



BANK SUPERVISION DIVISION

Prudential Standards No. 07-2014/BSD

FITNESS & PROBITY ASSESSMENT CRITERIA

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1. PRELIMINARY

1.1. ShortTitle

Prudential Standards on the Fitness and Probity Assessment Criteria

1.2. Authorization

1.2.1. The Prudential Standards are issued pursuant to **section 45** of the **Banking Act [Chapter 24: 20]**.

1.2.2. Section **8** of the **Banking Act** as read with **section 19** and **20** of the same and **section 5** of the **Banking Regulations, Statutory Instrument 205 of 2000**, require directors and senior management officers of regulated entities to be fit and proper persons.

1.2.3. On acquisition of a significant interest as per the threshold stipulated in the Banking Regulations, shareholders are also assessed for fitness and probity.

1.2.4. In terms of section 41 of the Banking Act, the Reserve Bank is responsible for the approval of appointment of regulated entities external auditors.

1.3. Scope of Application

These Prudential Standards shall apply to all banking and non banking institutions that are licensed and supervised by the Reserve Bank of Zimbabwe including bank controlling companies.

1.4. Definitions

1.4.1. Unless the context otherwise requires, terms, words or expressions contained in these prudential standards shall bear the same meaning as in the Banking Act [Chapter 24:20] as may be amended or any statutory instruments issued in terms thereof in force at the date of issuance of these prudential standards.

1.4.2. In these Prudential Standards,

“Applicant” means any person subject to the fit and proper assessment test,

“Fit & Proper Person” means one who is of good character, competent, capable, honest, financially sound, reputable and reliable.

“Key Responsible Person” means as a person who:

- i) has the authority, makes or has substantial influence in making decisions that affect the whole or a substantial part of the regulated entity’s business;
- ii) is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board; or
- iii) is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems, internal controls and processes that identify, measure, monitor or control the regulated entity’s risks.

“Person” means a natural person or an institution with legal rights and duties as applicable.

“Regulated entity” means any corporation or entity registered under applicable law or whose activities require an approval or licence granted by the Reserve Bank of Zimbabwe.

- 1.5. Unless the context otherwise requires, words or expressions contained in these prudential standards shall bear the same meaning as in the Banking Act [*Chapter 24:20*] or as amended or any statutory instruments issued in terms thereof in force at the date of these prudential standards.

2. INTRODUCTION

- 2.1. Members of the board and senior management provide strategic leadership that influences the financial condition, performance and future direction of a regulated entity. As such, persons in these positions should have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner.

- 2.2. The expectations on the suitability of persons in key positions are an extension of the corporate governance framework and are also aimed at ensuring that the regulated entity is led by persons of integrity, credibility and competency.
- 2.3. The Prudential Standards set out the criteria used by the Reserve Bank of Zimbabwe (Reserve Bank) in determining the fitness and probity of key responsible persons in entities supervised by the Reserve Bank.
- 2.4. The Prudential Standards set the minimum fit and proper assessment criteria applicable to such key responsible persons.
- 2.5. The Prudential Standards are meant to provide general guidance and not intended to replace or override any legislative provision but to be read in conjunction with the relevant provisions of applicable law.

3. OBJECTIVES OF THE FIT AND PROPER PERSON PRUDENTIAL STANDARDS

- 3.1. These Prudential Standards set out a framework which can be used by both the Reserve Bank and regulated entities in determining whether a person is fit and proper to hold a key position in a regulated entity.
- 3.2. Further, the Prudential Standards ensure that an objective criteria is provided in assessing a person for fitness and probity. The Prudential Standards further ensure that due process is observed in arriving at a decision whether a person is fit and proper.

4. APPLICATION OF THE FIT & PROPER PERSON TEST

- 4.1. In determining whether a person meets the fit and proper assessment requirements, the considerations set out in terms of these Prudential Standards are assessed individually (according to their relative importance) as well as on a cumulative basis.
- 4.2. Failure to meet one indicator may not, on its own, necessarily mean failure to meet the fit and proper criteria. The Reserve Bank will consider the specific circumstances surrounding a person's failure to meet specific indicators, including the lapse of time since the occurrence of events and the significance of the event from the perspective

of potential risks posed to the regulated entity. The process involves a good measure of judgment which must be exercised as objectively as is possible and in the best interests of the regulated entity.

- 4.3. Considerations relevant to the assessment of the fitness and probity of key responsible persons may vary depending on the role and responsibilities in the affairs of the regulated entity. For example, for an executive director, there will be more emphasis on qualifications and experience as they are involved in the day to day operations of the regulated entity. For a non executive director on the other hand, there will be more emphasis on experience and exposure as opposed to qualifications.
- 4.4. Further, the Reserve Bank may consider whether there have been material changes in the nature or scope of responsibilities assumed by an individual which would call for higher standards of competence or judgment in order to properly perform the duties associated with the said position. Similarly, circumstances which warrant an individual to be considered as fit and proper may differ between positions.
- 4.5. Further, these Prudential Standards place the responsibility on the board of directors of each regulated entity to ensure that the entity has policies and procedures covering fitness and probity including assessment criteria.
- 4.6. An application for fitness and probity assessment presented to the Reserve Bank should have passed the regulated entity's internal vetting process.
- 4.7. It is the responsibility of each applicant to establish, on reasonable grounds, that he/she is a fit and proper person.
- 4.8. Should the key responsible person fail to satisfy the Reserve Bank that he/she is fit and proper; the Reserve Bank may reject the person's application, revoke the person's authorization or exemption, or take other appropriate regulatory action as deemed necessary.

5. PERSONS SUBJECT TO FIT AND PROPER PERSON ASSESSMENT

- 5.1. The following key responsible persons are required to be vetted under the fit and proper person assessment criteria:
- a) directors;
 - b) shareholders with a significant shareholding in a regulated entity or on acquiring a significant shareholding in a regulated entity. In some cases, significant shareholders may be corporate entities and in these instances, applicable fit and proper tests will be applied;
 - c) principal officers including the Chief Executive Officer and Chief Accounting Officer (by whatever name they may be called);
 - d) any person performing a senior management function in the following areas:
 - i. risk management;
 - ii. lending and credit administration;
 - iii. operations and internal controls;
 - iv. investments and asset/liability management;
 - v. treasury and foreign exchange operations;
 - vi. compliance;
 - vii. trust and fiduciary operations, where a banking institution proposes to engage in these activities; and
 - viii. any person who has primary or significant responsibility for key control functions.
- 5.2. Any person who has primary or significant responsibility for key control functions refers to one who is principally accountable whether solely or jointly with others for monitoring the appropriateness, adequacy and effectiveness of the regulated entity's internal controls, risk management and compliance systems and processes and includes the external auditor, internal auditor, risk manager and compliance officer.
- 5.3. These Prudential Standards also apply to persons that are mainly accountable or responsible for key functions that are performed outside of the regulated entity such as under centralized group and outsourced key functions.

5.4. The Reserve Bank may further designate any person as a key responsible person if satisfied that the person plays a significant role in the management and/or the control of the regulated entity. Where the Reserve Bank makes such a determination, that fact will be notified in writing to the regulated entity.

6. FIT AND PROPER PERSON ASSESSMENT CRITERIA

6.1. The fit and proper person assessment criteria will be applied at licensing, appointment of a key responsible person, appointment or re-appointment of a director and on acquisition of significant shareholding.

6.2. For the purpose of establishing whether a person is fit and proper to hold a key responsible position, the Reserve Bank will exercise judgment and discretion in all relevant matters including:

- i) Probity, personal integrity and reputation;
- ii) Competence and capability; and
- iii) Financial soundness.

Probity, Personal Integrity and Reputation...

6.3. A person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness and a disciplined and on-ongoing commitment to high ethical standards. In assessing a person's level of probity, integrity and reputation to hold a position of a key responsible person, the Reserve Bank will consider matters including, but not limited to the following:

- a) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;
- b) whether the person has been subject of civil or financial crime within the last five (5) years or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an

undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity;

- c) whether the person has contravened any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
- d) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;
- e) whether the person, or any business in which he has a controlling interest or exercises significant influence, has been investigated, disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately;
- f) whether the person has been engaged in any business practices in a negligent, deceitful, oppressive or otherwise improper (whether unlawful or not), or otherwise discreditable business or professional practices;
- g) whether the person has been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorization, membership or a license to conduct any trade, business or profession, or has had that registration, authorization, membership or licence revoked, withdrawn or terminated and whether there is proof that the person's actions or failure to act contributed to receivership, insolvency, or liquidation;
- h) whether the person has held a position of responsibility in the management of a business that has gone into insolvency, or liquidation while the person was connected with that business and whether there is proof that the person's actions or failure to act contributed to receivership, insolvency, or liquidation ;
- i) whether the person has been a director of, or directly concerned in the management of, any institution which is being or has been wound up by a court or other authority competent to do so, or of any regulated entity, the licence of

which has been revoked under any written law and whether there is proof that the person's actions or lack of action contributed to the winding up;

- j) whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities and failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements and obligations, maintenance of effective internal control systems and risk management practices;
- k) whether the person has failed to meet his debts as they fall due or manage his financial affairs satisfactorily; and
- l) whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a key responsible person which would be disadvantageous to the regulated entity or its interest.

Competence and Capability...

- 6.4. A person must have the necessary skills, experience, ability and commitment to carry out the role. Competency and capacity are demonstrated by a person who possesses the relevant qualification, experience and ability to understand the technical requirements of the position.
- 6.5. In assessing a person's competence and capability, the Reserve Bank will consider matters including, but not limited to the following:
 - i) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfill the role and responsibilities of the position and in the case of directors, having regard to their other commitments;
 - ii) whether the person has satisfactory past performance or expertise in the nature of the business being conducted or position being appointed to;

- iii) whether the person has been disciplined by a professional, trade or regulatory body, dismissed or requested to resign from any position or office for negligence, incompetence, mismanagement, fraud or other criminal conduct;
- iv) where the person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his/her duties;
- v) in relation to a person who should be a registered professional, such as an auditor, public accountant, legal practitioner, estate administrator or liquidator; whether such registration subsists; and
- vi) whether the person has a sound knowledge of the business and the responsibilities of the position (soundness of judgment is derived from lack of adverse information and cannot stand alone).

Financial Soundness...

- 6.6. In order to demonstrate his/her capacity to ensure safety and soundness of a regulated entity, including the balancing of risks and rewards, and protect the interests of depositors and other stakeholders, a person must demonstrate, to the satisfaction of the Reserve Bank, that he/she has managed his/her own financial affairs properly and prudently.
- 6.7. In determining a person's financial soundness, the Reserve Bank will consider all relevant factors, including but not limited to:
- a) extent of liabilities due in comparison to assets
 - b) failure to meet liabilities as they fall due, including extent of non performing liabilities and litigation taken against the person;
 - c) whether the person has been the subject of any adverse judgment or award;
 - d) whether the person has made any arrangements or composition with his/her creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of these;

- e) whether a person has been a senior officer of accompany or a shareholder of a company that:
 - i. has been the subject of any adverse judgment or award, that remains outstanding or was not satisfied within a reasonable period; and
 - ii. has made any arrangements or composition with its creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, liquidated, placed under judicial management or been involved in proceedings relating to any of the foregoing.
- 6.8. The fact that a person may be of limited financial means will not, in itself, affect his/her ability to satisfy the financial soundness criteria. However in the case of a shareholder due consideration will be given to financial capacity.
- 6.9. The fact that one has been involved with a company that was placed under judicial management or liquidated, will not in itself result in adverse inference being drawn, due regard being placed on the role of the applicant in commission and/or omission.
- 6.10. The individual should not have a record or evidence of previous business conduct and activities of a deceitful, oppressive or otherwise improper in nature, or which otherwise raises concerns about the individual's methods of conducting business.

7. RESPONSIBILITY OF PERSONS SUBJECT TO FIT AND PROPER PERSON TEST

- 7.1. The applicant or key responsible person must demonstrate that they are fit and proper.
- 7.2. He/she must provide all the information that the Reserve Bank may require to complete its investigations.
- 7.3. He/she is further required to notify the Reserve Bank forthwith of any events or circumstances that have occurred subsequent to their initial assessment of fit and proper person that might change the assessment or at least have a material bearing on it.

8. RESPONSIBILITY OF THE BOARD OF DIRECTORS

- 8.1. Regulated entities should establish policies and procedures that are approved by the board to ensure that all key responsible persons are fit and proper to direct and manage the regulated entity's key business activities and functions. These policies and procedures should be periodically reviewed to ensure their relevance and alignment with material changes in the business and risk profile and strategies of the regulated entity.
- 8.2. The board is responsible for monitoring and ensuring on-going compliance with the internal policies and procedures, including policies on ethical behavior, codes of conduct, as well as disclosure and reporting obligations relating to the fit and proper requirements.
- 8.3. The fit and proper person assessment policies and procedures must at a minimum incorporate:-
 - a) fit and proper criteria as set out in these prudential standards;
 - b) procedures and processes for conducting fit and proper assessments;
 - c) factors considered in assessing whether a person is fit and proper for a specific position;
 - d) actions, including internal governance process requirements, to be taken where a key responsible person is assessed to be no longer fit and proper for a specific position;
 - e) list of key responsible persons; and
 - f) records of the process used to assess whether a person is fit and proper and reasons for any decisions made.
- 8.4. The policies and procedures should also provide for any person within the regulated entity to disclose information to the board and the nominations committee that may be relevant for a fit and proper assessment and afford protection to such persons against any discriminatory actions by the regulated entity for providing such information.
- 8.5. Regulated entities should take all reasonable steps to ensure that each key responsible person to be appointed or already appointed to assume key functions is aware of, and

understands, the regulated entity's fit and proper policy and their obligation to continue to meet the fit and proper requirements on an on-going basis.

- 8.6. The board and nominations committee (or any other designated committee) is primarily responsible for ensuring that all key responsible persons fulfill fit and proper requirements and for conducting assessments of the fitness and propriety of directors and the Chief Executive Officer. For other key responsible persons, decisions on appointments and assessments of fit and proper may be made by the Chief Executive Officer or a designated committee under the delegated authority of the board. This should be clearly provided for in the regulated entity's policies and procedures with appropriate reporting by the Chief Executive Officer or a designated committee.
- 8.7. The Reserve Bank expects that the fit and proper assessments of each key responsible person be conducted both prior to initial appointment and at regular intervals or when deemed necessary.
- 8.8. The documentation of fit and proper assessments for each key responsible person should be retained by the regulated entity for a reasonable period and the period must be specified in the regulated entity's fit and proper policy. Regulated entities should safeguard the confidentiality of information collected and assessments made.
- 8.9. To support the supervisory assessment process to determine the rigor and effectiveness of the fit and proper assessment policies and procedures within a regulated entity, the following information should be made readily available for inspection by the Reserve Bank upon request:
 - a) regulated entity's internal fit and proper policies and procedures;
 - b) list of key responsible persons within the regulated entity; and
 - c) documentation of fit and proper assessment for each key responsible person.
- 8.10. Where the nomination committee (or any other designated committee) has assessed that a person:
 - a) is not fit and proper for a position, the board shall not appoint the person to the said position; and

- b) is no longer fit and proper for a position, the board shall take reasonable steps to remove the person from such position as soon as practicable and in the interim, institute necessary measures to mitigate risks associated with the person continuing to hold the position.

9. RESPONSIBILITY OF THE RESERVE BANK WITH REGARDS THE FIT AND PROPER PERSON TEST

- 9.1. The Registrar will assess the information submitted in respect of an applicant and decide on the individual's fitness and probity.
- 9.2. The Registrar will also use other information that may be publicly available in assessing a person's fitness and probity.
- 9.3. If a person to whom the Registrar has made a request to so submit fails or refuses to provide the requested information or provides the Registrar with information which is materially inaccurate, misleading or incomplete, the Registrar may determine that he/she is not a fit and proper person to hold shares or occupy a position or office in an entity supervised by the Reserve Bank.
- 9.4. The Reserve Bank will monitor the fitness and probity of approved persons on an ongoing basis and may recommend removal of a person where the person is no longer fit and proper.

10. DOCUMENTS TO BE SUBMITTED FOR THE FITNESS & PROBITY ASSESSMENT

10.1. The following original documentation should be submitted to the Reserve Bank:

- i) affidavit of fitness and probity in the format prescribed in Appendix A;
- ii) police clearance certificate (less than six months old);
- iii) Zimbabwe Revenue Authority (ZIMRA) tax clearance certificate (less than 12 months old) or other tax certificate from the relevant authority from the applicant's jurisdiction;
- iv) statement of networth signed by a public accountant;
- v) *curriculum vitae*;

- vi) any other document that the Reserve Bank may deem necessary.
- 10.2. Companies will be required to submit similar documents as above, as applicable. In addition the following documents will be required:
- i) copy of the company's Memorandum of Association and Articles of Association;
 - ii) Certificate of Incorporation;
 - iii) sources of funding (local and foreign must be verifiable, free from encumbrances and not of illicit source);
 - iv) copies of audited financial statements of the company concerned, for three consecutive years immediately preceding its application or for each year it has been in operation, if less than three (3) years;
 - v) any other document that the Reserve Bank may deem necessary; and
- 10.3. In the event of documents being submitted from outside Zimbabwe, (with the exception of a *curriculum vitae*), these must be certified by a notary public registered in the country of origin of documents while an affidavit must be signed before a Commissioner of oaths in the country of origin of documents.

11. STEPS TO BE TAKEN BEFORE DECLARING A PERSON NOT FIT AND PROPER

11.1. Due process must be observed prior to a person being declared not fit and proper. The Reserve Bank will ensure that there is compliance with the steps listed hereunder:

Step 1 : assess submitted documentation;

Step2: where there is an intention to reject an applicant, write to the applicant or institution advising of the intention to declare not fit and proper and seek representations;

Step3: where representations are received, to consider representations before the Registrar makes a decision whether to proceed with the declaration or not.

12. ROLE OF THE EXTERNAL AUDITORS

12.1. 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 these Prudential Standards.

13. WHISTLEBLOWING

- 13.1. Whistle blowing is an important mechanism in prevention and detection of improper conduct, fraud and corruption. A regulated entity should implement an appropriate policy in its organizational structure in order to raise awareness of the whistle blowing process which is available to raise concerns about improper conduct within the institution. The process should include reporting concerns over key responsible persons' fitness and probity to the Chief Executive Officer (or equivalent) or to the Reserve Bank without the risk of reprisal and detrimental actions. The policy should outline the mechanisms for the protection of employees who make such a disclosure.

14. CONCLUSION

- 14.1. Best practices are designed and intended to be in place to ensure that supervisors are aware, at the authorization stage, of senior management, directors and shareholders who can exert a material influence, directly or indirectly, on the operations of regulated entities, and thereafter, are notified of changes regarding the positions of senior management, directors and shareholders, on the occurrence of specified events.
- 14.2. The Reserve Bank's expectations are that regulated entities will take the measures necessary to ensure that fitness, probity or other qualification tests are met on an ongoing basis.

15. COMMENCEMENT

These Prudential Standards shall come into force immediately on the date of issue.

Reserve Bank of Zimbabwe

July 2014

APPENDIX A
AFFIDAVIT OF FITNESS AND PROBITY

I, [*insert name, national registration number*] of [*insert physical address*], do hereby make oath and state that:

1. [*insert declarations as to directorships in other companies*];
2. [*insert declarations as to shareholding in other companies (including shareholding in a related subsidiary, whether held directly or indirectly through other interests)*];
3. [*insert declarations as to whether you have the appropriate qualification and experience to effectively fulfill the role and responsibilities of the position and enclose *curriculum vitae**];
4. [*insert declarations as to whether you are assuming concurrent responsibilities and how you will manage conflict of interest and ability to discharge your duties*];
5. [*insert declarations as to whether you are or have been the subject of any proceedings of a disciplinary or criminal nature, or have been notified of any impending proceedings or of any investigations, which might lead to such proceedings*];
6. [*insert declarations as to whether you are or have been the subject of civil or financial crime within the last five (5) years or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely against you (including consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct)*];
7. [*insert declarations as to whether you have faced criminal convictions or served sentences and whether you have been granted free pardons, whether in Zimbabwe or any other country*];
8. [*insert declarations as to whether you have contravened any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice*];
9. [*insert declarations as to whether you have contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies*];

10. [insert declarations as to whether you or any business in which you have a controlling interest or exercises significant influence, has been investigated, disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately];
11. [insert declarations as to whether you have been engaged in any business practices in a negligent, deceitful, oppressive or otherwise improper (whether unlawful or not), or otherwise discreditable business or professional practices];
12. [insert declarations as to whether you have been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorization, membership or a license to conduct any trade, business or profession, or has had that registration, authorization, membership or licence revoked, withdrawn or terminated];
13. [insert declarations as to whether you have made any arrangements or composition with your creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of these];
14. [insert declarations as to whether you have held a position of responsibility in the management of a business that has gone into insolvency, or liquidation while you were connected with that business and whether you contributed to receivership, insolvency, or liquidation];
15. [insert declarations as to whether you have been a director of, or directly concerned in the management of, any institution which is being or has been wound up by a court or other authority competent to do so, or of any regulated entity, the licence of which has been revoked under any written law and whether you contributed to the winding up];
16. [insert declarations as to whether you have non-performing loans with any banking institution, building society, microfinance institution or other lending institution in Zimbabwe or outside Zimbabwe]; and
17. [Insert declarations as to whether you are free from any business or other relationship which could materially pose a conflict of interest in discharging your duties as an appointed person within the institution].

SWORN TO ATTHIS.....DAY OF[YEAR]

BEFORE ME:

.....

COMMISSIONER OF OATHS