

# Requirement for bonding and other forms of security

ATOL Policy and Regulations 2016/02



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## 1. Introduction

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- 1.1 This document outlines the CAA's normal policy on its requirement for security from ATOL holders<sup>1</sup>.
- 1.2 This document is not intended to be exhaustive and specific requirements will vary from ATOL holder to ATOL holder. Security is normally provided in the form of a bond in favour of the Air Travel Trust (ATT) trustees.

### Assessment of resources and financial arrangements

- 1.3 Pursuant to Regulation 32(2) and 35(2) of the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regulations), the CAA may:

- refuse an application for the grant of an ATOL;
- refuse an application for the variation of an ATOL; or,
- revoke, suspend or vary an ATOL,

if the CAA is not satisfied that the resources and financial arrangements of an ATOL holder are adequate for discharging the actual and potential obligations in respect of the activities in which it is engaged or may be expected to be engaged<sup>2</sup>. The grant of an ATOL means the grant of a first ATOL or the grant following the expiry of a previous ATOL (i.e. renewal).

- 1.4 The CAA will carry out an assessment to determine whether it is satisfied with an ATOL holder's financial position. Where the CAA is not satisfied, it has the discretion to nevertheless grant or vary an ATOL to an applicant or ATOL holder whose resources it considers are not adequate for discharging its actual and potential obligations. Therefore, as part of its assessment, the CAA will assess what additional arrangements it may require from the applicant or ATOL holder in order to grant or vary an ATOL.

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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> See Policy Note "Criteria for an application for and grant of, or a variation to, an ATOL: financial" for further details.

- 1.5 When deciding whether or not to exercise its discretion to grant or vary an ATOL the CAA will consider, amongst other things, whether the resources and financial arrangements put in place are adequate in the event that the ATOL holder were to fail (as defined in the ATOL Regulations). On failure the ATOL holder may have unfulfilled obligations (such as refunds and repatriation costs) to consumers. These would, but for its failure, be actual obligations of the ATOL holder. By reason of its failure, any obligations not fulfilled by other arrangements made by the ATOL holder will fall to be met by the trustees of the ATT in accordance with the terms of the ATT Deed<sup>3</sup>.

## **2. Standard ATOL and Small Business ATOL**

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### **Bond provided to ATT**

- 2.1 Bonds are irrevocable undertakings from third party banks or insurance companies (bond obligors) provided to the ATT trustees. In the event that an ATOL holder is unable to meet its obligations to its consumers, the CAA on behalf of the ATT trustees will make a demand for the bond money from the bond obligor. The bond money will be used by the CAA to appoint an alternative ATOL holder to provide consumers with their flight or trip or, where this is not possible, the CAA will use the money to bring home consumers that would otherwise be stranded abroad and/or reimburse consumers that have paid for flights or trips but not yet travelled.
- 2.2 The table below sets out the level of bonding that the CAA normally requires for Standard and Small Business ATOLs. Where a bond is required as a condition of granting an ATOL, the ATOL will not be granted until the bond has been provided to the CAA.

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<sup>3</sup> See ATT Trust Deed published on the ATOL website: [Air Travel Trust](#).

Period ATOL held <sup>4</sup>	Small Business ATOL	Standard ATOL	
		% of annual public sales revenue	Subject to minimum amount of
New ATOLs and those that have been held for less than one year	£50,000	15%	£50,000
Less than two years	£40,000	12.5%	£40,000
Less than three years	£30,000	10%	£30,000
Less than four years	£20,000	7.5%	£20,000
More than four years	No bond		

2.3 Where an ATOL is being granted for less than 12 months, the bond is calculated on the basis of 12 month's forecast Public Sales revenue. Where an ATOL is being renewed with a lower level of Public Sales revenue than on the current ATOL, for the first 6 months the calculation of the new bond is based on the annual revenue limit for the Public Sales category on the current ATOL.

### Alternatives to bonding

2.4 Where the CAA requires bonding and an ATOL holder is unable to obtain a sufficient amount of bonding, the CAA may exceptionally consider the following to replace all or part of the bonding requirement:

- a) a charged deposit account, which is an account into which an ATOL holder deposits an amount of cash over which the ATT trustees have a fixed charge; or,
- b) a trust account, where money paid by consumers for licensable bookings is held in trust and can be used by the ATT trustees following the failure of an ATOL holder. The trust agreement must be in the CAA's approved form.

<sup>4</sup> If an Accredited Body member or a Franchise member chooses to obtain an ATOL from the CAA, the CAA will take the firm's history within these schemes into account when considering its application.

2.5 The CAA will wish to be satisfied that the alternative arrangement provides the ATT with at least the same level of protection in the event of failure as it would have if bonding were provided.

### **Deed of Indemnity (personal overtrading)**

2.6 The CAA may require Deeds of Indemnity (Personal Overtrading) from at least two individuals in a position of control<sup>5</sup> of an ATOL holder irrespective of whether or not a bond is required. Generally, such Deeds of Indemnity are required in the following circumstances:

- Applicants for a first ATOL and those that have held an ATOL for less than four years;
- Where there has been a change of ownership and/or control of an ATOL holder; or,
- Where the CAA has concerns over an ATOL holder's compliance with the ATOL Standard Terms, the Accredited Body Standard Terms (if applicable) or the Specific Terms of its ATOL.

2.7 The only exception to the above is where those in control of an ATOL are not resident in the UK, in which case, the CAA may require [additional] bonding instead of Deeds of Indemnity.

2.8 Under the terms of the indemnities, the signatories undertake to reimburse the ATT for any expenditure it incurs if the ATOL holder fails, in circumstances where it was exceeding its ATOL limit.

2.9 The indemnities have no expiry date, but if an indemnifier ceases to be involved in an ATOL holder he or she may give written notice to the CAA of a wish to terminate the indemnity and would be entitled to be released from it three months after giving notice.

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<sup>5</sup> Control is explained in Policy Note 2013/02 "Criteria for an application for and grant of, or a variation to, an ATOL: Fitness, Competence and Accountable Person". At the time of publication of this document, Policy Note 2013/02 states "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 or related parties."

### **Deed of undertaking or guarantee**

- 2.10 Where an ATOL holder is part of a group of companies<sup>6</sup> the CAA requires a Deed of Undertaking or Guarantee from the ultimate holding company or parent company. In some cases, the CAA may require undertakings from other companies in the group, related parties and/or individuals.
- 2.11 Where an ATOL holder is part of a group of related parties<sup>7</sup>, the CAA requires a Deed of Undertaking or Guarantee from the related party or parties.

## **3. Trade ATOL**

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- 3.1 Where a Trade ATOL holder is related to a Standard ATOL holder and bonding is required from the Standard ATOL holder, a joint bond in respect of both the Standard and the Trade ATOL holder must be provided. The CAA normally requires a Deed of Undertaking or Guarantee from the Standard ATOL holder as well.
- 3.2 Where a Trade ATOL holder is not related to any other ATOL holder and the CAA determines that bonding is required, the level of bonding required is usually £20,000. A Deed of Undertaking or Guarantee may also be required from other companies, parties or individuals.

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<sup>6</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>7</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".



## 4. Exceptions

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- 4.1 In certain circumstances, the CAA's requirements may be different than outlined in the sections above. These include, but are not limited to, cases where:
- a) An ATOL holder operates a higher risk business model. For example:
    - i. the programme is limited in the number of destinations offered or is concentrated in destinations subject to political or economic instability; or,
    - ii. a high percentage of flights or accommodation are sourced from one supplier or are committed; or,
  - b) The CAA:
    - i. does not have full visibility of the financial position, operating structure and/or ownership and control of other group<sup>6</sup> companies or parties related<sup>7</sup> to an ATOL holder; or,
    - ii. requires an ATOL holder to increase its capital but this is impossible to achieve before the ATOL is due to be renewed (where the CAA is satisfied that the financial position will be sufficiently improved within a reasonable time frame, the CAA may renew an ATOL subject to the provision of [additional] bonding); or,
    - iii. has concerns about whether the level of business projected by an ATOL holder is an accurate forecast; or,
    - iv. has concerns over current and/or future liquidity, trading losses or otherwise believes there is an increased likelihood of failure of an ATOL holder; or,
  - c) A parent company, related party or other undertaking is unable or unwilling to provide an indemnity, undertaking or guarantee to the ATT; or,
  - d) There is or has been:
    - i. a change of control or ownership of an ATOL holder; or,



- ii. issues with compliance in respect of the ATOL Standard Terms and/or the specific terms of an ATOL; or,
- e) An ATOL holder does not have an agreement with its business systems supplier that requires the supplier to provide the CAA access to the system, without fee, at any time and up to 1 month after the ATOL holder has failed (as required by the ATOL Standard Terms).

4.2 In the above cases, bonding of up to 25% of annual licensable revenue in the Public Sales category of an ATOL may be required.

Appendix

## Criteria for bond obligors

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1. Bonds will be accepted from banks and insurance companies which meet the CAA's minimum financial rating requirements. To assess ratings, the CAA will use information published by rating agencies. Where such information is not publicly available, obligors will be asked to provide evidence of their rating direct to the CAA.
2. The CAA will require all obligors to have at least a minimum financial rating of "normal investment level", which, for example, would be Standard & Poor's rating BBB or Moody's rating Baa for banks and insurance companies. Where any one rating falls below these levels, the CAA will base its assessment on the lower rating. Where a bank financial rating falls below our minimum requirement, we may continue to accept bonds, if other issuer ratings applicable to the bank offer good financial security. Such decisions are usually likely to apply only where the bank fails to meet our minimum financial strength rating by a single notch.
3. For banks that meet the minimum rating, there is no other limitation on the size of bonds which may be provided, apart from the general limits set out in paragraph 7 below.
4. For insurance companies rated AAA or AA by Standard & Poor's and Aaa and Aa by Moody's, there are no limitations on the size of bonds, except the general limits at paragraph 7 below.
5. For insurance companies rated A+ by Standard & Poor's and A by Moody's, total exposure will be limited to £150 million, with a maximum individual bond limit of £30 million.
6. All other insurance companies which meet the minimum requirement will be considered on an individual basis, but will normally be limited to providing individual bonds of no more than £10 million.

7. Generally, the CAA will not accept a bond in excess of £30 million for an individual licence holder and consequently, when an ATOL holder's requirement reaches this level they will be expected to have more than one obligor. If the level of bonding exceeds £60 million, then a further obligor will be required. Beyond £90 million the CAA will not expect any obligor to provide more than one third of the total bond requirement. When the bond requirement reaches £200 million and above the amount that may be covered by an individual obligor will be limited to 25%.
8. Where an obligor wishes to provide bonding with a value of £50,000 or less to an individual ATOL holder or ATOL holding group, the CAA may consider the obligor's suitability based on factors such as experience and/or reinsurance arrangements, without the obligor having to meet the minimum requirements set out above. Where this is the case, restrictions will be placed on the obligor's total ATOL exposure by introducing a cap specific to that obligor.