

# CENTRAL BANK OF LIBERIA FIT AND PROPER GUIDELINES



NOVEMBER 24, 2014

## 1.0 INTRODUCTION

Financial institutions should be owned, managed and operated by “fit and proper” persons who maintain high ethical standards, whose conduct and business dealings support a conclusion of overall integrity and probity, and who are competent and qualified to conduct such business. The primary responsibility for ensuring that financial institutions are prudently and soundly managed and directed rests with the institutions themselves. In this regard, the Central Bank of Liberia requires that financial institutions develop and implement, on an on-going basis, clear due diligence processes to guide the hiring and appointment of directors, management and all prospective staff members.

The law assigns to the Central Bank of Liberia a statutory responsibility to assess the fitness and propriety of directors, officers discharging corporate management functions, and significant/influential shareholders of all financial institutions and their subsidiary entities.

With the increasing complexity of financial institutions’ operations, changing market conditions, competition issues and the high level of risk exposures associated with certain specialized activities within financial institutions, the requirement for due diligence may extend to other officers who occupy sensitive positions which have the potential to significantly impact the institution’s financial health and viability. In this regard, the Central Bank of Liberia currently deems it necessary to lay down specific guidelines on conducting fit and proper assessments to specified officers of financial institutions, in addition to already existing directives and guidelines.

These standards are intended to explain how the Central Bank of Liberia shall apply the fit and proper criteria and to explicitly enunciate the principles utilized in ensuring that financial institutions are managed, directed and controlled by persons satisfying these strict fit and proper criteria. The standards intended therefore to provide a guide to individuals in understanding and applying the criteria for satisfying the “fit and proper” test and how the Central Bank of Liberia performs this assessment. These are minimum requirements and licensed

financial institutions are required to adopt more stringent standards applicable to their specific circumstances.

## **2.0 TITLE**

This Guideline shall be cited *as Guidelines for Fit and Proper Assessment for Financial Institutions, No. CBL/RSD/0.../2014.*

## **3.0 APPLICATION**

These guidelines shall apply to all licensed financial institutions in Liberia.

## **4.0 Definition of Fit and Proper**

A person is considered to be fit and proper if he or she has good character, is competent, honest, is financially sound, reputable, reliable and discharges or is likely to discharge his/her responsibilities fairly.

## **5.0 PURPOSE**

The purpose of these Guidelines 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. This does not, however, absolve the CBL of its responsibility to conduct due diligence and approval of the relevant senior officers of financial institutions. Specifically, the guidelines are intended to:

- (a) Ensure compliance with statutory and regulatory requirements;
- (b) Protect the interest of depositors by preventing dishonest, incompetent, unskilled or otherwise inappropriate individuals from entering or continuing to serve in the financial system;
- (c) Protect the financial system from being used as a vehicle to facilitate criminal activities; and
- (d) Facilitate ongoing review of ownership and management of a licensed financial institution.

## 6.0 WHO SHOULD BE FIT AND PROPER

Key responsible persons in these guidelines refer to persons that are accountable or responsible for the management and oversight of a financial institution. They include: -

- (a) Shareholders
- (b) Directors;
- (c) Chief Executive Officers (CEO)
- (d) any person performing a senior management function who has primary responsibility for the management and performance of significant business activities of the financial institution.

Key responsible persons are defined as persons who: -

- (a) has the authority, makes or has substantial influence in making decisions that affect the whole, or a substantial part of, the financial institution's business;
- (b) is principally accountable or responsible, whether solely or jointly with other persons, for implanting and enforcing policies and strategies approved by the board, or
- (c) is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems, internal controls and processes that identify, measures, monitor or control financial institution's risks,
- (d) is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the financial institution's internal controls, risk management and compliance systems and process; namely; -
  - Chief Internal auditor
  - Head of Risk Management
  - Head of Compliance
  - Chief Financial Officer,
  - Head of Credit
  - Actuaries (in the case of insurance business), and
  - Controlling shareholder- (individual or corporate entity).

These guidelines also apply to persons that are mainly accountable or responsible for key functions that are performed outside of the financial institution (such as under centralized group and outsourced key functions). The CBL may further designate any person as a key responsible person if it is of the opinion that the person plays a significant role in the management and/or the control of financial institution. Where the CBL makes such determination, that fact will be communicated in writing to the financial institution.

## **7.0 CRITERIA FOR FIT AND PROPER TEST**

In general, the three fundamental and universally accepted principles that determine a person's fitness and propriety are **Integrity, Financial Soundness** and **Competence**.

### **7.1 Integrity**

Although it is difficult to define precisely, qualities such as honesty, reputation and honorable behavior in dealings with depositors/customers, other licensees, the financial sector and the regulatory authority, are principally considered in determining one's level of integrity, which must be demonstrated over time. Integrity demands a disciplined, consistent approach to high standards of conduct.

The CBL will consider whether an individual has been convicted of any criminal offence involving dishonesty. In addition, convictions for other offences, particularly those relating to financial legislation will constitute evidence in determining issues of integrity, competence and probity.

In assessing integrity, the CBL shall consider the following, which is by no means an exhaustive list:

#### **7.1.1 In the case of an individual**

- (a) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been

- notified of any impending proceedings or of any investigations, which might lead to such proceedings;
- (b) whether the person has contravened any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
  - (c) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;
  - (d) whether the person, or any business in which he has a controlling interest or exercises significant influence, has been investigated, disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately;
  - (e) whether the person has been engaged in any business practices which are deceitful or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
  - (f) whether the person has been dismissed, asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
  - (g) whether the person has been associated in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorization, membership or a license to conduct any trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated;
  - (h) whether the person has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation while the person was connected with that business;
  - (i) whether the person has been a director of, or directly concerned in the management of any corporation which is being or has been wound up by a court or other authority

competent to do so within or outside Liberia, or of any licensed institution, the license of which has been revoked under any written law;

- (j) whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
- (k) whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities and failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements and obligations;
- (l) whether a person has contributed significantly to the failure of an organization or a business unit;
- (m) whether the person has at any time shown strong objection or a lack of willingness to maintain effective internal control systems and risk management practices;
- (n) whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a key responsible person which would be disadvantageous to the financial institution or the financial institution's interest; and
- (o) any other unethical or reprehensible conduct, which is of such significance that it raises doubts as to the individual's integrity.

#### **7.1.2 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 previously refused an application for registration, licensing or other authorization to carry on the business for which a license is sought;
- (d) whether the entity has been subjected to suspension, cancellation or revocation of its registration, license or other authorization to carry on the business for which a license is sought;
- (e) whether the entity has been subjected to any regulatory or enforcement action by any authority in any jurisdiction; and
- (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.

**7.13** Acting with integrity also involves frank and straight-forward disclosures to the Central Bank on any matter concerning the licensee whether of a material nature or with the potential to give rise to regulatory concerns and about which the Central Bank should be aware, whether or not it involves the individual, a related party or any other individual/entity. Failure or omission to do so or inordinate delays in supplying material information to the Central Bank will be taken into account in the assessment of the integrity of the individual.

Where the Central Bank discovers that such information was not brought to its attention, it will, inter alia, assess the circumstances surrounding the failure to report, the time that has elapsed between the occurrence of the event and its discovery, as well as the material (potential) impact that the event has had or could have had on the entity, to determine the extent to which this will impact the individual's fitness and propriety.

**7.14** With regards to circumstances in the examples above relating to proceedings before a disciplinary, regulatory or other legal body, each case shall be determined under the particular circumstances. However the general principles that would guide the CBL are: -

- i. In the case of criminal charges or regulatory proceedings pending against an individual, the CBL shall not normally proceed with the application until the matter is resolved;
- ii. In the case of any legal proceeding where the matters are terminated without any adverse findings against the individual, these would not usually form a part of the CBL's determination;
- iii. Pending civil proceedings will not normally form the sole basis of a determination, but may be considered together with other factors where there are extenuating circumstances.

## **7.2 Financial Soundness**

Financial soundness is an important element in determining the ongoing "fitness and propriety" of current and prospective key persons in the financial system. This includes meeting outstanding obligations as they become due and ensuring adequate control of financial risks on a continuing basis. It also involves the satisfactory discharge of one's fiduciary responsibilities, the principle being that of ensuring the safety of depositors' funds.

Financial soundness goes beyond corporate institutions – extending to their beneficial owners, controllers, directors and senior management. The rationale is that unless an individual can demonstrate that he/she can effectively manage his/her personal affairs, such an individual would not be entrusted to manage the affairs of others. Thus, it will be incumbent on the individual to demonstrate this ability through past events and conduct. In circumstances where such financial responsibility is not ably demonstrated, the Central Bank of Liberia is unlikely to regard the individual as fit and proper to be owner, controller, director or manager of a licensed financial institution.

In determining financial soundness, the Central Bank of Liberia will have regard to several other factors including, but not limited to:

#### **7.21. 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; and
- (d) whether the person has been involved in the management of a company which has gone into insolvency, liquidation or administration while the person has been connected with that organization or within one year of the severance of that connection.

#### **7.22 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.
- (c) whether the body corporate has been the subject of intervention by the government, or been the subject of sanction or intervention by any other regulatory body;

### **7.3 Competence**

Competence goes beyond the mere avoidance of incompetence, negligence and mismanagement to take into account one's level of expertise, efficiency, reliability and compliance with relevant legislations, regulations, best practice standards, guidelines, and any rules and/or directives issued by the Central Bank of Liberia.

To demonstrate competence, persons involved in the financial system must act in a knowledgeable, professional and efficient manner, while ensuring compliance with prevailing statutes. In assessing competence, Central Bank shall consider three main areas – qualification, experience and performance.

### **7.31 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; and
- (c) whether the person possesses sound knowledge of all relevant issues in their area of expertise and had at no time commit any serious and/or repeated breaches of the statutes or regulations made there-under or any guidelines or best practice standards.

### **7.32 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 adequate risk management framework is established, sufficient to clearly identify, measure, monitor and control the spectrum of risks to which entities are exposed;

- (d) whether there are in place KYC procedures, in line with anti-money laundering and prevention of terrorism financing laws;
- (e) whether there is IT support to maintain the integrity of the operating system and security;
- (f) whether financial records as well as prudential reports are complete, accurate and reliable; and
- (g) whether the board and management exercised proper supervision and ensured the adoption and execution of acceptable corporate governance principles.

## **8.0 APPLICATION OF FIT AND PROPER TESTS BY THE CENTRAL BANK OF LIBERIA**

Fit and proper tests shall be applied by the CBL at the licensing stage, that is, when a person or a company either applies for a license under the new FIA, and thereafter on the occurrence of specified events, which include, but are not limited to, new appointments of any such persons listed under Section 6 of these Guidelines.

The application of fitness, propriety or other qualification tests to managers, directors, 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.

The CBL shall regard 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 these guidelines.

The CBL shall assess the fulfillment of fit and proper criteria in a holistic manner after due consideration of all relevant areas. For instance, the CBL 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.

In cases where those being assessed are known to have connections in other jurisdictions, and have been assessed by an external supervisory authority, which adheres to international best fit and proper standards, some reliance **may** be placed on the prior assessment conducted by such authorities where the full assessment or a reasonable synopsis thereof is made available to the CBL by that overseas authority. Particular attention shall be paid to the background and circumstances against which supporting documents were produced, bearing in mind that standards of control vary between countries. Ultimately however, all individuals must satisfy the requirements of Liberia's financial laws and regulations as well as minimum best practice standards.

## **9.0 Submission and Review of Information**

As noted earlier, fit and proper assessments are conducted by the Central Bank of Liberia on a continuing basis for existing and proposed significant shareholders, directors, managers and other persons holding key positions. These persons are assessed initially as part of the licensing process or upon receipt of written formal advice from the financial institution of an intended acquisition or proposed appointment as the case may be, and reviewed at least every 12 to 18 months thereafter. To facilitate the conduct of the fit and proper process for individuals, financial institutions are required to submit the following documents/information:

**To be submitted initially and annually thereafter:**

- (a) A fully completed and duly certified Personal Questionnaire and all related appendices (see Appendix I for further details). The Personal Questionnaire must be updated annually (effective 31 December of each year) and submitted to the CBL within sixty days of each year end.
- (b) An updated, signed Curriculum Vitae.

**To be submitted initially and every five years thereafter:**

- I. A passport-sized photograph of the individual;
- II. For individuals residing in Liberia, a police clearance to be sent directly from the Liberia National Police (LNP) to the CBL;
- III. For persons who have resided or worked in jurisdictions outside of Liberia, an international police clearance from the relevant external authorities;
- IV. Any other document that may be required by the CBL in order to conduct its assessment of an individual/entity's integrity, financial soundness, and competence;

In the case of corporate entities, the following documents should be submitted:

- V. Copy of the company's Memorandum of Association and Articles of Associations or Articles of Incorporation or Continuance and By-laws or other instrument of incorporation and certificate of incorporation.
- VI. 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; and
- VII. Any other document that the CBL may deem necessary.

Upon receipt of the above-noted documents, the CBL shall commence a detailed assessment in accordance with the fit and proper principles espoused herein. The CBL reserves the right to verify the accuracy and authenticity of responses as well as to review information relating to the individual's employment history, particularly that which relates to his/her involvement in the financial sector, whether in Liberia or elsewhere. The provision of false or misleading information will result in automatic debarment.

A fit and proper test will be considered complete upon the conclusion of the above assessment and the receipt of clearance reports from the LNP and/or Interpol/other overseas law enforcement agencies (as applicable).

## **10.0 APPLICATION OF THESE GUIDELINES BY FINANCIAL INSTITUTIONS AND ROLE OF THE BOARD OF DIRECTORS**

10.1 Financial institutions shall establish policies and procedures that are approved by their boards of directors to ensure that all key responsible persons are fit and proper to direct and manage the financial institution's key business activities and functions. These policies and procedures shall be periodically reviewed to ensure their relevance and alignment with material changes in the business and risk profile and strategies of the financial institution. The board is responsible for monitoring and ensuring on-going compliance with the internal policies and procedures, including policies on ethical behavior, codes of conduct, as well as disclosure and reporting obligations relating to the fit and proper requirements.

**10.2** The fit and proper policies and procedures must incorporate:

- a) minimum fit and proper criteria as set out in these guidelines;
- b) procedures and processes for conducting fit and proper assessments;

- c) factors considered in assessing whether a person is fit and proper for a specific position;
- d) actions, including internal governance process requirements, to be taken where a key responsible person is assessed to be no longer fit and proper for a specific position; and
- e) list of key responsible persons for the financial institution.

**10.3** The policies and procedures should also provide for any person within the financial institution to disclose information to the board that may be relevant for a fit and proper assessment and afford protection to such persons against any discriminatory actions by the financial institution for providing such information.

**10.4** Financial institutions shall take all reasonable steps to ensure that each key responsible person to be appointed or already appointed to assume important functions is aware of, and understands, the financial institution's fit and proper policy and their obligations to continue to meet the fit and proper requirements on an on-going basis.

**10.5** The board is primarily responsible for ensuring that all key responsible persons fulfill fit and proper requirements and for conducting assessments of the fitness and propriety of directors, and the CEO. For other key responsible persons, decisions on appointments and assessments of fit and proper may be made by the CEO or designated committee under the delegated authority of the board. This shall be clearly provided for in the financial institution's policies and procedures with appropriate reporting by the CEO or the designated committee to the board.

**10.6** The CBL expects that the fit and proper assessments on each key responsible person to be conducted both prior to initial appointments and at regular intervals or at least annually or whenever the board becomes aware of information that may materially compromise a key responsible persons fulfill the fit and proper criteria at all times. In addition, the board is expected to

review the list of key responsible persons for the financial institution and be satisfied that the list comprehensive and has taken into account all key positions within the financial institution.

- 10.7** The fit and proper assessments must be supported by relevant information in relation to a key responsible person. 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 board is expected to take reasonable steps to verify the information against independent sources.
- 10.8** The documentation of fit and proper assessments for each key responsible person should be retained by the financial institution for a reasonable period and the period must be specified in the financial institution's fit and proper policy. Financial institutions shall safeguard the confidentiality of information collected and assessments made.
- 10.9** To support the supervisory assessment process in determining the rigor and effectiveness of the fit and proper assessment policies and procedures within a financial institution, the following information should be made readily available for inspection by the CBL upon request: financial institution's internal fit and proper policies and procedures; list of key responsible persons within the financial institution; and documentation of fit and proper assessment for each key responsible person.
- 10.10** Where the board has assessed that a person is not fit and proper for a position, it shall not appoint the person to the said position. Where the board has assessed that a person is no longer fit and proper for a position, it shall take reasonable steps to remove the persons from such position as soon as practicable, and in the interim, institute necessary measures to mitigate risks associated with the person continuing to hold the position. Under these circumstances, the board shall notify the CBL immediately of such a fact and action.

**11.0 ROLE OF EXTERNAL AUDITORS**

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 these guidelines.

**12.0 SANCTIONS**

If a financial institution, or any administrator or significant shareholder thereof , violates any provision of these guidelines in a willful, negligent or flagrant manner which results, or is likely to result, in an unsafe or unsound condition for the financial institution or that threatens the interest of depositors, creditors or the general public or if a financial institution, or any administrator or significant shareholder of a financial institution, fails to comply with the instructions and reporting requirements in these guidelines the CBL may impose remedial and/or administrative sanctions as provided in the New FIA of 1999 or as may be prescribed by the Bank from time to time.

These guidelines shall take effect as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 and shall remain in force until otherwise advised by the CBL.

BY ORDER OF THE PRESIDENT

.....  
MINISTER OF FOREIGN AFFAIRS

MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA

Date .....