

# **Regulatory Policy: Fitness and Propriety**

## **1. Statement of Objectives**

- 1.1 To set out and describe the criteria the Authority will use to determine whether persons are fit and proper to perform a controlled function.
- 1.2 It is a requirement under the regulatory laws that persons carrying out or proposing to carry out certain functions in a licensee or regulated fund be fit and proper.
- 1.3 Persons approved by the Authority are expected to remain fit and proper. Where it may come to light that there is evidence of the person no longer being fit and proper, the licensee should immediately inform the Authority. The Authority will endeavour to maintain adherence to international standards relating to fitness and propriety and will review this policy as needed.
- 1.4 This policy should be read in conjunction with the Regulatory Procedure for Assessing Fitness and Propriety; the Regulatory Policy: Criteria for Approving Changes in Ownership and Control and the Cayman Islands Monetary Authority Personal Questionnaire.

## **2. Introduction**

- 2.1 The regulatory laws list the following criteria for assessment as to whether a person is fit and proper:
  - a) Honesty, integrity and reputation;
  - b) Competence and capability;
  - c) Financial soundness.
- 2.2 Honesty, integrity and reputation relate to a person's character and reliability; competence and capability relate to the educational background, work experience of the person, and/or continued professional development of the person as it relates to the job he or she will be performing; and financial soundness establishes the person's financial integrity.
- 2.3 Failure to satisfy the Authority in relation to any of these criteria may result in the licensed entity being unable to appoint or continue to appoint the person to perform a controlled function.
- 2.4 These criteria will also apply to a regulated fund where the direction and management of the fund's business has not been conducted in a fit and proper manner.
- 2.5 The fit and proper assessment will involve assessment of natural persons and where relevant, legal persons. Where the licensee is a legal person, the fit and proper assessment will be conducted on the legal person, natural persons who are the beneficial owners, and persons in controlled functions.

- 2.6 The primary objective of assessing the fitness and propriety of persons in controlled functions is to protect the depositors, investors, policyholders, creditors or the public against future harmful conduct by that person.
- 2.7 When assessing the fitness and propriety of a person, the burden is on the licensee sponsoring the application to satisfy the Authority that the person is fit and proper to perform the function for which the person is proposed to be engaged.

### 3. Definitions

- 3.1 For the purpose of this Policy, the following definitions are provided:
  - a) **“Controlled Function”** means persons who have applied to be or are performing the function of directors, senior officers, managers, officers, shareholders, and licensed professional directors in accordance with the relevant legislation, and includes any function not listed in this definition in respect of which a fit and proper assessment is required pursuant to a regulatory law or the Money Laundering Regulations. For greater certainty, a controlled function includes a position that requires the person to be directly answerable to the board of the licensee or in respect of which the Authority is satisfied that the function plays a significant role in the management and decision making of the regulated entity at a senior level.
  - b) **“Legal Person”** means a body corporate, partnership, company, or any other such entity incorporated under the laws of the Cayman Islands or in any other jurisdiction.
  - c) **“Person”** means a natural person or legal person.
  - d) **“Source of Wealth”** refers to the origin of the entire body of wealth (i.e a person’s total assets). This information should give an indication as to the volume of wealth a person would be expected to have, and a picture of how the person acquired such wealth.
  - e) **“Source of Funds”** refers to the origin of the particular funds or other assets which are the subject of the business relationship between the Authority and a person (the amounts being invested, deposited, or wired as part of the business relationship). This information should not simply be limited to knowing from which financial institution the funds may have been transferred, it should be substantive and establish a provenance or reason for having been acquired.

### 4. General Considerations

- 4.1 In assessing the fitness and propriety of a person, the Authority may take into account, as appropriate, the particular function that the entity is applying for the person to perform, the particular function that the person is performing, and the activities of the licensee or applicant for licensing. As such, a person who is fit and proper for a particular role in a licensee may

not necessarily be considered fit and proper for any other role in the same licensee or with another licensed entity.

- 4.2 It is important to note that the fit and proper test as applied to shareholders, where applicable under the regulatory laws, will generally differ from that applied to other persons in controlled functions.
- 4.3 The fit and proper assessment 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.
- 4.4 As such, where a person has previously been regarded as fit and proper, the Authority reserves the right to reassess whether that person continues to be fit and proper to hold either current or proposed positions.
- 4.5 Part of the ongoing fit and proper assessment entails a review of any material changes affecting the probity questions in the personal questionnaire. Persons are required to notify the Authority of any material changes within a period of twenty-one days.
- 4.6 When assessing the fitness and propriety of a person, each case will be considered on its own merits, and may take into account all relevant matters, including, but not limited to, those set out in this Policy.
- 4.7 When considering each licence application or when subsequently assessing the fitness and propriety of persons, the Authority may have regard to current, past and prospective matters. Additionally, 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. The fit and proper factors are non-exhaustive and apply to each person on a case-by-case basis.
- 4.8 When considering an application, the Authority will scrutinize the fit and proper documentation provided in support of the application for approval. To prevent delays in the process for consideration of a person, all information should be provided in the form requested. Where there is any doubt by the person completing the application of the relevance of information, it should be included.
- 4.9 There is a range of sanctions available to the Authority where the Authority is of the opinion that a person is not a fit and proper person. This Regulatory Policy provides the foundation on which the Authority will base its decision on fitness and propriety. The list of considerations is not exhaustive and each application is considered on a case-by-case basis.
- 4.10 Sponsoring firms and persons are expected to provide complete and truthful information. A person may be held to have committed an offence under the regulatory laws if the person:
  - a) Knowingly, recklessly or wilfully supplies false or misleading information to the Authority; or

- b) Makes, orders or allows to be made any false statement in any document sent to the Authority.

## **5. Obligations of the Licensee**

- 5.1 When a licensee seeks to appoint a person to perform a controlled function, the burden is on the licensee sponsoring the application to satisfy the Authority that the person is fit and proper to perform the function for which the person is engaged.
- 5.2 It is expected that the assessment conducted by the licensee will take place during the recruitment stage and on an ongoing basis, and that the licensee make every effort to verify qualifications, experience, references and membership of professional bodies. It is also expected that the licensee will conduct probity checks on criminal history, sanctions, legal proceedings, and other similar matters. The licensee should be able to satisfy the Authority that the person proposed to act in a controlled function possesses sufficient competence and capability for the particular function.
- 5.3 The Authority expects that third parties providing the Authority with documentation for the fit and proper assessment on behalf of a person, obtain and submit information in the form requested and ensure that only complete applications are submitted to the Authority.

## **6. Honesty, Integrity and Reputation**

- 6.1 When assessing a person's honesty, integrity and reputation, the Authority will consider matters including, but not limited to, those items listed below, which may have arisen in the Cayman Islands or elsewhere:
  - 6.1.1 Whether the person has been convicted of any criminal offence; this may include, where particular, any offences of dishonesty, fraud, financial crime or other offences relating to financial services or financial institutions;
  - 6.1.2 Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
  - 6.1.3 Whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including the Authority's predecessor), clearing houses and exchanges, professional bodies, or government bodies or agencies;
  - 6.1.4 Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or any investigation, which might lead to such proceedings;

- 6.1.5 Whether the person has contravened any of the Authority's regulatory requirements or the rules, regulations, statements of principle, guidance or codes of practice of other regulatory authorities (including the Authority's predecessor), clearing houses and exchanges, professional bodies, or government bodies or agencies;
- 6.1.6 Whether the person has been the subject of any justified complaint relating to regulated activities in the Cayman Islands or in another jurisdiction;
- 6.1.7 Whether the person has been involved with a company, partnership or other organization that has been refused registration, authorization, membership or a license to carry out a trade, business or profession, or has had such registration, authorization, membership or license revoked, withdrawn or terminated, or has been expelled by a regulatory body or government body;
- 6.1.8 Whether, as a result of the removal of the relevant license, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a license, registration or other authority; the Authority should be informed about all such occurrences, but will consider the circumstances only where relevant to the regulatory requirements;
- 6.1.9 Whether the person has been a person in a controlled function, of a business that has gone onto insolvency, liquidation or administration while the person has been connected with that organization or within one year of such a connection;
- 6.1.10 Whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended by a regulatory or professional body, a Court or Tribunal, whether publicly or privately. Persons subject to a life-time censorship or suspension in any jurisdiction will not be approved by the Authority;
- 6.1.11 Whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;
- 6.1.12 Whether the person has ever been disqualified from acting in a controlled function;
- 6.1.13 Whether, in the past, the person has been candid and truthful in all his/her dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the Authority's regulatory requirements and with other legal, regulatory and professional obligations and ethical standards;
- 6.1.14 Whether the person has been convicted of money laundering, fraud, theft, other financial crime or crime involving dishonesty.

Such persons will not be approved if there are negative findings in this regard. Persons subject to the Rehabilitation of Offenders Law must disclose spent convictions unless excluded under the law. Unless stated otherwise in the regulatory laws, the record of any other type of conviction will not automatically disqualify a person from being deemed fit and proper. The seriousness of the offence, the restitution, circumstances surrounding the offence, explanation offered by the person, passage of time, and other relevant factors will be taken into account.

## **7. Competence and Capability**

7.1 The type of regulated activity conducted by the licensee; the nature, complexity and volume of business; the jurisdictions in which products and services will be offered; the level of responsibility; and the collective competence and experience of those who will govern the licensee will be taken into account when assessing whether a person is competent and capable of performing a controlled function. The Authority will consider matters including, but not limited to:

7.1.1 Whether the person has the technical knowledge to perform the controlled function for which the person is employed or is proposed to be employed. Recognized academic and professional qualifications and memberships in professional institutions will be particularly relevant;

7.1.2 Whether the person has demonstrated by experience through years of employment and positions held that the person is able, or will be able if approved, to perform the controlled function for which the person is employed or for which the licensee intends to employ him/her; and

7.1.3 Whether the person has the appropriate training necessary to fulfil the role for which the person is employed or for which the licensee intends to employ him/her.

7.1.4 Persons performing a controlled function should have an understanding of the regulatory and legal environment relevant to the controlled function and be knowledgeable about the business affairs of the licensee, the industry and products associated with the licensee and the duties of the controlled function.

## **8. Financial Soundness**

8.1 The assessment of financial soundness is aimed at determining whether the person can meet his/her personal liabilities when they become due and mitigate financial risks on a constant basis. In the case of shareholders, the financial strength will be considered. In addition, the Authority is committed to international efforts to detect and prevent financial services from being used to launder the proceeds of crime. To help with this, the Authority may ask applicants and their shareholders, using a risk-based approach, for information on how they acquired wealth and funds or other assets that are the subject of the business relationship. In determining a

person's sound management of financial affairs, the Authority may where relevant consider matters including, but not limited to:

- 8.1.1 Whether the financial reference obtained by the person provides satisfactory evidence of how financial relationships have been maintained;
- 8.1.2 Whether in the Cayman Islands, or elsewhere, the person has made any arrangements with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestered, or been involved in proceedings relating to personal solvency and that of any entity in which they had a controlling interest;
- 8.1.3 Whether the person has been subject to any judgement of debt payment that remained outstanding for a substantial period of time or is presently outstanding;
- 8.1.4 Whether the person has persistently failed to manage financial affairs in a manner that has caused detriment to others;
- 8.1.5 Whether the person met capital and/or solvency requirements applicable to it;
- 8.1.6 Whether the person was able to manage any previous business dealings in a sound and prudent manner;
- 8.1.7 The source of wealth and source of funds for individuals (natural persons) and corporate shareholders/ controllers.

## **9. Ongoing Obligations of Persons**

- 9.1 The fit and proper assessment is both an initial and ongoing test as long as the person continues to hold a controlled function. As such, in certain circumstances, the Authority will consider whether a person is or continues to be fit and proper. Such circumstances include:
  - a) Where the Authority has been notified of any material changes affecting the responses to the probity questions of the personal questionnaire;
  - b) Where the direction and management of a licensee's business has not been conducted in a fit and proper manner; or
  - c) Where the person has been subject to or has been involved in any other matters as listed in this Regulatory Policy.