

DEPARTMENT OF CO-OPERATIVES AND FRIENDLY SOCIETIES

Guidance Notes

Fit and Proper Questionnaire

Guidance Notes for completing Fit and Proper Questionnaires for Charity Applications

This document provides guidance for completing the Fit and Proper Questionnaire error free and in accordance with the standards established by the Charities Authority (“the Authority”). The Fit and Proper Questionnaire is an important instrument used by the Authority to assess the suitability of individuals appointed as a directors and secretaries for charitable organizations. It is therefore, important that the questionnaire reflect fulsome responses to each question asked to accurately represent full disclosure for the assessment of board members before recommendation is made for entity to receive charitable status.

All declarants (person completing the questionnaire) are expected to adhere to the guidelines to be outlined hereunder. Where a questionnaire is deemed to be completed incorrectly the applicant will be directed to have the necessary amendments done in keeping with the standards set by the Authority.

Guidance Notes

Below is a summary of guidelines to be observed when completing the Fit and Proper Questionnaire by all Directors and Secretary.

1. Guidance on correcting errors -

Where the declarant makes an error in completing the questionnaire, a line is to be drawn through the error, it is to be then signed and the correct information written above what has been struck out.

Clients should not retrace the correct information over the error or spoilt space. If the corrected information is not sufficiently clear, a new questionnaire is to be completed.

2. Guidance on responding to questions that do not apply –

All questions on the questionnaire are relevant and should be answered. If you feel, in the first instance, that a question does not apply to you, do not automatically write **NOT APPLICABLE OR N/A**. Instead, assess whether the question requires another written response such as **NONE**.

Declarants are therefore to refrain from using Not Applicable or N/A as a standard response to some questions. As far as possible written responses are to be provided befitting of the questions asked. For example: Where a request is made for alias the given response cannot be “N/A” but a preferred response be “None” if the declarant has no alias. There are however, a few instances where N/A maybe used to show that the question does not apply; for example: if the declarant is Jamaican, the question requiring information on naturalization does not apply.

3. Information on work and Spouse –

- i. **Work Information**: All declarants must satisfy the requirement to provide information on their work; including address and an active contact number or email address. Where the declarant is unemployed this requirement is waived. Where declarant is self-employed, the address for the place where trade is carried out is to be provided if

different from the primary address (home address); the type of self-employed business pursued is to be stated likewise.

- ii. **Spousal Information**: Where the declarant is in a union (marriage, common law etc.), information must be provided for the spouse.
- iii. **Business Person**: Where the declarant indicates that he/she operates a business and therefore is a *Business Person*, the requirement is that the nature of the business be detailed in the appropriate field.

4. Guidance on the nature of civil proceedings or law suits:

In general, only relevant civil proceedings are considered when assessing the good repute of an appointee, since they may reflect adversely on one's competence, diligence, judgement, honesty or integrity. Relevant civil proceedings include:

- Judicial dismissal of the appointee from management or supervisory bodies.
- Civil liability proceedings for damages suffered by an entity, its shareholders, creditors or third parties caused by the appointee as a member of a management body.
- Proceedings emanating from crimes involving dishonesty, misappropriation of funds, financial fraud and matters that call into question the fiduciary competence of an individual in the exercise of his/her duties.

The aforementioned may indicate behaviour that is incompatible with the sound and prudent management of an institution or organization. Consequently, such relevant proceedings are always assessed as part of the fit and proper test for a Director or trustee.

5. Guidance on what is improper business:

In assessing fit and proper person, the Authority will take into consideration the conduct of individuals in administering the affairs of a business or in their general business conduct. Improper business is defined as any conduct in the administration of the affairs of any entity or organization which calls into question an individual's integrity, honesty, and observance of sound fiduciary responsibility.

6. Consideration to be given for examining Fit and Proper:

A person is deemed to be **NOT** fit and proper if he/she:

- a) has been convicted of an offence involving dishonesty;
- b) is an undischarged bankrupt;
- c) has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards, or has been obstructive, misleading or untruthful in dealing with regulatory bodies or a court;
- d) has breached a fiduciary obligation;
- e) has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;
- f) has been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- g) has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- h) is of bad repute in any business or financial community or any market;
- i) is incapacitated by reason of a mental disorder.

7. Frequently misinterpreted questions:

Below are some questions on the fit and proper questionnaire which are often misinterpreted.

Explanation as to requirement provided.

I. Question (19)

Have you at any time been charged with or convicted of an offence involving dishonesty whether in Jamaica or elsewhere? Yes [] No []

a. If charged provide details:

What the question requires:

This question requires the declarant to state, if any, all current and past charges involving dishonesty.

Dishonesty means any actions that calls into the question the integrity of an individual and not just whether an individual has stolen money or any other possession or property or has defrauded anyone.

II. Question (20)

Have you ever been sued in your personal capacity or against any organization, or any other business undertaking to which you are connected as a partner, director or manager? Yes [] No [].

If pending, give details of the circumstances, and if not pending state how the matter was resolved.

What the question requires:

The question expects the declarant to state any and all Civil Court proceeding in which he/she has being party personally or otherwise in a capacity as a member or leader of any organization or business.

III. Question (21)

Have you ever been the subject of investigation/disciplinary procedures, censured, disciplined or publicly criticized by any professional body to which you belong or have belonged whether in Jamaica or elsewhere?

What the question requires

The question expects declarants to state if they have been the subject of formal investigations, or proceedings that may result in sanctions being levied against them, or being publicly named and criticized by any professional body to which you belong or have belonged whether in Jamaica or elsewhere.

8. Frequently asked questions:

Q 1) What is a Fit and Proper test?

A: A fit-and-proper test is a test that seeks to capture relevant data on individuals who will or have applied to serve in fiduciary roles of trust and integrity. The test employed by the DCFS helps to provide information on persons appointed to serve on voluntary boards so that a determination can be made as to their likely probity.

Q 2): Do all Directors need to complete a Fit and Proper Test Questionnaire.

A: Yes, all Directors are to complete a Fit and Proper Questionnaire.

Q 3) Other than the Directors, who else is required to complete the fit and proper test questionnaire?

A: The Secretary is required to complete the questionnaire which is to be submitted along with those of the other Directors.

Q 4) Can an individual serve on the Board of Directors of two charitable entities?

A: Yes, an individual can serve as a Director of two or more charitable entities. The individual must however write to the Authority informing of their occupancy as a Director of another entity other than the first entity they serve with.

Q 5) If a Director serves on the Board of more than one charity, is he/she required to complete more than one Fit and Proper Test Questionnaire.

A: No, only one Fit and Proper questionnaire is to be completed and submitted to the Authority.

Q 6) Can I refuse to do a fit and proper test?

A: No, all directors and secretary must complete a fit and proper questionnaire. Section 17 of the Charities' Act provides that the Authority shall satisfy itself that: Each governing board member is a fit and proper person. Where a person refuses to do a fit and proper test, they will not qualify to serve as a director of a Registered Charitable Organization.

Q 7) If a fit and proper questionnaire is incorrectly done by a Director, will this delay the processing of the application for charitable status.

A: Yes, where the fit and proper questionnaire is not completed properly by all Directors, the Authority will grant 10 days for completion.

Q 8) How often will a Director and Secretary be required to complete a Fit and Proper test.

Directors and Secretary will be required to submit fit and proper questionnaires upon registration of the entity. Where there has been a change in a Director or Secretary, fit and proper questionnaire for the new director/secretary is to be submitted to the Authority. The status of Directors will be examined upon renewal as well; and where the charity fails to renew within time, along with a new application fit and proper questionnaires for all directors and secretary are to be submitted.

