

FINANCIAL SUPERVISORY COMMISSION



Cook Islands

PRUDENTIAL STATEMENT

BPS06

FIT AND PROPER PERSONS

Authority

1. This Prudential Statement is issued by the Financial Supervisory Commission (FSC) pursuant to the provisions of Sections 34 and 65 of the Banking Act 2011 (the Act).

Application

2. This Prudential Statement is applicable to all bank licensees (banks). Foreign licensees that are part of banking groups listed on recognised public stock exchanges are not required to conduct significant shareholder assessments. Definitions for 'significant interest' and 'officer' are contained in Section 4 of the Act.

Purpose

3. The character, competence and financial integrity of significant shareholders and officers of banking institutions have a strong influence on the operating condition and performance of banking institutions. As such, fit and proper significant shareholders and officers are necessary to provide protection for depositors and engender public confidence in the banking and financial system.
4. The objective of this Prudential Statement is to provide guidance on the information and criteria used by the FSC in order to be satisfied that significant shareholders and officers of a bank are fit and proper persons for implementation of Sections 34 and 65(1)(e) of the Act.

Responsibility for Fit & Proper Assessment

5. It is the responsibility of the Board of Directors of a bank to ensure that every person who is, or is to become, a significant shareholder or officer of the bank is, at all times, a fit and proper person.

6. To effectively discharge this responsibility, the bank's Board of Directors should:
- (1) formulate and adopt a fit and proper person policy, taking into account the criteria outlined in this Prudential Statement;
 - (2) apply the policy to significant shareholders and officers on an on-going basis;
 - (3) implement appropriate procedures to provide for, at a minimum, an annual review of each significant shareholder and officer, in order to confirm that they continue to meet the fit and proper criteria outlined in this Prudential Statement;
 - (4) ensure appropriate current documentation is maintained by the bank to evidence the implementation of the policy, including at a minimum, the annual completion of a written signed statement by each significant shareholder and officer of the bank confirming there is either no change or detailing any change relevant to their previous Affidavits; and
 - (5) ensure that the chief executive officer, or such other person by whatever title with responsibility for the overall daily management of the affairs of the bank and the implementation of policies by the bank's board of directors, applies the fit and proper person policy to other employees of the bank on an on-going basis and periodically, but not less than on an annual basis, require the chief executive officer to report to the Board on the results thereof.

Responsibility of Persons Subject to Fit and Proper Person Criteria

7. It is the responsibility of the bank and significant shareholders and officers to provide evidence to the satisfaction of the FSC that they are fit and proper persons. They must accordingly complete and submit to the FSC a Personal Affidavit (BPS Form 2) and other information as may be requested by the FSC to make a fully informed decision regarding their capacity to meet the fit and proper person criteria. They are further obligated to notify the FSC in writing of any events or circumstances that occur subsequent to the FSC's initial assessment that might change the assessment or at least have a material bearing on it. The FSC shall investigate the information on a priority basis and decide on the person's fit and proper person status.

Fit and Proper Person Criteria

8. The FSC must evaluate the fit and proper status of a person who is or is to become a significant shareholder or officer of a bank. The following is a list, not to be considered exhaustive, of circumstances that may lead the FSC not to be satisfied that a person is fit and proper or raise questions that require further enquiry:
- (1) with respect to officers, it is not apparent that the person concerned has sufficient competency in terms of relevant experience and skills for the FSC to be satisfied that the person will be able to discharge satisfactorily the duties and responsibilities of the proposed position;
 - (2) the person has been, or is being, removed or suspended or is otherwise the subject of an enforcement or administrative action by the FSC, Cook Islands Financial Intelligence Unit (FIU) or by another

- regulatory or supervisory authority in the Cook Islands or any other jurisdiction,
- (3) the person has previously contravened any provision of the Act or any rule, regulation or prudential statement, or any other relevant law or regulation issued by the FSC, FIU or by another regulatory or supervisory authority in the Cook Islands or any other jurisdiction,
 - (4) the person has been or is a significant shareholder or officer of a bank, other financial institution, or business enterprise which has been or is being wound up or liquidated by order of a bank supervisory authority or Court;
 - (5) the person has been censured, disciplined, prosecuted, warned as to conduct or made subject to a Court Order by any governmental department, agency, commission or organ, by any professional association, or by any regulatory or supervisory body within the past fifteen (15) years;
 - (6) the person has been the subject of a judgment or award that is outstanding and unpaid for more than one (1) year after the judgment or award was made final;
 - (7) the person has previously been judged by a Court to be civilly liable for fraud, malfeasance, or any other misconduct;
 - (8) the person has previously been adjudged bankrupt or has made any compromise with creditors or otherwise failed to satisfy creditors in full as debts became due (Note: this applies even though the person may have since been discharged from bankruptcy);
 - (9) the person has not settled all undisputed obligations for taxes due for payment to the taxation authorities in the Cook Islands or in any other jurisdiction;
 - (10) the person is or becomes an appointed or elected member of the Cook Islands Parliament;
 - (11) in the case of significant shareholders, the source of their capital contribution may give rise to questions either about their past or current activities or whether they are really the beneficial owner or are acting as nominees, trustees or agents for some other undisclosed party.
9. The FSC does not look only for evidence that the person at least meets a minimum standard but rather looks for evidence that the person meets a high standard.
10. The FSC believes that the concept embraces not only honesty but solvency, competence and responsible behaviour.
11. In considering whether a person fulfils the fit and proper criteria the FSC has regard to a number of general considerations, whilst always taking account of the particular circumstances of the individual or institution concerned. With regard to institutions, the FSC is entitled to take account, inter alia, their business records, other business interests, financial soundness and strength, the nature and scope of their business, the integrity of their dealings with customers and others, and the institution's record-keeping and other internal systems. With regard to an individual who is an officer of the institution, the FSC includes amongst the relevant considerations whether they have

sufficient skills, knowledge and experience to properly undertake and fulfil their particular duties and responsibilities. In addition, the FSC takes into account a person's reputation and character, including such matters (as previously described) as whether they have a criminal record. Convictions for dishonesty are especially relevant but the FSC also has regard to other types of offences since it is vital that a person responsible for managing a financial institution is of the highest integrity.

12. The FSC has regard to the performance of the person in the exercise of their duties. Thus incompetence or imprudence in the conduct of an institution's business or anything which has threatened (without necessarily having damaged) the interests of existing or future customers will reflect adversely on those responsible, whether the matters of concern have arisen through the way they have acted or their failure to act in an appropriate manner. The FSC takes a cumulative approach, so that it may determine that a person does not fulfil the criteria on the basis of several instances of such conduct which, taken individually, might not lead to that conclusion.

Issued by:



Paul Heckles
Commissioner
FINANCIAL SUPERVISORY COMMISSION
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