



## **Prudential Standard LPS 520**

### **Fit and Proper**

#### **Objective and key requirements of this Prudential Standard**

Persons who are responsible for the management and oversight of a life company need to have appropriate skills, experience and knowledge and act with honesty and integrity. This strengthens the protection afforded to policyholders and other stakeholders. To this end, life companies need to prudently manage the risk that persons in positions of responsibility may not be fit and proper.

The prime responsibility for ensuring that a life company's responsible persons are fit and proper remains with the Board of directors, or, in the case of an eligible foreign life insurance company as defined in the *Life Insurance Act 1995*, by the Compliance Committee.

This Prudential Standard applies to life companies under the *Life Insurance Act 1995*. It sets out minimum requirements for these institutions in determining the fitness and propriety of individuals to hold positions of responsibility.

The key requirements of this Prudential Standard are that:

- a life company must have and implement a written fit and proper policy that meets the requirements of this Prudential Standard;
- the fitness and propriety of a responsible person must generally be assessed prior to initial appointment and then re-assessed annually (or as close to annually as practicable);
- a life company must take all prudent steps to ensure that a person is not appointed to, or does not continue to hold, a responsible person position for which they are not fit and proper;
- additional requirements must be met for certain auditors and actuaries; and
- information must be provided to APRA regarding responsible persons and the life company's assessment of their fitness and propriety.

## Authority and application

1. This Prudential Standard, made under section 230A(1)(a) of the *Life Insurance Act 1995* (**the Act**), applies to all life companies registered under the Act.

## Fit and Proper Policy

2. A life company must prudently manage the risk to its business or financial standing that persons acting in responsible person positions are not fit and proper. To this end, the life company must have a written policy relating to the fitness and propriety of its responsible persons that meets the requirements of this Prudential Standard (**Fit and Proper Policy**).
3. The Fit and Proper Policy must have been approved by the Board of directors (**Board**) or, in the case of an eligible foreign life insurance company as defined in the Act (**EFLIC**), by the Compliance Committee.<sup>1</sup>
4. A life company must take all reasonable steps to ensure that each of its responsible persons is aware of, and understands, the provisions of its Fit and Proper Policy.
5. Nothing in this Prudential Standard prevents a life company from applying a Fit and Proper Policy that is also used in a related company, provided that the policy has been approved by the life company in accordance with paragraph 3 and meets the requirements of this Prudential Standard.

## Responsible persons

6. A **responsible person** of a life company (other than an EFLIC) is:
  - (a) a director of the life company;<sup>2</sup>
  - (b) a senior manager of the life company;<sup>3</sup>
  - (c) the approved auditor of the life company (**Approved Auditor**);<sup>4</sup>
  - (d) the appointed actuary of the life company (**Appointed Actuary**);<sup>5</sup> or
  - (e) a person who performs activities for a subsidiary of the life company where those activities may materially affect the whole, or a substantial part, of the business of the life company or its financial standing, either directly or indirectly.

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<sup>1</sup> Compliance Committee as defined in subsection 16ZF(1) of the Act.

<sup>2</sup> Director as defined in the Schedule to the Act to include, in relation to an eligible foreign life insurance company, a member of the Compliance Committee.

<sup>3</sup> Senior manager as defined in paragraph 13 of this Prudential Standard.

<sup>4</sup> Approved Auditor as required in sections 83 to 85 of the Act.

<sup>5</sup> Appointed Actuary as required in section 93 of the Act. In some circumstances the appointment of the Appointed Actuary must be approved by APRA.

7. A **responsible person** of an EFLIC is:
  - (a) a member of the Compliance Committee of the EFLIC;
  - (b) a senior manager of the Australian operations of the EFLIC who is ordinarily resident in Australia;
  - (c) the Approved Auditor of the EFLIC;
  - (d) the Appointed Actuary of the EFLIC; or
  - (e) a person who performs activities for a subsidiary of the EFLIC that the EFLIC controls as part of its Australian operations, where:
    - (i) those activities may materially affect the whole, or a substantial part, of the business of the Australian operations of the EFLIC or its financial standing, either directly or indirectly; and
    - (ii) where the person is ordinarily resident in Australia.
8. References to a subsidiary in subparagraph 6(e) or 7(e) do not apply to a subsidiary that holds an RSE licence under the *Superannuation Industry (Supervision) Act 1993*.<sup>6</sup>
9. A person need not be an employee of the life company to be a responsible person if they are within the definition at paragraph 6 or 7. In some circumstances a consultant, contractor or employee of a subsidiary or otherwise related company may be a responsible person.
10. APRA may determine that any person is a responsible person if APRA is satisfied that the person plays a significant role in the management or control of the life company, or that the person's activities may materially impact on prudential matters. The determination will be notified in writing to the life company.
11. APRA may determine that a person is not a responsible person in relation to a particular position, responsibility or activity if APRA is satisfied that the person does not play a significant role in the management or control of the life company or that the person's activities may not materially impact on prudential matters. The determination will be notified in writing to the life company and may be subject to such conditions as APRA believes are appropriate.
12. **Responsible person position** means the responsibilities or activities of a responsible person that would lead to the person being a responsible person under paragraph 6 or 7.

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<sup>6</sup> RSE licence has the meaning given in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

## Senior managers

13. Senior manager in relation to a life company<sup>7</sup> means a person (other than a director of that life company) who:
- (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the life company; or
  - (b) has the capacity to affect significantly the life company's financial standing; or<sup>8</sup>
  - (c) may materially affect the whole, or a substantial part, of the business of the life company or its financial standing through their responsibility for:
    - (i) enforcing policies and implementing strategies approved by the Board of the life company;
    - (ii) the development and implementation of systems that identify, assess, manage or monitor risks in relation to the business of the life company; or
    - (iii) monitoring the appropriateness, adequacy and effectiveness of risk management systems.
14. The responsibilities set out in subparagraphs 13(a), (b) and (c), when exercised for a regulated institution, are senior management responsibilities (except where carried out by a director).

## Criteria to determine if a responsible person is fit and proper

15. Each life company must clearly define and document the competencies required for each responsible person position.
16. The criteria that must be met for a person to be fit and proper to hold a responsible person position are whether:
- (a) it would be prudent for a regulated institution to conclude that the person possesses the competence, character, diligence, honesty, integrity and judgement to perform properly the duties of the responsible person position;
  - (b) the person is not disqualified under the Act from holding the position; and
  - (c) the person either:
    - (i) has no conflict of interest in performing the duties of the responsible person position; or

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<sup>7</sup> In relation to an EFLIC, references to a life company in this paragraph refer only to the Australian operations of the EFLIC.

<sup>8</sup> The definition of senior manager in relation to a life company in paragraphs 13(a) and (b) is intended to be interpreted consistently with the definition of senior manager in relation to a corporation in section 9 of the *Corporations Act 2001*.

- (ii) if the person has a conflict of interest, it would be prudent for a life company to conclude that the conflict will not create a material risk that the person will fail to perform properly the duties of the position.

**Additional criteria applying to Approved Auditors of life companies**

17. The additional criteria that must be met for a person to act as Approved Auditor of a life company are whether the person:
- (a) is a registered company auditor under the *Corporations Act 2001*;
  - (b) is not:
    - i. the Appointed Actuary of that life company;
    - ii. an employee or director of a body corporate, statutory body, partnership, trust, or commercial or professional enterprise of any kind (entity) of which that actuary is an employee or director; or
    - iii. a partner of that actuary;
  - (c) has a minimum of 5 years relevant experience in the audit of life companies and has experience relating to life companies that has been sufficiently relevant and recent to provide reasonable assurance that the person is familiar with current issues in the audit of life companies;
  - (d) is a member of a recognised professional body; and
  - (e) is ordinarily resident in Australia.

**Additional criteria applying to Appointed Actuaries of life companies**

18. The additional criteria that must be met for a person to act as Appointed Actuary, where the approval by APRA of the person's appointment is required, are whether the person:
- (a) has appropriate formal qualifications;
  - (b) is not the Chief Executive nor a director of a life company or of a related body corporate (except when that related body corporate is a subsidiary of the life company);
  - (c) is not:
    - (i) the Approved Auditor of that life company;
    - (ii) an employee or director of an entity of which that auditor is an employee or director; or
    - (iii) a partner of that auditor;

- (d) has a minimum of 5 years relevant experience in the provision of actuarial services to entities carrying on life insurance business and it would be prudent to conclude that the person is familiar with current issues in the provision of actuarial services to life companies;
- (e) is a member of a recognised professional body; and
- (f) is ordinarily resident in Australia.

### **Other matters relating to Approved Auditors and Appointed Actuaries**

19. The criteria in paragraph 17 (other than subparagraph 17(a)) or 18 do not apply while:
- (a) the life company reasonably considers that there are exceptional circumstances;
  - (b) the life company has promptly notified APRA of which of the eligibility criteria are not satisfied and of the exceptional circumstances; and
  - (c) APRA has notified the regulated institution in writing that APRA has no objections to the person holding the position.

### **Process for assessment of fitness and propriety**

20. The Fit and Proper Policy must include the processes to be undertaken in assessing whether a person is fit and proper for a responsible person position (**fit and proper assessment**). The processes must include:
- (a) who will conduct fit and proper assessments on behalf of the life company;
  - (b) what information will be obtained and how it will be obtained;
  - (c) the matters that will be considered before determining if a person is fit and proper for a responsible person position; and
  - (d) the decision-making processes that will be followed.
21. The Fit and Proper Policy must specify the actions to be taken where a person is assessed as not fit and proper.
22. The Fit and Proper Policy must provide that a copy of the Policy is given to:
- (a) any candidate for election as a director as soon as possible after the candidate is nominated; and
  - (b) any other person before an assessment of their fitness and propriety is conducted.
23. A fit and proper assessment must be completed for each responsible person within 28 days of this Prudential Standard applying to a life company, if no

assessment meeting the requirements of this Prudential Standard has been made within the previous year.

24. The Fit and Proper Policy must require a fit and proper assessment to be completed before a person becomes the holder of a responsible person position unless they hold the position:
  - (a) because of a resolution of members of the life company; or
  - (b) because APRA has determined that the person is a responsible person under paragraph 10.

In such cases, the Fit and Proper Policy must require an assessment to be completed within 28 days of the person becoming the holder of the responsible person position.

25. Interim appointment to a responsible person position may be made without a full fit and proper assessment for a period of up to 90 days (or longer with APRA's agreement) including any prior period of interim appointment. Prior to making such an appointment, reasonable steps must be taken, as specified in the Fit and Proper Policy, to assess the fitness and propriety of the person. The life company must complete a full fit and proper assessment prior to appointing the person to the responsible person position on a permanent basis.
26. The Fit and Proper Policy must require annual fit and proper assessments (or as close to annual as is practicable) for each responsible person position.
27. When an assessment is conducted, a life company must make all reasonable enquiries<sup>9</sup> to obtain information, including collecting sensitive information as defined in the *Privacy Act 1988*, that it believes may be relevant to an assessment of whether the person is fit and proper to hold a responsible person position.
28. Where a responsible person has been assessed as fit and proper, but the life company subsequently becomes aware of information that may result in the person being assessed as not fit and proper, the life company must take all reasonable steps, including collecting sensitive information as defined in the *Privacy Act 1988* if relevant, to ensure that it can prudently conclude that no material fitness and propriety concern exists. Where a concern exists, a full fit and proper assessment must be conducted.
29. The Fit and Proper Policy must contain adequate provisions:
  - (a) to encourage any person to disclose information that may be relevant to a fit and proper assessment to the life company or APRA;
  - (b) to enable the disclosure to APRA of any information the life company is required to provide under this Prudential Standard; and

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<sup>9</sup> Including by following the processes described in the Fit and Proper Policy under subparagraph 20(b).

- (c) for giving or obtaining any consents required for the collection and use of any information:
  - (i) by the life company to comply with the Fit and Proper Policy or this Prudential Standard; and
  - (ii) by APRA for its powers and functions under the Act.
- 30. The Fit and Proper Policy must require that sufficient documentation for each fit and proper assessment is retained to demonstrate the fitness and propriety of the life company's current, and recently past, responsible persons.

### **Whistleblowing**

- 31. The Fit and Proper Policy must include adequate provisions to allow whistleblowing if a person believes that a responsible person does not meet the life company's fit and proper criteria. The Fit and Proper Policy must ensure that the life company and its subsidiaries consent to the person notifying either the person responsible for conducting fit and proper assessments or APRA of that belief and the reasons for it.
- 32. The Fit and Proper Policy must include adequate provisions to allow persons who believe that the life company has not complied with this Prudential Standard to notify APRA of that belief and the reasons for it.
- 33. The Fit and Proper Policy must provide that the life company and its subsidiaries consent to any person who held a responsible person position disclosing information or providing documents to APRA relating to their reasons for resignation, retirement or removal.
- 34. A life company must not, and must ensure that its subsidiaries do not, constrain, impede, restrict or discourage, whether by confidentiality clauses, policies or other means, any person from disclosing information or providing documents to APRA about matters referred to in paragraphs 31, 32 or 33.
- 35. The Fit and Proper Policy must require that any provisions of the policy encouraging whistleblowing are adequately communicated to directors and employees of the life company and its subsidiaries who are likely to have information relevant to fit and proper assessments.
- 36. APRA does not require that a life company impose an obligation on any person to make the disclosures under paragraph 31, 32 or 33. However, the Fit and Proper Policy must require that all reasonable steps be taken to ensure that no person making such disclosures in good faith is subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Fit and Proper Policy.

### **When a responsible person is not fit and proper**

37. Where a life company has assessed that a person is not fit and proper, or a reasonable person in the life company's position would make that assessment, the life company must take all steps it prudently can to ensure that the person:<sup>10</sup>
- (a) is not appointed to; or
  - (b) for an existing responsible person, does not continue to hold the responsible person position.

### **Informing APRA**

38. A life company must, within 28 days of when this Prudential Standard applies to it, notify APRA of the following information for each responsible person:
- (a) the person's full name;
  - (b) the person's date of birth (for identification purposes only);
  - (c) the person's position and main responsibilities; and
  - (d) a statement of whether the person has been assessed under the Fit and Proper Policy.
39. A life company must ensure that the information provided under paragraph 38 remains correct for all of its responsible persons. It must provide revised information to APRA within 28 days of any change or new appointment.
40. A life company must notify APRA within 10 business days if it assesses that a responsible person is not fit and proper. If the person remains in the responsible person position, the notification must state the reason for this and the action that is being taken.
41. The information or notifications required by this Prudential Standard must be given in such form, if any, and by such procedures, if any, as APRA publishes on its website from time to time.
42. A life company must take reasonable steps to:
- (a) obtain any information and documentation that APRA asks of it; and
  - (b) provide that information to APRA
- to assist APRA in assessing the fitness and propriety of a person. This may include providing the Fit and Proper Policy to APRA on request.
43. APRA does not and will not require disclosure of spent convictions where precluded under Part VIIC of the *Crimes Act 1914*.

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<sup>10</sup> Including the actions outlined in the Fit and Proper Policy in accordance with paragraph 21.