

# Insurance Regulation Omnibus Consultation (April 2018)

**Closed 29 May 2018**

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## Overview

The consultation made proposals in respect of the Rules and Guidance applicable to insurers licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002.

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Guernsey Financial  
Services Commission

# **INSURANCE REGULATION OMNIBUS CONSULTATION**

**A CONSULTATION PAPER ON REVISION OF THE RULES AND  
GUIDANCE FOR LICENSED INSURERS**

**Issued 17 April 2018**

This Consultation Paper makes proposals in respect of the Rules and Guidance applicable to insurers licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“the Insurance Business Law”).

The Guernsey Financial Services Commission invites comments on this consultation paper and your comments should be submitted by no later than 29 May 2018.

Responses should be sent to:

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## **A. Executive Summary**

1. The Guernsey Financial Services Commission is proposing that a number of the insurance Rules and Guidance it administers should be revised in order to continue to keep pace with international standards in insurance regulation.
2. This Consultation Paper will outline proposed changes to a number of the rules and guidance governing insurance business in Guernsey. These changes are intended to ensure that Guernsey remains in line with international standards in insurance regulation, as set out by the International Association of Insurance Supervisors (“IAIS”) in the Insurance Core Principles (“the ICPs”). Whilst the current ICPs originated in 2011, they have continued to develop and it is important that Guernsey remains aligned with them. The core principles can be found on the IAIS website<sup>1</sup>.
3. The areas addressed in this paper are: 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.
4. The key aims of the proposals in this consultation paper are to:
  - provide internationally comparable levels of protection to retail customers of insurance products;
  - enhance the effectiveness, clarity and transparency of the regulatory requirements; and
  - meet international standards.
5. The Commission is committed to meeting international standards to ensure the continuing credibility of Guernsey as an international financial services centre. We are also committed to introducing rules, on a proportionate basis, to implement those standards which take proper account of the economic wellbeing of the Bailiwick and the firms which operate in it; as well as safeguarding policyholders.

### **Public Disclosure**

6. The Commission is proposing to amend the current Insurance Business (Public Disclosure of Information) Rules, 2010 in order to bring them more in line with the standards set out by ICP 20, Public Disclosure. The Commission proposes to update the Rules to require all relevant insurers to publish electronically their audited financial statements and certain additional information, such as key features of the insurer’s

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<sup>1</sup> <https://www.iaisweb.org>

corporate governance framework. It is proposed that captive insurers and special purpose insurers will be exempt.

#### Guidance on Reinsurance and Risk Transfer

7. It is proposed that guidance, consistent with ICP 13, Reinsurance and Other Forms of Risk Transfer, clarifying expectations around the use of reinsurance will be issued by the Commission. This guidance will address the need for a reinsurance programme to form part of the wider risk management framework and to be appropriately controlled and governed.

#### Conduct of Business

8. The Commission is proposing that the current Licensed Insurers' Code of Conduct and Code of Conduct for Insurers Conducting Long-Term Business are withdrawn and replaced with a new set of Rules. These proposed Rules have been drafted with specific reference to ICP 19, Conduct of Business, and propose requirements promoting the fair treatment of customers, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied. The proposed Rules would apply to all Category 1 (Commercial Life) and Category 3 (Commercial General) licensed insurers writing business with retail customers.

#### Own Risk and Solvency Assessment ("ORSA")

9. It is proposed that the scope of the full ORSA requirement be extended further to a limited number of licensed insurers and that, in line with ICP 16, the Insurance Business (Solvency) Rules 2015 (the "Solvency Rules") be amended to clarify further the requirements for the use of forward looking stress testing and contingency planning.

#### Frequency of Regulatory Reporting

10. It is proposed to move to solvency reporting twice a year (semi-annually) for insurers subject to the full ORSA.

#### Qualifying criteria for insurance Category 6

11. New guidance is proposed to clarify expectations of the criteria to be met for qualification of a non-SPI insurer or cell as a Category 6 (Special Purpose Entity) insurer for the purposes of the Solvency Rules.

#### Majority Shareholder Controller Notification

12. New guidance is proposed requiring notification where a change in majority control of an insurer is proposed.

#### Timetable

13. This consultation is open for a period of six weeks until 29 May 2018.

14. Following this consultation period the Commission will evaluate and collate the responses and will issue feedback on the comments received together with the resulting relevant new and amended rules and guidance in July 2018.
15. Responses should be sent to:

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## **B. Public Disclosure**

16. The proposals within this section of the consultation apply to all licensed insurance and reinsurance companies regardless of the type of business written, with the exception of Category 5 (Captive) Insurers and Special Purpose Insurers.
17. Public disclosure is now a well-established pillar of international regulatory standards and Insurance Core Principle 20 (“ICP 20”) prescribes the standards expected within an insurance framework. ICP 20 requires the disclosure by insurers of relevant information to give both policyholders and other market participants a clear view of insurers’ business activities, performance and financial position. Such disclosure is intended to enhance market discipline and the understanding of risk and risk management.
18. The IMF last assessed Guernsey’s regulatory and supervisory regime for Insurance in 2010 and gave a “Partly Observed” rating for compliance with the ICP 26 on Public Disclosure. This assessment rating was given taking into consideration the Insurance Business (Public Disclosure of Information) Rules, 2010 (“the Rules”). ICP 26 was subsequently replaced by ICP 20 which prescribes more detailed requirements for public disclosure compared to the old ICP 26.
19. In 2013 the Commission consulted on proposals to implement an ICP 20-consistent disclosure framework along with a number of other regulatory enhancements. At the time this was not implemented partly because regulatory and industry focus was concentrated on the now successfully implemented risk-based solvency regime. The proposals in this paper represent a modified version of the proposals (primarily in scope and minimum disclosure information) but remain broadly consistent with those proposals made in 2013 and with ICP 20. The Commission believes that the current limited approach to public disclosure is no longer acceptable if the jurisdiction wishes to present itself as a leading international financial centre. Recognising concerns previously raised by industry, note should be taken of the proposed exclusions from scope and exemptions which may address the legitimate concerns of certain insurers.
20. The Rules currently require insurers to make audited financial statements available to policy holders, professional advisers and to others with a valid interest.
21. The Commission proposes to update the Rules to require all relevant insurers to publish electronically their audited financial statements and certain additional information.
22. There will be no requirement for auditors to audit information beyond the current statutory requirement to audit annual financial statements.
23. A draft of the proposed revised Rules is attached at Appendix 1.

### Disclosure policy

24. Although not required to be disclosed, insurers should form a disclosure policy which sets out disclosure process, responsible parties, the information to be disclosed and the method of disclosure.

### Non-disclosure of information

25. It is proposed that, with the Commission's consent, insurers need not disclose specific information if:
- a. to disclose such information would enable the competitors of the insurer to gain undue advantage; or
  - b. there are obligations to policy holders or other counterparty relationships binding an insurer to secrecy or confidentiality.

Insurers should not set up obligations to policy holders or other counterparty relationships binding them to secrecy or confidentiality in order to avoid disclosure of information.

### Exemptions

26. The Commission proposes that Category 5 Insurers (captive insurers) are exempted from the requirement of public disclosure. Such insurers have little impact on market discipline and the public disclosure requirements will be of little benefit to their policy holders. It is also proposed to exempt Special Purpose Insurers on the grounds that these are structures set up to facilitate specific transactions negotiated between professional counterparties.

### Effective date

27. It is proposed that the amended Rules will take effect from 9 July 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 1 January 2019.

## **C. Reinsurance and Other Forms of Risk Transfer**

28. The proposals in this section of the paper apply to all licensed insurers and reinsurers.
29. Insurance Core Principle 13 (“ICP 13”) “Reinsurance and Other Forms of Risk Transfer” was revised by the IAIS in November 2017. This core principle addresses the need for insurers to effectively manage the use of reinsurance and other forms of risk transfer (e.g. risk transfer to the capital markets) and for supervisors to assess the effectiveness of insurers’ reinsurance programmes.
30. At present a Guernsey licensed insurer is required to identify a risk appetite and maintain a risk management framework appropriate to the nature scale and complexity of its business but there is no explicit, detailed supervisory guidance on the use of reinsurance. It is proposed that guidance, consistent with ICP 13, clarifying expectations around the use of reinsurance will be issued by the Commission. This guidance will address the need for a reinsurance programme to form part of the wider risk management framework and to be appropriately controlled and governed.
31. It should be noted that application of the guidance should be proportionate and does not introduce any requirement to make use of reinsurance where this is not part of an insurer’s business strategy or risk appetite.
32. A draft of the proposed revised Guidance is attached at Appendix 2.
33. It is proposed that the guidance will apply from 9 July 2018.

## **D. Conduct of Business Rules**

34. In recent years the Commission has greatly strengthened conduct of business supervision on insurance intermediaries with the introduction of the Insurance Intermediaries (Conduct of Business) Rules 2014 and the implementation of the Guernsey Financial Advice Standards, but there remain gaps in the conduct of business framework applicable to licensed insurers.
35. At present the Principles of Conduct of Finance Business set high level expectations for all insurers, including fair treatment of customers and acting with integrity. Specific conduct requirements for insurers writing domestic insurance business are set out in the Licensed Insurers' Code of Conduct ("LCoC"). For long-term insurers writing business from Guernsey through brokers and other intermediaries operating outside Guernsey (as is the business model of international life insurers) the Code of Conduct for Insurers Conducting Long-Term Business ("CoCLT") applies. These Codes are now relatively old and no longer fully reflect industry practice or up-to date regulatory standards.
36. A revision of ICP19, Conduct of Business was adopted by the IAIS in November 2017. ICP19 requires that insurers, in their conduct of insurance business, treat customers fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.
37. The Commission is proposing that LCoC and CoCLT are withdrawn and replaced with a new set of Rules. These Rules have been drafted with specific reference to ICP 19 while also taking into account applicable requirements of the current framework.
38. It is proposed that the Rules will apply to all Category 1 (Commercial Life) and Category 3 (Commercial General) licensed insurers, as categorised under the Insurance Business (Solvency) Rules 2015, writing business with retail customers.
39. The proposed Rules will place requirements on those insurers in scope in relation to the following areas of business conduct:
  - Policies and procedures addressing fair treatment of customers;
  - Conflicts of interest;
  - Dealing with intermediaries;
  - Product development;
  - Promotion and advertising;
  - Customer information provision;

- Policy servicing;
  - Claims handling; and
  - Complaints
40. It is proposed that the Rules will come into effect from 9 July 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 1 January 2019.
41. A draft of the proposed new Rules is attached at Appendix 3.

## **E. Solvency Rules – Own Risk and Solvency Assessment (ORSA) Requirement**

42. At present the scope of the full ORSA requirement is narrow and it is proposed that the current applicable threshold, based on categorisation and size, be lowered thereby extending further the scope of this requirement to a limited number of additional licensed insurers.
43. Paragraph 201 of the Solvency Rules sets out the scope of application of the full ORSA and it is proposed that this be amended to read as follows:

*“Unless otherwise notified in writing by the Commission, a licensed insurer meeting at least one of the following conditions need not meet the requirements of paragraphs 205, 206 and 207 and may limit their assessment to an OSCA only -*

- (a) a Category 1 licensed insurers writing life business with a MCR below £350,000;*
- (b) a Category 2 licensed insurer with a MCR below £7,500,000;*
- (c) a Category 3 licensed insurer with a MCR below £1,500,000;*
- (d) a Category 4 licensed insurer with a MCR below £7,000,000;*
- (e) a Category 5 licensed insurer; and*
- (f) a Protected Cell Company”*

44. It is estimated that the above change will result in a total of 10 insurers being in scope of the full ORSA.
45. It is further proposed that, pursuant to paragraph 201, the Commission will notify insurers with significant retail customer bases that they will also fall within scope of the full ORSA, even if they meet at least one of the conditions set out in paragraph 43 above. At the time of writing it is estimated that this will affect approximately 8 further insurers, but the Commission will periodically review the scope of application to reflect changing circumstances.
46. Each affected insurer will be notified of the revised requirement formally in writing by the Commission. For the purposes of this consultation exercise the Commission will write directly to those individual insurers which would be impacted by the proposal.
47. It is further proposed that, for those insurers within scope of the full ORSA only, the Rules will be amended to clarify further the requirements for the use of forward looking quantitative risk analysis techniques, such as stress testing, in the full ORSA, and also for the maintenance of contingency plans in line with ICP 16.
48. It is proposed that a new paragraph is added after paragraph 206 of the Rules as follows:

*“As part of its assessment referred to in subparagraph 205(d), a licensed insurer is required to use appropriate forward-looking quantitative techniques such as risk modelling, stress testing, including reverse stress testing, and*

*scenario analysis. An appropriate range of adverse circumstances and events should be considered, including those that pose a significant threat to the financial condition of the insurer, and management actions should be identified together with the appropriate timing of those actions. Risk measurement techniques should also be used in developing long-term business and contingency plans.”*

49. It is proposed that the following words are added to the end of paragraph 206 of the Rules:

*“As a result of continuity analysis, a licensed insurer must maintain a contingency plan and procedures for use in a going and gone concern situation. A contingency plan should identify relevant countervailing measures and offsetting actions that the licensed insurer could realistically take to restore/improve its capital adequacy or cash flow position after some future stress event and assess whether actions should be taken by the insurer in advance as precautionary measures.”*

50. It is proposed that the changes to the Solvency Rules will apply from 9 July 2018. Firms will be expected to implement the amended Rules in line with the current ORSA timeline.

## **F. Increased Frequency of Solvency Reporting**

51. At present Part 2 of the Solvency Rules requires that all licensed insurers must at all times hold regulatory capital resources greater than or equal to the Prescribed Capital Requirement (“PCR”). Insurers are further required to calculate the PCR and report the results of that calculation to the Commission at least once a year. Insurers meet this requirement by reporting their capital position annually in the Regulatory Solvency Assessment (“RSA”). All insurers are required to monitor their capital position on an ongoing basis and to recalculate their PCR when requested to do so by the Commission or when the insurer’s risk profile has changed significantly.
52. The Commission has reviewed the current regulatory solvency reporting requirements and has determined that the annual frequency of reporting for significant insurers is insufficient and inconsistent with best practice as represented by the increased frequency and extent of reporting introduced in many other countries in recent years.
53. In this light the Commission proposes that insurers subject to the full ORSA requirement (i.e. those insurers required to meet the provisions of paragraphs 205, 206 and 207 of the proposed amended Solvency Rules as described in the previous section) will submit a completed RSA to the Commission twice annually. It is proposed that an additional submission of the RSA, based on the half-year financial position, will be provided to the Commission. This half-year information need not be audited. This reporting will be made via the Commission’s Online Submissions Portal and it is not proposed that any amendments to rules or regulations will be required.
54. Each affected insurer will be notified of the revised requirement formally in writing by the Commission and for the purposes of this consultation exercise the Commission will, as with the ORSA proposal, write directly to those individual insurers which would be impacted by the proposal.
55. It is proposed that the changes in reporting frequency will apply for reporting periods ending after 9 July 2018.



## **G. Category 6 – Special Purpose Entities**

56. The proposals in this section of the paper apply to licensed insurers, reinsurers and cells of Protected Cell Companies that fall under Category 6 – Special Purpose Entity (“Category 6”) for the purposes of Section 6 (f) of the Solvency Rules.
57. At present a Guernsey licensed insurer or cell will fall under Category 6 under The Solvency Rules where:
- a. The insurer meets the requirements for a Special Purpose Insurer as defined under The Insurance Business (Special Purpose Insurer) Rules 2016 (“The SPI Rules”); or
  - b. Entities that the Commission agrees in writing may fall into this category.
58. Experience has shown that whilst a cell may, theoretically, be fully funded there can be issues with the placement or documentation of reinsurance contracts or other business plan issues, which result in an exposure for the cell. The Commission needs to ensure that, when such issues arise, funding is available to resolve them. This may involve incurring fees for legal advice or the cost of restructuring reinsurance contracts.
59. Therefore, following a review of the characteristics of Category 6 insurers, the Commission proposes to issue Guidance to clarify its expectations of what criteria should be met where a request is made of the Commission to allow a non-Special Purpose Insurer or cell to fall under Category 6 for the purposes of the Solvency Rules. Specifically:
- the Commission will no longer accept individuals as direct owners of a Category 6 cell ;
  - a Category 6 insurer or cell will be expected to maintain at all times a minimum paid-up capital and shareholders’ funds of £100,000 or provide an acceptable contingency funding plan; and
  - a Category 6 insurer or cell will be expected to be Fully Funded at all times.
60. The above criteria shall not apply to Special Purpose Insurer applications, which will be subject to the requirements of the SPI Rules. It is not proposed that any amendments be made to the SPI Rules.
61. It should be noted that this Guidance will be applied in relation to new applications from the date it is issued and will not be applied retrospectively. It will not be applied to those insurers or cells that currently fall under Category 6 for the purposes of the Solvency Rules.
62. A draft of the proposed Guidance is attached at Appendix 4.

## **H. New Majority Shareholder Controller**

63. Insurance Core Principle 6 sets out the international standard with respect to changes in insurer control. This Principle requires that any proposed acquisition or changes in control of an insurer is notified to the supervisor. At present the Insurance Business Law requires prior written notification of proposed increases in control at the level of 15% of voting rights and subsequent increments of 5%. There is however no specific notification requirements for the Commission to be notified where an existing shareholder controller proposes to take a greater than 50% controlling interest.
64. It is therefore proposed that the Commission will issue guidance setting out the Commission's expectation that a licensed insurer will notify the Commission in writing, as soon as it becomes aware of any proposal for an existing shareholder controller to become a majority shareholder controller of an insurer.
65. For the purposes of this guidance a majority shareholder controller will mean a person who, alone or with associates, is entitled to exercise, or control the exercise of, 50% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary.
66. It is proposed that this guidance will not apply to the cells of a Protected Cell Company and that this guidance will not replace or modify any statutory controller notification requirements under the Insurance Business Law.
67. It is proposed that this guidance will apply from 9 July 2018.
68. A draft of the proposed Guidance is attached at Appendix 5.

## **I. Guidance in Respect of Prescribed Positions**

69. The Commission takes this opportunity to advise of a change to the Personal Questionnaires Guidance Note which is available on the Commission's website.
70. The Insurance Business Law defines in Section 11(6) those positions for which an appointment requires the Commission's written approval. One of those positions is "manager". For the avoidance of doubt, the Commission considers that individuals filling the positions of chief compliance officer, chief risk officer and head actuary (or equivalent positions) are "managers" in respect of the Insurance Business Law. The Personal Questionnaires Guidance Note will be amended to reflect this.
71. This guidance is issued to clarify this requirement and is not expected to have any significant effect on licensees.

## **Appendix 1: Public Disclosure**

## **The Insurance Business (Public Disclosure of Information) Rules, 2018**

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 it enables, hereby makes the following rules.

### **1. Information to be disclosed**

1.1 Subject to rule 1.2, a *licensed insurer* must make the following information publically available:

- (a) its annual audited financial statements together with the information set out in the Schedule; and
- (b) where the licensed insurer is a protected cell company, annual financial statements of each cell together with the information set out in the Schedule in relation to each cell.

Rule 1.1(b) will not apply in relation to cells designated as Category 5 or Special Purpose Insurers.

1.2 A *licensed insurer* may, with the written consent of the Commission specifying the *relevant information*, withhold such *relevant information* where the Commission is satisfied that the disclosure of such information would enable the competitors of the *licensed insurer* to gain undue advantage or otherwise cause detriment to the *licensed insurer* or there are obligations to policy holders or other counterparty relationships binding the *licensed insurer* to secrecy or confidentiality.

### **2. Format of disclosure**

The *licensed insurer* shall publish the information on the *licensed insurer's* website or on such other website as the Commission approves. Such information must be readily available to the public on the website and without charge.

### **3. Frequency of disclosure**

The *licensed insurer* must update the *relevant information* annually or more frequently where there is a significant change in the financial circumstances of the company. The *licensed insurer* must publish its relevant financial statements within 4 months of its financial year end.

#### **4. Disclosure policy**

*Licensed insurers* must prepare, and keep periodically under review, a disclosure policy that:

- i. identifies the parties responsible for drafting and reviewing the disclosures;
- ii. sets out the processes for completion of the various disclosure requirements and for review and approval by management;
- iii. identifies necessary disclosures additional to the financial statements and the method of disclosure of such information ; and
- iv. identifies the specific information for which disclosure is withheld with the Commission's consent.

#### **5. Citation, commencement and application**

- (a) These rules may be cited as the Insurance Business (Public Disclosure of Information) Rules 2018 (the "Public Disclosure Rules").
- (b) These rules shall come into force on 9 July 2018.
- (c) The Public Disclosure Rules apply to all *licensed insurers* other than:
  - i. Category 5 insurers as categorized under the Insurance Business (Solvency) Rules 2015; or
  - ii. Special Purpose Insurers as defined in the Insurance Business (Special Purpose Insurer) Rules 2016.

#### **6. Interpretation**

"*licensed insurer*" means an insurer licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended.

"*relevant information*" means the information required to be published by a *licensed insurer* under rule 1.1.

- (a) Except where the context otherwise requires, any reference in these rules to an enactment includes a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.
- (b) The Interpretation (Guernsey) Law, 1948 shall apply to the interpretation of these rules.

## **7. Transitional Provisions**

The Insurance Business (Public Disclosure of Information) Rules, 2010 shall be revoked upon the commencement date of the Public Disclosure Rules.

## SCHEDULE

### **Information to be disclosed**

#### **Profile of the Insurer**

Disclosures should include appropriately detailed information about the company profile, including the nature of its business, a general description of its key products, the external environment in which it operates and information on the *licensed insurer's* objectives and the strategies in place to achieve them.

#### **Corporate Governance**

Disclosures should include the key features of the *licensed insurer's* corporate governance framework, management controls and risk management framework including how these are implemented.

#### **Technical reserves**

Detailed quantitative and qualitative information about the determination of technical provisions should be disclosed.

#### **Insurance Risk**

Appropriately detailed quantitative and qualitative information on all reasonably foreseeable and relevant material insurance risk exposures and their management should be disclosed including the use of reinsurance.

#### **Financial performance**

Disclosure should include appropriately detailed quantitative and qualitative information on financial performance in total and by segmented financial performance. Where relevant, disclosures must include a quantitative source of earnings analysis, claims statistics including claims development, pricing adequacy, information regarding returns on investment assets and components of such returns.

#### **Capital Adequacy**

Disclosure about the financial position of the *licensed insurer* should include appropriately detailed quantitative and qualitative information about capital adequacy. A *licensed insurer* should disclose information that enables users to evaluate the *licensed insurer's* objectives, policies and processes for managing capital and to assess its capital adequacy. This information encompasses the Prescribed Capital Requirement and the Minimum Capital Requirement of the *licensed insurer*. If an internal model is used to determine capital resources and requirements, information about the model must be provided, having due regard to proprietary or confidential information.

#### **Financial instruments**

Disclosure about the financial position of the *licensed insurer* should include appropriately detailed quantitative and qualitative information about financial instruments and other investments by class.



**ERM and ALM**

Disclosure about the financial position of the *licensed insurer* should include appropriately detailed quantitative and qualitative information about enterprise risk management (ERM) including asset-liability management (ALM) in total and, where appropriate, at a segmented level.

## Guidance on Disclosures

1. Public disclosure of the financial statements of the *licensed insurer's* parent group will not satisfy the requirement to make the *licensed insurer's* annual audited financial statements available publicly. A *licensed insurer* may however make reference to disclosures in the parent group financial statements, where relevant, to meet the additional disclosure requirements described in the Schedule.
2. In the case of *licensed insurers* which are Protected Cell Companies appropriate disclosure must be made at a cellular level including annual financial accounts, although these need not be audited. Where a disclosure is relevant to a Protected Cell Company as a whole, a single disclosure at corporate level is acceptable. This may be relevant, for example, in relation to corporate governance disclosures.

## **Appendix 2: Reinsurance and Other Forms of Risk Transfer**

## **GUIDANCE NOTE FOR LICENSED INSURERS ON REINSURANCE AND OTHER FORMS OF RISK TRANSFER**

### **1. Introduction**

The Finance Sector Code of Corporate Governance requires the board of a licensed insurer to set and oversee the insurer's risk strategy and risk appetite. An insurer is required to establish, and operate within, effective systems of risk management.

The Insurance Business (Solvency) Rules 2015 further requires that licensed insurers must establish and maintain a risk management framework that is appropriate to the nature, scale and complexity of its business. The risk management framework is the totality of the systems, structures, policies, processes and people that identify, assess, mitigate and monitor all internal and external sources of risk that could have a material impact on the licensed insurer.

This guidance note sets out the Commission's expectation that licensed insurers' will effectively manage their use of reinsurance and other forms of risk transfer as part of the risk management framework.

The principle of proportionality applies to this guidance. Application should be commensurate with the nature, scale and complexity of the insurer's business.

This guidance applies to both long-term and general insurance business and to insurers and reinsurers.

For the purposes of this Guidance, the term "reinsurance" shall refer to both mainstream reinsurance and other forms of risk transfer including alternative reinsurance arrangements, such as risk transfer to the capital markets.

## 2. Guidance

- a) **The Commission requires ceding licensed insurers to have a reinsurance programme that is appropriate to their business, and that is part of their wider underwriting, risk and capital management strategies.**

A ceding insurer's underwriting, risk and capital management strategy should clearly articulate the part played by reinsurance, in particular:

- the objectives that are pursued by using reinsurance;
- the risk concentration and ceding limits; and
- the mechanisms to manage and control reinsurance risks.

The reinsurance strategy should take into account the ceding insurer's business objectives, levels of capital and business mix, with particular reference to:

- insurance risk appetite (both gross limit and net retention);
- peak exposures and seasonality in the insurance book;
- levels of diversification in the insurance book; and
- appetite for credit risk posed by reinsurers.

The reinsurance programme comprises the detailed implementation of the reinsurance strategy in terms of coverage, limits, deductibles, layers, signed lines and markets used. It should reflect the ceding insurer's overall risk appetite, comparative costs of capital and liquidity positions determined in the reinsurance strategy. Therefore, reinsurance programmes can vary significantly in complexity, levels of exposure and number of participants.

In some instances, an insurer may have a business strategy and risk appetite to retain all risk and therefore a reinsurance programme would not be necessary.

Senior Management develops the reinsurance strategy and programme, and is also responsible for establishing appropriate systems and controls to ensure that these are complied with. The Board is responsible for approving the reinsurance strategy and programme.

Large and/or complex ceding insurers, or those with a complex reinsurance strategy, may wish to appoint a committee of the Board to oversee the implementation of the reinsurance strategy.

The Board and Senior Management of the ceding insurer should regularly review the performance of its reinsurance programme, to ensure that it functions as intended and

continues to meet its strategic objectives. It is likely that such a review would take place as part of the feedback loop that is part of the risk management framework.

**b) The Commission requires licensed insurers to establish effective internal controls over the implementation of their reinsurance programme.**

Control of the reinsurance programme should be part of the ceding insurer's overall system of risk management and internal controls. Controls and oversight in place must be suitable in the context of the ceding insurer's business and the appropriateness of the reinsurance programme in addressing the ceding insurer's reinsurance needs.

*Link to capital assessment*

The ceding insurer should ensure that the characteristics of its reinsurance programme, including the credit risk posed by the reinsurer, are adequately reflected in its capital assessment, including its Own Risk and Solvency Assessment<sup>1</sup>.

*Credit risk posed by the reinsurer*

When developing the reinsurance programme the ceding insurer should consider its appetite for reinsurer credit risk. Reinsurers may face solvency issues, leading to delayed payment or default, and this can have significant consequences for the solvency and liquidity of the ceding insurer.

There are various ways for the ceding insurer to mitigate reinsurer credit risk, for example:

- establishing criteria on the financial strength and claims payment record of eligible reinsurers;
- setting limits on risks ceded to a single reinsurer;
- ensuring a spread of risk amongst a number of reinsurers;
- incorporating rating downgrade or other special termination clauses into the reinsurance contract;
- requiring the reinsurer to post collateral (the ability to require this will depend upon the relative commercial strengths of the ceding insurer and reinsurer); and
- withholding reinsurer's funds.

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<sup>1</sup> The Insurance Business (Solvency) Rules 2015 require a licensed insurer to conduct an Own Risk and Solvency Assessment, an assessment and calculation of its solvency requirement, assessment of risk management and future capital needs.

### *Approved security criteria*

The ceding insurer should have in place procedures for identifying reinsurers that provide security that it finds acceptable and should keep these procedures periodically under review. There should also be processes for dealing with situations where there is a need to assess reinsurers outside any pre-approved list. Ceding insurers may have their own credit committees to make their own assessment of the risk.

In line with other approaches to identifying appropriate reinsurers, any approved security criteria should be derived from a high level statement of what reinsurance security will be acceptable to the ceding insurer, which may be based on:

- external opinions;
- the ceding insurer's own view of the reinsurer;
- minimum levels of capital;
- duration and quality of relationship;
- expertise of the reinsurer;
- levels of retrocession;
- reinsurance brokers' security criteria; or
- a mixture of these and other factors.

### *Aggregate exposure limits or guidelines*

A ceding insurer should set prudent limits or guidelines reflecting security and size of the reinsurer, in relation to its maximum aggregate exposure to any one reinsurer or to a group of related reinsurers, which would be complementary to any supervisory limits or guidelines.

The ceding insurer should have in place procedures for monitoring this aggregate exposure to ensure that these limits or guidelines are not breached, including procedures to bring excess concentrations back within limits or guidelines, or otherwise managed, going forward.

### *Matching of underlying underwriting criteria*

The ceding insurer should give due consideration to the risk posed by a mismatch in terms and conditions between reinsurance contracts and the underlying policies. The ceding insurer may bear a greater net exposure than it initially intended because of this gap.

### *Criteria and procedures for purchasing facultative cover*

The ceding insurer should have appropriate criteria in place for the purchase of facultative coverage. Any facultative reinsurance coverage bought should be linked to the procedures

for aggregations and recovery management. The ceding insurer should have a specific process in place to approve, monitor and confirm the placement of each facultative risk. If facultative reinsurance is necessary to ensure that acceptance of a risk would not exceed maximum net capacity and/or risk limits set by the Board, such reinsurance should be secured before the ceding insurer accepts the risk.

*Operational risk related to contract documentation*

In order to reduce the risk and scope of future disputes, the ceding insurer and the reinsurer should have in place processes and adequate controls to document the principal economic and coverage terms and conditions of reinsurance contracts clearly and promptly.

Ceding insurers and reinsurers should finalise the formal reinsurance contract without undue delay, ideally prior to the inception date of the reinsurance contract.

All material reporting due to and from reinsurers should be timely and complete, and settlements should be made as required by the reinsurance contract.

The ceding insurer should consider how its reinsurance contracts will operate in the event of an insolvency of itself or its reinsurer.

**c) The Commission requires a licensed insurer to consider the impact of its reinsurance programme in its liquidity management.**

Given the nature and direction of cash flows within a ceding insurer, liquidity risk historically has not been considered to be a major issue in the insurance sector. However, there can be liquidity issues within an individual ceding insurer which could arise specifically from the ceding insurer's reinsurance programme.

Reinsurance contracts do not remove the ceding insurer's underlying legal liability to its policyholders. The ceding insurer remains liable to fund all valid claims under contracts of insurance it has written, regardless of whether they are reinsured or not. For this reason, a large claim or series of claims (e.g., resulting from a major catastrophe) could give rise to cash flow difficulties, especially if there are delays in settlement by reinsurers or in the ceding insurer providing proof of loss to reinsurers.

As with all risks, the insurer should develop its own response to the level of risk it faces and the Commission should assess these responses. There are a number of ways in which liquidity risk may be mitigated. For example, some insurers choose to arrange a line of credit from a bank in order to deal with short-term liquidity issues.

Ceding insurers may make arrangements with their reinsurers in order to mitigate their liquidity risk. These arrangements may include clauses that trigger accelerated payment of amounts due from reinsurers in the event of a large claim and/or the use of collateral or



deposit accounts, giving ceding insurers access to funds as needed. Use of such arrangements is a commercial matter between the ceding insurer and reinsurer.

External triggers can give rise to liquidity issues, especially where reinsurers have retroceded significant amounts of business. If a reinsurance contract contains a downgrade clause that gives the ceding insurer the right to alter the contract provisions, or obliges the reinsurer to post collateral with a ceding insurer to cover some or all of its obligations to that ceding insurer, such action may cause liquidity issues among reinsurers and may be pro-cyclical.

Ceding insurers are required to take appropriate measures to manage their liquidity risk including funding requirements in reasonably adverse circumstances.

### **Appendix 3: The Licensed Insurer's (Conduct of Business) Rules, 2018**



# **The Licensed Insurer's (Conduct of Business) Rules, 2018**

## **The Licensed Insurer's (Conduct of Business) Rules, 2018**

The Guernsey Financial Services Commission ("the Commission"), in exercise of the powers conferred on it by sections 38A and 38B of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended ("the Law") hereby makes the following rules.

### **1. Due skill, care and diligence when dealing with *customers*.**

- 1.1. A *licensed insurer* must act with due skill, care and diligence when dealing with *customers*.
- 1.2. A *licensed insurer* must have policies and procedures in place to ensure that employees and agents meet high standards of ethics and integrity, and act with due skill, care and diligence when dealing with customers.

### **2. Fair treatment of *customers***

- 2.1. A *licensed insurer* must establish and implement policies and procedures on the fair treatment of *customers* as an integral part of its business culture
- 2.2. A *licensed insurer* must adopt the fair treatment of *customers* as an integral part of their business culture, and policies and procedures to support this objective must be properly embedded in the organisation.

### **3. Conflicts of interest**

- 3.1. A *licensed insurer* must avoid or properly manage any potential conflicts of interest.
- 3.2. A *licensed insurer* must take all reasonable steps to identify and avoid or properly manage conflicts of interest in its dealings with customers, and must communicate these through appropriate policies and procedures.
- 3.3. Appropriate disclosure can provide an indication of potential conflicts of interests, enabling the client to determine whether the sale may be influenced by financial or non-financial incentives. It can thus help in managing conflicts of interest where it empowers customers to identify and challenge or avoid potentially poor advice or selling that may arise through the conflict of interest. However, managing conflicts of interest through disclosure or obtaining informed consent from clients, has limitations, including where the client does not fully appreciate the conflict or its implications, and could be seen to place an unreasonable onus on the client.

3.4. Where conflicts of interest cannot be managed satisfactorily, this should result in the *licensed insurer* declining to act. In cases where the Commission may have concerns about the ability of a *licensed insurer* to manage conflicts of interest adequately, the Commission may consider requiring other measures.

#### **4. Dealing with *intermediaries* to ensure the fair treatment of *customers***

4.1. *Licensed insurers* must have arrangements in place in dealing with *intermediaries* to ensure the fair treatment of *customers*.

4.2. A *licensed insurer* conducting business with intermediaries must do so only with insurance intermediaries that are licensed in the Bailiwick or, if outside the Bailiwick, licensed in their home jurisdiction, where such a licensing regime is in place.

4.3. When a *licensed insurer* grants terms of business to insurance intermediaries, that *licensed insurer* must:

- have in place a documented procedure for the appointment of new intermediaries;
- verify that the intermediaries have the appropriate knowledge and ability;
- establish that the intermediaries, both generally and in respect of their dealings with the *licensed insurer*, comply with applicable laws and regulatory requirements which are relevant to the services being provided to the *licensed insurer*;
- have an application form completed and signed by the intermediary applying for introducer terms - the application form will require the applicant to disclose certain facts about its directors, its principals and its partners, and as a minimum shall include:
  - (i) verification of identity, and
  - (ii) experience and qualifications;
- have a terms of business agreement completed and signed by the intermediary applying for introducer terms, to require the intermediary to

warrant that the agreement does not breach the provisions of the laws of the Bailiwick or any other legal obligation in any relevant jurisdiction, as applicable, that the intermediary will act only as agent of the *client* and not for or on behalf of the *licensed insurer*, that the intermediary will observe the conditions of the agreement at all times and will clearly explain the risks inherent in the product to the *client*;

- ensure that the terms of business agreement promotes the fair treatment of *customers* and clarifies the respective roles of the *licensed insurer* and the intermediary including, where relevant, on the following matters:
  - (i) product development,
  - (ii) product promotion,
  - (iii) the provision of pre-contractual and point of sale information to clients,
  - (iv) post sale policy servicing,
  - (v) claims notification and handling,
  - (vi) management information and other documentation required by the *licensed insurer*,
  - (vii) remedial measures, and
  - (viii) any other matters related to the relationship with clients;
- require an intermediary outside the Bailiwick to further warrant that:
  - (i) he will at all times maintain every obligatory licence, authorisation and registration and comply with or procure compliance by his officers and agents (as the case may be) with all applicable laws and regulations of jurisdictions where they operate,
  - (ii) he has read and understood and will comply with the anti-money laundering guidelines provided by the *licensed insurer*, and
  - (iii) he will comply with all anti-money laundering/countering the financing of terrorism laws, regulations, instructions, guidance or rules issued from time to time by the *Commission*;
- have in place suitable controls and procedures to ensure that where an intermediary undertakes the role of an introducer, they do not sell or advise on insurance matters; and
- take measures to monitor the performance of the intermediary, including the quality of the business, the persistency of the business, anticipated and actual

levels and patterns of business, financial exposure to the intermediary, and *complaints* made against the intermediary.

## **5. Development and distribution of insurance products**

5.1. A *licensed insurer* must take into account the interests of different types of consumers when developing and distributing insurance products.

5.2. A *licensed insurer* must ensure that products and distribution strategies are developed in accordance with the following principles:

- Development of products and distribution strategies should include the use of adequate information to assess the needs of different consumer groups.
- Product development (including a product originating from a third party) should provide for a thorough assessment of the main characteristics of a new product and of the related disclosure documents by every appropriate department of the *licensed insurer*.
- Before bringing a product or service to the market, the *licensed insurer* should carry out a diligent review and testing of the product in relation to its business model, the existing rules and regulations and its risk management approach. In particular, the policies, procedures and controls put into place should enable the *licensed insurer* to:
  - offer a product that delivers the reasonably expected benefits;
  - target the consumers for whose needs the product is likely to be appropriate, while preventing, or limiting, access by consumers for whom the product is likely to be inappropriate;
  - ensure that distribution methods are appropriate for the product, particularly in light of the legislation in force and whether or not advice should be provided;
  - assess the risks resulting from the product by considering, among other things, changes associated with the financial environment or stemming from the *licensed insurer's* policies that could harm *customers*; and
  - monitor a product after its launch to ensure it still meets the needs of target *customers*, assess the performance of the various methods of distribution used with respect to sound commercial practices and, if necessary, take the necessary remedial action.
- *Licensed insurers* should provide relevant information to intermediaries to ensure that they understand the target market (and thus reduce the risk of mis-selling), such as information related to the target market itself, as well as the characteristics of the

product.

- *Licensed insurer* should seek information from intermediaries on the types of *customers* to whom the product is sold and whether the product meets the needs of that target market, in order to enable the *licensed insurer* to assess whether its target market is appropriate and to revise its distribution strategy for the product, or the product itself, when needed.

## **6. Promotion of products and services in a manner that is clear, fair and not misleading**

6.1. A *licensed insurer* must promote products and services in a manner that is clear, fair and not misleading.

6.2. A *licensed insurer*, must ensure that any materials promoting or advertising its products or services:-

- (a) are clear, fair and not misleading;
- (b) do not contain any statement, promise or forecast which is untrue;
- (c) are not designed in such a way as to distort or conceal any relevant subject material;
- (d) are clearly recognisable as an advertisement;
- (e) are easily understandable;
- (f) accurately identify the product provider;
- (g) include the regulatory status of the *licensed insurer*;
- (h) are consistent with the coverage offered;
- (i) are consistent with the result reasonably expected to be achieved by the *customers* of that product;
- (j) state prominently the basis for any claimed benefits and any significant limitations;
- (k) do not hide, diminish or obscure important statements or warnings;
- (l) where appropriate state that the investment value is not guaranteed or that the value may fluctuate, and;



- (m) in the case of long term business –
- i. do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to,
  - ii. do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance, and
  - iii. where appropriate state that a whole of life or endowment policy is intended to be a long term contract and that surrender values, especially in early years, are frequently less than the total amount of premiums paid.

The above requirements apply to information upon which intermediaries may also rely.

#### *Independent Review*

6.3. Before a *licensed insurer* promotes or advertises an insurance product, it must take reasonable steps to ensure that the information provided is accurate, clear and not misleading. Procedures should provide for an independent review of promotional material intended for *customers* other than by the person or organisation that prepared or designed it. For example, where promotional material is developed by an intermediary on behalf of a *licensed insurer*, the *licensed insurer* should verify the accuracy of promotional material and compliance with the requirements of 6.2 before it is used.

#### *Inaccurate, unclear or misleading material*

- 6.4. If a *licensed insurer* becomes aware that the promotional or advertising material is not accurate and clear or is misleading, it should:
- inform the party responsible for that material;
  - withdraw the material; and
  - notify any person that it knows to be relying on the information as soon as reasonably practicable.

#### *Overseas Promotion and Advertising*

6.5. A *licensed insurer* must take all reasonable steps with a view to ensuring that, in addition to compliance with Rules 6.1 to 6.4, any form of promotion or advertising in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.

## **7. Provision of timely, clear and adequate pre-contractual and contractual information to customers.**

- 7.1. A *licensed insurer* must provide timely, clear and adequate pre-contractual and contractual information to *customers*.
- 7.2. The *licensed insurer* must take reasonable steps to ensure that a *customer* is given appropriate information about a product in order that the *customer* can make an informed decision about the arrangements proposed. Such information is also useful in helping *customers* understand their rights and obligations after sale.
- 7.3. Where a *licensed insurer* uses intermediaries for the distribution of insurance products, the *licensed insurer* must be satisfied that the intermediaries involved are providing information to *customers* in a manner that will assist them in making an informed decision.
- 7.4. The information provided should be sufficient to enable *customers* to understand the characteristics of the product they are buying and help them understand whether and why it may meet their requirements.
- 7.5. While the level of product information required may vary, it should include information on key features, such as:
- the name of the *licensed insurer*, its legal form and, where relevant, the group to which it belongs;
  - the type of insurance contract on offer, including the policy benefits;
  - a description of the risk insured by the contract and of the excluded risks;
  - the level of the premium, the due-date and the period for which the premium is payable, the consequences of late or non-payment, and provisions for premium reviews;
  - the type and level of charges to be deducted from or added to the quoted premium, and any charges to be paid directly by the *customer*;
  - the circumstances in which interest would accrue after the insurance has matured,
  - whether or not there are rights to surrender values in the contract and, if so, what those rights are;
  - when the insurance cover begins and ends; and
  - prominent and clear information on significant or unusual exclusions or limitations. A significant exclusion or limitation is one that would tend to affect the decision of consumers generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts. In determining what exclusions or limitations are significant, a *licensed insurer* should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a policy and factors which may have an adverse effect on the benefit payable under it. Examples of significant or unusual exclusions or limitations may include:

- (i) deferred payment periods;
- (ii) exclusion of certain conditions, diseases or pre-existing medical conditions;
- (iv) moratorium periods;
- (v) limits on the amounts of cover;
- (vi) limits on the period for which benefits will be paid;
- (vii) restrictions on eligibility to claim such as age, residence or employment; and
- (viii) excesses.

7.6. Where an intermediary is not used for the distribution of insurance products the *licensed insurer* must seek to gather sufficient information so that adequate disclosure, or where appropriate, a *fair presentation of risk* can be made to the *customer* by the *licensed insurer*.

7.7. A *licensed insurer* conducting long term business must provide a cancellation notice to long term policyholders offering the policyholder a fourteen day cooling off period.

## **8. Advice**

8.1. Where a *licensed insurer* provides advice to a *customer* in relation to an insurance contract, the *licensed insurer* must take into account the *customer's* disclosed circumstances.

8.2. Where a *licensed insurer* engages an intermediary in relation to the provision of insurance contracts and the intermediary provides advice to a *customer* in relation to an insurance contract, the *licensed insurer* must require that the intermediary take into account the *customer's* disclosed circumstances.

## **9. Servicing and Disclosure in relation to policies**

9.1. A *licensed insurer* must:

- a) service policies appropriately through to the point at which all obligations under the policy have been satisfied;
- b) disclose to the policyholder information on any contractual changes during the life of the contract; and
- c) disclose to the policyholder further relevant information depending on the type of insurance product.

9.2. A *licensed insurer* must satisfy its obligations under a policy in an appropriate manner and in accordance with the contractually agreed terms and legal provisions. This should include fair treatment in the case of switching between products or early cancellation of a policy. To enable them to do so, *licensed insurers* should maintain a relationship with the *customer* throughout the policy lifecycle.

- 9.3. Where there is an ongoing relationship between the *customer* and the intermediary, the *licensed insurer* remains ultimately responsible for servicing policies throughout their lifecycle, and ensuring that intermediaries have appropriate policies and procedures in place in respect of the policy servicing activities that they perform on the *licensed insurer's* behalf.
- 9.4. Policy servicing includes the provision of relevant information to *customers* throughout the life of the policy.
- 9.5. Information to be disclosed by the *licensed insurer* to the policyholder includes:
- (a) any change in the name of the *licensed insurer*, its legal form or the address of its head office and any other offices as appropriate;
  - (b) any acquisition by another undertaking resulting in organisational changes as far as the policyholder is concerned; and
  - (c) where applicable, information on a portfolio transfer (including policyholders' rights in this regard).
- 9.6. *Licensed insurers* shall provide evidence of cover to the policyholder (including policy inclusions and exclusions) promptly after inception of a policy.
- 9.7. Information to be provided by or on behalf of licensed insurers on an ongoing basis, including changes in policy terms and conditions or amendments to the legislation applicable to the policy, will vary by type of policy and may cover for example:
- (a) main features of the insurance benefits, in particular details on the nature, scope and due-dates of benefits payable by the *licensed insurer*;
  - (b) the total cost of the policy, expressed appropriately for the type of policy and in monetary terms where possible, including all taxes and other cost components; premiums should be stated individually if the insurance relationship comprises several independent insurance contracts or, if the exact cost cannot be provided, information provided on its basis of calculation to enable the policyholder to verify the cost;
  - (c) changes to the cost structure, if applicable, stating the total amount payable and any possible additional taxes, fees and costs not levied via or charged by the *licensed insurer*, as well as any costs incurred by the policyholder for the use of communication methods if such additional costs are chargeable;
  - (d) duration of the contract, terms and conditions for (early) termination of the contract and contractual consequences;
  - (e) means of payment of premiums and duration of payments;
  - (f) premiums for each benefit, both main benefits and supplementary benefits;
  - (g) information to the policyholder about the need to report depreciation/appreciation;
  - (h) information to the policyholder about other unique circumstances related to the contract;
  - (i) information on the impact of a switch option of an insurance contract;

- (j) information on a renewal of the contract; and
- (k) information on the ongoing suitability of the product, if such a service is provided by the *licensed insurer*.

9.8. In addition to the information set out in rules 9.1 to 9.7, the *licensed insurer* must provide, or must ensure that the intermediary provides, the following additional information at least annually to a *retail customer* regarding products with an investment element and should at a minimum include:

- (a) participation rights in surplus funds;
- (b) basis of calculation and state of bonuses;
- (c) the current surrender value;
- (d) premiums paid to date; and
- (e) for unit-linked life insurance, a report from the investment firm (including performance of underlying funds, changes of investments, investment strategy, number and value of the units and movements during the past year, administration fees, taxes, charges and current status of the account of the contract.

9.9. Rule 9.8 shall not apply to the *licensed insurer* in respect of a *customer*, where the customer has self-service access to a statement service, for example where statements are available via the internet, and the policyholder has agreed in writing for this rule to not apply.

9.10. Where there are changes in terms and conditions, the *licensed insurer* should notify the policyholder of their rights and obligations regarding such changes and obtain the policyholder's consent as appropriate.

#### *Renewal Notices*

9.11. A *licensed insurer*, in respect of general insurance business only, shall:

- (a) not unduly withhold renewal notices if renewal notices are ordinarily issued;
- (b) ensure that renewal notices contain a warning about the duty of disclosure, including the necessity to advise changes affecting the policy which have occurred since the policy inception or last renewal date, whichever was the later.

### **10. Timely, fair and transparent claims handling.**

10.1. A *licensed insurer* must handle claims in a timely, fair and transparent manner.

10.2. A *licensed insurer* must have a fair and transparent claims handling and claims dispute resolution policies and procedures in place.

10.3. *Licensed insurers* shall maintain written documentation on their claims handling

procedures, which include all steps from the claim being raised to its settlement. Such documentation may include expected timeframes for these steps, which might be extended in exceptional cases.

10.4. *Licensed insurers* shall ensure that:

10.4.1. Claimants are informed about procedures, formalities and common timeframes for claims settlement.

10.4.2. Claimants are given information about the status of their claim in a timely and fair manner.

10.4.3. Claim-determinative factors such as depreciations, discounting or negligence illustrated and explained in comprehensive language to claimants. The same applies where claims are denied in whole or in part.

10.5. *Licensed insurers* shall ensure that the claims assessment process is fair. At the minimum this requires avoidance of conflicts of interest, as well as competence and ongoing training of the staff involved, appropriate for the type of insurance policy and the level of technical and legal expertise required in relation to the insurance policy and the claim

#### *Claims disputes*

10.6. Where there is a dispute between the claimant and the *licensed insurer* in the course of a claims settlement on the claims settlement amount, or coverage, the *licensed insurer* must ensure that the staff handling claims disputes are experienced in claims handling and appropriately qualified.

10.7. The *licensed insurer* must ensure that its dispute resolution procedures should follow a balanced and impartial approach, bearing in mind the legitimate interests of all parties involved. Such procedures should avoid being overly complicated, such as having burdensome paperwork requirements. Decisions should include the reasoning in clear language relating closely to the specific disputable issues.

#### *Outsourcing*

10.8. If the *licensed insurer* outsources, whether in part or in full, any of the claims handling processes, the *licensed insurer* remains ultimately responsible for the provision of fair and transparent claims handling and claims dispute resolution and compliance with the Rules. The *licensed insurer* must maintain close oversight over outsourced processes.

## *Interest*

- 10.9. In respect of long-term insurance business only, when the payment of a claim is delayed by more than two (2) months, the *licensed insurer* shall pay interest on the cash sum due or make an equivalent adjustment to the sum due unless the amount of such interest would be immaterial. The two (2) month period shall run from the date the *licensed insurer* is notified of the insured event or, in the case of a unit-linked policy, from the date on which the *licensed insurer* became liable for payment, if later. Interest will be calculated at the relevant market rate from the end of the two (2) month period until the actual date of payment of the claim.

## **11. Timely and fair manner complaints handling**

- 11.1. A *licensed insurer* must handle *complaints* in a timely and fair manner.
- 11.2. A *licensed insurers* must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any *complaints* relating to the *licensed insurer's* insurance business, howsoever received.
- 11.3. A *licensed insurer* must ensure that each of its officers and employees responsible for dealing with customers is at all times aware of this procedure and of the obligation to follow it.
- 11.4. *Licensed insurers* shall make information on their policies and procedures on *complaints* handling available to its *customers*.
- 11.5. *Licensed insurers* shall respond to *complaints* without unnecessary delay; complainants should be kept informed about the handling of their *complaints*.
- 11.6. *Licensed insurers* shall send a written final response in relation to the *complaint* prior to the *complaint response date*. A 'final response' must:
- accept the *complaint* and offer any appropriate redress and/or remedy; or
  - offer redress and/or remedy without accepting the *complaint*; or
  - reject the *complaint* and give clear reasons for doing so.
- 11.7. *Licensed insurers* shall in the 'final response' also tell/remind the complainant in writing that, if he remains dissatisfied, he can refer the *complaint* to the Channel Islands Financial Ombudsman and also advise the complainant that they may inform the Commission directly of the *complaint*.
- 11.8. If the *licensed insurer* fails to issue a 'final response' by the *complaint response date*, the *licensed insurer* must inform the Commission within fourteen days after the *complaint*

*response date.*

- 11.9. A *licensed insurer* must inform the Commission within fourteen days of it first becoming aware of a *significant complaint* and shall also advise the complainant that it may inform the Commission directly of the *complaint*.
- 11.10. A *licensed insurer* must maintain a register in which it records any *complaints* received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such *complaints* in accordance with the Rules and any other applicable provisions of the Law.
- 11.11. *Licensed insurers* shall analyse the *complaints* they receive to identify failures, trends and recurring risks and to identify, and enable them to correct, common root causes.
- 11.12. *Licensed insurers* shall analyse *complaints* that they receive against intermediaries in respect of products that the intermediaries have distributed on their behalf, to enable them to assess the complete *customer* experience and identify any issues that need to be addressed.

## **12. Citation, commencement and application**

- (a) These rules may be cited as the Licensed Insurer (Conduct of Business) Rules 2018 (the “*Insurer Rules*”)
- (b) These rules come into force on 9 July 2018.
- (c) The Insurer Rules apply to all Category 1 and Category 3 *licensed insurers*, as categorized under the Insurance Business (Solvency) Rules 2015, writing business with *retail customers*.

## **13. Interpretation**

In the Rules, unless the context requires otherwise -:

“*customer*” means a client, policyholder, or potential policyholder of a licensed insurer;

“*complaint*” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service or product, which alleges that the complainant has suffered (or may suffer) financial loss, *material* distress or *material* inconvenience; a complaint may involve, but is different from, a claim and does not include a pure request for information;



“*complaint response date*” means three months from the date which the *complaint* is first received by the *licensed insurer* or the *licensed insurer* first becomes aware of the *complaint* (whichever date is earlier);

“*fair presentation of risk*” means to disclose every *material* circumstance which the *customer* knows or ought to know, or to provide the licensed insurer with sufficient information to put that insurer on notice that it needs to make further enquiries for the purpose of revealing those *material* circumstances;

“*the Law*” means the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended;

“*licensed insurer*” means a person who is a licensee within the meaning of the *Law* (that is, a person who is a licensed insurer under that Law);

“*material*” in relation to a circumstance, representation or fact means it would influence the judgement of a prudent insurer in determining whether to accept the risk and, if so, on what terms;

“*microenterprise*” means an enterprise which employs fewer than 10 persons and whose annual turnover does not exceed £2 million;

the “*provisions of*” the *Law* or any other enactment include the provisions of -

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under the *Law* or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation.

“*retail customer*” means a *customer* who is:

- (i) an individual who, in relation to a *licensed insurer*, is acting for purposes other than that individual’s trade, business or profession,
- (ii) a *microenterprise*, or
- (iii) a charity;

“*significant complaint*” means a *complaint* alleging a breach of the *Law*, mala fides, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise).

- (a) A term defined in the *Law* and used in these Rules shall have the meaning given to it in the *Law* unless otherwise defined in these Rules.

- (b) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules;
- (c) Any reference in these Rules to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

## **Appendix 4: Guidance Note on Category 6 – Special Purpose Entities**

## **GUIDANCE NOTE FOR LICENSED INSURERS ON CATEGORY 6 – NON-SPECIAL PURPOSE INSURERS**

### **1. Introduction**

The Insurance Business (Solvency) Rules 2015 introduces a system of categorisation for licensed insurers. Category 6 insurers comprise two subcategories: Special Purpose Insurers (“SPIs” - this sub-category is primarily intended for Insurance-Linked Securities business) and other Non-Special Purpose Insurers (“NSPI” - other forms of insurer where underwriting and counterparty risk may have been effectively eliminated).

The two subcategories are detailed in Section 6 (f) of The Insurance Business (Solvency) Rules 2015 which provides that licensed insurers or cells of a Protected Cell Company fall under Category 6 – Special Purpose Entities (“Category 6”) for the purposes of those rules if they are:

- Special Purpose Insurers as defined under the Insurance Business (Special Purpose Insurer) Rules 2016; or
- Entities that the Commission agrees in writing may fall into this category.

All Category 6 insurers fall outside the scope of the Commission’s risk based solvency requirement and it is therefore important that the Commission is satisfied that such insurers’ risk profile is appropriate for categorisation as a Category 6 insurer. The specific requirements for SPIs are set out in the Insurance Business (Special Purpose Insurer) Rules 2016 while the criteria for NSPIs are set out in this guidance.

The Commission will use the criteria noted in section 2 of this guidance note in assessing the suitability of a licensed insurer or cell to fall into Category 6.

Where the insurer or cell does not meet the guidance within section 2, the Commission will not agree in writing for the insurer or cell to fall under Category 6 for the purposes of The Insurance Business (Solvency) Rules 2015.

This guidance will be applied from 9 July 2018. This guidance will not be applied to those Category 6 insurers or cells for which categorisation was agreed in writing by the Commission prior to that date.

## **2. Guidance**

- a) The Commission will no longer accept individuals as direct owners of a category 6 cell. The following will be acceptable as owner(s) of a Category 6 insurer, provided that they have a minimum level of net assets of £5m:
- A limited partnership, unincorporated association, or body corporate; or
  - A Government, local authority, public authority, or supra-national body (in the Bailiwick or otherwise); or
  - A Guernsey registered or authorised collective investment scheme; or
  - A company quoted on an investment exchange licensed by the Commission or that meets the definition of a recognised investment exchange under the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

The net assets of the owner(s) must be denominated in either Pounds Sterling (£) or an equivalent sum in any currency that is acceptable to the Commission.

- b) The Commission considers that it is necessary for a Category 6 insurer or cell to maintain at all times a minimum level of paid-up capital and shareholders' funds in order to facilitate the orderly wind-down of the entity in the event of any issues with the fully funded status. It will no longer be acceptable for a cell to be incorporated with minimal capital which leaves little option for funding should something go wrong with the structure. This paid up capital should not be depleted by the normal ongoing running costs of the cell.

Therefore, in the absence of a robust contingency funding plan acceptable to the Commission, a Category 6 insurer or cell will be required to maintain a minimum level of paid up capital and shareholders' funds of £100,000. In applying this policy the Commission will take into account the proposed ownership structure and financial assets of the cell sponsor. The capital must be denominated in either Pounds Sterling (£) or an equivalent sum in any currency that is acceptable to the Commission. This capital is required to be fully paid-up.

- c) The Category 6 insurer or cell must be Fully Funded at all times. In order to meet the definition of Fully Funded, the insurer or cell must:
- At all times have assets the value of which exceed or are equal to the aggregate maximum risk exposure of the insurer or cell and be able to pay the amounts for which it is liable as they fall due; and

- Only enter into contracts or otherwise assume 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
- Where there is more than one insurance contract in place, ensure that each insurance contract is structured such that the Fully Funded requirement is met for each contract individually.

## **Appendix 5: Guidance Note on Change of Majority Shareholder Controller**



**THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002 (“the Insurance Business Law”)**

**GUIDANCE NOTE FOR LICENSED INSURERS ON CHANGE OF MAJORITY SHAREHOLDER CONTROLLER**

This guidance note sets out the Commission’s expectation that a licensed insurer will notify the Commission in writing, as soon as it becomes aware of any proposal for an existing shareholder controller to become a majority shareholder controller of the insurer.

For the purposes of this guidance a majority shareholder controller means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 50% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary.

This guidance does not apply to the cells of a Protected Cell Company.

This guidance does not replace or modify any statutory controller notification requirements under the Insurance Business Law.





Guernsey Financial  
Services Commission

# **INSURANCE REGULATION OMNIBUS CONSULTATION**

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

**3 August 2018**

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.