

GUIDELINES ON FIT AND PROPRIETY REQUIREMENTS

Unofficial English Translation

1. Introduction and title

(a) This guideline is established to provide companies with a standard to ensure that capital market intermediaries are properly qualified.

(b) This regulation shall be cited as “GUIDELINES ON FIT AND PROPER REQUIREMENTS”.

2. Definitions

“Company” shall mean any company licensed by the Capital Market Development Authority (CMDA).

“Integrity” shall mean the adherence to ethical principles, honesty, and transparency in all actions, along with the demonstration of professional competence and responsibility in the execution of duties.

“Fitness” shall mean the criteria used to assess whether a person is qualified for a position under this regulation.

“Fitness and Propriety” shall mean the integrity, fitness and professional competency of a person.

“Standard of Fitness and Propriety” shall mean the criteria set out in this regulation to assess the fitness and propriety of a person.

3. Application of these guidelines

- (1) These guidelines set criteria for the integrity, fitness and professional competence (fitness and propriety) of the Board of Directors, Management, and persons registered to give capital market related services of a licensed entity.
- (2) These guidelines apply to any person or a corporation holding a license from CMDA.
- (3) In these guidelines, management includes managing director, deputy managing director, company secretary, compliance officers, or any other person responsible for key business functions or holding similar management positions.

4. Principles of assessment

- a. The primary responsibility for ensuring that persons responsible for a licensed entity’s management and holding key business function are fit and proper rests with the licensed entity itself.
- b. A fit and proper assessment comprises the consideration of three factors: integrity, fitness and professional competence. Each factor should be assessed independently.

- c. An assessment shall be conducted by the license entity: -
 - i. When a new person is appointed to act in a position in which he is responsible for a licensed entity's management or a key business function.
 - ii. When a person is appointed to a new position more significant than the one held previously or when a person's responsibilities increase substantially.
 - iii. The fitness and propriety of a person is jeopardised in the manner described in these guidelines.
 - iv. Continuously as determined by the Board of Directors of the licensed person, or as required by CMDA.

5. Licensed entities shall also update information regarding the persons regularly.

6. Where a person fails to comply with all individual elements set out in these guidelines, a person may nonetheless be considered 'fit and proper' depending on the substance of the requirements and materiality of any failure to meet them.

7. Integrity of persons

- a. Persons responsible for a licensed entity's management shall always show integrity and be persons whose capacity has not been restricted.
- b. The loss of integrity or the restriction of legal capacity can lead to a person not being fit and proper to be a member the board of directors or the managing director or deputy managing director, or that the person can no longer continue to act in the above-mentioned positions.
- c. A person shall not be deemed to show integrity if the person has been sentenced to imprisonment within the last five years or to a fine within the last three years for a crime which can be deemed to indicate that the person is manifestly unsuitable as a member or deputy member of the board of directors or the managing director or deputy managing director of a licensed entity. A person is manifestly unsuitable if he has, for example, taken illegal action to obtain personal benefit.
- d. The following list comprises examples of criminal offences that can constitute grounds for the assessment of unsuitability. The list is not exhaustive:
 - (1) theft, fraud and other dishonesty;
 - (2) money laundering offences
 - (3) offences by a debtor;
 - (4) theft and embezzlement;
 - (5) robbery;
 - (6) extortion;
 - (7) forgery;
 - (8) providing false documentation to a public authority;
 - (9) registration related offences;
 - (10) security markets offences mentioned in the Maldives Securities Act;
 - (11) accounting offence;
 - (12) bribery;

(13) Corruption.

- e. A person referred to in the first paragraph above may not be adjudged bankrupt. Bankruptcy begins when a court has decided to adjudicate bankruptcy. Bankruptcy ends on account of a court decision, lapse of bankruptcy, composition or abatement.

8. Fitness of persons

- a. Fitness shall be assessed as an overall assessment, considering all factors affecting the evaluation. The assessment shall be conducted on a case-by-case basis as to ensure the maintenance of the soundness of a licensed entity's corporate governance and market confidence in the licensed entity's operations.
- b. A person may be presumed not to be fit in the following situations:
 - i. Failure to pass the integrity requirements
 - ii. Failure to have professional competence required to perform duties
 - iii. Legal proceedings in a matter relating to financial irregularities, seeking of own benefit or offenses
 - iv. Failure to carry out responsibilities carefully as is expected considering his professional competence and experience
 - v. has breached a fiduciary obligation;
 - vi. has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;
 - vii. has been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
 - viii. has been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management;
 - ix. is of bad repute in any business or financial community or any market;
 - x. Any other factor that could jeopardise the soundness of corporate governance and market confidence in licensed entity's activity
- c. The following list comprises examples of situations in which a licensed entity's management may have to assess the fitness of persons responsible for management and key business functions from the perspective of sound corporate governance and market confidence. The list is not exhaustive.
 - i. *Criminal matters*: pending criminal trial in a court or pending or ended pre-trial investigations in a matter relating to financial misconduct or the seeking of own benefit, for example the misuse of a position of trust or any other criminal offence that can compromise market confidence in a licensed entity's operations or weaken a person's capacity and possibilities to act in the position to which he has been appointed.
 - ii. *Civil matters*: debt restructuring; enforcement; registered payment defaults; other civil disputes or financial irregularities that can be relevant when assessing a person's financial position and that can jeopardise market confidence in a licensed entity's operations or weaken a person's capacity and possibilities to act in the position to which he has been appointed.
 - iii. *Disciplinary actions, objections or other reprimands*: for example decisions given by a market court, an authority, the disciplinary board of a stock exchange, the board of directors of a stock exchange; i.e. objections, warnings, conditional fines,

disciplinary fines imposed on the basis of self regulatory provisions and revocations of rights.

- d. The fitness of a person can also be subject to an assessment if he has such financial links or conflicts of interest that could significantly compromise market confidence in a licensed entity's operations or weaken the person's capacity and possibilities to act in the position to which he has been or will be appointed.
- e. Financial links and conflicts of interest refer for example to a person's direct and indirect holdings in, agreements and other arrangements with a licensed entity or another entity operating in financial markets (eg customer company) or other links with an external party, including positions of trust, board membership or a contract for services with the licensed entity's customer company.

9. Professional competency of persons

- a. Professional competence refers to a person's education, professional experience, personal character and capability to act in the position to which he is appointed.
- b. In applying the criteria of professional competence, account is taken of the nature and scope of a licensed entity's operations. Licensed entities differ by factors including the scope of activity, organisation, the number and diversity of financial services and customer structure.
- c. Managing director and deputy managing director are expected to possess sufficient education, professional experience suitable for the position, experience in directorship and other qualifications required for the successful fulfilment of the responsibilities of the position.
- d. A person shall also possess such general knowledge of the licensed entity's business area as is deemed necessary regarding the nature and scope of the licensed entity's operations.
- e. Each member of the board of directors shall possess such general knowledge of the licensed entity's business area as is deemed necessary regarding the nature and scope of the licensed entity's operations.
- f. General knowledge of a licensed entity's business area can refer to such knowledge of the business that a person can have obtained for example by working for the licensed entity or by working in another industrial sector in functions in which the person has familiarised himself with or has gained experience from the operation of financial markets, or by acting in positions of trust in the licensed entity.
- g. It is recommended that a member of the board of directors who has insufficient knowledge of the licensed entity's business area is given the possibility to acquire education and knowledge necessary for carrying out the responsibilities of the position.

10. MEASURES TO BE TAKEN BY THE LICENSED ENTITY

- a. Complete the forms to ensure the fitness and propriety of directors, management and registered persons in accordance with the requirements prescribed by the authority.
- b. The management of a licensed entity shall immediately take sufficient action to ensure the soundness of corporate governance and the maintenance of market confidence when the fitness and propriety of a person responsible for management or a key business function is jeopardised.