

FIT AND PROPER RULES FOR CONTROLLERS AND KEY PERSONS

2022

NBFIRA/REG/ENF/RUL01

NBFIRA

Non-Bank Financial
Institutions Regulatory
Authority



CONTROL TABLE

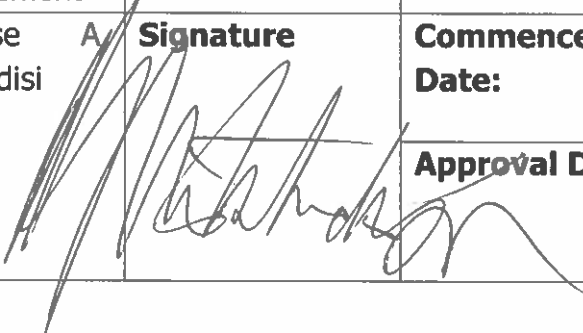
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1. PURPOSE

These Fit and Proper Rules for Controllers and Key Persons are to set out a framework for assessing a person's capacity to act as a Fit and Proper person and to provide for a basis for decision in the matter

2. SCOPE

These Fit and Proper Person Rules for Controllers and Key Persons are for internal use and give direction to any person to ensure compliance with the relevant law, rule and standard or guideline.

3. ASSOCIATED DOCUMENTS

Document	Reference
NBFIRA Act	CAP 46:08
Other Financial Services Laws	N/A
Proceeds and Instruments of Crime Act	N/A

4. DEFINITIONS

For purposes of this Policy, unless the context otherwise requires:

Term	Definition
Act	Refers to the Non-Bank Financial Institutions Regulatory Authority Act.
Board	Shall refer to the Board of the Non-Bank Financial Institutions Regulatory Authority.
Controller	Refers to a juristic person, the officers and beneficial owners of the corporation.
Criminal Offence	Refers to an act, attempt or omission punishable by the Penal Code of Botswana.
Director	Refers to the meaning assigned to it under the Act
Fit and Proper	Refers to the meaning assigned to it under the Act
Key Person	Refers to the meaning assigned to it under the Act


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Non-Bank Financial Institution	Refers to the meaning assigned to it under the Act
Money Laundering	Refers to the meaning assigned to it in the Proceeds and Instruments of Crime Act
Proposing Entity	Refers to any institution applying for the approval for a Controller
Regulated Activity	Refers to any activities regulated under the Act and/or any of the financial services law.
Rules	Refers to the Fit and Proper Rules for Controllers and Key Persons.
Suspension	Refers to the same meaning assigned to it in the Employment Act.
Regulatory Authority	Refers to the Non-Bank Financial Institutions Regulatory Authority.

5. **ABBREVIATIONS**

Abbreviation	Full Phrase
RUL	Rules

6. **RESPONSIBILITY**

The Director-Enforcement is responsible for the implementation and amendment of these Rules.

7. **PROCEDURE**

7.1 **CONSTITUTION**

- 7.1.1 The Regulatory Authority is a designated supervisory body in terms of Section 4(1) of the Act and has the mandate to regulate and supervise Non-Bank Financial Institutions. In accordance with the Act, the Regulatory Authority has been given the powers to make rules, set standards and provide guidelines for itself and Non-Bank Financial Institutions.
- 7.1.2 As part of its mandate the Regulatory Authority assesses the fitness and probity of Controllers, Key Persons and any applicant.

- 7.1.3 The probity and competence of Controllers and Key Persons who exercise significant influence on the Non-Bank Financial Institutions are not only of strong interest to the Regulatory Authority but also to the institutions themselves. As such, persons intending to become Controllers, or Key Persons of Non-Bank Financial Institutions must 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.
- 7.1.4 Market participants and the public at large need to be confident that persons managing the affairs of the Non-Bank Financial Institutions are competent, honest, financially sound and will treat them fairly. Non-Bank Financial institutions must, therefore, ensure that such persons are and are seen to be Fit and Proper.
- 7.1.5 The objective of these Rules is to set out a framework for assessing a person's capacity to act as a Fit and Proper person and to provide for a basis for decision in the matter.
- 7.1.6 A person is considered to be Fit and Proper if they essentially are able to demonstrate traits that include integrity demonstrated in personal behaviour and personal conduct, soundness of judgment, financial soundness, sufficient degree of knowledge, experience and professional qualifications.

7.2 APPLICATION OF RULES

- 7.2.1 These Rules supersede the Fit and Proper Person Rules for Controllers revised by the Regulatory Authority on 01 January 2018 and shall apply to Controllers and Key Persons of Non-Bank Financial Institutions.
- 7.2.2 Each Non-Bank Financial Institution shall, on request by the Regulatory Authority, provide such details as may be required in respect of its organisational structure to enable the Regulatory Authority to make a declaration on whether a person is a Controller or Key Person.
- 7.2.3 The application of fitness and probity tests may vary depending on the degree of a person's influence and on the person's responsibilities in the affairs of the Non-Bank Financial Institution.


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7.2.4 For avoidance of doubt, where the Controllers and Key Persons of NBFIs are body corporates, the controllers and key persons of such body corporates, shall become Controllers and Key Persons of the NBFIs, as envisaged by the Act.

7.2.5 Notwithstanding the provisions of Clause 7.10.7 of the Rules, the Rules shall apply for purposes of conducting a fit and proper assessment, provided the conduct and/or incident occurred whilst the person held the position of Controller or Key Person.

7.3 NON-BANK FINANCIAL INSTITUTIONS

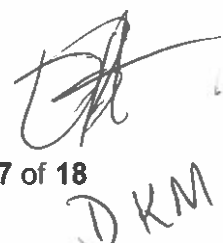
7.3.1 The Non-Bank Financial Institution shall, inter alia, ensure that it has processes in place to keep under constant review the capacity of Controllers or Key Persons of the Non-Bank Financial Institution to continue to meet the Fit and Proper test.

7.4 APPLICATION FOR APPROVAL AS CONTROLLER OR KEY PERSON

7.4.1 No person shall serve as a Controller or Key Person of a Non-Bank Financial Institution without the prior written approval of the Regulatory Authority.

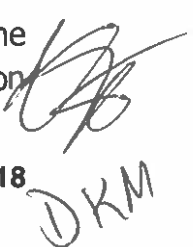
7.4.2 An application to the Regulatory Authority for approval as a Controller or Key Person of a Non-Bank Financial Institution shall be made by a Proposing Entity and shall comprise of:

- (a) Cover letter including the following information;
- (b) Names and full addresses of the Proposing Entity;
- (c) Name of contact person, address and telephone number;
- (d) Names and full addresses of the proposed Controller;
- (e) Proof of Identity (certified copies of valid identity cards for citizens and valid Passports for non-citizens);
- (f) A detailed Curriculum Vitae containing business and professional history;



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- (g) Information as to whether the person is, or has ever been, a significant shareholder, director or senior management official of any of the Non-Bank Financial Institutions in Botswana or elsewhere;
 - (h) Information on the person's involvement in companies, partnerships, associations, and groups of persons acting together with a common purpose whether or not organised as a formal business entity;
 - (i) A completed Personal Questionnaire in the prescribed Form 1 in the Schedule, or as may be prescribed;
 - (j) Security Vetting in the prescribed Form 2 in the Schedule, or as may be prescribed;
 - (k) Police Clearance from Botswana or country of residence;
 - (l) A reference confirming good or satisfactory financial conduct by any bank licensed in terms of the Banking Act or equivalent legislation for foreign referee banks;
 - (m) Copies of educational and professional Certificates certified no more than three 3 months prior to the date of submission;
 - (n) Proof of work permit and residence permit for non-citizens, provided that the position applied for requires the person to be resident in Botswana;
 - (o) Proof of residence to be verified by, but not limited to, a utility bill, title deed, lease agreement, letter from an employer, affidavit or any other document that the Regulatory Authority may prescribe from time to time; and
 - (p) Proof of payment of any application fees where required by the relevant financial services laws.
- 7.4.3 The Regulatory Authority may request any other document or information it deems necessary to accompany the application for approval.
- 7.4.4 The Regulatory Authority may request any of the documents to the application to be submitted either manually, electronically or both.
- 7.4.5 Within 60 days of receipt of a complete application under this provision, the Regulatory Authority shall make a determination in respect of an application



and give notice of its determination to the proposing entity. The Regulatory Authority may at any point during the assessment and, depending on the circumstances of the application, grant a conditional approval.

- 7.4.6 Failure to provide the Regulatory Authority with all the required information within fourteen (14) days will result in the Regulatory Authority returning the application without consideration.
- 7.4.7 Any applicant who was vetted in the past twelve (12) months shall be exempted from the assessment, provided that the applicant satisfies the prescribed minimum experience and qualification for the new position.

7.5 DETERMINATION OF FIT AND PROPER

7.5.1 Key Indicators

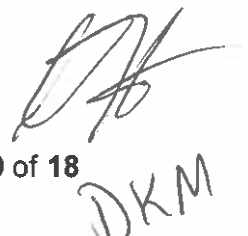
The Regulatory Authority shall conduct Fit and Proper assessment by considering the following indicators:

7.5.2 Criminal indicators:

These include record of criminal convictions arising from but not limited to, misappropriation of assets, embezzlement of funds, money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction (AML/CFT & P offences), fraud, theft and forgery.

7.5.3 Financial indicators:

These provide information on financial misconduct of both the individual and the entity in which the applicant is/was or a Key Person /controller. Indicators shall include but not be limited to financial trouble as a result of inability to manage own affairs, judgement debt or award which remains outstanding or has not been satisfied within a reasonable period, bankruptcy or insolvency proceedings, or property attachment resulting from legal proceedings, bankruptcy or insolvency proceedings in or in respect of an entity applicant which the individual is/was a Key Person/controller.



7.5.4 Supervisory indicators:

These relates to information gathered by the Regulator in the performance of their supervisory duties. Indicators could be the withholding of information from Regulators, a history of non - compliance, failure or refusal to cooperate with regulators, submission of incorrect information, market conduct transgressions and prior refusal of regulatory approval for key positions, suspension from operations, being subjected to regulatory investigations, being statutorily managed or subject to court proceedings by the Regulator.

7.5.5 Other indicators:

These may provide other information relating to the suitability of the individual, which may include documentary evidence of non-compliance with internal policies, previous lawful dismissal of the person, disciplinary measures imposed by professional associations/bodies, evidence that the person is or has been disqualified from being a director in a company in line with the Companies Act of Botswana or non-disclosure of pertinent information.

- (a) In determining whether a proposed Controller or Key Person is Fit and Proper, the Regulatory Authority shall take into account all relevant matters, including but not limited to:
 - (i) Good character which comprises an assessment of honesty, integrity, fairness, and reputation;
 - (ii) Competence and capability; and
 - (iii) Financial soundness.
- (b) An assessment using the indicators set out under paragraph 7.5.5.1 shall be subject to the relevant Non-Bank Financial Institution's industry standards and circumstances, nature of the proposed responsibilities and influence of the proposed Controller or Key Person in the affairs of the Proposing Entity.
- (c) In considering and assessing a proposed Controller or Key Person's individual qualities set out under paragraph 7.5.5.1 of this Rules, the Regulatory Authority shall also consider:

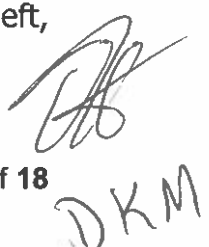


- (i) the seriousness of, and surrounding circumstances resulting in, the relevant person not meeting the specific criteria.
- (ii) the relevance of the failure by the relevant person to meet the specific criteria to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by the relevant person; and
- (iii) the passage of time since the failure by the relevant person to meet the specific criteria.
- (d) Where the Regulatory Authority has reasonable grounds to believe that an individual is not Fit and Proper, it shall declare that person to be not Fit and Proper, therefore unable to be approved as a Controller or Key Person.

7.6 GOOD CHARACTER

The assessment by the Regulatory Authority on whether a person is of good character shall include, but shall not be limited to, the following:

- 7.6.1 Whether the person has ever been the subject of an investigation by any government, professional or other regulatory body.
- 7.6.2 Whether the person has ever been asked to resign by the employer due to gross misconduct and whether the person has in fact resigned.
- 7.6.3 Whether the person has in connection with the formation or management of any company, partnership or unincorporated institution been adjudged by a court civilly liable for any fraud misconduct or other misconduct towards any company, partnership or unincorporated institution or towards any members thereof.
- 7.6.4 Whether the person has ever had a previous application to be a Controller or Key Person refused or revoked by any regulatory authority in Botswana or elsewhere.
- 7.6.5 Whether the person is disqualified from being a Controller or Key Person by any law applicable in Botswana or elsewhere.
- 7.6.6 Whether the person has ever been convicted for any criminal offence, including financial crimes and anti-money laundering such as fraud, theft,



forgery, dishonesty, perjury, whether in Botswana or elsewhere, excluding minor traffic offences.

- 7.6.7 Whether the person has ever previously been a Controller or Key Person of a Non-Bank Financial Institution, where the entity has had to be deregistered as a result of any failure on the part of the Controllers or Key Persons.
- 7.6.8 Whether the person has any actual or potential conflicts of interest which might interfere in the exercise of his/her fiduciary duties towards the Non-Bank Financial Institution.
- 7.6.9 Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, which have resulted in a conviction, censure or a fine.
- 7.6.10 Whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise discredit his/her professional conduct.
- 7.6.11 Whether the person, or any business in which he/she has a controlling interest or exercises significant influence, has been investigated, disciplined or suspended, by a regulatory body, a supervisory authority, a professional body, a court or a tribunal, whether publicly or privately.
- 7.6.12 Whether the person has been associated, in ownership, directorship or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a license to conduct trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn, or terminated.
- 7.6.13 Whether, as a result of the removal of the licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence.
- 7.6.14 Whether the person has been the subject of any justified complaint relating to dishonesty, fraud or financial criminal activities inter alia money laundering, theft, malpractice.
- 7.6.15 Whether the person has contravened any of the requirements and standards of a regulatory body, a professional body, a supervisory



authority, government or its agencies, which are of the nature and/or significance that may have affected his/her suitability to be a controller.

- 7.6.16 Whether the person has been a director, partner, or otherwise involved in the management, of a business that has gone into receivership, insolvency, liquidation, curatorship or statutory management while the person was connected with that business or within one year after the connection.
- 7.6.17 Whether the person has been dismissed, asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position arising from questions pertaining to his fitness and probity.
- 7.6.18 Whether the person has at any time shown strong resistance or lack of willingness to maintaining effective internal control systems.
- 7.6.19 Whether, in the past, the person has been unfair, untruthful, not forthcoming or in way demonstrated a lack of integrity in his dealings with his customers, superiors, auditors, regulatory authorities and any key stakeholders.
- 7.6.20 Whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.

7.7 COMPETENCE AND CAPABILITY

- 7.7.1 An applicant for Controller or Key Person of a Non-Bank Financial Institution must demonstrate his competence and ability to understand the technical requirements of the business, inherent risks and management processes required to conduct its operations effectively.
- 7.7.2 In the determination of competence and capability of a person, the following must be taken into consideration:
 - (a) Whether the person has a sufficient degree of knowledge and experience in the financial services industry relevant to the position being applied for, and as may be required by the respective financial services laws;
 - (b) Any examination or test administered or recognised by the Regulatory Authority;



- (c) Industry or professional qualification considered relevant by the Regulatory Authority;
- (d) The accreditation status of the institute of learning; and
- (e) Whether the person has ever been disciplined by a professional, trade or regulatory body or dismissed or requested to resign from any position or office for negligence, incompetence, or mismanagement.

7.8 FINANCIAL SOUNDNESS

7.8.1 In determining a person's financial soundness, the Regulatory Authority must consider all relevant factors, including but not limited to:

- (a) Whether the person has been the subject of any adverse judgement or award that remains outstanding or was not satisfied within a reasonable period;
- (b) Whether the person has filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of these;
- (c) Whether a person who has been a Controller or Key Person in the company that:
 - (i) Has been the subject of any adverse judgement or award, in Botswana or elsewhere, that remains outstanding or was not satisfied within a reasonable period;
 - (ii) Has, in Botswana or elsewhere, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or been involved in proceedings relating to any of the foregoing; and
 - (iii) The fact that a person may be of limited financial means will not, in itself, affect his ability to satisfy the financial soundness criteria.

7.9 THE PASSAGE OF TIME PRINCIPLES



7.9.1 A person may make an application for rehabilitation, save for where the not Fit and Proper declaration or revocation of approval as a Controller, was irrevocable in accordance with Clause 7.10.5(e) of these Rules or any other Financial Services Law or guidelines, in accordance with the following passage of time principles:

- (a) Applicants with a record of convicted financial criminal offences will be considered only after seven (7) years following conviction, or where a custodial sentence has been served the passage of a minimum of seven (7) years since the end of the custodial sentence.
- (b) Applicants who have records of other criminal offences will be considered only after five (5) years following conviction, or where a custodial sentence has been served the passage of a minimum of five (5) years since the end of the custodial sentence.
- (c) Applicants who have been Controllers or Key Persons in a regulated business/institution which had been declared bankrupt, insolvent, refused licences or had its licence revoked will be considered after seven (7) years following the date of pronouncement of decision.
- (d) Dismissal arising out of disciplinary actions, suspensions by a regulatory body, a supervisory authority, a professional body, a court, a tribunal, relating to financial crime will attract a five (5) years passage of time period from the date of dismissal or the suspension.
- (e) Applicants found not to be Fit and Proper for any other incident other than in Clause 7.9.1 above will be considered after a period, not exceeding five (5) years, to be determined by the Regulatory Authority.

7.9.2 Where an application is made in accordance with Clause 7.9.1 above, and where the passage of time principle has been satisfied, the Regulatory Authority shall make a determination on whether the applicant has been rehabilitated, and without limiting the generality of the foregoing, shall inter alia utilise the following criteria:

- (a) Whether any financial loss suffered as a result of the applicant's conduct has been compensated by the applicant, or any other debt and monetary obligations;



- (b) Whether the applicant has demonstrated any adverse conduct or behaviour during the rehabilitation period;
- (c) Whether the applicant has taken any positive rehabilitation steps, following being declared as not Fit and Proper;
- (d) Whether the applicant can demonstrate an ability to effectively manage and conduct their own affairs in an orderly manner;
- (e) Where the applicant had been deregistered from a professional body, whether the person has since been reinstated;
- (f) Letters of recommendation attesting to the conduct of the applicant from persons having dealt with the applicant in a professional capacity; and/or
- (g) A letter from a professional body, where the applicant belongs to one, attesting to their conduct and character.

7.10 CONTINUING REQUIREMENTS FOR CONTROLLERS AND KEY PERSONS

- 7.10.1 Controllers or Key Persons approved and declared Fit and Proper in terms of these Rules shall at all times be and be seen to be Fit and Proper.
- 7.10.2 Once approved and declared Fit and Proper in terms of these Rules, a Controller or Key Person, shall submit personal questionnaires, on an annual basis, for as long as they continue to hold the positions for which the approval was granted, in a manner prescribed by the Regulatory Authority.
- 7.10.3 Non-Bank Financial Institutions are obliged to immediately notify the Regulatory Authority 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.
- 7.10.4 The Regulatory Authority may, at any time after it has approved and declared a person as a Controller or Key Person in terms of these Rules, investigate whether such a Controller or Key Person is still Fit and Proper in terms of these Rules.
- 7.10.5 Where the Regulatory Authority determines on the basis of information it has, that a Controller or Key Person is no longer Fit and Proper, it may:

- (a) Reprimand or issue a warning to such Controller or Key Person;
 - (b) Give such Controller or Key Person a specified period within which to rectify the identified deficiency, which shall include but not be limited to undergoing prescribed training, and where the Controller or Key Person still fails to fulfil the requirements, the Regulatory Authority shall either revoke, or suspend the approval and declaration granted as a controller;
 - (c) Suspend, for a specified period, the approval and declaration of a controller;
 - (d) Revoke the approval and declaration of a controller, subject to such controller being eligible to apply for rehabilitation in accordance with the provisions of the Rules; and
 - (e) Revoke the approval and declaration of a controller permanently.
- 7.10.6 The Regularity Authority shall not take any action specified in paragraph 7.10.5 of these Rules, unless it has given the person concerned notice of the proposed action, and a reasonable opportunity to make representations in writing about the matter, save where it is a new application for entry into the market.
- 7.10.7 An approval granted under the Act shall lapse as soon as a person ceases to become a Controller or Key Person of a Non-Bank Financial Institution.

7.11 EFFECTIVE DATE

These Rules shall come into effect on **24 November 2022** and shall remain effective and applicable unless amended or revoked.

8. RECORDS

Reference Number	Record (Description of records)	Location/Holder	Retention Period	Justification
NBFIRA/REG/ENF/MAN02	Fit and Proper Processes Manual	Procurement and Administration	Preserve Permanently	Future Reference

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