



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

**DNFBP SUPERVISOR
FIT AND PROPER GUIDELINES**

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TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

DNFBP FIT AND PROPER GUIDELINES

These Guidelines are issued by the Turks and Caicos Islands Financial Services Commission (the Commission), in its capacity as the Supervisor of Designated Non-Financial Businesses and Professions (DNFBP Supervisor or Supervisor).

1.0 INTRODUCTION

Regulation 23 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations (the AML Regulations) makes the DNFBP Supervisor the registration and supervisory authority for all DNFBPs as defined by the Proceeds of Crime Ordinance 2007 (the Ordinance). A key aspect in the consideration of a registration application or the continuing registration of a DNFBP is an assessment of the fit and proper status of the applicant or registrant.

Regulation 27(1)(c)(ii) of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations (the AML Regulations) gives the DNFBP Supervisor the power to refuse an application for the registration as a DNFBP if the designated non-financial business and profession, or any of its owners, directors, senior managers, MLRO, MLCO or deputy MLRO/MLCO do not satisfy the DNFBP Supervisor's fit and proper criteria.

Additionally, section 165 of the Proceeds of Crime Ordinance vests in the DNFBP Supervisor the power to take enforcement action against a registered DNFBP for failing to satisfy the DNFBP Supervisor's fit and proper criteria.

These Guidelines set out the criteria that will normally apply in considering the fitness and propriety of DNFBP applicants and registrants.

2.0 DEFINITIONS

TERMS	DEFINITION
Applicant	An individual or entity that has applied to the DNFBP Supervisor for registration under the Proceeds of Crime Ordinance.
Entity	A partnership, sole trader, or other type of unincorporated entities.
Owner	Means a shareholder or a person or entity that— (a) holds, directly or indirectly, more than 10% of the issued shares in the DNFBP;

	<p>(b) is entitled directly or indirectly to exercise or control the exercise of more than 10% of the voting rights in the DNFBP;</p> <p>(c) has the right, directly or indirectly, to appoint or remove most of the directors of the DNFBP;</p> <p>(d) has the right to exercise, or exercises, significant influence or control over the DNFBP.</p>
His	His is used throughout this document to denote male or female.
Registrant	The holder of a DNFBP registration certificate issued by the DNFBP Supervisor.
Senior Manager	A person (other than a director) who participates in decision-making affecting the whole or a substantial part of the business of the DNFBP, or who has the capacity to affect significantly the DNFBP's financial standing.
Person	A company or an individual. Reference to person throughout this document includes an entity as defined in this table.
Relevant Persons	Includes – <ul style="list-style-type: none"> ▪ owners; ▪ directors or equivalent; ▪ senior managers; ▪ MLCOs, MLROs and any deputy.
Wrongdoing	Illegal, improper or unethical conduct.

3.0 PURPOSE

- 3.1 The purpose of this Fit and Proper Guidelines (the ‘Guidelines’) is to provide guidance to applicants and registrants on the criteria, approach and considerations that will be applied when conducting fit and proper assessments.
- 3.2 The primary objective of assessing fitness and propriety is to ensure that at the registration stage and after registration, that only fit and proper persons are allowed to control and direct the operations of DNFBPs. The assessment of a person’s fitness and propriety is to:
- i) ensures that criminals and their associates are prevented from holding (or being owners of), controlling, or managing DNFBPs;
 - ii) promote prudent and sound management of DNFBPs; and
 - iii) protects the reputation of the jurisdiction.

- 3.3 These Guidelines:
- i) specifies who is required to be fit and proper;
 - ii) specifies the key elements of the DNFBP Supervisor's "fit and proper" criteria; and
 - iii) provides applicants and registrants with a clear understanding of the initial and ongoing fit and proper standards that must be achieved and maintained.
- 3.4 The DNFBP Supervisor will review the Guidelines periodically, or upon the occurrence of an event that it considers to be significant, to ensure continued relevance and adherence to international standards and best practices.

4.0 SCOPE OF APPLICATION

- 4.1 The following are required to be fit and proper persons:
- i) Designated Non-Financial Business and Profession (DNFBP);
 - ii) Owners;
 - iii) Board members or equivalent;
 - iv) Senior managers; and
 - v) Money Laundering Compliance Officers, Money Laundering Reporting Officers and deputies.
- 4.2 The organisational structure of the applicant or registrant 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) the nature and scope of the business and the business relationship;
 - ii) the reputation of the entity;
 - iii) fitness and propriety of the natural persons representing the corporate shareholder or director; and
 - iv) the group's structure.

5.0 FIT AND PROPER CONSIDERATIONS

- 5.1 In accordance with regulation 27A of the AML Regulations, in assessing fitness and propriety the DNFBP Supervisor considers:

- the DNFBP applicant or registrant’s probity, competence and soundness of judgement;
- the probity, competence and soundness of judgement of the DNFBP applicant’s or registrant’s owners, directors and senior managers;
- the probity, competence, and soundness of judgement of the MLRO, MLCO and, where appointed, the Deputy MLRO and MLCO;
- the diligence with which the DNFBP, its owners, senior managers, MLCO, MLRO and any deputies are fulfilling or likely to fulfil their responsibilities;
- whether the interests of the DNFBP are, or are likely to be, in any way threatened by an owner, senior manager, MLRO, MLCO; and
- the purpose, nature, and scale of the proposed or actual designated business(es) of the applicant or registrant.

The factors to be considered in assessing the above criteria are detailed below.

- 5.1 When considering registration applications, the Supervisor assesses the applicant’s ability to comply with the Proceeds of Crime Ordinance, including the Anti-Money Laundering and Prevention of Terrorist Financing Regulations, and the Anti-Money Laundering and Prevention of Terrorist Financing Code; and these Guidelines.
- 5.2 Serious or repeated breaches of legislation in the TCI, or in another jurisdiction by any of the persons subject to the DNFBP Supervisor’s fit and proper test, will, prima facie, suggest a lack of competence and/or integrity.
- 5.3 A DNFBP applicant’s or registrant’s structure should enable the DNFBP Supervisor to identify Relevant Persons.
- 5.4 Where a DNFBP applicant is part of a group, the DNFBP Supervisor reserves the right to ask for information about other group entities from the applicant, other regulators and, if necessary, the group entities themselves.
- 5.5 If a DNFBP wishes to change a Relevant Person, it must notify the DNFBP Supervisor before the change is made as any change can alter the DNFBP Supervisor’s assessment of the DNFBP as a fit and proper person. The DNFBP Supervisor’s confirmation that it has no objection to the appointment of a Relevant Person must be obtained before proceeding with a new appointment or permitting a person to acquire a significant interest in a DNFBP registrant.

- 5.6 The fit and proper standard will vary to take account of the level of risk associated with the applicant or supervisee.
- 5.7 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.

6 HOW IS FITNESS AND PROPRIETY ASSESSED

- 6.1 The DNFBP Supervisor expects relevant persons to provide full and relevant information. DNFBPs are required to submit an Update Form to the Supervisor. A Personal Declaration Questionnaire is required from each relevant person. An updated Personal Declaration Questionnaire is to be submitted to the DNFBP Supervisor on a risk sensitive basis or where there is to be a change of a relevant person.
- 6.2 The onus is on the applicant or the registrant to satisfy itself of the integrity of the relevant persons for approval by the DNFBP Supervisor. Accordingly, the Supervisor expects to be provided with sufficient information to demonstrate that the fit and proper standards are met.
- 6.3 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.
- 6.4 The DNFBP Supervisor may invite individuals to attend a personal interview to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity.
- 6.5 Where a person knowingly or recklessly supplies false or misleading information or fails to provide relevant information to the DNFBP Supervisor or allows any false statement to be made in any document submitted to the DNFBP Supervisor, that applicant or registrant may be subject to enforcement action or to having its request for registration denied.

7 PROBITY

- 7.1 In determining a relevant person's probity, the applicant or registrant should consider whether the person -
- a) has been convicted of an offence involving fraud, dishonesty or violence under any law in any jurisdiction;
 - b) has contravened any provision made by or under any enactment designed for protecting members of the public against financial loss due to---

- (i) dishonesty, incompetence, or malpractice by persons concerned in the provision of services by the non-financial business or profession or the management of companies; or
 - (ii) the conduct of discharged or undischarged bankrupts;
 - c) has engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether lawful or not) or which discredit the person's method of conducting business; and
 - d) has engaged in or has been associated with any other business practices or otherwise acted in such a way as to cast doubt on the person's competence and soundness of judgement;
- 7.2 In cases where those being assessed are known to have connections in other jurisdictions, the Supervisor will communicate with supervisors in the relevant jurisdictions as part of the assessment procedure, as permitted by law.

8 COMPETENCE

- 8.1 In assessing competence, the applicant's or registrant'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 expertise and satisfactory past performance, 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 the person will have sufficient time to assume additional responsibilities and if such responsibilities would give rise to a conflict of interest or otherwise affect his or her ability to perform his or her duties in respect of any activity regulated by the Commission.
- 8.2 The size and type of business and jurisdictions in which the DNFBP is operating are relevant when assessing the competence of an MLRO and MLCO and any relevant deputy.

9 PERSONS NO LONGER FIT AND PROPER

- 9.1 The fit and proper test is an initial test (at registration) and a continuing test (in the ongoing conduct of the designated business). The DNFBP Supervisor may take action against a relevant person 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 DNFBP Supervisor will consider -

- i) whether action against the registrant 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 registrant in bringing or failing to bring quickly, effectively and completely the contravention to the Supervisor's attention, the degree of cooperation the registrant showed during the investigation of the contravention, and any remedial steps taken since the contravention occurred;
- viii) previous compliance history of relevant persons;
- ix) previous action taken by the DNFBP Supervisor in relation to similar behaviours; and
- x) action(s) taken by other regulatory authorities.

9.2 The DNFBP Supervisor 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.

9.3 In these circumstances, the Supervisor will consider the failure by a relevant person to conduct the business of the registrant with integrity and professional skills, which reflects adversely on their probity, competence, or soundness of judgement.

9.4 In general, relevant persons 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.

9.5 The DNFBP Supervisor expects all registrants to remain alert to fit and proper issues. It expects other relevant persons and other employees to report to the Supervisor as soon as it is practicable any circumstances which may be relevant to the Supervisor'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 subject to this reporting requirement.

10 PERIODIC REVIEW OF GUIDELINES

- 10.1 The Supervisor will keep these Guidelines under review to ensure it remains current and appropriate for its purpose.

APPENDIX A

DOCUMENTS TO BE SUBMITTED IN CONNECTION WITH CONSIDERATION OF FITNESS AND PROPRIETY OF RELEVANT PERSONS

- i) A completed Personal Declaration Questionnaire (PDQ) form;
- ii) An updated, signed Curriculum Vitae detailing a person's professional background may be required for certain businesses and professions;
- iii) Certified copies of certificates or records of relevant academic and professional qualifications evidencing the person's professional knowledge and experience for the particular function is required for certain businesses and professions;
- iv) A current job description detailing the duties and responsibilities of the person(s) involved in the day-to-day management of the DNFBP, also showing the reporting lines within the applicant or registrant;
- v) 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;
- vi) 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.
- vii) All documents, including the foreign language and translated documents, must be submitted to the Commission.