

Arizona Department of Financial Institutions



SUBSTANTIVE POLICY STATEMENT

Section: General
Subject: Applications

August 01, 2012
Policy Statement # GE-1

Pursuant to A.R.S. § 6-121, all financial institutions and enterprises are subject to the Department's supervision which includes licensure under A.R.S. §§ 6-122 and 123. The Superintendent has the responsibility to discharge the Department's duties and the authority to exercise all powers necessary for the administration and enforcement of all licensing requirements.

Any party desiring to apply for a license/permit/certificate/registration should obtain forms and instructions from and file an application with the Department located at 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018. Information that is provided to another regulatory authority, that is also needed as part of the Department's application, may be provided, in most cases, by appending a copy of it to the Arizona application. The Department will investigate the proposal as soon as possible and, where appropriate; every effort will be made to coordinate the Department's investigation with investigations by other regulators.

An application will not be processed until it is complete with respect to the specific features covered by the applicable statutes, as well as the basic information requested in the application form. An application submitted without all the information necessary for processing may be returned to the proponent. The applicant must satisfy all statutory requirements for conditional approval prior to the license/permit/certificate/registration being issued. Under A.R.S. § 41-1065, within 15 days of receipt of a notice that its application has been denied, an applicant may request a hearing before the Department. At such hearing, the applicant shall have the burden of proof.

In considering applications for a license/permit/certificate/registration, the Department must evaluate each application in relation to the applicable factors prescribed in Title 6, Title 32 and Title 44 of the Arizona Revised Statutes. In general, those factors include: the financial history and condition of the applicant, the adequacy of its capital structure, its future earnings prospects, and the character and fitness of its management and owners. If all of the applicable statutory factors are resolved favorably, the application may be approved. In deciding whether to grant a license/permit/certificate/registration, the Department may conduct examinations and/or investigations to develop essential information and to protect the public against unwarranted risk.

The Department has formulated certain guidelines which are designed to discharge its statutory duties and responsibilities and to assure uniform and fair treatment of all applicants. Depending upon the type of financial institution or enterprise and the specific statutory licensure requirements, these factors may not be appropriate for all applications. These guidelines include:

1. **Financial history and condition.** Proposed and newly organized entities have no financial history to serve as a basis for determining qualifications for a license/permit/certificate/registration. Thus, the primary areas of consideration under this factor are investment in fixed assets, including lease arrangements, insider transactions, and the ability to provide financial support for the new licensee.
 - a.) **Investment in fixed assets and leases.** The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent basis for consideration.
 - b.) **Insider transactions.** Any financial arrangement or transaction involving the applicant and one or more of its organizers, directors, officers and their associates and interests should be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that (1) any such transactions are made on substantially the same terms as those prevailing at the time for comparable transactions and do not present unfavorable features for the

applicant; (2) any business dealing must be intended for the benefit of the applicant and shall not be intended for the benefit of the insider and shall not be entered into by the applicant as an accommodation for the benefit of the insider; and (3) full disclosure of any arrangements must be made to all proposed directors and prospective shareholders.

Whenever any transaction between the applicant and insider involves the purchase of real property or construction contract, the purchase price must be supported by an independent appraisal or, in the case of a construction contract, by competitive bids.

- c.) Ongoing financial support. Organizers of a proposed new licensee must demonstrate that they, either through their own resources or through the financial markets, have sufficient financial ability to support the new licensee's operations and to provide capital when needed.**
- 2. Adequacy of the capital structure. The basic benchmark for evaluating the adequacy of the capital structure of a proposed licensee is that it should be liquid and normally in excess of the statutory requirement, net of any organizational expenses that will be charged to the licensee's capital after it commences business. Depending upon the nature of the proposed business, the potential for growth and the competitive environment, substantially greater initial capital levels may be appropriately required.**
- 3. Future earnings prospects. Before approving an application for a license/permit/certificate/registration submitted by a proposed licensee, the Department must have some assurance that the new licensee can operate profitably. It is, therefore incumbent upon the organizers to demonstrate through realistic and supportable estimates, that within a reasonable period of time after commencement of business (no longer than three years), the earnings of the applicant will be sufficient to cover all operating expenses, losses and/or charge offs, while providing a reasonable profit.**

The applicant is encouraged to maintain its books and records in accordance with the principles of accrual accounting.

- 4. General character and fitness of management/responsible individual/active managers and owners. The quality of an applicant's management/responsible individual/active manager and owner is vital. Individuals will be evaluated largely on the basis of the following: (1) business experience and competence; (2) proposed duties and responsibilities; (3) financial responsibility; and (4) character and reputation for honesty, truthfulness and integrity.**

Shareholders, proposed directors, principal officers, responsible individual and active managers must file in connection with the application, financial and biographical information. Fingerprinting of these individuals is also required.

The applicant must provide appropriate documentation/explanation with the application; if the prospective director, officer or responsible individual of the applicant has been convicted of any criminal offense involving dishonesty or breach of trust or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution of such offense.

A licensed entity, if applicable, must at all times maintain sufficient fidelity bond coverage. A binder or commitment letter from an insurer will facilitate processing of the application; however, if such is not obtained, approval of the application will be conditioned upon acquisition of adequate fiduciary coverage prior to the issuance of a license/permit/certificate/registration.