



INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002

**FEEDBACK ON THE CONSULTATION PAPER ON RULES FOR
SPECIAL PURPOSE INSURERS**

December 2016

This feedback paper reports on input received by the Guernsey Financial Services Commission on the Consultation Paper issued in October 2016 and consequent related changes.

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During October and November 2016 the Commission consulted on proposals to amend the framework underlying the Insurance Business (Bailiwick of Guernsey) Law 2002 (the “Law”) with the making of rules for Special Purpose Insurers and a related, minor amendment to the Insurance Business (Solvency) Rules 2015.

In making these proposals the Commission was responding to requests from industry, who believe that distinct rules for Special Purpose Insurers (“SPIs”) will assist in attracting Insurance Linked Securities business such as collateralised catastrophe reinsurance to the Bailiwick.

Feedback received and proposed changes

The Commission received a very small number of responses to this consultation, most of which referred to relatively minor points of drafting. Where appropriate the final Rules have been amended to reflect these comments. A number of substantive comments were received and these are addressed below along with the Commission’s response.

- A respondent asked why the definition of SPI refers only to cells of Protected Cell Companies and not to Incorporated Cells. It should be noted that Incorporated Cells would fall within the meaning of the term “insurer” which is also used in the definition of SPI.
- A respondent suggested that the subordination requirement for SPI capital be clarified. The Rules have been amended to clarify that subordination is to the claims against the assets of an insurer/cell and that subordination may be to a wider class of person than the insured. This comment has been accepted and the definition has been amended accordingly.
- A respondent suggested that the definition of Qualifying Investor used in the Rules should mirror the definition used in the Commission’s Qualifying Investor Fund Guidance (“QIF Guidance”). Consideration was given to this suggestion but the Commission’s view is that while this definition is appropriate for the QIF guidance, it is too broad a definition to be used in limiting investment in SPIs to parties with sufficient knowledge and resources to understand and participate in the alternative reinsurance market.
- A respondent commented that the proposed definition of Fully Funded Insurer, which permits the use of contingent capital where the capital provider is at a minimum rated A-, was too restrictive on the basis that providers of capital in such structures, though financially strong, are generally not rated. The Commission intends to give proper consideration to the widening of this restriction and assess the associated risks. The Commission does not intend to delay the issuance of the Rules while this matter is considered and, therefore, the relevant provisions of the Rules remain as consulted upon. Once the Commission’s assessment is completed the Rules may be amended as appropriate. However, otherwise, the stated approach to contingent capital will be applied by the Commission.

The Commission is grateful to the respondents for taking the time to consider and comment on the proposals.

Next Steps

The final version of the Insurance Business (Special Purpose Insurer) Rules 2016 is provided in the Annex to this document. The Rules will come into effect on 1 January 2017. The Insurance Business (Solvency) Rules 2015 will also be amended at this date to change the definition of a Category 6 insurer to include an SPI.

ANNEX

**THE INSURANCE BUSINESS (SPECIAL PURPOSE
INSURER) RULES 2016**

Introduction

- 1) The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred upon it by Sections 38A and 38B of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended and of all other powers enabling it, hereby makes the following rules:-

Citation

- 2) These rules may be cited as the Insurance Business (Special Purpose Insurer) Rules, 2016.

Commencement

- 3) These rules shall come into force on 1 January 2017.

Status

- 4) These rules shall have the status of rules of the Commission under the provisions of section 38A of the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the “Law”), as amended.

Definitions

- 5) The defined terms used in these Rules shall be defined as follows;

- a) “Acceptable Rating Agency” means a rating agency prescribed in Schedule 5 of the Insurance Business (Solvency) Rules 2015.
- b) “Law” means the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended.
- c) “Special Purpose Insurer” means an insurer or a cell of a protected cell company which conducts insurance business and is a Fully Funded Special Purpose Insurer funded from the proceeds of any one or more of the following:
 - i) a debt or equity issuance; or
 - ii) some other financing mechanism approved by the Commission.
- d) “Fully Funded Special Purpose Insurer” means an insurer or cell which satisfies all of the following requirements:
 - i) the insurer or cell has at all times assets the value of which is equal to or exceeds its aggregate maximum risk exposure and the insurer or cell is able to pay the amounts it is liable for as they fall due;
 - ii) the proceeds of the debt or equity issuance or other financing mechanism are:
 - (1) fully paid-in; or
 - (2) in the form of contingent assets where the finance provider has achieved a financial

- rating (counterparty, credit or financial strength as applicable) of at least A- as of the date of application and as determined by an Acceptable Rating Agency;
- iii) according to the terms of such financing mechanism, the claims of participants in any such mechanism against the assets of the insurer or the cell are subordinated to the claims of creditors under the contracts of insurance underwritten by the insurer or cell;
 - iv) the insurer or cell only enters into contracts or otherwise assumes obligations or contingent liabilities which are solely necessary for it to give effect to the purposes set out from time to time in its agreed business plan; and
 - v) to the extent that more than one insurance contract is in place within the insurer or cell, each of the insurance contracts is structured so that the insurer or cell meets the fully funded requirements, as described in this definition, individually for each contract.

- e) "Qualified Investor" means:
 - i) a Government, local authority, public authority or supra-national body (in the Bailiwick or elsewhere); or
 - ii) a person, partnership, unincorporated association or body corporate which has total assets of at least £5 million;
 - iii) Guernsey registered or authorised collective investment schemes; or
 - iv) a company quoted on an investment exchange licensed by the Commission or a Recognised Investment Exchange.
- f) "Recognised Investment Exchange" means a recognised investment exchange as defined under the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
- g) "Type 1 letter of credit" means a Type 1 letter of credit as defined in the Insurance Business (Solvency) Rules 2015 as amended.
- h) Unless otherwise defined in these rules, terms used in these rules that are defined in the Law shall have the meaning given to them in the Law.

Controllers, Collateral & Participation

- 6) Special Purpose Insurers may only raise capital for underwriting:
 - a) From Qualified Investors (whether via subscription for or purchase of debt or equity instruments or otherwise);
 - b) By listing of securities (whether debt, equity or derivative instruments) issued by the Special Purpose Insurer on an investment exchange licensed by the Commission or a Recognised Investment Exchange; or
 - c) By such other means or from such other persons as may be approved in writing from time to time by the Commission.
- 7) The capital utilized for underwriting by a Special Purpose Insurer may include the following contingent assets approved by the Commission on a case by case basis:

- a) Type 1 letters of credit
- b) Reinsurance
- c) Partly paid shares.

Applications, Consents and Requirements

- 8) An applicant for either the licensing of a new insurer or the creation of a new cell which meets the definition of a Special Purpose Insurer shall notify the Commission within the relevant application of its status as a Special Purpose Insurer and shall provide such information as the Commission may deem necessary to demonstrate compliance with the content of these Rules, the Law and any associated rules, codes, ordinances or regulations.
- 9) Upon application by a protected cell company the Commission may grant a single consent for the formation of further Special Purpose Insurer cells, whether generally or limited in extent, without further or additional application to the Commission, provided that such permission is subject to the following conditions:
 - a) that the business of such initial and further cell or cells complies and will continue to comply at all times with the terms and limits of the business plan submitted to the Commission under section 11 of the Law and with the content of these Rules;
 - b) that the ownership of such further cell or cells will be restricted to owners of a cell or cells of the Special Purpose Insurer previously approved by the Commission; and
 - c) that, within seven calendar days of the effective date of insurance underwritten by a further cell, the General Representative of the Special Purpose Insurer shall notify the Commission and provide the Commission with:
 - i) a completed application form in such form as the Commission may prescribe;
 - ii) a narrative business plan;
 - iii) the relevant fee; and
 - iv) confirmation of the effective date of insurance.
- 10) The authorisation of at least one Guernsey resident signatory is required for all bank payments made by a Special Purpose Insurer.