

**BANK OF BOTSWANA**

**BANKING SUPERVISION DEPARTMENT**



**GUIDELINES ON CORPORATE GOVERNANCE  
FOR BANKS/FINANCIAL INSTITUTIONS  
LICENSED AND SUPERVISED BY THE BANK OF  
BOTSWANA**

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## **GUIDELINES ON CORPORATE GOVERNANCE FOR BANKS/FINANCIAL INSTITUTIONS LICENSED AND SUPERVISED BY THE BANK OF BOTSWANA**

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## **1. AUTHORITY, PURPOSE AND SCOPE**

### **(a) Authority**

- 1.1 These Guidelines are issued by the Bank of Botswana (Bank), pursuant to its authority set forth in the Bank of Botswana Act (Cap. 55:01).

### **(b) Purpose of the Guidelines**

- 1.2 The purpose of these Guidelines is to provide guidance for the implementation of provisions on fit and proper persons, disqualification, disclosure of interest by a director, offences by directors and associated penalties as provided in the Banking Act (Cap. 46:04) (Banking Act); to comply with Core Principle 14 of the Basel Core Principles for Effective Banking Supervision, and to merge the 2008 Guidelines on the Appointment of New Directors and Senior Management Officials of Banks and Circular to Banks Regarding Eligibility for Board Membership in Banks into these Guidelines.

### **(c) Scope**

- 1.3 These Guidelines apply to any bank licensed by the Bank under the Banking Act, statutory banks falling within the purview of the Bank's supervision in accordance with the provisions of the Banking Act or respective statutes, and other financial institutions granted Exemption Certificates.
- 1.3 Implementation of these Guidelines is intended to be proportionate to the size, complexity, structure and risk profile of a supervised financial institution or a banking group. Thus, implementation of the Guidelines may require commensurate adjustments, where appropriate, for financial institutions with lower risk profiles, while being alert to the higher risks that may be attendant to more complex and publicly listed banks. Systemically important banks should have corporate governance structures and practices commensurate with their role in and potential effect on national and global financial stability.

## **2. DEFINITION OF TERMINOLOGY**

- 2.1 **Accommodation:** a loan, an advance or other credit facility, financial guarantee or other liability granted or incurred by a bank or financial institution to or on behalf of any person, natural or legal.
- 2.2 **Audit committee:** a committee established by and among directors of a board of a bank or financial institution for the purpose of overseeing the accounting and financial reporting processes and audits of the financial statements of a bank or financial institution and confirming the adequacy, efficiency and effectiveness of the bank or financial institution's internal control systems.
- 2.3 **bank:** a company incorporated in accordance with the provisions of the Companies Act (Cap.42:01), which is licensed under the Banking Act (Cap. 46:04) to conduct banking business.
- 2.4 **Bank:** the Bank of Botswana established by the Bank of Botswana Act (Cap. 55:01).
- 2.5 **Bank holding company:** a bank holding company is an entity that owns a controlling interest in one or more banks but does not itself offer banking services as defined in the Banking Act (Cap. 46 :04).

- 2.6 **Board of directors:** the highest body of authority in a bank or financial institution, responsible for governing and setting the operating strategy for the bank or financial institution and effectively monitoring management and properly accounting to shareholders.
- 2.7 **Corporate governance:** the allocation of authority and responsibilities of running the business and affairs of a bank or financial institution by the board of directors and senior management officials, using a system of practices and processes to direct and control the operations of the bank or financial institution; and forming board and management committees to ensure good risk management culture, with the objective of ensuring the safety and soundness of a bank or financial institution and enhancing shareholder value.
- 2.8 **Cross-directorship:** where an individual is a director in at least two financial institutions, either banks or financial institutions, including a financial institution not falling within the scope of the Banking Act (Cap. 46:04).
- 2.9 **Director:** any person, by whatever title designated, who performs or is empowered to perform substantially the same functions in respect of a bank or financial institution as those performed by a director of a company, as defined in the Companies Act (Cap. 42:01).
- 2.10 **Financial institution:** includes commercial banks, statutory banks and other financial institutions granted Exemption Certificates.
- 2.11 **Independent non-executive director:** an individual who is neither a shareholder, a representative of a shareholder, an employee of a bank or its related entity or a bank holding company or financial institution and is appointed to exercise a duty of care on the affairs of a bank or financial institution. For the purposes of these Guidelines, a non-executive member of a board should not have any management responsibilities within that bank or financial institution and should not be under any other undue influence, internal or external, political or ownership, which would impede the exercise of objective judgment by the board member or impair loyalty and duty of care to the bank or financial institution.
- 2.12 **Juridical/legal person:** an entity created by law and recognised as a legal entity having distinct identity, legal personality, duties and rights.
- 2.13 **Natural person:** means an individual, where an individual as defined in the Interpretation Act, is a natural person and does not include a corporation.
- 2.14 **Participation:** an involvement of a board member in dealings that may result in a director or members of his/her family or business associates benefitting from his/her relationship with the board, or being in direct financial competition with the bank or financial institution on whose board of directors he is serving.
- 2.15 **Principal Officer:** the chief executive officer, or other person, by whatever title he or she may be referred to, who is subject to the directions of the board of directors, responsible for the day-to-day management of the affairs of a bank or financial institution and participating in a major policy-making function of the bank or financial institution.
- 2.16 **Regulations:** the Banking Regulations, 1995, Statutory Instrument No. 73 of 1995, published on October 20, 1995, and as may be amended.

- 2.17 **Related party or related person:** all of the following without limitation: (1) significant shareholder of a bank or financial institution; (2) principal officer and senior management officials of a bank; (3) any person who is related to a significant shareholder, member of a board of directors or audit committee, principal officer or senior management official through family membership or business interest; (4) subsidiary of the bank; (5) a company or an undertaking in which at least a 5 percent interest is held by a bank; (6) parent company of a bank; (7) a company that is under common control with a bank; (8) a company that holds at least a 5 percent interest of another company in which a bank holds at least a 5 percent interest; and (9); board member of entities described at (5),(6),(7) (8) and (9).
- 2.18 **Risk governance framework:** a framework through which the board of directors and management make decisions about a bank's strategy and risk approach, articulate and monitor adherence to risk appetite and risk limits against the bank's strategy and identify, measure, manage and control risks.
- 2.19 **Senior management official:** any person who is an officer of a bank or financial institution, including a managing director or chief executive officer (and deputies), chief financial or operating officer, chief lending officer, chief internal auditor, company secretary, chief treasury officer, chief information officer, chief risk officer and chief compliance officer (or their equivalent), and all heads of departments.
- 2.20 **Shareholder:** an individual, a group, or an organisation that owns one share or more in a company and the share ownership appears in the CIPA-online business registration system.
- 2.21 **Significant shareholder:** a person (natural or juridical) who holds (directly or indirectly) (1) at least 5 percent or more of either the equity or the voting rights of a bank or financial institution or (2) such other interest in a bank or financial institution that enables the person to exercise significant influence over its strategic management or activity.
- 2.22 **Significant subsidiary:** a company that a bank or financial institution has invested (directly or indirectly) at least 5 percent or more of either the equity or the voting rights of such a bank or financial institution.
- 2.23 **Subsidiary company:** an entity that is owned or controlled by another company, a parent or holding company.
- 2.24 **Systemically important bank:** a bank that has the potential to significantly affect the stability of the domestic financial system and the broader economy should it become non-viable.
3. **BOARD OF DIRECTORS AND SENIOR MANAGEMENT OFFICIALS**
- (a) **Composition of the Board**
- 3.1 Banks or financial institutions should have an adequate number of board members, proportionate to the size, complexity and risk profile of a bank or financial institution, and an appropriate composition of board members, who are capable of exercising judgement independent of the views of management or any external interests.
- 3.2 The board should comprise individuals with diversity, independence, expertise and relevant skills that are commensurate with the size, complexity and risk profile of a bank or financial institution. A person appointed to serve as a director should at a minimum hold a diploma or equivalent in any field and have a proven track record in business and demonstrable managerial and leadership ability



to be able to understand a bank or financial institution's operations and business affairs. In addition, the board may consider attributes such as post-qualification experience, expertise, gender, and skills possessed.

- 3.3 Notwithstanding clause 3.2, where a person without the requisite skills and qualifications served on a board of a bank before the coming into effect of these Guidelines, such person shall continue to serve as a board member until expiration of the tenure of service. Thereafter, any such person shall not be eligible for reappointment unless the person has attained the requisite skills and qualifications.
- 3.4 All banks ought to have a board of directors comprising at least five natural persons at all times, consistent with the Bank's Licensing Policy. Thus, to obtain a banking licence, a prospective supervised bank or financial institution should have a board of directors comprising at least five natural persons, a majority of whom should be independent non-executive directors. However, it is expected that the number of board members should be commensurate with the size, complexity, and the risk profile of a bank. If, on resignation of a board member, the composition of a board of directors falls below the minimum requirement, a bank should replace such a board member within a period of six months.
- 3.5 To promote and enhance diversification, transparency, and independence of the board of directors, the representation of related persons on the board of a bank shall be restricted to one-third of the board membership.
- 3.6 Every member of the board shall attend at least 75 percent of the board meetings of a bank or financial institution annually, as part of criteria for effective performance of a board member. At the annual general meeting, every bank or financial institution is required to review the suitability of non-executive board members who have, without valid reasons, failed to comply with the 75 percent attendance requirement.

**(b) Assessment of Proposed Appointment of Board of Directors**

- 3.7 In accordance with the Banking Act, no person shall serve as a director of a bank or financial institution unless he is a fit and proper person in accordance with such criteria as may be determined by the Bank. Within 30 days from the date that the Bank receives all information required and sufficient for making a decision whether or not to approve a proposed appointment, it shall make a decision on an application for a proposed new director and shall notify the bank or financial institution of the decision in writing.
- 3.8 A bank or financial institution's request for a written consent by the Bank to a proposed new director position shall be made in writing in the form prescribed in the annex.
- 3.9 A person in full-time employment of a holding company or its subsidiaries, other than the concerned bank or financial institution may also serve as a non-executive director, unless such individual, by his/her conduct or executive authority, could be construed to be directing the day-to-day management of the company or its subsidiaries.
- 3.10 A board candidate should not have any conflict of interest, because any conflict of interest might impede the ability of the person to perform duties independently and objectively once appointed.
- 3.11 The Bank may request additional or supplementary information if, in its opinion, the founding application or notice submitted is incomplete or insufficient. Failure to provide the Bank with all

the required information within 30 days will result in the returning of the application or notice without processing it.

- 3.12 The decision of the Bank, whether or not to approve or object to a proposed appointment of a director of a bank or financial institution, shall be based on whether the person has been determined to be fit and proper, in addition to qualification and experience, for such a position.
- 3.13 A non-executive member of the board of directors of a bank or financial institution shall be restricted to a term not exceeding, cumulatively, a period of 10 years. Normally and in general, at any time upon reaching 75 years, a non-executive member should cease to be a board member. The age limit of 75 for board membership, however, does not apply to family-owned banks or as the Bank may determine from time to time. Where a bank or board of directors believe that a non-executive director over 75 years continues to be fit to serve as a board member, an application should be made to the Bank.

**(c) Appointment and Responsibility of Senior Management**

- 3.14 No person shall serve as a senior management official of a bank or financial institution unless the bank or financial institution has informed the Bank of the intended appointment. Within 30 days from the date when the Bank receives all relevant information sufficient to make a decision whether or not to object to the proposed appointment, a bank or financial institution shall be notified of the decision in writing.
- 3.15 Senior management should be selected through an appropriate promotion or recruitment policy of a bank or financial institution, as approved by the board. In addition, senior management should provide sufficient information to the board for those senior management positions that are subject to the board review.
- 3.16 A bank or financial institution's request for a written notice to the Bank of the appointment of a new senior management official shall be made in writing in the form set out in annex 2.
- 3.17 The decision of the Bank, on whether or not to object to a proposed appointment of a senior management official of a bank or financial institution, shall be based on whether the person has been determined to be fit and proper, including possession of relevant qualification and experience, for such a position.
- 3.18 Senior management should provide adequate oversight of the operations of a bank or financial institution, ensuring that staff conduct and performance are consistent with the business strategy, risk appetite and policies approved by the board.
- 3.19 Consistent with the direction given by the board, senior management should implement business strategies, policies, risk management systems, processes and controls for managing the risks – both financial and non-financial – to which a bank is exposed. Senior management is also responsible for ensuring a bank's compliance with laws, regulations and internal policies and promoting a risk-culture supportive of safe and sound conduct of the business of a bank.

**(d) Suitability for Board Membership and Senior Management**

**Fit and Proper Criteria**

- 3.20 Before the Bank's approval, and subsequently annually, all persons nominated or appointed by a bank or financial institution for board membership, or to senior management should be subjected to a fit and proper test to determine their continued suitability for the function. The assessment of fitness and propriety should be conducted in accordance with predefined criteria, and it is a continuing test as follows:

*Probity and competence*

- 3.21 A person's qualification, technical knowledge and experience (as determined by the Bank) should be appropriate to the nature, scale and risk of a bank or financial institution's actual operations and planned activities.
- 3.22 The person should not have been convicted of, or imprisoned for, any offence involving fraud, theft or any other offence involving acts of dishonesty, impropriety and/or breach of a fiduciary duty.
- 3.23 The person should not have been judged to be bankrupt by a court of law or having failed to satisfy his/her creditors in full within the last 10 years. However, where there is indication that the person has been rehabilitated, evidence of the rehabilitation process should be produced before the person can be considered for board membership.
- 3.24 The person's financial condition and history, including past employment, should not be questionable; that is, the person should not have been and is not being removed or suspended, as a principal officer, director, senior manager, or significant shareholder of any bank or financial institution licensed to operate in Botswana or in a foreign country, unless such removal or suspension is solely the result of his/her political affiliation and does not relate to his/her performance, conduct or competence as a director, officer or significant shareholder of a licensed institution.
- 3.25 The person should not have been a significant shareholder, director or senior management official of a problem bank, that is, a bank with formal enforcement action currently in effect or pending, or for which a receiver, conservator, liquidator or similar official has been appointed, and such position was held by the person not more than 5 years immediately preceding the surfacing or emergence of such problems at the bank.
- 3.26 Where the Bank has reason to believe that any person, by virtue of his/her shareholding in a bank or financial institution, is in a position to influence a principal officer, senior manager or the board of directors of that bank or financial institution, and is exercising his/her influence in a manner that is likely to be detrimental to the interests of depositors, the Bank may instruct the bank or financial institution to sever connection with that person.
- 3.27 The person should never have supplied false or misleading information to a bank regarding his/her qualifications, experience, professional and moral reputation that would otherwise render him/her unfit and improper according to these Guidelines, or ability to serve a bank and has never been involved in any acts of impropriety. Examples of impropriety are criminal acts and failure to comply with any obligations to which one is subject.



3.28 The person should not have been barred from practising his/her profession in accordance with a code of conduct or other regulation applicable to his/her profession

3.29 The person should not be under 18 years of age.

*Diligence in fulfilling responsibilities to a bank*

3.30 For senior management officials of a bank or financial institution, the person should be a resident of Botswana or possess a work permit and/or resident permit issued by an appropriate government agency.

3.31 For directors, the proposed candidate should be a resident of Botswana or, if not, two-thirds of directors should be resident in Botswana and the proposed candidate who is not resident in Botswana should reasonably be able to regularly attend meetings of the board of directors and committees thereof. Virtual meeting attendance is allowable subject to a bank's policies and procedures.

3.32 The person should not be serving as a director of another bank, statutory bank, non-bank financial institution, or any other financial institution within the financial sector in Botswana.

3.33 A person who has served on the board of a bank or financial institution shall only be eligible for appointment as director on the board of another bank or financial institution after a cooling-off period of at least 12 months.

3.34 A person who has previously served on the board of a bank or financial institution as a board member or has served as a Governor of the Bank shall only be eligible for appointment as director of a board of any bank or financial institution after a cooling-off period of at least 12 months.

3.35 The person should not be employed directly by another bank, statutory bank, or non-bank financial institution, or any other financial institution that falls within the supervisory purview of the Bank.

3.36 The person under consideration should not have been found to be mentally incompetent to manage his/her affairs in any official proceeding under the laws of Botswana or elsewhere.

3.37 The person (directly or indirectly, alone, or acting in concert with others) should not have accommodation from a bank or other exposures that exceed the limit prescribed by Section 17(5), (7) - (8) of the Banking Act and the Bank's Guidelines on Transactions with Related Persons of a Bank.

3.38 The person should have disclosed all material interests in accommodation, other exposures, and transactions with a bank.

*Absence of evidence of adverse record of previous conduct*

3.39 The person should have no adverse record of business or professional misconduct, for example, involvement in fraud or other acts of dishonesty, impropriety and/or breach of a fiduciary duty.

3.40 The person under consideration should not have been convicted of an offence involving fraud, breach of trust, or any other acts of dishonesty, including money laundering and terrorist financing.

- 3.41 The person should not have been convicted by a court of law of contravening any provisions of the Banking Act or other legislations designed to protect members of the public against financial loss as a result of the following:
- (a) dishonesty, incompetence, or malpractice by persons in the banking business or in the management of companies;
  - (b) engaging in any of the following prohibited activities at a bank, non-bank financial institution, or other previous employment:
    - (i) making false or misleading statements, false or misleading book entries, or false or misleading omissions from any book, account, report or statement;
    - (ii) obstructing any audit or examination of a regulated entity;
    - (iii) failing to take all reasonable steps to ensure compliance with the laws and regulations;
    - (iv) revealing to the concerned person that a suspicious transaction report or related information is being filed with the Financial Intelligence Agency for money laundering or terrorist financing investigation; or
    - (v) knowingly failing to report an offence, improper or unlawful activity to the board of directors or relevant authority.
  - (c) conducting business in an unlawful or unsound manner or in a way that resulted in an unsound financial condition;
  - (d) declared bankrupt and has not been lawfully rehabilitated;
  - (e) being under suspension or removed from office by order of the Bank pursuant to the Banking Act, or by the home-country supervisor; or
  - (f) having a negative employment record or having otherwise conducted himself/herself in a manner that appears to the Bank to be deceitful, or the person is considered to be incompetent or of unsound mind.

*Persons not eligible for board membership, and exemption*

- 3.42 The following categories of persons are not eligible for board appointment:
- (a) Central and local government officials, employees and board members of statutory corporations and other wholly owned state enterprises. This category includes entities where the government of Botswana by virtue of its shareholding is a related entity (20-50 percent) or parent (51 percent or more), except nominees of government;
  - (b) Partners and other senior auditors who, at the time of consideration for board membership, are practising auditors for public accounting firms or had been auditors of the bank for the immediate past 5 years;
  - (c) Board members of an oversight authority responsible for overseeing other financial institutions;
  - (d) President, members of a legislative body, such as members of parliament, house of chiefs, cabinet ministers or equivalent designation of foreign governments and local authorities such as land boards and similar government agencies;

- (e) Bank of Botswana staff, except as nominees of government;
  - (f) Member of the diplomatic corps (Botswana and other embassies); and
  - (g) Chief executive officers of state-owned enterprises and statutory corporations.
- 3.43 In a similar manner, to avoid the potential conflict of interest, chief executive officers and senior management officials of banks may not be board members of state-owned enterprises.
- 3.44 The following categories of persons are exempted from 3.42:
- (a) Employees/lecturers of the University of Botswana, Botswana International University of Science and Technology, Botswana University of Agriculture and Natural Resources, Botswana National Productivity Centre, Botswana Bureau of Standards, Botswana Investment and Trade Centre, Botswana Innovation Hub and any other category that the Bank may from time to time consider necessary to be exempt.
  - (b) Nominees of government in a financial institution wholly owned and/or partially owned by government.

*Submission of annual declaration and removal from office*

- 3.45 A board member and senior management official of a financial institution shall complete and submit to the Bank, by December 31 of each year, a newly completed personal questionnaire.
- 3.46 If it is found that any director or senior management official submitted false or misleading information at the time of his/her appointment, the Bank shall require removal of such a person from office with immediate effect.
- 3.47 The fit and proper requirement is a continuous assessment. At any point of breach, a bank should remove such person from office as director or senior management official.
- 3.48 The Bank also applies the fit and proper test to the board members and senior management officials of bank-holding companies domiciled in Botswana. The appointment thereof shall be subject to prior written approval of the Bank. The board of a bank-holding company and the banking institution shall be separate. The chairperson of a holding company, irrespective of residence, shall not be a chairperson of a banking institution.

#### **4. RESPONSIBILITIES OF A BOARD OF DIRECTORS**

##### **(a) Broad Board Responsibilities**

- 4.1 The board of directors (board) of a bank has overall responsibility for the bank, including improving and overseeing management's implementation of the bank's strategic objectives, governance framework and corporate culture
- 4.2 A board of directors has the ultimate responsibility for a bank or financial institution's business strategy and financial soundness, key personnel decisions, internal organisation and governance structures and practice, as well as risk management and compliance obligations in accordance with the board charter. The board may delegate some of its functions, not its accountability, to board committees, where appropriate.
- 4.3 In line with Section 152 (3) of the Companies Act (Cap. 42:01), all directors shall remain liable in relation to acts and omissions, and decisions made while the person was a director. Consistent with Section 154 of the Companies Act, the acts of a person acting as a director shall be valid even though the person's appointment was defective, or the director is deemed not to be qualified for appointment.
- 4.4 The duty of care requires a board member, at a minimum, to participate effectively in board and committee meetings and to communicate and work effectively with the chairperson of the board and the CEO. A board member owes a fiduciary duty to exercise good business judgement and to use ordinary care and prudence in the operation of the business. Board members ought to discharge their obligations in good faith, with care and in the best interests of a bank.
- 4.5 The duty of loyalty prohibits board members and officers from participating in a competing entity. Board members should disclose any potential conflict of interest relating to transactions to which the banking institution is a potential party. To enable devotion of due time to the oversight of a bank's activities by board members, such persons should not be board members of more than three organisations, including a bank.
- 4.6 A board should ensure that transactions with related parties (including internal group transactions) are reviewed to assess risk and are subject to appropriate restrictions and are conducted at arm's length.
- 4.7 In discharging these responsibilities, a board should take into account the legitimate interests of depositors, shareholders and other relevant stakeholders. It should also ensure that the bank maintains an effective relationship with its supervisors.
- 4.8 A board should ensure that the bank's or financial institution's organisational structure enables the board and senior management to carry out their responsibilities and facilitates effective decision-making and good governance. The board mandate includes laying down the key responsibilities and authorities of the board itself, senior management and of those responsible for the risk management and control functions.
- 4.9 As part of the overall corporate governance framework, the board is responsible for overseeing a strong, effective risk-governance framework. An effective risk-governance framework includes a strong risk culture, a well-developed risk appetite articulated through a risk appetite statement, and well-defined responsibilities for risk management, in particular, and control functions in general.

- 4.10 Developing and conveying a bank's or financial institution's risk appetite is essential to reinforcing a strong risk culture. The risk-governance framework is as outlined in paragraph 3.15 of the Guidelines on Risk Management issued to banks on May 15, 2018. The risk management policies and procedures must be approved by the board in line with the Guidelines on risk management.

**(b) Specific Board Responsibilities**

- 4.11 In addition to the duties and responsibilities of the directors as specified in the Companies Act, the board jointly and severally has the following responsibilities:
- (i) actively engage in the affairs of the bank or financial institution and keep up with material changes in its business and the external environment as well as act in a timely manner to protect the long-term interests of the bank or financial institution;
  - (ii) oversee the development of and approve the bank or financial institution's business objectives and strategy and monitor implementation of the strategy;
  - (iii) play a lead role in establishing the bank or financial institution's corporate culture and values;
  - (iv) oversee implementation of the bank's or financial institution's governance framework and periodically review it to ensure that it remains appropriate in the light of material changes to the bank's or financial institution's size, complexity, geographical footprint, business strategy, markets and regulatory requirements;
  - (v) establish, with senior management and the chief risk officer (CRO), the bank's or financial institution's risk appetite, taking into account the competitive and regulatory landscape, long-term interests, exposure to risk and ability to manage risk effectively;
  - (vi) ensure that the bank or financial institution complies with its own risk-appetite statement, risk policy and risk limits and prudential requirements prescribed by the supervisory authority;
  - (vii) approve the approach and oversee the implementation of key policies pertaining to the bank's or financial institution's capital adequacy assessment process, capital and liquidity plans, compliance policies and obligations, and the internal control system;
  - (viii) require that the bank or financial institution maintain a robust finance function responsible for accounting and financial data;
  - (ix) approve the annual financial statements and require a periodic independent review of critical areas;
  - (x) approve the selection and oversee the performance of the chief executive officer, key members of senior management and heads of the control functions and ensure that there is proper succession planning for all key positions;
  - (xi) play a leading role in establishing a bank's or financial institution's corporate culture and values. In addition, the board should develop a bank's or financial institution's code of conduct or code of ethics, or policy, defining acceptable and unacceptable behaviours



- (xii) oversee a bank's or financial institution's approach to remuneration, including monitoring and reviewing executive emoluments and assessing whether they are aligned with the bank's risk culture and appetite;
  - (xiii) oversee the integrity, independence and effectiveness of a bank's or financial institution's policies and procedures, mitigating or reporting any acts of dishonesty and/or fraud; and
  - (xiv) ensure compliance with the laws of Botswana and/or any jurisdiction of its business operation.
- 4.12 To effectively execute its specific responsibilities, the board should establish appropriate governance structures, inculcate values and entrench corporate culture within a bank or financial institution. In other words, the board should define structures regarding size, leadership and committees for effective oversight.

#### *Role of Chairperson*

- 4.13 A board chairperson plays a pivotal role in the proper functioning of the board; the chairperson provides overall leadership to the board and oversees its functions and should maintain a relationship of trust with board members. To fulfil these responsibilities, the chairperson should possess the requisite experience, competence and personal qualities. The chairperson should ensure that board decisions are well informed, encourage and promote discussion, and that dissenting views can be freely expressed in the process. To promote checks and balances, the board chairperson should be an independent non-executive board member and should not chair any board committee.
- 4.14 All board committees should comprise at least three board members. To enhance objectivity of committees, each should have a majority of members as independent non-executive directors, and committee members should be rotated regularly at the frequency stipulated in each committee charter.

#### *Board Committees and other Risk Governance Structures*

- 4.15 Every board committee of a bank or financial institution shall have a charter that includes the mandate, scope, oversight procedure, reporting lines, tenure limits and rotation cycle of board members. In the interests of transparency, a board shall disclose the committees it has established, their mandates and composition, including independent members of such committees in the annual report. Each committee shall maintain a record of committee deliberations and decisions. The record will reflect the committee's fulfilment of its mandate and will be used by regulators and other interested parties to assess committee effectiveness.

#### *Risk Committee*

- 4.16 A board risk committee is responsible for advising the board on the bank's or financial institution's risk appetite and providing oversight of the risk assessment system (RAS) implementation by management, reporting on the state of risk culture in the bank, and interacting with and guiding the chief risk officer (CRO). A majority of the members of the risk committee should be independent non-executive directors. The board risk committee should be distinct from the board audit committee but may have other related tasks, for example, finance. The committee's function includes oversight of the strategies for capital and liquidity management, assessment of whether or

not common risks such as credit, market, operational and reputational risks are aligned to the stated risk appetite of the bank.

- 4.17 The risk committee should be regularly apprised, by the CRO, of the risk status of the bank or financial institution, detailing the risk profile of the bank or financial institution and its current state of the risk culture, utilisation of capital against the established risk appetite, limits, risk tolerance levels and mitigation plans.
- 4.18 The risk committee should maintain effective communication and coordination with the audit committee to identify emerging risks and any needed adjustments to the risk-governance framework of a bank or financial institution. Furthermore, the risk committee should have oversight of the strategies for capital and liquidity management and all relevant risks of the bank or financial institution, such as strategic, credit, market, operational, compliance and reputational risks, to ensure consistency with the stated risk appetite.

#### *Audit Committee*

- 4.19 Section 23(1) of the Banking Act requires a bank to have a board audit committee, some responsibilities of which are stated under paragraph 4.18. Therefore, each bank or financial institution shall have an audit committee, which shall consist of at least three board members, all of whom will be independent non-executive directors. The committee shall be made up of members with experience in audit practice, financial reporting, and accounting. The chairperson of the audit committee shall not chair any other board committee. The chairperson of the board, the chief executive officer and alternate directors shall be ineligible for appointment to an audit committee. They could, however, be invited to sit in on an audit committee meeting whenever it is deemed necessary, to provide guidance on specific issues. But unlike the alternate directors, who could have a casting vote in the case of a deadlock, the CEO shall be ineligible for participation in the audit-committee decision-making process.
- 4.20 Responsibilities of the audit committee shall include the following:
- (i) reviewing and approving the audit scope and its frequency;
  - (ii) providing oversight of both the external and internal auditors and engaging them on matters that might need to be addressed to promote integrity of financial reporting;
  - (iii) ensuring that a bank or financial institution has resources to be used in a timely preparation of a bank's or financial institution's financial reports and accounts;
  - (iv) approving and recommending the appointment, remuneration, and dismissal of external auditors;
  - (v) assessing any related-party transactions within the bank or any of its affiliates; formulating policy on internal audit and financial reporting, among others;
  - (vi) assisting the board of directors with the evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied within a bank or financial institution; and
  - (vii) facilitating and promoting communication on risk management and other related matters within a bank or financial institution.
- 4.21 To fulfil the independent mandate, the audit committee shall be distinct from the risk committee and all other committees in both form and function.
- 4.22 The internal audit function plays a crucial role in the sustained maintenance and assessment of a bank's or financial institution's internal controls, risk management and governance systems and

processes, areas in which supervisory authorities have a keen interest. A bank or financial institution shall therefore establish an internal audit function for that purpose in line with paragraphs 4.9 and 4.10 of the Guidelines on Risk Management.

- 4.23 The board and senior management should respect and promote the independence of the internal audit function by ensuring that internal audit reports are provided to the board or its audit committee without management's filtering and that the internal auditors have direct access to the board or the board's audit committee.
- 4.24 If the chief internal auditor is removed from his/her position, the decision should be publicly disclosed, and the bank involved should discuss the reasons for the action with the regulator.

#### *Compliance Committee*

- 4.25 A compliance committee ensures that a bank or financial institution has the appropriate means for promoting proper decision-making, due consideration of the risks to the bank's or financial institution's reputation, and compliance with laws, regulations, and internal rules. In that regard, a board compliance committee should be separate from audit and risk committees. This provision will apply to systemically important banks.
- 4.26 The board and senior management should establish an independent compliance function. The compliance function is a key component of a bank's second line of defence. This function is responsible for, among others, ensuring that the bank or financial institution operates with integrity and in compliance with applicable laws, regulations, and internal policies.
- 4.27 The compliance function should advise the board and senior management on the bank's or financial institution's compliance with applicable laws, rules and standards and keep them informed of developments in the area. It should also help educate staff about compliance, act as a contact point within the bank for compliance queries from staff members and provide guidance to staff on the appropriate implementation of applicable laws, rules and standards in the form of policies and procedures and other documents, such as compliance manuals, internal codes of conduct and practice guidelines.
- 4.28 The compliance function should, among others, routinely monitor compliance with laws, corporate governance rules, regulations, codes, and policies to which a bank or financial institution is subject. The board shall approve compliance policies that are communicated to all staff. The compliance function should assess the extent to which policies are observed and report to senior management and, as appropriate, to the board, on the bank or financial institution's management of the compliance risk. The compliance unit should be independent, report directly to the board and be sufficiently resourced to effectively carry out its mandate. Furthermore, the head of compliance should have the right of access to the board of directors or to a board committee.
- 4.29 Other responsibilities of the compliance function are outlined at paragraphs 10.7 through 10.11 of the Guidelines on Risk Management.

#### *Remuneration Committee*

- 4.30 A remuneration committee or, alternatively, a human resource committee is required for all banks. It should support the board in overseeing the design and operation of the remuneration system and in ensuring that remuneration is appropriate and consistent with the bank's culture, long-term

- business and risk appetite, performance and control environment as well as with any legal or regulatory requirements.
- 4.31 The remuneration committee/human resource committee should be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives they create. The remuneration committee should work closely with the bank's risk committee in evaluating the incentives created by the remuneration system. The risk committee should, without prejudice to the activities of the remuneration committee/human resource committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity, and earnings and profitability.
- 4.32 Remuneration systems form a key component of the governance and incentive structure through which the board and senior management promote satisfactory performance, convey acceptable risk-taking behaviour and reinforce the bank's operating and risk culture. The board of a bank must pay sustained attention to the design and operation of remuneration practices for the whole bank, not just for the most senior executives. The board (or, by delegation, its remuneration committee/human resource committee) should also be responsible for the overall oversight of management's implementation of the remuneration system for the entire bank. In addition, the board or its committee should regularly monitor and review assessed impact of the implementation of the remuneration system to assess whether the bank-wide remuneration system is creating the desired incentives for managing risk, capital and liquidity. The board or remuneration committee should review the remuneration plans, processes and results at least annually.
- 4.33 The board, together with its remuneration committee/human resource committee, should approve the remuneration of senior executives, including the chief executive officer, chief risk officer, head of compliance and head of internal audit, and oversee development and operation of remuneration policies, systems and related control processes. The remuneration structure should be in line with the business and risk strategy, objectives, values, and long-term interests of the bank. It should also incorporate measures to prevent conflict of interest.
- 4.34 Banks should have a board remuneration committee as an integral part of their governance structure and organisation, to oversee the design and operation of the remuneration system.
- 4.35 The remuneration for employees in control functions (risk, compliance and internal audit) should not be determined by employees falling under the business lines that they oversee, and performance measures should be based principally on the achievement of those employees' objectives so as not to compromise their independence. That is, a bank should ensure that the remuneration for staff members in control functions are designed in a way that avoids conflict of interest.
- 4.36 Remuneration policies should encourage a sound risk culture in which risk-taking behaviour is appropriate and which encourages employees to act in the interests of the company as a whole (also taking into account client interests) rather than for themselves or only their business lines. In particular, incentives embedded in the remuneration structure should not influence staff to take excessive risk.
- 4.37 The remuneration structure should reflect risk-taking and risk outcomes. Practices by which remuneration of officers is based on potential future revenues whose timing and likelihood remain uncertain should be carefully evaluated by means of both qualitative and quantitative key indicators. The remuneration framework should provide for variable remuneration, taking into account the full range of risks, including breaches of risk appetite limits, internal procedures or legal requirements.



- 4.38 Banks have to set specific provisions for employees with a significant influence on the overall risk profile, the so-called material-risk takers. Remuneration should be sensitive to the resultant risk over time.

*Credit Committee*

- 4.39 A credit committee oversees the credit and lending strategies and the committee's responsibilities are detailed in Chapter Five of the Guidelines on Risk Management. The primary responsibilities, however, are summarised below:

- (i) review and oversee the overall lending policy of a bank;
- (ii) direct the formulation of, review and monitor the credit policies and procedures of a bank;
- (iii) ensure the existence of effective procedures and resources to identify and manage non-performing loans;
- (iv) direct, monitor, review and consider all issues that may materially impact on the present and future quality of a bank's credit risk management; and
- (v) delegate and review lending limits set for the respective senior management officials.

- 4.40 In addition to establishing corporate governance structures, the board should strengthen the three lines of defence and instil corporate culture and values throughout the levels of operation of a bank or financial institution.

*Risk appetite, management, and control*

- 4.41 As part of the overall corporate governance framework, the board is responsible for establishing and overseeing a strong risk governance framework. The risk-governance framework should comply with the minimum requirements of the Guidelines on Risk Management. The framework should include well-defined organisational responsibilities for risk management, typically referred to as the three lines of defence, viz., business unit, independent risk management and compliance units, and the internal audit unit. The business units should be adequately resourced to identify, assess, and report risk exposures, given a bank's risk tolerance level and the available risk-mitigation measures.
- 4.42 The board oversight structure is dependent on the bank's nature, size and complexity, and the risk profile of its activities. Regardless of the structure, responsibilities for each line of defence should be well defined and communicated.
- 4.43 In order to have an effective oversight of the activities of a bank, the board shall ensure that the three structures, namely, risk management, compliance and internal audit functions are adequately resourced to execute their functions effectively, independently and objectively.

*Corporate Culture and Values*

- 4.44 A fundamental component of good governance is a demonstrable corporate culture of reinforcing appropriate norms for responsible and ethical behaviour. These norms are especially crucial to a bank's risk awareness, risk-taking and risk management.
- 4.45 In order to promote a sound corporate culture, the board should take the lead in setting the tone by
- (i) setting and adhering to corporate values for itself, senior management and other employees to create expectations that all business should be conducted in a legal and ethical manner.



- (ii) promoting risk awareness within a strong risk culture, conveying the board's indisposition to excessive risk-taking and indicating that all employees are responsible for helping ensure that the bank operates within the agreed risk appetite and risk limits.
  - (iii) ensuring that appropriate steps are taken to communicate throughout a bank the corporate values, professional standards or codes of conduct it has set, together with supporting policies.
  - (iv) ensuring that employees, including senior management, are aware that appropriate disciplinary or other actions will be taken against unacceptable behaviours and transgressions.
- 4.46 A bank's code of conduct or code of ethics, or comparable policy, should define acceptable and unacceptable behaviours by
- (a) explicitly disallowing behaviour that could lead to any reputational risks or improper or illegal activity, such as financial misreporting, money laundering, fraud, anti-competitive practices, bribery and corruption, or the violation of consumer rights.
  - (b) making clear that employees are expected to conduct themselves ethically, in addition to complying with laws, regulations, and bank policies.
- 4.47 A bank's corporate values should recognise the importance of timely and frank discussion and escalation of problems to higher levels within the bank by
- (a) encouraging employees to confidentially communicate, without the risk of reprisal, legitimate concerns about illegal, unethical, or questionable practices. Communication can be facilitated through a well-communicated policy and adequate procedures and processes, consistent with applicable laws, which allow employees to communicate material and bona fide concerns and findings of any violations in a confidential way (for example, whistle blowing policy). The procedure includes communicating material concerns to the bank's supervisor.
  - (b) allowing direct or indirect communication to the board (for instance, through an independent audit or compliance process or through an ombudsman independent of the internal chain of command).
  - (c) determining a process through which legitimate concerns shall be investigated and addressed by an objective independent internal or external body, senior management and/or the board itself.

## **5. GOVERNANCE OF GROUP STRUCTURES**

- 5.1 When operating within a group structure, the board of the parent company should be aware of the material risks and matters that might affect both the bank as a whole and its subsidiaries. The board should exercise adequate oversight of subsidiaries, while respecting the independent legal and governance responsibilities that might apply to boards of subsidiaries.
- 5.2 Subsidiary boards and senior management remain the focal point of responsibility for developing effective risk management processes for their entities. Methods and procedures applied by subsidiaries should support the effectiveness of risk management at a group level. While parent

companies should conduct strategic, group-wide risk management and prescribe corporate risk policies, subsidiary management and boards should have appropriate input to their local or regional peculiarities and to the assessment of local risks. Parent companies should ensure that adequate tools and authority are available to the subsidiary and that the subsidiary understands the reporting obligations it has to the head office. It is the responsibility of subsidiary boards to assess the compatibility of group policy with local legal and regulatory requirements and, where appropriate, amend those policies.

- 5.3 While the strategic objectives, risk governance framework, corporate values and corporate governance principles of the subsidiary should align with those of the parent company (group policies), the subsidiary board should make necessary adjustments where a group policy is in conflict with an applicable legal or regulatory requirement or prudential rule or would be detrimental to the sound and prudent management of the subsidiary.
- 5.4 In the case of a significant regulated subsidiary (because of its risk profile or systemic importance or size relative to the parent company), the board of the significant subsidiary should take such further steps as are necessary to help the subsidiary meet its own corporate governance responsibilities and the legal and regulatory requirements that apply to it.

## **6. DISCLOSURE AND TRANSPARENCY**

- 6.1 Each bank or financial institution should be adequately transparent to its shareholders, depositors, other relevant stakeholders, and market participants. Transparency is necessary in that it enables stakeholders such as shareholders, depositors, and market participants to effectively monitor and properly hold the board and senior management accountable for their business decisions. Therefore, the objective of transparency is to provide stakeholders with the information necessary to adequately assess the effectiveness of the board and senior management.
- 6.2 Disclosure requirements for unlisted banks, notably those that are wholly owned, may be less detailed than those of listed banks, which have to comply with disclosure requirements prescribed by stock exchanges. However, to the extent that unlisted banks pose the same contagion risk as publicly traded banks through, inter alia, participation in the payments systems and retail deposit taking, all banks, even those for which disclosure requirements may differ because they are unlisted, should disclose relevant and useful information that supports the key areas of corporate governance identified by the Basel Committee on Banking Supervision. Such disclosure should be proportionate to the size, complexity, structure, economic significance, and risk profile of a bank.
- 6.3 At a minimum, a bank shall annually disclose in the annual report, the following information:
- (a) the recruitment approach for the selection of members of the board and their qualifications, knowledge, skills, and expertise; and
  - (b) whether the bank has set up board committees and the number of times key standing committees have met.
- 6.4 In general, a bank should apply the disclosure and transparency section of the Organisation for Economic Cooperation and Development principles. Accordingly, disclosure should include material information regarding a bank's or financial institution's objectives, organisational and governance structures and policies (in particular, the content of any corporate governance or remuneration code or policy and the process by which it is implemented), major share ownership and voting rights, related-party transactions, and the incentive and remuneration policy. In this

regard, an annual report on remuneration should be disclosed to the public and should cover the most important design characteristics of the remuneration system, including the criteria used for performance measurement and risk adjustment and aggregate quantitative information on remuneration.

- 6.5 A bank should also disclose key points concerning its risk exposures and risk management strategies without breaching necessary confidentiality.
- 6.6 Overall, a bank should have an annual corporate governance-specific and comprehensive statement in a clearly identifiable section of the annual report or the bank's websites. In addition, all material developments that arise between regular reports shall be disclosed, without undue delay, to the Bank and relevant stakeholders as required by law.

## **7. EVALUATION AND BOARD PERFORMANCE**

- 7.1 The board of a bank or a financial institution should, through the remuneration committee, review the combination of technical skills, expert knowledge and experience and diversity of board members in order to assess the effectiveness of a board. Such reviews shall be externally facilitated and by means of peer review or self-evaluation of the board, its committees and all directors, including the chairman.
- 7.2 The evaluation should be conducted annually, and every bank or financial institution is required to disclose, in its annual report, that the evaluation has been conducted. The evaluation report on the board effectiveness shall be submitted to the Bank on request.
- 7.3 The board should establish a formal framework, with appropriate tools, for regular assessment of the performance of the board, board committees and individual directors. The framework shall include the description of the performance evaluation undertaken during the reporting period, including the scope, whether formal or informal, and whether or not the evaluation was externally facilitated. Furthermore, the framework should provide for an overview of the evaluation results and the consequent remedial actions taken, if any.

## **8. EFFECTIVE DATE**

- 8.1 The Guidelines shall come into effect six months from the date of issue.

## **9. RESCISSION**

- 9.1 The 2008 Guidelines on the Appointment of New Directors and Senior Management Officials of Banks and the Circular to Banks Regarding Eligibility for Board Membership in Banks are hereby rescinded and shall be replaced by these Guidelines upon their coming into effect.

**Annex 1**

**(a) Application for Appointment of a New Director**

**Form of Notice**

The original and one signed official copy of the request shall be submitted to the Bank.

**Information Required**

1. Name of bank;
2. Name of contact person, address and telephone number in Botswana;
3. Name of proposed director;
4. Certified copy of the national identity card (*Omanang*) for citizens of Botswana; otherwise, a certified copy of the passport pages bearing passport number, dates of issue and expiry and personal details and photograph of a passport holder;
5. Security Vetting Authorisation and Consent Form, completed in full;
6. Police Clearance Report;
7. Business and professional history included in a detailed Curriculum Vitae;
8. Information on whether the person is, or has ever been, a significant shareholder, director, or senior management official of any bank located anywhere in the world;
9. 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;
10. A list of all "related persons" who will be so designated if the person serves as a director of a bank. (For definition, refer to Clause 2.16 of the Guidelines);
11. Personal questionnaire with two passport-size photos; and
12. An official resolution of the board of directors, authorising the appointment notice to the Bank, indicating the decision taken on the appointment of the person to the board of directors. The resolution shall specifically state that the appointment is subject to the written approval of the Bank and the person shall not act in the capacity until receipt of the Bank's approval.

(b) **Notice of Appointment of a Senior Management Official**

**Form of Notice**

The original and one signed official copy of the request shall be submitted to the Bank.

**Information Required**

1. Name of bank;
2. Name of contact person, address and telephone number in Botswana;
3. Proposed position at senior management level and functional responsibilities;
4. Name of proposed senior management official;
5. Certified copy of the national identity card (*Omang*) for citizens of Botswana; otherwise, a certified copy of the passport pages bearing passport number, dates of issue and expiry and personal details and photograph of a passport holder;
6. Security Vetting Consent and Authorisation Form, completed in full;
7. Police Clearance Report;
8. Business and professional history included in a detailed Curriculum Vitae.
9. Information on whether the person is, or has ever been, a significant shareholder, director or senior management official of any bank located anywhere in the world;
10. 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;
11. A list of all "related persons" who will be so designated if the person serves as a senior management official of a bank. (For definition, refer to Clause 2.16 of the Guidelines);
12. Personal questionnaire with two passport-size photos; and
13. An official resolution of the board of directors, authorising the appointment notice to the Bank and indicating that the board has thoroughly evaluated the proposed new senior management official according to each and every criteria of the "fit and proper" test prescribed by the Bank in Section 4 of the Guidelines and has determined that the person is "fit and proper" for the position of senior management official of a bank.

Issued this 14<sup>th</sup> day of November 2022



**DIRECTOR**  
**BANKING SUPERVISION DEPARTMENT**