



GUIDELINES NO. TIU/G-1/2017/6

GUIDELINES ON FIT AND PROPER CRITERIA FOR KEY RESPONSIBLE PERSONS AND KEY PERSONS IN CONTROL FUNCTIONS IN INSURANCE AND TAKAFUL

1. INTRODUCTION

- 1.1 These Guidelines are issued pursuant to Section 88 of the Insurance Order, 2006 and section 90 of the Takaful Order, 2008 (“the Orders”) to determine the criteria for assessment of fit and proper persons with respect to the Key Responsible Persons and Key Persons in Control Functions in registered insurance companies and takaful operators (hereinafter referred to as “insurers”). These Guidelines are the guidance for the Notice for an *Application for Approval for Key Responsible Persons and Key Person in Control Functions in Insurance and Takaful* [Notice No: TIU/N-6/2017/10] (hereinafter referred to as “Notice No: TIU/N-6/2017/10”).
- 1.2. AMBD requires all key responsible persons and key persons in control functions to be and remain suitable to fulfil their respective roles. AMBD requires that in order to be suitable to fulfil their roles, Key responsible persons and key persons in control functions possess adequate competence and integrity. Further, all significant owners possess the necessary financial soundness and integrity.
- 1.3. These Guidelines are extended where appropriate to include persons in key responsible positions in any of the insurance intermediaries and takaful intermediaries regulated under the Orders.
- 1.4. These Guidelines should also be read together with:-
 - 1.4.1. section 41 and 42 of the Insurance Order, 2006 (for Insurance companies) or section 42 and 43 of the Takaful Order, 2008 (for Takaful operators); and
 - 1.4.2. As well as any other Guidelines, circulars or notices, which the Authority may issue from time to time.
- 1.5. These Guidelines shall take immediate effect.
- 1.6. The *Guidelines on Fit and Proper Criteria for Key Responsible Persons in Insurance and Takaful (Guideline No ITA/G-3/2014)* issued by AMBD on 1st July 2014 is repealed.

2. **DEFINITION**

For the purpose of this Guidelines:

- 2.1. “Control functions” includes oversight functions where Senior Management has delegated some of its responsibilities for providing oversight of operational management including the Internal Audit, Risk Management, Compliance and Actuarial Functions;
- 2.2. “Key Responsible Persons” means a person whose activity is regulated by the Authority under the Orders, and refers to senior persons that are accountable or responsible for the management and oversight of the insurers of which they may hold controlled functions in executive positions which include:
 - 2.2.1. Controllers of insurers incorporated in Brunei Darussalam, brokers or adjusters as defined under Part II of the First Schedule of the Orders;
 - 2.2.2. Member of Board of Directors of insurers, brokers or adjusters incorporated in Brunei Darussalam;
 - 2.2.3. Chief Executive Officer or Managing Director of insurers incorporated in Brunei Darussalam, brokers or adjusters; and
 - 2.2.4. Principal Officer of insurers, brokers or adjusters incorporated outside Brunei Darussalam.
- 2.3. “Insurer” means a registered insurance company under Insurance Order, 2006 and/or registered takaful operator under Takaful Order, 2008;
- 2.4. “Key Persons in Control Function” means a person principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the insurer’s internal controls, risk management and compliance systems and processes, and includes:
 - 2.4.1. Chief Internal Auditor;
 - 2.4.2. Head of Risk Management;
 - 2.4.3. Head of Compliance;
 - 2.4.4. Chief Financial Officer; and
 - 2.4.5. Appointed Actuary.

3. **FIT AND PROPER CRITERIA**

- 3.1. Key Responsible Persons appointed by insurers should meet the fit and proper criteria set out in these Guidelines, both prior to and during their employment. For this purpose, all insurers are expected to obtain, independently verify through reasonable means, and review, relevant information necessary to support their assessment of the Key Responsible Persons' compliance with the fit and proper criteria set out in these Guidelines.
- 3.2. The criteria for considering whether a Key Responsible Person and Key Person in Control Function is fit and proper include but are not limited to the following:
 - 3.2.1. Honesty, integrity and reputation;
 - 3.2.2. Competence and capability; and
 - 3.2.3. Financial soundness.
- 3.3. The Key Responsible Person or Key Person in Control Function appointed or proposed to be appointed is required to carry out his duties efficiently, honestly, fairly and to act in the best interests of the insurer's policyholders/participants, stakeholders and the public.
- 3.4. In determining whether a Key Responsible Person or Key Person in Control Function meets the fit and proper criteria, the consideration set out under these Guidelines should be assessed individually as well as on a cumulative basis. Failure to meet one indicator may not, on its own, necessarily mean failure to meet the fit and proper criteria.
- 3.5. The failure by a relevant person to meet any one of the criteria set out in paragraphs 4.2, 5.2, 6.2 or 7.1 may not lead to an automatic refusal of an application refusal to allow an application or revocation of an authorisation, withdrawal of an exemption or other regulatory action by AMBD. The significance and relevance of a relevant person failing to satisfy AMBD that she or he meets specific criteria depends on:
 - 3.5.1. The seriousness of, and surrounding circumstances resulting in, the relevant person not meeting the specific criteria;
 - 3.5.2. The passage of time since the failure by the relevant person to meet the specific criteria.

4. **HONESTY, INTEGRITY AND REPUTATION**

- 4.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate the person possesses qualities such as honesty, integrity, diligence, independence of mind and fairness.
- 4.2. In assessing the honesty, integrity and reputation of a Key Responsible Person, the Authority should consider matters including but not limited to the following:-
 - 4.2.1. Whether the relevant person has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction;
 - 4.2.2. Has been issued a prohibition order under any Act administered by AMBD or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
 - 4.2.3. Has been censured, disciplined, suspended or refused membership or registration by AMBD, any other regulatory authority, any professional body or government agency, whether in Brunei Darussalam or elsewhere;
 - 4.2.4. Has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by AMBD or under any law in any jurisdiction;
 - 4.2.5. Whether under any law in any jurisdiction, the person is or has been the subject of any proceedings of a disciplinary or criminal nature (excluding traffic offences), or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;
 - 4.2.6. Whether the person has contravened any provisions or has been compounded or convicted of any offence under any legislation administered by the Authority, any regulatory body, professional body, government or its agencies whether in Brunei Darussalam or elsewhere;
 - 4.2.7. Whether the person has been a director of, or directly concerned in the management of, any company which is being or has been convicted of an offence under any written law in any jurisdiction during their tenure of office in that company (unless the person can prove that such offence was committed without knowledge or consent and he was not in a position to prevent the offence);
 - 4.2.8. Whether the person has had any judgment relating to the finding of fraud, misrepresentation entered against him in any civil proceedings in

Brunei Darussalam or elsewhere, or is a party to any pending proceedings that may lead to such a judgment;

- 4.2.9. Has had any civil penalty enforcement action taken against it or him by AMBD or any other regulatory authority under any law in any jurisdiction;
- 4.2.10. Has contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, whether in Brunei Darussalam or elsewhere;
- 4.2.11. Has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by AMBD, any other regulatory authority, any professional body or government agency, whether in Brunei Darussalam or elsewhere;
- 4.2.12. Has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards, whether in Brunei Darussalam or elsewhere;
- 4.2.13. Whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting business;
- 4.2.14. Whether the person has been a party to any action or decision of the board or management of a business which is detrimental to the interests of the business and its policy holders/participants;
- 4.2.15. Whether the person has acted in a manner which may cast doubt on his fitness to hold the position, or acted in blatant disregard for proper professional conduct, especially in dealings with policy holders/participants, potential policy holders/participants and named beneficiaries;
- 4.2.16. Whether the person is available for full-time employment, and does not carry on any other business or vocation;
- 4.2.17. Whether the person is engaged actively in any political activity;
- 4.2.18. Whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgement when acting in the capacity of a Key Responsible Person or Key Person in Control Function;
- 4.2.19. Whether the person has been censured, disciplined, suspended or refused membership, license or registration by the Authority, or any regulatory authority of any business or profession under any written law in Brunei Darussalam or elsewhere;

- 4.2.20. Whether the person has been dismissed or asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions of honesty and integrity;
- 4.2.21. Whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employers, auditors and regulatory authorities in any jurisdiction;
- 4.2.22. Whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities in any jurisdiction resulting in a failure or potential failure to comply with legal, regulatory and professional requirements and standards;
- 4.2.23. Whether the person has held a position of responsibility in the management of a business that has gone into Judicial Management (Part IV Insolvency Order 2016) or Wound-Up (Part V insolvency Order 2016) during his tenure of office in that business or within a period of one year after the relevant person was a director, partner, substantial shareholder or concerned in the management of the business, whether in Brunei or elsewhere;
- 4.2.24. Whether the person has had any proceedings initiated under the Bankruptcy Act (Cap. 7) against him in his personal capacity;
- 4.2.25. Whether the person has been a director of, or directly concerned in the management of, any insurer where its licence has been revoked under any written law; and
- 4.2.26. Whether the person has withheld any information from public authorities or submitted incorrect financial or other statements.

5. COMPETENCE AND CAPABILITY

- 5.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate that he possesses necessary skills, experience, ability and commitment to carry out the role.
- 5.2. In assessing the competence and capability of a Key Responsible Person, the Authority should consider matters including but not limited to the following, which the insurer should also consider when the application is being made;
 - 5.2.1. Whether the person has the appropriate and relevant qualifications, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities of the position and in the case of directors, having regard to the nature of the duties he is to perform and other commitments;

- 5.2.2. Whether the person has satisfactory past performance or expertise in the nature of business or duties being conducted, as the case may be, whether in Brunei Darussalam or elsewhere; and
- 5.2.3. Where the relevant person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Authority under the relevant legislation.

6. FINANCIAL SOUNDNESS

- 6.1. The Key Responsible Person must be able to demonstrate that he is able to manage his own debts or financial affairs prudently such that there are no loan defaults or court judgements related to debt or credit facilities in his name or associated parties.
- 6.2. In assessing the financial soundness of a Key Responsible Person, the Authority should consider matters including but not limited to the following:-
 - 6.2.1. Whether the person has been declared an undischarged bankrupt or a person in respect of whom a bankruptcy proceeding is pending in Court in Brunei Darussalam or elsewhere;
 - 6.2.2. Whether the person is or has been unable to fulfil any of his financial obligations, whether in Brunei Darussalam or elsewhere;
 - 6.2.3. Whether the person has been the subject of a judgement debt which is unsatisfied, either in whole or in part, whether in Brunei Darussalam or elsewhere.

7. ADDITIONAL CRITERIA FOR PROPOSED CONTROLLERS

- 7.1. In assessing the suitability of proposed controllers, either a legal person or a corporate entity, the Authority should consider matters including but not limited to the following, which the insurer should also consider when the application is being made:
 - 7.1.1. The nature and scope of its business;
 - 7.1.2. Its ownership structure, where relevant;
 - 7.1.3. Its source of finance/funding and future access to capital;
 - 7.1.4. The group structure, if applicable and organization chart, and the ability of AMBD to supervise, examine, and regulate the insurer effectively. This will entail assessing whether: -

- (a) the corporate structure of the group to which the insurer belongs;
and
- (b) the scope and risks associated with its affiliates' activities and the interdependence between itself and its affiliates, affects AMBD's ability to supervise, examine, and regulate the insurer effectively. If AMBD identifies supervisory concerns, the applicant may be required to restructure or provide undertakings intended to provide AMBD with information and/or to limit the applicant's activities. AMBD may also impose additional requirements or restrictions on the activities of the insurer.

MANAGING DIRECTOR

AUTORITI MONETARI BRUNEI DARUSSALAM

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