ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Responses to Consultation CP17-10/T11 Corporate Governance Code of Practice for Insurers ("CGC")

RESPONSE SUMMARY

This 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.

It summarises the responses received to consultation CP17-10/T11, Corporate Governance Code of Practice for Insurers ("CGC").

Issue date ***28 June 2018***

1. Introduction

During the period between 30 August 2017 and 17 November 2017 (including an extended period from 27 October 2017 to 17 November 2017 which was allowed following request from industry), the Authority conducted a consultation relating to the draft updated CGC.

The purpose of this paper is to detail the feedback received to the consultation and the Authority's responses to that feedback. The Authority's responses include details of changes that have been made following the consultation exercise and indicate where the Authority will engage further with the non-life insurance industry in relation to certain aspects of the draft updated CGC.

2. Responses received

Feedback to the consultation is set out in Appendix I together with the Authority's responses.

3. Contact details

Any queries should be directed to Alan Rowe (alan.rowe@iomfsa.im).

APPENDIX 1

In this Appendix the Authority's responses to comments received are shown in BLUE text, otherwise text is shown in black.

A. Details of comments received from industry body in respect of the consultation:

Details of comments received from industry body in respect of the consultation:

The only industry body to respond was the Isle of Man Captive Association (IOMCA), as follows.

This response in not intended to focus on the detail of the draft Corporate Governance Code of Practice for Insurers ("CGC") as the Managers have provided their own specific feedback in this regard. However, we consider that an Industry overview relating to what we perceive as the impact of the draft CGC on the Isle of Man's captive industry is highly appropriate.

The draft CGC is not proportional and applies to all licensed insurance companies and therefore encompasses a broad range of insurers which include major life insurers underwriting purely third party insurance and captive insurers underwriting largely the insurance risks of its parent company. Clearly the risk profiles of the two examples are vastly different yet the draft CGC doesn't make any concession in respect of captive insurance companies and what is a widely understood fact, that these insurance vehicles present an inherently low risk. [The Authority's response: The principle of proportionality runs through the entire CGC such that the CGC is to be applied by each insurer proportionate to the insurer, its business and risk exposure. However, the CGC also sets out certain mandatory minimum requirements. Concerning these minimums, we have considered the comments received from industry and our responses are included in the remainder of this document.]

There are a number of areas of concern with the key one being the proposed requirement for an actuarial function. IOMCA do not believe this requirement is valid and is not consistent with the risk profiles of many captives. IOMCA has reviewed the Regulation in both Guernsey and Bermuda and there is no requirement for captive insurance companies to have an actuarial function in either of these jurisdictions. Clearly Guernsey and Bermuda, particularly the former, are our closest competitors and any requirement for an actuarial function will severely impact the IOM's ability to attract new business. This point has been validated by the risk consulting teams within the global captive managers, who have commented that such a requirement would disadvantage the IOM in a captive feasibility study.

Staying with IOMCA's concerns relating to the actuarial function, we have considered the position in relation to our existing captive base and have also received feedback and concern from a number of clients via discussions at very recent board meetings. Any requirement for an actuarial function will create unnecessary pressure on the cost-base of the licensed entity and needless to say this will be unwelcome and unwarranted and the industry will face a heightened risk of redomiciliation to jurisdictions with a captive friendly regulatory regime or,

the risk of closure especially for the smaller captives or those already in run-off. Needless to say, such outcomes will effectively reduce headcount within the captive sector and support industries. [The Authority's response: The minimum actuarial requirements set out in the consultation document attracted a number of comments from respondents. The Authority accepts that a reduction in those requirements may be appropriate for some insurers and the Authority intends to have further engagement with the non-life sector to that end. In relation to captives, this will also depend on finalisation of a definition for 'captive' and corresponding class of authorisation, and we look forward to engagement with the non-life sector in that regard.]

Ideally, we would welcome a CGC which relates purely to the captive sector and is proportional in nature, being streamlined to reflect the low risks which captives present. IOMCA believe that this would be not only welcomed by the Managers but also by parent companies and non-executive directors. Further, it is believed that such a captive focused approach would provide a strong marketing angle for the sector. It should also be noted that unfortunately captive owners and consultants are very unlikely to take the time to understand when and where proportionality will apply and will opt for domiciles that have a straightforward regulatory framework and can "tick the box" quickly. Following discussions with some local NEDs, they would also welcome a simplified and separate CGC rather than trying to interpret how a complicated code should be applied to each of the Captives they are appointed to. This also creates pressure on the Managers in terms of providing greater guidance to the Board and is a further layering of cost. In the interest of the future of the captive industry, IOMCA would be prepared to contribute to the costs of an independent consultant to produce a captive CGC in consultation with IOMFSA and IOMCA. [The Authority's response: As indicated variously in this document, the Authority intends to have further engagement with the non-life sector concerning the proportionality of the CGC (notably in relation to actuarial and ERM/ORSA requirements). Subject to the outcome of that engagement, the Authority will consider the non-life sector's request for a simplified, captive-specific code, including the risk-basis supporting any desired changes.]

We appreciate the reasons why the "definition of a captive" has stalled previously; however, it is increasingly important that we finalise this in the short-term In order that the future regulatory framework recognises this. [The Authority's response: We look forward to IOMCA engaging with the Authority in relation to the necessary process in order to reach an appropriate regulatory definition of captive and, by way of that definition, finalising one or more corresponding classes of authorisation.]

We note that the intended effective date is 1 January 2019. Given that the current draft CGC doesn't have any provision for proportionality [The Authority's response: We disagree, subject to some minimums, proportionality is a fundamental principle applicable to CGC.] and we strongly believe that there should be a CGC bespoke to the captive sector [The Authority's response: See comments above concerning a captive-specific code.], we propose that a further consultation on the CGC is necessary [The Authority's response: A further consultation would, of course, be considered depending on the degree to which the proposals in this consultation are subsequently changed.]. It is IOMCA's opinion that the current draft CGC has

wide ranging negative implications for the future of the Island's captive insurance sector [The Authority's response: in addition to the actual and potential changes indicated in this document, we look forward to further engagement with the non-life sector concerning any potential implications.].

B. Details of comments received from individuals (corporate or natural persons) in respect of the consultation:

Paragraph in proposed revised CGC	Comment received	The Authority's response. (Unless indicated otherwise, cross references to paragraphs of the CGC are numbered as appearing in the proposed revised CGC).
General	[Company] have conducted a detailed review of the paper and are supportive of the proposed changes to the Corporate Governance Code. As it stands, we have no further comments to add.	Noted.
General	Following the publication of the above Consultation, I can confirm that [Company] has carried out a review of the Consultation and the amended Corporate Governance Code and we have no concerns or comments to make at this time.	Noted.
General	I am writing on behalf of [Company] the above consultation paper has been reviewed and I can confirm that we have no comments.	Noted.
General	I am writing to confirm that [Company] have no material feedback with regards to the amended CGC. It may be that we require some clarification on some issues as we begin to work through our action plan to update systems and will contact the Authority if required.	Noted.
General	This is just a courtesy note to advise that [Company] have no comments in regard to the proposed changes to the Corporate Governance Code. Consequently we do not propose to submit a formal response. We would however like to thank the Authority for affording us the	Noted.

	opportunity to participate in this Consultation.	
General	[Company] is well prepared in line with the Conduct of Business "Roadmap" and welcomes the proposed changes to the CGC. We have no additional comments at this stage and will await the further consultation in April 2018.	Concerning the April 2018 consultation (in respect of a governance code for Registered Insurance Managers), given the volume of insurance consultations being undertaken at present, a separate code in respect of insurance managers is not being pursued at the present time but will be kept under review.
General	It is noted that a further consultation exercise is to be carried out in April 2018 that will relate to the actual Insurance Manager operation.	Given the volume of insurance consultations being undertaken at present, a separate code in respect of insurance managers is not being pursued at the present time but will be kept under review.
General	It is recognised that the frequently updated and broadly circulated Roadmap has consistently flagged this process and timing. Specifically included within the Roadmap are reference to the total balance sheet approach, ERM etc.	Noted.
General	It is recognised that this consultation is primarily focused on 3 core areas: a. Actuarial requirements. b. Enterprise Risk Management* / ORSA (Own Risk Self Assessment) c. Reporting (enhanced). * Not simply annual but a living and breathing work tool.	Noted.
General	Run off This market is very different from the "Live" position. Once a Company is in run-off, the key thing for everyone is to try and extend the life of the company for as long as possible, thus maximising the timescale for policyholders to make a claim. No new funds will be collected by the company either in premium or capital funds so the funds need to be managed as efficiently as possible.	An insurer in run-off may be exposed to a reduced range of risks. However, its risk profile may still be very significant and in some cases more significant than an insurer still actively taking on new business. Just because an insurer is in run-off does not, in itself, justify a lesser degree of governance. Good governance would include, for example, a run-off insurer having an appropriate capital adequacy policy (including capital retention policy) to ensure that it has a lifespan which

	As I see it there are really only two real risks to the life of the company. Firstly, the expense run (net of any investment income) will ultimately eat into the company's funds and at some point the Directors will need to appoint a liquidator. Clearly the lower the expenses can be kept the longer the potential life of the company and thus maximum protection for policyholders. At this juncture, I would state the obvious that the more onerous the regulatory requirements the greater the costs and thus the quicker funds will be extinguished. Secondly, when the company is notified of new net claims, the potential cost implication is immediately assessed. It is normal for any notifications to lessen as time passes once new business acceptance has ceased. These really are the main issues facing company's in run off and therefore we would like to see CGC appropriately and proportionately cater for this class of company. Two potential options I see are to create a new insurance class with specific reductions in CGC requirements to reflect the above or to create exemptions from the majority of the CGC. The directors already have fiduciary duties under the company's act and I strongly believe this should consider this as part of the consultation process.	enables it to meet its legacy obligations and comply with its regulatory responsibilities. The CGC is part of those responsibilities and is required to be applied proportionately to each insurer's circumstances, including proportionate to a run-off insurer's circumstances. As indicated elsewhere in this document, the Authority intends to have further engagement with the non-life sector concerning proportionality, and especially in areas such as actuarial and ERM/ORSA. We would anticipate this process also encompassing cases of insurers in run-off.
General	Pure Class 12. I agree with the view expressed at the recent meeting that we need to revisit the definition and come to a landing between industry and yourselves on what a true captive is, reflecting the pure group relationship nature. Regulations around this class must be hugely reduced as it should not pose any great exposure to the Regulators	We agree that it is desirable to finalise a regulatory definition and classification(s) for captive business so that requirements can be applied according to the risks involved.

	given the insured and insurer are the same people/group. It should then be possible to carve out this class and reduce the workload on new legislative/regulatory matters for both clients and the regulators alike. Everyone can then focus their efforts on insurers with third party exposures.	
General	We understand the Island is committed to compliance with the International Association of Insurance Supervisors - Insurance Core Principles ("ICP"), however this Code appears to be geared towards the possibility/probability of the whole Island's insurance sector being able to gain Solvency II equivalence. We understand that this Solvency II equivalence has been requested by the Life sector; however the Captive sector has specifically indicated that Solvency II equivalence does not bring about any benefits to the Captives or their shareholders (e.g. Access to EU markets) and would indeed result in significant negative impacts (e.g. increased capital requirements, increased administration costs).	We acknowledge that the content of the proposals for actuarial function and ERM/ORSA in the draft CGC are similar to Solvency II and that these include requirements about which the Island's captive managers on behalf of captive insurers have raised concerns. As indicated elsewhere in this document, the Authority intends to have further engagement with the non-life sector (including captives) concerning proportionality, and especially in areas such as actuarial and ERM/ORSA.
General	ICP 8 Risk Management and Internal Controls state that "the Systems and functions should be adequate for the nature scale and complexity of the insurer's business and risks .... " (8.0.2) and "... the nature of the systems that the insurer has is dependent on many factors. These include the insurer's risk profile... " (8.0.3), therefore using the principle of proportionality on the Risk Management and Internal Controls which applies proportionality to the framework as a whole. Unfortunately the Code as currently written imposes the requirement for a prescribed (not allowing	The ICPs require each of the control functions referred to in the CGC, as illustrated in ICP standard 8 which states that "The supervisor requires an insurer to have, as part of its overall corporate governance framework, effective systems of risk management and internal controls, including effective functions for risk management, compliance, actuarial matters and internal audit." The CGC reflects these requirements and allows for proportionality, as follows. The updated CGC has a general provision in relation to proportionality (paragraph 7) as well as more particular proportionality provisions relating to – - risk management system and function (paragraph 59(a));

	proportionality) Risk Management and Internal Controls framework and only allows proportionality at a section or function level. Therefore, we believe that proportionality should be applied to the Risk Management and Internal Controls framework as a whole rather than at a section or function level.	- internal controls (paragraphs 68(2)); - internal audit function (paragraph 49); - compliance function (paragraph 53); and - actuarial function (paragraph 44(1)). As such we believe that the CGC has a scope consistent with the ICPs and, subject to further engagement over actuarial and ERM/ORSA requirements, sufficient provisions allowing for proportionality both collectively and on a control function level.
General	We note throughout the addition in parts of the words 'adequate', 'appropriate' and 'effective'. As these concepts form the basis of the principle of 'proportionality', are the words not superfluous?	We agree that 'adequate' and 'appropriate' are components of 'proportionality' and paragraph 7 reflects this. In the existing CGC it was considered appropriate to use this language throughout as it actively reinforced the key criteria needed to be met by the various governance implementation measures in order for them to be considered as proportionate. The proposed updated CGC continues this.
2	… why so long to bring them into operation? I suppose the question I would pose to the FSA is if it can wait this long (given that the core Code has been in force since 2010) is it really important enough to make these changes? This is especially in the context that the consultation process would have highlighted the thinking of the FSA and proposed changes for some time already and the "delay" (my word) to 1st January 2019 just seems a bit too generous to the industry?	The Island's policy of maintaining an appropriate degree of compliance with international insurance standards is an ongoing process and necessitates updates from time to time. This is such an update and is therefore sufficiently important to warrant the change. The CGC forms part of the development of the wider insurance regulatory framework and the timing of its introduction is intended to suitably coincide with the introduction of the wider insurance framework with which it is to some extent integrated. Also, given the potentially challenging nature of the proposed changes, the lead-in time also allows for amendments to be made in response to consultation.

2	It is noted that this Consultation (CP17-10/T11) is proposed to be effective 1 January 2019.	Noted.
5	Is an insurance manager expected to complete a certificate to confirm it has complied with the CGC or is the obligation on the insurer which has outsourced activities to make sure the insurance manager has complied?	As set out under paragraph 8 and Schedule 3 of the CGC, the certificate on corporate governance is to be completed and submitted in respect of the insurer in question. This is specifically for on behalf of the insurer's board of directors.
6	Should this section allow for the Authority to approve other jurisdictions	We note your comments and will amend the wording of paragraph 6 to the following: "A person authorised to carry on an insurance business in the United Kingdom, any Member State of the European Union or any other jurisdiction which is acceptable to the Authority is exempt from sub-paragraph 5(b)."
7	…when the initial consultation on the original Code came out I felt that the Schedule 1 (Risks) was an extremely good piece of work in setting the benchmark from which insurers can build on and work. In a sense a minimum that they need to ensure they have properly covered. Is there merit in setting out some minimum requirements or framework for insurers to follow? All models work until they do not! One only has to look at [insurer name deleted] in this context.	We note your comments in respect of Schedule 1. The Authority considers that the proposed CGC contains sufficient minimum stipulations at this time.
7	Page 7, Guidance Note 7 states "appropriate and effective measures that meet the CGC's requirements in a way that is proportionate to the nature, scale and complexity of the insurer". The principle of proportionality is also reiterated on page 7 of 43 (Executive Summary). This principle is fundamentally key to our (captive) sector and is consistent with one of the primary selling points in having a captive insurer in the Isle of Man. It is vital that the sector does not over regulate an industry that is for all intents and purposes insuring group	The Authority supports applying proportionality to its regulatory framework in meeting its objectives. Concerning the feedback to which you refer, this was given in relation to potential qualifying criteria for a lower regulatory capital requirement as part of the QIS exercises which are still ongoing. Until such time as the definition / authorisation classification(s) for captive business have been finalised it is, of course, premature to make assumptions as to how many insurers would be considered as "pure" captives.

	shareholder risks (during a QIS 3 feedback session [FSA officer] confirmed that the analysis by the IOMFSA of all QIS 3 industry returns demonstrated that circa 85% of the captives would fall under the broad definition of a "pure" captive.	
9	… my apologies but with a lawyers hat on I do not believe the use of the word "honest" is appropriate – you can act honestly but still create a legal mess!! Would "lawful" be more appropriate and consistent with Section 10? Honesty is best left in the context of culture and ethics.	The requirement to act honestly has been in the CGC since 2010. We believe that it is appropriate for the CGC, alongside its other requirements (including those in relation to complying with relevant laws and regulations), to require insurers generally to conduct themselves in an honest manner (i.e. to put into practice the principle of honesty, including having a supporting culture). Put another way, the CGC is advocating against dishonest behaviour by or on behalf of insurers. We do not see how this is inappropriate for a corresponding corporate governance code of practice.
9	A theme is consideration to corporate ethical values being strongly held, conspicuous and supported by appropriate systems. All entirely agreed in relation to third party insurance but perhaps not so relevant for "pure" captives?	The ethical values proposed are to carry on insurance business with due care, skill and diligence; and in a manner that- - is honest and straightforward; - ensures [the insurer's] risks are managed adequately, appropriately and effectively; - is consistent with the long term interests [as applicable] and viability of the insurer; and - adequately recognises and protects the rights, interests and information needs of [the insurer's] policyholders and other stakeholders to ensure they are treated fairly. When applied proportionately, we do not see how these values are necessarily inconsistent with any responsibly run captive.
9	9 (1) (b) (ii) "..ensures its risks are managed adequately, appropriately and effectively."	We note your comments and, for the avoidance of any potential confusion, we will amend the wording of paragraph

	ICP 8 requires an "effective system of risk management", and states "the risk management system is designed and operated to identify, assess, monitor, manage and report on all reasonably foreseeable material risks of the insurer in a timely manner. It takes into account the probability, potential impact and time duration of risks". There are a subtle but fundamental differences between the above two statements. It is not possible for an insurer to manage all "its risks". We acknowledge the need for a risk management system defined in ICP 8, however it is not possible or practical to ensure ALL risks are managed effectively. We would therefore suggest "all reasonably foreseeable material risks", In line with 36 (f) (ii) & 60 (a)	9(1)(b)(ii) to the following: "ensures its reasonably foreseeable, relevant and material risks are managed adequately, appropriately and effectively;"
10	I still remain of the view (since the drafting/initial consultation on the original code) that these 2 lines are one of the most contentious for the industry. The license holders who have restricted their markets to UK and/or through licensed branches (doing local business) only have no issues and this works for them – though how one applies this retrospectively to business already written prior to 2010 is a matter for the FSA and the license holder in terms of how it is reported or indeed whether it is covered by the certification requirements of Section 8. Whilst I would not expect the FSA to revisit this I still think that (as an off shore center – or whatever terminology one today wants to use) some thinking outside the box is needed. One option (which ties into the delayed consultation on intermediaries) is potentially to change the language to	We do not agree with the suggestion that the requirements in paragraph 10 should be limited by reference to the 3 sales and marketing routes suggested (i.e. we disagree with the idea that, where sales and marketing are conducted via one or more of these particular sales routes, then the CGC should not require the insurer to have regard for any applicable non-Isle of Man laws or regulations). It should also be noted that paragraph 10 applies to all of the insurer's activities and not just the laws and regulations applicable to its sales and marketing. The requirements of this paragraph are consistent with the principles of good governance and risk management and also support more detailed requirements being developed in other new legislation being progressed through the Authority's ICP Project, such as in areas around

	something like "An insurer has an obligation to identify and comply with all its legal and regulatory obligations in the Isle of Man and take all reasonable steps to do so on the basis of (i) doing any business directly through use of internet, without any intermediary; (ii) through the use of a regulated intermediary (the intermediary to be regulated in the country of residence of the policyholder); or (iii) where an unregulated intermediary is used this will be on the basis that such intermediary is the agent of the insurer" The business models would need to be changed – point (iii) is not new and is in essence a reflection of the Appointed Representative structure of old in the UK – and for business from this channel I would expect insurers to provide a simpler product with only managed funds from major institutions to manage their risks re advice, and beef up their compliance/new business department to be able to assess the needs and requirements of the policyholder. However, something like the above has the potential to allow for the differing current models to continue as otherwise the question any policyholder has a right to ask the FSA is what is their position if I am sold an Isle of Man policy where the insurer is not registered locally and this has been sold through an unregulated broker (but one who has direct commission terms with the insurer). It may be time where a simple Yes or No is provided for the long term benefit of the insurers/policyholders and also the long term planning for this industry in the Isle of Man. In the light of CRS I personally believe that there is still a big market for an Isle of Man based insurer as individuals are looking more and more to ensure that they have a	conduct of business, consistent with international standards.

	nest egg outside their main resident country in a different currency – as such as long as the policyholder is able to fund an Isle of Man policy premiums in the currency chosen, why should not the Isle of Man be prepared to accept this? Further I believe that Section 10 as worded must give potential issues for auditors and the Ombudsman in their interactions with the insurer and/or the policyholder. Also to senior management and others, given the cross reference to Section 10 in two or three other sections of this Code.	
11	…the sentiment and intent is clear – I suppose a mirror of this is why do the insurers not apply the same focus to policyholder investments! From my experience the biggest issue for the industry has always been choice of assets that they allow the intermediary to put into a policy (frankly the legal fiction that the policyholder chose the asset would not stand up to scrutiny) and in many instances where the intermediary also received a commission from the fund manager (on top of the commission from the insurer). Some obligation on the insurer on financial management of policyholder assets has merit – even if it were simply that they need to invest in funds on an institutional basis and seek to have all marketing allowances rebated back to the policyholder would go a long way. This would be some sort of hybrid of the current position in the UK. I simply make a point at this section as I believe that there is merit in having one which is from a policyholder perspective and protection.	Although your comments do not directly relate to paragraph 11, we note your suggestion that there should be a similar type of requirement governing the investment of policyholder funds in relation to unit-linked business. The purpose of such guidelines being designed to ensure the fair treatment of policyholders rather than simply ensuring the adequacy of the insurer's capital/liquidity. Provisions for the general fair treatment of policyholders and the appropriateness of insurers' product for target markets, including promotion and distribution, are expanded upon in the draft Insurance (Conduct of Business) (Long Term Business) Code 2018. This Code will include provisions for the reduction of the risk of policyholder detriment, which will be applicable to investment of policyholder funds in relation to unit-linked business.
11	…we feel "and other financial resources" in 11(a) should not be removed. To enable the Authority to	We note your comments and will amend paragraph 11 to reinstate the words "…and other financial resources…".

	accept e.g. letters of credit inwards, secondary capital.	In addition, for consistency, we will amend paragraphs 6(j) and 8(1)(d) of Schedule 2 to refer to "…capital and other financial resources…".
12	As most Captives have external regulated insurance managers, this paragraph needs to deal with these appointments.	We note your comments and will amend paragraph 12 by substituting the word "staff" with "…human resources (whether employed or outsourced)...".
13	…as per the point made in Section 11 I believe you may need to go further than simply "safeguard" which is really more towards having appropriate custody arrangements. What about credit, regulatory risk, etc. posed by the actual fund that the insurer is prepared to allow on its platform. Should this not be alluded to or covered here?	We note your suggestion that a form of risk-based guidelines governing the investment of policyholder funds in relation to unit-linked business is needed. As referred to above, in relation to paragraph 11, the draft Insurance (Conduct of Business) (Long Term Business) Code 2018 will include provisions for the reduction of the risks to policyholders arising from an insurer's handling of policyholder assets.
14 and 15	…is there is a need for the FSA to require a minimum template of what they require this to cover? This is especially so in order to comply with sub section 14 (b). Also is there merit in making reference to electronic copies and indeed a statement that electronic copies would be as acceptable as the original certified copy? Simply looking to a modernised and up to date approach – also could (given the emergence of e: gaming on the Isle of Man) give a push towards an insurer who may want to be an electronic only insurer? [Concerning section 15] … see Section 14 re a minimum template?	The Authority does not at this time propose to set out a minimum template of what records are to be maintained under paragraph 14(b), including as it relates to documents under paragraph 15. However, this does not prevent the Authority from doing so in the future if need be. This provision does not prohibit electronic record keeping where appropriate in accordance with applicable legislation such as the Electronic Transactions Act 2000.
14	…bullet (c) talks about a 6 year requirement for record retention. How does this correlate with the requirement (at point of closure of a captive) where the Manager is required to provide comfort to the IOMFSA that all cover written during the lifetime of	The 6 year requirement is an existing provision and not part of the proposed updates. Subject to any relevant laws to the contrary, we would agree that a document which is still needed to show

	the captive is closed with no potential future liabilities? Does the "or, if later, it ceases to be relevant" allow captive managers to keep records for as long as a company is under their management?	that an insurance contract has been fully terminated may, when an insurer intends to close down, be relevant to verifying that an insurer has permanently ceased its regulated insurance activities. In the event of an intended closure, reference to such proof is not simply relevant to providing "comfort" to this Authority, but is primarily relevant to the persons in charge of the insurer being able to properly satisfy themselves that a regulatory authorisation is no longer required by law before they seek to surrender it.
14	This should be tied into obligations under GDPR.	We agree that it would be appropriate to clarify how the CGC works alongside an applicable non-retention requirement under data protection legislation, including in relation to GDPR. Consequently we propose to amend paragraph 14(c) as follows: "without limiting any other applicable retention requirement, or other legal requirement upon the insurer to delete, rectify or block data in accordance with data protection legislation, any such record must be kept for at least six years from the date it is made or, if later, it ceases to be relevant".
14	How does this clause relate to the EU GDPR, and any request by a data subject for the deletion of data held by an insurer?	We agree that it would be appropriate to clarify how the CGC works alongside an applicable non-retention requirement under data protection legislation, including in relation to GDPR. Consequently we propose to amend paragraph 14(c) as follows: "without limiting any other applicable retention requirement, or other legal requirement upon the insurer to delete, rectify or block data in accordance with data protection legislation, any such record must be kept for at least six years from the date it is made or, if later, it ceases to be relevant".

14	We note the inclusion of the phrase 'including documentation of its internal organisation' and seek clarification from the Authority of what is intended.	The type of internal organisational record would include, for example (as applicable) – - internal arrangements and rules (e.g. articles of association); - structure chart(s) for management, personnel and outsourced functions, identifying roles and reporting lines; - board committee structure(s), including composition and terms of reference; - etc.
17	I do not expect this suggestion to be taken forward but here it goes! [deleted references that may identify a particular insurer] ..this frankly is a bit of nonsense and if there was an area where documentation will be prepared to simply tick a box it would be in this context. You would be better of simply stating the composition of the Board (which you already do) and where a non executive is needed follow the definition of an independent non executive and the current formulation where after 9 years he is not deemed independent unless yearly certified as such (from memory).	We note your comments but do not propose to amend this paragraph.
18(1)	…would the FSA want to take some form of lead by mandating a requirement to have at least one female on the Board? This is an area of governance that has received a lot of traction in the UK and USA and one where Isle of Man may want to also push forward.	It is not a statutory objective of the Authority to legislate in respect of gender-based equal opportunities. The Authority's objectives instead support, for example, the sound and prudent management of insurers. As a general comment in relation to board appointments, we would expect these to be based on appropriate criteria such as merit, as to do otherwise would appear inconsistent with acting in the best interests of an insurer and its policyholders.
18(1)	the Board is responsible for the insurers governance framework, how can the Board composition requirement be "commensurate with the insurer's governance framework" , surely	The governance framework informs the board and gives effect to its pronouncements. Therefore it is important that the board is up to the task of discharging its duties and

	commensurate with the risk of the insurer, works better?	responsibilities given the governance framework that the insurer has in place. If the board cannot discharge its duties and responsibilities, then it may be that the governance framework needs to change or perhaps the board composition does. Therefore we believe that this is an appropriate requirement. However, given your comments, we also believe that it is appropriate to clarify that the board composition needs to be fit for the risk profile in question. Therefore, we will amend the wording of paragraph 18(1) to state "… commensurate with the insurer's risk profile, including its governance framework…".
18(2) and 21	[In relation to paragraph 18(2)] I believe that this needs to be revisited as on face of it I cannot see (in the modern world and complexity of an insurer) that a board of 3 is sufficient to discharge the sentiment highlighted at Section 18.1 "adequate and appropriate combined level of knowledge, skills, experience and commitment" [In relation to paragraph 21] see point earlier re size of the Board at Section 18(2).	We disagree. For some insurers, such as a simple non-life captive, a small number of directors may be sufficient. Also, it should be noted that paragraph 18(2) only specifies a general minimum mandatory requirement as a starting point for the wider provision under paragraph 18(1). 18(1) requires board make-up to be such that it can properly discharge its duties. Consequently, given the nature, scale and complexity of the insurer in question, its business and risks, if the composition of the board is insufficient for this purpose, then more or different appointments would be required. Therefore, in respect of a complex commercial life company, for example, the requirement would be more like at least six directors, including at least two independent directors, depending on the insurer's governance needs.
19(b)	…potentially a nonstarter but is there merit in a minimum template to ensure some consistency? I can understand, with the multi nationals their need to follow group standards. Personally the documents I have seen at various	Paragraph 19(b) requires suitable governance practices and procedures to support the board in being able to exercise, and being seen to be able to exercise, independent oversight and judgement. This reflects the need for

	organisations are a risk in themselves as they are far too complicated and cumbersome to be of any use to the staff that actually faces a lot of the risks in the first place. However, I am happy to stand corrected if I have got the wrong end of the stick.	suitable governance systems in areas such as conflict management, board election process and remuneration. We do not view these as 'non-starters' but quite the opposite. Also, we do not see why related documentation needs to be overly complex or cumbersome but instead would comment that systems of governance need to be adequate, appropriate and effective or they will fail to comply with the CGC.
19(b)	New paragraph b) requires that a board has to document and record how it will go about exercising objective and independent oversight, judgement and decision making. Isn't this just creating more paperwork?	Paragraph 19(b) requires suitable governance practices and procedures to support the board in being able to exercise, and being seen to be able to exercise, independent oversight and judgement. This reflects the need for suitable governance systems in areas such as conflict management, board election process and remuneration. We would expect a responsible board to ensure that such areas follow appropriate and formalised practices and procedures. In terms of "just creating more paperwork", we do not see that this requirement would necessarily require extra paperwork as an insurer would already be expected to have a number of relevant documents in place under the existing CGC concerning the example areas mentioned above. Paragraph 19(b) serves to link these documents (and any others as may be necessary) to the purpose set out in paragraph 19(a).
20	…why give the choice. Just make the decision that Chairman and CEO need to be separate roles. The UK Governance code allows for a joint role but subject to justification by the Board each year – from personal experience this was more of an issue with the market then what was happening with the company and a distraction best avoided!	If the CGC is made the subject of a further consultation, the Authority will propose to prohibit the combining of the roles of Chairperson and Chief Executive Officer.

22	Paragraph a) now includes the word 'implement' with regard to the schedule of reserved powers. Is this not the same as 'monitor and review' under paragraph b) or is the Authority suggesting that the Board should annually consider each item on the schedule?	The requirement in paragraph 22(b) to "monitor and review" is a further articulation on what is needed to meet the requirements of paragraph 22(a) on an ongoing basis. Concerning paragraph 22(b), matters reserved to the board are, of course, an important concern for the board and any items in it (or not in it) should be kept under appropriate consideration, including reviewing at least annually the range and focus of those items. Each item on the schedule is an element of this and the degree to which an individual item is considered needs to be determined by the board having regard to the governance needs of the insurer.
23	I would suggest that there be a minimum number given that these are regulated entities. My suggestion would be 3 – for a regulated entity or indeed any trading entity 1 or 2 board meetings a year is simply not enough for the Board to be in a position to give proper oversight to the management.	We note your comment but do not believe that it is necessary to prescribe a minimum number of board meetings at this time in addition to the requirement already included under paragraph 23.
24/25	… welcomed in the context that this gives minimum guidance on what is required and best practise – even though one could argue that this would be followed by an appropriately qualified secretary as requirements from their own professional bodies. As noted earlier similar guidance/template on other areas would benefit everyone.	We note your comments and would say that some similarity with relevant professional standards is to be expected from a corporate governance code. Concerning your last point we would reiterate that the Authority considers that the proposed CGC contains sufficient minimum stipulations at this time.
24	Board meeting documents. Whilst it is certainly the normal practice to follow steps (a) (b) and (c) there are occasions when an ad hoc board meeting will be called to deal with a single matter in isolation. Ideally such flexibility should be retained by perhaps softening the use of the word "must".	We note your comments and agree that more flexibility is needed. Therefore, we will – - amend paragraph 24 to say "…must, where practicable and appropriate,…"; - qualify paragraph (a) with "…a suitably detailed agenda…"; and

		- qualify the requirement as follows: "Paragraph 1 does not inhibit appropriate flexibility for the board of an insurer to carry out its duties and responsibilities, including in respect of meetings of the board such as having limited agenda and short notice meetings, deferring matters to a subsequent meeting and raising other business at a meeting."
24	We agree with the concept of the provision of documentation including a detailed agenda, however the wording is too prescriptive. Replace "ensure" with "use best endeavours". The rational for this is that occasionally items are discussed at a board meeting, where it is not possible to include on the "detailed agenda" or "circulate in advance of the meeting". If/when this occurs the Board will make sufficient/appropriate time within the Board meeting to review/discuss the item in question (or defer the item to the next board meeting). We would not wish this provision to restrict the Board meeting discussion to only those items which have been included on a detailed agenda and circulated prior to the meeting, we feel that a Board should be able to freely discuss any items it sees fit(including if required to convene an emergency board meeting at short notice). The Board should be able to at liberty to raise any other (AOB) business.	We note your comments and agree that more flexibility is needed. Therefore, we will – - amend paragraph 24 to say "…must, where practicable and appropriate,…"; - qualify paragraph (a) with "…a suitably detailed agenda…"; and - qualify the requirement as follows: "Paragraph 1 does not inhibit appropriate flexibility for the board of an insurer to carry out its duties and responsibilities, including in respect of meetings of the board such as having limited agenda and short notice meetings, deferring matters to a subsequent meeting and raising other business at a meeting."
24	We note that the word 'that' is used twice in the introductory sentence to this paragraph.	This will be corrected.
25	Under a) i) a more appropriate word would be 'apologies' instead of 'non-attendees', as currently recorded in all minutes, where required.	We note your comments. Whilst we do not wish to use the term 'apologies' we have reconsidered the wording and have concluded that it would be appropriate to make it more specific. Therefore we will

		amend the wording of paragraph 25(a)(i) as follows: "which directors attended, which alternate directors attended as an alternate (and for whom) and which directors did not attend for any reason".
25	(a) (ii) ".. level of board attention.." how do you quantify the level of board attention? If the directors agree on the conservative approach, as proposed by senior management to a significant issues, without significant discussion at a Board meeting, the lack of discussion does not mean that this is issue has not been an appropriate "level of attention".	One of the changes in the CGC is to specifically recognise that a record needs to be kept of governance in operation. Board meetings are an important part of this as they are a key point of interaction between the executive and the governing body, helping facilitate and focus board attention on issues pertinent to its role. The intention of the provision you refer to is that minutes, for their part in overall governance documentation, should evidence what board-level attention is given to matters at board meetings and reflect the substance of discussions. Noting your comments we will amend the wording of paragraph 25(a)(ii) as follows: "…sufficient detail to evidence what board-level attention was given at the meeting to matters …".
26	I note the importance of the Board and the role they play. Is there merit in looking at the role of the shareholder and the role they play? (i) Accept not really required for the sole listed entity – but even here there is a major block controlled by one [interested party] (ii) For multi nationals you have in essence one shareholder with pretty much absolute control; (iii) For the privately owned entities you will have a number of shareholder In all the above shareholders will clearly influence the Board directly or indirectly and is there merit in considering how to manage this and whether controls are required? There	The purpose of the CGC is to provide guidance on the sound and prudent management of insurers. From the CGC's perspective, shareholders are a class of stakeholder. In the CGC, stakeholders are treated as external factors in that it addresses stakeholder needs by requiring their interests to be taken into account by insurers such that they are treated fairly. It is the responsibility of an insurer's board and senior management to balance appropriately the potentially competing interests of its various stakeholders, including notably its policyholders and shareholders. To this end, the CGC requires boards to be in a position to balance these interests and to take account of the likely strength of their respective representations.

	is a statement that no one director should have unfettered control – in a sense a company with a single shareholder has the potential for such unfettered control! Whilst I accept that the focus on the Board and accountability and responsibility is important here some regard needs to be given to the shareholders as well in light of the fact that pretty much for all of the Isle of Man insurers there is one or a small group of individuals who play a dominant role.	Consequently, given the potentially strong position of shareholder representation in comparison to policyholders, it is clear why the focus of the CGC's guidance supports the board of an insurer being suitably resilient to the influence of shareholders whilst acting to protect the interests of policyholders. For example - - paragraphs 21 and 22 require the board of an insurer to have and retain appropriate powers in relation to the insurer; - paragraph 19 requires the board of an insurer to able to exercise independent oversight, judgement and decision making in relation to the affairs of the insurer; - paragraph 41 requires directors to exercise independent judgement and objectivity in decision making, taking account of the interests of the insurer and its policyholders; and - paragraphs 9(1)(b)(iv) and 39(a) require a culture with supporting governance systems which give effect to the fair treatment of, notably, policyholders. As was indicated in the consultation document "independent" in this context requires directors to be independently minded, including not being unduly influenced by any other party (including shareholders). The Authority, given its remit, believes that it is appropriate for it to continue to put forward a regulatory framework from this perspective, i.e. by reinforcing the responsibilities of those charged with governance rather than seeking to impose requirements on shareholders directly.
26(2)(c)	…my experience in [jurisdiction] in the insurance sector of [number of years]	We note your comments. As a general response we would highlight that the

	would indicate that this one is very difficult for a Board to deal with. You will always have dominant CEO or indeed Chief Distribution Officers and it is a question of whether you have on the Board others who are prepared to challenge them. The story of the life assurance industry in the last [years] has been one major issue after another and the reason for the "over regulation" (my words) that we see currently. Indeed the story of the major failures from the 2008 crisis of insurers and banks again point to CEOs who were not controlled by the Board. As such whilst I accept the sentiment expressed I am not sure that it will do anything to avoid breaches of this provision in the future. To some extent the FSA review teams may need to be trained specifically to look into this point and make observations and conclusions – though I accept this is a dangerous path to tread!	requirement to avoid any person having 'unfettered powers' is not a standalone requirement. For example, the CGC advocates having in place suitable, delegated operational parameters, board oversight with supporting internal control functions (e.g. internal audit) and external audit process to help address potential risks in this area. Also, if a board of an insurer was unable or unwilling to challenge (where challenge was warranted) the CEO or other senior officer of the insurer, then the board would appear, on the face of it, to be failing in its role.
26(4)(d)	Whilst this is ideal, how in practice can this be measured?	Same comments as the next box below.
26(4)(d)	We note the inclusion of paragraph 4d) and suggest that the IOMFSA might provide some guidance as to how a board might, proportionately, go about this.	We do not propose at this stage to provide any further guidance on how the board oversees the embedding of culture as we feel that the CGC already includes sufficient guidance. For example, the CGC supports that the board should obtain information and evidence to properly oversee cultural aspects, including using independent sources which can provide indications of potential cultural problems. For example, the board can go about it by - - monitoring risk and capital management systems (including review of key policies) to ensure that the insurer's long term interests and the fair treatment of its policyholders are being addressed (and, in respect of any significant issues identified,

		considering the potential of those issues being caused by a cultural failing); - monitoring compliance performance, both internal and external (and, in respect of any significant issues identified, considering the potential of those issues being caused by a cultural failing); - tasking internal audit to consider cultural aspects and report to the board; - actively engaging with external auditors in respect any governance issues the auditors have identified which may be related to culture; - ensuring it has appropriate awareness of any complaints; - having in place an appropriate whistleblowing policy; - taking time perhaps informally to talk to staff away from senior management; - challenging senior management to explain and evidence how it goes about promoting a suitable corporate culture; - etc.
27	For Captives the Board of Directors are responsible for the management (at a high level – including its outsourcing) and the Oversight function, this ensures complete transparency of all operations and functions by the Board.	For any insurer the governing body (board) is ultimately responsible for all of the insurer's affairs. At the same time, management is responsible for the activities and functions delegated to it. The board having ultimate responsibility does not, in itself, "ensure complete transparency of all operations and functions", it only entitles the board to such. It is the actions of the board (including it obtaining and using information from independent sources such as external and internal audit), as well as management facilitating the board's information gathering, which needs to suitably inform the board concerning the activities of the insurer so

		that it is in a position to provide oversight.
27	We note the inclusion of the sentence commencing 'including to promote… ' between paragraphs a) and b). For captives under management and on the basis of the defined control functions being compliance, internal audit, risk management and actuarial (but see Part 7), implementing separation of each of these control functions from management is likely to be challenge even for a well-resourced manager and possibly lead to increased operating costs for insurers.	We note that this comment was received from the non-life sector and our response below is therefore geared towards that sector. The proposed requirement states "…including, where appropriate, independent…", it does not require the complete independence of all control functions all of the time. The use of the words "where appropriate" reflects that the internal audit, compliance, risk management and actuarial functions all need to have independence when performing a checks and balances role as may be required in carrying out their activities. For internal audit, independence is central to its overall role and all insurers should already have an internal audit function that is independent from the activities it audits. For compliance and risk management functions 'appropriate independence' means that a person should not be unduly conflicted when performing checks and balances (as would be the case with a person validating for internal control purposes their own work, for example). Insurers should already have suitable checks and balances in operation as part of their internal control frameworks. As previously indicated the proposed requirement for an actuarial function is subject to further consideration by the Authority. However, where the requirement remains applicable after that exercise, 'appropriate independence' will include being suitably independent of operational management in order to provide any objective input the board of an insurer requires in order to carry out

		its functions properly (for example, by providing assurance to the board in respect of product pricing and technical provisions, and thus aiding in capital adequacy assessment). In practice, for non-life insurers in the Island, this will require outsourcing to a qualified actuarial resource (whether externally, within the insurer's group or, where an insurance manager has been appointed, within the manager's group) and we would expect that an outsourced arrangement would lend itself to a suitable separation of duties. Given the above and the requirements for independence / segregation of duties already in the CGC since 2010, we do not expect a significant increase in operating costs arising from proposed new requirements. However, we do acknowledge that, if an actuarial function were to be imposed upon an insurer which does not already have such a function in place, then there would be a cost implication.
30	Is use of the word 'outsourced' twice in this heading necessary? We note that the Authority has provided no guidance on what it considers to be 'significant' in the context of activity or function and therefore this would be for the board to determine accordingly.	We will remove the first use of the word outsourced. Yes it would be for the board to determine appropriately. However, as an indication of what the Authority would ordinarily consider to be 'significant', we would assert that significant activities and functions would include, for example, outsourced: insurance management, any internal control function, accounting, financial reporting, sales etc.
32(a)(i)	…introduces the requirement for business objectives. The commonly inferred or accepted objective of a captive is a risk management tool that retains an appropriate level of shareholder risk internally minimising external market premium leakage etc.etc. Need to understand what level of granularity is anticipated or expected	Clearly an insurer needs to have a view on what it wants to do and achieve in order to properly plan ahead. It is down to its board and senior management to determine what is adequate, appropriate and effective in terms of articulating the insurer's objectives.

	here. Would the simple "Mission Statement" in the Corporate Governance Policy which each client has, suffice for this purpose?	We are not in a position to comment on the suitability of each of your clients' mission statements. However, we would suggest, given the brevity sometimes associated with mission statements, that such statements be considered in order to assess if they are sufficient to articulate the relevant insurer's purpose in a manner useful enough to support its strategy, policies and business planning.
33(a)	I have no issue with the sentiment expressed here. However, one word of advice from an independent non executive was that you also need to have regard to the remuneration policy applied for all staff – and compare this against the "executives". People forget that if there is a clear miss match over a short period of time you will end up with a major issue be it staff turnover/increased error/strikes/etc. Employees are stakeholders in an insurer and some emphasis needs to be given to ensure fairness to them as well from a remuneration perspective. For example should the FSA be interested where the executive team receive a bonus (for achieving their objectives) but not staff generally as their objectives were not achieved? Is such a scenario of interest to either the Board or the regulator in the context of the Code?	We note your comments. In response to your question, clearly any situation which might induce behaviour that might adversely affect an insurer to any material degree is of interest to its board. It might also be of interest to the Authority if relevant and material to the Authority having regard to its regulatory objectives.
34(1)(b)	…conceptually I have a difficulty with "clearly defined roles and responsibilities of the board" – Companies Act makes it clear that the Board has unfettered power and is only limited by what is in their Memo and Articles. As such I am not sure how one can define the Board's roles and responsibilities – if you put this in a document you are in essence limiting their rights, which may be dangerous in its own right.	Specifying key aspects of board-oversight in respect of financial reporting/external audit should not be drafted in a manner that seeks to limit (and indeed may not be capable of limiting) a board's responsibilities under the Companies Acts. We do not agree that the concept is flawed but rather that it is good practice if approached appropriately. From a practical perspective in relation to the external audit process, it would be similar to setting out the terms of reference for any audit committee of the board.

34(1)(c)	…is there merit (as per listing requirements) that there be appointed to the Board an independent non-executive director with financial/accounting experience? This will act as an independent check on a CFO and provide some better oversight of the audit process?	We believe that the principles of appropriate, objective oversight by the board in respect of financial matters and the actions of executive management are already sufficiently encapsulated within the provisions of the CGC for the Island's insurance sector (which is, of course, currently unlisted in general).
34(a) and (b)	…are additional items. The need for clearly "defined roles and responsibilities of the board, the insurer's senior management and external auditor". In relation to defined roles and responsibilities of the board is this going to be practical for captive boards? Is there a downside here in the sense that it suggests individual responsibility (and by logical extension liability) rather than collective responsibility and liability? Would the "Matters Reserved for the Board" schedule in each Corporate Governance Policy suffice? The Manager's role is defined in the Management Agreement and the Auditor's in the Letter of Engagement? In relation to item (b) we are not sure what Board oversight of an external audit can be applied as the scope is defined by the Auditor in accordance with the relevant ISAs. It would be useful to understand specifically what the IOMFSA is seeking on this point.	In relation to defining board responsibilities concerning financial reporting, we do not see that a requirement to define a board's responsibilities will necessarily be impractical or lead to individual rather than collective responsibility. The board's part in financial reporting is an important one and should be identified formally. In this regard, a 'matters reserved' schedule would be a key component in recognising and communicating things requiring referral to the board but would not necessarily describe the board's role and responsibilities. In respect of manager and auditor responsibilities, yes, we expect that the management agreement (where an insurer has outsourced management) and the letter of engagement, respectively, would set out much if not all of the roles and responsibilities of those parties. Concerning a board's oversight of an external audit, we are of course aware that auditing standards do and should apply. However, the board still needs to oversee the external audit process, and may, where appropriate, form an audit committee to assist it in doing so. Oversight includes, for example, areas such as- - ensuring that the insurer applies suitably robust processes to approving, or recommending the appointment, reappointment, removal and remuneration of the external auditor;

		- ensuring that the external auditor is competent, independent and has the capacity for the audit required; - preapproving all audit and non-audit services provided by the external auditor, including with a view to maintaining the auditor's independence; - review of the letter of engagement to ensure it is clear and appropriate to the scope of the audit and resources required to conduct the audit; - reviewing with management and external auditor separately any problems or difficulties encountered during the course of the audit, as well as to address any material weaknesses or significant deficiencies identified in the financial reporting process, or otherwise in relation to governance; - etc.
35 to 38	Looking at this afresh and with the passage of the last 7 years I would question why is this the responsibility of the Board? Should this not be the responsibility of Management who need to confirm this aspect to the Board? From a personal point I believe pushing this obligation to the Board may simply not work unless you have more regular Board meetings – indeed something like once a month may not be unreasonable if you want to ensure all these aspects are properly under the control of the Board. At the end I do not believe that any non-executive director would want to take on these obligations given the limited time they spend and also the fee they receive. The review obligations in the Sections are the proper Board responsibility and allows proper discharge of their duties. But the establishment of all these structures must fall on management.	The board is already ultimately responsible and accountable for these matters. The CGC does not 'push these obligations to the board', and does not require the board to take over executive management of these areas. Instead, the CGC allows the board to delegate functions and activities to management (as would normally be expected). For example, concerning the terms "establish, implement and maintain" when used in relation to board functions and responsibilities (Part 3 of the CGC), to illustrate how the CGC allows for delegation – - "establish" includes the board approving proposals prepared for the board by management or others; - "implement" (also see definitions) is a term which is

		expressly without prejudice to delegation and therefore recognises that the board will be likely to delegate to management or others; and - "maintain" includes, where appropriate, maintaining by way of review by the board of information prepared for the board by management or others.
36(f)(iii)	…the forecast time horizon should be set by an insurer in line with the timescale of the insurance policies underwritten and re-assessed when new policies are written or renewed. "at least three years" appears a long time horizon for short tailed business (i.e. for those insurers with Annual (or shorter) policies. Captive do not usually underwrite retail business which may automatically renewal.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ERM/ORSA requirements, including the minimum forecast time horizon.
36	We note the extension of this paragraph to include 'regulatory capital compliance' and that under paragraph f iii) reference is made to a 'forecast time horizon'. We note that forecast time horizon is defined in Schedule 2 as at least 3 years, unless a shorter period is agreed by the Authority. Generally client companies would look at a 2 year time horizon and we consider this a proportional approach in terms of the nature, scale and complexity of the risks. If the Authority is unwilling to reconsider this provision, what will be the process for obtaining the Authority's agreement and is the best use of resources?	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ERM/ORSA requirements, including the minimum forecast time horizon.
37	Refer to wide comments. [The comments referred to appear against the term "general" above, as opposed to a particular paragraph number.]	Refer to our corresponding comments above against the term "general", as opposed to a particular paragraph number.
38	Anti Money Laundering and Combating the financing of terrorism is governed by separate regulations	We are aware that this is the case but also assert that it is appropriate to recognise that AML/CFT are part of an

		insurer's corporate governance framework.
39	Accept that this is a Board responsibility. However, in the real world this has to start at the top and that means the CEO and the executive team. There may be merit in recognising this and saying that "The board of an insurer, especially the Chief Executive Officer, must promote ……"	We believe that this is already adequately addressed in paragraph 42(c), which is applicable to senior management including the CEO.
40	…whilst I accept that self-evaluation is the most practical. The reality is that this can become a tick box exercise and over time is of limited use. There may be merit in biting the bullet and saying that once in every 3 or 5 years an external evaluation should be undertaken. There are a number of entities now providing this and for the regulator getting an impartial view may have merit when compared to the previous self-assessments. Ultimately whether this is a useful tool or not is dependent on the Chairman and CEO and how seriously they take it.	We note your comments. However, we do not believe that it is necessary to require a mandatory periodic external board evaluation (this, of course, does not prevent a board from obtaining an external evaluation where the board feels that it is appropriate, or the Authority from requiring such an evaluation if circumstances were to warrant such action).
41(b)	… again I would have an issue with "honestly"	The requirement to act honestly has been in the CGC since 2010. We believe that it is appropriate for the CGC, alongside its other requirements, to require insurers to conduct themselves in an honest manner (i.e. to put into practice the principle of honesty, including having a supporting corporate culture). Put another way, the CGC is advocating against dishonest behaviour. This proposed amendment extends the requirement more specifically to individual directors.
41	"Key Responsibilities of Directors" directors are referred to as "he" or "his" is not politically correct as there are obviously female directors.	The use of the term 'he' or 'his' etc., is a carryover from an older statutory document drafting style. This was possible as the Interpretation Act 2015 (and its predecessor) specified that words indicating a gender included other

		genders. However, the current style (as you suggest should be the case) is for gender neutrality. Accordingly, we will amend the draft to ensure it is gender neutral throughout.
41	We note that this Part 4 replaces paragraph 8 of the existing CGC. Whether each director has acted in a responsible manner is within the sole knowledge of the individual therefore it does not seem appropriate for a representative of the board to signify compliance with this paragraph on behalf of others.	The paragraph on directors' responsibilities in the existing CGC already has areas which might be viewed as only known to each individual director. The proposed requirement to act reasonably adds another. The CGC's certification process has operated since 2010 without problems identified in this area. Although we do not necessarily know how every insurer has reconciled this matter we would suggest that it may be similar to the following. The CGC certificate is given on behalf of the entire board, therefore, the board should have agreed it and authorised someone to sign on its behalf. In so agreeing each director has the opportunity to alert the board to any matters known only to him/her which might affect the certification (or the board might require each director to actively confirm his/her position in that regard). The person signing on behalf of the board can therefore do so by placing reasonable reliance on what was agreed by the board and what representations were made by individual directors.
42(e)	…provision of information ".. to enable the board to carry out its duties and functions…" Senior management cannot determine whether the Board can carry out its duties. Senior management can provide information for the Board to review the areas list, however it is for the Board to decide whether the information provide is sufficient for the Board to carry out its duties, and if required request additional information from senior management.	We believe that there are both top down and bottom up roles to ensure that the board is properly informed. Whist we can see your point we believe that this paragraph should be read in the context of the overall CGC which clearly states that the board is responsible for ensuring that it gets the information it needs. However, senior management also has a role to facilitate the board in this regard given its proximity to relevant information about the insurer. Senior managers should also be sufficiently aware of the role and responsibilities of the board, and therefore its likely

	This wording appears to conflict with 41.	information needs, to constructively engage with informing it. However, noting your comments concerning the reasonable expectations of management, we consider it appropriate to amend paragraph 42(e) as follows: "…or other information (in a manner consistent with the role and responsibilities of senior management) to enable the board to carry out its duties…".
43(a)	…makes it clear that any outsourced functions by the insurer does not diminish accountability in any way.	Noted.
43	What is the impact of the inclusion of "significant activities"? Presumably these are wider than the oversight functions covered in Parts 7 – 13. Does it include for example the insurance activities listed in paragraph 35 of the FSA Guidance Notes for Insurance Business?	The inclusion of the word "activities" avoids any confusion that outsourcing might be limited to any particular functions. Yes, outsourcing can, of course, include activities and functions beyond the defined internal control functions; and yes, this includes outsourcing to an insurance manager.
43(e)(i)	…if the use of a outsourced provider is consistent with the company's effective risk management, the statement "..including not unreasonably increasing its operational risk;.." appears to be a duplication.	The reference to not unreasonably increasing operational risk is an emphasis given to a component of the main requirement for outsourcing to be consistent with effective risk and financial management and compliance. Accordingly we believe it remains appropriate and not simply a duplication.
44 to 47	We note that the wording of this section is consistent with Solvency II, but inconsistent with our understanding that Solvency II equivalence for captives is not the intention of the Authority. The IAIS application paper on the Regulation and Supervision of Captive Insurers (November 2015) acknowledges that 'captives generally do not use actuarial techniques to calculate premiums or to match assets	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.

	and liabilities'. The Authority does not appear to have taken this on board in the drafting of this Part. Any requirement in this regard will largely ensure that the Isle of Man is out of step with its closest competitors and will undoubtedly have an impact on the future flow of business to the Isle of Man. In addition to damaging our competitive position, there would be unwanted cost implications for our existing captive client-base and the feedback which we have received from many of our smaller class 12 licenced captives on this matter has been negative.	
44	Item (1) states that an insurer must have an effective actuarial function. For many captives this requirement will: a) Introduce significant cost for questionable return. b) Be considered excessive to requirements and inevitably encourage shareholders to consider more pragmatic captive domiciles. (2) (b) suggests that the actuarial role would not be limited to purely claims provisions. It extends to premium pricing, capital adequacy, liquidity adequacy, reinsurance, compliance with legal and regulatory obligations etc. Effectively "shadowing" or a "four eyes" approach to effectively the entire insurance management role. In its entirety such scope will introduce significant cost and definitely outprice the viability of captives operational expense base (we would suggest that the same comment applies to any general insurer). <u>This is a very broad proposed scope</u>. Very rough estimates would suggest an annual cost of no less than £20k per annum which is probably circa 25% of the entire annual captive management fee for an average client.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.

	Notwithstanding further issues to consider: 1. Is there such actuarial resource available on the IOM (to service 120 captives) ready to engage with the required broad level of experience i.e. claims, reinsurance, premium benchmarking etc? 2. In taking on this role any actuary will require significant E&O protection. Is that going to be available and at what price?	
44-47 (Part 7)	What is the significance of the change from AA to actuarial function or is this just to ensure consistency with other functions? Does the AA have any responsibilities independently of the actuarial function?	The proposed requirement for an actuarial function is in addition to the requirements for an appointed actuary. For a life company we anticipate that its appointed actuary will oversee its actuarial function. The actuarial function requirements extend the areas in which actuarial involvement is required, such as contributing to the ORSA process.
44	Section 44 (2) Where an actuarial function is appropriate, at least in part, we believe the scope should be further considered to reflect the size and complexity of the (re)insurer. Section 44 (2) provides a list of responsibilities that "must" be included in the actuarial function. We recommend the CGC include provision for a proportional approach where components of the scope are applied and others are not, provided there is a reasonable basis for not undertaking these aspects. For example, our understanding of section (c) (vii) to (ix) are that all insurers will require an actuarial opinion and a qualified actuary's input into the effectiveness of the risk management system. We believe this to be excessive for captives and, if this is not the intent, the CGC could be amended to remove reference to "opinion" to clarify that an appropriate	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.

	party, such as experienced staff of the insurance manager can perform this function. Section 44 (2) (d) In some instances the actuarial function could be robustly performed by insurance management staff using non-actuarial tools and techniques that are subject to review and challenge by the (re)insurer's auditor, who for example might use actuarial techniques to support the adequacy of reserves. Including a provision in the CGC that allows (re)insurers to consider and, where relevant, adapt the actuarial function to the size and complexity of the (re)insurer would be an enhancement that would avoid unnecessary cost and administration without jeopardising the integrity of governance. This could be achieved by providing scenarios or separate guidance that govern when deterministic (non-stochastic) methods could be used.	
44	Please refer our overarching comments about ICP8, Per ICP 8.5 – "…an effective actuarial function capable of evaluating and providing advice to the insurer regarding, at a minimum technical provisions, premium and pricing activities, and compliance with related statutory and regulatory requirements." The Actuarial function as defined in this code goes further than the minimum ICP requirements. Subject to comments on the Risk Management and Internal Controls of an insurer, being appropriate, rather than the individual functions (a), we would state that: 44 (1) Actuarial Function – "…risk to which it is or may be exposed.." assume	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.

	this only relates to certain risks (i.e. insurance, credit etc and not all risks i.e. operational, reputational, etc). Captives (when finally defined) may assume de minimis risks to third parties and therefore should not require an actuarial function, especially those writing short term risks. The cost implication of an actuarial function as prescribed could call into question the viability of a "captive" insurer and also a "non-captive" which are not retail insurers. These "non-captives" that are not retail insurers are not sophisticated or large enough to support an Actuarial Function . (Implementation of the actuarial function will mean the island insurance business will be local retail insurers, life insurance, and not Captives) The proposed description of "Actuarial Function" appears to include a number of discrete disciplines. Clarity is required between: 1. An actuary appointed (not relating to the requirements under section 18 of the Act. a. Appointed to provide an ultimate project loss calculation for specific lines of business (and periods of insurance) b. Appointed to provide premium estimates for future insurance periods 2. The provision of "known" technical provisions, per underwriting period, per class of business, per geographical location; by a. Claims handlers b. Fronting insurers c. Loss adjusters d. The insured	

	3. The decision to underwrite a risk and calculation of the premium; based on: a. A premium may be suggested by a broker, fronting insurer, the insurers will need to assess its adequacy to determine whether to underwrite the risk or not (at the given price), it may not be possible to re-negotiate on the price. b. Adequately consider the term of the (re)insurance contract (contracts can include automatic additions to the risk, usually based on a proportion of existing declared sums insured or turnover/wage roll etc. c. The nature of risk involved – is a policy limit loss binary? d. The nature of the policy – is there sufficient relevant information available for "actuarial assessment" (additional of a risk with no previous claims) e. Is the risk contingent on the loss and the failure for a primary insurance policy (i.e. contingent losses on a global master policy) f. Changing nature of the risk profile due to external factors, when currently there is insufficient data to quantify their impact – Ogden tables, Minister of Justice reforms. 44 (2) (c) (i) an Actuarial Function would not "coordinate the calculation of the insurer's technical provisions" – i.e. claims payable, loss reserves, these are provided by claims handlers, loss adjusters, fronting insurers. 44 (2) (c) (vii) is principally the responsibility of the Board. The Board should determine the insurers overall	

	underwriting and reserving policy, not the actuary. 44 (2) (c) viii – This again is the Board's responsibility, and their Risk advisers which may or may not include actuarial input.	
44	The wording of paragraph 1) makes it a mandatory requirement to have an actuarial function and 2) mandates that the actuarial function carry out various tasks which are excessive and disproportionate to the majority of captives. For example: Annual policies are generally underwritten: technical provisions - unearned premium reserves are determined by accounting convention. It is not necessary for these to be signed off by an actuary. Technical provisions - claims reserves are generally established on the advice of loss adjusters, claims handlers or ceding insurers and follow a company's stated claims reserving policy. It is not necessary for these to be signed off by an actuary. Premium and pricing activities – captives respond to the annual requirements of its insured (the parent). Often premiums are market driven or established by ceding insurers. In order to address BEPs issues, captive strategies are not generally driven by profit. Liquidity adequacy: reimbursement of claims is generally a matter between the captive and parent. Liquidity management is closely monitored by managers and boards. We do not see any value in having oversight of this by an actuary. For liability risks where IBNR loss reserves are required, these are	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.

	generally assessed periodically by qualified non-life actuaries who are expected to undertake the relevant enquiries and apply the appropriate standards. With regard to paragraph d) it would be impossible to comply proportionately with this desired outcome without employing an actuary which would add significant operational costs. From a practical point of view we understand that there are currently no non-life actuaries in the Isle of Man.	
45/46	Our concerns regarding the requirements under 44 above follow through to the provisions of these paragraphs.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.
48-51 (Part 8)	An annual internal audit is a requirement of the existing CGC and has become well established. Having watched the implementation of the internal audit function by client companies and reflected on the frequency of changes for most insurers, especially captives, we think the CGC should consider a phased multi-year or periodic approach in certain circumstances. This would allow parent companies to include their captive (re)insurer in the group's rolling internal audit cycle and where necessary complement it with less intensive reviews at more frequent intervals. For example, a group internal audit might be performed every 3-5 years and focus on the adequacy, appropriateness and effectiveness of controls, whereas an annual or bi-annual audit might focus on compliance with those policies and procedures. Similarly, in some instances it might be appropriate for an insurer, especially a basic captive, to undertake a periodic internal audit, say every 3-5 years or	The CGC does not allow for internal audit to be simply set aside for one or more years. However, it does allow for an internal audit process to address the risks involved on a proportionate basis over time. Notably the CGC in paragraph 49(g) provides that an insurer's internal audit function needs to employ "…a methodology that identifies the material risks to which the insurer is or may be exposed and allocates its resources accordingly…". This would include keeping under review a work plan for internal audit that is suitable for the insurer, its activities and risk exposures. An internal audit work plan may schedule work over a period, including periods of more than one year, provided that the relevant risks and controls are suitably addressed. It is not a mandatory requirement of the CGC that detailed internal audit assessment work must be carried out at least every year in respect of every material risk of the insurer. Instead it is the responsibility of the insurer's board, together with the

	when there is a significant change in risk profile, process or other trigger event. We think this is especially relevant where a (re)insurer is in run-off and is not actively writing business. As the CGC is currently written it implies a full and comprehensive internal audit would be required annually. We believe this will increase time and costs significantly and for little additional benefit. In addition, in our experience periodic internal audits tend to receive more focus and attention by all parties and are less prone to becoming standardised and routine. They therefore deliver better results and more meaningful insight into the company's control framework.	internal audit function, to determine an appropriate schedule for such work. The only mandatory minimum annual requirement in respect of internal audit is for the internal audit function to report its findings and recommendations at least annually to the insurer's board (or an appropriate committee thereof).
48	Where an un-complicated captive, which has not changed its operations, an annual independent internal audit appears too onerous. The Board should be able to set an internal audit timeframe, in the context of its other Risk Management and Internal Controls framework. We also believe that section of an internal audit may need to be carried out by an "independent" party, subject to the definition of "independent" however some internal audit control function do not justify or require an "independent" party. Is the adoption of a risk management and control system, provided by an outsourced service provider, which has been appropriate, independently and externally certified sufficient?	It is our view that an internal audit need not be onerous if it is implemented proportionately. Independence is essential to internal audit if it to be seen as credible. We do not necessarily see that there are material areas which do not justify appropriate independence. The board of an insurer is already able to set the timeframe of internal audit work in accordance with the opening sentence of paragraph 49 and sub-paragraph 49(g). Concerning your question, we have verified with you that the question concerned the sufficiency of an internal audit of an insurance manager for the purposes of its client insurers. In response, firstly, we would generally comment that 'sufficiency' depends on what is proportionate in each case. Secondly, there are some potential weaknesses in such an approach which would need to be resolved. For example, if the internal audit function is working for or on behalf of the manager (or the manager's group) this appears to create a conflict of duty (and potential doubt over

		reliability for the insurer) if asked to report on possible management / service failings of the manager to its client insurer. Also, there is a question of the remit and work plan of the internal audit function and how it would be matched with the appropriate risk focus (including materiality levels) of the insurer in question. There may be some comfort provided by the external certification you mention but it would depend on the circumstances involved.
49(c)	Usually the Internal Auditor reports to the Audit Committee rather than the Board. This is an appropriate division of oversight responsibilities. Can the Code reflect this?	We note your request and will amend the wording of paragraph 49(c) as follows: "has direct reporting lines to the insurer's board (or audit committee)".
50/51	We note that the provision which allows for the board to carry out the internal audit function has been deleted. This may increase costs for some companies.	We consider this change to be appropriate and a necessary cost of having in place a credible regulatory (and corporate governance) framework in respect of internal audit.
51	If it is the intention that a Director is not sufficiently independent and not able to undertake the internal audit, this is inconsistent with 51 (a) " a suitable resource from within the insurer" which could imply a Director – "suitable" may require definition.	We note your comments and will amend paragraph 51(a) to specify that "…a suitable resource does not include a director of the insurer…".
53	We acknowledge that a compliance function should be independent from the operational activities, however it does not need to be independent of the insurer as a whole, also where the operational activities are outsourced, the compliance function may also be outsourced to the same corporate manager, as long as the operational activities and the compliance functions are independent within the manager.	We note your comments and do not disagree.
57	Engagement Letter. Semantics on this point, but not all Audit Firms issue an annual engagement letter. Would this constitute a breach or is it a case of so	The requirement is for a suitable letter of engagement to be in place prior to commencement of the audit. There is no requirement for this to be reissued prior

	long as one is on file ahead of the engagement?	to the next audit, provided the existing letter remains in force and is suitable.
59-66 (Part 11)	For many (re)insurers, especially captives, the risk management environment and corresponding framework will not materially change from year to year. As the CGC anticipates a forward looking time horizon of 3 years or more, it should be possible for a (re)insurer to prepare and submit an Own Risk Solvency Assessment (ORSA) annually or less frequently in certain circumstances. Those circumstances might include dormant (re)insurers that are running-off legacy liabilities in a structured and prudent manner. Including a provision in the CGC for less frequent ORSA submissions would be sensible approach, albeit it might only be exercised occasionally.	The Authority intends to have further engagement with the non-life sector (including insurers in run-off) concerning the proportionality of the CGC in relation to ERM/ORSA requirements, including minimum ORSA frequency.
59	The Authority considers it to be appropriate to summarise one particular contribution received as follows: Capable and responsible people are required to give proper effect to risk management, and supporting systems should not be such that they unduly diminish or inhibit this.	Your comments are noted. The CGC requires adequate, appropriate and effective risk management systems and functions. A risk management system which unduly diminishes or inhibits its corresponding risk management function would not appear to be in compliance with one or more of the required criteria.
59	Between paragraphs a) and b) the words 'establish and' should be deleted. We note the significant expansion and detail contained under this Part, particularly paragraphs 61, 62, 63, 64, 65 and 66 which may be a challenge to some companies, particularly in the determining what might be considered a proportionate approach. We note that Internal Audit Function, Compliance Function and Actuarial Function (where applicable) fall under	This is a problem with how the mark-up of changes to the document have appeared. The words are actually part of (b) and should not be deleted. The Authority intends to have further engagement with the non-life sector concerning the proportionality of the CGC in relation to ERM/ORSA requirements. The functions were not re-ordered as this helped minimise changes made to the document.

	the wider remit of the Risk Management System and therefore suggest that those Parts should follow rather than precede this Part in the Code.	
59 and 61	"….including risk management function…." Does this imply the need for an appointed officer?	There is no proposed requirement for a dedicated officer to be appointed and the activities of the function can be carried out by persons with other roles in respect of the insurer (subject to having independence when carrying out checks and balances activities).
61	Risk Management should be integral to insurers operations, rather than being an independent Function.	The risk management function oversees the risk management framework, and as such we agree that risk management needs to be embedded in an insurer's operations. The CGC's proposed requirement is for independence of the risk management function where appropriate. It becomes appropriate, for example, if the activities of the risk management function involve checks and balances in order to provide objective validations. In such circumstances the activities should be carried out by independent persons (i.e. not by a person whose judgement may be unduly influenced by his or her other duties, which would be the case if the person were asked to validate their own work as an internal control check).
62	(3) The phrase "Prospective risks over its forecast time horizon" sounds like emerging risks. Is this the intention? If so, by definition emerging risks are "newly developing or changing risks which can be difficult to quantify and which may have a major impact on an organisation". This makes the assessment difficult if not impossible. Can this element be qualified?	The term "prospective risks" can encompass emerging risks which may be hard to quantify. Concerning hard to quantify risks, these are dealt with under paragraph 64(4) and paragraphs 6(a), 6(g) and 8(f) of Schedule 2.
59-66 (Part 11)	…the full blown ERM function when operated comprehensively is a significant commitment by all stakeholders. It requires 100% buy in,	All insurers are required to have in place an appropriate risk management function, and that function must support an enterprise-wide coordination of risk

	the key to which is an acceptance that the process adds real value. [specific client example not included] … There is no question that the process when functioning as intended will add value, however particularly on simpler, smaller captives it is highly questionable whether that level of commitment and engagement is viable and will prove cost effective. *Scope, purpose and shape requires discussion with IOMFSA.*	and capital management for capital adequacy purposes. The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ERM/ORSA requirements.
67	We note the inclusion of 'Actuarial Function' under paragraph 1 b) and refer the Authority to our comments in respect of PART 7 above.	The Authority intends to have further engagement with the non-life sector concerning the proportionality of the CGC in relation to actuarial requirements.
69	… from a conceptual perspective I fail to see why a section on fraud prevention is needed. Fraud by its own definition is a criminal matter and any organisation should know how to deal with this. If we go down this route is there not real merit in having a section on data protection and data integrity in light of the issues one hears about data breaches and failure of IT systems to keep hackers out?	Fraud may be a criminal matter but this does not limit the relevance of fraud prevention in relation to risk management, including internal control. Therefore we do not agree that this is a conceptual problem for a corporate governance code. Data protection and integrity are also relevant areas. Data safeguards and IT/communications risks are already referred to elsewhere in the CGC.
70	Anti Money Laundering and Combating the financing of terrorism is governed by separate regulations.	We are aware that this is the case but also assert that it is appropriate to recognise that AML/CFT are part of an insurer's corporate governance framework.
71	(b) "…directly with the Authority.." presumably the Authority only wishes to receive "whistle blowing" directly, if it relates to breach (or possible breach) of regulations.	Guidance on whistleblowing can be found on our website under the heading "Guidance on making a complaint about a regulated entity" at: **https://www.iomfsa.im/consumers/** This includes more information on the types of matters that may be appropriate to report to the Authority.
71	We note the extension of paragraph b) which requires persons to raise	Guidance on whistleblowing can be found on our website under the heading

	concerns directly with the Authority. As most companies adopt Group whistle-blowing policies which allow for anonymity in such cases, how does the Authority propose to address this?	"Guidance on making a complaint about a regulated entity" at: **https://www.iomfsa.im/consumers/** This includes more information relating to the anonymity of whistleblowers.
72 and 73 (Part 14)	Sections 72 and 73 of the CGC deal with treating customers fairly. In light of the consultation on Conduct of Business for non-life insurance, we would ask for clarification on whether it is the intention that these sections also apply to non-life captives? We understand the need for robust consumer protections and the Insurer's role and responsibilities in this area, however, these requirements are not easily adapted and applied to some non-life (re)insurers and especially captives. For example, "ensuring that information is sought from the policyholder that is appropriate in order to assess the policyholder's relevant needs before giving advice or conducting a contract." should not apply to captive arrangements where a fellow subsidiary approaches the group's captive for insurance. Complying with this requirement, to the letter, would increase cost and complexity unnecessarily and potentially expose the captive to new regulatory risks, such as providing insurance advice in another jurisdiction without a licence (in that jurisdiction).	The Authority intends to have further engagement with the captive sector concerning the proportionality of the CGC in relation to market conduct/fair treatment of policyholders requirement.
72	With regard to Captive the Policyholder, the Captive and the Shareholder are within the same Group – this relationship needs to be recognised.	The Authority intends to have further engagement with the captive sector concerning the proportionality of the CGC in relation to market conduct/fair treatment of policyholders requirement.
72(2)(c) (d) and (f)	[Concerning (2)(c) and (d)] Presumably this is intended to extend direct sales and tied agents but not independent financial intermediaries. Can this be clarified?	Paragraph 72(2)(c) would not apply in respect of a policy sold purely through an independent intermediary acting for the prospective policyholder and not the insurer. This is given effect by virtue of

		the wording which limits it to advice given by or on behalf of the insurer. Paragraph 72(2)(d) applies to all sales of insurance contracts as referred to in that paragraph, including as it relates to a "….relevant person appointed to act on behalf of the policyholder…".
	[(Concerning (2)(f)] The concept of "private information" introduces another element to data security. Does it cover information relating to a corporate entity? Can this be amended to compliance with obligations under Data Protection legislation?	Paragraph 72(2)(f) is a general guidance principle which simply reinforces that an insurer must comply with all relevant legal and regulatory requirements concerning private information, including Data Protection legislation. However, for the avoidance of any doubt, we will amend paragraph 72(2)(f) as follows: "ensuring that private information about its policyholders is protected in accordance with applicable legal and regulatory requirements;"
74	… in the context used I have no issue with "honest"	Noted.
74	Interaction with the Authority "(2) An insurer must report to the Authority anything relating to the insurer of which the Authority would reasonably expect notice, having regard to its regulatory objectives as set out in section 1 of the Insurance Act 2008, including — (a) any change or incident that could materially impact, currently or prospectively — (i) its risk profile; (ii) its financial condition, including its capital adequacy, liquidity adequacy or compliance with its regulatory capital requirements; or (iii) the fair treatment of its policyholders. (b) where it —	We do not propose to provide formal guidance in this area at this time. However, as a general comment in the interim, and without limiting the generality of the proposed requirement, the following are some examples of matters we would expect to be advised of in relation to an insurer: - Change in its financial reporting year end. - Change in its reporting currency. - Change in its name or address. - Change in outsourcing arrangements for a significant function of the insurer. - Criminal convictions or (as may be legally permitted) proceedings against the insurer or the persons working for or on behalf of the insurer. - Professional body investigation into conduct of any persons working for or on behalf of the insurer.

	(i) has deviated or is likely to deviate significantly from the requirements of the CGC; or (ii) has identified issues concerning its financial reporting process which may have a material impact on its reporting externally or to the Authority, as soon as is practicable after identifying any such matter and advise, at the same time or in a timely manner subsequently, the background of the matter, what action the insurer proposes to take (as applicable) and relevant timeframe." The above does not contain sufficient clarity as any material impact could be a positive material impact, also following any negative material impact the insurer could still be in compliance with its regulatory requirements. On this basis is there a requirement to interact with the Authority? Also if an insurer materially changes its underwriting strategy (e.g. new lines of business, risk retentions etc.) but remains compliant with its regulatory requirements is there a requirement to interact with the Authority?	- Material matters which, for example, may arise due to changes to business plans or arrangements such as in relation to the insurer's capital/distribution strategy, prospective business acquisitions/disposals, investment strategy or any plans for closure. Concerning 'positive impact' changes and changes that do not cause any non-compliance, we would not necessarily exclude these from the reporting requirement as they may have the potential, for example, to materially affect the risk assessment of the Authority applicable to an insurer and therefore influence the Authority in deploying its supervisory resources. Further to your last query, this would include a change to underwriting strategy which is not in breach of existing licence permissions.
74	We note that the Part and Paragraph have the same heading. In light of the inclusion of paragraph 2) we suggest that 74 be re-named 'General' and that paragraph 2) be entitled 'Specific Matters' or some other similar description.	We note your comment and will amend the heading at paragraph 74 to "Communication and reporting".

	With regard to paragraph 2) the requirements under b i) to report any deviation or the likelihood of significant deviation from the CGC and for such reporting to be 'as soon as practicable' suggests that companies will need to monitor compliance with the CGC constantly which would be impractical. The annual certification requires the board to sign off compliance with the CGC with exceptions as the case may be. Any deviation is not the same as significant deviation and the Authority has not defined what it intends by 'significant' so some clarification would be welcome.	The proposed requirement for more immediate reporting of significant deviations from the CGC is intended to require this information, once identified, to be provided to the Authority in a more timely fashion than might otherwise be the case if reported by way of the certification process (which could be months after the event). In terms of timely identification of significant deviations, we would expect any insurer which is subject to the CGC to be sufficiently familiar with the CGC's requirements so that the insurer can ensure its compliance on an ongoing basis. Therefore the insurer should also be aware if its circumstances represent, or are likely to represent, a significant deviation from the CGC.
75	"actuarial function…" does not appear to be a complete sentence?	This is a problem with how the mark-up of changes to the document have appeared. The sentence reads: ""actuarial function", in relation to an insurer, includes its appointed actuary (where applicable)"
75	Under 'ERM' reference is made to paragraph 61 e). There is no paragraph 61 e). We suggest this should be 60 e).	We note your comment and will amend this.
Sch 1	… as stated earlier when this came out in the original draft in 2010 this was a very good document and remains so today. An observation is that this looks at it from the perspective of the insurer and shareholder funds. Is there merit in looking at it from the policyholder as well in a direct way rather than indirectly? I suppose what I am trying to get to may never be achieved i.e. if it were my premiums would I have chosen those funds or single fund (as in many cases)! How one tries to manage this risk is for others to answer – however, one thing is clear in that if the policyholder obtains a sensible return there are no complaints. It's when they do not – and if this is a result of going	We note your comments. As referred to earlier, the draft Insurance (Conduct of Business) (Long Term Business) Code 2018 will include provisions for the reduction of the risk of policyholder detriment, which will be applicable to investment of policyholder funds.

	into inappropriate funds – this is where other issues come to the fore and has an impact on the Isle of Man and its reputation.	
Sch 1, Para 2	(8) ".. its risk transfer mechanisms.." should refer to "related to the insurance business".	We do not think that this change is required given that this paragraph, and other relevant paragraphs such as (6) and (7), are preceded by "In managing this risk [i.e. underwriting risk] an insurer must apply the following guidance…".
Sch 1, Para 4	(1) "An insurer must only invest in assets where the insurer is able to properly manage the risks involved…." In practice this will typically be the case. i.e. boards will prioritise capital preservation over investment return, however what exactly does this mean? Once an investment is made whilst the board has oversight of performance etc. the insurers are not really able to manage the risk (say of corporate bond failing for example).	The proposed requirement to be able to properly manage the risks associated with a particular investment include managing it throughout its whole investment lifecycle and not just after the investment has been made. For example, in respect of the investment separately and as part of the insurer's overall portfolio of investments – - identifying and understanding the relevant and material risks associated with the investment; - determining appropriate limits (e.g. limits of delegated authority / investment parameters) in respect of the investment in line with the insurer's risk appetite and maintaining compliant with its MCR/SCR requirements; - determining an appropriate means by which the investment is to be monitored; and - considering what management actions might be taken in the event of significant adverse circumstances.
Sch 1, Para 4	(2)(a) "How it complies such regulations or guidance on investments…." What does this mean? Surely this is purely factual basis? i.e. it either complies or it doesn't?	It means that the investment policy must take account of relevant regulatory requirements and be designed to prevent non-compliance with the insurer's MCR/SCR.
Sch 1, Para 4	(4) "functions responsible for measuring……separate from the insurer's front office functions". Notwithstanding the obvious point about captive managers not being	This provision is not about reinforcing insurance manager activity restrictions (which remain unchanged).

	licenced to provide investment advice, how practical is this requirement for captive managers? Is the point here simply reiterating that qualified fund managers should manage funds rather than the captive manager? i.e. reinforcing that captive managers should not provide investment advice?	This provision is about separating back office and front office functions in respect of asset transactions "where appropriate" to ensuring compliance with internal investment policy as well as applicable accounting, legal and regulatory requirements. The need for separation or lack of need for separation is a matter of judgement on the part of the board and senior management of an insurer based on what is proportionate for the insurer's circumstances. We note your comments are in respect of what is appropriate for non-life captive managers and we would agree that the separation requirement would need to be considered from a proportionality perspective. Typically, non-life captives might be expected (in addition to not selling investment products) to have, for example – - a flat management structure; - a simple investment policy; - limited discretion given to management in respect of investment activities; and - relatively low transaction numbers facilitating ease of oversight. Such circumstances might mitigate risks so that it is appropriate for a captive's front and back office functions in respect of asset transactions to be combined subject to the operation of suitable internal controls and oversight. However, as previously indicated, this is a matter of judgement in each case.
Sch 1, Para 4	(8). This is an added clause introducing the requirement for a contingency plan "…to mitigate the effects of deteriorating investment conditions…." what sort of scope and format can realistically be written down i.e. other	An investment policy would not necessarily fulfil the role of a contingency plan, but it is likely to influence the type, level and/or complexity of investment risks which might be reasonably expected to arise. The contingency plan considers

	than the board managing the situation dependent on the prevailing context and circumstances? Can it be argued that the Investment Policy already fulfils this role to a certain extent in limiting the deposit takers utilised and the length of time funds can be invested etc. etc. Perhaps a paragraph simply needs to be added to state that the Managers will advise the Board (at a certain point) if a deterioration in performance of the investment occurs. One would also expect to see relevant inclusion of words pertaining to failure of deposit takers within Risk Registers. There is also a sentence which refers to not including speculative uses in relation to the insurer's investments. Are not all investments speculative to a greater or lesser degree?	what can be done if those risks were to crystallise to any material extent, or if they were to become more likely to do so. Contingency plans need to be proportionate to the insurance company involved. In the case of a captive insurer with a simple investment policy involving deposits with banks, it might be sufficient to determine the type of event and thresholds which will trigger reporting/escalation processes and determine what realistic management actions could be taken in the event that adverse circumstances arose. Paragraph 6(2) states that "Appropriate uses do not include speculative uses." As part of the CGC, this is put forward in the context of the sound and prudent management of an insurance company. It provides against excessive or reckless risk taking that is inappropriate for the investment risk appetite of an insurer with obligations to policyholders and statutory solvency requirements to adhere to.
Sch 1, Para 4	Under paragraph 1 a) we note the requirement for an insurer's investment policy to comply, inter alia, with the Authority's guidance on investments in relation to the MCR and SCR. When is the Authority likely to issue such guidance?	This was presented in a square bracket and was a placeholder for a provision requiring the investment policy to take account of compliance with relevant regulatory requirements in respect of investments. Those proposed requirements (in the form of capital implications of holding certain assets) will appear in separate consultations on MCR/SCR regulations.
Sch 1, Para 11	This risk has been defined more granularly to include most features to which a captive is subject to. Question here is to what extent can a given captive insurer proactively manage this reality?	Clearly there are limits on the intra-group risks which a captive can meaningfully influence. However, a captive is still a regulated business in its own right. As such it is in charge of its own risk management, including retaining appropriate powers, agreeing appropriate contractual terms and

		entering into transactions with due regard to the risks involved etc.
Sch 1, Para 11	As Captives underwrite insurance risks for its Group, this should be recognised in this section.	We do not think this is necessary as a captive's underwriting risk is encapsulated within other, more specific, risk headings such as "underwriting risk".
Sch 1, Para 19	We note the inclusion of this new risk in the Schedule.	Noted
ORSA	(Overview of ORSA and its rationale) talks about a "bedding-in time and potential further discussion between industry and the Authority in relation to the requirements and their proportionate implementation". It would be useful to have an idea of what sort of timeframes we are looking at. The suggestion of further discussion is helpful. In that regard it would be useful to create practical workshops involving industry members from IOMCA and IOMFSA to design / agree on perhaps a couple of proportionate templates depending on the complexity of a particular captive.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ORSA requirements.
ORSA	We note the addition of this Schedule and the various references to it throughout the draft CGC. Our view is that the way this is articulated is as close as can be to Solvency II ORSA guidance and we therefore repeat the point expressed under Part 7 concerning the supposed bifurcated approach to Solvency II equivalence.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ORSA requirements.
ORSA	We note and very much welcome the emphasis that is placed on the principle of proportionality throughout the code. We think it be would be helpful to also include this in the section that deals with the ORSA.	To avoid any doubt we will add to paragraph 1 of Schedule 2 the words "… which is adequate and appropriate to the nature, scale and complexity of the insurer, its activities and the risks to which it is or may be exposed."
Sch 2, Para 3	(3) What is the FSA's expectation in terms of communication to "all of the insurer's relevant staff"? Does this extend beyond decision makers?	The intention is to require communication of ORSA information with any person working for or on behalf of the insurer where it is relevant and

		meaningful to that person's role and responsibilities (i.e. a sensible sharing of information with those who need the information in order to carry out their duties and responsibilities). By way of example we would expect communication to – - internal audit function where needed to help that function plan and focus its work programme; - risk management and financial planning functions (which are in any event expected to be integral to the ORSA process); and - any decision makers where an up to date ORSA-level understanding of the risk and financial consequence of important decisions is needed in order to act on a well-informed basis. In considering your comments we believe that an amendment is needed in order to clarify that this provision should also apply to outsourced providers of services where appropriate. We will therefore change the wording from "…all of the insurer's relevant staff…" to "…all relevant persons working for or on behalf of the insurer…".
	(4) Noted. The experience in other jurisdictions has been that insurers write the ORSA with the regulator in mind rather than to inform decision making by directors and managers. This has changed the emphasis and content of the ORSA. Often large swathes of the ERM which can be found elsewhere have been incorporated into the ORSA. Can clarity be provided on the primary purpose of the ORSA? Our early drafts contain a high level view of say the Enterprise Risk Management Framework but the detail is contained	The ORSA process has business as well as regulatory uses. From a business perspective, ORSA-style concepts have been around for many years and represent a process, for example, to aid with planning and inform decision making. From a regulatory perspective, the ORSA (similar to current requirements under existing CGC paragraph 5.5) will be a mechanism by which the Authority can consider the management and risk profiles of insurers for regulatory purposes.

	in another document which is known to the Directors.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ERM/ORSA requirements.
Sch 2, Para 3	2(2)(b) the forecast time horizon should be set by an insurer in line with the timescale of the insurance policies underwritten and re-assessed when new policies are written or renewed. "at least three years" appears a long time horizon for short tailed business (i.e. for those insurers with Annual (or shorter) policies. Captive do not usually underwrite retail business which may automatically renewal. 3 (4) our response will follow in conjunction with the separate consultation in relation to the ORSA	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ERM/ORSA requirements, including minimum forecast time horizon. Noted.
Sch 2, Para 3	(4) Inform the Authority of the results of each ORSA. Discussion required around: a) Volume, resource and review timeframes by IOMFSA. b) Expected scale and scope of ORSA. c) There is no question that the process adds value by helping to manage risk in a structured fashion, however needs to be fit for purpose. The risk of being overly complex is that it becomes less effective. d) Realistic, objective and candid assessment of current relevant skillset within captive management sector to roll this out. Risk vs Reward? How cost effective will the full blown process be (for relatively simple captives)	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to ORSA requirements.
Sch 2, Para 3	We note that the Authority has not yet determined the specific reporting requirements.	As indicated in the consultation, ORSA reporting will be covered in a separate

		consultation and this paragraph in the CGC will be updated as necessary.
Sch 2, Para 8	We note under paragraph 2 the requirements of an actuarial function and refer the Authority to our comments under Part 7.	The Authority intends to have further engagement with the non-life sector (including captives) concerning the proportionality of the CGC in relation to actuarial requirements.