



IRA

Insurance Regulatory Authority

**IRA/PG/15
GUIDELINE ON SUITABILITY OF KEY PERSONS
INVOLVED IN THE OWNERSHIP, STEWARDSHIP
AND MANAGEMENT OF INSURERS**

MAY 2013

To: Insurance & Reinsurance Companies

GUIDELINE ON SUITABILITY OF PERSONS FOR INSURERS

This guideline on Suitability of Persons is issued pursuant to section 3A of the Insurance Act for observance by Insurance and Reinsurance companies.

The guideline aims at ensuring that all persons involved and responsible for the ownership, stewardship, and management of an insurer are and remain suitable to fulfill their respective roles.

Suitability of persons is regarded as having the competence and integrity to fulfill their respective roles (also known as being “fit and proper”).

To this end, the Insurance Regulatory Authority issues this guideline on Suitability of Persons to be effective from 30th June, 2013.



SAMMY M. MAKOVE
COMMISSIONER OF INSURANCE & CHIEF EXECUTIVE OFFICER

THE INSURANCE ACT (CAP 487)
IRA/PG/15
GUIDELINE TO THE INSURANCE INDUSTRY
SUITABILITY OF KEY PERSONS INVOLVED IN THE OWNERSHIP,
STEWARDSHIP AND MANAGEMENT OF INSURERS

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1.0 AUTHORIZATION

IN EXERCISE of the powers conferred by sections 3A (a), (b) and (g) of the Insurance Act, the Insurance Regulatory Authority (herein referred to as Authority) issues the Guideline set out here below, for observance by all insurers registered under the Insurance Act Cap 487, in respect of the suitability of key persons involved with insurance business.

2.0 INTRODUCTION

- 2.1 This guideline establishes a set of principles to be adhered to in regard to the suitability of key persons who are involved and responsible for the ownership, stewardship, and management of regulated entities.
- 2.2 Key Persons responsible and involved in ownership, stewardship, and management of regulated entities include Board Members, Senior Management, Key Persons in Control Functions and Significant Owners.
 - 2.2.1 Suitability for Board Members, Senior Management, and Key Persons in Control Functions, refers to having the competence and integrity to fulfill their respective roles (also known as being “fit and proper”).
 - 2.2.2 Suitability for Significant Owners refers to having the financial soundness and integrity to fulfill their roles.
- 2.3 Competence can generally be judged from the level of an individual’s professional or formal qualifications, knowledge, skills and/or pertinent experience within the insurance and financial sector or other businesses.

- 2.4 Integrity is demonstrated through evidence regarding character and in personal behavior and business conduct. The conduct and actions of the individual who is subject to the suitability requirements should be such that his/her integrity is to the satisfaction of the Authority.

3.0 DEFINITIONS

- 3.1 Board Members means Independent or Non-Executive directors of the insurer.
- 3.2 Non- Executive Director means an individual not involved in the day to day management of the insurer and is not a salaried employee of an Insurer or its subsidiaries.
- 3.3 Independent Director means a director who;
- i. Has not been employed by the Insurer in any executive capacity within the preceding five (5) years.
 - ii. Is not associated to an adviser or consultant to the Insurer or a member of the Insurer's senior management or a significant customer or supplier of the Insurer or with a not-for-profit entity that receives significant contributions from the Insurer; or within the preceding five (5) years, has not had any business relationship with the Insurer (other than service as a director) for which the Insurer has been required to make disclosure;
 - iii. Has no personal service contract(s) with the Insurer, or a member of the Insurer's senior management;
 - iv. Is not employed by a public listed company at which an executive officer of the Insurer serves as a director;

- v. Is not a member of the immediate family of any person described above; Or;
 - vi. Has not had any of the relationships described above with any affiliate of the Insurer.
- 3.4 Senior Management usually comprises the Chief Executive Officer (CEO) and those who directly report to CEO including a Manager or an Officer, who does not report directly to the CEO but is nonetheless regarded by the insurer as holding a key position.
- 3.5 **“Key Persons in Control Function”** comprise of the Appointed Actuary, Head of Actuarial Function, Head of Compliance Function, the Risk Manager, the Internal Auditor and the External Auditor.
- 3.6 **“Significant owners”** means a person who holds more than 10% of controlling or beneficial interest of a person licensed under the Act.

4.0 OBJECTIVES

The objective of this guideline is to ensure that all Key Persons of an insurer are and remain suitable to fulfill their respective roles.

5.0 GENERAL PRINCIPLES

5.1 The Authority requires that in order to be suitable, Board Members, Senior Management and Key Persons in Control Function possess competence and integrity to fulfil their roles. Significant Owners are required to have the financial soundness and integrity necessary to fulfil their roles.

5.2 The Authority shall conduct suitability assessment by considering the following indicators; criminal, financial, supervisory and other aspects such as the pattern of behaviour.

5.2.1 Criminal indicators: The individual should not have a record or evidence of previous conduct and activities where individual has been convicted of a criminal offence under any legislation designed to protect members of the public from financial loss, e.g. dishonesty, misappropriation of assets, embezzlement of funds money laundering, financing of terrorism, fraud or any other criminal offences.

5.2.2 Financial indicators: These provide information on possible financial misconduct, improper conduct in financial accounting, or negligence in decision-making. Indicators could be financial troubles leading to legal proceedings, a mismatch between financial commitments and income and other funds, bankruptcy or insolvency proceedings in or in respect of an entity in which the individual is/was a Board Member, Senior Manager or Key Person in Control Function.

5.2.3 Supervisory indicators: These provide information gathered or brought to the attention of supervisors in the performance of their supervisory duties. These supervisors could also be authorities with supervisory responsibility in sectors other than insurance. Indicators could be the withholding of information from public authorities, submission of incorrect financial or other statements, market conduct transgressions, and prior refusal of regulatory approval for key positions, other corrective actions or interventions by a public authority.

5.2.4 Other indicators: These may provide other information relating to the suitability of the individual. Examples include disputes with previous employers concerning incorrect fulfilment of responsibilities or non-compliance with internal policies, including code of conduct, which led to the lawful dismissal of the person or to the imposition of a penalty under employment law or contract law, and disciplinary measures imposed by trade or professional associations. Additionally, strength of character, such as the ability and willingness to challenge, are also considered to be indicators of a person's integrity as well as competence to perform the respective role.

5.3 At a minimum, the necessary qualities of a Significant Owner relate to financial soundness and integrity demonstrated in personal behaviour and in business conduct.

5.4 The Authority shall consider all relevant indicators, such as the pattern of behaviour or a prior refusal of regulatory approval for key positions in suitability assessment.

5.5 In determining the financial soundness of Significant Owners, the Authority shall ascertain the source of financing/funding and future access to capital. In addition, the following matters shall be considered:

- i. Whether there are any indicators that the owners will not be able to meet their debts as they fall due;
- ii. Whether appropriate prudential solvency requirements for financial institutions are met;
- iii. Whether they have been subject to any legally valid judgment, debt or order that remains outstanding or has not been satisfied within a reasonable period;
- iv. Whether they have made arrangements with creditors, filed for bankruptcy or been adjudged bankrupt or had assets seized; and
- v. Whether they have been able to provide the Authority with a satisfactory credit reference.

6.0 KEY REQUIREMENTS

6.1 In respect of applications for new licenses, the Authority will conduct the suitability assessment of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an insurer as part of the licensing procedure before the insurer is permitted to operate.

6.2 When the insurer is already licensed, the Authority requires that the insurer reviews and satisfies itself as to the appropriateness of the procedures that are in place within the insurer to perform internal suitability assessments.

- 6.3 The Authority requires the insurer to certify that it has conducted necessary suitability assessments and demonstrate that the key persons are suitable to fulfill their roles.
- 6.4 The Authority requires the insurer to demonstrate, as and when requested, the suitability of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners. This will depend on the person's position and responsibility.
- 6.5 The Authority requires the insurer to take the necessary measures to ensure that these requirements are met by setting high internal standards of ethics and integrity, promoting sound corporate governance and requiring that the key persons have pertinent experience, and maintain a sufficient degree of knowledge and decision making ability.
- 6.6 The application of suitability requirements relating to competence for Board Members, Senior Management and Key Persons in Control Functions in an insurer may vary depending on the degree of their influence and on their responsibilities. It is recognized that an individual considered competent for a particular position within an insurer may not be considered competent for another position with different responsibilities or for a similar position within another insurer.
- 6.7 As a minimum, the Authority requires that the insurer conducts the suitability test by requiring the submission of a curriculum vitae or a resume , indicating the relevant professional qualifications as well as previous and current positions and experience of the individual and further information necessary to assist in the assessment, including whether there have been:
- 6.7.1 Financial problems or bankruptcy in his/her private capacity;

- 6.7.2 Financial problems, bankruptcy or winding-up of an entity in which the individual is or was a Board Member, a member of the Senior Management, a Key Person in Control Function or a Significant Owner;
- 6.7.3 Civil liability incurred by the individual as a consequence of unpaid debts;
- 6.7.4 Lawful suspension, dismissal or disqualification of the individual from a position of Board Member or a member of the Senior Management of any company or organization;
- 6.7.5 Preventive or corrective measures imposed by an authority on entities in which the individual is or was a Board Member, a member of the Senior Management, a Key Person in Control Function or a Significant Owner;
- 6.7.6 Convictions or pending proceedings against the individual in his/her capacity in respect of civil or criminal cases;
- 6.7.7 Convictions in criminal cases of an entity in which the individual is or was a Board Member, a member of the Senior Management, a Key Person in Control Function or a Significant Owner;
- 6.7.8 As a result of previous assessments of suitability of an individual, any sanctions or disciplinary actions taken against that individual by another supervisor;
- 6.7.9 Any disciplinary action taken against an individual by a professional organization in which the individual is or was a member; and

- 6.7.10 Any other fact or circumstance that could reasonably be considered decisive for the assessment of that individual.
- 6.8 The Authority requires a formal statement from the insurer that each of the tests has been performed, and, where necessary, further investigations have been conducted by the insurer. The Authority requires the insurer to make such statements when seeking approval of appointment of key persons to the insurer or at such time as directed by the Authority from time to time.
- 6.9 If the Significant Owner that is to be assessed is a corporate entity, the Authority requires that sufficient and appropriate information be provided to it in order to assess if it meets the suitability requirements, which will relate to:
- the nature and scope of its business;
 - its Significant Owners, where necessary;
 - the source of financing/funding and future access to capital;
 - the group structure, if applicable, and organization chart; and
 - other relevant factors as will be determined from time to time.
- 6.10 If the Significant Owner is regulated by another supervisor, the suitability assessment carried out by the latter may be relied upon to the extent that this assessment reasonably meets the requirements of this guideline.

7.0 NOTIFICATION TO THE AUTHORITY

- 7.1 The Authority requires to be notified by insurers of any changes in Board, Management, Key Person in the Control Function or Significant Owner and of any circumstances that may adversely affect the suitability of its Board Member, a member of the Senior Management, a Key Person in Control Function or a Significant Owner within seven days.

8.0 ENFORCEMENT

8.1 Remedial Measures

8.1.1 When the Authority determines that there is non-compliance with the provisions of this guideline, the Authority may take the necessary action/s in accordance with the provisions of the Insurance Act.

8.2 Administrative Sanctions

8.2.1 Where the Authority determines that an insurer has not met the requirements of this guideline, the Authority may impose any or all of the administrative sanctions to correct the situation in accordance with the provisions of the Insurance Act. The Authority will therefore take appropriate action to rectify the situation when Board Members, Senior Management, Key Persons in Control Functions or Significant Owners do not meet or no longer meet suitability requirements, including but not limited to:

- i. direct that the insurer provides additional education, coaching and/or propose the use of external resources in order to achieve the compliance of suitability requirements by an individual in a position of a Board Member, member of the Senior Management or Key Person in Control Functions;
- ii. Reject, delay or revoke appointment of an individual in a position as Board Member, member of the Senior Management or Key Person in Control Function by the insurer;
- iii. Suspend, dismiss or disqualify an individual in a position as Board Member, member of the Senior Management or Key

Person in Control Function with the insurer, either directly or by ordering the insurer to take these measures;

- iv. Direct the insurer to appoint a different person who meets the suitability requirements for the position.
- v. Impose additional reporting requirements and increase solvency monitoring activities;
- vi. Withdraw or impose conditions on the business license, especially in the case of a major breach of suitability requirements, taking into account the impact of the breach or the number of Board Members, Senior Management or Key Persons in Control Functions involved.
- vii. Take other action as may be deemed necessary.

8.3 Additional administrative sanctions apply to Significant Owners who do not meet or no longer meet suitability requirements. These include, but are not limited to:

- i. Requiring the Significant Owners to dispose of their interests in the insurer within a specified period of time;
- ii. The suspension of the exercise of their corresponding voting rights;
- iii. The nullification of any votes cast or the possibility of their annulment; and
- iv. Monetary penalties.

9.0 EFFECTIVE DATE

The effective date of this Regulation is 30th June 2013

10.0 ENQUIRY

Enquiries on any aspect of this guideline shall be referred to;

Address: The Technical Manager,
Insurance Regulatory Authority,
P.O. Box 43505-00100,
Nairobi

Telephone: +254 20 4996000

Facsimile: +254 20 2710126

E-mail: commins@ira.go.ke



Bima Bora Kwa Taifa
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11.0 ANNEXURE

FIT AND PROPER FORM

Specific tests to assess fitness and propriety for Board Members, Senior Management, Key Persons in Control Functions or Significant Owners

Please answer all the ‘YES’/’NO’ questions by placing a tick (√) in the appropriate column, sign the form and send it to the *Authority*. All ‘YES’ answers must be explained.

1. Have you been licensed or registered under any law which requires licensing or registration in relation to any regulated financial business;	Yes	No
Please provide details		
2. Have you been refused the right or restricted in your right to carry on any trade, business or profession for which a specific license, registration or other authorization is required by law in any jurisdiction;	Yes	No
Please provide details		
3. Have you been issued a prohibition order under any law or has been prohibited from operating in other jurisdiction by any financial services regulatory authority;	Yes	No
Please provide details		
4. Have you been censured, disciplined, suspended or refused membership or registration by the Authority or any other regulatory authority, in Kenya or elsewhere;	Yes	No
Please provide details		
5. Have you been the subject of any complaint made reasonably and in good faith relating to activities regulated by the Authority or under any law in any jurisdiction;	Yes	No
Please provide details		
6. Have you been the subject of any proceedings of a disciplinary or criminal nature or have been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction; of misfeasance	Yes	No

or serious misconduct?		
Please provide details		
7. Have you been convicted of any offence, or been subject to any pending proceedings which may lead to such a conviction, under any law in any jurisdiction;	Yes	No
Please provide details		
8. Have you had any judgment (including a finding of fraud, misrepresentation, or dishonesty) entered against you in any civil proceedings or are you a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;	Yes	No
Please provide details		
9. Have you had any civil penalty enforcement action taken against you by the Authority or any other regulatory authority under any law in any jurisdiction;	Yes	No
Please provide details		
10. Have you ever contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, in Kenya or elsewhere;	Yes	No
Please provide details		
11. Have you ever been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by any regulatory authority, an operator of a market or clearing facility, professional body or government agency, in Kenya or elsewhere	Yes	No
Please provide details		
12. Have you ever been refused a fidelity or surety bond, in Kenya or elsewhere?	Yes	No
Please provide details		

<p>13. Have you ever been a director, partner or concerned in the management of a business that has been censured, disciplined, suspended or refused membership or registration by any regulatory authority, professional body or government agency, in Kenya or elsewhere;?</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>14. Have you been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, you were a director, partner or concerned in the management of the business, in Kenya or elsewhere?</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>15. Have you ever been dismissed or asked to resign, from office, employment, a position of trust, or a fiduciary appointment or similar position, in Kenya or elsewhere;</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>16. Have you ever been subject to disciplinary proceedings by your current or former employer(s), in Kenya or elsewhere</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>17. Have you ever been disqualified from acting as a director or disqualified from acting in any managerial capacity, in Kenya or elsewhere</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>18. Have you ever been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, in Kenya or elsewhere;</p>	<p>Yes</p>	<p>No</p>
<p>Please provide details</p>		
<p>19. Are you unable to fulfill any financial obligations, in Kenya or elsewhere</p>	<p>Yes</p>	<p>No</p>

Please provide details		
20. Are you subject to a judgment debt which is unsatisfied, either in whole or in part, in Kenya or elsewhere?	Yes	No
Please provide details		

STATUTORY DECLARATION

I do solemnly declare as follows:

- a. I am aware that it is an offence to knowingly or recklessly provide any information, which is false or misleading in connection with an application for an approval to be a Board Member, Manager, Key Person in Control Functions or Significant Owner in an insurer.
- b. I am also aware that provision of false information in this regard may result in rejection of this application by the Authority.
- c. I certify that the information given above is complete and accurate to the best of my knowledge, and that there are no other facts relevant to this application of which the Authority should be aware.
- d. I undertake to inform the Authority of any changes material to the applications which arise while the application is under consideration.
- e. I make this declaration conscientiously believing the same to be true and in accordance with the Oaths and Statutory Declarations Act.

Sworn at _____ (place) this _____ (date) day of _____ (month)
 _____(year)

Signature of Deponent

Declared by the Deponent at _____ (place) this _____ (date) day of
 _____ (month) _____ (year)

Before me;

Commissioner for Oaths/Notary Public