GUERNSEY FINANCIAL SERVICES COMMISSION

GUIDANCE NOTE ON PRODUCER OWNED (RE)INSURANCE COMPANIES

Introduction

The guidance given in this guidance note is general and each applicable case will be considered by the Commission on the basis of its specific circumstances. This guidance is not intended to derogate from any obligations imposed upon licensees arising under contracts and/or the general law including the law of agency.

This guidance does not change the Commission's general approach in the consideration of all other areas of a licence application that would normally be reviewed, including but not limited to, fitness and propriety of owners and directors, corporate governance and the structure of the board and risk gap.

Producer Owned Reinsurance Companies (PORCs) are companies, or cells of protected or incorporated cell companies, that are beneficially owned by the producers (eg intermediaries or introducers) of insurance business where such insurance business is ultimately reinsured into the PORC through an independent fronting insurer. There are additional risks associated with these insurance vehicles since the producer could be in a position to influence the placing of business with its own PORC and could control the level of premiums or commissions that apply.

A Producer Owned Insurance Company (POIC) is similar, although there is no independent fronting insurer, and therefore raises the same regulatory issues.

The Issues

A client buying insurance cover where a PORC or POIC structure is present can be recommended by the producer to purchase a particular policy because it will generate an underwriting profit for the producer's company and not because it is the most suitable policy for the client. The producer could also cherry pick the best risks for its own PORC and offload the poorer risks to other carriers. They have also been used in fraudulent schemes where the PORC structure has been deliberately misused.

Dealing with Conflicts in PORCs and POICs

PORCs

PORC applicants and managers should identify and manage all the potential conflicts of interest faced by the producer and other related parties in the proposed structure.

The Commission will expect to see evidence that the applicant and managers have considered the conflicts and dealt with them accordingly. This may include providing detailed information to policyholders about the structure and its financial benefits for producers so that they can give their fully informed consent to the use of such vehicles and/or generating a greater amount of supporting evidence to demonstrate that clients are being treated fairly.

In common with all applications the Commission will consider matters such as underwriting policies and controls, the level of commissions paid to the producer and whether this exceeds any potential loss, and if required, whether additional capital is available. Of particular relevance will be whether the producer is itself regulated.

POICs

In principle the issues involved in consideration of POIC applications will be the same as for PORCs.

In addition, intermediaries established in the European Union are required to disclose to the customer any interest in excess of 10% in an insurer. Therefore, where the producer is established in a member country of the European Union, that producer will be required under the regulations to which it is subject to disclose to its own clients its interest in the POIC. As such, the Commission will seek confirmation of compliance with such requirements by means of a declaration from the Manager and/or by carrying out specific due diligence. For a producer established outside the EU we would impose licence conditions requiring the POIC to impose similar disclosure requirements on the producer.

Depending on the structure and location of the producer, the Commission may require additional controls or disclosure be put in place to ensure transparency and fairness is maintained for policyholders in the same way as for PORCs above**.**