



## FINANCIAL SERVICES COMMISSION

### Guide to Fitness and Propriety

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## 1. INTRODUCTION

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Established in 2001, the Financial Services Commission (the “FSC”) is mandated under the Financial Services Act 2007 ( the “FSA”) and has as enabling legislations *inter alia* the Securities Act 2005, the Insurance Act 2005 and the Private Pension Schemes Act 2012 to license, regulate, monitor and supervise the conduct of business activities in these sectors.

As part of its mandate the FSC must assess the fitness and propriety nature of any applicants/licensees (natural or corporate).

Section 20 of the FSA sets out the matters to which the FSC may have regard in considering whether a person is “*fit and proper person*” and these *inter alia* include his “*ability to perform the relevant functions properly, efficiently, honestly and fairly*” and his “*reputation, character, financial integrity and reliability*”.

Applicants who are granted a licence are expected to remain fit and proper at all times and any change in circumstances must promptly be notified to the FSC.

For the purposes of this Guide, a licensee includes:

- (a) any person authorised, registered or approved under the relevant Acts;
- (b) any institution established to provide any service under the relevant Acts.

In order to obtain a licence from the FSC to conduct any business activity in the financial services sector in Mauritius, the applicant has to demonstrate that he is a “*fit and proper person*”.

This Guide sets out and describes the criteria considered by the FSC when assessing fitness and propriety and how the FSC uses those criterions to determine whether any person is “*fit and proper*”.

For the purpose of determining whether a licensee/ applicant is a “*fit and proper person*”, the FSC may take into account any information in its possession and it may have regard to information, including but not limited to the criteria set out in section 20 of the FSA.

This Guide is issued pursuant to the powers granted to the FSC under sections 7 (1) (a) of the FSA.

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## 2. OBJECTIVE

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The objective of this Guide is to set out the matters to which the FSC may have regard in assessing whether a person is “*fit and proper*”.

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## 3. APPLICABILITY

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This Guide supersedes the Guide on Fitness and Propriety issued by the FSC in 2003 and applies to financial services and financial business activities licensable by the FSC. It does not intend to replace or override any legislation. Its provisions should be read in conjunction with the provision of relevant legislations and/or directions which may be issued by the FSC from time to time.

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## 4. WHAT DOES BEING FIT AND PROPER MEAN

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Being “*fit and proper*” means that an applicant/licensee (whether an individual or corporate) is likely, on the balance of probabilities, competent and capable of carrying out business in a manner that is both honest and correct.

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## 5. TO WHOM DOES THIS GUIDELINE APPLY?

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Pursuant to section 20 of the FSA, in considering whether a person is a fit and proper person the FSC may have regard to:

(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.

In the case of *Rookny Kaviraj vs The Financial Services Review Panel* (2018 SCJ 250), the Supreme Court in its judgment, reiterated 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 further 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 his lack of financial integrity and reliability, such person cannot be allowed to perform such office over that period in other licensees.

All the more so by virtue of section 5 of the FSA, the objects of the FSC are, inter alia, “to ensure the sound conduct of business in the financial services sector and in the global business sector”.

Apart from the criteria set out in section 20 of the FSA, the FSC may have regard to any other information in its possession.

In line with the above mentioned section, it is therefore implied that this Guide is applicable to the following non-exhaustive list of persons:

- (a) any shareholder of the applicant/licensee;
- (b) any beneficial owner of the applicant/licensee;
- (c) any director of the applicant/licensee;
- (d) any officer of the applicant/licensee;
- (e) any representative or agents of the of the applicant/licensee; and
- (f) any such person as may be determined by the FSC.

Officers<sup>1</sup>, 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/licenses, the related corporations of the applicant/licensee and the officers of those related corporations are collectively referred to as “*relevant person(s)*” in this Guide.

An initial test will be made when an applicant applies for a licence or any other authorisation and this test will be applied on an on-going basis thereafter inasmuch as a licensee/applicant must always act in a “*fit and proper*” way in relation to both its business with the FSC and with its clients.

The test will be applied on the basis of FSC's perception of the risk posed the relevant persons who are connected to the licensees/applicants and are involved in providing financial advice or financial services or any activity that places them in control of

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<sup>1</sup> As per section 2 of the FSA

clients' assets (including money). The relevant persons will be subjected to the full rigours of the test.

The FSC's approach is a cumulative one. It may decide that a licensee/applicant has not met the "*fit and propriety*" test having considered several situations, each of which on its own would not lead FSC to conclude a lack of fitness and propriety but which may cumulatively lead to that conclusion.

The process will involve good measure of judgment which must be exercised in a fair and judicious manner, always in the best interests of the institution and the sound conduct of its business.

The criteria listed in this Guide will be applied in general terms when the FSC is determining a person's fitness and propriety.

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## 6. THE PURPOSE OF THE FITNESS AND PROPRIETY TEST

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The purpose of the test is to:

- (a) establish an international benchmark for licensing and for ongoing regulation of licensees/applicants;
- (b) protect the interests of investors by deterring dishonest, incompetent, unskilled or otherwise inappropriate operators in Mauritius;
- (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 the abuse of Mauritius and of its financial markets; and
- (f) promote a business environment that meets acceptable international standards.

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## 7. RESPONSIBILITIES OF THE APPLICANT/LICENSEE AND THE RELEVANT PERSONS SUBJECT TO THE FITNESS AND PROPRIETY TEST

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An applicant / 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 it or he/she is a fit and proper person rather than for the FSC to show otherwise. As different appointments and designations entail different responsibilities, this Guide would be applied in a manner and to the extent that is suitable to the circumstances. The FSC will consider the nature of the responsibilities of the relevant person in determining the relative emphasis and standard that should be expected of the relevant person.

The applicant/licensee and the relevant persons must accordingly, complete the Fit and Proper Person Questionnaire (“PQ”), annexed to this Guide as **ANNEXURE A** and must provide any information that the FSC may require to complete its assessment. They are further obliged to notify the FSC forthwith of any events or circumstances that have occurred subsequent to their initial application for a license or assessment of being a fit and proper person that might change the assessment or at least have a material bearing on it.

This is an ongoing obligation throughout the period during which an applicant/licensee holds its or his/her registration, certification, approval or any other authorisation under the FSA. The onus of full and unequivocal disclosure is on the applicant/licensee.

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## 8. ASSESSING FITNESS AND PROPRIETY

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In arriving at a decision, the FSC will apply a ‘*balance of probabilities*’ standard and will on a best endeavours basis, assess all relevant evidence, irrespective of whether it is classed as positive or negative. The FSC will also consider *inter alia*, changes in



key relationships such as auditors and bankers and may enquire about the reasons for such changes.

The concept of “*fit and proper*” is an open-ended one and it is aimed at ensuring sound conduct of business in the financial services sector. As such, this Guide is not exhaustive of all matters which may be relevant and/or considered. Each case is considered on the basis of its own merits. The FSC reserves its right to adapt the approach described in this Guide if the context and other relevant circumstances suggest that it would be appropriate to do so.

When assessing an application for the appointment of a relevant person, the FSC may, in addition to the “*fit and proper*” criteria set out herein, 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. If the relevant person fails to satisfy the FSC that it or he/she is fit and proper, the FSC may refuse the applicant’s application, or take other appropriate regulatory action, as may be applicable and necessary.

In the case where the relevant person is an institution, to establish that it is “*fit and proper*”, it should satisfy the FSC that it has in place proper recruitment policies, adequate internal control systems and procedures that would ensure that the persons that it employs, authorises or assigns to act on its behalf, in relation to its conduct of activity regulated under the relevant legislations, meet the fit and proper criteria of this Guide.

The assessment process will involve a good measure of judgment, which should be exercised objectively and always in the best interests of the companies and of its sound conduct. Information relevant to the assessment of the fitness and propriety of persons within the scope of this Guide may also vary depending on the degree of their influence and responsibilities in the affairs of the companies. For example, the company may consider whether there have been material changes in the nature or scope of the responsibilities assumed by an individual. This may call for higher standards of competence or judgment in order to properly perform the duties

associated with the said position, or which may give rise to new conflicts that could impair the individual's performance in the position.

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

- (a) Honesty, integrity, diligence, fairness, reputation and good character;
- (b) Competence and capability; and
- (c) Financial soundness.

### **7.1 HONESTY, INTEGRITY, DILIGENCE, FAIRNESS, REPUTATION AND GOOD CHARACTER**

These 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 he/she is of good repute and additionally, illustrate his/her intentions to act in an honest, ethical and trustworthy manner.

Integrity demands a disciplined, on-going adherence to high standards of behaviour, and honesty.

The following non-exhaustive 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 restricted in its or his right 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 or refused membership or registration by FSC, any other regulatory authority;
- (d) whether the person has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by FSC or under any law in any jurisdiction;
- (e) whether the person has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- (f) whether the person has been convicted of any offence, or is being subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;
- (g) whether the person has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, in any jurisdiction;
- (h) whether the person has accepted civil liability for fraud or misrepresentation under in any jurisdiction;
- (i) whether the person has had any civil penalty enforcement action taken against it or him by FSC or any other regulatory authority under any law in any jurisdiction;

- (j) whether the person has contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, whether in Mauritius or elsewhere;
- (k) whether the person has been the subject of any investigations or disciplinary proceedings or been issued a warning by 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, whether in Mauritius or elsewhere;
- (m) whether the person has been untruthful or provided false or misleading information to FSC or been uncooperative in any dealings with FSC or any other regulatory authority in any jurisdiction;
- (n) whether the person has been involved with a company, partnership or other organization that has been refused registration, authorization, membership or a license to carry out a trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated, or has been expelled 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 asked to resign and 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 his dealings with his customers, superiors, auditors and regulatory authorities;
- (t) whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and other legal, regulatory or professional requirements and standards.

For a body corporate or legal entity:

- (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 made or any legal proceedings, actions or other claims are pending against the entity whether civil or criminal in nature; and
- (e) whether the entity has meaningful internal controls and procedures (including procedures to manage conflicts of interest)

The FSC should be informed of any of the above matters, whether those matters arose 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 right to gather any information from all appropriate sources, on the overall reputation of a person regardless of whether such information results from the above criteria and factor it in its assessment of the person's fitness and probity.

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

Where the FSC discovers information which should have been brought to its attention but was not, it will, among other things, take account of 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.

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.

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

## **7.2 COMPETENCE AND CAPABILITY**

To demonstrate competence, any person involved in carrying out the business of the licensee/applicant, 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 a relevant person. The factors include but are 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 his ability to discharge his duties in relation to any activity regulated by FSC under the relevant legislation;
- (c) whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function;
- (d) whether the person has ever been diagnosed as being mentally ill or unstable so as to render him unfit to discharge his duties;

*For body corporate or legal entity:*

- (a) whether the directors, managers and other key 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 IT 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 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 a sufficient understanding of the business, and of 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 licensee/applicant should be prudently and profitably managed while providing an efficient and reliable service to clients.

The same applies to people subsequently appointed. In so doing, the FSC may establish a minimum level of direct relevant experience in particular areas. The FSC will also take into account relevant professional qualifications and the successful completion of recognised industry based courses and examinations.

In its assessment, the FSC will also have regard to 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.

Consideration will also be given to the training provided to staff (on an on-going basis). This will help to indicate the extent to which the licensee/applicant is helping staff to understand the financial services being offered to clients.

The FSC recognises the difficulty of balancing education and experience. The FSC 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.

Applicants must be able to demonstrate the viability of proposed operations by means of a detailed Business Plan covering the first 3 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 same principle applies to the sole trader and partnership), the FSC expects that the approach adopted will take account of the aims of regulation. 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 (and to be able to demonstrate this by records, written instructions and well defined procedures) is of no less value to licensee/applicants themselves than to the general public. Competence in this context also requires that instructions and procedures are designed to enable licensee/applicants to comply with obligations under the relevant legislation 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 licensee/applicant'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, licensee/applicants 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 to enable them to do this);
- (e) only staff who are fit and proper and are of an appropriate calibre are employed and that 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 firm's documents and records are safeguarded and that 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 firm's 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 licensee/applicant or its representatives;
- (c) complaints from others in the marketplace about inefficiency, unreliability, unfair practices etc;
- (d) demonstration of lack of a sound knowledge of the business in which the licensee/applicant 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;
- (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 is necessarily 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.

Competence stems from an attitude of mind and is thus linked closely with integrity. Education and experience are clearly important but their value can only be maximised if the attitude of mind is right.

Systems and procedures are (relatively) easy to establish but have little value if there is no commitment to making them work properly. There is an unavoidable tension

between the interests of those who provide financial products and services and the interests of their customers. How that tension is resolved in the day to day running of the business is the essence of competence and a key ingredient of the fit and propriety test.

### **7.3 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 on-going suitability of licensee/applicants. It goes beyond corporations, extending to their beneficial owners, controllers, directors and senior management.

Naturally, unless an individual can demonstrate that (s)he can manage his/her personal affairs properly, it is unlikely that such an applicant will be entrusted to manage the affairs of others.

Therefore, the FSC will require Applicants and licensees to demonstrate from events and conduct that they can manage their personal affairs.

The factors set out in the following paragraphs are relevant to the assessment of the financial soundness of a relevant person. The factors include but are not limited to whether:

**For individual:**

- (a) the relevant person is or has been unable to fulfil any of its or his 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 (if an individual) has made any arrangements with his/its creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, been the subject of a bankruptcy restrictions 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 arrangements with his/its creditors, filed for winding up petition, had a winding up petition served on it, been the subject of a winding up order, had assets sequestrated, or been involved in proceedings relating to any of these
- (e) whether the relevant person has entered into a compromise or scheme of arrangement with its or his creditors or made an assignment for the benefit of its or his creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in Mauritius or elsewhere;
- (f) whether the relevant person is subject to a judgment debt;
- (g) which is unsatisfied, either in the whole or in part, whether in Mauritius or elsewhere;

*For body corporate or legal entity:*

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

The above factors may overlap with the factors listed at subparagraphs 7.1 and 7.2 above.

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## 9. DOCUMENTS ON WHICH THE FSC MAY RELY IN ASSESSING THE FITNESS AND PROPRIETY

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### 9.1 FINANCIAL STANDING/SOLVENCY

- (a) Audited accounts/management account
- (b) Bank Statement

### 9.2 COMPETENCE

- (a) Curriculum Vitae
- (b) Qualifications and experience, including inter alia certificates and reference letters.

### 9.3 HONESTY, FAIRNESS, DILIGENCE, REPUTATION, CHARACTER RELIABILITY

- (a) Certificate of character

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## 10. POST LICENSING – ONGOING ASSESMENT

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The FSA empowers the FSC to reassess the fitness and propriety of any licensee and accordingly take measures based on the assessment, if need be.

Part of the ongoing assessment of fitness and propriety entails a review of any material changes affecting the probity questions in the PQ. Applicant/licensee and any relevant persons are required to promptly notify the Authority of any material changes.

As such, where an Applicant/licensee and any relevant person has previously been regarded as fit and proper, the FSC reserves the right to reassess whether that person continues to be fit and proper to hold either current or proposed positions.

Section 23 (3) of the FSA provides that “where, at any time, the Commission 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 Commission is not satisfied that an officer of a licensee is a fit and proper person, it may, after giving such officer and the licensee an opportunity to make representations thereon, 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, he may refer the matter to the Enforcement Committee for such action as the Enforcement Committee may deem appropriate.

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## 11. HOW WILL THE FSC GATHER THE INFORMATION IT NEEDS?

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The persons to whom the test applies will be asked to complete a PQ Form (ANNEXURE A) which is the basis on which the FSC will make its assessment on whether the applicant satisfies the fitness and propriety test at that point in time.

Accordingly, the PQ Form asks detailed questions on the individual and his/her professional and academic background.

The FSC will require the PQ Form to be completed on the basis of its perceived risk. In turn Management Companies can also use the PQ Form as a template in collecting information from would be clients, on the basis of the Management Companies' perception of risk.

The PQ Form should be distinguished from Verification of Identity and Know Your Customer procedures that arise under the Anti-Money Laundering and Terrorist Financing Laws and Regulations.

Any Applicant or licensee (to whom the test applies) who is unwilling to subject him/herself to the fitness and propriety test will not be able to carry on any activity for which a licence or any other authorisation is necessary under the Act.

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## 12. BREACH

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Where any of the provisions described above are breached, the FSC must decide whether those involved continue to satisfy the "*fitness and propriety*" test. Failure to satisfy the "*fitness and propriety*" test means that a person will not be able to act or continue to act for a licensee.

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## 13. MISCELLANEOUS

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



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## 14. Glossary

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'FSA'	means the Financial Services Act
'FSC'	means the Financial Services Commission established under section 3 of the Financial Services Act 2007;
'PQ'	means the Fit and Proper Person Questionnaire
"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, 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.