ISLE OF MAN
FINANCIAL SERVICES AUTHORITY
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Guidance Notes and Information

Concerning Various Insurance Regulations[1] and the CGC[2]

Published by the Isle of Man Financial Services Authority under section 34 of the Insurance Act 2008 on 24 May 2023

INFORMATION

In this document, where the Isle of Man Financial Services Authority ("the Authority") indicates that it has exercised a power, this is not guidance but is information confirming that the power has been exercised as stated.

STATUS OF GUIDANCE

The Authority issues guidance for various purposes including to illustrate best practice, to assist regulated entities (in this case authorised insurers, permit holders and registered insurance managers (as applicable)) to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

[1] The various regulations are the Insurance Regulations 2021 and the Insurance (Special Purpose Vehicles) Regulations 2015.
[2] The CGC is the Corporate Governance Code of Practice for Insurers 2021.

Version 04
Issued on 24 May 2023

Contents

1. Interpretation

(1) In this document—

(a) "the Act" means the Insurance Act 2008;

(b) "the Authority" means the Isle of Man Financial Services Authority;

(c) "the CGC" means the Corporate Governance Code of Practice for Insurers 2021;

(d) "Electronic Return", in relation to an authorised insurer, means the current version of the published regulatory return template on the Authority's website, specifically the: LTB_Return, NLT_Return_Classes_3-9&11 or NLT_Return_Class 12 (as applicable to the insurer) pursuant to Regulation 17 of the Insurance Regulations 2021;

(e) "solvency coverage ratio", in relation to an authorised insurer, means its eligible own-funds divided by its SCR and, for example in relation to a class 12 insurer, it is also the ratio of that name as set out in the NLT_Return_Class 12, "SCR Summary" Tab; and

(2) In this document—

(a) unless specified otherwise, references to Regulations and Schedules are references to the Insurance Regulations 2021; and

(b) terms used in relation to the Insurance Regulations 2021 or the CGC (as the case may be) have the meaning (if any) as given in those documents or the Act (as appropriate).

2. Regulations 13 and 14: transitional clarification (all authorised insurers)

In relation to Regulations 13 (fitness and propriety requirements and notifications) and 14 (controlling interest requirements and notifications), to avoid any doubt, the notification requirements under those regulations apply only to corresponding notifiable matters which the regulated entity becomes aware of after 30 June 2022.

3. Regulation 17: transitional clarification (non long-term business insurers)

(1) The reporting requirements under Regulation 17 (annual and other periodic regulatory returns for authorised insurers) apply as follows—

(a) in relation to Regulation 17(1)(a) (annual returns) in respect of accounting years ending—

(i) before 30 June 2022, the insurer must report in accordance with the relevant requirements of the Insurance Regulations 2018 as were in operation immediately prior to the 30 June 2022; and

(ii) on or after 30 June 2022, the insurer must report in accordance with the relevant requirements of Regulation 17; and

(b) in relation to Regulation 17(1)(b) and (c) (quarterly returns or bi-annual returns, as applicable) in respect of reporting periods ending—

(i) before 30 June 2022, the Authority will accept regulatory returns—

A. in accordance with the relevant reporting requirements under the Insurance Regulations 2018 (or as otherwise required by the Authority) as were in operation immediately prior to the 30 June 2022; or

B. if the insurer wishes to effect such early adoption, in accordance with the relevant requirements of Regulation 17; and

(ii) on or after 30 June 2022, the insurer must report in accordance with the relevant requirements of Regulation 17.

(2) To avoid any doubt, in sub-paragraph (1)(b) a "reporting period" is the accounting period in question and not the time allowed after the accounting period end in which the return must be submitted to the Authority.

4. Matters relating to class 12 authorisation

4.1 Class 12 summary and 'decision tree' diagram

(1) To avoid any doubt, the summary descriptions of class 12 in sub-paragraphs (2) and (3) and the diagram in Appendix 1 are not exhaustive and are not a substitute for (and do not limit or extend in any way) the Insurance Regulations 2021 or any exercise of powers by the Authority under those regulations in relation to class 12.

(2) Class 12 is a class of insurance authorisation to which a reduced level of regulation is applied. Class 12 is described in Regulation 3(3) (definition of classes of insurance) as "Restricted", meaning in general terms that a class 12 insurer can only—

(a) insure (or reinsure underlying direct insured) parties which, at the time of contracting or otherwise becoming insured, are any of the following—

(i) related to the insurer (its related parties), or its former related parties if cover corresponds to a time when they were related;

(ii) employees, directors and other officers of the insurer's related parties (and their close family members);

(iii) other parties working for or on behalf of the insurer's related parties where the related parties are liable in respect of such work; or

(iv) other parties connected to the insurer or its group—

A. that are sophisticated and have provided informed consent; or

B. where the insurance involved is de-minimis to the insurer's other business; or

(b) reinsure any other business ceded to it by a qualifying ceding/retroceding insurer.

(3) Summarised even further, class 12 insurance business is either captive (re)insurance, qualifying reinsurance or both.

(4) Appendix 1 to this document contains a diagram and accompanying notes to help illustrate how the Schedule 1 (class 12 requirements) are applied.

4.2 Class 12 contracts must allow only class 12 insurance business

(1) In relation to class 12 insurance contracts, and to avoid any doubt, any contract of insurance—

(a) written by a class 12 insurer on or after 30 June 2022; or

(b) subject to sub-paragraph (2), written by an authorised insurer before 30 June 2022 and in respect of which the insurer wishes to use the transitional provisions under Regulation 23(2)(a),

must contain wording that only allows for the insurance of parties which meet the requirements of Schedule 1. For example, in a direct contract of insurance the simple inclusion of "associates" and/or "affiliates" of a principal insured party as a category of insured would be inappropriate by itself and would instead require an additional contract condition to ensure that any such category is incapable of being used to extend insurance to a party that does not meet the requirements of Schedule 1. (To avoid any doubt, this paragraph does not limit any relevant requirements of the CGC, and notably in respect of the fair treatment of policyholders. For example, any insured which would ordinarily receive the contract or a copy of the contract, or is specifically entitled within the contract to receive it (whether on request or otherwise), must be treated fairly. Fair treatment includes compliance with paragraph 9(1)(b)(i)&(iv) of the CGC, and this would (for example) require more than a simple cross reference to Schedule 1 as it would be unreasonable to assume that a person that is unfamiliar with Schedule 1 would be able to readily assess their compliance with it and therefore whether or not they are insured.)

(2) For the purposes of sub-paragraph (1)(b), if a category of insured included within a contract of insurance written before 30 June 2022 appears, on the face of it, to be capable of being applied to a party that does not meet the requirements of Schedule 1 but—

(a) the insurer has verified that the category, in practice, includes only parties that meet the requirements of Schedule 1; and

(b) circumstances are such that no other parties are capable of being included under the category,

then an additional contract condition is unnecessary and not required ("category of insured" and "contract condition" are as referred to in the example given under sub-paragraph (1)).

(3) Pursuant to paragraph 1(5) of Schedule 1, and to avoid any doubt, any contract not in accordance with sub-paragraph (1) is hereby determined as not meeting the requirements of Schedule 1.

4.3 Business potentially deemed not to be class 12

Pursuant to paragraph 1(5) of Schedule 1, and to avoid any doubt, in paragraph 1(4) of that Schedule the term "amalgamated" includes where an authorised insurer has been, or will be, amalgamated by consolidation.

4.4 Directors (concerning 'related party' individuals) include equivalents

Pursuant to paragraph 1(5) of Schedule 1, and to avoid any doubt, in paragraph 3 of that Schedule the term "director" includes equivalents (such as a partner of a partnership that is a related party).

4.5 Transitional use of 'common industry or association'

Pursuant to paragraph 1(5) of Schedule 1—

(a) in relation to the application of Regulation 23(2)(c); and

(b) where the insurer wishes to apply sub-paragraph (a)(ii) of the definition of class 12 (Restricted) insurance business under Regulation 3(2) of the Insurance Regulations 2018 (contracts within classes 1 to 11 that are with members of a common industry or association),

no such contract shall qualify as class 12 under the Insurance Regulations 2021 unless it is by way of a mutual-style arrangement acceptable to the Authority.

In other words: in relation to any contract entered into prior to 30 June 2022 under any of classes 3 to 9 or 11, the insurer cannot (unless the Authority agrees that the business represents a mutual-style arrangement acceptable to the Authority) use Regulation 23(2)(c) of the Insurance Regulations 2021 to transition that business as class 12 under those regulations on the basis that the contract was with members of a common industry or association.

4.6 Matters relating to 'informed consent'

(1) Informed consent is a proactive, evidential process that is the responsibility of the class 12 insurer wishing to obtain the informed consent. It requires timely, clear and specific acknowledgement and acceptance by, or for and on behalf of, the consenting party of the potential increased risk to which that party may be exposed due to the reduced level of regulation applicable to the class 12 insurer either providing direct insurance to, or reinsuring an underlying direct insurance of, the consenting party.

(2) In relation to paragraph 5(1)(b) of Schedule 1, the insurance involved is incidental to a business relationship (other than insurance) only if the insurance represents 10% or less of that relationship using all relevant and appropriate (including practicable) measures for the preceding and prospective 12 month periods (working from the date the insurer enters into a relevant contract of insurance). Such measures may include, for example, the insurer's share of income, costs or risk exposure attributable to the relationship. This sub-paragraph was added on 21 February 2021 and therefore is applicable from that date.

(3) Pursuant to paragraph 5(1)(c) of Schedule 1, in relation to a class 12 insurer, the Authority hereby specifies that the following may provide informed consent: a person which (at the time the relevant informed consent is given) is a government

department or statutory body where the consent is in respect of insurance covering a potential financial obligation imposed on a related party of the insurer by such person.

(4) In relation to paragraph 5(2)(b) of Schedule 1 and to avoid any doubt—

(a) informed consent for one contract does not necessarily apply to a subsequent renewal of that contract, nor to any new or amended contract, unless the consent clearly and specifically provides for it (if it does make such provision, herein it is an "enduring informed consent");

(b) risk management is, of course, an ongoing discipline requiring the maintenance of suitable risk management capabilities and for relevant information to be at hand in good time for decisions to be made, therefore an enduring informed consent is valid only if—

(i) the 'sophisticated person criteria' continues to be met by the consenting party; and

(ii) the consenting party continues to act on an actively informed basis (including having the information referred to in paragraph 5(2)(b) of Schedule 1 at the forefront of the consenting party's mind) at the time of entering into, renewing or amending each and every contract with the insurer which utilises the enduring informed consent;

(c) it is incumbent on the insurer wishing to use the enduring informed consent to make sure (and keep demonstrable records to show) that the provisions of this sub-paragraph (sub-paragraph (4)) are met; and

(d) in relation to sub-paragraph (b)(ii) and (c), in the case of an enduring informed consent being used in respect of such subsequent matters, the insurer must give a timely, conspicuous and demonstrable reminder to the consenting party to ensure that they remain cognisant of any applicable in-force enduring informed consent when entering into, renewing or amending contracts where the insurer is relying on that consent.

(5) In relation to paragraphs 5(2)(b) and 5(3) of Schedule 1, informed consent must include—

(a) clear and specific reference to—

(i) the insurance contract and, if applicable, reinsurance contract to which the informed consent relates; and

(ii) the role of the class 12 insurer (which may be as direct insurer or reinsurer, as the case may be); and

(b) appropriate wording such as the following (square bracketed information to be inserted):

"[name of the sophisticated person giving the informed consent] acknowledges and accepts that [name of the insurer] is authorised by the Isle of Man Financial Services Authority and holds a class of authorisation (class 12) meaning that [name of the insurer] is subject to a reduced level of regulation

which may result in increased risk to [name of the sophisticated person giving the informed consent]".

(6) In relation to paragraph 5(3) of Schedule 1, for informed consent—

(a) in respect of a direct contract of insurance written by a class 12 insurer, a suitable document includes (and the Authority would ordinarily expect it to be) the contract of insurance itself; or

(b) in respect of a direct contract of insurance underlying a reinsurance contract written by a class 12 insurer, the Authority would ordinarily expect the informed consent to be given effect by a document where the informed consent is its sole clear purpose, or one of its clearly prominent purposes.

(7) In relation to paragraph 5(3)(a) of Schedule 1—

(a) an authorised insurer must obtain evidence of any appointment of a person to represent a consenting party for the purposes of providing informed consent, and any such appointment must be clear and specific to its purpose; and

(b) to avoid any doubt, for example—

(i) the principal party to be insured under a contract, simply by virtue of being the principle party, does not have the right to give informed consent for or on behalf of any other party to be insured under the contract; and

(ii) a member of a group of companies (including holding companies), simply by virtue of being a member of that group, does not have the right to give informed consent for or on behalf of any other member of that group.

(8) In relation to paragraph 5(6) of Schedule 1, a class 12 insurer must be in a position to readily maintain, and must maintain, a log identifying each party included within the insurer's business by way of informed consent and the log must—

(a) cross reference each such consenting party to the relevant contract written by the insurer in respect of which the informed consent was obtained (if the informed consent is provided by a party insured by a contract underlying a reinsurance contract of the insurer, then the log must also cross reference the consenting party to that underlying contract); and

(b) if a consent extends to subsequent contractual matters such as those referred to in sub-paragraph (4)(a), detail the extent of that consent.

4.7 Matters relating to 'de minimis'

(1) In relation to paragraphs 6(1) and (2) of Schedule 1, and to avoid any doubt, Regulation 4(2) gives effect to the whole of Schedule 1 (including paragraph 6(1)). Paragraph 6(2) is therefore subject to paragraph 6(1) despite paragraph 6(2) not specifically stating that fact.

In other words: in Schedule 1, the requirements of paragraph 6(1) must be met before the de minimis rule can be applied.

(2) In relation to paragraph 6(1)(a)(B) of Schedule 1, the insurance involved is incidental to a business relationship (other than insurance) only if the insurance represents 10% or less of that relationship using all relevant and appropriate

(including practicable) measures for the preceding and prospective 12 month periods (working from the date the insurer enters into a relevant contract of insurance). Such measures may include, for example, the insurer's share of income, costs or risk exposure attributable to the relationship. This sub-paragraph was added on 21 February 2023 and therefore is applicable from that date.

(3) In relation to paragraph 6(2) of Schedule 1—

(a) written premiums corresponding to non-class 12 insurance business are based on premiums directly or indirectly payable by the insured for the insurance cover provided. Therefore, for example—

(i) where premiums relating to various insured parties are collected and remitted as a combined total to the insurer, the insurer must look through the combined total to the component premiums relating to each insured; or

(ii) where members of the same group of companies are being insured and one of the members pays the premium for other members being insured and then recharges those premiums to the other group members, the insurer must look through to the recharged component premiums (by whatever name) relating to each insured; and

(b) for business written as reinsurance, an authorised insurer may look through its reinsurance contract to the underlying direct contract premiums in order to measure elements of any non-class 12 insurance business for the purpose of calculating de minimis (noting that this is only necessary in respect of reinsurance elements not ceded by a qualifying ceding insurer or qualifying retroceding insurer).

(4) In relation to paragraph 6(5)(b) of Schedule 1—

(a) A class 12 insurer—

(i) subject to sub-paragraph (ii), must maintain a log identifying each party included within the insurer's business by way of the de minimis rule and cross reference each such insured to the relevant contract written by the insurer (if the insurer has looked through a reinsurance contract in accordance with sub-paragraph (3)(b) it must also cross reference the relevant underlying contract(s)); or

(ii) may, where it is unreasonably demanding to meet the requirement of sub-paragraph (i)—

A. maintain a log of each category of insured (or category of insured underlying a reinsurance contract) included within the insurer's business by way of the de minimis rule and cross reference that information to the relevant contract written by the insurer (if the insurer has looked through a reinsurance contract in accordance with sub-paragraph (3)(b) it must also cross reference the relevant underlying contract(s)); and

B. in the log, record and briefly explain the unreasonably demanding circumstances and how these were ascertained (if due to a large number of insureds, include an estimate of the number involved and how that estimate was arrived at); and

(b) to avoid any doubt, any reduced requirement in respect of log-keeping in accordance with sub-paragraph (ii), does not reduce the requirement to provide accurate information in accordance with paragraph 6(6)(a) of Schedule 1 (and maintain supporting documentation of that calculation and process to identify de minimis-related claims) and nor does it diminish a class 12 insurer's risk management responsibility to thoroughly understand the nature and extent of its exposures.

4.8 Matters relating to mutual members qualifying as 'related parties'

Pursuant to paragraph 1(5) of Schedule 1 and to avoid any doubt, in paragraph 2(1)(b) of Schedule 1 a person that is a "mutual member", in addition to being required to be a member of the insurer (e.g. a shareholder of the insurer or a guarantee member of the insurer if the insurer is limited by guarantee), is required, in accordance with the mutual's self-established rules and requirements, to have been accepted as a participant in the mutual and to be subject to the rules and requirements applicable to that participation.

4.9 Class 12: clarification in respect of having access to an actuarial function

Paragraph 44(2) of the CGC exempts class 12 insurers so that they are not subject to mandatory actuarial function requirements. However, paragraph 44(7) requires a class 12 insurer to have "access to" an actuarial function. To avoid any doubt, this is not a requirement for the insurer to keep an actuarial resource on retainer. Instead it is consistent with paragraph 21(c) of the CGC which requires the board of an authorised insurer to have the powers and resources available to obtain expertise where necessary and appropriate to enable the board to properly discharge its duties and responsibilities and carry out its functions. Paragraph 44(7) is, in effect, an important example of the expert advice an insurance board may need in order to support/inform its decisions (for example, actuarial advice may be appropriate in respect of 'long tail' insurance obligations which may take years to settle).

4.10 Requirement on content of class 12 Summary ORSA

Pursuant to paragraph (2)(g) of Schedule 4 to the CGC, a class 12 insurer's summary ORSA is required to include the information set out in Appendix 2.

4.11 Auditor's Report not required (Class 12 non long-term business insurers)

(1) Subject to sub-paragraph (2) and pursuant to Regulation 17(4)(a), a class 12 insurer with only non long-term business—

(a) is not required to provide in its annual return an Auditor's Report as referred to in Regulation 17(5)(c); and

(b) that is a PCC is not required to provide in its annual return an Auditor's Report as referred to in Regulation 17(5)(b)(ii) (as inserted by paragraph 5(1) of

Schedule 5) insofar as it relates to the core or a cell of the PCC where that core or cell is authorised in respect of class 12 in accordance with paragraph 3 of Schedule 5.

(2) Sub-paragraph (1) applies in respect of annual returns for financial years ending—

(a) on or after 31 March 2023; and

(b) before 31 March 2023 where—

(i) an auditor has not yet been engaged to provide the relevant Auditor's Report; or

(ii) in respect of an existing engagement to provide the relevant Auditor's Report, the insurer and the auditor involved mutually agree to—

A. modify (including end, if that is what is agreed) the engagement to provide the relevant Auditor's Report; and

B. a corresponding cost (including final settlement, if that is what is agreed) for work carried out in respect of that engagement,

and, in respect of an existing engagement relating to any financial year end date, where there is no mutual agreement (between all parties to the engagement) to modify it, the engagement remains unaffected by the regulatory changes referred to in this paragraph (paragraph 4.11).

(3) Pursuant to Regulation 17(4)(a), and until such time as the Electronic Return applicable to a class 12 insurer (specifically, the Index Tab of "NLT_Return_Class 12") is amended to take account of this paragraph (paragraph 4.11), the Index Tab of that return shall be construed to have been adjusted, where applicable and as necessary, to take account of the this paragraph (paragraph 4.11).

5. Reconciliation regarding SCR inputs (non-long term business insurers)

(1) An insurer authorised in respect of classes 3 to 9, 11 or 12 (or any combination thereof), each time it calculates its SCR for the submission of a regulatory return (including annual, quarterly and bi-annual returns, as applicable) to the Authority under Regulation 17, must maintain a clear reconciliation between—

(a) the balance sheet in its audited financial statements or management accounts (as applicable); and

(b) the inputs to the following worksheets/tabs within its corresponding Electronic Return: RBS-Assets, RBS-Direct TPs, RBS-Reins TPs, RBS-Other Liab and RBS-Capital (to avoid any doubt, this includes the 'accounting basis' and 'regulatory basis' inputs).

(2) Pursuant to Regulation 17(4), an authorised insurer referred to in sub-paragraph (1) must provide the reconciliation referred to in sub-paragraph (1) to the Authority in support of each of its corresponding regulatory returns under Regulation 17(5) or 17(6), or those regulations as amended by paragraph 5(1) of Schedule 5, (as applicable).

6. Compliance certifications: transitional clarification (all authorised insurers)

(1) Insofar as a certification of compliance of an authorised insurer relates to a period—

(a) before 30 June 2022, the certification must be in respect of compliance with the relevant equivalent secondary legislation applicable to the insurer having effect immediately before that date; or

(b) on or after 30 June 2022, the certification must be in respect of the legislation specified (as applicable).

(2) In sub-paragraph (1), a "certification of compliance" includes those under the following (as applicable)—

(a) paragraph 8 of, and Schedule 3 to, the CGC; and

(b) Regulations 17(4) and (5) of the Insurance Regulations 2021 (a Directors' Certificate as specified by the Authority).

7. Permit holder-related 'necessary modifications'

In the Insurance Regulations 2021 and CGC, where reference is made to applying specified requirements to permit holders with any necessary modifications, those modifications include, for any relevant reference to an authorised insurer (by whatever term is used), substituting that reference with an appropriate reference to a permit holder as the context requires.

8. ORSA submission times: transitional clarification (all authorised insurers)

(1) For insurers that were already subject to ORSA requirements under the Corporate Governance Code of Practice for Commercial Insurers which came into operation on 1 January 2019, the timelines for carrying out and submitting ORSAs to the Authority in the CGC which came into operation on 30 June 2022 are a continuation of those to which they were previously subject.

(2) For insurers that were subject to the Corporate Governance Code of Practice for Regulated Insurance Entities which came into operation on 1 October 2010, the insurer is expected under the CGC which came into operation on 30 June 2022 (at a minimum) to carry out an ORSA and submit the ORSA (or, if class 12, the ORSA summary) to the Authority—

(a) before 30 June 2023 (i.e. within a year of the ORSA requirement coming into operation in respect of the insurer); and

(b) thereafter within each calendar year,

the exact timing depends on when is appropriate to the insurer's circumstances (including its risk profile, risk management approach and information needs) in accordance with the CGC.

9. Examples of material matters to be reported under the CGC (all authorised insurers)

Pursuant to paragraph 75(2)(b) of the CGC and without limiting the generality of Part 15 (Interaction With The Authority) of the CGC, matters referred to in sub-paragraph 75(2)(b) of the CGC to be reported to the Authority by an authorised insurer—

(a) include those referred to in the table in Appendix 3 to this document; and

(b) must be notified (and additional information reported) as specified in that table.

10. Requests for regulatory approvals etc. should be conspicuous (all authorised insurers)

If an authorised insurer intends to apply for, or otherwise request, the Authority to exercise a regulatory power of approval, or to provide any other form of consent, it should specifically and conspicuously make that application or request. For example, it should not simply include it within the body of a regulatory return or other wider communication without drawing clear attention to it, for example, by way of a covering written communication.

11. Insurance Special Purpose Vehicles: clarification on solvency requirements

The following relates to the Insurance (Special Purpose Vehicles) Regulations 2015 and any class 13 insurance special purpose vehicle ("ISPV") authorised under those regulations. References to regulations under this paragraph (paragraph 11) are references to the Insurance (Special Purpose Vehicles) Regulations 2015.

Pending any amendments being made to the regulations to take account of changes made to the Act after 2015, the Authority makes the following clarification of its approach.

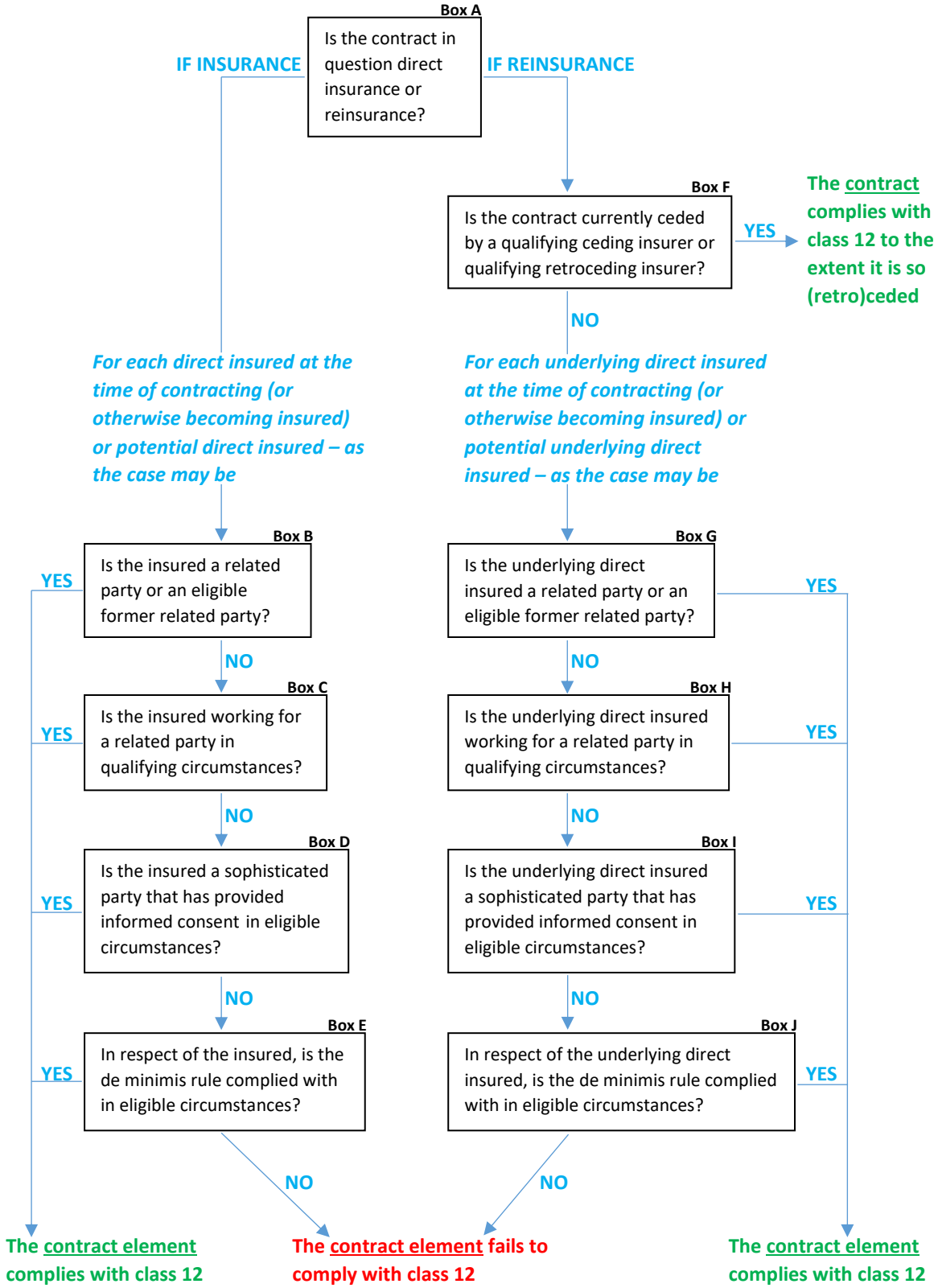
(1) Regulation 10(1), for the purposes of section 12(1) of the Act, prescribes the solvency capital requirement ("SCR") and minimum capital requirement ("MCR") for an ISPV. Accordingly, the SCR and the MCR of an ISPV are both set at the same level, being that the total assets of the ISPV must at all times be equal to, or exceed, its total liabilities.

(2) Regulation 10(2), for the purposes of section 12(2) of the Act, makes provision in relation to the assets to be held by an ISPV for the purpose of meeting its SCR and MCR (its eligible capital resources). Specifically, an ISPV's eligible capital resources are those included within its balance sheet, or otherwise allowed to be included, in accordance with Regulation 10(2).

(3) Sections 12A to 12D, and section 13, of the Act are construed in accordance with sub-paragraphs (1) and (2).

APPENDIX 1 (Class 12 decision tree diagram)

This diagram is an aid to help with applying Schedule 1. It not exhaustive and is not a substitute for (and does not limit or extend in any way) the Insurance Regulations 2021 or any exercise of powers by the Authority under those regulations in relation to class 12.



Notes to the decision tree diagram

The decision tree diagram summarises the requirements of Schedule 1 to the Insurance Regulations 2021. It does not include transitional arrangements relating to business entered into prior to 30 June 2022 and may not necessarily reflect all instances where the Authority may have exercised powers under those regulations.

The following abbreviations are used in these notes:

- "GN" means a guidance note (including information) in this document
- "Para" means a paragraph in the Insurance Regulations 2021
- "Reg" means a regulation in the Insurance Regulations 2021
- "Sch" means a Schedule to the Insurance Regulations 2021

Class 12 insurance business is subject to:

- Any prohibition of reinsurance under para 1(3) of Sch 1
- Any class change imposed under para 1(4) of Sch 1 (also see GN 4.3)
- Any compliance clarification under para 1(5) of Sch 1 (also see GNs 4.2 to 4.5)
- Any modification of related party requirements in respect of protected cell companies ("PCCs") under para 4(3) of Sch 5
- GNs relating to informed consent and de minimis (4.6 and 4.7, as applicable)
- The GN relating to mutual members qualifying as related parties (4.8, as applicable)

Box A : **(is the contract in question insurance or reinsurance?)**

The requirements for class 12 direct insurance are different to those for class 12 reinsurance. In the diagram, for direct insurance follow Boxes B to E (as applicable) and for reinsurance follow Boxes F to J (as applicable). It should be noted that GN 4.2 applies to all class 12 contracts.

Boxes B to E: (direct insurance)

There are four ways in which direct insurance can qualify as class 12, as follows—

- **Box B:** if the contract element is direct insurance of a related party of the insurer or an eligible former related party of the insurer. Relevant provisions include—
  - paras 1(1)(c), 1(2)(a)(i), 1(6) (as applicable), 2 to 4 (as applicable) of Sch 1 and GN 4.4 and 4.8 (as applicable);
  - for PCCs: para 4(2) and, if applicable, 4(3) of Sch 5; and
  - for limited partnerships: para 4(2) of Sch 7;
- **Box C:** if the contract element is direct insurance of a person working for or on behalf of a related party (other than an individual) of the insurer in qualifying circumstances. Relevant provisions include—
  - paras 1(1)(c) and 1(2)(a)(ii) of Sch 1; and
  - also see Box B for provisions relevant to related parties;

- **Box D:** if the contract element is direct insurance by way of informed consent. Relevant provisions include—
  - paras 1(1)(c), 1(2)(a)(iii), 1(6) (as applicable) and 5 (as applicable) of Sch 1 and GN 4.6 (as applicable); and
- **Box E:** if the contract element is direct insurance within the de minimis rule. Relevant provisions include—
  - paras 1(1)(b) and (c), 1(6) (as applicable) and 6 (as applicable) of Sch 1 and GN 4.7(as applicable).

Boxes F to J: (reinsurance)

There are five ways in which reinsurance can qualify as class 12, as follows—

- **Box F:** insofar as the contract is reinsurance of a qualifying ceding insurer or qualifying retroceding insurer. Relevant provisions include—
  - paras 1(1)(c), 1(2)(b)(ii), 1(3) (if and as applicable) and 1(6) (as applicable) of Sch 1;
- **Box G:** if the contract element is reinsurance involving an underlying directly insured related party of the insurer or an eligible former related party of the insurer. Relevant provisions include—
  - paras 1(1)(c), 1(2)(b)(i)(A) and 1(6) (as applicable) of Sch 1; and
  - also see Box B for provisions relevant to related parties;
- **Box H:** if the contract element is reinsurance involving an underlying directly insured person working for or on behalf of a related party of the insurer in qualifying circumstances. Relevant provisions include—
  - paras 1(1)(c), 1(2)(b)(i)(A) and 1(6) (as applicable) of Sch 1; and
  - also see Box C for provisions relevant to persons working for or on behalf of related parties;
- **Box I:** if the contract element is reinsurance by way of informed consent from an underlying direct insured. Relevant provisions include—
  - paras 1(1)(c), 1(2)(b)(i)(B) and 1(6) (as applicable) of Sch 1; and
  - also see Box D for provisions relevant to informed consent; and
- **Box J:** if the contract element is reinsurance within the 'de minimis rule'. Relevant provisions include —
  - paras 1(1)(b) and (c), and 1(6) (as applicable) of Sch 1; and
  - also see Box E for provisions relevant to de minimis.

APPENDIX 2 (Content of class 12 summary ORSA)

Pursuant to paragraph (2)(g) of Schedule 4 to the CGC, a summary ORSA of a class 12 insurer must include a summary statement of the insurer's conclusions (including relevant amounts) in relation to its current and, at a minimum for its forecast time horizon, prospective—

(1) compliance with its regulatory capital requirement (include relevant SCR amounts and solvency coverage ratios);

(2) compliance with its capital adequacy requirement (if the insurer's self-assessed economic capital needs—

(a) do not exceed its eligible own-funds already included within its corresponding solvency coverage ratio referred to in paragraph (1), state that fact; or

(b) exceed its eligible own-funds already included within its corresponding solvency coverage ratio referred to in paragraph (1), include—

(i) a brief description of the main elements and amounts of capital and other resources the insurer employs to meet its self-assessed economic capital needs which exceed those eligible own-funds; and

(ii) if the capital and other resources referred to in sub-paragraph (i) are not considered by the insurer to be adequate for it to comply with the requirement of paragraph 11(a) of the CGC, state the amount by which they are considered by the insurer to be inadequate in that regard.)

(3) compliance with its liquidity adequacy requirement (include, given the insurer's self-assessed liability profile, a brief description of the main elements of the asset liquidity arrangements the insurer employs to meet its liabilities as they fall due).

APPENDIX 3 (Examples of material matters to be reported under the CGC – relevant to all authorised insurers)

Matter to be reported	Timescales
Where the insurer has not commenced the activities for which it has been authorised within 4 months of the date of grant of that authorisation. This does not apply to a dormant insurer or a supporting core of an authorised insurer that is a PCC.	The insurer must notify the Authority of that fact as soon as is practicable after the end of the 4 month period.
Where the insurer intends to cease writing new business in respect of (in each case) any class of business.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
The insurer has an inability or prospective inability to comply with the requirement to submit any regulatory return applicable to the insurer within the relevant required reporting period. In this table, "regulatory returns", in relation to an authorised insurer, include— a) its audited accounts; b) any applicable regulatory return required under Regulation 17; and c) any other regulatory return required by the Authority.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such inability or prospective inability.
The insurer has reason to believe that any regulatory return previously made by it to the Authority (which has not already, in effect, been corrected by a subsequent regulatory return) was or has become misleading in any material respect.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
The insurer intends to change its reporting currency to be used in any of its regulatory returns.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware that such a change is to be made.
The insurer intends to change its financial year end to be used in its audited accounts.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware that such a change is to be made.
The insurer intends to create a charge (or amend an existing charge) on any of its assets, or enter into an agreement (or amend an existing agreement) by virtue of which such a charge may be created (or existing charge amended). This requirement excludes any charge or agreement entered into (or existing	The insurer must notify the Authority not less than 20 days before the charge is created or the agreement is entered into, as the case

charge or agreement amended) in the normal course of its insurance business for the purpose of securing that the insurer meets its insurance obligations. A "charge" includes any other transaction to the same or similar effect, including a mortgage, debenture, lien or other encumbrance by whatever name.	may be. Where this is impracticable the insurer must notify the Authority as soon as is practicable.
The insurer, either itself or via another party, intends to give a (or amend an existing) guarantee, indemnity or other commitment. This includes entering into a (or amend an existing) contingency agreement by virtue of which such guarantee, indemnity or other commitment may be given. This requirement excludes any guarantee, indemnity or other commitment entered into in the normal course of its insurance business.	The insurer must notify the Authority not less than 20 days prior to entering into such transaction.
The— a) insurer's auditor has qualified its report, or has included an emphasis of matter paragraph, in relation to the audited accounts of the insurer; or b) insurer has reason to believe that its auditor is likely to qualify or include an emphasis of matter paragraph in relation to the audited accounts of the insurer.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
The insurer intends to— a) change its name; b) register or change any business name of the insurer; c) change its principal place of business in the Island; or d) change its registered office.	The insurer must notify the Authority not less than 20 days prior to such change.
Any of the following in respect of the insurer— a) its conversion (including re-registration) into any legal form other than its current legal form (such as an authorised insurer that is a company incorporated under the Companies Act 1931 re-registering as a company incorporated under the Companies Act 2006, or becoming a protected cell company); b) intention to transfer its domicile; c) the acquiring or establishing of a trading subsidiary, branch or representative office of the insurer in the Island or elsewhere; d) the closure, sale or winding up of a trading subsidiary, branch or representative office in the Island or elsewhere; e) a purchase by the insurer of the assets or liabilities of another business; f) the sale or disposal of, or an agreement to sell or dispose of, the whole or any part of its business; g) a merger or amalgamation (including consolidation) of its business with another business;	The insurer must notify the Authority not less than 20 days prior to such change. In respect of item i) the insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.

h) a takeover or acquisition by the insurer of another business; or i) any change in the ownership structure between it and its ultimate parent company.	
Any of the following in respect of the insurer— a) increase or reduction of its issued share capital or loan capital (as applicable); b) alteration of the nature of its issued share capital or loan capital (as applicable); c) becoming aware of any proposed pledge of, offer of options over, or options granted, in respect of any shares in its capital; d) alteration of the rights or obligations of its shareholders or debenture holders (as applicable); or e) subscribing for, or acquiring, or entering into a contract to subscribe for or acquire, 10% or more of the issued share capital of a company.	The insurer must notify the Authority not less than 20 days prior to such change, or as may be otherwise agreed in writing by the Authority
The insurer has taken serious disciplinary action against any of the insurer's employees whose appointment in respect of the insurer is required to be notified to the Authority. The insurer must supply full details of the action including copies of any notices or written warnings given by the insurer to the employee. The insurer must also provide the individual concerned with a copy of any notification under this paragraph. In this regard, "serious disciplinary action" is to be interpreted in accordance with the insurer's internal human resources policy.	The insurer must notify the Authority within 5 days after such event.
Any disqualification or any application for disqualification relating to the insurer, or other relevant person, under— a) sections 4, 5 or 9 of the Company Officers (Disqualification) Act 2009; or b) any equivalent provision having effect in a country or territory outside the Island. In this paragraph "other relevant person" means a person working for or on behalf of the insurer in a position where the appointment to such position is required to be notified to the Authority.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
Any action against the— a) insurer; or b) an associated company of the insurer. The notification must specify the name of the body serving the request and the person to whom the request relates.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.

In this paragraph, "action" means the service by a constable or member of HM Attorney General's Chambers of any notice, summons, order or warrant (a "request") made under any criminal statute in the Isle of Man for the purposes of obtaining evidence for a criminal investigation or criminal proceedings, including a confiscation investigation or confiscation proceedings either in the Island or elsewhere.	
The bringing of any criminal proceedings against, or the conviction of— a) the insurer or an associated company of the insurer; or b) any officer or employee of the insurer or an associated company of the insurer, for an offence to which this paragraph applies. This paragraph applies to an offence— (i) which is or, if committed in the Island, would be triable on information; (ii) relating to the carrying on of insurance business which, if carried on in the Island, would be insurance business; (iii) under the Companies Acts 1931 to 2004 or the Companies Act 2006, or any legislation having similar effect in any country or territory outside the Island; (iv) relating to the formation, management or administration of companies in any country or territory; (v) under the Purpose Trusts Act 1996 or any legislation having similar effect in any country or territory outside the Island; (vi) relating to trusts in any country or territory; (vii) relating to insolvency; (viii) involving fraud or dishonesty; (ix) under the Foundations Act 2011 or any legislation having similar effect in any country or territory outside the Island; or (x) under the, Protected Cell Companies Act 2004, the Incorporated Cell Companies Act 2010 or the Partnership Act 1909, or any legislation having similar effect in any country or territory outside the Island. Nothing in this paragraph requires an authorised insurer to disclose any matter subject to legal professional privilege.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
Any of the following (whether occurring in the Island or elsewhere)—	The insurer must notify the Authority of that fact as soon as is practicable after

a) the commencement of proceedings for the winding up of the insurer or a wholly owned subsidiary of the insurer; b) the appointment of a receiver, liquidator, provisional liquidator, administrator or trustee in bankruptcy of the insurer or a wholly owned subsidiary of the insurer; c) the making of any composition or arrangement with creditors of the insurer or a wholly owned subsidiary of the insurer; or d) the appointment of an inspector by a statutory or other regulatory authority to investigate the affairs of the insurer or a wholly-owned subsidiary of the insurer.	it becomes aware of such circumstance.
Any claim or legal proceeding of whatever nature against the insurer, where the amount claimed or likely to be claimed exceeds 20% of the insurer's net assets (as applicable). If the claim is by way of insurance business, then it should only be reported if the net claim (being net of any corresponding amount which is recoverable from reinsurance) against the insurer exceeds 20% of the insurer's net assets. A net claim is not limited to a single claim but also includes a number of claims from the same event which are collectively of a net amount which exceeds 20% of the insurer's net assets. "Net assets" are the insurer's total net assets (regulatory basis) as indicated in cell F34 of the tab "RBS – Other Liab" (or, for long-term insurers, cell F126 of tab "Regulatory Balance Sheet") in the insurer's last Electronic Return submitted to the authority in accordance with Regulation 17 of the Insurance Regulations 2021. If the insurer has calculated its SCR subsequent to that submission, or has not yet needed to make a return to the Authority under Regulation 17, the insurer should use its total net assets (found in the same cell of the corresponding Electronic Return template) in its most recent calculation of SCR. Nothing in this paragraph requires an authorised insurer to disclose any matter subject to legal professional privilege. (Legal professional privilege would not prevent an authorised insurer from reporting basic facts of an insurance claim against it by way of business, such as the fact that a claim exists and the amount of the claim, or from including the claim within any applicable regulatory financial reporting.)	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
Any event which would give rise to a claim under a compensation scheme established by Regulations under section 43 of the Act.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such event.

Any material breach by the insurer of any of the regulatory requirements applicable to the insurer. Where an authorised insurer gives a notification under this paragraph, it must also inform the Authority of the steps which it proposes to take to remedy the situation. In this table "regulatory requirements" means any regulatory requirements that are applicable to the insurer including— a) the limitations applicable to the class or classes of authorisation held by the insurer; b) any— (i) condition of authorisation; (ii) direction; or (iii) other requirement, given or imposed by the Authority; c) the following, so far as applicable to the insurer— (i) any provision of the Act; (ii) any provision of regulations made by the Authority under the Act or any other legislation; (iii) any material breach of the CGC or any other binding guidance issued under the Act; (iv) Anti-Money Laundering and Countering the Financing of Terrorism Code 2019, and any successor; (v) any other relevant code of practice under section 157 of the Proceeds of Crime Act 2008 or section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014; and (vi) any other provision having effect under or by virtue of the Act.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such breach.
The insurer— a) has reason to believe that a controller, director or employee of the insurer has been engaged in activities involving fraud or other dishonesty; b) becomes aware of any circumstances which may amount to fraud or serious mismanagement in the conduct of its business; or c) becomes aware of any fraud by a third party that could be material to the insurer's safety and soundness or reputation. A notification under this paragraph must— (i) specify the event; (ii) specify the name of any employee who is a controller or director or employee of the insurer	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.

whose appointment in respect of the insurer is required to be notified to the Authority; (iii) for any other employee of the insurer, following an investigation which results in the insurer concluding that the employee has been engaged in activities involving fraud or other dishonesty, the insurer must disclose the name of that employee to the Authority.	
Any action of the following kinds taken against a controller, director or employee of the insurer (whose appointment in respect of the insurer is required to be notified to the Authority) by a professional body of which that person is a member— a) an inquiry into that person's professional conduct; b) the termination of that person's membership; c) any disciplinary action against that person; or d) any censure of that person's conduct.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
A material breakdown of administrative or control procedures relevant to any of the insurer's business (including breakdowns of computer systems or other accounting problems resulting, or likely to result in, failure to maintain proper records) or other material failures or weaknesses in systems and procedures. A notification under this paragraph must also inform the Authority of the steps which the insurer proposes to take to remedy the situation.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such circumstance.
Any event which makes it impracticable for the insurer to comply with any of the legal or regulatory requirements applicable to the insurer. A notification under this paragraph must also inform the Authority of the steps which the insurer proposes to take to remedy the situation	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such event.
The appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the insurer or any associated company of the insurer.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such appointment.
The imposition of disciplinary measures or sanctions on the insurer or any associated company of the insurer, in relation to its business, by any statutory or other regulatory authority	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such imposition.
An application by the insurer or its immediate parent or subsidiary for authorisation to carry on an activity in any country or territory outside the Island which, if carried on in the Island, would be insurance business; and any— a) refusal of any such application; or	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such

b) revocation of any such authorisation of the insurer or such parent or subsidiary.	application, refusal or revocation.
The material loss of consumer or other data relevant to the insurer.	The insurer must notify the Authority of that fact as soon as is practicable after it becomes aware of such loss.
Any appeal made by the insurer to a tribunal against any decision or action taken by the Authority.	The insurer must notify the Authority of that fact as soon as is practicable after deciding to make such an appeal.