

# Prudential Standard GOI 4

## Fitness and Propriety of Key Persons and Significant Owners of Insurers

### ***Objectives and Key Requirements of this Prudential Standard***

*Prudent business management of an insurer is heavily dependent on the fitness and propriety of individuals who make the critical business decisions for the insurer. In the case of Key Persons, fitness and propriety is linked to competency and integrity. In the case of Significant Owners, it is linked to financial standing and integrity.*

*The Prudential Authority requires insurers to have a board-approved policy and related procedures for testing and assessing the fitness and propriety of its Key Persons and Significant Owners.*

*This Standard sets out the matters that insurers should consider when assessing the fitness and propriety of Key Persons and Significant Owners. With respect to integrity and financial standing, the Standard identifies matters that constitute prima facie evidence against fitness and propriety. The Prudential Authority recognises that assessing fitness and propriety requires some judgement, and provides guidance on matters to consider when exercising that judgement.*

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## 1. Application

- 1.1. This Standard applies to all Key Persons and Significant Owners of insurers licensed under the Insurance Act, 2017, other than microinsurers, Lloyd's and branches of foreign reinsurers. The application of these Standards to insurance groups that have been designated as such by the Prudential Authority, under Section 10 of the Insurance Act, 2017, is addressed in a separate standard, GOG 1 (Governance and Operational Standard for Groups).
- 1.2. Unless otherwise indicated, all references to "insurer" in this Standard can be read as a reference to life insurers, non-life insurers and reinsurers.

## 2. Roles and Responsibilities

- 2.1. An insurer's board of directors is ultimately responsible for ensuring that the insurer complies with the fitness and propriety principles and requirements of this Standard.
- 2.2. An insurer's auditor must provide assurance to the insurer and the Prudential Authority, if requested, that the insurer complies with the requirements of this Standard.

## 3. Commencement and Transition Provisions

- 3.1. This Standard commences on [XX].
- 3.2. The final version of this Standard reflects feedback and comments provided to the Prudential Authority in relation to the following draft versions released for consultation:

### Draft versions of this Standard released for consultation

Version Number	Release Date	Description
1	26 April 2017	Initial draft of GOI 4 released for consultation

## 4. Principles

- 4.1. An insurer should ensure that Key Persons and Significant Owners are fit and proper for their roles.<sup>1</sup>
- 4.2. In practical terms this requires that:
  - a) Key Persons have integrity and the competence to meet the demands of their roles; and
  - b) Significant Owners have integrity and the financial resources commensurate with supporting the insurer's business.
- 4.3. An insurer must have a board-approved policy and related procedures for testing and assessing the fitness and propriety of its Key Persons and Significant Owners. The sections below set out minimum matters that should be considered in the policy and procedures.

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<sup>1</sup> The concept of Key Person is defined in section 1 of the Insurance Act, 2017.

- 4.4. Notwithstanding that primary responsibility for assessing fitness and propriety of Key Persons and Significant Owners resides with the insurer, the Insurance Act, 2017 requires the Prudential Authority to approve Significant Owners and certain Key Persons. Under section 14 of the Act, the Authority is required to approve directors and auditors before they are appointed. Fitness and propriety is the central consideration of any such approval. In the case of other Key Persons, insurers are required to notify the Authority within 30 days of an appointment, or of changes in circumstances that may adversely affect the fit and proper status of a Key Person (see section 15 of the Act). Insurers are also required to notify the Authority within 30 days of the termination of the appointment of a Key Person (see section 16 of the Act).

## **5. Fitness and Propriety Policy**

- 5.1. An insurer's fitness and propriety policy must be consistent with this Standard.
- 5.2. The policy and procedures must:
- a) clearly define and document the fitness and propriety criteria required for each category of person, having regard to the requirements set out in this Standard;
  - b) require periodic (at least annual) fit and proper assessments for Key Persons;
  - c) require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of Key Persons and their immediate predecessors;
  - d) set out the processes (including the decision-making processes) to be undertaken in assessing whether a person is fit and proper;
  - e) specify the actions to be taken where the insurer assesses an existing Key Person to no longer be fit and proper, including notifying the Prudential Authority of such an assessment and the actions taken;
  - f) include adequate provisions to allow for confidential reporting by any person who believes that a Key Person does not meet the insurer's fit and proper criteria, and for the protection of such a person;
  - g) require that Key Persons consent to being subject to the fitness and propriety policy as a condition of employment as a Key Person; and
  - h) provide that the insurer consents to any former Key Person disclosing information to the Prudential Authority, including their reasons for resignation, early retirement or removal.

## **6. Fitness and Propriety Requirements for Key Persons**

- 6.1. This part applies, with the necessary changes, to an auditor of an insurer that is a firm as contemplated in the Auditing Profession Act, 2005.
- 6.2. *Competency* - A Key Person or any of their alternates must, at all times, have satisfactory educational qualification, experience or expertise, and relevant skills and knowledge in respect of the duties that that Person must perform.
- 6.3. *Integrity* – A person who has integrity displays honesty and strong moral principles. Given that integrity is difficult to establish according to objective criteria, fitness and propriety tests generally approach the assessment from the negative, by identifying criteria that indicate a potential lack of integrity.
- 6.4. Subject to section 8 below, any of the following constitutes evidence that a person may lack integrity:
- a) The person has been convicted (and that conviction has not been expunged), or is the subject of pending proceedings which may lead to such a conviction under any law in any jurisdiction, of an offense:

- i. under a law relating to the regulation or supervision of a financial institution as defined in the Financial Sector Regulation Act, 2017 or a corresponding offence under the law of a foreign country;
- ii. involving theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty; or
- iii. under the Prevention of Corruption Act, 1958, the Corruption Act, 1992, or Parts 1 to 4, or section 17, 20 or 21 of the Prevention and Combating of Corrupt Activities Act, 2004, or a corresponding offence under the law of a foreign country;

where the penalty for the offense was or may be imprisonment or a significant fine.

- b) The person has been convicted (and that conviction has not been expunged), or is the subject of 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) The person 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) The person has been the subject of frequent or severe preventative, remedial or enforcement actions by the Prudential Authority or another regulatory authority.
- e) The person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation or dishonesty.
- f) The person has breached a fiduciary duty.
- g) The person 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) The person 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, or be the subject of any pending proceedings which may lead to such a judgment, in respect of an unpaid debt and which debt remains unpaid; or
  - ii. having been sequestered, or be the subject of pending proceedings which may lead to sequestration under the Insolvency Act, 1936 or a corresponding law of a foreign country, and has not been rehabilitated in terms of that Act or law.
- i) The person 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.
- j) The person 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) The person has been refused 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) The person has been, or is being, disciplined, reprimanded, disqualified, or removed in relation to matters relating to honesty, integrity or business conduct by a professional body or a regulatory authority.
- m) The person has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, the Prudential Authority or another regulatory authority.
- n) The person has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards.
- o) The person has been found to be not fit and proper by the Prudential Authority or another regulatory authority in any previous assessments of fitness and propriety and the reasons for being found not fit and proper have not been remedied.
- p) The person has been involved, or is involved, as a director or a member of the senior management of a business that has been placed in liquidation or business rescue while the person has been connected with that organisation, or within one year of that connection.
- q) The person has been involved, or is involved, as a director or a member of the senior management of a business that has been the subject of any matter referred to in subparagraphs (a), (c), (d), (j), (l), (m), (n), or (o).

## **7. Fitness and Propriety Requirements for Significant Owners**

- 7.1. A Significant Owner of an insurer must be in good financial standing and have integrity.
- 7.2. *Good financial standing* – A Significant Owner has good financial standing if it can demonstrate the financial capacity to support the insurer's business with additional resources should it be called upon to do so. As with integrity, good financial standing is often defined by reference to the obverse.
- 7.3. Subject to section 8 below, any of the following constitutes evidence that a Significant Owner may not be in good financial standing:
  - a) The Significant Owner does not have adequate financing or funding and future access to capital.
  - b) The Significant Owner is not able or likely to be able to meet any of its financial obligations (including debts) as they fall due.
  - c) The Significant Owner has been the subject of a civil judgment in respect of an unpaid debt, which debt remains unpaid, or is the subject of pending proceedings which may lead to such a judgment.
- 7.4. *Integrity* – Subject to section 8 below, any of the following constitutes evidence that a Significant Owner may lack integrity:
  - a) In the case of a Significant Owner who is a natural person, any of the matters referred to in section 6.4 constitutes evidence that he or she may not have integrity.
  - b) In the case of a Significant Owner that is a legal person, any of the following constitutes evidence that it may 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 6.4;

- ii. it has been placed in business rescue or is the subject of any pending action to place it into 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, 2008 or a corresponding law of a foreign country.

7.5. In the case of a Significant Owner that is a legal person, integrity must be demonstrated through its corporate behaviour and through the personal behaviour of its directors.

## **8. Matters to be considered when assessing Fitness and Propriety**

8.1. Notwithstanding section 6.4, an insurer should, in assessing whether a Key Person is fit and proper, have due regard to:

- a) the seriousness and surrounding circumstances of a particular adverse situation (including a situation referred to in section 6.4) that has, or could potentially have, a negative impact on assessment of the person's competence or integrity;
- b) the relevance of such an adverse situation to the duties that are to be performed and the responsibilities that are to be assumed by the person; and
- c) the passage of time since the occurrence of the adverse situation.

8.2. Notwithstanding sections 7.3 and 7.4, an insurer should, in assessing whether a Significant Owner is fit and proper, have due regard to the:

- a) matters referred to in section 6.4 (read with the necessary changes) insofar as it relates to any natural person who is the subject of an assessment;
- b) nature and scope of the Significant Owner's business; and
- c) structure of any group that the Significant Owner is part of.

8.3. Where, in light of the considerations in section 8.1, an insurer is of the view that a person is fit and proper, despite the fact that one or more of the criteria specified in section 6.4 is met, the insurer must, when notifying the PA of the appointment, or in proposing the appointment in the case of a director or auditor, include a declaration from the board of directors that one of the criteria for fitness and propriety is not met, and justify why the board of directors, despite this, is of the opinion that the person is fit and proper.

8.4. Where, in light of the considerations in section 8.2, an insurer is of the view that a prospective Significant Owner is fit and proper, despite the fact that one or more of the criteria specified in section 7.3 or 7.4 is met, the insurer must, when notifying the PA of the proposal for the person to become a Significant Owner, include a declaration from the board of directors that one of the criteria for fitness and propriety is not met, and justify why the board of directors, despite this, is of the opinion that the person is fit and proper.

## **9. Regulatory Approvals**

9.1. In considering whether or not to approve a director or auditor or Significant Owner or to object to the appointment of a key person other than a director or auditor the Prudential Authority will be guided by the principles set out in this Standard.

9.2. The Prudential Authority may, from time to time, specify the minimum educational qualifications, or other criteria referred to in section 6.2, required to meet the competency standard of certain Key Persons (see Attachment 1).

- 9.3. Where an insurer proposes a Key Person subject to the conditions referred to in section 8.3, in considering its approval, the Prudential Authority will pay particular attention to the factors identified in section 8.1.
- 9.4. Where an insurer proposes a Significant Owner subject to the conditions referred to in section 8.4, in considering its approval, the Prudential Authority will pay particular attention to the factors identified in section 8.2.

## **10. Regulatory Intervention**

- 10.1. Part 4 of the Insurance Act, 2017 details actions that the Prudential Authority may take in the event that it reasonably believes that a Key Person or a Significant Owner of an insurer is no longer fit and proper.

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## **Attachment 1: Minimum Competency and Other Criteria for Certain Key Persons**

### ***A. Head of an Insurer's Actuarial Function***

The Head of an insurer's actuarial function must be a natural person who:

1. Is permanently resident in the Republic.
2. Is a Fellow of the Actuarial Society of South Africa.
3. Has, as an actuary, appropriate practical experience relating to the type of insurance business of the insurer.

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