



**Reserve Bank of Fiji**

**Capital Markets Supervision Policy  
Guideline No. 6**

**Fit & Proper Requirements for  
Licensed Intermediaries and Issuers**

**NOTICE TO LICENSED INTERMEDIARIES AND ISSUERS  
UNDER THE CAPITAL MARKETS DECREE 2009**

## **1.0 Introduction**

- 1.1 Persons holding key positions in licensed intermediaries (broking, dealing, securities exchange, unit trusts, and investment adviser) and issuers, also known as responsible persons, must satisfy after the grant of such licences and approval that they are fit and proper persons. The development of a Fit and Proper Policy arises from the need for investors to have confidence that the people and organisations that they deal with are competent, honest and financially sound.
- 1.2 Section 14 of the Capital Markets Decree 2009 (“the Decree”) requires that no person shall carry on a business as a securities exchange, broker, dealer, investment adviser, unit trust or a representative or hold himself out as carrying on such a business unless he/she is a holder of a valid licence issued under the Decree.
- 1.3 Furthermore, Section 24 of the Decree requires that the Bank, in relation to issues of securities, shall examine and may allow to become effective the proposal specified in and in accordance with subsections (2) & (3).
- 1.4 This policy complements Section 5 (r) of the Capital Markets Decree 2009 which states that the Reserve Bank of Fiji (“RBF” or the “Reserve Bank”) is to take all reasonable measures to safeguard the interest of persons dealing in securities.
- 1.5 For locally incorporated licensed intermediary and issuer that undertake capital markets activities, responsible persons include:
  - (i) The Board of Directors (Board), including alternate directors; and
  - (ii) Senior Management and its proxy.
- 1.6 For foreign incorporated licensed intermediary and issuer responsible persons include the board of directors, senior manager or managers responsible for the Fiji operations.
- 1.7 Organisation structures may differ for each licensed intermediary or issuer, the Reserve Bank may agree with each licensed intermediary or issuer as to which positions in the intermediary’s or issuer’s current organisational structure, be considered as falling within the category of Senior Management.
- 1.8 The minimum standards reflected in this Policy have been aligned to international standards and sound best practices including those introduced by the International Organisation of Securities Commissions (IOSCO) Principle Number 23 which states that market intermediaries should be required to comply with standards for international organisation and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility of these matters.
- 1.9 Each licensed intermediary and issuer must ensure that all their current and prospective responsible persons are assessed against the requirements of this Policy.
- 1.10 This Guideline should be read in conjunction with the Capital Markets Supervision Policy No.2 on Continuing Professional Education (CPE), which sets the initial and continuous competence requirements expected of a licence.

## **2.0 Purpose**

2.1 The purpose of this guideline is:

- (i) to safeguard the interests of investors, beneficiaries and stakeholders by ensuring that licensed intermediaries and issuers that undertake capital markets activities are soundly and prudently managed and directed.
- (ii) set out a framework which can be used by licensed intermediaries and issuers in determining whether a person is fit and proper to hold a key position within the organisation;
- (iii) address the risk of mismanagement within and the inadequate or in appropriate control over the influence of licensed intermediaries and issuers.

## **3.0 “Fit and Proper” Assessment Criteria**

3.1 The following criteria are important in the assessment of fit and proper person:

- reputation, character, reliability and financial integrity;
- education/other qualifications and experience
- financial status or soundness;

### **(I) Reputation, Character, Reliability and Financial Integrity**

For the purposes of this Guideline, good character qualities include honesty, integrity, fairness and reputation that are demonstrated over time.

In determining good character, the Reserve Bank is not likely to be satisfied that a person is fit and proper if that person:

- (a) was found to be of poor reputation, character or reliability, lacking in financial integrity, or dishonest;
- (b) convicted or found guilty in a criminal or disciplinary offence;
- (c) is a controlling shareholder or has significant influence in an intermediary that has been investigated, disciplined or suspended by a regulatory or professional body, a court or tribunal, publicly or privately;
- (d) disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
- (e) has been dismissed, asked to resign from employment because of questions about integrity and honesty;
- (f) disqualified by a court of competent jurisdiction from being a director;
- (g) has not been fair, truthful and forthcoming in dealings with customers, superiors, auditors and regulatory authorities.

- (h) found culpable of market misconduct or failed to abide by any codes and guidelines promulgated by the Reserve Bank of Fiji, other regulators or any relevant exchanges in Fiji or overseas;
- (i) a director, substantial shareholder or involved in the management, of a corporation or business that was:
  - i. wound up or was otherwise insolvent or had a receiver or administrator appointment;
  - ii. was found guilty of fraud;
  - iii. has not met all obligations to client, compensation funds established for the protection of investors;

## **(II) Education, Other Qualifications and Experience**

A responsible person exhibits the competency 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 competency and capability of a person, the Reserve Bank is not likely to be satisfied that a person is fit and proper if:

- (a) the person has a medical condition to the extent in the opinion of the Reserve Bank, after having taken into account such relevant factors including that if the person's past training, experience and qualification, that person would be unable to carry out the inherent requirements of the regulated activity;
- (b) has 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.

## **(III) Financial Status or Soundness**

When assessing the financial soundness of responsible persons, the Reserve Bank is not likely to be satisfied that a person is fit and proper if that person:

- (a) is an undischarged bankrupt,
- (b) is currently subject to bankruptcy proceedings or
- (c) is a bankrupt who has recently been discharged within 3 years preceding the application

In assessing the financial soundness of a person, the following will also be considered:

- (a) Credit Worthiness
- (b) Level of Debt
- (c) Assets and Investments

In considering whether to licence or approve a bankrupt who has been discharged, the Reserve Bank would have regards to the circumstances of the discharge and the decency of the discharge:

- (a) is subject to receivership or other similar proceedings;
- (b) had failed to meet any judgemental debt.

## **4.0 Minimum Requirements**

### **4.1 Fit and Proper Policy**

4.1.1 Each licensed intermediary or issuer must establish and implement an in-house “Fit and Proper Policy” approved by the Board. Subsidiary or Branch operations can adopt 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 or as and when required.

4.1.3 The licensed intermediary or issuer must submit a copy of the Fit and Proper Policy to the Reserve Bank within 3 months for it being reviewed and approved and all its subsidiaries or branches in Fiji must have immediate access to a copy of the Policy.

#### **A. The criteria in determining if a responsible person is fit and proper:**

- (i) the characteristics as defined in 3.1 above;
- (ii) the responsible persons should not be acting as consultants or advisors for the licensed intermediaries and issuers they want to be a Director of;
- (iii) over the age of 21;
- (iv) the licensed intermediary and issuer must clearly define and document competencies and responsibilities of a responsible person position. Documentation must include any training or induction procedures appropriate to ensuring the continued fitness and propriety of a responsible person, including they continues competency.

#### **B. Process involved in assessing whether a responsible person is fit and proper:**

- (i) The assessment process must include:
  - (a) the selection of those who will conduct the assessment for each responsible person on behalf of the licensed intermediary or issuers;
  - (b) what information will be obtained by the licensed intermediary or issuers and how it will be obtained and;
  - (c) the decision making process for the assessment.
- (ii) The Fit and Proper Policy must include ongoing monitoring of responsible persons.
- (iii) Assessment of a responsible person must be conducted prior to 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. An assessment must be conducted within 30 calendar days of the appointment.

#### **C. Actions to be taken should a responsible person does not qualify as being fit and proper:**

Should a licensed intermediary or issuer conclude that a responsible person is not fit and proper, it must ensure that the person:

- (i) is not appointed;

- (ii) for an existing responsible person, is relieved of his/her position as a responsible person.

## **5.0 Role of the Board Directors**

5.1 The Board is discharged with its responsibilities and should:

- (i) Establish a fit and proper person policy and ensure that staff are aware of the requirements of the Fit and Proper Policy.
- (ii) Have documented the process used to assess whether a person is fit and proper and reasons for any decisions made;
- (iii) Make the documentation available to the Reserve Bank, as required.
- (iv) Ensure that candidates who are being considered for appointment to key positions meet the fit and proper test before appointments are made;
- (v) Ensure that processes are implemented to keep under constant review the capacity of directors, controllers, managers, controlling shareholders and other with significant influence on the operations of the intermediaries to continue to meet the fit and proper test;

## **6.0 Role of the Senior Management**

6.1 The responsibilities of Senior Management include any relevant activities that may materially affect the whole of a substantial part of the licensed intermediaries and issuers' business's or financial standing.

For locally incorporated licensed intermediaries and issuers, Senior Management should include for one or more of the following responsibilities:

- (i) High level decision making;
- (ii) Identify, assess, manage and monitor risks incurred by the institution;
- (iii) Implement strategies and policies approved by the Board;
- (iv) Monitoring the appropriateness, adequacy and effectiveness of the risk management system.

6.2 For a foreign incorporated licensed intermediary and issuer, Senior Management must ensure that all employees are aware of the requirements of the Fit and Proper Policy.

## **7.0 Role of the External Auditors**

7.1 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 this Policy.

## **8.0 Whistle blowing**

8.1 The licensed intermediary and issuer 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 issuers:

- (i) In such instances where a responsible person is not fit and proper and continues to be employed by the licensed intermediary or issuers;
  - (ii) On the inaction of a licensed intermediary and issuer on a responsible person that the Reserve Bank has declared to be not fit and proper and who continues to be employed by the licensed intermediary or issuers;.
  - (iii) The licensed intermediary or issuer has not complied with this Fit and Proper Policy or the licensed person's internal Fit and Proper policy; and
  - (iv) The licensed intermediary or issuer has not complied with any other policies issued by the Reserve Bank.
- 8.2 The licensed intermediary or issuer 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.
- 8.3 The Reserve Bank will under no circumstance except under court order reveal the identity of the whistleblower.

## **9.0 Assessment of Fitness and Properness by the Reserve Bank**

- 9.1 Pursuant to its Section 5 and 6 of the Capital Markets Decree 2009, the Reserve Bank has powers to assess and review is to give directions to any person, which the Reserve Bank has approved or to which it has granted a licence and any public issuers the securities of which are traded on an approved securities exchange.
- 9.2 The Reserve Bank will review the fitness and propriety of a proposed responsible person prior 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.
- 9.3 In assessing the fitness and properness of an appointed or elected or proposed responsible person, the Reserve Bank would require the submission of the curriculum vitae of the responsible person. The curriculum vitae should indicate the professional qualification, previous current positions, names and contact details of three professional referees and two character references and any financial connections they may have with the institution.
- 9.4 The Reserve Bank may conduct an interview with the appointed person or proposed responsible person as and when deemed necessary.
- 9.5 The licensed intermediary or issuer must inform the Reserve Bank in writing, within 30 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.
- 9.6 If a licensed intermediary or issuer 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 they held within the previous, then it should inform the Reserve Bank.

- 9.7 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 in the Decree and this policy, the Reserve Bank shall disqualify the person.
- 9.8 Should the Reserve Bank object to a proposed appointment of a responsible person, the Reserve Bank will advise the licensed intermediary or issuer not to appoint the person. In extreme cases, the Reserve Bank will direct the licensed intermediary or issuer not to appoint the proposed responsibility person. The RBF reserves the right to request for further information and conduct any investigations as it deems fit.

## **10.0 Penalty**

Should a licensed intermediary or issuer fail to comply with the requirements of this Policy, the Reserve Bank will impose such fines as stipulated in Section 40 of the Capital Markets Decree 2009.

## **11.0 Oversight by the Reserve Bank**

In addition to ongoing monitoring, the Reserve Bank, during its on-site supervision of licensed intermediaries and issuers will determine whether the licensed intermediary or issuer have adequate policies, procedures and resources for compliance with the requirements of this Policy.

## **12.0 Implementation and Arrangements**

This Policy Statement is a minimum requirement and applies to all persons licensed and approved under the Capital Markets Decree 2009, and comes into effect from 1 March, 2011.

**Reserve Bank of Fiji**  
**24 February 2011**



## **SCHEDULE**

### **Interpretation**

- i. Any term or expression used in the this Notice that is not defined in this Notice:
  - (a) Which is defined in the Decree shall, unless the context otherwise requires, have the meaning given to it by the Decree;
  - (b) Which is not defined in the Decree 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 the those policy statements; and
  - (c) Which is not defined in the Decree 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.
- ii. In this Notice, unless the context otherwise requires:

**‘Decree’** means the Capital Markets Decree 2009 unless otherwise specified;

**‘Licensed intermediary/Licensed intermediaries’** means any institution licensed under the Decree;

**‘Issuers/Issuers’** means issuers approved to undertake capital markets activities in Fiji like issuers of securities (debt & equity);

**‘Persons’** means any persons licensed or approved by the Reserve bank under the Decree