

**Draft Guideline on Fit and Proper Criteria  
to be Issued by the independent Insurance Authority**

**Purpose**

This paper seeks Members' suggestions on matters to be covered by the relevant guideline on fit and proper criteria that may be issued by the independent Insurance Authority ("IIA") in relation to insurance intermediaries.

**Background**

2. Licensed insurance intermediaries and their responsible officers ("ROs")<sup>1</sup> should have the necessary qualities, competencies and experience that will allow them to perform the duties and fulfil the responsibilities required for the relevant position in an effective manner. This aims at ensuring that the insurance advice and services are provided by persons of integrity, credibility and competency. Currently, the three Self-Regulatory Organizations ("SROs") require that applicants must be fit and proper (relevant extracts of the guidelines of the SROs are attached at Annex A). The criteria adopted by the three SROs for determining a person's fitness and propriety can broadly be categorised as follows:

- (a) competence and capability;
- (b) honesty, integrity and reputation; and
- (c) financial soundness.

3. Under the Insurance Companies (Amendment) Ordinance 2015 ("Amendment Ordinance"), persons<sup>2</sup> applying for or granted with insurance intermediaries licences, as well as their owners, partners, directors and controllers, as the case may be, are required to satisfy IIA that they are fit and proper persons.

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<sup>1</sup> A responsible officer is a person who, alone or jointly with others, is responsible for the conduct of the business of a licensed insurance agency or licensed insurance broker company.

<sup>2</sup> A person means a natural person, a sole proprietor, a partnership or a company.

4. New section 64ZZA added by section 74 of the Amendment Ordinance sets out that, in determining whether a person is fit and proper, IIA is required to consider factors such as the person's qualifications, integrity, financial status and compliance history.

### **The Draft Guideline**

5. The draft guideline at **Annex B** is to facilitate the Working Group to discuss what criteria and matters they expect IIA to consider in assessing a person's fitness and propriety so as to facilitate IIA to draw up the relevant guideline as soon as possible. It is likely that IIA will consult the industry formally before finalising the guideline. References have been made to the following when preparing the draft guideline:

- (a) the existing criteria adopted by the three SROs in determining whether a person is fit or proper;
- (b) Guidance Note on "Fit and Proper" Criteria under the Insurance Companies Ordinance (GN4) issued by the Office of the Commissioner of Insurance in relation to insurers; and
- (c) relevant guidelines issued by local and overseas regulatory authorities.

6. The draft guideline deals with the "fit and proper" criteria in relation to insurance intermediaries only. The existing GN4 shall be revised to cater for the regulatory regime for insurers under the Amendment Ordinance.

### **Competence Requirements for Licensed Individual Insurance Agents / Technical Representatives**

7. Currently, eligible individual agents / technical representatives are grandfathered<sup>3</sup> from the minimum education requirement of Form 5

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<sup>3</sup> Grandfathering arrangement in respect of the minimum education requirement of Form 5 standard under the existing regime:

Except for applications for carrying on restricted scope travel business, an applicant being a person who was engaged in the insurance intermediary business in Hong Kong immediately

standard. It is proposed that the same grandfathering arrangement and conditions shall be retained under the new regime provided that the individual agents / technical representatives who rely on the grandfathering arrangement are deemed licensees<sup>4</sup> under the Amendment Ordinance.

8. In view of the new academic structure under which all students are expected to complete a six-year secondary education before taking the Hong Kong Diploma of Secondary Education (“HKDSE”) Examination, we invite the Working Group to express views on the updated minimum educational attainment required for insurance intermediaries. We are aware that the Australian Securities & Investments Commission has recently proposed to raise the minimum educational attainment for insurance intermediaries to bachelor degree. For discussion purpose, we suggest a minimum educational attainment of meeting the general entrance requirements for local undergraduate degree programmes, i.e., -

- (a) obtaining level 3 or above in both Chinese Language and English Language; and
- (b) obtaining level 2 or above in Mathematics Compulsory Part and Liberal Studies.

Statistics on the performance of candidates in the 2015 HKDSE Examination is attached at **Annex C**.

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before 1 January 2000 and has not since ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years is exempted from the Form 5 requirement.

In respect of applications for technical representatives of insurance agencies to carry on restricted scope travel business only, the requirement for Form 5 standard can be waived if the applicant (i) was engaged in the travel agency business in Hong Kong immediately before 15 May 2006 and has not since ceased to be engaged in travel-related work in Hong Kong for two consecutive years; (ii) has proven relevant experience in travel agency business in Hong Kong for a cumulative period of at least five years within the six-year period immediately before 15 May 2006; and (iii) has applied for this waiver on or before 30 April 2008.

<sup>4</sup> Part 5 of new Schedule 11 provides that insurance intermediaries who are validly registered with the three SROs will be deemed as licensees upon the commencement of the new regime for a period of three years.

## Competence Requirements for Responsible Officers of Licensed Insurance Agencies – Minimum Age and Industry Experience

9. Under the existing self-regulatory regime, a registered insurance intermediary which is a business entity is required to appoint an individual<sup>5</sup> who is responsible for the conduct of the entity's insurance intermediary business in Hong Kong. Under the Amendment Ordinance, licensees which are business entities are required to appoint at least one RO for establishing internal control and procedures to promote compliance with conduct requirements by the business entities and its technical representatives. The RO is licensed as a Technical Representative. IIA must not grant an approval unless it is satisfied that the individual is fit and proper to discharge the responsibilities of an RO. The same fit and proper criteria as set out in **Annex B** shall be applicable.

10. In determining the competency of an RO, currently the Hong Kong Confederation of Insurance Brokers ("CIB") and the Professional Insurance Brokers Association ("PIBA") require that a chief executive (i.e. an RO) of its members must be at least 21 years old and possess a minimum of 2 years' experience in the insurance industry occupying a management position. There is no corresponding competence requirement for ROs of insurance agencies registered with the Insurance Agents Registration Board ("IARB").

11. It is proposed that, under the new regime, an RO of a licensed insurance agency will be subject to the same requirements as an RO of an insurance broker company in relation to minimum age and industry experience, i.e. minimum age of 21 and a minimum of 2 years' management experience in the insurance industry. As all existing ROs validly approved by the SROs before the transition will be considered as being approved by IIA during the 3-year transitional period as provided under the Amendment Ordinance, existing ROs eligible for the deemed approval under the Amendment Ordinance will be able to meet the proposed industry experience requirements upon expiry of the transitional period.

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<sup>5</sup> Currently, an insurance agency registered with the Insurance Agents Registration Board is required to appoint a responsible officer and an insurance broker registered with the Hong Kong Confederation of Insurance Brokers or the Professional Insurance Brokers Association is required to appoint a chief executive.

## **Advice sought**

12. Members are invited to comment on the draft Guideline on Fit and Proper Criteria (**Annex B**). We will consolidate Members' comments for IIA's future reference.

**Financial Services and the Treasury Bureau**  
**21 April 2016**

# P A R T E Fit and Proper Criteria for Registered Persons

## Matters Relevant to Fitness and Propriety of Registered Persons

58. In considering whether a person is fit and proper to be or continue to be registered as a Registered Person, the IARB may take into account:

- (a) whether that person has ever been declared bankrupt;
- (b) whether that person has ever been a controller, a director, a company secretary or a senior manager of a corporation that has become insolvent in Hong Kong or elsewhere;
- (c) whether the person has acquired educational or other qualifications commensurate with his proposed responsibilities or responsibilities as a Registered Person;
- (d) whether the person has ever been convicted of any criminal offence in Hong Kong or elsewhere which may affect his fitness, suitability or propriety to be registered as a Registered Person;
- (e) whether the person has ever been found guilty of misconduct in a profession, trade or industry to which he belongs or has belonged;
- (f) whether the person has ever been subject to any order of the court or other competent authority in Hong Kong or elsewhere for fraud, dishonesty or misfeasance;
- (g) whether the person has failed to conduct insurance agency business in a manner complying with clauses 73 to 83 (Part F: Minimum Requirements of Model Agency Agreement and Part G: Conduct of Registered Persons) of this *Code* and/or the rules of the HKFI;
- (h) whether the person is or has ever been found not to have complied with or to be in breach of this *Code* and/or the rules of the HKFI;
- (i) whether the person possesses the qualifications specified in clauses 61 to 70 (Minimum Qualifications for Persons to be registered as Registered Persons);
- (j) whether the person has been registered as an MPF intermediary with the MPFA where the person is engaged in selling or advising on Mandatory Provident Fund schemes or their constituent or underlying funds;
- (k) if the person is or has been an MPF intermediary, whether the person is found not to have complied with or is in breach of the *MPF Code*;
- (l) in case where the person is a company, partnership or sole proprietorship, whether the person has taken adequate measures to ensure that each of its directors and employees, as appropriate:
  - (i) has registered as an MPF intermediary with the MPFA; and
  - (ii) complies with the requirements as specified in the *MPF Code*



- where the director or employee is engaged in selling or advising on Mandatory Provident Fund schemes or their constituent or underlying funds; and
- (m) such other matters as the IARB considers relevant in the circumstances.
59. The IARB may consider a person not fit and proper to be or continue to be registered as a Registered Person if:
- (a) his appointment as a Registered Person was terminated by a Principal or appointing insurance agent pursuant to a requirement imposed by the IARB or the Insurance Authority; or
  - (b) in the opinion of the IARB, by his words or actions, he has manifested a material lack of understanding of the duties and ethical responsibilities of a Registered Person.
60. The IARB may consider a person not fit and proper to be or continue to be registered as an insurance agent if:
- (a) its appointed Responsible Officers or any of its Technical Representatives would not be considered fit and proper to act as an insurance agent if he applied as an individual; or
  - (b) any of its controllers or directors would not be considered fit and proper to act as an insurance agent if he applied as an individual. For the purpose of this sub-clause, the requirements specified in clauses 61(b) to (d) and 70 are not applicable to any controller or director not being an insurance agent, a Responsible Officer or Technical Representative.

#### **Minimum Qualifications for Persons to be Registered as Registered Persons**

61. The minimum qualifications that an individual must fulfill before he may be considered by the IARB to be fit and proper to be registered as a Registered Person are that:
- (a) he has attained the age of 18;
  - (b) he is a Hong Kong Permanent Resident or Hong Kong Resident whose employment visa conditions, if any, do not restrict him from acting as an insurance agent, a Responsible Officer or a Technical Representative;
  - (c) he has completed education to a level of Form 5 or equivalent unless he was engaged in the insurance intermediary business in Hong Kong immediately before 1 January 2000 and has not since ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years;
  - (d) he has successfully passed the relevant papers of the Insurance Intermediaries Qualifying Examinations recognized by the Insurance Authority (the Qualifying Examinations) unless he has been exempted under the criteria specified in clauses 64 to 66 as appropriate; and
  - (e) he complies with such rules and policies as may be prescribed by the Insurance Authority or the HKFI as applicable to him from time to time.

62. The Qualifying Examinations consist of the following Papers:
- (a) Paper I - Principles and Practice of Insurance;
  - (b) Paper II - General Insurance;
  - (c) Paper III - Long Term Insurance;
  - (d) Paper IV - MPF Schemes;
  - (e) Paper V - Investment-linked Long Term Insurance;
  - (f) Paper VI - Travel Insurance Agents; and/or
  - (g) such other examinations as may be prescribed by the Insurance Authority from time to time.
63. Subject always that no Registered Person shall be engaged in a class of insurance business other than that his Principal or his appointing insurance agent is authorized to conduct, a Registered Person, unless exempted under clauses 64 to 66 as appropriate, is only eligible to be engaged in a Line of Insurance Business in respect of which he has passed the relevant Qualifying Examination paper(s). An individual must pass:
- (a) Papers I and II before he can be registered to be engaged in General Business;
  - (b) Papers I and III before he can be registered to be engaged in Long Term (excluding Linked Long Term) Business;
  - (c) Papers I, III and V before he can be registered to be engaged in Long Term (including Linked Long Term) Business; and/or
  - (d) Paper VI before he can be registered to be engaged in the Restricted Scope Travel Business.
64. An individual shall be exempted from Papers I, II, III and VI as appropriate of the Qualifying Examinations referred to in clause 62 if he:
- (a) was engaged in the insurance intermediary business in Hong Kong immediately before 1 January 2000 and is in possession of one of the following:
    - (i) proven relevant experience in insurance business in Hong Kong for a cumulative period of at least five years within the six-year period immediately before 1 January 2000; or
    - (ii) the Certificate of Proficiency in General Insurance Studies issued by the HKFI;
  - or
  - (b) is in possession of any of the following recognized professional qualifications in insurance or actuarial science:
    - (i) Associate or Fellow of the Chartered Insurance Institute (ACII/FCII);
    - (ii) Senior Associate or Fellow of the Australian and New Zealand Institute of Insurance and Finance [ANZIIF (Snr Assoc) / ANZIIF (Fellow)];
    - (iii) Fellow of the Life Management Institute (FLMI);
    - (iv) Chartered Life Underwriter (CLU);
    - (v) Chartered Property Casualty Underwriter (CPCU);
    - (vi) Hong Kong Diploma in Insurance Studies of the Insurance Institute of Hong Kong;
    - (vii) Fellow of the Institute of Actuaries of England (FIA);
    - (viii) Fellow of the Faculty of Actuaries in Scotland (FFA);





- (ix) Fellow of the Institute of Actuaries of Australia (FIAA); or
  - (x) Fellow of the Society of Actuaries of the United States of America (FSA);  
or other qualifications acceptable to the Insurance Authority.
65. Other than clause 64, an individual shall be exempted from Paper VI of the Qualifying Examinations if he has passed Papers I and II of the Qualifying Examinations.
66. From 1 March 2010, the exemption in sub-clause (a)(i) to (ii) inclusive below will no longer apply. From that time, Registered Persons may engage or continue to engage in Long Term (including Linked Long Term) Business in accordance with GN11-Guidance Note Applicable to Registered Persons Wishing to Engage/Continue to Engage in Investment-linked Long Term Insurance Business on or after 1 March 2010 as in force from time to time.

An individual shall be exempted from Paper V of the Qualifying Examinations if he:

- (a) was engaged in long term insurance intermediary business in Hong Kong immediately before 1 January 2002 and has fulfilled all of the following:
    - (i) has proven long term insurance experience in Hong Kong for a cumulative period of at least seven years within the eight-year period immediately before 1 January 2002; and
    - (ii) has proven experience in Hong Kong in selling at least four linked long term policies per annum and 50 linked long term policies in total within the five-year period immediately before 1 January 2002;
  - or
  - (b) is in possession of any of the following recognized professional qualifications in insurance, investment or actuarial science:
    - (i) Chartered Life Underwriter (CLU) with an elective paper "HS 328 Investments" in the CLU qualifying examination successfully passed;
    - (ii) Chartered Financial Consultant (ChFC);
    - (iii) Certified Financial Planner (CFP);
    - (iv) Fellow of the Institute of Actuaries of England (FIA);
    - (v) Fellow of the Faculty of Actuaries in Scotland (FFA);
    - (vi) Fellow of the Institute of Actuaries of Australia (FIAA);
    - (vii) Fellow of the Society of Actuaries of the United States of America (FSA);
    - (viii) Foundation Programme Examination of the Hong Kong Securities Institute (FPE) successfully passed;
    - (ix) Diploma Programme Examination of the Hong Kong Securities Institute (DPE) successfully passed;
    - (x) HKSI Practising Certificate of the Hong Kong Securities Institute;
    - (xi) HKSI Specialist Certificate of the Hong Kong Securities Institute; or
    - (xii) HKSI Professional Diploma in Financial Markets of the Hong Kong Securities Institute;
- or other qualifications acceptable to the Insurance Authority.

67. Subject always that no Registered Person shall be engaged in a class of insurance business other than that his Principal or his appointing insurance agent is authorized to conduct:

- (a) a Registered Person who has been exempted under clause 64(a)(i) is eligible to be engaged in the Line of Insurance Business [only for (i) General Business or Restricted Scope Travel Business, and (ii) Long Term (excluding Linked Long Term) Business] in which he has been engaged for five years within the six-year period immediately before 1 January 2000 or has substantially been engaged during that five-year period;
- (b) a Registered Person who has been exempted under clause 64(a)(ii) is eligible to conduct general insurance agency business or restricted scope travel insurance agency business;
- (c) a Registered Person who has been exempted under clause 64(b)(i) to (vi) is eligible to conduct general and long term (excluding linked long term) insurance agency business and restricted scope travel insurance agency business;
- (d) a Registered Person who has been exempted under clause 64(b)(vii) to (x) and clause 66(b)(iv) to (vii) is eligible to conduct general, long term (excluding linked long term) and long term (including linked long term) insurance agency business and restricted scope travel insurance agency business;
- (e) a Registered Person who is eligible to conduct long term (excluding linked long term) insurance agency business and has been exempted under clause 66 is also eligible to conduct long term (including linked long term) insurance agency business;

but such Registered Persons are not eligible to conduct any additional insurance agency business unless qualified to conduct such business under another clause of this *Code*.

68. Subject to GN11 - Guidance Note Applicable to Registered Persons Wishing to Engage/Continue to Engage in Investment-linked Long Term Insurance Business on or after 1 March 2010 as in force from time to time, an individual who has ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years shall pass the relevant papers of the Qualifying Examinations before he can be re-appointed and registered as a Registered Person, unless he has been exempted under clauses 64(b) and 66(b) as appropriate.

69. Subject to GN11 - Guidance Note Applicable to Registered Persons Wishing to Engage/Continue to Engage in Investment-linked Long Term Insurance Business on or after 1 March 2010 as in force from time to time, an individual who has passed the relevant papers of the Qualifying Examinations for two consecutive years during which he has not been engaged in insurance-related work in the insurance industry in Hong Kong, shall pass the relevant papers of the Qualifying Examinations again before he can be appointed and registered as a Registered Person, unless he has been exempted under clauses 64(b) and 66(b) as appropriate.



70. All Registered Persons shall comply with the requirements of the Continuing Professional Development Programme in such manner and form as specified by the Insurance Authority.

**Insurance Agent which is an Insurance Agency**

71. An insurance agent which is an Insurance Agency shall have an appointed Responsible Officer. Subject always that no insurance agent shall be engaged in a class of insurance business other than that his/its Principal is authorized to conduct, an insurance agent which is an Insurance Agency is only eligible to be engaged in the Line of Insurance Business which its Responsible Officer is eligible to be engaged in.

**Additional Matters Relevant to Fitness and Propriety of Responsible Officers and Technical Representatives**

72. In considering whether a person is fit and proper to act or continue acting as a Responsible Officer or Technical Representative, the IARB shall take into account whether that person is fit to act in the particular Line of Insurance Business in which he intends to be registered as being engaged in the same manner as for an application for registration by an individual insurance agent.

#### 4. Fit and Proper Criteria

- 4.1 In considering whether a person is fit and proper, the Confederation shall take into account all relevant factors, which include, in relation to such person:
- 4.1.1 his character and reputation;
  - 4.1.2 his integrity and reliability;
  - 4.1.3 his financial status; and
  - 4.1.4 his capabilities to perform functions and to comply with laws and regulations.
- 4.2 Without limiting the criteria set out in Regulations 4.1.1 to 4.1.4, the following events and matters would likely give rise to a concern in respect of the fit and proper status of a person:
- 4.2.1 such person has been convicted of a criminal offence by any court (including a military tribunal) in Hong Kong or elsewhere;
  - 4.2.2 such person has been adjudged to be civilly liable for fraud, dishonesty or misfeasance by a court in Hong Kong or elsewhere;
  - 4.2.3 such person has been adjudicated bankrupt by a court in Hong Kong or elsewhere;
  - 4.2.4 such person was a director or involved in the management of a corporation in Hong Kong or elsewhere which has been wound up other than by a members' voluntary winding up or equivalent in any other jurisdiction;
  - 4.2.5 such person has any unsatisfied judgement or court order requiring the payment of damages or other sums of money;
  - 4.2.6 such person has been censured, disciplined, disqualified or criticised by any regulatory body or self-regulatory organization or professional body in Hong Kong or elsewhere.
- 4.3 Notwithstanding the foregoing, the assessment as to whether any person is to be considered fit and proper shall be at the discretion of the General Committee, or at the discretion of the Disciplinary Committee or the Disciplinary Appeals Committee in their deliberation of Complaints.

9. Minimum Requirements for a Chief Executive

9.1 A Member shall satisfy the General Committee that the person it has nominated as its Chief Executive complies with all of the following minimum requirements before such person may be registered as the Chief Executive of a Member:

9.1.1 he is at least twenty-one years of age;

9.1.2 he is a Hong Kong Permanent Resident or Hong Kong Resident but is permitted to work in Hong Kong and whose employment visa conditions, if any, do not restrict him from being engaged in insurance broking business and he resides in Hong Kong;

9.1.3 he has attained an education standard of Form 5 (or equivalent) or higher;

9.1.4 he is a Fit and Proper Person;

9.1.5 he is a full-time Employee or full-time Director of the Member and is responsible for the conduct of the whole of the insurance broking business of the Member in Hong Kong, and under whom the direction and overall day to day supervision and control of the business of the company in Hong Kong is conducted, and to avoid any doubt, "full-time" in this context means that he shall not be registered as either Chief Executive or Technical Representative of another insurance broker in Hong Kong unless that insurance broker is of the same group of companies of the Member concerned or that insurance broker and the Member are the two parties to an instrument which has created a power of attorney, or equivalent, between themselves;

9.1.6 he is registered for specific Lines of Business by the Confederation;

9.1.7 he possesses a minimum of two years' experience in the insurance industry occupying a management position;

9.1.8 he is:

(a) possesses an Acceptable Insurance Qualification and, where he intends to be engaged in the linked long term insurance broking business, has passed the relevant paper of the Qualifying Examination unless exempted; or

(b) where he does not have an Acceptable Insurance Qualification has a minimum of five years' experience in the insurance industry and has passed the relevant papers of the Qualifying Examinations unless exempted; and

9.1.9 he is in compliance with the CPD Programme.

- 9.2 A Chief Executive shall comply with the requirements in Regulations 9.1.1 to 9.1.9 for as long as he remains registered with the Confederation as the Chief Executive of a Member.
- 9.3 A Chief Executive shall notify the Confederation in writing of any event or circumstance which results in a breach by himself of any of these Regulations applicable to him not later than fourteen days following discovery of such event or circumstance.

#### 10. Minimum Requirements for a Technical Representative

- 10.1 A person nominated as a Technical Representative of a Member shall satisfy the Confederation that he complies with all the following requirements before he may be registered as the Technical Representative of a Member:
- 10.1.1 he is at least eighteen years of age;
- 10.1.2 he is:
- (a) a Hong Kong Permanent Resident or a Hong Kong Resident but is permitted to work in Hong Kong and whose employment visa conditions, if any, do not restrict him from being engaged in insurance broking business and he is resident in Hong Kong; or
  - (b) a person who is permitted to work in Hong Kong and whose employment visa conditions, if any, do not restrict him from being engaged in insurance broking business;
- 10.1.3 he has attained an education standard of Form 5 (or equivalent) or higher, unless he was engaged in the insurance intermediary business in Hong Kong immediately before 1 January 2000 and has not since ceased to be engaged in insurance-related work in the insurance industry in Hong Kong for two consecutive years;
- 10.1.4 he is registered for specific Lines of Business by the Confederation;
- 10.1.5 he is a Fit and Proper Person;
- 10.1.6 he has passed the relevant papers of the Qualifying Examinations unless exempted; and
- 10.1.7 he is in compliance with the CPD Programme.
- 10.2 A Technical Representative shall comply with the requirements in Regulations 10.1.1 to 10.1.7 for as long as he remains registered with the Confederation as a Technical Representative of a Member.
- 10.3 A Technical Representative shall notify the Confederation in writing of any event or circumstance which results in a breach by himself of any of these Regulations applicable to him not later than fourteen days following discovery of such event or circumstance.

2A Chief Executive and Eligibility of a Person to be a Chief Executive

A chief executive is a person who, by application, has been listed in the Register of Chief Executive of the Association. Only persons whose names are on such a register for the time being shall be allowed to act as a member's representative to the Association. Any person shall be eligible to apply for registration as a chief executive provided that he/she has met the requirements for a chief executive as stipulated in the Articles of Association of the Association and the Minimum Requirements for Insurance Brokers issued by the Insurance Authority and also he/she has satisfied the Association that:-

- (a) if he/she holds an insurance qualification approved by the Association, he/she has a minimum of two years experience occupying a management position in the insurance industry;
- (b) if he/she holds no insurance qualification, he/she has a minimum of five years relevant experience in the insurance industry of which two years is at management position;
- (c) he/she has attained a minimum education level of Form 5 standard;
- (d) he/she is a fit and proper person and has always, in the opinion of the Association, complied with recognized ethical standard in his/her business dealings, and has not been convicted of any criminal offence, or has not been adjudicated bankrupt or wound-up by the Court, or found guilty of misconduct by a professional body to which he belongs or by the Association in breach of guidelines and regulations which may be from time to time determined by the Association concerning the conduct and integrity of the members;
- (e) he/she is a resident in HKSAR and is at least 21 years of age;
- (f) he/she is appointed or employed by a member company of the Association at the time of application to be registered as chief executive.

Each Member shall have one Chief Executive, and it may have not more than one Alternate Chief Executive.

# **Guideline on Fit and Proper Criteria For Licensed Insurance Intermediaries Under the Insurance Ordinance**

**Published under Section 133 of the Insurance Ordinance  
(Chapter 41)**

*[This is a working draft prepared by the Financial Services and the Treasury Bureau / Office of the Commissioner of Insurance to invite views of the Working Group. This does not pre-empt the decision of the independent Insurance Authority.]*



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## **Guideline on Fit and Proper Criteria for Licensed Insurance Intermediaries under the Insurance Ordinance**

### **Introduction**

This Guideline is issued by the Insurance Authority (“IA”) pursuant to section 133 of the Insurance Ordinance (Chapter 41) (the “Ordinance”).

Licensed insurance intermediaries and their responsible officers should have the necessary qualities, competencies and experience that will allow them to perform the duties and fulfill the responsibilities required of the relevant position in an effective manner. This aims at ensuring that the insurance advice and services are provided by persons of integrity, credibility and competency.

This Guideline is intended to outline the criteria and matters that the IA will normally consider in determining whether a person is fit and proper. The criteria and matters set forth herein are not exhaustive and do not constitute legal advice or create additional legal obligations beyond those contained in the Ordinance.

The onus of proof in establishing fitness and properness rests with the person who is subject to such requirements. Persons who are unsure about whether they meet the relevant requirements are encouraged to approach the IA before submitting an application. Where there are concerns about the fitness and properness of a person, the person may be required to provide additional information for the IA’s consideration and/or to attend interviews with the IA for clarification about the concerns.

Despite a person’s failure to comply with certain criteria set out in this Guideline, the IA may nonetheless be satisfied that the person is fit and proper. This depends on the following factors:

- (a) the seriousness of the person’s failure to comply with the criteria and the surrounding circumstances resulting in such non-compliance;
- (b) the relevance of the person’s failure to comply with the criteria to the responsibilities that are, or are to be, assumed by the person; and
- (c) the passage of time since the person’s failure to comply with the criteria.

### **Applicability**

Any persons applying for an insurance intermediary licence under sections 64U, 64W, 64Y, 64ZA or 64ZC of the Ordinance must satisfy the IA that they are fit and proper persons to carry on regulated activities in the lines of business concerned. In respect of applications for an insurance agency licence or insurance broker company licence, any persons applying for

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approval to become responsible officers of the insurance intermediaries concerned under sections 64ZE and 64ZF of the Ordinance must also satisfy the IA that they will be fit and proper to discharge their responsibilities as responsible officers, and the owner(s), director(s) and controller(s)<sup>1</sup> (where applicable) of such applicants concerned must also satisfy the IA that they are fit and proper persons. The IA shall refuse an application if the applicant is not fit and proper.

Licensed insurance intermediaries, their responsible officers and their owner(s)/director(s)/controller(s) (where applicable) must continue to be fit and proper during the licence period.

Under section 81 of the Ordinance, the IA may take disciplinary actions against a regulated person<sup>2</sup> if the IA is of the opinion that the person is or was not a fit and proper person. The powers available to the IA under the Ordinance, include:

- (a) revocation or suspension of a licence;
- (b) revocation or suspension of the approval granted to a responsible officer;
- (c) prohibition from applying for a licence or being approved as a responsible officer;
- (d) public or private reprimand; and
- (e) pecuniary penalty.

In addition, the IA may also exercise the above powers as relevant on a licensed insurance intermediary being an individual, or a partner or director of a licensed insurance agency or insurance broker company, if the person has been found by a court to be mentally incapacitated, or is detained in a mental hospital, under the Mental Health Ordinance (Cap.136), which in the IA's opinion impugns the fitness and properness of the insurance intermediary concerned.

Insurance intermediary licences under section 64ZV of the Ordinance will not be renewed by the IA if, in the IA's opinion, the person is considered not fit and proper.

This Guideline should be read in conjunction with the relevant provisions of the

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<sup>1</sup> The term "controller" has the meaning given in section 64F of the Ordinance. The controllers of licensed insurance agencies and insurance broker companies broadly refer to those persons who are in a position to exert control over the operations of these intermediaries.

<sup>2</sup> Under section 80 of the Ordinance, a regulated person means:

- (a) a licensed insurance intermediary;
- (b) a responsible officer of a licensed insurance agency;
- (c) a responsible officer of a licensed insurance broker company;
- (d) a person concerned in the management of the regulated activities carried on by a licensed insurance agency; or
- (e) a person concerned in the management of the regulated activities carried on by a licensed insurance broker company.

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Ordinance, the relevant subsidiary legislation as well as the relevant codes and guidelines issued by the IA.

The expressions used in this Guideline shall, except where expressly defined in this Guideline, have the same meanings as in the Ordinance in which the expressions are referred to or used.

### **Fit and Proper Criteria**

Section 64ZZA of the Ordinance stipulates that the IA must have regard to the following matters in determining whether a person is a fit and proper person:

- (a) the person's education, qualifications or experience;
- (b) the person's ability to carry on a regulated activity competently, honestly and fairly;
- (c) the person's reputation, character, reliability and integrity;
- (d) the person's financial status or solvency;
- (e) disciplinary actions taken by financial regulators against the person;
- (f) information about the person's related companies and any controller/director of those related companies (if applicable);
- (g) other business which the person carries on or proposes to carry on;
- (h) in respect of an application for an insurance agency licence or insurance broker company licence or renewal of such licence, information about:
  - i. employees of the applicant or other persons associated with the carrying on of regulated activities;
  - ii. representatives of the applicant in relation to carrying on of regulated activities; and
  - iii. the applicant's internal control procedures and risk management systems for compliance with the Ordinance; and
- (i) any other matter that the IA considers relevant.

In assessing a person's fitness and properness, the IA may, in addition to the criteria set out in this Guideline, consider other factors that may be relevant.

In the case where the person is a licensed insurance agency or insurance broker company, the following matters will also be considered in determining whether it is a fit and proper person:

- (a) whether its owner(s), directors and controllers, as the case may be, are fit and proper persons;
- (b) whether it has in place appropriate recruitment policies for its technical representatives (agent)/(broker);
- (c) whether it has in place proper internal controls in relation to its conduct of regulated activities for compliance with the conduct requirements for licensed

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insurance intermediaries and whether it uses its best endeavours to secure observance with those internal controls by its technical representatives (agent)/(broker);

- (d) whether its responsible officer(s) has been given sufficient authority and provided with sufficient resources for discharging the responsibilities required of a responsible officer under the Ordinance; and
- (e) whether its responsible officer(s) has implemented proper internal controls in relation to its conduct of regulated activities and uses his best endeavours to secure observance with those internal controls by its technical representatives (agent)/(broker).

The criteria for determining whether a person is fit and proper can broadly be categorized as follows:

- (a) competence and capability;
- (b) honesty, integrity and reputation; and
- (c) financial soundness.

### Competence and Capability

In determining a person's fitness and properness, the IA must consider the person's education, qualifications, experience and ability to carry on the relevant regulated activity competently having regard to the nature of the functions or duties which the person is required to perform.

#### Individual

In relation to an application for the following licence under the Ordinance:

- (a) an individual insurance agent licence under section 64W
- (b) a technical representative (agent) licence under section 64Y
- (c) a technical representative (broker) licence under 64ZC

the applicant is unlikely to be fit and proper if any of the following criteria are not fulfilled:

- (a) minimum age of 18;
- (b) a Hong Kong permanent resident or a person holding an appropriate employment visa;
- (c) ***[obtaining level 3 or above in both Chinese Language and English Language, and obtaining level 2 or above in Mathematics Compulsory Part and Liberal Studies in the Hong Kong Diploma of Secondary Education Examination]***

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*unless otherwise exempted<sup>3</sup>*]; and

***In view of the new academic structure under which all students are expected to complete a six-year education before taking the Hong Kong Diploma of Secondary Education Examination, we invite the Working Group to express views on the updated minimum educational attainment required for insurance intermediaries.***

- (d) passing the relevant papers of the Insurance Intermediaries Qualifying Examination under the Insurance Intermediaries Quality Assurance Scheme unless otherwise exempted.

### Responsible Officer

A responsible officer is licensed as a technical representative.

In relation to an application for an approval for a responsible officer of a licensed insurance agency under section 64ZE, the applicant is unlikely to be fit and proper if any of the following criteria are not fulfilled:

- (a) minimum age of 21; and  
(b) a minimum of two years' management experience in the insurance industry.

In relation to an application for an approval for a responsible officer of a licensed insurance broker company under section 64ZF, the applicant is unlikely to be fit and proper if any of the following criteria are not fulfilled:

- (a) minimum age of 21;  
(b) a minimum of five years' experience in the insurance industry or an acceptable insurance qualification including, but not limited to, the following:
- Associate or Fellow of the Chartered Insurance Institute (ACII/FCII);
  - Senior Associate or Fellow of the Australian and New Zealand Institute of Insurance and Finance (ANZIIF (Snr Assoc)/ANZIIF (Fellow));
  - Fellow of the Life Management Institute (FLMI);
  - Chartered Life Underwriter (CLU);
  - Chartered Property Casualty Underwriter (CPCU);
  - Hong Kong Diploma in Insurance Studies of The Chartered Insurance

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<sup>3</sup> Exemption from the educational requirement is granted to deemed licensees under the Insurance Companies (Amendment) Ordinance 2015, i.e. persons who were, immediately before the commencement of Part 5 of Schedule 11 to the Ordinance, registered with the Insurance Agents Registration Board, The Hong Kong Confederation of Insurance Brokers or Professional Insurance Brokers Association, as individual agents or technical representatives, and regarded as having been granted individual insurance agent licences, technical representative (agent) licences or technical representative (broker) licences (as the case may be) under the Ordinance from the relevant commencement date.

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- Institute (including that issued by The Insurance Institute of Hong Kong prior to its merger with The Chartered Insurance Institute Hong Kong Limited);
- Fellow of the Institute of Actuaries of England (FIA);
  - Fellow of the Faculty of Actuaries in Scotland (FFA);
  - Fellow of the Institute of Actuaries of Australia (FIAA); and
  - Fellow of the Society of Actuaries of the United States of America (FSA); and
- (c) a minimum of two years' management experience in the insurance industry.

In assessing the relevance of an applicant's experience, the IA will consider the role and functions to be undertaken by the applicant and whether the applicant's experience will enable him to understand and carry out the responsibilities of the role as responsible officer. The applicant's experience gained in Hong Kong or elsewhere that is closely related to the functions to be performed will be recognized, including experience in deciding or supervising how the insurance services or products to be provided by his appointing licensed insurance agency or licensed insurance broker company.

### Continuing Professional Development

It is of paramount importance for licensed insurance intermediaries to ensure their professional competence in providing advice and services to their clients. To this end, a licensed insurance intermediary being an individual is unlikely to be fit and proper if he has failed to comply with the continuing training requirements as set out in the Guideline on Continuing Professional Development.

### Corporation

In the case where the applicant is a corporation, the IA will consider whether it is competent at the organizational level, i.e. organizational competence. The IA will assess the applicant's proposed corporate governance structure and internal controls as well as the knowledge and skills of the persons who will manage its business in relation to regulated activities. Such competence requirements will depend on the nature, scale and complexity of the insurance services and products to be provided.

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

In determining a person's fitness and properness, the IA must consider the following factors:

- (a) the person's ability to carry on the relevant regulated activity honestly and fairly;
- (b) the person's reputation, character, reliability and integrity; and
- (c) whether any disciplinary actions have been taken by financial regulators and professional bodies against the person.

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Factors relevant to the assessment in this regard include, but are not limited to, whether the person:

- (a) has failed to or has demonstrated an unwillingness to comply with any requirements under the Ordinance or other regulatory requirements prescribed in any codes and guidelines made thereunder;
- (b) has been untruthful or uncooperative in the dealings with the IA or other regulatory authorities;
- (c) has been dismissed from any office or employment or refused entry to any profession or occupation;
- (d) has been found by a court or other competent authority for fraud, dishonesty or misfeasance;
- (e) has been convicted of a criminal offence or is the subject of unresolved criminal charges;
- (f) has been subject to any investigation or disciplinary proceedings;
- (g) has been censured, disciplined or disqualified by any regulatory authorities or professional bodies in relation to any trade, business or profession;
- (h) has been a director or controller of a firm, which is the subject of the circumstances mentioned in (d), (e), (f) or (g) above; and
- (i) has been disqualified by a court of competent jurisdiction from being a director or acting in any managerial capacity.

### **Financial Soundness**

In determining a person's fitness and properness, the IA must consider the person's financial status or solvency. A person is unlikely to be fit and proper if the person:

- (a) has failed to fulfil its or his financial obligations;
- (b) has failed to meet any judgement debt;
- (c) in the case where the person is an individual:
  - i. is an undischarged bankrupt, is currently subject to bankruptcy proceedings, or is recently discharged from bankruptcy;
  - ii. has been a director or controller of a corporation, which is or has been compulsorily wound up or has made any compromise or scheme of arrangement with its creditors;
- (d) in the case where the person is a corporation:
  - i. is or has been subject to receivership, administration, liquidation or other similar proceedings;
  - ii. has entered into a scheme of arrangement with its creditors; or
  - iii. has been a director or controller of a corporation, which is or has been compulsorily wound up or has made any compromise or scheme of

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- arrangement with its creditors; and
- (e) in the case where the person is a licensed insurance broker company, it should have and maintain at all times sufficient resources for compliance with the requirements in respect of capital and net assets prescribed under the Ordinance.





(Extract)

## PRESS RELEASE

### 2015 Hong Kong Diploma of Secondary Education Examination Results Released

The Hong Kong Examinations and Assessment Authority (HKEAA) will release the results of the 2015 Hong Kong Diploma of Secondary Education Examination (HKDSE) tomorrow (15 July).

A total of 74,131 candidates entered the 2015 HKDSE, representing a 7% decrease from last year. Among them, 61,136 are day school candidates while 11,932 are private candidates. There are 498 participating schools this year.

Three categories of subjects are offered in the HKDSE: Category A Senior Secondary subjects, Category B Applied Learning subjects and Category C Other Language subjects. About 85% of school candidates registered for two to three elective subjects in addition to the four core subjects, namely Chinese Language, English Language, Mathematics and Liberal Studies.

This year, a total of 41,527 day school candidates obtained level **2** or above in five subjects including Chinese Language and English Language. This represents 69.5% of day school candidates, which has risen by 1.2% as compared to last year. These candidates are eligible to apply for sub-degree courses and relevant civil service posts.

The percentage of day school candidates who have met the general entrance requirements for local undergraduate university programmes is 40.3%, which is similar to last year. These 24,547 day school candidates obtained level **3** or above in both Chinese Language and English Language, and level **2** or above in Mathematics Compulsory Part and Liberal Studies.

The general performance of day school candidates in the four core subjects is broadly comparable to that of last year. In Chinese Language, 52.6% of day school candidates attained level **3** or above, while 81.9% and 7.5% were awarded level **2** or above and level **5** or above respectively.

About 52.4% of day school candidates obtained level **3** or above in English Language, which is similar to last year's figure. The percentages of candidates getting level **2** or above and level **5** or above are 79.3% and 8.8% respectively.