

Insurance Intermediaries Rule 2 of 2007

Criteria of Fitness and Properness of Insurance Intermediaries

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on the criteria of fitness and properness of insurance intermediaries (“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 -

(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 intermediaries 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, a person enrolled, in the Agents List Managers List or Brokers List and carrying out insurance intermediaries 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,

(the “person concerned”).

Scope

3. The scope of this Rule is to determine -

(a) the fit and proper controls to be applied by the 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; and

(b) the fit and proper controls to be applied by every authorised undertaking when it grants persons registration in the Tied Insurance Intermediaries Company Register of the undertaking.

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 concerned must possess. This is because it is not an absolute standard but one which relates to the type of registration or enrolment the person holds or desires to apply for.

(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 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 or Brokers List or the Tied Insurance Intermediaries List.

(5) The Authority's approach is cumulative. It may decide that a person applying for registration or enrolment has failed to comply with or fulfil 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 applying for registration or enrolment has complied with or fulfilled 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 registration to an individual applying for registration in the Agents Register, Managers Register or Brokers Register and carrying out insurance intermediaries activities; nor shall the Authority grant enrolment to a person applying for enrolment in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities; nor shall the Authority 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, 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.

(8) In this Rule -

(a) “criteria of fitness and properness” means:

(i) in the case of an individual, the criteria set out in the First Schedule to this Rule;

(ii) in the case of a qualifying shareholder, the criteria set out in the Second Schedule to this Rule;

(b) “Personal Questionnaire” means the Personal Questionnaire set out in the Schedule to Insurance Intermediaries Rule 21 of 2007;

(c) 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 or Brokers List or the Tied Insurance Intermediaries List, includes a reference to a person registered or enrolled therein, as the case may be.

(9) The provisions of paragraph (7) of this article, 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 Authority and, 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.

(10) The provisions of the First Schedule to this Rule shall apply to an individual applying for registration in the Agents Register, Managers Register or Brokers Register or 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.

Repeals and Savings

5. (1) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (2) of this article, Insurance Intermediaries Directive 2 of 1999 - Criteria of Fitness and Properness of Insurance Intermediaries, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder or under Insurance Directive 2 of 1999 - Criteria of Fitness and Properness, in so far as they apply to insurance agents and insurance managers, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.

FIRST SCHEDULE

(Article 4 of the Rule)

Criteria of Fitness and Properness

- in the case of directors, controllers and senior managers or individuals who effectively manage the affairs of an enrolled person -

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 type of registration or enrolment the person applies for or holds.

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 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.

5. Testing for unfitness is carried out by examining an applicant's integrity in response to a range of standardised requirements set out in the application form for registration or enrolment that are highly relevant to fitness and the Personal Questionnaire, where appropriate.

6. Requirements set out in the application form and 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.

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

8. On application, an applicant is to produce to the Authority not more than three months after its date of issue a police conduct certificate and the Authority may, from time to time, at its absolute discretion, require the applicant to produce an updated certificate.

SECOND SCHEDULE

(Article 4 of the Rule)

Criteria of Fitness and Properness

- in the case of qualifying shareholders –

Part I

Fit and proper individuals

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 the First Schedule to the Rule;

(b) ensure that he/she is not, and shall not be, a source of weakness to the company.

2. Paragraphs 4 and 6 of this Schedule 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.

Part II

Fit and proper bodies corporate

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.

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.

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 1 and 2 of this Schedule 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.

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.