

Chapter 2: Fit and Proper Criteria, Notification and Assessment

2.1 Introduction

2.1.1 In terms of article 8(1)(e) of the Act, the competent authority shall not issue an authorisation unless it is satisfied that all qualifying shareholders, directors, controllers and all persons who will effectively direct or manage the business of insurance, are fit and proper persons to ensure the sound and prudent management of an authorised undertaking. Therefore, all persons who effectively run an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking (“an authorised undertaking”), or persons having other key functions within the undertaking are required to be fit and proper, at all times.

2.1.2 This Chapter applies to:

(a) persons who effectively run an undertaking such as directors, controllers or chief executive officers, persons responsible for key functions or overseeing key functions where the function is outsourced (“key function holders”) of an undertaking desirous of applying for authorisation to carry on, or carries on business of insurance;

(b) a qualifying shareholder of an undertaking, including cell owners in the case of protected cell companies, desirous of applying for authorisation to carry on, or carries on business of insurance;

(c) an individual who is responsible for the effective management of a branch in Malta of an authorised undertaking with head office in Malta;

(d) an individual fulfilling the requirements of article 11(2) of the Act in the case of a third country insurance undertaking or third country reinsurance undertaking and the undertaking elects to carry on business of insurance in Malta through a branch;

(e) a compliance officer or Money Laundering Reporting Officer (“MLRO”); of an undertaking desirous of applying for authorisation to carry on, or carries on business of insurance;

(f) an actuary appointed in terms of article 22 of the Act, by an undertaking desirous of applying for authorisation to carry on, or carries on business of insurance;

(g) a person within the management structure designated to be responsible for the distribution of insurance and, or reinsurance products of an undertaking desirous of applying for authorisation to carry on, or carries on business of insurance,¹

(the “person concerned”).

2.1.3 In this Chapter, any reference to an undertaking applying for authorisation to carry on business of insurance, includes a reference to an undertaking granted an authorisation to carry on business of insurance.

Section I - Fit and Proper Requirements

2.2 Requirement of Fitness and Properness

2.2.1 An authorised undertaking shall ensure that all persons who effectively run the undertaking or have other key functions are at all times “fit and proper” persons. In deciding whether a person is “fit and proper”, an authorised undertaking shall be satisfied that the person:

(a) has the personal characteristics, including that of being of good repute and integrity (proper);

(b) has the professional qualifications, and possesses the adequate level of competence, knowledge and experience (fit),

¹ Applicable as from 1st October 2018

required to enable such person to carry out his duties and perform his or her key function effectively and to enable sound and prudent management of the undertaking.

- 2.2.2 Where an authorised undertaking outsources key functions such undertaking is to apply fit and proper procedures in assessing persons employed by the service providers or sub-service providers to perform an outsourced key function as stated in paragraph 17 of Annex I to Chapter 6 in Part B of these Insurance Rules.

2.3 Criteria of Fitness and Properness

- 2.3.1 Fit and proper controls are a means of raising public confidence in the integrity of the insurance system and a key element of an effective insurance supervisory system. The "fit and proper" test is one which the applicant undertaking and the persons concerned shall satisfy on a continuing basis.
- 2.3.2 Sub-section 2.3 does not attempt to define what constitutes fitness and properness of a person concerned. The fit and proper test is not an absolute standard but one which relates to the position a person holds, or will hold, or the key function he performs or will perform, with an applicant undertaking and the type of authorisation the undertaking holds or applies for. Each case is assessed on the basis of the relevant circumstances.
- 2.3.3 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, or the key function he will perform, with an applicant undertaking to ensure sound and prudent management of the undertaking is on the undertaking concerned. It shall not be the duty of the competent 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, an undertaking.
- 2.3.4 The competent authority's approach when determining whether a person concerned is fit and proper 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. An open and honest relationship with the competent authority is thus essential. When arriving at its decision as to whether a person concerned who is an individual has met the fitness and properness criteria, the competent authority will take account of all material facts, whether such facts are disclosed or otherwise. It should be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.

2.3.5 In general terms, the “fit and proper” test which a person shall meet includes the following criteria:

- (a) integrity
- (b) competence; and
- (c) financially sound.

2.3.6 Integrity involves the authorised undertaking and the persons concerned being of good repute, acting honestly and in a trustworthy fashion in relation to its policyholders and prospective policyholders. Competence means that those persons who effectively run an undertaking, persons having other key functions and key function holders of an authorised undertaking carrying on business of insurance are to be able to demonstrate an acceptable amount of knowledge, professional expertise and experience directly relevant to the business of insurance to be carried out, or carried out by the undertaking. The competent authority will also look into the experience and track record of such persons to assess competence. The degree of competence required will depend on the role being performed.

2.4 **Fit and proper individuals**

2.4.1 A fit and proper person is a person who is competent, honest and experienced. 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. Conversely, a person who is incompetent, dishonest and inexperienced is an unfit and improper person.

- 2.4.2 The competent 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. 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. Requirements set out in the Personal Questionnaire contained in Annex I to this Chapter 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. All information is to be submitted in writing and signed by the person concerned.
- 2.4.3 On application, an undertaking is to produce to the competent authority not more than three months after its date of issue a police conduct certificate of each person concerned and the competent authority may, from time to time, at its absolute discretion, require the undertaking to produce in respect of each person concerned, or any of them, an updated certificate.

2.5. Personal Questionnaire

- 2.5.1 The requirement for the submission of a Personal Questionnaire to the competent authority, shall apply to the following persons, including:
- (a) a qualifying shareholder (individual), including cell owners in the case of protected cell companies;
 - (b) a director, controller or chief executive officer;

- (c) persons responsible for key functions (“key function holders”) or when a key function is outsourced, the persons appointed to oversee the outsourced key function from within the undertaking. Where a group of persons or a committee is responsible for the key function, a Personal Questionnaire is to be submitted for the person leading the committee;
- (d) a compliance officer or where the compliance function is outsourced, the person who is responsible to carry out the function at the service provider;
- (e) a money Laundering Reporting Officer (“MLRO”);
- (f) an individual who is responsible for the effective management of a branch in Malta of an authorised undertaking with head office in Malta;
- (g) an individual fulfilling the requirements of article 11(2) of the Act in the case of a third country insurance undertaking or third country reinsurance undertaking which elects to carry on business of insurance in Malta through a branch;
- (h) an actuary appointed in terms of article 22 of the Act;
- (i) a person within the management structure of the undertaking who is designated to be responsible for the distribution in respect of insurance and, or reinsurance products².

2.5.2 The above-list is non-exhaustive and the competent authority may require the submission of a Personal Questionnaire where it deems appropriate.

² Applicable as from 1st October 2018

Section II – Pre-approval process

2.6 A proposed qualifying shareholder including cell owners in the case of protected cell companies

2.6.1 The criteria of fitness and properness to be met by a qualifying shareholder or a cell owner in the case of protected cell companies shall be five prudential assessment criteria as set out in Section 3.4 of Chapter 3 in Part A of the Insurance Rules. For the purpose of carrying out the assessment, the competent authority shall require the submission of the following information:

(a) in the case of a qualifying shareholder, or a cell owner in the case of protected cell companies, who is an individual, the Personal Questionnaire as set out in Annex I to this Chapter;

(b) in the case of a qualifying shareholder, or a cell owner in the case of protected cell companies, who is not an individual, the Questionnaire for Qualifying Shareholders other than individuals, set out in the Annex to Chapter 3 in Part A of these Insurance Rules;

(c) in the case of a qualifying shareholder, or a cell owner in the case of protected cell companies, which is a trust, the information listed in Part A.1.C of the Schedule to Chapter 3 in Part A of these Insurance Rules.

2.7 Pre-approval process of proposed director, controller, chief executive officer, actuary to be appointed in terms of article 22 of the Act, compliance officer or MLRO

2.7.1 Sub-section 2.7 applies to a proposed director, controller, chief executive officer, actuary to be appointed in terms of article 22 of the Act, compliance officer or Money Laundering Reporting Officer. An authorised undertaking shall not be able to appoint any such person unless:

(a) the undertaking has served on the competent authority a written notice stating that it proposes to appoint that person to a particular position and submitting in respect of that person a Personal Questionnaire as set out in Annex I to this Chapter. The notice and Personal Questionnaire shall be submitted prior to date of when the undertaking concerned would like to appoint the person to take up the appointment; and

(b) the competent authority has notified in writing the undertaking concerned that there is no objection to that person being appointed to that position.

2.7.2 In the case of a proposed actuary to be appointed in terms of article 22 of the Act, in addition to the Personal Questionnaire referred to in paragraph 2.7.1, a competency form as set out in Annex III to this Chapter shall also be submitted to the competent authority.

2.7.3 A Personal Questionnaire submitted in respect of a person proposed to be appointed by the authorised undertaking under paragraph 2.7.1 shall be completed by that person and its submission by the undertaking to the competent authority constitutes an acknowledgement that the notice served on the competent authority is served with that person's knowledge and consent.

2.7.4 The competent authority may serve a notice of objection under paragraph 2.7.1(b) on the ground that it appears to the authority that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question.

2.7.5 Before serving such a notice, the competent authority shall serve on the authorised undertaking a preliminary written notice stating that-

(a) the competent authority is considering the service on the undertaking of a notice of objection on that ground; and

(b) the undertaking may, within the period as may be stated in the notice, being a period of not less than 48 hours and not longer than 15 days from the date of service of the preliminary notice, make written representations to the competent authority.

2.7.6 The competent authority shall not be obliged to disclose to the authorised undertaking any particulars of the ground on which it is considering the service on the undertaking of a notice of objection, and where representations are made in accordance with paragraph 2.7.5(b) the competent authority shall take them into consideration before serving the notice of objection.

2.7.7 An application to the competent authority made out and submitted by an authorised undertaking in the form set out in the Application Forms set out in the Schedules, as applicable, to Chapter 1 in Part A of these Insurance Rules to carry on the business of insurance shall also constitute a written notice for the purposes of paragraph 2.7.1(a).

2.8. Changes of director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer, MLRO

2.8.1 An authorised undertaking shall give notice in writing to the competent authority where any person ceases to be a director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO, of the undertaking. A notice under this sub-section shall –

(a) be given before the expiration of the period of 14 days beginning with the day next following that on which the person concerned ceases to be a director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO;

(b) state if that person's ceasing to be in that position has any regulatory implications; and

(c) contain any other matters which the undertaking may wish to bring to the attention of the competent authority in relation to that event.

2.9 Objection to existing director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO

- 2.9.1 Where it appears to the competent authority that the criteria of sound and prudent management are not or may not be fulfilled in respect of an authorised undertaking concerned by reason of the ability of a person who is a director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO, of the undertaking to influence the undertaking, the competent authority may serve on the undertaking a notice of objection to that person continuing to be a director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO of the undertaking.
- 2.9.2 Before serving a notice of objection under paragraph 2.9.1, the competent authority shall serve on the authorised undertaking a preliminary written notice stating that the competent authority is considering serving a notice of objection under this article.
- 2.9.3 An authorised undertaking served with a notice of objection under paragraph 2.9.2 may, within the period of one month beginning with the day on which the notice is served, make written representation to the competent authority and, where representations are made in accordance with this sub-section, the competent authority shall take them into consideration before serving a notice of objection.
- 2.9.4 The competent authority shall not be obliged to disclose to the authorised undertaking any particulars of the ground on which it is considering the service of notice of objection.
- 2.9.5 After a notice of objection has been served on an authorised undertaking in relation to a person who is a director, controller, chief executive officer, actuary appointed in terms of article 22 of the Act, compliance officer or MLRO, of the undertaking, such undertaking shall immediately remove the person from that office.

2.10 Individuals responsible for a branch of an authorised undertaking

- 2.10.1 Sub-section 2.10 applies to an individual who is responsible for the effective management of a branch in Malta of an authorised undertaking with head office in Malta and a third country insurance undertaking or third country reinsurance undertaking carrying on business of insurance in Malta through a branch. Such

individuals shall be subject to the pre-approval process as set out in sub-sections 2.7 to 2.9 of Section II of this Chapter.

- 2.10.2 An individual responsible for the effective management of a branch of an authorised undertaking, which in the case of a third country insurance undertaking or third country reinsurance undertaking carrying on business of insurance in Malta is the person appointed pursuant to article 11(2) of the Act, shall be fit and proper to ensure the sound and prudent management of the undertaking concerned. Such an individual is required to submit a Personal Questionnaire as set out in Annex I to this Chapter.
- 2.10.3 An individual who is responsible for the effective management of such branch shall be required to demonstrate the ability and willingness to assume the responsibilities relevant to the position.
- 2.10.4 The qualifications of an individual responsible for the effective management of a branch of an authorised undertaking are those set out in Annex IV to this Chapter.

Section III – Notification for Key Function Holders

2.11 Notification of Key function holders

- 2.11.1 When an authorised undertaking appoints a key function holder, the competent authority is to be notified in writing without undue delay. This requirement shall apply to persons appointed to lead a key function and when a key function is outsourced, to the person appointed to oversee the key function from within the undertaking.
- 2.11.2 An authorised undertaking shall notify the competent authority of any changes to the identity of key function holders and shall provide the competent authority with:
- (a) all the information needed to assess whether any such person is fit and proper; and
 - (b) a summary of the significant responsibilities allocated to that person.

- 2.11.3 If an authorised undertaking becomes aware of information which would reasonably be expected to be material to the assessment of the fitness and propriety of a current or former key function holder under this Chapter, such undertaking shall inform the competent authority as soon as practicable.
- 2.11.4 Where an authorised undertaking replaces a key function holder because the undertaking considers that the person is no longer fit and proper pursuant to paragraphs 2.2.1 and 2.2.2, the undertaking shall notify the competent authority as soon as reasonably practicable.

Assessment by the competent authority at appointment of key function holders

- 2.12.1 The assessment by the competent authority at appointment of key function holders requires the submission of the following:
- (a) a Personal Questionnaire as set out in Annex I to this Chapter and a competency form as set out in Annex III to this Chapter of the key function holder and of the compliance officer (where the compliance function is outsourced). Where a group of persons or a committee is responsible for the key function, a Personal Questionnaire is to be submitted for the person leading the committee. A competency form for each member of the committee is to be completed and submitted to the competent authority.
 - (b) an assessment form as set out in Annex II to this Chapter is to be completed by the authorised undertaking in cases where a key function is going to be outsourced.
- 2.12.2 The ‘fit’ assessment of the proposed appointee may be complemented by an interview conducted by the competent authority to ascertain the person’s competences in relation to the key function’s expectations under Solvency II.
- 2.12.3 In line with the proportionality principle, the nature, scale and complexity of the risks inherent to the business of the authorised undertaking would be taken into account as an overarching consideration during the assessment process.

- 2.12.4 In addition, when assessing the key function holder, the level of support, resources and expertise provided by other functions, persons and/or committees should be duly taken into consideration by the competent authority to ascertain the person's overall ability to effectively carry out the duties of the function concerned.
- 2.12.5 Following the assessment by the competent authority under sub-section 2.12, the authority will provide feedback in writing. If the competent authority concludes that the person already appointed does not comply with the fit and proper requirements, the authority shall require the undertaking to replace the person in question. The competent authority may reassess the fitness and properness of an individual if facts, circumstances or actions give rise to such a measure.

Section IV –Notification of persons responsible for distribution³

2.13 Notification of persons responsible for distribution

- 2.13.1 When an authorised undertaking appoints a person/s within the management structure of an authorised insurance undertaking carrying out insurance distribution activities or an authorised reinsurance undertaking carrying out reinsurance distribution activities who is designated to be responsible for the distribution in respect of insurance and reinsurance products, the competent authority is to be notified, in writing, without undue delay.

Assessment to be carried out by the authorised undertaking

- 2.13.2 An authorised undertaking is required to submit the following information to the competent authority:
- (a) a Personal Questionnaire as set out in Annex I to this Chapter;

³ Applicable as from 1st October 2018.

(b) details of the assessment carried out by the undertaking to assess the fitness and properness of the proposed persons and the outcome from such assessment to perform the proposed role;

(c) details of any training/courses attended in relation to the Insurance Distribution Directive and which are relevant to the carry out such role.

(d) details on how such persons fulfils the knowledge and ability requirements as contained in section 6.8 to 6.10 of Chapter 6 in Part B of the Insurance Distribution Rules issued under the Insurance Distribution Act (Cap.487), for the competent authority to be able to carry out its assessment.

2.13.3 The 'fit' assessment of the proposed person may be complemented by an interview conducted by the competent authority to ascertain the person's competences in relation to such role.

2.13.4 Following the assessment by the authority, the competent authority will provide feedback in writing. Where the competent authority concludes that the person already appointed does not comply with the requirements of this Section, the competent authority shall require the undertaking to replace the person in question. The competent authority may reassess the individual if facts, circumstances or actions give rise to such a measure.

Changes to the identity of the persons responsible for distribution

2.13.5 An authorised undertaking shall notify the competent authority of any changes to the identity of the a person/s within the management structure who is designated to be responsible for the distribution in respect of insurance and reinsurance products. A notice under this paragraph shall:-

(a) be given before the expiration of the period of 14 days beginning with the day next following that on which the person concerned ceases to occupy such role;

(b) state if that person's ceasing to be in that position has any regulatory implications; and

(c) contain any other matters which the undertaking may wish to bring to the attention of the competent authority in relation to that event.

2.13.6 Before appointing a person/s within the management structure to be responsible for the distribution insurance and reinsurance products, an authorised undertaking shall carry out an assessment which would include a review of the information outlined in paragraph 2.13.2 of this Chapter.

2.13.7 If an authorised undertaking becomes aware of information which would reasonably be expected to be material to the assessment of the fitness and properness of a current or former person responsible for distribution under Section IV of this Chapter, such undertaking shall inform the competent authority as soon as practicable.

2.13.8 Where an authorised undertaking replaces such persons because the undertaking considers that the person is no longer fit and proper, the undertaking shall notify the competent authority as soon as reasonably practicable.