



أوتوري تي مونيتاري بروني دارالسلام
AUTORITI MONETARI BRUNEI DARUSSALAM

Guideline No: ITS/G-3/2014

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

1 July 2014

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1. Purpose

- 1.1. These Guidelines are issued pursuant to section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010 (“the AMBD Order 2010”).
- 1.2. These Guidelines are intended to provide guidance on the assessment of fit and proper criteria for key responsible persons involved in insurance business and takaful business regulated under the Insurance Order, 2006 (“the IO 2006”) and the Takaful Order, 2008 (“the TO 2008”) respectively.
- 1.3. These Guidelines should be read in conjunction with the provisions of IO 2006 and TO 2008, its subsidiary legislation, as well as directions, notices, circulars and other guidelines that Autoriti Monetari Brunei Darussalam (“the Authority”) may issue from time to time.
- 1.4. These Guidelines shall take effect on 1st July 2014.

2. Application of the Guidelines

- 2.1. Section 41 of the IO 2006 provides that no insurer incorporated in Brunei Darussalam shall appoint a person as its managing director, director, chief executive or principal officer, and no insurer incorporated outside Brunei Darussalam or otherwise carrying on insurance business outside Brunei Darussalam shall appoint a chief executive or principal officer for Brunei Darussalam, unless the insurer has served on the Authority a notice in writing stating that the person it proposes to appoint fulfils the minimum criteria of a “fit and proper person” as may be determined.
- 2.2. Section 42 of the TO 2008 provides that no takaful operator incorporated in Brunei Darussalam shall appoint a person as its managing director, director, chief executive or principal officer, and no takaful operator incorporated outside Brunei Darussalam or otherwise carrying on takaful business outside Brunei Darussalam shall appoint a chief executive or principal officer for Brunei Darussalam, unless the takaful operator has served on the Authority a notice in writing stating that the person it proposes to appoint fulfils the minimum criteria of a “fit and proper person” as may be determined.
- 2.3. In addition, the Authority has the responsibility of registering and regulating insurance and takaful intermediaries under the IO 2006 and TO 2008 respectively. As such, 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 IO 2006 and TO 2008.
- 2.4. If it appears to the Authority that the person appointed or proposed to be appointed is not “a fit and proper person”, the Authority shall serve on the insurer, insurance intermediary, takaful operator or takaful intermediary and on such person a preliminary notice in writing stating:
 - 2.4.1. that the Authority is considering the service on the insurer, insurance intermediary, takaful operator or takaful intermediary of a notice of objection on the ground that it appears to the Authority that such person is not “a fit and proper person”; and

2.4.2. that the insurer, insurance intermediary, takaful operator or takaful intermediary and that person may, within one month from the date of service of the preliminary notice, make representations to the Authority.

2.5 The onus is on the applicant to show and establish that:

2.5.1 in the case of insurance and takaful operator, the appointed or proposed to be appointed is a fit and proper person; and

2.5.2 in the case of insurance and takaful intermediaries, he is a fit and proper person.

3. Definitions

For the purpose of these Guidelines -

“authorisation” means –

- a) a registration as an insurer under section 9(1) of the IO 2006;
- b) a registration as a takaful operator under section 9(1) of the TO 2008;
- c) a registration as an insurance agent under section 48(1) of the IO 2006;
- d) a registration as a takaful agent under section 49(1) of the TO 2008;
- e) a registration as an insurance broker under section 53(1) of the IO 2006;
- f) a registration as a takaful broker under section 54(1) of the TO 2008;
- g) a registration as an adjuster under section 56(1) of the IO 2006; and
- h) a registration as an adjuster under section 57(1) of the TO 2008.

“key responsible person” means –

- a) in relation to a person whose activity is regulated by the Authority under the IO 2006:
 - (i) controllers of insurers incorporated in Brunei Darussalam, insurance brokers or adjusters as defined under Part II of the First Schedule of the IO 2006;
 - (ii) managing directors or directors of insurers incorporated in Brunei Darussalam, insurance brokers or adjusters;
 - (iii) chief executives or principal officers of insurers whether incorporated in or outside Brunei Darussalam, insurance brokers, or adjusters;
 - (iv) individual agents as defined under the Guidelines on Registration of General Insurance Agents issued by the Authority;
 - (v) corporate nominees of corporate agents as defined under the Guidelines on Registration of General Insurance Agents issued by the Authority; or
 - (vi) actuaries appointed by insurers.
- b) in relation to a person whose activity is regulated by the Authority under the TO 2008:
 - (i) controllers of takaful operators incorporated in Brunei Darussalam, takaful brokers or adjusters as defined under Part II of the First Schedule of the TO 2008;
 - (ii) managing directors or directors of takaful operators incorporated in Brunei Darussalam, takaful brokers or adjusters;

- (iii) chief executives or principal officers of takaful operators whether incorporated in or outside Brunei Darussalam, takaful brokers, or adjusters;
- (iv) individual agents as defined under the Guidelines on Registration of General Takaful Agents issued by the Authority;
- (v) corporate nominees of corporate agents as defined under the Registration of General Takaful Agents issued by the Authority; or
- (vi) actuaries appointed by takaful operators.

4. Fit And Proper Criteria

- 4.1. For the purpose of establishing whether a key responsible person is fit and proper and able to fulfil his responsibilities, the insurer, insurance intermediary, takaful operator or takaful intermediary shall have regard to, and the Authority may assess, the key responsible person's:
 - 4.1.1. Probity, personal integrity and reputation;
 - 4.1.2. Competence and capability; and
 - 4.1.3. Financial soundness.
- 4.2. The key responsible person appointed or proposed to be appointed is required to carry out his duties efficiently, honestly, fairly and to act in the best interests of his stakeholders and customers.
- 4.3. In determining whether a key responsible person meets the fit and proper criteria, the considerations 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.

5. Probity, Personal Integrity and Reputation

- 5.1. The key responsible person appointed or proposed to be appointed must be able to demonstrate that he possesses qualities such as honesty, integrity, diligence, independence of mind and fairness.
- 5.2. In assessing the probity, personal integrity and reputation of a key responsible person, the insurer, insurance intermediary, takaful operator or takaful intermediary shall, and the Authority may, take into consideration the following factors, amongst others:
 - a) whether under any law in any jurisdiction, the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;
 - b) whether the person has contravened any provisions, or has been compounded or convicted of any offence under any legislation administered by the Authority;
 - c) 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 his tenure of office in that company (unless the

person can prove that such offence was committed without his/her knowledge or consent and he was not in a position to prevent the offence);

- d) whether the person has had any judgment relating to the finding of fraud, misrepresentation or dishonesty 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;
- e) 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;
- f) whether the person has been a party to any action or decision of the board or management of an insurer/takaful operator, which is detrimental to the interests of the insurer/takaful operator and its policy owners/participants;
- g) 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 owners/participants, potential policy owners/participants and named beneficiaries;
- h) whether the person is available for full-time employment, and does not carry on any other business or vocation, except as a non-executive director, shareholder of another company, insurance agent or takaful agent;
- i) whether the person is engaged actively in any political activity;
- j) 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;
- k) whether the person has been censured, disciplined, suspended or refused membership, licence or registration by the Authority, or any regulatory authority of any business or profession under any written law;
- l) 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; and
- m) whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employers, auditors and regulatory authorities.

6. Competence and Capability

- 6.1. 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.
- 6.2. In assessing the competence and capability of a key responsible person, the insurer, insurance intermediary, takaful operator or takaful intermediary shall, and the Authority may, take into consideration the following factors, amongst others:

- a) whether the person has the appropriate qualification, 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 their other commitments; and
- b) 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.

7. Financial Soundness

- 7.1. The key responsible person appointed or proposed to be appointed must be able to demonstrate that he is able to manage his own debts or financial affairs prudently.
- 7.2. In assessing the financial soundness of a key responsible person, the insurer, insurance intermediary, takaful operator or takaful intermediary shall, and the Authority may, take into consideration the following factors, amongst others:
 - a) 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;
 - b) whether the person is or has been unable to fulfil any of his financial obligations, whether in Brunei Darussalam or elsewhere;
 - c) 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;
 - d) whether the person has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation during his tenure of office in that business; and
 - e) whether the person has been a director of, or directly concerned in the management of, any company which is being or has been wound up by a court or other authority competent to do so within or outside Brunei Darussalam, or has been a director of, or directly concerned in the management of, any licensed institution where its licence has been revoked under any written law.