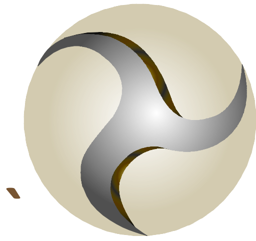

Consultation Response

INSURANCE REGULATIONS 2021

CR21-04

Issue Date: 25 May 2021

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Glossary

Authority	Isle of Man Financial Services Authority

1. Background

This Consultation Response is issued by the Isle of Man Financial Services Authority following Consultation Paper CP20-04-T17[1].

The purpose of that paper was to make proposals for the Insurance Regulations 2021 which, together with the Insurance (Non Long-Term Business Valuation and Solvency) Regulations 2021 (which had been consulted on previously) update and replace the following (all of which will be revoked by the Insurance Regulations 2021):

a. Insurance Regulations 2018
b. Insurance (Amendment) Regulations 2018
c. Insurance (Protected Cell Companies) Regulations 2004
d. Insurance (Protected Cell Companies) (Amendment) Regulations 2005
e. Insurance (Limited Partnerships) Regulations 2004
f. Insurance (Limited Partnerships) (Solvency) (Amendment) Regulations 2011
g. Insurance (Incorporated Cell Companies) Regulations 2011
h. Insurance (Solvency) (Amendment) Regulations 2011
i. Insurance (Solvency) (Amendment) Regulations 2012
j. Regulations 4, 5 and 7 of the Insurance (Miscellaneous Amendments Regulations 2015
k. Insurance (Protected Cell Companies and Limited Partnerships) Amendment Regulations 2020

2. Responses and the Authority's further comments

A table of the detailed responses received during the consultation, together with the Authority's further comments, is attached at Appendix B.

3. Changes and potential changes to the Proposals

The regulations, and changes to those regulations indicated in this document, are applicable to all sizes of firms (including small firms) on a proportionate basis in accordance with the classes of authorisation contained in those regulations. Those classes impose a reduced level of regulation to lower risk insurers and a higher level of regulation to higher risk insurers. The classes are based on the insurer's risk profile where size is one factor together with the nature and complexity of the insurer and its business.

A summary list of the post-consultation changes and potential changes to the proposals is attached at Appendix C.

This list is limited to changes identified in connection with the consultation. It does not contain any changes in respect of class 12 as may be made following review arising out of the class 12 compliance exercise. It also does not contain any changes as may arise out of further review and finalisation of the regulations by the Authority.

[1] https://consult.gov.im/financial-services-authority/cp20-04-t17-insurance-regulations-2021/consult_view/

4. Next Steps

Following the publication of this paper the Authority will amend the Insurance Regulations 2021 as indicated in Appendix C. The amended regulations will be made available to interested parties prior to 30 June 2021.

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
- Manx Insurance Association

Appendix B – Table of detailed consultation responses and the Authority's further comments

Note in respect of column headed "Comments received":

- **Any typographical errors are as received**

Note in respect of column headed "The Authority's response":

- **To avoid any doubt, should any of the comments of the Authority be inconsistent with the requirements of the Insurance Regulations 2021 (which would be unintentional), the Insurance Regulations 2021 shall apply**

Regulation to which the comment relates		Comment received	The Authority's response
Format of the regulations	1	With regard to your separate question regarding how best to include the different requirements for protected and incorporated cell companies and Limited partnerships, our preference is that they be kept separate from the main regulations. Separate schedules, ideally indexed and with updated extracts from the main regulations is preferred.	This comment comes from an industry body representing the majority of the Island's authorised non long-term insurers, for which this particular question of format is a current consideration. The Authority will maintain the requirements for protected cell companies, incorporated cell companies and limited partnerships within the schedules to the regulations. However, in future updates to the regulations, the Authority may reconsider this format. Concerning aids such as an index, or reading copies of regulations as amended by the schedules, the Authority will consider providing these (if necessary) as separately published information.
Regulation 5(1)	2	Regulation 5 (1) Class 12 qualifying criteria states that a class 12 insurer cannot hold any other class of insurance authorisation. This is contrary to Schedule 5 – 4 (a) and (b), which allows combinations of Class 12 and non-Class 12 licences for Protected Cell Companies. To avoid confusion we recommend this be clarified in Regulation 5.	Regulation 5(1) is modified by Schedule 5 when applied to a protected cell company. To avoid any doubt in this regard, the Authority will amend Schedule 5 to clarify.

Regulation to which the comment relates		Comment received	The Authority's response
Regulation 17	3	We note the new requirement to notify the Authority of changes in controlling interest and to report them within 7 days for shares quoted on a recognised exchange and 28 days before the transfer in other instances. In practice many insurers, and their registered insurance manager, do not have the tools to monitor exchange traded shares and activity directly. Often the Insurance Manager is not advised of such changes until the following renewal. Is it intended that monitoring of controlling ownership be periodic, say annually, as parent company audited financial statements become available and ad-hoc as trigger events become known? While an insurer or registered insurance manager may often be aware of a proposed increase in a controlling interest of which the Authority will have to be notified pursuant to regulation 17(1), there will be instances where this is not the case through no fault on the part of the insurer or registered insurance manager. (By way of example, experience here has been that where an insurer forms a comparatively small part of the business of an extensive international group, the requirements of section 29(1) of the IA2008 in relation to changes within the group structure of which notice is required to be given under section 29(1) can sometimes be overlooked. If the insurer does find out about these changes, it is often only sometime after they have already become effective.) An indication as to what the Authority's formal and substantive requirements are likely to be, as far as	The Authority will amend regulation 17 so that all notifications are required within 7 days of the insurer or insurance manager becoming aware of the change. In addition, to promote activity to support such reporting, the Authority will require insurers and insurance managers to undertake appropriate monitoring in respect of potential changes. The Authority will also amend regulation 17 so that it integrates better with section 29 of the Insurance Act 2008.

Regulation to which the comment relates		Comment received	The Authority's response
		notification under regulation 17(1) is concerned, would be useful. Under section 29(1) of the IA2008, in the case of a controller the obligation is on the proposed controller to give notice to the Authority. Perhaps by design, this regulation 17(2) is likely to be of comparatively limited application (effectively being restricted to cases where a proposed controller has authorised the insurer or registered insurance manager to give notice on its behalf – which, experience here, suggests is not often the case).	
Regulation 20	4	We note that the Authority intend to remove the specific reporting requirements as they apply to Long Term Insurers but that these will be detailed on the Authority's website.	Following a post-consultation review by the Authority of the proposed simplification of the reporting requirement, the Authority has decided to reintroduce more of the detail back into regulation 20 (and paragraph 6 of Schedule 5). This is for clarity so that the regulations better reflect the different reporting elements that will be published separately on the Authority's website.
Regulation 20	5	Minor query on the consultation is whether the annual return referred to in Part III (20), will this have to be audited ? It was unclear to me if the "Supplementary Information" referred to on page 8 of the consultation paper was the same as the annual return referenced in the draft regulations.	Firstly, to avoid any doubt, the audit of annual accounts remains unchanged for all insurers. For long-term insurers audit requirements will not change. For non long-term insurers (for which regulatory reporting is changing significantly), the annual return referred to in regulation 20(1)(a) includes the auditor's report. This will be similar to the auditor's report in current regulations. This includes assurances in relation to solvency and other elements of supplementary information. The auditor's report will need to be updated to take account of changes in solvency and supplementary information in respect of non

Regulation to which the comment relates		Comment received	The Authority's response
			long-term insurers. Changes to the form and content of the auditor's report will be addressed further following the exercises conducted with industry on the new regulatory returns for solvency and supplementary information (as finalisation of audit assurances in connection with those returns is, of course, dependent on their final form and content). Yes, the detail behind the annual return referred to in regulation 20(1)(a), was mentioned on page 8 of the consultation paper (and set out in the relevant table in Appendix 2 of that paper).
Schedule 1(1)	6	We note that the related party test is based on current relationships, which could change over time. We agree with this in principle. However, in some instances it is not practical for existing insurers to perform the policy archaeology necessary to determine all legacy insureds and validate the nature of current relationships before implementation on 30 June 2021. We would therefore ask that the Authority consider grandfathering existing Class 12 insurers into the new regime on the basis that the Insurance Regulations 2018 "related companies" requirements were met or adopt a simplified process for verifying compliance with the new Class 12 criteria.	The Authority is assessing the information arising out of the class 12 compliance exercise, and is carrying out further discussions with industry to consider potential changes to the class 12 requirements.
Schedule 1, paragraph 3(1)(a)	7	The definition of a Sophisticated Person by reference to a fixed financial amount alone appears to be a rather blunt tool. It might unfairly, and unnecessarily, prejudice some smaller non-life insurers. Could any thought be given to linking the definition to the exposure being underwritten instead? If a sophisticated party has unencumbered Net Assets that are X times the demonstrable historical loss	The Authority does not see how this would necessarily prejudice smaller non-life insurers. The requirement in question relates to the policyholder's circumstances and has nothing to do with the insurer's size. However, as part of the Authority's further consideration in respect of class 12, it will discuss this matter with industry.

Regulation to which the comment relates		Comment received	The Authority's response
		record, or Y times the aggregate exposure, then it may better reflect the sophisticated party's ability to withstand a failed claim without having to hold surplus assets to meet the arbitrary £3m threshold.	
Schedule 1, paragraph 3(1)(b)	8	We note that informed consent must be obtained prior to or at the same time as entering into a contract. This raises two issues: 1. Should the insured be able to withdraw consent? Our view is that consent should be permanent and irrevocable for the life of the contract, so actions of a third party in the future does not impact the Insurer's compliance with its license obligations. 2. Should a sophisticated person be able to give informed consent after entering into the contract? We note that there is provision Schedule 1 – 3 (c) for informed consent to be given after the date the contract was entered into, but only as part of a remedial plan. This could lead to unnecessary regulatory activity for ordinary and routine business situations. For example, where the relationship with an insured changed and informed consent was obtained from an unrelated party. This could become common practice for insurers and should not require regulatory oversight to maintain compliance with the Class 12 criteria.	The Authority agrees that, after a contract has been entered into, any withdrawal of corresponding informed consent should not, purely from a regulatory class 12 compliance perspective, invalidate the informed consent for the remaining duration of that contract. The Authority will amend the regulations accordingly. The concept of informed consent is based on entering into a contract understanding the risks involved. It is therefore appropriate and logical that consent should be obtained prior to (or concurrently with) entering into the contract. The inclusion of post-contract informed consent only as part of remedial mechanism was to prevent any normal practice of obtaining informed consent after the fact. As part of the Authority's further consideration in respect of class 12 it will discuss this matter further with industry.
Schedule 1, paragraph 3(1)	9	Informed consent – Does the Authority intend to provide guidance on suitable or required wording of consent?	The Authority does not propose at this time to prescribe mandatory wording. However, if industry feels it would be

Regulation to which the comment relates		Comment received	The Authority's response
			helpful, the Authority may publish an acceptable form of wording which insurers can elect to use.
Schedule 1, paragraph 4	10	There appears to be two criteria here, the level of claims and the level of premiums. Starting with the level of premium, it is fairly easy I would expect to calculate whether the amount of premium for the non-class 12 risks is below or above 5% of the total premium. Based on this it should therefore also be fairly easy to ensure that the insurer is class 12 compliant. This makes complete sense. Turning to claims. At the start of the policy there are no claims so fine. Inherently, the Insurer does not know from which insured they will get a claim and when. In really simplistic terms, should the first claim come from a non-class 12 insured, my reading of the legislation is that the Insurer would fail test 1(4)(1)(a). As I understand the situation then, the Insured would need to approach the Regulator with a plan to remediate this position. Should the claim be settled relatively quickly (short tail business) then this should happen fairly quickly and the Insurer would move back to Class 12 De-minimis compliant. The concern is a long tail policy (e.g. liability) receives claims may take many years to settle (imagine a personal injury claim with a young minor that could take nearly 20 years to settle). Would the Authority allow an Insurer to be in regular or long term breach of the De-minimis exemptions? Taking an extreme example, if there were no other claim over that 20 year period, the Insurer	As part of the Authority's further consideration in respect of class 12 it will discuss this matter further with industry.

Regulation to which the comment relates		Comment received	The Authority's response
		would NOT be Class 12 compliant under 1(4)(1)(a) for those 20 years, yet it could have written another 19 policy years (all class 12 complaint on a premium basis 1(4)(1)(b)) but the Insured would not gain the Class 12 benefits and would be Regulated as effectively a full blown composite insurer.	

Appendix C – Summary of changes and potential changes to the Proposals

The changes and potential changes to the draft Insurance Regulations 2021 (as referred to in Appendix B), are as follows:

1. **Regulation 17** will be amended so that all notifications are required within 7 days of the insurer or insurance manager becoming aware of the change. In addition, insurers and insurance managers will be required to undertake appropriate monitoring in respect of potential changes. The Authority will also amend regulation 17 to integrate better with section 29 of the Insurance Act 2008.

2. **Regulation 20** (and **paragraph 6 of Schedule 5**) will be amended to more clearly reflect the different reporting elements that will be published separately on the Authority's website under regulation 20.

3. **For class 12 requirements** the Authority is assessing the information arising out of the recent class 12 compliance exercise, and is carrying out further discussions with industry to consider potential changes to the class 12 requirements.

4. **Paragraph 3(3) of Schedule 1** in relation to informed consent will be clarified so that, after a contract has been entered into, any withdrawal of corresponding informed consent does not (from a class 12 compliance perspective) invalidate the informed consent for the remaining duration of that contract.

5. The Authority will amend **Schedule 5** to clarify that Regulation 5(1) is modified by Schedule 5 when applied to a protected cell company.

6. Any other changes as may arise out of final review and finalisation by the Authority.