



Prudential Practice Guide Draft

SPG 520 – Fitness and Propriety

14 August 2009

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About this guide

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) and Regulations set out the operating standard for registrable superannuation entity licensees (RSE licensees) in relation to fitness and propriety. The standard was introduced under the licensing provisions inserted into the SIS Act by the Superannuation Safety Amendment Act 2004 (SSAA). The standard is set out in Regulation 4.14 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and applies to all RSE licensees.

This prudential practice guide (PPG) aims to assist RSE licensees and their directors in complying with these provisions and, more generally, to outline sound practices in relation to this particular area of a licensee's superannuation operations.

It is not the purpose of this guide to provide a restatement of the content of the law or to outline provisions, such as Regulation 4.14 of the SIS Regulations, which are particularly relevant to the fitness and propriety of RSE licensees.

Not all the practices outlined in this PPG will be relevant for every RSE licensee and some aspects may vary depending upon the size, complexity and risk profile of the licensee.

These guidelines replace Superannuation Guidance Note 110.1 (Fit and Proper) and information previously contained in the frequently asked questions on APRA's website.

A reference to a trustee in this guide should be taken as a reference to the RSE licensee of an APRA regulated superannuation fund, approved deposit fund (ADF) or pooled superannuation trust (PST). Depending on the context, the reference will also be applicable to a director of the RSE licensee if it is a corporation or to an individual trustee if the licensee is a group of individual trustees. Also depending on the context, a reference to a fund or to fund members or beneficiaries will be applicable to ADFs and their members or to PSTs and unit holders of those trusts.

As the operating standard applies specifically to the RSE licensee, this PPG does not address issues relating to the fitness and propriety of auditors or actuaries of RSEs.

Contents

Introduction	5
Meaning and application of fit and proper	5
APRA assessment of compliance with the standard	6
The trustee policy	6
Whistleblowing	7
Dealing with persons who are not fit and proper	7
Responsible officers	7
Determining if a person is fit and proper	8
Fitness	9
Minimum fitness requirements	9
Collective fitness requirements	10
Training and induction of responsible officers	10
The fitness standard and outsourcing	11
Propriety	11
Disqualified persons	11
Police checks	12
Conflict of interest	12
Equal representation requirements and assessment of individuals under the trustee policy	13
Key persons	13
Interaction with Australian Financial Services Licenses	14
Attachment A	15

Introduction

1. Persons who are responsible for the management and oversight of RSEs need to have appropriate skills, experience and knowledge and act with honesty and integrity. This strengthens the protection afforded to fund members and beneficiaries. To this end, institutions need to prudently manage the risk that persons in positions of responsibility may not be fit and proper.
2. Under the SIS Act trustees are solely responsible and directly accountable for the prudential management of members' benefits. The prime responsibility for ensuring that an institution's responsible officers are fit and proper remains with the trustee. The fit and proper operating standard is designed to ensure that the interests of superannuation members and beneficiaries are overseen competently by appropriately skilled, honest and trustworthy individuals.
3. All RSE licensees must continually comply with the requirements of the fit and proper standard in order to fulfil their duties as RSE licensees. Compliance with the standard is a pre-requisite for granting an RSE licence and APRA must be satisfied that the licensee can continue to meet the standard on an ongoing basis before granting an RSE licence to the applicant.
6. In the event that APRA has to consider whether a particular individual is fit and proper, APRA will have regard to the matters listed in paragraph 22 below. APRA's consideration will not be confined to an individual's involvement in the superannuation industry but will extend, where relevant, to an individual's conduct in other industries. If APRA considers that there is evidence to demonstrate that a person fails the tests of fitness or propriety, it may apply to the Federal Court for orders disqualifying the person from acting as a responsible officer.²
7. The SIS Act also prescribes that a person who has ever been convicted of an offence in respect of dishonest conduct in any jurisdiction, or who is an insolvent under administration, or who has been disqualified by the Federal Court under s126H(5) of the SIS Act, is a disqualified person and can not act in positions of responsibility in relation to a superannuation entity³.

APRA assessment of compliance with the standard

8. In its assessment as to whether an RSE licensee or licence applicant meets the requirement of the standard, APRA will examine the policy and processes that the trustee has developed to ensure that the fit and proper requirements are satisfied on an ongoing basis, and are regularly reviewed by the trustee. For example, APRA is likely on occasion to seek access to the reports arising either from the trustee's own assessment of its continual satisfaction of the standard or an independent review of the trustee's processes for ensuring its fitness and propriety. In this way, APRA is better able understand the process undertaken, to get a feel for the issues the trustee is facing and to get some satisfaction that the trustee is learning from the review process and where necessary taking steps to improve itself.

Meaning and application of 'fit and proper'

4. The SIS Regulations impose minimum standards of fitness and propriety on trustees licensed by APRA.¹
5. The trustee as a collective entity is required to satisfy criteria of both fitness and propriety. Each individual to whom the standard applies should meet the requirements of propriety, including character, honesty, integrity, diligence and judgement. Each individual would be expected to make a contribution to the trustee satisfying the requirements of fitness at a collective level.

¹ Refer to SIS Regulations, subregulation 4.14

² Refer to Subdivision B of Part 15 of the SIS Act for further information

³ Refer to s. 120 of the SIS Act for further information

The trustee policy

9. A prudent trustee would maintain and implement a Fit and Proper policy to assist it to manage the risk that responsible officers are not fit or proper. The fit and proper policy constitutes part of a trustee's broad risk management framework and may be formed as part of, or in conjunction with, a governance policy or code of conduct. Sound practice would be for it to also be congruent with the trustee's policy on identification and management of conflicts of interest⁴.
10. As a guide, the development of a trustee's Fit and Proper policy would ordinarily include as a minimum:
 - (a) identification and articulation of the skills and competencies required for the trustee collectively to effectively carry out its duties;
 - (b) identification and articulation of the skills and competencies required on the part of each responsible officer position for that person to effectively carry out their duties;
 - (c) a process for identifying any gaps that may arise from time to time in the skills the trustee requires at a collective level;
 - (d) a process to remedy any skill gaps in a timely manner;
 - (e) identification of who will conduct fit and proper assessments on behalf of the trustee;
 - (f) what information will be obtained for those assessments and how it will be obtained. Self assessment by the trustee as a collective entity or independent assessments of performance of both the trustee and responsible officers can be considered key tools in reviewing fitness and propriety;
 - (g) the matters that will be considered before determining if a person is fit and proper for a responsible officer position;
 - (h) a mechanism to identify and respond to any relevant lapse in propriety on the part of any responsible officer; and
 - (i) regular review of the policy.
11. As a guide the trustee's policy in relation to propriety would ordinarily:
 - (a) identify the criteria it has determined are necessary for responsible persons to meet the propriety standard;
 - (b) outline the process for assessing propriety of both new responsible officers and ongoing responsible officers on a regular basis; and
 - (c) outline the process for removal of responsible officers who, for whatever reason, are determined to no longer meet the trustee's propriety standard.
12. APRA envisages an RSE licensee's policy and processes for meeting the fit and proper standard would specify the trustee's own standards for initial and ongoing training for directors and other responsible officers, particularly where equal representation rules mean that new representatives may have little practical superannuation knowledge. The policy would include processes for assessing the training needs of new and continuing responsible officers of the trustee. It would identify the trustee's own minimum requirements for educational, technical or practical qualifications for each role and set out procedures to confirm candidates' claims.
13. A trustee may consider extending its assessment process for fitness and propriety to a wider range of persons than is required under the SIS Act. The assessment process under the Fit and Proper policy could be adapted for this purpose.
14. A prudent trustee would take all reasonable steps to ensure that each of its responsible officers was aware of, and understood, the provisions of its Fit and Proper policy. As a matter of sound practice, those steps would be set out as part of the policy.

⁴ Refer to SPG 510 Conflicts of Interest

15. The trustee's policy should provide for regular review of the policy as well as specifying processes to ensure it is being complied with.

Whistleblowing

16. As a matter of sound practice, the trustee's Fit and Proper policy would include adequate provisions to allow whistleblowing if a person believes that a responsible person, or the trustee, did not meet the criteria of that policy. The policy would formalise the consent of the trustee, its parent or subsidiaries as relevant, to the whistleblower notifying either the person responsible for conducting fit and proper assessments or APRA of that belief and the reasons for it, notwithstanding any other conditions of their employment or contract. It would formally reiterate anti-victimisation procedures in place to ensure whistleblowers are not deterred.
17. As a matter of sound practice, the policy would provide that the trustee, its parent or subsidiaries as relevant, consented to any person who held a responsible person position disclosing information or providing documents to APRA at any time relating to their reasons for resignation, retirement or removal.
18. An RSE licensee should not, and should ensure that its related companies 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 16 or 17. Note that s336C of the SIS Act imposes offences for causing detriment, or threatening to cause detriment, to whistleblowers as defined under that Act.
19. As a matter of sound practice, the Fit and Proper policy would require that any provisions of the policy facilitating whistleblowing are adequately communicated to directors, responsible officers and other employees of the trustee and its related entities.

Dealing with persons who are not fit and proper

20. As a matter of sound practice, the Fit and Proper policy would include a process for dealing with persons who are not fit and proper, including a process for removal of such persons in circumstances where it is necessary to do so. When formulating a process for removal of persons who are not fit and proper, the trustee would generally ensure that these include consideration of the entity's structure and individual arrangements made with responsible officers. The policy would ordinarily include a requirement for the licensee to obtain legal advice when faced with the need to address a lack of fitness and propriety.

Responsible officers

21. The fit and proper standard applies to all responsible officers of the RSE licensee⁵. A responsible officer in the context of the SIS Act means a director or individual trustee including acting or alternate directors, a company or fund secretary or an executive officer of the RSE licensee. An executive officer means a person, by whatever name called, who is concerned with or takes part in the management of the RSE licensee.
 - (a) As a matter of sound practice, the Fit and Proper policy would clearly identify which roles have been assessed to be included as responsible officers.
 - (b) In APRA's view a responsible officer of an RSE licensee is any person whose conduct is likely to have a significant impact on the sound and prudent management of the licensee.
 - (c) A person need not be an employee of the RSE licensee to be a responsible officer. In some circumstances a consultant or contractor to the trustee, or an employee of a service provider, parent, subsidiary or otherwise related company, may be a responsible officer.

⁵ Refer to s. 10 of the SIS Act for the definitions of both an executive officer and a responsible officer, and s.126H of the SIS Act for indication that the legislative intent is to extend the requirement for fitness and propriety beyond individual trustees or the directors of a corporate trustee.

Determining if a person is fit and proper

22. In the trustee's process of reaching a judgement about the fitness and propriety of an individual, APRA expects it to give consideration to the following factors:

- (a) the person's character, competence and experience relative to the duties involved, including whether there are reasonable grounds to believe the person:
 - (i) possesses the necessary skills, knowledge, expertise, diligence and soundness of judgement to undertake and fulfil the particular duties and responsibilities of the role in question; and
 - (ii) has demonstrated appropriate competence in fulfilling occupational, managerial or professional responsibilities previously and/or in the conduct of his or her current duties; and
- (b) whether the person:
 - (i) has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards, or has been obstructive, misleading or untruthful in dealing with regulatory bodies or a court;
 - (ii) has breached a fiduciary obligation;
 - (iii) has a conflict of interest which may influence the trustee entity's or the individual's ability to carry out his or her role and functions with the degree of probity and independence required or with regard to the duty of care to superannuation fund members, or has failed to deal appropriately with such conflicts;
 - (iv) has perpetrated or participated in negligent, deceitful, or otherwise discreditable business or professional practices;

- (v) has been reprimanded, disqualified or removed, by a professional or regulatory body in relation to matters relating to the person's professional competence (where relevant to the role of the responsible officer), honesty, integrity or business conduct;
- (vi) has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- (vii) has been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies in that management;
- (viii) is of bad repute in any business or financial community or any market;
- (ix) was the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgement, honesty or integrity.

23. It is important to note that the list in paragraph 22(b) above is not exhaustive. Moreover, demonstration of one or more of the criteria in the list need not necessarily, in itself, be sufficient to lead the trustee to assess the individual as not fit and proper to be a responsible officer. These are examples of 'flags' which should lead the trustee or RSE licensee to further consideration of an individual's status or suitability.

24. When assessing a person's fitness and propriety, an RSE licensee would commonly seek, but not be limited by, an attestation from the person that they meet the criteria for fitness and propriety established by the trustee's policy. APRA considers that a trustee need not make enquiries about a matter that is unlikely to be material. It would need to weigh the burden of documenting information and the risk of unnecessary disclosure of personal information with the possibility that this information might be material.
25. An annual performance review will typically be the appropriate time for the annual assessment of a responsible officer's continuing fitness and propriety. However, if material information adverse to the assessment becomes known to the trustee during the year, it should take all necessary steps without waiting for the annual performance review.

Fitness

26. The fitness assessment of an RSE licensee would generally be both prudentially focused and dynamic and take into account (but not be limited to) the following factors;
 - (a) the business currently being conducted by the RSE licensee,
 - (b) the strategy and future focus of the RSE licensee;
 - (c) the size and complexity of superannuation entities managed; and
 - (d) the skills required to adequately manage the external risk environment.
27. APRA envisages that the fitness standard would normally be applied at two levels; a minimum requirement applicable to each responsible officer of the RSE licensee, and a more comprehensive requirement applicable to the trustee collectively.

Minimum fitness requirements

28. APRA considers that all officers of an RSE licensee should possess appropriate skills, knowledge and qualifications to carry out their appointed roles in order to meet the fitness standard. Minimum requirements for all responsible officers of an RSE licensee would include:
 - (a) an understanding of and ability to effectively implement the covenants outlined in section 52 of the SIS Act;
 - (b) a working knowledge of the SIS legislation and other relevant prudential requirements, including accounting, auditing and operational processes;
 - (c) basic investment knowledge;
 - (d) basic knowledge of the elements and application of other RSE licensee and trust law; and
 - (e) awareness of areas where additional technical, professional or expert advice should be sought.
29. If these minimum requirements are not met upon appointment it would generally be considered necessary for the RSE licensee to have in place a suitable induction and training process to ensure that newly appointed responsible officers have acquired the minimum required knowledge detailed above within a reasonable period of time. The concept of a reasonable period of time (which as a rule should not exceed one year) generally would be addressed in the trustee's fit and proper policy, and would have regard to any probationary period applied to officers who are new employees of the trustee. Depending on the existing level of skills, knowledge and qualifications of the relevant officer, the trustee could consider putting a planned program into place. In designing such a program, the trustee may consider how the trustee board as a whole would supplement the total skill levels till the programme has been successfully implemented.

Collective fitness requirements

30. On the basis that the minimum individual fitness requirements have been met the fitness standard can ordinarily be applied on a collective basis. A common tool and good starting point for the assessment of the overall skills, knowledge and experience of an RSE licensee is the development of a matrix matching the required skills, knowledge and experience which has been determined by the licensee to be necessary to effectively conduct its business (or planned future business) to the skills, knowledge and experience of the individuals that make up the responsible officers of the licensee, allowing for normal absences. This allows the trustee to more easily identify any knowledge or skill gaps.
31. The collective application of the fitness standard is also important to ensure a trustee holds the appropriate mix of skills to manage the entities within its trusteeship, having regard to any increase in size and complexity envisaged within its business plan as well as any emerging risks in the superannuation industry. For example, the skills, knowledge and qualifications required by a trustee which manages a number of entities with complex benefit structures would differ from those required to manage a single small fund with a relatively simple benefit structure.
32. Examples of other circumstances of a trustee's or RSE licence applicant's superannuation operations that APRA would have regard to in assessing whether the standard is met would include:
 - (a) public offer or multi-employer non public offer operations
 - (b) complex defined benefit funds
 - (c) trustee self-administration
 - (d) self-insurance
 - (e) other operations such as managed investment schemes or commercial provision of services such as administration.
33. APRA would expect that a majority of the directors and responsible officers of the trustee corporation would bring some particular relevant skill set or knowledge base to the operation.
33. In respect of 'fitness', APRA does not intend to set specific educational or technical qualifications, levels of knowledge, skills and experience to be demonstrated by licence applicants or trustees or their responsible officers. The collective application of the fitness standard means that individuals are not excluded from being part of a group or body corporate that is regulated by APRA merely because they are not superannuation experts. This is particularly important where there is a requirement under the SIS Act for equal representation of member and employer interests at the trustee level (refer to paragraphs 50-54 for further guidance on this). Having said this, the industry has become more complex and the level of skills needed for a trustee to demonstrate adequate fitness has risen in most instances. APRA would assess such adequacy in the context of industry sophistication, market standards and prudential safety.
34. While APRA is adopting a non-prescriptive approach to the matter of skills and qualifications, it should be noted that ignorance of the legislative and other obligations imposed on trustees will not be regarded as an acceptable defence should the trustee breach any of those obligations.

Training and induction of responsible officers

35. APRA acknowledges that many employer-sponsors of stand alone corporate funds provide paid time off and funding for training to achieve and maintain sufficient knowledge on the part of responsible officers of equal representation trustees. However, where such co-operation or assistance is not available, trustees would need to make alternative arrangements; for example to provide targeted training out of fund income if permitted under the governing rules. Practical training courses provided by the industry bodies are a good starting point.

36. As a minimum, individuals must be able to quickly acquire sufficient knowledge regarding the duties and responsibilities of an RSE licensee in order that they are capable of making informed decisions having regard to the advice of technical experts.

The fitness standard and outsourcing

37. The requirements of the standard do not prevent a trustee, or an applicant for an RSE licence, from employing or using in-house and/or external service providers to assist in the performance of its duties and responsibilities. Functions of the trustee and entities it manages which are commonly outsourced include administration, investment management and custody of assets. Where specialist knowledge is required, such as a detailed understanding of trust law or taxation rules, trustees which do not retain such knowledge in house would need arrangements to 'buy in' the required advice or expertise.
38. Ultimately, the trustee remains responsible for all decisions. In circumstances where a trustee relies on outsourced services, APRA would expect that the first requirement for a competent trustee would be an ability to exercise informed judgements in the best interests of beneficiaries and within a sound governance framework about the (continued) engagement and conduct of the service providers. Where the trustee receives external advice, it must demonstrate sufficient knowledge to assess the advice of technical experts and to make informed decisions in the best interest of beneficiaries based on that advice.

Propriety

39. The propriety limb of the standard must be met at all times by each member of a group of individual trustees and by each director and other responsible officer of a corporate trustee. All relevant individuals are required to meet standards relating to character, competence, honesty, integrity, judgement and diligence in keeping with the responsibility of roles they carry out as superannuation trustees.

Disqualified persons

40. Section 120 of the SIS Act defines disqualified persons to be those who:
- (a) have at any time been convicted of an offence in respect of dishonest conduct, whether in Australia or elsewhere, or in respect of whom a civil penalty order has been made;
 - (b) are an insolvent under administration; or
 - (c) have been disqualified by APRA or the Federal Court.
41. Persons banned from acting as company directors under the *Corporations Act 2001* or similar overseas legislation are ineligible for appointment as a director of a trustee that is a body corporate. APRA also takes the view that a person appointed as a member of a group of individual trustees would not meet the standard if he or she had been so prohibited from acting as a director. Similarly, an individual found under other APRA administered legislation to be a disqualified person or otherwise not a fit and proper person would be unlikely to meet the standard as it is intended to apply to trustees or applicants for an RSE licence. If a trustee made a decision to appoint or retain as a responsible officer a person who had been determined by the Commissioner of Taxation to be a disqualified person in respect of self managed superannuation funds, APRA would seek from the trustee a positive demonstration as to why the person should be assessed as meeting the standard of fitness and propriety required of a responsible officer of an RSE licensee.
42. As a matter of sound practice, the trustee policy would include a process for at least annual checking that trustees and responsible officers are not disqualified persons, such as periodic declaration by individuals that there is no change in status. Such a regular process is important as failure to act in respect of a disqualified person may result in the trustee not meeting the standard.

43. APRA may cancel an RSE licence if 'the RSE licensee is a body corporate and is a disqualified person'⁶. Subsection 120(2) of the SIS Act describes the circumstances when a body corporate will be a disqualified person, including, under subsection 120(2A), where the body corporate knows, or has reasonable grounds to suspect, that a responsible officer is a disqualified person.
44. If the body corporate was a disqualified person under subsection 120(2A), it is open to APRA to impose a condition on the trustee's licence in relation to the removal of the individual who was the disqualified person, and also to issue a subsequent direction to comply with that condition, before taking action to cancel the RSE license. It is likely, however, that APRA would move to suspend a trustee which failed to act promptly to remove a responsible officer known or reasonably suspected of being a disqualified person, pending resolution of that person's status.
46. For RSE licence applicants, APRA's requirements in relation to individuals include provision of an Australian Federal Police (AFP) check. If a request for a check has been lodged with the AFP and the applicant is awaiting a response, APRA will accept a licence application lodged without this check. In this circumstance applicants must attach either a statement verifying that an application has been made or a copy of the documents submitted to the AFP. A decision regarding any licence application will not be made by APRA until the police check has been received and is accepted in accordance with APRA's requirements.
47. The assessment of directors who have resided overseas for a period of time exceeding 12 months after the age of 18 is generally expected to incorporate a criminal record check from the former country(ies) of residence, similar to that required by the Department of Immigration for a visa application. Trustees which experience difficulty in obtaining such criminal record checks would often raise the issue specifically with APRA.

Police checks

45. In order to be satisfied that an individual is not disqualified in terms of s120(1)(a)(i) of the SIS Act, trustees should obtain an Australian Federal Police (AFP) check in relation to each person to be newly appointed as a responsible officer. This should happen as soon as practicable after the decision is made regarding the intended appointment, and would preferably be received before the appointee commences duty. A copy of the police check should be retained by the trustee and made available for inspection by APRA on request.

Conflict of interest

48. How the trustee identifies and manages conflicts of interest between trustee duties and any other commercial interests would generally be addressed within the trustee's governance framework and may form part of the trustee's fit and proper policy. APRA envisages that the governance process of the licensee should support the arm's length nature of all decisions and that alternative arrangements are considered as part of the due diligence process before entering any arrangement with a related party.
49. As a guide to determining whether an individual meets the propriety standard the trustee would generally consider whether the person has:
 - (a) failed to disclose a conflict of interest; or
 - (b) inappropriately failed to disqualify himself or herself because of a conflict of interest; or
 - (c) inappropriately participated in deliberations relating to a matter in which he or she had a conflict of interest; or

⁶ Refer to s. 29G(2)(b) of the SIS Act

- (d) acted in his or her own interests, or those of a related party such as an employer, in preference to the interests of the beneficiaries of the superannuation entity.⁷

In some instances, disclosure / abstention alone may not be sufficient to deal with conflicts of interest.

Equal representation requirements and assessment of individuals under the trustee policy

- 50. In the case of trustee entities that are not subject to equal representation requirements, assessment of the fitness and propriety of an individual candidate for a position as a responsible officer would normally occur prior to appointment.
- 51. The equal representation requirements do not, in APRA's view, absolve a trustee from the obligation to determine whether an individual is appropriate to act as a trustee or director of a corporate trustee. However, where there are voting and appointment procedures to be complied with, it may not be possible to do this before appointment. Accordingly, a copy of the trustee's fit and proper policy and a summary of the duties and responsibilities of a trustee as encapsulated in the covenants described in section 52 of the SIS Act should be made available to prospective candidates prior to nomination.
- 52. The information provided to potential candidates or appointees, and those in the position to nominate or appoint an employer or member representative, could also include specific advice as to what the trustee requires to enable it to satisfy itself and APRA that the requirements of the standard will continue to be met.
- 53. In order to satisfy APRA that the trustee has taken steps to satisfy itself that it meets, and will continue to meet, the standard, the trustee may require candidates or appointees to confirm certain matters. These may include their readiness to:
 - (a) undertake relevant training within a specified period after appointment;

- (b) declare that, to the best of their knowledge, they possess relevant attributes set out in the standard;
- (c) declare any known conflicts of interest; and
- (d) confirm that they are aware of the trustee's policy in relation to ongoing performance evaluation.

- 54. A non exhaustive list of matters in relation to which a trustee may consider seeking confirmation from individuals is provided at Attachment A for illustrative purposes only, not as a recommendation or requirement.

Key persons

- 55. Where APRA forms the view that an RSE licensee or an applicant for an RSE licence is heavily dependant upon a certain person or persons to meet the fitness element of the fitness and propriety requirements, APRA may designate those persons as key persons as a condition of licence. The expression 'key person' refers to a person invested with certain skills or knowledge required by the trustee in order to carry out its function fully and effectively in accordance with the SIS legislation. APRA expects that any RSE licensee or licence applicant who is reliant on a key person who is not a director of the trustee or an individual trustee himself or herself should have a process to ensure that the key person is a fit and proper person. APRA would also expect the trustee's risk management strategy to address key person risk.
- 56. A key person cannot be used by a corporate trustee to fill a gap relating to minimum fitness requirements. All responsible officers should meet the minimum fitness requirements outlined at paragraph 28.
- 57. Reliance on a key person suggests that the trustee as a whole does not have the complete skill set that is considered the minimum necessary for the effective discharge of its duty, or that there is only a single person in the trustee structure who meets the knowledge and experience requirements in their entirety.

⁷ Refer to SPG 521, Conflicts of Interest, for further guidance.

58. In those cases where a key person or persons are named on the licence, the implication is that the trustee will use the skills or knowledge of the key person/s so that the trustee as a whole can meet the standard.
59. A key person must be a natural person. APRA envisages that a key person would generally be part of the trustee structure and reliance on any key person outside of the licensee would typically be through a proper outsourcing arrangement. In circumstances where a licence applicant relied on a specific individual who was not subject to the control of the applicant the fit and proper standard would still apply to such an individual. In this scenario the trustee would be expected to have a suitable process in place to ensure that the person was a fit and proper person to be so involved with the operation of the fund.
60. Designation of a person as a 'key person' would occur after discussion with the trustee or RSE licence applicant. Where a person is designated a key person by APRA, the continued engagement of that person in the capacity of a key person or a satisfactory replacement will be a condition of the trustee's RSE licence. To address the additional risk arising from reliance on a key person such licensees should have in place an adequate succession plan for this role. If a designated key person ceases or is about to cease the role they occupy, the trustee must notify APRA and nominate another suitably qualified person to perform that role. APRA may then reassess the trustee against the fit and proper standard, taking into account the competency of the nominated replacement key person, before varying the RSE licence conditions to reflect the new key person.

Interaction with Australian Financial Services Licenses

61. Some applicants for an RSE licence have been granted an Australian Financial Services Licence (AFSL) by ASIC. Where there is an overlap of documentation required under the two licensing processes, applicants may provide to APRA copies of documents that had been submitted in the course of a successful AFSL application. Such documents must be up to date, comprehensive and relevant to the information requested in the APRA licence application form.

Attachment A

Matters regarding which a trustee may consider seeking confirmation from candidates or appointees to trustee and responsible officer positions.

Full name, address and occupation of person;

- Confirmation by the person that he or she:
 - is a fit and proper person for the purposes of the *Superannuation Industry (Supervision) Act 1993* and/or the *Superannuation Industry (Supervision) Regulations 1994*;
 - is a candidate for/or holds the position of trustee or director of the company that is the trustee, responsible officer, relevant person or key person;
 - is not a disqualified person;
 - has not been convicted in respect to any dishonesty offence;
 - is not a bankrupt or a discharged bankrupt;
 - has not had a civil penalty order made against him or her by any court;
 - has not been the subject of an adverse finding made by APRA or any other regulator;
 - is not aware of any real or potential conflicts of interest which may adversely affect his or her suitability for the position other than those interests which are expressly disclosed to the trustee;
 - holds educational and/or vocational qualifications (these could be listed by qualification, relevant institution or organisation, and date of qualification);
 - has technical, specialist or industry skills or experience (described to the trustee);
 - intends to undergo necessary training courses or attend industry seminars as reasonably required by the trustee.



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