

Insurance Rule 2 of 2007

Criteria of Fitness and Properness

Rule pursuant to article 4 of the Act

1. (1) This Insurance Rule on the criteria of fitness and properness of directors, controllers, senior managers and qualifying shareholders of companies (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act.

(2) This Rule shall come into force on the 1st March 2007.

Application

2. This Rule applies to any person who is -

(a) a director, controller or senior manager of a company desirous of applying for authorisation to carry on, and, on continuing basis, a company authorised to carry on, business of insurance;

(b) a qualifying shareholder of a company desirous of applying to carry on, or carries on business of insurance;

(c) an individual fulfilling the requirements of article 11(2) of the Act, in the case of a company whose head office is in a country outside Malta and the company elects to carry on business of insurance in Malta through a branch,

(the “person concerned”).

Scope

3. The scope of this Rule is to determine the fit and proper controls to be applied by the Authority when it grants companies authorisation to carry on business of insurance.

Criteria of fitness and properness

4. (1) Fit and proper controls are a means of raising public confidence in the integrity of the insurance industry and a key element of an effective insurance supervisory system.

(2) In general terms, the fit and proper test includes the following criteria: integrity, competence, experience, qualifications and the requirement to be financially sound. All criteria must be met in satisfaction of the fit and proper test.

(3) This Rule does not attempt to define what constitutes fitness and properness of a person concerned and does not, therefore, make a list of attributes which the person must possess. This is because it is not an absolute standard but one which relates to the type of position a person holds, or will hold, with an applicant company and the type of authorisation the company holds or applies for.

(4) The onus of proving that a person concerned who is an individual is a fit and proper person for the type of position the person holds, or will hold, with an applicant company to ensure sound and prudent management of the company is on the company concerned. It shall not be the duty of the Authority to prove the converse before it refuses to grant authorisation, or before it intends to suspend or withdraw an authorisation granted to, or held by, a company.

(5) The Authority's approach is cumulative. It may decide that a person concerned who is an individual has failed to meet the fitness and properness criteria on the basis of considering several situations, each of which on its own merit would not lead to that conclusion.

(6) When arriving at its decision as to whether a person concerned who is an individual has met the fitness and properness criteria, the Authority will take account of all material facts, whether such facts are disclosed or otherwise.

(7) The Authority shall not grant authorisation to an applicant company to carry on business of insurance, if it appears to it that the criteria of fitness and properness set out in the Schedule to this Rule are not, and will not, be met by a person concerned who is an individual who is, or will be, a director, controller, senior manager, or who directs, or will direct, the business, or who manages, or will manage, the affairs, of the applicant company.

(8) The criteria of fitness and properness to be met by a qualifying shareholder shall be five prudential assessment criteria as set out in article 7 of Insurance Rule 29 of 2009. For the purpose of carrying out the assessment, the Authority shall require the submission of the following information:

(a) in the case of a qualifying shareholder who is an individual, the Personal Questionnaire as set out in the Appendix to Insurance Rule 15 of 2008;

(b) in the case of a qualifying shareholder who is not an individual, the Questionnaire for Qualifying Shareholders other than Individuals set out in the Annex to Insurance Rule 29 of 2009;

(c) in the case of a qualifying shareholder which is a trust, the information listed in Part 1.1.C. of the Schedule to Insurance Rule 29 of 2009.

(9) In this Rule, any reference to a company applying for authorisation to carry on business of insurance, includes a reference to a company granted authorisation to carry on business of insurance.

Repeals and Savings

5. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 2 of 1999 – Criteria of Fitness and Properness is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, in so far as insurance companies are concerned, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.

SCHEDULE

(Article 4 of the Rule)

Criteria of Fitness and Properness - in the case of directors, controllers and senior managers -

Fit and proper individuals

1. A fit and proper person is a person who is competent, honest and experienced.

2. Such person is a person of integrity, has a good record of business and the requisite knowledge and ability for the position the person holds or proposes to hold.

3. Conversely, a person who is incompetent, dishonest and inexperienced is an unfit and improper person.

4. The Authority must be satisfied that there is nothing in a person's present state or past record that would make the person unfit for the position such person holds or proposes to hold.

5. Testing for unfitness is carried out by examining a person's integrity in response to a range of standardised requirements set out in the Personal Questionnaire that are highly relevant to fitness.

6. Requirements set out in the Personal Questionnaire contained in the Appendix to Insurance Rule 15 of 2008 are about a person's experience and qualifications; about a person's own business interests; about events which may cast doubts on a person's reputation and character including convictions, bankruptcy proceedings and regulatory actions against the person.

7. All information is to be submitted in writing and signed by the person concerned.

8. On application, a company is to produce to the Authority not more than three months after its date of issue a police conduct certificate of each person concerned and the Authority may, from time to time, at its absolute discretion, require the company to produce in respect of each person concerned, or any of them, an updated certificate.