



# **FINANCIAL SERVICES COMMISSION**

## **GUIDELINES ON FITNESS AND PROPRIETY**

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## 1.0 INTRODUCTION

The Financial Services Commission, Mauritius (the "FSC") is established under the Financial Services Act 2007 (the "FSA") and is mandated to regulate the non-bank financial services sector and global business.

The FSA requires the FSC to assess the "*fitness and propriety*" of an applicant and any holder of a licence (natural person or corporation), including any person authorised, registered or approved under a relevant Act.

Applicants who are granted a licence are expected to remain "*fit and proper*" at all times and any change in circumstances which can affect the "*fitness and propriety*" of the licensee must promptly be notified to the FSC.

Regulated entities are required to reflect the elements of these Guidelines in their internal policies, procedures and controls and apply them in their assessment of persons who manage, control, direct, own or perform key functions in a regulated entity.

Terms used in these Guidelines shall, unless otherwise specified, have the same meaning as under the relevant Acts.

## 2.0 PURPOSE OF THESE GUIDELINES

These Guidelines are issued by the FSC pursuant to its powers under section 7(1)(a) of the FSA. It supersedes the *Guide on Fitness and Propriety* previously issued by the FSC on 9 June 2020 but does not intend to replace or override any legislation or case law on the matter, whether in Mauritius<sup>1</sup> or abroad<sup>2</sup>. Its provisions should be read in conjunction with the provisions of relevant legislations and/or directions which may be issued by the FSC from time to time.

The Guidelines aim at clarifying the criteria to be taken into consideration by the FSC in assessing the "*fitness and propriety*" of an applicant/licensee.

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<sup>1</sup> Rookny Kaviraj vs The Financial Services Review Panel [2018 SCJ 250] (*infra*)

<sup>2</sup> Financial Conduct Authority (formerly the Financial Services Authority) vs Hobbs [2013 EWCA CIV 918]

The concept of "*fit and proper*" is an open-ended one and is aimed at ensuring sound conduct of business in the financial services sector. As such, these Guidelines are not exhaustive and each case shall be considered on the basis of its own merits.

### **3.0 SCOPE OF APPLICATION**

These Guidelines are applicable to the following:

- (a) all the shareholders of the applicant/licensee;
- (b) any beneficial owner of the applicant/licensee;
- (c) any controller of the applicant/licensee;
- (d) any director of the applicant/licensee;
- (e) any officer of the applicant/licensee;
- (f) any incumbent officer such as the Money Laundering Reporting Officer, the Deputy Money Laundering Reporting Officer and the Compliance Officer;
- (g) any representative or agents of the applicant/licensee;
- (h) trustees and management committees of occupational pension plans;
- (i) external and outsourced auditors of regulated entities;
- (j) the principal representative of a foreign financial institution that is conducting insurance business or business of a financial nature;
- (k) an insurance agent, broker and sales representative and any such person as may be determined by the FSC.

The above list is not-exhaustive.

### **4.0 THE FIT AND PROPER TEST**

Pursuant to section 20 of the FSA, in considering whether a person is "*fit and proper*", the FSC may have regard to the following, but not limited to same:

- (a) in relation to the person and, where the person is a corporation, the officers and beneficial owners of the corporation –
  - (i) financial standing;
  - (ii) relevant education, qualifications and experience;

- (iii) ability to perform the relevant functions properly, efficiently, honestly and fairly; and
  - (iv) reputation, character, financial integrity and reliability;
- (b) any matter relating to –
  - (i) any person who is or is to be employed by, or associated with, the person;
  - (ii) any agent or representative of the person;
  - (iii) where the person is a corporation, the officers and any shareholder of the corporation, the related corporations of the corporation and the officers of those related corporations; and
- (c) any matter specified in a relevant Act as relating to the *"fit and proper"* person requirement.

An initial *"fit and proper"* test ("Test") will be carried out when an applicant submits an application for a licence or requests any other authorisation from the FSC. The Test will thereafter be applied on an ongoing basis inasmuch as an applicant/licensee must at all times remain *"fit and proper"*.

The FSC's approach is a cumulative one. It may be decided that an applicant/licensee has not met the Test having considered several situations, each of which on its own may not have led the FSC to conclude a deficiency of *"fit and proper"* but which may cumulatively lead to that conclusion. The failure by a relevant person to meet any one of the criteria set by the FSC may not lead to an automatic refusal of an application.

## **5.0 THE PURPOSE OF THE FIT AND PROPER TEST**

The purpose of the Test is, inter alia, to:

- (a) establish a standard benchmark for licensing and for ongoing regulation and supervision of licensees/applicants;

- (b) to act as a deterrent to protect the interests of consumers of financial services;
- (c) encourage high standards of market conduct;
- (d) encourage a high level of confidence amongst those using (and those considering using) Mauritius as a base for their operations;
- (e) deter making an abuse of Mauritius financial market;
- (f) promote a business environment that meets acceptable international standards;  
and
- (g) ensure that persons, who are not "*fit and proper*" to perform functions in relation to a regulated activity, are precluded from doing so, in the public interest;

## **6.0 RESPONSIBILITIES OF THE APPLICANT/LICENSEE AND THE RELEVANT PERSON(S) SUBJECT TO THE FIT AND PROPER TEST**

An applicant/a licensee and each relevant person shall at all times be and be seen as "*fit and proper*".

The onus is on the applicant/licensee and each relevant person to establish that the latter is a "*fit and proper*" person, as different appointment(s) and designation(s) entail different responsibilities. The FSC will consider the nature of the responsibilities of the relevant person(s) in determining the standards expected from of the relevant person.

The applicant/licensee and the relevant person(s) must accordingly, complete the Fit and Proper Person Questionnaire ("PQ"), annexed to these Guidelines as ANNEXURE A and must provide, depending on the nature of the license, authorisation, registration or approval sought, any information that the FSC may require to complete its assessment. Where a PQ has already been filed, the applicant shall indicate in this application that the PQ has been filed and inform the Commission of any material change. Providing false and misleading information to the FSC will lead to criminal prosecutions under the FSA.

Applicants and licensees should notify the FSC of any event(s) or circumstance(s) occurring subsequent to their initial application for a license, authorisation, registration or approval that might change the assessment or have a material impact on the assessment of "*fit and proper*".

The applicant has a duty to make full, unequivocal and diligent disclosure.

## **7.0 ASSESSING FITNESS AND PROPRIETY**

In reaching a decision, the FSC will apply the 'balance of probabilities' standard and will assess all evidence submitted and may have regard to any other information in its possession. The FSC will also consider, inter alia, changes in key relationships such as auditors and bankers and may enquire into the changes.

When assessing an application for the appointment of a relevant person(s), the FSC may, in addition to the Test, consider other factors that may be relevant, such as whether the relevant person has a good standing in the profession in respect of which the application is submitted.

For the purpose of these Guidelines, the FSC has grouped the criteria for the assessment of "*fit and proper*" set out in section 20 of the FSA as follows:

- A. HONESTY, INTEGRITY, DILIGENCE, FAIRNESS, REPUTATION AND GOOD CHARACTER**
- B. COMPETENCE AND CAPABILITY; and**
- C. FINANCIAL SOUNDNESS**

However, these criteria are not limitative and the FSC may have regard to any other information that may be relevant.

The FSC should be informed of any of the above factors or any other matter that the FSC may consider relevant whether they occurred in Mauritius or elsewhere. When conducting its assessment, the FSC will consider the extent and circumstances of the person's involvement in the relevant events, the time it occurred and its seriousness.

The FSC reserves its regulatory powers to gather any information from any appropriate source on the overall reputation of a person, regardless of whether such information results from the above criteria and factor in its assessment of the person's "*fitness and propriety*".

An applicant/licensee must report voluntarily any matter of a material nature or matters that may potentially give rise to regulatory concerns to the FSC and which the FSC should be aware of. This may involve the applicant/licensee or a related entity. Failure or omission to do so promptly or inordinate delay to supply material information to the FSC may be taken into account in the FSC's assessment of the integrity of the applicant/licensee.

Where the FSC discovers information which should have been brought to its attention but was not, it will, inter alia, take into account the circumstances, the gravity of the event(s), the time that has elapsed between the happening of the event and its discovery and the relevance of the event to the licence/authorisation issued by the FSC.

#### A. HONESTY, INTEGRITY, DILIGENCE, FAIRNESS, REPUTATION AND GOOD CHARACTER

Honesty, integrity, diligence, fairness, reputation and good character are qualities that must be demonstrated on an ongoing basis.

A person shall demonstrate to the FSC and provide reasonable assurance to the satisfaction of the FSC that the latter is of good repute and substantiate the intentions to act in an honest, ethical and trustworthy manner.

Integrity demands a disciplined and ongoing adherence to high standards of behaviour and honesty.

The following factors are relevant to determining honesty, integrity, diligence, fairness, reputation and good character:

For individual:

- (a) whether the person has been refused the right or is restricted to carry on any trade, business or profession for which a specific license, registration or other authorisation is required by law in any jurisdiction;
- (b) whether the person has been issued a prohibition order as a result of an offence committed under any legislation administered by the FSC or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
- (c) whether the person has been censured, disciplined, suspended and / or disqualified by the FSC or any other local or foreign regulatory authority / organisation;



- (d) whether the person has been the subject of any complaint, made reasonably and in good faith, relating to activities regulated by the FSC or under any law in any jurisdiction;
- (e) whether the person has been the subject of any proceeding of a disciplinary or criminal nature or has been notified of any potential proceeding or of any investigation which might lead to such proceedings, under any law in any jurisdiction;
- (f) whether the person has been convicted of any offence, or is being subject to any pending proceeding, which may lead to such a conviction, under any law in any jurisdiction;
- (g) whether any judgment associated with a finding of fraud, misrepresentation or dishonesty any case entered against the relevant person in any civil proceeding or the relevant person is a party to any pending proceeding which may lead to such a judgment, in any jurisdiction;
- (h) whether the person has accepted civil liability for fraud or misrepresentation in any jurisdiction;
- (i) whether any enforcement action was taken against the person by the FSC or any other regulatory authority under any law in any jurisdiction;
- (j) whether the person has aided or abetted another person in breach of any law or regulation, business rules or codes of conduct, be it in Mauritius or elsewhere;
- (k) whether the person has been the subject of any investigation or disciplinary proceeding or been issued a warning by the FSC, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Mauritius or elsewhere;
- (l) whether the person has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards in Mauritius or elsewhere;

- (m) whether the person has provided false or misleading information to the FSC or been uncooperative in any dealings with the FSC or any other regulatory authority in any jurisdiction;
- (n) whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a license to carry out a trade, business or profession; or the registration, authorisation, membership or license of the individual has been revoked, withdrawn or terminated by a regulatory or government body;
- (o) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;
- (p) whether the person has been dismissed or resigned, from employment or from a position of trust, fiduciary appointment or similar;
- (q) whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial capacity;
- (r) whether the person has contributed significantly to the failure of an organisation or a business unit;
- (s) whether, in the past, the person has been fair, truthful and forthcoming in the latter dealings with customers, superiors, auditors and regulatory authorities; and
- (t) whether the person complies with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.

For corporations:

- (a) whether the entity has substantial shareholders, directors, key officers who are not fit and proper;

- (b) whether the entity has been subject to suspension, cancellation or revocation of its licence or other authorisation to carry on the business for which a licence is sought;
- (c) whether the entity has been subject to any regulatory or enforcement action by any authority in any jurisdiction;
- (d) whether any judgment, order or conviction has been delivered against the entity or any legal proceedings, actions or other claims are pending against the entities; and
- (e) whether the entity has meaningful internal controls and procedures (including procedures to manage conflicts of interest).

In addition to the above, integrity, or lack of, may also be reflected in the licensees' attitude to maintaining internal controls and effective procedures in the absence of which the business could be jeopardised.

Accordingly, a licensee's attitude towards customers will be taken into account in assessing its integrity. An applicant/licensee's failure to act with probity and/or lack of candour in dealing with the FSC, will impact adversely on the FSC's assessment of an applicant/licensee's integrity. Deceitful, oppressive and/or improper conduct will tilt the scales against an applicant/licensee.

## B. COMPETENCE AND CAPABILITY

To demonstrate competence, any person involved in carrying out the business of the applicant/licensee, must act in a knowledgeable, professional and efficient manner.

The factors set out in the following paragraphs are relevant to the assessment of the competence and capability of an applicant/licensee, but not limited to:

For individual:

- (a) whether the relevant person has satisfactory past performance or expertise, having regard to the nature of the relevant person's business or duties, as the case may be, whether in Mauritius or elsewhere;

- (b) where the relevant person is an individual who is assuming concurrent responsibilities and whether such responsibilities would give rise to a conflict of interest or otherwise, impair the individual's ability to discharge the latter's duties in relation to any activity regulated by FSC under the relevant legislations;
- (c) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function; and
- (d) whether the person has ever been diagnosed as being mentally ill or unstable so as to render the individual unfit to discharge the latter's duties.

For corporations:

- (a) whether the officers of the entity are qualified, knowledgeable and experienced;
- (b) whether there are in place adequate systems and controls to provide an efficient and reliable service; and
- (c) whether there is in place adequate information technology infrastructure.

The nature and extent of the competence required will depend upon the services being offered or to be offered.

The FSC will take into account the qualifications and experience of those involved, and the way in which the business is transacted or is proposed to be transacted. The business should be well organised, it should have an adequate infrastructure, efficient controls, and sufficient records should be maintained to demonstrate these attributes.

Individuals should have sufficient understanding of the business, the instruments and markets with which they are dealing.

In assessing competence, the FSC will focus on three areas - qualifications, experience and performance but more generally, the applicant/licensee should be prudently and profitably managed while providing an efficient and reliable service to clients. The same condition applies to a person subsequently appointed.

The FSC will also take into account:

- (a) Relevant professional qualifications and the successful completion of recognised industry based courses and examinations.
- (b) The standing of the institution or institutions with which direct experience has been obtained, as well as, the standing of bodies conducting courses and examinations which individuals have obtained.
- (c) The training provided to staff on an ongoing basis. This will help to indicate the extent to which the applicant/licensee is assisting staff to understand the financial services being offered to clients.

The FSC recognises the difficulty of weighting education and experience and will look particularly for evidence of a sound knowledge of the business, a prudent approach to risk, and a scrupulous attitude towards clients. These attributes are likely to manifest themselves over time and may not be fully apparent in new applications.

Applicant(s) must be able to demonstrate the viability of proposed operations by means of a detailed Business Plan covering the relevant years of operation. The applicant must also satisfy the FSC that it can support the operation financially in its early stages and has the financial strength to withstand unexpected, adverse developments, as well as, making proper provision for the normal risks of the business.

Although the FSC recognises that it is for the Board and the management of the applicant to decide how best to run their business, the FSC expects that the approach adopted will take into consideration the aims of these Guidelines. Competence therefore involves, planning and control, appropriate to the nature and size of the business.

Competence extends also to the proper implementation of the plan and to the general organisation of the business. The FSC considers that to be well organised (for records keeping written instructions and well-defined procedures) is as important to applicant/licensees themselves as to the general public. Competence in this context, also requires that instructions and procedures are designed to enable applicants/licensees to comply with obligations under the relevant legislations, and to enable them to provide high quality services to clients. This includes anti-money laundering procedures in general and verification of identity and suspicious transaction reporting in particular.

On the basis that most businesses rely on computer based systems, competence includes information technology support that is adequate to maintain the integrity of the applicant/licensee's operating systems and security.

More specifically, competence requires that:

- (a) the policies of the business are properly authorised and documented and reviewed and updated regularly. In particular, applicant/licensee must be able to demonstrate anti-money laundering procedures;
- (b) authority is properly delegated, i.e. formally approved and documented;
- (c) key operating controls are authorised, documented and observed by management and staff;
- (d) management exercises proper supervision (e.g. proper systems and information are in place);
- (e) only staff who are fit and proper and are of an appropriate calibre are employed and their activities are monitored. This applies also to self-employed people on contract (e.g. consultants, advisors etc.);
- (f) there is proper and appropriate segregation of duties, particularly in relation to the authorising, recording and settlement of transactions;
- (g) the documents and records are safeguarded and there is adequate provision for the reconstruction of records in the event of a disaster;
- (h) customers' documents and assets are appropriately documented, segregated and safeguarded;
- (i) customers' business records are complete and reliable;
- (j) the financial and business records are complete, accurate and reliable;
- (k) dealing and investment transactions are properly authorised, effected and accounted for;

(l) receipt and payment of funds (including customers' funds) are properly authorised, controlled and accounted for; and

(m) internal rules concerning the avoidance of conflicts of interest are in place.

Failure to maintain adequate systems and procedures is likely to give rise to evidence of lack of competence. Such evidence might be:

(a) complaints from customers about administrative error, lack of care in dealing with their affairs, unsuitable advice or transactions, unfair or oppressive behaviour;

(b) complaints from other regulatory authorities about the activities of a applicant/licensee or its representatives;

(c) complaints from others in the market place about inefficiency, unreliability, unfair practices;

(d) demonstration of the lack of a sound knowledge of the business in which the applicant/licensee is engaged;

(e) ignorance of the financial services and related legislation including serious and/or repeated breaches of the relevant Acts or Regulations made thereunder or any guidelines or Code of Conduct issued by the FSC;

(f) late or inadequate returns/accounts submitted to FSC; and

(g) frequent changes in key relationships (e.g. bankers, auditor et al).

The FSC will seek to ensure that complaints are properly substantiated. Not every error or failing would necessarily be significant in an assessment of competence. The FSC's approach will depend on the seriousness of the event and what it reveals about the licence holder.

### C. FINANCIAL SOUNDNESS

Financial soundness includes being able to meet liabilities as they become due and ensuring adequate control over financial risks on a continuing basis. It also involves taking proper care of customers' assets, including their money.

Financial soundness is an important element in determining the suitability of applicants for licensing and in determining the ongoing suitability of applicant/licensee. It goes beyond corporations, extending to their beneficial owners, controllers, directors and senior management.

Unless an individual can demonstrate the management of the latter's personal affairs properly, it is unlikely that such an applicant will be entrusted to manage the affairs of others.

Therefore, the FSC will require applicant(s) and licensee(s) to demonstrate that they can manage their personal affairs.

The factors set out in the following paragraphs are also relevant in the assessment of the financial soundness of a relevant person.

The factors include but are not limited to:

For individual:

- (a) the relevant person is or has been unable to fulfil any of the latter's financial obligations, whether in Mauritius or elsewhere;
- (b) the relevant person is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Mauritius or elsewhere;
- (c) in Mauritius or elsewhere, the person has made any arrangement with creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, been the subject of a bankruptcy restriction order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these;
- (d) in Mauritius or elsewhere, the person (if a corporate body) has made any arrangement with the creditors, filed for winding up petition, had a winding up petition served on the person, been the subject of a winding up order, had assets sequestrated, or been involved in proceedings relating to any of these; and
- (e) whether the relevant person has entered into a compromise or scheme of arrangement with creditors or made an assignment for the benefit of creditors,



being a compromise or scheme of arrangement or assignment that is still in operation, whether in Mauritius or elsewhere.

For corporation

- (a) whether the body corporate or legal entity is or has been threatened with receivership, administration, liquidation or other similar proceedings; and
- (b) whether the body corporate or legal entity is able to meet any financial or capital requirements applicable to it.

## **8.0 DOCUMENTS ON WHICH THE FSC MAY RELY IN ASSESSING FITNESS AND PROPRIETY**

In addition to the PQ, the documents upon which the FSC may rely in assessing "*fit and proper*" include, but not limited to the following:

1. Financial Standing/Solvency
  - (a) Audited accounts/management accounts; and
  - (b) Bank statements.
2. Competence
  - (a) Curriculum Vitae; and
  - (b) Qualifications and experience, including inter alia certificates and reference letters.
3. Honesty, Fairness, Diligence, Reputation, Character Reliability
  - (a) Certificate of character.

## **9.0 POST LICENSING – ONGOING ASSESSMENT**

The FSA empowers the FSC to assess on an ongoing basis the "*fit and proper*" of any licensee and take measures based on the assessment accordingly, if need be.

Part of the ongoing assessment of the Test entails a review of any material change affecting the probity questions in the PQ. A licensee and any relevant person(s) are required to promptly notify the FSC of any material changes. As such, where a licensee and any relevant person(s) have previously been regarded as "*fit and proper*", the FSC reserves the right to review whether that person continues to meet the Test in order to maintain the licence.

Section 23(3) of the FSA provides that where, at any time, the FSC is not satisfied that a controller or beneficial owner of a licensee is a "*fit and proper*" person, it may, after giving the person and the licensee an opportunity to make representations about the matter, direct:

- (a) such person to dispose of his shareholding in the licensee;
- (b) such person not to exercise any voting rights with respect to his shareholding in the licensee; or
- (c) the licensee to take such remedial measures as may be necessary in the circumstances.

Section 24(7) of the FSA further empowers the FSC, notwithstanding any other enactment where, at any time, the FSC is not satisfied that an officer of a licensee is a "*fit and proper*" person to the FSC, it may, after giving such officer and the licensee an opportunity to make representations, direct the licensee to remove such officer.

Pursuant to section 53(1)(g) of the FSA, where the Chief Executive has reasonable cause to believe that a licensee is not a "*fit and proper*" person, the Chief Executive may refer the matter to the Enforcement Committee for such action as the Enforcement Committee may deem appropriate.

## **10. HOW WILL THE FSC GATHER THE INFORMATION IT NEEDS?**

The person(s) to whom the Test applies will be asked to complete the PQ Form (ANNEXURE A) which is the basis on which the FSC will make its assessment on whether the applicant satisfies the Test at that point in time.

The PQ Form requires detailed answers on the individual, professional and academic background.

The PQ Form should be distinguished from verification of identity and Customer Due Diligence procedures that arise under the Anti-Money Laundering and Terrorist Financing Laws, Regulations and FSC Guidelines.

## **11. BREACH**

Where any of the provisions described above are breached, the FSC must decide whether those involved, continue to satisfy the Test, notwithstanding the aforesaid breach.

In *Rookny Kaviraj vs The Financial Services Review Panel (2018 SCJ 250)*, the Supreme Court in its judgment referred to the criteria set out in section 20 of the FSA, upon which the FSC may act in considering whether a person is a "*fit and proper person*". The Supreme Court clarified that when a person has been disqualified over a certain period of time from an office or position in a particular licensee on account of, for example, "inability to perform his functions properly, efficiently, honestly and fairly" or lack of financial integrity and reliability, such person cannot be allowed to perform such office over that period in other licensees.

## **12. MISCELLANEOUS**

In assessing the "*fitness and propriety*" of a natural person, the FSC should take into account the particular function which the person will be performing. As such, a person who is "*fit and proper*" for a particular role (e.g. MLRO, DMLRO) in a licensee may not necessarily be considered fit and proper for any other role in the same licensee or with another licensed entity.

## **13. COMMENCEMENT**

These Guidelines shall come into effect as from 1<sup>st</sup> November 2020.

## 14. GLOSSARY

"Consumer of financial Services"	includes – (a) a beneficiary under the Private Pension Schemes Act; and (b) any other person entitled to benefit from financial services under the relevant Acts.
"Licensee"	means – (i) the holder of a licence; and  (ii) includes - (a) any person authorised, registered or approved under a relevant Act; and (b) any institution established to provide any service under a relevant Act;
"PQ"	means the Fit and Proper Person Questionnaire;
"Regulated entities"	means an institution or a person, as the case may be, licensed, registered or authorised under – (i) section 14, 77, 77A or 79A of the Financial Services Act; (ii) the Insurance Act, other than an insurance salesperson; (iii) the Securities Act; (iv) the Captive Insurance Act; or (v) the Trusts Act.
"Relevant Acts"	means the FSA and the Acts specified in the First Schedule of the FSA and includes any regulations and FSC Rules made under those Acts;

“Relevant Person(s)”

means officers, controllers, beneficial owners of the applicant/licensee as well as any person who is to be employed by, or associated with the applicant/licensee, any agent or representative of the applicant/licensee, the officers and any shareholder of the applicants/licensees, the related corporations of the applicant/licensee and the officers of those related corporations.

**FSC House, 54 Cybercity, Ebene, Republic of Mauritius**  
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# **ANNEXURE A**

# **FINANCIAL SERVICES COMMISSION**

## **PERSONAL QUESTIONNAIRE**

To be completed by all applicants who are required to be approved by the Financial Services Commission, Mauritius ("FSC") in connection with a licence holder/licence applicant under the following laws or other legislations (the Personal Questionnaire may be subject to amendments from time to time):

FINANCIAL SERVICES ACT 2007

CAPTIVE INSURANCE ACT 2015

INSURANCE ACT 2005

THE INSURANCE (AMENDMENT) ACT 2015

PRIVATE PENSION SCHEMES ACT 2012

PROTECTED CELL COMPANIES ACT 1999

SECURITIES ACT 2005

SECURITIES (CENTRAL DEPOSITORY, CLEARING AND SETTLEMENT) ACT 1996

TRUSTS ACT 2001

## **INSTRUCTIONS FOR COMPLETING THE PERSONAL QUESTIONNAIRE FORM**

- This Form is to be completed in English.
- No question should be left unanswered. Where the Applicant believes that a question does not apply, the Applicant should write "Not applicable" or "N/A".
- If there is insufficient space on the printed Form in which to answer a question, additional information can be provided on a separate signed sheet if necessary.
- This Form should be read in conjunction with the Guidelines on Fitness and Propriety which can be accessed on the FSC's website.
- The duly filled in and signed application must be submitted to the Commission.
- Where a Personal Questionnaire has already been filed, the Applicant shall indicate in his application that the Personal Questionnaire has been filed and inform the Commission of any material change in the information.

Please ensure that all answers and information are true and correct. Providing false or misleading information to the FSC constitutes a criminal offence and will lead to criminal prosecutions under the Financial Services Act 2007.



## Personal Questionnaire

### Section 1: Applicant

#### 1. Name of Applicant<sup>3</sup>:

### Section 2: Personal Details

#### 2. Full Name of Respondent<sup>4</sup>:

Title (*Mr. /Mrs. /Ms., etc.*):

Surname:

Forename:

Maiden name (*if applicable*):

Other name(s) or aliases used (*if any*):

#### 3. Capacity in which the Respondent is completing this questionnaire:

#### 4. Previous name(s) by which you have been known (*if any*):

<sup>3</sup> Applicant means the Company that has applied to the FSC for a Licence and in whose name (if the application is successful) the Licence will be issued. "Applicant" should not be interpreted to mean "Promoter" (the original shareholder) or an existing Management Company (which is merely an agent of the Applicant) who may submit the application on behalf of the Applicant.

<sup>4</sup> Respondent means the person submitting the Personal Questionnaire to the FSC in connection with the Applicant or Licensee.

**5. Date of Birth** (dd/mm/yyyy):

**6. Place of birth:**

Town

State

Country

**7. Nationality, and how it was acquired** (e.g. Birth, Naturalisation, Marriage):

*(If you hold more than one Nationality, please provide details for all Nationalities currently or previously held)*

**8. Passport/ Identity Card Number**

**9. Current residential address** (with relevant dates):

Address Line 1 (Street Address):

Address Line 2 (Apartment, suite, unit, building, floor, etc.):

City:

State/Province/Region:

Zip/Postal:

Country:

Dates at this Address: *(mm/yyyy)*

From

To

**10. Previous residential addresses during the last ten years** *(with relevant dates)*

**Previous address 1.**

Address Line 1 (Street Address):

Address Line 2 (Apartment, suite, unit, building, floor, etc.):

City:

State/Province/Region:

Zip/Postal:

Country:

Dates at this Address: *(mm/yyyy)*

From

To

**Previous residential address 2:**

Address Line 1 (Street Address):

Address Line 2 (Apartment, suite, unit, building, floor, etc.):

City:

State/Province/Region:

Zip/Postal:

Country:

Dates at this Address:(*mm/yyyy*)

From

To

**Previous residential address 3:**

Address Line 1 (Street Address)

Address Line 2 (Apartment, suite, unit, building, floor, etc.)

City

State/Province/Region

Zip/Postal

Country

Dates at this Address (*mm/yyyy*)

From

To

**Previous residential address 4:**

Address Line 1 (Street Address)

Address Line 2 (Apartment, suite, unit, building, floor, etc.)

City

State/Province/Region

Zip/Postal

Country

Dates at this Address (*mm/yyyy*)

From

To

**Previous residential address 5:**

Address Line 1 (Street Address)

Address Line 2 (Apartment, suite, unit, building, floor, etc.)

City

State/Province/Region

Zip/Postal

Country

Dates at this Address (*mm/yyyy*)

From

To

**11. Are you currently, or were you previously approved/ authorised (within the last 10 years) by any other Regulatory Body?**

- Yes
- No

If yes, please provide details below:

Name of Regulator	Country	Position held	Name of Corporation	Date approved (MM/YY)	Date Approval Cease (MM/YY)

**12. Do you have any pending applications with any other foreign Financial Services Regulator?**

- Yes
- No

If yes, please provide full details, including Name of Regulator, Country and Nature of Application

**13. Please provide the name and address of your main bank at which you hold a principal bank account and confirm how long you have been a customer of that bank.**

Name:

Address:

Date of account opening:

**Section 3: Professional Qualifications**

**14. Current Associateship, Membership or Fellowship (A, M or F) of professional bodies and year of admission.**

<b>A/M/F</b>	<b>Admitted (Yr)</b>	<b>Professional Body</b>	<b>Country</b>

**Section 4: Academic Qualifications**

**15. Do you hold any academic qualifications (e.g. BA, LLB, MBA, PhD)?**

- Yes
- No

If Yes, specify the following in **each** case:

<b>Qualification</b>	<b>Name of Institution</b>	<b>Address of Institution</b>	<b>Year Obtained</b>




**Section 5: Career History**

Begin with your current occupation or employment and please give full details of all occupations and employment during the last ten years, leaving no period unaccounted for. Continue on a separate signed sheet if necessary.

Please justify any gaps in your employment history.

**16. Current Occupation:**

Address Line 1 (Street Address)

  

Address Line 2 (Apartment, suite, unit, building, floor, etc.)

  

City

  

State/Province/Region

Zip/Postal

Country

Date of employment:(*mm/yyyy*)

From

To

**Position held**

**Nature of business**

**Employment reference details**

Name

Position

Contact

Email

**Previous Occupation 1:**

Address Line 1 (Street Address)

Address Line 2 (Apartment, suite, unit, building, floor, etc.)

City

State/Province/Region

Zip/Postal



<b>Position held</b>
<b>Nature of business</b>
<b>Employment reference details</b>
Name
Position
Contact
Email

<b>Previous Occupation 3:</b>		
Address Line 1 (Street Address)		
Address Line 2 (Apartment, suite, unit, building, floor, etc.)		
City		
State/Province/Region		
Zip/Postal		
Country		
Date of employment:( <i>mm/yyyy</i> )	From	To
<b>Position held</b>		
<b>Nature of business</b>		

**Employment reference details**

Name

Position

Contact

Email

**Section 6: Fitness and Propriety**

**17. Please state any position you have held in any corporation<sup>5</sup> (during the last ten years).**

<b>Name of corporation</b>	<b>Post</b>	<b>Current (C)/ Previous (P)</b>	<b>Country of incorporation/licence/authorisation/ approval/registration</b>

**At any time, have you been involved with an application for regulatory approval in any jurisdiction where that application has been refused or withdrawn?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

<sup>5</sup> Includes, where specified in FSC Rules, any trust, société, partnership or any other body of persons.

**18. Are you, through any previous or current occupation, employment, position or otherwise, precluded in any way from carrying on (fully or partially) the services which the corporation (identified in 18 above) offers?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**19. Have you or any corporation in which you are or have been associated with at any time, been convicted of any offence including spent matters by any Court in any jurisdiction? If so, give full particulars of the Court by which you were convicted, the offence and the penalty imposed and the date of conviction. (Road Traffic offences should not be listed).**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**20. Have you, or any corporation with which you are or have been associated<sup>6</sup>:**

- (a) been the subject of any punitive action;**
- (b) been refused a licence or equivalent authorisation to carry on a business activity;**
- (c) have had a licence or equivalent authorisation to carry on a business activity revoked;**
- (d) been censured, disciplined or publicly criticised or adversely commented upon and**
- (e) is, or has been the subject of any investigation and/or enquiry by any professional body or any public body or any Regulatory Authority?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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<sup>6</sup> Associated in this form means associated as a director, secretary, controller, officer, as a senior member of staff or a controlling shareholder.

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**21. Have you ever been adjudicated bankrupt by any Court or entered into a compromise or arrangement with creditors?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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**22. Have you ever failed to satisfy any debt adjudged due and payable by you as a judgment-debtor under an order of a court in any jurisdiction?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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**23. Has any corporation with which you have been associated been compulsorily wound up or has been subject to voluntary winding up, or made any compromise or arrangement with its creditors, or ceased trading?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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**24. Are you engaged in any personal litigation with respect to the management of any business corporation?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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**25. Have you ever, at any time, been the subject of an investigation in relation to a corporation, including a financial institution?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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**26. Have you ever been disqualified from acting as a director or similar position<sup>7</sup>? Have you ever, at any time, been the subject of an investigation in relation to a corporation, including a financial institution?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**27. Do you have any written complaints made against you by clients or former clients in the last five years which you have accepted, or which are awaiting determination, or have been upheld – by an Ombudsman or complaints scheme?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**28. Have you ever been refused entry to, or been dismissed, suspended or requested to resign from, any professional, vocation, office or employment, or from any fiduciary office or position of trust whether or not remunerated?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**29. Have you ever, anywhere, been censured, disciplined or criticised by any professional body to which you belong or have belonged to?**

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<sup>7</sup> One where the respondent acts in a management capacity or conducts the affairs of any company, partnership or unincorporated association.

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**30. In carrying out your duties, will you be acting on the directions or instructions of any other person?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**31. In the course of any trial or proceedings involving fraud, dishonesty or similar matters, have you ever been required to give evidence other than as an expert witness?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

**32. Have you, a family member or a close associate, at any time, been designated as a politically exposed person (PEP)<sup>8</sup>?**

**YES/NO** (Please delete as appropriate). If yes, please give full particulars.

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<sup>8</sup> “politically exposed person” or “PEP” –

means a foreign PEP, a domestic PEP and an international organisation PEP; and for the purposes of this definition –

“domestic PEP” means a natural person who is or has been entrusted domestically with prominent public functions in Mauritius and includes the Head of State and of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials and such other person or category of persons as may be specified by a supervisory authority or regulatory body after consultation with the National Committee;

“foreign PEPs” means a natural person who is or has been entrusted with prominent public functions by a foreign country, including Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials and such other person or category of persons as may be specified by a supervisory authority or regulatory body after consultation with the National Committee;

“international organisation PEP” means a person who is or has been entrusted with a prominent function by an international organisation and includes members of senior management or individuals who have been entrusted with equivalent functions, including directors, deputy directors and members of the board or equivalent functions and such other person or category of persons as may be specified by a supervisory authority or regulatory body after consultation with the National Committee;

### 33. Declaration

I hereby CERTIFY that the above information is complete and correct to the best of my knowledge and belief and I undertake that, as long as I continue to be a director, shareholder, manager, officer or controller of an institution authorised/licensed under any of the above laws, I will notify the FSC of any material changes affecting the completeness of the answers 17 to 29 above within a period of thirty days.

I also hereby AUTHORISE the FSC to make such enquires and seek such further information as it thinks appropriate in verifying the information given in the Personal Questionnaire, or in any other documents submitted as part of this application, for the purposes of performing its due diligence and background checks.

Misleading the FSC will lead to criminal prosecutions under the Financial Services Act 2007.

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Name of Respondent

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Signature

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Date

**Supplemental Information**

If there are any additional information that must be communicated to the FSC, please populate the below section accordingly.

<b>Question No.</b>	<b>Additional information</b>

**FSC House, 54 Cybercity, Ebene, Republic of Mauritius**  
**Tel: (230) 403 7000 Fax: (230) 467 7172**  
**E-mail: [fscmauritiu@intnet.mu](mailto:fscmauritiu@intnet.mu), Website: [www.fscmauritiu.org](http://www.fscmauritiu.org)**