

GROUP SUPERVISION

CP17-12/T13

Issue date: October 9 2017

Closing date: December 1 2017

This Consultation paper is issued by the Isle of Man Financial Services Authority (“Authority”) the regulatory authority responsible for the regulation and supervision of all financial services business carried on in or from the Isle of Man.

What is it for?

In June 2013 the Authority published its ‘Roadmap for updating the Isle of Man’s regulatory framework for insurance business’ and through that document set out its objective to establish a project to implement a framework for the regulation and supervision of insurers, insurance managers and general insurance intermediaries that will establish a high level of observance in respect of the updated and revised Insurance Core Principles issued by the International Association of Insurance Supervisors, and remain appropriate and proportionate to the risks of the different parts of the insurance industry that operate in and from the Isle of Man.

This continues to be the objective of the Authority.

Since 2013 the Roadmap has been updated annually and more recently every six months to reflect progress made.

One element of the project to update the regulatory framework for insurance business is the creation of a framework whereby the Authority may act as the supervisor of an insurance group where it is appropriate for it to do so and the purpose of this paper is to set out the Authority’s proposed requirements for such a framework for consideration and comment by interested parties.

Who is required to respond to the consultation paper?

Group supervision for life insurance companies will be implemented on 1 January 2019, one year ahead of implementation for non-life insurance companies. As such, this paper will be of most relevance and initial interest to the boards and senior management of authorised life insurers which belong to insurance groups of which the Authority expects to be the group supervisor as well as to the boards and senior management of other members of the group.

The themes within this paper will, however, be equally relevant to non-life insurance groups though it is appreciated that the Authority has not yet initiated detailed individual discussions with companies from within that sector for the groups for which it expects to be group supervisor.

The paper may also be of more general interest to other existing and prospective insurance companies that belong to groups, and also possibly other parties with an interest in the Isle of Man insurance sector, including the legal and auditing professions.

The closing date for any comments on this consultation is December 1, 2017.

Please send the above preferably by email to:

Cheryl McGinley

Insurance and Pensions Division

Isle of Man Financial Services Authority

PO Box 58, Finch Hill House

Bucks Road, Douglas

Isle of Man, IM99 1DT

Email: cheryl.mcginley@iomfsa.im

Telephone: +44 (0) 1624 646022

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GLOSSARY OF TERMS

Term	Meaning in this document
Act	Insurance Act 2008
Amendment Act	Insurance (Amendment) Act 2017
Authorised insurer	An insurer authorised under section 8 of the Insurance Act 2008 to carry on an insurance business.
Authority	The Isle of Man Financial Services Authority
CGC	Corporate Governance Code of Practice for Regulated Insurance Entities
Designated insurer	As defined in Section 21A of the Insurance (Amendment) Act 2017 (See Appendix 2)
ERM	Enterprise risk management
Group supervisor	As defined in Section 21A of the Insurance (Amendment) Act 2017 (See Appendix 2)
Head of an insurance group	The company nominated by the Authority, which is the ultimate parent of the entities which, together with the company itself, comprise the insurance group.
IPA	The former Insurance and Pensions Authority
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles (of the IAIS)
Insurance group	As defined in Section 21B of the Insurance (Amendment) Act 2017 (See Appendix 2)
ORSA	Own risk solvency assessment
QIS	Quantitative Impact Study
Roadmap	Roadmap for updating the Isle of Man's regulatory framework for insurance business

1. INTRODUCTION AND BACKGROUND

1. International bodies such as the G20, the Financial Stability Board and the IAIS are concerned with financial stability. Indeed, the stated mission of the IAIS is “to promote effective and globally consistent regulation and supervision of the insurance industry in order to develop and maintain a fair, safe and stable insurance market for the benefit and protection of policyholders and to contribute to global financial stability”.
2. A key component of financial stability is considered to be the ability to supplement supervision at the level of the individual insurer with supervision at the group level and this is one of the key themes of the ICPs as updated in 2011. The concept is that at least one supervisor must be able to understand the business strategy, financial position, legal and regulatory position and the risk exposure of an insurance group as a whole. That supervisor should also be able to assess the quality of the group’s governance framework and risk management and internal controls. This should enable supervisors to recognise potential areas of concern across borders and sectors and take appropriate action promptly.
3. There are insurance groups which are based on the Island, for which the implementation of a group supervision framework will be beneficial, enhancing the Authority’s understanding of the group’s risks and extending the ability to impose requirements at the group level.
4. As indicated in the Roadmap, the Authority’s intention is that the Island’s insurance regulatory framework should be capable of a positive Solvency II equivalence assessment for long term insurance. A group supervision framework whereby the Authority has the power to act as group supervisor and implement requirements at insurance group level is also necessary for this purpose.
5. Whilst the Authority participates in group supervision arrangements and attends supervisory colleges where it is appropriate to do so, it does not currently have the legal power to act as a group supervisor. Consequently, when the Authority carried out its own gap analysis against the updated ICP requirements, it identified gaps in this area. This was particularly as the focus of the group supervision ICPs is on the powers of the supervisor as the group supervisor, rather than on the power to participate in group supervision where another supervisor is the group supervisor.
6. Provisions setting out the legal framework for group supervision are included in the Amendment Act which was consulted upon in 2015 and 2016. A discussion paper was also issued in April 2016 which reviewed those provisions and provided an overview of the requirements that are expected to apply to an insurance group where the Authority determines that it is appropriate for it to be the Group Supervisor. This paper builds on the

above, and in particular develops further the Authority's proposals in respect of the requirements that apply to insurance groups where the Authority anticipates being the Group Supervisor.

7. The following sections set out –
 - A summary of the key points of the framework which will be implemented by the Amendment Act;
 - A summary of the Authority's actions to date in preparation for it carrying out the role of Group Supervisor;
 - The Authority's proposals in respect of the requirements that apply to insurance groups where the Authority anticipates being the Group Supervisor; and
 - How the Authority expects requirements to be set out in regulations and guidance ("Regulatory framework").

8. Draft insurance group regulations and binding guidance are included in Appendices 1 and 2 respectively and Appendix 3 contains the group supervision provisions set out in the Amendment Act. Readers are asked to note that the regulations and binding guidance are in draft form and so may well change depending on feedback both from the consultation and the Attorney General's drafters. Notwithstanding this, it was thought that they would be helpful and facilitate understanding of the Authority's intentions.

2. THE FRAMEWORK FOR GROUP SUPERVISION

9. The Amendment Act received Royal Assent on 18 July 2017. It addresses the pre-requisites for a group supervision framework i.e. it sets out the necessary legal powers to enable the Authority to act as Group Supervisor and to make regulations which apply to insurance groups of which the Authority has determined it is the Group Supervisor.

10. The Amendment Act defines an insurance group and gives the Authority the power to determine whether it is appropriate for it to be the Group Supervisor of an insurance group with reference to certain criteria, and enables the Authority to include or exclude members of a group from the scope of group supervision and to withdraw as Group Supervisor if it is appropriate for it to do so with reference to certain specified circumstances.

11. The functions of the Authority as Group Supervisor are also set out in the Amendment Act and include the following -
 - the supervisory review and assessment of the financial situation of the insurance group;

- the supervisory review and assessment of the system of governance of the insurance group; and
- the coordination of communication between supervisors across the insurance group.

12. Where the Authority determines that it is appropriate for it to be the Group Supervisor, 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 the requirements of the Act and provisions made under it. Enforcement of requirements in respect of the insurance group will be via the designated insurer.

13. Once the relevant part of the Amendment Act comes into force (Part 4A), section 21H(1) of the Act (as amended) will enable the Authority to make regulations that are applicable to a designated insurer which take into account the actions of the insurance group. Section 51(1) of the existing Act enables the Authority to issue binding guidance regarding any matter in respect of which regulations may be made under the Act.

Thus once the group supervision framework comes into force, the Authority will be able to make regulations and issue binding guidance which, if not complied with by a designated insurer or the insurance group of which it is a member, may lead to the Authority taking regulatory action against the designated insurer pursuant to its functions as Group Supervisor.

3. THE AUTHORITY’S ACTIONS TO DATE

14. The following actions are in respect of life insurers only.

15. The Authority has reviewed existing group structures and determined, in accordance with the provisions of the Amendment Act, the insurance groups for which it anticipates acting as Group Supervisor and the scope of those insurance groups. It has identified the designated insurers and has informed relevant authorised insurers to that effect.

16. It is however noted that group structures are dynamic and that the insurance groups of which the Authority is Group Supervisor are likely to change over time.

17. In respect of group solvency, in light of the variations in group structures, rather than there being a QIS exercise for groups in the same way as QIS exercises have been carried out for individual insurers, the Authority decided that it would be more efficient to liaise with designated insurers on an individual basis. Those discussions are ongoing and the

outcome will be that a group solvency calculation based on the 2016 year end will be carried out for all insurance groups where the Authority anticipates being Group Supervisor.

4. REQUIREMENTS TO BE APPLIED TO INSURANCE GROUPS

18. Insurance groups may be organised in different ways with functions being centralised or decentralised or possibly a combination of both. The Authority recognises this and proposes, therefore, to implement group supervision requirements in a way that is outcome focussed. It is not expected that detailed requirements applying to an authorised insurer are replicated across the insurance group, but it is expected that the insurance group should seek to ensure that the principles, when applied, lead to similar outcomes across the insurance group.
19. The Authority seeks to apply requirements at the insurance group level on a proportionate basis and does not seek to impose requirements at the level of the insurance group where there is no benefit over that which can be achieved under supervision of the authorised insurer. The Authority expects the designated insurer to take account of the materiality and the activities of the members of the group and to assess which requirements should apply and how they should apply.
20. The following sections provide an overview of group solvency followed by a more detailed review of the requirements which are proposed in the areas of suitability (fitness and propriety), conduct of business, corporate governance including risk management, and regulatory reporting.

4.1 Group solvency requirements

21. Group solvency considers an insurance group as a single integrated entity for which a separate solvency assessment is made for the group as a whole on a consistent basis with adjustments to reflect constraints on the fungibility of capital and transferability of assets among members of the insurance group.
22. As at the authorised insurer level, regulatory capital requirements apply and there will be a Solvency Capital Requirement (“SCR”) and a Minimum Capital Requirement (“MCR”) at insurance group level.
23. There are two possible methods for calculating group solvency -
 - a. method 1, which considers the insurance group at the consolidated level of the head of the group and bases the solvency calculation on the consolidated accounts of the head of the group; and

- b. method 2, which considers the insurance group as a set of interdependent companies, and 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.
24. Designated insurers have been requested to produce a group solvency calculation using both methods 1 and 2. The outcome of this exercise will assist the Authority in determining whether both methods should be permitted or whether just one method should be permitted.

4.2 Fit and proper requirements

25. In addition to the requirements at the level of the authorised insurer, the Authority expects that those responsible for the direction and management of the insurance group should be fit and proper.
26. Specifically, the Authority will require notification of certain roles at group level in advance of appointment or as soon as is practicable. Those roles will be notifiable only, and not subject to “no objection” by the Authority. It is expected that the majority of those roles will already have been notified to the Authority as part of supervision of the authorised insurer.
27. The roles referred to above are:
- a. Directors and the Chief Executive of the head of the group;
 - b. Group Principal Control Officers; and
 - c. Directors of any other insurers in the group which are members of the insurance group and which carry on insurance in accordance with the laws of a country outside the Island.

In respect of (b) above, Group Principal Control Officers are considered to include the heads of Internal Audit, Compliance and Risk Management at group level.

In respect of (c) above, the Authority will rely on fit and proper assessments carried out by the home regulator.

28. The role of Group Actuary is subject to much the same fit and proper requirements as those to which the Appointed Actuary of an authorised insurer is subject under Section 18 of the Act. As such, prior notification is required and the Authority may direct that that person should not be appointed or continue in the role. This requirement will be introduced by the Amendment Act when the Group Supervision Part is brought into force.

29. The Authority will also require notification of the auditor of the head of the group and will expect it to be suitable for that role in terms of its expertise and capacity.
30. Notification forms and associated guidance for all notifiable roles will be published on the Authority's website.

4.3 Group conduct of business

31. Conduct of business requirements at the level of the authorised insurer are principles-based but also include more prescriptive requirements particularly in relation to pre-sale disclosure requirements under the "Key Information Document" or "Summary Information Document".
32. It is not proposed to seek to implement the detailed authorised insurer requirements at group level but rather to require principles to be followed at group level with the overall aim of achieving an outcome of fair treatment of the policyholders of entities in the group.
33. The focus is therefore on there being policies and procedures at group level. In this way, due account can be taken of the nature of the group and particularly other insurers and possibly intermediaries within it.
34. The Authority would expect group policies and procedures to cover the following areas:
 - a. development and marketing of products;
 - b. provision of information to policyholders before, during and after the point of sale;
 - c. distribution methods in light of the insurance group's products and its policyholders' needs;
 - d. handling of policyholder complaints and disputes;
 - e. management of the reasonable expectations of policyholders;
 - f. monitoring of the insurance group's performance with respect to the fair treatment of policyholders;
 - g. staff and management awareness and training in respect of their obligations in relation to the fair treatment of policyholders; and
 - h. performance and reward strategies for an insurance group's staff and management and alignment with the principles of the fair treatment of policyholders and fair policyholder outcomes.

4.4 Group-wide governance

35. As with the requirements for conduct of business, governance requirements at the level of the group are mostly principles-based recognising the different ways in which insurance groups may be organised and also recognising the varied nature and scope of groups.
36. There is an overarching requirement for an appropriate and effective corporate governance framework at the level of the insurance group and which is suitable for the group's organisational structure.
37. Notwithstanding the recognition that insurance groups are organised in different ways, the organisational structure of the group must not unreasonably inhibit compliance with group requirements nor the ability of the Authority to carry out its functions as Group Supervisor.
38. It is expected that the corporate governance framework at the level of the insurance group should –
- a. ensure effective, comprehensive and consistent direction and coordination;
 - b. include objectives and strategies to achieve those objectives;
 - c. ensure effective communication across all levels of the group;
 - d. promote a sound and consistent risk management and compliance culture;
 - e. include clearly defined responsibilities and accountabilities, and appropriate segregation of responsibilities and accountabilities;
 - f. ensure that persons in key roles are fit and proper at outset and on an ongoing basis;
 - g. include measures to manage conflicts of interest;
 - h. include measures to consider legal and regulatory obligations;
 - i. include suitable internal control systems and functions; and
 - j. have comprehensive and well coordinated policies, procedures and controls.
39. As part of the above, an effective ERM system must be in place, including an ORSA process, that is suitable for the group. This is similar to that which is required for authorised insurers but also includes consideration of matters which are relevant from a group perspective.

4.5 Regulatory Reporting

40. As part of amendments to regulatory reporting at the level of the authorised insurer, it is proposed that there should be a requirement for all authorised insurers to provide a group structure chart and an organisational chart on an annual basis. This will enable the Authority to review group structures on a regular basis and to identify cases where it is no

longer appropriate for it to be the Group Supervisor or alternatively whether it has become appropriate for it to be the Group Supervisor.

41. The designated insurer of insurance groups for which the Authority has determined that it is the Group Supervisor will be required to provide the information set out in the following paragraph, some of which may be provided through the regulatory reports submitted by the authorised insurer. Information is in respect of the insurance group but depending on the group structure and the information being requested, it may be appropriate to also include details of the wider group where applicable.

42. The information referred to above is as follows -

- a. a full corporate structure chart, which includes details of the insurance group and indicates how the designated insurer fits into that structure;
- b. details of key relationships between insurance group entities, for example, where one entity provides services to another;
- c. in respect of each legal entity in the insurance group –
 - i. the country of incorporation or establishment;
 - ii. the legal structure/type of organisation;
 - iii. the principal activity of each entity;
 - iv. the regulatory status of each entity; and
 - v. the percentage of ownership.
- d. an organisation chart which shows the way in which the business is managed across the insurance group, identifies the executive and non-executive directors of group companies and other persons carrying out group functions and indicates reporting lines;
- e. details of any material financial and non-financial intra group transactions;
- f. details of material functions that have been outsourced at insurance group level both within the group and outside the group, with “material functions” including as a minimum any of the internal control functions, underwriting activity and the payment of claims;
- g. the insurance group’s approach to governance, including the degree of authority and autonomy at group-level and entity-level, the structure of the significant control functions (including risk management, compliance, internal audit and where applicable, actuarial) at the group level and entity level, their relationships to each other and to the group; and
- h. details of material risk concentrations across the group with “material” meaning any risk exposures with a loss potential large enough to threaten the solvency or the financial position of an insurer in the group.

43. The designated insurer will be required to provide a report on its ORSA which will be similar in format to that which is required by the authorised insurer and the details of which are still to be determined.
44. The designated insurer will be required to provide a consolidated balance sheet for the insurance group although it is recognised that this may be difficult for “sub-groups” of which the Authority is the Group Supervisor.

4.6 Enforcement of requirements

45. As previously indicated, insurance group regulations apply to the designated insurer and so any non-compliance with the regulatory requirements, whether by the designated insurer or not, must be addressed by way of the Authority’s powers over the designated insurer.
46. Where the matter pertains to a legal entity which is subject to another jurisdiction’s regulatory provisions, the Authority will liaise with the supervisor of that entity to ensure that appropriate action is taken and the breach is addressed satisfactorily.
47. It is expected that the Authority will address most compliance issues through supervisory dialogue between the Authority, any other involved supervisor and the designated insurer. However, if remediation is not achieved, the Authority may, having considered all circumstances, the interests of policyholders and the views of any other supervisor, impose a formal requirement on the designated insurer. For example, should there be governance failings at insurance group level, the Authority might withdraw the designated insurer’s authorisation for carrying on new business contingent on the strengthening of risk management at the group level.

5. REGULATORY FRAMEWORK

48. It is proposed that requirements in relation to suitability (fit and proper), conduct of business, governance and reporting will be set out in group supervision regulations. Group solvency requirements will be set out within specific group valuation and solvency regulations.
49. The overarching governance requirements set out in regulations will be supplemented by more detailed group considerations in binding guidance and designated insurers will also be directed to the CGC as a frame of reference as to what generally constitutes sound and prudent management.

Appendix 1 – DRAFT INSURANCE (GROUP SUPERVISION) REGULATIONS

The Isle of Man Financial Services Authority makes the following Regulations under sections 21H and 50 of the Insurance Act 2008, after carrying out the consultations required by section 50(3) of that Act.

1. Title

- (1) These Regulations are the Insurance (Group Supervision) Regulations 2019 and subject to section 50(4) of the Act, come into operation on 1 January 2019.

2. Application and enforcement

- (1) These Regulations apply to designated insurers which are authorised to carry on classes 1 or 2 insurance business only and for which the Authority is the Group Supervisor in accordance with Part 4A of the Insurance Act 2008. They do not apply to designated insurers which carry on other classes of insurance business in addition to classes 1 or 2.
- (2) In these Regulations, any requirement expressed in terms of being applicable to an insurance group –
 - a. shall not be construed as a direct requirement on any part of the insurance group other than its designated insurer; and
 - b. shall apply as a requirement for which the designated insurer may be held accountable to the Authority pursuant to its function as group supervisor.
- (3) Pursuant to Regulation (2)(b), the Authority may take such regulatory action against the designated insurer as it deems appropriate where it appears to the Authority that any activity of the designated insurer’s insurance group is inconsistent with the requirements of these Regulations.

3. Interpretation

- (1) In these Regulations –

“**Act**” means the Insurance Act 2008;

“**designated insurer**” means an insurer designated by the Authority under section 21C(6) of the Act in respect of an insurance group;

“**entity-level**”, in relation to an insurance group, refers to matters particular to each of its entities respectively;

“**governing body**”, in relation to an insurance group or its legal entities, means the board of directors (or equivalent) that is responsible for the corporate governance of the insurance group or each legal entity respectively;

“**group supervisor**” has the meaning in section 21A of the Insurance (Amendment) Act 2017;

“**insurance group**” means a group as defined in section 21B of the Act in respect of which the Authority has made a determination under section 21C(6) of the Act that it is appropriate for it to be the group supervisor;

“**head of the insurance group**” means the undertaking which has the highest level of control over the insurance group; and

“**legal entity**”, in relation to an insurance group, means a legal entity that is included as part of the group for the purposes of group supervision.

4. Directors, Chief Executives and Principal Control Officers of the Head of the Insurance Group

- (1) The designated insurer must ensure that those persons responsible for the direction and management of the insurance group and internal control functions at insurance group level are fit and proper.
- (2) The designated insurer must give written notice to the Authority of the following roles in advance of their appointment or as soon as is practicable –
 - a. directors and the chief executive of the head of the insurance group;
 - b. directors of insurers which are members of the insurance group and which carry on insurance in accordance with the laws of a country outside the Island; and
 - c. the Principal Control Officers at insurance group level.
- (3) The written notice required under (2) must contain such particulars as may be determined by the Authority.

5. Auditor of the Head of the Insurance Group

- (1) The auditor of the head of the insurance group must be suitable for that role.
- (2) The designated insurer must give written notice to the Authority in respect of the auditor of the head of the group.

6. Fair treatment of policyholders

- (1) The designated insurer must ensure that —
 - a. policies and procedures are established and implemented for the fair treatment of policyholders as an integral part of the insurance group's business and culture; and
 - b. the insurance group's policies and procedures for the fair treatment of policyholders are set out in writing and are provided to all relevant staff.
- (2) The policies and procedures at (1) should include a consideration of how the insurance group —
 - a. develops and markets its products in a way that pays due regard to the interests of policyholders;
 - b. ensures policyholders are provided with clear information before, during and after the point of sale;
 - c. only permits distribution methods that are appropriate to the insurance group's products and its policyholders' needs;
 - d. deals with policyholder complaints and disputes in a fair and transparent manner;
 - e. manages the reasonable expectations of policyholders;
 - f. monitors the insurance group's performance with respect to the fair treatment of policyholders;
 - g. ensures that the insurance group's staff and management are aware of their obligations in relation to the fair treatment of policyholders including through regular training; and
 - h. ensures that any performance and reward strategies for the insurance group's staff and management are aligned with the principles of the fair treatment of policyholders and do not result in unfair policyholder outcomes.
- (3) The responsibility for the design, implementation and monitoring of adherence to the policies and procedures in (1) rests with the board and senior management of the designated insurer in conjunction with the head of the group and other insurers in the group as appropriate.

- (4) The designated insurer must ensure that the policies and procedures in (1) are regularly reviewed and updated where necessary to ensure that they remain valid and up to date.

7. Corporate Governance

- (1) The designated insurer must ensure that an effective corporate governance framework is established, implemented and maintained in respect of the insurance group and its legal entities, which ensures that the insurance group and its legal entities –

- a. are soundly and prudently managed (which includes being soundly and prudently overseen by their respective governing bodies); and
- b. adequately recognises and protects the interests of its policyholders.

- (2) Pursuant to regulation 7(1) -

- a. the relevant group-level governing body and group-level senior management of an insurance group must establish, implement and maintain adequate, appropriate and effective measures that meet the requirements of regulation 7(1) in a way that is at least proportionate to the nature, scale and complexity of the insurance group, its activities and the risks to which it is or may be exposed; and
- b. the relevant entity-level governing body and entity-level senior management of a legal entity of the insurance group must establish, implement and maintain adequate, appropriate and effective measures that meet the requirements of regulation 7(1) in a way that is at least proportionate to the nature, scale and complexity of the entity, its activities and the risks to which it is or may be exposed.

- (3) The organisational structure of an insurance group must not unreasonably inhibit –

- a. the insurance group complying with these regulations; or
- b. the Authority carrying out its functions as group supervisor.

8. Reporting

- (1) A designated insurer must provide to the Authority such information as the Authority may require for the purposes of carrying out its functions as group supervisor of that group.

(2) The designated insurer must provide the Authority with the following information –

- a. details of the insurance group’s structure showing the legal structure, where entities are located, key relationships between group entities and material related party transactions;
- b. details of the insurance group’s organisational structure, showing the way in which the business is managed across the group, the names of the directors of group companies and those carrying out group functions as well as details of reporting lines (e.g. centralised/decentralised functions, organisation by business line);
- c. the insurance group’s approach to governance, including the degree of authority and autonomy at group-level and entity-level and an outline of the material aspects of its corporate governance;
- d. the structure of the significant control functions (including risk management, compliance, internal audit and where applicable, actuarial) at the group level and entity level, their relationships to each other and to the group;
- e. the allocation of significant corporate governance responsibilities and accountabilities to persons and bodies (as applicable) at the group-level and entity-level, including the following key roles –
 - i. setting and ultimately approving strategy and giving direction;
 - ii. setting and ultimately approving the significant policies that set and oversee the implementation of that strategy and direction;
 - iii. oversight of senior management;
 - iv. principal officers in respect of day to day management;
 - v. principal officers in respect of operation and control functions including risk management, compliance, internal audit and, where applicable, actuarial;
- f. details of material functions that have been outsourced at group level both within the group and outside the group;

“material functions” include as a minimum any of the internal control functions, underwriting activity and the payment of claims;
- g. details of any material intra group transactions;

- h. details of significant risk concentrations;

“significant” means any risk exposures with a loss potential large enough to threaten the solvency or the financial position of an insurer;

- i. a summary report in respect of the insurance group’s Own Risk Solvency Assessment containing such details as may be determined by the Authority; and
- j. a consolidated balance sheet for the insurance group unless otherwise agreed in writing by the Authority.

(3) The information required under 8(2) must be provided to the Authority on an annual basis at the same time as the designated insurer’s annual accounts are submitted.

(4) Any significant changes to the information required under 8(2) should be notified to the Authority.

Appendix 2 – DRAFT CORPORATE GOVERNANCE CODE OF PRACTICE FOR DESIGNATED INSURERS

The Financial Services Authority (the “Authority”) makes the following binding Guidance Notes under section 51(1) of the Insurance Act 2008.

Interpretation

1. In [this document] –

“**Act**” means the Insurance Act 2008;

“**CGC**” means the Corporate Governance Code of Practice for Regulated Insurance Entities;

“**entity-level**” has the meaning given in the regulations;

“**governance approach**”, in relation to an insurance group, means the approach it uses as referred to in paragraph 2;

“**group-level**” has the meaning given in the regulations;

“**group supervisor**” has the meaning in section 21A of the Insurance (Amendment) Act 2017;

“**insurance group**” has the meaning given in the regulations;

“**legal entity**”, has the meaning given in the regulations;

“**Regulations**” means the Insurance (Group Supervision) Regulations 2019;

“**wider group**”, in relation to an insurance group, includes the widest group in respect of which the insurance group is part.

Approach to corporate governance

2. An insurance group may, in respect of its approach to its corporate governance, adopt a centralised approach, decentralised approach or a combination of both provided that it complies with the Regulations and these Guidance Notes.

Factors relevant to implementing the Regulations

3. In relation to the corporate governance systems of an insurance group and its legal entities, the CGC, subject to this document and with the necessary amendments, shall be construed as information and advice issued by the Authority under section 34 of the Act on what constitutes sound and prudent management.
4. The corporate governance framework of an insurance group must address its governance needs at both the group-level and entity-level. This includes that the framework must -

- a. take account of, and be suitable for, the insurance group's organisational structure;
- b. ensure effective, comprehensive and consistent group-wide governance, including direction and coordination at group-level;
- c. include group-wide objectives and strategies for achieving those objectives;
- d. ensure effective communication within the insurance group and adequate and timely information at all levels within the group;
- e. promote a sound and consistent risk management and compliance culture at group-level and entity-level;
- f. include clearly defined responsibilities and accountabilities at both group-level and entity-level, as well as allocation and separation of responsibilities and accountabilities that ensure the operation of effective checks and balances at group-level and entity-level (including separation between oversight and management responsibilities);
- g. ensure that persons in key roles have the integrity, competence, experience, qualifications, commitment and, where appropriate, independence commensurate with those roles at group-level and entity-level respectively;
- h. support objective decision making by avoiding or managing conflicts of interest to appropriately mitigate them and, where appropriate, using clear and objective independence criteria in key areas of potential conflict such as membership of remuneration or audit committees;
- i. include proper consideration of the legal and regulatory obligations, governance responsibilities and relevant and material individual and aggregate risk exposures at group-level and entity-level;
- j. have an effective risk management system appropriate to the insurance group's corporate governance approach (whether centralised, decentralised or a combination of both) that is able to –
 - i. act flexibly and in a timely manner to manage the risks at group-level and entity-level (including ensuring appropriate awareness of relevant and material group risks at entity-level and relevant and material entity risks at group-level); and
 - ii. promote a risk management culture consistent with sub-paragraph e;

- k. have an effective compliance system able to ensure adherence to the relevant legal and regulatory obligations at group-level and entity-level and promote a compliance culture consistent with sub-paragraph e;
- l. include comprehensive and well-coordinated policies (including risk appetite, limits and tolerances), procedures and controls across the insurance group and its legal entities, including reporting;
- m. have in place a remuneration policy at group-level and entity-level which does not incentivise inappropriate behaviour including inappropriate risk taking;
- n. have in place risk management, compliance, internal audit and, where appropriate, actuarial functions that provide a reliable view of risks at group-level and entity-level, including how these should be managed and how they are being managed;
- o. include documentation of the insurance group's organisational structure and system of governance at group-level and entity-level; and
- p. be clear as to how any branches within the insurance group are managed, overseen and held accountable.

ERM AND ORSA (applicable at group-level only)

- 5. As part of its corporate governance framework, an insurance group, at group-level and with a group-wide perspective, must establish, implement and maintain an effective ERM system, including an ORSA process, that is adequate and appropriate to the nature, scale and complexity of the insurance group, its activities and the risks to which it is or may be exposed.
- 6. The ERM system, including the ORSA process, of an insurance group must –
 - a. encompass and appropriately categorise all relevant and material group-wide risks (including any such risks arising from the insurance group being part of a wider group);
 - b. have a group-wide risk management policy for those risks, outlining how they are managed on a strategic and day to day basis (including a group-wide risk appetite framework which integrates effectively with the individual risk appetite frameworks, or equivalent, at the entity-level within the group);

- c. use forward-looking quantitative methods, including risk modelling, stress testing, reverse stress testing and scenario analysis (including scenarios involving relevant and plausible changes in group structure or integrity in adverse circumstances) as may be adequate and appropriate on a group-wide basis;
- d. take account of the real nature and effect of the direct and indirect relationships between group members (such as the formality and legal enforceability of potentially relevant and material intra-group arrangements);
- e. use assumptions that are appropriate on a group-wide basis (such as constraints affecting the fungibility of capital and the transferability of assets which may be different from the group-level perspective as compared to entity-level);
- f. have a feedback loop at group-level (including any additional analyses and information as may be needed to address any increased complexity) which enables the group to take timely and appropriate action in responses to changes in its risk profile;
- g. determine the economic capital needs, capital adequacy and liquidity adequacy of the insurance group, which also take account of prescribed regulatory requirements (including the SCR of all insurers within the group);
- h. in assessing group-wide capital resources, take account of key group-wide factors including any multiple gearing, intra-group creation of capital and reciprocal financing, leverage of the quality of capital, the fungibility of capital and the free transferability of assets across group entities; and
- i. carry out a group-wide continuity analysis over a suitable forecast time horizon, including assessment of capital distribution and cash flows across the group under scenarios involving relevant and plausible adverse circumstances.

Appendix 3 – Part 4A of the Insurance (Amendment) Act 2017 in respect of group supervision

PART 4A – GROUP SUPERVISION

21A Interpretation

In this Part, unless the context otherwise requires —

“**college of supervisors**” means a structure for cooperation and coordination among competent authorities;

“**competent authority**” means a regulatory authority that is empowered by law to supervise insurers;

“**designated insurer**” means an insurer designated by the Authority under section 21C(6) in respect of an insurance group;

“**equivalent jurisdiction**” means a jurisdiction that has supervisory standards that the Authority determines to be equivalent to those established by or under this Act;

“**group actuary**” means an individual appointed under section 21I;

“**group supervisor**” in relation to an insurance group, means the Authority or, as the case may be, another competent authority that is the group supervisor for the insurance group.

21B Insurance group (interpretation)

(1) For the purposes of this Part an “**insurance group**” means 2 or more undertakings consisting of an authorised insurer and —

(a) any other undertaking —

- (i) which is the holding company or a subsidiary of the insurer;
- (ii) which is a subsidiary of that holding company; or
- (iii) in which that holding company, the insurer or any subsidiary of the insurer or the holding company is entitled to exercise, or control the exercise of, 10 per cent or more of the voting power at a general meeting; or

(b) any undertaking other than one mentioned in paragraph (a) which has the power to exercise or actually exercises a dominant influence or control over the authorised insurer.

(2) For the purposes of this Part “**undertaking**” means any of the following —

- (a) a body corporate;
- (b) a partnership;
- (c) an unincorporated association; or
- (d) a trust,

and references to any undertaking mentioned in paragraphs (a) to (d) include a comparable undertaking incorporated in, formed or established under the law of a country or territory outside the Island.

21C Group Supervisor

(1) The Authority may, in respect of an insurance group, determine whether it is appropriate for it to be the group supervisor of that group.

(2) Before making such a determination the Authority must take into account the matters set out in subsection (3).

(3) Those matters are —

(a) whether the insurance group is headed by an authorised insurer;

(b) where the insurance group is not headed by an authorised insurer whether the insurance group is headed by a holding company which is incorporated in the Island;

(c) where the insurance group is headed by a holding company which is not incorporated in the Island, whether the Authority is satisfied that —

(i) the insurance group is directed and managed from the Island; or

(ii) the insurer in the insurance group with the largest balance sheet total is an authorised insurer;

(d) whether the principal activity of the group is the carrying on of insurance business;

(e) any other matter which may be prescribed.

(4) The Authority may determine, notwithstanding any other consideration, that it is not appropriate for it to be the group supervisor of an insurance group where the insurance business carried on does not involve liability to third parties.

(5) The Authority must give notice in writing to the proposed designated insurer of the Authority's intention to make such a determination and must take into account any written representation made by the proposed designated insurer within such period as the Authority may specify in the notice.

(6) If the Authority makes a determination under subsection (1) that it is appropriate for it to be the group supervisor in respect of an insurance group, the Authority must designate an authorised insurer who is a member of the insurance group to be the designated insurer in respect of that insurance group for the purposes of this Part.

(7) The Authority must notify the designated insurer for an insurance group and other competent authorities in writing that the Authority is the group supervisor for that insurance group.

(8) The Authority must establish and maintain a register containing the prescribed particulars in respect of every insurance group of which it is the group supervisor.

(9) The designated insurer for an insurance group must immediately notify the Authority of any change of the particulars entered in the register in respect of that insurance group.

21D Excluding undertakings from group supervision

(1) The Authority may, on its own initiative or on the application of the relevant designated insurer, exclude from group supervision any undertaking that is a member of an insurance group if the Authority is satisfied that —

(a) the undertaking is situated in a country or territory where there are legal impediments to cooperation and exchange of information;

(b) the financial operations of the undertaking have a negligible impact on insurance group operations; or

(c) the inclusion of the undertaking would be for some other reason inappropriate.

(2) The Authority must notify the relevant designated insurer and competent authority in writing of any decision to exclude an undertaking from the scope of group supervision.

21E Authority's power to include undertakings within group supervision

(1) The Authority may, on its own initiative or on the application of the relevant designated insurer, include within group supervision any undertaking that is a member of the insurance group but is not on the register maintained under section 21C(8) if the Authority is satisfied that —

(a) the financial operations of the undertaking may have a material impact on the insurance group's operations; and

(b) the inclusion of the undertaking would be appropriate in the opinion of the Authority.

(2) The Authority must notify the relevant designated insurer and competent authority in writing of any decision to include an undertaking within the scope of group supervision.

21F Authority's power to withdraw as group supervisor

(1) The Authority may withdraw as group supervisor —

(a) on its own initiative;

- (b) at the request of a competent authority from an equivalent jurisdiction; or
 - (c) on the application of a designated insurer in respect of the insurance group of which it is a member.
- (2) The Authority must notify the relevant insurance group in writing of its intention to withdraw as group supervisor and must take into account any written representation made by the insurance group within such period as it may specify in the notice.
- (3) The Authority may withdraw as group supervisor if —
- (a) the Authority considers that it would be appropriate to do so having regard to the structure of the insurance group and the relative importance of the insurance group’s insurance business in different countries or territories;
 - (b) the Authority determines that there has been a material change in the structure or operations of the insurance group or an absence of cooperation by other competent authorities; or
 - (c) for any other reason that prevents the Authority from effectively discharging its function as group supervisor for that insurance group.
- (4) The Authority must notify the designated insurer and any other relevant competent authority in writing of any decision made by it under this section.

21G Functions of Authority as group supervisor

The Authority as group supervisor has the following functions with regard to group supervision —

- (a) coordination of the gathering and dissemination of relevant or essential information for going concerns and emergency situations, including the dissemination of information which is of importance for the supervisory task of other competent authorities;
- (b) supervisory review and assessment of the financial situation of insurance groups;
- (c) assessment of compliance of insurance groups with any regulations in relation to solvency and risk concentration and intra-group transactions prescribed by or under this Act;
- (d) assessment of any system of governance in relation to insurance groups prescribed by or under this Act, and whether the persons involved in the management or administration of participating undertakings meet the requirements set out therein;
- (e) planning and coordination, through regular meetings held at least annually or by other appropriate means, of supervisory activities in going concerns as well as in emergency situations, in cooperation with the competent authorities concerned and taking into account

the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of insurance groups;

(f) coordination of any enforcement action that may be taken against insurance groups or any of their members; and

(g) planning and coordinating, as required, meetings of colleges of supervisors, to be chaired by a representative of the Authority where the Authority acts as the group supervisor, to facilitate the exercise of the functions set out in paragraphs (a) to (f).

21H Regulations in relation to group supervision

(1) The Authority may for the purposes of group supervision make regulations applying to designated insurers which take into account, in their case, any activity of the insurance group of which they are members or of other members of the insurance group.

(2) Without prejudice to the generality of subsection (1), such regulations may make provision for —

(a) the assessment of the financial situation of the insurance group;

(b) the solvency position of the insurance group;

(c) intra-group transactions and risk concentration;

(d) the system of governance and risk management of the insurance group; and

(e) supervisory reporting and disclosures in respect of the insurance group.

(3) The Authority in such regulations may in relation to group financial statements require that they be prepared in the English language and that the currency of any amount shown therein be converted to a currency specified by the Authority as at a specified date.

21I Appointment of group actuary

(1) Where any insurer in an insurance group carries on long-term business the designated insurer for that group must ensure that there is appointed an actuary for the group who is qualified in accordance with section 18(2).

(2) No appointment shall be made under subsection (1) unless a written notice containing such particulars as may be determined by the Authority is served on the Authority by the insurer concerned within such period as the Authority may require.

(3) If it appears to the Authority that a person is not a fit and proper person to be appointed as actuary under subsection (1), the Authority may direct that such person shall not, without the written consent of the Authority, be appointed as actuary.

(4) If it appears to the Authority that a person appointed under subsection (1) is not a fit and proper person to continue as such, the Authority may direct that such person shall not, without the written consent of the Authority, continue in such capacity.

(5) The Authority shall give written notice to the person concerned of any decision to make a direction under this section.

(6) Except where the Authority is satisfied that urgent action is necessary, the notice under subsection (5) shall be served on the person not less than 28 days before the date on which the direction is to take effect.

(7) Any consent by the Authority under subsections (3) or (4) may be —

(a) given subject to conditions;

(b) varied from time to time; or

(c) revoked at any time,

and the Authority shall give written notice to the person concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c).

(8) No person shall accept or continue in any appointment referred to in subsection (3) or (4) in contravention of a direction under this section.

(9) It is the duty of a designated insurer to take care not to appoint or continue the appointment of a person in contravention of a direction under this section.

(10) Whenever an appointment under subsection (1) comes to an end the designated insurer shall —

(a) within 14 days of the termination of the appointment, notify the Authority in writing of the termination and the reason for the termination;

(b) satisfy the Authority that appropriate arrangements have been made to cover any absence of a person appointed under subsection (1); and

(c) as soon as practicable following the termination, ensure that the insurance group makes a new appointment under subsection (1).

(11) Whenever an appointment under subsection (1) comes to an end the person ceasing to be appointed under that provision shall serve a written notice on the Authority containing such particulars as may be prescribed within 14 days of such cessation.

(12) The Authority may appoint a person qualified in accordance with section 18(2) as actuary to an insurance group where a designated insurer has failed to ensure that an appointment is made under subsection (10)(c) and such appointment shall be deemed to have been made by the designated insurer.

(13) Where no insurer in an insurance group carries on long-term business regulations may provide for this section to have effect subject to any exception, adaptation or modification specified in the regulations.