

Guernsey Financial Services Commission

Consultation Paper on Rules for Retail General Insurers

March 2023

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Responses to this Consultation Paper are sought by 1 June 2023.

We welcome and encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission’s website (www.gfsc.gg).

Glossary

IBL – The Insurance Business (Bailiwick of Guernsey) Law, 2002
Solvency Rules – The Insurance Business (Solvency) Rules 2021
Insurance Business Rules – The Insurance Business Rules 2021
Insurance Managers Rules – The Insurance Managers Rules 2021

Purpose of the Consultation Paper

With a small life sector, the greater part of the insurance sector in Guernsey comprises retail and wholesale general (re) insurers. Whilst wholesale general (re) insurers (such as captives and Insurance-Linked Securities) make up the bulk of Guernsey (re) insurers, this paper is concerned with the smaller retail general sector. In the past, this sector has consisted of mainly domestic insurers with a small number of insurers writing business outside of Guernsey. However, recent years have seen a modest growth in the latter; and the Bailiwick wishes to see this growth continue.

The Commission's rules generally do not differentiate between retail and wholesale general (re) insurers. However, recent experience with several retail general insurers have drawn the Commission's attention to areas where rules need to be expanded or made more specific to address the risks presented by retail insurance. These changes will enable the industry in Guernsey to grow safely and to provide insurance services to policyholders who otherwise might find such services difficult to access.

Most retail general insurers in Guernsey use the services of an insurance manager. Insurance managers have historically serviced the captive insurance market and may not have relevant expertise for retail general insurance. Nevertheless, such insurance managers have a key role to play in the expansion of this sector and would benefit from a more bespoke regulatory approach. The Commission is therefore proposing to add requirements to the Insurance Managers Rules in respect of managers who service retail general insurers.

The rules will be issued principally under Insurance Business Law for insurers. There will also be some amendments to the Insurance Managers Rules. If appropriate, concrete proposals on fees will be the subject of the separate annual consultation process.

This paper contains proposals relating to retail general insurers only. Arguably, some of these proposals may have equal validity for other insurance sectors – for example life. However, the recent experience of the Commission suggests that additional consumer protection is needed primarily in the retail general sector. Almost all retail general insurers in Guernsey are local legal entities. A branch should agree with the Commission the application of these rules.

Executive Summary

The following changes for retail general insurers are proposed (as set out in the paper below):

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 Non-Executive Independent 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 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.

Others

- 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.

Proposed Changes – Scope

Definition

There were 35 clearly identifiable retail general insurers licensed in Guernsey (28 companies and 7 cells) at end-2020 – of which three were composite. However, the number is likely to be a little higher than 35 given that some insurers do not identify themselves as general retail insurers. One reason for this is that some insurers argue that their policyholders are not retail because there is an intermediary between the insurer and the policyholders (treated as a wholesale insurer) or that the client base is restricted to a certain class of person (again – wholesale) or that the premium is collected from the ultimate insured individual by the owners of the insurer (treated as a captive). In fact, all these cases are examples of retail general insurers.

The Insurance Business Rules (8/1) define a retail customer as:

1. an individual who, in relation to a licensed insurer, is acting for purposes other than that individual’s trade, business, or profession;
2. a microenterprise; or
3. a charity other than a Non-Governmental Organisation (“NGO”)

It seems to the Commission that this definition is clear enough and invalidates the above reasons as to why some insurers do not regard themselves as dealing with the retail public. Going further, if there is any uncertainty as to whether an individual is a retail customer or non-retail customer, the Commission considers that the insurer should treat the person as a retail customer. This principle will be incorporated in the Insurance Business Rules.

This proposal – linked with others set out below (such as around fees) – should ensure that all retail general insurers in Guernsey are identified as such; and that therefore the additional rules set out in the paper apply to them.

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?

Proposed Changes – Governance

Directors

The Commission considers that all board members of a retail general insurer must attend at least one board meeting in Guernsey each year. The reason for this is that a retail general insurer entails reputational risk for the Bailiwick. Being physically present in Guernsey should help ensure all directors are aware of this.

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?

The Minimum Criteria for Licensing in the IBL requires that a Guernsey licensed insurer must have at least one INED – broadly, that is a person otherwise unconnected with the insurer.

To address the challenge of a single INED being overwhelmed by shareholder representatives and executive board members, and the risk that a single INED may not wish to be seen as ‘difficult’, it is proposed that the minimum number of INEDs is increased to two for general retail insurers. Current retail general insurers would have six months to implement this rule.

Some in the industry may point out that it is difficult to find INEDs; and this will become even more difficult if each board has two INEDs. This may be true; however, in that case, this may well reflect a disinclination by the industry to look beyond the usual cohort of retired industry ex-colleagues and an unwillingness to pay a rate that is reflective of the responsibilities entailed by the job. It should also be added that whilst an insurance background is useful for this role; it is not essential. A questioning approach however is key. The Commission for several years has been pushing the industry informally to widen its INED constituency to ensure varied views are expressed around the boardroom tables. You often benefit from having individuals who are prepared to ask ‘obvious’ questions which those overly habituated to the insurance sector may well feel uncomfortable asking for fear of being perceived as ignorant. We have seen too many instances in the immediate past where boards failed to ask the obvious questions, behaving in a fashion that we might politely refer to as naive or asleep.

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

It is common for a retired senior staff member of an insurance manager to become an INED of a firm serviced by the same insurance manager firm. This means that somebody who one day is working with executive colleagues; the next day has an oversight role over those colleagues. For most human beings, this creates emotional conflicts that make it difficult for such an INED to be impartial.

Therefore, to ensure the independence of INEDs for retail general insurers, the Commission proposes that, where a firm uses an insurance manager, it cannot consider as an INED an individual who has worked for that insurance manager in the previous three years.

In addition, a retail general insurer may change insurance manager. In that case, an executive previously employed by that insurance manager may retire and become employed as a director of that retail general insurer. In that case such a director will be working with board members with whom he previously worked when he/she worked for the previous insurance manager. This makes it difficult for that person to be truly independent. Again, therefore the Commission proposes a three-year gap before that person can be considered as an INED.

For the avoidance of doubt, that individual can still be appointed to the board as an Executive Director or a Non-Executive Director, but not as an INED. Having said this, all directors should take an objective view of their responsibilities.

INEDs who do not meet this requirement but were approved by the Commission before the date the 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.

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?

The INED brings independent and impartial challenge to the remainder of the board. The longer an INED holds that position the more familiar they will become with the company and the other directors, and there is a risk that their independence and impartiality will be compromised.

There are currently no rules requiring an INED to be no longer classified as independent after a certain period, and there is no intention to introduce this more broadly. Nevertheless, because of the importance of the INED for retail general insurers it is proposed that the board must consider whether an INED remains independent after a certain length of time. Several retail general insurers have connections to the UK and so it is proposed that the timescale broadly follows the UK Corporate Governance Code 2018. Namely, that the independence of any

INED should be considered by the board once the individual has been a member for nine years, and then reconsidered annually thereafter. Such consideration must be clearly documented. There is no presumption that an INED must resign after nine years. For the avoidance of doubt, this rule would apply to all current INEDs.

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?

Internal Audit

Principle A:15 of the Finance Sector Code of Corporate Governance (“the Code”) states 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 that there will be different approaches to meeting these principles depending upon the nature, scale and complexity of the business.

The Commission proposes to apply this requirement in a specific manner for retail general insurers. Some retail general insurers do not in practice have an internal audit function appropriate to the business. Therefore, all retail general insurers should now formally maintain an internal audit function. The internal audit function however may be outsourced to an independent third party or to a group internal audit function. The general representative or insurance manager will be considered independent; but only where the function being audited is carried out by a group entity that is not part of the organisation which ordinarily undertakes the retail insurer’s management function. They will not be considered independent for a review of functions which they themselves carry out. In all cases the board must satisfy itself that the internal auditor has sufficient relevant knowledge and experience to carry out the function. An internal audit report should be submitted to the board at least once a year.

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?

External Audit

All licensed insurers are required to appoint an auditor and the insurer must notify the Commission of the appointment. Following the revisions to IBL in 2021 the Commission no longer maintains a statutory list of approved auditors for all insurance companies; given moral hazard and the difficulty for the Commission to assess continually the insurance expertise of each external auditor. Nevertheless, the Commission wishes to ensure that retail general insurers use external auditors who are sufficiently knowledgeable and experienced in retail general insurance to carry out effective audits. It has become clear to the Commission that some retail general insurers have been using external auditors who do not have relevant expertise.

To ensure that a retail general insurer appoints an external auditor for its knowledge and experience of retail general insurance rather than, for example, price; it is proposed that the board of the insurer must document in detail the reasons why it appointed a particular auditor. The documentation must include consideration of the knowledge and experience of the auditor in respect of retail general insurance. For the avoidance of doubt, there is no requirement to choose a large auditor. The requirement simply requires that the auditor has 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?

Proposed Changes – Financial

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

Capital

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 minimum requirements relevant to retail general insurers 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

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

It is therefore proposed that the minimum levels of paid-up share capital and shareholders’ funds for retail general insurers be increased to the following:

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

It is proposed that companies licensed at the date the rules become effective and whose paid-up share capital and shareholders’ funds are less than the new minimum would be given two years to comply with this requirement. Firms licensed after the inception of the rules will be required to meet them from the point of licensing.

The Commission has previously received comments from industry that an increased share capital requirement may act as a barrier for a jurisdiction which encourages new and innovative business. The Commission acknowledges this comment, but 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.

An alternative approach is to base the capital requirement on say three months expenses. One problem with this approach is that it would be out-of-line with IBL’s capital floor rules which are all otherwise based on an absolute amount. Another problem is if the resultant number is small in absolute terms, the relevant firm is left with minimal resources to deal with problems that may arise. Economies of scale are relevant.

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?

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.

There is no minimum capital floor requirement for a PCC cell. To ensure that clients who transact with cells of PCCs benefit from the same level of prudential and conduct requirements as a standard company, the Commission is proposing to apply all the rules for retail general insurance companies to retail general cells. A cell will be required to maintain the equivalent level of net funds and solvency as a retail company. The cell will need to meet all the operational and conduct requirements of a retail general insurer, for instance have its own internal auditor. The rules in respect of governance, for example the number of independent directors, will apply to the PCC as a whole.

The Commission is aware that cells writing retail general insurance may need a significant capital injection to maintain net funds of £250,000; but this must be weighed against the risk to policyholders from cells which have inadequate levels of funding. The Commission is also aware that some cells may be seen to contain 'riskless' business – that is a line of business re-insured with a highly rated insurer. And that these cells must of course meet the PCR requirement – although in practice this is usually less than £250,000. However, even in these circumstances, a minimum level of operational risk exists (not least around conduct risk); and a certain minimum level of capital is necessary to mitigate this. It is also important to avoid an unlevel playing field where retail business is perversely channelled into the least capitalised entities.

The Commission is also aware that cells may be used as incubators to test and grow new businesses, with the intention that the cell becomes a fully formed insurer in due course. In practice the Commission does not often see small cells develop into large stand-alone insurers, and the possibility of it happening must be weighed against the increased risk to policyholders over the period the cell has low levels of capital.

If cells are not treated equally with companies, there will be an incentive to put retail general business into a cell. This will achieve the opposite of the intention to increase protection for the consumer.

Currently, there are relatively few cells that write general retail insurance; however almost all would fail to meet the capital level proposed.

Existing cells writing retail general business, and the PCC itself for those aspects of the rules that affect the company as a whole, will have two years from the time the rules come into effect to meet the requirements within these rules.

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?

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 and 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 was rock solid under all circumstances. The Commission therefore proposes to increase capital required to meet the PCR for retail general insurers.

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. The Commission now proposes to apply a higher percentage across-the-board to all retail general insurers. The Commission proposes 135%. 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 retail general insurers in Guernsey have a PCR requirement below 135%, so the application of this approach is feasible.¹ 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.

Any retail general insurer below the minimum will be expected to come up to that number within two years.

¹ This change will be brought about by applying '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'.

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

Own Risk Solvency Assessment (ORSA)

Part 8 of the Solvency Rules lays out the requirements for the preparation of an Own Risk and Solvency Assessment ('ORSA') and an Own Solvency Capital Assessment ('OSCA'). An OSCA is the licensed insurer's own assessment and calculation of its solvency requirements. The ORSA comprises the OSCA; an insurer's assessment of its own risk management; and an assessment of the adequacy of capital resources to meet future capital requirements. Currently general insurers are required to do an OSCA only and not an ORSA if their Minimum Capital Requirement (MCR) falls below £1,500,000.

At present about half of current retail general insurers do not complete an ORSA; given the above de minimis exemption. The process for calculating the ORSA requires the identification and quantification of all the risks facing an insurer, together with any mitigants. This forms a critical part of the firm's risk management. The Commission has become aware of issues with some small retail general insurers having inadequate risk management; even though they may have many retail policyholders. The Commission no longer considers it appropriate that there should be exemptions for small retail general insurers which allow them to avoid assessing their risk management and future capital requirements. It is proposed that, subject to any other exceptions in the Solvency Rules, all retail general insurers should produce an ORSA.

It is worth noting that 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 requirements for all insurers that are not retail general insurers will remain the same.

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?

At present, all insurers must report certain data once a year (Insurance Business Rules Part 3), including 'a spreadsheet showing unaudited financial projections, in the standard format determined by the Commission, showing the anticipated operations of the licensed insurer for

the twelve months following the financial year end to which the annual return relates' (Insurance Business Rules 3.1 (1)(a) (i) (A)). In a letter of 3 August 2018, the Commission requested that those firms required to submit an ORSA, also submit the aforesaid data half-yearly. Given that all retail general insurers will now have to submit an ORSA, it follows that all these entities will also be included in the request to submit additional half-year data. The Commission now proposes to regularise the six-month reporting requirement for all relevant insurers by including it in the Insurance Business Rules; rather than simply making a request. This proposal will also include all retail general insurers. This proposal 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?

Reinsurance

The Commission has seen examples of reinsurance being arranged with reinsurers with weak capital positions. This is unusual as many insurers would only contemplate using a rated reinsurer. In the case of some Guernsey retail insurers, retrocession cost seems to outweigh this convention. The Commission is concerned that the failure of a reinsurer could cause an insurer to be unable to pay claims to its customers. The Solvency Rules already apply default credit factors to outstanding reinsurance balances based upon the credit rating of a reinsurer; but these factors are all less than 100%. 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 requirements²:

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

² This list consciously differs from the List of Recognised Insurers; given that the latter simply sets out which insurers are recognised for local insurance purposes.

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:

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.

Occasionally an insurer may act as “fronter” for a reinsurance company whereby most or all of a particular risk is passed onto the reinsurer. For the avoidance of doubt, the rules for retail general insurers will apply to all insurers regardless of how much of the risk is retained, and no exemptions will be given for firms because they consider themselves to be a “fronter” for a reinsurer.

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

Fees

Retail general insurers 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 increasing amounts of time to dealing with retail general insurers. The cost of this work is borne by other licence holders through their annual fees. Fees should reflect the user-pays principle, and on this basis retail general insurers fees should be increased. The aim is not to shift supervisory resources from one sector to another but to increase the resources available for retail general insurers; noting that the 2019 IAIS report on Guernsey remarked how thin were our insurance supervisory resources³. Any increase in fees for retail insurers will not therefore result in a commensurate decrease in fees for others but it will mean that they stay lower than they otherwise would be.

³ 'Detailed Assessment of Observance IAIS Insurance Core Principles (ICPs) Bailiwick of Guernsey' p42; GFSC website

Fees payable by licensees are determined annually following a fees consultation and they will not form part of these rules; but we plan that fees paid by retail general insurers be increased to reflect the additional work they create for the Commission. The Commission has yet to fully develop its funding needs for 2024 but retail insurers can expect an increase considerably larger than that applied to all other sectors.

The current annual fee for a commercial insurer is £9,960. The Commission proposes to divide this category into two – one for business insurers and one for retail insurers.

Cells are charged £3,255 annually. Given that the supervisory oversight of a retail insurer operating in a cell is no different than were it outside a cell and that this paper argues that a cell should be subject to the same requirements, this approach is anomalous. It also creates a perverse incentive to put more retail business into a cell. The Commission therefore proposes to apply the same fee to retail cells as are charged to retail insurers.

Domestic insurers, along with mutual, friendly and provident societies, are charged various fees up to £19,075. Although this paper applies to them so far as they have retail policyholders, these entities have not required untoward demands on the Commission. The annual fee for this category will merely change in accordance the Commission’s general funding needs.

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?

Proposed Changes – Systems and Controls

Legal

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. However, the Commission proposes 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.

Many Guernsey retail insurers provide insurance in jurisdictions other than the UK. The experience of the Commission is that some firms have had – at least in the past – a view that marketing into a foreign jurisdiction requires limited due diligence and all is permissible unless explicitly forbidden. This approach can lead to significant regulatory issues down the line for the firm and distress for policyholders. For these insurers, the Commission proposes to require that the board should agree an approach for each separate jurisdiction, based on whatever data is available. This can go as far as a legal opinion but may instead comprise other data, such as that made available to the insurer through local intermediaries. Whatever the case, the board must sign-off on documentation explaining why it is comfortable insuring policyholders in that jurisdiction; in line with its own risk appetite. For the avoidance of doubt, the Commission is not proposing that a retail general insurer must secure regulatory consent before marketing into a jurisdiction, but they should be sure that they are operating appropriately under such jurisdictional exemptions as may exist for those providing overseas insurance capacity.

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?

Cash Management

Some retail general insurers have arrangements whereby funds are not under the direct control of the insurer. Examples might be where the funds are provided as a claims fund which is available to a separate claims management company, or the broker pays across premiums infrequently. The Commission has seen examples of boards having very little or no knowledge of how the funds are being managed. In some cases, the company has handed control over its bank accounts to third parties, and the Commission has also seen examples of Guernsey boards not even being aware of what bank accounts have been created in the company's name.

The Commission proposes to make rules that any funds held by third parties must be governed by a written agreement which clearly identifies 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 review at least annually 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.

For all third party payments the rules will require that no payment may be made without at least one of the signatories or electronic approvers being a Guernsey resident director or manager of the company, or a Guernsey resident employee of the general representative.

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?

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?

Disclosure of Information to the Public

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 framework⁴. The Insurance Business Rules currently lay out the requirements for the public disclosure of information by insurance companies. The Rules require certain insurers to publish data about themselves – for example a profile of themselves, corporate governance, technical reserves and so on (as specified in Schedule 1 of IBR).

Nevertheless, there are several exemptions in the public disclosure rules. For example, one exemption is a quantitative de minimis qualification, namely for insurers with:

- annual gross written premium income not exceeding £500,000 or gross assets not exceeding £2,500,000, 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 (IBR 4.1).

A related exemption is for insurers with a ‘small number of commercial ‘policyholders’’. Another exemption is where a Guernsey insurer has ‘75% or more of its insurance risk with a

⁴ 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.

group insurer and where that insurance group makes public disclosures equivalent to those required in these Rules'. Insurers may also choose not to publish data where they consider that to do so would give away commercial data of use to a competitor; albeit subject to submitting an explanation for this to the Commission.

Less than half of retail general insurers qualify for the quantitative de minimis exemption specified above. However, for whatever other reason, very few retail general insurers currently meet the public disclosure requirements.

As background, the current public disclosure rules were issued shortly before the IAIS assessment of the Bailiwick in 2019. That assessment registered only a 'Partially Compliant' score for the relevant Insurance Core Principle⁵.

The Commission considers that the status quo is unacceptable for a jurisdiction that includes retail general insurer policyholders; not least given industry's desire to expand this sector. It therefore proposes to abolish all current exemptions for retail general insurers. All retail general insurance policyholders – and their brokers – have a right to know where the insurer is based, and its financial status. PCCs and their retail cells will also be required to disclose.

In general, the Commission is disinclined to agree exemptions; which will have to be agreed explicitly for each insurer. However, these will be considered for instance where there are competitive grounds for not disclosing certain data to where to do so is not in the interest of policyholders.

It is notable that those few firms that do comply with the current requirements do so with limited inconvenience by simply highlighting the relevant key data and attaching their statutory accounts with contact details. The requirements do not therefore seem onerous.

In line with the above, the Commission however is also proposing that all retail general insurers must 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 address or telephone number for the insurer (not a service company or any related company such as a broker);
3. postal address and either e-mail address or telephone number for complaints against the insurer;
4. the existence of the Channel Islands Financial Ombudsman, and provide 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).

⁵ 'Detailed Assessment of Observance IAIS Insurance Core Principles (ICPs) Bailiwick of Guernsey' p28; GFSC website.

All required data should be on a website. This website can be part of a group website but there must be pages specific to Guernsey and the Guernsey insurer.

For the avoidance of doubt, all the above applies to retail general insurer cells.

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?

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

Conduct risk – Complaints

The Insurer Business Rules 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 of where complaints are dealt with by outsourced companies and either insufficient information is considered by the board, or complaints are not considered at all.

The Insurance Business Rules already contain 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. It is proposed that an additional requirement be introduced such that the board of every retail insurer consider, and document, the consideration of, complaints (either individually or in aggregate), including outcomes, at least half yearly. The rules will not 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?

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 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. The Commission therefore proposes to require retail general insurers to report the conduct data specified below once a year:

- 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) total number of complaints that took more than 90 days to resolve to the satisfaction of the complainant;
- c) number of all complaints referred to CIFO or another ombudsman;
- d) details of all 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.

In conducting its business, the Commission would expect a Guernsey retail general insurer to have the above data for its own business reasons.

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

Proposed Changes – Others

Insurance Manager Resources, Skills and Knowledge

Guernsey has a well-established captive insurance sector with individual captives often outsourcing various functions to insurance managers. This model generally works well for captive insurers; but the Commission has seen examples of insurance managers taking on retail general insurer clients without having adequate resources, knowledge or skills to manage the different business model and risks presented by retail general insurance. To ensure that insurance managers can manage retail general insurers adequately the Commission is proposing to add rules to the Conduct of Business section of the Insurance Manager Rules in respect of retail general insurers' clients only.

The Commission has also seen examples of insurers where the insurance manager has failed to identify that policyholders meet the definition of retail customers, and the firm has been treated as commercial or even as a captive. We propose that every time an insurance manager

takes on a new client it must assess whether the insurer's customers are retail, bearing in mind the definition in the Insurance Business Rules, and that, where the manager has concluded that they are not retail, the board must document the reason for its conclusion. At the inception of the new rules all insurance managers must carry out this exercise for all insurer clients within six months, and where they identify that a firm should be classed as a retail insurer, make appropriate changes to their policies and procedure within the next six months.

When an insurance manager identifies that an insurer has retail clients but the insurer itself does not consider its clients are retail, and so does not follow the requirements for a retail general insurer, then the insurance manager must notify the Commission and consider what steps it should take to protect the interests of policyholders.

The requirements for a retail general insurer are different to those of a captive insurer or even a commercial insurer. To ensure that the manager can manage the insurer effectively its board must carry out and document a gap analysis between the insurance manager's resources, skills and knowledge and the requirements of the retail general insurer. Where there is a gap, the board of the manager must determine and document how it will be filled and what mitigation will be put in place until that time. Where there is a gap between the manager's resources, skills and knowledge and the insurer's requirements that cannot be filled or mitigated before the manager provides services, then the manager should decline the appointment.

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.

Appropriate mitigants or ways to bridge an identified gap might include the appointment of third-party actuaries with relevant experience to assess reserving methodologies, or the employment by the manager of individuals with relevant experience, skills and qualifications. Mitigants that would not be acceptable would include unquestioning acceptance of assurances by the insurer that its business model is simple and manageable within current resources, or the hope that the manager's staff would "learn on the job".

The Commission, at its discretion, may ask to review the above analysis. And, if the Commission is unconvinced, the Commission may stop the manager to undertake retail business. This may be done through a condition.

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

Insurance Manager Capital Assessment

Section 29(3) of IBL states that a general representative of a licensed insurer shall not resign his position, and the insurer shall not remove him, unless a replacement general representative has given the Commission written notice that he has consented to accept the position, or the Commission has agreed in writing to the resignation or removal of the general representative.

The general representative may seek to resign if it becomes concerned about the governance of an insurer, or the insurer becomes financially distressed. If the insurer cannot find an alternative general representative that is acceptable to the Commission, the Commission may decline to agree to the resignation of the general representative. This is particularly the case where the Commission considers that the general representative has failed to meet his obligations under Part 5 of the Insurance Business Rules, and this failure has contributed to the extent or severity of the insurer's problems.

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 insurance managers 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 retail general insurers. 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.

The Commission proposes to increase the minimum capital requirement for insurance managers that manage general retail insurers to £100,000. Most, but not all, insurance managers already meet this proposed requirement.

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?

Conclusion

To support a growing retail general insurance sector, it is necessary to develop a different regulatory regime from that required for wholesale general insurance. This is because retail policyholders need more regulatory protection than wholesale policyholders and because, unfortunately, our recent experience is that several Guernsey based retail general insurers have been materially mismanaged to such a degree as to present a material risk of policyholder losses. This paper presents an evolutionary approach which elaborates several aspects of the current regulatory system around, for example governance, financial requirements, and controls to create a workable solution. It is the Commission's hope that these changes will be generally welcomed by the local insurance industry, many of whose participants have already put in place several of the proposed regulatory changes.

Annex – Policyholder Protection Scheme

This part of the paper should be viewed as having the status of a discussion paper rather than a formal consultation paper proposing a definitive solution to a problem. The Commission is in listening mode but recent interactions with industry have given it cause to believe that there might be more support for a low-cost scheme than it had originally thought would be the case.

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 insurers⁶. 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.

There are several ways in which a policyholder protection scheme could be structured:

- Limited to retail general insurers or to include long term and/or commercial insurers;
- Funded pre- or post-event;
- Funded solely by retail general insurers or by the industry more widely;
- A limit on the amount that could be paid by amount and/or proportion of claim;
- A simple framework or administered by a separate legal corporate entity.

One relatively low-cost model might be set up so that, if a retail general insurer goes into liquidation, the liquidator will notify the Commission of any shortfall of funds available to settle all the insurer's outstanding claims. The Commission will then make a call on all insurance entities licensed at the time the firm became insolvent up to the amount of the last annual fee paid by the entity to the Commission. Those funds will then be used to settle claims by the liquidator. The maximum amount any entity will have to pay is the equivalent to two years' fees to the Commission, and there will be no more than one call in any five-year period.

The maximum amount raised would be around £2.5m, based on the current income from general insurance fees. Whilst this may not appear large, many retail general insurers are small, and it is also unlikely that they will lose all their assets. Such a scheme might make a significant contribution towards ensuring that retail general insurer policyholders receive a reasonable level of compensation in the event of an insurer failure; and that all claims will be paid.

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.

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?

GUERNSEY STATUTORY INSTRUMENT NO.

**THE INSURANCE BUSINESS (AMENDMENT) RULES,
2023**

Made: ***

Coming into Operation: ***

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by sections 6, 29, 33, 37, 38A, 38B, and 85 of *The Insurance Business (Bailiwick of Guernsey), 2002*¹ (the “Law”) hereby makes the following Rules.

¹ Order in Council No. XXI of 2002.

Citation and Commencement

1. These Rules may be cited as The Insurance Business (Amendment) Rules, 2023 and amend the Insurance Business Rules, 2021² (“the Rules”).
2. These Rules shall come into force on **** 2023.

Amendments

3. The Rules are amended in accordance with Annex A.

Dated this ** day of ****, 2023

.....

J. WINSER

Chairman of the Guernsey Financial Services Commission
For and on behalf of the Commission

² No.137 of 2021.

Annex A

Amendments to The Insurance Business Rules, 2021

1. In this section underlining indicates new text, to be added to the Rules, and striking through indicates text to be deleted:

...

PART 3 ANNUAL RETURNS AND AUDITS

3.1 Annual returns

(1) A licensed insurer's annual returns must include –

(a) an up-to-date business plan, including -

...

(g) further financial information including –

(i) for a PCC; management accounts that include a breakdown by cell;

(ii) a summary of claims paid and outstanding, as at the end of the period covered by the annual insurance return, in the form agreed, with the Commission, as appropriate to the underwriting activity; and

(iii) a schedule of bank deposits and investments broken down by asset class.

(2) Retail general insurers must also include in their annual return all information set out in the requirements at Schedule 3.

3.2 Consolidated accounts

...

3.3 Annual returns in a non-standard format

- (1) The Commission may, on application, consider the acceptance of the annual returns in a format other than the standard format. Non-standard format annual returns will only be accepted following written confirmation from the Commission.

3.4 Audit

- (1) A licensee offering retail insurance services must maintain an internal audit function.

- (2) An internal audit function, in compliance with (1) –

- (a) must be undertaken at least once a year;

- (b) must be undertaken by an auditor whom the board is satisfied has the relevant knowledge and experience;

- (c) may be outsourced to a group internal audit function;

- (d) may be outsourced to an independent third party; and

all decisions of the board must be clearly documented.

- (3) All insurers must appoint an external auditor in accordance with the Law and, on appointment, the board must detail the reasons for the appointment of the chosen auditor, to include their consideration of the knowledge and experience of that auditor in respect of general retail insurance.

...

PART 4 PUBLIC DISCLOSURE OF INFORMATION

...

4.1 Application of Part 4

(1) This Part does not apply to –

- (a) Category 5 licensed insurers as categorised under the Insurance Business (Solvency) Rules 2021 (“Solvency Rules”);
- (b) Category 6 licensed insurers as categorised under the Solvency Rules;
- (c) PCCs, unless that PCC provides general retail insurance; or
- (d) licensed insurers not incorporated in the Bailiwick.

(2) In this Part, “relevant insurer” means a licensed insurer other than -

- (a) a Category 1 licensed insurer, Category 2 licensed insurer, Category 3 licensed insurer, or Category 4 licensed insurer, as categorised under the Solvency Rules, which does not offer retail general insurance, and which has ~~with~~ either –
 - (i) annual gross written premium income not exceeding £500,000; or
 - (ii) gross assets not exceeding £2,500,000,

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;

- (b) a licensed insurer, which does not offer retail general insurance, that has reinsured 75% or more of its insurance risk with a group insurer and where that insurance group makes public disclosures equivalent to those required in these Rules;
- (c) a Category 2 licensed insurer, or a Category 4 licensed insurer, as categorised in the Solvency Rules and writing insurance for related group insurers only;
- (d) a Category 2 licensed insurer, or a Category 4 licensed insurer, as categorised under the Solvency Rules and writing a single class of reinsurance for one fronting insurer in relation to a specific product or arrangement; or
- (e) a licensed insurer, which does not offer retail general insurance, with a small number of commercial policyholders only.

4.2 Public disclosure of information

- (1) ~~A relevant insurer with a website must publish its annual audited financial statements, together with the information set out in Schedule 1, on that website. This information must be available for a minimum period of three years from the filing date. All relevant insurers, which are retail general insurers, must maintain a website which displays its annual audited financial statements, the information set out at Schedule 1, and any further information which would be of use to the customer including that set out at rule 4.2A. The information must be available for a minimum period of three years from the filing date.~~
- (1A) All other relevant insurers with a website must publish their annual audited financial statements, together with the information set out at Schedule 1, on that website. The information must be available for a minimum period of three years from the filing date.

(2) A relevant insurer, which is not a retail general insurer, may withhold, redact, or summarise, all or any part of the information required by this rule where –

(a) the disclosure of such information would enable their competitors to gain undue advantage or otherwise cause detriment;

(b) there are obligations to policy holders, or other counterparty relationships, binding the relevant insurer to secrecy or confidentiality;

(c) the disclosure of such information would prejudice their position by making confidential information public; or

(d) where the disclosure of such information is prohibited by any jurisdiction’s legislation; or it breaches a direction issued by the Commission or any other relevant overseas authority; and

where that insurer is a general retail insurer, such action may only be taken with the prior written consent of the Commission.

(2) Where a relevant insurer withholds, redacts, or summarises any information, in accordance with this rule, they must provide the Commission with written notification, explicitly approved by their board of directors, of the information to be withheld, redacted, or summarised and the reason why this is necessary.

...

(5) A relevant insurer must publish the relevant information within fourteen days of the date of filing the relevant information with the Commission.

4.2A Further disclosure requirements for retail general insurers

- (1) All retail general insurers must ensure that the following information is prominently displayed on their website, on all marketing materials, and all communications with both customers and potential customers –
 - (a) the postal address of the insurer's registered office or, where the insurer is a branch, the postal address of the branch;
 - (b) the email address or telephone number for direct communication with the insurer;
 - (c) the postal address and either email address or telephone number for lodging complaints against the insurer;
 - (d) details for contacting the Channel Islands Financial Ombudsman;
 - (e) whether the insurer and the producer share a common controller.

4.3 Disclosure of information to persons with a valid interest

...

7.1 Application of Part 7

- (1) Part 7 applies to all Category 1 and Category 3 licensed insurers with respect to business with retail customers.

7.1A Governance

- (1) This rule only applies to licensees offering retail general insurance.

- (2) A licensee offering retail insurance services must ensure that all directors must physically attend at least one board meeting, in the Bailiwick, per annum.

- (2) Each board must include, at a minimum, two Independent Non-Executive Directors (“INEDs”).

- (3) Non-executive directors will not be considered to be independent directors of that entity, by the Commission, where –
 - (a) they have been employed by the insurance manager of that entity at any time within the three years prior to the appointment; or

 - (b) they have been employed by any previous insurance managers of that entity –
 - (i) who have acted as insurance manager of that entity within the previous three years; and

 - (ii) no less than three years have elapsed, prior to the appointment, since that insurance manager ceased to be the insurance manager for that entity; and

 - (c) this sub-rule does not apply to INEDs appointed prior to this rule coming into force¹.

¹ This Rule came into force on ****

(4) The independent status of an INED -

- (a) must be reviewed, by the board, on the occasion that the INED has been a member of that board for a period of nine years;
- (b) must be reviewed, by the board, on an annual basis thereafter;
and
- (c) such reviews must be clearly documented by the board; and

7.2 Due skill, care, and diligence when dealing with customers

- (1) A licensed insurer must act with due skill, care, and diligence when dealing with customers.

...

7.6 Development and distribution of insurance products

- (1) A licensed insurer must take into account the interests of different types of consumers when developing and distributing insurance products.
- (1A) Guernsey retail general insurers who sell into the UK market must obtain a legal opinion on the legality of that offering, to that market, prior to making the offering.
- (1B) Where Guernsey retail general insurers provide insurance in jurisdictions other than the UK, the Board must agree an approach for each separate jurisdiction.
- (2) A licensed insurer must ensure that products and distribution strategies are developed in accordance with the following principles –

...

7.12 Timely and fair manner complaints handling

(1) A licensed insurer must handle complaints in a timely and fair manner.

...

(13) Licensed insurers must analyse the 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.

(14) The board of a retail general insurer must –

(a) consider all complaints, either individually or in aggregate, and the outcome of such complaints; and

(b) document all such considerations,

on a regular basis and not less than half-yearly.

(15) Where the board of a retail general insurer appoints a sub-committee to deal with the detail of complaints, in accordance with (14), that sub-committee must report to the board on a regular basis and no less than half-yearly.

7.13 Cash management

(1) Rule 7.13 applies to all retail general insurers.

(2) Any funds held by third parties must be governed by a written agreement which –

- (a) clearly identifies whether the funds are being held by a third party as claims fund, float, or other agreement; and
 - (b) sets out the basis on which funds will be paid or returned to the insurer.

- (3) The board must, at least annually -
 - (a) review the purpose of the fund;
 - (b) verify the amounts held; and
 - (c) review and verify the mitigants, including consideration of the solvency position of the transferee.

- (4) Where an amount transferred is in excess to requirements for the purpose, or the mitigants are considered insufficient, the insurer must take appropriate action.

- (5) Payments to facilitate transfers to third parties require the approval of at least one signatory, or electronic approver who is either –
 - (a) a Guernsey resident director or manager of the licensee; or
 - (b) a Guernsey resident employee of the general representative.

PART 8 GENERAL PROVISION

8.1 Interpretation

(1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.

(2) In these Rules the following definitions should be followed –

“acceptable rating agency” means a rating agency prescribed in Schedule 5 of the Insurance Business (Solvency) Rules 2021;

...

“retail customer” means a customer who is –

(a) an individual who, in relation to a licensed insurer, is acting for purposes other than that individual’s trade, business, or profession

(b) a microenterprise; or

(c) a charity other than a Non-Governmental Organisation (NGO); and in cases where it is not clear whether an individual qualifies as a retail customer, in accordance with this definition, they must be treated as a retail customer;

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

...

SCHEDULE 1

INFORMATION TO BE DISCLOSED

This Schedule applies, in full, to PCCs providing retail general insurance. In addition, paragraphs 4 to 8 apply to each cell, within the PCC, offering retail general insurance.

1. PROFILE OF THE INSURER

...

SCHEDULE 2

THE PRINCIPLES OF CONDUCT OF FINANCE BUSINESS

...

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

SCHEDULE 3

ANNUAL RETURNS FOR GENERAL RETAIL INSURERS

The information that general retail insurers must provide may include, but will not be limited to –

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. confirmation that regulatory approval has been given to carry on business in all jurisdictions, or appropriate legal advice has been received which confirms that the insurer can write business in each jurisdiction for that class of insurance.

5. Intermediaries

- a. list of intermediaries with total amount of gross of 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 year end, including –
 - i. credit rating;
 - ii. amounts that are outstanding at year end;
 - iii. amount 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. total number of complaints that took more than 90 days to resolve to the satisfaction of the complainant;
- c. number of all complaints referred to the Channel Islands Financial Ombudsman or any other ombudsman;
- d. details of all 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.

GUERNSEY STATUTORY INSTRUMENT NO.

**THE INSURANCE BUSINESS (SOLVENCY)
(AMENDMENT) RULES, 2023**

Made: ***

Coming into Operation: ***

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by sections 38A of *The Insurance Business (Bailiwick of Guernsey) Law, 2002*¹ (the “Law”) makes the following Rules.

¹ Order in Council No. XXI of 2002.

Citation and Commencement

- 4. These Rules may be cited as The Insurance Business (Solvency) (Amendment) Rules, 2023 and amend The Insurance Business (Solvency) Rules, 2021² (“the Rules”).
- 5. These Rules shall come into force on **** 2023.

Amendments

- 6. The Rules are amended in accordance with Annex A.

Dated this *** day of **, 2023

.....

J. WINSER

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

² No.136 of 2021.

Annex A

Amendments to The Insurance Business (Solvency) Rules, 2021

2. In this section underlining indicates new text, to be added to the Rules, and striking through indicates text to be deleted:

...

2.1 General Rules

- (1) A licensed insurer must, at all times, hold regulatory capital resources greater than or equal to its Minimum Capital Requirement ("MCR").

...

- (4) The Capital Floor of a licensed insurer is –
- (a) £100,000 for a licensed insurer carrying on general business other than retail general business;
 - (aa) £250,000 for a licensed insurer carrying on retail general business;
 - (b) £250,000 for a licensed insurer carrying on long term business;
 - (c) £250,000 for a licensed insurer carrying on both long term business and general business; or
 - (d) an amount specified in writing by the Commission.

(5) For PCCs, which do not provide retail general insurance, the Capital Floor only applies to the overall PCC. There is no Capital Floor for each cell or the core.

(5A) For PCCs providing retail general insurance, the Capital Floor applies to each cell providing retail general insurance.

(6) The MCR of a licensed insurer must be no less than the Capital Floor.

...

2.3 Regulatory Capital Resources of a PCC

(1) The total regulatory capital resources of a PCC is the sum of notional regulatory capital resources of each cell and the core, pursuant to these Rules.

(2) For a cell, the notional regulatory capital resources to meet the notional PCR must be calculated as if it were a stand-alone insurer, subject to a maximum of the PCR for that cell, and in accordance with these Rules.

(2A) For a cell which carries on retail general insurance business, the notional regulatory capital resources must be, at least, £250,000 or currency equivalent.

(3) For a cell, the notional regulatory capital resources to meet the notional PCR must be calculated as if it were a stand-alone insurer, subject to a maximum of the PCR for that cell, and in accordance with these Rules.

...

4.2 General Business – PCR standard formula

...

4.2.9 Counterparty default risk capital – other

- (1) The capital requirement for other default risk must be determined for each counterparty and each exposure type as the value of the gross exposure, less any amount offset in case of default, multiplied by (1-Recovery Rate) and the Other Default Risk Capital Factor. The Recovery Rate and the Other Default Risk Capital Factors are as determined in accordance with Schedule 7.

4.2.9A Counterparty default risk capital – reinsurance

- (1) Retail general insurers must only place reinsurance with reinsurers that meet at least one of the following requirements –
 - (a) they are licensed by the Commission;
 - (b) they are licensed by a member state of the G-10;
 - (c) they are licensed in Bermuda;
 - (d) they are licensed in the Republic of Ireland;
 - (e) they maintain an acceptable credit rating, where such rating is the same of higher than –
 - (i) an AM Best rating of bbb-;
 - (ii) a Fitch rating of BBB-;
 - (iii) a Moody's rating of Baa3; or
 - (iv) a Standard & Poor's rating of BBB-;
 - (f) if not rated, they are a 100% wholly owned subsidiary of a reinsurer, or insurer, which is rated, in which case the reinsurer can be treated as having the same rating as its ultimate parent;
or
 - (g) the potential exposure is protected by collateral representing the full exposure under the contract and the collateral is held –
 - (i) in cash, by a bank with a credit rating equal or above the ratings listed at (e); or

(ii) in investment-rated bonds, by an investment rated custodian, and

the insurer must have legal advice confirming that the collateral agreement will be effective in the event of default by the reinsurer; and

these requirements also apply to reinsurers within the same group as the insurer seeking reinsurance.

....

8.2 Own Risk Assessment

...

- (3) A licensed insurer, who is not a retail general insurer, meeting at least one of the following criteria is not required to perform an ORSA –
- (a) a licensed insurer classified as a Category 6 licensee;
 - (b) a licensed insurer which is dormant with no outstanding insurance liabilities;
 - (c) a licensed insurer that would otherwise be required to perform an OSCA only and whose board of directors considers the PCR to be sufficient. In such cases this should be clearly stated, either in the documentation submitted with the annual return, or in separate correspondence. Any such statement should be accompanied by the supporting rationale for this decision; and
 - (d) a licensed insurer notified, in writing, by the Commission.
- (4) Unless otherwise notified in writing by the Commission, a licensed insurer meeting at least one of the following conditions may limit their assessment to an OCSA only –

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

unless the licensed insurer provides retail general insurer.

- (5) An ORSA must be performed at least once a year.

(5A) All insurers submitting an ORSA must also submit to the Commission at six monthly intervals, a spreadsheet showing unaudited financial projections, in the standard format, determined by the Commission, showing the anticipated operations of the licensed insurer for following twelve months.

...

Schedule 11

Green Criteria

...

Criteria	Date Added
The Common Principles for Climate Mitigation Finance Tracking	{Day}{Month}20xx *****

Schedule 12

Transitional Arrangements

1. Licensees will have three years, from the date on which The Insurance Business (Solvency)(Amendment) Rules, 2023 come into force, to implement the additional MCR set out at rule 2.1.

GUERNSEY STATUTORY INSTRUMENT NO.

**THE INSURANCE MANAGERS (AMENDMENT) RULES,
2023**

Made: ***

Coming into Operation: ***

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by sections 3, 18, 20, 61 and 62 of *The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey), 2002*¹ (the “Law”) makes the following Rules.

¹ Order in Council No. XXII of 2002.

Citation and Commencement

- 7. These Rules may be cited as The Insurance Managers (Amendment) Rules, 2023 and amend the Insurance Managers Rules, 2021² (“the Rules”).
- 8. These Rules shall come into force on **** 2023.

Amendments

- 9. The Rules are amended in accordance with Annex A.

Dated this * day of **, 2023

.....

J. P. WINSER

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

² No.139 of 2021.

Annex A

Amendments to The Insurance Managers Rules, 2021

In this section underlining indicates new text, to be added to the Rules, and striking through indicates text to be deleted:

...

5.1 Minimum Capital Requirement of Licensees

- (1) The Minimum Capital Requirement of a licensed insurance manager which does not manage general retail insurers is £25,000, or 125% of the licensee's professional indemnity insurance deductible or excess, if higher.
- (2) The Minimum Capital Requirement of a licensed insurance manager which manages general retail insurers is £100,000, or 125% of the licensee's professional indemnity insurance deductible or excess, if higher.

5.2 Method of calculation

...

7.1 Application of Part 7

- (1) Rules, in this Part, which apply to **all insurance managers** are clearly marked.
- (2) The remaining rules in this Part apply to any insurance manager who advises or arranges insurance products in relation to the general public and is required to appoint an authorised insurance representative ("AIR") and, for the purposes of this Part, the term AIR includes any individual authorised by a licensee as a financial adviser.

7.1A Client assessments

(1) When any licensed insurance manager takes on a new client they must

=

- (a) assess whether the client services retail customers;
- (b) record the reasons where the result of the assessment is found to be that the client is not considered to service retail customers; and
- (c) carry out a gap analysis in accordance with Schedule 2.

(2) All licensed insurance managers must –

- (a) ensure that the assessment set out at (1) is carried out for all its existing clients; and
- (b) where clients are identified as being general retail insurers, update their policies and procedures accordingly

within six months of this rule coming into force.

(3) Where a licensed insurance manager identifies that a client is offering general retail insurance, but this is not recognised by that insurer, the licensed insurance manager must –

- (a) take appropriate steps to protect the interests of policyholders; and
- (b) notify the Commission.

7.2 Authorised insurance representatives

...

8.1 Interpretation

(1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.

(2) In these Rules the following definitions should be followed –

“accounting reference date” means the date to which the licensee’s accounts are prepared;

...

“long term insurance products” means any policy or product falling under Schedule 1 of the Law excluding permanent health, credit life assurance, and any contracts on human life that are renewable annually;

“retail customer” means a customer who is –

(a) an individual who, in relation to a licensed insurer, is acting for purposes other than that individual’s trade, business, or profession;

(b) a microenterprise;

(c) a charity other than a Non-Governmental Organisation (NGO); and

in cases where it is not clear whether an individual qualifies as a retail customer, in accordance with this definition, they must be treated as a retail customer.

PART 9 SAVINGS, REVOCATIONS, CITATION, AND COMMENCEMENT

...

SCHEDULE 1

THE PRINCIPLES OF CONDUCT OF FINANCE BUSINESS

...

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

SCHEDULE 2

GAP ANALYSIS

Areas that the manager should consider as part of its gap analysis should include, but are not limited to:

1. Resources required to manage the insurer effectively;
2. Knowledge and experience, including 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.