



REPUBLIC OF ZAMBIA

GOVERNMENT GAZETTE

Published by Authority

Price: K15.00 net
Annual Subscription: Within Lusaka—K400.00

No. 7534]

Lusaka, Friday, 29th December, 2023

[Vol. LIX, No. 124

GAZETTE NOTICE NO. 1735 OF 2023

The Banking and Financial Services Act, 2017

The National Payment Systems Act, 2007

Guidelines for the Fit and Proper Assessment for the Appointment of Shareholders, Directors and Senior Management

I INTRODUCTION

1. The Bank of Zambia conducts fit and proper assessments for shareholders, directors and senior management of regulated entities under its supervision. The fit and proper assessments are conducted for persons proposed to hold key or significant roles in financial service providers and payment service providers in accordance with provisions of the Banking and Financial Services Act, 2017 and National Payments System Act, 2007.

2. The Bank of Zambia in conducting the assessment will consider the nature of responsibilities of the person proposed, determining the relative emphasis and standard that will be expected of the role they are being proposed to hold. When assessing an application for appointment of a person proposed to a key or significant role, the Bank of Zambia may, in addition to the fit and proper assessment consider other relevant factors, such as whether the person proposed is in good standing in the profession with respect to which the application is being submitted.

3. The Board of directors and senior management of regulated entities provide strategic leadership that affects the financial health, performance, and future course of their institutions. In this regard, any person proposed to hold a key or significant role should possess qualities that will enable them to carry out their duties and responsibilities efficiently, honestly, fairly and at all times act in the best interest of their customers and stakeholders.

4. Significant shareholders of regulated entities shall be subject to fit and proper assessments. Since regulated entities occupy a special place in the national economy, the way they conduct their affairs is central to the economic health of the financial system as well as the economy as a whole. It is, therefore, the expectation of the Bank of Zambia that these entities should in no way be used for illicit or any other unlawful purposes.

5. The Bank of Zambia has regulatory authority for the purposes of giving effect to these Guidelines and may, subject to such conditions as it may consider necessary delegate to any other person the performance of any of the powers conferred upon the Bank of Zambia in these Guidelines.

II DEFINITIONS

6. In these Guidelines, unless the context otherwise requires –

“beneficial owners” means an individual who –

(a) exercises control over financial service provider or payment service provider, legal person or arrangement; or

(b) owns or controls a customer or the person on whose behalf a transaction is conducted and, where two or more persons associated through the beneficial ownership of shares in the same company, each person shall be a beneficial owner of the aggregate number of shares of the company;

“board” means the governing body of a regulated entity;

“chief executive officer” means a person responsible, under the immediate authority of the board, for the conduct of the business of a regulated entity;

“chief financial officer” means a person responsible for maintaining the accounts and related records of a regulated entity;

“chief information technology officer” means a person responsible for the information technology and systems or platforms of a payment service provider;

- “chief risk officer” means an independent senior executive with distinct responsibility for the risk management function and enterprise-wide risk management framework;
- “director” means a natural person who holds office as a member of a board;
- “fit and proper person” means one who is of good character, honest, possesses financial integrity, probity, personal integrity, is of good repute, competent, capable and dependable;
- “financial service provider” means a bank, financial institution or financial business;
- “payment service provider” means a person licensed or authorised by the Bank of Zambia to provide a service or system that facilitates the transfer of funds from one person to another using various forms of payment instruments. This includes a Payment System Operator, Payment Institution, Payment System Participant and Electronic Money Institution;
- “regulated entity” means a financial service provider regulated under the Banking and Financial Services Act, 2017 or a person designated to conduct payment system or payment systems business under the National Payment Systems Act, 2007;
- “senior management” means the executive committee or management team comprising a core group of individuals who are responsible and accountable to the board for effectively overseeing the day-to-day management of the regulated entity;
- “senior officer” means a chief executive officer, chief financial officer, manager or management personnel of a regulated entity;
- “significant shareholding” means a direct or indirect shareholding or beneficial interest of ten (10) percent or more of the share capital of a regulated entity, and the words
- “significant shareholder” shall be construed accordingly; and
- “stakeholder” means a person, either internally or externally, who has an ability to influence the performance of the regulated entity directly or indirectly, such as shareholders, creditors, customers, employees, board members, and regulators.

III APPLICATION AND OBJECTIVES OF THE GUIDELINES

7. These Guidelines shall apply to all regulated entities.
8. The Bank of Zambia shall conduct due diligence assessments of shareholders which are intended to examine the transparency of ownership structures, source(s) of financial resources, financial integrity, probity as well as conformity with laws and ethical standards that govern business conduct.
9. The Guidelines are intended to strengthen the governance framework of regulated entities and harmonise the requirements of the fit and proper assessment. The Guidelines are set out to create a framework that seeks to:
 - (i) reduce the risk of loss to beneficiaries due to the mismanagement or misconduct by financial and payment service providers;
 - (ii) explain the Bank of Zambia’s expectation of the minimum standard for key or significant roles to be held in regulated entities under the supervision of the central bank;
 - (iii) promote the appointment of persons who are fit and proper to assume key or significant roles in regulated entities;
 - (iv) provide the basis for the Bank of Zambia to remove or disqualify persons who are not fit and proper to perform the key or significant roles in regulated entities; and
 - (v) reflect fit and proper requirements that are consistent and compatible to best practice both domestically and internationally.
10. Additionally, these Guidelines will provide the basis for determining the attributes which a person proposed for appointment to a key or significant role should possess. These attributes include honesty, good character, good repute, personal integrity, financial integrity, competence and capability

IV ROLES SUBJECT TO THE FIT AND PROPER ASSESSMENT

11. The roles listed below shall be subject to the Bank of Zambia Fit and Proper Assessment:
 - (i) a significant shareholder¹ and any other shareholder that the Bank of Zambia may deem to possess defacto or de jure control or influence;
 - (ii) a director;
 - (iii) a chief executive officer;
 - (iv) a chief financial officer;
 - (v) a chief information technology officer;
 - (vi) a chief risk officer;

¹ Where a significant share holder or any other shareholder is a corporate entity, similar fit and proper tests should be applied to the

- (vii) head of compliance;
- (viii) head of internal audit;
- (ix) a company secretary;
- (x) other senior officer(s) by whatever name described who has responsibilities or similar functions to those referred to above; and
- (xi) any other role that the Bank of Zambia shall determine to be subject to the fit and proper assessment.

V FIT AND PROPER TEST

12. The assessment criteria for determining the fitness and probity of a person proposed for appointment to a key or significant role will include the following:
- (i) Probity, personal integrity and reputation;
 - (ii) Competence and capability; and
 - (iii) Financial integrity.

VI PROBITY, PERSONAL INTEGRITY AND REPUTATION

13. In determining the probity, personal integrity and reputation of a person proposed to a key or significant role in a regulated entity, the Bank of Zambia shall give due regard to whether the person proposed has been subject to disciplinary action, disqualification or removal by a professional or regulatory body or Court and may include the following factors:

- (a) Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which may lead to such proceedings;
- (b) Whether the person has been convicted of a criminal offence relating to dishonesty, fraud or financial crimes;
- (c) Whether the person has been subject of any adverse findings in civil proceedings in relation to banking or other financial business due to misconduct or fraud;
- (d) Whether the person is responsible for a failed entity at the time it failed;
- (e) Whether the person has been refused a licence for a commercial or professional activity;
- (f) Whether the person has breached a fiduciary obligation;
- (g) Whether the person has been involved in business practices in a negligent, deceitful, or otherwise, improper manner;
- (h) Whether the person has not been tax compliant;
- (i) Whether the person has been dismissed, disqualified or has resigned from a position of trust or similar position because of questions about honesty and integrity; or
- (j) Whether the person has been cleared by local and international law enforcement agencies.

VII COMPETENCY AND CAPABILITY

14. A person proposed to hold a key or significant role should possess the necessary skills, expertise and experience to perform the role to which they are being proposed to hold commensurate with the intended activities of the regulated entity. The person proposed should demonstrate such competency and capability by possessing relevant qualification, expertise, experience and or the ability to understand the requirements of the role they are being proposed for.

15. In assessing this criteria, the following factors should be considered for the person proposed:

- (a) Academic and professional qualifications and where appropriate membership to professional bodies;
- (b) Demonstration of satisfactory past performance;
- (c) Appropriate knowledge, skills, experience, competence, judgment; and
- (d) Demonstrated commitment and ability to comply with regulatory or professional requirements.

VIII FINANCIAL INTEGRITY

16. A person proposed to hold a key or significant role should demonstrate to the satisfaction of the Bank of Zambia their ability to:

- (a) Prudently manage their personal financial affairs;
- (b) Balance risks and rewards; and
- (c) Protect the interests of depositors and other stakeholders.

17. Financial integrity goes beyond corporate institutions and extends to their beneficial owners, shareholders, director and senior management. The rationale for financial integrity is that the person proposed to hold a key or significant role should demonstrate that they can effectively manage their personal affairs before they can be entrusted to manage the affairs of others. It is incumbent on the person proposed to hold the role to demonstrate this ability through past events and conduct.

18. In assessing the financial integrity of a person proposed to hold a key or significant role in a regulated entity, factors to be considered include:

- (a) Whether the person has previously had delinquent facilities with financial service providers in their personal capacity or in a legal entity in which they have an interest in Zambia or elsewhere;
- (b) Whether the person has a record of previous criminal conduct or a conviction under any law which protects members of the public from financial loss, such as dishonest conduct or any other financial crime including offences of money laundering and financing of terrorism in Zambia or elsewhere;
- (c) Whether the person or the legal entity in which they have an interest is subject to judgment debt which is outstanding either in whole or in part, in Zambia or elsewhere; and
- (d) Whether the person is or has been the subject of bankruptcy or insolvency proceedings whether in Zambia or elsewhere.

IX RESPONSIBILITY OF A PERSON PROPOSED TO THE FIT AND PROPER ASSESSMENT

19. A person who is the subject of a fit and proper assessment shall submit to the regulated entity all information and requirements as required by the Bank of Zambia to complete the assessment.

20. A person proposed for appointment to a key or significant role in a regulated entity shall cause the regulated entity to notify the Bank of Zambia of any adverse events or circumstances that could potentially alter the initial fit and proper assessment of that person, where it is likely to change the initial assessment or at least have material bearing on the assessment being conducted.

21. A person proposed for appointment to a key or significant role in a regulated entity, where the Bank of Zambia elects, may be subject to an interview as part of the fit and proper assessment.

22. Where a person proposed for appointment to a key or significant role in a regulated entity does not satisfy the Fit and Proper Assessment, the Bank of Zambia may reject the application, revoke any authorisation or exemption granted, or take any other appropriate regulatory action, as may be applicable and necessary.

X RESPONSIBILITY OF THE BOARD OF DIRECTORS

23. The board of directors of a regulated entity shall ensure that the entity has in place appropriate policies and procedures to ensure that persons appointed or reappointed to key or significant roles meet the Bank of Zambia Fit and Proper Assessment at all times.

24. To effectively discharge their responsibilities, the board of directors of a regulated entity shall have in place appropriate policies and procedures to conduct fit and proper assessments for persons proposed to key or significant roles in their institutions.

25. These policies and procedures at a minimum must incorporate the following:

- (a) Fit and proper assessments that will give due regard to the fit and proper criteria as set out in these Guidelines;
- (b) Factors considered in the assessment for a person to be considered fit and proper to hold a key or significant role;
- (c) Detailed actions or reasons for any decisions made, including internal governance process requirements, taken where a person holding a key or significant role is assessed to be no longer fit and proper; and
- (d) A record of persons proposed to key or significant roles including the process used to assess the fitness and probity of the person proposed.

26. In addition, a regulated entity shall:

- (a) Conduct a fit and proper assessment of the person proposed to hold a key or significant role prior to submitting the application for the appointment of the proposed person to the Bank of Zambia;
- (b) Take reasonable steps to ensure that each person proposed for appointment or already appointed to a key or significant role, other officers and employees of the regulated entity understand the relevant policies of their institution relating to the assessment and the obligation to continue to meet the fit and proper requirements on an on-going basis; and
- (c) Conduct fit and proper assessments at regular intervals as may be determined by their institutions.

27. For roles not specified in these Guidelines and for decisions relating to the appointment of persons to these roles, corresponding fit and proper assessments may be delegated by the board of the regulated entity to the chief executive officer or any other designated committee of the regulated entity. In addition, such assessments shall be carried out in line with these Guidelines.

28. Any documentation and information used during the fit and proper assessment of a person proposed to a key or significant role shall be retained by the regulated entity for a period of not less than ten (10) years.

29. Where a person appointed to a key or significant role ceases to be fit and proper for the role, the board shall take reasonable steps to remove the person from that role as soon as is practical and where appropriate institute interim measures to mitigate any risks associated where such a person continues to hold the role.

30. A regulated entity should have in place appropriate policy and procedure that will allow disclosure of information by any employee to raise concerns about improper conduct within the institution to the board and or the nominations and remunerations committee (or any other designated committee) or to the Bank of Zambia. This process should include procedure for the reporting of concerns relating to the fitness and probity of directors, chief executive officer (or equivalent) without the risk of reprisal and detrimental actions to the reporting employee. This policy should also outline the mechanisms for the protection of employees who make such a disclosure.

XI SUBMISSION OF FORMS AND DOCUMENTATION FOR THE FIT AND PROPER ASSESSMENT

31. A regulated entity shall submit to the Bank of Zambia an application for appointment of a person proposed to a key or significant role. The application shall be made in writing accompanied by forms duly completed by the proposed person and supporting documentation as required by the Bank of Zambia.

32. A regulated entity shall submit duly completed physical or electronic copies of the forms² to the Bank of Zambia as follows:

- (i) Director's Questionnaire; and
- (ii) Vital Statistics Form.

33. In addition, a person proposed to a key or significant role shall submit to the regulated entity as part of the application, the following supporting documentation:

- (i) Detailed curriculum vitae or resume (which will include the full contact details and phone numbers of three (3) referees);
- (ii) Certified copies of academic and or professional qualifications;
- (iii) Certified copy of a national identity card or the biometric page of passport (Zambian nationals);
- (iv) Certified copy of the biometric page passport (Foreign nationals);
- (v) Zambia Revenue Authority (ZRA) tax clearance certificate (less than 12 months old) or other tax certificate from the relevant authority of the applicant's present jurisdiction;
- (vi) Foreign and Zambian nationals not resident in Zambia shall be required to submit a police clearance certificate or report from their country of residence whose validity shall not be more than six (6) months; and
- (vii) Payment of the appropriate security fees (as determined by the Zambia Police Services) shall be made through electronic funds transfer (EFT). An advice copy of proof of payment of the fees shall be submitted to the Bank of Zambia when submitting the application.

XII STEPS TAKEN BY THE BANK OF ZAMBIA FOR THE DECLARATION OF A "FIT AND PROPER PERSON"

34. Due process shall be observed prior to a person proposed being declared Fit and Proper to hold a key or significant role in a regulated entity. The Bank of Zambia will ensure that there is compliance with the steps listed below:

- Step 1 Assess the submitted documentation for completeness;
- Step 2 Assess the application submitted by the regulated entity for the appointment of the person proposed to a key or significant role;
- Step 3 Where the Bank of Zambia deems it appropriate, interview the person proposed to a key or significant role;
- Step 4 Communicate the decision of Bank of Zambia to the regulated entity; and
- Step 5 Where a person proposed to the role does not satisfy the Bank of Zambia's Fit and Proper Assessment, the Bank of Zambia shall reject the application. In turn the regulated entity may make written representations to the Bank of Zambia and inquire into the decision of the Bank of Zambia to reject the application.

XIII EFFECTIVE DATE

35. These Guidelines shall take effect on the day that they are published in the Gazette.

LUSAKA

28th December, 2023

DR F. CHIPIMO,
Deputy Governor-Operations

² The forms may be downloaded from the Bank of Zambia website: www.boz.zm.