



Commonwealth of Dominica
MINISTRY OF FINANCE
Financial Services Unit

Dominica Financial Services Unit

'Fit and Proper' Guideline

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1. INTRODUCTION

- 1.1 The Financial Services Unit Act 18 of 2008, PART VI, Sections 27; the Cooperatives Societies Act 2 of 2011, Section 53(4); Insurance Act 4 of 2012, Sections 203 and 91; the Money Services Business Act 8 of 2010, sections 15, 41 and Form B require that persons holding key positions in licensed financial institutions, must be a fit and proper person to hold the particular position which he holds or is likely to hold.
- 1.2 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.”
- 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. Accordingly, they have the primary responsibility for appointing persons that are fit and proper to hold key positions within the organization. (*Key positions are defined in Paragraph 4).*
- 1.4 The Financial Services Unit of Dominica as regulator and supervisor of international banks, nonbanks, insurance companies and pension funds etc, has a duty to ensure that licensees under the FSU Act and other relevant legislations are compliant with the provisions of the Acts 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 FSU Act have been followed and international best practice, where relevant, has been considered.

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 or is likely to discharge his/her responsibilities fairly.
- 3.2 In some cases, controlling shareholders may be corporate entities and in these instances, similar fit and proper tests should be applied to those entities and their respective shareholders / directors.

4. WHO SHOULD BE FIT AND PROPER?

- 4.1 According to governing legislation 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) any person who is entitled to control at least one-third of the voting power at any general meeting of the company.*
- (ii) any person who controls ten per cent or more of the voting power at any general meeting*

- 4.1.5 Managers of financial institutions.*
- 4.1.6 Insurance agents, salesmen, adjusters, and brokers.*
- 4.1.7 Actuaries.*
- 4.1.8 Senior officers.*

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 FSU, 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 FSU Act 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/Manager 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.

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. For example, conflict of interest may arise where a trustee is an officer or employee, or a shareholder of a company issuing a debenture or other debt that may be held by the trust.

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 No 29 of 1987;

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 FINANCIAL SERVICES UNIT (FSU)

11.1 Fit and proper tests will be applied by the FSU at the authorization stage, that is, when a person or a company either applies for a licence or to be registered in accordance with relevant legislative obligations, and thereafter on the occurrence of specified events. The latter include, but are not limited to, new appointments 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 Financial Services Unit 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 Financial Services Unit will consider whether such conduct is relevant to the person's fitness and propriety.

11.4 The Financial Services Unit will assess the fulfillment of fit and proper criteria in a holistic manner after due consideration of all relevant areas. For instance, the FSU 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, Financial Services Unit will communicate with supervisors in the relevant jurisdictions as part of the assessment procedure, to the extent permitted by law.

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; etc.

APPENDIX I

Documents To Be submitted On Application

1. On application, or as otherwise requested, the following documents should be submitted to the Financial Services Unit in order to assess the fitness and propriety of persons:
 - a) Personal Questionnaire and Declaration Form B
 - b) An updated, signed Curriculum Vitae.
 - c) A valid Certificate of Good Character or Conduct from the Commonwealth of Dominica Police Service or from the relevant authority of the relevant jurisdiction in the case of foreign directors, controlling shareholders, controllers and managers.
 - d) Criminal Records
 - e) Any other document that the Financial Services Unit deems necessary.
2. In the case of corporate entities, the following document should be submitted:
 - a) Questionnaire and Declaration (QD) 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 Financial Services Unit deems necessary.

FORM B: PERSONAL QUESTIONNAIRE

Fit and Proper Test

PART A

NAME: _____

PREVIOUS NAME (IF ANY): _____

ALIASES: _____ DATE OF BIRTH: _____

CITIZENSHIP: _____

PLACE OF BIRTH: _____

SOCIAL SECURITY or NIS NUMBER: _____

PASSPORT NUMBER: _____

ADDRESS (Home & Business): _____

OCCUPATION: _____

- 1 Have you at any time been charged or convicted of any offence by a criminal or military court? (excluding minor Road Traffic offences). If so, please give details of charge, and if convicted, the date of conviction and full particulars of the offence and the penalty imposed.

- 2 Have you ever been the subject of investigation, disciplinary procedure, censured, disciplined by any professional body to which you belong or have belonged? If so, give particulars.

- 3 Have you ever been refused entry to any profession or vocation? If so, give particulars.

- 4 Have you ever been dismissed or requested to resign from any office of employment? If so, give particulars.

- 5 Have you ever been censured, disciplined by, or made the subject of a court order at the instigation of any -

- (a) regulatory authority?
- (b) officially appointed enquiry?
- (c) other established body concerned with the regulation of a relevant activity (as described in the glossary at the end of this form)? If so, give particulars.

- 6 In connection with the formation or management of any corporation, have you been adjudged by a court civilly or criminally liable for any fraud, misfeasance or other misconduct towards that corporation or any member of the corporation? If so, give particulars.

- 7 In connection with the formation or management of any corporation have you been disqualified by a court from being a director or from acting in the management or conduct of the affairs of any corporation? If so, give particulars.

8 Have you ever -

(d) been adjudged bankrupt by a court in any jurisdiction?

(e) had a receiving order made against you?

(f) entered into a deed of arrangement, or other composition or arrangement with your creditors?

If so, give particulars.

9 Has a bankruptcy petition ever been served on you? If pending, give details of the circumstances and if not pending, how was the matter resolved?

10 Have you, your company or your employer, previously dealt on a regular basis with any person carrying on a relevant activity (as described in the glossary at the end of this form) who has, to your knowledge at any time, indicated that he is unwilling to effect further transactions with you, your company or your employer, by reason of any act or omission by you? If so, give particulars.

11 Will you be actively engaged in the business of the entity to which this application relates and devote the major portion of your time to it?

PART B

RELATED OR OTHER INTEREST

1. Have you been a director of a deposit taking institution, credit extending institution, other financial service provider, any other limited company or corporation other than those stated in the previous questions? If so, state -
 - (a) name of company/corporation;
 - (b) nature of business;
 - (c) date of commencement of directorship;
 - (d) date of cessation of directorship;

2. Are you or have you been engaged -
 - (a) in partnership; or
 - (b) in business as a principal on your own account?

If so, give particulars.

3. Are you a beneficial owner of any controlling interest in any unlisted private or public company? If so, give particulars.

4. Have you ever been a director, or directly concerned with the management of a bank or other financial institution -
 - (a) that has been wound up by a court?
 - (b) the license of which has been revoked?
 - (c) which has been placed in receivership?
 - (d) which has entered into a composition with its creditors?
 - (e) whose business has been adjudged to have been conducted imprudently or fraudulently?
 - (f) which has failed to meet the solvency requirements prescribed by law?

If so, give particulars.

5. Have you ever been a director, or been directly concerned with the management or conduct of affairs of any company which has gone into liquidation, whilst you were, or within one year of you being a director, or so concerned? If so, give details of the circumstances including the following-

- (a) name of company;
- (b) name of liquidator;
- (c) address of liquidator.

6. Have you ever been concerned with the management or conduct of affairs of any corporation which, by reason of any matter relating to a time when you were so concerned, has been censured or disciplined by-

- (a) any regulatory authority?
- (b) any official appointed enquiry?
- (c) any other body concerned with regulation of a relevant activity?

If so, give particulars.

7. Do you (in your personal capacity or through any entity controlled by you) have outstanding debt of any amount sixty or more days in arrears? If so, state the following-

- (a) form
- (b) amount
- (c) source
- (d) maturity date

8. Has any person, firm or company guaranteed the Indebtedness? If so, give Particulars (see previous question).

9. Are you at present guaranteeing the debts and obligations of any third parties?
If so, give particulars:

I certify that all the
statements contained in this questionnaire are true, accurate and
fair to the best of my knowledge and belief.

.....
Signature

GLOSSARY

“connected” in relation to a company means two or more companies or groups of companies with interests which are so interrelated that they should be considered as a single unit;

“corporation” means a body corporate, incorporated in Dominica or elsewhere;

“relevant activity” means-

- (a) banking, finance, insurance, money-lending, money management, debt-financing, hire purchase financing, leasing or other financial activities;
- (b) dealing in securities;
- (c) providing investment or financial advice and management.