

## **J.3 – Suitability Policy**

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As established by the Rules, a person who wishes to obtain a licence or who holds a licence with the Insurance Council must be trustworthy, competent, financially reliable and has the intention to carry on the business of insurance in good faith and in accordance with the usual practice. The person also must not engage in business activities that are in conflict with their duties as an insurance licensee or place them in a position of undue influence.

The Code defines trustworthiness, good faith, competence, financial reliability, and the usual practice of the business of insurance, and this serves as the benchmark upon which applicants and licensees are measured.

The Suitability Policy is intended to assist Council in assessing the suitability of a person where the Insurance Council learns of a possible suitability concern, either upon disclosure in an application for licensing, review of conditions added by staff, an annual licence renewal, pursuant to the Rules, or at any other time.

Subject to review by the Licensing Committee and if applicable, Council, the following parameters would apply to suitability considerations:

### **1. Relevant Matters**

#### **1.1 Relevance**

The Insurance Council considers the nature of a matter to determine if it is relevant to the person's trustworthiness, competence, or intention to carry on the business of insurance in good faith and the person's overall fitness to be an insurance licensee.

Matters relevant to a person's suitability include, but are not limited to:

- Fraud;
- Theft;
- Corruption;
- Breach of trust;
- Forgery;
- Other activities involving deceit or dishonesty for personal gain or advantage;
- Offences under any legislation related to the sale or trade of financial products and services; and

- Serious offences against a person, such as murder or sexual assault.

If conduct is deemed to be a relevant matter and results in, or is tantamount to, a summary conviction offence (in the case of financial improprieties, if the value of the matter is under \$5,000), the person is unsuitable to hold a licence for a minimum of one year from the date of completion of any sentence, parole, probation, or the like. Where two years have elapsed since the completion of these terms, such conduct generally will not bring a person's suitability into question if all other relevant factors are considered favourable.

If conduct is deemed to be a relevant matter and results in, or is tantamount to, an indictable conviction offence (in the case of financial improprieties, if the value of the matter is \$5,000 or more), the person is unsuitable to hold a licence for a minimum of two years from the date of completion of any sentence, parole, probation, or the like. Where five years have elapsed since the completion of these terms, such conduct generally will not bring a person's suitability into question if all other relevant factors are considered favourable.

### **1.2 Mitigating Factors**

When considering the suitability of a person for licensing, mitigating factors can be taken into account. These include, but are not limited to:

- if the relevant matter is isolated in nature;
- if there are no outstanding or unfulfilled obligations related to the relevant matter;
- if there is little to no risk of harm to the public in the conduct of the business of insurance;
- if the person has made rehabilitative efforts to improve his or her suitability through education, employment, or other means, since the time of the relevant matter;
- if the person has already suffered other consequences or penalties; and
- if an agency/firm is aware of the relevant matter and supports the person having a licence with the Insurance Council.

### **1.3 Aggravating Factors**

When considering the suitability of a person for licensing, aggravating factors can be taken into account. These include, but are not limited to:

- If the person has been subject to more than one relevant matter;
- If there is a possible risk of harm to the public in the conduct of the business of insurance;
- If there are outstanding or unfulfilled obligations involving the relevant matter;
- If it is likely that the relevant matter or something of a similar nature may be repeated; and

- If the person has refused to respond or has been evasive in responding to the Insurance Council's inquiries.

#### **1.4 Absolute and Conditional Discharges**

This policy applies to absolute or conditional discharges arising from relevant matters.

#### **2. Financial Reliability**

Depending on the type of licence held by a person, financial reliability can have different meanings.

A bankruptcy, consumer proposal, insolvency proceeding, or other financial problem has more significance to a person's suitability where the person is a nominee, director, officer, partner, or controlling shareholder of an agency or firm. Such financial matters can also reflect on the financial reliability of any other person; however, concerns can be mitigated by the person disclosing the matter to any agency or firm that the person represents.

#### **3. Applicants Who Have Had Their Licence Refused, Cancelled, or Suspended or Are Under Investigation by Another Regulator**

Consideration of such applications by the Insurance Council should include the conduct causing the investigation, the enforcement action taken by the regulator, and Council's Rules and Suitability Policy. While the Insurance Council is not bound by precedents, staff must make Council aware of relevant precedents.

In an effort to ensure the public maintains confidence in the insurance industry and to maintain consistency between financial services sectors, if the disciplinary action or pending investigation was reviewed by another insurance regulator, the Insurance Council should strongly consider taking equivalent action, such as, refusing a licence, or granting a licence without or with comparable conditions or restrictions.

#### **4. Other Business Interests or Activities**

##### **4.1 Activities Which Would be in Conflict to the Duties and Responsibilities of a Licensee**

A conflict of interest exists when there is a risk that an applicant's loyalty to, or representation of, a client, an insurance company, or other principal could be materially or adversely affected by their own interests or by their duty to another client, former client, insurance company, or other third party. Conflict of interest requirements are outlined in the Code of Conduct, which all licensees are required to adhere to. Conflicts of interest include, but are not limited to:

- A real conflict of interest denotes a situation in which an applicant has knowledge of a personal, private, financial, or professional interest that is sufficient to influence the exercise of their duties and responsibilities.
- A potential conflict of interest incorporates the concept of foreseeability, such as when an applicant can foresee that a personal, private, financial, or professional interest may someday be sufficient to influence the exercise of his or her duties.
- An apparent or perceived conflict of interest exists when a reasonable person has an apprehension that a conflict of interest exists. An apparent conflict of interest can exist where it could be perceived, or where it appears, that a licensee’s personal, private, financial, or professional interest or access to information could improperly influence the exercise of his or her duties, whether or not this is, in fact, the case.

The Insurance Council needs to consider key factors in addressing the possibility of Conflict of Interest by an applicant. These include, but are not limited to:

- If there are private interests of the applicant;
- If risks posed by conflicts have been identified;
- If there are specific occurrences and prohibition of unacceptable conflicts;
- If there are options for transparency of the conflict of interests to impacted stakeholders; and
- If there are available options for positive resolution or management of unacceptable conflicts.

#### **4.2 Activities that Give Rise to the Reasonable Possibility of Undue Influence**

In considering whether other businesses would lead to a possibility of undue influence, the Insurance Council needs to consider whether the activity identified by the applicant would lead to an offer of excessive, unwarranted, inappropriate, or improper reward or other overture to obtain compliance. Here “compliance” could mean agreeing to get an insurance product. “Influence” means to impact, guide, shape, alter, change, or transform and “undue influence” is influence that is excessive, unwarranted, inappropriate, or improper. The Insurance Council needs to consider other business interests to establish whether it is influence or undue influence that would occur and apply remedies as appropriate.

The Insurance Council needs to consider key factors in understanding and addressing the possibility of undue influence by an applicant. These include, but are not limited to:

- The contexts in which undue influence could occur;
- The value of potential benefits to the applicant;
- Power dynamics of the applicant if licensed and the parties involved;
- Capacity to provide legally effective consent - means that the involved parties have been provided with sufficient information about the activities and insurance product, have considered that information, can understand the implications of a decision to take part, can make a decision, and can communicate that decision;
- Identifying if there are clients or parties that would not be impacted;
- Fairness to the parties involved; and
- Available options to minimize all or most sources of undue influence.

**5. Suitability Review Process for Licensing Applicants Activities that Give Rise to the Reasonable Possibility of Undue Influence**

This process is outlined in the Suitability Review Process for Licensing Applicants Policy.