



TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

Regulating with Honesty, Integrity and Transparency

Date: 27 August 2023

REGULATORY ADVISORY 5 OF 2023

FIT AND PROPER ASSESSMENT: TREATMENT OF MINORS IN RELATION TO REGULATED ENTITIES

PURPOSE

To provide guidance to regulated entities in cases where a child/minor falls into a category of regulatory importance.

THE LAW

The legislative regime of the Turks and Caicos Islands covers children/minors in various categories. Sections 2 of the following Ordinances provide a definition of a child/minor:

- i) Turks and Caicos Islander Status Ordinance
 - Child: A person who has not attained the age of eighteen years
- ii) Children (Care and Protection) Ordinance
 - Child: A person who is under the age of eighteen years
- iii) Trusts Ordinance
 - Minor: subject to the terms of the trust, means a person who has not attained the age of eighteen years

The Insurance Ordinance in referring to a minor, defines a controller as a director, any person in accordance with whose decisions the directors are accustomed to act, or any person entitled to exercise not less than thirty per centum of the votes at a general meeting or *entitled to exercise voting rights of... a minor child*. Section 110 of the Companies Ordinance disqualifies a person under the age of eighteen years from appointment as a director.

GUIDANCE

The above legislative references establish who is viewed as a child/minor in the Turks and Caicos Islands and based on the limitations implied and expressed, suggests that a child/minor is limited in their ability to perform certain roles. The further view is that, based on the above, there is an understanding that a minor will not and cannot make decisions necessary for a Legal/Regulated Person.



To properly fulfil its mandate, the Commission must be able to interface with persons who are of adequate experience and expertise in the relevant sector. In many cases regulated entities will be required to take specific actions at the instance of the Commission. The ability to perform at the instance of the Commission will ultimately impact the success of the entity as the Commission is seized with the authority to act against a noncompliant entity.

Based on the above, the Commission will require shareholders who are minors to interface with the Commission through a proxy i.e., a person who has been granted relevant authority to act on behalf of the minor, whether by lawful appointment or by nature of proximity. Furthermore, that person so intending to act, will be required to provide supporting evidence as to their capacity to act on behalf of the minor.

Any individual wishing to act on behalf of a minor/child with respect to his/her ownership in a regulated entity must satisfy the Commission's fit and proper criteria for ownership in that entity and will be assessed accordingly as part of the approval process.

This position will allow the Commission to rely on the undertakings of the entity without fear of challenge relating to the capacity of the minor, particularly in instances where the actions of the Commission may be in furtherance of its overall protection mandate.

Accordingly, any application for a minor to own, wholly or partly, a regulated or supervised entity will be considered in accordance with this Advisory.

APPLICABILITY

This Advisory applies to minors' ownership in regulated/supervised entities.

This Advisory does not apply to minors acting as directors, controllers, key officers or holding other regulated positions, as minors will not be considered eligible to hold these positions.

Please be guided accordingly.

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Managing Director