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- Regulatory Risk Management
- Technical Advice
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ASSESSING FITNESS AND PROPRIETY

The Personal Questionnaire Process



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International Standards

FATF Recommendation 23.*

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations.

Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.





To what sectors does Recommendation 23 apply?

Banking
Other deposit-taking business
Insurers
Insurance intermediaries
Collective investment schemes
Market Intermediaries
Money or value transfer businesses
Money or currency changing offices

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Recommendation 23 – Casinos

Competent authorities should:

take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino

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SRVIII - Not For Profit Organisations

NPOs should maintain information on:

the purpose and objectives of their stated activities; and

the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees.

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Fit and Proper Test

Statute needs to permit (or not prevent) regulator to assess principal persons of FIs and Casinos for:-

- Honesty
- Integrity
- Reputation
- Competence
- Capability
- Financial soundness

And as a minimum, identify controllers/directors of NPOs

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Information that will now be requested by CBA

Criminal offences

Adverse findings or settlement in civil cases (including debt and divorce)

Involvement in any investigations or disciplinary proceedings (professional body, regulatory, criminal or employer led)

Any censure, suspension or criticism whether public or private

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Information that will now be requested

Previous contraventions of local or other regulatory authority rules (eg where no censure resulted)

Complaints related to regulated activities, where the complaint has been settled by or led to censure from the employer

Dismissals, including resigning when asked, or entering into a compromise agreement

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New Personal Questionnaire

The Personal Questionnaire is accompanied by Guidance Notes, which

Advise the Applicant of the process and scope of the Approval process

Explain what a 'Key Person' is and who is caught

Outline the obligations placed upon the individual to advise the CBA on changes to circumstances & the communication process on an ongoing basis

Remind the applicant that providing false and misleading information
To the regulator is a criminal offense

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Issues to take into account

Whether the person has been truthful and candid with regulators, including cooperating when asked to do so

Whether the person has been candid and truthful in his dealings with regulators and has demonstrated a readiness and willingness to comply with legal, regulatory and professional requirements and standards

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What will the new Questionnaire achieve?

Demonstrate compliance with international AML/CFT and Core Principle regulatory standards

Reduce the likelihood of regulated financial services businesses being owned or controlled by organised crime, or by persons who may be manipulated by criminals

Reduce the likelihood of loss to the public from fraud, dishonesty, mismanagement, incompetence, insolvency

Increase industry standards

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Information Required - General Points

5 sections of the Questionnaire:-

Personal Details required

Personal & Business History

Experience of the Applicant

Reputation & Character (specific yes/no questions)

Declaration to be signed

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Declaration & Check List

Reminder that it is a Criminal Offense to provide false or misleading information

Authority to CBA to make enquiries

Confirmation of responsibilities and accountability under the relevant Law

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Routine Correspondence conducted by the CBA

Acknowledgement

Supervisor to supervisor enquiry

Checks on the applicant's past employment record –
confirmation of dates of service, role, title and responsibilities
and the reason for leaving

Credit check, identity/passport check, address verification

Qualifications checked with awarding academic or
professional body

Acceptance of Key Person status

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How a Regulator can handle issues and refusals

The regulator must be direct – there is no room to “pussy foot” about. It is the regulator’s duty and responsibility to get to the bottom of the issue.

The regulator should never make value judgements or indicate disapproval at a personal level

Offences and issues which offend YOU (maybe deeply) do not necessarily affect honesty or a person’s capacity to be an effective director, compliance officer, etc.

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Examples of “values based” issues

Paedophile offences

Isolated/old charges of assault (particularly in a stressed circumstance eg his wife prior to divorce or aged 20 in a bar)

Activism in certain groups (gay rights, pro life/pro abortion)

“Soft” drugs charges

“Decency” offences – male toilets etc

Drinking and driving convictions

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How to handle “values based” issues

Regulator needs an internal policy guidance note
Strictly consider:-

- whether the issue affects the applicant’s ability to fulfil the requested role well
- represents a serious reputational risk to the jurisdiction (remember others may not share your values or be as offended)
- was honestly disclosed

If a matter is not disclosed, or if a false disclosure is made, the integrity test has been failed, regardless of whether the matter itself would have generated a refusal.

Even if it was disclosed, do the circumstances make the applicant vulnerable to blackmail?

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Regulator needs a decision making process

Issues need to be dealt with DIRECTLY with the applicant –

- Do not disclose personal information about the applicant to the licenceholder
- the Regulator's initial (preliminary) "minded to refuse" decision (and the reasons for it) should be disclosed to the applicant ONLY
- In this way, the applicant can reply and the Regulator's concerns are either alleviated or confirmed

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Decision Making Process

If the Regulator's concerns are alleviated, it can progress to approval and inform both employer and applicant, at the same time, making no mention of the problems previously corresponded upon

If the Regulatory concerns remain, after considering the applicant's response, the Regulator must make a formal decision, and communicate it ONLY to the applicant.

The applicant must have the opportunity to challenge the decision privately although the Regulator may encourage him to share the information with the licenceholder.

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Decision Making Process

When a formal decision is made by the Regulator, it informs the applicant, **PRIVATELY**, of the decision and the full reasons for it.

Whilst the Regulator may encourage the applicant to share the full reasons with the entity, it will merely tell the regulated entity that the applicant has failed to meet the standards required by the CBA with regard to the fit and proper test.

This process is Human Rights compliant and meets the principles of natural justice. An applicant's privacy is protected.

Ultimately, they are able to appeal a regulatory decision, should they wish to do so, through the Courts.

When the regulator will be judged on the reasonableness of the decision itself **AND** the fairness of the process.

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Case Study 1 – Failing the Integrity Test

APBW

10 years Compliance industry experience

Well known to the Commission and industry

Intelligent & well educated

No requirement for Compliance Officers to hold specific qualifications but they are expected to be suitably experienced

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Case Study 1 – continued

Pre IMF visit – Jersey Commission undertook an exercise to make Compliance Officers in the Island ‘Key Persons’

As a result a requirement was introduced for all Compliance Officers to complete Personal Questionnaires

PQ submitted by APBW

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Case Study 1 – continued

Personal Questionnaire stated that qualifications held included:-

Certified Public Accountant – University of the State of New York

Master of Business Administration Degree in Corporate Finance –
University of Rochester

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Case Study 1 – continued

Qualifications found to be forged

Signing a False Declaration on the PQ carries Criminal penalty. The Commission elected to progress a regulatory level sanction rather than a criminal prosecution and exercised their powers to ban the individual

Banned from holding any position within the Finance industry

Public statement made warning that firms who employed him without Commission approval would be committing Criminal Offence

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Case Study 2 – Failing the Integrity Test

Mr RM

Long standing local Accountant, Associate of the Institute of Bankers and the Institute of Accountants

100% share holder of small Trust Company which employed 3 other staff

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Case Study 2 – continued

Investigations discovered that no qualifications or memberships were held

Submitting a false declaration to the Regulator carries criminal sanction, however, regulatory sanction chosen

RM banned from employment in Financial Services Sector – business required to be wound up by appointed Liquidator

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Case Study 3 – Failing the Competency Test (through no fault)

Mr SYM

Highly talented 24 year old applies for approval to take up his first directorship.

The bank operates in high risk areas, has weak controls and is on the Regulator's watch list. The other directors are client facing men, who offer no support for compliance, internal audit or other risk management functions within the organisation. The director vacancy provides opportunity to bring in a stronger, older person to add strength to the structure.

Mr SYM refused but given praise and support and assisted with another application elsewhere.

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Summary:

The fit and proper test of directors or shareholders and other key persons is a vital gate-keeping function.

The vetting process must be vigorous, the information supplied must be verified independently, inter-regulatory references, resume checks and police records must be taken up. Where possible credit agencies and court records considered.

The test must be applied on an initial and ongoing basis

The Regulator must take firm action and use powers of public statement, and banning powers to drive up standards.

The process raises real challenges for Regulatory staff who must administer the evaluation and refusal procedure with scrupulous fairness.

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QUESTIONS?

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