



BANK OF GHANA

***EXPLANATORY NOTES TO THE FIT AND PROPER
PERSONS DIRECTIVE – JULY 2019***

*For Banks, Savings and Loans Companies, Finance Houses and Financial Holding
Companies*

JULY 2019

Introduction

The purpose of the Fit and Proper Persons Directive is to set out a framework which shall be used by a Regulated Financial Institution (RFI) and the Bank of Ghana (BOG) in determining whether a person is fit and proper to be associated with an RFI as a Shareholder, Director or hold a Key Management position within the institution.

Pursuant to the provisions of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) and the Bank of Ghana Act 2002 (Act 612), as amended by Act 738, the Bank of Ghana (BOG) shall have overall supervisory and regulatory authority in all matters relating to deposit-taking business. The aforementioned Act mandates the BOG to regulate, supervise and direct the banking and credit system and ensure the smooth operation of the financial sector including the promotion and maintenance of financial stability. To this end, the BOG is responsible for the licensing, supervision and regulation of the banking and credit system in Ghana.

To achieve the regulatory and supervisory objectives of BOG, RFIs are expected to adhere to BOG's licensing and prudential requirements as well as ongoing supervision programs, including periodic on-site examinations and required prudential reporting. BOG recognises the influential role that Shareholders, Directors and Key Management Personnel of RFIs play in shaping the activities and operations of their institutions toward achieving their set objectives. It is therefore the responsibility of BOG to ensure that persons acquiring significant equity interest in RFIs, or appointed as Directors or Key Management Personnel do not pose risks to depositors and creditors of their institutions, thus maintaining confidence in the banking sector.

It is for this purpose that BOG issued an exposure draft of the "Fit and Proper Directive" in July 2018 to elicit comments, contributions and feedback from the general public. Subsequently, the BOG received useful feedback, comments, and constructive contributions, from the industry and the general public which have been incorporated in the final version of the directive title Fit and Proper Persons Directive - 2019.

Notes explaining revisions reflected in the 2019 “Fit and Proper Persons Directive” (FPPD)

Cover Page

The title page of the Directive has been changed from “Fit and Proper Directive – 2018” to “Fit and Proper Persons Directive – 2019”

Section 1: Title

The Directive, originally cited as the “Fit and Proper Directive,” is now cited as “Fit and Proper Persons’ Directive - 2019” for purposes of clarity,

Section 2: Application and scope

The scope and application of the directive has been limited to Banks and Specialised Deposit-Taking Institutions (SDIs) pursuant to Section 92(1) of Act 930. The Directive shall therefore apply to Banks, Savings and Loans Companies, Finance Houses and Financial Holding Companies, and their significant Shareholders, Directors and Key Management Personnel, as in the case of the Corporate Governance Directive issued in December 2018. BOG shall issue a more-proportionate and tailored directive which shall be commensurate with the size, business model and complexity of activities of lower tier Regulated Financial Institutions namely, the Rural and Community Banks, Micro-Finance Institutions as well as other non-deposit-taking BOG licensed institutions.

Section 3: Objectives

The scope of objectives of the Directive has been amended to reflect the operationalisation of the relevant provisions of Act 930 relating to the fitness and propriety of Shareholders Directors and Key Management Personnel. The Directive further seeks to prohibit persons who are not ‘fit and proper’ from engaging in or undertaking licenced or registered activities under Act 930 and also to engender sound corporate governance practices in Regulated Financial Institutions.

Section 4: Interpretation

The definition of ‘Board of Directors’ has been included in the section for clarity. In addition, the definitions of “Duty of Care” and “Duty of Loyalty” have been expunged from the Directive. The definition of “Key Management Personnel” has been amended to align with the definition as provided for under section 156 of Act 930. The definition of “Person” has been included in the Directive for clarity and consistency with Act 930

“Regulated Financial Institution” has been re-defined to make it consistent with the scope and application of the directive. In this regard, it refers to a Bank, Savings and Loans Company, Finance House or Financial Holding Company regulated under Act 930.

The term “Qualifying Person” is introduced for simplicity and refers to *insiders* as defined by Act 930, namely shareholders, directors (executive & non-executive) and key management personnel.

Section 11: Principles Underlying the Directive

The primary responsibility of Regulated Financial Institutions in respect of the Directive is for the Boards of Directors to ensure the fitness and propriety of their members and that of Key Management Personnel. This is now captured under Role of Directors in Part V of the Directive.

The ‘gatekeeper role’ of the Bank of Ghana is expunged from the Directive since it only conveys a statement of fact.

Thus, the original five (5) underlying principles of the Directive have been reduced to three (3) namely: *due process and fairness, proportionality and case by case assessment, and interaction with on-going supervision*

The entire “*Due Process and Fairness*” sub-section is reduced to a simple single statement as follows: ‘The Bank of Ghana shall consider all information relevant and material to the fit and proper assessment of a person in arriving at its decision.’ The sub-section (e) is also clarified,

Part III - Section 19: Role of Board of Directors, Senior Management and External Auditors

The above caption is amended as follows: “*Role of Significant Shareholders, Board of Directors and Key Management Personnel and External Auditors*”. This is to ensure consistency with application of the Directive as set out in section 3 and to further ensure that providers of capital resources are of good repute.

Senior Management is replaced with “Key Management” in line with Act 930 and the role of Significant Shareholders has been included in the application of the Directive to ensure consistency with the provisions of Act 930.

Per the Directive, Significant Shareholders shall among others, ensure that the Directors nominated meet the fit and proper assessment criteria as prescribed by the Directive.

Part IV - Section 22-25: Conditions for Assessment and Appointment

The entire section is moved from Part IV to Part III of the Directive for the orderly presentation and flow of the contents of the Directive.

Part V - Section 26-32: Minimum Assessment Criteria

The entire section is moved from Part V to Part III for the orderly presentation and flow of the contents of the Directive. The re-organization seeks to draw the attention of readers to the main thrust of the Directive in a much earlier section than that of the Exposure Draft.

A separate set of Assessment Criteria for Significant Shareholders have been introduced in the Directive following the inclusion of Significant Shareholders in the scope of application. Shareholders shall be assessed on; financial integrity, reputation and the demonstration sufficient appreciation of deposit-taking business and the rules pertaining thereto. The Assessment Criteria for Directors and Key Management Personnel remain largely unchanged.

“*Independence of mind*”, as an assessment criterion has however been removed as it is deemed to be subsumed under the “*conflict of interest*” assessment criterion. “*Interviews*” under the assessment criteria has also been expunged from the section as it is only used by the Bank of Ghana to elicit further information from Qualifying Persons under Part IV of the Directive.

“*Experience and theoretical knowledge*” as an assessment criterion is sub-divided into;

- (i) *practical experience* and
- (ii) *academic/professional qualification*

The assessment thresholds under section 27 (c) of the Exposure Draft is to ensure that Qualifying Persons possess adequate experience to provide supervisory comfort to the Regulator.

The “*reputation*” assessment criteria under section 28 (e) (iii) of the exposure draft has also been amended to reflect the fact that pending legal proceedings would only have an impact on “*reputation*” if the findings go against the Qualifying Person.

Interviews – Section 32

The entire section has been subsumed under section 16 of Part IV of the Directive since interviews by the BOG are only meant to elicit further information from qualifying Persons rather than being used separate assessment criteria under the Directive.

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