



GUIDELINES:

FITNESS AND PROPRIETY

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Guidelines: Fitness and Propriety

LEGISLATIVE REFERENCE:	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)
	Trust and Corporate Services Providers Act, 2017 (“TCSP Act”): Section 6(4), 46

1.0 BACKGROUND

- 1.01 Compliance with fit and proper standards is essential to ensuring that business activities in the financial sector are conducted with high standards of market practice and integrity. Consequently, all legislation administered by the Financial Services Commission (the “Commission”) require that applicants and certain persons associated with a corporate entity be fit and proper.
- 1.02 In carrying out its mandate to regulate and supervise the insurance, securities, private pensions, and trust and corporate services providers industries (the “regulated industries”) the Commission acts as a gatekeeper in ensuring observance of the applicable fit and proper standards for the purpose of:
- protecting consumers of financial services in the regulated industries.
 - preventing individuals who would pose a risk to the proper functioning of these industries from entering in the first place or from continuing in these entities when an issue regarding their fitness and propriety has arisen.
 - protecting Jamaica’s reputation.
- 1.03 Fitness and propriety assessment is an on-going process; continuing throughout the period for which a person is licensed or registered with the Commission or is otherwise engaged in regulated activities carried out by a registrant or licensee.
- 1.04 For consistency and reasons of a level playing field, a cross-sectorial approach to the fitness and propriety standards has been applied as far as possible, while taking into account the legislative requirements applicable to the various regulated persons and entities.

- 1.05 These guidelines are applicable to applicants for registration or licensing by the Commission and all regulated individuals and entities within the remit of the Commission.

2.0 OBJECTIVES

The objectives are to:

- 2.01 Outline the Commission's fit and proper criteria, policy requirements and related principles, which the Commission considers when assessing whether an individual is and remains fit and proper, the general frequency of assessments and the persons who are required to meet the fit and proper standards.
- 2.02 Stipulate the Commission's expectations of applicants, registrants and licensees regarding fitness and propriety.
- 2.03** These guidelines are to be read in conjunction with all other relevant guidelines and bulletins issued by the Commission, including *Bulletin GEN-ADVI-21/05-0004: Fit and Proper Assessment by the Financial Services Commission*. **In respect of trust and corporate service providers, the guidelines are issued pursuant to section 46 of the TCSP Act.**

3.0 LEGISLATIVE REQUIREMENTS

- 3.01 All legislation administered by the Commission provides for compliance with fit and proper criteria that are broadly delineated in the relevant statutes. The Insurance Act, Pensions Act, Securities Act, and TCSP Act respectively specify that applicants for registration or licensing and other specified persons connected with a corporate applicant, such as the officers, shall be fit and proper persons.
- 3.02 Under sections 2(3), 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; 9(3) and 10(3) of the Securities Act, and 6(4) of the TCSP Act, the Commission is required to assess the fit and proper status of individual applicants and "covered" and "relevant" persons associated with an applicant who is not a natural person. Covered and relevant persons relate to the senior executives, general partners (in the case of a partnership), managers, and other persons who by their shareholding and voting rights can exercise control over or otherwise influence the direction of the regulated entity.

4.0 FITNESS AND PROPRIETY DEFINED

- 4.01 Fitness relates to whether the individual being assessed is physically and mentally able and competent to perform the duties, responsibilities, and functions entailed in their position and has the appropriate qualification, knowledge, training, experience, skills, diligence, and soundness of judgment needed.
- 4.02 Propriety concerns a person's character and personal attributes. It involves an assessment of a person's behaviour, which provides insight into a person's attitude and character, by considering things such as his/her:
- Attitude
 - Integrity, credibility, and honesty

- Judgment
- Propensity or willingness to disregard the law

4.03 To carry out regulated activities sections 2(3) of the Insurance Act, 7(3) of the Pensions Act, 9(3A) of the Securities Act and 7(2) and (3) of the TCSP Act require inter alia that certain persons such as the officers of regulated entities are of sound probity, able to exercise competence diligence and sound judgement in fulfilling their role, have not contravened any statutory provisions designed for protecting members of the public and has not been convicted of an offence involving dishonesty. In furtherance of this, an assessment of a person's fit and proper status is directly focused upon their fitness and propriety to exercise the responsibilities and perform the functions and duties related to the regulated activity associated with their application or an application made by a firm, company or other body corporate to which they are employed. The assessment also requires consideration of the person's conduct and attitude measured against the responsibilities, functions, and duties of the holder of a registration certificate or licence required under the applicable legislation administered by the Commission.

5.0 FIT AND PROPER ASSESSMENT PRINCIPLES

Fit and proper assessments are informed by the following principles:

- 5.01 **Consistency** - The Commission seeks to ensure consistency in its processes and practices regarding the assessment of fitness and propriety of applicants, registrants and licensees, ensuring that like cases are treated consistently.
- 5.02 **Proportionality** - The application of fit and proper criteria should be commensurate with the size, nature, and complexity of the activities of the applicant, and the particular role to be played by covered or relevant persons as applicable.
- 5.03 **Due process and fairness** – An applicant or supervised entity who is affected by a fit and proper decisions will be afforded all applicable procedural guarantees such as the right to be heard.
- 5.04 **Intersection with on-going supervision** - The fit and proper assessment will feed into the on-going supervision of the governance of a regulated entity and on-going supervision in turn may provide input for a fit and proper assessment or reassessment of members of the governing/management team.

6.0 POLICY REQUIREMENTS

- 6.01 It is a condition of any registration or licence granted that the holder and any person having control over the exercise of the privileges under the registration or licence are fit and proper.
- 6.02 Officers who are directors, both executive and non-executive, and other persons who exercise significant influence, such as the senior management personnel of a financial institution, must be assessed by the Commission as fit and proper before confirmation of their appointment by the regulated entity.
- 6.03 Under the Securities Act each person beneficially entitled (directly or indirectly and whether alone or in association with others) to 10 per cent or more (or such percentage as is specified as a threshold in any

legislation administered by the Commission or policy approved by the Commission) of the voting shares, or issued shares as applicable, of the applicant, registrant or licensee must be assessed as fit and proper.

- 6.04 Persons applying for registration or a licence to engage in regulated activities may be asked to attend interviews with the Commission.
- 6.05 References may be taken from previous employers covering at least the last five years of employment history (or the full employment history if less than five years) which will be considered indicative of past business conduct.
- 6.06 In the case of a licensed corporate or trust service provider, the applicant and other relevant persons who have been assessed for fitness and propriety have a duty to report to the Commission any matter that may impact upon their on-going fitness and propriety without undue delay. Such a report should be submitted using the standard form specified by the Commission within 14 days from the date the licensee or relevant persons become aware of the matter.

7 FIT AND PROPER ASSESSMENT AND CRITERIA

- 7.01 Under sections 2(3), 11(1)(e), 63(2)(e), and 73(2)(d) of the Insurance Act; sections 7(3), 8(2), and 9(1) of the Pensions Act; sections 9(3) and 10(3) the Securities Act; and section 6(4) of the TCSP Act, the Commission may only grant registration or a licence if it is satisfied that the applicant is fit and proper to perform the regulated function to which the application relates. The Commission must be satisfied therefore that there is nothing in a person's (natural or otherwise) present circumstance or past record that would make the person unfit for the position such person holds or proposes to hold, or to undertake the proposed regulated activity.
- 7.02 Evaluation is carried out through the examination of responses provided to a range of standardized requirements which are set out in the Commission's Fit and Proper Questionnaire ("FPQ"). The completed FPQ is to be submitted by each covered or relevant person as the case requires and must be accompanied by all specified documents and information.
- 7.03 Whether a person is fit and proper is determined primarily through assessment of the criteria prescribed in the various legislation administered by the Commission and factors which enable a determination as to whether or not the criteria are met. This assessment will require, considerations of skills and ability, honesty, knowledge, as well as behaviour, attitude, credibility, and past conduct to assist in determining likely future conduct.
- 7.04 When considering an individual's fitness and propriety, the Commission will take into account a wide range of factors that fall within the following three broad and universally accepted assessment categories:
- Honesty, integrity, and reputation
 - Competence and capability
 - Financial soundness

7.04.1 Honesty, Integrity, and Reputation

- (a) Honesty, integrity, diligence, and fairness are qualities that are demonstrated over some time and demand a disciplined on-going commitment to high ethical standards. The assessment element of

- honesty and integrity is demonstrated by an individual who is open in his or her dealings (inside and outside the workplace), who behaves in a way that is trustworthy and fair, and who is responsible and accountable for his or her actions. Breaches of Anti-Money Laundering/Countering the financing of terrorism/Countering Proliferation Financing (“AML/CFT/CPF”) requirements are relevant to the assessment of fitness and propriety; particularly with respect to persons holding significant or controlling interests of the applicant. In determining these qualities and an assessment of a person’s fitness and propriety, consideration is given to all appropriate factors, including but not limited to, whether the person:
- (b) has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or any investigation which might lead to such proceedings.
 - (c) has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by the Commission, or any other regulatory authority, any professional body or government agency whether in Jamaica or elsewhere.
 - (d) has been censured, disciplined, suspended or refused registration or a licence by the Commission, any other regulatory or professional body, a court or Tribunal or government agency whether in Jamaica or elsewhere.
 - (e) has been associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorization, membership or a licence to conduct trade, business or profession, or has had the registration, authorization, membership or licence revoked, withdrawn or terminated.
 - (f) has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorization as a result of the withdrawal of the registration or licence.
 - (g) has been the subject of any justified complaints relating to regulated activities which include any business practices appearing to be deceitful or oppressive or otherwise improper, which reflect discredit to his or her method of doing business.
 - (h) has been charged or convicted of any criminal offence, particularly an offence relating to dishonesty, fraud, financial crime, or other criminal acts, or been involved in any acts of misfeasance or serious misconduct.
 - (i) has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies, which are of a nature and significance that may have affected his or her fitness and propriety.
 - (j) has contravened any provisions of any relevant Act within the meaning of the Financial Services Commission Act.
 - (k) has contravened any provision of the Proceeds of Crime Act and related regulations; any enactment relating to the financing of terrorist activities; illegal drug, firearm or other weapons; and the United Nations Security Council Resolutions Implementation Act and concomitant regulations or falls within any high risk categories as named by international standard-setting bodies including politically exposed persons.

- (l) has been a director, partner, or otherwise involved in the management of a business that has gone into receivership, insolvency, or liquidation while he/she was connected with that business or within two (2) years after severing connection with the business.
- (m) has been dismissed, or asked to resign or resigned from employment or a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity.
- (n) has been disqualified under any legislation from acting as a director or serving in a managerial capacity.
- (o) has demonstrated an unwillingness to comply with any regulatory requirements or to uphold any professional and ethical standards.
- (p) Has provided false or misleading information to the Commission on the Commission's application, questionnaire or in any other document or correspondence, submitted pursuant to the fit and proper due diligence process or in support of an application to the Commission for registration/licence.
- (q) Is at present or has in the past engaged in cyber activity against a regulated financial institution or other activities to create misinformation, panic, or instability in the regulated industries.

7.04.1.1 In respect of trust and corporate service providers and pursuant to section 46 of the TCSP Act the holder of a licence under the TCSP Act must inform the Commission of any convictions, warrants, or charges for criminal offences, whether committed in Jamaica or another country, against a natural person covered by the licence that arises during the period between the grant of the licence and the expiration of the time that the Commission is placing reliance on a criminal record report submitted as part of its application.

7.04.1.2 Proceedings before a disciplinary, regulatory, or other legal authority:

- (a) Each case must be considered on its merit, taking into account all relevant factors.
- (b) In the case of pending criminal charges and regulatory proceedings against the individual, the Commission will make a determination based on the particular circumstances of the case.
- (c) Consideration is given to the extent and circumstances of the person's involvement in any relevant events, including the time of occurrence, seriousness of the matters and surrounding circumstances, mitigating factors, the seriousness of any relevant offence or administrative or supervisory action, the explanation offered by the person as applicable, the relevance of the offence to the proposed role, and evidence of the individual's rehabilitation.

7.04.2 Competency and Capability

- (a) The person being assessed must demonstrate, depending on their role, his or her competence and ability to understand the business of insurance, securities, pensions, and corporate services and/or trust services as the case requires; the inherent risks, and the processes required to achieve efficiency and effectiveness, with due regard to the interests of all stakeholders.
- (b) In determining the person's competence and capability, the Commission will consider whether the relevant staff and other personnel connected with the applicant have demonstrated by experience,

- training (either undertaken or planned training), and qualification consistent with the established competency framework that he or she will be capable of performing the applicable regulated functions.
- (c) All relevant considerations will be taken into account including but not limited to whether the person:
- (i) has demonstrated through qualifications, education, and satisfactory past performance or expertise the capacity to successfully undertake the cognate responsibilities of the position.
 - (ii) has demonstrated sound knowledge, experience and qualifications to successfully undertake and properly discharge the duties and responsibilities of the regulated activity.
 - (iii) has ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement.
 - (iv) If an applicant, has an appropriate business structure and good internal control systems, such as proper documentation, authorization, review, and updating of policies and procedures, to ensure the proper management of risks that may be encountered in carrying on the proposed business as detailed in their business plan.
 - (v) Has or will have adequate time to perform their functions associated with the regulated activity.
- (d) Individual applicants and regulated entities must therefore have regard to the Commission's Competence Framework set out in the Guidelines: Evaluating Competency - GEN-ADVI-04/28-0005. Reference should also be made to the following publications:
- Guidelines on Standards of Conduct
 - Guidelines on Internal Control
 - Guidelines on Risk Assessment

7.04.3 Financial Soundness

- (a) To demonstrate the capacity to ensure the establishment of an adequate risk management framework to afford the safety and soundness of financial entities and protect the interests of stakeholders, an applicant and other specified persons must show to the satisfaction of the Commission that he has managed the affairs of the regulated entity properly and prudently.
- (b) Also, to detect and prevent financial services from being used to launder the proceeds of crime, the Commission may seek information from the applicant regarding their shareholders and on how they acquired wealth and funds or other assets that are the subject of the business relationship under the statutory power to in the various legislation request may be made to obtain such other documents or information as the Commission may require.
- (c) In determining a person's financial soundness the Commission will consider all relevant factors including but not limited to:

- (1) whether an entity, owned, directed and managed by the individual, or over which the individual has or had a material influence through substantial shareholdings, or in whose management the individual has been involved:
 - (i) has gone into or remains in insolvency, liquidation or has been served a bankruptcy petition, while the person was connected with that organization or within one (1) year of severance of that connection.
 - (ii) has entered into a composition¹ or arrangement² with its or his creditors in Jamaica or elsewhere.
 - (iii) has failed to satisfy any debt adjudged due and payable as a judgement under an order of a court of Jamaica or elsewhere.
 - (iv) has been the subject of intervention or sanction by a government agency or any other regulatory body or been placed under Temporary Management or issued with cease and desist orders to protect the assets and interests of stakeholders.
 - (v) has had its registration or licence to perform any financial business revoked/denied or refused renewal by the Minister of Finance or other regulatory body.
- (2) whether an individual or an entity over which the individual has or had significant influence, or been a director or senior manager:
 - (i) has in Jamaica or elsewhere, made any arrangements with his creditors, filed for bankruptcy, been adjudged bankrupt, had assets sequestrated, or has been involved in proceedings relating to any of the foregoing.
 - (ii) has been the subject of any adverse judgement or award in Jamaica elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
 - (iii) has been adjudged liable by a Court for fraud, misfeasance, or other misconduct.
- (3) Whether the applicant meets any applicable capital and/or solvency requirements.
- (4) The source of funds and wealth of individuals and corporate shareholders.
- (d) The fact that a person may be of limited financial means will not, in itself, affect the ability to satisfy the financial soundness criteria. It is recognized that an individual considered fit for a particular position within a financial entity may not be considered fit for another position with different responsibilities, or a similar position within another entity. Conversely, an individual considered unfit for a position in a particular financial entity may be considered fit in different circumstances. It is, therefore, the cumulative effect of the application of the above-mentioned criteria that will determine the fitness and propriety of a person with each case being considered on its own merit.

¹ An agreement between the compounding debtor and all or some of his creditors (The Bankruptcy and Insolvency Act, 2014)

² Matters such as can be used to effect a solvent reorganisation of a company or group structure, including by merger or demerger, as well as to effect insolvent restructurings such as by a debt for equity swap or by a wide variety of other debt-reduction strategies.

8 PERSONS WHO ARE SUBJECT TO FIT AND PROPER REQUIREMENTS

The following covered or relevant persons must be deemed fit and proper by the Commission:

Entities	Covered, or Relevant Persons
<u>Insurance Act</u> Association of underwriters Insurer Insurance consultants Insurance intermediaries	<ul style="list-style-type: none"> • Each of the persons managing or controlling the body and every member of the syndicate/ association. • All directors, senior managers, and shareholders owning 10% or more of the shareholdings • Individual applicants
<u>Securities Act</u> Securities dealer Dealer's representative Investment adviser Investment adviser representative	Officers (director, president or vice-president, general manager, secretary, responsible officer, financial controller or treasurer, or such other senior managers who are responsible for management and decision making for the entity by whatsoever name called) or members holding (whether in their own right or when counted with any holding of an associated person) 10 per cent or more of the voting shares of the company
<u>Trust and Corporate Services Providers Act, 2017</u> Corporate services providers Trust services providers Corporate and trust services providers	<ul style="list-style-type: none"> • Directors, secretary or senior executives of the firm, company or entity by whatever name called • Persons beneficially entitled to issued shares or other ownership interest in the amount prescribed in the legislation • General partners in the case of a partnership • Manager, assistant manager, and the accountant
<u>Pensions Act</u> Administrators Investment Managers Corporate trustees	<ul style="list-style-type: none"> • Board members • The manager, assistant manager, accountant, company secretary, or, the person who (by whatever name called) who performs for the administrator, investment manager, or corporate trustee, the duties normally carried out by a manager, assistant manager, accountant, or company secretary • The designated responsible officer
A fund or scheme	The trustees

9 FREQUENCY OF ASSESSMENT

- 9.01 Fit and proper assessment is an on-going process commencing at the stage where an application for registration or licensing is submitted. In this regard, reliance will be placed by the Commission on the fit and proper documents submitted generally for five or seven years in keeping with the bulletin, *GEN-ADVI-21/05-0004* published by the Commission.
- 9.02 As such after the initial assessment is done periodic reassessments will formally commence within six months of the expiration of each five-year or seven-year period as per the aforementioned bulletin.
- 9.03 The Commission may however reassess an individual and the collective suitability of the persons connected with a corporate applicant, collective investment scheme, or pension plan in the absence of any specific signals in the context of its general risk-based supervision.
- 9.04 Reassessment may also occur as a result of various elements such as adverse information that have come to the attention of the Commission resulting from onsite examinations, other supervisory actions, or due to the passage of time in keeping with its policy regarding the frequency of assessments.

10 RESPONSIBILITY OF APPLICANTS, REGISTRANTS, AND LICENSEES

- 10.01 The on-going fitness and propriety of all members of the Board of Directors or other management body of a regulated entity and other key persons such as individuals having significant influence over the direction of the entity under the overall responsibility of the board or management body is vital for the proper functioning of a regulated entity. Consequently, regulated entities have a responsibility and are required to assess the fitness and propriety of all individuals who hold positions, or are otherwise engaged, that require fit and proper assessment; initially and on an on-going basis without prejudice to the assessment performed by the Commission.
- 10.02 It is the onus of each party identified in section 8 to demonstrate that he or she is a fit and proper person. The individual must accordingly complete the FPQ and provide any additional information that may be required for the Commission to complete its evaluation. He or she is also required to notify the Commission immediately of any circumstances and events that have occurred subsequent to their initial assessment as being fit and proper that might change the assessment or have a material bearing on it. Notification should also be provided of any change in the roles performed by the individual.
- 10.03 Both the entity and the person who is the subject of the fit and proper assessment must ensure that the information submitted to the Commission is complete and accurate.
- 10.04 Applicants and regulated entities are expected to:
- 10.04.1 Develop and implement policies and procedures to conduct effective due diligence in the recruitment and appointment of directors and senior managers, and the engagement of all other covered or relevant persons. The policies and procedures are to have regard to substantively to the same factors as those outlined in section 7 which is not intended to be a definitive enumeration of factors considered.

- 10.04.2 Take into account their size, internal organization, and the nature, scale, and complexity of their activities when developing and implementing policies and processes regarding fitness and propriety. Significant financial institutions should have more sophisticated policies and processes relative to those of small and less complex entities.
- 10.04.3 Implement and maintain a relevant and effective framework of fit and proper standards, consistent with applicable laws, the Commission's supervisory requirements and industry best practices.
- 10.04.4 Have documented and approved policies and procedures in place to ensure that existing and new senior management personnel, and members of the board of directors or other governing body collectively possess adequate knowledge, skills and experience to understand the activities of the business, including the main risks, and are fit and proper on an on-going basis.
- 10.04.5 Monitor on an on-going basis the fitness and propriety of the members of its board or other management body as well as other key functionaries and identify, in the light of any relevant new fact, situations where a reassessment of their fitness and propriety should be performed. A reassessment should, at a minimum, be performed:
- when there are concerns regarding the individual or collective suitability of the members of the board or other management body
 - when there are material changes (including new appointment, reappointment, or termination of membership) to the composition of its board or other governing body
 - in the event of a material impact on the reputation of a member of the board or other management body, inclusive of instances of breaches of the entity's conflict of interest policy
 - as part of the review of its internal governance arrangements
- 10.04.6 Conduct and/or update fit and proper assessments of covered or relevant persons as applicable periodically.
- 10.04.7 Investigate any matter of concern regarding the fitness and propriety of a covered or relevant person and take such action as is appropriate.
- 10.04.8 In the case of a trust or corporate service provider, any matter that may impact upon a relevant person's on-going fitness and propriety should be reported without undue delay to the Commission. In any event, such a report should be submitted within 14 days from the date the registrant or licensee becomes aware of the matter.**
- 10.04.9 Make readily available for examination by the Commission, fit and proper policies and procedures and documentary evidence of fit and proper due diligence conducted for each covered and relevant person as the case requires.
- 10.04.10 Give notice to the Commission within timeframes prescribed or otherwise specified by the Commission where a covered or relevant person ceases to carry out a regulated activity.

The expectations set out in these guidelines are not exhaustive.

Questions regarding these guidelines may be directed to:

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