



**FINANCIAL SUPERVISORY COMMISSION
OF THE
COOK ISLANDS**

Banking Prudential Statement

BPS06

Fit and Proper

Objectives and key requirements of this Prudential Statement

This Prudential Statement sets out minimum requirements to ensure that banks impose and adhere to an effective fit and proper framework for key persons.

Banks are strongly influenced by the character, competence and integrity of their significant shareholders, directors, managers and responsible officers. People with these roles must meet fit and proper standards to protect customers and maintain public confidence in the financial system.

This Prudential Statement provides guidance on the criteria used by the FSC to assess a licensee's fit & proper procedures. It also provides information on the assessment an individual will undergo if applying to act in a key position for a licensee. Assessments are required for:

- people who will be significant shareholders of the licensee;
- directors;
- people who exercise senior management functions;
- compliance officers; and
- people providing audit services.

Please refer to the relevant legislation or the FSC if clarification is needed on what appointments must have FSC approval.

Contents

Authority	4
Application	4
Definitions	4
Board and Senior Management Responsibilities	4
Fit and Proper Policy	4

Authority

1. This Prudential Statement is issued by the Financial Supervisory Commission (FSC) in accordance with section 65, of the Banking Act 2011 (the Act).

Application

2. This Prudential Statement is applicable to all financial institutions licensed under the Banking Act 2011

Definitions

3. This Prudential Statement has used the following terms, which unless otherwise indicated, have the meanings specified below:
 - 3.1. **Associate** – is defined under paragraph 14 of this Prudential Statement or section 7(2) of the Banking Act 2011.
 - 3.2. **Bank** – an entity licensed under the Banking Act 2011.
 - 3.3. **Compliance Officer** – as required under section 17 (1) of the Financial Supervisory Commission Act 2003.
 - 3.4. **Key Person** – is defined under paragraphs 10 to 12 of this Prudential Statement.
 - 3.5. **Person** – means a natural person or a legal person.
 - 3.6. **Significant Interest** – is defined under paragraph 15 of this Prudential Statement or section 4(2) of the Banking Act 2011.

Board and Senior Management Responsibilities

4. The Board must approve the bank's Fit and Proper Policy.
5. The Board must ensure that all key persons meet the fit and proper criteria.
6. The Board and senior management must ensure there are procedures in place to review and confirm that all key persons continue to meet the fit and proper criteria.
7. For branches of foreign banks, the Senior Overseas Officer is ultimately responsible for the oversight of the Cook Islands branch Fit and Proper Policy.

Fit and Proper Policy

8. A bank must have a written policy for the fitness and propriety of its key persons.

9. A bank must ensure that each of its key persons is aware of, and understands, the provisions of its Fit and Proper Policy.

Key Persons

10. A key person of a bank is:
 - 10.1. a director of the bank;
 - 10.2. a senior manager of the bank;
 - 10.3. an associate of the bank;
 - 10.4. a compliance officer of the bank; or
 - 10.5. an auditor of the bank.
11. For branches of foreign banks, a key person includes the Senior Overseas Officer but does not include a director or an associate of the foreign bank. The FSC will rely on the home regulator supervising the foreign bank.
12. The FSC may determine that any person is a key person if it is satisfied that the person plays a significant role in the management or control of the bank, or that the person's activities may materially impact on prudential matters.
13. The FSC may determine that a person is not a key person in relation to a position, responsibility or activity if it is satisfied that the person does not play a significant role in the management or control of the bank or that the person's activities may not materially impact on prudential matters.

Senior Managers

14. A senior manager of a bank is a person (other than a director of that bank) who:
 - 14.1. makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the bank; or
 - 14.2. has the capacity to significantly affect the bank's financial standing; or
 - 14.3. may materially affect the whole, or a substantial part, of the business of the bank or its financial standing through their responsibility for:
 - 14.3.1. enforcing policies and implementing strategies approved by the Board of the bank; or
 - 14.3.2. the development and implementation of systems that identify, assess, manage or monitor risks in relation to the business of the bank; or
 - 14.3.3. monitoring the appropriateness, adequacy and effectiveness of risk management systems.

Associates

15. A person is an associate of a bank if the person:

15.1. has a significant interest in the bank, or

15.2. is a subsidiary of the bank, or

15.3. is a holding company of the bank, or

15.4. if a person has a significant interest in the bank and a significant interest in another company, that other company is an associate of the bank.

Significant Interest

16. A person has a significant interest in a bank or company if: -

16.1. The person has a legal or equitable interest in the company or in a holding company of that company; and

16.2. The interest directly or in-directly: -

16.2.1. enables the person to control 10% or more of the voting stock of the company at a general meeting of the company; or

16.2.2. entitles the person to a share of 10% or more in dividends declared and paid by the company; or

16.2.3. entitles the person to a share of 10% or more in any distribution of the surplus assets of the company.

Fit and Proper Assessment

17. The Fit and Proper Policy must include the process for fit and proper assessment. The processes must include:

17.1. who will conduct fit and proper assessments on behalf of the bank;

17.2. what information will be obtained and how it will be obtained;

17.3. the matters that will be considered before determining if a person is fit and proper for a key person position; and

17.4. the decision-making processes that will be followed.

18. The Fit and Proper Policy must specify the actions to be taken where a person is assessed as not fit and proper.

19. The Fit and Proper Policy must provide that a copy of the policy is given to:

19.1. any candidate for election as a director as soon as possible after the candidate is nominated; and

- 19.2. any other person before an assessment of their fitness and propriety is conducted.
20. The Fit and Proper Policy must require a fit and proper assessment to be completed before a person becomes the holder of a key person position unless the FSC has determined that the person is a key person under paragraph 10. In such cases, the Fit and Proper Policy must require an assessment to be completed within 28 calendar days of the person becoming the holder of the key person position.
 21. The Fit and Proper Policy must require periodic reassessment of fitness and propriety for each key person position.
 22. When an assessment is conducted, a bank must make all reasonable enquiries to obtain information that it believes may be relevant to an assessment of whether the person is fit and proper to hold a key person position.
 23. Where a key person has been assessed as fit and proper, but the bank subsequently becomes aware of information that may result in the person being assessed as not fit and proper, the bank must undertake a full fit and proper reassessment.
 24. The Fit and Proper Policy must contain adequate provisions to encourage any person to disclose information that may be relevant to a fit and proper assessment to the bank or the FSC.
 25. The Fit and Proper Policy must require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of the bank's current, and recently past, key persons.
 26. As part of the fit and proper assessment, the bank must ensure that the person applying for a key person position completes the following prescribed forms:
 - 26.1. in the case of a natural person, the FSC Personal Questionnaire form (BPF02); or
 - 26.2. in the case of a legal person, the FSC Corporate Declaration form (BPF03), this is required for associates or auditors; and
 - 26.3. the FSC Confidential Financial Statement Report (BPF04), as may be required for persons with a significant interest in the bank
 27. The bank must submit to the FSC the completed prescribed forms with any other necessary information so the FSC can assess the persons capacity to meet the fit and proper criteria.
 28. The bank is required to notify the FSC in writing of any events or circumstances occurring after the FSC's initial assessment of an appointed fit and proper person which could have a material influence on the assessment.
 29. The FSC may determine that a person is not fit and proper, and require the bank to remove the person from a key person position, or not appoint the person to a key person position.

When a Key Person is not Fit and Proper

30. Where a bank has assessed that a person is not fit and proper, it must take all steps it prudently can to ensure that the person:

30.1. is not appointed to a key person position; or

30.2. for an existing key person, does not continue to hold the key person position.

Fit and Proper Criteria

31. To be allowed to be appointed as a fit and proper person there must be evidence that the person meets a high standard. The fit and proper concept includes honesty, solvency, competence and responsible behaviour. The FSC evaluates all information provided to assess the person's fit and proper status.

32. For natural persons applying to be a key person of a bank the FSC will consider whether they have:

32.1. sufficient experience, knowledge and/or qualifications to properly fulfil the duties and responsibilities of the role;

32.2. the individual's reputation and character, including such matters as set out in paragraph 36 below and whether they have a criminal record. Offences and convictions for dishonesty are considered especially relevant.

33. For legal persons applying to be a key person of a bank the FSC will consider the:

33.1. legal structure;

33.2. organisation;

33.3. whether its ownership and control are held by fit and proper persons;

33.4. whether its business and undertaking are managed and undertaken by fit and proper persons.

34. The FSC considers a person's previous performance relevant where incompetence on the part of that person has threatened (without necessarily having damaged) the interests of existing or future customers. This applies whether the situation arose through actions taken or a failure to act. The FSC may consider a cumulative approach be taken in that a person may not fulfil the criteria on the basis of several instances of conduct which, considered individually, might not lead to that conclusion.

35. The FSC in some circumstances may also consider the internal controls, systems and organisational structure of the bank to determine whether the proposal for a key person of the bank is appropriate in those circumstances, including:

35.1. the nature and scope of the bank's business;

35.2. the bank's financial soundness and strength; and

35.3. the bank's risk profile.

36. The following is also a non-exhaustive list of circumstances that will lead the FSC to make further enquiries, and/or determine that that person does not meet fit and proper criteria:
- 36.1. the person has or is being removed, suspended or subject of enforcement or administrative action by the FSC, Cook Islands Financial Intelligence Unit (FIU) or any regulatory or supervisory authority in any jurisdiction;
 - 36.2. the person has previously contravened a law, rule, regulation, or prudential statement issued by the FSC, FIU or any regulatory or supervisory authority in any jurisdiction;
 - 36.3. the person has been or is a significant shareholder, director or officer of a financial institution or business which was or is being wound up or liquidated by order of a regulatory or supervisory authority or Court;
 - 36.4. the person has been censured, disciplined, prosecuted, or made subject to a Court Order by any governmental organisation, any professional association, or any regulatory or supervisory body within the past 15 years;
 - 36.5. the person has previously been judged by a Court to be civilly liable for fraud, malfeasance, or any other misconduct;
 - 36.6. the person has been ruled bankrupt, made a 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);
 - 36.7. the person has not settled all undisputed obligations for taxes due for payment to the taxation authorities in the Cook Islands or another jurisdiction;
 - 36.8. the person is or becomes an appointed or elected member of the Cook Islands Parliament; and
 - 36.9. if the source of a significant shareholders capital contribution raises questions about past or current activities or whether the shareholder is acting as a nominee, trustee or agent for some other undisclosed party.

Informing the FSC

37. A bank must, within 28 calendar days of when this Prudential Statement applies to it, notify the FSC of the following information for each key person:
- 37.1. For a natural person:
 - 37.1.1. the person's full name;
 - 37.1.2. the person's date of birth (for identification purposes only);
 - 37.1.3. the person's key person position and main responsibilities; and
 - 37.1.4. a statement of whether the person has been assessed under the Fit and Proper Policy.

- 37.2. For a legal person:
- 37.2.1. the person's registered or incorporated name;
 - 37.2.2. the person's date of registration or incorporation;
 - 37.2.3. the person's key person position; and
 - 37.2.4. a statement of whether the person has been assessed under the Fit and Proper Policy.
38. A bank must ensure that the information provided under paragraph 36 remains correct for all its key persons. It must provide revised information to the FSC within 28 days of any change or new appointment.
39. A bank must notify the FSC within 5 business days if it assesses that a key person is not fit and proper. If the person remains in the key person position, the notification must state the reason for this and the action that is being taken to mitigate any risk the person presents to the bank.
40. For branches of foreign banks, a bank must notify the FSC of any changes in the directors and associates of the foreign bank within 28 days of any change or new appointment.

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