

Criteria for an application for and grant of, or a variation to, an ATOL: fitness, competence and Accountable Person

ATOL Policy and Regulations 2014/01



1. Introduction

- 1.1. This guidance document outlines the policy which the CAA applies in respect of determining whether the CAA is satisfied with the fitness and competence of an ATOL holder¹ and whether the Accountable Person nominated by the ATOL holder is acceptable. An extract from The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("the ATOL Regulations"), setting out the CAA's powers and obligations in this regard, is set out in the Appendix.
- 1.2. The CAA must refuse to grant an ATOL if the CAA is not satisfied that the applicant is a fit person to make available flight accommodation. In respect of an existing ATOL holder, the CAA must revoke, suspend or vary an ATOL if the CAA is no longer satisfied that the ATOL holder is a fit person to make available flight accommodation.
- 1.3. The CAA may refuse to grant or vary an ATOL or may revoke, suspend or vary an ATOL if the CAA is not satisfied that the applicant or ATOL holder is competent to make available flight accommodation.
- 1.4. In determining whether an applicant or ATOL holder is fit and competent, the CAA must have regard to the past activities of:
 - a) the applicant or ATOL holder;
 - b) the applicant's or ATOL holder's employees, which includes directors, and;
 - c) where the applicant or ATOL holder is a body corporate, its shareholders and any person appearing to the CAA to control that body.

2. Control

- 2.1 In determining the persons appearing to control an ATOL holder, on an operational or strategic basis, the CAA will take into account all persons who appear to the CAA to be likely to have influence over the business of the ATOL holder. This may include, but is not limited to, the directors, shadow directors, employees, shareholders, owners or family members of the ATOL holder, group bodies² or related parties³.

¹ The term 'ATOL holder' means an existing ATOL holder or an applicant for a new ATOL, unless otherwise specified.

² An 'ATOL holder's Group' is defined in the CAA Official Record Series 3, Schedule of ATOL Standard Terms, as amended from time to time. At the time of publication of this document, the current definition is: "*parent undertakings, subsidiary undertakings, joint ventures and associated undertakings of the ATOL holder. The term 'associate' is defined in the Companies Act 2006*".

³ A 'related party' is defined in the CAA Official Record Series 3, Schedule of ATOL Standard Terms, as amended from time to time. At the time of publication of this document, the current definition is: "*a person who has links with the ATOL holder through common shareholders, directors, partners or where there are significant levels of trading or financial links. "Related to the ATOL holder" shall be interpreted accordingly*".

3. Fitness

- 3.1. In the CAA's view, in the context of the ATOL Regulations, fitness means fitness of character. The question is whether the ATOL holder has the appropriate fitness of character to hold an ATOL and make available flight accommodation to consumers. The CAA considers fitness to include an ATOL holder's honesty, integrity and propensity to comply with rules and regulations. Fitness would also include complying with regulatory obligations and dealing with the CAA and other regulators in an open, timely and co-operative manner.

4. Competence

- 4.1. The CAA considers competence to include a person's ability to perform his or her role within the business. The person's knowledge, skills and qualifications will be among the factors that may be considered. Competence would also include a person carrying out his/her role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

5. Evidence of lack of fitness and competence

- 5.1. When determining a person's fitness and/or competence, the CAA will have regard to a range of factors and will take into consideration any factor(s) that may indicate a lack of fitness or competence. Factors the CAA may have regard to include but are not limited to:
- a) an act or omission which is likely to cause detriment to consumers, for example:
 - i. deliberate or reckless provision of false or misleading information, or misleading omissions made to consumers; and/or,
 - ii. being, or having been, subject to enforcement action and providing, or having provided, undertakings pursuant to consumer protection legislation;
 - b) failing to comply with CAA or ATOL regulatory requirements or conditions, for example:
 - i. breaches of the ATOL Regulations or the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 as amended ("ATT Regulations");
 - ii. breaches of ATOL Standard Terms or other terms and conditions of an ATOL, including exceeding ATOL limits;
 - iii. deliberate or reckless provision of false or misleading information, or misleading omissions made, to the CAA; and/or,

- iv. criminal convictions or civil sanctions and the circumstances and actions or omissions that have led to prosecution, cautions or warnings in relation to breaches of the ATOL Regulations or the ATT Regulations;
- c) failing to comply with non-ATOL related regulatory requirements, for example:
- i. failure to comply with filing requirements and to keep proper accounting records under the Companies Act 2006; and/or,
 - ii. deliberate or reckless provision of false or misleading information, or misleading omissions made, to a relevant authority in relation to any regulated activity; and/or,
- d) failure to act in a manner reasonably expected of a company post holder, for example:
- i. involvement in insolvency and bankruptcy proceedings;
 - ii. involvement in a failed ATOL holder or other failed business;
 - iii. disqualification as a director or any sanction relating to the unsuitability of being a company post holder;
 - iv. failure to keep proper business records;
 - v. criminal convictions or civil sanctions and the circumstances and actions or omissions that have led to prosecution in relation to dishonesty or fraud; and/or,
 - vi. dishonest behaviour or other improper conduct, for example, encouraging or facilitating the illegal conduct of an ATOL holder.

6. Accountable Person

- 6.1. The CAA may refuse to grant or vary an ATOL or may take action to revoke, suspend or vary an ATOL if the CAA is not satisfied that the ATOL holder has appointed a person acceptable to the CAA as the ATOL holder's Accountable Person. An Accountable Person, who must be a director of the company, sole trader or a partner in a partnership, is responsible for ensuring that an ATOL holder complies with the terms and conditions of its ATOL, the ATOL Regulations and the ATT Regulations.
- 6.2. The Accountable Person must meet the fitness and competence criteria as set out above. In addition, the Accountable Person must have sufficient oversight and knowledge of the ATOL holder's business and a sufficient understanding of the obligations of ATOL holders under the ATOL Regulations, the ATT Regulations and the ATOL Standard Terms to be acceptable to the CAA.

- 6.3. In determining whether a person is acceptable to the CAA as an Accountable Person, the CAA will have regard to the past activities of the person, especially where the person was the Accountable Person for another ATOL holder.
- 6.4. Further guidance for Accountable Persons is in Appendix B.

7. Failure to comply with the ATOL Standard Terms

- 7.1. The CAA may revoke, suspend or vary an ATOL if an ATOL holder fails to comply with a term or condition of its ATOL. ATOL limits of passengers and revenue per year or per quarter are terms and conditions of an ATOL. ATOLs have other specific terms and conditions notified to ATOL holders by the CAA. In addition, all ATOLs have standard terms and conditions known as the ATOL Standard Terms.
- 7.2. When considering whether to propose to revoke, suspend or vary an ATOL as a consequence of any breach of a term or condition of an ATOL, the CAA will take into account the scale of any breach, whether any breach was deliberate, how often and how many breaches have occurred and whether any breach increased the risk of consequential detriment to consumers.
- 7.3. A failure to comply with terms and conditions of an ATOL is likely also to affect the CAA's view on whether the ATOL holder is fit or competent to hold an ATOL, as referred to in paragraph 5 above.

APPENDIX A**Extract from the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012**

Application for and grant of an ATOL or a variation to an ATOL

- 31.— (1) The CAA must specify and publish the requirements for an application for an ATOL or a variation to an ATOL.
- (2) Subject to paragraph (4), an application for the grant or variation of an ATOL must be made in a form and manner published by the CAA.
- (3) Where such an application is received the CAA must —
- (a) grant an ATOL or a variation to an ATOL to the applicant in the terms requested in the application;
 - (b) grant an ATOL or a variation to an ATOL in those terms with such modifications and subject to such conditions as the CAA thinks fit; or
 - (c) refuse to grant an ATOL or a variation to an ATOL.
- (4) The CAA may refuse to consider an application unless it is accompanied by the charge payable under a charging scheme made under section 11 of the Act.
- (5) The CAA may require as a condition or a term of the ATOL compliance with one or more of the ATOL standard terms and all or any part of the schedule of agency terms.
- (6) When granting an ATOL, the CAA must provide a number for that ATOL, unique to that ATOL.

Refusal to grant an ATOL

- 32.— (1) The CAA must refuse to grant an ATOL if the CAA is not satisfied that the applicant is a fit person to make available flight accommodation.
- (2) The CAA may refuse to grant an ATOL or a variation to an ATOL if the CAA is not satisfied—
- (a) that the applicant is competent to make available flight accommodation;
 - (b) that the resources of the applicant and the financial arrangements made by the applicant are adequate for discharging the actual and potential obligations in respect of the activities in which the applicant is

- engaged (if any) and in which the applicant may be expected to engage if granted the ATOL;
- (c) that it has appointed a person acceptable to the CAA as its accountable person; or
 - (d) that the applicant has complied with all or any of regulations 7, 8 and 9 of the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007(a) which are applicable to it in the circumstances.
- (3) In determining whether the applicant is a fit and competent person under paragraph (1) or 2(a) the CAA must have regard to —
- (a) the past activities generally of the applicant and the applicant's employees; and
 - (b) where the applicant is a body corporate, the past activities generally of the persons appearing to the CAA to control that body.
- (4) The CAA is not obliged to refuse an ATOL on the grounds that the applicant has insufficient experience in making available flight accommodation.

Revocation, suspension or variation of an ATOL

- 35.—
- (1) The CAA must revoke, suspend or vary an ATOL if the CAA is no longer satisfied that the ATOL holder is a fit person to make available flight accommodation.
 - (2) The CAA may revoke, suspend or vary an ATOL if —
 - (a) it is no longer satisfied with regard to any of the matters specified in regulation 32(2), or
 - (b) the ATOL holder fails to comply with any term or condition of its ATOL.

APPENDIX B

Guidance for Accountable Persons⁴

1. Introduction

- 1.1. Pursuant to Regulations 32(2) and 35(2) of The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 ("the ATOL Regulations"), the CAA may:
- a) refuse an application for the grant of an ATOL; or,
 - b) refuse an application for the variation of an ATOL; or,
 - c) revoke, suspend or vary an ATOL
- if the CAA is not satisfied that an ATOL holder has appointed a person acceptable to the CAA as its Accountable Person.
- 1.2. This guidance provides an outline of what the CAA considers to be the key responsibilities of an Accountable Person and what the CAA expects of a person nominated for this role and therefore whether the person is likely to be acceptable to the CAA.

2. Factors determining the acceptability of an Accountable Person – authority and competencies

- 2.1. In order to be suitable for the role of the Accountable Person, the person is expected to:
- a) have appropriate seniority and authority to be able to influence the ATOL holder's policies and procedures to ensure that the ATOL holder complies with the terms and conditions of its ATOL, the ATOL Regulations and the ATT Regulations;
 - b) demonstrate knowledge and understanding of the terms and conditions of the ATOL, the ATOL Regulations and the ATT Regulations by successfully completing any training provided by the CAA for Accountable Persons;
 - c) have access to all relevant business systems, data and paperwork of the ATOL holder;
 - d) understand and be responsible for procedures in respect of maintaining the ATOL, including, but not limited, to:

⁴ This appendix should be read in conjunction with the ATOL Policy and Regulations document "Criteria for an application for and grant of, or a variation to, an ATOL: fitness, competence and Accountable Person" which sets out the CAA's criteria in determining the fitness and competence of an ATOL holder and the Accountable Person.

- i. renewing and varying the ATOL on time;
 - ii. submitting the ATOL holder's Report and paying the ATOL Protection Contribution (APC) on time;
 - iii. submitting all other reports and information required by the CAA under the terms of the ATOL (such as advising of changes to the ATOL holder's business, ownership and control) on time;
- e) monitor changes and developments to the ATOL and ATT Regulations, any other relevant regulations and the terms and conditions of the ATOL, understand the impact they might have on the ATOL holder and act accordingly;
- f) ensure all appropriate co-directors, partners and other staff understand the obligations of the ATOL holder and are kept aware of changes and developments to relevant regulations and the terms and condition of the ATOL;
- g) ensure that information required by the CAA in order to meet the terms and conditions of the ATOL is accurate, complete and provided on time. Where an activity or task is the responsibility of, or delegated to, another appropriate person within the ATOL holder, the Accountable Person must retain oversight and control of the process described above; and,
- h) where the ATOL holder is an Accredited Body, additionally ensure that its members comply fully with the terms of membership, the relevant ATOL Standard Terms, ATOL Regulations and ATT Regulations.

2.2. Where the CAA does not believe that the nominated Accountable Person meets the criteria and requirements outlined above, it is likely to determine that the person is not acceptable to it.

3. Notifying a change of Accountable Person

3.1. In accordance with ATOL Standard Term 7 the ATOL holder must give the CAA at least 28 days notice (or where this is impossible as much notice as possible) of the Accountable Person leaving his or her post for any reason. Failure to do so is relevant to the CAA's assessment of the fitness and competence of the ATOL holder.

4. Exceptional circumstances for companies

4.1. In exceptional circumstances⁵, if no director can fulfil the role of Accountable Person then the ATOL holder should demonstrate to the CAA how the

⁵ This would be considered by the CAA on a case-by-case basis. An example of where this may be considered is if the Board of directors are all based or resident overseas.

Accountable Person role would be carried out and how it is proposed that effective oversight will be formalised within the ATOL holder.

- 4.2. In such cases an ATOL holder may wish to appoint a person who is not a registered company director to carry out the role and duties of the Accountable Person and to sign CAA documents as the delegatee of the Accountable Person. In these cases, a director acceptable to the CAA must still be appointed as the Accountable Person but the duties would be delegated to an employee of the ATOL holder to perform on his or her behalf. For the avoidance of doubt the Accountable Person would still be responsible for ensuring that the ATOL holder complies with the terms and conditions of its ATOL, the ATOL Regulations and the ATT Regulations.
- 4.3. The person carrying out the delegated role must be an employee of the ATOL holder and be able to demonstrate to the CAA that he or she can fulfil the requirements set out above.
- 4.4. The ATOL holder would need to provide the CAA with the Board Resolution or minutes of the Board meeting confirming the agreement of this delegated role and how in any event the Accountable Person retains ultimate responsibility for ensuring ATOL compliance in the terms mentioned above.