

RESERVE BANK OF VANUATU

DOMESTIC BANK PRUDENTIAL GUIDELINE NO. 10

MANAGEMENT OF FINANCIAL INSTITUTIONS: FIT & PROPER REQUIREMENTS

1. This Guideline aims to ensure that a financial institution, licensed under the Financial Institutions Act No. 2 of 1999, is well managed and that persons occupying key positions within the institution must have the degree of probity and competence commensurate with their responsibilities. These key positions include directors and senior managers. This Guideline should be read in conjunction with Sections 42 & 45(2)(b) of the Financial Institutions Act.
2. At a minimum, each financial institution should have policies and procedures in place to address the criteria for fitness and propriety contained in this Guideline. The Reserve Bank of Vanuatu may direct that a financial institution remove persons from key positions where they no longer meet the criteria for fitness and propriety.
3. The Reserve Bank of Vanuatu may consult other regulators (domestic and overseas) regarding the suitability of personnel for the financial institution.

GOVERNANCE

4. Financial institutions must ensure that persons occupying key positions within the institution have the degree of probity and competence commensurate with their responsibilities.
5. For this purpose, financial institutions should have in place policies and procedures to address fitness and propriety. These policies should at a minimum address the criteria for fitness and propriety that the Reserve Bank of Vanuatu uses to assess fitness and propriety set out in paragraph 9.
6. For locally incorporated financial institutions, persons occupying key financial positions means:
 - (a) Directors;
 - (b) Senior managers
7. For foreign financial institutions operating in Vanuatu as branches, persons occupying key positions means the senior manager(s) or manager(s) responsible for the Vanuatu operations.

8. In considering matters in relation to a person's fitness and propriety, the Reserve Bank of Vanuatu will have regard to matters including, but not limited to, those matters set out in paragraphs 9 which may have arisen either in Vanuatu or elsewhere.
9. In addition to the requirements of Section 42 of the Financial Institutions Act, the criteria for fitness and propriety include, but are not limited to:
 - (a) Whether the person has been convicted of any criminal offence. Particular consideration will be given to offences of dishonesty, fraud, financial crime or other legislation relating to banking and financial services, companies and insurance;
 - (b) Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;
 - (c) Whether the person has been dismissed, or asked to resign and resigned, from employment or from a position trust, fiduciary appointment or similar;
 - (d) Whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial position;
 - (e) Whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the Reserve Bank of Vanuatu and with other legal, regulatory and professional requirements and standards;
 - (f) Whether the person has contravened any of the requirements and standards of the Reserve Bank of Vanuatu or equivalent standards or requirements of other regulatory authorities, professional bodies, or government bodies or agencies;
 - (g) Whether the person has actual or potential conflicts of interest that are likely to influence their ability to carry out their role and functions with appropriate probity and competence;
 - (h) Whether the person has adequate experience and demonstrated competence and integrity in the conduct of business duties;
 - (i) Whether the person is of bad repute within the financial and business community.
10. The Reserve Bank of Vanuatu may direct that a financial institution remove a person occupying a key position where the Reserve Bank finds that person:
 - (a) Is a disqualified person under Section 42 of the Financial Institutions Act; or

(b) Does not meet one or more of the criteria for fitness and propriety.

11. Individuals affected by a decision made by the Reserve Bank of Vanuatu referred to in paragraph 10 may request a review of that decision.

ELIGIBILITY CRITERIA FOR EXTERNAL AUDITORS

12. In terms of Section 22(1) of the Financial Institutions Act a licensed financial institution is required to have an external auditor. Under Section 22 of the Financial Institutions Act, any appointment made is subject to written approval by the Reserve Bank of Vanuatu. In addition to the general requirements of fitness and propriety outlined paragraph 9, and the requirements of Sections 22(3) and 22(4) of the Financial Institutions Act, the Reserve Bank of Vanuatu can only approve the appointment of an auditor if the person concerned meets the following eligibility criteria:

(a) The person has appropriate formal qualifications;

(b) The person has a minimum of 5 years experience in the banking and finance industry;

(c) The person is ordinarily resident in Vanuatu

13. The Reserve Bank of Vanuatu may approve individuals, on a case-by-case basis, who do not meet the eligibility criteria in paragraph 12 if the financial institution can demonstrate to the reasonable satisfaction of the Reserve Bank of Vanuatu that exceptional circumstances exist as to why the person should be appointed as external auditor.

ROLES AND OBLIGATIONS OF KEY POSITIONS

Boards

14. The Board has ultimate responsibility for the safety and soundness of a financial institution. Accordingly, the Board should have responsibility for approving and reviewing business strategies and significant policies of the institution. When setting policies and making decisions for the financial institution, the board should have regard to the interests of depositors. The Board must use its best endeavours to identify and understand the major risks faced by the institution. The Board must ensure that an appropriate, adequate and effective system of risk management and internal control is established and maintained, and must use its best endeavours to ensure that senior management monitors the effectiveness of the risk management and control system.

15. Directors should wherever possible avoid situations that could give rise to conflicts of interest, or to perceptions of conflict of interest. To this end, no director serving on the board of a locally incorporated financial institution operating in Vanuatu should simultaneously serve as a board member, or in an executive capacity, with another bank or subsidiary of another bank operating in Vanuatu. If conflicts do arise, directors should take appropriate action, such as not participating in boardroom discussion of matters on which they face a conflict.
16. Locally incorporated financial institutions must provide the Reserve Bank of Vanuatu with details of all newly appointed directors, including their name, principal business associations and curriculum vitae, within 14 days of their appointment. In addition, locally incorporated institutions must provide the Reserve Bank of Vanuatu with an updated annual statement listing all of its directors (including details of any changes to business associations) no later than at the time which the institution lodges its yearly statutory accounts¹. A resigning director should supply the Reserve Bank of Vanuatu with a written statement of reasons for resignation.

Senior Management

17. Senior managers comprise persons employed by a financial institution who exercise senior management responsibilities. Senior management responsibilities means having primary responsibility for one or more of the following:
 - (a) High level decision making;
 - (b) Implementing strategies and policies approved by the Board;
 - (c) Developing processes that identify, manage and monitor risks incurred by the institution; and
 - (d) Monitoring the appropriateness, adequacy and effectiveness of the risk management system.
18. Financial institutions must provide the Reserve Bank of Vanuatu with a list of senior management positions and the responsibilities of those positions. Details of the individuals who occupy these positions, including their name and curriculum vitae, must also be submitted within 14 days of their appointment. In addition, institutions must provide the Reserve Bank of Vanuatu with an updated annual statement listing all senior management positions, and names of persons occupying those positions, no later than at the time which the institution lodges its yearly statutory accounts.

¹ Section 24(1) of the Financial Institutions Act requires a licensee to submit to the Reserve Bank of Vanuatu a copy of its audited financial statements within three months of its balance date, unless otherwise approved by the Reserve Bank.

Senior Officer from Outside Vanuatu (Foreign Bank branches)

19. As in the case of locally incorporated financial institutions, the ultimate responsibility for the safety and soundness of a foreign institution resides with its Board. However, for practical purposes, the Reserve Bank of Vanuatu will allow a foreign bank branch's risk management policies and the Board Declaration (refer Policy Guideline 5) to be approved by a senior officer outside Vanuatu with delegated authority from the Board. The senior officer must have responsibility for overseeing the Vanuatu branch operation.

20. At the time of nominating a senior officer from outside Vanuatu, foreign financial institutions must provide the Reserve Bank of Vanuatu with details of that person, including their name and curriculum vitae. These details must be resubmitted to Reserve Bank of Vanuatu within 14 days when there is any change in the senior officer from outside Vanuatu. The foreign bank must ensure that the designated senior officer meets the standards of fitness and proprietary set out in this Guideline.