

Insurance Intermediaries Rule 21 of 2007

Personal Questionnaire to be submitted by specific individuals

Rule pursuant to article 4 of the Act

1. (1) This Insurance Intermediaries Rule on personal questionnaires to be submitted by specific individuals (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act.

(2) This Rule shall come into force on the 1st June 2007.

Application

2. This Rule applies to -

(a) directors, controllers, senior managers and all persons who effectively manage the affairs of a company desirous of applying for enrolment and, on continuing basis, a company enrolled, in the Agents List, Managers List or Brokers List;

(b) all qualifying shareholders who are individuals of a company desirous of applying for enrolment and, on continuing basis, a company enrolled, in the Agents List, Managers List or Brokers List,

(“the individual concerned”).

Scope

3. The scope of this Rule is to determine a compliance test on continuing basis for ensuring the fitness and properness of the individual concerned, so that the criteria of sound and prudent management would be, and continue to be, fulfilled with respect to the carrying out of insurance intermediaries activities.

Definitions

4. In this Rule, unless the context otherwise requires -

“controller”, in relation to an enrolled company means a person who alone or jointly with others, exercises control of the enrolled company and includes -

(a) a managing director of the enrolled company or of a body corporate of which the company is a subsidiary;

(b) a chief executive of the enrolled company or of a body corporate, being an enrolled company, of which the company is a subsidiary;

(c) a person in accordance with whose directions or instructions the directors of the enrolled company or of a body corporate of which it is a subsidiary are accustomed to act;

“chief executive”, in relation to an enrolled company or body corporate, means an employee of the company or body corporate, who, either alone or jointly with others, is or will be responsible under the immediate authority of the directors for the conduct of the insurance intermediaries activities, as the case may be, of the enrolled company or body corporate;

“senior manager” –

(a) in relation to an enrolled local company, means any employee of the company (other than a chief executive) who, under the immediate authority of a director or the chief executive of the company exercises managerial functions or is responsible for maintaining accounts or other records of the company;

(b) in relation to a branch of an enrolled foreign company in Malta, means an employee of the company who satisfies the provisions of paragraph (a) of subarticle (2) of article 12 of the Act and includes a person vested with the administration of the branch of the company,

and, in each case, “senior manager” shall include the Compliance Officer and Money Laundering Reporting Officer of the company or branch in Malta and a manager whose duties and responsibilities ordinarily involve carrying out a function which is of importance to the effective running of the operational business of the enrolled company.

“Personal Questionnaire” means the Personal Questionnaire in the form and content set out in Appendix I to this Rule.

Approval of proposed qualifying shareholder, director, controller or senior manager of an enrolled company

5. (1) No enrolled company shall appoint an individual as director, controller or senior manager of the company unless:-

(a) the enrolled company has served on the Authority a written notice stating that it proposes to appoint that individual to that position and has submitted a Personal Questionnaire in respect of that individual prior to the date when the enrolled company would like the person to take up the appointment; and

(b) the Authority has notified the company in writing that there is no objection to that individual being appointed to that position.

(2) No individual shall become a qualifying shareholder of an enrolled company, unless -

(a) the enrolled company has served on the Authority a written notice of the individual's intention to become a qualifying shareholder and has submitted a Personal Questionnaire in respect of that individual; and

(b) the Authority has granted consent in accordance with article 38 of the Insurance Business Act, 1998 applied pursuant to article 54 of the Act;

(3) A Personal Questionnaire submitted by the company under paragraphs (1) and (2) of this article shall be completed by the individual concerned and its submission by the company to the Authority constitutes an acknowledgement that the notice served on the Authority is served with that individual's knowledge and consent.

(4) For the purposes of paragraph (1) of this article -

(a) the Authority may serve a notice of objection on the ground that it appears to it that the individual proposed to be appointed is not a fit and proper person to be appointed to the position in question and, if that individual were appointed, the criteria of sound and prudent management would not or might not continue to be fulfilled with respect to the enrolled company;

(b) before serving a notice of objection, the Authority shall serve on the enrolled company a preliminary written notice stating-

(i) that the Authority is considering the service on the enrolled company of a notice of objection on that ground; and

(ii) that the enrolled company may, within the period of 15 days from the date of service of the preliminary notice, make written representations to the Authority;

(c) the Authority shall not be obliged to disclose to the company any particulars of the ground on which it is considering the service on the enrolled company of a notice of objection;

(d) where representations are made in accordance with this article, the Authority shall take them into consideration before serving the notice of objection.

(5) An application to the Authority made out and submitted by an enrolled company as set out in the applicable Schedules to Insurance Intermediaries Rule 12 of 2007 to carry out insurance intermediaries activities shall constitute a written notice for the purposes of paragraphs (1) and paragraph (2) of this article.

Duty to notify change of director, controller or senior manager of an enrolled company

6. (1) An enrolled company shall give notice in writing to the Authority where any person ceases to be a director, controller or senior manager of the company.

(2) A notice under this article shall -

(a) be given before the expiration of the period of 14 days beginning with the day next following that on which the person concerned ceases to be a director, controller or senior manager;

(b) state if that person's ceasing to be in that position has any regulatory implications; and

(c) contain any other matters which the company may wish to bring to the attention of the Authority in relation to that event.

Objection to existing director, controller or senior manager of an enrolled company

7. (1) Where it appears to the Authority that the criteria of sound and prudent management are not or may not be fulfilled with respect to

an enrolled company by reason of the ability of a person who is a director, controller or senior manager of the company to influence the company, the Authority may serve on the company a notice of objection to that person continuing to be a director, controller or senior manager of the company.

(2) Before serving a notice of objection under this article, the Authority shall serve on the company a preliminary written notice stating that the Authority is considering serving a notice of objection under this article and specifying the criteria of sound and prudent management which are not or may not be fulfilled with respect to the company.

(3) A company served with a notice under paragraph (2) of this article may, within the period of one month beginning with the day on which the notice is served, make written representations to the Authority and, where representations are made in accordance with this paragraph, the Authority shall take them into consideration before serving a notice of objection.

(4) The Authority shall not be obliged to disclose to the company any particulars of the ground on which it is considering the service of a notice of objection.

(5) After a notice of objection has been served on a company in relation to a person who is a director, controller or senior manager, the company shall forthwith remove the person from that office.

