ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

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CR19-04/T13

Response to Consultation CP18-07/T13

Insurance (Group Supervision) Regulations 2019
Corporate Governance Code of Practice for Designated Insurers

RESPONSE SUMMARY

This paper is issued by the Isle of Man Financial Services Authority ("the Authority"), the regulatory authority responsible for the supervision of the financial services, insurance and pensions sectors in the Isle of Man.

It summarises the responses received to consultation CP18-07/T13, Insurance (Group Supervision) Regulations 2019 and Corporate Governance Code of Practice for Designated Insurers.

Issue date ***7 May 2019***

1. Introduction

During the period 9 November 2018 to 31 January 2019, the Authority conducted a consultation relating to the draft Insurance (Group Supervision) Regulations 2019 ("Regulations") and the Corporate Governance Code of Practice for Designated Insurers ("Group CGC") for life insurers belonging to groups of which the Authority anticipates determining that it will be the Group Supervisor.

The purpose of this paper is to detail the feedback received to the consultation with the Authority's responses, as well as changes to the Regulations and the Group CGC on the basis of that feedback or otherwise.

Full details of the feedback received and the Authority's responses for all areas other than group solvency can be found in Appendix 1. The queries regarding group solvency were specific to each insurance group and so have not been included but have been addressed on an individual basis. The amended Regulations and Group CGC can be found in Appendix 2 and Appendix 3 respectively, with changes marked up. These include changes in all areas including group solvency.

2. Responses received

Group requirements excluding group solvency

Although Appendix 1 provides the detail, a key theme of the consultation feedback was respondents' understanding of the Authority's approach to group supervision (***indirect approach***) and how it might be applied in practice.

As previously advised, under the indirect approach, the Authority exercises its authority over the insurance group via the entity authorised in its jurisdiction, the designated insurer. This was determined to be the more proportionate and practicable approach; the ***direct*** approach involves the supervisor exercising its authority over other group companies, thus potentially requiring additional statutory powers over unregulated entities on the Island as well as extra territorial application of insurance laws and regulations in respect of entities off Island.

In implementing the indirect approach, where the Authority determines that it is appropriate for it to be the Group Supervisor of an insurance group, the authorised insurer (or the largest authorised insurer should there be more than one) is determined to be the ***designated insurer***. The designated insurer is the Authority's point of contact and is responsible for facilitating and maintaining compliance by the insurance group with relevant legislation. Enforcement of requirements in respect of the insurance group is also via the designated insurer. Thus, if the Authority needed to undertake a regulatory intervention in respect of any group-wide issues, it would do so by engaging with (including, if necessary, imposing requirements on) the designated insurer.

The Regulations were drafted in a way intended to allow the designated insurer to find a practical way of complying with the requirements. It is however acknowledged that this wording may not have been sufficiently clear in some cases and so amended wording has been proposed in those instances (see Appendices 1, 2 and 3) which the Authority anticipates will provide additional clarity.

Group Solvency

The key theme of the feedback in relation to the group solvency calculation section of the Regulations was a request for additional clarity on how the methodologies should be applied to the insurance groups' particular group structures and the entities falling within them.

In particular, concerns were raised regarding the system and administrative developments that would be required in order to accurately apply method 1.[1]

The Authority has responded individually to those queries, and they have not given rise to any changes to the Regulations.

3. Other amendments to the Regulations

Register of insurance groups

Section 21C(8) of the Insurance Act 2008 requires the Authority to establish and maintain a register for insurance groups containing the particulars set out in regulations. As such, an additional regulation has been included which specifies that the name of the insurance group and the name of the designated insurer will be contained in the register for insurance groups.

Group Solvency

The Regulations have been amended to clarify that a designated insurer must document its assessment of the availability of own funds at group level which the Authority may challenge where appropriate.

4. Next steps

The Authority will finalise the Regulations as set out in Appendix 2 and will then proceed to make the Regulations to enable them to come into force on 1 July 2019. The Authority will issue the Group CGC to enable that also to come into force on 1 July 2019.

Any general queries should be directed to Cheryl McGinley, cherylmcginley@iomfsa.im and any queries relating specifically to group solvency should be directed to Sian Eltman, sian.eltman@iomfsa.im.

[1] There are two possible methodologies; method 1 calculates group solvency on the basis of the group's consolidated accounts while method 2 considers the solvency of the head of the group and each of the other companies in the group separately before taking into account the relationships between the companies.

Appendix 1

Group supervision – the Authority's response to feedback on consultation CP18-07/T13

Ref	***Comment***	***Response***
Regulation 5 – Fit and proper requirements	*"We have no comments … other than to note the additional consumption of resource which the new obligations will place upon licensees falling into the regime but which, by definition, do not benefit from the economies of scale enjoyed by competitors falling outside the regime. The principles and objectives of the fitness and probity requirements will be de facto met as the consequence of adherence to obligations arising elsewhere in the Group. Nonetheless the Group Supervision regime will create additional administrative and monitoring overheads which are likely to outweigh any additional value."*	The only role that is subject to the Authority's fitness and proprietary regime is that of Group Actuary. The Fitness and Propriety Assessment Guidance is currently being updated to include this role. In respect of other group roles; group PCOs, directors of company at head of the group and directors of insurers in other jurisdictions, while the designated insurer is expected to take reasonable steps to ensure that persons responsible are fit and proper, the Authority requires notification only. Currently this may be in the form of a letter or an email. The information required is as follows – • Name, address and date of birth of the appointed individual; • Name of designated insurer; • Group Role; and • Commencement date.
Regulation 6 – Auditor of head of an insurance group	*"6(1) (p6) states that: "The auditor of the head of an insurance group must be suitable for that role." For the group including [insurer] the head of the insurance group is defined to be [holding company], which is not a regulated entity, and which is not controlled by the designated insurer, [insurer]. We have two queries in this regard:- 1. How is suitability defined, given that that auditor of [holding company] is not the auditor of a company regulated in the Isle of Man but rather is [non-Isle of Man] auditor? Please also see our comments on 9-g below.*	1. Suitability in respect of the auditors of authorised insurers is not explicitly defined in the Fitness and Propriety Assessment Guidance. The Authority does however expect that an authorised insurer ensures that its auditor has relevant expertise and the necessary capacity. The same guideline applies in relation to the auditor of the head of the group; the Authority's expectation is that the designated insurer, in liaison with the head of the group, takes reasonable steps to satisfy itself that the appointed firm has the necessary expertise and capacity.

Ref	***Comment***	***Response***
	2. Whilst, in the current situation, the auditor of the head of the insurance group is part of the same group of firms as the auditor of the designated insurer, the choice of auditor is not within the control of the designated insurer and has been and could again be part of the a different group of firms. What action would the FSA take where the auditor of the head of the insurance group deemed not to be suitable?	2. We would expect the designated insurer and the head of the group to liaise should the designated insurer have any concerns regarding the suitability of the auditor of the head of the group. The requirement in respect of the Authority is that of notification only. However, if the Authority did have concerns about the auditor appointed to the head of the group it would raise this with the designated insurer. Should the situation be so severe with no possible resolution, the Authority could take action against the designated insurer only (e.g. impose conditions the insurer's authorisation) which presumably all parties, including the head of the group, would wish to avoid.
Regulation 8 – Corporate Governance	*"The Company remains supportive of the principles-based approach to governance requirements at the level of the Group. The only significant concerns which the Company has continue to be in respect of work volumes and associated resource stretch in key business areas. The Company is particularly conscious of continuing pressures on the availability of suitably qualified and experienced resource in the local market as it develops its governance, risk management and internal control frameworks to meet new and enhanced regulatory obligations, but has previously flagged this with the Authority."*	Noted.
Regulation 8 – Corporate Governance	*"How is it envisaged that the designated insurer be responsible for the corporate governance of the insurance group, in the circumstance where it is not the head of the insurance group e.g. the head of the group is the shareholder of the lead insurer?"*	As explained in "Responses Received", the Authority has adopted the indirect approach to group supervision and as such, the designated insurer is effectively a conduit, with responsibility for coordinating and facilitating compliance with requirements across the group. Our expectation would be that the designated insurer should liaise with the head of the group and agree a policy for ensuring good

Ref	*Comment*	*Response*
		governance across that group, taking into account the nature, scale and complexity of the members of that group. The policy would then drive any further actions in respect of implementation and monitoring. Our wording was therefore intended to allow the designated insurer the space to find a practical way of doing this but we acknowledge that it was not perhaps sufficiently clear. We have therefore proposed that regulation 8(1) is amended to read as follows – " *A designated insurer must take reasonable steps to satisfy itself that an effective governance framework is established, implemented and maintained …*" In addition we have proposed that regulation 7 (fair treatment) should be amended in a similar way.
Regulation 8, 9(2)(e) & 9(3)	*Query raised re our expectations in respect of the information required at the level of the undertaking.*	On further review of these requirements, it does seem that there are some instances where requirements at the level of the undertaking appear disproportionate. We have therefore reviewed the Regulations and the Group CGC once more and suggested a number of changes to address this as follows – • The reference to "undertaking-level" in regulation 8(2)(b) has been removed; • The references to "undertaking-level" in regulation 9(3)(a) and (b) have been removed;

Ref	Comment	Response
		• Regulations 9(3)(c)(iii), (iv) and (v) have been removed as these matters are already covered in regulations 9(3)(a), (b) and (c); • The reference to "at undertaking level" in paragraph 6(1) of the Group CGC has been removed.
Regulation 9-g	*"9-g (p8) says that the designated insurer (insurer) must provide to the Authority:* *"consolidated financial statements for the head of the insurance group as required by relevant companies legislation"* *The financial statements for the head of the insurance group (holding company) state that the company has applied exemptions in accordance with FRS101 for preparing consolidated financial statements under section 400 of the Companies Act 2006 and ISA 27.* *Therefore where the head of the insurance company does not normally produce consolidated financial statements:-* *1. are consolidated financial statements required by the Authority?* *2. would there be a requirement for these financial statements to be audited?* *Full consolidated FS may also not agree to the balance sheet for Group Solvency, depending on the makeup of the group for regulatory reporting, i.e. some entities may be excluded or reported differently."*	In this case the Authority would not require consolidated financial statements.