

**GUIDANCE NOTE ON
“FIT AND PROPER” CRITERIA UNDER
THE INSURANCE COMPANIES ORDINANCE (CAP. 41)**

Introduction

1. Under section 8 of the Insurance Companies Ordinance (“Ordinance”), any company intending to carry on any class of insurance business in or from Hong Kong may apply to the Insurance Authority (“IA”) for authorization. Section 8(2) of the Ordinance provides that the IA shall not authorize a company if it appears to him that any person who is a **director** or **controller** of the company is not a *fit and proper* person to hold the position held by him. “Controller” is defined in section 9 of the Ordinance and includes a chief executive and any person holding or controlling 15% or more of the shareholdings of the company.
2. After obtaining authorization an insurer is required to comply with sections 13A, 13B and 14 of the Ordinance in respect of any changes in its directors or controllers. These requirements aim at ensuring that the persons to be appointed or have been appointed, as appropriate, as directors or controllers of the insurer are fit and proper.
3. Section 13A stipulates that an authorized insurer must obtain the IA’s prior approval for the appointment of a managing director or a chief executive who is responsible for managing the insurer’s Hong Kong business.
4. Section 13B requires a person intending to acquire control of 15% or more of the shareholdings of a locally incorporated authorized insurer to seek IA’s approval before the acquisition.

5. Section 14 requires an authorized insurer to notify the IA of the actual appointments of directors or controllers, including those to whom sections 13A and 13B apply.

6. A person who is proposed to be appointed or has been appointed, as appropriate, as a director or controller of an authorized insurer, is required to submit his particulars in the relevant Form to the IA for consideration as to his fitness and properness. The relevant Forms for different situations are prescribed in the Second, Fourth, Fifth and Sixth Schedule to the Ordinance.

7. The IA has the power under sections 13A, 13B and 14 of the Ordinance to raise objection if it appears to him that any person proposed to be appointed or has been appointed, as appropriate, as a director or controller of the authorized insurer is not fit and proper to hold that position. Where the IA considers that a person is not fit and proper to be appointed or have been appointed, as appropriate, as a director or controller of the authorized insurer, the IA will serve a preliminary notice to that effect on the insurer or person as appropriate. The insurer or person, as appropriate, may within one month make representations to the IA.

8. Any person aggrieved by the decision of the IA in objecting to the proposed appointment or appointment already made, as appropriate, may, within 1 month, appeal against the decision to the Financial Secretary whose decision shall be final.

The “fit and proper” criteria

9. The Ordinance does not define “fit and proper” but the term may be considered to cover “competent” and “honest”. The IA however would look for high standards of competence and honesty. In considering whether a person is fit and proper, the IA will take into account all relevant factors, including :-

- (a) financial status;
- (b) character, reputation, integrity and reliability;
- (c) qualifications or experience having regard to the nature of the functions to be performed; and
- (d) ability to perform such functions efficiently, honestly and fairly.

10. *Without limiting the generality of the statements referred to in paragraph 9 above*, the following paragraphs set out the events and matters that are likely to give rise to concerns about the fitness and properness of a person to be appointed or who has been appointed as a director or controller of an authorized insurer. However, failure to comply with all individual elements will not necessarily result in the IA not being satisfied that a person is fit and proper. The IA will look to the substance of the requirements and materiality of any failure to meet them.

Individual Person

11. The IA is not likely to be satisfied that the director or controller is a fit and proper person, if the person :-

- (a) has been found by a court or other competent authority to have acted fraudulently or dishonestly;
- (b) has been disqualified by a court of competent jurisdiction from being a director of a body corporate;
- (c) has been convicted of a criminal offence by any court, including a military tribunal or is the subject of unresolved criminal charges, in Hong Kong or elsewhere;

- (d) has, in Hong Kong or elsewhere, been censured, disciplined or publicly criticised by a professional body to which he belongs or belonged, or has been dismissed from any office or employment or refused entry to any profession or occupation;
- (e) was a director or controller (within the meaning of section 9 of the Ordinance) of a body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the person was a director or controller or within one year after the person ceased to be such a director or controller;
- (f) has, in connection with the formation or management of a body corporate or insurer, been found adjudged by a court in Hong Kong or elsewhere civilly liable for any fraud, misfeasance or other misconduct by the person towards such a body or insurer or towards any members thereof;
- (g) has been adjudicated bankrupt by a court, or is currently subject to bankruptcy proceedings, in Hong Kong or elsewhere;
- (h) has failed to satisfy any judgement debt under an order of a court in Hong Kong or elsewhere; or

- (i) was or has been a director or controller (within the meaning of section 9 of the Ordinance) of a body corporate or insurer, in Hong Kong or elsewhere, which, with the consent or connivance of, or because of the neglect by, the person failed to comply with any legislative or other regulatory requirements or any guidelines made thereunder.

12. In respect of the events listed in paragraphs 11(c) to (f) above, the IA, in considering whether the individual is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event, and the degree of his involvement in the event. If necessary, the IA may require further information regarding the event from the individual, the insurer or the relevant party concerned.

13. A chief executive of an insurer means an employee of the insurer who is responsible under the immediate authority of the directors for the conduct of the insurance business of the insurer. It includes, in the case of an insurer incorporated outside Hong Kong, the chief executive of the Hong Kong operation. A chief executive is therefore expected to be professionally competent in addition to consideration of the matters referred to in paragraph 11 above.

14. Where an individual intends to become the **chief executive** of an insurer, the IA expects that the person possesses the relevant qualification and/or experience which would enable him to discharge his functions properly (i.e. whether he is professionally competent). For example, an individual may be considered as professionally competent :-

- (i) if he possesses any of the following qualifications:-
 - (a) Associate or Fellow of the Chartered Insurance Institute of the UK;
 - (b) Associate or Fellow of the Australian Insurance Institute;

- (c) Associate or Fellow of the Insurance Institute of New Zealand;
- (d) Fellow of the Institute of Actuaries of England;
- (e) Fellow of the Faculty of Actuaries in Scotland;
- (f) Fellow of the Institute of Actuaries of Australia;
- (g) Fellow of the Society of Actuaries of the United States of America; or
- (h) A degree in Insurance, Risks Management or Actuarial Science from a university in Hong Kong, Australia, Canada, United Kingdom, United States of America, or other places acceptable to the Insurance Authority;

and has not less than 5 years' experience in an insurer or similar institution occupying a management position;

OR

- (ii) if he does not possess the relevant qualification as set out in (i) above, he has not less than 8 years' experience in an insurer or similar institution occupying a management position.

Body Corporate

15. In the case of a body corporate, the IA is not likely to be satisfied that the body corporate is fit and proper to be a director or controller of an authorized insurer if the body corporate :-

- (a) does not have financial integrity, e.g. the accounts of the body corporate do not display a financially sound and stable position;
- (b) is subject to receivership, administration, liquidation or other similar proceedings;
- (c) has failed to satisfy any judgement debt under an order of a court in Hong Kong or elsewhere;
- (d) was a director or controller (within the meaning of section 9 of the Ordinance) of any body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the body corporate was a director or controller or within one year after the body corporate ceased to be such a director or controller;
- (e) was or has been a director or controller of any body corporate or insurer, in Hong Kong or elsewhere, which, with the consent or connivance of, or because of the neglect by, the body corporate failed to comply with any legislative or other regulatory requirements, or any guidelines made thereunder; or
- (f) has a director or controller that fails to meet the requirements set out above for individuals (other than those relating to qualifications and experience), or the requirements set out herein for body corporate, as appropriate.

16. Where a body corporate intends to become or has become a **shareholder controller (i.e. a shareholder holding or controlling 15% or more of the shareholdings) of an insurer**, the IA will, in addition to the matters referred to in paragraph 15 above, take into account whether the body corporate has sufficient financial resources to acquire or support the operations of the insurer, and whether the business plan for the insurer is realistic and viable.

17. In respect of the event listed in paragraph 15(d) above, the IA, in considering whether the body corporate is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event and the degree of involvement of the body corporate in the event. If necessary, the IA may require further information regarding the event from the body corporate, the insurer or the relevant party concerned.

Review of Guidance Note

18. This Guidance Note will be regularly reviewed and revised from time to time as may be considered appropriate. Words and expressions used in this Guidance Note shall have the same meanings as given to them in the Ordinance.

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