



Banking Supervision Policy Statement No. 10:

Fit and Proper Requirements for Licensed Financial Institutions in Fiji

**NOTICE TO BANKS AND CREDIT INSTITUTIONS
LICENSED UNDER THE BANKING ACT 1995**

1.0 Introduction

- 1.1 This Policy is issued under Section 14(3) and complements the requirements of Section 19(1) of the Banking Act 1995. Section 19(1) of the Banking Act 1995 requires all directors and employees of banks and credit institutions (Licensed Financial Institutions) in Fiji to be fit and proper to hold such a position.
- 1.2 This Policy establishes minimum requirements that persons holding key positions in Licensed Financial Institutions (LFIs) in Fiji, also known as responsible persons, must be assessed for the purposes of being deemed fit and proper.
- 1.3 Responsible persons for locally incorporated LFIs include:
 - (i) The Board of Directors (Board), including alternate directors; and
 - (ii) Senior Management and its proxy.
- 1.4 For foreign incorporated LFIs, responsible persons mean Senior Management, which include the senior manager or managers responsible for the Fiji operations.
- 1.5 As the organisation structure differs for each LFI, the Reserve Bank will agree with LFIs as to which positions in the institution's current organisational structure, would be considered as falling within the category of Senior Management.
- 1.6 The responsibility of ensuring that the Board Directors are fit and proper lies with the shareholders. Senior Management of locally incorporated LFIs are assessed by the LFI's Board while Senior Management of branch operations are assessed by their regional heads.
- 1.7 Whilst the requirements of this Policy focus on responsible persons, each LFI must ensure that all their current and prospective employees are assessed against the requirements of this Policy.
- 1.8 The minimum standards reflected in this Policy have been aligned to international standards and best practices, including the Basel Committee for Banking Supervision, Bank for International Settlements and the Organisation for Economic Co-operation and Development. It also aims to further strengthen legislated requirements under the Banking Act 1995.

2.0 Objectives of this Policy

- 2.1 The objectives of this Policy are:
 - (i) to safeguard the interests of depositors and stakeholders by ensuring that LFIs are soundly and prudently managed and directed;
 - (ii) to set out a minimum framework which can be used by LFIs when determining whether a responsible person is fit and proper;

- (iii) to address the risk of mismanagement of, and inadequate or inappropriate control or influence over, LFIs; and
- (iv) to facilitate consultation and the exchange of information between the Reserve Bank of Fiji and all Directors and employees of the LFI, to achieve the above.

2.2 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 on a LFI's operation, risk profile or financial soundness.

3.0 Definition

3.1 Fit and proper status for responsible persons, as a minimum, is assessed against the following criteria:

- A. Good Character;
- B. Competence and Capability; and
- C. Financial Soundness.

A. Good Character

For this Policy, good character qualities include honesty, integrity, fairness and reputation, that are demonstrated over time. The Board and its proxy should consider all appropriate factors, including, but not limited to:

- (i.) Whether the person has been convicted or found guilty of a criminal or disciplinary offence;
- (ii.) Where the person is a controlling shareholder or has significant influence, has been disciplined or suspended by a regulatory or professional body, a court or tribunal, publicly or privately;
- (iii.) Whether the person has been the owner of, or held a responsible person position within, a company or organisation that has been refused registration or had its licence revoked, withdrawn or terminated;
- (iv.) Whether the person has been dismissed or asked to resign from employment because of concerns over their integrity and honesty;
- (v.) Whether the person has ever been disqualified from acting as a director or serving in a managerial position because of wrongdoing;
- (vi.) Whether the person has not been ethical, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities; and
- (vii.) Whether the person demonstrates a readiness and willingness to comply with the requirements and standards of both the Reserve Bank and the LFI.

B. Competence and Capability

A person must exhibit the competence and ability to understand the technical requirements of the business, the inherent risks and the management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.

In evaluating the competence and capability of a person, the Board of Directors and its proxy should consider all relevant factors, including, but not limited to:

- (i.) Whether the person has demonstrated, through qualifications and experience, the capacity to successfully undertake the responsibilities of the position;
- (ii.) Whether the person has any medical condition that may affect competency;
- (iii.) Whether the person has ever been disciplined by a professional, trade or regulatory body, dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; and
- (iv.) Whether the person has a sound knowledge of the business and the responsibilities of the position.

C. Financial Soundness

Proper and prudent management of his/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. All relevant factors must be considered, including but not limited to:

- (i.) Whether the person has been the subject of any judgment or award that remains outstanding or was not satisfied within a reasonable period; and
- (ii.) Whether the person has made any arrangements with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings relating to any of the above mentioned.

4.0 Minimum Requirements of this Policy

4.1 Fit and Proper Policy

4.1.1 Each LFI must establish and implement an in-house "Fit and Proper Policy", approved by the Board in the case of a locally incorporated institution or Senior Management in the case of a branch operation. Branch operations can adapt the Group's Fit and Proper Policy, which must at a minimum, include the requirements of this Policy.

4.1.2 The Fit and Proper Policy must be reviewed every two years.

4.1.3 The LFI must submit a copy of the in-house Fit and Proper Policy to the Reserve Bank within 30 calendar days of it being approved/reviewed and all of its branches or representative office in Fiji must have immediate access to a copy of the Policy.

4.1.4 The LFI's Fit and Proper Policy, must, at a minimum include:

A. The criteria for determining if a responsible person is fit and proper.

(i.) The minimum criteria for this Policy are:

- a) the characteristics as defined in 3.1 above;
- b) Section 19 (7) of the Banking Act is not contravened for an elected or appointed person of a LFI. This must also apply to prospective responsible persons. Section 19(7) states that:
"Any person who-
 - 1. has been a director of, or had directly or indirectly concerned in the management of, a financial institution which has had its licence revoked in accordance with Section 21 or has been wound up by a court; or
 - 2. has been sentenced by a court, in any country, to a term of imprisonment for an offence involving dishonesty; or
 - 3. is, or becomes, bankrupt or enters a scheme of arrangement or composition with his creditors,shall not, without the written authorisation of the Minister, act or continue to act as any officer or employee of any licensed financial institution or its subsidiaries."
- c) the responsible person should not be acting as consultant or advisers for the LFI they want to be a director of; and
- d) the responsible person must be over the age of 21 (Section 187 of Companies Act).

(ii.) Further to c) above, should a consultant of a LFI be appointed as responsible person for that LFI, the person must cease their role as the LFI's consultant.

(iii.) The LFI must clearly define and document competencies and responsibilities of a responsible person position. Documentation must include any training or induction processes required for each position, for commencement in the position and on a continuing basis.

B. The processes involved in assessing whether a responsible person is fit and proper.

(i.) The assessment process must include:

- a) the selection of the institution's personnel or their proxy, to conduct the assessment for each responsible person position on behalf of the LFI;
 - b) what information will be obtained by the LFI and how it will be obtained; and
 - c) the decision making processes for the assessment.
- (ii.) The Fit and Proper Policy must include ongoing monitoring of responsible persons. In cases where new information is received and is of material concern, the LFI must make queries and collect information to determine if a fitness or propriety concern exists; and
 - (iii.) Assessment of a responsible person must be conducted prior to the appointment of the person, unless it is of urgency to fill the position due to some critical reasons that would affect the soundness of the institution. In the latter case, an assessment must be conducted within 30 business days of such appointment.

C. The actions to be taken should a responsible person not qualify as being fit and proper.

Should a LFI conclude that a responsible person is not fit and proper, the LFI must ensure that the person:

- (i.) is not appointed; or
- (ii.) for an existing responsible person, is relieved of his/her position as a responsible person.

4.2 Role of the Board of Directors for Locally Incorporated Financial Institutions

- 4.2.1 The Board is responsible for the safety and soundness of the financial institution by identifying and understanding the major risks of the institution.
- 4.2.2 The Board must ensure that all employees are aware of the requirements of the Fit and Proper Policy.
- 4.2.3 Directors should avoid situations that bring about conflicts of interest. The Policy should address conflicts of interest involving both directors and employees.

4.3 Role of the Senior Management

- 4.3.1 Senior Management responsibilities means any relevant activities for which the person is responsible that may materially affect the whole or a substantial part of the LFI's business or financial standing.
- 4.3.2 For locally incorporated financial institutions, Senior Management responsibilities mean having primary responsibility for one or more of the following:
 - (i.) High level decision making;

- (ii.) Developing processes that identify, assess, manage and monitor risks incurred by the LFI for Board approval;
- (iii.) Implementing strategies and policies approved by the Board; and
- (iv.) Monitoring the appropriateness, adequacy and effectiveness of the risk management system.

4.3.3 For foreign incorporated financial institutions, Senior Management responsibilities mean having primary responsibility for one or more of the following:

- (i.) High level decision making;
- (ii.) Developing, approving and implementing processes that identify, assess, manage and monitor risks incurred by the LFI; and
- (iii.) Monitoring the appropriateness, adequacy and effectiveness of the risk management system.

4.3.4 Senior Management must ensure that all employees are aware of the requirements of the Fit and Proper Policy.

4.4 Role of the External Auditor

4.4.1 The LFI must appoint annually an auditor who:

- (i.) in accordance with Section 58(7) of the Banking Act, is not a director, employee, or agent of that financial institution. An appointed auditor of a financial institution who becomes a director, employee or agent of that institution, must cease to be the auditor of that LFI; and
- (ii.) further to Section 59 and 61 of the Banking Act, the audit report which must include information of any instances of non-compliance by the institution with regard to the fit and proper requirements of both this Policy and the LFI's internal policy.

4.4.2 The Reserve Bank of Fiji Banking Supervision Policy Statement No. 7: Role of External Auditors in the Supervision of Licensed Financial Institutions defines the role of auditors.

4.5 Whistleblowing

4.5.1 The LFI's Policy must have provisions that provide for employees and Directors, to report to the Reserve Bank where they have no recourse under the current reporting structure within the financial institution:

- (i.) in such instances where a responsible person is not fit and proper and continues to be employed by the institution;
- (ii.) on the inaction of a LFI on a responsible person that the Reserve Bank has declared to be not fit and proper and who continues to be employed by the LFI;

- (iii.) the LFI has not complied with this Fit and Proper Policy or the institution's internal Fit and Proper policy; and
- (iv.) the LFI has not complied with any other policies issued by the Reserve Bank.

4.5.2 The LFI's policy must protect employees who make a disclosure in good faith to ensure that they are not subject to, or threatened with, a detriment because of any notification in compliance with the requirements of this Fit and Proper Policy.

5.0 Assessment of Fitness and Propriety by the Reserve Bank

- 5.1 Section 19(1) of the Banking Act provides the Reserve Bank the powers to assess and review an elected or appointed responsible person of a LFI to ensure that he/she satisfies the Fit and Proper requirements.
- 5.2 Further to this, the Reserve Bank will review the fitness and propriety of a proposed responsible person prior to the finalisation of their appointment. The Reserve Bank will not be able to confirm that it has no objection to an appointment until it has received and reviewed the appropriate information.
- 5.3 In assessing the fitness and propriety of an appointed or elected or proposed responsible person, the Reserve Bank would require submission of the curriculum vitae of the responsible person. The curriculum vitae should clearly indicate the professional qualifications, previous and current positions, names and contact details of three professional and two character referees and any financial connections they may have with the financial institution.
- 5.4 The Reserve Bank may conduct an interview with the appointed or elected or proposed responsible person as and when deemed necessary.
- 5.5 The LFI must inform the Reserve Bank in writing, within 30 calendar days after any resignation, retirement or removal of a responsible person. The Reserve Bank must also be updated on any changes to details of a responsible person.
- 5.6 If a LFI forms a belief that a person is not fit and proper for a responsible person position they hold, or was not fit and proper for a responsible person position they held within the previous 28 days, then it should inform the Reserve Bank:
 - (i.) If the person remains in that position, the reason the person remains and what action is taken; or
 - (ii.) If the person no longer holds the responsible person position, a statement of that fact.
- 5.7 If the Reserve Bank is of the opinion that an appointed or elected responsible person is not fit and proper or failed to perform adequately the required responsibilities as provided for in the Act and this Policy, the

Reserve Bank shall disqualify the person. In the proposal to disqualify a person, the Reserve Bank shall take the following actions:

- (i.) as per Section 19(2) of the Banking Act, the Reserve Bank shall give the LFI and the officer written notice of its intention to disqualify, and shall specify the grounds on which such determination has been made;
- (ii.) as per Section 19(3) of the Banking Act, the LFI and the officer concerned, in receipt of the notice may within a period of 14 days beginning on the day on which the notice was given, make representations to the Reserve Bank;
- (iii.) as per Section 19(4) of the Banking Act, the Reserve Bank, in taking into account the representations by the LFI and the officer, shall decide whether to:
 - a) proceed with the action proposed in the notice;
 - b) take some other action; or
 - c) take no further action.

5.8 The Reserve Bank shall impose fines on any person disqualified but who continues to undertake responsible person duties, as stated under Section 19(8) of the Banking Act.

5.9 As per section 15 of the Act, the Reserve Bank shall impose penalties on a LFI who continues to employ a disqualified person to undertake responsible person duties.

5.10 Should the Reserve Bank object to a proposed appointment of a responsible person, the Reserve Bank will advise the LFI not to appoint the person. In extreme cases, the Reserve Bank will direct the LFI not to appoint the proposed responsible person.

6.0 Oversight by the Reserve Bank

6.1 In addition to ongoing monitoring, the Reserve Bank, during its on-site examinations of LFIs will determine whether the LFI has adequate policies, procedures and resources for compliance with the requirements of this Policy.

6.2 Should a LFI fail to comply with the requirements of this Policy, the Reserve Bank will impose such sanctions as specified in Section 15 of the Act.

7.0 Implementation and Arrangements

7.1 This Policy Statement is a minimum requirement and applies to all banks and credit institutions licensed under the Banking Act 1995, and comes into effect after final consultation with the banks and credit institutions.

Reserve Bank of Fiji
31 August 2007

SCHEDULE

Interpretation –

- (1) Any term or expression used in this Notice that is not defined in this Notice:
 - (a) which is defined in the Act shall, unless the context otherwise requires, have the meaning given to it by the Act;
 - (b) which is not defined in the Act and which is defined in any of the Reserve Bank of Fiji Policy Statements shall, unless the context otherwise requires, have the meaning given to it by those policy statements; and
 - (c) which is not defined in the Act or in any of the Reserve Bank of Fiji's Policy Statements shall, unless the context otherwise requires, be interpreted in accordance with generally accepted accounting practice.
- (2) In this Notice, unless the context otherwise requires:

'Act' means the Banking Act 1995 unless otherwise specified.

'Bank' means a bank with the meaning given to it by the Act.

'Conflicts of interest' means where a responsible person influences the LFI's decisions in ways that could result in their personal gain, benefit or advantage of any kind.

'Credit Institution' means a credit institution with the meaning given to it by the Act.

'Director' means a person holding office as a director of the local incorporated LFI by whatever name called who whether by himself or herself, or in conjunction with other directors acting as a board of directors, has the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the local incorporated LFI.

'Fiji Operations' means all business, operations, or undertakings conducted in or from Fiji.

'Foreign incorporated LFI' means a LFI incorporated outside Fiji which has been licensed as a branch to conduct banking business in Fiji. The parent is also be a LFI in its country of domicile, authorised, registered or licensed by the appropriate banking supervisory authority.

'Licensed financial institution (LFI)' means any company licensed under the Banking Act 1995 to conduct banking business which in Fiji includes local and foreign incorporated banks and credit institutions.

'Locally Incorporated' means a LFI incorporated in Fiji which has been licensed to conduct banking business in Fiji.