
BOARD NOTICE

NOTICE 113 OF 2015

FINANCIAL SERVICES BOARD

REGISTRAR OF LONG-TERM INSURANCE AND SHORT-TERM INSURANCE

LONG-TERM INSURANCE ACT, 1998 (ACT NO. 52 OF 1998) AND SHORT-TERM INSURANCE ACT, 1998 (ACT 53 OF 1998)

PROPOSED FIT AND PROPER REQUIREMENTS

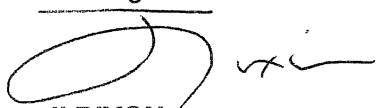
I, Jonathan Ian Dixon, Deputy Registrar of Long-term Insurance and Deputy Registrar of Short-term Insurance, hereby, under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and Short-term Insurance Act, 1998 (Act No. 53 of 1998) ("the Acts"), publish for public comment the proposed fit and proper requirements to be prescribed pursuant to the definition of "fit and proper" in sections 1 of the Acts as set out in Schedule A hereto.

Section 1 was amended through the Financial Services Laws General Amendment Act, 2013 (Act No. 45 of 2013) to provide that the Registrar may prescribe such requirements, and came into effect on 28 February 2014.

The proposals set out in the Schedule are aligned with the Insurance Core Principles of the International Association of Insurance Supervisors (October 2013).

It is envisaged that the final requirements will be published by 31 July 2015 for implementation by 1 September 2015.

Comments on the proposed amendment may be submitted in writing on or before 1 July 2015 to the Registrar at FSB.FitProper@FSB.co.za.



JI DIXON

Deputy Registrar of Long-term Insurance and Deputy Registrar of Short-term Insurance

SCHEDULE A

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PART 1: INTERPRETATION

Definitions

1. In this Schedule any word or expression to which a meaning has been assigned in the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or Short-term Insurance Act, 1998 (Act No. 53 of 1998), as the case may be, has the same meaning, and, unless the context indicates otherwise

—
“Board Notice 158 of 2014” means Board Notice 158 of 2014 as published in Government Gazette No. 38357 of 19 December 2014 that prescribes the Governance and Risk Management Framework for Insurers;

“insurer” means a long-term insurer or a short-term insurer, as the case may be;

“regulatory authority” has the meaning set out in section 1 of the Financial Services Board Act;

“significant owner” has the meaning set out in section 1 of Board Notice 158 of 2014; and

“the Act” means the Long-term Insurance Act, 1998 or the Short-term Insurance Act, 1998 or both, as the case may be.

PART 2: MATTERS TO BE TAKEN INTO ACCOUNT BY REGISTRAR

2. (1) For purposes of sections 9 and 12 of the Act, and section 22 of the Long-term Insurance Act, 1998 and section 21 of the Short-term Insurance Act, 1998, the Registrar must take into account the requirements referred to in Part 3 when considering if a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) is fit and proper.

(2) For purposes of section 12 of the Act, the Registrar must take into account the requirements referred to in Part 4 when considering if a significant owner is fit and proper.

(3) The Registrar in taking into account the requirements referred to in Parts 3 or 4 must have

due regard to –

- (a) the seriousness of, and surrounding circumstances resulting in, a person not meeting the requirements;
 - (b) the relevance of the failure by a person to meet the specific criteria to the duties that are or are to be performed and the responsibilities that are or are to be assumed by that person; and
 - (c) the passage of time since the failure by a person to meet the specific criteria.
- (4) The Registrar, in addition to subsection (3), in taking into account the requirements referred to in Part 4 must have due regard to –
- (a) the nature and scope of the significant owner's business; and
 - (b) the structure of any group that the insurer is part of, if applicable.

PART 3: FIT AND PROPER REQUIREMENTS FOR DIRECTOR, MANAGING EXECUTIVE, PUBLIC OFFICER, AUDITOR OR STATUTORY ACTUARY

Requirements relating to competency

3. A director, managing executive, public officer, auditor or statutory actuary (or his or her alternate), at all times, must –

- (a) have satisfactory past performance or expertise in respect of the duties that that person must perform; and
- (b) have satisfactory educational qualification or experience, relevant skills and knowledge in respect of the duties that that person must perform.

Requirements relating to integrity

4. (1) A director, managing executive, public officer, auditor or statutory actuary (or his or her alternate), at any time, in the Republic or elsewhere, must not have -

- (a) been convicted or be the subject of any pending proceedings which may lead to such a conviction under any law in any jurisdiction of –
 - (i) an offence under a law relating to the regulation or supervision of a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) or a corresponding offence under the law of a foreign country;
 - (ii) theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or
 - (iii) an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992) or Parts 1 to 4, or section 17, 20

- or 21, of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence under the law of a foreign country;
where the penalty imposed for the offence is or was -
- (aa) imprisonment without the option of a fine; or
 - (bb) a fine exceeding R5,000 (or a corresponding amount where the person was convicted in a foreign country), which has not been expunged;
 - (iv) any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, where the penalty imposed for the offence is or was imprisonment without the option of a fine;
- (b) accepted civil liability for fraud or misrepresentation under any law;
 - (c) been the subject of frequent or severe preventative, remedial or enforcement actions by the Registrar or a regulatory authority;
 - (d) been removed from an office of trust otherwise than at his or her own request;
 - (e) breached a fiduciary duty;
 - (f) a conflict of interest or an impaired ability to discharge his or her duties in respect of the insurance business of the insurer;
 - (g) seriously or persistently failed to or be failing to manage any of his or her financial obligations (including) debts satisfactorily, including –
 - (i) been the subject of a civil judgment in respect of unpaid debts, which debt remains unpaid or be the subject of any pending proceedings which may lead to such a judgment;
 - (ii) been sequestrated or be the subject of any pending proceedings which may lead thereto under the Insolvency Act, 1936 (Act No. 24 of 1936) or a corresponding law of a foreign country, and has not been rehabilitated in terms of that Act or law; or
 - (iii) been unable to provide a satisfactory credit record;
 - (h) been or is being suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law; or
 - (i) been refused a registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated by a regulatory authority;
 - (j) been denied membership of any professional body because of matters relating to honesty, integrity, or business conduct;
 - (k) been or is being disciplined, reprimanded, or disqualified, or removed in relation to

- matters relating to honesty, integrity, or business conduct by a –
- (i) professional body; or
 - (ii) regulatory authority;
- (l) been untruthful or provided false or misleading information to or been uncooperative in any dealings with the Registrar or a regulatory authority;
 - (m) demonstrated a lack of readiness and willingness to comply with legal, regulatory and professional requirements and standards;
 - (n) been found to be not fit and proper by the Registrar or a regulatory authority in any previous assessments of fit and properness; or
 - (o) been involved or be involved as a director or managing executive or concerned in the management of a business that has been –
 - (i) the subject of any requirement referred to in subparagraphs (a), (b), (c), (i), (k)(ii), (l), (m) or (n); or
 - (ii) placed in liquidation or business rescue while that person has been connected with that organisation or within one year of that connection.

Auditor that is a firm

5. Sections 3 and 4 apply with the necessary changes to an auditor of an insurer that is a firm as contemplated in the Auditing Profession Act.

PART 4: FIT AND PROPER REQUIREMENTS FOR SIGNIFICANT OWNERS**Requirements relating to financial standing**

6. A significant owner, at any time, in the Republic or elsewhere, must –
- (a) have adequate unencumbered financing or funding and future access to capital to fund the insurer's financial soundness requirements in the event that the insurer fails or is likely to fail to comply with section 29(1) of the Long-term Insurance Act, 1998, or section 28(1) of the Short-term Insurance Act, 1998;
 - (b) be able or likely to be able to meet any of its financial obligations (including debts) as they fall due;
 - (c) not have been the subject of a civil judgment in respect of unpaid debts, which debt remains unpaid; and
 - (d) be able to provide a satisfactory credit record.

Requirements relating to integrity

7. A significant owner, at any time, in the Republic or elsewhere, must –

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- (a) in the case of a natural person, meet the requirements referred to in section 4; and
- (b) in the case of a legal person –
 - (i) meet the requirements referred to in section 4 in respect of each person that is a significant owner of that legal person; and
 - (ii) not have been placed in business rescue or have entered into a scheme of arrangement with creditors within the meaning of the Companies Act or a corresponding law of a foreign country.

PART 5: GENERAL

Title and commencement

8. This Notice is called the Notice on Fit and Proper Requirements, 2015 and takes effect on [*to be inserted*].

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