Guernsey Financial Services Commission

Feedback Paper following consultation on the Rules for Retail General Insurers

February 2024

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1. Introduction

This paper provides feedback on the responses received to the Commission's consultation paper on the Rules for Retail General Insurers, which was issued in March 2023.

Background

General retail insurers have become an increasingly significant part of the insurance industry in the Bailiwick. They place different demands on the industry and regulatory landscape compared to other areas of insurance and the Commission considers it essential that its rules are updated to reflect this important sector of the industry.

When the consultation paper was published in March 2023, there were 35 clearly identifiable retail general insurers licensed in Guernsey (28 companies and 7 cells). In practice, the overall figure is likely to be a little higher given that some insurers do not identify their activity as retail. This is for a number of reasons, for example:

- there is an intermediary between the insurer and the policyholders;
- the client base is restricted to a certain class of person; or
- the premium is collected directly from the ultimate insured individual by the owners of the insurer.

In fact, it is the Commission's understanding that all these cases are examples of retail general insurers. This highlights that one of the most significant issues for the industry is the correct identification of insurers which are retail rather than wholesale general insurers. This issue is addressed in the substance of the consultation, the Commission's objective is to ensure the appropriate rules and safeguards can be applied.

The Commission notes that it is not alone in tightening up the rules and requirements around various types of insurers. Regulators in other international finance centres are taking steps to safeguard customers. For example, the BMA in Bermuda is seeking to strengthen its own rules for certain types of insurer and is adopting a more prescriptive approach as to the types of investment it considers acceptable for long term insurers[1].

[1]Bermuda – BMA White Paper: Supervision and Regulation of Private Equity Insurers
Bermuda Royal Gazette Article: BMA to enhance regulation and supervision of PE insurers - The Royal Gazette

2. Original Consultation

The Commission published its consultation paper on updates to its rules for Retail General Insurers in March 2023. After consultation and dialogue with industry, we received 19 responses. We have carefully considered the views expressed in reaching our conclusions and in deciding on the final updates to the Insurance Business Rules which are published along with this feedback paper. The original consultation sought to make changes in several areas set out in the following table:

Scope	• If there is any doubt, an insurer must class itself as a retail rather than a wholesale general insurer.
Governance	• All board members to be present in the Bailiwick for at least one board meeting a year; though not necessarily at the same time. • The board must include two Independent Non-Executive Directors (INEDs) rather than one. • A former employee of the insurance manager cannot become an INED for an insurer managed by that insurance manager for at least three years after leaving that insurance manager. • The independence of the INED to be reviewed annually after 9 years. • There should be an annual internal audit of a retail general insurer. • The board must ensure that the external auditor has the right skills to audit a retail general insurer.
Financial	• Capital floor to rise from £100,000 to £250,000. • Capital floor to apply to PCC cells. • Prescribed Capital Ratio (PCR) requirement to increase from the current minimum of 105% to 135%. • Removal of Own Risk Solvency Assessment exemptions. • Regulatory Solvency Reporting to increase from yearly to half-yearly. • Minimum re-insurance requirements to be applied. • Differentiated fees for retail general insurers.
Systems and controls	• A retail general insurer should have a legal opinion that it can sell into the UK if it does this. • Stronger controls over third party funds. • More specific public disclosure requirements. • Complaints to be considered by boards at least semi-annually. • Bespoke regulatory reporting requirements.
Other	• Insurance Managers to ensure they have the skills necessary to service retail general insurers, to the extent they develop this line of business. • Minimum capital requirement of insurance managers servicing retail general insurers to increase from £25,000 to £100,000.

The majority of the feedback received was positive and constructive. This is reflected in the recognition that there is a need to apply greater levels of protection and safeguarding in respect of general insurers which have retail customers as their policyholders. The industry has taken a pragmatic approach in recognising that most of the changes proposed are reasonable and reflect existing good practice or are necessary to continue to operate as a well-regulated jurisdiction providing appropriate safeguards for customers while continuing to encourage new business to develop. In the majority of cases no changes are required to the proposals set out in the CP and the rules will be updated as set out in the draft accompanying the CP.

There were areas where the views expressed by respondents did not support the Commission's proposed approach. In most of these cases, where the majority of feedback did not support the proposed approach, the Commission has amended its proposals in light of the comments received. For example, in dropping proposals to require boards of insurers to seek specific legal advice and in reducing the length of the proposed cooling off period before individuals who previously worked for an insurance managers can be considered sufficiently independent to qualify as INEDs on the boards of insurers.

However, there are some areas where feedback did not support the approach proposed in consultation, but where the Commission takes the view that that it must nevertheless take forward its proposals. It does so to protect retail customers, to safeguard the reputation of the Bailiwick and comply with international standards in respect of Retail General Insurers. In this feedback paper the Commission has identified the areas where that is the case and where possible sought to balance its proposals against the concerns raised and to explain why it has adopted its chosen approach.

3. Feedback on the Consultation

3.1 Scope

Definition of Retail Insurers

The aim of this proposal was twofold. First, to offer a definition of retail for Retail General Insurers (RGIs) and second, to ensure that all RGIs within the Bailiwick are identified as such. To do this it was proposed that where there is ambiguity or doubt over the status of an insurer as to whether or not it should be considered an RGI, the Commission would make the presumption the insurer is an RGI unless it could demonstrate otherwise.

Q1: Do you have any comments on the definition of retail customer, and that if there is any doubt, then the entity should be treated as a retail insurer?

Responses were split. They were broadly supportive of the retail definition although a number objected or suggested preferred alternatives. Some suggested the definition was too broad but there was no clear consensus for any changes that should be made.

There was a more mixed response to the idea that the Commission would make the presumption an insurer was an RGI where there was any doubt about its status. Some noted this might be difficult for certain niche insurers, that the definition of retail was too broad (so would encompass too many insurers) or that the issue was already covered in the Insurance Business Rules. One response commented that the whole proposal was disproportionate, Guernsey was chosen by RGIs because it is flexible and does not impose the same requirements on retail insurers as some jurisdictions.

The Commission notes that its approach to supervision is well known and proportionate. This proposal responds to specific weaknesses that we have observed in relation to RGIs which IMs are not managing appropriately.

The Commission notes the responses, especially in relation to the relatively broad definition of retail. It considers it important that all RGIs in the Bailiwick are identified as such in order to ensure that the appropriate additional rules and safeguards can be applied. The Commission will adopt the rules as proposed in the absence of a superior alternative definition being proposed.

3.2 Governance

Directors Attendance at meetings in Guernsey

The Commission considers that all board members of a retail general insurer must attend at least one board meeting in Guernsey each year.

Q2: Do you have any comments on the proposal to require that all directors of a retail general insurer must be physically present in the Bailiwick for at least one meeting of the board per calendar year?

There was strong support for this proposal. A number of respondents sought clarification as to whether this meant that all directors would be required to attend a specific in person meeting, which could be difficult for some.

This proposal is adopted as set out in the consultation paper. For clarification, the requirement is for each director to attend at least one meeting in the Bailiwick in person each calendar year. There is no requirement that the directors all attend the same meeting in person.

Increasing the number of INEDs for RGIs

The Commission proposed that the number of INEDs for RGIs (and only RGIs) should be increased from one to two.

Q3: Do you have any comments on the proposal to increase the number of INEDs for retail general insurers to two?

Most responses were supportive, there was general agreement that this was a reasonable requirement in principle but there were a number of objections. One response considered the provisions to be excessive and anti-competitive (without being entirely clear as to why that was the case) others stated that the requirement was too onerous or unnecessary. Among those supporting the proposal several noted concerns over the scarcity of suitably qualified candidates for INED roles. It was suggested that if implemented, a longer transition period would be helpful.

The Commission notes the concerns raised over the transition period. It therefore adopts the proposal as published in the consultation paper but with an extension in the transition period from six to twelve months.

Cooling off period between leaving and IM and becoming an INED

The Commission proposed that individuals who had worked for an insurance manager in the past three years could not be considered an INED in respect of entities managed by that IM.

In combination with the previous proposal (increasing the number of INEDs) this seeks to encourage insurers to cast the net wider for individuals who may become directors of RGIs. It aims to ensure there is genuine independence and to avoid the concerns raised by the perception of a relatively small "closed shop" with a conveyor belt for those moving from IMs directly into INED roles with associated entities.

Q4: Do you have any comments on the proposal that an individual who worked for an insurance manager during the previous three years cannot be classed as an INED?

Responses to this question were divided, albeit with a majority supporting the Commission's proposal. Among the objections, a number commented that it was simply not appropriate to apply such restrictions. Others were more specific. They noted that there was a limited pool of experienced individuals to fill the available roles and suggested that individuals employed by the IM but not directly involved with a particular insurer should still be permitted to be act as an INED.

We note that there might be scope for some individuals previously employed by an IM, but not directly involved in the operation or oversight of a particular insurer managed by that IM, to be considered sufficiently independent to act as an INEDs. However, it is neither practical nor desirable for the Commission to make such individual exceptions. There is a reasonable concern that even in the circumstance described, the close relationship with the IM may influence – however unintentionally – the objectivity of the INED. Since the purpose of this obligation is to ensure that INEDs are genuinely independent, the Commission does not consider such a carve out to be appropriate.

The Commission retains the requirement for a cooling off period for individuals employed by insurance managers before they can be classed as INEDs but the cooling off period is reduced from three to two years and the rules amended accordingly.

For clarification (and as noted in the CP), INEDs approved by the Commission before the new rules take effect will remain approved as a director for that retail general insurer; but they should reflect on whether they need to consciously assume a more critical stance in fulfilling their legal obligations.

Independence of long serving INEDs

There is an issue that after a sufficiently long period serving on the board of an insurer (or any other business) an individual may no longer be considered sufficiently independent to continue acting as an INED. Without imposing particular restrictions, the Commission proposed that after a substantial period (nine years) of service, the board should document whether an individual continues to be considered independent.

Q5: Do you have any comments on the proposal that retail general insurers should consider and document whether an INED remains independent after nine years, then annually thereafter?

The Commission's proposed approach was supported by most respondents. Several suggested that any ongoing review after the initial nine year period should take place only every two or three rather than annually. Others noted that this requirement formed part of the corporate governance code which they followed.

The Commission intends to implement the proposal as drafted. This broadly follows the UK Corporate Governance Code, which requires that the independence of any INED should be considered by the board once the individual has been a member for nine years and reconsidered annually thereafter. Such consideration must be clearly documented.

For the avoidance of doubt, this rule applies to all INEDs, not just those newly appointed from 2024, and there is no presumption that an INED should be resign after nine years.

3.3 Audit

Internal Audit

The Commission proposed that all RGIs should be required to maintain an internal audit function, independent of the insurer's general representative and the insurance manager. The internal audit function may be carried out in house or contracted out to an independent service provider. It should report annually as specified by the Commission.

Q6: Do you agree that a retail general insurer should maintain an internal audit function; that this function should be independent of the general representative or insurance manager where work is carried out by them, and that an internal report should be made at least once a year to the board?

This issue divides the industry. Similar numbers of responses opposed or suggested significant amendments to the proposed approach as were in favour. Several responses expressed the view that it was a matter for the board to decide whether internal audit was required and to determine the scope and frequency of such work. Others commented that the proposals were disproportionate and could add significant costs for businesses. Several said the requirement was impractical for small RGIs and the obligation was superfluous because of external audit.

Nevertheless, the Commission considers that the existence of an internal audit function and the availability of internal audit reports and information to the board of an RGI is essential for ensure that it is able to provide appropriate financial scrutiny and oversight.

Internal and external audit functions perform different roles and may examine different areas and internal auditors may identify different issues than external auditors, particularly when it comes to issues such as conduct risk.

This is not a completely new obligation. The Finance Sector Code of Corporate Governance ("the Code") applies to licensees including RGIs. It states (principle A:15) that "the insurer is required to have, or to have access to, an appropriate and effective internal audit function capable of providing the Board with independent assurance in respect of the insurer's governance, including its risk management and internal controls". The Code recognises different approaches to meeting the principles depending upon the nature, scale and complexity of the business.

The Commission recognises the potential impact of this requirement. It has therefore modified its original proposal. It continues to require that all retail general insurers must maintain an internal audit function (which may be outsourced), independent of its IM or general manager. However, instead of requiring annual reports it now requires the board should determine the frequency and scope of internal audits, subject to a minimum requirement for an internal audit at least once every three years.

External Audit

All licensed insurers are required to appoint an auditor and to notify the Commission of the appointment. Following the 2021 revisions to the *Insurance Business (Bailiwick of Guernsey) Law, 2002*, the Commission no longer maintains a statutory list of approved auditors. Nevertheless, the Commission wishes to ensure that RGIs use auditors who are sufficiently knowledgeable and experienced to be able to carry out effective audits of retail general insurance. It has become clear to the Commission that some RGIs have used external auditors who do not have relevant expertise.

Q7: Do you agree that retail general insurers should be required to document in detail the reasons why they appointed a particular auditor?

The response on this issue was mixed but the majority supported the proposal. Objections were along the lines that this was an issue for the auditor to consider for themselves and that the board of the insurer should not be required to replicate considerations made by the auditor.

The board is responsible for ensuring that the auditors which it appoints have the appropriate skills, knowledge and experience to carry out an effective audit of retail general insurance[2]. It must document the reasons for appointing a particular auditor to ensure that RGI appoints an external auditor for its knowledge and experience of retail general insurance rather than, for example, price.

The Commission is retaining this requirement as proposed.

[2] The Commission expects that auditors putting themselves forward to conduct audits of RGIs will be suitably qualified and experienced, which is an issue for the auditors themselves as well as for the board of the RGI

3.4 Capital & Solvency

Minimum Capital Requirements

The capital and solvency rules for insurers are laid out in the Insurance Business (Solvency) Rules and Guidance, 2021. These proposals consider the Capital Floor, the Minimum Capital Requirement ("MCR") and Prescribed Capital Requirements ("PCR").

The Solvency Rules require that insurers maintain minimum shareholders' funds of at least 75% of the Capital Floor, or an equivalent sum, in any currency acceptable to the Commission. The purpose of the 75% is to allow for periodic losses and exchange rate movements. The existing minimum requirements are laid out below:

Insurer carrying on:	Capital Floor £	Shareholders' funds £ (or ccy. equiv.)
General business	£100,000	£75,000
Long term and general business	£250,000	£187,500

An RGI needs sufficient capital to withstand underwriting losses or deterioration in value of capital. Even if a firm with the minimum level of capital were to survive the loss, the costs of operating the company (directors fees, staff or insurance manager fees, legal and accounting costs, audit fees etc.), would likely make it insolvent before the business had run-off. In theory, the firm could be re-capitalised, but the Commission's experience is that the shareholders of retail general insurers in distress are not normally willing to provide additional capital.

The current requirements do not differentiate between RGIs and other insurers. It is proposed that the minimum capital requirement for RGIs should be increased. This is especially necessary as the current capital floor was set in 1986 and has not been increased since then.

In the CP it was proposed that for RGIs the capital floor should be increased so that minimum levels of paid-up share capital and shareholders' funds for RGIs be increased as set out below:

Insurer carrying on:	Capital Floor £ (or ccy. equivalent)	Shareholders' funds £ (or ccy. equiv.)
Retail general insurers	£250,000	£187,500

Q8: Do you agree that minimum levels of paid-up share capital and shareholders' funds for general retail insurers should be increased to £250,000? Do you agree that existing firms should have three years to comply with the rules?

Most responses were in favour of the change, some proposing it go further or that the amount should be tailored to the nature of the business. Industry had previously noted that an increased capital requirement may be a barrier to entry and restrict new or innovative business. The Commission acknowledges the comments but notes that new and innovative firms are as likely to fail as established ones, if not more so.

A capital level of £250,000 is not unreasonable for shareholders who are fully committed to establishing a robust and enduring retail general insurance company. In fact, very few firms at present would be unable to meet this requirement.

The Commission will adopt this requirement as set out in the CP. Companies already licensed at the date the rules become effective and whose paid- up share capital and shareholders' funds are less than the new minimum will have three years to meet this requirement. Firms licensed after rule changes come into effect will be required to meet them from the point of licensing.

Capital – Protected Cell Company Cells

The protected cell company structure originated from a desire to provide captive services to firms which are not large enough to justify a stand-alone captive, and they have found other uses as wholesales vehicles such as for Insurance-Linked Securities. A small number of cells write general business, including retail general insurance.

At present there is no minimum capital floor requirement for a PCC cell. To ensure that clients of retail general insurers structured as PCCs benefit from the same level of prudential and conduct protections as a standard company, the Commission proposed that the rules for retail general insurance companies should also apply to retail general cells.

Q9: Do you have any comment on the proposal that PCC cells which write retail general insurance should meet the same standards as a retail general insurance company?

Responses noted that the proposal diminishes the benefit of PCC structures, and it was suggested that the standard should apply at the level of the PCC rather than individual cells. Another suggested that cells should not be permitted to write RGI business. Overall there was a general consensus in favour of consistency of treatment of RGIs irrespective of whether structured as a PCC or a separate company.

The Commission will adopt the proposal without further changes.

Solvency - Prescribed Capital Ratio (PCR) requirement

The PCR requirement for a commercial general insurer is the capital required to ensure that the licensed insurer can meet its obligations over the next 12 months with a probability determined at a 99.5% confidence level. Whilst the calculation is specific to commercial insurers, that category is itself broad. It does not differentiate between the non-payment of a loss for a large company which understood the risk profile of the insurer from whom it was purchasing cover and a member of the public who had not such ability and assumed a retail policy would be rock solid under all circumstances. The Commission therefore proposes to increase capital required to meet the PCR for RGIs.

The Commission operates a ladder of intervention approach for all insurers. Any ratio below 105% triggers regulatory intervention; although the Commission can – and does – apply a higher percentage in certain cases.

In the consultation, the Commission proposed applying a higher PCR of 135% across-the-board to all RGIs. There is no scientific reason for choosing this number. However, the Commission is aware that several other regulators in practice apply a generic number – ranging from 135% to 155% - for some insurance sectors. Very few RGIs in Guernsey have a PCR requirement of less than 135%, so the application of this approach is feasible and it will have an impact on a relatively small number of RGIs where it will make a difference.

It is also better to be transparent about this approach so that prospective insurers are clear about what is required of them. This higher number will enable the Commission to act at an earlier stage than otherwise if a retail general insurer begins to have solvency problems. It also links into more frequent reporting of the ratio; as detailed below.

It was proposed that any RGI with a PCR falling below the new minimum level of 135% would be expected to come up to that number within two years.

Q10: Do you agree that retail general insurers should have a higher minimum capital requirement than wholesale general insurers?

There was strong support for increasing the minimum capital level for retail general insurers.

The Commission therefore intends to adopt the approach set out in the CP. The minimum PCR for RGIs is raised to 135% in all cases. Any RGI whose PCR is below the new 135% minimum when the new rule comes into effect is required to come up to that number within two years.

This change will be implemented by applying the "Stage 1 - Early Warning" to retail general insurers with between 100% and 135% of the PCR requirement in the Commission's Guidance Note on Supervisory Ladder of Intervention.

Own Risk Solvency Assessment (ORSA)

The Commission's approach to ORSAs is one of 'horses for courses', namely that a relatively simple business can best be served by a straight-forward and short ORSA; and one of practical use to the board. The process for calculating the ORSA requires the identification and quantification of all the risks facing an insurer, together with any mitigants. The Commission has become aware of some small RGIs having inadequate risk management even though they may have many retail policyholders. The ORSA is an important part of the firm's risk management but at present about half of current RGIs do not complete an ORSA because of de minimis exemption. The Commission no longer considers exemptions permitting small RGIs to avoid assessing their risk management and future capital requirements to be appropriate. Subject to any other exceptions in the Solvency Rules, all RGIs should produce an ORSA.

Q11: Do you have any comments on the proposal that the current exception which allows general retail insurers with MCR's below £1,500,000 to prepare an OSCA and not an ORSA be removed for retail general insurers?

There was broad support for this proposal, with only a few seeing no benefit from this approach.

The Commission adopts the proposal as set out in the CP. The requirements for all other (non RGI) insurers remain the same.

Reporting frequency - Six monthly reports

The CP proposed that six-monthly reporting should be a requirement for all relevant insurers by including it in the Insurance Business Rules (IBR); rather than simply making a request. This proposal will also include all RGIs. It is intended to ensure that the financial status of retail general insurers is as current and transparent to the Commission as reasonably possible; and that there is a formal obligation of firms to submit accurate data for regulatory purposes.

Q12: Do you agree with making reporting as specified; and with making this a formal requirement for all those having to submit an ORSA?

There was strong support for regularising six monthly reporting as proposed.

The Commission adopts the proposal in the CP and amends the IBR accordingly. In line with the existing timetable and reporting deadlines for half year returns, six monthly reports must be submitted within two months of the end of the half year period, and will be subject to the existing requirements for the timing and sufficiency of reporting.

Reinsurance

The Commission is concerned that the failure of a reinsurer could cause an insurer to be unable to pay claims to its customers. It has seen examples of reinsurance arranged with reinsurers with weak capital positions. This is unusual as many insurers would only contemplate using a rated reinsurer.

In addition, retail insurers often use reinsurance for excess loss coverage. In that case the failure of a reinsurer could have a crippling impact on the solvency of the insurer. To protect retail policyholders, the Commission is proposing to strengthen the rules for retail general insurers.

The Commission is proposing that retail general insurers may only place reinsurance with reinsurers that meet at least one of the following requirements[3]:

1. Licensed by the Commission;
2. Licensed in a member state of the G-10;
3. Licensed in Bermuda;
4. Licensed in the Republic of Ireland;
5. Maintains an acceptable credit rating (please see below);
6. Not rated but is a 100% owned subsidiary of a (re)insurer which is rated, in which case the reinsurer can be assumed to have the same rating as its rated ultimate parent; or
7. The potential exposure is protected by collateral representing the full exposure under the contract. The collateral must be held in cash by a bank with a credit rating equal to or above, the ratings listed below; or in investment–rated bonds by an investment-rated custodian. The insurer must have legal advice confirming that the collateral agreement will be effective in the event of default by the reinsurer.

An acceptable credit rating is one which is the same or higher than those listed below:

Rating Firm	**Minimum Rating**
AM Best	**bbb-**
Fitch	**BBB-**
Moody's	**Baa3**
Standard & Poor's	**BBB-**

The requirements will also apply to those reinsurers within the same group as the insurer. These reinsurers pose an additional risk that the insurer may be obliged to do business with them and therefore will not carry out proper due diligence or apply adequate mitigation.

Q13: Do you have any comments on the proposal that retail general reinsurers may only use reinsurers as specified in the above table?

The majority of responses favoured adopting this approach. Some suggested it should be a guide rather than a rules. One suggested there should be no restrictions, the choice of reinsurer is an issue for the ORSA and the firm's decisions on the appropriate level of capital resources.

The Commission is concerned that left to their own discretion, some insurers have chosen to use reinsurers with a weak capital position, and this is not appropriate for RGIs. The Commission therefore adopts the proposals as set out in the CP.

For clarification, these requirements apply to reinsurers within the same group as the insurer, as set out in the CP. Such reinsurers pose the additional risk that the insurer may be obliged to use them and may not therefore carry out proper due diligence or apply adequate mitigation.

For the avoidance of doubt, the rules apply to insurers regardless of how much risk is retained. There is no exemptions for firms which consider themselves to be a "fronter" for a reinsurer.

[3]Note that this is not the same as the List of Recognised Insurers (which is for local insurance purposes).

3.5 Annual Fees

Annual Fees

RGIs have a greater ability than other insurers to damage the reputation of the Bailiwick through not fulfilling contracts with policyholders. Over recent years, the Commission has had to dedicate substantial and increasing amounts of time to mitigating the risks which have crystallized around individual RGIs. To the extent that it is not covered by fees from RGIs themselves, the cost of this work is borne by other licence holders through their annual fees.

Fees should reflect the risks incurred by the industry and the effort applied by the Commission in supervising the sector. On this basis, because of the significant risks posed by RGIs and the substantial resources dedicated by the Commission to resolving specific issues and problems that have arisen with RGIs, fees should be increased appropriately. In addition, since they pose the same risk and potential for significant additional costs to resolve, the fees for RGI cells should be brought into line with those for RGIs which are stand-alone companies.

The purpose of this change is not to shift supervisory resources from one sector to another but to increase the resources available for retail general insurers. It is worth noting that the 2019 International Association of Insurance Supervisors' inspection (IAIS) report on Guernsey remarked how thin were our insurance supervisory resources[4].

Q14: Do you agree that, as a matter of principle, retail general insurers should pay a higher fee than other insurers to reflect their greater risk and therefore greater use of resources by the Commission?

The majority of respondents agreed, at least in principle, with the proposed approach to changes to the fees for RGIs. A small number of responses favoured rebalancing fees rather than an overall increase or fees based on the scale of regulated activity.

The Commission intends to adopt the change in approach to fee proposals set out in the CP and will set out its proposals within the usual fee consultation process during 2024. Any changes will be highlighted in the fee consultation paper to be published in 3Q 2024 and will not come into effect until 1 January 2025.

[4] 'Detailed Assessment of Observance IAIS Insurance Core Principles (ICPs) Bailiwick of Guernsey' p42; GFSC website

3.6 Systems and Controls

Legal opinion

Guernsey retail insurers serve policyholders in several jurisdictions across the world. The most pertinent jurisdiction is the UK where Guernsey insurers are accessed primarily through UK intermediaries. It is important for the Guernsey insurer itself and for the wider reputation of the Bailiwick that a Guernsey insurer does not become an unlicensed UK insurer. For this reason, most Guernsey retail insurers operating in this market already secure a legal opinion that they are not acting in this capacity. Several of the changes in this paper, for example, around transparency, should further mitigate this risk. In the original CP the Commission proposed to make obtaining a legal opinion of this nature mandatory. In practice, most Guernsey retail insurers already obtain such a legal opinion, but some do not.

Q15: Do you agree that a legal opinion be required for the UK and either a legal opinion or some other form of documentation for other jurisdictions?

While opinion was split on this issue, a significant majority of respondents were opposed to this requirement. They considered that it would add costs and would potentially offer false security without achieving any substantial benefit for customers.

The Commission recognises that a legal opinion is far from foolproof, that its utility will depend on the nature and scope of the request made and it may conflict with other legal advice or opinions.

The Commission notes the arguments put forward against its previously proposed approach and has decided not to take forward this proposal.

This does not detract from the existing obligations on the business and specifically the board and its members to ensure that the insurer may carry out its activities in the targeted jurisdiction. As such, Boards may wish to gather legal advice or opinions but will not be compelled to do so through a new rule at this juncture.

Cash Management

In the CP the Commission proposed that where funds are held by a third party, the arrangement must be governed by a written agreement. This must identify whether the funds are being held by a third party as claims fund, float or other arrangement and sets out the basis on which funds will be paid to or returned to the insurer. The board must, at least annually, review the purpose of the funds, verify the amounts held and the mitigants. Where the amount transferred is excess to requirements for the purpose, or the mitigants are considered insufficient, the insurer should take appropriate action.

Q16: Do you have any comments on the proposal that there should be a written agreement between the retail general insurer and a third party relating to the transfer of funds to the third party, and that such an arrangement should be reviewed annually?

This proposal was supported by the majority of respondents. One respondent commented that while such arrangements might be appropriate for the UK, they were overly burdensome for Guernsey because insurers had chosen to locate in the Bailiwick in order to avoid such requirements being imposed by the FCA.

Given the balance of responses and the Commission's view that it considers appropriate governing agreements are important, it will implement the arrangements as proposed in the CP.

Payments to third parties

In the CP it was proposed that any payment or transfer of funds to a third party should be approved by a Guernsey resident director or manager of the company, or a similarly resident employee of the insurer's general representative.

Q17: Do you have any comments on the proposal that any transfer or payment of a retail general insurer's funds to a third party must be signed or electronically approved by a Guernsey resident director or manager of the company, or a Guernsey resident employee of the general representative?

This proposal was supported by the almost all respondents. A number noted that it reflected the existing approach in place for most insurance managers.

The Commission intends to implement the requirement as proposed in the CP.

3.7 Disclosure of information

Disclosure of Information

Consumer transparency – which allows consumers to make up their own mind as to whether to buy a financial product based on public data – is an important part of any regulatory framework[5]. The Insurance Business Rules currently lay out the requirements for the public disclosure of information by insurance companies.

Nevertheless, there are several exemptions in the public disclosure rules. Although fewer than half of retail general insurers qualify for specific de minimis exemptions, very few RGIs fulfil the existing public disclosure requirements.

Q18: Do you agree the current exemptions on public disclosure should be withdrawn for retail general insurers, that non-compliance as currently set out should be subject to Commission agreement, and that the above additional data should also be required?

A majority of responses were opposed to proposals to require disclosure and to the removal of the exemptions on which RGIs could rely. Some objected in principle, on the basis that it would be detrimental because it requires the disclosure of sensitive material. Several wanted to retain the ability to redact certain information, they noted that disclosure could place monoline insurers at a competitive disadvantage, or it could be of concern for insurers providing niche security related insurance. Others noted that disclosure was required by the UK FCA and there was no need for Commission to also require disclosure.

The Commission does not consider the status quo provides a sustainable way forward; not least because it would not be consistent with the Bailiwick's compliance with the relevant international standards under ICP 20. All RGI policyholders – and their brokers – have a right to know where the insurer is based and its financial status. Retail customers should not be expected to rely primarily on requirements from regulators in other jurisdictions to ensure disclosure by Guernsey RGIs; particularly given industry's desire to expand this sector.

In line with this, the Commission is proceeding as set out in the CP. The current exemptions from disclosure are removed for RGIs. However, the Commission recognises the concerns arising from the removal of automatic exemptions and that this may be a particular issue for certain types of RGI. While the Commission is unlikely to agree blanket exemptions for RGIs, it will consider applications by individual insurers for exemptions from publishing specific pieces of information on a case by case basis.

[5] See section 5 of the Principles of Conduct of Finance Business; and, more generally, section 7.3 of the Insurance Business Rules for the fair treatment of customers.

In addition to financial disclosures, the new rules require that RGIs disclose prominently on their website, all marketing material and communication with customers and potential customers some basic details, namely:

1. postal address of the insurer's registered office or branch, whichever is appropriate;
2. e-mail or telephone number for the insurer (not a service company or any related company such as a broker);
3. postal address and e-mail address or telephone number for complaints against the insurer;
4. the existence of the Channel Islands Financial Ombudsman, and details of its website;
5. whether the insurer and the producer (i.e. broker, intermediary or other similar party) share a common controller (as defined by IBL).

The required data should be made available publicly on a website (the detail of which is addressed below) with pages specific to Guernsey and the insurer. Firms will be permitted a period of six months to ensure that the relevant information is disclosed or to apply for an appropriate exemption or derogation from the rules.

For the avoidance of doubt, all the above applies to all RGIs, including individual RGI cells.

RGI website

In the CP it was proposed that all RGIs should have a dedicated website on which to publish information and to make the disclosures required by these rules.

Q19: Do you agree that all retail general insurers should have a dedicated website on which they disclose the information required by these rules?

The majority of responses opposed this approach, either because they did not agree with disclosure in the first instance or because they did not see the need for a specific website.

Noting the responses, the Commission will not insist that RGIs maintain a dedicated website for such disclosures. Disclosure may be made on an appropriate group or other website provided that the information made available is sufficiently prominent and accessible to all customers, regardless of which route they use to access the insurer.

Conduct risk – Complaints

The Insurance Business Rules and Guidance 2021 ("IBR"), define a complaint as:

> "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"

Complaints are a key indicator of whether customers feel they are being treated fairly. The Commission has seen examples where complaints are dealt with by outsourced companies and insufficient information is considered by the board, or complaints are not considered at all.

The IBR already include requirements for the general representative around the maintenance of the complaints register and acting as a point of contact for complaints on behalf of the insurer. The CP proposed that an additional requirement be introduced such that the board of every retail insurer consider, and document, at least every six months, its consideration of complaints (either individually or in aggregate), including outcomes. It was not intended that rules should be prescriptive about the format for the reporting of complaints to the board. A board may appoint a complaints sub-committee to deal with the details of complaints, but it must report to the board at least half-yearly.

Q20: Do you have any comments on the proposal that boards of retail general insurers will consider, and document, consideration of complaints regularly and at least half yearly?

The majority of responses were comfortable with the proposed approach and noted that they would expect this to be carried out already. A small number of responses disagreed on the basis that it should be for the board to decide the approach to complaints.

The Commission adopts the proposals set out in the CP and amends the IBR accordingly.

Data

At present, the Commission receives relatively little data on the details of general retail insurance; with most regulatory data focussing on prudential risk. For example, there is no requirement for RGIs to report to the Commission on the number of policyholders insured. This makes it difficult for the Commission to assess either the absolute or the relative riskiness of each insurer when allocating supervisory resources.

In the CP the Commission set out a reporting proposal for Guernsey RGIs based on information it would expect the RGI to have available for its own business reasons. The information required is set out in Annex 1.

Q21: Do you agree that retail general insurers should provide additional data to the Commission? Do you agree with the above list?

While a majority of responses were supportive, some expressed reservations either in the volume of information or the manner it was being collected. They suggested the Commission should limit its data collection to only information which it specifically required and that it should consider using other routes – such as incorporating it into the ORSA process – or that the data be provided in response to a specific request from the Commission. In general, firms recognised that the information identified would be available and required to manage their business.

There appeared to be general recognition that the information was data which firms would require themselves and would therefore be easily available to be reported. Relying on firms to provide information by other routes means that important information may not be up to date when it is required, while annual returns ensure that information is accurate and updated at least annually and is on hand for the Commission without the need for a specific data request.

On the basis of this and the responses, the Commission will require retail general insurers to provide the data specified in the CP to the Commission on an annual basis.

3.8 Insurance Managers

Insurance Manager (IM) Resources, Skills and Knowledge

Guernsey has a well-established captive insurance sector. Individual captives often outsource various functions to insurance managers. This model generally works well for captive insurers but the Commission has seen examples of IMs taking on RGI clients without having adequate resources, knowledge or skills to manage the different business model and risks presented by the business. The requirements for an RGI are different to those of a captive insurer or even a commercial insurer.

To ensure IMs can manage RGIs adequately the Commission proposed to add rules to the Conduct of Business section of the Insurance Manager Rules and Guidance 2021 ("IMR"), in respect of RGI clients only, to ensure that the manager can manage the insurer effectively its board must carry out and document a gap analysis between the IM's resources, skills and knowledge and the requirements of the RGI. Areas that the manager should consider as part of its gap analysis should include but are not limited to:

- Resources required to manage the insurer effectively;
- Knowledge and experience, including understanding the risks of:
    a. the products to be sold;
    b. distribution channels;
    c. the markets into which the products are sold;
    d. claims handling;
    e. reserving methodology; and
    f. the relevant reinsurance market.

Q22: Do you agree with the proposed amendments to the Insurance Managers Rules in respect of managers dealing with retail general insurers?

There was a broad consensus in favour of making the proposed changes to the Insurance Manager rules. The small number opposed indicated that they did not consider that the insurance manager should be responsible for issues with the underlying insurer and the insurer should be the focus of the Commission's efforts.

The Commission notes the comments and, of course, that the insurer is only one focus of its efforts when problems arise. However, this in itself is not sufficient and where there is an IM in place, it must have sufficient skill and knowledge to carry out its functions and to understand in detail the underlying insurance business.

The Commission therefore adopts this proposal and the changes to the IMR as described in the consultation paper.

Insurance Manager (IM) Capital Assessment

When an insurer is in financial difficulties it may require more resources from its general representative, and the insurer's difficulties may be such that the general representative is unable to recover all its costs. Most general representatives are licensed IMs and the current minimum capital requirement for an insurance manager is £25,000, or 125% of the licensee's professional indemnity insurance deductible or excess, if higher. This amount was set several years ago and is no longer adequate for managers managing RGIs. It also does not allow for the situation whereby the manager is required to continue servicing an insurer but is no longer able to recover costs from the insurer.

In the CP the Commission proposed increasing the minimum capital requirement for insurance managers that manage RGIs to £100,000. Most, but not all, IMs already meet this proposed requirement. Conceptually, the Commission sees this capital as acting as a buffer of sorts in the circumstances outlined above. If drawn upon with the permission of the Commission in such circumstances, the Commission would look to agree an appropriately graduated plan with the IM for its restoration over a suitable period of time.

Q23: Do you agree that the minimum capital requirement for insurance managers dealing with retail general insurers should be increased to £100,000, or 125% of the licensee's professional indemnity insurance deductible or excess, if higher?

While a majority of respondents did not support this proposal, opinions were divided. It was noted that in many cases IMs already meet this threshold and that there was no greater likelihood of failure in a retail insurer than any other. Responses also commented that it was not reasonable that an IM should be expected to provide financial support to RGIs by, for example, continuing to provide information or carry on reporting where an RGI was not able to cover the relevant costs incurred by the IM.

The concern for the commission is that while the probability of failures may indeed be no higher for RGIs than for other types of insurer, the consequences for affected customers can be serious. It is in these circumstances that it is particularly important that the IM is sufficiently capitalised to continue in place even if they may not be able to derive continued financial support from the underlying insurer.

The Commission considers that in this case, the requirement to ensure continued performance of its duties by the IM/general representative as the case may be is essential. Therefore the increased capital requirement for IMs is justified – and rather than reflecting the IM supporting the insurer, is a recognition that additional resources may not be forthcoming from the insurer.

The Commission therefore adopts the proposal set out in the CP and the minimum capital requirement for IMs dealing with RGIs is increased accordingly.

3.9 Policyholder Protection Scheme

In the Bailiwick, there is a deposit protection scheme for customers of Guernsey banks and there is a tied asset scheme for customers of long-term insurers[6]. There is nothing equivalent for general insurance policyholders of an insurer licensed in Guernsey if it is unable to meet its liabilities. For the avoidance of doubt, there is no scope for Guernsey insurers to buy into the UK policyholder protection scheme.

A policyholder protection scheme can give comfort to policyholders if their insurer can no longer pay claims. Its existence may make Guernsey more appealing to some types of policy holder.

This part of the paper and the following question were highlighted as having the status of a discussion paper rather than a formal consultation paper proposing a definitive solution to a problem.

Q24: Do you think that a policyholder protection fund should be created? How do you consider that the scheme might be arranged? Please include scope of coverage, funding, limits and governance in your response. Do you have any comment on the fund being financed by a post-event levy paid by all insurer entities at an amount equivalent to the annual fee paid to the Commission for the relevant year? Do you have any suggestions for an alternative arrangement that would enable the creation of a policyholder protection fund?

This was an area in which the Commission was seeking input from industry on the practicalities of implementing in limited form a policy holder protection fund.

There was a range of responses expressing mixed views. There was a small majority of responses in favour of pursuing such a limited arrangement amongst those who gave a view. However, this represented fewer than half of the overall responses received with a number that were non-committal or ambivalent in view.

The Commission will take this under further consideration but, given the nature of this discussion progress that has been made in introducing policyholder priority in the event of insolvency, it does not propose at this point in time to take forward proposals for an insurance protection fund.

[6] Through the standard condition applied to long term insurers which requires that assets representing at least 90% of policyholder liabilities must be held in trust.

Annex 1: Information to be collected from retail general insurers annually

1) Underwriting
    a) number of clients by class of insurance;
    b) gross and net written premium income by class;
    c) expense ratio by class;
    d) brokerage, commission or related charges paid to associated companies; and
    e) reinsurance premiums paid to associated companies.

2) Persistency
    a) percentage of policyholders lapsing / not renewing by class of insurance.

3) Claims
    a) net claims ratios by class; and
    b) percentage of claims rejected by class.

4) Location of policyholders
    a) list of all jurisdictions in which policyholders are resident by class of insurance; and
    b) Notification of what action has been to ensure that the insurer is allowed to carry on business in each jurisdiction into which it writes business.

5) Intermediaries
    a) list of intermediaries with total amount of gross premium;
    b) list of intermediaries which are an associated party of the insurer; and
    c) location and licensed status of all intermediaries contracted by the firm.

6) Outsourcing
    a) details of all functions that are outsourced (including to associated entities) including the name, jurisdiction, regulatory status and relationship with the insurer.

7) Reinsurance
    a) Details of each reinsurer with balances at the year end, including:
        i) credit rating;
        ii) amounts that are outstanding at year end;
        iii) amounts that are outstanding for more than three months by reinsurer; and
        iv) any right of offset and whether the insurer has legal advice which confirms that it is enforceable.

8) Complaints
    a) total number of complaints received during the year, broken down by type;
    b) no. of complaints taking more than 90 days to resolve to the satisfaction of the complainant;
    c) number of complaints referred to CIFO or another ombudsman;
    d) details of complaints where an ombudsman has found in favour of the complainant; and
    e) for each complaint where the ombudsman has found in favour of the complainant, an explanation of what actions have been taken by the firm to prevent a repeat of the failings which led to the finding.

Annex 2 – Insurance Business Rules Amendments

The following rules are included:

The Insurance Business (Amendment) Rules 2024

The Insurance Business (Solvency) (Amendment) Rules 2024

The Insurance Managers (Amendment) Rules 2024

All of which were originally published with the March 2023 CP.