

Module C Unit 4C

Step plan for company formation and licencing

Purpose

At the end of this unit the participant should be able to demonstrate an appreciation of the processes and time line required to incorporate the company, obtain an insurance licence in Guernsey, and to be ready to commence writing insurance business.

It is not expected that you memorise the step plan but rather gain an appreciation of the importance of each step and the need to follow the chronology as set out in the plan provided.

Assumed knowledge

None

Summary of learning outcomes
1. Describe the likely time frame for the establishment and licencing of a Guernsey (re)insurance company.
2. Describe the order in which various actions must be undertaken.
3. Explain who has responsibility for delivery of each step of the plan

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In the appendices you will find the Step Plan for the formation and licencing of an insurer in Guernsey. This is a quite a complex process and when undertaking this process it needs to be given close attention as failure to address the steps in the correct order or in a comprehensive manner could lead to considerable delays in the necessary approvals and commencing writing business.

It is wise to allow as much time as practically possible for this process. The time line shown on the Step Plan is for guidance only.

4.0 Week 1

4.0.1 Company Name

It is important to agree the name for the company early in the process. The shareholder does not always want the name of the parent organisation reflected in the (re)insurance company name. It is a requirement that the word Insurance, Reinsurance or Re appears in the name. If it is a PCC or ICC this must also appear in the name of the company immediately following the word Insurance, Reinsurance or Re.

The GFSC must grant approval for the name selected.

4.0.2 Ownership structure

It is important to understand the ownership structure that the shareholder wants to have in place. Sometimes the (re)insurance company's shares will be held by a Holding Company or a company other than that at the top of the shareholders group structure. The Manager must undertake due diligence and hold certain documents on file for both the entity which is to be the immediate shareholder of the (re)insurer (the parent company) and the ultimate shareholder of the parent company.

4.0.3 Tax residency

The shareholders of most Guernsey (re)insurers will want the company to be tax resident in Guernsey which will mean that board meetings must take place in Guernsey and mind and management is to be in Guernsey. See Unit 14 for more information on Tax Substance.

Occasionally the shareholder will want the (re)insurer to be tax resident in the same territory as the shareholder. In order to achieve this mind and management must take place in that territory and as such board meetings must be held there.

If the tax residency is to be outside of Guernsey there is an application to be made to the Guernsey Revenue Service in that regard.

NB whilst mind and management can be outside of Guernsey all Core Income Generating Activities (CIGA), effectively the assessment and pricing of risk, aka Underwriting, (See Unit 14) must be undertaken in Guernsey otherwise the board risk undertaking an activity in a territory other than Guernsey where they are not appropriately licensed to do so. This is often achieved by appointing an Underwriting Committee which can meet in Guernsey to take decisions on all matters of CIGA.

4.0.4 Selection of directors from the parent company

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The reason for making this selection in the first week is that they must complete and submit a Personal Questionnaire (PQ) to the GFSC who must then grant approval of those directors. This process can take as much as six weeks to complete. Please see link to the GFSC website where you will find a PQ. It is recommended that you review this to gain an understanding of what is required of the proposed directors.

4.0.5 Selection of Independent Non-Executive Directors (INED)

The Manager will normally provide the shareholder with some recommendations and CV's for the position of INED. There is a requirement for there for not less than one INED and it is common to have two or more. The INED must be independent of both the shareholder and the Insurance Manager. The INED proposed are often already approved by the GFSC and as such there is not the same time pressure on their selection as there is for the directors from the parent company.

4.0.6 Selection of formation lawyers

It is necessary to appoint a firm of Guernsey lawyers to deal with the formation of the company. They will require the same due diligence that the Manager has collected and will also require a letter of appointment to be completed by the parent of the (re)insurer.

4.0.7 Accounting, Reporting and Audit

A decision needs to be taken on the Accounting Standard under which the accounts of the company will be prepared. Most commonly UK GAAP or IFRS for a Guernsey insurer but occasionally other standards are used such as US GAAP.

The base currency in which the accounts are to be presented must be chosen. Most commonly GBP, Euro or USD.

The first financial year end must be chosen. This is usually aligned with the parent company year-end for ease of consolidation of the (re)insurers results into the parent organisations accounts.

The auditors must be selected and a letter obtained confirming their consent to act for the company.

4.0.8 Banking and Investments

The company will need to open a bank account into which it can receive the capital of the company. As this stage only one bank will need to be chosen. It is common for other banking relationships to be established once the company is operational.

Opening a bank account is a process that can take some time to complete so it is wise to begin to address this in week one.

At this stage it will be important to determine who will have signing authority over the account so that the bank mandate can be completed for submission with the account opening application forms.

4.1 Week 2

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This week is principally focused on completion and submission of the licence application to the GFSC.

This is undertaken in the second week as many of the actions undertaken in the first week need to be completed in order for the application form to be completed.

The application must be accompanied by a letter from the intended auditors confirming their willingness to act, the business plan for the company and the GFSC statutory solvency calculations based upon the business plan and proposed level of capitalisation.

The licence application fee must also be paid.

Please see appendices and the link below for examples or for access to the above mentioned documents.

4.2 Weeks 3 & 4

This may be used to interview the prospective INEDS and agree their appointment.

Once selected the directors are required to sign a willingness to act letter that will confirm that there are no reasons that prevent them from acting as a director of the company.

4.3 Week 8

By week 8 the GFSC should have issued a minded to letter which will state that, subject to certain further matters, such as a copy of the Articles of Incorporation, Certificate of Incorporation and confirmation of capital having been received by the company, the GFSC is minded to approve the licence application. This letter is the trigger for the company to be incorporated and the appointed lawyers will guide the shareholder through the incorporation process with the Guernsey Registry.

4.4 Week 9

Once the company has been formed an application with the chosen bank to open the account can be finalised and the capital can then be paid up by the shareholder.

Proof of payment is to be sent to the GFSC together with the now issued Articles of Association and Certificate of Incorporation.

All being well the Insurance Licence will now be issued.

4.5 Week 10

Before the company can commence writing business there are many formalities to be completed and these are addressed during the first board meeting of the company. See Unit 4B 4.9 for an agenda for this first board meeting.

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It is strongly recommend that you visit the GFSC website and review the licence application forms and Personal Questionnaire (PQ) forms so that you gain a full understanding of the information which must be provided to the GFSC. Please see link below.

<https://www.gfsc.gg/authorisations/insurance-applications/licensed-insurers>

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Self-test questions

Answering these questions will remind the participant as to what has been learnt. Once completed, please check your answers against the relevant text.

1. What is a reasonable time frame in which to establish and licence a Guernsey (re)insurer?
2. When do you need to have confirmation of the auditor's willingness to act?
3. What due diligence information is required from the directors? NB you will probably need to talk with your compliance team to gather the answer to this.
4. When does the name of the company need to be approved and by whom?

Summary of learning outcomes

1. Describe the likely time frame for the establishment and licensing of a Guernsey (re)insurance company.
2. Describe the order in which various actions must be undertaken.
3. Explain who has responsibility for delivery of each step of the plan