

**BERMUDA MONETARY AUTHORITY**  
**INSURANCE DEPARTMENT**

**GUIDANCE NOTE #7**

**FIT AND PROPER CRITERIA – PRINCIPAL  
REPRESENTATIVE, INSURANCE MANAGER AND  
INTERMEDIARIES**

**MARCH 2005**

## **GUIDANCE NOTE: FIT AND PROPER CRITERIA - PRINCIPAL REPRESENTATIVE, INSURANCE MANAGER AND INTERMEDIARIES**

### **Introduction**

- 1 The objective of this Guidance Note is to set out and describe the criteria the Bermuda Monetary Authority (“Authority”) will use to determine whether a person is fit and proper to act as Principal Representative or to be registered as Insurance Manager or as a Broker, Agent or Salesman (“the Intermediaries”) under to the Act. The Guidance Notes are intended to provide information on the application of the Insurance Act and corresponding regulations.
- 2 The Authority recognizes the need for clarity as to the scope and implementation of the provisions of the Act <sup>1</sup> if the regulatory system is to command the confidence of insurers and policyholders. It seeks, therefore, to ensure that those operating in Bermuda have a good understanding of the nature of the requirements and of the Authority’s approach in implementing the Act.
- 3 While the Authority aims to provide clarity as to its approach, this Guidance is not intended to be exhaustive. The Authority, through the Guidance, hereby sets out its understanding of the legal provisions affecting the fit and proper criteria with respect to the above approved persons.<sup>2</sup> Interpretation of statutes is ultimately a matter for the Bermuda courts. (The applicable sections of the Act are in brackets.)<sup>3</sup>
- 4 Other guidelines issued by the Authority contain additional information related to the additional criteria and approval process for specific approved persons.
- 5 The Authority’s guidance is of general application and seeks to take account of the wide diversity of institutions that may be licensed under the Act. There may be a need for revision of the Guidance Notes from time to time. Material changes in the Guidance will be published, generally through the issue of a revised version.

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<sup>1</sup> The insurance legislation is comprised of the Insurance Act 1978 (as amended by the Insurance Amendment Acts, 1981, 1983, 1985, 1995, 1998 and 2001) and the regulations promulgated under that Act (the “Regulations”). The Regulations are the Insurance Accounts Regulations 1980 (as amended by The Insurance Accounts Amendment Regulations 1981, 1985 and 1989) and the Insurance Returns and Solvency Regulations 1980 (as amended by The Insurance Returns and Solvency Amendment Regulations 1981, 1985 and 1989). References herein to the “Act” are to the Insurance Act 1978 (as amended) and the Regulations.

<sup>2</sup> The legislative summary in this Guideline is not intended to be a substitute for provisions of the Act. The reader is advised to refer to the provisions of the Act and not to rely on the interpretation of those provisions contained in this Guideline.

<sup>3</sup> “IA” means the Insurance Act 1978. “IAR” means the Insurance Accounts Regulations 1980. “IRASR” refers to the Insurance Returns and Solvency Regulations 1980.

- 6 Guidance should be understood as reflecting the minimum standard that the Authority expects insurers and approved persons to observe at all times. For references in these Guidance Notes with respect to the changes in legislation contained in the Insurance Amendment Act 2004 insurers and approved persons must take immediate steps to ensure they are in compliance with the Act. In relation to other matters contained in the Guidance Notes, the Authority encourages insurers and approved persons to come into compliance as soon as possible and, in any event, not later than 31<sup>st</sup> December 2005 or a later date as may be agreed with the Authority in a particular case.

### **Application**

- 7 This guidance applies to persons who must be approved or registered under the Act in the following functions: Principal Representative, Insurance Manager, Broker, Agent or Salesman. In order to be considered for approval by the Authority, the person must meet and maintain the fit and proper criteria as described in this Guidance Note. A person may be a natural person or body corporate.
- 8 When assessing the fitness and propriety of a person, the burden is on the individual and/or the firm sponsoring the application to satisfy the Authority that the person is fit and proper for the role. Where a person has previously been regarded as fit and proper, the Authority reserves the right to reassess whether that person continues to be fit and proper to hold either the current or proposed new duties.
- 9 The fit and proper assessment is both an initial test undertaken during consideration of an application for approval by the Authority and a continuing test in relation to the conduct of the approved person and their relationship with the Authority.
- 10 The Authority will take into account, as appropriate, the particular function under the Act that the person is applying for, the particular function(s) under the Act that the person may already be performing, and, if applicable, the current classification and activities of the insurer registered pursuant to the Act for which the applicant proposes to act. As such, a person who is fit and proper for a particular role may not be considered fit and proper for another role with different responsibilities with the same insurer or for a similar position with another insurer. Conversely a person considered unfit for a particular position with a particular employer may be considered fit in different circumstances.
- 11 It is also important to note that the fit and proper test as applied to one function (e.g. Principal Representative) may differ from that applied to another function (e.g. Broker).

- 12 When assessing the fitness and propriety of a person, each case will be considered on its own merits, and may take into account all relevant matters, including, but not limited to, those set out below.
- 13 When considering each application or when subsequently assessing the fitness and propriety of persons, the Authority may have regard to current, past and prospective matters. Additionally, the Authority may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the person is not fit and proper to perform a specified duty pursuant to the Act.

### **Fitness and Propriety Criteria**

- 14 The Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular duty pursuant to the Act. The most important considerations will be the person's:
- *Competence and capability; and*
  - *Honesty, integrity and reputation.*
- 15 The criteria listed are *guidance* and will be applied in general terms when the Authority is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all matters that would be relevant to a particular determination.
- 16 If a matter comes to the Authority's attention, which suggests that the person might not be fit and proper, the Authority will take into account how relevant and how important the matter is to the overall assessment of the fitness and propriety of the person.
- 17 During the application process, the Authority may discuss the assessment of the candidate's fitness and propriety informally with the insurer making the application and may retain any notes of those discussions.

### **Competence and Capability**

- 18 In determining a person's competence and capability, the Authority will consider, as applicable, matters including, but not limited to:
- Whether the person has relevant experience, sufficient skills, knowledge, and soundness of judgment properly to undertake and fulfill their particular duties and responsibilities;
  - The diligence with which a person is fulfilling or is likely to fulfill those duties and responsibilities is also considered, so that the Authority can

assess whether the person does or will devote sufficient time and attention to them.

- 19 In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had experience of similar responsibilities previously, the record in fulfilling them and, where appropriate, whether the person has appropriate qualifications and training. As to soundness of judgment the Authority looks to the person's previous conduct and decision taking.

### **Honesty, Integrity and Reputation**

- 20 The probity of the person concerned is very important: it is essential that a person approved or registered under the Act is of high integrity. In contrast to the fitness elements of this criterion which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.

- 21 Specifically, the Authority takes into account the person's reputation and character. When determining a person's honesty, integrity and reputation, the Authority will consider matters including but not limited to, those items listed below, which may have arisen in Bermuda or elsewhere:

- Whether the person has been convicted of any criminal offence, this may include, in particular, any offences of dishonesty, fraud, financial crime or other offences under legislation relating to banks, trust companies, companies managers, insurance companies, mutual funds, money service businesses, credit unions and building societies, together with such other financial institutions;
- Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
- Whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including the Authority's predecessor), clearing houses and exchanges, professional bodies, or government bodies or agencies;
- Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or any investigation, which might lead to such proceeding;

- Whether the person has contravened any of the Authority’s regulatory requirements or the rules, regulations, statements of principal or codes of conduct of other regulatory authorities (including the Authority’s predecessor), clearing houses and exchanges, professional bodies, or government bodies or agencies;
- Whether the person has been the subject of any justified complaint relating to regulated activities in Bermuda;
- Whether the person has been involved with a company, partnership or other organization that has been refused registration, authorization, membership or a licence to carry out a trade, business or profession, or has had such registration, authorization, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory body or government body;
- Whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority; the Authority should be told about all such occurrences, but will consider the circumstances only where relevant to the regulatory requirements;
- Whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended by a regulatory or professional body, a court or tribunal, whether publicly or privately;
- Whether the person has been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar;
- Whether the person has ever been disqualified from acting as a director or disqualified from acting in a managerial capacity; and
- Whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the Authority’s regulatory requirements and with other legal, regulatory and professional obligations and ethical standards.

22 While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognizes that lapse of time, and a person’s subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.

### **Continuing Regard**

- 23 Once an individual has been approved or registered, the Authority has continuing regard to the performance of the person in the exercising of his or her functions.
- 24 Imprudence in the conduct of the business, or actions which have threatened (without necessarily having damaged) the interests of policyholders or clients (or potential policyholders or clients) will reflect adversely on the competence and soundness of judgment of those responsible.
- 25 Similarly failure of a person to conduct business with integrity and professional skills will reflect adversely on the probity, competence and soundness of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner.
- 26 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.

### **Considerations**

- 27 Conviction for a criminal offence will not automatically mean an application will be rejected. The Authority treats each application on a case-by-case basis, taking into account the seriousness of, and circumstances surrounding the offence, the explanation offered by the convicted person, the relevance of the offense to the proposed role, the passage of time since the offence was committed and evidence of the person's rehabilitation.

End of guidance note.

***If you have questions on this or other guidance from the Insurance Department please email [info@bma.bm](mailto:info@bma.bm) . Please put "Insurance Guidance" in the title of your email.***