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## BOARD NOTICES • RAADSKENNISGEWINGS

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### BOARD NOTICE 158 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)

#### FIT AND PROPER REQUIREMENTS

I, Dube Phineas Tshidi, Registrar of Long-term Insurance and 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"), prescribe the fit and proper requirements pursuant to the definition of "fit and proper" in sections 1 of the Acts as set out in Schedule A hereto.

The Board Notice takes effect on 1 October 2015.



**DP TSHIDI**

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

## SCHEDULE A

### Arrangement of sections

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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, statutory actuary or any of their alternates 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 significant owner 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 any of their alternates, at all times, must have satisfactory educational qualification, experience or expertise, and 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 any of their alternates, must be a person who has integrity.

(2) Subject to section 2(3), any of the following constitutes *prima facie* evidence that a person referred to in paragraph (1) does not have integrity:

- (a) he or she has been convicted (and that conviction has not been expunged) or is 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 was or may be -

- (aa) imprisonment without the option of a fine; or
- (bb) a significant fine;
- (b) he or she has been convicted (and that conviction has not been expunged) or is the subject of any pending proceedings which may lead to a conviction of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, where the penalty imposed for the offence was or may be imprisonment without the option of a fine;
- (c) he or she has accepted civil liability for, or has been the subject of a civil judgment in respect of, theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty under any law;
- (d) he or she has been the subject of frequent or severe preventative, remedial or enforcement actions by the Registrar or a regulatory authority;
- (e) he or she has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty;
- (f) he or she has breached a fiduciary duty;
- (g) he or she has an impaired ability to discharge his or her duties in respect of the insurance business of the insurer because of a conflict of interest or any other reason;
- (h) he or she has seriously or persistently failed to or is failing to manage any of his or her financial obligations (including debts) satisfactorily, including –
  - (i) having 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; or
  - (ii) having been sequestered or being 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;
- (i) he or she has 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
- (j) he or she has been refused a registration, authorisation or licence to carry out a trade, business or profession, or has had that registration, authorisation or licence revoked, withdrawn or terminated by a regulatory authority;
- (k) he or she has been denied registration or membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters relating to honesty, integrity, or business conduct;
- (l) he or she has been or is being disciplined, reprimanded, disqualified, or removed



- in relation to matters relating to honesty, integrity or business conduct by a –
- (i) professional body; or
  - (ii) regulatory authority;
- (m) he or she has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, the Registrar or a regulatory authority;
- (n) he or she has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards;
- (o) he or she has been found to be not fit and proper by the Registrar or a regulatory authority in any previous assessments of fit and properness and the reasons for being found not fit and proper have not been remedied; or
- (p) he or she has been involved or is involved as a director or managing executive, or is concerned in the management, of a business that has been –
- (i) the subject of any matter referred to in subparagraphs (a), (c), (d), (j), (l)(ii), (m), (n) or (o); 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. (1) A significant owner must be in good financial standing.
- (2) Subject to section 2(3), any of the following constitutes *prima facie* evidence that a significant owner is not in good financial standing:
- (a) he, she or it does not have adequate financing or funding and future access to capital;
  - (b) he, she or it is not able or likely to be able to meet any of its financial obligations (including debts) as they fall due; or
  - (c) he, she or it has been the subject of a civil judgment in respect of unpaid debts, which debt remains unpaid, or is the subject of any pending proceedings which may lead to such a judgment.

**Requirements relating to integrity**

7. (1) A significant owner must be a person who has integrity.
- (2) Subject to section 2(3), –

- (a) in the case of a natural person, the matters referred to in section 4 constitute *prima facie* evidence that he or she does not have integrity; and
- (b) in the case of a legal person, any of the following constitute *prima facie* evidence that it does not have integrity:
  - (i) any of its direct or indirect significant owners that are natural persons fail to meet the requirements relating to integrity referred to in section 4;
  - (ii) it has been placed in business rescue or is the subject of any pending placement in business rescue; or
  - (iii) it has entered into or is entering 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 1 October 2015.