

Material Change Guideline - Application Guide

This guide is provided to assist financial institutions in complying with the Material Change Guideline (Guideline). It does not form part of the Guideline. Persons should review the relevant legislation and where needed liaise with the Financial Services Commission (Commission) where there is doubt as to whether a change will constitute a material change. If there is any doubt regarding the extent of disclosure required, disclose as much as possible.

1. Section 1.2 - Foreseeable change

In assessing whether an event is a foreseeable event and should be disclosed to the Commission, a financial institution should consider the probability of the event happening as well as the severity of the event should it happen.

A foreseeable change is distinguished from an unplanned change. Examples of a foreseeable change that should be reported:

- an anticipated change in financial reporting standards that is likely to significantly impact the capital or future profitability of an institution.
- an event (anticipated or effected) at the parent/holding company level which is likely to result in significant changes in the operations or financial status of the financial institution

2. Section 2.2, 2.3 & 2.4 – Timing of notification

Where the legislation prescribes a deadline for disclosing or reporting a material change, and the deadline varies from the one in the Guideline a financial institution will be expected to apply the shorter deadline. Submission by the shorter deadline outlined in a Guideline assists in facilitating more timely processing of the change.

Planned changes

The Commission appreciates the time sensitivity of certain changes and will endeavour to provide timely responses in respect of planned changes, including those requiring prior approval or sanction. The Commission's ability to respond in a timely manner will be informed by the provision of complete and accurate information by a financial institution.

3. Section 7 - Key/Relevant persons and parties

Key/relevant persons include persons who have control or management of a financial institution or who discharge certain responsibilities on behalf of the financial institution. The Persons who may be considered key/relevant persons include the persons outlined in Tables 1 and 2 of the Appendix to the Guideline.

Types of changes that must be reported include:

- Resignation or removal or death of a director
- Resignation, dismissal or death of an employee who is registered or licensed with the Commission
- Termination or cessation of business with a key person or key party (whether initiated by the financial institution or otherwise)
- Change of name and contact information of employees of the financial institutions who are registered or licensed with the Commission, directors of a financial institution or individuals providing services on behalf of the financial institution e.g. insurance salesmen.

4. Section 8 - Fit and Proper Status

A determination of fitness and propriety is based on certain criteria. In determining whether to disclose a change related to the financial institution, a key person or key party to a financial institution a financial institution should consider whether the change relates to the following:

i. Reputation, honesty and integrity

In this regard consideration must be given to among other things whether key individuals have been convicted of dishonesty, fraud, breach of trust, money laundering, financing of terrorism, theft or financial crimes. In addition whether the financial institution, key persons or parties have been the subject of any censures, enforcement action, investigations by another regulator or professional standard setting body.

In addition suspension or other disciplinary action taken by a financial institution in respect of an employee of a financial institution who is registered or licensed with the Commission related to its functions as a registrant or licensee.

ii. Competence and capability as it relates to experience, education and qualifications

For example consideration may be given to information which:

- Brings into question the ability of persons to credibly undertake the critical activities
- Indicates that prior disclosures of a key individual's experience, education or qualifications were erroneous.

iii. Financial soundness

Consideration must be given to whether key persons have been subject to any judgement debt or award in Barbados or elsewhere, that remains outstanding or was not satisfied either in whole or in part; or whether in Barbados, or elsewhere, key persons have made any arrangements with their creditors, filed for bankruptcy, been adjudged as bankrupt, been the subject of bankruptcy petition or have been involved in proceedings relating to any of these.

5. Section 10 - Operations

The types of corporate changes necessitating disclosure include:

- i. establishing a holding/new parent company, a new subsidiary or branch
- ii. re-organisation
- iii. purchase/acquisition of or by another entity
- iv. amalgamation, merger or other business combination
- v. change in business strategy
- vi. expanding into a new line or category of business/activity, expanding services/products offered
- vii. ceasing to carry on a regulated line, category or class of business/activity or providing a product or service
- viii. outsourcing of key functions/changes in outsourcing arrangements
- ix. adopting innovative technological arrangements including payment systems and other arrangements for customer interfacing
- x. re-domiciling to another jurisdiction
- xi. in the case of a segregated cell company or incorporated cell company, addition or removal of a cell

Credit Unions

- xii. transfer of all of a credit union's assets and liabilities to another credit union
- xiii. decision of a credit union to divide into two or more societies

Insurance sector

- xiv. transfer or acquisition of insurance business
- xv. ceasing to write new business

A number of changes in operations require prior approval before effecting the change. In such cases, notification may precede the submission of the application or request to approve the transaction or change.

6. Section 12 - Financial Soundness & Reporting

Financial institutions are expected to monitor their financial status including capital requirements to ensure that they are operating in a financially sound manner. They are subject to on-going financial reporting requirements which enable the Commission to assess their financial condition and that of the sector. The following information assists with understanding the disclosures required.

- i. Capital requirements: includes a reduction or anticipated reduction in capital; a change that may significantly increase the capital requirements of a financial institution; a decision or proposal to offer shares to the public.
- ii. Solvency: Significant liquidity challenges or concerns will be regarded as a material change
- iii. Financial resources or financial support including parental support arrangements or guarantees: the loss of, or entering into new arrangements should be reported. This includes where a financial institution is providing the parental or other financial support
- iv. Significant investment, financing/debt arrangements entered into by a financial institution, particularly those involving related parties
- v. Significant losses e.g. on investments
- vi. Material restatement of financial statements
- vii. Decline, withdrawal of, or reduction in, non-renewal of professional indemnity coverage where such coverage is required by the legislation

Mutual funds sector

- viii. failure to make redemptions, including within the timeframe
- ix. decision to suspend dealing
- x. decision to cease accepting subscriptions into the fund

7. Section 13 - Risk Management and Internal Controls

Significant failures related to non-financial risk areas associated with a financial institution's operations should be reported.

Reference should be made to guidelines issued by the Commission as well as best practices established by international standard setting bodies in assessing the types of changes that should be reported.

8. Section 14 - Regulatory Breaches, Fraud and other Irregularities

A financial institution is required to make these disclosures whether the actions took place in Barbados or in another jurisdiction.

9. Non-compliance with the Guideline

Non-compliance with the Guideline may result in regulatory action being taken including imposition of conditions on a licence or registration; and suspension of registration or a licence.

10. Templates

Notifications are expected to be made using the templates provided by the Commission, accompanied by other information required. Where a template has not been provided a letter should be submitted.