A diverse business – Guernsey's insurance sector

Briefing Summary: Guernsey's position as Europe's leading captive insurance domicile has made the jurisdiction renowned for insurance activity. However, Guernsey is also home to a number of insurers and reinsurers underwriting third party risks. This article summarises the legal framework underpinning Guernsey's successful and diverse insurance sector.

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Guernsey's position as Europe's leading captive insurance domicile has made the jurisdiction renowned for insurance activity – a large proportion of which provides general insurance cover to UK parents, many of them listed companies. Indeed, approximately 40% of the leading companies on the London Stock Exchange have captives in Guernsey which are estimated to generate annual cost savings of £100 million.

However, Guernsey is also home to a number of insurers and reinsurers underwriting third party risks including life insurance/assurance as well as more exotic risks such as kidnap and ransom and "after the event" insurance.

Guernsey's long-established protected cell company ("**PCC**") as well as its younger offspring, the incorporated cell company ("**ICC**") are frequently used as incubators for small captive businesses and as special purpose vehicles for insurance linked securities and transformer structures which convert financial risk into insurance risk and vice versa.

Clients come to Carey Olsen because of our extensive experience, industry know-how and proven track record in advising the insurance industry. We advise on insurance and reinsurance in an offshore context. With years of experience in advising on protected and incorporated cell companies we are also the legal adviser of choice on complex risk transfer structures including transformer vehicles.

A number of our lawyers previously worked in the insurance and reinsurance departments of other international law firms and sit on the boards of locally-licensed insurance companies. This experience brings a practical, commercial dimension to the team's advice. Our clients include insurers, reinsurers, intermediaries, brokers and other financial services companies.

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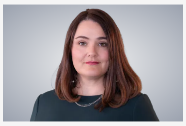

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Licensing

Insurers and reinsurers in Guernsey are governed by the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the "**Law**"). The definition of insurance in the Law includes reinsurance and accordingly all references in this article to insurance or to insurers apply equally to reinsurance and to reinsurers. Under the Law, a person must not carry on or hold themselves out as carrying on insurance business in or from within the Bailiwick of Guernsey ("**Guernsey**") unless licensed to do so.

The Law distinguishes general insurance and long-term (including life) insurance business. Other than in the case of a PCC, a single company cannot be licensed to conduct both long-term and general insurance business. In addition, a distinction is drawn between domestic insurers who insure persons or property in Guernsey and international insurers who write business outside the islands.

A person wishing to establish a licensed insurer in Guernsey must satisfy the regulator, the Guernsey Financial Services Commission (the "**Commission**"), that any person who is to be a director, partner, manager, controller, general representative, money laundering reporting officer, money laundering compliance officer, compliance officer or an actuary of the insurer will meet the licensing criteria set out in Schedule 7. Schedule 7 requires that the insurance business will be carried on with prudence, integrity, professional skill and in a manner which will not tend to bring Guernsey into disrepute as an international finance centre. Each of the persons listed above must be fit and proper having regard to their probity, competence, experience, judgement, diligence, qualifications, knowledge and understanding of the legal and professional obligations to be assumed and policies, procedures and controls to be implemented.

The business of every licensed insurer must be directed by at least two individuals of appropriate standing and experience who are sufficiently independent of each other. Every licensed insurer must appoint at least one independent non-executive director (i.e. not connected to the insurer's shareholders or the appointed manager, if any) as well as a general representative who is authorised to accept service of official notices on behalf of the insurer in Guernsey.

To ensure that the mind, management and control of the insurer remains in Guernsey, locally licensed insurers usually appoint a majority of Guernsey residents to the board and board meetings are usually held in the islands. Most Guernsey licensed insurers have no employees but appoint an entirely non-executive board of directors supported by a local licensed insurance manager. Corporate directors may not be appointed to a Guernsey licensed insurer.

Financial Resources

Minimum Paid Up Capital

As one would expect, Guernsey licensed insurers are subject to statutory capital and solvency requirements. The minimum paid up capital is £100,000 for a licensed general insurer (carrying on business other than retail general business), £250,000 for a licensed general insurer carrying on retail general business, £250,000 for a licensed long-term insurer and £250,000 for a licensed insurer carrying on both long-term and general business.

A general insurance company structured as a PCC would commonly issue at least £100,000 in core shares in order to meet this minimum capital requirement. Although each cell of a PCC must meet the MCR and PCR (described below), because a PCC is a single legal entity each cell is not required to be separately capitalised. However, because each incorporated cell of an ICC is a separate legal entity, each incorporated cell must be separately capitalised to meet the minimum paid up capital requirement. Like cells of a PCC, each incorporated cell of an incorporated cell company must meet the MCR and PCR.

Minimum Shareholder Funds

Every insurer must maintain shareholders' funds (i.e. assets in excess of liabilities) of at least 75% of the minimum paid up capital.

Minimum Capital Requirement

A general insurer must maintain a minimum capital requirement ("**MCR**") of the higher of:

(a) 12% of gross written premiums during the previous financial year;

(b) 12% of the value of claims reserves and premium reserves; and

(c) the Capital Floor.

The Capital Floor of a licensed insurer is the same as the minimum paid up share capital described above.

Long-term (life) insurers must maintain a MCR of the higher of:

(a) 2.5% of total reserves, net of reinsurance; and

(b) the Capital Floor.

The minimum capital requirement does not apply to insurers categorised as special purpose entities (category 6). That is, insurers whose underwriting and counterparty credit risk are effectively eliminated because they are fully collateralised or otherwise funded. Further information on the special regulatory regime applicable to special purpose entities can be found here.

Prescribed Capital Requirement

All Guernsey licensed insurers, other than category 6 insurers, are subject to a prescribed capital requirement ("**PCR**"). The PCR is calculated by applying a set formula contained in a spreadsheet created by the GFSC. The formula assesses the risks to which the company is subject including market, counterparty, premium and reserve risk and allows certain adjustments for diversification of business and regulatory adjustments. Depending upon the category of insurer, the PCR is set at different confidence levels as follows:

- Category 1 – commercial life insurer – 99.5% confidence level
- Category 2 – commercial life reinsurers – 97.5% confidence level
- Category 3 – commercial general insurers – 99.5% confidence level
- Category 4 – commercial general reinsurers – 97.5% confidence level
- Category 5 – captive (re)insurers - 90% confidence level
- Category 6 – special purpose entities - exempt from the PCR.

OSCA

Guernsey licensed insurers are required to calculate an own solvency capital assessment ("**OSCA**") considering the particular risks written by that insurer. That assessment involves the board of directors (or their equivalent) conducting a subjective analysis of the business written by the insurer and determining the appropriate level of capital that should be maintained. The OSCA may be and often is higher than the MCR and PCR requirements described above. The OSCA calculation must be lodged with the Commission annually. The OSCA does not apply to category 6 insurers.

Retail General Insurers

In 2025, Guernsey introduced additional regulatory requirements for Retail General Insurers ("**RGI**") That is an insurer carrying on business with:

1. An individual acting other than in their trade, business or profession;
2. A micro enterprise; or
3. A charity, other than a non-governmental organisation.

The additional regulatory requirements to which RGI's are subject include:

1. Publication of:

    1. Audited financial statements;
    2. Corporate governments arrangements;
    3. Technical reserves; and
    4. Financial performance capital adequacy.

2. All directors must physically attend at least one board meeting in the Bailliwick of Guernsey per year.
3. The board must include 2 independent non-executive directors, as opposed to one for non-RGIs; and
4. minimum capital of £250,000 must be maintained, as opposed to £100,000 for non-RGIs.

Other Requirements

In addition to the OSCA calculation, every Guernsey licensed insurer must lodge an annual return with the Commission together with its audited accounts. The annual return must include an up to date business plan including financial projections, a statutory solvency calculation, a copy of the auditors' management letter, a summary of the extent of adherence to the corporate governance principles applicable to licensed insurers and a note on how insurance reserves are calculated. Every licensed insurer which is a company must be audited annually. It is worth noting that category 5 (re)insurers (captives) may obtain a derogation from preparing audited financial statements which comply with all of the requirements of UK GAAP FRS103.

Long-term insurers must appoint an actuary to prepare an annual report including a valuation of the liabilities of the insurer and an assessment of the surplus or deficit (as appropriate) on the statutory fund. The statutory fund is an account which every long-term insurer is required to maintain in respect of receipts from long-term business conducted by it. The Commission has a discretion to waive this requirement and will generally do so in respect of fully funded insurers.

Long-term insurers must also appoint a Guernsey based trustee to hold in trust assets representing at least 90% of policyholder liabilities. The Commission has a discretion to waive this requirement and will generally do so in respect of reinsurers.

Change in Control

Strict controls are imposed on the shareholders and key officers of Guernsey licensed insurers. A person acquiring an interest in excess of 5% of the equity share capital (directly or indirectly) of a licensed insurer must notify the Commission. A person proposing to obtain 15% or more of the voting rights in a company or 15% or more of the beneficial interest in a cell of a PCC must obtain the consent of the Commission before doing so. In addition, the Commission must approve any proposed change in the directors or officers of a licensed insurer which is a company.