



Republic of Nauru

ANTI-MONEY LAUNDERING AND TARGETED FINANCIAL SANCTIONS (FIT AND PROPER PERSON) CRITERIA 2023

1. Legislative Requirement for fit and proper person criteria

This Fit and Proper Person Criteria is issued pursuant to the requirements of *Section 88(3) of the Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.

2. Meaning of terms used in the criteria

In this Criteria:

- (a) *Act* means the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*;
- (b) *beneficial owner* has the meaning given by *Section 5 of the Beneficial Ownership Act 2017*;
- (c) *criminal conduct* has the meaning given under *Section 4 of the Act*;
- (d) *financial crime compliance Officer* means a person appointed in accordance with *Section 20 of the AML-TFS Act 2023* who is responsible for the compliance of the AML/CFT requirements of the reporting entity in accordance with the law;
- (e) *Director* means a person who is appointed to serve as a director of a reporting entity including board member;
- (f) *nominated officer* has the meaning given by *Section 7 of the Beneficial Ownership Act 2017*;
- (g) *person* means a natural person or a legal person;
- (h) *Responsible Persons* means:
 - (i) Directors;

- (ii) Senior Executive;
 - (iii) External Auditor;
 - (iv) Compliance Officer; or
 - (v) any other person determined by a Supervisory Authority that it deems to have a significant role in the management or control of the reporting entity.
- (i) ***serious offence*** has the meaning given under *Section 3* of the *Proceeds of Crime Act 2004*;
 - (j) ***senior management*** has the meaning given under *Section 4* of the Act; and
 - (k) ***supervisory authority*** has the meaning given under *Section 4* of the Act.

3. Purpose

- (1) This Criteria provides a guide for reporting entities to refer to in order for reporting entities to meet their obligations under *Section 88* of the Act.
- (2) The determination for the appointment of a Responsible Person must be in accordance with this Criteria.

4. Who does the criteria apply to?

- (1) This Criteria applies to:
 - (a) all reporting entities in the Republic and including those that apply to a foreign group compliance programme; and
 - (b) foreign incorporated reporting entities operating in Nauru as branches or subsidiaries.
- (2) The determination for the appointment of a Responsible Person must be in accordance with this Criteria.

5. What is the fit and proper person criteria?

- (1) A person considered to be appointed as a Responsible Person must have the necessary competencies, skills, knowledge, technical expertise, diligence, experience and soundness of judgment to perform that role.
- (2) A person considered to be appointed as a Responsible Person must also have the requisite character, diligence, honesty, integrity and judgment.

- (3) With regard to a body corporate applying to be a Responsible Person, the fit and proper person criteria set out above must be met by the senior management of that body.
- (4) A person must not be appointed as a Fit and Proper Person:
 - (a) any individual who had previously held the position of a Director on the Board of Directors, a Senior Executive, an External Auditor or an Actuary of a Licensed reporting entity in the Republic or elsewhere at the time the license of the reporting entity was revoked;
 - (b) any individual who had been convicted of a criminal conduct, serious offence or terrorist offence. This includes a person who was convicted of criminal conduct, serious offence or terrorist offence and did not serve the full term of the sentence, was pardoned for the crime or from serving any term of sentence;
 - (c) any individual under a sanction by the United Nations or country-specific Sanctions List;
 - (d) any individual who has been declared a prohibited immigrant, bankrupt or deported from the Republic;
 - (e) the person has failed to settle all undisputed obligations for taxes due for payment to the taxation authorities in the Republic or another jurisdiction;
 - (f) the person is or becomes an appointed or elected member of the Nauru Parliament; and
 - (g) if the source of wealth of a significant shareholders capital contribution raises questions about past or current activities or whether the shareholder is acting as a nominee, trustee or agent for some other undisclosed party.

6. How to assess in accordance with the fit and proper person criteria

6.1 Process

- (1) The fit and proper assessment processes to be implemented by a reporting entity must include:
 - (a) who will conduct fit and proper assessments on behalf of the reporting entity;
 - (b) what information will be obtained and how it will be obtained;

- (c) the matters that will be considered before determining if a person is fit and proper for a Responsible Person position; and
 - (d) the decision-making processes that will be followed after the fit and proper person assessment has been conducted and completed.
- (2) Where a determination has been made that a Responsible Person is fit and proper through the assessment process but the reporting entity later becomes aware of information that may result in the person being determined as not fit and proper, the reporting entity must again undertake the fit and proper person assessment.

6.2 Conducting the assessment

- (3) When conducting a 'fit and proper' person assessment for a Responsible Person, a reporting entity must make all reasonable enquiries to obtain information that it believes to be relevant to determine whether the person is fit and proper to be appointed a Responsible Person.
- (4) In assessing whether a person is 'fit and proper' consideration must be given to whether the person:
- (a) possesses necessary competencies, skills, knowledge, technical expertise, diligence, experience and soundness of judgment to undertake and fulfil the duties and responsibilities specified in the position description for the particular role;
 - (b) has demonstrated the appropriate competence and integrity in fulfilling occupational managerial or professional responsibilities previously or in the conduct of their current duties;
 - (c) can be concluded by the reporting entity to possess the competence, character, diligence, honesty, integrity and judgment to perform properly the duties of the Responsible Person position; and
 - (d) is not disqualified under the Act and this criteria from holding the position.
- (5) In assessing whether the person possesses the requisite character to properly perform the duties of the Responsible Person position, consideration must be given to whether the person:
- (a) has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements, professional standards or obstructive, misleading or untruthful in dealing with regulatory bodies or any court;
 - (b) has breached a fiduciary obligation;

- (c) has perpetrated or participated in negligence, deceitful or otherwise discreditable business or professional practices;
- (d) has been disciplined, disqualified or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- (e) has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failures caused loss to others;
- (f) has been substantially involved in the management of a business or company which has failed and that failure has been occasioned in part by deficiencies in that management;
- (g) is not of good reputation or standing in any business or financial community or any market; or
- (h) was or is the subject of civil, criminal proceedings or enforcement of an action limited to:
 - (i) the management of an entity; or
 - (ii) commercial or professional activities.

7. When person is fit and proper

Where a reporting entity has determined that a person is fit and proper, it may appoint the person:

- (a) as a Responsible Person of the reporting entity; or
- (b) to continue in the Responsible Person position, if he or she holds the office at the time of the determination.

8. When person is not fit and proper

Where a reporting entity has determined that a person is not fit and proper, it must:

- (a) not appoint that person to a Responsible Person position; or
- (b) not recommend the extension of any appointment of a Responsible Person who holds the office at the time of the determination.

9. Information to the Supervisory Authority

- (1) A reporting entity must comply with the requirement of any reporting requirements under any relevant written law (e.g. *Banking Act 1975*) that applies to that entity, which includes (if required) to provide to the supervisory authority the following information for each Responsible Person:
 - (a) the person's full name;
 - (b) the person's date of birth;
 - (c) the person's Responsible Person position and main responsibilities; and
 - (d) a statement confirming that the person has been assessed under the Fit and Proper Policy.
- (2) A reporting entity must ensure that the information provided under this Criteria remains accurate for all Responsible Persons.
- (3) The reporting entity must inform the Supervisory Authority in writing of any events or circumstances occurring after the Supervisory Authority's initial assessment of an appointed Responsible Person which may have a material influence on the initial assessment.

10. How can a Supervisory Authority respond to information received from a reporting entity?

- (1) The Supervisory Authority may determine that a person is not fit and proper, and require the reporting entity to remove the person from a Responsible Person position, or not appoint the person to Responsible Person position.
- (2) The Supervisory Authority may where it deems necessary consider the internal controls, systems and organisational structure of the reporting entity to determine whether the appointment of a Responsible Person is appropriate in those circumstances, including:
 - (a) the nature and scope of the reporting entity's business;
 - (b) the reporting entity's financial soundness and strength; and
 - (c) the reporting entity's risk profile.

11. Fit and Proper Policy

- (1) All reporting entities are required to maintain a Fit and Proper Policy.
- (2) The Fit and Proper Policy must reflect the requirements of this Criteria.

- (3) The Fit and Proper Policy must where applicable be approved by the senior management.
- (4) It is the responsibility of the senior management to ensure that Responsible Persons are aware of the Fit and Proper Policy of the reporting entity.
- (5) The Fit and Proper Policy must provide that a copy of the policy is given to:
 - (a) any Responsible Person as soon as possible after the person is nominated; and
 - (b) any other person applying to become a Responsible Person, before an assessment of their fitness and propriety is conducted.
- (6) The Fit and Proper Policy must require that a fit and proper assessment is completed before a person is appointed a Responsible Person.
- (7) The Fit and Proper Policy must require periodic reassessment of the Fit and Proper Persons for each Responsible Person position. This is to ensure that the fitness and propriety of Responsible Persons remains up to date.
- (8) The Fit and Proper Policy may require that records for each fit and proper assessment is retained to demonstrate the Fit and Proper checks of the reporting entity's current and previous Responsible Person.

12. Limitation

- (1) This Fit and Proper Person Criteria is limited to the requirements of the *Anti-Money Laundering and Targeted Financial Sanctions Act 2023*.
- (2) The requirements for the operations of the Bank under the *Banking Act 1975* vests with the Secretary for Finance, over which the Financial Intelligence Unit has no jurisdiction, authority or power.
- (3) The reporting requirements for the operations of any other reporting entity under any other relevant written law is the responsibility of any person or authority which has the jurisdiction, authority or power.
- (4) Where a responsible person is appointed under any other written law by a reporting entity, if that person meets the requirements of this Criteria, that person may also perform the responsibilities of a responsible person for the purposes of this Criteria.

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