



**BERMUDA MONETARY AUTHORITY**

**INFORMATION BULLETIN**

**FIT AND PROPER PERSONS**

**8<sup>th</sup> October, 2009**

## **Introduction**

1. In early 2009 the Bermuda Monetary Authority (“the Authority”) embarked on a review and assessment of its prudential regime for fit and proper persons. The Authority recognised that failure of institutions has increasingly been attributed to adverse economic or market conditions as well as to the actions of individuals who hold positions of responsibility. The Authority in its review sought to ensure that its regime reduces the risk of institution failure due to incompetence and improper management by key functionaries.
2. In its 2009 Business Plan the Authority indicated that it would issue appropriate Guidance. Having undertaken a review of the Authority’s supervisory toolkit and having also put forward specific requirements regarding fitness and propriety of key functionaries in our Insurance Code of Conduct, we have concluded that such Guidance is not required at this time. In addition, our existing and proposed requirements in this regard are consistent with international standards.
3. This Information Bulletin summarises the findings of the review; outlines the Authority's existing fit and proper requirements; and provides the Authority's rationale for its decision that additional Guidance is not required at this time.

## **Existing Fit and Proper Framework**

4. The Authority’s prudential regime for regulated entities has ensured consistent and strong supervision. An integral component of its regime has been the Authority's assessment of key functionaries of regulated institutions.
5. The regulatory statutes (“the various Acts” – see Appendix) establish the minimum licensing criteria that persons seeking a license must satisfy. The Statement of Principles and Guidance issued under the various Acts specifically outline the criteria that would be used to assess the fitness and propriety of key functionaries.
6. In addition the Acts stipulate that the Authority must be notified of the proposed appointment of key functionaries and provides that the Authority can object to an individual’s appointment on grounds, *inter alia*, that such persons are unfit and improper.
7. The existing regime has a comprehensive approval system for appointment and removal of key functionaries, in particular it:
  - Establishes minimum standards that proposed controllers of regulated institutions must meet.

- Ensures that at the licensing stage, and during the life of the institution, that only fit and proper persons become controllers.
- Specifically focuses on the prior conduct and degree of skill and competence of persons seeking approval to manage or advise regulated entities.
- Permits the Authority to remove controllers who are not fit and proper.
- Requires that third parties appointed by the regulated institution whose roles are deemed integral to maintaining vigilance vis a vis the financial soundness and stability of the regulated entity, e.g. actuaries, auditors, must meet fitness and propriety requirements.
- Enhances the existing rules on good corporate governance by establishing a Code of Conduct for key functionaries.
- Remains consistent and compatible with international best practices.

#### **Existing Criteria for Assessment of Fitness and Propriety**

8. The criteria for fitness and propriety of an individual who is, or is to be, a controller or officer (which terms are defined as including a director, secretary or senior executive) are set out in Statement of Principles and Guidance Notes (see Appendix) issued pursuant to the various Acts and include:
  - Whether the person has relevant experience, sufficient skills, knowledge and soundness of judgment properly to undertake and fulfill the particular duties and responsibilities of his office.
  - Consideration of the diligence with which a controller or officer is fulfilling or is likely to fulfill their duties and responsibilities.
  - Whether the person has had experience of similar responsibilities previously, and their record in fulfilling them.
  - Whether the person has appropriate qualifications and training, as applicable. As to soundness of judgment the Authority looks to, *inter alia*, the degree of balance, rationality and maturity demonstrated in the person's previous conduct and decision-taking.
  - The probity of the person concerned, as it is essential that a person with responsibility for the conduct of financial services business is of high integrity. In contrast to the fitness elements of this criterion, which reflects an individual's judgment relating to the particular position that the

person holds or is to hold, the judgment of probity reflects much more a common standard, applicable irrespective of the particular position held.

- The person's reputation and character *inter alia*, whether the person has a criminal record; convictions for fraud or other dishonesty would clearly be particularly relevant.
  - Whether the person has contravened any provision of insurance, banking, investment or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice.
  - Whether the person has been involved in any business practices appearing to the Authority to be deceitful or oppressive or improper or which otherwise reflect discredit on his method of conducting business.
  - A person's record of compliance with various non-statutory codes insofar as they may be relevant to the registration criteria and to the interests of policyholders and potential policyholders.
  - Whether the person has been censured or disqualified by professional or regulatory bodies, e.g. the Chartered Property Casualty Underwriters, Casualty Actuarial Society, The Institute of Chartered Accountants of Bermuda, or corresponding bodies in other jurisdictions. Those who have been censured are unlikely to be acceptable.
  - Any evidence of relevant past misconduct will be taken into consideration.
  - Imprudence in the conduct of the business of the regulated entity or actions which have threatened without necessarily having damaged the interests of policyholders or potential policyholders will reflect adversely on the competence and soundness of judgment of those responsible.
  - Failure by a controller or officer to conduct the business of the regulated entity with integrity and professional skills will reflect adversely on their probity and/or competence and/or soundness of judgment.
  - The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfill the criterion on the basis of several instances of such conduct which, if taken individually, may not lead to that conclusion.
9. The Authority's existing fitness and propriety regime also extends to shareholder controllers who may hold a wide variety of positions in relation to a regulated entity, and the application of the fit and proper criterion takes account of this. The Authority's key consideration is the likely or actual

impact on the interests of policyholders/investors of a person holding his particular position as controller.

10. In assessing the fitness and propriety of shareholder controllers or persons proposing to become such controllers, the Authority also has regard to the following considerations:
  - What influence the shareholder controller has or is likely to have on the conduct of the affairs of the regulated entity. If he does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he has the probity and soundness of judgment and relevant knowledge and skills for managing the affairs of a regulated entity.
  - Whether there could be conflicts of interest arising from the influence of the shareholder on the regulated entity. This could, for example, arise from the closeness of his links with another person.
  - Whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the regulated entity through an association which undermines confidence in that regulated entity.

### **Proposed Fitness and Propriety Requirements**

11. The Authority's draft Insurance Code of Conduct (which is currently subject to consultation) will strengthen the fitness and propriety oversight for key functionaries as it will require the boards of regulated entities to:

*“Establish processes to assess and document the fitness and propriety of board members, controllers, officers, and third party service providers, including insurance managers, auditors, actuaries and the principal representative.”<sup>1</sup>*

### **Conclusion**

12. The Authority has therefore determined that its existing fit and proper persons' guidelines allow it to adequately supervise senior individuals and management within its regulated entities.
13. The Authority will maintain its supervisory scrutiny of key functionaries and will periodically review its regime to ensure its adequacy, and that it maintains consistency with international standards.

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<sup>1</sup>Bermuda Monetary Authority - Consultation Paper on Insurance Code of Conduct: September 2009. paragraph 16

14. In particular the Authority will examine whether in addition to its existing power to approve such individuals and to remove persons it adjudges unfit or improper the Authority also needs the power to prevent such a person from holding a controller position in the regulated financial sector.

## APPENDIX

- a. **The Insurance Act 1978**
  - i. The Insurance Act 1978 (and amendments) Schedule Minimum Criteria for Registration.
  - ii. Statement of Principles 2007
  - iii. Guidance Note #3 Fit & Proper Criteria and Approval Process for the Loss Reserve Specialist.
  - iv. Guidance Note #5 Fit & Proper Criteria and Approval Process for the Approved Auditor
  - v. Guidance Note #7 Fit & Proper Criteria – Principal Representative, Insurance Manager and Intermediaries.
  - vi. Guidance Note #8 Appointment and Duties of the Insurance Manager
  - vii. Guidance Note #9 Fit & Proper Criteria and Approval Process for the Approved Actuary
  - viii. Consultation Paper on the Insurance Code of Conduct September 2009 – to be issued in January 2010 and is due for implementation in December 2010.
- b. **Banks & Deposit Companies Act 1999** (and amendments) plus attaching Guidance etc.
  - i. Banks & Deposit Companies Act 1999 and the Second Schedule.
  - ii. Statement of Principles
- c. **Investment Business Act 2003** (and amendments) plus attaching Guidance etc.
  - i. Investment Business Act 2003 Sections 29, 30, 46, 64 and the Second Schedule Minimum Criteria for Registration.
  - ii. Statement of Principles para 2.2 et seq., 2.3 and 2.11 et seq.

- d. **Investment Funds Act 2006** (and amendments) and Guidance etc.
  - i. Investment Funds Act 2006 and the Schedule - Minimum Criteria for Registration.
  - ii. Investment Funds Act 2006 - Fund Administrators - Information for prospective applicants and Guidance Notes –
- e. **Trust (Regulation of Trust Business) Act 2001** (and amendments) plus attaching Guidance etc.
  - i. Trust (Regulation of Trust Business) Act 2001 - First Schedule - Minimum Criteria for Licensing.
  - ii. Statement of Principles