



BANK OF MAURITIUS

Guidelines on Section 46(2) of the Banking Act 2004 – Appointment or Reappointment of Senior Officers

December 2010



Guidelines on Section 46(2) of the Banking Act 2004 - Appointment or Reappointment of Senior Officers

Introduction

The appointment of senior officers in financial institutions is governed by section 46(2) of the Banking Act 2004 as well as the *Guideline on Fit and Proper Person Criteria*. These statutory requirements aim at strengthening the banking sector by ensuring that only persons who have adequate skills and experience, and who have demonstrated that they are fit and proper, are in management roles.

Purpose

The Bank of Mauritius (hereinafter referred to as “the Bank”) has deemed it necessary to provide guidance in relation to the appointment or reappointment of senior officers in the wake of deficiencies in practices of financial institutions identified in the course of regular on-site examinations as well as through routine supervision. The guidelines set also clarify the expectations of the Bank in relation to the appointment of senior officers.

Authority

The guidelines are issued under the authority of section 100 of the Banking Act 2004, and section 50 of the Bank of Mauritius Act 2004.

Scope of application

The guidelines apply to all financial institutions licensed under the Banking Act 2004.

Effective date

These guidelines take effect as from 15 December 2010.

Definition of Senior Officer as per the Banking Act 2004

1. “Senior officer” is defined in section 2 of the Banking Act 2004 as -
 - (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor or manager of a significant business unit of the financial institution; or
 - (b) a person with similar position and responsibilities as a person in paragraph (a).

The definition also includes other officers designated as “senior officers” in guidelines issued by the Bank, e.g. the Money Laundering Reporting Officer and the Compliance Officer.

Profile of a Manager

2. It must be mentioned, that the guidelines given below cover the determination of the manager of a significant business unit in the context of a bank. However, the same rationale/spirit will apply to financial institutions other than banks.
3. A manager as defined at 1(a) above, refers to any individual appointed by a bank to be principally responsible, either alone or with others, for the conduct of any one or more of its affairs or business which may involve but is not limited to:
 - (a) the carrying on of retail banking, corporate banking, international banking, institutional banking, private banking or any other business considered significant to the bank;
 - (b) the maintenance of the accounting systems of the bank;
 - (c) the maintenance of the systems of control of the bank, including its risk management systems;
 - (d) the development, operation and maintenance of IT systems of the bank; and
 - (e) the function of ensuring that the bank complies with laws, regulations or guidelines applicable to it, i.e. the compliance function.

Significant Business Unit

4. A significant business unit mentioned at 1(a) above means a key business function or activity in a financial institution, as developed at 3. However, while the functions so mentioned have been used to illustrate some specific types of business activity, banks may use other terms such as commercial banking, wholesale banking or

investment banking which better reflect their business reality. What matters is the nature of the underlying activity or the function rather than the name by which it is called. Banks shall therefore ensure that all relevant business functions, however described or named, are identified for the purposes of determining the managers who fall within the definition.

While there is no standard measure of significance as it varies among banks, the following indicators could be used by banks when comparing the relative importance of each type of business:

- (a) the proportion of the bank's total operating income (net of interest expense) or net profit before taxation contributed by the business;
- (b) the value of assets attributable to the business in relation to the bank's total assets or capital base; or
- (c) the operating costs (including staff expenditure) attributable to the business in relation to the bank total operating costs.

Attributes of the Manager of a Significant Business Unit

- 5. The following paragraphs provide some general guidance as to how the definition of a manager fits in the different functions or activities of a bank. While it is practically impossible to cover all relevant situations, the Bank recommends that banks consult their legal advisors or the Bank in case of doubt on how the definition shall apply in particular cases.
- 6. In determining whether an individual can be considered as the manager of a significant business unit, therefore a senior officer, a bank may consider whether that individual
 - (a) is principally responsible, either alone or with others, on a day-to-day basis for the management of a particular department, division or other business or functional unit which carries on a business or activity that falls within the categories specified at 3. above or as per the categorisation of functions established and fully documented by the bank;
 - (b) is principally responsible, either alone or with others, on a day-to-day basis for the management of an overseas branch or banking subsidiary;
 - (c) demonstrates the following attributes in the conduct of a particular business or activity:
 - (i) accountability for the achievement of business objectives or targets set by the board of directors or the chief executive officer;

- (ii) occupying a position within the bank which is of sufficient authority as to enable the individual to exercise a significant influence on the conduct of the business or the activity, e.g. if the individual is under the immediate authority of the chief executive officer or has a direct reporting line to such persons, that would be indicative of sufficient authority;
 - (iii) authority to make decisions (e.g. assume business risks within pre-set limits) for that business or activity;
 - (iv) authority to allocate resources or incur expenditures in connection with the particular department, division or functional unit carrying on the business or activity; or
 - (v) authority to represent the particular department, division or function unit within the bank (e.g. in senior management meetings) or in meetings with outside parties (e.g. regulator).
7. While the above attributes or characteristics are indicators of whether an individual is a manager, banks shall note that not every manager will necessarily possess all these attributes. Every case shall, therefore, be dealt with on an individual basis.

Procedures for the Appointment or Reappointment of Senior Officers

Section 46(2) of the Banking Act 2004

8. Under section 46(2) of the Banking Act 2004, 'No financial institution shall appoint or reappoint any person as senior officer in Mauritius unless -
- (a) prior notice to the central bank is given by the financial institution at least 20 days before the date of the proposed appointment or reappointment;
 - (b) the notice under paragraph (a) is accompanied by a certificate of good conduct acceptable to the central bank, or a certificate of morality dating back to not more than 3 months, or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy duly executed by the person concerned; and
 - (c) the central bank is satisfied that the person to be appointed or reappointed is a fit and proper person'.

Further Guidance

9. As stipulated in section 46(2)(a) of the Act, financial institutions shall give ***at least 20 days prior notice to the Bank before the proposed appointment or reappointment*** of a senior officer, and it is imperative that the notice be accompanied by a *Fit and Proper Person Questionnaire* with ***all relevant sections duly filled-in***, and any of the documents listed at section 46(2)(b) of the Act. The notice period of 20 days will start from the day complete documents are submitted to the Bank; any notice given to the Bank without the statutory supporting documents will not be treated as a notice. Ordinarily, the Bank will accept only a certificate of morality or an affidavit. Where, in exceptional circumstances, the Bank accepts a certificate of good conduct, it shall be subject to the submission of a certificate of morality or an affidavit duly executed by the person concerned within such time frame as may be specified by the Bank.
10. Any appointment in contravention of section 46(2) of the Banking Act 2004 and these guidelines would be of no effect.
11. For senior officers (expatriates) employed on contract basis, their reappointment whether in the same post or in a different post and whether before or after the termination of their present contract will be subject to the provision of section 46(2) of the Banking Act 2004. However, for senior officers other than expatriates, the Bank should only be informed of their reappointment as well as lateral movement.
12. Any lateral movement of a senior officer (**i.e. appointment to another post which also qualifies as senior officer**) initially appointed by a financial institution before the promulgation of the Banking Act 2004, will now attract section 46(2) of the Banking Act 2004.

However, Section 46(2) of the Banking Act 2004 will **not** apply in cases of **lateral movements** where the Bank has, **after the promulgation of the Banking Act 2004**, been satisfied that a proposed senior officer is a fit and proper person, and that person is being appointed to another post which also qualifies as senior officer; except in the case of the appointment of a Chief Executive Officer (CEO). In this case, the Bank deems it essential to re-evaluate the fitness and propriety of the proposed CEO given the level of responsibility inherent to the post.

13. All notices given under section 46(2) of the Banking Act 2004 for appointment of senior officers other than the CEO shall be given by the CEO of the institution. In the case of the appointment of the CEO, the notice shall be given by the Chairman of the board of directors (in the case of a financial institution incorporated in Mauritius) or the outgoing CEO (in the case of a financial institution incorporated outside Mauritius and having a branch in Mauritius). All notices shall henceforth include a declaration that the information given in the accompanying *Fit and Proper Person Questionnaire* and any attachments has been verified for completeness and correctness **to the best of the CEO's ability**.

14. In cases at 12 above where the 'no objection' of the Bank shall not be required, the Bank nevertheless expects to be kept informed of such movements. The Bank shall also be informed of the resignation or dismissal of any senior officer, including the Compliance Officer, and the effective date thereof within one week.
15. In situations where the post of CEO falls vacant due to unforeseen events/circumstances, the financial institution can designate one of its existing employees or director as its acting CEO and inform the Bank of the name of the person so designated. It is the responsibility of the financial institution to ensure that within a period of three months from the date of the vacancy arising, it has identified a fit and proper person to be approved by the Bank as its CEO either on a regular basis or in an acting capacity. Where such person is proposed to be appointed in an 'acting' capacity, the Bank may, at the time of approval of his appointment impose such conditions as it may deem necessary including with regard to the period by which a regular incumbent should be appointed.
16. Financial institutions shall await the communication in writing from the Bank regarding the proposed appointment (objection or no objection) before proceeding further, and before issuing any press release/communiqué regarding the appointment of a senior officer.
17. The determination of who is a senior officer rests primarily with financial institutions themselves. However, if in the course of an on-site examination or routine supervision it comes to the attention of the Bank that a financial institution is not properly determining a senior officer, the Bank may require the financial institution to take such steps as may be necessary to remedy the situation.
18. Financial institutions shall submit a paper to their board of directors (or to the local management committee in the case of a financial institution incorporated outside Mauritius and having a branch in Mauritius) for determination of all posts considered to be of senior officer cadre taking into consideration the above guidelines. This shall be done within 3 months of the coming into effect of these guidelines.