

**GUIDELINES ON THE APPOINTMENT OF NEW DIRECTORS AND SENIOR  
MANAGEMENT OFFICIALS OF BANKS**

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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 Section 4(2) of the Bank of Botswana Act (CAP. 55:01).

### (b) **Purpose**

- 1.2 The purpose of these Guidelines is to provide guidance for the implementation of the provisions of Sections 29, 30, 31 and 32 of the Banking Act (CAP. 46:04) (hereinafter referred to as the “Act”).

### (c) **Scope**

- 1.3 These Guidelines apply to any bank licensed by the Bank under the Act, to statutory banks and other financial institutions established under separate Acts of Parliament, but falling under the purview of the Bank’s supervision in terms of Section 53(2) of the Act and/or their respective statutes.

## 2. **DEFINITIONS**

- 2.1 **Accommodation** - A loan, advance or other credit facility, financial guarantee or other liability granted or incurred by a bank to or on behalf of any person, physical or juridical.
- 2.2 **Act** - The Banking Act (CAP. 46:04).
- 2.3 **bank** - A company which is licensed by the Bank of Botswana, pursuant to the Act, to conduct banking business in Botswana.
- 2.4 **Board of Directors** - The highest body of authority in a bank responsible for strategically guiding the bank, effectively monitoring management, and properly accounting to shareholders.
- 2.5 **Bank** - The Bank of Botswana established under the Bank of Botswana Act (CAP. 55:01).
- 2.6 **Director** - Any person, by whatever name called, who performs or is empowered to perform, substantially the same functions for the bank as those performed by a director of a company, as defined in the Companies Act (CAP. 42:01).
- 2.7 **Regulations** - The Banking Regulations, 1995, Statutory Instrument No. 73 of 1995, published October 20, 1995.
- 2.8 **Related Person** - Includes all of the following without limitations: (1) Significant shareholder; (2) Member of the board of directors or Audit Committee; (3) Principal

Officer and senior management officials; (4) Any person who is related to such significant shareholder, member of the board of directors or Audit Committee, Principal Officer or senior management official by family member or business interest; (5) Subsidiary of the bank; (6) Company or undertaking in which at least a 5 percent interest is held by the bank; (7) Parent company of the bank; (8) Company that is under common control with the bank; and (9) A company that holds at least a 5 percent interest of another company in which the bank holds at least a 5 percent interest.

- 2.9 **Senior Management Official** - Any person who is an officer of a bank, including the Managing Director or Chief Executive Officer (and Deputies), Chief Financial or Operations Officer, Chief Lending Officer, Chief Internal Auditor, Chief Treasury Officer (or their equivalents), and other Heads of Department (core banking functions).
- 2.10 **Significant Shareholder** - A person who holds (directly or indirectly): (1) 5 percent or more of either the equity or the voting rights of the bank; or (2) Such other interest in the bank that enables the person to exercise significant influence over its strategic management or activity.
- 2.11 **Audit Committee** - A Committee (or equivalent body) established by and among the board of directors of a bank, for the purpose of overseeing the accounting and financial reporting processes and audits of the financial statements of the bank and ensuring the adequacy and effectiveness of the bank's internal control systems.

### 3. **DIRECTORS AND SENIOR MANAGEMENT OFFICIALS**

- 3.1 In accordance with Section 29(4) of the Act, no person shall serve as a director of a bank without the prior written consent of 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 the proposed appointment, the Bank shall render a decision on an application for a proposed new director and shall notify the bank of its decision in writing.
- 3.2 No person shall serve as a senior management official of a bank unless a bank informs the Bank of the intended appointment. Within 30 days from the date the Bank receives all relevant information sufficient to make a decision whether or not to object to the proposed appointment, the bank shall be notified of the decision in writing.
- 3.3 A bank's request for the Bank's prior written consent to a proposed new director, or prior written notice to the Bank of the appointment of a new senior management official shall be made in writing in the form prescribed in Annexes 1 and 2, respectively.
- 3.4 The Bank may request additional or supplemental information if, in its opinion, the basic information submitted with an application or notice is incomplete or insufficient. Failure to provide the Bank with all the required information in a timely manner will result in the Bank returning the application or notice without consideration.

- 3.5 To enhance the effective diversification 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. A person in full-time employment of the holding company or its subsidiaries, other than the bank in question, 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 and/or its subsidiaries.
- 3.6 The decision of the Bank whether or not to approve a proposed director or not to object to the appointment of a senior management official of a bank shall be based upon whether the person has been determined to be “fit and proper” for such a position.
4. **“FIT AND PROPER” TEST**
- 4.1 The following criteria must be met for a person to be considered “fit and proper” to hold the position of director or to be a senior management official of a bank.
- (a) **The person’s probity and competence**
- 4.2 The person’s technical knowledge and experience (as determined by the Bank) are appropriate to the nature, scale and risk of a bank’s actual operations and the planned activities.
- 4.3 The person’s background evidences integrity, uprightness, and honesty.
- 4.4 The person has not declared bankruptcy or been declared bankrupt.
- 4.5 The person’s financial condition and history, including past employment, are satisfactory.
- 4.6 The person has not 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.
- 4.7 There is no evidence that any other person is exercising an influence over the prospective senior management official or director in a manner which is likely to be detrimental to the interests of depositors.
- 4.8 There is no evidence that the person has supplied false or misleading information to the bank regarding his/her qualifications, experience, or ability to serve the bank or any other acts of impropriety.
- 4.9 The person has not been barred from practising his/her profession in accordance with the Code of Conduct or other regulation applied to his/her profession.

**(b) The diligence with which the person is likely to fulfill responsibilities to the bank**

- 4.10 For senior management officials of a bank, the person is a resident of Botswana.
- 4.11 For directors, the person is a resident of Botswana or the majority of directors are residents of Botswana and the proposed director appears reasonably able to regularly attend meetings of the board of directors and committees thereof.
- 4.12 The person does not serve as a director of another bank, statutory bank, or non-bank financial institution.
- 4.13 The person is not employed directly by another bank.
- 4.14 The person has not been found mentally incompetent to manage his/her affairs in any official proceeding under the laws of Botswana or elsewhere.
- 4.15 The person (directly or indirectly, alone, or acting in concert with others) does not have accommodation or other exposures from a bank that exceed the limitations of Section 17(7)-(8) of the Act and the Bank's *Guidelines on Transactions with Related Persons of a bank*.
- 4.16 The person has disclosed all material interests in accommodations, other exposures to, and other transactions with a bank.

**(c) The person's previous conduct and activities in business, particularly whether the person has been involved in any fraud or other acts of dishonesty**

- 4.17 The person has not been suspected of or involved in an offence involving fraud, breach of trust, or any other acts of dishonesty, including money laundering.
- 4.18 The person has not contravened any provision made by the Bank or other authority designed for protecting members of the public against financial loss due to the following:
- (i) Dishonesty, incompetence, or malpractice by persons in the banking business or in the management of companies.
  - (ii) Engagement in any of the following prohibited activities at a bank, non-bank financial institution, or other previous employment:
    - made false or misleading statements, false or misleading book entries, or false or misleading omissions from any book, account, report, or statement;
    - obstructed any audit or examination of a regulated entity;

- failed to take all reasonable steps to ensure compliance with the law and regulations;
  - revealed a money laundering investigation to the person(s) being investigated; or
  - knowingly failed to report an offence, improper or unlawful activity to the board of directors or relevant authority.
- (iii) Conducting business in an unlawful or unsound manner or in a manner that resulted in an unsound financial condition.
- (iv) Being more than two months delinquent without adequate cause, as determined by the Bank in its sole discretion, with respect to any loan, extension of credit, guarantee or other obligation.
- (v) Being under suspension or removal from office by order of the Bank pursuant to the Act or by the home country supervisor.
- (vi) Engagement in business practices, has an employment record, or has otherwise conducted himself or herself, in a manner that appears to the Bank to:
- be deceitful, oppressive, or otherwise improper (whether lawful or not);
  - reflect discredit on the manner in which the person conducts business; or
  - cast doubt on the person’s competence or soundness of judgement.
- (d) **Annual declarations and removal from office**
- 4.19 A serving board member of a supervised financial institution shall complete and submit to the Bank, by December 31 of each year, a new completed personal questionnaire.
- 4.20 If it is found out that any director or senior management official submitted false or misleading information at the time of his/her appointment, such person shall be removed from office with immediate effect.
- 4.21 “Fit and proper” is a continuing test. Any director or senior management official found to be unfit and/or improper at any time shall be terminated.
5. **ANNEXES**

**(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 in English.

**Information Required**

1. Name of bank;
2. Name of contact person, address and telephone number in Botswana;
3. Name of proposed director;
4. Certified copies of *Omang* identity card if a citizen of Botswana; otherwise, passport number, dates of issue and expiry and pages with personal details and photograph;
5. Business and professional history included in a detailed *Curriculum Vitae*;
6. Information as to whether the person is, or has ever been, a significant shareholder, director, or senior management official of any bank located anywhere in the world;
7. 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;
8. A list of all "related persons" who will be so designated if the person serves as a director of a bank;
9. Personal questionnaire; and
10. A certified copy of the decision taken by the general meeting of shareholders of a bank on the appointment of the person to the board of directors which shall specifically state that the appointment is subject to the written approval of the Bank and the person shall not act in said capacity until approval of the Bank has been granted.

**(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 in English.

**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 copies of *Oman* identity card if a citizen of Botswana; otherwise, passport number, dates of issue and expiry, as well as pages with personal details and photograph;
6. Business and professional history included in a detailed Curriculum Vitae;
7. Information as to whether the person is, or has ever been, a significant shareholder, director or senior management official of any bank located anywhere in the world;
8. 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;
9. A list of all "related persons" who will be so designated if the person serves as a senior management official of a bank;
10. Personal questionnaire;
11. A certified copy of the minutes of the meeting of the board of directors showing that the board of directors 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; and



12. Official resolution of the board of directors authorising the appointment notice to the Bank.

Issued this ..... day of ....., 2008

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