

**ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY**

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**Consultation Paper  
Corporate Governance Code of Practice for  
Insurers**

**CP19-10/T11**

**Issue Date: 23 December 2019**

**Closing Date: 14 February 2020**

## Consultation Paper – CP19-10/T11

This Consultation Paper is issued by the Isle of Man Financial Services Authority, which is the regulatory body for financial services in the Isle of Man.

The purpose of the consultation is to obtain views and evidence in relation to proposed changes to the current Corporate Governance Code of Practice for Commercial Insurers (which came into operation on 1 January 2019), including extending the proposed amended code on a proportionate basis to all Isle of Man authorised insurers.

The consultation is relevant to the boards and senior management of existing and prospective insurance companies, and registered insurance managers. Other parties involved in the Isle of Man insurance sector, including general insurance intermediaries and the legal and auditing professions may also find this discussion paper and the issues raised of interest.

The closing date for comments is **14 February 2020**.

Please send comments in writing and preferably by email to:

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If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at [Policy@iomfsa.im](mailto:Policy@iomfsa.im) or by telephone on +44 (0) 1624 646000.

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## Glossary

<b>Act</b>	Insurance Act 2008
<b>Authority</b>	Isle of Man Financial Services Authority
<b>Updated CGC</b>	Updated Corporate Governance Code of Practice for Insurers as set out in this paper
<b>Class 12 insurers</b>	A class of authorisation under section 8 of the Act which applies a reduced level of regulation (the rationale for reduced regulation was set out in the Authority's consultation paper CP19-04/T04 (Class 12 Insurance Authorisation)), and includes, for example: captives, commercially fronted reinsurers and business with sophisticated consenting parties.
<b>Insurance manager</b>	A person registered under section 25 of the Act as an insurance manager
<b>ERM</b>	Enterprise risk management
<b>ORSA</b>	Own risk and Solvency Assessment
<b>Captive</b>	In general terms is an insurer which insures the group to which it belongs

# 1. Executive Summary

## 1.1 Overview

In 2019 the Authority brought forward some significant updates to its corporate governance guidance for insurers. However, those changes were applied only to commercial insurers whilst consideration was given to any changes to the guidance needed to allow for proportionate application when subsequently extended to apply to lower risk insurers. The main purpose of this paper is to provide for those changes and extend the guidance (the CGC) to lower risk insurers.

As part of the Authority's assessment of proportionality it has held pre consultation discussions with the Isle of Man Captive Association (IOMCA) in relation to the proportionate application of the updated CGC to lower risk insurers.

### **The key changes in respect of proportionality are to:**

- Exempt lower risk insurers from mandatory actuarial function requirements.
- Remove the mandatory minimum annual reporting frequency of the internal audit function to the board in respect of lower risk insurers.
- Exempt lower risk insurers from detailed conduct requirements when dealing with less vulnerable policyholders (related parties and other insurers).
- Exempt lower risk insurers from the need to analyse the differences between their own specific risk profile and the assumptions underlying the Authority's prescribed generally applicable solvency requirements; and
- Allow for shorter than 3 year forecast time horizons to be used in respect of ORSAs in certain circumstances.

### **Other changes**

- It is proposed that, in respect of routine regulatory reporting in relation to ORSA, that lower risk insurers provide a summary ORSA submission to the Authority rather than a full ORSA report. This does not reduce the ORSA requirement for such insurers but it will aid the Authority in using its resources effectively on a risk basis.
- There are a number of wording additions/changes which are mainly to promote appropriate integration of elements within the ERM framework of insurers.
- Insurers will be required, if not already sufficiently doing so as part of their ORSA, to consider their recovery options in hypothetical highly adverse circumstances (including insolvency).

### **Additional request for feedback on possible notification requirements**

The paper also seeks feedback in relation to the Authority potentially bringing forward more detailed requirements in relation to matters in respect of which it would wish to receive notification from insurers. The types of matter are set out herein and readers are asked for their views on the matters and what form they might take (regulation, guidance etc.).

## 1.2 What is the purpose of this Consultation Paper?

This paper proposes changes to the current Corporate Governance Code of Practice for Commercial Insurers (which came into operation on 1 January 2019). The most notable change introduced by this paper is to extend the proposed amended code on a proportionate basis to all Isle of Man authorised insurers.

## 1.3 Who may be affected by this Consultation Paper?

The consultation is relevant to the boards and senior management of existing and prospective insurance companies, and registered insurance managers. Other parties involved in the Isle of Man insurance sector, including general insurance intermediaries and the legal and auditing professions may also find this discussion paper and the issues raised of interest.

## 2. Consultation Process

### 2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA08 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The Authority is required to give consideration to certain factors when discharging its functions in accordance with paragraph 3 of Schedule 1 to the FSA08. The most relevant factors for this consultation are considered as follows:

Factor	Information
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden	A key element of the updates to the CGC proposed in this paper is to allow for its proportionate application, as it is being extended to apply to lower risk insurers.
The desirability of implementing and applying recognised international standards.	Corporate governance is a fundamental part of the Authority's current project to update its insurance regulatory framework in a proportionate manner consistent with relevant international regulatory standards for insurance.

Factor	Information
The responsibilities of those who manage the affairs of permitted persons, insurers and retirement benefits schemes	The CGC represents regulatory guidance to be implemented in a proportionate manner by insurers and, notably, by the directors and senior managers of insurers in accordance with their respective responsibilities.

## 2.2 Responding to the Consultation Paper

Open dialogue with stakeholders is an essential element for successful development of the Authority's proposals and constructive feedback will help the Authority reach an informed decision on the content of the proposals and manner of implementation. Respondents should note the following when responding to this Consultation Paper:

- As responses to the consultation may be subject to publication or disclosure in accordance with access to information regimes, respondents should state if they wish their response to remain confidential and, if so, the reasons for this.
- Submissions received by the closing date of the consultation will be considered but may not necessarily result in a change to the proposals following a review of all responses received.
- Professional bodies, trade associations and other representative groups should provide a summary of the people and organisations they represent when responding to a consultation as well as the methodology used to gain members' input.
- The Authority requests that submissions are not made anonymously as they will not be considered or included in the Consultation Response.

This Consultation Paper has been published on the Authority's website and the Isle of Man Government's Consultation Hub<sup>1</sup>. A list of specific representative groups to which this Consultation Paper has been sent is shown in Appendix A.

## 3. Proposals: mainly in order of appearing in the updated CGC (but with relatively minor items appearing under "other changes")

References to paragraphs in **bold** are references to the updated CGC.

### 3.1 Application of the updated CGC to insurers

As set out in **paragraph 5(1)(a)**, the updated CGC shall apply to all Isle of Man authorised insurers. As set out in **paragraph 2(3)**, the Corporate Governance Code of Practice for Commercial Insurers (Statutory Document No. 2018/0247) will be withdrawn and the updated CGC will apply; and via **paragraph 2(2)** the Governance Code of Practice for Regulated Insurance Entities (SD 0880/10) shall no longer be applicable to insurers.

<sup>1</sup> <https://consult.gov.im/>

As set out in **paragraphs 5(1)(b) and 6**, the updated CGC shall apply to non Isle of Man insurers that hold permits in the Isle of Man subject to the following:

- permit holders located in the United Kingdom, European Union or other jurisdiction acceptable to the Authority are exempt as they are subject to equivalent requirements in their home jurisdictions; and
- in respect of other permit holders, the Authority will have discretion to adapt the Isle of Man requirements as appropriate having regard to the requirements already applicable to the permit holder in its home jurisdiction.

#### Question 1

Do readers agree or disagree with any of—

- (a) the application of the updated CGC to all Isle of Man insurers;
- (b) the exemption given to UK/EU-based permit holders; or
- (c) the application of the updated CGC to non UK/EU-based permit holders, and/or the Authority's scope to exercise discretion in applying the CGC to non UK/EU-based permit holders?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.2 Application of the updated CGC to insurance managers

As set out in **paragraph 5(2)**, the updated CGC shall apply to insurance managers in respect of the services they provide to their client insurers.

As set out in **paragraph 2(2)**, the Corporate Governance Code of Practice for Regulated Insurance Entities (SD 0880/10) shall remain applicable to insurance managers. It should be noted that updated governance guidance specific to insurance managers is anticipated to be issued by the Authority in 2020. In the intervening period existing requirements (i.e. SD 0880/10) shall remain in place on an ongoing proportionate basis.

#### Question 2

Do readers agree or disagree with any of—

- (a) the application of the updated CGC to Isle of Man insurance managers (i.e. where it is limited to the services and responsibilities the insurance manager has adopted by way of outsourced arrangements); and/or
- (b) the interim continuation of the requirements of SD 0880/10 otherwise in respect of insurance managers until such time as more tailored governance requirements are introduced in respect of the manager's own internal arrangements?

Do readers have any other related comments or views?

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### 3.3 Consideration of recovery scenarios

**Paragraph 11(c)** requires insurers to consider what they might do in highly adverse hypothetical circumstances, such as a threat to solvency, where the insurer would need to recover.

For example, an insurer might from time to time review its prospect of success in raising new capital or reaching a compromise with creditors, or what options it might be able to exercise within its contractual arrangements to improve its position should it need to do so for any reason.

This requirement recognises considerations which are already part of the dialogue the Authority has with insurers when considering the insurer's risk profile. For example, a high likelihood of financial support being available to a captive insurance company from its parent group is a factor relevant to the captive being considered lower risk.

It may be that an insurer will already address hypothetical 'ruinous' scenarios consistent with this requirement as part of its ORSA. If so, then of course, it would not need to repeat work unnecessarily.

The requirements of paragraph 11(c) are also reflected under board responsibilities in paragraph 36(d)(iv) and 36(d)(iv).

#### Question 3

Do readers agree or disagree with the requirement for insurers to evaluate their risks and options (and intentions where appropriate) in hypothetical recovery scenarios?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.4 Prohibition of combined Chairperson and Chief Executive (CEO) role

In relation to **paragraph 20**, the Authority is of the view that the roles of Chairperson and CEO appear too inherently conflicted to be combined in an insurer. The Chairperson has influence over the direction of the board and, given the board's role in overseeing the

performance of the executive management and corporate governance overall, it is contrary to an appropriate separation of duties.

We therefore propose to prohibit this combination of roles, or its equivalent by any other name, in respect of insurers.

#### Question 4

Do readers agree or disagree with the prohibition of combining the roles of Chairperson and CEO in relation to insurers?

Do readers have any other related comments or views?

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### 3.5 Board review of capital and liquidity adequacy policies

**Paragraph 36(d)(iii)** has been amended to include additional examples of what should be included in risk strategies and significant risk policies. These additional examples are an insurer's policies to ensure compliance with its capital and liquidity adequacy requirements (which have been added to the existing example of the risk appetite framework).

This change is consistent with the CGC reflecting the integrated nature of ERM. To help readers who are not familiar with ERM matters related to insurers, a general description of the integrated nature of ERM has been included in item 3.9 below. Readers will see how the risk appetite and capital and liquidity adequacy (including the policies which give them effect) are all significant elements in the ERM framework. The main purpose of ERM in the CGC is to ensure capital and liquidity adequacy.

#### Question 5

Do readers agree or disagree with capital and liquidity adequacy policies being added as additional examples of risk strategies and significant risk policies which should be subject to regular board review?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.6 Board's role in consideration of hypothetical recovery scenarios

**Paragraphs 36(d)(iv) and 36(f)(iv)** have been amended to reflect the board's role in relation to consideration of hypothetical recovery scenarios, as referred to in item 3.3 above.

#### Question 6

Do readers agree or disagree with the inclusion of consideration of hypothetical recovery scenarios within board responsibilities?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.7 Application of Actuarial Function requirements to different types of insurers

**Paragraph 44(1)(a)** is a continuation of existing actuarial function requirements applicable to classes 1, 2 and 10 insurers (long-term business insurers).

**Paragraph 44(1)(b)** applies the actuarial function requirements to classes 3 to 9 and 11 insurers (non long-term business insurers). However, **paragraphs 44(5) and 44(6)** give the Authority discretion to vary the requirements where the Authority believes it to be appropriate (subject to a satisfactory case for variation being made by the insurer to the Authority).

The Authority may, for example, reduce some or all of the actuarial function requirements in relation to an insurer which is deep into a stable business run-off position in circumstances where actuarial input, or repeated actuarial input, is of limited value.

**Paragraph 44(2)** exempts class 12 insurers so that they are not subject to mandatory actuarial function requirements. However, **paragraph 44(7)** requires a class 12 insurer to have "access to" an actuarial function. This is not a requirement for the insurer to keep an actuarial resource on retainer. Instead it is consistent with paragraph 21(c) which requires the board of an insurer to have the powers and resources available to obtain expertise where necessary and appropriate to enable the board to properly discharge its duties and responsibilities and carry out its functions. Paragraph 44(7) is, in effect, an important example of the expert advice an insurance board may need in order to support/inform its decisions (for example, actuarial advice may be appropriate in respect of 'long tail' insurance obligations which may take years to settle).

The exemption of class 12 insurers is consistent with the Authority's approach to proportionality in relation to insurers that are considered to be generally lower risk than commercial insurers for the reasons set out in the Authority's consultation paper CP19-04/T04 (Class 12 Insurance Authorisation) which was consulted on earlier this year.

#### Question 7

Do readers agree or disagree with any of—

- (a) the continuation of actuarial resource requirements in relation to long-term business insurers;
- (b) the application of actuarial resource requirements in relation to non long-term business insurers with discretion given to the Authority to vary requirements; and/or
- (c) the exclusion of class 12 insurers provided they can obtain actuarial advice if they need it?

Do readers have any other related comments or views?

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### 3.8 Internal Audit Function

**Paragraph 49(2)** has been introduced to clarify that the existing paragraph 49(1)(g) allows insurers, where appropriate, to schedule their internal audit work over more than one year. The change reflects the Authority's comments in relation to previous consultations concerning its expectations as to how 49(1)(g) may be interpreted. The wording has been introduced into the CGC text in this round of updates so that the scope for appropriate internal audit planning over more than one year is formalised and made more evident.

#### Question 8

Do readers agree or disagree with the inclusion (or any of the content) of the additional wording clarifying that insurers, where appropriate, may schedule their internal audit work over more than one year?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

**In paragraph 50(1)** it is proposed, in respect of class 12 insurers, to remove the minimum requirement for the internal audit function to report at least annually to the board.

This is consistent with the Authority's approach to proportionality in relation to insurers that are considered to be generally lower risk than commercial insurers for the reasons set out in the Authority's consultation paper CP19-04/T04 (Class 12 Insurance Authorisation) which was consulted on earlier this year. This will also provide more flexibility for a class 12 insurer to integrate with its parent group internal audit cycles which may involve, for example, comprehensive internal audit exercises every 2 or 3 years.

It should be noted that this change simply removes the mandatory minimum reporting requirement which could potentially result in an unnecessary cost of compliance. It does not mean that an insurer can simply ignore internal audit in periods where work is not currently planned. The board of a class 12 insurer will still need to keep under review its need for objective information in order for the board to properly discharge its duties and responsibilities and carry out its functions in relation to the insurer. For example, if the insurer's risk profile or systems of governance change significantly between internal audit exercises (or governance systems are otherwise shown to have weaknesses or failings, or the board has cause for significant concern for any reason) then the board would need to consider whether supplemental internal audit work, or a review and reporting exercise, is necessary in order for the board to remain suitably informed. The requirements of paragraphs 26(4) and 19, for example, remain unchanged.

#### Question 9

Do readers agree or disagree with the removal, in respect of class 12 insurers, of the minimum annual frequency of internal audit function reports to the board?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

**Paragraph 51(c)** has been amended to highlight the need to manage any potential conflicts of duty or interests involved where an insurer seeks to place reliance on the internal audit function of its appointed insurance manager or the insurance manager's group. Such a conflict is self-evident if, in effect, the manager is expected to report to its client on any inadequacies or failings related to the services the manager itself provides to the client.

#### Question 10

Do readers agree or disagree with the CGC highlighting a need to manage potential conflicts if an insurance manager's (or its group's) internal audit resources are to be relied upon by the manager's client insurers?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

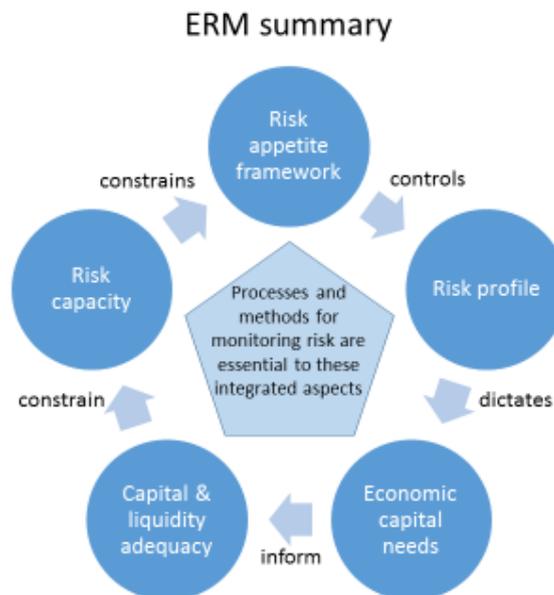
### 3.9 Changes to Part 11

**Paragraph 60(e)** has been amended to better reflect the integrated nature of the ERM requirement.

Broadly, ERM is the process used by an insurer to limit its risks to only those it can properly manage and afford. ERM enables the insurer to stay alert to the financial resources it needs versus that which it has available, and to make risk-taking decisions on a well-informed basis.

As an aid to readers who may not be familiar with ERM, the following simple diagram and explanation of terms show some of the proposed key elements of ERM and how they either depend upon each other or influence each other and, in effect, form one continual process.

We hope that readers will be able to use this diagram to better understand why the changes to the wording in paragraph 60(e) and other paragraphs in Part 11 and Schedule 1 (see below) have been made. The changes are also consistent with relevant international standards for insurance regulation.



- A. An insurer's "**risk appetite**" (meaning the risks the insurer has decided it will, or will not, accept within its risk capacity – see 5) controls the insurer's **risk profile** – see B.
- B. An insurer's "**risk profile**" (meaning all of the combined risks the insurer is exposed to and is committed to becoming exposed to) dictates the insurer's **economic capital needs** – see C.

- C. An insurer’s “**economic capital needs**” (meaning the total cost to the insurer of liabilities which may result due to the combined risks it has taken or is committed to take) is used to assess if the insurer will continue have enough money overall (**adequate capital** and other resources), and whether the money will be available to make payments when needed (**adequate liquidity**) – see D.
- D. An insurer’s “**capital and liquidity adequacy**” assessments (where the insurer calculates if it has enough money to meets all of its liabilities and whether it is able to make all payments on time) will also reveal whether the insurer has, or does not have, any money spare to take on new business (**risk capacity**) – see E.
- E. An insurer’s “**risk capacity**” (meaning any spare money the insurer has or will have available to cover any new business it wants to take on) creates a limit or boundary which the insurer’s **risk appetite** must not exceed (in other words an insurer must not take on risks it cannot afford) – see A.

**Paragraph 62(1)** has been amended to restate the material focus of the risk management actions involved and also to include reference to risk interdependencies.

**Paragraph 63(1)(a)** has been amended to emphasise that an insurer’s policies must support risks being managed within the insurer’s risk appetite.

**Paragraph 64** has been amended to clarify that an insurer’s risk appetite must be actively stated, and also to emphasise that the risk appetite, at its highest level, must control the insurer’s entire risk profile within its capacity to take risk (the diagram above may aid with seeing how these elements sit within the ERM process).

#### Question 11

Do readers agree or disagree with any or all of the various changes in Part 11?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.10 Exemptions from detailed conduct requirements

**Paragraph 72** has been introduced to provide for exemptions from the detailed market conduct requirements of Part 14. Exemptions are given to class 12 insurers in respect of their dealings with policyholders that are:

- related parties (reflecting the reduced risk due to the insurer and the policyholder having interests in common); and

- other insurers (reflecting the reduced risk due to the policyholder being an expert party).

#### Question 12

Do readers agree or disagree with the conduct exemptions given to class 12 insurers in respect of their dealings with related parties and/or other insurers?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.11 Changes to Schedule 1 (Risks)

Guidance in relation to the following risks has been amended, again, on the basis of promoting the integration of the elements within ERM.

**Paragraph 2 (Underwriting Risk) sub-paragraph (1)** is changed so that an insurer's underwriting policy is specifically required to integrate with its risk appetite framework, deal with the nature of the risks to be taken on via the policy and provide for the coordination of underwriting with any reinsurance or other mechanism used to transfer the insurer's risks to another party.

**Paragraph 4 (Investment Risk) sub-paragraph (2)(d) and (e)** are changed so that an insurer's investment policy is specifically required to deal with how it will interact with the insurer's asset-liability management (ALM) and integrate with its risk appetite framework.

#### Question 13

Do readers agree or disagree with any of the changes to underwriting and/or investment guidance to specifically promote certain integration of elements within the ERM framework?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.12 Changes to Schedule 2 (Own Risk and Solvency Assessment (ORSA)), and the inclusion of Schedule 4 (Summary ORSA Submission)

**Schedule 2 sub-paragraph 10** has been added in respect of class 12 insurers on the basis of proportionality (the changes reduce some of the ORSA requirements for class 12 insurers which are considered to be lower risk than commercial/open market insurers).

These changes include that:

- A class 12 insurer is not required to analyse the differences between its specific risk profile and the assumptions underlying the Authority's prescribed generally applicable solvency requirements. This removes a layer of complexity in the mandatory ORSA process which may be disproportionate for the less complex risk profiles of some class 12 insurers. This does not remove the requirement for a class 12 insurer to determine and articulate its own capital needs.
- For class 12 insurers which are not in a position to meaningfully forecast their business plans 3 years in advance, a shorter minimum period of more than one year plus its subsequent programme renewal is allowed. For example, in respect of captive insurance, this takes account of situations such as where a captive is dependent upon the changing self-insurance needs and preferences of its parent group, which in turn are dependent on the group's business circumstances and the availability and pricing of cover in the insurance market. Such circumstances mean that the captive might legitimately adopt a shorter than 3 year planning horizon.
- Consistent with the exemption given to class 12 insurers in relation to Actuarial Function (see item 3.7 above), class 12 insurers are exempted from the requirement for actuarial input to their ORSA processes.

**Schedule 4** has been added to facilitate the Authority's risk-based approach to supervision where it proposes to receive summary ORSA submissions from class 12 insurers on a routine basis and request additional details from insurers on a case by case basis where the Authority considers it appropriate. For higher risk non-class 12 insurers the Authority will require submission of their full ORSA reports at least annually (timing to coincide with when each ORSA is carried out by the insurer in question).

Schedule 4 sets out the summary information proposed to be submitted to the Authority from class 12 insurers at least annually (again, timing to coincide with when each ORSA is carried out by the insurer in question).

#### Question 14

Do readers agree or disagree with any of the following changes to Schedule 2 in relation to reducing requirements for class 12 insurers:

- (a) not requiring an analysis of differences between own assessments versus general regulatory solvency specifications;
- (b) allowing for a reduced forecast time horizon where the minimum 3 years is not suitable; and/or

(c) not mandatorily requiring actuarial input?

Do readers agree or disagree with any of the following:

(d) the use by the Authority of a summary ORSA submission in respect of class 12 insurers for the purpose of facilitating a risk-based focus of regulatory attention; and/or

(e) any of the requirements in the proposed summary ORSA submission (Schedule 4)?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.13 Other changes

A small number of punctuation etc. changes appear and these are considered to be self-explanatory.

**Paragraph 15** has been amended to include an example of what significant systems of governance include.

**Paragraph 18(5)** has been amended to take account of the definition of “permit holder” now appearing under **paragraph 76**.

The words “activity or” have been added to **paragraph 27(c)** for consistency with other requirements of the CGC referring to outsourcing.

**Paragraph 36(b)(ii)** has been added to reflect that the ORSA is a key report to the board.

The words “(and operate within)” have been added to **paragraphs 59(a) and 68(1)** to emphasise that an insurer should not operate outside of its risk management system and internal controls (notably this includes not operating outside of the insurer’s risk appetite as mentioned in item 3.9 above).

In relation to **Part 11**, reference to ‘ERM system’ has been changed to ‘ERM framework’ consistent with the risk appetite framework, both of which lie within the risk management system and function.

**Paragraph 76(1)** has been changed to:

- remove reference to ‘commercial insurers’ as the updated CGC applies to all insurers (commercial or otherwise);

- add a helpful cross reference to the location of the definition of ‘permit holder’;
- add a provision confirming the inclusion of requirements for ‘processes’ in the CGC (the CGC typically refers to ‘strategies, policies and procedures’ in its requirements, but not to ‘processes’ with such consistent regularity as these were historically assumed to be included – this change addresses any potential uncertainty about their inclusion going forwards); and
- add a definition of “recovery scenarios” as referred in item 3.3 above.

#### Question 15

Do readers agree or disagree with any of the ‘other changes’ proposed?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.14 Note on timing of first ORSA submissions to the Authority

In respect of an insurer which is currently subject to the Corporate Governance Code of Practice for Regulated Insurance Entities (SD 0880/10), its first ORSA or summary ORSA (as applicable) should be submitted to the Authority within the first year of the updated CGC coming into operation (i.e. by 30 June 2021).

In respect of an insurer which is currently subject to the Corporate Governance Code of Practice for Commercial Insurers (Statutory Document No. 2018/0247), the updated CGC represents a continuation of ORSA reporting requirements.

#### Question 16

Do readers agree or disagree with the timing requirement for the first ORSA submissions in respect of insurers that were not previously required to submit ORSA information?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

### 3.15 Additional request for feedback on possible changes to Part 15

In relation to the consultation in 2017 (CP17-10/T11) in respect of the Corporate Governance Code of Practice for Commercial Insurers (now Statutory Document No. 2018/0247) there were some comments and some discussion at the time as to whether it would be appropriate for the Authority to issue further information on matters in respect of which it would expect to receive notice.

In the Authority's response to that consultation it indicated that it did not propose to issue further information at that time.

However, for a number of reasons the Authority now feels that it is appropriate to consider whether it should formalise in some way some additional detail of the matters it would wish to be notified of.

The main reasons the Authority is considering this change are:

- To provide greater clarity for insurers on such matters.
- To provide more certainty for the Authority that particular matters will be notified to it which are relevant, and may be material, in relation to its supervisory activities.
- To reduce the gap, where appropriate, between notifiable matters specified in respect of insurers and those specified in the Financial Services Rule Book applicable to other regulated entities.

As a general indication of the types of matters being considered we provide the following list (which would, if developed further, become more detailed and include timings for notifications which may, where appropriate, be similar to detail/timings included in the Rule Book).

In respect of an insurer (and without limiting the generality of Part 15) the following matters might be required to be notified to the Authority:

- Non commencement of authorised activity after a specified period following authorisation of the insurer
- Change of annual reporting date of the insurer
- Change of reporting currency of the insurer
- Inability to make financial returns to the Authority
- Existence of misleading financial returns to the Authority
- Creation of charge in respect of the insurer's assets
- The insurer making financial commitments outside of its ordinary course of business
- Audit report qualification in respect of the insurer
- Change of name or address of the insurer
- Change of insurer's legal form or location
- Material disposals in relation to the insurer's business
- Mergers, takeovers, acquisitions and business purchases in relation to the insurer
- Capital alterations in respect of the insurer

- Share options in respect of the insurer
- Matters affecting fitness or propriety of persons relevant to the insurer
- Potential cause for the insurer giving a final warning to an employee of the insurer
- Final warning given to an employee of the insurer
- Disqualification of a director relevant to the insurer
- Service of summons/warrant etc. (criminal actions) against the insurer
- Criminal proceedings against the insurer or its officers/employees
- Bankruptcy, winding up, arrangements with creditors etc. concerning the insurer
- Material legal proceedings against the insurer
- The triggering of a compensation scheme in relation to the insurer
- Prospective capital inadequacy or unfair policyholder treatment relevant to the insurer
- Insurer bringing itself or the Authority or the Island into disrepute
- Breaches of the insurer's regulatory requirements
- Fraud or dishonesty relevant to the insurer
- Investigation of conduct by professional body relevant to the insurer
- Material disruption to the insurer's operations
- Actions by another authority relevant to the insurer
- Matters relating to any application for authorisation outside of IOM relevant to the insurer
- Material loss of data relevant to the insurer
- Appeal to tribunal by the insurer in respect of the Authority
- Other...

#### Question 17

Do readers agree or disagree:

- (a) that the Authority should set out further detail of matters in respect of which it would require notification; and/or
- (b) that the sorts of matters indicated in this paper should be included?

Do readers believe that any other matters should be included (please specify)?

If in favour, do readers believe that such matters should be:

- (c) required by regulations (similar to the Rule Book);
- (d) required by binding guidance under the CGC;
- (e) required by binding guidance outside of the CGC; and/or
- (f) set out in non-binding guidance or other publication by the Authority?

Do readers have any other related comments or views?

*In responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.*

## 4. Impact Assessment

The matters referred to in this paper apply only to insurers.

For commercial insurers already subject to the existing Corporate Governance Code of Practice for Commercial Insurers (Statutory Document No. 2018/0247) issued in 2018, the changes will be relatively minor.

For other insurers the changes will be more significant. Therefore, prior to full consultation, the Authority engaged with the Isle of Man Captives Association (IOMCA), the relevant industry body representing the insurers where the change will be more significant. The potential impact of the provisions was discussed with IOMCA and the Authority believes that the requirements can be applied proportionately (including by small insurers).

## 5. Questions

In respect of the following, readers are encouraged to provide any other related comments or views.

Also, in responding to specific questions or providing other feedback in relation to this paper, readers are requested to provide the rationale for any views expressed or any changes suggested.

### Question 1 – item 3.1

Do readers agree or disagree with any of—

- (a) the application of the updated CGC to all Isle of Man insurers;
- (b) the exemption given to UK/EU-based permit holders; or
- (c) the application of the updated CGC to non UK/EU-based permit holders, and/or the Authority's scope to exercise discretion in applying the CGC to non UK/EU-based permit holders?

### Question 2 – item 3.2

Do readers agree or disagree with any of—

- (a) the application of the updated CGC to Isle of Man insurance managers (i.e. where it is limited to the services and responsibilities the insurance manager has adopted by way of outsourced arrangements); and/or
- (b) the interim continuation of the requirements of SD 0880/10 otherwise in respect of insurance managers until such time as more tailored governance requirements are introduced in respect of the manager's own internal arrangements?

### Question 3 – item 3.3

Do readers agree or disagree with the requirement for insurers to evaluate their risks and options (and intentions where appropriate) in hypothetical recovery scenarios?

### Question 4 – item 3.4

Do readers agree or disagree with the prohibition of combining the roles of Chairperson and CEO in relation to insurers?

**Question 5 – item 3.5**

Do readers agree or disagree with capital and liquidity adequacy policies being added as additional examples of risk strategies and significant risk policies which should be subject to regular board review?

**Question 6 – item 3.6**

Do readers agree or disagree with the inclusion of consideration of hypothetical recovery scenarios within board responsibilities?

**Question 7 – item 3.7**

Do readers agree or disagree with any of—

- (a) the continuation of actuarial resource requirements in relation to long-term business insurers;
- (b) the application of actuarial resource requirements in relation to non long-term business insurers with discretion given to the Authority to vary requirements; and/or
- (c) the exclusion of class 12 insurers provided they can obtain actuarial advice if they need it?

**Question 8 – item 3.8**

Do readers agree or disagree with the inclusion (or any of the content) of the additional wording clarifying that insurers, where appropriate, may schedule their internal audit work over more than one year?

**Question 9 – item 3.8**

Do readers agree or disagree with the removal, in respect of class 12 insurers, of the minimum annual frequency of internal audit function reports to the board?

**Question 10 – item 3.8**

Do readers agree or disagree with the CGC highlighting a need to manage potential conflicts if an insurance manager's (or its group's) internal audit resources are to be relied upon by the manager's client insurers?

**Question 11 – item 3.9**

Do readers agree or disagree with any or all of the various changes in Part 11?

**Question 12 – item 3.10**

Do readers agree or disagree with the conduct exemptions given to class 12 insurer in respect of their dealings with related parties and/or other insurers?

**Question 13 – item 3.11**

Do readers agree or disagree with any of the changes to underwriting and/or investment guidance to specifically promote certain integration of elements within the ERM framework?

**Question 14 – item 3.12**

Do readers agree or disagree with any of the following changes to Schedule 2 in relation to reducing requirements for class 12 insurers:

- (a) not requiring an analysis of differences between own assessments verses general regulatory solvency specifications;
- (b) allowing for a reduced forecast time horizon where the minimum 3 years is not suitable; and/or

(c) not mandatorily requiring actuarial input?

Do readers agree or disagree with any of the following:

- (d) the use by the Authority of a summary ORSA submission in respect of class 12 insurers for the purpose of facilitating a risk-based focus of regulatory attention; and/or
- (e) any of the requirements in the proposed summary ORSA submission (Schedule 4)?

Question 15 – item 3.13

Do readers agree or disagree with any of the ‘other changes’ proposed?

Question 16 – item 3.14

Do readers agree or disagree with the timing requirement for the first ORSA submissions in respect of insurers that were not previously required to submit ORSA information?

Question 17 – item 3.15

Do readers agree or disagree:

- (a) that the Authority should set out further detail of matters in respect of which it would require notification; and/or
- (b) that the sorts of matters indicated in this paper should be included?

Do readers believe that any other matters should be included (please specify)?

If in favour, do readers believe that such matters should be:

- (c) required by regulations (similar to the Rule Book);
- (d) required by binding guidance under the CGC;
- (e) required by binding guidance outside of the CGC; and/or
- (f) set out in non-binding guidance or other publication by the Authority?

## 6. Next Steps

Following closure of the consultation period, the Authority will review the responses received and publish a Consultation Response document on the Authority’s website and the Isle of Man Government’s Consultation Hub.

## **Appendix A – List of Representative Groups to which this Consultation Paper has been sent**

- Isle of Man Captive Association

## **Appendix B – Draft Corporate Governance Code of Practice for Insurers (“updated CGC”)**