



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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DISCUSSION PAPER

DP18-03/T18

**PUBLIC DISCLOSURE FOR AUTHORISED
INSURERS**

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This discussion paper is issued by the Isle of Man Financial Services Authority (“the Authority”), the regulatory authority responsible for the supervision of the financial services, insurance and pensions sectors in the Isle of Man.

What is this paper for?

In June 2013 the Insurance and Pensions Authority¹ published its Roadmap² for updating the Isle of Man’s regulatory framework for insurance business (“the Roadmap”). That document set out the objective to establish a project to enhance the Island’s regulatory framework to ensure that it remains up to date, proportionate and, where appropriate, consistent with the ongoing development of the Insurance Core Principles (“ICPs”) issued by the International Association of Insurance Supervisors (“IAIS”). Since its issue the Roadmap has been updated at least annually, and more recently six monthly, to reflect progress made across the various work streams established under the project.

The developments explained within the Roadmap include consideration of a framework in respect of public disclosure requirements for insurers. This would require insurers based in the Isle of Man to disclose information to relevant market participants (for example, the insurer’s policyholders, lenders and creditors) to enable those participants to take informed decisions concerning those insurers.

The purpose of this paper is to obtain initial feedback on the topic of public disclosure requirements for insurers based in the Isle of Man.

Information obtained by way of this paper will be considered by the Authority in drafting its proposed regulatory requirements for public disclosure for insurers, which will be the subject of a future public consultation.

Who is affected by this paper?

This paper will be of interest to the boards and senior management of existing and prospective insurance companies in the Isle of Man, as well as policyholders and other insurance market participants such as lenders and creditors of those insurers.

¹ With effect from 1st November 2015 the functions of the Insurance and Pensions Authority were transferred into the Isle of Man Financial Services Authority <https://www.iomfsa.im/about/about-us/>

² The Roadmap may be downloaded from the Authority’s website at: <https://www.iomfsa.im/media/2479/roadmap-july-2018.pdf>

Other parties with an interest in the Isle of Man insurance sector such as general insurance intermediaries and the legal, auditing and actuarial professions may also find this discussion paper and the issues raised of interest.

How may I respond to this paper?

The closing date for comments is **28 February 2019**. Please send comments by email to Alan.rowe@iomfsa.im or alternatively by post to:

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Questions are included throughout this discussion paper and, for ease of reference, repeated in a full list in **Appendix 1**. However, readers should not consider themselves limited to responding only to the questions included and may respond on any point they consider relevant to the matters referred to in this paper.

Readers are strongly encouraged to provide the rationale supporting any views they wish to express in response to this paper.

Confidentiality and Data Protection

The information you send may be published in full or in a summary of responses. All information in responses, including personal data, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The Authority is registered with the Information Commissioner as a data controller under Isle of Man data protection legislation. It collects and processes personal data to carry out its functions under relevant legislation and may share personal data with other parties where there is a legal basis for doing so. Further information on how the Authority collects and processes personal data can be found in the Privacy Policy on the Authority's website: <https://www.iomfsa.im/terms-conditions/privacy-policy/>

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Glossary of Terms

Term	Meaning in this paper
Act	Insurance Act 2008
Authority	The Isle of Man Financial Services Authority
ERM	Enterprise Risk Management
EU	The European Union
GAAP	Generally Accepted Accounting Principles
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles (of the IAIS)
IFRS	International Financial Reporting Standards
Insurer	Insurer authorised under section 8 of the Act
Island	The Isle of Man
ISPV	Insurance Special Purpose Vehicles (a class of insurer in the Isle of Man)
Roadmap	Roadmap for updating the Isle of Man's regulatory framework for insurance business
Solvency II	A Directive in EU law that codifies and harmonises insurance regulation within the EU

1. Introduction and background

- (1) International bodies such as the G20, the Financial Stability Board and the IAIS are concerned with financial stability. Indeed, the stated mission of the IAIS is:

“to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain a fair, safe and stable insurance market for the benefit and protection of policyholders and to contribute to global financial stability”.

- (2) That insurance entities are required to provide information for public disclosure about their financial position, risk profile and risk management is considered internationally to be an important feature of a supervisory regime that oversees a disciplined and transparent market. The Authority supports the introduction of an appropriate and proportionate regulatory framework in the Isle of Man for the disclosure of information about Isle of Man insurers to support their stakeholders in making relevant decisions about those insurers.
- (3) In considering a potential framework for public disclosure the Authority has regard to the IAIS ICPs as a globally accepted standard. As acknowledged in the Authority’s Roadmap, the Authority’s stated policy is to achieve a high level of observance with the ICPs in a manner that is appropriate and proportionate to the businesses on the Island.
- (4) As well as there being a specific ICP for the public disclosure³ of relevant information by insurers, aspects of public disclosure also run through many other ICPs and so the absence of a suitably developed public disclosure framework may impact the Island’s observance of the ICPs in a number of areas.
- (5) In terms of local implementation, the ICPs allow for their proportionate application by each jurisdiction pursuant to its regulatory objectives. This supports the Authority’s approach in updating the Island’s insurance regulatory framework in line with the ICPs in a way that is appropriate and proportionate for the different parts of the Island’s insurance sector. (Note: **Appendix 2** contains further details on IAIS membership and proportionality within the ICPs.)

³ ICP 20 Public Disclosure (for full details see <https://www.iaisweb.org/page/supervisory-material/icp-on-line-tool>. It should also be noted that the IAIS recently consulted on amendments to ICP 20. Further details of that consultation can be found at <https://www.iaisweb.org/page/consultations/closed-consultations/2018/icps-6-and-20>

By way of example, proportionality in the Island might take account of the following:

- There are some insurance entities based in the Island who are part of wider insurance groups. Those Groups may already be participating in supervisory regimes which require some element of public disclosure and so, where relevant, such disclosure might be taken account of in any public disclosure requirements in the Island.
 - If insurers were required to publicly disclose their audited GAAP/IFRS financial statements (which they are already required to prepare and submit to the Authority), relevant disclosures within those documents might be taken account of in any public disclosure requirements in the Island.
 - Captive insurers might warrant exemption from public disclosure requirements where there is no (or suitably limited) involvement of third party policyholders.
 - ISPVs might warrant exemption from additional public disclosure requirements because of the required involvement of only sophisticated policyholders and investors, and because the current ISPV framework already promotes transparency and access to information for those parties to manage their risks.
 - It is a stated intention of the Island to have a regulatory framework capable of a positive Solvency II third country equivalence assessment in respect of long-term insurance. A public disclosure framework whereby the Island's long-term insurers routinely disclose material relevant to their risk profile and financial position is necessary for this purpose. A Solvency II equivalence standard for the Island is expected to require extensive implementation measures and therefore may result in a more demanding public disclosure regulatory framework than that required for the Island's non long-term insurance sector.
- (6) The powers by which the Authority might introduce a framework for public disclosure applicable to insurers includes notably the regulation making power under paragraph 14A of Schedule 7 to the Act which provides that regulations may be made by the Authority in respect of "The publication of such information as may be prescribed". Also, paragraph (g) of section 51(1) of the Act allows the Authority to issue binding guidance in respect of "any matter in respect of which regulations may be made under this Act".

It should be noted that this paper is not exhaustive and readers are encouraged to consider the detailed requirements of ICP 20, Solvency II and the regulatory frameworks of competitor jurisdictions. To aid with this some links to key documents have been provided throughout.

2. Executive Summary

Introduction

- (7) The Isle of Man does not at present have a framework for public disclosure in respect of insurers. Therefore, an important element of the Authority's ICP project is the introduction of public disclosure requirements where appropriate and proportionate for the Island's insurers.
- (8) This paper considers the question of appropriateness and proportionality of potential public disclosure requirements for the different types of insurers in the Island. It considers the approaches adopted in other jurisdictions, what ICP observance might naturally incorporate and asks what information might be disclosed to policyholders and other market participants to meaningfully inform their decision making relating to Isle of Man insurers.

The requirements of ICP 20

- (9) Subject to potential exemptions in respect of proprietary and confidential information, ICP 20 includes the following topics of information as justifying disclosure at least annually, with that disclosure being appropriately detailed:
- Profile (captured predominantly in ICP 20.5 & 20.8).
 - Governance and controls (ICP 20.9).
 - Financial position (ICP 20.3, 20.4 & 20.6).
 - Technical provisions (ICP 20.2).
 - The risks to which insurers are subject (ICP 20.7).
 - The disclosure of audited financial statements (ICP 20.10).

Public Disclosure requirements in other jurisdictions

- (10) This paper considers the approaches taken:
- In Guernsey, as a comparable jurisdiction to the Island's captive insurance sector.
 - In Bermuda as a comparable jurisdiction to the Island in terms of its bifurcated approach to Solvency II third country equivalence (i.e. Bermuda has obtained Solvency II equivalence only for its commercial (re)insurance sector, and that approach has some similarities to the Isle of Man seeking equivalence only for

its long-term (re)insurance sector). Bermuda is also comparable to the Island in terms of its captive insurance sector, which lies outside of its Solvency II equivalence arrangement.

- Under Solvency II and (in relation to the Island's long-term (re)insurance sector) third country equivalence with Solvency II.

Interaction of disclosures with accounting standards

- (11) Both the IAIS and Solvency II acknowledge the potential for GAAP/IFRS approaches to help ultimately blur the lines of comparability both within jurisdictions and across borders.
- (12) From an ICP local implementation perspective, if information about insurers which is prepared under GAAP/IFRS were to be made publicly available, it may provide scope for potential exemption for some regulatory disclosure requirements.
- (13) The development of regulatory requirements in accordance with international standards, and in light of relevant accounting and actuarial standards, is an ongoing process. IFRS 17 is a notable example of an accounting development which is expected to be relevant to the Island's insurance regulatory framework.

3. The requirements of ICP 20

(14) ICP 20 in full can be found at <https://www.iaisweb.org/page/supervisory-material/icp-on-line-tool>.

(15) ICP 20's main statement on public disclosure is that:

“The supervisor requires insurers to disclose relevant, comprehensive and adequate information on a timely basis in order to give policyholders and market participants a clear view of their business activities, performance and financial position. This is expected to enhance market discipline and understanding of the risks to which an insurer is exposed and the manner in which those risks are managed.”

(16) In the Isle of Man there are no existing requirements for the mandatory disclosure of an insurer's business activities, including its financial position, other than to the Authority as regulator.

- A. Do readers agree or disagree that the Island should establish a regulatory framework for public disclosure in respect of its insurers?
- B. Do readers agree or disagree that such a framework should be varied for different types of insurers such that the requirements are proportionate? For example, by the requirements taking account of the different types of insurers as referred to in the examples in paragraph (5)?
- C. Would insurers wish to have regulatory public disclosure requirements set out generally in the regulatory framework as overarching principles/objectives or specified in more detail, perhaps within a standard format prescribed by the Authority?
- D. In respect of public disclosures which may be required, would readers prefer for insurers to publish the material or the Authority, or both?

(17) At its outset, ICP 20.0.1 notes that it:

“is important to improve and maintain the quality, timeliness and relevance of disclosure of key information needed for credit and investment decisions as well as policyholder's decisions”.

- (18) ICP 20.0.8 lists the following as typical key decisions that information disclosed should ultimately be decision useful for:
- Whether to insure risks with an insurer.
 - Whether to invest in an insurer.
 - Whether to effect other transactions with an insurer.
- (19) Consequently any material required to be publicly disclosed needs to meet these objectives, and that by doing so it is intended to enhance market discipline and public understanding in respect of any given insurer.

- E. Do readers have any views on the range of potential users who should be catered for with publicly disclosed information of the type discussed in this paper? For example, in relation to the market participants referred to (i.e. policyholders, investors, lenders and creditors) do readers—
- agree or disagree that each such participant should be considered as a type of user who warrants being accommodated under public disclosure requirements; and/or
 - consider that any other type of stakeholder should be included instead of, or as well as, those mentioned?

Criteria for the information to be disclosed⁴

- (20) The ICP notes the following criteria which should be met by publicly disclosed information:
- *Decision useful to decisions taken by market participants*, including suitable qualitative and quantitative information and presentation.
 - *Timely* – the ICP does not set timescales for disclosure (except at least annually), but does indicate that material disclosed should balance the need for reliability against delays so that users are not significantly disadvantaged.
 - *Comprehensive and meaningful* – including setting the benchmark as being meaningful to a person who is generally well informed about insurance but reliant on public disclosure for particular information. Information should also, where relevant, encompass disclosure in respect of both the insurer and its wider group and include sufficient disaggregation such that distinct material items can be identified.

⁴ ICP 20.1

- *Reliable and complete* – as a basis of decisions, including being suitably disseminated, with strong encouragement for disclosure through electronic channels.
- *Comparable between different insurers operating in the same market* – including coverage of methods and assumptions used, appreciating that full and practicable comparability of quantitative material can to some extent only come from global regulatory, accounting and actuarial standards.
- *Consistent over time* – so as to enable relevant trends to be discerned, and also that any changes to key methodologies or assumptions are explained.

F. Do readers have any views on the extent to which insurers might be required to disclose information electronically? For example, should requirements take account of the insurer's, and/or its group's, existing public electronic profile (such as whether or not either has a website)?

G. Do readers have any views on the above mentioned criteria forming the basis of public disclosure in respect of insurers? For example, do readers have any concerns in relation to potentially competing objectives such as—

- timeliness vs the need for completeness/accuracy; and/or
- comprehensibility/ease of use vs the need for suitable detail/disaggregation?

Types of information to disclose

(21) The types of information expected to be publicly disclosed by insurers are summarised below.

Concerning such information (see paragraphs (22) to (31)):

- H. Do readers have any views on the necessity or effectiveness of disclosures of any of the types of information referred to in this paper for different user-types? For example:
- Do readers consider such information is likely to be decision useful for policyholders?
 - Do readers consider such information is needed in respect of investors and/or creditors given the information likely to be already available to those parties respectively?
- I. Do readers consider that disclosure of information of the type referred to in this paper is likely to meaningfully influence insurers to manage their risks in a manner which reduces the risks posed to their policyholders and other market participants?

- J. Do insurers envisage any significant negative impact as a result of any of the types of information referred to in this paper (noting potential exemptions for proprietary and confidential information)?
- K. If and to what degree do insurers consider that any of the types of information referred to in this paper exceed materials which insurers already produce or maintain?

Also see questions AA and BB.

Profile⁵

(22) The information which would fall into this category is largely qualitative, with the ICP reinforcing both that it is the responsibility of the insurer to bring the content together, while avoiding generic disclosures.

(23) The expectation is that profile information would include:

- Detail on the insurer's corporate and functional structure, highlighting any changes to its management structure, risk management framework, asset/liability management strategy etc. over a given year.
- Disclosure of the main positive and negative trends affecting the insurer's position.
- The insurer's competitive position, business model, and regulatory or legal issues.
- The insurer's financial and non-financial objectives, and strategies to achieve them.
- Risk profile of the insurer from before and after its internal controls.

Governance and controls⁶

(24) The information which would fall into this category is also largely qualitative. The ICP does not suggest over-elaboration in this area but focuses on:

⁵ ICP 20.8

⁶ ICP 20.9

- The organisation of key business functions, including how the insurer’s board of directors oversees them, changes to key personnel, and how those functions fit into the overall risk management framework of the insurer.
 - Key business functions in the context of outsourcing, including if an insurer outsources to a parent or other entity related to the insurer.
- (25) A definition of ‘key business function’ is not provided. However, governance material in other ICPs would suggest they would at least include compliance, actuarial, risk management and internal audit functions.

See questions G to K, AA, BB and also:

- L. Would insurers prefer for the Authority to specify in the regulatory framework what ‘Key Business Functions’ include for these purposes?

Financial position

- (26) The information which would fall into this category is a mixture of qualitative and quantitative and is covered by several sub-sections of the ICPs, with the disclosures expected broadly categorised as follows:

Capital adequacy⁷

- The insurer’s objectives, policies and processes for managing its capital and assessing capital adequacy, key risks faced and the risk tolerances applied when managing its capital. This would include the insurer’s risk tolerance (or ‘risk appetite’) policy.
- The insurer’s position in relation to its regulatory capital and solvency requirements.
- The quality and quantity of the insurer’s capital, in tiers, and any changes over time.
- Information on internal models in the calculation of regulatory capital requirements, if used. (Note: the Isle of Man insurance regulatory capital regime does not at the present time envisage allowing internal models.

See questions G to K and AA and BB.

⁷ ICP 20.3

Investments⁸

- Disclosures which make distinctions between asset classes or instrument type due to having similar characteristics. The ICP goes on to note that this should not lead to excessive segmentation, while avoiding over-aggregation.
- The objectives, processes and policies by each different segment (for example, classed by similar characteristics) of a firm's investment portfolio.
- The effect of any derivatives in respect of uncertainty in investment performance.
- Differences in valuation techniques, liquidity levels, constraints on disposal and return expectations by asset class.
- Quantifiable exposure (on both the asset and liability side of the balance sheet) to currency, market, credit, liquidity and concentration risks, all in the context of investment objectives and returns achieved. This might also include intra-period highs, lows and averages.
- Disclosure of the range of market risk measures used, market risk sensitivities and debt instruments by credit rating and credit risk.
- Asset-Liability Management approaches, specifically the methodology used and assumptions employed in measuring assets and liabilities, as well as provisions and capital held to cover asset/liability mismatches and their sensitivity, all segmented accordingly.
- Explanation, where applicable, of any values, assumptions or methods used for general financial reporting purposes which differ to those used for regulatory solvency purposes.

See questions G to K, AA, BB and also:

- M. What significant issues (if any) do insurers envisage in respect of regulations potentially requiring insurers to 'look-through' collective investments in order to segment in sufficient detail?
- N. What significant issues (if any) do insurers envisage in collating investment public disclosure information in respect of discretionary managed portfolios?
- O. In respect of unit linked business, do readers believe that insurers should be required to publicly disclose investment risk exposures (such as currency, credit and concentration) from the insurer's perspective, the policyholders' or both?

⁸ ICP 20.4 and 20.5

P. In respect of unit linked business, do readers believe that insurers should be required to distinguish between sub-categories of unit linked investments or should unit linked investments be considered to have similar enough characteristics to be considered as one segment for public disclosure purposes?

In relation to questions N and O, also see question U and its preceding paragraphs.

Financial Performance⁹

- Financial performance reported in aggregate and split for example by business type or by country. The ICP emphasises that the format and threshold of disclosure can be jurisdiction-specific.
- Disclosure of technical performance incorporating conventional financial statements materials such as changes in equity and profit and loss statements:
 - Technical underwriting profit and loss account by broad lines of business, gross and net of reinsurance.
 - If the insurer is a cedant, gains and losses recognised in profit or loss on its buying of reinsurance.
 - Information on pricing adequacy, appropriateness of technical provisions, claims statistics, risk concentrations, reinsurance and capital, and the interaction of these.
- Specific disclosure for non long-term insurers:
 - Ratios (including loss, expense and combined operating ratios) gross of reinsurance (and net if materially different) on a reporting year basis.
 - Discount rates, claims statistics and information, including trends.
 - Qualitative information in respect of non-homogeneous classes of insurance.
- Specific disclosure for long-term insurers:
 - Expected earnings on in-force business (including risk margin releases, management fees and earnings on deposits).
 - Impact of new business (premium received vs expenses incurred, including impact of any deferred or amortised acquisition costs).
 - Analysis of gains/losses expected versus actual experience over a reporting period.

⁹ ICP 20.6

- Impact of management actions or assumption changes on earnings
- Investment performance disclosure, which the ICP details as essential to market participants, including:
 - Broken into appropriate subsets (for example, by segregated portfolio or by asset class).
 - Separately identifying income streams generated by the assets (for example, rental income, dividends, interest and realised and unrealised gains and losses).
 - Detail on amortisation and impairment.
- Provision and disclosure of audited financial statements¹⁰, with supervisors asked to ensure information of a similar nature is made publicly available by other means if audited materials are not made available.

See questions G to K, AA, BB and also:

Q. Do readers agree or disagree that it is proportionate to require insurers to publish or otherwise make publicly available their audited financial statements?

Also see question CC.

Technical provisions¹¹

- Disclosure of technical provisions and reinsurance assets on a gross basis (and net if useful), split between claims incurred and future claims.
- Disclosure of how technical provisions are determined, including the amount, timing and uncertainty of cash flows covering insurance obligations analysed between claims incurred and future claims (including any run-off).
- Information on methods and assumptions, including rationale for discount rates. Also including any actuarial models used in calculating technical provisions.
- Composition of technical provisions, including estimates, risk margins and, where applicable, surrender values and how acquisition costs and future profits are treated.
- Disclosure of a year-on-year technical provision reconciliation.
- Specific disclosure for non long-term insurers:

¹⁰ ICP 20.10

¹¹ ICP 20.2

- To aid in analysis of trends, disclosure of historic data comparing premiums earned vs claims paid/provided for.
- To aid in assessing the assumptions and methodology used for determining technical provisions, disclosure of historical data on run-off results and claims development triangles by class of business.
- Specific disclosure for long-term insurers:
 - Methods used for determining mortality and disability rates used, and assumptions on future changes.
 - Assumptions used for valuing participation features, guarantees and options within contracts and on a discretionary basis, including assumptions in respect of policyholder behaviour.

See questions G to K and AA and BB.

The insurance risks to which an insurer is subject¹²

- Disclosures on the nature, scale and complexity of insurance risks carried by the insurer and how they are managed.
- The insurer's insurance objectives, insurance risk policy and insurance risk appetite, including the interaction with capital adequacy.
- Reinsurance information such as risk control strategy, cover used, counterparties involved, collateral held (if any) and likelihood of counterparty default.
- Reinsurance in the context of the balance sheet, including its share of technical provisions, receivables from reinsurers and development of reinsurance assets over time.
- Disclosure on insurance risk concentrations including the significance of concentrations, mitigation in place and detail of concentrations such as by geography, economic sector and potentially through the concentration of reinsurers used.
- The insurer's derivative policy and use in hedging risks (where relevant).
- Whether stress testing and sensitivity analysis is used in the management of investment risks, and if it is, disclose how the results are used.

¹² ICP 20.7

See questions G to K and AA and BB.

Proprietary and confidential information (not requiring disclosure)¹³

- (27) The ICP indicates two types of information which need not be subject to public disclosure:
- Proprietary information which, if disclosed to competitors, would seriously prejudice the insurer's position (for example, information on insurance products, markets and distribution).
 - Confidential information either by way of contractual terms or legal obligations (for example, policyholder identity).
- (28) The ICP indicates that an appropriate balance needs to be struck between meaningful disclosures and the protection of proprietary and confidential information.
- (29) To facilitate a reasonable approach, supervisors in other countries have tended to establish a process for allowing insurers to apply for waivers and modifications to their respective regulatory requirements for public disclosure. In the UK for example, this is fairly extensive and well established in the context of exemptions from public disclosure, as well as a range of other matters.
- (30) The concessions allowed by Bermuda, Guernsey and under Solvency II are referred to in the summary beginning on page 23 of this paper, and include exemption categories where disclosure would:
- Breach contractual confidentiality binding on the insurer.
 - Be in contravention of laws or regulatory directions applicable to the insurer.
 - Duplicate public disclosures already made in relation to the insurer.
 - Competitively disadvantage the insurer.
- (31) It should also be noted that the burden would be on the insurer to prove the waiver or modification is warranted and at all times the supervisor reserves the right to decline a request for waiver or modification.

R. Do readers agree or disagree with the above mentioned categories for exemption?

¹³ Section 20.0.19 and 20.0.20

- S. What, if any, specific information outside of (or potentially outside of) the above mentioned exemptions would insurers not wish to disclose, and why?
- T. What would be insurers' preferred structure of regulations in this area, prescribed rules and/or principles/outcomes? And with or without regulatory discretion? (Readers should note that the Authority will have consideration for the potential supervisory implications of any discretionary elements; and will also have consideration in respect of potential disclosure to the Authority of any information which an insurer has not disclosed pursuant to any regulatory rule.)

4. Main insurance sectors in the Island

Long-term insurers

- (32) The majority of the Island's long-term insurers write unit linked products. Those products, in addition to providing insurance benefits, also involve policyholders determining the type of instruments their investment benefits will be linked to (and the policyholder, not the insurer, bears the corresponding investment risks). Consequently, the responsibility lies with policyholders to understand and manage their investment risks.
- (33) However, readers should also be aware that Isle of Man unit linked insurers are not mandatorily required to fully match the assets they hold with the asset structures agreed with policyholders in connection with their policies. Therefore an insurer may elect to carry some unmatched investment risks. Those risks and the manner in which the insurer manages them may be relevant to policyholders and/or other market participants.

U. The structure of unit linked business is a relevant factor in determining what information insurers are required to publicly disclose. This is reflected, for example, in questions N and O and is relevant to question H, where readers should consider—

- the likely sophistication of unit linked policyholders and the manner in which unit linked products are sold (i.e. what information, in addition to product etc. information already required¹⁴ to be provided to policyholders and prospective policyholders, is reasonable for unit linked policyholders to expect to be disclosed by insurers in order to inform their decisions); and
- the need for, and likely decision usefulness of, disclosure of investment risks borne by unit linked insurers.

- (34) Ownership of most long-term insurers in the Island is through a small number of institutional, private equity or individual shareholders who have access by virtue of their holding to extensive information about those insurers, including the kind of decision-influencing material the ICP looks to publicise.
- (35) Also, some insurers already disclose financial and risk management-related information at group level.

¹⁴ Requirements include the Insurance (Conduct of Business) (Non Long Term Business) Code 2018 which will come into effect on 1 January 2019.

- V. To what extent do insurers believe that—
- information already available to the investors in, or lenders to, insurers; and/or
 - information disclosed about insurers by way of disclosures made by the groups to which they are members,
- should be provided for in the form of exemptions from potential public disclosure requirements?

Insurers should also consider the likely information needs of policyholders and creditors in relation to this question, as exemptions should not unduly disadvantage such parties.

(36) The absence of any regulatory framework for public disclosure for long term insurers in the Island prevents that sector from achieving the stated goal of having a regulatory regime that is capable of being assessed as equivalent to Solvency II. Therefore the requirements of Solvency II in relation to public disclosure are an appropriate benchmark for the type of regulatory framework which would be needed in that regard.

(37) Additionally, the provisions of Bermuda’s regulatory framework provide an example of a Solvency II equivalent jurisdiction which has adopted a bifurcated approach to equivalence for its commercial (re)insurance sector, which therefore has some similarities to the approach the Island has adopted for its long-term insurance sector.

See questions Y and Z, and their preceding paragraphs.

Non long-term insurers

(38) The Island’s non long-term insurance sector is predominantly captive in nature (see below), with few open market / commercial insurers.

(39) These remaining non-long term insurers are diverse in nature and, unlike the unit linked long-term insurers, do not necessarily fall within a broad risk profile. Therefore a regulatory framework for public disclosure for those insurers would need to accommodate their varied risk profiles.

See questions C and D in relation to non captive insurers.

Captive insurers

(40) ICP 20 specifically allows a supervisor to decide not to apply the public disclosure requirements to captives:

“....provided there is no potential threat to the financial system, no public interest need for disclosure and no legitimately interested party is prevented from receiving information”¹⁵.

(41) The idea of the captive industry being exempted from observing ICP requirements (including public disclosure) is established and is being practised, for example, by Guernsey and Bermuda – with the latter achieving this by virtue of its captive industry being excluded for Solvency II equivalence purposes.

(42) The Authority, as part of an ongoing engagement process with the non long-term insurance sector, is in the process of refining one or more regulatory classifications for captives. Pending the outcome of that process some relevant factors might be highlighted for the purposes of this paper as follows:

- Historically captives have not been considered to pose a significant threat to the financial system or give rise to a public interest need for disclosure. However, this paper seeks to consider the current Isle of Man insurance sector in the context of ICP 20.
- Captives might be classified as ‘pure’ (only having policyholders which are related or associated with the captive or its parent group) or ‘impure’ (where the captive may have an element of its business insuring third parties – for example, under a de-minimis rule).

W. Do readers agree or disagree that ‘pure’ captives should be exempt from public disclosure requirements?

X. Do readers believe that ‘impure’ captives should be subject to public disclosure requirements, exempt from them or somewhere in between?

¹⁵ ICP 20.0.11

5. Summary of requirements in other jurisdictions and equivalence objective

Summary of requirements in Bermuda

- (43) The regulatory authority in Bermuda is the Bermuda Monetary Authority (“BMA”).
- (44) Full details of the BMA’s requirements are available through its website¹⁶.
- (45) A very general summary of the BMA’s framework is as follows:
1. Insurers are required each year to publicly disclose a financial condition report, subject to:
 - a. Exempt insurers (see paragraph 2)
 - b. Other exemptions and/or modifications (see paragraph 3)
 2. Public disclosure does not apply to: Classes 1-3, A and B (long-term and non-long-term captives and other insurers with less than 20% unrelated business).
 3. Exemptions and/or modifications are available on application to the BMA, including where—
 - a. disclosure would competitively disadvantage the insurer;
 - b. disclosure would be contrary to contractual obligations for confidentiality;
 - c. disclosure would be contrary to relevant laws or regulatory directions;
 - d. disclosure equivalent to the financial condition report has been made directly to all policyholders, beneficiaries and counterparties;
 - e. suitable information has been disclosed in the insurer’s group’s financial condition report; or
 - f. suitable disclosure has been made pursuant to other statutory requirements.
 4. An insurer is required to make disclosure on its website (if it has one). The insurer must keep copies of its financial condition report at its head office for 5 years. The disclosed information must be provided to the BMA.

¹⁶ Key documents include:

Insurance (Public Disclosure) Rules 2015

[http://www.bermulaws.bm/laws/Consolidated%20Laws/Insurance%20\(Public%20Disclosure\)%20Rules%20015.pdf](http://www.bermulaws.bm/laws/Consolidated%20Laws/Insurance%20(Public%20Disclosure)%20Rules%20015.pdf)

Schedule 1 to the Insurance (Public Disclosure) Rules 2015 “Schedule of Financial Condition Report”

[http://www.bma.bm/legislation/SiteAssets/Insurance%20\(Public%20Disclosure\)%20Rules%202015%20-%20Schedules.pdf](http://www.bma.bm/legislation/SiteAssets/Insurance%20(Public%20Disclosure)%20Rules%202015%20-%20Schedules.pdf)

5. The general disclosure categories are: business and performance, governance structure, risk profile, solvency valuation and capital management, and the report encompasses subsequent events.
6. Large commercial (re)insurers are required to file audited general purpose financial statements as part of their annual filings, which the BMA will subsequently publish.

Summary of requirements in Guernsey

(46) The regulatory authority in Guernsey is the Guernsey Financial Services Commission (“GFSC”).

(47) Full details of the GFSC’s requirements are available through its website¹⁷

(48) A very general summary of the GFSC’s framework is as follows:

1. Guernsey requires some insurers to make public disclosures subject to—
 - a. Exempt insurers (see paragraph 2)
 - b. Other exemptions and/or modifications (see paragraph 3)
2. Public disclosure does not apply to the following insurers—
 - a. Category 5 (captives), Category 6 (Special Purpose Entities), Protected Cell Companies and insurers not incorporated in Guernsey.; and
 - b. Other insurers meeting certain criteria based on small size and/or the nature of their business.
3. Exemptions apply where disclosure would—
 - a. competitively disadvantage or otherwise cause detriment to the insurer;
 - b. be contrary to contractual obligations for confidentiality;
 - c. reveal confidential information prejudicial to the insurer; or
 - d. be contrary to relevant laws or regulatory directions.
4. An insurer is required to make disclosure on its website (if it has one), where not already disclosed in its published audited financial statements. The information must remain available for 3 years. The disclosed information must be provided to the GFSC and will be made available on its website for the same period.
5. The general disclosure categories are: insurer profile, corporate governance, technical reserves, insurance risk, financial performance, capital adequacy,

¹⁷ Key documents include:

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

<https://www.gfsc.gg/sites/default/files/Insurance%20Business%20%28Public%20Disclosure%20of%20Information%29%20Rules%202018.pdf>

financial instruments, enterprise risk management and asset-liability management.

6. An insurer (to which public disclosure applies) must make its audited financial statements available to anyone with a valid interest.

Summary of the requirements of Solvency II

- (49) Disclosure and transparency forms one of the three primary pillars of Solvency II.
- (50) Under Solvency II, information required to be disclosed publicly by insurers is collected and published in an extensive template called the Solvency and Financial Condition Report (“SFCR”) which must be submitted at least annually.
- (51) While the requirements for public disclosure in the Directive itself¹⁸ are like ICP 20, these are elaborated on in some considerable detail in Solvency II’s Delegated Regulation¹⁹, Implementing Technical Standards²⁰ and the supervisory convergence guidelines issued to national supervisory authorities by the European Insurance and Occupational Pensions Authority (EIOPA)²¹.
- (52) Readers may also wish to note that, whilst the language of the ICPs is frequently expressed in terms of “may”, “could” and “should”, the language of the Directive and Delegated Regulation is expressed in terms of “shall” or “must”. The more imperative language under Solvency II will have a bearing on any framework in respect of Isle of Man long-term insurers which seeks to be capable of being assessed as equivalent to Solvency II.
- (53) Another element, of course, is the need for a regulatory framework to be proportionate and from that perspective the Solvency II Delegated Regulation states in the recitals:

“The application of the proportionality principle in the area of public disclosure should not result in insurance and reinsurance undertakings being required to disclose any information which would not be relevant to their business or not be material”.

¹⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0138-20140523> Articles 51, 53-56

¹⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:012:FULL&from=EN> Articles 290-303

²⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2452> - all

²¹ https://eiopa.europa.eu/GuidelinesSII/EIOPA_EN_Public_Disclosure_GL.pdf Guidelines 1-15

- (54) Solvency II also allows supervisors to provide for exemption from the requirements for public disclosure (other than the capital-related disclosures, which are compulsory), where:
- Competitors would gain significant undue advantage from disclosure.
 - It would break existing secrecy or confidentiality agreements with policyholders or other counterparties.
 - It is already published in other publicly available materials issued by the firm.
- (55) Also, any exclusion of material needs to be declared and explained in the SFCR actually published.
- (56) As a point of interest readers may wish to note that the UK has adopted a relatively sophisticated waivers and modifications process²² for dealing with commercially sensitive information which may otherwise need to be disclosed in order to comply with the disclosure requirements of Solvency II.

Bifurcated Solvency II equivalence objective

- (57) As indicated previously, it is a stated intention of the Island to have a regulatory framework capable of a positive Solvency II equivalence assessment in respect of its long-term insurance sector (and not in respect of its non long-term sector).
- (58) Also, as referred to previously for comparison purposes, a bifurcated approach has already been adopted by Bermuda which excluded its captive and limited purpose insurance vehicles from its assessment, and was ultimately successful²³.

In respect of the following questions, long-term insurers are assumed to already have knowledge of the requirements of Solvency II.

- Y. Do long-term insurers envisage that a regime for public disclosure in respect of long-term insurers in the Island should—
- directly emulate Solvency II's public disclosure requirements (as referred to above);
 - be tailored in a manner particular to the Island's long-term insurance sector (perhaps in a manner similar to that adopted by Bermuda); or

²² <https://www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules>

²³ [http://www.bma.bm/solvency2/Class/Bermuda%20Solvency%20II%20Equivalence%20FAQs%20\(April%202016\).pdf](http://www.bma.bm/solvency2/Class/Bermuda%20Solvency%20II%20Equivalence%20FAQs%20(April%202016).pdf)

- take a different approach (please specify)?

Z. Do long-term insurers consider any elements of the Solvency II disclosure requirements as particularly beneficial or onerous?

Long-term insurers may wish to consider any potential challenges for the Island which might be associated with any equivalence assessment of provisions which are divergent from those of Solvency II.

6. Interaction of regulatory disclosures with accounting standards

GAAP/IFRS potential to achieve a degree compliance with ICP 20

- (59) ICP20's main statement seeks to ensure that insurers publicly disclose information about their business activities, performance and financial position to enhance market discipline and inform market participants.
- (60) To that end the ICP recognises that regulatory requirements should take account of information already available (via public disclosure) in general purpose financial statements and complement that information as appropriate.
- (61) All Isle of Man insurers are required to prepare annual general purpose audited financial statements (typically using UK GAAP or IFRS) and submit these to the Authority, but they are not currently required to make the financial statements public.
- (62) Without public disclosure of audited financial statements, there would appear to be little, if any, scope to make allowances in any potential public disclosure requirements for any information the audited financial statements may contain.

See question Q.

- (63) The ICP is careful to distinguish between information publicly disclosed via regulatory requirements and general purpose financial statements.
- (64) In that regard ICP 20.0.13 comments that it is desirable that the methods for calculating regulatory reporting and general reporting should be consistent. Importantly, any differences between methodologies must be publicly explained and reconciled.
- (65) The ICP also makes a number of points of clarity. For example:
- Where GAAP or IFRS are consistent with ICP 20 (and publicly disclosed), they may be regarded as compliant with ICP 20 (20.0.10).
 - Meaningful comparisons between insurers (both within and between jurisdictions) cannot be achieved without disclosure of how the published information is prepared, including methods and assumptions used (20.0.5).

- In order to be effective for market participants and not overly burdensome for insurers, public disclosure needs to contain key information and avoid excessive data (20.0.9).

AA. Do readers (having regard to the last bullet point above and the information discussed in this paper) have any particular views as to what might be considered to be 'key information' from a market participant perspective, and in particular from a policyholder perspective?

BB. Do insurers (having regard to the last bullet point above and the information discussed in this paper) have any particular views as to what might be considered to be 'excessive data' (or disproportionately burdensome to the insurer to produce)?

- (66) Generally there appears to be some way to go before GAAP/IFRS and IAIS standards might harmonise. Indeed there may always be fundamental differences given that, for example, IFRS is based on fair value and regulatory standards are geared towards prudential protection. Despite this there do appear to be opportunities developing over time for regulatory requirements to take account of information available via accounting standards, for example in relation to IFRS 17.

External audit of publicly disclosed information

- (67) As referred to above, Isle of Man insurers are not currently required to publicly disclose their audited GAAP/IFRS financial statements. If they were required to disclose them publicly then they would have the advantage of having already been audited.

CC. Do insurers or audit firms envisage any issues arising should insurers be required to publicly disclose their audited GAAP/IFRS financial statements?

- (68) In relation to any other regulatory requirements for insurers to publicly disclose information, there is the question as to whether this should be externally audited, and if so to what degree and to what level of assurance.

- (69) Neither the IAIS (through its ICPs) nor EIOPA (through Solvency II) require external audit of such information. Readers may wish to note however that EIOPA encourages it and some jurisdictions (for example, the UK, Ireland and Gibraltar) do require 'reasonable assurance' audit of public financial disclosures under their regulatory

rules. In comparison, Bermuda has not compelled such external audit whilst still achieving Solvency II equivalence.

DD. Do readers believe that it is proportionate to require potential regulatory financial public disclosures to be audited?

EE. If so, do readers have any views on the proportionate level of assurance (for example, full 'true and fair' audit, reasonable assurance or limited assurance)?

Appendix 1 – Full list of questions appearing in this discussion paper

For ease of reference, the following is a list of questions appearing in this paper. However, to avoid loss of context (and cross references to other relevant questions) readers should consider the questions as they appear in the paper.

- A. Do readers agree or disagree that the Island should establish a regulatory framework for public disclosure in respect of its insurers?
- B. Do readers agree or disagree that such a framework should be varied for different types of insurers such that the requirements are proportionate? For example, by the requirements taking account of the different types of insurers as referred to in the examples in paragraph (5)?
- C. Would insurers wish to have regulatory public disclosure requirements set out generally in the regulatory framework as overarching principles/objectives or specified in more detail, perhaps within a standard format prescribed by the Authority?
- D. In respect of public disclosures which may be required, would readers prefer for insurers to publish the material or the Authority, or both?
- E. Do readers have any views on the range of potential users who should be catered for with publicly disclosed information of the type discussed in this paper? For example, in relation to the market participants referred to (i.e. policyholders, investors, lenders and creditors) do readers—
 - agree or disagree that each such participant should be considered as a type of user who warrants being accommodated under public disclosure requirements; and/orconsider that any other type of stakeholder should be included instead of, or as well as, those mentioned?
- F. Do readers have any views on the extent to which insurers might be required to disclose information electronically? For example, should requirements take account of the insurer's, and/or its group's, existing public electronic profile (such as whether or not either has a website)?
- G. Do readers have any views on the above mentioned criteria [see paragraph 20] forming the basis of public disclosure in respect of insurers? For example, do readers have any concerns in relation to potentially competing objectives such as—
 - timeliness vs the need for completeness/accuracy; and/or

- comprehensibility/ease of use vs the need for suitable detail/disaggregation?
- H. Do readers have any views on the necessity or effectiveness of disclosures of any of the types of information referred to in this paper for different user-types? For example:
- Do readers consider such information is likely to be decision useful for policyholders?
 - Do readers consider such information is needed in respect of investors and/or creditors given the information likely to be already available to those parties respectively?
- I. Do readers consider that disclosure of information of the type referred to in this paper is likely to meaningfully influence insurers to manage their risks in a manner which reduces the risks posed to their policyholders and other market participants?
- J. Do insurers envisage any significant negative impact as a result of any of the types of information referred to in this paper (noting potential exemptions for proprietary and confidential information)?
- K. If and to what degree do insurers consider that any of the types of information referred to in this paper exceed materials which insurers already produce or maintain?
- L. Would insurers prefer for the Authority to specify in the regulatory framework what 'Key Business Functions' include for these [see paragraph 25] purposes?
- M. What significant issues (if any) do insurers envisage in respect of regulations potentially requiring insurers to 'look-through' collective investments in order to segment in sufficient detail?
- N. What significant issues (if any) do insurers envisage in collating investment public disclosure information in respect of discretionary managed portfolios?
- O. In respect of unit linked business, do readers believe that insurers should be required to publicly disclose investment risk exposures (such as currency, credit and concentration) from the insurer's perspective, the policyholders' or both?
- P. In respect of unit linked business, do readers believe that insurers should be required to distinguish between sub-categories of unit linked investments or should unit linked investments be considered to have similar enough characteristics to be considered as one segment for public disclosure purposes?

- Q. Do readers agree or disagree that it is proportionate to require insurers to publish or otherwise make publicly available their audited financial statements?
- R. Do readers agree or disagree with the above mentioned categories for exemption [see paragraphs 27 to 31]?
- S. What, if any, specific information outside of (or potentially outside of) the above mentioned exemptions exemption [see paragraphs 27 to 31] would insurers not wish to disclose, and why?
- T. What would be insurers' preferred structure of regulations in this area [exemptions], prescribed rules and/or principles/outcomes? And with or without regulatory discretion? (Readers should note that the Authority will have consideration for the potential supervisory implications of any discretionary elements; and will also have consideration in respect of potential disclosure to the Authority of any information which an insurer has not disclosed pursuant to any regulatory rule.)
- U. The structure of unit linked business is a relevant factor in determining what information insurers are required to publicly disclose. This is reflected, for example, in questions N and O and is relevant to question H, where readers should consider—
- the likely sophistication of unit linked policyholders and the manner in which unit linked products are sold (i.e. what information, in addition to product etc. information already required²⁴ to be provided to policyholders and prospective policyholders, is reasonable for unit linked policyholders to expect to be disclosed by insurers in order to inform their decisions); and
 - the need for, and likely decision usefulness of, disclosure of investment risks borne by unit linked insurers.
- V. To what extent do insurers believe that—
- information already available to the investors in, or lenders to, insurers; and/or
 - information disclosed about insurers by way of disclosures made by the groups to which they are members,
- should be provided for in the form of exemptions from potential public disclosure requirements?
- Insurers should also consider the likely information needs of policyholders and creditors in relation to this question, as exemptions should not unduly disadvantage such parties.

²⁴ Requirements include the Insurance (Conduct of Business) (Non Long Term Business) Code 2018 which will come into effect on 1 January 2019.

- W. Do readers agree or disagree that 'pure' captives should be exempt from public disclosure requirements?
- X. Do readers believe that 'impure' captives should be subject to public disclosure requirements, exempt from them or somewhere in between?
- Y. Do long-term insurers envisage that a regime for public disclosure in respect of long-term insurers in the Island should—
- directly emulate Solvency II's public disclosure requirements (as referred to above [see paragraphs 49 to 56]);
 - be tailored in a manner particular to the Island's long-term insurance sector (perhaps in a manner similar to that adopted by Bermuda); or
 - take a different approach (please specify)?
- Z. Do long-term insurers consider any elements of the Solvency II disclosure requirements as particularly beneficial or onerous?

Long-term insurers may wish to consider any potential challenges for the Island which might be associated with any equivalence assessment of provisions which are divergent from those of Solvency II.

- AA. Do readers (having regard to the last bullet point above [see paragraph 65] and the information discussed in this paper) have any particular views as to what might be considered to be 'key information' from a market participant perspective, and in particular from a policyholder perspective?
- BB. Do insurers (having regard to the last bullet point above [see paragraph 65] and the information discussed in this paper) have any particular views as to what might be considered to be 'excessive data' (or disproportionately burdensome to the insurer to produce)?
- CC. Do insurers or audit firms envisage any issues arising should insurers be required to publicly disclose their audited GAAP/IFRS financial statements?
- DD. Do readers believe that it is proportionate to require potential regulatory financial public disclosures to be audited?
- EE. If so, do readers have any views on the proportionate level of assurance (for example, full 'true and fair' audit, reasonable assurance or limited assurance)?

Appendix 2 – Scope of the IAIS and proportionate application of its ICPs in the Isle of Man

IAIS global membership

- (70) There are currently over 200 jurisdictions who are IAIS members which represents 97% of the world's premiums. Most, if not all, jurisdictions of competitive interest to the Isle of Man's insurance industry are IAIS members.

Proportionality within the ICPs

- (71) The purpose of the IAIS ICPs includes the following under their introduction section:

“6. The Insurance Core Principles (ICPs) provide a globally accepted framework for the supervision of the insurance sector. The ICP material is presented according to a hierarchy of supervisory material. The ICP statements are the highest level in the hierarchy and prescribe the essential elements that must be present in the supervisory regime in order to promote a financially sound insurance sector and provide an adequate level of policyholder protection. Standards are the next level in the hierarchy and are linked to specific ICP statements. Standards set out key high level requirements that are fundamental to the implementation of the ICP statement and should be met for a supervisory authority to demonstrate observance with the particular ICP. Guidance material is the lowest level in the hierarchy and typically supports the ICP statement and/or standards. Guidance material provides detail on how to implement an ICP statement or standard. Guidance material does not prescribe new requirements but describes what is meant by the ICP statement or standard and, where possible, provides examples of ways to implement the requirements.

8. The ICPs apply to insurance supervision in all jurisdictions regardless of the level of development or sophistication of the insurance markets and the type of insurance products or services being supervised. Nevertheless, supervisory measures should be appropriate to attain the supervisory objectives of a jurisdiction and should not go beyond what is necessary to achieve those objectives. It is recognised that supervisors need to tailor certain supervisory requirements and actions in accordance with the nature, scale and complexity of individual insurers. In this regard, supervisors should have the flexibility to tailor supervisory requirements and actions so that they are commensurate with the risks posed by individual insurers as well as the potential risks posed by insurers to the insurance sector or the financial system as a whole. This is provided for in the ICPs and standards where relevant.”

- (72) The scope for flexibility is also reflected in the wording of the ICPs which contain a limited amount of use of the word “must” and instead use “may”, “should” or “can”.

The Authority’s proportionate approach

- (73) On this basis, and in accordance with the Authority’s own objectives and stated position within its Roadmap, the Authority will seek to tailor regulatory requirements so that they are appropriate and proportionate to the Island’s local insurance industry, whilst having regard to Authority’s strategic objectives.