



BULLETIN FOR:

FIT AND PROPER ASSESSMENT BY THE FINANCIAL SERVICES COMMISSION

**The Financial Services Commission
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FIT AND PROPER ASSESSMENT

LEGISLATIVE REFERENCES: The Insurance Act: Sections 2(3), 11(1)(e), 63(2)(e), 73(2)(d)

The Pensions (Superannuation Funds and Retirement Schemes) Act ("Pensions Act"): Sections 7(3), 8(2), 9(1)

The Securities Act: Sections 9(3), 10(3)

1. BACKGROUND

1.01 In carrying out its mandate to regulate and supervise the insurance, pensions, securities, and other industries placed under its remit ("the regulated industries") the Financial Services Commission (the "FSC") conducts a fit and proper assessment of all applicants for licensing and registration in the regulated industries. Such assessments are also conducted for specified persons connected with corporate entities such as the senior executives. Further, the fit and proper assessment process is an on-going one, which continues throughout the period for which a person¹ is licensed or registered with the FSC.

1.02 In keeping with the FSC's bulletin GEN-ADVI-10/01-0001, the FSC places reliance on several fit and proper documents in the assessment of a person's fitness and propriety. These documents are the:

- (i) Police Certificate/Record
- (ii) Confidential Report from previous employer(s)
- (iii) Completed Fit and Proper Questionnaire; and
- (iv) Current Résumé.

1.03 Reliance is generally placed on the above-stated documents for a period of five years. However, with the onset of the COVID-19 pandemic and the associated community spread ("the pandemic"), the FSC has had cause to revisit the period of reliance on fit and proper documents given the challenges being experienced by and concerns of applicants, registrants, and licensees about obtaining the police certificate/ record in these challenging times.

2. OBJECTIVE

The purpose of this bulletin is to:

¹ 'Person' means an individual or entity/corporate body.

- Outline the exceptions to the reliance period for fit and proper documents
- Stipulate other exceptions to the requirement to submit fit and proper documents;
- Indicate the duration for which these exceptions will apply;
- Articulate the FSC's requirement regarding the submission of documents used for background checks in its assessment of fitness and propriety; and
- Set out the documents in the possession of the FSC that an applicant may request to be used with a new application; provided that such document(s) remains valid.

3. LEGISLATIVE REQUIREMENTS

3.01 The Insurance Act, Pensions Act, and Securities Act, respectively specify that applicants for registration or licensing and other specified persons owning and controlling them shall be fit and proper persons. The legislation further indicates that in making a fit and proper determination regard must be had, inter alia, to whether or not the applicant and the relevant specified person(s) have any convictions for criminal offences involving dishonesty.

3.02 Under sections 11(1)(e), 63(2)(e), and 73(2)(d) of the Insurance Act; 7(1), 8(2), and 9(1) of the Pensions Act; and 9(3) and 10(3) of the Securities Act, the FSC is required to assess the fit and proper status of individual applicants and "connected", and "covered" persons associated with an applicant who is not a natural person. Connected and covered persons relate to the senior executives and other persons who by their shareholding and voting rights can exercise control over or otherwise influence the direction of the regulated entity.

4. REVISED POLICIES

Taking into account the need to reduce regulatory burden for regulated entities and improve the responsiveness of the FSC, the following policies now apply:

4.01 Fit and Proper Documents

4.01.1 Where the five-year period for relying on the fit and proper documents identified at 1.02 above elapses in 2020 or beyond, the period has been extended to seven years in light of the pandemic.

4.01.2 While the FSC will conduct background checks on all applicants and any person connected with them who are required to be assessed for fitness and propriety, a police certificate/record may not be required to be submitted in connection with a new application if the applicant:

- is currently registered or licenced with the FSC in another capacity; and
- has had a favourable fit and proper assessment conducted within the last seven years.

4.01.3 If an applicant, connected, or covered person has lived overseas for six continuous months or more during the last five years, in addition to the Jamaican police certificate/record they must also provide evidence of a criminal record/report or such other official report that provides details of their criminal history from an official source from the country they have lived in covering the time that they lived overseas. Further, if this criminal record/report or such other official report that provides details of the criminal history of the applicant is in a language other than English, then the individual must send the FSC a translation of the report provided by a professionally accredited translator of the government body that issues the report.

- 4.01.4 An applicant should ideally submit an overseas criminal record/report when submitting his/her application for registration or a licence to the FSC. However, an application can be made while an individual waits to receive his or her overseas criminal record report or such other official report that provides details of the criminal history of the applicant, provided that evidence of the request for the report is submitted with the application. Registration or a licence, however, will not be granted until the criminal record/report or such other official report that provides details of the criminal history of the applicant covering at least the previous five years, or the period of time the person resided overseas, if less than five years, has been received by the FSC.
- 4.01.5 A copy of a police certificate/report issued no more than **180 days** before its submission to the FSC and which has been certified by a Justice of the Peace, Minister of Religion, Notary Public, Attorney-At-Law, Inspector of Police or higher rank, will be accepted provided that it is submitted with a written attestation from the applicant, that is also witnessed by the same person who has certified the police certificate/report, stating whether there has been any change in their criminal history since the police certificate/report was issued.
- 4.01.6 In exceptional circumstances, such as in wartime, a pandemic, or other national or global emergencies, where an applicant is unable to obtain a criminal record/police report, the FSC may consider accepting a sworn statement in lieu of the criminal record/police report.

4.02 Background Checks

- 4.02.1 Where an applicant is also regulated and supervised by the Bank of Jamaica ("BOJ"), the FSC may rely on the assessment of fitness and propriety done by the BOJ and in that regard may accept a report about the fit and proper status of the applicant sent by the BOJ directly to the FSC, upon request made by the applicant to the BOJ.
- 4.02.2 Individual applicants, connected, and covered persons must provide consent for the FSC to conduct a review of their personal and corporate credit history. Further, a credit history check will not be conducted if an individual is currently registered or licenced and has had a favourable credit history check conducted within the last six months.
- 4.02.3 If an applicant, covered, or connected person currently holds a certificate of registration or licence to work in insurance, securities, or pensions sectors abroad and it is a condition of that registration or licence that they have a criminal record report, the individual may send a notarized copy of the certificate or licence to the FSC as evidence of their good character. They must also inform the FSC about any conditions of that registration or licence, the sector it permits them to work in, and when the conditions, if any, expire. Further, the FSC reserves the right to seek confirmation from the overseas regulator and to request additional information about such registration or licence from the applicant.

4.03 Use of Previously Submitted Documents

4.03.1 Corporate Entities

Where –

- (i) the members of an applicant's Board of Directors
- (ii) the applicant's manager/general manager, assistant manager/general manager, accountant/financial controller/treasurer, company secretary, or such other senior managers who are responsible for management and decision making for an entity (by whatsoever name called)
- (iii) the person designated by the applicant as the responsible officer
- (iv) a person with a material interest in or control of shares equivalent in value to 10 per cent or more of the applicant's total shares which carry voting rights

have been assessed and deemed fit and proper, or is being assessed, under any of the statutes administered by the FSC, the applicant entity and Responsible Officer, who wishes to apply for a licence or registration certificate with respect to other businesses/ services may in writing request that the FSC use their previous full application, submitted to the FSC within the past five to seven years as the case may be, for purposes of the new application.

4.03.2 Individuals

- (i) Where an individual is being assessed or has been assessed and deemed fit and proper in a capacity under the Securities, Insurance, or Pensions Acts, that person may, in connection with a new application for registration or a licence, in writing request that the FSC use specific documents that were previously submitted to the FSC for which the period for reliance on the documents by the FSC has not expired.
- (ii) A request (from individuals and corporate entities) that the FSC use one or more documents previously submitted with an application for registration or licensing may be made in so far as:
 - (a) the specified documents have not expired and more than three months remain before expiration.
 - (b) there is no material change to the fitness and propriety information such as conduct breaches, disciplinary action related to conduct; and convictions for any criminal offences.

4.03.3 Making the Request

- (i) To request that previously submitted documents be used for a new application the applicant must include in the new application package a letter to the FSC:
 - (a) making the request
 - (b) giving their name, file or registration number associated with the previous application, and the date of the previous complete application(s). Where the applicant is not registered or licensed in respect of any application, the name of the company with which they are connected is also to be provided
 - (c) providing the names of the persons relevant to the new application who are currently being assessed or have been previously assessed and deemed fit and proper by the FSC; and

- (d) certifying that the information submitted in the previous full application is still valid and applicable to the new application and that there is no new or additional information, including no material change to their fit and proper status, to be disclosed or provided.
- (ii) This letter must bear the signature of the same original applicant. The same signature should also be affixed to the new application. In the case of a corporate entity, where the foregoing cannot be achieved, a Director duly authorized to sign on behalf of the entity or the Chairperson of the Board should sign this letter to which the company stamp is to be affixed.

4.03.4 Applicable Documents

- (i) The following documents submitted with a previous application, or otherwise, may be used by the FSC in connection with a new application where no changes by the applicant are necessary to be made to the documents and the period for reliance by the FSC on the documents has not expired:
 - (a) Certificate of Incorporation
 - (b) Memorandum and Articles of Association/Articles of Incorporation
 - (c) Audited Financial Statements for the previous three financial years
 - (d) Tax Compliance Certificate valid as at the date of application
 - (e) List of top 10 shareholders (ranked by number of shares) and shareholdings of a parent company or ultimate holding company if the latter is different
 - (f) Corporate Organization Chart showing parent, ultimate holding, subsidiaries, and associated companies
 - (g) Fit and Proper Questionnaires for each covered, or connected person
 - (h) Police Report valid as at the date of application
 - (i) Confidential report valid as at the date of application
 - (j) Résumé
 - (k) Credit report valid as at the date of application
- (ii) An applicant is required to submit all other documents and meet all other requirements according to the registration or licence being sought.

5. EFFECTIVE DATE

5.01 The abovementioned policies take immediate effect and will continue until further advised by the FSC.

5.02 This bulletin replaces the publication GEN-ADVI-10/01-0001 -BULLETIN ON NEW REQUIREMENTS RELATED TO REGISTRATION PROCESSING AND FIT & PROPER ASSESSMENTS

Questions regarding this bulletin may be directed to the:

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