

GUIDELINE
ON
“FIT AND PROPER” CRITERIA UNDER
THE INSURANCE ORDINANCE (CAP. 41)

Insurance Authority

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1. Introduction

1.1 This Guideline is issued pursuant to section 133 of the Insurance Ordinance (Cap. 41) (“the Ordinance”) taking into account the Insurance Core Principles, Standards, Guidance and Assessment Methodology (“ICP”) promulgated by the International Association of Insurance Supervisors. Special reference is made to ICP 5 which stipulates that the supervisor expects board members, senior management, key persons in control functions and significant owners of an insurer to be and remain suitable to fulfil their respective roles.

1.2 It sets out the minimum standard of suitability requirements that are applicable to certain persons of an authorized insurer and the general guiding principles of the Insurance Authority (“IA”) in assessing the suitability of such persons in fulfilling their roles in an insurer.

1.3 This Guideline is to provide general guidance to the relevant applicants and is not intended to be exhaustive.

1.4 Words and expressions used in this Guideline shall have the same meanings as given to them in the Ordinance.

2. Approval / Notification Requirements for Appointments of Certain Positions

2.1 Under section 8 of the Ordinance, a company intending to carry on any class of insurance business in or from Hong Kong may apply to the IA for authorization. Section 8(2) of the Ordinance provides that the IA shall not authorize a company if it appears to the IA that any person who is a **director** or **controller** of the company is not a *fit and proper* person to hold such position. For the purpose of this section, the meaning of a “controller” is defined in section 9 of the Ordinance.

2.2 After obtaining authorization, an insurer is required to comply with sections 13A, 13AC, 13AE, 13B, 14, 15 and 15B of the Ordinance in respect of any appointments of, or changes in, its controllers, directors, key persons in control functions or appointed actuary (if the insurer carries on long term business). These requirements aim at ensuring that the

persons to be appointed or have been appointed, as controllers, directors, key persons in control functions or appointed actuary of the insurer are fit and proper.

Controllers under Section 13A

2.3 Section 13A stipulates that an authorized insurer must obtain the IA's prior approval for the appointment of a managing director or a chief executive of the insurer. Where the insurer is incorporated outside Hong Kong, it is required to seek the IA's prior approval of any appointment of a managing director in respect of so much of the insurer's insurance business as is carried on within Hong Kong or a chief executive who is responsible for the conduct of the whole of the insurance business carried on by the insurer within Hong Kong. By virtue of section 50B, the authorized representative of Lloyd's is also subject to the prior approval requirement under section 13A.

Directors

2.4 Section 13AC provides that an authorized insurer incorporated in Hong Kong must obtain the IA's prior approval for the appointment of a director. Where an authorized insurer is incorporated outside Hong Kong, it is required to notify the IA of any changes to its directors in accordance with section 14 of the Ordinance.

Key Persons in Control Functions

2.5 Section 13AE provides that an authorized insurer must obtain the IA's prior approval for the appointment of a key person in control functions. If the insurer is incorporated in Hong Kong, a key person in control functions means an individual responsible for the performance of one or more of the control functions for the insurer. Where the insurer is incorporated outside Hong Kong, a key person in control functions means an individual responsible for the performance of one or more of the control functions for the insurer in respect of so much of its insurance business as is carried on within Hong Kong.

2.6 Pursuant to section 13AE(12), a control function is defined as any of the prescribed functions that is likely to enable the individual

responsible for the performance of the function to exercise a significant influence on the business carried on by the authorized insurer. The prescribed functions include risk management function, financial control function, compliance function, internal audit function, actuarial function and intermediary management function. The Financial Secretary may also, by notice published in the Gazette, specify a function to be a control function.

Shareholder Controllers

2.7 Section 13B requires a person who intends to become a controller (as defined under section 13B(1)) of an authorized insurer incorporated in Hong Kong to notify the IA in writing that he proposes to become a controller of that insurer. For the purpose of this Guideline, a controller as defined under section 13B(1) of the Ordinance is referred to herein as shareholder controller.

2.8 Where there are any changes in the controllers (other than a controller to whom section 13B applies), the authorized insurer must notify the IA of the changes in accordance with section 14.

Appointed Actuary

2.9 Section 15(3A) requires that if the authorized insurer is incorporated in Hong Kong and carries on long term business, it must obtain the IA's prior approval for the appointment of an actuary. Where the authorized insurer is incorporated outside Hong Kong, it is required to notify the IA of its appointment of an actuary in accordance with section 15(3) of the Ordinance. For the purpose of this Guideline, an actuary appointed under section 15 of the Ordinance is referred to herein as appointed actuary.

Particulars of Controllers, Directors, Key Persons in Control Functions and Appointed Actuaries

2.10 A person who is proposed to be appointed or has been appointed as a controller, director, key person in control functions or

appointed actuary of an authorized insurer, is required to provide his particulars in the relevant prescribed Form(s) to the IA for consideration. The relevant Forms¹ for seeking approval or notification of any changes of or in the particulars of such persons are set out in Schedules 2, 4, 5 and 6 to the Ordinance.

The IA's Powers of Approval, Revocation of Approval, or Objection in respect of Proposed Appointments or Appointments

2.11 Under sections 13A, 13AC, 13AE and 15 of the Ordinance, the IA must not approve the appointment of a person as a controller, director, key person in control functions or appointed actuary of an authorized insurer respectively unless it is satisfied that the person is a fit and proper person to be so appointed. Pursuant to sections 13AF and 15AA, the IA may impose any conditions that it considers appropriate on the approval when granting and/or after it has granted the approval.

2.12 Under sections 13A, 13AC and 13AE of the Ordinance, the IA has the power to reject an application for approval as a controller (as defined under section 13A(12)), director or key person in control functions of an authorized insurer respectively if it appears to the IA that the person is not fit and proper to hold that position.

2.13 Under sections 13B, 14 and 15B(2A) of the Ordinance, the IA has the power to object respectively to (i) a person proposing to become a shareholder controller or has become a shareholder controller in contravention of section 13B(2); (ii) the appointment of the person as a controller, director (other than a controller or director to whom sections 13A, 13AC or 13B applies); or (iii) appointed actuary (other than an actuary to whom section 15(3A) applies) of an authorized insurer if it appears to the IA that the person is not fit and proper to hold that position.

¹ The prescribed forms used for different situations are set out below:

- Form A/A1/A2/B in Schedule 2 – Notification of appointments of controller, director, key person in control functions and appointed actuary under sections 7, 14 and 15(3).
- Form A/A1/A2/B in Schedule 4 – Seeking IA's approval for the appointment of controller, director, key person in control functions, appointed actuary and authorized representative under sections 13A, 13AC, 13AE, 15(3A) and 50(B) respectively.
- Form A/B in Schedule 5 – Person proposing to become controller within the meaning of section 13B(1).
- Form A/B in Schedule 6 – Person who has become controller in contravention of section 13B(2).

2.14 In relation to controllers, directors, key persons in control functions and appointed actuaries of an authorized insurer, where it appears to the IA that a person is no longer a fit and proper person to be so appointed, the IA may revoke the approval of the appointment already made as appropriate pursuant to sections 13A(7), 13AC(7), 13AE(7) and 15(3F) of the Ordinance respectively.

2.15 Any person aggrieved by or in respect of whom the decision of the IA is made in refusing to approve, revoking the approval of or objecting to the proposed appointment or appointment already made, as appropriate, may, within 21 days after the notice informing the person of the decision has been served, apply to the Insurance Appeals Tribunal for a review of the decision. If a party to a review is dissatisfied with the Tribunal's determination of the review, the party may appeal to the Court of Appeal against the determination as provided for under section 112 of the Ordinance.

2.16 A table summarizing the prior approval requirements for the appointments of controllers, directors, key persons in control functions and appointed actuaries is set out in the Annex.

3. Factors for Determining “Fit and Proper” Persons

3.1 Pursuant to section 14A of the Ordinance, the IA must have regard to the following matters in determining whether a person is a fit and proper person for the purposes of sections 8, 13A, 13AC, 13AE, 13B, 14 and 15:

- (a) the education or other qualifications or experience of the person;
- (b) the person's ability to act competently, honestly and fairly;
- (c) the reputation, character, reliability and integrity of the person;
- (d) the person's financial status or solvency;
- (e) whether any disciplinary action has been taken against the person

by:

- (i) the Monetary Authority;
 - (ii) the Securities and Futures Commission;
 - (iii) the Mandatory Provident Fund Schemes Authority; or
 - (iv) any other authority or regulatory organization, whether in Hong Kong or elsewhere, which, in the IA's opinion, performs a function similar to those of the IA;
- (f) if the person is a company in a group of companies, any information in the possession of the IA, whether provided by the person or not, relating to:
- (i) any other company in the group of companies; or
 - (ii) any substantial shareholder or officer of the person or of any company referred to in subparagraph (i);
- (g) the state of affairs of any other business which the person carries on or proposes to carry on; and
- (h) any other matter that the IA considers relevant in making the determination.

3.2 Without limiting the generality of the statements referred to in paragraph 3.1 above, the following paragraphs set out the events and matters that are likely to give rise to concerns about the fitness and properness of a person to be appointed or who has been appointed as a controller, director, key person in control functions or appointed actuary of an authorized insurer. However, failure to comply with individual elements will not necessarily result in the IA not being satisfied that a person is fit and proper. The IA will look to the substance of the requirements and materiality of any failure to meet them.

4. Criteria for Individual Persons

4.1 The controllers, directors, key persons in control functions and appointed actuary are holders of important positions in an insurer. They should possess competence and integrity. Competence is demonstrated generally through the level of an individual's professional and/or formal

qualifications and knowledge, skills and pertinent experience within the insurance and financial industries or other related businesses. Competence also includes having the appropriate level of commitment to perform the role. Integrity is demonstrated generally through character, personal behaviour and business conduct.

Competence Requirements - Qualifications and Working Experience

4.2 The requirements on qualifications and experience for controllers, directors, key persons in control functions and appointed actuary may vary depending on the degree of their influence and their respective job duties and roles in the insurer's business. It is generally recognized that an individual considered competent for a particular position within an insurer may not be considered competent for another position with different responsibilities or for a similar position within another insurer.

Controllers under Section 13A

4.3 In general, the IA expects that a controller as defined under section 13A possesses the relevant qualifications and/or experience which would enable him to discharge his functions properly (i.e. whether he is professionally competent). For example, he may be considered as professionally competent:

- (a) if he possesses professional qualifications in insurance, accounting, actuarial science or law, and has not less than 5 years' experience in an insurer or similar institution occupying a management position; or
- (b) if he does not possess the relevant qualification as set out in (a) above, he has not less than 8 years' experience in an insurer or similar institution occupying a management position.

Directors

4.4 The Board of Directors ("Board") plays an important role in the corporate governance of authorized insurers. In assessing the competence

of individual directors, the IA would give due regard to the respective duties allocated to each individual director to ensure an appropriate diversity of expertise and the effective functioning of the Board as a whole. The IA would give due considerations if a director has sufficient skills, knowledge, experience and soundness of judgment properly to undertake and discharge his roles and responsibilities.

Key Persons in Control Functions

4.5 The IA expects that a key person in control functions possesses the relevant qualification and/or experience which would enable him to discharge his functions properly. To demonstrate competency in his appointment, he should have not less than 5 years' experience in risk management, financial control, compliance, internal audit, actuarial work, intermediary management or relevant discipline.

Appointed Actuary

4.6 The actuary appointed under section 15 of the Ordinance shall possess either any of the following qualifications as prescribed under the Insurance (Actuaries' Qualifications) Regulation or a qualification that is accepted by the IA as being comparable to the following qualifications:

- (a) Fellow of the Institute and Faculty of Actuaries of the United Kingdom;
- (b) Fellow of the Institute of Actuaries of Australia; or
- (c) Fellow of the Society of Actuaries of the United States of America,

as well as appropriate working experience in long term business obtained in the last 5 years. The appointed actuary should also be familiar with the insurance market in Hong Kong, particularly the applicable actuarial standards, legal, judicial and social trends in Hong Kong that may impact upon the valuation of assets and liabilities pertaining to insurance business.

Assessment of Integrity

4.7 In the case of an individual, the following factors are relevant to the assessment of integrity in respect of a controller, director, key person in control functions or appointed actuary, namely, whether the individual concerned:

- (a) has been found by a court or other competent authority to have acted fraudulently or dishonestly;
- (b) has been disqualified by a court of competent jurisdiction from being a director of a body corporate;
- (c) has been convicted of a criminal offence by any court, including a military tribunal or is the subject of unresolved criminal charges, in Hong Kong or elsewhere;
- (d) has been refused or restricted from the right to carry on any trade, business or profession by any regulatory authority in Hong Kong or elsewhere;
- (e) has been censured, disciplined or publicly criticized by any regulatory authority in Hong Kong or elsewhere;
- (f) has been the subject of an investigation conducted by any regulatory authority in Hong Kong or elsewhere;
- (g) has, in Hong Kong or elsewhere, been censured, disciplined or publicly criticized by a professional body to which he belongs or belonged, or has been dismissed from any office or employment or refused entry to any profession or occupation;
- (h) was a controller, director, key person in control functions or appointed actuary of a body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the individual concerned held any of the above positions or within one year after the individual ceased to hold such position;

- (i) has, in connection with the formation or management of a body corporate or insurer, been adjudged by a court in Hong Kong or elsewhere civilly liable for any fraud, misfeasance or other misconduct by the individual concerned towards such a body or insurer or towards any members thereof;
- (j) has been adjudicated bankrupt by a court, or is currently subject to bankruptcy proceedings, in Hong Kong or elsewhere;
- (k) has failed to satisfy any judgment debt under an order of a court in Hong Kong or elsewhere; or
- (l) was or has been, in connection with the management of a body corporate or insurer in Hong Kong or elsewhere, a controller, director, key person in control functions or appointed actuary of the body corporate or insurer, which,
 - (i) with the consent or connivance of, or because of the neglect or omission by the individual concerned, failed to comply with any legal or regulatory requirements or any guidelines made thereunder;
 - (ii) was or has been convicted of a criminal offence by any court, or is the subject of unresolved criminal charges, in Hong Kong or elsewhere; or
 - (iii) was or has been adjudicated by any court civilly liable for any fraud, misfeasance or misconduct, in Hong Kong or elsewhere.

4.8 In respect of the events listed in paragraph 4.7 above, the IA, in considering whether the individual is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event, and the degree of his involvement in the event. If necessary, the IA may require further information regarding the event from the individual, the insurer or the relevant party concerned.

4.9 To ensure compliance with this Guideline, an authorized insurer

should set high internal standards of ethics and integrity, promote sound corporate governance and require the aforesaid position holders to have pertinent experience and maintain a sufficient degree of knowledge and decision making ability.

Independence and Conflicts of Interests

4.10 For the prudent and effective management of an insurer, it should have sufficient safeguards in place to prevent undue influence over its controllers, directors, key persons in control functions and appointed actuary with respect to the performance of their duties and responsibilities. In this regard, the IA considers that:

- (a) the Chairman of the Board should not be the Chief Executive; and
- (b) the appointed actuary should not be the Chairman of the Board or the Chief Executive.

4.11 The IA also considers that if the same person assumes the role of the key person in more than one control functions, there should not be conflicts between these positions.

5. Criteria for Body Corporate

5.1 In the case of a body corporate, the following factors are relevant to the assessment of fitness and properness of the body corporate, namely, whether it:

- (a) has financial integrity, e.g. whether the accounts of the body corporate displays a financially sound and stable position;
- (b) is subject to receivership, administration, liquidation or other similar proceedings;
- (c) has failed to satisfy any judgment debt under an order of a court in Hong Kong or elsewhere;

- (d) has been refused or restricted from the right to carry on any trade, business or profession by any regulatory authority in Hong Kong or elsewhere;
- (e) has been censured, disciplined or publicly criticized by any regulatory authority in Hong Kong or elsewhere;
- (f) has been the subject of an investigation conducted by any regulatory authority in Hong Kong or elsewhere;
- (g) was a controller or director of a body corporate or insurer, in Hong Kong or elsewhere, which has been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either whilst the body corporate concerned was a controller or director or within one year after the body corporate concerned ceased to be such a controller or director;
- (h) was or has been, in connection with the management of a body corporate or insurer in Hong Kong or elsewhere, a controller or director of a body corporate or insurer, which
 - (i) with the consent or connivance of, or because of the neglect or omission by, the body corporate concerned, failed to comply with any legal or regulatory requirements, or any guidelines made thereunder;
 - (ii) was or has been convicted of a criminal offence by any court, or is the subject of unresolved criminal charges, in Hong Kong or elsewhere; or
 - (iii) was or has been adjudicated by any court civilly liable for any fraud, misfeasance or misconduct, in Hong Kong or elsewhere; or

- (i) has a controller, director or key person in control functions (if applicable) who fails to meet the requirements set out above for individuals (other than those relating to qualifications and experience), or the requirements set out herein for body corporate, as applicable.

5.2 Where a body corporate intends to become or has become a shareholder controller (i.e. a shareholder directly or indirectly controlling the exercise of 15% or more of the voting power at any general meeting of an insurer) of an insurer, the IA will, in addition to the matters referred to in paragraph 5.1 above, take into account whether the body corporate has sufficient financial resources to acquire or support the operations of the insurer, and whether the business plan for the insurer is realistic and viable.

5.3 In respect of any event listed in paragraph 5.1 above, the IA, in considering whether the body corporate is fit and proper, will have regard to, inter alia, the relevance of the event, the lapse of time since the event, the seriousness of the event, the degree of involvement of the body corporate in the event and any information in the possession of the IA (whether provided by the body corporate or not) relating to any other company within the group of companies of the body corporate, as well as any information relating to the substantial shareholder and officer of the body corporate or such other company referred to above. If necessary, the IA may require further information regarding the event from the body corporate, the insurer or the relevant party concerned.

6. Commencement

6.1 This Guideline shall take effect from 26 June 2017.

June 2017

**Summary of Prior Approval Requirements
for Appointments of Certain Positions
under the Insurance Ordinance (Cap. 41)**

	Authorized Insurer Incorporated in Hong Kong	Authorized Insurer Incorporated Outside Hong Kong
Controller under s.13A	✓ (Form A in Schedule 4)	✓ (Note: the prior approval requirement applies to controllers of the insurer's Hong Kong operation) (Form A in Schedule 4)
Shareholder controller	✓ (Note: appointment of immediate shareholder controller is subject to IA's prior approval under s.13B) (Form A/B in Schedule 5) X (Note: changes in controller (other than a controller to whom section 13B applies) are subject to notification requirement under section 14) (Form A/B in Schedule 2)	X (Note: the appointment is subject to notification requirement under section 14) (Form A/B in Schedule 2)
Director	✓ (under s.13AC) (Form A/B in Schedule 4)	X (Note: the appointment is subject to notification requirement under section 14) (Form A/B in Schedule 2)
Key Persons in Control Functions under s.13AE	✓ (Form A1 in Schedule 4)	✓ (Note: the prior approval requirement applies to those persons appointed for the insurer's Hong Kong operation) (Form A1 in Schedule 4)
Appointed Actuary (applicable to insurers carrying on long term insurance business)	✓ (under s.15(3A)) (Form A2 in Schedule 4)	X (Note: the appointment is subject to notification requirement under section 15(3)) (Form A1 in Schedule 2)

Note:

- ✓ – The appointment is subject to the Insurance Authority (“IA”)’s prior approval.
- X – The IA’s prior approval for appointment is generally not required, unless otherwise specifically required by the IA.