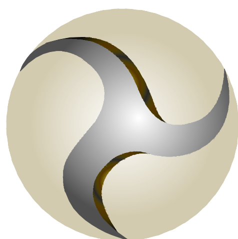

ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Consultation Response

CLASS 12 Insurance Authorisation

CR20-04/T04

Issue Date: 17 April 2020

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1. Background

This consultation response concerns the Isle of Man Financial Services Authority's ("the Authority") proposals in consultation paper CP19-04/T04 (Class 12 Insurance Authorisation) to amend the criteria by which an insurer might qualify for a reduced or simplified level of regulation under class 12 authorisation.

2. Summary of Responses

We received 5 responses generally welcoming and supporting proposals. A summary of the Authority's responses to the responses can be found in Appendix B.

3. Changes to the Proposals

Following the consultation some comments and discussions subsequently resulted in a small number of changes.

4. Next Steps

The Authority will include the proposals and the small changes made following this consultation in the upcoming consultation on the Insurance Regulations 2020.

In case of any query, please contact the undersigned —

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Appendix A – List of Representative Groups to which this Consultation Response has been sent

- Isle of Man Captive Association

Appendix B – Table of responses

OUR QUESTION (where applicable). (Italicised references to "items" are the numbered paragraphs of the consultation paper.)	Comment received (Note any typographical errors are as received)	Our response
General	We have now had an opportunity to consider the consultation paper and must say that we are pleased with what we have read. It is clear that the IOMFSA has listened to the concerns of the non-life sector and responded accordingly in a proportionate way. Noting that we have been involved with the development of the proposed regulation for some time now, we have no further comment to make. I would like to add that, from our perspective, the process to this point has gone well and I am pleased with the level of engagement between industry and the IOMFSA.	Thank you for your comments.

General	We note that previously discussed class 12 qualifying policies have been excluded from these draft regulations, notably finance parties/lending bank (especially where it is a single claim which may be paid to a finance party or a related insured) or ancillary risk where at the discretion of a related insured, a unrelated insured may be reimbursed for an insurance claim. (i.e. an owner controlled construction all risk direct insurance policy).	These arrangements have not been excluded. Each such arrangement is included insofar as it meets any of the available categories (related party informed consent, commercially fronted, ancillary business or de-minimis). Also see our comments below in relation to Question M b.
A. The Authority welcomes views on the above mentioned *rationale [item (12) - (Re)insurance in relation to related parties]* as a basis for applying a reduced level of regulation.	We support the rationale and welcome the formal recognition of Captives, their lower risk and the proposed application of a reduced level of regulations.	Thank you for your comments.
B. Do readers agree or disagree with any element of the draft regulations in paragraphs 3(1)(a)(i) and 3(1)(b)(i), and paragraphs 1 and 2 of Schedule 1, concerning the class 12 qualifying criteria applicable to the (re)insurance of related parties?	Broadly speaking, in the vast majority of cases, we would agree with the elements of paragraphs 3(1)(a)(i) and 3(1)(b)(i), and paragraphs 1 and 2 of Schedule 1, concerning the class 12 qualifying criteria applicable to the (re)insurance of related parties. It appears that the fundamental requirement is whether an insured is "controlled" by a person will significant knowledge of the insurer (akin to implied consent by shareholding/control). a. Control of insured – 45% shareholding is a significant increase from the current level of shareholding, however	As indicated in the consultation paper, the related party rationale is based on the insurer and its policyholders having significant interests in common. Common control is considered to be a reasonable basis for assuming commonality of interests. Concerning the suggested 'implied knowledgeable consent' via lower level shareholding, we do not necessarily think this is appropriate as it is passive and does not take account of whether the party involved is in a position to understand and manage the risks involved. It is for this reason that the

	we recognise that an increase is required. b. Knowledge of insurer – We believe that the requisite knowledge of an insurer can be derived from a lower than 45% shareholding in an insurer, again this 45% is a significant increase from the current level, we would support a level lower. We do acknowledge that informed consent is always an option.	consent category was proposed in a manner that requires it to be on an informed basis and involve only suitably sophisticated parties. In relation to the 45% threshold, this has been reduced from the Authority's previous proposal (over 50% per the QIS exercises) to take account of potential impracticalities arising out of reported requirements in other jurisdictions which may prohibit 50%+ foreign ownership/control. Whilst we acknowledge a desire for further reduction, no rationale has thus far been put forward by industry to support this on a risk/necessity basis.
C. For example, such elements of the draft regulations include the—		
a. 45% threshold in relation to the qualifying criteria of shareholder voting rights, or share holdings in relation to a PCC cell (and the position that collective qualifying rights/holdings must be via a joint venture agreement);	We welcome the inclusion of trusts in paragraph 1(b) – Related parties and informed consent. However, it is not clear whether the beneficial ownership requirements set out in this section apply to the Trustee, Settlor, or the trust beneficiaries (some or all). In addition, is it the FSA's intention to treat all trust structures the same, irrespective of whether they are discretionary in nature or not?	We note your request for greater clarity on the treatment of trusts in the context of the draft requirements. For ease of reference, 1(b) states: "…a person in respect of which 45% or more of its ordinary share capital (or equivalent) is in the same beneficial ownership (whether directly or indirectly through a trust, body corporate or similar) as 45% or more of the ordinary share capital of— (i) the insurer; or

		(ii) a person in accordance with paragraph (a)(i) or (a)(ii); or…” The Authority agrees that additional information in respect of trusts may be appropriate and will consider how to introduce this (e.g. a change to the draft regulations, issuing guidance or otherwise publishing information). In the interim, in relation to discretionary trusts, we would comment that an important factor for the insurer and the Authority is verifying the identities and entitlements of beneficiaries in relevant structures. Discretionary powers within a trust, if they introduce potential uncertainty as to the identities and entitlements of beneficiaries, might create complications in this regard.
	Where an insurer meets the “related party” criteria in terms of their business but currently hold class 3-9 or 11 licences will the Authority require these insurers to change their licences to Class 12? If so, what would the arrangements be for such changes?	A class 3-9 or 11 insurer will also be able to (re)insure its related parties in accordance with those classes, as applicable. Therefore, if an existing class 3-9 or 11 insurer happens to also meet the requirements for class 12 it will not be mandatorily required by the Authority to apply for class 12 as this would limit the insurer to class 12 insurance only (a class 12 insurer will not be permitted to hold any other class of authorisation), and this may not be what the insurer wishes.

		Equally, this does not prevent an existing class 3-9 or 11 insurer, should it wish to do so, from electing to apply to the Authority for a change of authorisation to become class 12 if it meets the requirements for that class. From a class 12 perspective, as indicated above, a class 12 insurer will not be permitted to hold another class of authorisation. However, a class 12 insurer, should it wish to do so, may elect to apply to the Authority for a change of authorisation to become a class 3-9 or 11 insurer (or any combination thereof). In the case of an insurer which is currently authorised under class 12, but would no longer qualify as class 12 under the new framework (if implemented), the following would apply (as applicable): The insurer might elect to submit a plan under the remedial provisions by which it would at an appropriate future date meet the requirements for class 12 authorisation. The insurer might elect to seek a non-class 12 authorisation (e.g. if a non-life insurer, any of 3-9 or 11, as applicable).

		The insurer's position may be one in respect of which transitional arrangements may be appropriate. (Note: transitional arrangements were not included in this consultation but are to be considered for inclusion when the provisions are resubmitted for consultation as part of the wider Insurance Regulations update planned for later this year.)
	We agree with the qualifying criteria of shareholder voting rights, or shareholding in relation to a PCC cell, however our comments to Question B above are also relevant.	Thank you for your comments. See our comments above in relation to Question B.
b. the qualifying criterion of the right to appoint or remove the majority of a relevant board of directors (and the position that this does not apply to a mutual or to PCC cells);	The qualifying criterion of the right to appoint or remove the majority of the relevant board of directors (other than for mutual or PCC cells) would appear appropriate.	Thank you for your comments.
c. permission for an insurer that is a mutual to insure its mutual members (and the requirement for such a mutual to be able to make adequate calls on its members, where needed, to top up its capital to meet its	[Text deleted] we do not have any comments to make.	Noted.

regulatory capital requirements); and		
d. permission for an insurer to directly insure employees, directors and officers of its legal entity related parties (or the limited circumstances that apply, i.e. limited to benefits for employees, or linked to the roles of directors and officers).	We believe this is appropriate.	Thank you for your comments.
D. In relation to C.d. above, do readers agree with the Authority's initial view that any direct insurance of such parties should include a mandatory requirement to disclosure of the nature any class 12 insurer involved?	Are there to be any mandatory requirements to disclose Class 12 status to individuals benefitting from a policy e.g. insured group company employees?	As indicated in the consultation paper the Authority has asked for views in respect of a potential disclosure requirement. The Authority will consider any views it receives and any resulting requirements it subsequently proposes to bring forward will be resubmitted for consultation as part of the wider Insurance Regulations update planned for later this year.
	Where an insurance policy has the primary insured as a related party corporate entity, and the policy includes additional ancillary insurance cover for an employee of that related party, related to the individual's role with that related party, (Public Liability for Directors, First Aid Employees) we do not believe it would be appropriate to disclose the nature of a class 12 insurer.	Thank you for your comments, we may contact you for further discussion in relation to any potential refinement of the wording (which would be resubmitted for consultation as part of the wider Insurance Regulations update planned for later this year).

	We do acknowledge that where the primary insured is an employee of a related party to the insurer (Direct employers benefits insurance policies where the employee expects to make a direct claim on the policy), it may be more appropriate to have a mandatory disclosure of the nature of a class 12 insurer. Directors and officers ("D&O") liability insurance is specifically mentioned as an example, however we do not believe this is an appropriate example and it is market practice not to insure D&O liability via a class 12 insurer, as litigation resulting in a possible claim against a D&O policy is instigating the shareholders of the insured (and the Class 12 insurer) therefore D&O issued by a Class 12 insurer does not transfer the risk outside the Group and therefore the claimant would not be compensated. Therefore, we think the regulations should not specifically refer to D&O insurance.	Thank you for your comments, we may contact you for further discussion in relation to any potential refinement of the wording (which would be resubmitted for consultation as part of the wider Insurance Regulations update planned for later this year). Thank you for highlighting these matters relating to D&O. We will look at this and amend the wording where appropriate (and any amendments would be resubmitted for consultation as part of the wider Insurance Regulations update planned for this year). We may contact you for further discussion as part of this process.
E. The Authority welcomes views on the above mentioned rationale *[item (13) - Insurance in relation to sophisticated, informed and consenting parties]* as a basis	We agree with the rationale of applying a reduced level of regulation.	Thank you for your comments.

for applying a reduced level of regulation.		
F. Do readers agree or disagree with any element of the draft regulations in paragraphs 3(1)(a)(ii) and 3(1)(b)(i), and paragraph 3 of Schedule 1, Isle of Man Financial Services Authority CP 19-04/T04 Page 10 of 16 2019.07 concerning the class 12 qualifying criteria applicable to the (re)insurance of sophisticated, informed and consenting parties?	We agree with the elements of the draft regulations concerning informed consent.	Thank you for your comments.
G. For example, such elements of the draft regulations include the—		
a. requirement that only direct policyholders (and not fronting insurers or other ceding reinsurers) are eligible to give informed consent (any implied informed consent in relation to insurance counterparties is implied in the provisions applying class 12 authorisation to reinsurance business –	Given that fronting insurers are sophisticated regulated parties, that will assess the risks of reinsurance transactions (including those to Class 12 insurers) and where the fronting insurer remains responsible to the original insured, we believe that informed consent should not be required from a fronting insurer, or the original insured when the original insurance policy is with a fronting insurer and reinsured to a class 12 insurer. Where the original insurance policy is linked to the reinsurance provided by a class 12 informed	The proposed regulations already provide for these matters. Informed consent is not required from fronting insurers and indeed it is prohibited under paragraph 3(1)(a)(ii). Informed consent is not required when the insurer otherwise qualifies as a class 12 reinsurer.

see points (14), (15) and (16) of this paper);	consent from the original insured may be appropriate	Thank you for your comments in relation to the possible use of informed consent when the original policy is linked to the reinsurance provided by the class 12 insurer. This is, of course, one of the reasons why the draft regulations (when the informed consent route is being used) specifically require the consent to come from the original insured underlying the reinsurance, and not from the fronting insurer.
b. choice of a principles-based approach (rather than rules-based approach) in the provisions of paragraphs 3(1)(a) and 3(2)(a) of Schedule 1;	[Intentionally blank.]	[Intentionally blank.]
c. content of paragraphs 3(1)(a) and 3(2)(a) of Schedule 1;	[Intentionally blank.]	[Intentionally blank.]
d. requirements under paragraph 3(1)(b) of Schedule 1 that, prior to a contracts being entered into—		
i. a prospective consenting party must be alerted the potential risks involved;	[Intentionally blank.]	[Intentionally blank.]

ii. informed consent must be given; and		
e. requirements under paragraph 3(2) of Schedule 1 for insurers to obtain and hold evidence of informed consent' (including assessing the prospective consenting party against the qualifying criteria in paragraph 3(1)(a) of Schedule 1).	[Intentionally blank.]	[Intentionally blank.]
H. The Authority welcomes views on the above mentioned rationale *[item (14) - Commercially fronted reinsurance]* as a basis for applying a reduced level of regulation.	As highlighted, the island does not have a sizable reinsurance sector, therefore we believe the rationale for applying a reduced level of regulations is appropriate.	Thank you for your comments.
I. Do readers agree or disagree with any element of the draft regulations in paragraph 3(1)(b)(ii) and corresponding definitions in paragraph 4, concerning the class 12 qualifying criteria applicable to commercially fronted reinsurance?	We agree with draft regulations applicable to commercially fronted reinsurance and welcome the inclusion of ".. or any other jurisdiction which is which is acceptable to the Authority .." , however as previously discussed where an fronting insurer is in a jurisdiction that does not regulate to "1 in 200" year and where the provision of insurance in that jurisdiction is limited to authorised insurers in the same jurisdiction, the reinsurance of this	The Authority currently views a 1 in 200 confidence level as the standard commercial level of solvency protection due to policyholders. However, the regulatory framework is also subject to proportionality and we have therefore put forward risk-based criteria to justify and control access to a reduced level of protection (i.e. 1 in 10) where appropriate. Those criteria include the 'commercially fronted reinsurance' category, where the fronting insurer already provides at least 1 in

	insurance to a Isle of Man class 12 insurer does not increase the risk to the original insured, and in some cases may reduce the level of risk. Also, some internationally recognised jurisdiction including USA do not regulated on a “1 in 200” year basis. Therefore we do not support the inclusion of “.. based on the aforementioned criteria..” in the definition of qualifying insurer.	200 protection to the ultimate policyholder regardless of the credit security of the reinsurer from which it obtains financial protection (this is because the fronting insurer will be required in its existing solvency commitments to take account of any risks associated with its reinsurance, including counterparty risk due to the reinsurer being subject to reduced regulation). To change this to include reinsurance of other fronting insurers would be to promote the extension of less than 1 in 200 protection to ultimate policyholders under circumstances outside of the reduced risk criteria we have proposed, which is contrary to supporting the commercial level of solvency protection which the Authority believes is generally due to policyholders. Consequently, the Authority believes that the use of the words “…based on the aforementioned criteria…” are appropriate as it requires a commercially fronted reinsurance arrangement to qualify for class 12 authorisation. It should be noted that this does not prevent a reinsurer from qualifying for class 12 via any of the other available categories where applicable. Concerning internationally recognised jurisdictions like the USA, the Authority is considering the criteria by which it will approve other jurisdictions so that relatively straightforward decisions can be facilitated. For example, the Authority may include third countries which have been determined by the

	This example is also relevant where large commercial insurers structure their global reinsurance agreements with the reinsurer including subsidiary and affiliated companies (rather than the reinsurance being consolidated in a single legal entity with the commercial insurer prior to reinsurance to a class 12 insurer. [Deleted text].	European Commission to be equivalent under the Solvency II Directive. We are not clear on what you are suggesting. If you are suggesting that class 12 should be granted to a fronting insurer simply because it is reinsured by a 1 in 200 reinsurer then we disagree. Our view is that an insurer should provide 1 in 200 protection to policyholders or reinsure underlying arrangements which, in any event, provide 1 in 200 protection. Or that the insurer should otherwise have a risk profile which warrants a reduced level of regulation – such as those we have set out in this consultation. We can, of course, see that there may be merit in organisations taking a group view on funding risk. However, we do not see why an entity which holds itself out to be part of a 1 in 200 protection structure would wish to be subject to less than commercial standards.
J. For example, such elements of the draft regulations include the—		
a. reliance placed on a fronting insurer ("qualifying insurer") in paragraph 3(1)(b)(A);	Comments above in response to question I	See our comments above in relation to Question I.

b. reliance placed on any intermediate reinsurer (“qualifying reinsurer”) between a fronting insurer and the class 12 insurer in paragraph 3(1)(b)(B); and	Comments above in response to question I	See our comments above in relation to Question I.
c. definition in paragraph 4 by which a qualifying insurer or reinsurer is determined.	Comments above in response to question I	See our comments above in relation to Question I.
K. The Authority welcomes views on the above mentioned rationale *[item (15) - Other reinsurance ancillary to an activity of the insurer’s group]* as a basis for applying a reduced level of regulation.	The provision of insurance cover ancillary to an activity of the insurer’s group is a fundamental part of certain business models, therefore we welcome the rationale on applying a reduced level of regulation. However we would welcome clarification on “..appears to the Authority to be commercial in nature…” to ensure this is section is not utilised to override other elements of the class 12 qualifying criteria, especially Schedule 2.	The proposed power is specifically intended to give the Authority discretion to override regulations 3(1)(b)(ii) and (iii), including Schedule 2, where the Authority considers it appropriate. In particular, this power may be used where the Authority considers the reinsurer to have the characteristics of an open market commercial vehicle with no significant additional incentive at group level to provide financial support if the reinsurer required it. Without the discretionary ability to impose a higher standard where appropriate, the Authority would not necessarily support extending class 12 to reinsurance/ancillary business.

L. Do readers agree or disagree with any element of the draft regulations in paragraph 3(1)(b)(iii) and Schedule 2 concerning the class 12 qualifying criteria applicable to reinsurance ancillary to an activity of the reinsurer's group?	In general we support the draft regulations in Schedule 2 relating to ancillary to an activity of the reinsurer's group, we would question how "..sufficiently incentivise the insurer's group to financially support the insurer.." and whether this ancillary insurance should be issued by a "qualifying insurer" (subject to our comments to question I)?	Such incentive underpins the assumption of reduced risk to solvency. Therefore, without the criterion of "…sufficiently incentivise the insurer's group to financially support the insurer…", the Authority would not necessarily support the ancillary business category of the class 12 proposals. Concerning the suggestion that a qualifying insurer should issue the direct policy: if the underlying policy is written by a qualifying insurer then it can be treated in accordance with paragraph 3(1)(b)(ii) – the qualifying insurer provision, instead of 3(1)(b)(iii) – the ancillary business provision. The proposed regulations therefore already provide for what is being suggested. See our comments above in relation to Question I.
M. For example, such elements of the draft regulations include the—		
a. application of the criteria to reinsurance and not direct insurance;	The application to reinsurance and not direct insurance appear appropriate where individuals are the original insured.	Thank you for your comments.
b. choice of a principles-based approach (rather than a rules-based approach) to the provisions of paragraph	The definition of ancillary business of the group appears to be open to subjectivity. Is there any guidance on what the Authority has in mind here?	The Authority does not propose at this time to issue exhaustive guidance in relation to the types of main non-insurance group activities, or the types of insurances which might be ancillary to those activities, as these are numerous. However, the

(1) of Schedule 2 (or the discretion given to the Authority in those provisions);		Authority may consider publishing examples in due course to help inform expectations. These might include, for example (provided that they meet the qualifying criteria): Contractors' All Risks in relation to a major group construction project Motor insurance provided to drivers which is related to group business involving group owned vehicles Recognising the interests of a financial lending institution in relation to property insurance where the institution is providing lending to the group on an insured property which is owned by the group Extended warranty or breakdown insurance provided to customers in respect of products manufactured by the group
	Does this mean that a submission and approval to the Authority is required before an insurer can rely on Schedule 2?	Yes on an ongoing basis. However, the Authority would have regard to the need for transitional arrangements if the requirement is brought into effect. (These arrangements would be submitted for consultation as part of the wider Insurance Regulations update planned for next year).

c. content of paragraph (1) of Schedule 2;	"non-insurance business activity" does this include the provision of good/services provided by the related party and also goods/services received by the related party?	Potentially, yes, subject to more detailed information and provided that each of the requirements of Schedule 2 are met and the services in question are not insurance.
d. definition in paragraph (2) of Schedule 2 by which a reinsurer's group is determined.	No comment.	Noted.
N. Do readers agree, agree with some changes or disagree with the above mentioned discretionary power *[item (16) - Discretionary power to impose full level of regulation to reinsurer]* as a basis for disapplying a reduced level of regulation?	Under what circumstances would the Authority envisage using its discretionary powers to disallow the reduced level of regulation?	The proposed discretionary power to impose an increased level of regulation is for cases where the Authority considers the reinsurer to have the characteristics of an open market commercial vehicle with no significant additional incentive at group level to provide financial support if the reinsurer required it. (Readers may note that these criteria are similar to those use in relation to the criteria relating to ancillary business.)
	We agree with the discretionary power to disapply the reduced level of regulations, however we would also welcome the discretionary power to apply the reduced level of regulations, circumstances arise that warrant the reduced level of regulations but do not fall within the draft regulations as currently drafted. (this may already be provided in 3 (5))	The Authority has had regard to a provision giving it discretion to apply reduced regulation, but did not include it in the interests of transparency of access to reduced regulation. In relation to paragraph 3(5), this is intended to deal with any uncertainty in relation to interpreting the proposed requirements and it is not intended for creating concessions.

O. The Authority welcomes views on it proposed approach through the de-minimis rule *[item (17)]*.	We welcome the proposed approach of the de-minimis rule. Following the inclusion of the reinsurance ancillary to group business and the ability to insurer employees, which will deal with most "incidental matters" the de-minimis rule of 5% appropriate. If the de-minimis rule in respect of technical provision (4 (a)) is breached, we would like the ability to segregate funds (or provide the claimant with appropriate external guarantee) as a remedy to allow the insurer as a whole no longer complying with class 12 qualifying criteria.	Thank you for your comments in relation to the de-minimis rule. Whether such a remedial plan would be appropriate depends upon the circumstances involved and the detail of the proposed arrangements, including the expected length of time any arrangements might be needed.
P. Do readers agree or disagree with any element of the draft regulations in paragraph 3(3) and 3(4) concerning the class 12 qualifying criteria applicable to a permission to write a small amount of business which not class 12?	All large complex groups may provide a small amount of insurance which does not fall within any other class 12 qualifying definition, therefore we agree that it is appropriate to allow a small amount of this business within a class 12 insurer.	Thank you for your comments.
Q. For example, such elements of the draft regulations include the—		
a. application of the de-minimis rule to technical provisions as they change over time under paragraph 3(4)(b) (it might be noted that the technical provision basis	Should the technical provision calculation also take in to account a proportion of the insurers shareholders' funds? For example, if "related" claims lower than expected and "unrelated" are as expect this could breach the 5% rule – but where shareholders' funds are significant	Our view is that shareholders' funds are not a factor we would see as appropriate to the de-minimis calculation, as we believe that the calculation should reflect current business levels. However, shareholders' funds may be a factor appropriate to consider in the assessment of the materiality of a breach of the de-minimis rule, or the urgency with

for calculating the de-minimis level is included because it is not susceptible to potential distortion due to premium rating or allocation, and, as referred to in item (18) below, because a reduced level of regulation should apply based on the current and not historic risk profile of the (re)insurer in question).	this would offer protection for the "unrelated" claimant.	which a breach should be rectified. Such materiality/urgency, along with other things, may be relevant to the Authority's assessment of the remedial proposals of an insurer.
R. Do readers agree or disagree with the above mentioned approach *[item (18) - Application of class 12 requirements to prior years' business]* as a basis for applying a reduced level of regulation?	At [a meeting with industry the Authority] confirmed that it was intended that once a captive is authorised it remains a captive unless the business is transferred to a new insurer. [The Authority] further stated that this transfer is intended to exclude captives sold to a third party for run off. [The Authority subsequently indicated] that this stance has now changed and that upon sale of a captive, the Class 12 licence WILL now change under the new proposals even if sold to a third party for run off. [Deleted text] Whilst this would have more relevance for a "ex group 12 captive" continuing to write	We would like to clarify one of the points raised. At the referred to industry/regulatory meeting the Authority did not indicate any intention that a captive sold to third parties for run off would continue to be treated as a captive for regulatory purposes. The Authority's position was the opposite. However, it was a draft working assumption at the industry/regulatory meeting that captive business, if incepted as captive, might remain as captive even if the captive's relationship with the policyholder subsequently changed due to a change in the policyholder's circumstances. It is this position which altered as referred to in paragraph 18 of the

	business, any captive purchased for run off would fall into the yet to be decided run-off criteria. Accordingly, it is imperative that run off is taken into consideration in the related solvency calculations and subsequent CGC regulations. As the revised CGC is still being drafted and consultation will be requested later in the year, this will be of great interest to the run off market. It has been indicted that run-off will have some form of carve out. I am sure we can work constructively on these revisions going forward. Please can you confirm that my understanding is correct.	consultation paper. (Also note the potential transitional and grandfathering provisions referred to in our comments in relation to question R, response 5.) In relation to carve outs, we would not necessarily agree that the Authority indicted that insurers in run-off will simply have some form of carve out. Concerning the Authority's intentions in relation to run off insurers, we referred to this in our published response to the CGC consultation on 28 June 2018. This stated: "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". The updated CGC was released for consultation on 23 December 2019, which ended on 14 February 2020. Based on some of the comments received in relation to that consultation the Authority will be having some further discussions with industry about proportionality in the case of run-offs.
	We do not believe that a change in relationship (either whilst the policy is in force or after expiry of the policy) from a "related" party to an "unrelated" party following the time of contracting with the insured should	As indicated in the consultation document, the rationale for a 'related party' (re)insurer having access to reduced regulation is based on its commonality of interest with the direct policyholders, and the assumed incentive inherent

	change. A previously related party will be aware of the class 12 nature of the insurer and will have the ability to cancel the insurance policy if they do not wish to continue with a class 12 insurer. The type of large corporates, like those who have a class 12 insurer, do sell, transfer or dispose of subsidiary company and an insured, after the expiry of the policy, has not obligation to disclose any changes in circumstances to an insurer, therefore in practice an insurer may not be formal informed of a change in relationship between the original parts of the Insurer's Group.	in those relationships (all being part of the insurer's group) that the insurer would receive financial support from its group if needed. If the insurer's relationship with the direct policyholders change for any reason, the new relationship would need to be assessed to determine whether the class 12 'related party' criteria, and the corresponding assumed support incentive, are still met (and, if not, whether the business otherwise qualifies as class 12 under any of the other reduced risk categories: i.e. de-minimis, 1 in 200 fronted, ancillary business or informed consent). If, under the insurer's new circumstances, the class 12 criteria are not met, the insurer would need to remedy its position using the remedial framework or reclassify as a commercial insurer. The Authority acknowledges that monitoring the 'related-party' standing of policyholders may be challenging in some circumstances. It will therefore consider transitional and grandfathering provisions in relation to this requirement if it is to be implemented (which would be resubmitted for consultation as part of the wider Insurance Regulations update planned for later this year).

S. Do readers agree or disagree with the above mentioned discretionary power *[item (19) - General discretion in applying the class 12 qualifying criteria]* to address any uncertainty in applying the class 12 requirements?	We agree with this discretionary power, we would like to understand how this discretionary power would work within the FSA (i.e. whom will hold that power? CEO, FSA Board, etc?).	This would become part of the Authority's structured framework for delegated functions. Its inclusion within that framework would be nearer the time of the regulations being brought into effect.
T. Do readers agree or disagree with the inclusion of a remediation mechanism in relation to potential non-compliance with class 12 authorisation *[item (20) - Remediation if class 12 requirements are not met]*?	We agree that the remediation mechanism appears appropriate.	Thank you for your comments.
U. Do readers agree or disagree with any element of the draft remediation mechanism in paragraph 5?	We agree that that is appears appropriate for the Authority to take account of relevant factor.	Thank you for your comments.
V. For example, such elements of the draft regulations include the—		
a. specific requirement under paragraph 5(1)(a) to report any instance of non-compliance;	"as soon as practicable" appears an appropriate timeframe for notifying the Authority, "after becoming aware of such situation" however given the nature of insurance claims flexibility must be allowed in relation to becoming aware. You may be aware of a claim but not the quantum of the	The requirement is to provide notification as soon as practicable after becoming aware of a non-compliance with the class 12 criteria. We believe that the words "after becoming aware" would apply to any relevant claims quantum as it changes over time. Therefore we do not see any need for additional flexibility.

	claim, until further investigation has taken place, and it is only when a realistic estimate can be established that the situation will be clarified.	
b. requirements under paragraph—		
i. 5(1)(b) for the (re)insurer to submit a remedial plan and the timescales involved in doing so;	What arrangements does the Authority envisage if an insurer fails the de-minimis test? Will there be specific guidance on rectification or is it to be a case by case matter for discussion with the Authority?	A remedial plan is a matter for the insurer in the first instance and will depend on circumstances. So, yes, discussion with the Authority will be on a case by case basis. The Authority welcomes early dialogue and good communication throughout any necessary remedial process. The Authority does not propose to prescribe how an insurer should rectify a non-compliance position, but retains the right to impose requirements if the insurer fails to address its situation appropriately and in a timely manner.
	30 days is an appropriate timeframe to submit a remedial plan.	Thank you for your comments.
ii. 5(2) for the Authority's approval of any remedial plan;	[Intentionally blank.]	[Intentionally blank.]
iii. 5(3) for the (re)insurer to give effect to an accepted remedial plan;	[Intentionally blank.]	[Intentionally blank.]
c. Authority's power under paragraph 5(4) to take steps to address any instance of failure to provide or execute a	If an insurer fails to implement an agreed remedial plan it is appropriate that the Authority has steps as appear appropriate to it.	Thank you for your comments.

remedial plan, and the example matters under paragraph 5(5) it may take into account in doing so.		
W. Do readers agree or disagree with the inclusion of a compliance monitoring requirement in relation to class 12 authorisation?	We agree with the inclusion of a compliance monitoring requirement, subject to comments to question X.	Thank you for your comments. See our comments below in relation to question X.
X. Do readers agree or disagree with any element of the draft compliance monitoring requirement in paragraph 6?	Further to comments to question R, as an insured has not obligation, after the expiry of a policy to disclose to an insurer, a class 12 insurer may not easily identify changing relationships within the insurers group, that is especially so as time passes.	See our comments above in relation to question R.