



BANK OF JAMAICA

**METHODOLOGY
FOR
THE TREATMENT OF DEBARRED PERSONS**

Under the Banking Services Act, 2014

© 2023 Bank of Jamaica

All Rights Reserved

CONSULTATION PAPER

**Consultation on the Methodology for the
Treatment of Debarred Persons
(for institutions licensed under the Banking Services
Act, 2014)**

This Consultation paper is available on Bank of Jamaica's website at
www.boj.org.jm.

Bank of Jamaica, February 2023. All rights reserved.

No reproduction or translation of this publication may be made without the prior written permission of the Bank of Jamaica.

Applications for such permissions, for all or part of this publication, should be made to:

Bank of Jamaica
Nethersole Place,
Kingston, Jamaica
(Telephone 876-922-0750-9; Fax 876-922-2519 or email
fisdfeedback@boj.org.jm)

**THIS PAGE IS INTENTIONALLY
LEFT BLANK**

Table of Contents

Preamble.....	4
Background and Purpose	5
Legal Provision/Requirement	6
Assessment Criteria	8
Information Requirements	12
Appendix.....	13

PREAMBLE

1. Section 38 of the Banking Services Act (“BSA”), 2014 requires the Supervisor or the Supervisory Committee (“SC”) to make determinations on whether to grant approval for persons debarred from directorship, management and key employment, to act or continue to act as a director of, or be involved, directly or indirectly, in the management or key functions of any licensee.
2. This requirement also extends to substantial shareholders of the deposit-taking institutions (DTIs), ultimate holding companies, financial holding companies (FHC) and intermediate holding companies (IHC), as well as subsidiaries of the FHC and/or any institution within the group or ownership structure that the SC so determines.
3. In this regard, this Consultation Paper outlines Bank of Jamaica’s (BOJ’s) methodology for the treatment of debarred persons, specifically the evaluation criteria and information requirements to be considered by SC for section 38 determinations.
4. BOJ invites feedback from institutions licensed under the BSA (i.e. commercial banks, merchant banks, building societies and financial holding companies) as well as other relevant stakeholders on the proposal of this Consultation Paper by **31 March 2023**. Please submit your comments via email to:

fisdfeedback@boj.org.jm, Attention: Jide Lewis (Dr) or
James.Robinson@boj.org.jm, Attention: James Robinson (Mr)

5. Following the close of this consultation, BOJ will further refine its proposals taking into consideration the feedback/comments received.

BACKGROUND AND PURPOSE

6. In 1996, the Jamaican financial system was in a state of distress as several institutions were operating imprudently, had unsafe and unsound practices and were facing insolvency. Some common operational characteristics among these failed/problematic institutions at the time included poor corporate governance, deficient control systems, poor liquidity and/or asset quality, capital inadequacies, as well as fraud and concealment.
7. These operational weaknesses were further compounded by constraining legislative and statutory powers by BOJ to intervene in distressed entities before final insolvency was reached, putting at risk the investments of Jamaican depositors, policyholders and pensioners.
8. Consequently, in January 1997, the Government of Jamaica established the Financial Sector Adjustment Company Ltd (FINSAC) to handle all take-overs and arrange the asset management and disposal of approximately 200 financial institutions that were failing. Of note, all of the institutions in which FINSAC intervened were experiencing severe liquidity and solvency crises.
9. Accordingly, an individual who acted as a director, or was involved either directly or indirectly in the management, or had key functions in any company that was intervened by FINSAC, was automatically debarred (or statue-barred) from serving as a director, manager, or to hold any key employment role in a licensee.
10. It is important to emphasize that not all positions held by a statue-barred individual at an intervened entity were deemed executive, to inter alia, influence the decision-making process of the institution. Notwithstanding, these persons were automatically listed on the *'Intervened Institution Register'* due largely to the superiority of their function.
11. Section 38 (1) of the BSA, however, gives latitude for debarred individuals to re-enter the financial space to serve in a licensee as director, manager, or in a key employment role, provided there is expressed written authorization by the Supervisor or approval by the SC. In this regard, this Consultation Paper outlines BOJ's assessment criteria for regulatory waiver requests submitted under section 38 of the BSA.
12. Once published, this Consultation Paper will also supplement the BOJ's Protected Disclosures (BOJ as a Prescribed Person) Procedures.

LEGAL PROVISION/REQUIREMENT

13. An overview of the legislative and regulatory architecture regarding fit and proper deliberations are as follows:

- a. **Section 3 of the BSA:** defines what it means for a person to be fit and proper;
- b. **Section 7(1)(b) of the BSA:** gives the SC the authority to make determinations on whether a person is fit and proper; and
- c. **Section 38 (2)¹ of the BSA:** outlines the circumstances in which a person would not be allowed to act or continue to act as a director, or be in the management or key functions of a licensee under the BSA, without the expressed written authorization of the Supervisor or the approval of the SC. The circumstances as outlined in section 38 (2) of the BSA applies to any person who:
 - i. is not a “fit and proper” person; or
 - ii. whether in Jamaica, or elsewhere, has been a director of, was directly involved in the management of, or functioned as key employee in a licensee, or any other entity offering financial services or functioning as an FHC:
 - which has been wound up by a court;
 - the licence of which has been revoked²;
 - which has been in receivership;
 - which has entered into an arrangement with its creditors;
 - whose business has been conducted imprudently or fraudulently;
 - or
 - which has failed to meet the solvency requirements prescribed by law
- d. The Standard of Sound Practice on Fit and Proper Assessments, 2017 (SSP)³ provides guidance regarding the criteria for fit and proper assessments. Accordingly, this Consultation Paper must be read in conjunction with the aforementioned SSP.

14. BOJ is proposing two legislative amendments (*refer to table below*) relating to the rules for section 38 of the BSA, to reflect changes in policy intent, as well as to align with other

¹ See Box 1 for details

² Unless the revocation was consequent upon (i) the amalgamation of that licensee with another licensee; or (ii) a voluntary winding up of the licensee in compliance with section 107

³Consultation process on the updated SSP on Fitness & Propriety (October 2022) in progress.

related provisions of the BSA and other enactments, including the SSP on Fit and Proper Assessments.

Item No.	Proposed Amendments	Rationale
1.	<ul style="list-style-type: none"> Delete any reference of the 'Supervisor' from section 38 provisions. 	<ul style="list-style-type: none"> Section 38 (1) of the BSA confers authorization and/or decision-making power on either the Supervisor or the SC. However, it is considered that this approach is not consistent with the policy intent of having regulatory determinations addressed by a committee (<i>consistent with the provisions which are evident in sections 3(4) and 7(1) respectively of the BSA</i>); and allowing technical matters to remain within the operating prerogative of the Supervisor (<i>as evidenced by section 3(2) of the BSA</i>). Additionally, to achieve operating clarity for the provisions mentioned above, section 38 assessments will be routed by the Fit and Proper Review Committee (FPRC) through the Supervisor to the SC, for determination.
2.	<ul style="list-style-type: none"> Inclusion of 'substantial shareholders' to the list of persons subject to section 38(2) circumstances. 	<ul style="list-style-type: none"> Currently, determinations made under section 38 of the BSA do not apply to substantial shareholders. The principle underpinning section 38 is that the consideration of debarment and cleansing applies to persons involved in a licensee's critical operations or in the licensee's management or key functions. Thus, to the extent there are shareholders who carry out these functions, those individuals would, by virtue of those functions, be subject to section 38. Substantial shareholders who do not fall within the circumstances described in section 38, would not be subject to a reassessment. Further, this group of persons must not only be subjected to and comply with the fit and proper requirements on entry, but also for consideration for debarment and subsequent cleansing.

ASSESSMENT CRITERIA

15. For regulatory waiver requests under section 38 of the BSA, the SC shall, at minimum, consider the following evaluation criteria listed below:
- i. the degree of influence;
 - ii. honesty and integrity;
 - iii. minimum lapse period;
 - iv. the conclusion of business dealings;
 - v. the conclusion of legal and other proceedings; and
 - vi. fit and proper status.

The Degree of Influence

16. For this criterion, the assessment should, amongst others, take into consideration issues such as:
- i. whether the applicant was in a sufficiently senior position to have significant influence over the company's strategic, financial, compliance, or risk-taking decisions and activities;
 - ii. whether the applicant openly objected to certain decisions, but due to instances such as a voting system, their opinion was over-ruled;
 - iii. the explanation offered by the applicant for their involvement in making the decision;
 - iv. the tenure of the applicant in the company, at the point when the company entered into any of the circumstances mentioned in section 38 (2)(b) of the BSA; and
 - v. whether the applicant was on any extended leave immediately before or during the time the company entered into any of the circumstances mentioned in section 38 (2)(b) of the BSA.

Honesty and Integrity

17. For this criterion, the SC will contemplate an individual's track record of honesty and integrity. Matters to be considered may include, but are not limited to: -
- i. whether the applicant took excessive salaries and emoluments from an institution described in section 38(2) of the BSA and with which the applicant was involved or employed during a time when the institution was experiencing deteriorating financial conditions including, being insolvent;
 - ii. whether the applicant knowingly caused a financial institution to take on additional debt when there were no reasonable prospects of repayment by the institution;
 - iii. whether the applicant demonstrated a lack of willingness to comply with any regulatory, legal or professional obligations and standards;

- iv. whether the applicant was untruthful and or had knowingly provided misleading information to liquidators, regulatory authorities, auditors or other relevant stakeholders;
- v. whether the applicant ever breached any fiduciary duty whilst serving in a financial institution or otherwise;
- vi. whether the applicant engaged in fraudulent activities which ultimately, adversely impacted the reputation or financial strength of a financial institution or adversely impacted the stability of the financial system; and
- vii. evidence that the applicant is rehabilitated,⁴ or is focusing on personal and/or professional rehabilitation and reform.

Minimum Lapse Period

- 18. An application by a person for appointment as a director, manager, key employee or substantial shareholder, who is subject to the requirements of section 38 will not be considered until at least **five years** have elapsed between the date when the criteria were not met and the application date; and up to a **period of ten years for egregious breaches.**
- 19. The lapse period applied should be proportionate to (i) the gravity of the misdemeanour/misconduct and (ii) the degree of responsibility of the offender. Accordingly, the prescribed minimum period of five years would apply to misconduct or behaviour that reflects culpability or poor judgment but not egregious breaches. A lapse period of ten years will be reserved for egregious misconduct or behaviour. *Refer to Box 1 for justification and Appendix I for examples of offences.*
- 20. Importantly, the expiration of the lapse period does not indicate that the person is now allowed into the financial system, but rather that the fit and proper assessment process can now recommence.

⁴ Note, rehabilitation in this paper means that the applicant has not violated any criteria stipulated in this document and/or the fit and proper stipulations stated in section 3 of the BSA since debarment.

BOX 1: Lapse period of ten years

The minimum lapse period of five years, is considered inadequate for misconducts or behaviours that are deemed egregious or serious in nature. Therefore, the lapse period for these offences will be ten years.

Rationale: The fiduciary duties, responsibilities, legal obligations (to include knowledge of the law), integrity of the financial markets, as well as the intentions, power and degree of control exhibited must be taken into consideration when determining the lapse period. The quantum of any sentence imposed on misconduct or behaviour must be broadly commensurate with the gravity (or seriousness) of the offence committed. As such, individuals who caused intentional harm to a DTI, FHC or financial group, must be punished more severely than those who committed an unintentional act.

In light of the foregoing, a ***minimum lapse period of ten years*** will be applied for offences deemed egregious by the SC (refer to Appendix I). This time period is deemed adequate for the following reasons:

- I. to allow for sufficient time for applicants to demonstrate that they have been reformed or rehabilitated, especially in instances where honesty and integrity issues of the applicants played a major role in any of the circumstances listed under section 38 2 (b) of the BSA; and
- II. to allow for sufficient time for the applicants to acquire the required skills, training and knowledge necessary to meet BOJ’s fit and proper requirements.

The Conclusion of Business Dealings

- 21. The onus will be on applicants to provide satisfactory evidence that all businesses associated with the company that resulted in their debarment have been concluded completely and appropriately.
- 22. In situations, where certain business dealings are not finalized, the SC can make a decision to impose conditions (such as a divestiture) to a positive decision, rather than negate due to failure to satisfy this criterion.

The Conclusion of Legal and Other Proceedings

- 23. Applicants will be required to provide satisfactory evidence that all legal proceedings⁵ in any jurisdiction or complaints against the applicants, as former representatives of any company listed under section 38 (2) (b) of the BSA have been properly and lawfully resolved, concluded or ended; and that the applicants have fully complied with all determinations or rulings given in that regard.

⁵ Brought about by any regulatory body, statutory body, clients of the financial institution, liquidator or any person, any court or body appointed by the government or any such groups

Fit and Proper Status

24. At the end of the assessment, the SC will evaluate the findings and evidence and based on the facts and circumstances will then decide on the eligibility of the applicant to re-enter the financial space and, inter alia, conclude whether or not the applicant meets the fit and proper requirements under the BSA.

25. It should be noted that each case will be considered on its own merit, taking into consideration all relevant factors mentioned in this draft Guideline and related enactments.

INFORMATION REQUIREMENTS

26. Licensees requesting that an individual who falls within one or more of the circumstances outlined in section 38(2)(b) of the BSA be approved by the SC to re-enter the financial space, must submit all of the following requirements to BOJ:
- i. All fit and Proper documentation for the BOJ's fitness and propriety assessment process, including:
 - (b) Fully completed and duly certified Personal Questionnaire (PQ)
 - (c) Police clearance reports from the Jamaica Constabulary Force (JCF)
 - (d) Clearance reports from the Financial Investigations Division (FID)
 - (e) Overseas law enforcement clearance reports
 - (f) A certified or notarized colour passport-sized photograph
 - ii. Results of its own assessment of the individual's case using the assessment criteria outlined in paragraphs 16 to 25 of this Consultation Paper.
 - iii. A summary of the findings of its own evaluation of the person's fitness and propriety, which served as the basis for determining that the individual is "fit and proper".
 - iv. A request letter that includes appropriate justification for why a cleansing should be granted by the SC.
 - v. Details of the applicant's proposed role and responsibilities.
27. All applications will be evaluated on a case-by-case basis, using all the information available to the BOJ. Further, it should be noted that no single factor is dispositive, therefore the Central Bank will consider all the facts and circumstances; and evaluate the evidence on a case-by-case basis prior to submission to the SC by the Supervisor.
28. Additionally, the SC is permitted to impose conditions (e.g. probationary period), on the person who has been cleansed.

APPENDIX I

Examples of possible Offences	Prescribed Minimum (i.e. 5yrs)	Prescribed Maximum (i.e. 10yrs)
<ul style="list-style-type: none"> • Gross mismanagement or misconduct in the execution of certain legal obligations under the BSA or applicable legislations (e.g. <i>money laundering, violations of laws and regulations etc.</i>). 	<ul style="list-style-type: none"> • If the position is deemed non-executive (such as a manager or supervisor), then the individual would not be or have been in a position to affect or influence the decision-making process of a licensee. In such instances, the offence may be viewed as non-egregious (e.g. <i>certain conflicts of interest that impair the person’s objectivity and independence; and inter alia impact the probity criterion under fit and proper assessments</i>). 	<ul style="list-style-type: none"> • If the position is deemed executive (e.g. <i>chief financial officer, chief risk officer, head of IT etc. and/or a shareholder</i>); and allows the person to be a part of executive management, sit on the board or an oversight committee; then the person, by virtue of his/her position has/had the power to influence or to impact the decision-making powers of the licensee. Resultantly, the offence may be viewed as egregious (i.e. <i>violation of certain legal obligations under the BSA or applicable legislations</i>).
<ul style="list-style-type: none"> • Illegal or unethical offences that are contrary to a licensee’s stated principles, policies and procedures (e.g. <i>insider trading, theft, bribery, fraud</i>) 	<ul style="list-style-type: none"> • Intention, fiduciary duties, responsibilities, integrity of the financial market, legal obligations (to include knowledge of the law), as well as power and control, are key metrics that the SC should consider when contemplating the duration of the lapse period. 	<ul style="list-style-type: none"> • Intention, fiduciary duties, responsibilities, integrity of the financial market, legal obligations (to include knowledge of the law), as well as power and control, are key metrics that the SC should consider when contemplating the duration of the lapse period.