

Ref.: 08/24/008/0019/001

**Direction on Assessment of Fitness and Propriety of Directors and Officers Performing Executive Functions of Primary Dealer Companies**

This direction is issued under Regulation 11(1)(p) of the Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 and Regulation 11(1)(p) of the Registered Stock and Securities (Primary Dealers) Regulations No. 01 of 2009 made by the Minister of Finance under the Local Treasury Bills Ordinance No. 8 of 1923 and the Registered Stock and Securities Ordinance No. 7 of 1937, respectively, and will be effective from 01.06.2013.

Colombo.

Date: 28.05.2013



**N W G R D Nanayakkara**  
**Superintendent of Public Debt**

1. Fitness and Propriety (honesty, integrity and reputation, competence, capability, and financial soundness) of directors and officers performing executive functions of Primary Dealer Companies is an essential requirement to ensure good governance and risk management on the conduct of business of Primary Dealer Companies which promote safety, soundness and stability of the Primary Dealer industry.
2. Hence, no person shall be appointed as a director of a Primary Dealer Company or an officer performing executive functions (hereinafter referred as "officer") in such company unless that person is a fit and proper person to hold office as a director or an officer in terms of the provisions of this Direction. Non-compliance with any one of the criteria as set out herein shall disqualify a person to be appointed, elected or nominated as a director or an officer and/or to continue as a director or an officer.

### **3. Criteria for assessment of fitness and propriety of directors and officers**

3.1 In assessing the fitness and propriety of a person, the following matters shall be considered by the Superintendent of Public Debt:

- (a) that such person possesses academic or professional qualifications or effective experience in banking, finance, business or administration or of any other relevant discipline;
- (b) that the age of a person who serves as a director of a Primary Dealer Company shall not exceed 70 years;
- (c) that a director of a Primary Dealer Company shall not hold office as a director or any other equivalent position in more than 20 companies/entities/institutions, inclusive of related companies of the Primary Dealer Company, subject to Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 and Registered Stock and Securities (Primary Dealers) Regulations No. 01 of 2009;
- (d) that such person is not found by any court of law, regulatory or supervisory authority, professional association, Commission of Inquiry, tribunal or other body established by law in Sri Lanka or abroad, to the effect that such person has committed or has been connected with the commission of, any act which involves fraud, deceit, dishonesty, improper conduct or non-compliances with provisions of any statute or rules, regulations, directions or determinations issued thereunder;
- (e) that such person has not been convicted by any Court in Sri Lanka or abroad in respect of an offence involving criminal activity;
- (f) that such person has not been declared insolvent or declared bankrupt in Sri Lanka or abroad;
- (g) that such person has not failed to satisfy any judgment or order of any Court whether in Sri Lanka or abroad, or to repay a debt;
- (h) that such person has not been declared by a Court of competent jurisdiction in Sri Lanka or abroad, to be of unsound mind;

- (i) that such person has not been removed or suspended by a regulatory or supervisory authority from serving as a director, chief executive officer or other officer or an employee in any licensed bank, finance company, Primary Dealer Company, financial institution or a corporate body in Sri Lanka or abroad;
- (j) that such person has not been a director, chief executive officer or held any other position of authority in any licensed bank, finance company, Primary Dealer Company or financial institution;
- (i) whose license or business has been cancelled or suspended on grounds of regulatory concerns; or
- (ii) which has been wound up or is being wound up, or which is being compulsorily liquidated; whether in Sri Lanka or abroad.

3.2 In addition, criteria set out in Regulations 3(c), 5(c) and 5(d) of the Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 and the Registered Stock and Securities (Primary Dealers) Regulations No. 01 of 2009 shall also be applicable, of which details are as follows:

Regulation 3(c): The Central Bank may conduct such inquiries as it may consider necessary to ascertain the eligibility of the applicant to be appointed as a Primary Dealer, including inquiries as regards the competence, character, integrity and suitability of its directors and principal officers.

Regulation 5(c): The Company shall not have on its Board of Directors, a director or an employee of another Primary Dealer or except for the Chief Executive Officer, an employee of the Company.

Regulation 5(d): The Company shall not have on its Board of Directors any person who is subject to any disqualification applicable to directors of a Licensed Commercial Bank in terms of the Banking Act, No. 30 of 1988.



**4. Assessment of fitness and propriety of Directors and Officers performing executive functions**

4.1. Each Primary Dealer Company shall submit to the Superintendent of Public Debt;

- (a) An affidavit and a declaration as in Annex I and II, respectively, from respective new directors or officers selected for appointment.
- (b) A letter from the company in which such new director or officer selected for appointment held office immediately preceding the appointment regarding the level of performance of duties assigned to him/her in the particular institution.

4.2. With respect to existing directors and officers, Primary Dealer Companies shall obtain and submit affidavits and declarations to the Superintendent of Public Debt within thirty days of this Direction.

4.3. In respect of every continuing director/s, the Chief Executive Officer of the Primary Dealer Company shall obtain and submit affidavits and declarations to the Superintendent of Public Debt annually thirty days prior to the Annual General Meeting of the respective Primary Dealer Company if such Directors are nominated for re-appointment.

4.4. In respect of every continuing Chief Executive Officer of a Primary Dealer Company, the Chairman of the Board of Directors of the Primary Dealer Company shall obtain and submit an affidavit and a declaration to the Superintendent of Public Debt annually thirty days prior to the commencement of the calendar year, if such officer is nominated for continuation in the Chief Executive position or nominated for appointment to another position.

4.5. In respect of every continuing officer, the Chief Executive Officer of Primary Dealer Company shall obtain and submit affidavits and declarations to the Superintendent of Public Debt annually thirty days prior to the commencement of the calendar year, if such officers are nominated for continuation in respective positions or nominated for appointment to another position.

## **5. Approval of the Superintendent of Public Debt**

5.1 The Superintendent of Public Debt may, having regard to the matters specified in Paragraph 3 above, approve or refuse to approve the appointment or continuation of any person as the case may be as a director or an officer of a Primary Dealer Company.

5.2 The Superintendent of Public Debt shall notify the Primary Dealer Company of such approval or refusal within thirty days from the receipt of duly completed documents referred to in 4 above giving reasons therefore and it shall be the duty of the Chairman of the Board of Directors or the Chief Executive Officer of Primary Dealer Company to communicate such notification to the director or the chief executive officer or the officer concerned, as the case may be, and implement same.

## **6. Determination by the Superintendent of Public Debt at any time**

6.1 Where the Superintendent of Public Debt, having regard to the matters specified in Paragraph 3 above, is satisfied at any time that a person appointed or continued is not fit and proper as a director or an officer for continuation, may determine that the person is not fit and proper to be a director or an officer of a Primary Dealer Company and Paragraph 5.2 above shall be applicable thereafter.

## **7. Subsequent ineligibility to be notified**

7.1 Every Chairman of the Board of Directors or the Chief Executive Officer of Primary Dealer Company, as the case may be, shall notify the Superintendent of Public Debt of any reasonable suspicions or findings to the effect that any director or an officer is not a fit and proper person to hold office in the respective Primary Dealer Company within fourteen days of it being aware of such suspicion or findings.

7.2 If circumstances vary, change, render invalid, make inapplicable or falsify the information contained in an affidavit or declaration submitted by a director or an officer, such person shall, within fourteen days, notify the Superintendent of Public Debt.

## **8. Appeal to the Monetary Board**

8.1 A person aggrieved by the refusal or determination of the Superintendent of Public Debt under Paragraph 5.1 or 6.1 above may within fourteen days of receipt of the

communication sent by the Chairman of the Board of Directors or the Chief Executive Officer of the Primary Dealer Company, as the case may be, make an appeal giving reasons in writing in justifiable manner to the Monetary Board.

8.2 The Monetary Board may, after considering reasons given by the Superintendent of Public Debt and the objections of the aggrieved party, decide either to confirm or over-rule the refusal made by the Superintendent of Public Debt.

9. In this Direction, unless the context otherwise requires:-

9.1 "Primary Dealer Company" includes Primary Dealer Companies which are appointed in terms of the Local Treasury Bills Ordinance No. 8 of 1923 and Registered Stock and Securities Ordinance No. 7 of 1937 that, maintain capital base over and above Rs. 300 million under the existing Directions issued by the Superintendent of Public Debt, and excludes Licensed Commercial Banks which are appointed as Primary Dealers.

9.2 "Officers performing executive functions" in a Primary Dealer Company include:

- (a) Chief Executive Officer/General Manager
- (b) Chief Risk Officer
- (c) Chief Accountant
- (d) Chief Internal Auditor
- (e) Compliance Officer
- (f) Head of Information Technology
- (g) Company Secretary
- (h) Head of Front Office
- (i) Head of Middle Office
- (j) Head of Back Office
- (k) Any other officer holding office as "key management personnel"



Name of Primary Dealer Company: .....

**Affidavit to be submitted by Directors and Officers performing Executive functions in  
Primary Dealer Companies**

I, ..... (full name)  
holder of National Identity Card No. / Passport No. .... of  
..... (address)  
being a [Buddhist / Hindu do hereby solemnly, sincerely and truly declare and affirm / Christian / Catholic / Muslim  
make oath and state] as follows:

1. I am the [affirmant / deponent] above named and I am ..... (designation)  
of ..... (name of the Primary Dealer Company).
2. I [affirm/state] that I possess the following academic and / or professional qualification/s:  
.....
3. I [affirm/state] that the effective experience that I possess in banking, finance, business or administration or  
of any other relevant discipline is as follows:  
.....
4. I [affirm / state] that I am not subjected to any disqualification given under Paragraph 3 of the Direction on  
the fitness and propriety of Directors and Officers performing executive functions in Primary Dealer  
Companies and to any disqualification referred to in Local Treasury Bills (Primary Dealers) Regulations  
No. 01 of 2009 and Registered Stock and Securities (Primary Dealers) Regulations No. 01 of 2009.

The averments contained  
herein were read over to the  
[affirmant / deponent] who  
having understood the contents  
hereof and having accepted  
same as true, affirmed / swore  
to and placed his /her signature  
at ..... on  
this ..... day of  
.....

*Affix Stamps as  
applicable*

Before me

JUSTICE OF THE PEACE/  
COMMISSIONER FOR OATHS

Name of Primary Dealer Company : .....

**Declaration to be submitted by Directors and Officers performing executive functions  
(with enclosures as appropriate as of .....)**

**1. Personal Details**

- 1.1 Full Name: .....
- 1.2 Date of birth: .....
- 1.3 National Identity Card Number: .....
- 1.4 Passport Number: .....
- 1.5 Permanent address: .....
- 1.6 Present address: .....

**2. Appointment to the Primary Dealer Company**

- 2.1 Date of appointment to the board / present position:  
(Please attach a certified copy of draft appointment letter in the case of an officer performing executive functions): .....
- 2.2 Designation: .....
- 2.3 Local or expatriate: .....
- 2.4 Annual remuneration (with details): .....
- 2.5 Annual value of benefits derived by director or officer performing executive functions and/or his/her family from company assets.  
(Example by use of company land, building, vehicles, etc).
- 2.5.1 Expenses borne by the company on account of the maintenance of assets referred to in 2.5 or for reimbursement of any expenses (credit card bills, utility bills etc.)
- 2.6 Purchased value and book value of such assets and the location of immovable assets.

**3. Personal Details of Relatives**

- 3.1 Full name of spouse : .....
- 3.2 National Identity Card Number: .....
- 3.3 Passport Number : .....
- 3.4 Details of dependent children.....

	<i>Full Name</i>	<i>NIC No.</i>	<i>Passport No.</i>
3.4.1			
3.4.2			
3.4.3			



#### 4. Background and Experience

Names/s of licensed bank/s or registered finance company/ies or any other company/ies, in which he/she is or has been a director or has been employed as an officer performing executive functions:

<i>Name of the institution</i>	<i>Period of office</i>	<i>Designation</i>

#### 5. Shareholdings in Primary Dealer Companies and their Related Companies

- Share ownerships in Primary Dealer Companies and their related companies, if any, subject to Local Treasury Bills (Primary Dealers) Regulations No. 01 of 2009 and Registered Stock and Securities (Primary Dealers) Regulations No. 01 of 2009, presently held:

<i>Name of the institution</i>	<i>No of shares</i>	<i>Percentage holding</i>

#### 6. Business Transactions <sup>1/</sup>

Any business transaction the director or officer performing executive functions presently has with the Primary Dealer Company or its related companies, if any.

Name of the institution	Date of transaction	Amount as at ..... (Rs Mn)		Classification (performing / non-performing)	Type and value of encumbered securities (Rs Mn)	% of the Primary Dealer company's Capital Funds
		Limit	Out-standing			
Outright transactions with the Primary Dealer Company						
Reverse Repurchase facilities obtained from the Primary Dealer Company						
Repurchase Transactions made with the Primary Dealer Company						

1/ "Business transaction" includes outright, repurchase or reverse repurchase transactions

**7. Appointments, Shareholdings and Business Transactions of Relatives**

7.1 Any relative presently employed as a director or an officer performing executive functions in any Primary Dealer Company.

<i>Name of the Primary Dealer Company</i>	<i>Full Name of the relative</i>	<i>Position held</i>

7.2 Direct or indirect share ownership in the Primary Dealer Company, if any, presently held by any relative.

<i>Full name of the relative</i>	<i>No. of Shares</i>		<i>Percentage holding</i>	
	<i>Direct</i>	<i>Indirect</i>	<i>Direct</i>	<i>Indirect</i>

7.3 Any business transaction, a relative currently has with the Primary Dealer Company, if any.

<i>Full name of the relative</i>	<i>Nature of the business transaction</i>	<i>Date of transaction</i>	<i>Limit as at ..... (Rs Mn)</i>	<i>Outstanding As at..... (Rs Mn)</i>	<i>Type and value of encumbered securities (Rs Mn)</i>	<i>% of Primary Dealer Company's paid-up capital</i>

8. Any other explanation/information in regard to the information furnished above and other information considered relevant for assessing the suitability of the director or officer performing executive functions in the Primary Dealer Company.

**DECLARATION:**

I confirm that the above information is to the best of my knowledge and belief true and complete. I undertake to keep the Primary Dealer Company and the Superintendent of Public Debt Department of the Central Bank of Sri Lanka duly informed, as soon as possible, of all events, which take place subsequently, which is relevant to the information provided above.

I state that I am not prevented by any Statute from being appointed to the above post.

Date : .....

.....  
*Signature of Director or  
Officer Performing Executive Functions in the  
Primary Dealer Company*

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**TO BE COMPLETED BY THE CHIEF EXECUTIVE OFFICER WITH REFERENCE TO OFFICERS PERFORMING EXECUTIVE FUNCTIONS**

Additional explanation/information in regard to the information furnished above and other information considered relevant for assessing the suitability of the person performing executive functions in the Primary Dealer Company.

Date : .....

.....  
*Signature of the Chief Executive Officer  
and the official stamp*

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**TO BE COMPLETED BY THE CHAIRMAN OF THE BOARD OF DIRECTORS WITH REFERENCE TO THE CHIEF EXECUTIVE OFFICER**

Any other explanation/information in regard to the information furnished above and other information considered relevant for assessing the suitability of the person performing the function of the chief executive officer.

Date : .....

.....  
*Signature of the Chairman of the Board of Directors*