

FIT AND PROPER GUIDELINES

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1. Introduction

1.1 The Securities Act, Insurance Act and the Mutual Fund and Hedge Fund Act (regulatory laws) vest the Central Bank with the authority to license and supervise the securities, funds and insurance sectors. As part of its statutory mandate, the Central Bank must assess the Fit and Proper nature of licence applicants under the regulatory laws.¹

1.2 These Guidelines outline the general criteria the Central Bank will consider when determining what constitutes Fit and Proper under the above mentioned legislation.

1.3 The Fit and Proper assessment of an applicant (corporate or individual) will be undertaken at the time of initial application and on a continuing basis thereafter, in particular at the time of renewal of any licence. An applicant granted a licence for one or more activities requiring a licence under the governing laws and the officers employed by an applicant are required to be prepared to demonstrate that they are Fit and Proper at all times.

1.4 The onus is on the applicant and its key officers to demonstrate to the satisfaction of the Central Bank that they are Fit and Proper and not on the Central Bank to demonstrate the contrary.

1.5 The guidelines set out herein provide general guidance, and are not intended to be comprehensive nor replace or override any legislative provisions. They should be read in conjunction with the relevant governing laws and any regulations made thereunder, as well as written directions, notices, codes and other guidelines as may be issued by the Central Bank from time to time.

1.6 The minimum standard comprised in this paper are not exhaustive, the Central Bank may at its discretion consider additional or alternative factors where the particular circumstances of an applicant so demands.

¹ Section

2. Who needs to comply with the “fit and proper” guidelines?

2.1 The Fit and Proper Guidelines apply to the applicant business as a whole and the individuals involved in its management and control, as well as to those who exercise significant power or discharge significant responsibilities in relation to the activities carried on by the business. The following is a non exhaustive list of persons to whom the Central Bank will apply the fit and proper test;

- (a) a company, unit trust or limited partnership applying for a licence or licensed as a mutual fund;
- (b) each director, general partner or trustee, as the case may be, of a mutual fund;
- (c) each promoter of a mutual fund;
- (d) a person seeking to be approved as a custodian of a mutual fund;
- (e) a person seeking to be approved as an auditor of a mutual fund;
- (f) a company, firm or other entity applying for a licence or licensed as a mutual fund administrator;
- (g) each shareholder, beneficial owner and director of a mutual fund administrator;
- (h) a company applying for a licence or licensed as a clearing agency;
- (i) each shareholder and director of a clearing agency;
- (j) a company, firm or other entity applying for a licence or licensed as a securities facility;
- (k) a company applying for a licence or licensed as a securities dealer;
- (l) each shareholder, beneficial owner and director of a securities dealer;
- (m) an individual or company applying for a licence or licensed as an investment adviser;
- (n) each shareholder, beneficial owner and director of a corporate investment advisor;
- (o) an individual applying for or licensed as a securities dealer’s representative or an investment adviser’s representative;
- (p) an insurer
- (q) an insurance manager;
- (r) an insurance agent;
- (s) an insurance broker;
- (t) a principal insurance representative
- (u) such other key person as the Central Bank may determine.

2.2 No responsibility for the failure of any action to be of the necessary standard can be excused by any of the following as being the advice or actions of any other person, individual, adviser or agent.

3. Determination of “fit and proper”

3.1 In determining the fitness and propriety of a person the Bank will have regard to;

- Integrity;
- Competence and capability; and
- Financial soundness.

3.2 As the particular circumstances of licence applicants differ and various roles or positions entail different responsibilities, the emphasis and extent of application of these Guidelines may vary. Each application will be considered on its own merits and the relevant matters of each applicant will be examined on a case by case basis but the essential qualities in 3.1 will be required in each case.

3.3 Failure to comply with any individual element of these Guidelines may not of itself render a person not fit and proper but repeated minor failures can contribute to an overall assessment of shortcomings in reaching the standards required.

3.4 Where the Central Bank has reasonable grounds to believe that an individual is not fit and proper, a “not fit and proper” direction will be issued to prevent that individual from occupying or continuing to occupy a position for which he is not or no longer fit and proper.

3.5 Unless the context precludes such construction, the standards applicable to a licence applicant in these Guidelines should be construed to apply to a licence holder.

4. Integrity

4.1 Integrity encompasses honesty, reputation and the correct conduct of business. The Central bank will take into account the past attitude, actions or conduct of applicants .

The integrity of an applicant's business should be ensured by appropriate supervision and training of subordinates by individuals in management or supervisory positions. In determining integrity, the Central Bank may have regard to the following:

4.1.1 *In the case of an individual*

- (a) whether the person has been convicted of any criminal offence involving dishonesty, fraud, financial crime or other offences under legislation relating to the financial services industry in Seychelles or elsewhere;
- (b) whether the person has ever been subject of an investigation by a government, professional or other regulatory body;
- (c) whether the person has ever been subject of a disciplinary enquiry;
- (d) whether the person has ever been suspended from any office or asked to resign;
- (e) whether the person has been dismissed from any office of employment or barred from entry to any profession or occupation;
- (f) whether the person has ever been disqualified from acting as a director of a company, or from acting in the management or conduct of the affairs of the company, partnership or unincorporated company;
- (g) whether the person has in connection with the formation or management of any body corporate, partnership or unincorporated institution been adjudged by a court civilly liable for any fraud misfeasance or other misconduct towards any body corporate, partnership or unincorporated institution or towards any members thereof;

4.1.2 *In the case of a body corporate or other legal entity*

- (a) whether the entity has substantial shareholders, directors, key officers who fail to meet the Fit and Proper Guidelines;

- (b) whether the entity has meaningful internal controls and procedures (including procedures to manage conflicts of interest);
- (c) whether the entity has been refused an application for registration, licensing or other authorisation to carry on the business for which a licence is sought;
- (d) whether the entity has been subject to suspension, cancellation or revocation of its registration, licence or other authorisation to carry on the business for which a licence is sought;
- (e) whether the entity has been subject to any regulatory or enforcement action by any authority in any jurisdiction;
- (f) whether any judgment, order or conviction has been made or any legal proceedings, actions or other claims are pending against the entity whether civil or criminal in nature;

5. Competence

5.1 An applicant has to demonstrate the ability to carry on the activity for which a licence is required competently. In assessing competence, Central Bank will consider;

5.1.1 *In the case of an individual*

- (a) whether the person has been disciplined by a professional or regulatory body or has resigned or been dismissed for negligence, incompetence or mismanagement;
- (b) whether the person has demonstrated the possession of the necessary qualification, knowledge and experience to carry out his functions (*see Guidance Notes on Competence*).

5.1.2 *In the case of a body corporate or other legal entity*

- (a) whether the directors, managers and other key officers of the entity are qualified, knowledgeable and experienced;
- (b) whether there are in place adequate systems and controls to provide an efficient and reliable service.
- (c) whether there are in place KYC procedures, in line with Seychelles anti-money laundering and prevention of terrorism financing legislation;
- (d) whether there is IT support to maintain the integrity of the operating system and security;

6. Solvency

6.1 Solvency is not limited to being able to meet one's liabilities but more importantly it is a matter of maintaining sufficient financial resources to allow the business to continue as a going concern, taking into account the nature and extent of its current and proposed business and its ability to demonstrate that its capital and available funds are adequate, according to international standards, to reasonably ensure security of its clients and investors. In determining solvency the Central Bank will take into account factors such as;

6.1.1 *In the case of an individual*

- (a) whether the person has ever been adjudged a bankrupt, had his estate sequestrated, or is the subject of such proceedings;
- (b) whether the person has made a compromise with his creditors;
- (c) whether the person has failed to satisfy any debt adjudged due and payable by as a judgment-debtor under an order of a court;

6.1.2 *In the case of a body corporate or other legal entity*

- (a) whether the body corporate is or has been threatened with receivership, administration, liquidation or other similar proceedings;
- (b) whether the body corporate is able to meet any financial or capital requirements applicable to it;