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# **BANKING COMMISSION**

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## **REGULATION**

### **FIT AND PROPER REQUIREMENTS FOR BANKS**

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#### **I. PURPOSE AND SCOPE**

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1. This Regulation sets out a framework for assessing a person's capacity to act as a fit and proper person with regard to his/her role as a director, senior manager, or holder of a substantial interest of a bank, including its beneficial owner, a director, a chief executive officer, other senior manager, and any other key functionary of a bank and who provides a basis for a decision in the matter for banks licensed to operate in the Republic of the Marshall Islands (RMI).
2. The probity and competence of persons holding a substantial interest in a bank, including their beneficial owners, directors, and senior managers, who exercise significant influence on banks in the RMI are of strong interest to the RMI Banking Commission and the banks. Market participants and the public need to be confident that persons managing the affairs of banks are competent, honest, financially sound, and will treat them fairly. Therefore, licensed banks must ensure that such persons are and are seen to be fit and proper.
3. The criteria outlined in this Regulation are to be applied individually, but it is their cumulative effect which will determine whether a person meets the test. A failure to meet one criterion will not, on its own, necessarily mean failure to constitute a fit and proper person. The process will involve a good measure of judgment, which must be exercised in a fair and judicious manner, always in the best interests of the bank and the sound conduct of its business.
4. This Regulation applies to all licensed banks in the RMI and should be read in conjunction with the provisions of other relevant laws and regulations, including:
  - (a) the Banking Act 1987;
  - (b) the Banks and Financial Services Providers Licensing and Fees Regulations 2020; and
  - (c) the Anti-Money Laundering Regulations, 2002.
5. The fit and proper assessments on qualifying persons within the scope of this Regulation should be conducted by the bank both prior to initial appointments and at regular intervals of at least annually or whenever the bank becomes aware of information that may materially compromise a person's fitness and propriety.

6. In the case of foreign branches of banks (FBs) operating in the RMI, the 'fit and proper criteria' shall apply only to the local management of the FB headed by the Country Head. However, the Board of the parent bank of the FB will continue to be responsible for ensuring that the local management of the FB complies with the requirements of this Regulation.

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## II. STATUTORY REFERENCE

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7. This Regulation is issued pursuant to Section 141A of the Banking Act 1987, which requires the Commissioner to issue fit and proper requirements, in addition to those set forth under Sections 139, 140, and 141, for banks from time to time and as necessary.

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## III. DEFINITIONS

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- a) **"bank"** has the meaning set out in Section 102(b) of the Banking Act 1987.
- b) **"beneficial owner"** has the meaning set out in Section 1 of the Anti-Money Laundering Regulations, 2002.
- c) **"Board"** refers to the board of directors, or equivalent body, of a licensed bank and, to the extent the bank is owned directly or indirectly by a parent entity, includes the board of directors, or equivalent body, of the bank's parent entity.
- d) **"Commissioner"** has the meaning set out in Section 102(h) of the Banking Act 1987.
- e) **"Country Head"** means the senior manager authorized by the Board or President of the bank to oversee the FB operation who does not reside in the RMI, and not specifically the branch manager.
- f) **"director"** means a member of the Board of a bank.
- g) **"fit and proper person"** means a person who is suitable to hold the particular position which that person holds or is to hold at a bank as regards the criteria set out in Section IX of this Regulation.
- h) **"Foreign Branches"** or **"FBs"** means branches of a bank incorporated outside RMI that are operating in RMI.
- i) **"licensed bank"** has the meaning defined in Section 102(q) of the Banking Act 1987 and includes FBs.
- j) **"senior manager"** means a person (other than a director) who:
  - i. makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the bank;
  - ii. has the capacity to significantly affect the bank's financial standing; or
  - iii. may materially affect the whole, or a substantial part, of the business of the bank or its financial standing through his/her responsibility for:

(A) enforcing policies and implementing strategies approved by the Board;

- (B) the development and implementation of systems that identify, assess, manage, or monitor risks in relation to the bank's business; or
  - (C) monitoring the appropriateness, adequacy, and effectiveness of risk management systems.
- k) **"substantial interest"** – a person holds a "substantial interest" in a bank if:
- i. the person holds a legal or equitable interest in the bank, directly or indirectly; and
  - ii. the person's interest, directly or indirectly:
    - (A) enables the person to control 10% or more of the voting stock of the bank;
    - (B) entitles the person to a share of 10% or more in dividends declared and paid by the bank; or
    - (C) entitles the person to a share of 10% or more in any distribution of the bank's surplus assets.

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#### IV. RESPONSIBILITIES OF SHAREHOLDERS, DIRECTORS, AND SENIOR MANAGERS

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8. Banks' proposed and existing directors and senior managers shall possess integrity and have expertise, qualifications, and competence commensurate with the size, complexity, business model, and risk profile of the bank. Evaluation of the suitability of persons holding a substantial interest in banks and their ultimate beneficial owners, by the Commissioner, will, among other things, involve in-depth due diligence assessments, examination of the transparency of ownership structures, source(s) of financial resources, financial soundness, probity, and conformity with laws and ethical standards that govern business conduct.
9. The onus, however, shall be on each relevant person to establish that s/he is a fit and proper person rather than for the Commissioner to show otherwise.

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#### V. RESPONSIBILITIES OF THE BANK

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10. Banks have the primary responsibility of selecting and nominating directors and senior managers who comply with the requirements for fitness and propriety as well as substantial interest-holders who are fit and proper.
11. The bank should carry out its own due diligence and assessment of persons holding a substantial interest in the bank and their ultimate beneficial owners, directors, and senior managers 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 director or senior manager).
12. In some cases, persons holding a substantial interest may be corporate entities and, in these instances, similar fit and proper tests should be applied to those entities and their directors.
13. As part of its responsibility to ensure ongoing suitability of directors, senior managers, and substantial interest-holders and their ultimate beneficial owners, the bank must provide the Commissioner with all the information necessary for conducting fit and proper assessment in all cases (new appointment,



change of role, etc.). This should include the identities of beneficial owners of shares being held by nominees, custodians, and through any other vehicles. The Commissioner, if necessary, can request a bank to provide additional information in writing or orally (e.g., requesting an interview).

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## VI. ROLE OF THE BOARD OF DIRECTORS

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14. To effectively discharge its responsibilities, the Board of a bank must establish a fit and proper policy and oversee its effective implementation. The fit and proper policy must at a minimum address:
  - (a) who will conduct the fit and proper assessment;
  - (b) what information will be obtained and how it will be obtained;
  - (c) matters that will be considered before determining if a person is fit and proper;
  - (d) relevant decision-making process that will be followed and any delegations of authority which have been given by the Board;
  - (e) actions to be taken where a person is assessed not to be a fit and proper person;
  - (f) on-going disclosure requirements placed by the Board and senior managers of events that may affect a person's status as a fit and proper person;
  - (g) frequency of re-assessment (not more than 2 years); and
  - (h) any other requirements under applicable laws and this Regulation.
15. The fit and proper policy should require that a copy of the policy be given to candidates for a director's position as soon as possible after nomination and to applicants for other senior manager positions before commencing an assessment of their fitness and propriety, including obtaining any releases required to conduct background checks including police checks, education checks, company searches, credit evaluations, and similar checks.
16. In the case of FBs, the Board of a bank must establish a fit and proper policy for the senior managers of the FB that are responsible for the bank's RMI operations.
17. Other responsibilities of a bank's Board include:
  - (a) documentation of the processes used to assess whether a person is a fit and proper person and reasons for any decisions made;
  - (b) making the documentation available to the Commissioner upon an application for approval of a director or senior manager under Section 140 of the Banking Act 1987, as well as approval involving persons holding substantial interests in the bank under Sections 112 and 127 of the Banking Act 1987;
  - (c) ensuring that candidates who are being considered for appointment to the Board and senior manager positions meet the fit and proper test before appointments are made;
  - (d) ensuring that processes are implemented to keep under constant review the capacity of directors, substantial interest-holders and their ultimate owners, and senior managers to continue to meet the fit and proper test;

- (e) filing not later than February 1 of every year an Ownership/Control Report (OCR) as required under Section 2A of the Anti-Money Laundering Regulations, 2002.

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#### **VII. ROLE OF SENIOR MANAGERS**

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18. Senior managers of the licensed bank must apply the fit and proper test to middle- and lower-level management positions within the bank and report to the Board periodically on the results of the tests.
19. The tests should guide the recruitment of personnel in the bank and generally be conducted annually unless, in the view of senior managers, more frequent assessment is required.

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#### **VIII. ROLE OF EXTERNAL AUDITORS**

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20. When an external auditor becomes aware of information during the statutory audit that points to non-compliance or potential non-compliance by a person with the fit and proper person requirements of this Regulation, the auditor should immediately advise the Board of the matter and provide all information necessary.
21. On a priority basis, the Board must then decide the case and initiate whatever action is necessary. The Board's proceedings must be documented appropriately. The Board must immediately inform the Commissioner of the matter and its decision.

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#### **IX. FIT AND PROPER CRITERIA ASSESSMENT**

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22. The minimum criteria for considering whether a person is fit and proper include but are not limited to the following:
- (a) honesty, integrity, diligence, fairness, and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.
23. As stated earlier in paragraph 3, it is the cumulative effect of the application of the criteria that will determine the fitness and propriety of a person. In applying the criteria, the Board may need to discuss the matter and document the evidence.

##### **A. Honesty, Integrity, Diligence, Fairness, and Reputation**

24. Honesty, integrity, diligence, and fairness are qualities that are demonstrated over time. These attributes demand a disciplined, ongoing commitment to high standards of behavior and honesty.
25. In determining a person's honesty, integrity, fairness, and reputation, the Board must consider all appropriate factors, including but not limited to:
- (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 investigation, which might lead to such proceedings;

- (b) whether the person or any business in which s/he has a controlling interest or exercises significant influence, has been investigated, disciplined, suspended, or criticized by a regulatory or professional body, a court, or tribunal, whether publicly or privately;
  - (c) 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 trade, business, or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated;
  - (d) whether, as a result of the removal of the license, registration, or other authority mentioned in criterion (c), the person has been refused the right to carry on a trade, business, or profession requiring a license, registration, or other authorization;
  - (e) whether the person has been the subject of any justified complaint relating to regulated activities;
  - (f) whether the person has been charged or convicted of any criminal offense, particularly an offense relating to dishonesty, fraud, financial crime, or other criminal acts, or been involved in any acts of misfeasance or serious misconduct; whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies, which are of the nature and/or significance that may have affected his/her fitness and propriety;
  - (g) whether the person has been a director, partner, or otherwise involved in the management, of a business that has gone into receivership, insolvency, or liquidation while the person was connected with that business or within one (1) year after the connection;
  - (h) whether the person has been dismissed, asked to resign, or resigned from employment or from a position of trust, fiduciary appointment, or similar position because of questions about his/her honesty and integrity;
  - (i) whether the person has ever been disqualified, under the Associations Law or any other legislation or regulation, from acting as a director or serving in a managerial capacity;
  - (j) whether the person has at any time shown strong opposition or lack of willingness to maintaining effective internal control systems;
  - (k) whether, in the past, the person has been fair, truthful, and forthcoming in his/her dealings with customers, superiors, auditors, and regulatory authorities; and
  - (l) whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory, or professional requirements and standards.
26. The above matters may have arisen either in RMI or elsewhere. The Board should be informed of any of these matters but will consider the extent and circumstances of the person's involvement in the relevant events, the time it occurred, and its seriousness. The Board will gather information from all appropriate sources, on the overall reputation of a person regardless of whether such information results from the above criteria and factor it in its assessment of the person's fitness and propriety.

#### **B. Competence and Capability**



27. A person must demonstrate his/her competence and ability to understand the technical requirements of the business, the risks inherent, and the management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.
28. In determining the competence and capability of a person, the Board must take into account all relevant considerations including, but not limited to:
  - (a) whether the person has demonstrated, through his/her qualifications and experience, the capacity to successfully undertake the cognate responsibilities of the position, including the establishment of an effective control regime;
  - (b) whether the person has ever been diagnosed as being mentally ill or unstable;
  - (c) whether the person has ever been disciplined by a professional, trade, or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence, or mismanagement; and
  - (d) whether the person has a sound knowledge of the business and responsibilities s/he will be called upon to shoulder.

#### **C. Financial Soundness**

29. To demonstrate his/her capacity to ensure the safety and soundness of a financial institution, including the balancing of risks and rewards, and protect the interests of depositors and other stakeholders, a person must demonstrate, to the satisfaction of the Board, that s/he has managed his/her own financial affairs properly and prudently.
30. In determining a person's financial soundness, the Board must consider all relevant factors, including but not limited to:
  - (a) whether the person has been the subject of any adverse judgment or award, in RMI or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
  - (b) whether, in RMI or elsewhere, the person has made any arrangements or composition with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of these;
  - (c) whether a person who has been a senior officer of a company or a shareholder in a position to exercise significant influence in the company that:
    - i. has been the subject of any adverse judgment or award, in RMI or elsewhere, that remains outstanding or was not satisfied within a reasonable period; and
    - ii. has, in RMI or elsewhere, made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had asset sequestrated, or been involved in proceedings relating to any of the foregoing.

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

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#### **X. PERSONS WHO ARE NOT FIT AND PROPER**

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31. Where a bank has assessed that a person is not a fit and proper person, it must take all steps it prudently can to ensure that:
- (a) the person is not appointed as a director, senior manager, or substantial interest-holder with the bank; or
  - (b) to the extent the person is an existing director, senior manager, or substantial interest-holder, the person does not continue to hold that position with the bank.
32. In addition to regular reporting requirements, a bank must notify the Commissioner within five (5) business days if it becomes aware of reliable information that a director, senior manager, or person holding a substantial interest in the bank is not a fit and proper person. If the person is not removed from the position, the notification must state the reason(s) for this and the action(s) being taken to mitigate any risk the person presents to the bank. This requirement is consistent with Sections 139, 140, and 141 of the Banking Act 1987.
33. Failure of the bank to remove a director, senior manager, or substantial interest-holder of the bank if such a person is not eligible as required under these Regulations or the Banking Act 1987, the Commissioner shall proceed to remove this person immediately, with notification in writing to be submitted to the bank.

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#### XI. PENALTIES

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34. Failure to adhere to the requirements of this Regulation will result in penalties as prescribed by law, which may include fines or revocation of the bank's license.



## **Annex 1.**

### **DOCUMENTATION REQUIRED FOR FIT AND PROPER ASSESSMENTS**

Fit and proper assessments are conducted by the RMI Banking Commission on a continuing basis for existing and proposed substantial interest-holders and their ultimate owners, directors, senior managers, and other persons holding sensitive positions with the licensed banks. These persons are assessed initially upon receipt of formal advice from the bank of an intended acquisition or proposed appointment as the case may be and reviewed at least on an annual basis thereafter.

To facilitate the conduct of the fit and proper process, the following documents are required:

- a) A fully completed and duly certified Personal Questionnaire and all related appendices; and
- b) Clearance reports from:
  - i. The RMI Police;
  - ii. The RMI Financial Intelligence Unit (FIU) (if any); and
  - iii. Interpol/other overseas law enforcement agencies (where the candidate has either lived or worked overseas).

It is the responsibility of the bank or candidate to make the necessary requests for police reports and fulfill all the procedural requirements to ensure direct submission of the reports to the Commissioner.