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 an institution's capital or future profitability.
- an event (anticipated or effected) at the parent/holding company level that 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 those who control or manage a financial institution or who discharge certain responsibilities on behalf of the financial institution. The Persons who may be considered key/relevant persons include those 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 specific 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 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 a 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, the addition or removal of a cell

<u>Credit Unions</u>

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 operations changes require prior approval before they can be implemented. In such cases, notification may precede the application submission 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: This includes a reduction or anticipated reduction in capital, a change that may significantly increase a financial institution's capital requirements, and 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 new arrangements should be reported. This includes where a financial institution is providing parental or other financial support

iv. Significant investment, financing/debt arrangements entered 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. the decision to suspend dealing

x. decision to cease accepting subscriptions to 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.