



**BANK OF JAMAICA**

**STANDARD OF SOUND PRACTICE  
ON  
FITNESS AND PROPRIETY**

Under the Banking Services Act, 2014

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**CONSULTATION PAPER**

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**Consultation on the  
Proposed Standard of Sound Practice  
on  
Fitness and Propriety  
(for institutions regulated under the Banking Services  
Act, 2014)**

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Bank of Jamaica  
Nethersole Place,  
Kingston, Jamaica  
(Telephone 876-922-0750-9; Fax 876-922-2519  
or email [fisdfeedback@boj.org.jm](mailto:fisdfeedback@boj.org.jm))

## Responding to this Document

This document is being circulated to deposit-taking Institutions (DTIs), financial holding companies (FHCs), credit unions, and other relevant stakeholders to facilitate industry consultation and feedback on the proposed Standard of Sound Practice on Fitness and Propriety for licensees as defined under the BSA. Comments on this Standard will be most helpful if they:

- a. indicate the clause and specific point to which a comment relates;
- b. contain a clear rationale;
- c. provide substantive evidence to support the feedback given; and
- d. describe any alternative regulatory approaches the Bank of Jamaica should consider.

## Submission of Responses

Comments should be submitted by **04 November 2022** via email to:

[fisdfeedback@boj.org.jm](mailto:fisdfeedback@boj.org.jm)

Attention: Jide Lewis (Dr)

OR

Email: [keron.burrell@boj.org.jm](mailto:keron.burrell@boj.org.jm)

Attention: Keron Burrell (Major)

Telephone 876-832-5410

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## List of Abbreviations

|      |                                                                                         |
|------|-----------------------------------------------------------------------------------------|
| BOJ  | Bank of Jamaica                                                                         |
| BSA  | Banking Services Act, 2014                                                              |
| DTIs | Deposit-taking Institutions                                                             |
| FHC  | Financial Holding Company                                                               |
| PQ   | Personal Questionnaire                                                                  |
| SBP  | Standard of Best Practice for Effective Corporate Governance of Deposit-taking Entities |

## Glossary

“**Agent**” means a person other than a deposit-taking institution, who has been appointed by a deposit-taking institution under section 108(1) of the BSA to carry out one or more of the banking services specified in that section.

“**Appointee**” means an individual who is proposed for a position in the management body or who has been appointed to such position.

“**Close personal relationship**” includes spouse, registered partner, cohabitee, child, parent or other relation with whom the person shares living accommodation.

“**Company**” means any corporate body incorporated in Jamaica or elsewhere and any entity, which, in the opinion of the Supervisor, is analogous to a body corporate.

“**Counterparty exposure**” has the same meaning as in section 2 of the Banking Services Act, 2014.

“**Financial Holding Company**” means a company:

- (a) licensed under the Banking Services Act, 2014 as a financial holding company; and
- (b) under which all other companies within the financial group are held, including:
  - i. any of that company's subsidiaries incorporated outside of Jamaica, and
  - ii. entities over which it has effective control.

“**Financial institution**” means an entity that undertakes or engages in financial services.

“**Financial services**” includes the following:

- (a) banking business;
- (b) lending;
- (c) consumer credit;
- (d) financing commercial transactions;
- (e) transfer of money or value;
- (f) issuing electronic money;
- (g) financial guarantees and commitments;
- (h) dealing in securities and trading in other financial instruments;
- (i) participation in security issues;
- (j) individual and collective portfolio management;
- (k) insurance business and insurance related financial services;
- (l) investment of moneys and other financial assets on behalf of third parties;
- (m) pension fund management; and
- (n) any other service designated as a financial service by the Supervisor by order published in the Gazette, subject to affirmation resolution.

“**Key responsible persons**” means relevant persons who are accountable or responsible for the management or oversight of the relevant institution.

**“Management body”** means an individual or group of persons functioning in a supervisory or management/operational capacity.

**“Relevant institutions”** For the purpose of fit and proper” assessments, relevant institutions refer to the following entities:

- (a) Ultimate Holding Company (whether foreign or local) or such other entity approved by the Supervisor, pursuant to section 69(3) of the BSA;
- (b) Financial Holding Company;
- (c) Deposit-taking Institution;
- (d) Subsidiaries of Financial Holding Company;
- (e) Persons treated as members of the financial group pursuant to section 71(2) of the BSA;
- (f) Companies within the financial group which provide necessary support services to the licensee pursuant to section 73(2) of the BSA; and
- (g) Agents appointed under section 108(1) of the BSA to carry out one or more of the banking services specified in that section.

**“Relevant persons”** means Individuals in the following positions or proposed positions within a relevant institution for the purpose of fit and proper assessments:

- (a) Substantial Shareholder - person who holds 20 per centum or more of the shares of a licensee (including shareholders of holding companies) or an agent under section 108 of the BSA;
- (b) Director - director or trustee or other person who is a member of the board or other body of a company that is responsible for the governance and oversight of the company;
- (c) Officer - includes an executive director, managing director, chief executive officer, a chief financial officer, a manager (to include a branch manager) and the company secretary;
- (d) Key Employee - key employees refer to the following individuals:
  - i. a person who is employed or contracted below the level of management of a relevant institution to perform functions that:
    - a. can substantially affect the financial condition or reputation of the licensee or both, and
    - b. meets the criteria specified in any guidelines prescribed by the Supervisor; or
  - ii. a person who is deemed by the Supervisor to be a key employee of the licensee.

**“Suitability”** means the degree to which an individual is deemed to have good repute and to have, individually and collectively with other individuals, adequate knowledge, skills and experience to perform her/his/their duties. Suitability also covers the honesty, integrity and independence of mind of each individual and his or her ability to commit sufficient time to perform her or his duties.

**“Ultimate Holding Company”** means a company that is formed with the specific purpose of acquiring and holding shares in other subsidiary companies. The holding company has control over these other subsidiaries. While the subsidiary companies are responsible for running day-to-day operations, the ultimate holding company manages the subsidiaries and holds all the assets.

## FOREWORD

Financial institutions regulated by Bank of Jamaica (“the Bank”) are required to be owned, controlled and managed by persons who are fit and proper. Such persons are required to, inter alia, maintain high ethical standards, exhibit conduct and business dealings that support a conclusion of overall integrity and probity and be competent and qualified to conduct such business. This not only impacts the safety and soundness of the institutions themselves, but also the wider financial sector, as it will reinforce the trust of the public at large in those who manage the sector.

Licensees are statutorily responsible for ensuring that they remain prudently and soundly managed. Therefore, on an ongoing basis, the Bank requires that licensees develop and implement clear due diligence policies and processes to guide the hiring and appointment of directors, management and all prospective staff members.

Additionally, with the passage of the Banking Services (Deposit Taking Institutions) (Agent Banking) Regulations, 2016, deposit-taking institutions (“DTIs”) are responsible for ensuring that substantial shareholders, directors, officers and key employees of agents are “fit and proper” persons.

Bank of Jamaica has a statutory responsibility to assess the fitness and propriety of relevant persons, that is, substantial shareholders, directors, officers and key employees in a licensee. Upon completion of this assessment, the Bank will make a recommendation to the Supervisory Committee, which has responsibility for making determinations on whether an individual is a “fit and proper” person.

The objective of this Standard of Sound Practice on Fitness and Propriety (the Standard), is to detail the policies, practices and processes applied by the Bank when assessing the suitability of relevant persons of licensees. In that regard, this Standard will provide details regarding the following:

- i. the principles of fitness and propriety;
- ii. the criteria, policies and procedures for fit and proper assessments;
- iii. the application of the fit and proper criteria by the Supervisor; and
- iv. the approach to conducting fit and proper assessments in relation to agent banking operations.

The Standard is intended to be a practical tool and, as such, some of the policies, practices and processes described herein will be updated as necessary to reflect new developments, as well as experiences gained over time.

## **PART 1: INTRODUCTION**

1. Bank of Jamaica expects a relevant person to be competent, honest, objective, of sound financial standing, and to operate with integrity. These qualities underpin the Bank's requirements that relevant persons function in the best interests of stakeholders; and gives the Bank the assurance that the relevant person is willing and able to fulfil obligations under the Banking Services Act, 2014 (BSA).
2. Establishing a minimum standard of fitness and propriety will strengthen the institution by ensuring that responsible persons have the degree of probity and competence commensurate with their responsibilities, thus, reducing the possibilities of problems that could impact a relevant institution's operations, risk profile or financial soundness.

### **1.1 Objectives**

3. The objective of the Standard is to set out the Bank's proposed approach and the key factors that will be considered by the Bank when assessing the fitness and propriety of relevant persons within licensees under the BSA as well as credit unions.
4. The guidelines in the Standard are not intended to be comprehensive or to override any legislative provisions. As a consequence, they should be read in conjunction with the provisions of the BSA, as well as written notices, codes and other Guidelines that the Bank may issue pursuant to sections 131 and 132 of the BSA.

### **1.2 Legal Provision**

5. The proposed Standard of Sound Practice on Fitness and Propriety will be issued pursuant to section 132 of the BSA and complements section 37 of the same Act, which requires relevant institutions (DTIs, FHCs, Credit Unions and agents of DTIs) to ensure that each substantial shareholder, director, officer and key employee is and remains a "fit and proper" person.
6. All individuals with responsibility for the management and control of a financial institution and key persons within the institution must satisfy the fitness and propriety criteria outlined in section 3 of the BSA. For the purposes of the BSA, an individual is a "fit and proper" person if:
  - a. the individual:
    - i. has not been convicted of an offence involving dishonesty or an offence listed in Part III of the BSA or in the Second Schedule to the Proceeds of Crime Act or an offence which is similar to any such offence in another jurisdiction;
    - ii. is not an undischarged bankrupt; and
    - iii. is compliant with any tax and other statutory requirements imposed on the individual;

- b. the individual's employment record or any other information does not give the Supervisory Committee reasonable cause to believe that the individual carried out any act involving dishonesty or any act involving impropriety in the engagement of banking business or other financial services; and
- c. the individual is, in the opinion of the Supervisory Committee:
  - i. a person of sound probity and is able to exercise competence, diligence and sound judgment in fulfilling his or her functions in relation to the licensee and whose relationship with the licensee will not threaten the interests of depositors;
  - ii. a person whose appointment to the board of, employment by or ownership of the licensee will not result in a conflict of interest; and
  - iii. a person who possesses the knowledge, skills and experience that are necessary for the intended functions to be carried out by that person.
- 7. A person who is not fit and proper shall not act or continue to act unless he is expressly authorized to do so by the Supervisor or the Supervisory Committee. A breach of this requirement is an offence under section 38 of the BSA.
- 8. Unless the context otherwise requires, words or expressions contained in the Standard shall have the meanings as assigned in the BSA, or as amended, or any other statutory instruments issued in terms thereof in force at the date of issuance of this Standard.
- 9. When assessing an application for the appointment of a relevant person to senior or critical functions, the Bank may, in addition to the fit and proper criteria set out in this Standard, consider other factors that may be relevant, such as whether the relevant person has a good standing in the profession in respect of which the application is submitted. If the relevant person fails to satisfy the Bank that he or she is fit and proper, the Bank may refuse the person's application, revoke the person's "non-objection", or take other appropriate regulatory action as may be applicable and necessary.
- 10. Failure to comply with the Standard is regarded by Bank of Jamaica as evidence of "unsound" business practices.

### **1.3 Applicability**

- 11. This Standard applies to all licensees as defined under the BSA, which are, commercial banks, merchant banks, building societies, financial holding companies and entities providing necessary support services to the licensee or the financial group, which are held in accordance with section 73(2) of the Act.
- 12. With the passage of the Banking Services (Deposit-Taking Institutions)(Agent Banking) Regulations, 2016, licensees are also responsible for ensuring that

substantial shareholders, directors, officers and key employees of agents are “fit and proper” persons.

13. The Standard is also intended to be applicable to cooperative societies that operate as credit unions when the legislation to bring them under the Bank's regulatory ambit is passed and the regime takes effect. In the interim, credit unions are encouraged to adhere to the requirements outlined in this Standard.

#### **1.4 Information Sharing**

14. One core principle for effective banking supervision is co-operation and collaboration among authorities with responsibility for the stability of the financial system or for the safety and soundness of banks or other financial institutions.
15. In this regard, the Bank has entered into multilateral Memorandums of Understanding (MOU) with supervisors across the region, as well as bilateral MOUs with several other jurisdictions. These MOUs involve sharing information regarding financial institutions, as well as the fit and proper status of individuals. Given the confidential nature of such information, signatories to the MOUs have committed to treat the information with the utmost confidence and use same only for supervisory purposes.
16. In addition, section 3(5) and 3(6) of the BSA provides for the sharing of information among local or overseas regulators for the purposes of determining whether a person is fit and proper.

## **PART 2: PRINCIPLES OF FITNESS, PROPRIETY AND SUITABILITY**

### **2.1 Principle 1 – Primary Responsibility of Relevant Institutions**

***Relevant institutions have the primary responsibility of selecting and nominating individuals who have the requisite qualities to be a “fit and proper” candidate suitable enough to serve as a relevant person in the institution.***

17. Pursuant to sections 31 and 37 of the BSA, licensees must, with full cooperation of the individuals concerned, carry out their own due diligence and assessment of the relevant persons, not only prior to their appointment but also on an ongoing basis (e.g. in the case of a significant change to the responsibilities of a relevant person).
18. In cases where significant shareholders are corporate entities, relevant institutions shall ensure that these entities and attendant relevant persons are assessed against similar fit and proper criteria.
19. Relevant institutions shall in a timely and accurate manner, supply the Bank with all information necessary for the performance of robust fit and proper assessments to ensure the ongoing suitability of the relevant persons. This includes information regarding new appointments, new facts, change of roles etc.
20. If necessary, Bank of Jamaica may ask the relevant institution or the relevant person to provide additional information in writing or orally (e.g. in an interview). Failure to comply with this requirement will render the information on the relevant person incomplete, and thereby impair the Bank’s ability to make a decision.

### **2.2 Principle 2 – Gatekeeper**

***Effective fit and proper supervision should prevent individuals who would pose a risk to the proper functioning of a relevant institution from entering initially, or from continuing in their role when an issue regarding their suitability has come to the fore.***

21. The fitness and propriety regime primarily fulfils a gatekeeper role, as the regime is necessary to ensure that applicants to key positions have the required level of competence and integrity.
22. The responsibility of the Bank as a gatekeeper is to ensure that the relevant institutions comply with requirements to have in place robust corporate governance arrangements, including the fit and proper requirements for all relevant persons in the institution.

### **2.3 Principle 3 – Consistency**

***Fit and proper supervision seeks to ensure consistency and convergence in the fitness and propriety assessments of relevant persons with regionally and internationally accepted monitoring and control practices and processes.***

## 2.4 Principle 4 – Proportionality and Case-by-Case Assessment

***The principle of proportionality is embedded in the fit and proper process. Accordingly, the supervisory process of the Bank and the application of the suitability criteria should be commensurate with the size of the entity and the nature, scale and complexity of the relevant institutions' activities, as well as the particular role to be filled.***

23. The application of the proportionality principle to the fit and proper criteria cannot lead to a lowering of the suitability standards, but can result in a differentiated approach to the assessment procedure or the application of suitability criteria.
24. In this regard, the proportionality principle may be applied to, inter alia, the level or areas of knowledge, skills and experience; or in terms of the time commitment required for each relevant person.
25. In all cases, the approach to assessment and application of the proportionality principle will comprise an individual analysis and supervisory judgement.

## 2.5 Principle 5 – Principles of Due Process and Fairness

***Fit and proper supervision is procedurally driven and relevant institutions or appointees are guaranteed the right to appeal decisions taken.***

26. The relevant institution is, in most cases, the applicant in the supervisory procedure and the supervisory relationship is between the Bank and the relevant institution.
27. The relevant institution and the appointee are guaranteed the right to appeal the decision of the Supervisory Committee or the Supervisor to the Supervisory Appeals Board in accordance with the provisions of section 28 of the BSA.
28. The Bank has a duty to decide on the suitability of information that can be considered as material and relevant to the fit and proper assessment, in a balanced way, and to take account of the factors that are in favour of and against the appointee.
29. fit and proper assessments conducted, as with any supervisory procedure, are strictly confidential.

## 2.6 Principle 6 – Interaction with ongoing supervision

***Continuous fit and proper assessments of relevant persons of relevant institutions should be linked to the ongoing supervision of the governance of an institution, particularly with regard to the composition and functioning of the management and oversight team.***

30. A fit and proper assessment may lead to a decision which needs to be followed up in ongoing supervision, while ongoing supervision may provide input for a fit and proper assessment (especially with regard to the collective suitability) or lead to the reassessment of the relevant persons.

## PART 3: FIT AND PROPER GOVERNANCE FRAMEWORK

31. The Fit and Proper Policy must form part of the relevant institution's risk management framework.
32. The obligation for a person to be fit and proper is an ongoing commitment and does not apply only at the application stage. Consequently, relevant institutions shall ensure that proper systems, procedures and controls are put in place to enable a comprehensive assessment of persons required to be fit and proper on an ongoing basis.

### 3.1 Policies on Fitness, Propriety and Suitability

33. Licensees should have a policy for selecting and assessing relevant persons which takes into account the nature, scale and complexity of the business and sets out at least:
  - a. the fitness and propriety criteria required for each category of person, having regard to the requirements set out in this Standard.
  - b. the individual or function responsible for performing the fitness, propriety and suitability assessment;
  - c. the applicable internal procedure for the assessment of the fitness, propriety and suitability of a member, and attendant frequency;
  - d. the competencies and skills of a member of the management body needed to assume that the member has sufficient expertise;
  - e. the information and evidence that a member of the management body should provide for an assessment;
  - f. if the member is to be appointed by the shareholders, the measures taken to ensure that shareholders are informed about the requirements for the position and the relevant profile of persons before they are appointed;
  - g. the situations where a re-assessment of the fitness, propriety and suitability should be performed, together with measures to identify such situations. These should include a requirement that members of the management body notify the Bank of any material change to the relevant institution;
  - h. ways in which the relevant institution will provide training opportunities, in case there are specific learning and development needs of the members of its management body;
  - i. avenues to allow any person within the institution to disclose information that would be relevant for the assessment of key responsible persons while providing the necessary protection to such person from any discriminatory actions for providing such information (*whistleblowing*);

- j. procedures to be undertaken to deal with key responsible persons who no longer meet the fit and proper criteria set by the Bank;
- k. procedures to ensure all documentation on fit and proper assessments and supporting information are kept confidential and the period for which the documentation of fit and proper assessments conducted on each person will be retained by the relevant institution; and
- l. procedures for maintaining a current list of relevant persons who are subject to fit and proper policies and assessment processes.

### **3.2 Role of the Board of Directors**

32. In keeping with the responsibilities attributed to the board in the Standard of Best Practice for Effective Corporate Governance of Deposit-Taking Entities ("SBP"), particularly in regard to the board's duties with respect to overall risk management, it is expected that the board or a committee of the board will:
- i. ensure that the relevant institution develops and implements fit and proper policies and procedures, including assessment processes. Such policies, procedures and processes shall be approved by the board and reviewed at least annually, along with significant amendments thereto;
  - ii. monitor and ensure on-going compliance with internal policies and procedures, including policies on ethical behaviour, codes of conduct, as well as disclosure and reporting obligations relating to the fit and proper requirements;
  - iii. receive and take necessary actions regarding concerns raised by senior management regarding the suitability and integrity of a relevant person or regarding the manner in which the assessment policy is implemented; and
  - iv. periodically review the internal fitness, propriety and suitability policies and procedures to ensure their relevance and alignment with the organizational needs and structure, as well as material changes in the business and risk profile and strategies.
  - v. In instances where it is inappropriate for another person in the institution to make the determination, the board will also remove persons who do not meet the fit and proper criteria set out in section 3 BSA and this Standard.
33. Bank of Jamaica recognises that branches do not have board of directors and, accordingly, it would be inappropriate to apply the requirements of this Standard directly to branch operations. However, the Bank expects the principal officer or chief agent of a branch to oversee the management of the branch, including matters of corporate governance.

### 3.3 Role of Senior Management

34. The senior management of the licensee 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 tests should guide the recruitment of personnel in the institution.

### 3.4 Role of the External Auditors

35. The external auditor of a relevant institution shall make a statement in the published financial statements to the effect that all significant shareholders, directors and key management personnel are “fit and proper” personnel.

### 3.5 Notifications to Bank of Jamaica

36. All relevant institutions are required to notify the Bank in writing regarding proposed relevant persons. All notifications must be accompanied by the required documentation and information to facilitate fit and proper assessments (see **Table 2** in Part 5 of this Standard).

37. In keeping with section 39(1)(c)-(e) of the BSA, licensees must immediately notify the Supervisor, in writing, of:

- a. any dismissal or resignation of a relevant person and the reason(s) for the dismissal or resignation;
- b. any circumstances that render any relevant person unfit to hold office and advise on action that is being taken with regard to that matter; and
- c. any emerging factor that affects whether a relevant person is or remains a “fit and proper” person.

38. Where there is a material<sup>1</sup> change to a person's Personal Questionnaire (PQ), an updated PQ must be submitted to Bank of Jamaica.

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<sup>1</sup> Material change in the context of this Guideline is any change that will significantly impact the fitness and propriety of a person.

## **PART 4: MINIMUM FIT AND PROPER ASSESSMENT CRITERIA**

### **4.1 Conditions for Assessment and Appointment**

39. The fit and proper assessment on relevant persons within the scope of this Standard shall be conducted prior to initial appointments and at regular intervals of at least annually or whenever the relevant institution becomes aware of information that may materially compromise a person's fitness and propriety.
40. The fit and proper assessments must be supported by relevant information in relation to the person being assessed.
41. Where significant reliance is placed on information that is obtained from the person being assessed, and that information is material to the determination of the person's fitness and propriety, the relevant institution shall take reasonable steps to verify the information from independent sources. Copies of the independent assessment should be made available to Bank of Jamaica as part of the request for approval.

### **4.2 Assessment Criteria**

42. The fitness and propriety of proposed relevant persons is assessed against the following criteria:
  - i. competence, capability and experience;
  - ii. probity, integrity and reputation;
  - iii. conflicts of interests;
  - iv. financial integrity; and
  - v. time commitment.

### **4.3 Description of Assessment Criteria**

#### **4.3.1 Competence, capability and experience**

43. The principle of proportionality is inherently applicable, as the level of competence, capability and experience required depends on the main characteristics of the specific function and the institution. The more complex these characteristics are, the more experience will be required.

#### **Practical Experience and Theoretical Knowledge**

44. For the purposes of assessing a relevant person's theoretical knowledge, the level and profile of the education, which should relate to banking and financial services or other relevant areas (mainly banking and finance, economics, law, administration, information technology, financial regulation, strategy, risk management, internal control, corporate governance, financial analysis and quantitative methods) are taken particularly into account.

45. Practical experience covers previous positions held, taking into account the length of service, the size of the entity, responsibilities held, number of subordinates, the nature of the activities carried out, the actual relevance of experience gained, etc.
46. Further, the assessment of adequate knowledge, skills and experience will consider, inter alia, the knowledge and skills attained through training and practice; and acquired and demonstrated by the professional conduct of the relevant person.

### **Function-specific and Minimum Requirements**

47. When assessing the knowledge, skills and experience of an appointee of the management body, the Supervisor will take into consideration both theoretical and practical experience relating to:
  - a. banking and financial markets;
  - b. legal requirements and regulatory framework;
  - c. strategic planning, the understanding of an institution's business strategy or business plan and accomplishment thereof;
  - d. risk management (identifying, assessing, monitoring, controlling and mitigating the main types of risk of an institution). This includes experience directly related to the responsibilities of the person, as well as areas for which an individual member is not directly responsible but is collectively accountable together with the other members of the management body;
  - e. accounting and auditing;
  - f. the assessment of the effectiveness of an institution's arrangements, ensuring effective governance, oversight and controls. Relevant persons should be able to contribute to the implementation of an appropriate culture, corporate values and behaviour within the management body and the institution; and
  - g. the interpretation of an institution's financial information, the identification of key issues based on this information, and appropriate controls and measures.
48. The relevant institution shall submit, as a minimum, a detailed and current curriculum vitae (CV) for the appointee with supporting documents and completed personal questionnaires, along with information from any other internal or external sources including such information received from other jurisdictions in which the individual has worked; reports in the media; and court judgements.

### **Assessment against Thresholds**

49. Experience is assessed against guiding presumptions of sufficient experience based on thresholds. If the thresholds are met, the appointee is ordinarily presumed to have sufficient experience, unless there is an indication to the contrary.

50. Members of the management body in their management function should have gained sufficient practical and professional experience from a managerial position over a suitable length of time, which is expected to be commensurate with the roles, responsibilities and stature of the position.
51. Members of the management body in their supervisory function should be able to provide constructive challenge to the decisions and effective oversight of the management body in its management function. Adequate knowledge, skills and experience for fulfilling the supervisory function effectively may have been gained from relevant academic or administrative positions or through the management, supervision or control of financial institutions or other firms.
52. Furthermore, additional experience might be deemed necessary based on relevant factors e.g. the function applied for, the nature, size and complexity of the entity, the scope of competencies, decision-making powers, and responsibilities of the member, or other factors as deemed necessary.

#### 4.3.2 **Probity, Integrity and Reputation**

53. At all times, relevant persons shall be of good repute to ensure sound and prudent management of the relevant institution.
54. A nominated relevant person is considered to be of good repute if there is no evidence to suggest otherwise and no reason to have reasonable doubt about his or her good repute (presumption of innocence).
55. The principle of proportionality cannot apply to the probity, integrity and reputation requirement or to the assessment of the reputation requirement, as an individual can only have either a good or a bad reputation. Accordingly, the assessment of the probity, integrity and reputation requirement should be conducted for all institutions in an equal manner.

## Minimum Requirements

56. In assessing a person's level of probity, integrity and reputation to hold a position of a key responsible person, at minimum, consideration should be given to matters including, but not limited to the following set of information that is required from the nominee, the relevant institution and/or prosecution authority. That is, whether the individual:
- a. has been the subject of any existing or previous investigation or disciplinary proceedings by the Supervisor, other past or existing regulatory authorities, professional bodies, or government bodies or agencies or any justified complaint relating to regulated activities;
  - b. has contravened any legislative provisions, made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
  - c. has contravened any requirements or standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), professional bodies, or government bodies or agencies, whether in Jamaica or overseas;
  - d. is or has been the subject of any proceedings of a criminal nature, or has been notified of any potential proceedings (see **Box 1**) or of any investigation which may lead to those proceedings;

### BOX 1: PENDING LEGAL PROCEEDINGS

- a. Pending, as well as concluded criminal or administrative proceedings may have an impact on the reputation of the appointee and the regulated financial institution.
- b. While there is a presumption of innocence, the fact that an individual is being prosecuted is relevant to propriety. The Supervisor will not normally proceed with the application until the matter is resolved.
- c. Concluded proceedings will have an impact if the finding goes against the nominee. Even if the conclusion is in favour of the nominee, Bank of Jamaica may question the underlying circumstances of the proceedings to determine whether there is any impact on reputation. Therefore, Bank of Jamaica must always be informed about legal proceedings.
- d. Based on the relevant information available, Bank of Jamaica will assess the materiality of the facts and the impact on the reputation of the nominee and the regulated financial institution.
- e. has been involved with a company, partnership or other organization that has been refused registration, authorization, membership or a licence to carry out a

trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; and as a result of the removal of the relevant 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 authority;

- f. or any business with which the person has been involved as a substantial shareholder, director, management or key employee has been investigated, disciplined, censured or suspended or criticized by a regulatory or professional body, a Court or tribunal, whether publicly or privately;
  - g. has been dismissed, or asked to resign and resigned from employment, from a position of trust or fiduciary appointment due to any alleged or proven inappropriate action(s)<sup>2</sup>;
  - h. has been disqualified from acting as a director in any managerial capacity or as a key employee;
  - i. has been adjudged liable by a Court for fraud, misfeasance or other misconduct;
  - j. in his personal or professional capacity, or an entity of which an individual has been a major shareholder, director or senior manager has been non-compliant with any tax and other statutory requirements imposed;
  - k. owned, directed or managed an entity that has gone into liquidation or administration while the individual has been connected with that organization or within one year of the severance of that connection; and
  - l. portrays any other unethical or reprehensible conduct, which is of such significance that it raises doubts as to the individual's integrity.
57. Acting with integrity further involves candid disclosures to the Supervisor on any matter concerning the relevant institution about which the Bank should be aware (see section 39(1) of the BSA).
58. If the personal or professional conduct of a nominee gives rise to any doubt about his or her ability to ensure the sound and prudent management of the relevant institution, the institution and/or the nominee should inform Bank of Jamaica, who will assess the materiality of the circumstance.
59. The Bank will not positively recommend an individual who has not demonstrated a readiness and willingness to comply with the requirements and standards of the

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<sup>2</sup> There may not be any evidence to substantiate an employer's claim that an employee's engagement was severed by them being asked to resign.

regulatory system and other legal, regulatory and professional requirements and standards.

#### 4.3.3 Conflicts of interest

60. A conflict of interest arises when a member of a management body or other relevant person makes or participates in decision-making in the execution of his office, and knows or ought reasonably to have known, that in the making of the decision there is a direct or indirect opportunity to further private interests, which may adversely affect the interests of the relevant institution.
61. A relevant person may be allowed to have conflicts of interest if the institution can prove that measures and mechanism will be in place to mitigate and manage the exposure adequately. If adequate mitigation or management is not possible based on the written policies of the relevant institution, material conflicts of interest must be prevented.

#### **Disclosure, Mitigation, Management and Prevention of Conflicts of Interest**

62. It is the responsibility of the relevant institution and the appointee to notify or disclose to the Bank all actual, potential or perceived conflicts of interest.
63. Accordingly, the relevant institution should have governance arrangements in place for disclosing, mitigating, managing and preventing conflicts of interest, whether actual, potential (i.e. reasonably foreseeable) or perceived (i.e. in the mind of the public).
64. The conflict of interest policy developed by the regulated entity should include a process that includes a reporting framework and a risk rating system to rate the materiality of the conflict and its potential effect on the person's ability to objectively carry out the function he or she has been or will be appointed to do.
65. Where the conflict of interest risks cannot be appropriately managed or mitigated, the regulated entity needs to give serious consideration to the appropriateness of that person being appointed a director, officer, or a significant or controlling shareholder of the regulated entity.
66. Where Bank of Jamaica finds that the measures taken by the relevant institution or the imposition of a condition are not sufficient to adequately manage the risks posed by the conflict of interest, the appointee cannot be considered suitable.

## Materiality Threshold

67. The relevant institution shall assess the materiality of the risk posed by the conflict of interest. If a conflict of interest is considered to be material, licensees must adopt adequate measures, including, but not limited to the:
- i. performance of a detailed assessment of the particular situation; and
  - ii. determination of which preventive or mitigating measures will be implemented, primarily based on its internal conflicts of interest policy unless national law already prescribes which measures must be taken.
68. Potential material conflicts of interest must be assessed in detail on a case-by-case basis and the information provided by the relevant institution regarding the material or non-material nature of the conflict will be considered. See **Table 1** below.

Table 1: Potential Material Conflicts of Interest

| CATEGORY OF CONFLICT | PERIOD                               | DEGREE AND TYPE OF CONNECTION AND, WHERE APPLICABLE, THRESHOLD                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Personal             | Current                              | The appointee: <ol style="list-style-type: none"> <li>i. has a close personal relationship with a member of a management body, key function holder or qualifying shareholder in the licensee or in the parent undertaking/its subsidiaries;</li> <li>ii. is a party in legal proceedings against the licensee or against the parent undertaking/its subsidiaries;</li> <li>iii. conducts significant business, in private or through a company, with the licensee or with the parent undertaking/its subsidiaries.</li> </ol> |
| Professional         | Current or over the past three years | The appointee or a close personal relation: <ol style="list-style-type: none"> <li>i. holds at the same time a management or senior staff position in the licensee or in the parent undertaking/its subsidiaries;</li> <li>ii. has a significant commercial relationship<sup>3</sup> with the licensee or any of its competitors, or with the parent undertaking/its subsidiaries.</li> </ol>                                                                                                                                 |
| Financial            | Current                              | The appointee or a close personal relation has a substantial financial interest <sup>4</sup> in or financial obligation to: <ol style="list-style-type: none"> <li>i. the licensee;</li> <li>ii. the parent undertaking or its subsidiaries;</li> <li>iii. any of the licensee's clients;</li> <li>iv. any of the licensee's competitors.</li> </ol>                                                                                                                                                                          |

<sup>3</sup> The significance of the commercial interest will depend on the financial value it represents to the business of the appointee or his close personal relation.

<sup>4</sup> Examples of financial interests/obligations are shareholdings, other investments and loans.

| CATEGORY OF CONFLICT | PERIOD                             | DEGREE AND TYPE OF CONNECTION AND, WHERE APPLICABLE, THRESHOLD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      |                                    | <p>The substantiality depends on what (financial) value the interest or obligation represents to the financial resources of the appointee. The following would in principle be considered non-material:</p> <ul style="list-style-type: none"> <li>i. all non-preferential (i.e. under standard market conditions of the relevant bank) secured, personal loans (such as private mortgages) that are performing;</li> <li>ii. aggregate counterparty exposure below the thresholds outlined in sections 57 and 58 of the Banking Services Act, 2014.</li> </ul> |
| Political            | Current or over the past two years | <p>The appointee or a close personal relation holds a position of high political influence<sup>5</sup>.</p> <p>The materiality of the conflict of interest depends on whether there are specific powers or obligations inherent in the political role, which would hinder the appointee from acting in the interest of the licensee.</p>                                                                                                                                                                                                                        |

69. Bank of Jamaica will assess the materiality of the conflict of interest and the adequacy of the measures adopted by the relevant institution. If there are concerns that could be overcome by the relevant institution taking adequate action, a condition could be imposed in respect of the individual application. Possible conditions include:
- a. resignation of a person from a certain position;
  - b. specific enhanced monitoring by the licensee;
  - c. specific reporting to Bank of Jamaica on the particular situation;
  - d. cooling-off period for the appointee;
  - e. obligation on the relevant institution to publish the conflict of interest; and
  - f. application of the “at arm’s length” principle.

#### 4.3.4 Financial Soundness

70. Proper and prudent management of his or her own financial affairs is a demonstration of the person’s capacity to contribute to the safety and soundness of a financial institution and its interests.
71. In assessing financial integrity, the relevant institution and Bank of Jamaica shall consider all relevant factors including, inter alia, whether the relevant person has:
- a. been non-compliant with any tax and other statutory requirements;
  - b. been wound up by a Court;

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<sup>5</sup> “High influence” is possible at every level: local politician (e.g. mayor); regional or national politician (e.g. cabinet); public employee (e.g. governmental job); or state representative.

- c. been in receivership;
  - d. entered into a composition with its creditors;
  - e. failed to meet the solvency requirements prescribed by law;
  - f. been adjudged bankrupt; had assets seized by a Court in Jamaica or elsewhere;
  - g. failed to satisfy any debt or award adjudged by a Court in Jamaica or elsewhere, to be due and payable;
  - h. been intervened<sup>6</sup>; and
  - i. ceased trading in circumstances in which creditors were not or have not yet been paid in full.
72. 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.

#### 4.3.5 Time Commitment

73. All relevant persons must be able to commit sufficient time to performing their functions in the institution.
74. The directors of a regulated entity must be able to commit sufficient time to performing their functions in the regulated entity. The time a person can dedicate to his or her functions may be affected by several factors, such as:
- a. current employment and the level of responsibility and accountability required of that position;
  - b. the number of other directorships or employments held giving consideration to the size and the circumstances of these other entities; the nature, scale and complexity of the activities of these entities; and the location of these entities, whether local or foreign; and
  - c. other professional or personal commitments and circumstances (e.g. a court case in which the person is involved).
75. When assessing whether the person will be able to commit sufficient time to performing his or her functions, the regulated entity should also take into account the need for ongoing learning and development, as well as, the ability to respond in a timely manner when unexpected or urgent circumstances arise.

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<sup>6</sup> Subject to one or more of the actions described in section 38(2) of the BSA.

## **Time Commitment Assessments**

76. The relevant institution should be aware of the time commitment required for each role on the board and require the following from each board member:
  - a. a list of all of the other mandates or positions that the applicant currently holds and the expected time commitment for each mandate or position; and
  - b. a self-declaration by the person that he or she has sufficient time to dedicate to all the mandates confirmed by the regulated entity.
  
77. The following additional information about the applicant should also be known (in the light of individual circumstances and based on a proportionate approach):
  - a. whether the person is in full time occupation or not, providing the number of hours or days dedicated to each mandate or position;
  - b. whether any of the mandates have any additional responsibilities such as membership of committees (e.g. chair of the audit, risk, remuneration, and/or nomination committee);
  - c. whether the nature, type and size of the other entity/entities will demand more time from the applicant (e.g. the entity is regulated, listed etc.);
  - d. ongoing learning, development and activation of emergency business continuity procedures have been provided for; and
  - e. whether the experience of the person, either generally or with respect to the company, is such that the person could carry out his or her duties with greater familiarity and hence efficiency.

## **PART 5: SUPERVISORY APPROACH TO FIT AND PROPER ASSESSMENTS**

### **5.1 Responsibilities of the Relevant Institution**

78. It is the relevant institution's responsibility to satisfy Bank of Jamaica that any person proposed to undertake a regulated function, is deemed fit and proper to perform the function for which he or she is being appointed or engaged.
79. It is expected that the assessment conducted by the relevant institution will take place at the recruitment stage, and on an ongoing basis and that the regulated entity will make every effort to verify qualifications, experience, references and membership in professional bodies.
80. The Bank expects that the relevant institution will conduct probity checks on criminal history, sanctions, legal proceedings and other similar matters. The relevant institution should be able to satisfy the Bank that the person acting or proposed to act in a regulated function possesses good character, integrity, competence and capability for the particular function and is financially sound.
81. Assessments conducted by the relevant institution to assess the fitness and propriety of persons seeking to conduct a regulated function must be documented to evidence the determination of suitability of the applicant for the position. Such internal assessments must be made available to the Bank upon request.
82. When assessing the suitability of members of the management body, relevant institutions should assess whether the management body is suitable collectively. Weaknesses within the overall composition of the management body or its committees should not necessarily lead to the conclusion that a particular member is not suitable.
83. Relevant institutions are required to provide all information, as may be required by the Bank, including the list of senior officers within the company and the records relating to the fit and proper assessment for each person who is subject to the requirements specified in this policy document and its own internal policies.
84. Where the Bank determines that a person fulfils the definition of key employee<sup>7</sup> as specified by the Bank in this policy document but has not been identified by the licensee as a key responsible person, the licensee shall include the said person in the list of key employees and subject such person to fit and proper assessments and requirements.

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<sup>7</sup> Refer to definition of relevant persons.

## 5.2 Relevant Institution's Corrective Measures

85. If a relevant institution's assessment concludes that a person is not suitable to be appointed as a relevant person of the institution, that person should not be appointed. If the relevant person has already been appointed, the relevant institution should take appropriate measures to replace this member.
86. If the relevant institution's reassessment concludes that a member of the management body or any other relevant person is no longer suitable, the licensee should take appropriate measures to rectify the situation and inform the Bank accordingly.
87. When a relevant institution takes corrective measures, it should take appropriate actions to ensure the institution is not worse off.

## 5.3 Responsibilities of the Supervisor

88. The Bank will assess relevant persons as to their probity, expertise, qualification, competence, financial soundness and conflicts of interest. In addition, the Bank will determine the suitability of substantial shareholders via in-depth due diligence assessments which would involve examination of the transparency of ownership structures, source(s) of financial resources, financial soundness and probity, as well as conformity with laws and ethical standards that govern business conduct.
89. Individuals will be assessed in accordance with the provisions of the BSA, as well as, with the principles outlined in Part 4 (Minimum Fit and Proper Assessment Criteria) of this Standard in order to ensure transparency, objectivity, consistency and overall fairness of the process.
90. In determining whether a person meets the fit and proper requirements, the considerations set out in Part 4 will be assessed individually, as well as, on a cumulative basis according to their relative importance.
91. The weight of the contribution of each of the relevant principles to the assessment of the fitness and propriety of an individual may vary depending on the degree of the individual's influence and responsibilities in the affairs of the entity<sup>8</sup>.
92. 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 relevant institution is required to notify the Bank as soon as possible, and

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<sup>8</sup> For example, consideration will be given to whether there are material changes in the nature and scope of the responsibilities assumed by an individual, which would require higher standards of competence or judgement in order to properly perform the duties associated with said position. Material changes in expected duties could give rise to conflicts that could impair the individual's performance in the position.

internally re-assess the person's fitness and propriety. The Bank is expected to consider this evidence and re-evaluate the person where necessary.

93. The Bank may also conduct interviews and request professional references as a part of its information sources when performing assessment of the fitness and propriety of any relevant person:

#### 5.3.1 Fit and Proper Interviews

94. Interviews are an opportunity to probe a person on his practical experience or to determine whether he is well informed about the relevant institution, market developments, and the level of understanding of proposed roles and responsibilities.
95. The Bank may use interviews to explore issues of integrity and propriety, or to query or verify facts and documentation submitted or information garnered by the Bank through other means.
96. The Bank may also conduct interviews where it has concerns about the person's ability to perform the regulated function or is aware of information that may impact the person's fit and proper assessment and/or where additional information requested from the regulated entity did not assist in allaying the concerns.
97. Bank of Jamaica takes a proportionate and risk-based approach to the use of interviews in fit and proper assessments. In all other cases, interviews may be used on a discretionary basis as a tool for fit and proper assessments (e.g. when a specific concern relating to an appointee's fitness or integrity/propriety has been identified).
98. Where Bank of Jamaica determines that an interview should be conducted, the person and as appropriate, the relevant institution will be given reasonable notice in writing of the date, time and place of the requested interview.
99. The Bank may choose to conduct interviews using any or both of the following styles. **An informative interview** – which will cover all elements of suitability. Alternatively, if there are still concerns after an informative interview or the Bank is already clear from the written documentation that there is a specific concern regarding the fitness and propriety of the nominee, **a specific interview** – which focuses on the facts that gave rise to the concerns, may be conducted.
100. Where a specific interview is initiated, the Bank will, in advance, provide an outline that details the Bank's concerns or issues and give a timeframe for the person to make representation either verbally, or in writing, in respect of the issued statement before a determination is made of the person's fitness and propriety.
101. The interview panel will generally consist of a minimum of two and not more than three officers of the Bank, with sufficient seniority. No member of the interview panel

must have a conflict of interest or perceived conflict of interest or bias in relation to any nominee who is being interviewed.

### 5.3.2 Regulatory References

102. In making its determination on the fitness and propriety, the Bank may request information from current and former employers<sup>9</sup> and business partners on the conduct and fitness and propriety of any candidate being proposed to perform any of the following functions in a licensee:

- a) Shareholder,
- b) Director
- c) Manager
- d) Key employee

## 5.4 Frequency of Assessments

Table 2: Frequency and Documentation for Fitness, Propriety and Suitability Assessments

|    | DOCUMENT                                                           | REQUIRED FREQUENCY                                                                                       | COMMENTS                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Fully completed and duly certified Personal Questionnaire (PQ)     | Initially                                                                                                | PQs are required prior to effecting appointments of relevant persons. Information provided relates to the individual both in their personal and professional capacity.                                                                                                                                                                                                                                                                                    |
|    |                                                                    | Annually                                                                                                 | PQs are to be submitted as at 31 December, within 60 days of the calendar year-end.                                                                                                                                                                                                                                                                                                                                                                       |
| 2. | Police clearance reports from the Jamaica Constabulary Force (JCF) | Initially and every five years thereafter.                                                               | The Bank requires original receipts evidencing proof of payment of the requisite fees to the Collector of Taxes for JCF reports; and a collection date noted by the JCF. These reports will be collected directly from the JCF by the Bank.                                                                                                                                                                                                               |
| 3. | Clearance reports from the Financial Investigations Division (FID) | Initially and every five years thereafter; or at such other frequency as the Supervisor deems necessary. | Payment for these reports is the responsibility of the relevant institution. Cheques should be drawn payable to FID and submitted to the Bank.                                                                                                                                                                                                                                                                                                            |
| 4. | Overseas law enforcement clearance reports                         | Initially                                                                                                | This requirement applies to individuals who have 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) directly to the FID. |

<sup>9</sup> Both local and overseas current and former employers and regulated and unregulated institutions.

|    |                                                                                     |                                            |                                                                                                                                                                                                                                                                                                                                                                           |
|----|-------------------------------------------------------------------------------------|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                                                     | Every five years                           | This requirement applies to an individual who has habitually resided in an overseas jurisdiction for six or more months, subsequent to the last fit and proper assessment.                                                                                                                                                                                                |
| 5. | A certified or notarised colour passport-sized photograph                           | Initially and every five years thereafter. | This requirement applies to all relevant persons who reside overseas. A photograph is not required in cases where this is already embedded in the JCF clearance reports.                                                                                                                                                                                                  |
| 6. | Summary of the relevant institution's due diligence on the individual <sup>10</sup> | Initially                                  | In addition to the requisite fit and proper documentation, the relevant institution shall provide the Bank with a summary of the findings of its own evaluation, which served as the basis for determining that the proposed individual is fit and proper. This should include the licensee's assessment of the individual's probity, financial soundness and competence. |

**5.5 Fit and Proper Determinations**

**5.5.1 Communication of Decision**

- 103. The relevant institutions are required to await the final determination of fitness and propriety by the Supervisory Committee or the Supervisor before effecting appointments, confirmations or acquisitions.
- 104. The relevant institution (or exceptionally the appointee)<sup>11</sup> is notified of the decision taken by Bank of Jamaica. The relevant institution and the appointee have to comply with any other requirements under national law, where applicable.

**5.5.2 Appeal of Decision**

- 105. Every person who is aggrieved by a decision of the Supervisory Committee or the Supervisor, as to whether a person is fit and proper, may appeal to the Supervisory Appeals Board in accordance with section 28 of the BSA.

**5.5.3 Enforcement of Decision**

- 106. Relevant institutions are obligated to ensure that the relevant persons are “fit and proper”. As such, licensees and individuals commit an offence under the BSA when the obligations are not met. These offences include:
  - a. Failure of a relevant institution to ensure that each relevant person is and remains a “fit and proper” person;

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<sup>10</sup> Section 37 of the BSA provides that every licensee shall ensure that each substantial shareholder, director, officer and key employee is and remains a “fit and proper” person.  
<sup>11</sup> The decision is communicated to the party who declared the appointment.

- b. Failure of a financial holding company to ensure that all members of any financial group comply with the obligation to ensure that each relevant person is and remains a "fit and proper" person;
- c. Failure of a relevant institution to notify the Supervisor regarding dismissals and resignations of relevant persons and the respective reasons for same;
- d. Where an individual who is not fit and proper acts, or continues to act as a director of or is involved in the management of the key functions of any relevant institution, without the express written authorisation of the Supervisor or the Supervisory Committee.