

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2022 No. 110.

**Financial Institutions (Amendment of Third Schedule)
Instrument, 2022**

(Under section 132 (2) of the Financial Institutions Act, 2004)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 132 (2) of the Financial Institutions Act, 2004, this Instrument is made this 4th day of October, 2022.

1. Title

This Instrument may be cited as the Financial Institutions (Amendment of Third Schedule) Instrument, 2022.

2. Amendment of Third Schedule

For the Third Schedule to the Financial Institutions Act, 2004, there is substituted the following—

“THIRD SCHEDULE

Sections 3, 11, 18, 19, 52, 53 and 57

**CRITERIA AND PROCEDURE FOR DETERMINING
WHETHER A PERSON IS A FIT AND PROPER PERSON
TO MANAGE, CONTROL, BECOME A DIRECTOR
OR SUBSTANTIAL SHAREHOLDER IN A FINANCIAL
INSTITUTION**

PART I

CRITERIA FOR DETERMINING A FIT AND PROPER PERSON TO MANAGE, CONTROL OR BECOME A DIRECTOR OR SUBSTANTIAL SHAREHOLDER IN A FINANCIAL INSTITUTION

1. Interpretation

In this Schedule, unless the context otherwise requires—

“executive manager” means a person who is either—

- (a) empowered to control, direct, and influence decision making of the financial institution;
- (b) principally accountable or responsible for implementing and enforcing policies and strategies approved by the board in their respective area of responsibility; or
- (c) principally accountable or responsible for developing and implementing systems, internal controls or processes that identify, measure, increase or decrease, monitor or control, a supervised financial institution’s risk;

“ultimate beneficial shareholder” means a person or entity that ultimately owns shares in a supervised financial institution and derives the benefits associated with ownership or control of the supervised financial institutions.

2. Criteria to determine fit and proper person

(1) In order to determine, for the purposes of the Act, the professional and moral suitability of any person proposed to manage or control a financial institution, or to become a substantial

shareholder, or director, the Central Bank shall have regard to the following qualities, in so far as they are reasonably determinable, in respect of the person concerned—

- (a) his or her general probity;
- (b) his or her competence and soundness of judgment for the fulfilment of the responsibilities of the office in question;
- (c) the diligence with which the person concerned is fulfilling or likely to fulfil those responsibilities; and
- (d) whether the interests of depositors or potential depositors of the institution are, or are likely to be in any way, threatened by his or her holding that position.

(2) For the purposes of and without prejudice to the general effect of subparagraph (1), the Central Bank may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that the person—

- (a) has been convicted of the offence of fraud, corruption, drug, wildlife and human trafficking, tax crime, a predicate offence generating proceeds of crime to money laundering and terrorism financing or any other offence depicting dishonesty or indicative of involvement or participation in handling of proceeds of illegal activities or any other offence of which dishonesty or violence is an element;
- (b) has contravened any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractice by, persons engaged in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

- (c) was a director of an institution that has been liquidated or is under liquidation or management of the Central Bank or under receivership;
- (d) has taken part in any business practice that in the opinion of the Central Bank, was deceitful or oppressive, fraudulent, prejudicial or otherwise improper whether unlawful or not, or which otherwise reflect discredit on his or her method of conducting business;
- (e) has engaged in or taken part in or been associated with any other business practices or otherwise conducted himself or herself in such manner as to cause doubt on his or her competence and soundness of judgement;
- (f) has defaulted on a loan or credit accommodation or a company in which he or she is a director has defaulted on a loan or credit accommodation;
- (g) has been listed as an individual or entity subject to targeted financial sanctions under any United Nations Security Council Resolution or any other national, regional or international sanctions list;
- (h) has contravened any law protecting members of the public against financial loss;
- (i) was a director or substantial shareholder or vetted executive manager of any corporate entity that has been or is under involuntary liquidation, receivership or management by a Central Bank or financial sector regulator or by the direction of Court or a creditor mandated administrative process;
- (j) has been refused admission to, or has been expelled from or has an outstanding probe or pending disciplinary process with, any professional body;

- (k) has taken part in any improper business practices that discredit or bring into disrepute the said business;
- (l) has engaged in business practices or conduct that causes or casts doubt as to his or her competence or integrity or soundness of judgment;
- (m) has been sanctioned by any regulator or professional body or association;
- (n) has defaulted on a loan as an individual or he or she is a director or has a substantial shareholding or is an ultimate beneficial shareholder in a company that has defaulted on a loan or credit facility;
- (o) has been the subject of an adverse judgment or has been found guilty on any matter or subject that speaks to their integrity in a civil or criminal proceeding by any lawfully established court;
- (p) has deliberately misled or attempts to mislead by act or omission, a client, the institution or the regulator that is seeking or sought to authenticate their probity;
- (q) has deliberately falsified documents to mislead a client, the institution or regulator, or failed to disclose the existence of falsified documents;
- (r) has deliberately failed to inform the client, institution or regulator, without reasonable cause, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding;
- (s) has deliberately prepared or to a material extent, participated in the preparation of inaccurate records or returns;

- (t) has a record of non-compliance with statutory codes, including but not limited to disciplinary or supervisory or regulatory administrative sanctions; or
- (u) his or her appointment would result in a conflict of interest, real or perceived.

(3) Notwithstanding paragraph (2), the Central Bank reserves the right to take into consideration other facets or features not expressly provided for under paragraph (2) that may be applicable to the nominee, to ascertain that the nominee is fit and proper.

(4) The Central Bank may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of a nominee.

PART II

PROCEDURE FOR DETERMINING A FIT AND PROPER PERSON TO MANAGE, CONTROL, BECOME A DIRECTOR OR SUBSTANTIAL SHAREHOLDER IN A FINANCIAL INSTITUTION

3. Procedure for determination of whether person is fit and proper

(1) A financial institution shall subject every substantial shareholder, chief executive officer, executive director, director and executive manager to the fit and proper criteria to ensure that they are fit and proper persons.

(2) A financial institution shall ensure that a nominee substantial shareholder, chief executive officer, executive director, director and executive manager complies with the fitness and probity criteria prior to forwarding the nominee's name to the Central Bank for further review and approval.

(3) A financial institution shall conduct risk-based evaluations and due diligence on every nominee substantial shareholder, chief executive officer, executive director, director and executive manager and take reasonable steps to verify the authenticity of documents submitted by the applicant against independent sources prior to forwarding them to the Central Bank for vetting purposes.

(4) The Central Bank shall vet every ultimate beneficial shareholder or owner of proposed or nominated substantial shareholders, in the case of a natural person, director and executive manager and shall grant approval if found to be compliant with the fit and proper test.

(5) Before approval under subparagraph (4), the Central Bank may, at its discretion, conduct a face-to-face meeting or an online interview with the nominee, where the nominee or ultimate beneficiary is a natural person.

(6) In determining whether a person is fit and proper to hold a position as a substantial shareholder, chief executive officer, executive director, director or executive manager of the financial institution, a financial institution shall, in general, have due regard to—

- (a) his or her probity;
- (b) whether the interests of depositors or potential depositors of the institution are or are likely to be, in any way, threatened by his or her holding of that position;
- (c) his or her competence and soundness of judgment for fulfilling the responsibilities of the job or position;
- (d) the diligence with which he or she is fulfilling or likely to fulfil those responsibilities;
- (e) his or her ability to understand the technical requirements of the business; or

- (f) his or her ability to clearly demonstrate a tangible or credible contribution to the nominating supervised financial institution business.

(7) A financial institution shall, at least once in every calendar year, evaluate and update the fit and proper status for each of its board or executive management staff, including conducting performance assessments and appraisals of board directors and executive management as integral to their continuous fit and proper evaluations.

4. Assessing fitness and probity

(1) A financial institution shall consider the following criteria when assessing the fitness and probity of key personnel within the institution—

- (a) good character, including honesty, integrity, fairness and reputation;
- (b) competence, diligence, capability, soundness of judgment; and
- (c) financial soundness in relation to substantial shareholders.

(2) With regard to corporate entities which are controlling shareholders, the following shall be taken into consideration—

- (a) financial soundness and strength;
- (b) the nature and scope of the business;
- (c) fitness and propriety of key functionaries; and
- (d) group structure, if applicable, and organisation charts.

(3) A proposed shareholder, director or manager shall demonstrate the competence and ability to understand the technical requirements of the business, the inherent risks therein and the management processes required to conduct its operations effectively, with due regard to the interests of all stakeholders.

5. Assessing competence and capability

In assessing the competence and capability of a person, a financial institution shall consider the following—

- (a) whether the person has demonstrated, through qualifications and experience, the capacity to successfully undertake the responsibilities of the position;
- (b) whether the person has been declared mentally incompetent by any official proceeding under the laws of Uganda or elsewhere;
- (c) whether the person has ever been disciplined by a professional, trade or regulatory body or dismissed or requested to resign from any position or office for negligence, incompetence, fraud or mismanagement; or
- (d) whether the person has a sound knowledge of the business and the responsibilities of the position.

6. Financial soundness

(1) A financial institution shall consider the financial soundness of a nominee, before appointment.

(2) In determining the a person's financial soundness of a nominee, the financial institution shall consider the following—

- (a) whether the nominee has been the subject of any judgment or award that remains outstanding;
- (b) whether the nominee has made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets confiscated, or has been involved in proceedings relating to any of the aforementioned; and
- (c) whether the nominee has contracted a loan which subsequently turned nonperforming.

(3) The Central Bank shall, in assessing whether a nominee is fit, consider the following—

- (a) examine submissions related to the nominee's education and theoretical knowledge within the context of their proposed role in the institution;
- (b) consider the nominee's current and previous roles and positions held, including the nominee's length of service, the nature, complexity and size of the business they were responsible for in the past; their performance assessments in past management or directorship roles and functions; the nature and complexity of past responsibilities held; and the reporting lines and delegated authority that the nominee has been responsible for in their past roles; and
- (c) consider the nominee's time commitment, given their existing obligations to the role or position for which they are being nominated and in considering time commitments, factors such as the number of directorships held, the size, nature, scale and complexity of the institutions where those directorships are held, or the existence of any other professional or personal commitments and circumstances shall form part of the regulatory assessment process for fitness.

7. Obtaining and giving professional references

A financial institution shall, when hiring an executive manager or contracting a director for its board, obtain a professional reference covering a minimum of the last six years of the nominee's employment whether with a regulated entity or otherwise.

8. Obtaining and giving regulatory references

(1) The Central Bank shall obtain an independent assessment in form of a confidential opinion from the most recent regulator or supervisory body where applicable, about the professional conduct and integrity of a nominee, if a natural person, covering the period of his or her employment with any previous regulated entity where applicable, in addition to any other information that may be beneficial or incidental to the nominee's fit and proper evaluation

(2) In cases where a nominee for fit and proper assessment is a corporate body, the Central Bank shall conduct sufficient due diligence from the country of origin or domicile or host regulator or supervisory body or any other law enforcement agency in the home jurisdiction of the nominee, to ascertain the ultimate beneficial shareholders.

(3) The costs for a due diligence conducted under subparagraph (2), shall be borne by the financial institution and payable prior to the conduct of the due diligence.

(4) The due diligence referred to in subparagraph (2), shall relate to matters including legal ownership, financial capacity, credit usage history, corporate structure or arrangement, evidence of existence, ultimate beneficial shareholders and ownership and past or existing infractions and sanctions if any.

9. Role of the board of directors

- (1) A financial institution shall—
 - (a) establish a fit and proper person policy which shall take into account the fit and proper criteria specified in this Act and the Central Bank Guidance Note on the Risk-Based criteria for the vetting of substantial shareholders, directors and executive manager of supervised financial institutions;
 - (b) have documented processes used to assess whether a person is fit and proper and reasons for any decisions made and shall make the documentation available to the institution as required; and
 - (c) ensure that—
 - (i) candidates who are being considered for appointment to key positions meet the fit and proper test before being appointed;

- (ii) processes are implemented to keep under constant review the capacity of directors, controllers, managers, controlling shareholders, registrants under the Act and others with significant influence on the operations of the institution, to continue to meet the fit and proper test; and
- (iii) the managing director or chief executive officer applies the fit and proper test to middle and lower level management positions within the organisation and reports to the board periodically on the results of the tests.

10. Role of external auditors

A financial institution shall request the external auditors of the financial institution to advise and provide necessary details if they become aware of information that points to non-compliance or potential non-compliance with the fit and proper requirements.

11. Application of fit and proper tests by Central Bank

(1) Fit and proper tests may be applied by the Central Bank at the licensing stage and thereafter, every year or on the occurrence of specified events, including for new appointments of any such persons.

(2) The application of fitness, propriety or other qualification tests to executive manager and controlling shareholders may vary depending on the degree of their influence and on their responsibilities in the affairs of the institution.

(3) The Central Bank may have regard to current, past and prospective matters when conducting fit and proper assessments of persons or entities.

(4) The Central Bank shall assess the fulfillment of the fit and proper criteria in a holistic manner, after due consideration of relevant areas.

(5) In cases where a person being assessed is known to have connections in other jurisdictions, the Central Bank shall communicate with supervisors in the relevant jurisdictions as part of the assessment procedure, to the extent permitted by law.

12. Clearance and approval of fit and proper persons

(1) The Central Bank shall approve the appointment of directors and senior officers deemed fit and proper to hold their respective offices.

(2) The Central Bank shall approve the controlling shareholders deemed fit and proper to acquire shares in the financial institution.

(3) Notwithstanding subparagraph (1) and (2), the Central Bank may withdraw the approval or clearance referred to in subparagraph (1) and (2) at any time, if the Central Bank is satisfied that the person is no longer fit and proper.

13. General vetting requirements for substantial shareholders, directors and executive management

(1) The documentation submitted to the Central Bank shall be in English, and where it is in another language, it is the responsibility of the nominating supervised financial institution to obtain a certified English version from a competent authority.

(2) The request for approval of a nominated candidate in case of an ultimate beneficial shareholder who is corporate body shall be accompanied by—

- (a) an information sheet for the applicant and for each of its substantial direct and indirect shareholders, subsidiaries or affiliates in the form prescribed by the Regulations witnessed by the Commissioner of Oaths or his or her equivalent, in the respective country of residence or domicile;

- (b) a certified true copy of income tax returns for the substantial shareholder;
 - (c) the latest audited financial statements for a corporate body for each of the three years preceding the date of the application by the nominee, including for entities in which they hold a substantial shareholding or beneficial interest or where any of the substantial shareholders is a corporate body;
 - (d) a company resolution by the corporate's shareholders to acquire a shareholding in the proposed supervised financial institution in Uganda;
 - (e) Memorandum and Articles of Association for the corporate body (MEMARTS);
 - (f) letters duly certified by financial institutions with whom the corporate body has had dealings or transactional relationships in the last five years, including the performance of past and present accounts held at those financial institutions; and
 - (g) a breakdown of the ultimate beneficial shareholding structure of the corporate body nominee subsequent to which the individual shareholders, if any, will provide their respective information similar to that relating to the individual ultimate shareholders.
- (3) The request for approval of a nominated person, in the case of the individual ultimate beneficiary shareholders, board and executive management shall be accompanied by—
- (a) a personal declaration form for each of the proposed directors, executive managers and substantial shareholders, if natural persons, in the form prescribed by the Regulations made under the Act and witnessed by a Commissioner of Oaths or his or her equivalent in the respective country of

residence or domicile;

- (b) a signed declaration by the chairperson of the board of a financial institution on appointment of a director designate, in the form prescribed in the Regulations made under the Act;
- (c) an updated, signed curriculum vitae of every individual substantial shareholder, director and executive manager who is likely to take part in or be a part of, the supervised financial institution's policy making or execution process, with the respective dates, positions held, key responsibilities, and achievements thereof, clearly indicated;
- (d) a statement of assets and liabilities of each individual substantial shareholder, director and executive manager, duly certified by a certified public accountant or his or her equivalent in the respective country of residence or domicile;
- (e) the latest tax compliance certificate for individual substantial shareholders, directors and executive management from their home jurisdiction;
- (f) two character references from individuals, other than relatives or related persons as defined in the Act, who have personally known the substantial shareholder, director or executive manager for at least five years;
- (g) letters duly certified by financial institutions with whom the nominee or director designate has had dealings or transactional relationships in the last five years, including the performance of past and present accounts held at those financial institutions;
- (h) individual credit references for the nominee and each of the substantial shareholders, directors and executive manager from his or her bankers during the last five years, as well

as for all the companies where he or she has a substantial shareholding;

- (i) certified copies of all academic qualifications of the nominee at University level and above, where applicable, as well as of professional qualifications or verifiable proof of membership to professional bodies, where applicable;
- (j) a copy of the nominees passport or valid national identification document;
- (k) two passport size photographs;
- (l) a certificate of good character or conduct from Interpol or similar policing authority of the relevant home jurisdiction, in the case of foreign directors, substantial shareholders and executive manager nominees;
- (m) if the most recent audited financial statements are more than six months out of date, they shall be accompanied by management accounts which need not be audited, showing the current financial position and the current results of the entity in which the nominee has a substantial shareholding interest or controlling influence;
- (n) written confirmation by the nominating financial institution on whether or not the nominee is a politically exposed person, and the grounds for that categorisation or non-categorisation as the case may be;
- (o) a filled and signed potential material conflicts of interest form as may be prescribed by the Central Bank, which shall be updated and re-submitted annually to the Central Bank;
- (p) proof that a check has been conducted on the nominee against the list of sanctioned persons at the Office of Foreign Assets Control of the United Nations, the European Union, or any such listing of sanctioned persons at a national, regional and domestic level;

- (q) copy of the proposed job description in the case of nominees for executive manager; and
- (r) assess and consider the individual Board nominee's value addition to the board of the supervised financial institutions in relation to the other existing board member's areas of expertise.

(4) Subject to subparagraph (2) and (3), the Central Bank reserves the right to request for additional information and, where there is a failure to submit the information to the Central Bank within fifteen working days from the time the institution is notified, the request for approval shall be rejected for lack of sufficient supporting documentation.

14. Qualifications and experience required for appointments

(1) A financial institution shall ensure that individuals hired or assigned managerial and other senior positions have the requisite qualifications, knowledge and experience to handle the positions with minimum standards.

(2) The minimum standards referred to in subparagraph (1) in relation to non-executive directors include—

- (a) a first or undergraduate degree or its equivalent, in any discipline and the ability to demonstrate more than a basic knowledge of the financial services industry; financial institution business; financial industry related supervisory or regulatory frameworks and laws and regulations that govern the operating context of the nominating supervised financial institution;
- (b) a demonstrable and verifiable value addition that he or she shall bring to the financial institution or board;
- (c) a demonstrable and verifiable understanding of risk management; its identification, impact assessment,

mitigation, monitoring and control for at least one of the main risk categories that the nominating financial institution is subject to in the normal course of its business;

- (d) ability to assess the effectiveness of a financial institution's arrangements, and ensure effective governance and oversight over the entity's control environment;
- (e) ability to interpret financial information, identify key issues arising therefrom, and make meaningful and objective contributions to board deliberations;
- (f) willingness and ability to exercise independent judgment and provide credible and informed challenge or critical review of executive manager decisions, implementation plans and recommendations;
- (g) possession of background, knowledge, and experience in business or another discipline relevant to the provision of an oversight role within the financial services industry;
- (h) acceptance of fiduciary duties and obligations, including a firm and sworn commitment to put the supervised financial institution's interests ahead of their personal interests or to avoid conflicts of interest; perceived or actual;
- (i) demonstrable and verifiable commitment to regularly attend, prepare and contribute to board and committee meetings;
- (j) have knowledge of the communities or demographic or sectors that the nominating supervised financial institution serves;
- (k) previous or existing board membership or exposure in any regulated institution as an added advantage;

- (l) the existence and number of independent directors on the board; and
- (m) the collective suitability requirement for all existing board members with respect to diversity of the board in terms of professionalism, awareness of emerging issues and risks and experience.

(3) Subject to subparagraph (2), where the nominee has no academic qualifications he or she may be appointed on the following conditions—

- (a) his or her direct involvement in an established business enterprise with total assets or gross revenue of not less than twenty five billion shillings or its equivalent;
- (b) the size, scope and complexity of the institution for which the nominee is being considered for directorship, and the nature of nominee's intended contribution to the institution;
- (c) the relevant experience and qualifications of other board members; and
- (d) the proposed assignment of responsibilities on the board, commensurate with the member's experiences.

(4) The minimum standards referred to in subparagraph (1) in relation to a chief executive officer or managing director shall include—

- (a) a minimum of first or undergraduate degree in any discipline from an accredited institution by the relevant authorities, with a professional qualification in any business-related discipline being an added advantage;

- (b) prerequisite post-graduate experience, out of which at least ten years must have been at executive management, with responsibility in major areas of financial institution business including but not limited to: business, development, credit, finance, risk management, audit or treasury management; and
- (c) in case of Islamic banking institutions, the proposed nominees shall in addition to the requirements in subparagraph (a) and (b), possess requisite and verifiable knowledge and experience or training in Islamic banking and finance.

(5) The minimum standards referred to in subparagraph (1) in relation to executive directors shall include—

- (a) a minimum of a first or undergraduate degree in any discipline from an accredited institution and attainment of a professional qualification in any business-related discipline shall an added advantage;
- (b) prerequisite post-graduate experience, and significant working experience of at least five years at executive management, evidence of experience in several areas of banking operations, including business development, credit, finance, risk management, audit or treasury management;
- (c) for an executive director, shall have served in the position of executive director for a minimum of two years to be qualified for appointment as a chief executive officer or managing director, except in extenuating circumstances where the Central Bank may assess the executive director's suitability for the position of chief executive officer or managing director he or she does not meet the minimum two years' experience; and

- (d) in case of Islamic banking institutions, in addition to the requirements in subparagraph (a), (b) and (c) possess requisite and verifiable knowledge and experience or training in Islamic banking and finance.

- (6) The minimum standards referred to in subparagraph (1) in relation to executive manager shall include—
 - (a) a minimum of a bachelor's degree in any field, from an institution accredited, membership in a relevant professional body or associations as an added advantage and where membership in a professional body or association is mandated by law must have such membership;
 - (b) the requisite post-graduate experience, in the role for which they are being nominated and evidence of relevant experience of not less than five years at middle level management in the proposed area of appointment or nomination; and
 - (c) in case of Islamic banking supervised financial institutions, in addition to the requirements referred to in subparagraph (a) and (b), possess requisite and verifiable knowledge and experience or training in Islamic banking and finance and the Central Bank reserves the right and discretion, for deserving cases or situations to waive the mandatory requirement of prior knowledge about Islamic banking and finance for Islamic banking supervised financial institutions.

- (7) In case of an independent non-executive director he or she shall only be deemed independent if he or she has no direct or indirect material relationship or interest in the financial institution or any of its subsidiaries or affiliates or related parties.

HON. MATIA KASAIJA,
Minister of Finance, Planning and Economic Development.