

# **Fit and Proper Test**

## **DEFINITIONS**

**“Alternate Director”** means a person who has been designated by a director during his absence, as per provisions of the sub-section (2) of section 192 of Companies Ordinance, 1984.

**“BCO”** means Banking Companies Ordinance, 1962

**"Chief Executive Officer (CEO)"**, in relation to bank/DFI means an individual who, subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the bank/DFI occupying the position of Chief Executive Officer and include President, acting President, Managing Director, Country Head of Foreign bank, Executive assuming charge of the bank for interim period or by whatever name called, and whether under a contract of service or otherwise.

**“DFI”** means Development Financial Institution and includes financial institutions notified under Section 3-A of the Banking Companies Ordinance, 1962.

**“Director”** includes any person occupying the position of a director on the Board of a bank/DFI and includes sponsor, nominee and alternate director or by whatever name called.

**“Executive Director”** means a paid employee or executive in the concerned bank / DFI or employee or executive in a company / group where sponsor shareholders of the bank / DFI have substantial interest.

**“Family member”** as define in sub-section (ff) of Section 5 of Banking Companies Ordinance, 1962

**“Financial Institutions”** mean banks, Development Financial Institutions (DFIs) and Non Banking Finance Companies (NBFCs).

**“Independent Director”** means such a person who is not linked directly or indirectly with bank / DFI or its sponsor or strategic shareholders. For the purpose of such determination, an "independent director" is a director who:

- ❑ Has not been employed by Bank/DFI within the last five years;
- ❑ Has not been an employee or affiliate of any present or former external auditor / consultant / legal advisor of Bank/DFI within the last three years;
- ❑ Has not been an executive officer or employee of a subsidiary or associate company of the bank / DFI or where Directors of the bank / DFI has substantial beneficial interest (20% or more shareholding of director’s own or combined with family members);
- ❑ Has not been employed by a company of which an executive officer of Bank/DFI has been a director within the last three years;

- Is not affiliated with a not-for-profit entity that received contributions from Bank/DFI exceeding the greater of 10 million or 2 percent of such charitable organization's consolidated gross revenues during the current fiscal year or any of the last three completed fiscal years.

(**Note:** An independent director shall submit a declaration for his / her independence to SBP at the time of his / her appointment.)

**“Key Executive”** means key executives of banks/DFIs and includes the following functional responsibilities for the present:-

- (a) Any executive, acting as second to CEO including Chief Operating Officer, Deputy Managing Director or by whatever name called
- (b) Chief Financial Officer / Head of Finance / Head of Accounts
- (c) Head of Internal Audit
- (d) Country Treasurer
- (e) Head of Credit/ Risk Management
- (f) Head of Operations
- (g) Head of Compliance
- (h) Head of Human Resource
- (i) Head of Information Technology
- (j) Head of Islamic Banking

The above list will be reviewed from time to time by SBP.

**“Major Shareholder”** of a bank / DFI means any person holding 5% or more of the share capital of a bank / DFI either individually or in concert with family members.

**“Non-Banking Finance Company (NBFC)”** as defined in Companies Ordinance, 1984 that include:

- (a) Companies/Institutions licenced by the SECP to carry out any one or more of the following forms of business, namely:
  - i. Investment Finance Services
  - ii. Leasing
  - iii. Housing Finance Services
  - iv. Venture Capital Investment
  - v. Discounting Services
  - vi. Investment Advisory Services
  - vii. Asset Management Services; and
  - viii. any other form of business which the Federal Government may, by notification in the official Gazette specify from time to time; and
- (b) such other company or class of companies or corporate body as the Federal Government may, by notification in the official Gazette specify for the purpose.

**“Nominee Director”** means a person nominated on the board of a bank/DFI by sponsor(s), persons, company, institution etc. by virtue of his/their shareholding in a bank/DFI.

**“SECP”** means Security and Exchange Commission of Pakistan

**“SBP”** means the State Bank of Pakistan

**“Sponsor Shareholder”** means an individual, company or any other person whose shares are held in safe custody with SBP or in a blocked account maintained with Central Depository Company of Pakistan Limited.

**“Substantial ownership / affiliation”** means beneficial shareholding of more than 20% by a person and/or by his dependent family members, which will include his/her spouse, dependent lineal ascendants and descendants and dependent brothers and sisters. However, shareholding in or by the Government owned entities and financial institutions will not constitute substantial ownership/affiliation, for the purpose of these regulations.

## **SCOPE, APPLICATION AND LIMITATION**

The **“Fit and Proper Test” (FPT)** is applicable on the sponsors (both individual & companies) who apply for a commercial banking licence, the investors acquiring strategic/controlling stake in the banks/DFIs, major shareholders of the banking companies and for the appointment of Directors, CEO, and Key Executives of the banks/DFIs. The fitness & propriety will be assessed on the following broad elements:

- a. Integrity, Honesty & Reputation
- b. Track Record
- c. Solvency & Integrity
- d. Qualification & Experience
- e. Conflict of Interest
- f. Others

2. First three elements are applicable to all categories of individuals, whereas the last three elements will be considered while assessing the FPT of Directors, CEO & Key Executives of banks/DFIs. In addition to above requirements, sponsors and strategic investors are evaluated respectively in terms of “Guidelines & Criteria for setting up of a Commercial Bank” & “Criteria for Establishment of Islamic Commercial Banks” issued by SBP and Code of Corporate Governance issued by SECP.

3. The sponsors, the strategic investors, and appointment of the Directors and CEO require prior clearance in writing from SBP. The CEO and Key Executives shall be full time employees of the bank/DFI. The Directors and CEO will not assume the charge of their respective offices until their appointments are approved in writing by SBP. All the requests for seeking approval of SBP for appointment of Directors & CEO of the banks/DFIs should be routed through respective banks/DFIs along with information on Annexures-I & II.

4. The appointment of Key Executives will not require prior clearance of SBP. However, the banks/DFIs must themselves ensure while appointing Key Executives that they qualify FPT in letter and spirit. The information on appointment of Key Executive is required to be forwarded to SBP on prescribed format at Annexure-III within seven days of assumption of the charge of the post by the incumbent. The information submitted may be checked on post fact basis by Banking Inspection Department of SBP during inspection.

5. The sponsors are required to seek prior approval of SBP along with the information at Annexure-II and other information as required in the “Guidelines & Criteria for Setting up a Commercial Bank” and “Criteria for Establishment of Islamic Commercial Banks”. The strategic investors contemplating to acquire strategic/controlling stake are required to seek prior approval from SBP either directly or through the concerned department/Ministry of Government executing

strategic sale transaction of the bank as required and provided in the transaction structure. The bank should also ensure to give prior intimation to SBP before dealing with any investors/bank/institutions/person for sale/purchase of sponsors/strategic shares and seek approval of SBP for conducting due diligence of bank/DFI in terms of BPD Circular No. 8 of 2003.

6. The major shareholders are required to seek prior approval in writing from SBP for acquiring 5% or more shares along-with information on Annexure-II, with proper justification for holding more than 5% shares of the paid up capital. All the banks/DFIs are required to ensure that major shareholders have sought such an approval from SBP and place it on record.

7. Fit & Proper Test prescribed in the guideline is continuous in nature. All persons subject to FPT should immediately submit any change in the information already submitted (at the time of clearance) either through Company Secretary or Human Resources Department to Banking Policy and Regulations Department. Violation of the instructions, circumvention, concealment, misreporting and delay in submission of information to SBP may result in withdrawal of SBP approval, besides penal action under the provisions of BCO.

## **ASSESSMENT OF FITNESS AND PROPRIETY**

### **1. INTEGRITY, HONESTY AND REPUTATION**

- i) Has not been convicted/involved in any fraud/forgery, financial crime etc, in Pakistan or elsewhere, or is not being subject to any pending proceedings leading to such a conviction.
- ii) Has not been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial matters/business, misconduct, fraud, formation or management of a corporate body etc by SBP, other regulatory authorities (within or outside Pakistan), professional bodies or government bodies/agencies.
- iii) Has not contravened any of the requirements and standards of SBP or the equivalent standards/requirements of other regulatory authorities (outside Pakistan as well), professional bodies or government bodies/agencies.
- iv) Has not been involved with (management or conduct of the affairs of) a company/firm or any other organization that has been refused registration/licence to carry out trade, business etc.
- v) Has not been involved with (management or conduct of the affairs of) a company/firm whose registration/licence has been revoked or cancelled or gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or mal practices.
- vi) Has not been debarred for being Chief Executive, Chairman, Director, Controlling Shareholder/Sponsor or Key Executive of a company/firm or in similar capacity.

### **2. TRACK RECORD**

- i) The person must have an impeccable track record in the companies served either in the capacity of an employee or director/Chief Executive or as Chairman.
- ii) Has not been demoted, dismissed or forced to resign from employment by the bank/DFI, or has not been removed by any regulator or government body, in the capacity of employee, director, chairman or key executive of the company/firm or any other position of trust.

### **3. SOLVENCY & FINANCIAL INTEGRITY**

- i) Has not been associated with any illegal activity concerning banking business, deposit taking, financial dealing and other business.
- ii) Has not been in default of payment of dues owed to any financial institution and/ or default in payment of any taxes in individual capacity or as proprietary concern or any partnership firm or in any private unlisted/listed company.
- iii) Has not been associated as director and/or chief executive with the corporate bodies who have defaulted in payment of Government duties/taxes etc.
- iv) Has sufficient means to discharge his/her financial obligations, if any.

### **4. QUALIFICATION & EXPERIENCE**

This section shall apply separately for Directors, CEO and Key Executives of Banks/DFIs as under: -

#### **i. Directors on the Board**

- a. Must have management/business experience of at least 5 years at senior level in an active capacity. In case of lawyers, 7 years experience is required, provided that they are not practicing/involved with or acting as legal counsel/adviser or on payroll of a bank where he is proposed to be appointed as director.
- b. Minimum qualification for a person to be appointed as Director on the Board of a bank/DFI is graduation. Higher education accomplished in the discipline of banking and finance may be an added qualification.

#### **ii. Chief Executive Officer**

- a. Must be a career banker having at least 5 years of experience at senior level as EVP and above or equivalent i.e. Group Head of Financial/Business Line in a bank and posses expertise and skill set to undertake responsibilities of the position effectively and prudently.
- b. Should be between 40 to 70 years of age.



- c. Should have minimum qualification of graduation or equivalent in the discipline of banking, finance, economics, business administration and related fields. CEO of the Islamic Bank should preferably be having experience/training in Islamic Banking.

### iii. Key Executive

- a. Must be a qualified professional possessing relevant experience & degree relating to the job/assignment.

## 5. CONFLICT OF INTEREST

- i. The CEO is not a Chairman of the Board of Directors of the same bank/DFI .
- ii. The Directors on the Board should avoid conflict of interest in their activities with, and commitments to, other organizations.
- iii. Is not a director (including as a nominee director of the Government) of any other bank/DFI. However, this clause will not be applicable in case of Managing Director and other employees of National Investment Trust (NIT) nominated on the Board of banks/DFIs, till its privatization.
- iv. No person can become a Director of the bank/DFI, if he/she is :
  - a. Holding substantial interest or is working as Chairman, Director, Chief Executive, Chief Financial Officer, Chief Internal Auditor, Research Analyst or Trader (by whatever name/designation called) of a:
    - i. Exchange Company (firm or sole proprietorship)
    - ii. Member of a Stock Exchange
    - iii. Corporate Brokerage House
    - iv. Any company/entity owned and controlled by the person mentioned at (i) to (iii) above
  - b. Acting, either in personal capacity and/or through firm/company where he/she has substantial interest, as consultant /advisor to bank/DFI in which he/she intends to become a director.

## 6. OTHERS

- i. Not more than 25% directors of the same family are permitted to be on the Board of a bank/DFI.
- ii. Maximum two members of Board of Directors of a bank/DFI including its CEO can be the Executive Directors.

- iii. Directors should preferably be professionals from diversified field/industry. However, a minimum of 25% members of Board of Directors of a bank/DFI shall be Independent Directors.
- iv. No member of Senate, National/ Provincial Assembly, Local bodies shall be appointed/ recommended for appointment as Member of Board of Directors and/or Chief Executive Officer/Key Executive of any bank/DFI.
- v. No Key Executive shall head more than one functional area. Furthermore, he/she shall not hold directorship in his /her personal capacity: (a) in a business concern which is also a client of the bank/DFI, and (b) in any other financial institution.

# ANNEXURES

ANNEXURE - I**PROFORMA - FIT & PROPER TEST**

<b>Photo 1 x 1½</b>	Full Name	
	Father's Name	
	Date of Birth	Place of Birth (City and Country)
	Nationality (ies)	NTN Number
	C.N.I.C. No	N.I.C. No (Old)
Passport Number (for foreign national)		
Present Residential Address in Full		
Permanent Residential Address in Full		
Residential Telephone Number(s)		Mobile Number
If you have changed your name, state previous name and reason for change		
Academic Education		
<b>Qualification</b>	<b>Name &amp; Address of Degree Awarding Institution</b>	<b>Date of Completion</b>
Professional Education		
<b>Qualification</b>	<b>Name &amp; Address of Institution/ Professional Body</b>	<b>Date of Completion</b>
Training(s); if any		

cont'd...

<b>Existing Employment</b>	
Present Designation	Present Department
Official Address	
Telephone Number (s)	Email

Please provide complete and true particulars of all business(es), including proprietary concern/partnership firms, companies, in which you have been associated as a proprietor, partner or a director thereof during the last ten years and the accounts maintained by them:		
<b>Name of the Proprietary Concern/Partnership Firm/ Company</b>	<b>Name of Bank and/or NBFIs Together with Name of Branches</b>	<b>Account Number(s)</b>

Position held during the last ten years (along with name and address of company / institution/ body where appointment held, nature of the company/institution/body and dates of appointment)
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Position of the shares held in the bank	Number of shares held as of _____
As a Sponsor Shareholder <ul style="list-style-type: none"> <li>• Own name</li> <li>• In name of your company</li> <li>• In name of your family member</li> </ul> Other than Sponsor Shareholder <ul style="list-style-type: none"> <li>• Own name</li> <li>• In name of your company</li> <li>• In name of your family member</li> </ul>	

(Signature of concerned official)

**ANNEXURE-II**

**Affidavit**  
**(On Non-Judicial Stamp Paper)**

I, \_\_\_\_\_ son/ daughter/ wife of \_\_\_\_\_ adult, resident  
 of \_\_\_\_\_  
 and holding CNIC No. \_\_\_\_\_ do hereby state on solemn  
 affirmation as under:-

- a. that the deponent hereby confirm that the statement made and the information supplied in the attached questionnaire and the Annexure-I and the answers thereof are correct and that there are no other facts that are relevant for "Fit and Proper Test"
- b. that the deponent undertake that the State Bank of Pakistan may seek additional information from any third party it deems necessary in view of assessing "Fit and Proper Test"
- c. that the deponent undertake to bring to the attention of the State Bank of Pakistan any matter which may potentially affect my status as being someone fit and proper as and when it crops up; and
- d. that whatever is stated above is correct to the best of my knowledge and belief and nothing has been concealed therefrom.

**DEPONENT**

The Deponent is identified by me

Signature \_\_\_\_\_  
**ADVOCATE**  
**(Name and Seal)**

Solemnly affirmed before me on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by  
 the Deponent above named who is identified to me by \_\_\_\_\_, Advocate,  
 who is known to me personally.

Signature \_\_\_\_\_  
**OATH COMMISSIONER FOR TAKING AFFIDAVIT**  
**(Name and Seal)**

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### QUESTIONNAIRE FOR ACCESSING "FIT & PROPER TEST"

Please answer the following questions by entering a tick (✓) in the appropriate box. If answer of any of these questions in YES and need explanation, use a separate sheet with proper reference to the question.

	Yes	No
1. Have you ever been convicted/involved in any fraud/forgery, financial crime etc, in Pakistan or else where, or is being subject to any pending proceedings leading to any conviction?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you ever been associated with any illegal activity concerning banking business, deposit taking, financial dealing and other business?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you ever been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial/business, misconduct, fraud, formation or management of a corporate body etc by SBP, other regulators, professional bodies or government bodies/agencies?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you ever contravened any of the requirements and standards of regulatory system or the equivalent standards or requirements of other regulatory authorities?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you ever been involved with a company or firm or other organization that has been refused registration/licence to carry out trade, business etc?	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you ever been involved with a company/firm whose registration/licence has been revoked or cancelled or gone into liquidation or other similar proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you ever been debarred for being Chief Executive, Chairman, Director or Sponsor/Strategic Investor of a company, especially financial institutions?	<input type="checkbox"/>	<input type="checkbox"/>
8. Have you ever been dismissed/ asked to resign/resigned in Pakistan or elsewhere in order to avoid legal or disciplinary action?	<input type="checkbox"/>	<input type="checkbox"/>
9. Have you ever resigned from a professional or regulatory body in Pakistan or elsewhere in order to avoid legal or disciplinary action?	<input type="checkbox"/>	<input type="checkbox"/>
10. Have you ever been disqualified/ removed by regulators/Government bodies/ agencies?	<input type="checkbox"/>	<input type="checkbox"/>
11. Have you ever been in default of payment of dues owed to any financial institution in individual capacity or as proprietary concern or any partnership firm or in any private unlisted/listed company?	<input type="checkbox"/>	<input type="checkbox"/>
12. Have you ever been in default of taxes in individual capacity or as proprietary concern or any partnership firm or in any private listed/unlisted company?	<input type="checkbox"/>	<input type="checkbox"/>
13. Have you ever been associated as director and/or chief executive with the corporate bodies whose corporate and tax record, including custom duties, central excise and sales tax has been unsatisfactory?	<input type="checkbox"/>	<input type="checkbox"/>

cont'd...

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 14. Have you entered into any agreement with any other person (natural or legal) which will influence the way in which you exercise your voting rights or the way in which you otherwise behave in your relationship with the authorized entity?                      | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Are you a director on the Board of Directors of any other Financial Institution(s)?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Are you a Chairman, Chief Executive, Chief Financial Office, Chief Internal Auditor, Research Analyst or Trader (by whatever name/designation called) of a Exchange Company (firm or sole proprietorship), member of a Stock Exchange, Corporate Brokerage House? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Are you owing/controlling any Exchange Company or Corporate Entity?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Have you been or are you working as consultant or adviser of bank/DFI in which you intend to become a director?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Are you employee of the bank/DFI?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Are you employee of a company/entity/organization where sponsor shareholders of bank/DFI have substantial interest?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. Are you a member/office bearer of any political party or member of Senate/National/Provincial Assembly/Local Body?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. If independent director, have you enclosed declaration in this behalf?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. Any other information that is relevant for the purpose of SBP and needs to be mentioned?  | <input type="checkbox"/> | <input type="checkbox"/> |

**Signature** \_\_\_\_\_  
**Name** \_\_\_\_\_  
**Position** \_\_\_\_\_  
**Date** \_\_\_\_\_



**ANNEXURE-III****PROFORMA - FITNESS & PROPRIETARY OF KEY EXECUTIVES**

<b>Photo 1 x 1½</b>	Position and Grade held by the Executive											
	Date of assumption of current position (dd/mm/yyyy)											
	Full Name											
	Father's Name											
	Date of Birth		Place of Birth (City and Country)									
Nationality (ies)		NTN Number										
C.N.I.C. No		N.I.C. No (Old)										
Telephone Number(s)		Mobile Number										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3">Academic Qualification</th> </tr> <tr> <th style="width: 40%;">Qualification</th> <th style="width: 40%;">Name &amp; Address of Degree Awarding Institution</th> <th style="width: 20%;">Date of Completion</th> </tr> <tr> <td style="height: 40px;"></td> <td></td> <td></td> </tr> </table>				Academic Qualification			Qualification	Name & Address of Degree Awarding Institution	Date of Completion			
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Professional Qualification												
Qualification	Name & Address of Degree Awarding Institution	Date of Completion										
Training(s); if any												
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If yes, reasons for adverse findings and amount of penalty imposed (if any)												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 75%;">Has ever been dismissed from employment?</td> <td style="width: 10%;">Yes</td> <td style="width: 15%;">No</td> </tr> <tr> <td colspan="3">If yes, name of the employer and reason for dismissal</td> </tr> </table>				Has ever been dismissed from employment?	Yes	No	If yes, name of the employer and reason for dismissal					
Has ever been dismissed from employment?	Yes	No										
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**(Signature of the concerned official)****(Signature and Stamp of Employer)**