

Insurance Intermediaries Rule 6 of 2007

Criteria of Sound and Prudent Management

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on the criteria of sound and prudent management which must be fulfilled with respect to persons desirous of applying for enrolment, or enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (“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 15th March 2007.

Application

2. This Rule applies to a 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 (the “enrolled person”).

Scope

3. The scope of this Rule is to determine the criteria of sound and prudent management which must be fulfilled with respect to enrolled persons.

Sound and prudent management: criteria which must be fulfilled

4. (1) The Authority shall not grant enrolment under article 13 of the Act 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 permit such person to retain enrolment granted thereunder, if it appears to it that the criteria of sound and prudent management are not or will not be fulfilled with respect to the person.

(2) In this Rule “criteria of sound and prudent management” means the criteria set out in the Schedule to this Rule.

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(2) of this article, Insurance Intermediaries Directive 6 of 1999 - Criteria of Sound and Prudent Management, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder or under the Insurance Business (Criteria of Sound and Prudent Management) Regulations, 1999 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.

SCHEDULE

(Article 4 of the Rule)

Criteria of Sound and Prudent Management

Integrity and skill

1. The business of the enrolled person is carried on with integrity, due care, diligence and the professional skills appropriate to the nature and scale of its activities.

2. Where applicable, each director, controller or officer of the enrolled person is a fit and proper person to hold that position in accordance with Insurance Intermediaries Rule 2 of 2007 – Criteria of Fitness and Properness of Insurance Intermediaries.

3. In the case of a foreign company -

(a) the representative referred to in sub-paragraph (ii) of paragraph (b) of subarticle (1) of article 12 of the Act; or

(b) where that representative is not an individual, the individual representative referred to in paragraph (d) of subarticle (1) of article 12 of the Insurance Business Act, 1998,

is a fit and proper person to hold that position.

Direction and management of the enrolled person

4. The enrolled person, where applicable, is directed and managed by a sufficient number of registered persons and persons who are fit and proper persons to hold the positions which they hold.

Insurance intermediaries activities to be carried out in a sound and prudent manner

5. The enrolled person carries out insurance intermediaries activities in a sound and prudent manner.

6. The enrolled person shall not be regarded as carrying out insurance intermediaries activities in a sound and prudent manner unless such person maintains -

(a) adequate accounting and orderly records of its business and internal organisation; and

(b) adequate systems of control of its business and records.

7. Accounting and other records and systems of control shall not be regarded as adequate and orderly unless they are such as -

(a) to enable the business of the enrolled person to be prudently managed; and

(b) to enable the enrolled person to comply with the obligations imposed on the person by or under any provision of the Act, the Insurance Business Act, 1998, any Insurance Rules or any other Insurance Intermediaries Rule which apply to insurance intermediaries activities.

8. In determining whether any systems of control are adequate, the Authority shall have regard to the functions and responsibilities for those systems which are held by the persons who are responsible for the direction and management of the business and to whom paragraph 7 of this Schedule applies.

9. For the purposes of paragraphs (6) to (8), the term “adequate” implies the taking into account of the necessary margins for unexpected contingencies.

10. The enrolled person shall not be regarded as carrying out insurance intermediaries activities in a sound and prudent manner if -

(a) it fails to carrying out insurance intermediaries activities with due regard to the interests of clients and potential clients;

(b) it fails to satisfy an obligation to which it is subject by or under any provision of the Act or the Insurance Business Act, 1998, or any other Insurance Intermediaries Rule or Insurance Rules which applies to its activities;

(c) where applicable, it fails to supervise the activities of a subsidiary undertaking or branch:

(i) with due care and diligence; and

(ii) without detriment to the enrolled person's activities;

(d) in the case of persons enrolled in the Agents List, it fails to supervise the activities of any of its tied insurance intermediaries;

(e) it fails to set controls and monitor on an ongoing basis all outsourced services; and

(f) it fails to operate compliance arrangements that are robust and reliable, including safeguards against participating in or being used by others as a vehicle for financial crimes such as money-laundering.

11. For the purposes of this Schedule “subsidiary undertaking” shall be construed in accordance with article 2 of the Companies Act, 1995.