

# **OFFSHORE GROUP OF INSURANCE SUPERVISORS**



**PRINCIPLES PAPER  
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**STATEMENT OF PRINCIPLES FOR “FIT AND  
PROPER” EVALUATION**

## OFFSHORE GROUP OF INSURANCE SUPERVISORS

### *Statement of Principles for “fit and proper” evaluation*

The Group takes the opportunity to stress that it sees the definition given as being of universal application in the provision of financial services and does not see it as confined to those areas where there are formal responsibilities and powers. It follows that there is the entitlement, when acquiring the criterion, to take into consideration any evidence of past performance.

1. The “fit and proper” criterion runs right through the work of the insurance supervisor in the exercise of his statutory and implied functions.

2. The criterion, which dates back in public administration over very many years, has undergone some evolution in recent years. In the UK, both the Bank of England and the SIB have published guidance on how those institutions apply the criterion in the course of their work under the Banking Act 1987 and the Financial Services Act 1986 respectively. The Tribunal in the matter of Nobel Warren Investments Limited also contributed to the understanding of the criterion in its findings in that case, which was an unsuccessful appeal against refusal of authorization under the Financial Services Act 1986. The Group has taken note of these precedents in formulating the following statement of how it applies the criterion.

3. The Group’s view of the criterion goes well beyond the mere consideration of whether the person concerned has a bad record or reputation or not and it does so in at least two respects.

First, the insurance supervisor should not look for evidence that the person at least meets a minimum standard but rather it looks for evidence that the person meets a high standard. This is because, in the context of the provision of financial services, the person concerned will almost invariably occupy a position of trust for the money, other assets or financial interests of customers and this must imply higher standards of conduct than in many walks of life. With regard to institutions which become subject to regulation under new legislation and thereby applications for authorization, the insurance supervisor should therefore look for much more positive evidence in favour of the applicant than the simple fact that it has operated in the particular field of financial services concerned for some years without giving cause for complaint.

Second, the Group believes that the concept embraces not only honesty but solvency and competence. The Group believes that an objective standard exists which the insurance supervisor should be required by its statutory or implied functions to apply such a standard. It is irrelevant that an applicant or authorized institution may hold a subjective view of its own fitness and propriety and, while the view of customers or counter-parties may be relevant to the insurance supervisors consideration of this criterion, these are not necessarily a substitute for the insurance supervisors’ judgment. One reason for holding this view is that the Group also believes that the concept of “fit and proper” extends to conduct not only in dealings with the public but in the ordering of the institution’s internal affairs.

4. In considering whether a person fulfils the “fit and proper” criterion the insurance supervisor should have regard to a number of general considerations, whilst always taking account of the particular circumstances of the individual or institution concerned. With regard to institutions, the insurance supervisor is entitled to take account, inter alia of their business

records, their other business interests, their financial soundness and strength, the nature and scope of their business, and the institution's record-keeping and other internal systems. With regard to an individual who is an executive director or manager of the institution, the insurance supervisor should include amongst the relevant considerations whether he has sufficient skills, knowledge, experience and application to properly undertake and fulfill his particular duties and responsibilities. In addition, the insurance supervisor shall take into account a person's reputation and character, including such matters as whether he has a criminal record. Convictions for dishonesty are especially relevant but the insurance supervisor should also have regard to other types of offences since it is vital that a person responsible for managing an institution authorized by the insurance supervisor in discharging his statutory and implied functions is of the highest integrity.

5. The insurance supervisor should have regard to the performance of that person in the exercise of his duties. Thus incompetence or imprudence in the conduct of an institution's business or anything which has threatened (without necessarily having damaged) the interests of existing or future customers will reflect adversely on those responsible, whether the matters of concern have arisen through the way they have acted or their failure to act in an appropriate manner. The insurance supervisor should take a cumulative approach, so that it may determine that a person does not fulfill the criterion on the basis of several instances of such conduct which, taken individually, might not lead to that conclusion.

6. The standards demanded are more onerous for those with prime responsibility for an institution's affairs, though they will vary according to the scale and nature of the business concerned. In all cases, the insurance supervisor should look for a firmly based understanding of the institution's business and a clear conception of its future development and also for evidence of sound judgment regarding both commercial and administrative matters relevant to the business.