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ICP 5

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ICP 5 Suitability of Persons

The supervisor requires Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an insurer to be and remain suitable to fulfil their respective roles.

Introductory Guidance

5.0.1 — Suitability is an overarching term that means:

- for Board Members, Senior Management, and Key Persons in Control Functions, having the competence and integrity to fulfil their respective roles (also known as being “fit and proper”); and
- for Significant Owners, having the financial soundness and integrity to fulfil their roles.

Comment [NM1]: Comment from GWG: Unnecessary introductory guidance. Covered in ICP and Glossary

5.1 Legislation identifies which persons are required to meet suitability requirements. At a minimum, the legislation includes Board Members, Senior Management, Key Persons in Control Functions and Significant Owners.

5.1.1 ~~At a minimum, the legislation should include Board Members, Senior Management, Key Persons in Control Functions and Significant Owners.~~ Suitability requirements may extend to other individuals (e.g. financial controllers and treasurers) to account for the ~~duties and responsibilities~~ roles of such individuals that may differ depending on the jurisdiction and the legal form and governance structure of the insurer. ~~Some jurisdictions may impose these requirements and apply these tests also to other individuals including financial controllers and treasurers.~~

5.2 The supervisor requires that in order to be suitable to fulfil their roles:

- Board Members (individually and collectively), Senior Management and Key Persons in Control Functions possess competence and integrity; and to fulfil their roles.
- Significant Owners are required to have possess the necessary financial soundness and integrity necessary to fulfil their roles in order to be suitable.

Suitability requirements for Board Members, Senior Management and Key Persons in Control Functions

5.2.1 — ~~In order to meet suitability requirements, a Board Member, a member of the Senior Management and a Key Person in Control Functions should have the necessary qualities that will allow that~~

~~individual to perform the duties and carry out the responsibilities required in his/her position in the insurer.~~

~~5.2.25.2.1~~ Competence ~~can generally be judged from~~ is demonstrated through evidence regarding the level of an individual's professional or formal qualifications and knowledge, skills and/or pertinent experience within the insurance and financial industries or other businesses. Competence also includes having the appropriate level of commitment to perform the role. ~~(Please also refer to ICP 7 (Corporate Governance) with regard to competence and commitment and to ICP 8 (Risk Management and Internal Controls) with regard to control functions).~~ When assessing the competence of the Board Members of collective organs of an insurer (e.g. the Board), regard should be given to respective duties allocated to individual members to ensure appropriate diversity of qualities and to the effective functioning of the collective organ Board as a whole.

Comment [WR2]: Moved to new 5.3.6 as this is about the assessing process rather than defining competence.

~~5.2.35.2.2~~ Integrity is demonstrated through evidence regarding character and in personal behaviour 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 supervisor.~~

~~5.2.45.2.3~~ The supervisor should 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 above noted these~~ individuals have pertinent experience, and maintain a sufficient degree of knowledge and decision making ability.

5.2.4 To ensure an appropriate level of suitability, Board Members, Senior Management and Key Persons in Control Functions should acquire, maintain and enhance their knowledge and skills to fulfil their roles, for example, by participating in tailored and comprehensive induction programmes and having access to ongoing training on relevant issues. Sufficient time, budget and other resources should be dedicated for this purpose, including external expertise drawn upon as needed. More extensive efforts should be made to train those with more limited financial, regulatory or risk-related experience.

~~5.2.5 Indicators for an individual's assessment in terms of suitability include criminal, financial, supervisory and other aspects. The presence of any one indicator may, but need not in and of itself, be determinative of a person's suitability. All relevant indicators, such as the pattern of behaviour, should be considered in suitability assessment. Examples of indicators could be as follows:~~

Comment [NM3]: Original 5.2.4 moved down to 5.3.4 and revised

Suitability requirements for Significant Owners

~~5.2.6~~5.2.5 At a minimum, the necessary qualities of a Significant Owner relate to:

- financial soundness demonstrated by sources of financing/funding and future access to capital; and
- ~~the~~ integrity demonstrated in personal or corporate behaviour and in business conduct.

Comment [WR4]: To explain briefly what we mean by financial soundness.

~~The presence of any one indicator may, but need not in and of itself, be determinative of a person's suitability. All relevant indicators, such as the pattern of behaviour or a prior refusal of regulatory approval for key positions, should be considered in suitability assessment.~~

~~5.2.7~~ Financial soundness is an important element in determining the suitability of Significant Owners. In determining the financial soundness of Significant Owners, besides their source of financing/funding and future access to capital, the supervisor should also consider matters such as, but not limited to whether:

Comment [NM5]: Moved to guidance under 5.3

- ~~there are...~~

5.3 The supervisor requires the insurer to demonstrate initially and on an ongoing basis thereafter, when requested by the supervisor, the suitability of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners. The suitability requirements and the extent of review required by the supervisor depend on the person's position and responsibilityrole.

Comment [NM6]: Following recommendations from SAPR

~~5.3.1~~ The supervisor 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 above noted individuals have pertinent experience, and maintain a sufficient degree of knowledge and decision making ability.

Comment [NM7]: Moved up to 5.2.3

~~5.3.2~~5.3.1 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/roles. For example, supervisors may require the Chairman of the Board to possess a higher level of knowledge and experience in certain areas to ensure effective leadership. It is recognised 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. For Key Persons in Control Functions, the individual(s) to be assessed should be those with the functional responsibility for that particular control function rather than those with overall accountability for the function. The supervisor should assess the suitability assessment of

Comment [NM8]: Original 5.3.2 amended and moved down to 5.3.6 for better flow.

Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an ~~insurer insurance legal entity by the supervisor should be conducted~~ as part of the licensing procedure before the ~~insurer insurance legal entity~~ is permitted to operate. ~~See ICP 4 (Licensing).~~

~~5.3.2 When the insurer is already licensed, the supervisor should assess the suitability of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of insurers prior to changes in the positions. The supervisor should also require the insurer to review and satisfy itself as to the appropriateness of the procedures that are in place within the insurer to perform internal suitability assessments of Board members, Senior Management and Key Persons in Control Functions on an ongoing basis, for example on an annual basis or when there are changes in the circumstances of the individuals. The supervisor may also require the insurer to certify that it has conducted such assessments and demonstrate how it reached its conclusions.~~

5.3.3 ~~For Key Persons in Control Functions, the individual(s) to be assessed should be those with the functional responsibility for that particular control function rather than those with overall accountability for the function.~~

5.3.4 The supervisor should ~~have collect~~ sufficient and appropriate information, ~~or satisfy itself that the insurer has collected such information, in order~~ to assess whether an individual meets suitability requirements. The information to be collected and the supervisor's assessment of such information may differ depending on the ~~position of the person role, being assessed in relation to the interests to be safeguarded.~~

5.3.5 For the purpose of ~~collecting information for~~ the assessment, the supervisor should require the submission of a résumé or similar indicating the professional qualifications as well as previous and current positions and experience of the individual and any information necessary to assist in the assessment, such as:

- ~~evidence that the individual has sufficient relevant knowledge and pertinent experience within the insurance and financial industries or other businesses; and~~
- ~~evidence that the individual has the appropriate level of commitment to perform the role.;~~
- ~~financial problems or bankruptcy in his/her private capacity;~~
- ~~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 Functions or a Significant Owner;~~

Comment [NM9]: Original 5.3.4 split into 2 guidance

Comment [NM10]: The parts below from original 5.3.4 are moved down to 5.3.7

- ~~civil liability incurred by the individual as a consequence of unpaid debts;~~
- ~~the suspension, dismissal or disqualification of the individual from a position from acting as a Board Member or a member of the Senior Management of any company or organisation;~~
- ~~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 Functions or a Significant Owner;~~
- ~~civil liability, criminal convictions or pending proceedings against the individual in his/her personal capacity in respect of civil or criminal cases;~~
- ~~civil liability, criminal convictions or pending proceedings against 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 Functions or a Significant Owner;~~
- ~~outcome of previous assessments of suitability of an individual, or sanctions or disciplinary actions taken against that individual by another supervisor;~~
- ~~any disciplinary action taken against an individual by a professional organisation in which the individual is or was a member; and~~
- ~~any other fact or circumstance that could reasonably be considered decisive material for the assessment of that individual.~~

5.3.6 The application of suitability requirements relating to competence for Board Members, Senior Management and Key Persons in Control Functions ~~of in~~ an insurer may vary depending on the degree of their influence and on their ~~responsibilities~~ roles. ~~For example, supervisors may require the Chairman of the Board to possess a higher level of knowledge and experience in certain areas to ensure effective leadership.~~ It is recognised 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. ~~When assessing the competence of the members of collective organs of an insurer (e.g. the Board), Members, regard should be given to respective duties allocated to individual members to ensure appropriate diversity of qualities and to the effective functioning of the collective organ Board as a whole. For Key Persons in Control Functions, the individual(s) to be assessed should be those with the functional responsibility for that particular control function rather than those with overall accountability for the function.~~

Comment [WR11]: Moved from Original 5.2.2 (5.2.1 above)

Comment [TmA12]: Moved to the end of the new 5.3.3

5.3.7 In determining assessing the suitability integrity of an individual Board Member, Senior Management, Key Person in Control Functions and Significant Owner, the supervisor should assess the criminal, financial, supervisory and other aspects. To do so, the supervisor may look at consider a variety of indicators such as:

- Criminal indicators: The individual should not have a record or evidence of previous conduct and activities such as:
 - civil liability, criminal convictions or pending proceedings where he/she has been convicted of a criminal offence such as under any for breaches of law legislation designed to protect members of the public from financial loss, e.g. dishonesty, or misappropriation of assets, embezzlement and other fraud or other criminal offences (including anti-money laundering and the combating of the financing of terrorism (AML/CFT) matters).
 - civil liability, criminal convictions or pending proceedings against the individual in his/her personal capacity in respect of civil or criminal cases;
 - civil liability, criminal convictions or pending proceedings against 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 Functions or a Significant Owner; or
 - civil liability incurred by the individual as a consequence of unpaid debts. In assessing this indicator, the supervisor should recognise that criminal convictions or past misconduct are relevant factors for assessing the suitability of a person. Consideration should also be taken to the lapse of time since the misconduct or conviction, and its severity, as well as the person's subsequent conduct.
- Financial indicators: These provide information on possible financial misconduct, improper conduct in financial accounting, or negligence in decision-making. Such indicators could include: be
 - financial problems or bankruptcy in his/her private capacity; financial difficulties leading to legal proceedings, a mismatch between financial commitments and income and other funds, personal bankruptcy or
 - financial difficulties problems, bankruptcy or insolvency proceedings in or in respect of an entity in which the individual is or was a Board Member, a

Comment [NM13]: Bulletpoints below moved from Guidance under 5.2 (e.g. 5.2.4) as this provides guidance on how to review integrity.

Comment [NM14]: This sentence deleted. Self-evident.

Comment [WR15]: Moved to the end of this paragraph as it applies to all indicators.

member of the Senior Management or a Key Person in Control Functions.

- Supervisory indicators: These provide information gathered by or that comes 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. Such indicators could include:
 - the withholding of information from public authorities or submission of incorrect financial or other statements;
 - market-conduct of business transgressions; and
 - prior refusal of regulatory approval for key positions; other corrective actions or interventions by a public authority.
 - preventive or corrective measures imposed (or pending) on entities in which the individual is or was a Board Member, a member of the Senior Management, or a Key Person in Control Functions; or
 - outcome of previous assessments of suitability of an individual, or sanctions or disciplinary actions taken (or pending) against that individual by another supervisor.
- Other indicators: These may provide other information relating that could reasonably be considered material for the assessment of the suitability of the individual. Examples include:
 - suspension, dismissal or disqualification of the individual from a position as a Board Member or a member of the Senior Management of any company or organisation;
 - 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 action or measures taken against an individual by a professional organisation in which the individual is or was a member (e.g., actuaries, accountants or lawyers); or disciplinary measures imposed by trade or professional associations, for example on actuaries, accountants or lawyers. Additionally,

- strength of character, such as the ability and willingness to challenge, may be an indicator of a person's integrity as well as competence to perform the respective role.

The presence of any one indicator may, but need not in and of itself, be determinative of a person's suitability. All relevant indicators, such as the pattern of behaviour, should be considered in a suitability assessment. Consideration should also be taken to the lapse of time since ~~the misconduct or conviction, since a particular indicator occurred~~ and its severity, as well as the person's subsequent conduct.

Comment [NM16]: Original 5.2.4 – with some amendments

~~5.3.6~~ **5.3.8** For Significant Owners, the supervisor sets out the minimum standards of financial soundness. – If the Significant Owner that is to be assessed is a legal person or a corporate entity, the supervisor should collect sufficient and appropriate information such as to assess if it meets the suitability requirements, which should relate to:

- the nature and scope of its business;
- its Significant Owners ownership structure, where necessary relevant;
- its source of financing/funding and future access to capital;
- the group structure, if applicable, and organisation chart; and
- other relevant factors.
- ~~If the Significant Owner is regulated by another supervisor, the suitability assessment done by the latter may be relied upon to the extent that this assessment reasonably meets the requirements of this standard.~~

5.3.9 In determining the financial soundness of Significant Owners, besides the supervisor should assess their source of financing/funding and future access to capital. To do so, the supervisor should also consider financial indicators as such as:

Comment [NM17]: Taken from original 5.2.6 as it relates to the review.

- Financial statements and exhibits. If the Significant Owner is a legal person, financial statements may include annual financial statements; for a natural person, it may include financial information (such as tax accounts or personal wealth statements) that are reviewed by an independent public accountant; and
- Transactions and agreements such as: loans; investments; purchase, sale or exchange of securities or other assets; dividends and other distributions to shareholders; management agreements and service contracts; and tax allocation agreements.

5.3.10 Additionally the supervisor should also consider matters such as, but not limited to whether:

Comment [NM18]: Taken from original 5.2.6 as it relates to the review.

- Expectations of Significant Owners understand their role as potential future sources of future capital, if needed, are understood;
- there are any indicators that Significant Owners will not be able to meet their debts as they fall due;
- appropriate prudential solvency requirements for are met if the Significant Owner is a financial institutions are met;
- Significant Owners they have been subject to any legally valid judgment, debt or order that remains outstanding or has not been satisfied within a reasonable period;
- Significant Owners they have made arrangements with creditors, filed for bankruptcy or been adjudged bankrupt or had assets sequestered; and
- Significant Owners they have been able to provide the supervisor with a satisfactory credit reference.

The presence of any one indicator may, but need not in and of itself, be determinative of a person's suitability. All relevant indicators, such as the pattern of behaviour, should be considered in a suitability assessment. If the Significant Owner is regulated by another supervisor, the suitability assessment done by the latter may be relied upon to the extent that this assessment reasonably meets the requirements of this standard.

5.4 The supervisor requires to be notified notification by insurers of any changes in Board Members, Senior Management, Key persons in Control Functions and Significant Owners, and of any circumstances that may materially adversely affect the suitability of its Board Members, Senior Management, Key Persons in Control Functions and Significant Owners.

5.4.1 Insurers should be required to report forthwith promptly any information gained about these persons that may materially adversely affect their suitability, for example, if a Board Member is convicted of a financial crime. See guidance under Standard 5.3 for additional examples of indicators of circumstances that may materially adversely affect an individual.

5.5 The supervisor takes appropriate action to rectify the situation when Board Members, Senior Management and Key Persons in Control Functions or Significant Owners no longer meet suitability requirements.

5.5.1 The supervisor should have the power to impose various measures in respect of Board Members, Senior Management and Key Persons in Control Functions who do not meet the suitability requirements. Examples of such measures could include the power to:

- requesting the insurer to provide additional education, coaching or ~~propose~~ the use of external resources in order to achieve ~~the~~ compliance ~~of with~~ suitability requirements by an individual in a position as ~~member of the~~ Board Member, member of the Senior Management or Key Person in Control Functions;
- preventing, delaying or revoking appointment of an individual in a position as Board Member, member of the Senior Management or Key Person in Control Functions ~~by the insurer;~~
- suspending, dismissing or disqualifying an individual in a position as member of the Board, member of the Senior Management or Key Person in Control Functions ~~with the insurer,~~ either directly or by ordering the insurer to take these measures;
- ~~ordering requiring~~ the insurer to appoint a different person for the position in question who does meet the suitability requirements, to reinforce the sound and proper management and control of the insurer;
- ~~taking other actions such as~~ imposing additional reporting requirements and increasing solvency monitoring activities; ~~and/or~~
- withdrawing or imposing conditions on the business licence, especially in the case of a major breach of suitability requirements, taking into account the impact of the breach or the number of members of the Board, Senior Management or Key Persons in Control Functions involved.

5.5.2 The supervisor should ~~have the power to~~ impose measures of a preventive and corrective nature in respect of Significant Owners who do not meet suitability requirements. Examples of such measures ~~could include:~~

- ~~The power to~~ requiring the Significant Owners to dispose of their interests in the insurer within a prescribed period of time;
- the suspension of the exercise of their corresponding voting rights; or
- the nullification or annulment of any votes cast by the Significant Owners, or the possibility of their annulment.

5.5.3 There can be circumstances where a Board Member, a member of the Senior Management or a Key Person in Control Functions is unable to carry out his/her role and a replacement needs to be appointed on short notice. In jurisdictions where the supervisor approves the post-licensing appointment of Board Members, Senior Management or Key Persons in Control Functions, it may be appropriate, ~~for example for policyholder protection,~~ for the

Comment [NM19]: Original 5.5.2: bulleted and slightly amended.

supervisor to permit the post to be filled temporarily until the successor's suitability assessment is affirmed. In such circumstances, a supervisor ~~might~~ may require that these temporary replacements meet certain suitability requirements, depending on his/her position or responsibilities within the insurer. However, such assessment should be conducted and concluded in a timely manner, ~~with all the deliberate speed~~.

5.6 The supervisor exchanges information with other authorities inside and outside its jurisdiction where necessary to check the suitability of Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an insurer.

- 5.6.1 ~~Supervisors should use the modes available for supervisory cooperation, in particular, the ability to exchange information relevant to check suitability with domestic or foreign authorities, taking into account confidentiality issues. Having such arrangements in place is important so as to not unduly delay relevant supervisory processes and/or affect the insurers' ability to satisfy composition requirements for the Board or make necessary changes to its management team. Legislation defines the extent of possible information exchange inside and outside a jurisdiction taking into account confidentiality issues and existing Memoranda of Understanding.~~ For additional information, see ICP 3 (Information Exchange and Confidentiality Requirements).
- 5.6.2 The supervisor ~~may~~ uses this information as an additional tool to ~~effectively~~ assess effectively the suitability of, or to obtain information about, a Board Member, a member of the Senior Management or a Key Person in Control Functions ~~of an insurer, notably for foreign insurers.~~
- 5.6.3 If a Significant Owner that is to be assessed is a legal person or a corporate entity regulated in another jurisdiction, the supervisor should seek confirmation from the ~~pertinent~~ relevant supervisor authority that the entity is in good standing in that other jurisdiction.