



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BANK OF NAMIBIA

No. 509

2023

FIT AND PROPER PERSON GUIDELINES: VIRTUAL ASSETS ACT, 2023

The Bank of Namibia designated as the Regulatory Authority in terms of section 5(1) of the Virtual Assets Act, 2023 (Act No. 10 of 2023) has in terms section 4(2) of that Act made the Fit and Proper Person Guidelines set out in the Schedule.

J. !GAWAXAB
GOVERNOR
BANK OF NAMIBIA

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PART 1**DEFINITIONS AND SCOPE OF GUIDELINES****Definitions**

1. In these guidelines, a word or an expression to which a meaning has been given in the Virtual Assets Act, 2023 (Act No. 10 of 2023), has that meaning, and –

“fit and proper person” means a person who when subjected to the criteria set out in section 4(1) of the Act and these guidelines presents the likelihood of being in a position to discharge all the responsibilities of that person in a honest, competent, and prudent manner and in the interest of the customers and in a manner not prejudicial to the financial industry;

“Regulatory Authority” means the Bank or any other entity designated as the Regulatory Authority in terms of section 5(1) of the Act;

“relevant person” means a beneficial owner, officer, a person in senior management and other persons subject to the fit and proper requirement under the Act and these guidelines; and

“the Act” means the Virtual Assets Act, 2023 (Act No. 10 of 2023).

Scope of guidelines

2. These guidelines apply to –
 - (a) persons who apply for a licence under the Act to operate as virtual asset service providers or as token issuers;
 - (b) persons who apply for any authorisation under the Act and who are subject to the fit and proper person requirement;
 - (c) persons issued with a licence or authorisation under the Act and who are subject to the fit and proper person requirement; and
 - (d) the beneficial owners, officers, individuals in senior management and other persons who are subject to the fit and proper person requirement under the Act and these guidelines.

PART 2

FIT AND PROPER PERSONS

Fit and proper person requirements

3. (1) In considering whether a person is a fit and proper, the Regulatory Authority must have regard to –

- (a) the matters referred to in section 4(1) of the Act;
- (b) criminal conviction relating to the licence holder, an applicant for licence or authorisation under the Act and relevant persons;
- (c) other matters set out in these guidelines.

(2) The Regulatory Authority will carry out an initial fit and proper test when a person applies for a licence or applies for any authorisation under the Act that requires that the fit and proper requirement be complied with.

(3) The Regulatory Authority will apply a fit and proper test on an ongoing basis to ensure that persons who are required to be fit and proper persons are at all times fit and proper.

Purpose of fit and proper test

4. The purpose of the fit and proper test is the following but is not limited to the following:

- (a) to establish a standard benchmark for licensing and for ongoing regulation and supervision of licence holders and applicants for authorisation under the Act;

- (b) to act as a deterrent to protect the interests of consumers of financial services;
- (c) to encourage high standards of market conduct;
- (d) to encourage a high level of confidence amongst those using, and those considering using Namibia as a base for their operations;
- (e) to deter making an abuse of Namibia financial market;
- (f) to promote a business environment that meets acceptable international standards; and
- (g) to ensure that persons, who are not fit and proper to perform functions in relation to a regulated activity, are precluded from doing so, in the public interest.

Responsibilities of the licence holder, applicant and persons subject to fit and proper test

5. (1) A licence holder or applicant for licence or authorisation under the Act and relevant persons must at all times be seen as fit and proper.

(2) The onus is on the licence holder or applicant for licence or authorisation under the Act to establish that the relevant persons are fit and proper persons, as different appointments and designations entail different responsibilities.

(3) The Regulatory Authority will consider the nature of the responsibilities of the relevant persons in determining the standards expected from the relevant person.

(4) On application for a licence or authorisation under the Act that requires the fit and proper requirement to be complied with, the applicant for a licence, the licence holder and the relevant persons must complete the fit and proper person questionnaire set out in the Annexure and must provide, depending on the nature of the license or authorisation, any additional information that the Regulatory Authority may require to complete its assessment.

(5) A licence holder or an applicant for a licence or authorisation under the Act must notify the Regulatory Authority of any events or circumstances occurring subsequent to the initial application for a license or authorisation, that might change the assessment or have a material impact on the assessment of fit and proper.

(6) The licence holder or an applicant for a licence or authorisation under the Act and relevant persons has a duty to make full, unequivocal, and diligent disclosure.

Assessing fitness and propriety

6. (1) In reaching a decision whether a person is a fit and proper person, the Regulatory Authority will apply the balance of probabilities standard and will assess all evidence submitted and may have regard to any other information in its possession.

(2) The Regulatory Authority will also consider, amongst other things, changes in key relationships such as auditors and the Regulatory Authority may enquire into the changes.

(3) When assessing an application for the appointment of relevant persons, the Regulatory Authority may, in addition to the fit and proper test, consider other factors that may be relevant, such as whether the relevant person has a good standing in the profession in respect of which the application is submitted.

(4) The Regulatory Authority must be informed of any of the factors referred to in subparagraph (3) or any other matter that the Regulatory Authority may consider relevant whether they occurred in Namibia or elsewhere.

(5) When conducting its assessment of fitness and propriety, the Regulatory Authority will consider the extent and circumstances of the person's involvement in the relevant events, the time it occurred and its seriousness.

(6) The Regulatory Authority reserves its regulatory powers to gather any information from any appropriate source on the overall reputation of a person, regardless of whether such information results from the above criteria and factor in its assessment of the person's fitness and propriety.

(7) A licence holder or applicant for a licence or authorisation under the Act must report voluntarily any matter of a material nature or matters that may potentially give rise to regulatory concerns which the Regulatory Authority should be aware of, and this may involve the licence holder or applicant or a related entity.

(8) Failure or omission to report promptly or inordinate delay to supply material information, may be taken into account in the assessment of the integrity of the licence holder or applicant for a licence or authorisation under the Act.

(9) Where the Regulatory Authority discovers information which should have been brought to its attention but was not, it will, amongst other things, take into account the circumstances, the gravity of the events, the time that has elapsed between the happening of the event and its discovery and the relevance of the event to the licence or authorisation.

Honesty, integrity, diligence, fairness, reputation, and good character

7. (1) Honesty, integrity, diligence, fairness, reputation, and good character are qualities that must be demonstrated on an ongoing basis.

(2) A person must demonstrate and provide reasonable assurance to the satisfaction that the person is of good repute and substantiate the intentions to act in an honest, ethical and trustworthy manner.

(3) Integrity demands a disciplined and ongoing adherence to high standards of behaviour and honesty.

(4) The following factors are relevant to determining honesty, integrity, diligence, fairness, reputation and good character:

(a) for individuals:

- (i) whether the person has been refused the right or is restricted to carry on any trade, business or profession for which a specific license, registration or other authorisation is required by law in any jurisdiction;
- (ii) whether the person has been issued a prohibition order as a result of an offence committed under any legislation or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
- (iii) whether the person has been censured, disciplined, suspended and disqualified or suspended or disqualified by any local or foreign regulatory authority;

- (iv) whether the person has been the subject of any complaint, made reasonably and in good faith, relating to activities under any law in any jurisdiction;
- (v) whether the person has been the subject of any proceeding of a disciplinary or criminal nature or has been notified of any potential proceeding or of any investigation which might lead to such proceedings, under any law in any jurisdiction;
- (vi) whether the person has been convicted of any offence, or is being subject to any pending proceeding, which may lead to such a conviction, under any law in any jurisdiction;
- (vii) whether any judgment associated with a finding of fraud, misrepresentation or dishonesty any case entered against the person in any civil proceeding or the person is a party to any pending proceeding which may lead to such a judgment, in any jurisdiction;
- (viii) whether the person has accepted civil liability for fraud or misrepresentation in any jurisdiction;
- (ix) whether any enforcement action was taken against the person by any regulatory authority under any law in any jurisdiction;
- (x) whether the person has aided or abetted another person in breach of any law or regulation, business rules or codes of conduct, be it in Namibia or elsewhere;
- (xi) whether the person has been the subject of any investigation or disciplinary proceeding or been issued a warning by any regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Namibia or elsewhere;
- (xii) whether the person has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards in Namibia or elsewhere;
- (xiii) whether the person has provided false or misleading information to the Regulatory Authority or been uncooperative in any dealings with any regulatory authority in any jurisdiction;
- (xiv) whether the person has been involved with a person or partnership that has been refused registration, authorisation, membership or a license to carry out a trade, business or profession;
- (xv) whether the registration, authorisation, membership or license of the person has been revoked, withdrawn or terminated by a regulatory or government body; and
- (xvi) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that business or within one year of that connection; and

- (b) for a legal person:
 - (i) whether the legal person has substantial shareholders and relevant persons who are not fit and proper persons;
 - (ii) whether the legal person has been subject to suspension or cancellation of its licence or other authorisation to carry on the business for which a licence is sought;
 - (iii) whether the legal person has been subject to any regulatory or enforcement action by any authority in any jurisdiction;
 - (iv) whether any judgment, order or conviction has been made or any legal proceedings, actions or other claims are pending against the legal person whether civil or criminal in nature; and
 - (v) whether the legal person has meaningful internal controls and procedures, including procedures to manage conflicts of interest.

(5) The Regulatory Authority recognises the difficulty of weighting education and experience and will look particularly for evidence of a sound knowledge of the business, a prudent approach to risk, and a scrupulous attitude towards clients.

Financial soundness

8. (1) Financial soundness includes being able to meet liabilities as they become due and ensuring adequate control over financial risks on a continuing basis, and it also involves taking proper care of customers' assets, including their money.

(2) Financial soundness is an important element in determining the suitability of applicants for licensing and in determining the ongoing suitability of the licence holder or applicant for a licence or authorisation under the Act and it extends to relevant persons of the licence holder or applicant.

(3) Unless an individual can demonstrate that he or she can manage his or her personal affairs properly, it is unlikely that such an individual will be entrusted to manage the affairs of others, and the Regulatory Authority will require licence holders or applicants to demonstrate that they can manage their personal affairs.

(4) The factors set out in the following subparagraphs are also relevant in the assessment of the financial soundness of relevant persons:

- (a) for individuals:
 - (i) the individual is or has been unable to fulfil any of the individual's financial obligations, whether in Namibia or elsewhere;
 - (ii) the individual is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Namibia or elsewhere;
 - (iii) the individual in Namibia or elsewhere, has made any arrangement with creditors, filed for bankruptcy, had a bankruptcy petition served on him or her, been adjudged bankrupt, been the subject of a bankruptcy restriction order, offered a bankruptcy restrictions undertaking, had assets sequestered, or been involved in proceedings relating to any of these; or

- (v) whether the individual has entered into a compromise or scheme of arrangement with creditors or made an assignment for the benefit of creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in Namibia or elsewhere; and
- (b) for legal persons:
 - (i) whether the legal person is or has been threatened with administration, liquidation or other similar proceedings; and
 - (ii) whether the legal person is able to meet any financial or capital requirements applicable to it.

PART 3

ENFORCEMENT

Enforcement

9. Where a licence holder or applicant for a licence or authorisation under the Act or persons to whom these guidelines apply contravenes or fails to comply with a provision of these guidelines, the Regulatory Authority, may as it consider appropriate in the circumstance and in accordance with the Act, issue a directive, suspend or cancel a licence or amend a condition of a licence, impose administrative sanctions or institute criminal proceedings in terms of the Act.

PART 4

SHORT TITLE

Short title

10. These guidelines may be cited as Fit and Proper Person Guidelines.

PART 5

EFFECTIVE DATE

Effective date

11. These guidelines become effective on the date of publication in the *Gazette*.

ANNEXURE

FIT AND PROPER PERSON QUESTIONNAIRE

ANNEXURE A

IDENTIFICATION OF NATURAL OR LEGAL PERSON

- a) Entity Name/Trade
- b) Legal form and identification
- c) Proof of existence of the legal person or arrangement

- d) Legal existence and structure
- e) Country of original incorporation
- f) Registration name
- g) Registered address
- h) Foreign address (if Applicable)
- i) The nature and purpose of the entity's business and operations

ANNEXURE B

COMPLIANCE AND SUPERVISION

- a) Prudential and other regulators
- b) Name of auditors and years of audit service engagement
- c) Submit certified copies of article of association issued by BIPA
- d) Submit Tax Certificate of Good standing issued by NamRA
- e) Submit Police Clearance Certificate issued by the Namibian Police or in any other jurisdiction where the applicant is domiciled

ANNEXURE C

BENEFICIAL OWNERSHIP

- a) Provide the ownership structure of the entity
- b) Completed shareholders' questionnaire for each of the shareholders
- c) List the shareholders of the entity and the % shareholding.

Name	% Share	Name	% Share
1.		6.	
2.		7.	
3.		8.	
4.		9.	
5.		10.	

- d) Provide the control structure of the entity

e) **List the persons with control or voting rights.**

Name		Name	
1.		6.	
2.		7.	
3.		8.	
4.		9.	
5		10.	

f) Provide the Management structure for the entity

g) Curriculum Vitae (“CV”) details for each of the relevant persons

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h) **List the management of the entity and the portfolio.**

Name	Portfo	Name	Portfo
1.		6.	
2.		7.	
3.		8.	
4.		9.	
5		10.	

i) Determine the entity’s beneficial owners as defined (*natural person with 25% of ownership or control*) refer to definition for beneficial ownership)

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j) List the Beneficial owners as determined and the % of ownership and control.

Name	Ownership %	Name	Control %
1.		6.	
2.		7.	
3.		8.	
4.		9.	
5		10.	

ANNEXURE D

1. STATEMENT BY INDIVIDUALS WHO ARE HOLDING, OR ARE PROPOSING TO HOLD OFFICE AS OFFICER, SENIOR MANAGER, SHAREHOLDER AND BENEFICIAL OWNER IN THE VIRTUAL ASSET SERVICE PROVIDER/TOKEN ISSUER:

The information provided herein is private and confidential.

Where allocated answering space is not sufficient, make use of additional paper to ensure complete information is provided.

1.1 Name of entity in connection with which this questionnaire is being completed:
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1.2 Your surname:
.....

1.3 Your full forename(s):
.....

1.4 Former surname(s) and or forename(s) by which you may have been known:
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1.5 Date and place of birth (including town or city):
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1.6 Residential address:
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1.7 Any previous residential address(es) during the last 10 years:
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1.8 Please state in which capacity you are completing this questionnaire, that is, as a current or prospective officer, a shareholder or combination of these.
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- 1.9 Please state your full title and describe the particular duties and responsibilities attached to the positions(s) that you hold or will hold.

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- 1.10 If you are completing this form in the capacity of director, indicate whether, in your position as director, you have or will have executive responsibility for management of the entities business. In addition, please provide a copy of your curriculum vitae:

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- 1.11 Your nationality and how it was acquired (birth, naturalization or marriage). If applicable, a certified copy/suitable documentary evidence as proof that you were granted Namibian citizenship must also be attached.

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- 1.12 Names and address(es) during the past 10 years.

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- 1.13 Your occupation and employment now and during the past 10 years, including the name of your employer in each case, the nature of the business, the position held and relevant employment dates:

(Please include current occupation as well)

POSITION HELD	EMPLOYER NAME	NATURE OF BUSINESS	PERIOD OF EMPLOYMENT

- 1.14

Of which body corporate are you currently a director or a shareholder and since when:
- 1.15

Of which other legal persons were you a director or a shareholder over the past 10 years (those not mentioned above):
- 1.16

Do you hold directly or indirectly issued capital of any entity (other than the entity) that is now registered, or that has applied for authorisation, to operate as Virtual Asset Service Provider/Token Issuer. If so give particulars:
- 1.17

Do you hold or have you ever held or applied for a license or equivalent authorization to conduct any business activity in Namibia or elsewhere? If so, give particulars. If any such application was refused or withdrawn after it was made, or if any authorisation was cancelled, give particulars:

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-
- 1.18 Does any entity with which you are, or have been, associated as a director or shareholder hold, or has it ever held or applied for a license or equivalent authorization to conduct any business activity? If so, give particulars. If any such application was refused, or was withdrawn after it was made or if an authorisation was cancelled, give particulars thereof:

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- 1.19 Have you, in Namibia or anywhere else, been censured, disciplined, warned as to future conduct, or made the subject of a court order at the instigation of any regulatory authority or any professional body to which you belonged or have you ever held a practicing certificate subject to conditions? If so, give particulars:

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- 1.20 Have you, or any legal person with which you are, or have been, associated as a director or shareholder, been the subject of an investigation, in Namibia or elsewhere, by or at the instigation of a government department or agency, professional association or other regulatory body? If so give particulars:

1.21 Have you, in Namibia or elsewhere, been dismissed from any office or employment, or been subject to disciplinary proceedings by your employer or been barred from entry to any profession or occupation? If so, give particulars:

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1.22 Have you failed to satisfy any debt adjudged due and payable by you, as a judgement-debtor under an order of a court in Namibia or elsewhere, or made any compromise arrangement with your creditors within the past 10 years? If so, give particulars:

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1.23 Have you ever been declared insolvent (either provisionally or finally) by a court in Namibia or elsewhere, or has a bankruptcy petition ever been served on you? If so, please give particulars:

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1.24 Have you, in connection with the information or management of any body corporate, partnership or unincorporated institution, been adjudged by a court in Namibia or elsewhere civilly liable for any fraud, misfeasance or other misconduct by you towards such body corporate, partnership or unincorporated institution or towards any members thereof? If so, give particulars:

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- 1.25 Have any legal person with which you were associated as a director or shareholder, in Namibia or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while you were associated therewith or within one year after you ceased to be associated therewith, or has anything analogous to any of these events occurred under the laws of any other jurisdiction? If so, give particulars:

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- 1.26 Have you been concerned with the management or conduct of the affairs of any entity that, by reason of any matter relating to a time when you were so concerned, has been censured, warned as to future conduct, disciplined or made the subject of a court order at the instigation of any regulatory authority in Namibia or elsewhere? If so, give particulars:

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- 1.27 In carrying out your duties will you be acting on the directions or instructions of any other individual or entity? If so, give particulars:

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- 1.28 Do you or does any related party whom you are aware, undertake business with this entity? If so, give particulars:

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- 1.29 How many shares in the entity are registered in your name or that of a related party? If applicable, give name(s) in which such shares are registered and the class of shares.

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1.30 In how many shares in the entity (not being registered in your name or that of a related party) are related parties beneficially interested?

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1.31 Are you currently, or do you, other than in a professional capacity, expect to be, engaged in any litigation in Namibia or elsewhere? If so give particulars:

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1.32 Do you, at all times, while acting in your capacity as officer, senior manager, beneficial owner of the entity, undertake to:

- a) Act in good faith towards the entity and the Regulatory Authority. (YES / NO)
- b) Avoid conflict between your other interests and the interests of the entity and the Regulatory Authority. (YES / NO)
- c) Place the interest of the entity and the Regulatory Authority above all other interests. (YES / NO)

1.33 Kindly also attach certified copies of:

- a) Certificate of Conduct, from the Namibian Police, not older than six (6) months as from the time of submitting application, certifying that there are no convictions recorded against you, excluding:
 - 1) any offence committed when you were under the age of 18, unless the same was committed within the last 10 years;
 - 2) any road traffic offence; or
 - 3) any political offence.

If applicable, give particulars of the court by which you were convicted, the penalty imposed and the date of conviction.

- b) Certificate of Good Standing for tax purposes, not older than six (6) months as from the time of submitting application, from the NamRa.
- c) Demonstration of ability to maintain sound personal finances: Provision of personal income statement.

2. DECLARATION

I, _____ hereby declare the following: this declaration is true and to the best of my knowledge and belief. I am aware that should it be submitted as evidence and I know that something appears therein that I know to be false or believe not to be true, I may be liable to prosecution. I am acting in my own personal capacity as a shareholder of the institution and not as a nominee, trustee or beneficiary for an undisclosed person or entity.

I undertake that, as long as I continue to be an officer/person in senior management/ shareholder of the entity, I will notify the Regulatory Authority of any materials changes that occurs at any time after this form is submitted.

_____ Name	_____ Signature	_____ Date
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the completeness or accuracy of, the information supplied in support of this application, but in not later than 21 days from the day that the changes come to my attention.

I know and understand the content of this declaration. I ****have / do not have**** objections to taking the prescribed oath.

I consider the prescribed oath to be **** binding / not binding**** on my conscience.

.....
SIGNATURE OF DEPONENT

I certify that the above statement was taken by me and that the deponent has acknowledged that ****he / she**** knows and understands the content of this statement. This statement was ****sworn to / affirmed**** before me and the deponent's signature was placed thereon in my presence at on this day of (yyyy-mm)

COMMISSIONER OF OATHS

FULL NAMES:

EX OFFICIO:

AREA:

ADDRESS:

**** Delete whichever is not applicable.***
