



Fitness & Propriety



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INTRODUCTION

The information herein is provided to assist regulated entities in applying the fit and proper test to relevant persons. A **relevant person** is defined in the AMLR as a person carrying on relevant business. **Relevant business** is defined as engaging by way of business in one or more of the businesses or transactions referred to in relation to a regulated person. A **regulated person** means any person carrying on a regulated business activity as defined under the Proceeds of Crime Act (POCA).

The FSRC-Nevis Branch expects a relevant person to be competent, honest, to have integrity and to be of sound financial standing. This provides the Branch with the assurance that the relevant person is willing and able to fulfil his/her obligations. This also underpins the requirements that the relevant person performs the activities regulated under the relevant legislation efficiently, honestly, fairly and acts in the best interests of his/her stakeholders and clients.

When assessing the application for the appointment of a relevant person to senior and/or critical positions, the Branch may, in addition to the fit and proper test, consider other factors that may be relevant. The Branch may refuse an application, suspend or revoke authorisation/licence and take other regulatory action(s) as may be necessary if a relevant person fails to satisfy the fit and proper test.

The information provided herein is not intended to be comprehensive or to override any legislative provisions.

REGULATED BUSINESS ACTIVITIES

Regulated business activities as specified in the Schedule of the POCA include but are not limited to:

- ◆ Banking business carried on under the Banking Act;
- ◆ International banking carried on under the Nevis International

Banking Ordinance;

- ◆ Trust business carried on under the Trust Act, and the Nevis International Exempt Trust Ordinance;
- ◆ Business corporations under the Nevis Business Corporation Ordinance;
- ◆ Company business carried on under the Companies Act, and the Nevis Limited Liability Company Ordinance;
- ◆ Insurance business;
- ◆ Money transmission services;
- ◆ Real estate business;
- ◆ Credit Unions;
- ◆ An activity in which money belonging to a client is held or managed by a Barrister or a Solicitor providing legal or notarial services;
- ◆ The business of providing accounting, tax advice, audit or insolvency services;
- ◆ The business of acting as a company secretary of bodies corporate;
- ◆ Gaming;
- ◆ Charities and non-profit organizations; and
- ◆ Jewellers and dealers in precious stones and metal;

A RELEVANT PERSON MEANS, INTER ALIA:

- a) A chief executive officer or chief financial officer;
- b) A substantial shareholder;
- c) A principal officer or director;
- d) A manager;
- e) An appointed, provisional or temporary representative; and
- f) Any person by whatever name described, who has responsibilities or functions similar to items (a – e) listed above.

ELEMENTS OF THE FIT AND PROPER TEST

The criteria for considering whether a relevant person is fit and proper include but are not limited to the following:

- a) Honesty, integrity and reputation;
- b) Competence and capability; and
- c) Financial soundness.

The failure by a relevant person to meet any one of the criteria as set out above may not lead to an automatic refusal of an application; refusal of a relevant person or suspension or revocation of authorisation/licence, or any other regulatory

action that may be deemed necessary by the Branch.

The significance and relevance of a person failing to satisfy the Branch that he/she meets a specific criteria depends on:

- ⇒ The seriousness of, and surrounding circumstances resulting in, the relevant person not meeting the specific criteria;
- ⇒ The relevance of the failure by the relevant person to meet the specific criteria to the duties/responsibilities that are, or are to be performed/assumed by the relevant person; and
- ⇒ The passage of the time since the failure by the relevant person to meet the specific criteria.

HONESTY, INTEGRITY AND REPUTATION

The factors to assess honesty, integrity and reputation of a relevant person include but are not limited to, whether the person:

- has been convicted of any criminal offences; any spent convictions, particular consideration will be given to offences of dishonesty, fraud and financial crime;
- has been the subject of any proceedings of a disciplinary or criminal nature, or any potential investigation that might lead to such proceedings;
- whether the person has contravened any of the requirements and standards of any regulatory authorities or professional body or government body/agency;
- has been issued a prohibition order under any laws in the Federation or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
- has been involved with a company or any organization that has been refused authorisation/licence to carry out business, or has had that authorisation/licence suspended, revoked or withdrawn;
- has been the subject of any justified complaint made in good faith relating to regulated activities;
- has been untruthful or provided false or misleading information to the Branch or has been uncooperative in any dealings with the Branch or any other regulatory or competent authority;
- demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards; and
- has been the subject of any adverse findings.



COMPETENCE AND CAPABILITY

In determining a relevant person's competence and capability, the Branch will have regard to all relevant matters including, but

not limited to, whether the relevant person:

- has satisfactory past performance or expertise, having regard to the nature of the relevant person's business or duties, whether in Nevis or elsewhere;
- is assuming concurrent responsibilities, which may give rise to a conflict of interest or otherwise impair his/her ability to discharge such duties in relation to any activity regulated by the Branch; and
- has satisfactory educational qualification, training or experience, relevant skills and knowledge in relation to the functions he/she intends to perform.



FINANCIAL SOUNDNESS

In determining a relevant person's financial soundness, the Branch will have regard to any factors including, but not limited to, whether the relevant person:

- has been unable to fulfil any of his/her financial obligations;
- has been the subject of any judgment debt in Nevis or elsewhere, that remains outstanding or was not satisfied in a reasonable time, whether in whole or in part;
- has made any arrangement with his creditors, filed for bankruptcy, had a bankruptcy petition served on him/her, been adjudged bankrupt, been the subject of a bankruptcy restrictions order, offered a bankruptcy restrictions undertaking, had assets sequestrated or had been involved in proceedings relating to any of these.



The onus is on the regulated entity to establish to the satisfaction of the Branch that a relevant person is fit and proper. As different appointments and designations entail different responsibilities, the information given herein should be applied in a manner that is suitable to the circumstances.

Sources

The Proceeds of Crime Act, Cap. 4:28
Anti-Money Laundering Regulations, 2011
Guidelines on Fit and Proper Criteria, Guideline No: FSG-G01,
revised January 2012

