

Chapter 3: Criteria of Fitness and Properness of Intermediaries

3.1 Introduction

3.1.1 This Chapter on the criteria of fitness and properness of insurance intermediaries and reinsurance intermediaries and the submission of a personal questionnaire, is made pursuant to, and for the purposes of, article 4 of the Act.

3.1.2 Sections 3.2, 3.3 and 3.4 of this Chapter determine the fit and proper controls to be applied:

(a) by the competent authority when it grants:

(i) registration of individuals in the Agents Register, Managers Register or Brokers Register; or

(ii) enrolment in the Agents List, Managers List or Brokers List;

(b) by every authorised undertaking when it grants persons registration in the Tied Insurance Intermediary Company Register of the undertaking;

(c) by every authorised undertaking or enrolled insurance broker when it grants persons registration in the Ancillary Insurance Intermediary Company Register of the undertaking or the enrolled insurance broker.

3.1.3 Sections 3.6, 3.7 and 3.8 of this Chapter determine a compliance test on a continuing basis for ensuring the fitness and properness of the individual concerned, so that the criteria of sound and prudent management would be, and continue to be, fulfilled with respect to the carrying out of insurance distribution activities and reinsurance distribution activities.

Application

3.1.4 Sections 3.2, 3.3 and 3.4 of this Chapter apply to -

(a) a person desirous of applying for registration and, on continuing basis, a person registered, in the Agents Register, the Managers Register or Brokers Register and carrying out insurance distribution activities or reinsurance distribution activities;

(b) all qualifying shareholders, directors, controllers and all persons who effectively manage the affairs and carry out the activities of an enrolled person desirous of applying for enrolment and, on continuing basis, of a person enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance distribution activities or reinsurance distribution activities;

(c) a person desirous of applying for registration and, on continuing basis, a person registered, in the Tied Insurance Intermediaries Company Register of any authorised undertaking and carrying out tied insurance intermediaries activities on behalf of the undertaking;

(d) a person desirous of applying for registration and, on continuing basis, a person registered, in the Ancillary Insurance Intermediaries Company Register of any authorised undertaking or enrolled insurance broker and carrying out ancillary insurance intermediaries activities on behalf of the undertaking or enrolled insurance broker;

(e) a compliance officer of a person desirous of applying for enrolment in the Agents List, Managers List, or Brokers List;

(f) a money laundering reporting officer, where applicable, of a person desirous of applying for enrolment in the Agents List, Managers List, or Brokers List.

(the “person concerned”).

3.1.5 Definitions

“chief executive”, in relation to an enrolled company or body corporate, means an employee of the company or body corporate, who, either alone or jointly with others, is or will be responsible under the immediate authority of the directors for the conduct of the insurance distribution activities, as the case may be, of the enrolled company or body corporate;

“controller”, in relation to an enrolled company means a person who alone or jointly with others, exercises control of the enrolled company and includes –

(a) a managing director of the enrolled company or of a body corporate of which the company is a subsidiary;

(b) a chief executive of the enrolled company or of a body corporate, being an enrolled company, of which the company is a subsidiary;

(c) a person in accordance with those directions or instructions the directors of the enrolled company or of a body corporate of which it is a subsidiary are accustomed to act;

“criteria of fitness and properness” means:

(i) in the case of an individual, the criteria set out in Section 3.3 of this Chapter;

(ii) in the case of a qualifying shareholder, the criteria set out in Section 3.4 of this Chapter;

“Personal Questionnaire” means the Personal Questionnaire in the form and content set out in the Appendix to the Chapter;

“senior manager” –

(a) in relation to an enrolled local company, means any employee of the company (other than a chief executive) who, under the immediate authority of a director or the chief executive of the company exercises managerial functions or is responsible for maintaining accounts or other records of the company;

(b) in relation to a branch of an enrolled foreign company in Malta, means an employee of the company who satisfies the provisions of article 12(2)(a) of the Act and includes a person vested with the administration of the branch of the company.

3.2 Criteria of Fitness and Properness

3.2.1 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. The fit and proper test is one in which the applicant and the persons concerned shall satisfy on a continuing basis.

3.2.2 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.

- 3.2.3 Sections 3.2 to 3.4 do 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 type of registration or enrolment the person holds or desires to apply for. Each case is assessed on the basis of the relevant circumstances.
- 3.2.4 The onus of proving that an applicant is a fit and proper person for the type of registration or enrolment applied for is on the applicant concerned. It shall not be the duty of the competent authority to prove the converse before it refuses to grant registration or enrolment, or before it suspends or strikes the name of a registered person off the Agents Register, Managers Register or Brokers Register or the name of an enrolled person off the Agents List, Managers List, Brokers List, the Tied Insurance Intermediaries List or the Ancillary Insurance Intermediaries List.
- 3.2.5 The competent authority's approach when determining whether a person concerned is fit and proper is cumulative. It may decide that a person applying for registration or enrolment 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 applying for registration or enrolment 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 is to be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.
- 3.2.6 The competent authority shall not:
- (a) grant registration to an individual applying for registration in the Agents Register, Managers Register or Brokers Register and carrying out insurance distribution activities or reinsurance distribution activities; or
 - (b) grant enrolment to a person applying for enrolment in the Agents List, Managers List or Brokers List and carrying out insurance distribution activities or reinsurance distribution activities; or
 - (c) grant enrolment to a person applying, through an authorised undertaking, for enrolment in the Tied Insurance Intermediaries List and carrying out tied insurance intermediaries activities on behalf of the undertaking applying for the enrolment of the person; or

(d) grant enrolment to a person applying, through an authorised undertaking or an enrolled insurance broker, for enrolment in the Ancillary Insurance Intermediaries List and carrying out ancillary insurance intermediaries activities on behalf of the undertaking or broker applying for the enrolment of the person,

if it appears to it that the criteria of fitness and properness are not, or will not, be complied with or fulfilled with respect to that person.

- 3.2.7 Any reference to a person applying for registration in the Agents Register, Managers Register or Brokers Register, or enrolment in the Agents List, Managers List, Brokers List, the Tied Insurance Intermediaries List or the Ancillary Insurance Intermediaries List, includes a reference to a person registered or enrolled therein, as the case may be.
- 3.2.8 The provisions of Sections 3.3 of this Chapter shall apply to an individual applying for registration in the Agents Register, Managers Register, Brokers Register, in the same manner and to the same extent as they apply to an individual who is a director, controller or senior manager.

Tied Insurance Intermediaries

- 3.2.9 The provisions of paragraph 3.2.6 of this Chapter, in so far as they relate to the enrolment of a person in the Tied Insurance Intermediaries List, shall apply to an authorised undertaking granting registration of a person in the Tied Insurance Intermediaries Company Register of the undertaking, in the same manner and to the same extent as they apply to the competent authority. In this respect, any reference therein to an application for enrolment in the Tied Insurance Intermediaries List shall apply as if it were a reference to an application for registration in the Tied Insurance Intermediaries Company Register of the undertaking.
- 3.2.10 The provisions of Section 3.3 of this Chapter shall apply to an individual applying for registration in the Tied Insurance Intermediaries Company Register of an authorised undertaking in the same manner and to the same extent as they apply to an individual who is a director, controller or senior manager. However, in the case of an individual applying for registration in the Tied Insurance Intermediaries Company Register of the undertaking, the undertaking shall have regard to the responsibilities which are relevant to the tied insurance intermediaries activities to be carried out and assess the criteria of fitness and properness to be met by the individual in relation to those responsibilities.

Ancillary Insurance Intermediaries

- 3.2.11 The provisions of paragraph 3.2.6 of this Chapter, in so far as they relate to the enrolment of a person in the Ancillary Insurance Intermediaries List, shall apply to an authorised undertaking or an enrolled insurance broker, granting registration of a person in the Ancillary Insurance Intermediaries Company Register of the undertaking or the enrolled insurance broker in the same manner and to the same extent as they apply to the competent authority. In this respect, any reference therein to an application for enrolment in the Ancillary Insurance Intermediaries List shall apply as if it were a reference to an application for registration in the Ancillary Insurance Intermediaries Register of the undertaking or the insurance broker.
- 3.2.12 The provisions of Section 3.3 of this Chapter shall apply to an individual applying for registration in the Ancillary Insurance Intermediaries Company Register of an authorised undertaking or an enrolled insurance broker, in the same manner and to the same extent as they apply to an individual who is a director, controller or senior manager. However, in the case of an individual applying for registration in the Ancillary Insurance Intermediaries Company Register of an undertaking or an enrolled insurance broker, the undertaking or the enrolled insurance broker shall have regard to the responsibilities which are relevant to the ancillary insurance intermediaries activities to be carried out and assess the criteria of fitness and properness to be met by the individual in relation to those responsibilities.

3.3 Criteria of Fitness and Properness of directors, controllers and senior managers or individuals who effectively manage the affairs of an enrolled person

Fit and proper individuals

- 3.3.1 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 type of registration or enrolment the person applies for or holds. Where such person is a person referred in paragraph 6.5.1(a) and (b) of Chapter 6 in Part B of the Insurance Distribution Rules, such person is also required to comply with the knowledge and ability requirements set out in Part B of Chapter 6 in Part B of the Insurance Distribution Rules. Conversely, a person who is incompetent, dishonest and inexperienced is an unfit and improper person.
- 3.3.2 The competent authority must be satisfied that there is nothing in an applicant's present state or past record that would make the applicant unfit for the type of registration or enrolment such person applies for or holds or proposes to hold. Testing

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

- 3.3.3 Requirements set out in Personal Questionnaire are about applicant's experience and qualifications; about the applicant's own business interests; about events which may cast doubts on the applicant's reputation and character including convictions, bankruptcy proceedings and regulatory actions against the applicant. All information is to be submitted in writing and signed by the person concerned.
- 3.3.4 On application, an applicant is to produce to the competent authority not more than three months after its date of issue a police conduct certificate and the competent authority may, from time to time, at its absolute discretion, require the applicant to produce an updated certificate.

3.4 Criteria of Fitness and Properness of qualifying shareholders

Fit and proper individuals

- 3.4.1 Every individual who is a qualifying shareholder of an enrolled company should -
- (a) meet the fit and proper criteria to be met by an individual who is a director, controller or senior manager as set out in Section 3.3 of this Chapter;
 - (b) ensure that he/she is not, and shall not be, a source of weakness to the company.
- 3.4.2 Paragraphs 3.4.4 and 3.4.6 of this Chapter shall apply to an individual who is a qualifying shareholder of an enrolled company in the same manner and to the same extent as they apply to a body corporate which is a qualifying shareholder of an enrolled company if the individual is the owner of a business of any kind.

Fit and proper bodies corporate

- 3.4.3 Every body corporate which is a qualifying shareholder of an enrolled company should ensure that it is not, and shall not be, a source of weakness to the enrolled company.
- 3.4.4 Factors relevant to the assessment of the fitness, propriety or other qualifications of a body corporate which is a qualifying shareholder of an enrolled company include

business reports and financial positions of the body corporate, and whether such ownership would adversely affect the enrolled company.

3.4.5 Every shareholder of a body corporate which is a qualifying shareholder of an enrolled company who is an individual should meet the fit and proper criteria as set out in paragraphs 3.4.1 and 3.4.2 of this Chapter in the same manner and to the same extent as they are to be met by a qualifying shareholder of an enrolled company who is an individual.

3.4.6 Every body corporate which is a qualifying shareholder of an enrolled company shall at all times be financially solvent. Financial soundness involves ensuring the proper financial control and management of the business of the body corporate which should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements established by any competent authority regulating the business.

3.5 Personal Questionnaire

3.5.1 The requirement for the submission of a Personal Questionnaire to the competent authority shall apply to the following persons, including:

(a) directors, controllers, senior managers and all persons who effectively manage the affairs of a company desirous of applying for enrolment and, on continuing basis, a company enrolled, in the Agents List, Managers List or Brokers List;

(b) all qualifying shareholders who are individuals of a company desirous of applying for enrolment and, on continuing basis, a company enrolled, in the Agents List, Managers List or Brokers List;

(c) a person desirous of applying for registration and, on continuing basis, a person registered, in the Agents Register, the Managers Register or Brokers Register and carrying out insurance distribution activities or reinsurance distribution activities;

(d) compliance officer;

(e) money laundering reporting officer.

(“the individual concerned”).

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

3.6 Approval of proposed qualifying shareholder, director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of an enrolled company

3.6.1 An enrolled company shall not be able to appoint an individual as director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of the company unless: -

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

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

3.6.2 An individual shall not become a qualifying shareholder of an enrolled company, unless –

(a) the enrolled company has served on the competent authority a written notice of the individual's intention to become a qualifying shareholder and has submitted a Personal Questionnaire in respect of that individual; and

(b) the competent authority has granted consent in accordance with article 44A of the Act.

3.6.3 A Personal Questionnaire submitted by the company under paragraphs 3.6.1 and 3.6.2 of this Chapter shall be completed by the individual concerned and its submission by the company to the competent authority constitutes an acknowledgement that the notice served on the competent authority is served with that individual's knowledge and consent.

3.6.4 The competent authority may serve a notice of objection under paragraph 3.6.1 of this Chapter on the ground that it appears to the competent authority that the person proposed to be appointed is not a fit and proper person to be appointed to the position

in question and, if that individual were appointed, the criteria of sound and prudent management indicated in Chapter 5 in Part B of the Insurance Distribution Rules would not or might not continue to be fulfilled with respect to the enrolled company.

3.6.5 Before serving a notice of objection, the competent authority shall serve on the enrolled company a preliminary written notice stating that –

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

(ii) the enrolled company may, within the period as may be stated in the notice, being a period of not less than 48 hours and not more than 15 days from the date of service of the preliminary notice, make written representations to the competent authority;

3.6.6 The competent authority shall not be obliged to disclose to the company any particulars of the ground on which it is considering the service on the enrolled company of a notice of objection, and where representations are made in accordance with paragraph 3.6.5 of this Chapter, the competent authority shall take them into consideration before serving the notice of objection.

3.6.7 An application to the competent authority made out and submitted by an enrolled company as set out in the applicable Schedules to Chapter 1 in Part A of the Insurance Distribution Rules to carry out insurance distribution activities or reinsurance distribution activities shall constitute a written notice for the purposes of paragraphs 3.6.1 and 3.6.2 of this Chapter.

3.7 Changes of director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of an enrolled company

3.7.1 An enrolled company shall give notice in writing to the competent authority where any person ceases to be a director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of the company. A notice under this article 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, senior manager, registered person, compliance officer or money laundering reporting officer;

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

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

3.8 Objection to existing director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of an enrolled company

3.8.1 Where it appears to the competent authority that the criteria of sound and prudent management are not or may not be fulfilled with respect to an enrolled company by reason of the ability of a person who is a director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of the company to influence the company, the competent authority may serve on the company a notice of objection to that person continuing to be a director, controller, senior manager, registered person, compliance officer or money laundering reporting officer of the company.

3.8.2 Before serving a notice of objection under this Section, the competent authority shall serve on the company a preliminary written notice stating that the competent authority is considering serving a notice of objection under this section and specifying the criteria of sound and prudent management which are not or may not be fulfilled with respect to the company.

3.8.3 A company served with a notice under paragraph 3.8.2 of this Chapter may, within the period of one month beginning with the day on which the notice is served, make written representations to the competent authority and, where representations are made in accordance with this paragraph, the competent authority shall take them into consideration before serving a notice of objection.

3.8.4 The competent authority shall not be obliged to disclose to the company any particulars of the ground on which it is considering the service of a notice of objection.

3.8.5 After a notice of objection has been served on a company in relation to a person who is a director, controller, senior manager, registered person, compliance officer or money laundering reporting officer the company shall immediately remove the person from that office.