

GUIDE TO ESTABLISHING INSURANCE COMPANIES IN GUERNSEY

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PREFACE

This Guide is intended to provide broad information as to the establishment of an insurance company in Guernsey.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the Corporate Team, using the [contact information](#) provided at the end of this Guide.

Appleby

Guernsey

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1. INTRODUCTION

Guernsey is well renowned for its insurance industry, which has origins dating back to the 18th century and has an excellent reputation for innovation and professionalism in international insurance.

Guernsey's insurance sector includes commercial insurers and captive insurance companies which have been incorporated in the Island since 1922. Guernsey has grown to become the leading captive insurance domicile in Europe and number four in the world.

Guernsey offers a range of structuring options for insurance companies, depending on their requirements, which include limited companies, protected cell companies (known as **PCCs**) and incorporated cell companies (known as **ICCs**).

Guernsey was the first jurisdiction to introduce a PCC in 1997 and has been regularly using cell companies and refining the concept since then. A PCC is one company made up of a core and individual cells. With a PCC, unlike in an ordinary company where all assets and liabilities are linked, the assets and liabilities of the different cells will remain separate from each other so no claim against one cell will be covered by the funds of another. Guernsey has also introduced the ICC, which, like a PCC, has cells but they are separately incorporated and distinct legal entities.

As at 31 July 2013, Guernsey played host to 774 international insurance entities, which included 435 PCC cells and 22 ICC cells. At the end of 2012, the international insurance industry in Guernsey had gross assets of £22.90bn, a net worth of £9.34bn and wrote premiums to the value of £4.63bn.

2. AUTHORISATION

The law governing insurers conducting insurance business in or from within Guernsey is the *Insurance Business (Bailiwick of Guernsey) Law, 2002* (the **Insurance Law**), which is supplemented by a number of regulations.

There are two main types of insurers licensed in Guernsey:

- international insurers, which mainly underwrite non-local insurance risks: pure captive insurers and commercial insurers are the main types of insurers who fall within this category; and
- domestic insurers, which mainly underwrite insurance risks within the Bailiwick of Guernsey. Domestic insurers can be either locally or non-locally incorporated.

Insurers in Guernsey can be licensed to write either long term business or general business. Insurers writing long term business will be required to have policyholder protection, with an additional requirement to appoint an independent Guernsey based trustee who will report directly to the Commission.

Any persons wishing to be licensed as an insurer to carry on insurance business in or from within the Bailiwick of Guernsey must apply to the Guernsey Financial Services Commission (the **Commission**) for a licence.

3. MINIMUM CRITERIA FOR LICENSING

When assessing applications for a licence to write insurance business, the Commission considers the application both against the minimum criteria for licensing, as set out in the Insurance Law, and the means by which the applicant will comply with all other requirements of the Insurance Law and its associated regulations, rules, codes and guidance issued by the Commission from time to time. Key considerations include whether:

- (a) the applicant will carry on its insurance business with prudence and integrity and in a manner that will not bring the Bailiwick into disrepute as an international financial centre;

- (b) fit and proper persons will be involved in ownership, management and control of the applicant and whether they will exercise probity, competence, diligence, experience and soundness of judgement in fulfilling their responsibilities;
- (c) there will be economic benefit to Guernsey in granting the application;
- (d) at least two individuals are appointed, independent of each other and with appropriate standing and experience to direct its insurance business;
- (e) the applicant will conduct its insurance business in a prudent manner including maintaining sufficient capital base and insurance cover in an amount which the Commission considers appropriate; and
- (f) the applicant will maintain adequate capital and liquidity.

4. **REQUIREMENTS FOR LICENSING UNDER THE INSURANCE LAW**

Any applicant seeking to obtain an insurance licence must apply to the Commission using the prescribed form and must provide the Commission with certain information, including:

- (a) the personal and professional details of the proposed personnel and third party service providers of the applicant;
- (b) details of the proposed ownership of the applicant including an organisational chart identifying, in sufficient detail, all shareholdings between the applicant and its ultimate holding company and all material associated parties with whom the applicant will trade;
- (c) a statement explaining the rationale for setting up an insurance company in the Bailiwick of Guernsey;
- (d) details of the form of insurance business to be undertaken;
- (e) copies of the latest audited financial statements of the applicant and the applicant's ultimate holding company and direct controller, where different.
- (f) a three year business plan in a format determined by the Commission;
- (g) details of the proposed method of capitalisation, whether by way of share capital, letter of credit, subordinated loans or otherwise and further confirmation that the proposed capital is in place and/or available to the applicant;
- (h) details of the proposed bank mandate signing powers of the applicant;
- (i) the constitutional documents of the applicant; and
- (j) the appropriate fee (see below).

Additional information and documents may be required generally, in particular where the applicant, controller, or ultimate holding company is resident in a sensitive jurisdiction, as published from time to time by the Commission on its website.

5. **DIRECTORS AND A GENERAL REPRESENTATIVE**

With regard to the composition of the Board of Directors, the Insurance Law requires that the board of directors of an applicant includes at least one director who is not an associate of, or associated party in relation to, the applicant (other than as a director) and who is not responsible for the management of the applicant's business, unless the Commission has agreed in writing to waive this requirement.

In addition, the Commission expects there to be at least an equitable balance between local and non-local directors and that control of the board of the applicant and the monies of the applicant will reside in Guernsey. The policy of the Commission is that corporate directors are not permitted.

A licensed insurer must also appoint and must at all times maintain the appointment of a general representative to act on behalf of the insurer. The general representative must be:

- an executive director (or in certain circumstances an employee or agent) of the insurer ordinarily resident in the Bailiwick of Guernsey and approved by the Commission as fit and proper to act as the general representative; or
- a licensed insurance manager approved by the Commission.

The Commission also requires all current and proposed directors and the general representative of prospective applicants to fill out a personal questionnaire regarding their qualifications, experience and legal and regulatory information, in the form found on the Commission's website (www.gfsc.gg).

6. FINANCIAL REQUIREMENTS

6.1 Minimum Capital

At the date of this guide, the minimum capital requirements for insurers is £100,000 for insurers writing general business and £250,000 for insurers writing long term business. In practice, the Commission often requires insurers to have higher levels of capital depending upon the nature of the business.

6.2 Margin of Solvency

Licensed insurers are also required to maintain a prescribed margin of solvency and approved assets.

This margin of solvency is the excess of the value of the insurer's approved assets (see below) over the value of its liabilities.

The minimum solvency requirements are:

- for licensed insurers conducting general business - 18% of the first £5,000,000 of net premium income and 16% of net premium income that exceeds £5,000,000 or 5% of the value of the loss reserves, whichever is greater; and
- for licensed insurers conducting long term business - 2.5% of the value of the long term business fund or £250,000, whichever is the greater.

The Commission may require an insurer to maintain a higher solvency margin depending upon the nature of the business.

The Commission also requires licensed insurers to determine and justify their own margin of solvency, subject to the minimum amounts specified above and provides guidance on how this is to be calculated.

A licensed insurer which carries on general business shall be deemed insolvent if at any time it does not comply with the margin of solvency requirement applicable to it.

Approved assets are set out in the *Insurance Business (Approved Assets) Regulations, 2008*. The assets are split into Classes 1, 2, 3 and 4 and the Commission imposes restrictions on the valuation of assets contained in Classes 2, 3 and 4. The approved assets include:

(a) Class 1

- (i) cash in hand and on deposit with a recognised bank in a recognised territory;
- (ii) bank certificates of deposit issued by a recognised bank in a recognised territory;
- (iii) debt securities having a current rating of AAA, A, or an equivalent, issued by a sovereign or a supranational agency listed on a recognised stock exchange and capable of normal realisation at short notice;

- (iv) collective investment schemes with a current rating of AAA or equivalent, capable of normal realisation at short notice;
 - (v) net accounts receivable including premiums net of provisions for bad debts;
 - (vi) reinsurance balances receivable;
 - (vii) accounts receivable, net of provisions for bad debts;
- (b) **Class 2**
- (i) irrevocable letters of credit issued to the benefit of the insurer and provided by recognised banks in recognised territories;
- (c) **Class 3**
- (i) securities quoted in a recognised stock exchange;
- (d) **Class 4**
- (i) exchange traded derivative contracts or schemes;
 - (ii) forward foreign exchange transactions conducted with a recognized bank, to the extent they are hedge currency exposures to currencies other than reporting currency in the statutory accounts; and
 - (iii) any asset which the Commission may by prior written consent approve.

7. FEES

Fees must be paid to the Commission when the application is made. The application fees, with effect from 1 January 2014, are:

- £5,155 if the application is for an insurer, reinsurer or captive;
- £2,904 if the application is for a domestic insurer licence;
- £5,155 if the application is for a PCC or an ICC; and
- £1,455 in respect of an application for consent by cell of a PCC or an incorporated cell of an ICC.

The annual fees in force as at 1 January 2014, payable by 31st January each year, are:

- £5,155 for an insurer, reinsurer or captive insurer;
- £5,155 if the application is for a PCC or an ICC carrying on general insurance;
- For an insurer writing life insurance (including a PCC or an ICC) the fee is based on net policyholder liabilities at the end of the most recent complete financial year as follows:
 - if less than £1, in which case the annual fee is £5,155;
 - if equal to or more than £1 but less than £1,000,000, in which case the annual fee is £6,690;
 - if equal to or more than £1,000,000 but less than £10,000,000, in which case the annual fee is £8,215;
 - if equal to or more than £10,000,000 but less than £100,000,000, in which case the annual fee is £12,780; and
 - if equal to or more than £100,000,000, in which case the annual fee is £20,386, save where the life insurer is a non-cellular company with net policyholder liabilities of £500,000,000 or more, in which case the annual fee is £30,000;
- £5,155 annual fee for a general business licence;

- £1,685 in respect of each trading cell and £135 in respect of each dormant cell in existence as of 1 January in each year; and
- For an insurer writing domestic insurance the fee is based on gross premium income as follows:
 - £0 to £11,999, in which case the fee is £431;
 - £12,000 to £4,999,999, in which case the fee is £2,904; and
 - £5,000,000 or more, in which case the fee is £9,000.

8. **APPOINTMENT OF ACTUARY**

A licensed insurer carrying on long term insurance business must appoint a qualified actuary. Written notice of this appointment including the date of appointment and the name and qualification of the actuary must be given to the Commission.

9. **APPOINTMENT OF AUDITORS**

A licensed insurer must appoint qualified auditors. Written notice of this appointment, including the date of appointment and the name and qualification of the auditors must be given to the Commission.

10. **DURATION OF LICENCE**

The licence shall (unless any condition of the licence provides for any other period of duration) continue to be valid until it is revoked by, or surrendered to, the Commission.

11. **ANNUAL RETURN**

All licensed insurers are required to prepare an annual return in such form, containing such particulars and accompanied by such information and documents as the Commission may require. The relevant information required on the annual return are set out in the *Insurance Business (Annual Return) Regulations 2008*.

Typically information on the relevant annual return includes the following:

- (a) up-to-date business plan;
- (b) completed margin of solvency and approved asset calculation;
- (c) completed declaration of reliance on reinsurers;
- (d) auditor's management letter or confirmation of the general representative that the auditors have confirmed that no such letter is to be issued;
- (e) summary of the extent of adherence to the corporate governance principals set out in the Corporate Governance Code of licensed insurers;
- (f) declaration signed by the general representative;
- (g) explanation note on how reserves (including reserves of incurred but unreported) claims are calculated; and
- (h) financial information, including management accounts, summary of claims paid and outstanding and a schedule of bank deposits and investments broken down by asset claims.

12. **CONDITIONS OF INSURANCE LICENCE**

The Commission may, when granting a licence or at any time thereafter, impose conditions in respect of the licence as it thinks fit. Such conditions may apply to licensed insurers generally, to any class of licensed insurer or to any particular licensed insurer. Conditions may include limitations on the acceptance or carrying on of insurance business or prohibitions on the insurer soliciting (whether at all

or in any specified manner) insurance business, either generally or from particular persons or classes of persons.

For more specific advice on Insurance Companies in Guernsey, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

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