outlined under three captions.

1. Honesty, integrity, diligence, fairness, reputation and good character;
2. Competence and capability;
3. Financial soundness.

As stated earlier, it is the cumulative effect of the application of the criteria that will determine the fitness and probity of a person. In applying the criteria, the board may need to discuss the matter with an informed party, in which case a summary of the discussion should be minuted for future reference.

4.1 Honesty, Integrity, Diligence, Fairness, Reputation and Good Character

Honesty, integrity, diligence, fairness, reputation and good character are qualities that are demonstrated over time. These attributes demand a disciplined, on-going commitment to high standards of behaviour and honesty.

In determining a person's honesty, integrity, diligence, fairness, reputation and good character, the board of directors shall consider all appropriate factors, including but not limited to:

1. whether the person is honest, diligent and independent-minded and acts ethically with integrity and fairness;
2. whether the person 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 investigation, which might lead to such proceedings;
3. whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
4. whether the person, or any business in which he has controlling interest or exercises significant influence, has been investigated, disciplined, suspended or criticised, by a regulatory body, a supervisory authority or professional body, a court or a tribunal, whether publicly or privately;



5. whether the person has been associated, in ownership, directorship or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a licence to conduct trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated;
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;
7. whether the person has been the subject of any justified complaint relating to regulated activities;
8. whether the person has been charged or convicted of any criminal offence, particularly an offence relating to dishonesty, fraud, money-laundering, theft, malpractice, financial crime or other criminal acts or been involved in any acts of misfeasance or serious misconduct;
9. whether the person has contravened any of the requirements and standards of a regulatory body, a professional body, a supervisory authority, government or its agencies, which are of the nature and/or significance that may have affected his fitness and probity;
10. whether the person has been a director, partner, or otherwise involved in the management, of a business that has gone into receivership, insolvency, or liquidation while the person was connected with that business or within one year after the connection;
11. 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 his fitness and probity;
12. whether the person has ever been disqualified, under the Companies Legislation or any other legislation or regulation, from acting as a director or serving in a managerial capacity;
13. whether the person has at any time shown strong opposition or lack of willingness to maintaining effective internal control systems;
14. whether the person has contributed significantly to the failure of an organisation or a business unit;
15. whether, in the past, the person has been fair, truthful and forthcoming in his dealings with his customers, superiors, auditors and regulatory authorities; and
16. 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.



The above matters may have arisen either in Mauritius or elsewhere. The board of directors should be informed of any of these matters, but will consider the extent and circumstances of the person's involvement in the relevant events, the time it occurred and its seriousness. The board of directors will gather information from all appropriate sources, on the overall reputation of a person regardless of whether such information results from the above criteria and factor it in its assessment of the person's fitness and probity.

4.2 Competence and Capability

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

In determining competence, and capability of a person, the board of directors shall take into account all relevant considerations including, but not limited to:

1. whether the person has demonstrated, through his qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position, including the establishment of effective control regime;
2. whether the person has ever been diagnosed as being mentally ill or unstable so as to render him unfit to discharge his duties;
3. whether the person has ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement; and
4. whether the person has sound knowledge, experience, expertise and satisfactory past performance of the business and responsibilities he will be called upon to shoulder.

4.3 Financial Soundness

In order to demonstrate his capacity to ensure safety and soundness of a financial institution, including the balancing of risks and rewards, and protect the interests of depositors and other stakeholders, a person must demonstrate, to the satisfaction of the board of directors, that he has managed his own financial affairs properly and prudently. Where a person has failed to manage his or her debts or financial affairs satisfactorily, especially where a loss was caused to others, the person's competence, honesty and integrity may be in doubt.

In determining a person's financial soundness, the board of directors must consider all relevant factors, including but not limited to:

1. whether the person has been the subject of any adverse judgment or award in Mauritius or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
2. whether, in Mauritius or elsewhere, the person has made any arrangements or composition with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestered, or been involved in proceedings relating to any of these;



3. whether a person who has been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:
 - a. has been the subject of any adverse judgment or award, in Mauritius or elsewhere, that remains outstanding or was not satisfied within a reasonable period; and
 - b. has, in Mauritius or elsewhere, made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestered, or been involved in proceedings relating to any of the foregoing.

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

5.0 COMMENCEMENT

This guideline shall come into effect immediately.

Bank of Mauritius

¹ Amended June 2014