



## INSURANCE REGULATIONS 2020

**Note: these regulations are draft proposals setting out the qualifying criteria for class 12 insurance authorisation. They will form part of the anticipated wider update later this year to the Insurance Regulations 2018.**

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Statutory Document No. 20XX/XXXX



*Insurance Act 2008*

## **INSURANCE REGULATIONS 2020**

*Laid before Tynwald:*

*Coming into Operation:*

*1 July 2020*

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The Isle of Man Financial Services Authority makes the following Regulations under section 50 of the Insurance Act 2008.

### **1 Title**

These Regulations are the Insurance Regulations 2020.

### **2 Commencement**

These Regulations come into operation on 1 July 2020.

### **3 Class 12 qualifying criteria**

- (1) Subject to paragraphs (2) to (5), in relation to an insurer, class 12 authorisation includes only contracts of an insurer which in each case are—
  - (a) within classes 1 to 9 and involve only policyholders that, in each case, are—
    - (i) a related party in respect of the insurer in accordance with paragraph 1 or 2 of Schedule 1 (as applicable); or
    - (ii) in accordance with paragraph 3 of Schedule 1, a sophisticated person (other than an insurer) where that person has given informed consent in relation to the contract; or
  - (b) within classes 10, 11 (or within classes 1 to 9 written as reinsurance) insofar as the underlying direct contract of insurance being reinsured by the insurer—
    - (i) involves only policyholders that, in each case, are a person in accordance with paragraph (a);
    - (ii) subject paragraph (2) is—
      - (A) written by a qualifying insurer; or

- (B) reinsured by a qualifying reinsurer underlying the insurer's reinsurance,  
provided that the qualifying insurer or qualifying reinsurer (as applicable) remains responsible for its corresponding insurance obligations irrespective of whether or not it can recover from its reinsurance any amounts paid; or
  - (iii) meets the requirements for ancillary business in accordance with Schedule 2.
- (2) The Authority may disapply paragraphs (1)(b)(ii) or (1)(b)(iii) and require any reinsurer, which appears to the Authority to be commercial in nature, to be authorised under a class of business other than class 12.
- (3) A class 12 insurer may conduct insurance business other than class 12 insurance business provided that its non-class 12 insurance business amounts to no more than 5% of its total business as determined in accordance with paragraph (4) (the "de-minimis rule").
- (4) In paragraph (3), more than 5% is reached by an insurer if its —
  - (a) total current technical provisions corresponding to its obligations under its non-class 12 insurance business represent more than 5% of its total current technical provisions corresponding to all of its insurance business. Technical provisions must be measured gross of reinsurance; or
  - (b) total written premiums in the last 12 months corresponding to its non-class 12 insurance business represent more than 5% of its total written premiums in the last 12 months corresponding to all of its insurance business (or, if higher, premiums on the same basis expected to be written in the next 12 months). Written premiums must be measured gross of reinsurance and corresponding reinsurance commission and net of other commission.
- (5) In any situation where it is unclear as to whether or not some, or all, of an insurer's business, or prospective business, meets the requirements of paragraphs (1) to (4) or any combination thereof (as the case may be), the Authority may determine the degree to which such business does or does not meet those requirements.

#### 4 Interpretation

In these regulations—

**"ancillary business"** has the meaning given in Schedule 2;

**"the Act"** means the Insurance Act 2008;

**"class 12 insurance business"**, for the purposes of regulations 3(3) and (4), means insurance business in accordance with regulation 3(1) as determined without the application of the de-minimis rule in regulation 3(3);

- “**class 12 insurer**” means an insurer authorised under section 8 of the Act in respect of class 12 insurance business in accordance with regulation 3, including any determination of the Authority under regulation 3(5);
- “**direct contract of insurance**” refers to an insurance contract and not a reinsurance contract;
- “**informed consent**” has the meaning given in paragraph 3(1)(b) of Schedule 1;
- “**non-class 12 insurance business**”, for the purposes of regulation 3(3) and (4), means insurance business corresponding to contracts which fall outside of the criteria set out in regulation 3(1) as determined without the application of the de-minimis rule in regulation 3(3);
- “**policyholder**” has the same meaning as given in section 54 of the Act and includes any person who has a contractual right, or contingent contractual right, to make a claim under the policy directly against the insurer;
- “**qualifying insurer**” and “**qualifying reinsurer**” mean an insurer that is licenced in a jurisdiction which requires the insurer to hold capital determined using a risk-based approach and calibrated to at least a ‘1 in 200’ year (or a 99.5% value at risk) confidence level over a one year time horizon (this includes an insurer 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 based on the aforementioned criteria);
- “**reinsured**”, as the case may require, includes—
- (a) direct reinsurance (reinsurance of a direct contract of insurance); and
  - (b) indirect reinsurance (reinsurance of reinsurance),  
of the underlying direct contract of insurance;
- “**related party**” has the meaning given in paragraphs 1 and 2 of Schedule 1 (as applicable); and
- “**sophisticated person**” has the meaning given in paragraph 3(1)(a) of Schedule 1.

## 5 Remediation if not complying with the class 12 qualifying criteria

- (1) If a class 12 insurer at any time does not meet the requirements of regulation 3, including any determination of the Authority under regulation 3(5), it must—
- (a) as soon as practicable after becoming aware of such situation, notify the Authority that it has not met the requirements as referred to in paragraph (1); and
  - (b) within 30 days of such notification, or such longer period as the Authority may permit, provide to the Authority either —

- (i) details of how it has rectified the situation; or
  - (ii) a short-term plan to rectify the situation.
- (2) If the Authority considers a plan under paragraph (1)(b)(ii) (or such a plan as previously modified) to be inadequate (including in the Authority's view not being sufficiently short-term)—
  - (a) the insurer must propose modifications to it to the Authority; and
  - (b) the Authority may stipulate the timeframe within which such modifications must be proposed.
- (3) An insurer must give effect to any in-force plan under paragraph (1)(b)(ii) that has been accepted by the Authority.
- (4) If an insurer is unable or fails to—
  - (a) submit a plan under paragraph (1)(b)(ii) which is acceptable to the Authority;
  - (b) submit a plan within the timescales referred to in paragraph (1)(b) or (2)(b); or
  - (c) fails to give effect to a plan as referred to in paragraph (3),the Authority may take such steps as appear appropriate to it.
- (5) In considering the exercise of its options under paragraph (4), the Authority may take account of relevant factors such as—
  - (a) any previous instances where the insurer has not met the requirements of regulation 3, or a determination under regulation 3(5), including any previous failure to give effect to a plan as referred to in paragraph (3);
  - (b) any failure of the insurer to properly monitor and control its position in order to avoid or identify in a timely manner any actual or likely situation where it has not met, or may not meet, the requirements of regulation 3, or a determination under regulation 3(5); and
  - (c) any failure of the insurer to inform the Authority in accordance with paragraph (1)(a).

## **6 Requirement to monitor compliance with class 12 authorisation**

- (1) Without prejudice to any other requirement to monitor compliance, an insurer must take adequate, appropriate and effective steps to ensure that it is aware on an ongoing basis of whether it has not met, or is likely not to meet, the requirements of regulation 3, or a determination under regulation 3(5).
- (2) In relation to paragraph (1), an insurer must be able to demonstrate to the Authority the steps it has taken and the basis of the conclusions it has reached.

- (3) In paragraph (1), adequate steps include consideration of circumstances on a contract by contract basis where appropriate.



**SCHEDULE 1****RELATED PARTIES AND INFORMED CONSENT****1 Related parties (not individuals)**

Further to regulation 3(1)(a)(i), in relation to an insurer, the following persons who are not individuals may be treated as a related party of the insurer.

- (1) Where the insurer is a company incorporated under the Companies Acts 1931 to 2006—
  - (a) a person that is a shareholder of the insurer and—
    - (i) controls alone; or
    - (ii) controls in accordance with a joint venture agreement with other shareholders of the insurer,  
45% or more of the voting rights in respect of the insurer attributable to the shares of the insurer; or
    - (iii) has the right to appoint or remove a majority the insurer's board of directors; or
  - (b) 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
  - (c) a person in respect of which the right to appoint or remove a majority of its board of directors is the right of a person in accordance with paragraph (a)(iii).
- (2) Where the insurer is a mutual entitled to make adequate calls on its members in order to comply with its capital requirements under section 12 of the Act—
  - (a) a mutual member of the insurer; or
  - (b) 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 a mutual member of the insurer.
- (3) Where the insurer is the core of a PCC—
  - (a) a person that is a shareholder of the PCC in respect of the non-cellular shares of the PCC and—
    - (i) controls alone; or

- (ii) controls in accordance with a joint venture agreement with other such shareholders of the insurer,  
45% or more of the voting rights in respect of the insurer attributable to the non-cellular shares of the PCC; or
    - (iii) has the right to appoint or remove a majority the PCC's board of directors; or
  - (b) 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—
    - (i) non cellular shares of the PCC; or
    - (ii) ordinary share capital of a person in accordance with paragraph (a)(i) or (a)(ii); or
  - (c) a person in respect of which the right to appoint or remove a majority of its board of directors is the right of a person in accordance with paragraph (a)(iii).
- (4) Where the insurer is a cell of a PCC—
  - (a) a person that is a shareholder of the PCC in respect of the shares of the PCC issued in respect of the cell and—
    - (i) holds alone; or
    - (ii) holds, in accordance with a joint venture agreement with other persons that in each case are a shareholder of the PCC in respect of the shares of the PCC issued in respect of the cell, and those persons collectively hold,  
45% or more of the shares of the PCC issued in respect of the cell;  
or
  - (b) 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 a person in accordance with paragraph (a).
- (5) In this schedule—

**“adequate calls”**, in relation to an insurer that is a mutual, means calls in respect of which—

  - (a) the mutual has a unilateral and uninhibited contractual right to levy against its members; and
  - (b) at a minimum, are in a form and of an amount that enables the mutual to comply with its capital requirements under section 12 of the Act;

“**cell**”, in relation to a PCC, has the meaning given in the Protected Cell Companies Act 2004, or Companies Act 2006, as the case may be;

“**core**”, in relation to a PCC, is its non-cellular part in accordance with the Protected Cell Companies Act 2004, or Companies Act 2006, as the case may be;

“**joint venture agreement**”, in relation to an insurer, means an agreement that is—

- (a) of the nature of a joint venture (a business enterprise undertaken jointly by two or more persons (not individuals));
- (b) in writing; and
- (c) verified by the insurer;

“**non-cellular**”, in relation to the shares of a PCC, means the shares of the PCC other than those issued in respect of a cell of the PCC;

“**PCC**” means a company which is incorporated as, or has been converted into, a Protected Cell Company in accordance with Protected Cell Companies Act 2004, or Companies Act 2006, as the case may be; and

“**voting rights**” in relation to an insurer which is a company, mean in relation to a resolution of the shareholders of the insurer, or a class of shareholders of the insurer, all the rights to vote on such resolution conferred on the shareholders of the insurer.

## 2 Related parties (individuals)

- (1) Further to regulation 3(1)(a)(i), in relation to an insurer, the following persons may be treated as a related party of the insurer.
- (2) Subject to paragraph (3), in respect of a related party in accordance with paragraph 1—
  - (a) an employee of that related party, and relatives of that employee, where the insurance in question is an employee benefit; and
  - (b) a director or other officer of that related party where the insurance in question is linked to that individual’s role with the related party (such as directors and officers liability insurance).
- (3) For the avoidance of any doubt, paragraph (2) is not required if regulation 3(1)(b)(ii) or 3(1)(b)(iii) applies.

## 3 Informed consent

- (1) Subject to paragraph (2), in these Regulations—
  - (a) “**sophisticated person**” means a person, at the time of entering into the relevant contract of insurance to which the informed consent

relates, with sufficient knowledge and experience (or the financial resources to readily obtain appropriate advice) to understand the risks associated with entering into a contract of insurance with an insurer that is subject to a reduced level of regulation; and

- (b) **“informed consent”** means written evidence showing that the sophisticated person, prior to entering into the contract of insurance with the insurer to which the informed consent relates, has been specifically alerted to the fact that the insurer holds a class of authorisation which means the insurer is subject to a reduced level of regulation which may result in increased risk to the sophisticated person.
- (2) Informed consent is valid only if the insurer —
- (a) has taken reasonable and documented steps to verify that the sophisticated person meets the criteria in paragraph (1)(a); and
  - (b) holds the written evidence referred to in paragraph (1)(b).

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**SCHEDULE 2****ANCILLARY BUSINESS**

- (1) Further to regulation 3(1)(b)(iii), in order to qualify as ancillary business, the circumstances relating to an underlying direct contract of insurance being reinsured by an insurer must be acceptable to the Authority, including being—
- (a) ancillary to a significant non-insurance business activity of the insurer's group and in circumstances which sufficiently incentivise the insurer's group to financially support the insurer if needed; and
  - (b) sold or otherwise generated in a manner which is not on an open market basis.
- (2) In this schedule—
- “group”**, in relation to the insurer, means any person which meets the criteria as a related party of the insurer in accordance with paragraph 1 of Schedule 1 (as applicable to reinsurance), and **“insurer's group”** shall be construed accordingly.