Guernsey Financial Services Commission

INSURANCE REGULATION OMNIBUS CONSULTATION

FEEDBACK ON THE CONSULTATION PAPER ISSUED BY THE GUERNSEY FINANCIAL SERVICES COMMISSION

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This feedback paper reports on input received by the Guernsey Financial Services Commission on the Consultation Paper issued in April 2018.

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1: Executive Summary

1.1 Background

This paper details and responds to the feedback received on the Consultation Paper ("CP"), "Insurance Regulation Omnibus Consultation – A Consultation Paper on Revision of the Rules and Guidance for Licensed Insurers" issued in April 2018.

The CP outlined proposed changes to a number of the rules and guidance governing insurance business in Guernsey in the following areas: Public Disclosure, Guidance on Reinsurance and Risk Transfer, Conduct of Business Rules for Insurers, Own Risk and Solvency Assessment, Frequency of Regulatory Reporting, Guidance on the Qualifying Criteria for Insurance Category 6 (Special Purpose Entities) and Majority Shareholder Controller Notification.

1.2 Feedback received

The CP was issued publicly and received a strong level of response from industry. The Commission followed up on formal written responses directly with a number of parties to clarify the issues raised.

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

2: Summary of Feedback

2.1 Public Disclosure

Feedback Received

A number of comments were received from industry with respect to the proposed revision to the Insurance Business (Public Disclosure of Information) Rules. A primary issue raised by respondents was a need for greater proportionality in the jurisdiction's approach to public disclosure, recognising the diverse and primarily institutional nature of the insurance industry in the Bailiwick.

Commission Response

The Commission has sought to address the issues raised in the response of industry and a number of amendments to the original proposal have been made.

The Commission has sought to broaden the proportional application of the disclosure requirement by widening the categories of licensed insurer falling outside the scope of the Rules and by further narrowing the scope of new disclosure requirements. All licensed insurers, with the exception of Category 5 and Category 6 licensed insurers, all Protected Cell Companies and non-Bailiwick incorporated entities, will continue to be subject to a disclosure requirement equivalent to that under the existing 2010 Public Disclosure Rules and will be required to make annual audited financial statements available to persons with a valid interest.

All licensed insurers will also be required to make additional public website disclosure unless they fit into one or more of the following categories:

- the insurer has annual gross written premium income not exceeding £500,000, or gross assets not exceeding £2.5 million; providing that, if the insurer is in run off (by which it is no longer taking on new business but still has outstanding liabilities to existing policyholders), it would have met these conditions in its last full year of underwriting.
- the insurer that has reinsured 75% or more of its insurance risk with a group insurer;
- the insurer writes reinsurance for related group insurers only;
- the insurer writes a single class of reinsurance for one fronting insurer in relation to a specific product or arrangement; or
- the insurer has a small number of commercial policyholders only.

It should be noted that all or any part of this disclosure may be withheld, redacted or summarised where disclosure would enable competitors of the insurer to gain undue advantage or otherwise cause detriment to the insurer, or where the information is confidential in nature or where disclosure may breach laws or regulation. The insurer's board need not seek the permission of the Commission to limit disclosure on the aforementioned grounds but will be required to provide the Commission with notification of the reasons for non-disclosure/redaction.

Those insurers with websites will be required to make their applicable disclosure via this medium and all relevant licensed insurers will be required to file their public disclosure information with the Commission for subsequent publication on the Commission's website.

The new Rules will apply only to insurer financial year ends falling after 31 August 2018.

2.2 Conduct of Business Rules

Feedback Received

A small number of responses were received on the proposed Licensed Insurer's (Conduct of Business) Rules, 2018. The majority of comments related to clarification of scope, definition of terms and potential conflict with relevant foreign supervisory regimes.

Commission Response

The Commission has accepted the majority of comments provided and has made a number of drafting changes to the Rules to aid clarity and understanding. There has been no material change to the substance of the Rules. The following changes should be noted.

- The scope of the Rules has been clarified. The Rules will apply to all Category 1 and Category 3 licensed insurers with respect to business with retail customers. The purpose of this change is to ensure that the Rules apply only to business with retail customers.
- The trigger point for interest on overdue payments has been redefined. This change is to ensure that the trigger point references the meeting of relevant payment conditions.
- The hard 14 day cooling-off period requirement has been softened. This change allows flexibility if third parties regimes apply a different number of days for cooling-off.
- A definition of "intermediary" has been added and the superfluous reference to "introducer" removed.
- The definition of "customer" has been amended. This change has been made to ensure that all relevant parties are captured – for example beneficiaries.

The new Rules will apply from 3 August 2018. There will be a transitional period of 6 months from this date, during which the Commission will expect insurers to take the necessary actions to ensure full compliance with the Rules by 3 February 2019.

2.3 Own Risk and Solvency Assessment (ORSA)

Feedback Received

A small number of responses were received on the proposed widening of the scope of the full ORSA. Certain respondents commented on the basis of the criteria used to determine whether or not an insurer would fall within scope of the full ORSA requirement, questioning transparency and whether the criteria were appropriately risk-based. Further clarity was sought on timing and frequency of the ORSA process.

Commission Response

The Commission will proceed with the use of the criteria for determination of scope of the full ORSA as proposed, as these criteria are consistent with the Commission's impact and risk based approach to supervision.

Relevant insurers should transition to the full ORSA in respect of the insurers' individual assessment periods (currently assessed under the OSCA process) commencing after the date of the making of the Insurance Business (Solvency) Amendment Rules 2018 (e.g. where an insurer's current OSCA assessment period ends on 31 December 2018, an OSCA should be prepared for this period - a full ORSA should be carried out for the subsequent period ending 31 December 2019). For the avoidance of doubt, the revised rules will only be applied to assessment periods beginning after 2 August 2018.

The ORSA assessment period need not coincide with the financial year. ORSA should be conducted on an annual basis, but the extent of the annual process and the degree to which this may necessitate review of prior period's assessment work is a matter of judgement for the Board. This means that firms need only comply with this new requirement in line with their current timeline.

The text proposed in the CP remains unchanged.

2.4 Category 6 – Special Purpose Entities

Feedback Received

In response to this area of the consultation the argument was made that any imposition of a firm minimum capital requirement or restriction on ownership by individuals may limit the use of Category 6 Special Purpose Entities for a number of existing, low risk business models.

Commission Response

The Commission has made amendments to the proposed guidance. The revised guidance makes it clear that the Commission will carefully scrutinise applications which propose individuals as direct owners of a Category 6 cell and that, where there is an absence of a robust contingency funding plan to facilitate the orderly wind down of a cell in the event of issues with the fully funded status, the Commission may require paid-up share capital of up to £100,000.

2.5 Reinsurance and Other Forms of Risk Transfer

Feedback Received

The drafting of the proposed guidance with use of the word "requires" was queried in response to the CP and clarity sought as to the status of the document. "Should" is now used instead.

Commission Response

The Commission confirms that the Reinsurance and Other Forms of Risk Transfer policy is issued in the form of guidance. The wording of the guidance has been amended to avoid any potential ambiguity in this regard with no other significant changes being made.

2.6 Increased Frequency of Solvency Reporting

Feedback Received

This proposal attracted limited response. The suggestion was made that increased frequency of solvency reporting may be of limited value and might be applied only to insurers regarded as high risk. Clarity was also sought on the timing of submission of half-year returns.

Commission Response

The Commission is of the view that the proposed increased frequency of solvency reporting for a relatively small number of licensed insurers is consistent with the Commission's impact and risk based approach to supervision.

The deadline for submission of the half year return is 60 calendar days following the 6 month reporting period end. Licensed insurers within scope of the new reporting requirement should provide their first half-year Regulatory Solvency Assessment in relation to financial years commencing after the publication date of this response paper.

2.7 New Majority Shareholder Controller

No substantive comments were received on this proposal and the Commission will proceed with guidance as proposed.