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## **Regulatory Procedure: Assessing Fitness and Propriety**

### **1. Statement of Objectives**

- 1.1 To set out the procedure followed by the Authority to assess the fitness and propriety of persons who have applied to perform a controlled function.
- 1.2 The assessment of fitness and propriety on a person may vary depending on the type of licensee, position within the licensee, and all other matters considered within this regulatory procedure.

### **2. Scope of Application**

- 2.1. The regulatory laws list the following criteria for assessing the fitness and propriety of persons:
  - a) Honesty, integrity and reputation;
  - b) Competence and capability; and
  - c) Financial soundness.
- 2.2. The fit and proper assessment of a person is both an initial test undertaken during consideration of an application for licensing and a continuing test in relation to the conduct of the business and the person's relationship with the Authority.
- 2.3. The fit and proper assessment of a person is comprehensive and time-consuming. The Authority does not grant conditional approvals and no appointment may be made until the person is approved. Circumstances such as an incomplete questionnaire, inadequate references, and documents submitted in a language other than English, or missing documentation will hinder decisions by the Authority in a timely manner.



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- 2.4. Where possible under the regulatory laws, the Authority may require substitution of a person subject to this assessment if the person is deemed not fit and proper.
- 2.5. An adverse finding may not by itself, exclude the person from approval by the Authority. Other factors are taken into consideration including the seriousness of the adverse finding, length of time that has passed, any restitution paid, and the proposed role of the person in the business.
- 2.6. This procedure should be read in conjunction with the Regulatory Policy: Fitness and Propriety and with the Regulatory Policy: Criteria for Approving Changes in Ownership and Control.

### **3. Assessment of Persons upon Application**

#### **3.1. Documentation To Be Collected**

The Authority requires the following:

- 3.1.1 A completed current version of the Personal Questionnaire (“PQ”) issued by the Authority;
- 3.1.2 Not less than three references acceptable to the Authority, including at least two character references for the person, and one reference verifying the good financial standing of the person, all being dated within six months of submission to the Authority.

The original financial reference letter must be from a financial institution (bank, credit union, etc.) and should;

- a) state whether the account has been satisfactorily maintained;
- b) state the period of the relationship which should be a minimum of two years; and
- c) be signed and on a company letterhead with the physical and



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mailing address included.

The original character reference letters must:

- a) not be written by any person with a familial relationship to the person;
- b) state the period for which the person writing the reference has known the proposed person, which should be a minimum of three years;
- c) state the nature of the relationship;
- d) be written by a person who is independent, without a vested interest in the acceptability of the reference. For example, letters from employees of the person who work under their influence are not acceptable;
- e) be dated, signed, indicate a contact name, physical and mailing address, contact telephone numbers, and email address for the referee; and
- f) address the person's honesty, integrity and reputation as well as their competence and capability in fulfilling their proposed role.

3.1.3 A police or other certificate satisfactory to the Authority, such as an original affidavit, must be obtained from the last country of residence where the person was ordinarily resident for at least 12 months, and state that the person has not been convicted of a serious crime or any offence involving dishonesty.

3.1.4 Details in the form of documents (such as a report of final decision) should be provided to the Authority if a person responds "Yes" to any of the probity questions in the PQ.

3.1.5 Evidence acceptable to the Authority of the person's professional knowledge and experience for the particular function to be undertaken by the person. This includes certified copies of certificates or other



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records of relevant academic and professional qualifications. Where a person is required to be registered with a professional body, a certified copy of the current registration should be provided.

- 3.1.6 An updated and comprehensive Curriculum Vitae detailing the professional background of the person to demonstrate that the person has the necessary skills, experience and qualifications to perform the controlled function;
- 3.1.7 For persons who will be involved in the day to day management of the licensee, a current job description detailing the duties and responsibilities attached to the position, and an organizational chart showing lines of reporting within the licensee and of the position to which the person is to be appointed. Both documents must be signed and dated by the person as well as an authorized person of the licensee such as a manager.
- 3.1.8 A notarized or similarly certified copy of photo identification such as passport, photo driving license, or other Government issued photo identification card. All copies must be in colour. Certifiers should include their seal and stamp as well as the acknowledgement such as “I (name of certifier), Notary Public of and duly authorized by (name of country) do hereby certify that this is a true copy of the original (name of document) of (name of person) shown to me on (date).”
- 3.1.9 For each beneficial shareholder who is a natural person holding more than the percentage of issued share capital or total voting rights as stated in the relevant regulatory laws, the Authority may request a notarized net worth statement. The net worth statement must be prepared by a qualified accountant (include the accounting body registration number), a bank, or any other person or institution acceptable to the Authority.



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3.1.10 All documents and certificates must be provided in English:

- a) Where the primary documents/certificates are in a foreign language, a professional translation is required;
- b) The professional translator must translate the documents/certificates and include a Certificate of Accuracy;
- c) The translator must state his or her name, mailing address, contact details, as well as sign and date all translated documents; and
- d) The primary documents/certificates along with the translated documents/certificates and the Certificate of Accuracy must be submitted to the Authority.

3.1.11 The Authority will consider whether an offense has occurred under the regulatory laws where a person:

- a) Knowingly or recklessly supplies false or misleading information to the Authority;
- b) Makes, orders or allows to be made any false statement in any document to be sent to the Authority; or
- c) Knowingly or recklessly provides any explanation or makes any statement to the Authority.

## **3.2. Assessment Procedures – Supervisory Divisions**

3.2.1 Upon the receipt of documentation, the relevant supervisory division will review the application for completeness.

- a) The PQ is thoroughly reviewed, ensuring that all questions have been properly answered and that it is dated within 6 months of the application;
- b) The three references are reviewed to ensure they meet the requirements set out in 3.1.2 above;
- c) Information on the three references is compared to the PQ for internal consistency;
- d) The affidavit or police clearance is reviewed to ensure it meets the



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following standards:

- Dated within six months of the application;
- If it is a police clearance certificate, it is stamped and signed.
- If it is an affidavit, it is:
  - i. Signed by the person;
  - ii. Signed by a notary, affixed with the seal as required in that jurisdiction;

3.2.2 Each supervisory division will conduct a risk assessment and assign a risk rating of low, medium or high based on the extent of the following factors and the weight the supervisory division assigns to those factors:

- a) Answers in the standard form PQ (which appears as Appendix E4 in the Regulatory Handbook), and in particular (but not limited to) the probity questions of the PQ;
- b) A clean police record;
- c) The proposed role of the person in the controlled function, for example, as directors have greater fiduciary duties than shareholders, all things being equal directors may be a higher risk;
- d) The type of licence held by the licensee to which the person is proposed to be appointed;
- e) Complexity of business of the proposed licensee, for example variable life insurance is of higher risk than property insurance;
- f) Whether the licensee is restricted to dealing with related parties;
- g) The experience and qualifications of the person, for example, those with greater experience (and in particular, experience on other Cayman Islands licensees) and those possessing a relevant qualification would be considered to be less of a risk;
- h) Previous compliance history of the person;
- i) The jurisdiction where the person operates or resides, for example, those not on the list of countries in Schedule 3 to the Money



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Laundering Regulations may be considered a higher risk than those who reside or operate in Schedule 3 countries;

- j) An assessment of the quality of the financial and character reference letters;
- k) Any information identified while performing the procedures for assessing the fitness and propriety of persons; and
- l) Any other factor the supervisory division deems relevant in determining the fitness and propriety of a person.

3.2.3 Where a low-risk rating has been assigned, the following procedure will be performed by the supervisory division:

- a) A search on the World-Check database is conducted. World-Check is a database that monitors existing and emerging risks of individuals and organizations around the world;
- b) A search of publicly available web search engines for the following:
  - 1. The person's name;
  - 2. Entities listed in the PQ of which the person is in a controlled function;
  - 3. The licensee; and
  - 4. The licensee's ultimate shareholder(s).
- c) An assessment of the person's experience and qualifications, as detailed in the PQ and curriculum vitae, against the competence required to perform the role for which the person is proposed to be appointed.

3.2.4 Where a medium-risk or high-risk rating has been assigned, the following procedure will be performed by the supervisory division:

- a) Conduct the assessment specified in 3.2.3(c) above; and
- b) Compile the following information for submission to the Compliance Division:
  - 1. The name of the person and the name of the institution in



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connection with which the approval is being sought.

2. The documents submitted as part of the application.
3. Results of the searches carried out pursuant to 3.2.3, including details of any “hits”;
4. Where a high-risk rating has been assigned, a selection of additional verification steps to be performed;
5. Any other special instructions.

### **3.3. Assessment Procedures –Compliance Division**

3.3.1 The following procedures are performed on all requests for background checks received by the Compliance Division:

- a) References are verified by calling the reference writers, who are asked to validate the information that was set out in the reference; and
- b) A search for the person’s names is conducted on the Authority’s internal databases.

3.3.2 In addition to the procedures set out in Section 3.3.1 above, the following procedures are performed on all medium-risk requests received by the Compliance Division:

- a) A search on the World-Check database is conducted;
- b) A search of Regulatory DataCorp’s Global Regulatory Information Database (“GRID”), which is a collection of in-depth, current, risk-relevant data. The database contains approximately 1.5 million individual and business names drawn from over 22,000 international and US public record sources including government lists, media and regulatory actions; and
- c) A search of publicly available web search engines.

3.3.3 In addition to the procedures set out in sections 3.3.1 and 3.3.2 above,





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the supervisory division can, in cases where applications have been assessed as high-risk, seek additional verification steps to be performed on the person. The additional steps include verifications of:

- a) the criminal history;
- b) employment history;
- c) professional qualifications;
- d) civil history;
- e) education;
- f) evidence of identity.

3.3.4 The length of time for which an application can be processed will depend on the risk assessment and the amount of work that is necessary to complete the assessment. The Compliance Division will require approximately 14 – 28 calendar days following receipt of fully completed forms and all supporting documentation in the required format.

#### **3.4. Reporting and Decision Making**

3.4.1 Upon completion of the applicable procedures, a Due Diligence Summary Report will be completed by the Compliance Division and submitted to the Head or Deputy Head of the supervisory division that submitted the application to the Compliance Division.

3.4.2 The Due Diligence Summary Report documents the results of the above procedures, providing details of the work that was performed and what discrepancies, if any, were identified. It will also identify whether any information is still outstanding and provide a summary of the discrepancies and a conclusion as to suitability.

3.4.3 In an effort to minimise the delay in responding to supervisory divisions, the Due Diligence Summary Report will be submitted when



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there have been three (3) failed attempts to verify the references. This will be noted as a discrepancy on the Due Diligence Summary Report and the supervisory division will need to assess whether further follow up is required.

3.4.4 While the information provided in the Due Diligence Summary Report will be pertinent in assessing whether persons are fit and proper to act in a controlled function of licensed entities, the ultimate responsibility for making this decision rests with the supervisory division.

### **3.5. Document Retention and Centralisation**

3.5.1 There is a central database containing details of the persons who have been assessed by the Compliance Division according to this Procedure.

3.5.2 Information is stored electronically, for each person previously subject to the due diligence process, and the Authority will maintain the following in line with the Authority's document retention policy:

- a) A copy of the documentation received from the person;
- b) A copy of the completed Due Diligence Request Form from the supervisory division; and
- c) A copy of the Due Diligence Summary Report.

3.5.3 In addition, the evidence collected to support the conclusions in the Due Diligence Summary Report, along with the required documents provided with the application, will be retained centrally with the Compliance Division.

## **4. Assessment of Previously Approved Persons where a New Application is Submitted**

4.1. In cases where the person is already approved by the Authority to perform a



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controlled function at a licensee, and due diligence has already been performed on this person, it may be appropriate to substantially reduce the amount of due diligence work to be performed on future applications.

- 4.2. In respect of a future application for approval, where the information is not already on file or is older than twelve months, the Authority would require the following from the person:
  - 4.2.1 A PQ completed by the person;
  - 4.2.2 A police record or affidavit showing that the person has not been convicted of a serious crime or any offence involving dishonesty; and
  - 4.2.3 For persons proposed to be involved in the day to day management of the licensee, a current job description, as outlined in section 3.1.7 above
- 4.3. Where the information is already on file and is dated within twelve months, the Authority would require an affidavit that there are no material changes to the PQ and the due diligence documents previously submitted to the Authority along with the current job description under section 3.1.7, if applicable.
- 4.4. In some circumstances, the supervisory division would assign a rating of low-risk for persons who are operating in an existing controlled function. The Authority's due diligence procedures would comprise of (1) reviewing the documents to identify any discrepancies or changes since the previous documentation was received and (2) assessing the person's competence and capability to perform the new position to which the person is to be appointed.
- 4.5. If the supervisory division determines that the person should be assessed as medium-risk or high-risk, the documentation listed in 3.1 should be collected, and the due diligence steps for new applications as identified under Section 3.2 and 3.3 should be employed.



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## **5. Assessment of Previously Approved Persons in the Absence of a New Application**

### **5.1. Basis for Enquiries**

- 5.1.1 At the end of the PQ, the person certifies that the information in the PQ is complete and correct and that s/he undertakes that, as long as s/he continues to be in a controlled function, s/he will notify the Authority of any material changes affecting the completeness of the answers to the probity questions of the PQ within a period of 21 days.
- 5.1.2 As a result, as standard practice the Authority does not make inquiries into whether a person in a controlled function remains fit and proper.
- 5.1.3 The person is expected to continue to meet the criteria of fitness and propriety for the entire period during which the person acts in a controlled function. For instance, failure to maintain appropriate qualifications or memberships may raise doubts about the person's continuing fitness.
- 5.1.4 However, there will be circumstances that may prompt the Authority to make further enquiries of a person acting in a controlled function with a view to assessing whether that person continues to be fit and proper.
- 5.1.5 There are two primary circumstances that would warrant further enquiries by the Authority into a person's fitness and propriety:
- a) The direction and management of a licensee's or a regulated fund's business have not been conducted in a fit and proper manner;
  - b) The Authority is made aware that a person in a controlled function has been subject to or has been involved in any of the matters listed



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under the Regulatory Policy–Fitness and Propriety.

5.1.6 Where possible under the regulatory laws, the Authority may require substitution of a person subject to this assessment if the person is deemed not fit and proper.

## **5.2. Concerns surrounding a Licensee**

5.2.1 The Authority may be prompted to make further enquiries into the actions or lack of action when the direction and management of a licensee’s business has not been conducted in a fit and proper manner.

5.2.2 The primary responsibility for ensuring compliance with a licensee’s regulatory obligations rests with the licensee itself. Normally therefore, in considering whether action is appropriate, the Authority’s main focus will be on the licensee rather than on the persons in controlled functions.

5.2.3 In some cases, however, it will not be appropriate to hold a licensee responsible for the actions of the persons in controlled functions. For example, where management may have acted in a manner detrimental to the interests of a licensee’s depositors, investors, policyholders, or creditors and where the licensee can demonstrate it took all reasonable steps to prevent the breach.

5.2.4 Alternatively, in other cases, it may be appropriate for the Authority to investigate the actions of both the licensee and the persons in controlled functions. For example, where the licensee has breached the rule requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business and persons in controlled functions have taken advantage of those deficiencies to front run or misappropriate assets.



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5.2.5 In such circumstances as described above, the Authority will utilise one of two approaches, or a combination thereof, to assess the fitness and propriety of persons in controlled functions:

- a) A person, either upon its own initiative or upon the request of the Authority, reports on the fitness and propriety of the persons in controlled functions, for example upon appointment of a controller, liquidator advisor or other expert to inter alia investigate the affairs of the licensee; or
- b) The Authority, using its regulatory powers to obtain and perform analysis of information, investigates the actions (or lack of action) of persons in controlled functions.

5.2.6 The extent to which the Authority will utilise either of the approaches will be dependent upon a number of factors, including, but not limited to, the source of the information, access to the documents, the basis for any conclusions reached and its credibility.

### **5.3. Concerns arising from other sources**

5.3.1 The Authority may become aware of certain information, originating outside of the supervision of the licensee, which may give rise to concerns of the fitness and propriety of a person in a controlled function to continue to perform his or her functions. Examples of such information include those circumstances identified in the Regulatory Policy–Fitness and Propriety.

5.3.2 The extent to which the Authority will rely upon the information is dependent upon a number of factors, including, but not limited to, the source of the information, the authority that it carries, whether it is independent, the basis for any conclusions reached and its credibility. It may also be important to corroborate the information obtained with other independent and/or reliable sources, particularly where the



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information is not from an authoritative source.

- 5.3.3 To assist the Authority in performing its own enquiries and analysis of the information, it is imperative that the Authority collect all information on the subject and where possible, obtain original or certified copies of the documents, court orders or reports that are most authoritative, independent or fact-based. It is also important to ensure the document is final.

#### **5.4. Factors to be taken into Account**

- 5.4.1 The Authority may take action against a person acting in a controlled function of a licensee if it considers that the person is no longer a fit and proper person to perform his or her respective function. The following paragraphs set out the factors, in this context, the Authority will take into account in considering whether or not a person is a fit and proper person to hold his or her respective function.
- 5.4.2 In assessing whether it is appropriate to take action against a person in a controlled function, the Authority may consider the following, amongst other factors:
- a) Whether action against the licensee rather than the person would be a more appropriate regulatory response; and
  - b) What action would be a proportionate response to the nature and seriousness of the breach by that person.
- 5.4.3 In addition, the Authority may have regard to the following (which is not exhaustive):
- a) The seriousness of the misconduct in question, of which the following factors may be relevant:
    1. The duration and frequency of the contravention, including how long the contravention lasted and when it was identified;



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2. Whether the contravention revealed serious or systematic weaknesses of the management systems or internal controls relating to the licensee for which the person was responsible;
  3. The impact of the contravention on the orderliness of financial markets, including whether public confidence in those markets have been damaged; and,
  4. The loss or risk of loss caused to depositors, investors, policyholders, or creditors.
    - b) The extent to which contravention was deliberate or reckless;
    - c) The amount of losses incurred;
    - d) The conduct of the person in the controlled function in bringing (or failing to bring) quickly, effectively and completely the contravention to the Authority's attention, the degree of cooperation the person showed during the investigation of the contravention, and any remedial steps taken since the contravention occurred;
    - e) The previous compliance history of the person in the controlled function;
    - f) Previous action taken by the Authority in relation to similar behaviour; and
    - g) Action taken by other regulatory authorities.
- 5.4.4 The Authority may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the person is not fit and proper to perform a controlled function.
- 5.4.5 In these circumstances, the principal question that the Authority will ask is whether there is evidence of personal culpability on the part of the person in the controlled function or does the conduct display a lack of commercial probity. Personal culpability arises where the behaviour





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was deliberate or where the person in the controlled function's standard of behaviour was below that which would be reasonable in the circumstances. Ordinary commercial misjudgement is in itself not sufficient to justify regulatory action.

## **6. Process for Decision-Making on Fitness and Propriety**

### **6.1. Where the Authority:**

- a) Has determined or is considering the refusal of a person's application to act in a controlled function, it will follow the Regulatory Procedure - Issuing Notices of Decisions to Declined Applicants; and
- b) Is exercising or is considering exercising its regulatory enforcement powers in relation to a person in a controlled function, it will follow the process described in the Enforcement Manual.