

## **FMA Guidelines 2017/18 – Professional qualification and personal integrity of executive bodies and function holders**

Requirements regarding the professional qualification and personal integrity of executive bodies and function holders in accordance with the principles of the Law on the Supervision of Insurance Undertakings

Reference:	FMA GL 2017/18
Addressees:	Insurance undertakings
Concerning:	Liechtenstein Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act, ISA; <i>Gesetz vom 12. Juni 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsgesetz, VersAG</i> ), Liechtenstein Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance, ISO; <i>Verordnung vom 25. August 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsverordnung, VersAV</i> ), Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council regarding the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (Commission Delegated Regulation (EU) 2015/35), Guidelines on system of governance, including its Technical Annex (EIOPA-BoS-14/253 EN; Governance Guidelines) and explanations from the Final Report on Public Consultation No. 14/017 on Guidelines on system of governance (EIOPA-BoS-14/253; Final Report)
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## 1. Introduction

Insurance undertakings shall ensure that all management bodies<sup>1</sup> and all other persons, including the authorised representative of a branch and the responsible actuary, who exercise supervision and control over the insurance undertaking<sup>2</sup> or have other key functions<sup>3</sup>, have at all times the necessary professional qualification and personal integrity.

These Guidelines provide an overview of the legal basis in addition to the documents and records to be submitted to the Financial Market Authority (FMA) Liechtenstein for supervisory review of the professional qualification and personal integrity of the named persons.

The information and documents on professional qualification and personal integrity should be made available to the FMA within the framework of an application for a change of licence in accordance with the checklist included with these Guidelines.

The relevant provisions of the ISA, the ISO, the Commission Delegated Regulation (EU) 2015/35, the Governance Guidelines and, serving as an aid to interpretation, the explanations in the Final Report apply to the regulatory review of professional qualification and personal integrity of the management bodies and all other persons, including the authorised representative of a branch and the responsible actuary, who exercise supervision and control over the insurance undertaking or who have other key functions.

## 2. General notes

In accordance with Article 33(1) and Article 41(1) of the ISA, the members of the management bodies and all other persons, including the responsible actuary, who hold supervision, control or other key functions must be fit and have propriety. Under Article 108(1) of the ISA, these requirements also apply to the authorised representative of a branch. Furthermore, the requirements of Article 33(2) to (4) of the ISA on citizenship, residence and power of attorney must also be adhered to by members of the executive board and board of directors.

In addition to the professional qualification and personal integrity (fit and proper requirements) of each member of the management body, the overall management body must also meet the supervisory requirements. As a result, the FMA must approve not only planned new appointments to the management body but also departures from the management body. In the event of a departure from a management body, the name of the departing person must be reported to the FMA in the application for a change of licence and the internal organisational chart<sup>4</sup> (in the versions before and after the departure) must be included. The FMA can then verify whether the remaining management body and the remaining internal organisation continue to meet the legal requirements.

In accordance with Article 12(2)(i) of the ISA, the management bodies and all other bodies, including persons responsible for supervision and control or those having other key functions, must be specified in a licence application. As part of licensing requirements, changes (planned new entrants and departures) must be approved by the FMA prior to implementation in accordance with Article 19(1)(a) of the ISA or reported to the FMA in accordance with Article 20(a) of the ISA.

The reporting obligation set out in Article 20(b) of the ISA, Article 3(1) of the ISO and Article 8(5) of the ISO in the event of a change of management body (within the meaning of Article 12(2)(i) of the ISA, including the responsible actuary as a body responsible for supervision and control) is fulfilled when an application for approval of the replacement is submitted in accordance with Article 19(1)(a) of the ISA. In the event that a management body is replaced in accordance with Article 20(b) of the ISA, it is also subject to approval. The notification should explain in detail how the overall diversity of qualifications,

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<sup>1</sup> The word “management bodies” is synonymous with “persons who actually run the insurance undertaking”. This refers to the members of the executive board and the board of directors, who are referred to in the Governance Guidelines as members of the administrative, management or supervisory bodies, abbreviated as AMSB in the explanations from the Final Report. These persons are usually also entered in the commercial register with the respective function.

<sup>2</sup> This includes the function according to Article 16(1) of the Liechtenstein Insurance Distribution Act (*Versicherungsvertriebsgesetz, VersVertG*). This function is not subject to reporting or approval.

<sup>3</sup> Key functions are held by persons named in Article 30(3) of the ISA. The responsible actuary is materially equivalent to those holding these functions under Article 41 of the ISA. In addition, all those persons who have been defined and determined as such by the insurance undertaking are considered to be holding key functions.

<sup>4</sup> See Annex 1 (footnote 4) for the internal organisational chart requirements.

knowledge and relevant experience of the management bodies as defined in Governance Guideline 11 is ensured despite the departure. Reporting the change in key functions is subject to the provisions of Article 20(a) in conjunction with Article 3(1) of the ISO, and the reasons for the change must be stated.

If two functions are exercised by one person, the measures taken to avoid or counteract any conflicts of interest that may arise must be disclosed. In this context, particular reference is made to Article 7(1) of the ISO (responsible actuary and actuarial function) and Article 271 of Commission Delegated Regulation (EU) 2015/35.

### **3. Professional qualification and personal integrity**

#### **a) Professional qualification (fitness)**

Explanations of the requirements for the fitness of persons actually managing the insurance undertaking or having other key functions can be found in particular in Article 273(2) and (3) of Commission Delegated Regulation (EU) 2015/35 and in Article 4(1) of the ISO, and for the responsible actuary in Article 8(2) of the ISO. Further information on the management bodies is provided in Governance Guideline 11 and the relevant explanations in the Final Report.

#### **b) Personal integrity (propriety)**

The legal basis and requirements for propriety can be found in Article 273(4) of Commission Delegated Regulation (EU) 2015/35 and in Article 4(2) of the ISO, Article 5 of the ISO, Article 8 of the ISO and Governance Guideline 12. Those cases in which propriety is not present are enumerated in Article 4(2)(a) to (e) of the ISO. Article 5 of the ISO regulates the options for presenting recognised replacement documents for nationals of other EEA contracting states. The explanations on Governance Guideline 12 provide examples of violations of the law and other circumstances to be taken into account when assessing propriety, with the existence of such violations raising fundamental doubts about propriety. Indicators are also provided to illustrate the criterion and basic approach of the supervisory review.

### **4. Outsourcing of key functions**

When outsourcing key functions, Governance Guideline 14 and the related explanations in the Final Report must be taken into account. These specify in particular that the company must guarantee that the outsourcing partner (service provider) has verified the professional qualification and personal integrity of all persons working in the function concerned. The company is also required to provide the FMA with the name of a fit and proper person who, as an employee of the insurance undertaking, will bear overall responsibility for the outsourced key function and who is available as a contact person for the FMA. The checklist (including supplementary documents) attached to these Guidelines must be completed and submitted to the FMA together with the formal application for a change of licence for this contact person.

Information on the assessment criterion of the fitness of these persons can be found in the Final Report in section 2.61. et seqq. of the explanations to Governance Guideline 14. Additionally, in section 2.64 et seqq. of the explanations to Governance Guideline 15, there is a list of information that the company is required to report to the FMA, in particular the information under the Technical Annex on verifying the fitness and propriety of the person who bears overall responsibility for the outsourced key function.

In accordance with section 1.4 of Annex I to the Final Report, key functions are likewise to be assessed as important and critical functions. When outsourcing key functions, the requirements for outsourcing critical or important operational functions and activities in accordance with section 4 of the FMA Guidelines on the outsourcing of functions (Solvency II) therefore also need to be taken into account.

### **5. Internal guidelines and procedures concerning professional qualification and personal integrity**

In accordance with Article 273(1) of Commission Delegated Regulation (EU) 2015/35, insurance undertakings must establish, implement and maintain documented policies and adequate procedures to ensure that all persons who effectively run the company (management bodies) or have other key functions are at all times fit and proper. Further details on the content requirements of these internal guidelines and procedures can be found in Governance Guideline 13. The corresponding explanations in the Final Report should also be noted.

## **6. Documents, checklist, confirmations and declarations to be submitted**

With regard to the documents to be submitted for supervisory review of the professional qualification and personal integrity of all executive bodies and function holders covered by these Guidelines and the confirmations and declarations to be made in this respect, reference is made to the enclosed checklist. In view of the supervisory significance of the declarations to be submitted with it, the checklist must be signed by two persons authorised to represent the insurance undertaking or by an authorised representative, with a corresponding power of attorney to be submitted in the case of signature by an authorised representative (with the exception of a signature by a Liechtenstein lawyer).

## **7. Procedure**

In accordance with Article 12(1) and (2)(i) of the ISA, the names of the management bodies and all other bodies, including persons responsible for supervision and control or those having other key functions, are part of the licence application and must be disclosed as such in the licence application (see section 2 above).

The approval of changes to the licensing requirements with regard to management bodies (executive board and board of directors), including the authorised representative of a branch and the responsible actuary (within the meaning of Article 12(2)(i) of the ISA), must be submitted to the FMA in writing. Holders of key functions (and the claims representative) are to be reported in accordance with Article 12(2)(i) in conjunction with Article 20(a) of the ISA. In accordance with Article 3(1) of the ISO, any change of these other bodies must be reported with a statement indicating the reasons for the change.

The application or notification must be signed either by two persons authorised to represent the insurance undertaking or by an authorised representative, with a corresponding power of attorney to be submitted in the case of signature by an authorised representative (with the exception of signature by a Liechtenstein lawyer).

The application in accordance with Article 19(1)(a) of the ISA and the notification in accordance with Article 20(a) of the ISA must be submitted together with the completed checklist (see Annex 2). After receiving and reviewing the application, the FMA issues supervisory approval if the legal requirements have been met and acknowledges the notification by letter or by expiry of the four-week period.

If a person's CV shows that they are or have been engaged in an activity in another country, and the supervisory authority of that country examined the requirements for the professional qualification and personal integrity (fit and proper review), the FMA shall obtain the result of this fit and proper review from this supervisory authority. Since it may be necessary to wait for a response from this supervisory authority, the processing time of an application may be reduced if the application is already accompanied by a confirmation from this supervisory authority or authorities.

## **8. Penal provision**

In accordance with Article 257(2)(c) of the ISA, a custodial sentence of up to six months or a monetary penalty of up to 180 daily rates may be imposed on anyone who gives false information to the FMA, in particular in order to obtain a license to conduct business operations (Article 12 and 13 of the ISA), to conduct branch or service operations (Article 107 to 111 of the ISA), or to obtain a license to change the licensing requirements (Article 19 to 22 of the ISA) or to transfer the insurance portfolio (Article 124 to 127 of the ISA).

In accordance with Article 257(3) (a) of the ISA, the FMA may impose a fine of up to CHF 100,000.00 on anyone who breaches the rules on governance (Article 30 to 41 of the ISA and Article 231 to 234 of the ISA). Additionally, in accordance with Article 257(3)(g) of the ISA, the FMA may impose fines of up to CHF 100,000.00 on anyone who does not obtain the required permission from the FMA or fails to do so in good time.

## **9. Entry into force**

These Guidelines replace the FMA Guidelines 2017/18 on professional qualification and personal integrity of executive bodies and function holders dated 15 May 2017 and enter into force on 26 June 2020.

## 10. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

Information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: [www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html](http://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html).

**Annex 1 – Legal basis**

**Annex 2 – Checklist regarding requirements for professional qualification and personal integrity of executive bodies and function holders in accordance with the principles of the Law on the Supervision of Insurance Undertakings**

**Annex 3 – Declaration regarding personal integrity (individual)**

**Annex 4 – Declaration concerning other board of directors and/or executive board positions and employment relationships (domestically and abroad)**

## Annex 1 – Legal basis

- Liechtenstein Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act, ISA; *Gesetz vom 12. Juni 2015 betreffend die Aufsicht über Versicherungsunternehmen; Versicherungsaufsichtsgesetz, VersAG*)
  - Article 12(2)(i) of the ISA (basis of licensing requirements)
  - Article 19(1)(a) of the ISA (authorisation requirement in the event of a change in the licensing requirements)
  - Article 20(a) of the ISA (obligation to report in the event of a change in the licensing requirements)
  - Article 33(1) and Article 40(2) of the ISA and Article 4 and Article 7(3) of the ISO (requirements for management bodies and holders of key functions)
  - Article 108(1) of the ISA (authorised representative of a branch)
  - Article 41(1) and Article 4(2) and Article 8(2) of the ISO (responsible actuary)
  
- Guidelines on system of governance ([EIOPA-BoS-14/253 EN](#)) including Final Report on Public Consultation No. 14/017 on Guidelines on system of governance ([EIOPA-BoS-14/253](#))
  - Governance Guidelines 11 and 12 including explanations in the Final Report
  - Governance Guideline 13 including explanations in the Final Report
  - Governance Guideline 14 including explanations in the Final Report
  - Governance Guideline 16 (evaluation by the supervisory authority)
  
- [FMA Guidelines 2020/6](#) – Outsourcing of functions in accordance with the Insurance Supervision Act (ISA)
  
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (Commission Delegated Regulation (EU) 2015/35)
  - Article 271 of Commission Delegated Regulation (EU) 2015/35 (internal audit function)
  - Article 273(1) of Commission Delegated Regulation (EU) 2015/35 (guidelines and documentation)
  - Article 273(2) to (4) of Commission Delegated Regulation (EU) 2015/35 (assessment of professional qualification and personal integrity)

**Annex 2 – Checklist regarding requirements for professional qualification and personal integrity of executive bodies and function holders in accordance with the principles of the Law on the Supervision of Insurance Undertakings**

[Annex 2](#)

**Annex 3 – Declaration regarding personal integrity (individual)**

[Annex 3](#)

**Annex 4 – Declaration concerning other board of directors and/or executive board positions and employment relationships (domestically and abroad)**

[Annex 4](#)