

GOVERNMENT NOTICE NO.6

INSURANCE ACT
(ACT NO. 9 OF 2010)

INSURANCE (SUITABILITY OF PERSONS ASSOCIATED WITH
OWNERSHIP AND MANAGEMENT OF INSURERS AND
INSURANCE BROKERS) DIRECTIVE, 2011

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IN EXERCISE of the Powers conferred by section 79 (3) (a) and (b) of the Insurance Act, 2010, the Registrar has issued the following Directive—

PART I—PRELIMINARY

- 1. This Directive may be cited as the Insurance (Suitability of Persons Associated with Ownership and Management of Insurers and Insurance Brokers) Directive, 2011. Citation
- 2. This Directive shall apply to insurers, re-insurers, insurance brokers and re-insurance brokers conducting insurance business in Malawi. Application
- 3. In this Directive, unless the context otherwise requires— Interpretation
 - “Registrar” means Registrar of Financial Institutions appointed under section 8 of the Financial Services Act, 2010. Act No. 26 of 2010

PART II—OBJECTIVES AND RATIONALE

- 4. The objectives of this Directive include— Objectives
 - (a) ensuring that insurers and insurance brokers are managed and overseen by competent personnel, at board level, management and independent advisory level; and
 - (b) promoting corporate self-discipline in the management of insurers and insurance brokers.
- 5. This Directive is issued on the basis that— Rationale
 - (a) significant owners, members of the board, senior management, actuaries and auditors of insurers and insurance brokers possess appropriate integrity, competence, experience and qualifications so that they are fit and proper to fulfill their roles; and

(b) insurers and insurance brokers manage their business by following international best practices on corporate governance.

PART III—SPECIFIC REQUIREMENTS

Responsible
persons

6.—(1) A responsible person of an insurer or an insurance broker, shall be —

- (a) a significant owner;
- (b) a director;
- (c) a senior manager;
- (d) an internal auditor;
- (e) an appointed actuary; or
- (f) an external auditor.

(2) A person need not be an employee of the regulated institution to be a responsible person.

(3)—(a) The Registrar may determine that a person is a responsible person if the Registrar is satisfied that the person plays a significant role in the management of an insurer or an insurance broker.

(b) The Registrar shall notify the insurer or insurance broker of the determination in writing.

(4)—(a) The Registrar may determine that a person is not a responsible person if the Registrar is satisfied that the person does not play a significant role in the management of the insurer or insurance broker.

(b) The Registrar shall notify the insurer or the insurance broker of the determination in writing.

(c) The Registrar may set such conditions as the Registrar believes are appropriate.

(5) A significant owner of an insurer or an insurance broker shall be a person or corporation with—

(a) more than ten per cent (10%) of the ordinary shareholder capital of the insurer or insurance broker; or

(b) more than ten per cent (10%) of voting rights, of the insurer or insurance broker.

(6)—(a) If the significant owner is a corporation, the directors of that corporation shall be the responsible persons.

(b) If the corporation is owned by a corporation, the directors of the ultimate holding company shall be the responsible persons.

(7) A senior manager of an insurer or insurance broker shall be a person, other than a director of an insurer or insurance broker who—

(a) participates in making decisions that affect a substantial part of the business of the insurer or insurance broker; or

(b) has the capacity to affect significantly the financial standing of the insurer or insurance broker; or

(c) may materially affect a substantial part of the business or the financial standing of an insurer or insurance broker through—

(i) enforcing policies and implementing strategies approved by the board of directors of the insurer or insurance broker; or

(ii) developing and implementing systems that identify, access, manage or monitor risks relating to the business of the insurer or insurance broker.

(8) An appointed actuary is a person who holds the position of appointed actuary in accordance with the Directive on actuaries.

(9) An external auditor is a person who holds the position of external auditor in accordance with the Directive on external auditors.

7. (1) The board of directors hereafter referred to as the Board shall be responsible for ensuring that responsible persons of an insurer or an insurance broker are fit and proper. Fit and Proper requirements

(2) The key requirements of this Directive are that—

(a) an insurer or an insurance broker shall implement a written Fit and Proper policy on the fitness and propriety of a responsible person, meeting the requirements of this Directive;

(b) the fitness and propriety of a responsible person shall be assessed prior to the initial appointment;

(c) an initial appointment or change in the appointment of a responsible person shall be submitted to the Registrar for approval and—

(i) an insurer or an insurance broker shall provide reasons for proposing a person for appointment as a responsible person; and

(ii) if approval is not granted by the Registrar in accordance with this Directive, the Registrar shall provide a written explanation to the insurer or insurance broker for finding that a person is not fit and proper;

(d) the Board shall re-assess the fitness and propriety of responsible persons annually;

(e) an insurer or an insurance broker shall take prudent steps to ensure that a person is not proposed for appointment, or does not continue to hold, a responsible person position for which the person is not fit and proper; and

(f) an insurer or an insurance broker shall provide the Registrar with information regarding the assessment of the fitness and propriety of a responsible person.

8.—(1) An insurer or an insurance broker shall prudently manage business risks, by ensuring that significant owners, Board members, senior managers, auditors and actuaries— Fit and Proper Policy

(a) possess appropriate integrity, competence, experience and qualifications; and

(b) are fit and proper to fulfill their roles.

(2) An insurer or an insurance broker shall ensure that every responsible person understands the provisions of the Fit and Proper Policy.

(3) The Fit and Proper Policy shall form part of the Risk Management Strategy of an insurer or an insurance broker as required under the Directive on risk management.

(4) The Fit and Proper Policy shall state the procedure to be followed when assessing if a person is fit and proper for a responsible person position and shall include —

- (a) a list of persons responsible for conducting Fit and Proper assessments;
- (b) information to be obtained during Fit and Proper assessments;
- (c) matters for consideration before determining if a person is fit and proper; and
- (d) the decision making process that shall be followed.

(5) The procedure for Fit and Proper assessments is that —

(a) an insurer or an insurance broker shall complete a Fit and Proper assessment prior to a person taking-up a responsible person position;

(b) an insurer or an insurance broker shall provide the outcome of a Fit and Proper assessment on a proposed responsible person to the Registrar;

(c) the Registrar shall use information received from the insurer or an insurance broker to conduct a further investigation on whether the person is fit and proper;

(d) the Registrar shall advise the insurer or insurance broker within twenty-one days of the submission of the information to the Registrar on whether the person is fit and proper;

(e) where a person is not fit and proper, the Registrar shall provide written reasons;

(f) an insurer or an insurance broker may appeal against an adverse finding as to the fitness and propriety of a proposed responsible person, as provided in the Financial Services Act, 2010; and

(g) an insurer or an insurance broker shall not employ a responsible person until the Registrar has advised that the person is fit and proper.

(6)---(a) The Fit and Proper Policy shall have adequate provisions to allow whistle blowing if a person believes that a responsible person does not meet the Fit and Proper criteria of an insurer or an insurance broker.

(b) The Fit and Proper Policy shall include provisions to ensure that an insurer or an insurance broker and their associated companies consent to the whistle blower notifying either the person conducting the Fit and Proper assessments or the Registrar of the belief and the reasons why a person does not meet the Fit and Proper criteria.

(7) The Fit and Proper Policy shall specify actions to be taken where a person is assessed as not being fit and proper.

9.—(1) Every insurer or insurance broker shall clearly define and document the competencies required for each responsible person position.

(2) An insurer or an insurance broker shall provide information on every responsible person to enable the Registrar to determine that the person is fit and proper to fulfill their role.

(3) The information required under subparagraph (2) shall provide that

(a) the person possesses the competence, character, diligence, honesty, integrity and judgement to properly perform the duties of the responsible person position;

(b) the person is not legally disqualified from holding the position;

(c) the person either --

(i) has no conflict of interest in performing the duties of the responsible person position; or

(ii) if the person has a conflict of interest, it would be prudent for an insurer or an insurance broker and the Registrar to conclude that the conflict will not create a material risk that the person will fail to properly perform the duties of the position.

(4) The following shall not be approved as director, principal officer, and senior management official of an insurer or an insurance broker—

(a) a member of Cabinet or Parliament;

(b) an office-holder in a political party at any political level;

(c) a director, officer, or employee of the Reserve Bank of Malawi;

or

(d) an employee of Government, unless representing Government interest in that institution.

(5) The following qualifications shall apply—

(a) the principal officer of an insurer shall be a chartered insurer and shall have at least ten years of experience in the insurance industry;

(b) the principal officer of an insurance broker shall be a chartered insurer or shall have at least ten years of senior managerial experience in the insurance industry;

(c) the technical functions of claims, underwriting and re-insurance shall be managed by chartered insurers; and

(d) the accounting function of an insurer shall be managed by a qualified or chartered accountant (ACCA/CIMA) qualification and the person shall be a member of the local professional accounting body SOCAM, or its equivalent, as recognized by the Insurance Institute of Malawi.

10. The additional criteria for a person to be fit and proper to act as an appointed external auditor shall be whether the person—

(a) has appropriate formal qualifications;

(b) is a registered company auditor under Malawi legislation;

(c) is not --

(i) the appointed actuary of the insurer or insurance broker; or

Additional
criteria for
appointed
auditors

(ii) an employee or director of an entity of which the appointed actuary is an employee or director; or

(iii) a partner of an appointed actuary.

(d) has a minimum of three years experience in the audit of insurers and has experience relating to insurers that is sufficiently relevant and recent to provide reasonable assurance that the person is familiar with current issues in the audit of insurers;

(e) is a member of a recognized professional body; and

(f) is ordinarily resident in Malawi.

Additional
criteria for
appointed
actuaries

11. The additional criteria for a person to be fit and proper to act as appointed actuary of an insurer shall be whether the person—

(a) has appropriate formal qualifications;

(b) is not the chief executive nor a director of the insurer, or of a related entity;

(c) is not—

(i) the appointed auditor;

(ii) an employee or director of an entity of which the appointed auditor is an employee or director; or

(iii) a partner of an appointed auditor;

(d) has a minimum of five years relevant experience in the provision of actuarial services to entities carrying on insurance business and it would be prudent to conclude that the person is familiar with current issues in the provision of actuarial services to such entities; and

(e) is a fellow or accredited member of an approved actuarial institute in accordance with the directive on actuaries.

The approval
process for
responsible
persons

12.—(1) A licensed insurer or an insurance broker shall request the written approval of the Registrar for a proposed appointment of a new senior management official, director or responsible person.

(2) The approval process shall involve assessment of the submitted information on the responsible person, and the information shall include—

(a) personal details (name, age, address);

(b) qualifications, at a minimum a director of an insurer or an insurance broker shall have a University degree or a professional qualification in finance, accounting, economics, business studies, insurance and banking;

(c) experience, reputation and expertise to conduct insurance business in the earmarked role;

(d) roles performed;

(e) an extract or statement from the police to show that the person has no criminal record; and

(f) credit reference checks.

(3)—(a) The Registrar may request additional or supplementary information if, in the opinion of the Registrar, the basic information submitted with a request is insufficient.

(b) Failure to provide the Registrar with the required information in a timely manner shall result in the request not being considered.

(4) (a) The Registrar shall make a decision on a request for a proposed responsible person within twenty-one days from the date the Registrar receives necessary information for making a decision.

(b) The Registrar shall notify the insurer or the insurance broker of its decision in writing.

PART IV ADMINISTRATIVE PENALTIES AND ADMINISTRATIVE SANCTIONS

13. Where the Registrar determines that an insurer or an insurance broker has not met the requirements of this Directive, the Registrar shall impose administrative penalties in accordance with the provisions of the Financial Services Act, 2010, to correct the situation, including but not limited to

(a) a monetary penalty of five hundred thousand Kwacha (K500,000);

(b) a written warning; or

(c) direction to an insurer or an insurance broker to compensate any person who has suffered loss because of the contravention.

14. In addition to the penalties prescribed in paragraph 13, the Registrar may take any or all of the following actions against an insurer or an insurance broker

(a) imposition of directions as stipulated under section 39 of the Financial Services Act, 2010;

(b) prohibition from declaring or paying dividends;

(c) prohibition from declaring or paying bonuses, salary incentives or other discretionary compensation to directors or managing officers;

(d) suspension of the establishment of new branches or expansion into new insurance or financial activities;

(e) suspension of the acceptance of new risks and certain classes of insurance business;

(f) suspension of acquisition of fixed assets;

(g) where the insurer or insurance broker persistently fails to comply with this Directive, closure of an insurer or an insurance broker to accept new business, and suspension or cancellation of licence.

PART V TRANSITIONAL ARRANGEMENTS

15. (1) Every insurer and insurance broker governed by the Insurance Act shall conduct Fit and Proper Investigations on all responsible persons and shall provide a report of the investigations to the Registrar not later than five months after publication of this Directive.

(2) The Registrar shall provide a written response on the fitness and propriety of all responsible persons within six months of having received the report of the investigations from an insurer or insurance broker.

Made this 2nd day of February, 2011:

(FILE NO. MF/2/10)

DR. PERKS M. LIGOYA
Registrar
