

FINANCIAL BONDS OR OTHER FINANCIAL INSTRUMENTS

The Qualifying Criteria (QC) set by the Ministry of Justice (MoJ) require an applicant to obtain:

- 1.3 *"A financial bond or other financial instrument of at least £20,000, demonstrating that the MRO has sufficient funds available to remunerate medical experts from whom it has commissioned medical reports in the case of failure of the MRO".*

For high capacity national MROs the bond or financial instrument must be at least £100,000.

The rationale provided by the MoJ for this criterion is: *"the availability of sufficient financial resources is required to ensure that medical experts are protected in the event of a failure of an MRO. Payment of this bond is also a disincentive to the establishment of "shell" MROs designed to undermine the random allocation model."*

MedCo has considered the type of bond or financial instrument that each MRO applicant should obtain in order to meet QC 1.3 and its intended purpose. It has been decided that any bond or other financial instrument obtained must be issued by an authorised firm in order for MedCo to accept that QC 1.3 has been met.

The full definition which will be applied by MedCo is set out below. It covers all authorised insurers and banks authorised to accept deposits in the UK, including those authorised in the EU or with appropriate "passports" to conduct business here and insurers at Lloyd's. An insurer will need to be authorised to write business in Class 15: suretyship – see links below.

Definition of authorised insurer and authorised bank

"authorised insurer" means:

- (i) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 ("FSMA") to effect or carry out contracts of insurance of a relevant class;
- (ii) a person who carries on an insurance market activity, within the meaning of section 316(3) of FSMA;
- (iii) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to FSMA, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class (for these purposes Class 15); or
- (iv) a person who does not fall within paragraph (i), (ii) or (iii) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the UK, provided that this definition must be read with section 22 of FSMA, any relevant order under that section and Schedule 2 to FSMA.

The Prudential Regulation Authority (PRA) provides a list of authorised insurers listed by class at <http://www.bankofengland.co.uk/pr/Pages/authorisations/fscs/insurance.aspx>. The relevant class of these purposes is Class 15. Whilst Classes 14 and 15 are listed together in these tables, further enquiry with those companies listed will establish which of them cover Class 15.

"authorised bank" means:

- (i) a person (other than a building society) who has permission under Part 4A of FSMA to accept deposits;
- (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FSMA, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits; or
- (iii) a person who does not fall within paragraph (i) or (ii) and who may lawfully accept deposits in a member state other than the UK, provided that this definition must be read with section 22 of FSMA, any relevant order under that section and Schedule 2 to FSMA

The PRA provides a list of authorised banks at

<http://www.bankofengland.co.uk/pr/Pages/authorisations/banksbuildingsocietieslist.aspx>

NOTES

- 1 *MedCo must not be named as the beneficiary of the bond or financial instrument.*
- 2 *MedCo does not consider that money deposited in solicitors' client accounts complies with the Qualifying Criteria.*