

## **Insurance Rule 15 of 2008**

### **Appointments and Changes of Director, Controller or Senior Manager**

#### **Rule pursuant to article 4 of the Act**

1. (1) This Insurance Rule on the appointments and changes of director, controller, or senior manager (“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 1<sup>st</sup> February 2008.

#### **Application**

2. This Rule applies to a company desirous of applying for authorisation to carry on and, on continuing basis, a company authorised to carry on, business of insurance (the “company concerned”);

#### **Scope**

3. The scope of this Rule is to determine with respect to companies concerned, a compliance test on continuing basis for ensuring the fitness and properness of persons appointed as director, controller or senior manager of companies concerned so that the criteria of sound and prudent management would be, and continue to be, fulfilled in respect of the companies.

#### **Definitions**

4. In this Rule, unless the context otherwise requires -

“controller”, in relation to a company concerned means a person who, alone or together with others, exercises control of the company concerned and includes -

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

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

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

“chief executive”, in relation to a company concerned or body corporate of which it is a subsidiary, means an employee of the company concerned or that 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 whole of the business of insurance of the company concerned or that body corporate;

“senior manager” –

(a) in relation to a company whose head office is in Malta, means an 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 in Malta of a company whose head office is in a country outside Malta, means an individual who is an employee of the company who satisfies the provisions of subarticle (2) of article 11 of the Act in so far as they apply to an individual, and who exercises managerial functions which relate exclusively to business of insurance conducted from the branch of the company in Malta,

and, in each case, “senior manager” shall include the Compliance Officer and Money Laundering Reporting Officer of the company or branch in Malta and a manager whose duties and responsibilities involve ordinarily carrying out a function which is of importance to the effective running of the operational business of the company concerned.

“Personal Questionnaire” means the Personal Questionnaire in the form and content set out in Appendix I to this Rule.

## **Approval of proposed director, controller, or senior manager, of company concerned**

5. (1) No company shall appoint a person as director, controller, or senior manager of the company unless -

(a) the company has served on the Authority a written notice stating that it proposes to appoint that person to that position and submitting in respect of that person a Personal Questionnaire. The notice and the Personal Questionnaire shall be prior to the date when the company concerned would like the person to take up the appointment; and

(b) the Authority has notified the company in writing that there is no objection to that person being appointed to that position.

(2) A Personal Questionnaire in respect of a person proposed to be appointed as director, controller, or senior manager of a company concerned submitted by the company under paragraph (1) of this article shall be completed by that person and its submission by the company to the Authority constitutes an acknowledgement that the notice served on the Authority is served with that person's knowledge and consent.

(3) The Authority may serve a notice of objection under paragraph (1) of this article on the ground that it appears to it that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question.

(4) Before serving such a notice the Authority shall serve on the company a preliminary written notice stating that-

(a) the Authority is considering the service on the company of a notice of objection on that ground; and

(b) the company 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 Authority.

(5) The Authority shall not be obliged to disclose to the company any particulars of the ground on which it is considering the service on the company of a notice of objection.

(6) Where representations are made in accordance with this article the Authority shall take them into consideration before serving the notice of objection.

(7) An application to the Authority made out and submitted by a company concerned in the form set out in the First, Second, Third or Fourth Schedule to Insurance Rule 6 of 2011 to carry on the business of insurance shall constitute a written notice for the purposes of subparagraph (a) of paragraph (1) of this article.

(8) In the case of a company concerned which is a company whose head office is in a country outside Malta, the requirements of paragraph (1) of this article shall apply to the extent only of requiring the company to submit to the Authority a curriculum vitae in lieu of a Personal Questionnaire in respect of a person appointed as managing director or chief executive of the company prior to the date of such appointment:

Provided that, notwithstanding those provisions, the Authority may, in respect of that person require the submission by the company of a Personal Questionnaire, in lieu of a curriculum vitae, completed by that person and giving the information required therein.

### **Duty to notify change of director, controller, or senior manager, of company concerned**

**6.** (1) A company concerned shall give notice in writing to the Authority where any person ceases to be a director, controller or senior manager of the company.

(2) 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, or senior manager;

(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 Authority in relation to that event.

## **Objection to existing director, controller, or senior manager**

7. (1) Where it appears to the Authority that the criteria of sound and prudent management are not or may not be fulfilled in respect of a company concerned by reason of the ability of a person who is a director, controller, or senior manager of the company to influence the company, the Authority may serve on the company a notice of objection to that person continuing to be a director, controller, or senior manager of the company.

(2) Before serving a notice of objection under this article, the Authority shall serve on the company a preliminary written notice stating that the Authority is considering serving a notice of objection under this article and specifying the criteria of sound and prudent management which are not or may not be fulfilled in respect of the company.

(3) A company served with a notice under paragraph (2) of this article may, within the period of one month beginning with the day on which the notice is served, make written representations to the Authority and, where representations are made in accordance with this paragraph, the Authority shall take them into consideration before serving a notice of objection.

(4) The 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.

(5) After a notice of objection has been served on a company in relation to a person who is a director, controller, or senior manager, the company shall forthwith remove the person from that office.

## **Repeals and Savings**

8. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 15 of 1999 – Appointments and Changes of Director, Controller or Senior Manager, is hereby repealed.

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

