



**THE TURKS AND CAICOS ISLANDS
FINANCIAL SERVICES COMMISSION**

FIT AND PROPER GUIDELINES

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TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

FIT AND PROPER GUIDELINES

These Guidelines are issued by the Turks and Caicos Islands Financial Services Commission (the Commission), pursuant to section 43 of the Financial Services Commission Ordinance 2007 (the Ordinance).

1.0 INTRODUCTION

Section 4 of the Ordinance vests in the Commission specific responsibilities, including the responsibility to grant relevant licenses under the various regulatory ordinances. A key aspect in the consideration of a licence application is an assessment of the fit and proper status of the applicant. These Guidelines set out the criteria that will normally apply in considering the fitness and propriety of persons who are licensed or who wish to be licensed by the Commission.

2.0 DEFINITIONS

TERMS	DEFINITION
Applicant	An individual or entity that has applied to the Commission for a licence under an ordinance administered by the Commission. <i>(Refer Appendix B)</i>
Beneficial owner	A person is a beneficial owner of an entity if the person— <ul style="list-style-type: none"> (a) holds, directly or indirectly, more than 10% of the issued shares in the company; (b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than 10% of the voting rights in the company; (c) has the right, directly or indirectly, to appoint or remove most of the directors of the company; (d) has the right to exercise, or exercises, significant influence or control over the company; or (e) has the right to exercise, or exercises, significant influence or control over the activities of a trust or a partnership that, by the law under which the partnership is governed, is not a corporate body, and apply to— <ul style="list-style-type: none"> (i) the trustees of the trust; or (ii) the members of the partnership, in the capacity of trustee or member.

Controller	A person that directly or indirectly exercises significant influence over management and control of the applicant or licensee.
Financial business	A legal or natural person, trust, partnership or unincorporated association specified in Schedule 2 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations (AML/PTF Regs) and includes general insurance.
His	His is used throughout this document to denote male or female.
Key employees	Include compliance officers, money laundering compliance officers, money laundering reporting officers, or senior managers.
Key officers	Include persons with decision-making roles in the business and is synonymous with key employees.
Licensee	The holder of a licence issued by the Commission.
Person	A corporation or an individual.
Wrongdoing	Illegal, improper or unethical conduct.

3.0 OBJECTIVE

- 3.1 The objectives of these Guidelines are to:
- i) set out the key elements of the Commission’s “fit and proper” standard; and
 - ii) to provide applicants and licensees with a clear understanding of the initial and ongoing fit and proper standards that must be achieved and maintained in order to be licensed to carry on relevant business in or from the territory.
- 3.2 The assessment of a person’s fitness and propriety is a standard that:
- i) ensures that criminals and their associates are prevented from holding (or being owners of) a significant or controlling interest, or holding a management function in a financial business;
 - ii) promotes prudent and sound management of financial businesses; and
 - iii) protects the reputation of the jurisdiction.
- 3.3 The fit and proper test ensures that at the licensing stage and continuing through the life of the relationship, that only fit and proper persons are allowed to control and direct the operations of the business.

4.0 FIT AND PROPER CONSIDERATIONS

- 4.1 It is a requirement of the Ordinance that a person having an interest in the licensee (whether equitable or legal), or any director, officer or key employee of the licensee satisfy the Commission's fit and proper criteria.
- 4.2 A person is considered to be fit and proper if the person has integrity, is competent, financially sound, reputable, reliable, and discharges and/or is likely to discharge his responsibilities in the best interest of the business.
- 4.3 Competence refers to the person's ability (based on training, experience, continued profession development or qualification) to efficiently and effectively perform the relevant functions connected to his application.
- 4.4 Financial soundness assesses the applicant's track record in the judicious management of personal and/or corporate finances.
- 4.5 Integrity, good reputation and reliability are assessments of the applicant's character.
- 4.6 The assessment of fitness and propriety of an applicant may vary depending on the type of license being considered, the position within the licensee, and other factors considered in these Guidelines.
- 4.7 It is the responsibility of a licensee to ensure that individuals concerned with its ownership, control and direction remain fit and proper by adhering to the fit and proper standards detailed in the relevant legislation and these Guidelines.
- 4.8 Continuing and cumulative fit and proper test considers the conduct of the business and its relationship with the Commission. This considers the history of compliance with all applicable laws, regulation and codes.

5.0 BOARD OF DIRECTORS

- 5.1 In assessing an application for a licence the Commission will consider the range, mix and relevance of the experience, skills and training represented by individuals nominated to the Board of Directors.
- 5.2 Applicants for a license are required to establish and document policy on how it will ensure that owners and key employees are fit and proper on an ongoing basis.
- 5.3 The Board of Directors of a financial business should -

- i) establish, implement and maintain recruitment policies, adequate internal controls and procedures that would reasonably ensure owners and key officers (including contractors) are fit and proper, as per the requirements of these Guidelines;
- ii) ensure that the Commission is notified promptly of any circumstances or events that could affect the assessment of the fitness and propriety of any owner or key employee.
- iii) ensure that the process used to assess whether a person is fit and proper and the reasons for any decisions made are documented and available to the Commission.

6.0 WHO SHOULD BE FIT AND PROPER

- 6.1 The following individuals connected to an entity that is licensed or supervised by the Commission are required to be fit and proper:
 - i) Beneficial owners
 - ii) Shareholders
 - iii) Board of Directors or equivalent functions.
 - iv) Key employees
 - v) Compliance Officers, Money Laundering Compliance Officers, Money Laundering Reporting Officers
 - vi) Auditors
 - vii) Actuaries
 - viii) Principals of third-party relationships (persons for whom a customer is acting)
 - ix) Persons to whom regulatory functions are outsourced

- 6.2 The organizational structure of the applicant must clearly identify the natural persons who are shareholders and directors. Where corporate entities are controlling shareholders or directors, the fit and proper assessment should consider the –
 - i) financial soundness and strength of the entity;
 - ii) the nature and scope of the business and the business relationship;
 - iii) the reputation of the entity;
 - iv) fitness and propriety of the natural persons representing the corporate shareholder or director; and
 - v) the group's structure.

7.0 HOW IS FITNESS AND PROPRIETY ASSESSED

- 7.1 The Commission expects relevant persons to provide full and relevant information. A Personal Declaration Questionnaire is required from each principal of a licensee. An updated Personal Declaration Questionnaire is to be submitted to the Commission at least once every three years.
- 7.2 The onus is on the applicant or the licensee to satisfy itself of the integrity of the relevant persons for regulatory approval. Accordingly, the Commission expects to be provided with sufficient information to demonstrate that the fit and proper standards are met.
- 7.3 An incomplete questionnaire, inadequate reference, documents submitted in a language other than English and/or missing documents will negatively impact the fit and proper assessment.
- 7.4 Compliance by licensees with their legal and/or regulatory obligations will form part of the Commission's assessment of an entity when undertaking on-site compliance visits.
- 7.5 Where a person knowingly or recklessly supplies false or misleading information or fails to provide relevant information to the Commission or allows any false statement to be made in any document submitted to the Commission, that applicant or licensee could be subject to enforcement action or to having its request for a licence denied.

8.0 APPLICATION OF FIT AND PROPER TEST

- 8.1 Upon receipt of the required information/documents, the Commission will review the information for quality and completeness.
- 8.2 The fitness and propriety, or other qualification tests applied to owners and key employees may vary depending on the degree of their influence and on their responsibilities at the applicant or licensee. An individual may be fit and proper for a particular position within an institution but not fit and proper for another position with the same or different institution.
- 8.3 The fit and proper standard will vary to take account of the level of risk associated with the applicant or licensee.
- 8.4 Fit and proper assessments may be triggered by any number of events including, but not limited to, changes in corporate appointments, changes in shareholding, changes in functions, introduction of new products or changes to the business model.

9.0 GOOD CHARACTER

9.1 In determining a person's good character, the applicant or licensee should consider factors relevant to the person's honesty, integrity and fairness. These factors include but are not limited to whether the person -

- a) has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence or other authorisation is required in any jurisdiction;
- b) has been issued a prohibition order under any Ordinance administered by the Commission or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
- c) has been censured, disciplined, suspended or refused membership by the Commission, any other regulatory authority, whether in the Turks and Caicos Islands or elsewhere;
- d) has been the subject of any complaint as a result of wrongdoing;
- e) has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- f) has been convicted of any offence, or is the subject of any pending proceedings which may lead to a conviction, under any law in any jurisdiction;
- g) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- h) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
- i) has had any civil penalty enforcement action taken against the person by the Commission or any other regulatory authority under any law in any jurisdiction;
- j) has contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, whether in the Turks and Caicos Islands or elsewhere;
- k) has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by the Commission, any other regulatory authority, whether in the Turks and Caicos Islands or elsewhere;
- l) has been refused a fidelity or surety bond, whether in the Turks and Caicos Islands or elsewhere;

- m) has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards, whether in the Turks and Caicos Islands or elsewhere;
- n) has been untruthful or provided false or misleading information to the Commission or been uncooperative in any dealings with the Commission or any other regulatory authority in any jurisdiction;
- o) in addition to sub-paragraphs (a) to (n), where the relevant person is an individual:
 - i) is or has been a director, partner, substantial shareholder or concerned in the management of a business that has been censured, disciplined, prosecuted or convicted of a criminal offence, or been the subject of any disciplinary or criminal investigation or proceeding, in the Turks and Caicos Islands or elsewhere, in relation to any matter that took place while the person was a director, partner, substantial shareholder or concerned in the management of the business;
 - ii) is or has been a director, partner, substantial shareholder or concerned in the management of a business that has been suspended or refused membership or registration by the Commission, any other regulatory authority, any professional body or government agency, whether in the Turks and Caicos Islands or elsewhere;
 - iii) has been a director, partner, substantial shareholder or concerned in the management of a business that has gone into insolvency, liquidation or Court appointed administration during the period when, or within a period of one year after, the person was a director, partner, substantial shareholder or concerned in the management of the business, whether in the Turks and Caicos Islands or elsewhere;
 - iv) has been dismissed or asked to resign from —
 - 1) office;
 - 2) employment;
 - 3) a position of trust; or
 - 4) a fiduciary appointment or similar position, whether in the Turks and Caicos Islands or elsewhere;
- p) is or has been subject to disciplinary proceedings by current or former employer(s), whether in the Turks and Caicos Islands or elsewhere;
- q) has been disqualified from acting as a director or disqualified from acting in any managerial capacity, whether in the Turks and Caicos Islands or elsewhere; and
- r) has been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or

connivance of, or neglect attributable to, the officer, whether in the Turks and Caicos or elsewhere.

- 9.2 In cases where those being assessed are known to have connections in other jurisdictions, the Commission will communicate with supervisors in the relevant jurisdictions as part of the assessment procedure, as permitted by law.

10.0 FINANCIAL SOUNDNESS

- 10.1 A person's capacity to contribute to the safety and soundness of a financial institution and the protection of the interest of stakeholders are demonstrated by the prudent management of his own financial affairs.
- 10.2 In determining a person's financial soundness, relevant factors would be considered, including but not limited to -
- i) whether the person has been the subject of any judgement or award that remains outstanding or was not satisfied within a reasonable period, whether in the Turks and Caicos Islands or elsewhere;
 - ii) whether the person has made any arrangements with its or his creditors, been adjudged bankrupt, had assets confiscated, or been involved in proceedings relating to any of the aforementioned;
 - iii) in addition to sub-paragraphs (1) and (2), in the case where the person is an individual:
 - 1) is or has been declared insolvent, whether in the Turks and Caicos Islands or elsewhere; or
 - 2) is or has been subject to any other process outside the Turks and Caicos Islands that is similar to those referred to in subparagraph (1).
 - iv) in addition to sub-paragraphs (1) to (3), in the case where the applicant or licensee is a corporation:
 - 1) is or has been the subject of a winding-up petition, whether in the Turks and Caicos Islands or elsewhere;
 - 2) is in the course of being wound-up or otherwise dissolved, whether in the Turks and Caicos Islands or elsewhere;
 - 3) is or has been a corporation where a receiver, receiver and manager, judicial manager, or such other person having the powers and duties of a receiver, receiver and manager, or judicial manager, has been appointed, in relation to, or in respect of any property of the corporation, whether in the Turks and Caicos Islands or elsewhere; or

- 4) is or has been subject to any other process outside the Turks and Caicos Islands that is like referred to in subparagraphs (1) to (3).

- 10.3 The Commission will take account of the person's financial position through a review of financial statements as indicated through its business plan. The fact that a person may be of limited means will not, in itself, affect the person's ability to satisfy the financial soundness criteria.
- 10.4 The Commission must be satisfied as to the financial position of a licensee or the projected financial position of an applicant. It will, therefore, take account of whether the financial position of any shareholder or controller may adversely affect the financial stability of the licensee and whether this may give rise to a "contagion". If, for example, a holding company or major shareholder of a licensee encounters severe financial problems, the stability of the licensee may also be affected, to the potential detriment of its clients. Generally, the higher the shareholding, the greater the potential risk of "contagion"
- 10.5 At the same time, other factors beyond financial weakness may need to be considered as potential sources of contagion risk for a licensee. For example, the poor reputation of the controller or allegations of illegal, improper or unethical conduct, whether in the islands or overseas, may similarly have a bearing on the Commission's assessment.
- 10.6 When considering the fitness and propriety of shareholders, consideration would be given to the source of funds or the source of wealth of prospective controllers in respect of their ability to provide support to the institution.

11.0 COMPETENCE

- 11.1 In assessing competence and capability, the applicant's relevant experience, qualification, training, skill, knowledge, professional development and track record should be considered; these include but are not limited to:
 - i) whether the person has satisfactory past performance or expertise, having regard to the nature of the business or duties, as the case may be, whether in the Turks and Caicos Islands or elsewhere; and
 - ii) where the person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Commission.

12.0 ASSESSMENT OF OWNERS AND CONTROLLERS

- 12.1 The key consideration for the Commission is actual or likely influence or control that may be exerted by an individual on the conduct of business of the applicant or licensee.
- 12.2 If the controller is likely to exercise close operational control over a business, the Commission will look for evidence of the competence and ability, as well as probity of the individual concerned, in accordance with the criteria set down in these Guidelines.

13.0 PERSONS NO LONGER FIT AND PROPER

- 13.1 The Commission may take action against a person acting in a controlling function of a licensee if it considers that the person is no longer a fit and proper person to perform his function(s). In considering whether a person is a fit and proper person, the Commission will consider -
- i) whether action against the licensee rather than the natural person would be more appropriate;
 - ii) what action is considered proportionate in response to the nature and seriousness of the breach;
 - iii) whether the breaches reveal serious or systemic weaknesses in management systems or internal controls;
 - iv) the seriousness of the misconduct and the duration and frequency of such contraventions;
 - v) the impact on public confidence in the financial sector;
 - vi) the extent to which contraventions were deliberate or reckless;
 - vii) conduct of the controller in bringing or failing to bring quickly, effectively and completely the contravention to the Commission's attention, the degree of cooperation the person showed during the investigation of the contravention, and any remedial steps taken since the contravention occurred;
 - viii) previous compliance history of the controllers of the financial business;
 - ix) previous action taken by the Commission in relation to similar behaviours; and
 - x) action(s) taken by other regulatory authorities.
- 13.2 The Commission may have regard to the cumulative effect of several factors which, when considered in isolation, may not be sufficient to show that the person is not fit and proper to perform a key function.

- 13.3 In these circumstances, the Commission will consider the failure by a controller or officer to conduct the business of the licensee with integrity and professional skills which reflects adversely on their probity, competence, or soundness of judgement.
- 13.4 In general, owners and controllers, directors and other employees of licensees are expected to act with openness and transparency in their dealings with the Commission and with other authorities, whether regulatory or otherwise. A failure to deal openly and transparently with the Commission is likely to give rise to questions over the “fit and proper” status of the individual concerned.
- 13.5 The Commission expects all licensees to remain alert to fit and proper issues. It expects owners, controllers, directors and other employees to report to the Commission as soon as is practicable any circumstances which may be relevant to the Commission’s assessment of the fit and proper standard of an individual. Hence, a failure to report such circumstances may give rise to questions over the fit and proper status of the individual concerned.

14.0 PERIODIC REVIEW OF GUIDELINES

- 14.1 The Commission will keep this Guideline under review to ensure it remains current and appropriate for its purpose.

APPENDIX A

DOCUMENTS TO BE SUBMITTED WITH THE APPLICATION

- i) A completed Personal Declaration Questionnaire (PDQ) form on all principals and key employees;
- ii) An updated, signed Curriculum Vitae detailing the professional background of the person;
- iii) An original Police Certificate dated within six months of the submission date from the individual's principal country of residence (where the person was ordinarily resident for at least 12 months). If not available, some other approved official equivalent certification;
- iv) A professional reference addressed to the Commission must-
 - i) be from an individual who is independent of the applicant or the subject of the reference;
 - ii) state the nature of the relationship and the period for which the person has been known to the writer;
 - iii) address the person's honesty, integrity and reputation as well as their competence and capability in fulfilling their proposed role; and
 - iv) be dated within 6 months of the submission and contain the referrer's contact information.
- v) A financial reference addressed to the Commission from a financial institution (bank, credit union, etc.) which must-
 - i) be signed on a company letterhead with the physical and mailing address included.
 - ii) state whether the account has been satisfactorily maintained.
 - iii) state the period of the relationship which should be no less than three years, and
 - iv) be dated within 6 months of the submission date.
- vi) Certified copies of certificates or records of relevant academic and professional qualifications evidencing the person's professional knowledge and experience for the particular function;
- vii) A current job description detailing the duties and responsibilities of the person(s) involved in the day to day management of the licensee, showing the reporting lines within the financial business;

- viii) Certified copies of photo identification such as current passport, driver's licence or other Government issued photo identification. All copies must be in colour. Certifiers must include their name and date of certification;
- ix) All documents and certificates must be provided in English. Where a document is in a foreign language -
 - i) a professional translator or a translator satisfactory to the Commission must translate the documents.
 - ii) the translator must state his name and contact details as well as sign and date all translated documents.
- x) All documents, including the foreign language and translated documents, must be submitted to the Commission.

APPENDIX B

FINANCIAL SERVICES COMMISSION (PRESCRIBED FINANCIAL SERVICES ORDINANCES) REGULATIONS - SECTION 55

(Legal Notice 20/2010)

Regulatory Ordinance

3. An Ordinance specified in Part II of the Schedule is prescribed as a regulatory Ordinance for the purposes of section 2 of the Financial Services Ordinance.

SCHEDULE

(Regulations 2 and 3)

FINANCIAL SERVICES ORDINANCES

PART I – ADMINISTERED ORDINANCES

Business Names (Registration) Ordinance

Companies Ordinance

International Financial Institutions Ordinance

Limited Partnerships Ordinance

Patents Ordinance

Trademarks Ordinance

PART II – REGULATORY ORDINANCES

Banking Ordinance

Banking (Special Provisions) Ordinance

Company Management (Licensing) Ordinance

Credit Union Ordinance

Insurance Ordinance

Investment Dealers (Licensing) Ordinance

Money Transmitters Ordinance

Mutual Funds Ordinance

Trustees Licensing Ordinance
