



**STANDARD OF SOUND PRACTICE
ON
FIT AND PROPER ASSESSMENTS
UNDER THE BANKING SERVICES ACT, 2014**

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Standards of Sound Practices (SSP) are guiding principles issued by the Bank of Jamaica which set out minimum expectations of the Supervisory Authority in relation to its licensees; and against which licensees can evaluate their performance.

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STANDARD OF SOUND PRACTICE ON FIT AND PROPER ASSESSMENTS

A. PREAMBLE

Deposit Taking Institutions (DTIs) should be owned, managed and operated by “fit and proper” persons who maintain high ethical standards, whose conduct and business dealings support a conclusion of overall integrity and probity, and who are competent and qualified to conduct such business.

Licensees are statutorily responsible for ensuring that financial institutions are prudently and soundly managed (section 37(1) of the Banking Services Act, 2014 (BSA)). Therefore, on an ongoing basis, Bank of Jamaica (the “Bank”) requires that licensees develop and implement clear due diligence processes to guide the hiring and appointment of directors, management and all prospective staff members. Additionally, with the passage of the Banking Services (Deposit Taking Institutions)(Agent Banking) Regulations, 2016, the DTIs are also responsible for ensuring that substantial shareholders, directors, officers and key employees of agents are “fit and proper” persons.

The Supervisor has a statutory responsibility to assess the fitness and propriety of substantial shareholders, directors, officers and key employees (relevant persons) in relevant institutions. Upon completion of this assessment, a recommendation is made to the Supervisory Committee which has responsibility for making determinations on whether an individual is a “fit and proper” person.

The Standard of Sound Practice on Fit and Proper Assessments (the “Standard”) is, therefore, intended to provide guidance regarding:

- i) the criteria for “fit and proper” assessments;
- ii) the application of the “fit and proper” criteria by the Supervisor;
- iii) the approach to conducting “fit and proper” assessments in relation to agent banking operations.

B. INTRODUCTION

B.1 Legal Basis for Fit and Proper Testing

All individuals with responsibility for the management and control of a financial institution and key persons within the institution must satisfy the “fit and proper” criteria outlined in section 3 of the BSA. For the purposes of the BSA, an individual is a “fit and proper” person if:

- (a) the individual:
 - i. has not been convicted of an offence involving dishonesty or an offence listed in Part III of the BSA or in the Second Schedule to the Proceeds of Crime Act or an offence which is similar to any such offence in another jurisdiction,
 - ii. is not an undischarged bankrupt, and
 - iii. is in compliance with any tax and other statutory requirements imposed on the individual;

- (b) the individual’s employment record or any other information does not give the Supervisory Committee reasonable cause to believe that the individual carried out any act involving dishonesty or any act involving impropriety in the engagement of banking business or other financial services; and

- (c) the individual is, in the opinion of the Supervisory Committee:
 - i. a person of sound probity and is able to exercise competence, diligence and sound judgment in fulfilling his or her functions in relation to the licensee and whose relationship with the licensee will not threaten the interests of depositors,
 - ii. whether a person whose appointment to the board of, employment by or ownership of the licensee will result in a conflict of interest, and
 - iii. whether a person possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person.

C. PURPOSE AND APPLICATION OF FIT AND PROPER ASSESSMENTS

C.1 Purpose

1. The purpose of the “fit and proper” assessment is to:
 - (a) deter persons who are not “fit and proper” from entering or continuing in the deposit taking system;
 - (b) ensure compliance with statutory and regulatory requirements;
 - (c) ensure consistency with internationally accepted best practice standards; and
 - (d) promote a high standard of corporate governance.

2. By definition, a “fit and proper” assessment is the statutory basis for evaluating the probity, expertise, competence, diligence and sound judgement of the relevant persons.

C.2 Application

3. The Supervisor is statutorily required to assesses whether relevant persons of relevant institutions are “fit and proper” on:
 - (a) an ongoing basis;
 - (b) the review of a licensing application; or
 - (c) the review of any application involving a change in the ownership or control of a licensee (see sections 77 and 78 of the BSA) or a person to whom section 3(3) of the BSA relates.

4. Additionally, assessments shall be conducted in situations such as the following:
 - (a) where findings of on-site examinations point to or uncover information which may affect the ongoing fitness and propriety of a relevant person;
 - (b) in response to a request for regulatory co-operation; and
 - (c) where the Bank is notified of information which may adversely impact a person’s fitness and propriety.

5. The BSA provides that licensees should ensure that each relevant person is and remains a “fit and proper” person. Therefore, licensees have a responsibility to ensure that relevant persons

are “fit and proper” at appointment or upon assumption of the relationship and on an ongoing basis thereafter. This responsibility is extended to agents as a DTI is required to submit, along with its application for approval to appoint an agent, evidence that the agent’s substantial shareholders, directors, officers and principal agent banking employees are “fit and proper”.

D. SUPERVISORY APPROACH TO FIT AND PROPER ASSESSMENTS

6. The Bank will assess relevant persons as to their probity, expertise, qualification, competence and financial soundness. In addition, the Bank will determine the suitability of substantial shareholders via in-depth due diligence assessments which would involve examination of the transparency of ownership structures, source(s) of financial resources, financial soundness and probity as well as conformity with laws and ethical standards that govern business conduct.
7. Individuals will be assessed in accordance with the stipulations of the BSA as well as the principles outlined in Section F of this Standard - “Description of Fit and Proper Principles” - in order to ensure transparency, objectivity, consistency and overall fairness of the process.
8. In determining whether a person meets the “fit and proper” requirements, the considerations set out in Section F will be assessed individually as well as on a cumulative basis according to their relative importance. Failure to meet one indicator may not, on its own, mean failure to meet the “fit and proper” criteria.
9. The weight of the contribution of each of the relevant principles to the assessment of the fitness and propriety of an individual may vary depending on the degree of the individual’s influence and responsibilities in the affairs of the entity. For example, consideration will be given to whether there are material changes in the nature and scope of the responsibilities assumed by an individual which would require higher standards of competence or judgement in order to properly perform the duties associated with said position. Material changes in expected duties could give rise to conflicts that could impair the individual’s performance in the position.

10. The Bank's approach will be informed by all available evidence taken together, including third-party evidence.

E. CRITERIA FOR FIT AND PROPER ASSESSMENTS

11. In general, three (3) fundamental and universally accepted principles determine a person's fitness and propriety. These are probity (honesty, integrity, and reputation); financial soundness; and competence.

12. In executing a "fit and proper" assessment, the most critical considerations are:

- (a) Probity (honesty, integrity and reputation) - Relevant persons being proposed as substantial shareholders or for directorships or employment must have no record of criminal offences involving dishonesty or breaches of Part III of the BSA or the Second Schedule to the Proceeds of Crime Act. Neither should there be any adverse regulatory determinations that may make a person unfit to hold management positions or positions with the capacity to significantly impact the performance of a deposit taking institution;
- (b) Financial soundness - Relevant persons must be compliant with tax and other statutory requirements. Additionally, they must not be undischarged bankrupts; and
- (c) Competence - Relevant persons must possess the necessary knowledge, skills, and experience which are required for their current or intended functions.

13. The statutory provision regarding fitness and propriety is not exhaustive and therefore the Supervisor can take other things into consideration when conducting its assessments.

F. DESCRIPTION OF FIT AND PROPER PRINCIPLES

F.1 Probity (Honesty, Integrity and Reputation)

14. It is difficult to precisely define integrity, however, qualities such as honesty, reputation and honourable behaviour in dealings with third parties, are principally considered in the determination of one's integrity. Integrity demands a disciplined and consistent approach to high standards of conduct.
15. Integrity will be reflected in the degree of stewardship exhibited in managing the financial affairs of the relevant institution, attitude towards maintaining internal controls and effective procedures. The absence of the foregoing could be highly detrimental for a financial institution and will impinge on the Supervisor's assessment of an individual's fitness and propriety.
16. The Bank will consider whether an individual has been convicted of any criminal offence involving dishonesty or an offence listed in Part III of the BSA or in the Second Schedule to the Proceeds of Crime Act or an offence which is similar to any such offence in another jurisdiction. Convictions for other offences will also factor in determining issues of probity.
17. Acting with integrity also involves candid disclosures to the Supervisor on any matter concerning the relevant institution about which the Bank should be aware (see section 39(1) of the BSA and section H of this Standard).
18. Where the Bank discovers that such information was not brought to its immediate attention, it will assess the following in order to determine the extent to which this will impact the individual's fitness and propriety:
 - (a) the circumstances surrounding the failure to report;
 - (b) the time which has elapsed between the occurrence of the event and its discovery;
as well as
 - (c) the material impact that the event has had or could have had on the entity.

19. The Supervisor will not positively recommend an individual who has not demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory and professional requirements and standards.
20. The list below highlights more specific instances in which an individual may receive increased scrutiny and the integrity test impacted. While not exhaustive, the list should be interpreted as a guide to understanding the considerations in conducting the integrity test.

The instances are as follows:

- (a) The individual has been the subject of any existing or previous investigation or disciplinary proceedings by the Supervisor, other past or existing regulatory authorities, professional bodies, or government bodies or agencies or any justified complaint relating to regulated activities;
- (b) The individual has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), professional bodies, or government bodies or agencies, whether in Jamaica or overseas;
- (c) The person is or has been the subject of any proceedings of a criminal nature, or has been notified of any potential proceedings or of any investigation which may lead to those proceedings;
- (d) The individual has been involved with a company, partnership or other organization that has been refused registration, authorization, membership or a licence to carry out a trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; and as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;

- (e) The person or any business with which the person has been involved as a substantial shareholder, director, management or key employee has been investigated, disciplined, censured or suspended or criticized by a regulatory or professional body, a Court or tribunal, whether publicly or privately;
- (f) The individual has been dismissed, or asked to resign and resigned from employment, from a position of trust or fiduciary appointment due to any alleged or proven inappropriate action(s)¹;
- (g) The individual has been disqualified from acting as a director in any managerial capacity or as a key employee;
- (h) The individual has been adjudged liable by a Court for fraud, misfeasance or other misconduct;
- (i) The individual (in his personal or professional capacity) or an entity of which an individual has been a major shareholder, director or senior manager has been non-compliant with any tax and other statutory requirements imposed;
- (j) Where an entity owned, directed or managed by the individual has gone into liquidation or administration while the individual has been connected with that organization or within one year of the severance of that connection; and
- (k) Any other unethical or reprehensible conduct which is of such significance that it raises doubts as to the individual's integrity.

21. With regard to the examples above which relate to proceedings before a disciplinary, regulatory or other legal body, each case will be determined under the particular circumstance. However, the general principles that will guide the Supervisor's consideration are as outlined overleaf:

¹ There may not be any evidence to substantiate an employer's claim that an employee's engagement was severed by them being asked to resign.
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- (a) In the case where criminal charges or regulatory proceedings pending are against an individual, the Supervisor will not normally proceed with the application until the matter is resolved²;
- (b) In the case of any legal proceeding, matters which are terminated will be taken into consideration by the Supervisor contingent on the outcome³; and
- (c) Pending civil proceedings will not form the sole basis of a determination but may be considered together with other factors where there are extenuating circumstances.

F.2 Financial Soundness

22. Financial soundness is an important element in determining the fitness and propriety of current and prospective persons in key positions in relevant institutions.
23. An individual is required to demonstrate that he or she is not an undischarged bankrupt. Otherwise, the individual will not be entrusted to safeguard the interest of depositors and customers of financial institutions.
24. An individual who has the following issues is unlikely to meet the financial soundness criterion. That is, the individual (in his personal or professional capacity) or an entity in which he or she has been a substantial shareholder, director or senior manager or key employee has:
- (a) been non-compliant with any tax and other statutory requirements;
 - (b) been wound up by a Court;
 - (c) been in receivership;
 - (d) entered into a composition with its creditors;
 - (e) failed to meet the solvency requirements prescribed by law;
 - (f) been adjudged bankrupt or had assets seized by a court in Jamaica or elsewhere;

² This is dependent on the proportionality or nature of the charge, for example, revenue related offences.

³ If the individual is not convicted of the offence, the outcome of the proceedings would not form a part of the determination of the individual's fitness and propriety.

- (g) failed to satisfy any debt or award adjudged by a Court in Jamaica or elsewhere, to be due and payable;
- (h) been intervened⁴; and
- (i) ceased trading in circumstances in which creditors were not or have not yet been paid in full.

F.3 Competence

25. To demonstrate competence including expertise in the relevant subject matter, individuals involved in the financial sector must act in a knowledgeable and professional manner, demonstrating sound judgement and a culture of compliance. In this regard, the Supervisor will focus on three main areas, namely qualification, experience and performance.

26. Demonstration of competence takes the following factors into account:

- (a) the technical know-how and ability to perform prescribed duties for which they are engaged as supported by the requisite experience including recognised professional qualifications;
- (b) an appropriate range of skills and experience to understand, execute, manage or oversee the activities for which he or she is being proposed or for which he or she is responsible;
- (c) sound knowledge of all applicable legislation, rules, policies, guidelines and standards of sound practices.

G. FREQUENCY OF ASSESSMENTS

27. To facilitate the “fit and proper” assessments, the following documents must be submitted to the Financial Institutions Supervisory Division (FISD) in the required frequency (see Table 1):

⁴ For these purposes, intervened in relation to a person means a person who has been subject to one or more of the actions described in section 38(2) of the BSA.
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Table 1. Frequency and Documentation for “Fit and Proper” Assessments			
	Document	Required Frequency	Comments
1	Fully completed and duly certified Personal Questionnaire (PQ)	Initially	PQs are required prior to effecting appointments of relevant persons. Information provided relates to the individual both in their personal and professional capacity.
		Annually	PQs are to be submitted as at 31 December, within 60 days of the calendar year end.
2	Police clearance reports from the Jamaica Constabulary Force (JCF)	Initially and every five years thereafter	The Bank requires original receipts evidencing proof of payment of the requisite fees to the Collector of Taxes for JCF reports; and a collection date noted by the JCF. These reports will be collected directly from the JCF by the Bank.
3	Clearance reports from the Financial Investigations Division (FID)	Initially and every five years thereafter; or at such other frequency as the Supervisor deems necessary	Payment for these reports is the responsibility of the licensee. Cheques should be drawn payable to FID and submitted to the Bank.
4	Overseas law enforcement clearance reports	Initially	This requirement applies to individuals who have at any time worked, studied or habitually resided in overseas jurisdictions for six or more months, since attaining the age of eighteen years. These clearance reports are required to be requested by the licensee from the law enforcement agency within each applicable jurisdiction. The overseas law enforcement agency is to be requested to submit their report (in English) directly to the FID.
		Every five years	This requirement applies to an individual who has habitually resided in an overseas jurisdiction for six or more months, subsequent to the last “fit and proper” assessment.
5	A certified or notarised colour passport-sized photograph	Initially and every five years thereafter	This requirement applies to all relevant persons who reside overseas. A photograph is not required in cases where this is already embedded in the JCF clearance reports.
6	Summary of the relevant institution’s due diligence on the individual ⁵	Initially	In addition to the requisite “fit and proper” documentation, the relevant institution shall provide the Bank with a summary of the findings of its own evaluation which served as the basis for determining that the proposed individual is “fit and proper”. This should include the DTI’s assessment of the individual’s probity, financial soundness and competence.

28. Assessments rely, principally, on the review of PQs and associated submissions, along with information from any other internal or external sources including such information received from other jurisdictions in which the individual has worked; reports in the media; and Court judgements.

⁵ Section 37 of the BSA provides that every licensee shall ensure that each substantial shareholder, director, officer and key employee is and remains a “fit and proper” person.

H. NOTIFICATIONS TO THE BANK OF JAMAICA

29. All relevant institutions are required to notify the Supervisor in writing of proposed relevant persons. All notifications must be accompanied by the required documentation and information to facilitate “fit and proper” assessments (see Table 1 in Section G of this Standard).
30. The relevant institutions are required to await the final determination of fitness and propriety by the Supervisory Committee or the Supervisor before effecting appointments, confirmations or acquisitions.
31. In keeping with section 39(1)(c)-(e) of the BSA, licensees must immediately notify the Supervisor, in writing, of:
- (a) any dismissal or resignation of a relevant person and the reason(s) for the dismissal or resignation;
 - (b) any circumstances that render any relevant person unfit to hold office and advise on action that is being taken with regard to that matter, and
 - (c) any emerging factor that affects whether a relevant person is or remains a “fit and proper” person.

I. THE ROLE OF THE SUPERVISORY COMMITTEE AND THE SUPERVISOR

32. The Supervisory Committee, under section 7(1)(b) of the BSA, is responsible for “fit and proper” determinations based on the assessments and recommendation of the Supervisor. The assessment is informed by the licensees own “fit and proper” assessment of the individual, the information provided on the “fit and proper” questionnaire and other documents required to be submitted by the relevant persons.
33. Determinations in relation to the fitness and propriety of a relevant person may be made by the Supervisor in accordance with the delegated authority under section 7(4) of the BSA.

34. A person who is not “fit and proper” shall not act or continue to act unless he is expressly authorized to do so by the Supervisor or the Supervisory Committee. A breach of this requirement is an offence under section 38(3) of the BSA.

J. APPEALING AN UNFAVOURABLE DECISION

35. Every person who is aggrieved by a decision of the Supervisory Committee or the Supervisor, as to whether a person is “fit and proper”, may appeal to the Supervisory Appeals Board in accordance with section 28 of the BSA.

K. INFORMATION SHARING

36. One of the key core principles for effective banking supervision is co-operation and collaboration among authorities with responsibility for the stability of the financial system or for the safety and soundness of banks or other financial institutions. In this regard, the Bank has entered into multilateral Memorandums of Understanding (MOU) with supervisors across the region as well as bilateral MOU with several other jurisdictions. These MOU involve sharing information regarding financial institutions as well as the “fit and proper” status of individuals. Given the confidential nature of such information, signatories to the MOU have committed to treat the information with utmost confidence and use same only for supervisory purposes.

37. In addition, section 3(5) and (6) of the BSA provides for the sharing of information among local or overseas regulators for the purposes of determining whether a person is “fit and proper”.

L. ENFORCEMENT

38. Licensees are obligated to ensure that the relevant persons are “fit and proper”. As such, licensees and individuals commit an offence under the BSA when the obligations are not met. These offences include:

- (a) Failure of a licensee to ensure that each relevant person is and remains a “fit and proper” person;

- (b) Failure of a financial holding company to ensure that all members of any financial group comply with the obligation to ensure that each relevant person is and remains a “fit and proper” person;
- (c) Failure of a licensee to notify the Supervisor regarding dismissals and resignations of relevant persons and the respective reasons for same;
- (d) Where an individual who is not “fit and proper” acts, or continues to act as a director of or is concerned in the management of the key functions of any licensee, without the express written authorisation of the Supervisor or the Supervisory Committee.

GLOSSARY

1. **“Agent”** - means a person, other than a deposit taking institution, who has been appointed by a deposit taking institution under section 108(1) of the BSA to carry out one or more of the banking services specified in that section.

2. **“Company”** - A company is any corporate body incorporated in Jamaica or elsewhere and any entity which, in the opinion of the Supervisor, is analogous to a body corporate.

3. **“Financial Holding Company”** - a financial holding company is a company:
 - (a) licensed under the Banking Services Act, 2014 as a financial holding company; and
 - (b) under which all other companies within the financial group are held, including:
 1. any of that company’s subsidiaries incorporated outside of Jamaica, and
 2. entities over which it has effective control.

4. **“Financial Institution”** - means a person who undertakes or engages in financial services.

5. **"Financial Services"** includes the following:
 - (a) banking business;
 - (b) lending;
 - (c) consumer credit;
 - (d) financing commercial transactions;
 - (e) transfer of money or value;
 - (f) issuing electronic money;
 - (g) financial guarantees and commitments;
 - (h) dealing in securities and trading in other financial instruments;
 - (i) participation in security issues;
 - (j) individual and collective portfolio management;
 - (k) insurance business and insurance related financial services;
 - (l) investment of moneys and other financial assets on behalf of third parties;
 - (m) pension fund management; and
 - (n) any other service designated as a financial service by the Supervisor by order published in the Gazette, subject to affirmation resolution.

6. **“Relevant Institutions”** - for the purpose of “fit and proper” assessments, relevant institutions refer to the following entities:
 - (a) Ultimate Holding Company (whether foreign or local) or such other entity approved by the Supervisor, pursuant to section 69(3) of the BSA;
 - (b) Financial Holding Company;

- (c) Deposit Taking Institution;
- (d) Subsidiaries of Financial Holding Company;
- (e) Persons treated as members of the financial group pursuant to section 71(2) of the BSA;
- (f) Companies within the financial group which provide necessary support services to the licensee pursuant to section 73(2) of the BSA; and
- (g) Agents appointed under section 108(1) of the BSA to carry out one or more of the banking services specified in that section.

7. **“Relevant Persons”** – refer to individuals in the following positions or proposed positions within a relevant institution for the purpose of “fit and proper” assessments:

- (a) Substantial Shareholder - person who holds 20 per centum or more of the shares of a licensee (including shareholders of holding companies) or an agent under section 108 of the BSA;
- (b) Director - director or trustee or other person who is a member of the board or other body of a company that is responsible for the governance and oversight of the company;
- (c) Officer - includes an executive director, managing director, chief executive officer, a chief financial officer, a manager (to include a branch manager) and the company secretary;
- (d) Key Employee - key employees refer to the following individuals:
 1. a person who is employed or contracted below the level of management of a relevant institution to perform functions that:
 - (i) can substantially affect the financial condition or reputation of the licensee or both, and
 - (ii) meets the criteria specified in any guidelines prescribed by the Supervisor; or
 2. a person who is deemed by the Supervisor to be a key employee of the licensee.