

FINANCIAL INSTITUTIONS COMMISSION

PRUDENTIAL REGULATION
FIC-PR-08

FIT & PROPER REQUIREMENTS

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PART I: PRELIMINARY

- 1: **Short Title** – Fit and proper requirements.
- 2: **Authorization** – The Financial Institutions Commission (the Commission) of the Republic of Palau (Palau) is authorized to promulgate regulations under Sections 12 and 80 of the Financial Institutions Act of 2001 (the Act) as amended. In addition, Section 44 provides that administrators must meet criteria established by regulation, and Section 33 allows the Commission to grant a license only if it is satisfied that the qualifications, experience and integrity of a proposed bank’s administrators and significant shareholders are appropriate.
- 3: **Application** – This regulation applies to all administrators of Palau banks and the branches of foreign banks licensed by the Commission to conduct financial activities in Palau (Palau foreign bank branch) (hereafter collectively referred to as “bank”).
- 4: **Definitions** – Terms used within this regulation are as defined in the Act, as defined within this regulation, or as reasonably implied by contextual usage.
 - 1) “Administrator” – means (i) for a Palau bank any person who is an officer of the Palau bank, including any member of the board of directors or the Audit Committee, or the head of a department of the Palau bank, and (ii) for a Palau foreign bank branch any person who is an officer or any member of the Audit Committee of the Palau foreign bank branch.
 - 2) “Significant shareholder” means a person or number of related persons acting in concert, directly or indirectly, holding 20% or more of the equity or of any class of shares with voting rights in a Palau bank, or any person or number of related persons which otherwise exercise a significant influence over the management or policies of the Palau bank.

PART II: STATEMENT OF POLICY

- 1: **Purpose** – This regulation is intended to ensure that all persons who are, or who will be, administrators or significant shareholders of a bank are “fit and proper” persons based on prudent and objective criteria.
- 2: **Scope** – This regulation applies to all persons who are or are to become (i) administrators of a Palau bank or a Palau foreign bank branch or (ii) significant shareholders of a Palau bank.
- 3: **Responsibility** – It is the responsibility of the board of directors of each bank to ensure that every person who is, or is to become, an administrator of the bank is fit and proper at all times according to the Act and this regulation.

PART III: IMPLEMENTATION AND SPECIFIC REQUIREMENTS

- 1: Requirements** – The following requirements shall apply:
- (a) a bank shall ensure that the criteria specified in this regulation are satisfied when electing, appointing, re-electing, re-appointing or continuing the appointment of persons as administrators of a bank
 - (b) a bank shall not permit any person who is not fit and proper to be, or continue to be, an administrator of the bank;
 - (c) a bank shall maintain written documentation supporting a determination that a person is fit and proper and shall provide such documentation to the Commission on request; and
 - (d) a bank shall not record on its books, or otherwise recognize or permit without the prior written approval of the Commission any sale, transfer, disposal or change of ownership of its shares of stock which would result in any person or number of related persons owning or controlling, directly or indirectly, 20% or more of the bank's shares.
- 2: Criteria** – When evaluating an application for a licence to conduct financial activities in Palau, or when a person is to be appointed or elected or to continue as an administrator or when a person proposes to become a significant shareholder of a bank operating in Palau, the Commission will assess whether a person is fit and proper by applying the criteria below.

The Commission will conclude that a person is NOT fit and proper if –

- (a) **Competency** – a person does not have sufficient competency, in terms of relevant experience and academic qualifications, to reasonably conclude that he/she will be able to discharge satisfactorily the duties and responsibilities of his/her proposed position.
- (b) **Mental Capacity** – a person does not have sufficient mental capacities to reasonably conclude he/she is of sound mind and able to carry out satisfactorily the duties and responsibilities of his/her proposed position.
- (c) **Removal or Suspension** – a person has been, or is being, removed or suspended, by order of a bank regulatory authority in Palau or in a foreign country, as an administrator or director of any bank licensed to operate in Palau or in a foreign country unless such removal or suspension is solely the result of his/her political affiliation and in no way relates to his/her performance, conduct or competency as a director, officer or significant shareholder of a licensed bank.
- (d) **Offences and Breaches** – a person has ever contravened any provision of the Act or any regulation issued under the Act, or has been guilty of gross negligence or willful or intentional misconduct as those terms contextually apply in the Act.

- (e) **Winding Up or Liquidation** – a person has been, or is, an administrator or director of a bank licensed to carry on banking activities in Palau and which bank has been, or is being, wound up or liquidated involuntarily.
- (f) **Positions in Competing Financial Institutions** – a person is an administrator or director of a bank or financial institution operating in Palau which is competing with but not a subsidiary or associate of the bank in which the person is or will be an administrator.
- (g) **Censures** – a person has been censured, disciplined, prosecuted, warned as to financial crimes or irregularities conduct or made subject to a court order by any governmental department or agency, by any professional association, or by any regulatory body in Palau or elsewhere, within the last 10 years.
- (h) **Convictions or Administrative Orders** – a person has been convicted of or imprisoned for any offense for fraud or dishonesty, or has had an administrative order issued by a financial regulator or supervisory authority served on him/her in Palau or elsewhere, within the last 10 years.
- (i) **Investigations** – a person has been or is subject to an investigation in Palau or abroad by or at the instigation of a governmental department or agency, professional association, or other regulatory body for fraud or dishonesty.
- (j) **Litigation** – a person has engaged or is expecting to be engaged in litigation in Palau or elsewhere which may have a material adverse effect on the resources of the proposed bank or its promoters.
- (k) **Judgments** – a person has failed, within the last 10 years, to satisfy within one year a judgment of debt under a court order in Palau or elsewhere.
- (l) **Fraud** – a person has been judged by a court in Palau or elsewhere to be civilly liable for fraud, malfeasance, or any other misconduct.
- (m) **Bankruptcy or Debt Compromise** – a person has been judged bankrupt by a court in Palau or elsewhere, or has made any compromise or otherwise failed to satisfy his/her/her creditors in full within the last 10 years.
- (n) **Taxes** – a person has not satisfied all undisputed obligations for taxes that are due and payable to the taxation authority in Palau or in any other jurisdiction.
- (o) **Political Office** – a person holds an appointed or elected position in the national congress in Palau or in a foreign country, or is an officer of a political party as referenced in the Constitution of Palau or similarly in a foreign country.
- (p) **Resources** – in the case of a corporate entity, the entity does not have or have access to sufficient financial, managerial, technological, and intellectual resources to reasonably

conclude that the entity will be able to fulfill satisfactorily the duties and responsibilities of the proposed position.

The Commission will consider mitigating circumstances –

If there are mitigating circumstances, but only in respect of criteria (a), (b), (f), (g) and (p), the Commission will review the circumstances and may, or may not, at its sole discretion allow a person to be an administrator or a director of a bank. The Commission will not consider mitigating circumstances for any other criteria than those listed above.

3: Reporting Requirements. On written request from the Commission, a person who is, or will be, an administrator of a bank shall submit such information as the Commission requires to determine whether the person is fit and proper. At a minimum, a bank or person shall provide to the Commission the following information:

(a) A written declaration of the bank's compliance with this regulation in respect of the continuation and new appointment of an administrator of the bank and authorization for the Commission to request and receive any information necessary to conduct a background investigation to determine whether a person are fit and proper.

(b) In respect of each natural person who will be an administrator, a bank shall submit, at a minimum, the information required in Appendix A.

PART IV: CORRECTIVE MEASURES

1: Remedial measures and sanctions – If a bank, or any administrator or significant shareholder of a bank, violates any provision of this regulation in a willful, negligent or flagrant manner which results, or is likely to result, in an unsafe or unsound condition for the bank or that threatens the interests of depositors, creditors or the general public, or if a bank, or any administrator or significant shareholder of a bank, fails to comply with the instructions and reporting requirements in this regulation, the Commission may impose any one or more of the remedial measures or penalties provided in the Act.

PART V: EFFECTIVE DATE

1: Effective date – The effective date of this regulation shall be 1st September 2008.

Questions relating to this regulation may be addressed to the Financial Institutions Commission of the Republic of Palau.

Adopted _____, 2008

**Governing Board
Financial Institutions Commission
Republic of Palau**

Approved _____, 2008

**Honorable President
Tommy E. Remengesau, Jr.**

Appendix A

**ADMINISTRATORS,
MEMBERS OF THE BOARD OF DIRECTORS,
and
SIGNIFICANT SHAREHOLDERS**

This application for fit and proper requests biographical and financial information on natural persons who are, or will be, administrators, members of the board of directors, or significant shareholders of a bank. **An entire application must be completed and submitted for each such natural person.**

Respond fully to Questions 1-25. A detailed personal financial statement, using the form provided, and a CV must be provided for **each** person who is or will be an administrator, a member of the board of directors, or a significant shareholder. Supporting schedules must be included for aggregated data and for all real estate, notes and accounts receivable, and proprietary interests in unlisted shares or closely held companies. Methods and assumptions used in establishing values for real estate, unlisted shares, or closely held companies must be fully disclosed. Dates and amounts shown in the supporting schedules must correspond to those shown in the financial statement. If unlisted shares are included in assets and represent 10% or more of net worth, then financial statements for the underlying company/ies must be provided for the most recent two full years.

The Commission may require submission of additional information, including real estate or business valuations, in order to accurately assess financial strength and capacity.

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- 1. Name, Address.** Provide the full name and physical address (current and permanent or immediate past) of the person who will be an administrator, member of the board of directors, or a significant shareholder of the bank.
 - 2. Position.** Provide the position and/or title the above person will hold in the bank .
 - 3. Nationality.** Provide the citizenship and national identity or passport number of the person.
 - 4. Birth date.** Provide the date and place of birth of the above person.
 - 5. Role, Responsibilities, and Reporting.** Discuss the role the above person will have in organizing and managing the affairs of the bank. Indicate to whom the person will report and/or from whom he will receive directions or instructions. If the person will be an administrator, describe the specific duties and responsibilities for the position(s) to be held.
 - 6. Qualifications.** Provide a current CV (less than one year old) listing the professional and academic qualifications of the above person.
 - 7. Employment History.** Provide the following information regarding the employment history and professional experience of the above person for the past 10 years.

- (a) Name and address of employer
- (b) Nature or type of business
- (c) Title and duties/responsibilities
- (d) Date employed, and date and reason for leaving

Provide complete details regarding positions held in financial institutions, the number of employees and/or assets supervised, lending authority, etc. and the performance of the bank or department for which responsible. If the person has ever been dismissed or otherwise terminated from any office or employment, been subject to disciplinary proceedings, or barred from entry to any profession or occupation, provide details.

8. Affiliations. Provide the name of any other financial institution which the person is now or will be affiliated with as an administrator, member of the board of directors, or a significant shareholder. Indicate his/her/hers title or official capacity, duties/responsibilities in the other institution, and describe any relationship which now exists or will exist between the other institution and the proposed bank.

9. Controlling Shareholder of Any Other Financial Institution. If the above person is now or ever has been a significant shareholder (owning 20% or more of voting shares) of any other financial institution, provide details thereof including any relationship which now exists or will exist between the other financial institution and the proposed bank .

10. Membership in Professional or Trade Associations. If the above person is now or will be a member of any professional or trade association concerned with financial activities in Palau or elsewhere, provide details including whether such membership has ever been refused or terminated.

11. Censures. Has the above person ever been censured, prosecuted, warned as to conduct, disciplined, or publicly criticized by, or made subject to a court order by any governmental department or agency, professional association, or regulatory body in Palau or elsewhere?

12. Convictions or Administrative Orders. Has the above person ever been convicted of any felony offense, or has a petition for an administrative order been served on him/her/hers, in Palau or elsewhere, within the last 10 years? If so, provide details.

13. Investigations. Has the above person ever been or is s/he now subject to an investigation, in Palau or elsewhere, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If so, provide details.

14. Litigation. Is the above person engaged or expecting to be engaged in litigation, in Palau or elsewhere, which may have a material effect on his/her resources or his/her/hers ability to financially support the proposed bank ? If so, provide details.

15. Judgments. Has the above person, within the last 10 years, failed to satisfy within one year a judgment of debt under a court order in Palau or elsewhere? If so, provide details.

16. Fraud. Has the above person ever been judged by a court, in Palau or elsewhere, to be civilly liable for fraud, malfeasance, or any other misconduct? If so, provide details.

17. Bankruptcy or Debt Compromise. Has the above person been judged bankrupt by a court, in Palau or elsewhere, or has a bankruptcy petition ever been served on him/her/within the last 10 years, or has he made any compromise arrangement or otherwise failed to satisfy his/her creditors in full within the last 10 years? If so, provide details.

18. Receiver. Has a receiver of any property of the above person been appointed within the last 10 years in Palau or in any other jurisdiction? If so, provide details including whether the receiver is still acting under the appointment.

19. Liquidation: (a) Voluntary. Has a notice of resolution for the voluntary liquidation of the above person been issued within the last 10 years in Palau or in any other jurisdiction? If so, provide details including whether the liquidation has been fully resolved.

(b) Compulsory. Has a petition for the compulsory liquidation of the above person been served within the last 10 years in Palau or in any other jurisdiction? If so, provide details including whether the petition has been fully resolved.

20. Income Taxes. Is the above person in good standing with the taxation authority in Palau or in any other jurisdiction, or does he/she have any tax liabilities which are unpaid or in dispute?

21. Share Registrations. How many shares in the proposed bank are or will be registered in the name of the above person or in the name of a related party? Provide the name(s) in which the shares will be registered and the class of shares if not ordinary shares.

22. Beneficial Interest. How many shares in the proposed bank, which are not registered in the name of the above person or in the name of a related party, will the above person have a beneficial interest in? Provide the name(s) in which the shares will be registered and the nature of the beneficial interest.

23. Trustee or Nominee. Does or will the above person or any party related to him/her hold shares in the proposed bank as a trustee or nominee? If so, provide details.

24. Assignments or Pledges. Are or will any of the shares in response to Questions 21-23 be equitably or legally assigned or pledged to any other party? If so, provide details.

25. Voting Authority. (a) Direct. What proportion of the voting shares at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, is or will the above person be entitled to vote or exercise control over? Provide details of such voting authority or control.

(b) Indirect. If the exercise of voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, is or may be controlled or influenced by someone other than the above person, provide the identity of such other person and the proportion of voting power so controlled or influenced.

<p>Provide any other information regarding the proposed administrator or director that may assist Commission in evaluating this application.</p>

PERSONAL FINANCIAL STATEMENT

To be completed by each natural person proposed an administrator, a member of the board of directors, or a significant shareholder of the bank for which this application is being submitted. Report all amounts in 000's of US Dollars, and attach supporting schedules where appropriate to provide explanatory information.

Name and Address of Proposed Bank:

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Name and Proposed Position of Person:

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Date of Financial Statement:

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ASSETS

Cash & Bank Balances /1

--

Marketable Shares /2

--

CV Life Insurance /3

--

Loans Receivable – good

--

Loans Receivable – doubtful

--

Other Shares & Investments /4

--

Vehicles & Equipment /5

--

Personal Property /6

--

Real Estate /7

--

Business Interests /8

--

Other assets /9

--

Total Assets

--

LIABILITIES & NET WORTH

Accounts Payable

--

Loans Payable /10

--

Mortgages Payable /11

--

Interest Due and Unpaid /12

--

Taxes Due and Unpaid /13

--

Judgments /14

--

Other Liabilities /15

--

Total Liabilities

--

Net Worth

--

Total Liabilities & Net

Worth

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Notes:

- (1) Provide name/s of banks, account numbers, and contact officers at banks.
- (2) Provide number of shares of listed companies, where held, date acquired, cost, current market value, and evidence of ownership if amount exceeds 10% of net worth.
- (3) Provide number, face amount and type of policy, name and address of company, names of insured and beneficiary, evidence of current cash value and certified copy of policy if amount exceeds 10% of net worth.
- (4-9) Indicate kinds of shares or investments, vehicles and equipment, property, real estate, business interests or other assets; indicate date acquired, cost, and current value if amount exceeds 10% of net worth.
- (10-11) Indicate to whom debts are owed, original and current balances, repayment terms, and security.
- (12-13) Indicate the amount/s of any accrued interest or taxes that are due and unpaid, and to whom owed.
- (14) Provide details of any judgments currently outstanding.
- (15) Provide details of other liabilities if amount exceeds 10% of net worth.

I certify that the information provided herein is true and correct to the best of my knowledge, and that there are no material omissions or misrepresentations of facts. I authorize the Commission to request and receive any information necessary to verify the accuracy of information herein.

Signature: _____

Date: _____