

# 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

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- 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 holder<sup>1</sup> 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

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- 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 bodies<sup>2</sup> or related parties<sup>3</sup>.

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

<sup>2</sup> 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*".

<sup>3</sup> 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

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- 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

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- 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

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- 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,