



Guernsey Financial
Services Commission

The Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended ('Insurance Law')

Guidance in respect of requesting disclosure derogation

Introduction

Changes to UK Generally Accepted Accounting Practice (UK GAAP), with effect from 1 January 2015, will see the enactment of new financial reporting standards and in particular, FRS 103: Insurance Contracts - Consolidated accounting and reporting requirements for entities in the UK and Republic of Ireland issuing insurance contracts ('FRS 103'). FRS 103 has introduced the requirement for significant additional disclosures to be made within the annual audited financial statements.

For captive insurers, those insurance entities owned by its parent, the additional disclosures will not only be costly but do not provide any meaningful information to its stakeholders (ie its parent or the Commission).

A captive insurer's financial statements are not publicly filed and both the Commission and the shareholder have access to all information they require. A derogation from the additional disclosures under FRS 103 are not intended to weaken the financial statements and will only apply to specific insurance licensed entities, permitted by the Commission on a case by case basis. The disclosure information provided to the Commission and the licensees' shareholders would effectively not change from that currently submitted other than the audit opinion which will be amended from being prepared on a 'true and fair basis' to a 'properly prepared basis', due to the exclusion of the new disclosure requirements arising under FRS 103.

As a result, The Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations 2014 and Companies (Audit Exemption) (Amendment) Regulations 2014 have been effected from 7 November 2014, to provide certain relevant licensees with the option to not include the additional disclosures noted above.

Process

Derogation Request

If a relevant licensee has considered the non-disclosure option and would like to apply to not report the additional disclosures required by paragraphs 4.4 to 4.9 of FRS 103, a request may be made by that insurance licensee to the Commission for a derogation under s35(6) of the Insurance Law. This should also include a request for the preparation of their financial statements to be on a ‘properly prepared’ basis rather than on a ‘true and fair’ basis.

To check whether an insurance licensee is able to make such a request, a flowchart is attached in Appendix 1, together with category definitions. “Relevant licensees” that are able to apply for derogation from the additional disclosure requirements arising from FRS 103 fall into “**Category 5 Captive (Re)Insurer**”.

It is the Board’s responsibility to ensure that the derogation continues to be valid: any changes to an insurance licensee’s business plan which would impact on this derogation must be notified to the Commission prior to implementation of those changes.

Protected Cell Companies (‘PCCs’)

The Commission has considered whether the derogation can be requested by PCCs, where individual cells may be of a ‘captive’ type but may also include ‘commercial’ cells.

As PCCs consolidate the results from all their cells within the audited financial statements, the consolidation of the additional disclosure requirements would not provide meaningful information to the owners of the PCCs, the cells or the Commission: owners of cells receive separate management accounts in respect of their own cell.

It is for this reason that the Commission is willing to agree to the derogation for PCCs.

Election for Audit Exemption

On receipt of a derogation from the Commission, the insurance licensee will then need to pass a waiver resolution under s256 The Companies (Guernsey) Law, 2008 (‘Companies Law’), exempting the company from audit under Companies Law. This must be filed with the Registrar prior to the end of the company’s previous year end (this will mean that companies with a 31 December year-end will need to make and file the election with the Registrar, prior to 31 December 2014).

Although this election will exempt an insurance licensee from audit under the Companies Law, that licensee will still be subject to an audit under the Insurance Law (under a ‘properly prepared’ rather than a ‘true and fair’ basis).

Please remember to advise the licensee’s auditors.

Agreement to a condition on the insurance licensee's licence

By electing for an audit exemption under Companies Law, directors' responsibilities under s249 are also exempted. The Commission therefore proposes to reintroduce those directors' responsibilities by way of the following condition on the licensee's insurance licence:

"The directors of ... agree to include information within the directors' report of the financial statements, audited under the Insurance Law, as required under section 249 of the Companies Law, as if the company was not exempt from audit under the Companies Law."

An insurance licensee applying for derogation for the additional disclosures required by FRS 103 (noted above) is therefore also requested to confirm agreement to the above condition being imposed on the company's licence.

Suggested wording when requesting derogation

The suggested wording below may be used in making this request:

" The directors of ... request, under section 35(6) of the Insurance Law, that the disclosures required under paragraphs 4.4 to 4.9 of FRS 103 are not to be included within the financial statements of the company and that those financial statements be prepared on a 'properly prepared' rather than a 'true and fair' basis.

In making this request, the directors also agree to the following condition being imposed on its licence:

"The directors of ... agree to include information within the directors' report of the financial statements, audited under the Insurance Law, as required under section 249 of the Companies Law, as if the company was not exempt from audit under the Companies Law." "

Directors' responsibilities

Questions have been raised in respect of a director signing off the audited financial statements under a 'properly prepared' rather than a 'true and fair' basis under s243 of Companies Law. As there appears to be a potential issue in respect of the interpretation of the Companies Law, this is being considered further, and may result in an additional amendment being passed during 2015 in respect of Companies Law. An update in respect of this issue will be provided prior to the end of Q2 of 2015.

Applications

In respect of new applications, if derogation is to be requested from the additional disclosures under FRS 103, please ensure that this is noted within the application. Following the issue of in principle approval, the Commission will require a formal request for derogation, together with the Board's confirmation to the imposition of the condition noted above.

APPENDIX 1

Flowchart – [Definition of a licensee for waiver of disclosure purposes](#)

Insurer Categorisation

- (a) **Category 1** - Commercial Life Insurers - a long-term insurer with any element of unrelated party business;
- (b) **Category 2** - Commercial Life Reinsurers - a long term reinsurer with any element of unrelated party business;
- (c) **Category 3** - For Commercial General Insurers - a general insurer with an element of unrelated party business;
- (d) **Category 4** - Commercial General Reinsurers - a reinsurer providing reinsurance to a commercial insurer, whether or not part of the same group, and with no direct business;
- (e) **Category 5** - Captive (Re)insurers - an insurance or reinsurance entity created and owned, directly or indirectly, by one or more industrial, commercial or financial entities or associations, the purpose of which is to provide insurance or reinsurance cover for risks of the entity or entities to which it belongs, or for entities connected to those entities; and
- (f) **Category 6** - Special Purpose Entities - examples of these would include transformer cells, catastrophe cells, ILS cells.

“Relevant companies” that are able to apply for a waiver from the additional disclosure requirements arising from FRS 103 fall into “**Category 5 Captive (Re)Insurer**”.

For the avoidance of doubt, the Commission **does not** regard a reinsurer that is owned by a commercial insurer as a captive; in fact, the IAIS definition of a captive specifically excludes such entities.

PCCs are not listed separately within this flowchart, but are able to apply for derogation from the additional disclosure requirements.

25 November 2014