Module D Unit 5

GUERNSEY LAW

Purpose

The end of this unit the participant should be able to demonstrate an understanding of the key elements and requirements of the Insurance Business (Bailiwick of Guernsey) Law, 2002

Assumed knowledge (if applicable)

None

Summary of learning outcomes
1. State the minimum criteria for licencing.
2. State the requirements for appointment of the Board of Directors, General Representative and Auditor.
3. Explain the different requirements of the law in respect of Long Term (Life) business compared with General Insurance
4. State the Minimum Capital Requirements

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Introduction

Since 1987 all insurers and reinsurers writing business within the Bailiwick of Guernsey have been subject to the Guernsey insurance law and 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 original 1986 law was replaced in 2002 by the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the "Law"). This Law has been amended on a number of occasions the most recent being on 1 November 2021.

5.0 PURPOSE

The purpose of the Law is to establish minimum standards for the carrying on of insurance in Guernsey.

5.1 AUTHORISATION

The definition of insurance in the Law includes reinsurance and accordingly all references to insurance or insurers in this Unit may equally apply to reinsurance and to reinsurers. Any person 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 ("Commission") for a licence.

There are two main types of insurers licensed in Guernsey, international insurers and domestic insurers:

a) international insurers, which mainly underwrite non-local insurance risks: pure captive insurers and commercial insurers and
b) domestic insurers, mainly underwrite insurance risks within the Bailiwick of Guernsey.

This Course is only concerned with international insurers.

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. Other than in the case of a Protected Cell Company, a single company cannot be licensed to conduct both long term and general insurance business (a "composite insurer").

5.2 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 Law, and the means by which the applicant will comply with all other requirements of the 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, with professional skill appropriate to the nature and scale of the activities of the applicant 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 the 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) at least two individuals are appointed, independent of each other and with appropriate standing and experience to direct its insurance business;
d) the applicant will conduct its insurance business in a prudent manner including maintaining sufficient capital base in an amount which the Commission considers appropriate; and
e) the applicant will maintain adequate capital, insurance cover and liquidity.

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.

Once a licence has been issued it continues to be valid until it is revoked by, or surrendered to, the Commission.

5.3 DIRECTORS AND GENERAL REPRESENTATIVE

With regard to the composition of the Board of Directors, the Law requires that the board of directors of an applicant includes at least one independent non-executive director (i.e., not connected to the insurer's shareholders or the appointed manager (if any) unless the Commission has agreed in writing to waive this requirement.

In addition, and this is not enshrined in the Law, the Commission expects there to be appropriate control and oversight from the Bailiwick of Guernsey over all of an insurer's banking and treasury arrangements. The Commission typically dictates that all banking mandates should contain the requirement of at least one local resident signatory on all transactions.

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:

a) 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
b) 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.

5.4 SUPERVISED ROLES

A person who is appointed as a director or a general representative is deemed to be the holder of an "approved supervised role". A person may not become a holder of such a role without giving prior notice to the Commission and receiving written confirmation that the Commission has no objection.

A person who is appointed as a money laundering reporting officer, money laundering compliance officer, compliance officer, an actuary or an "other supervised manager" (a person who under the immediate authority of a director exercises day to day managerial functions in relation to insurance business for the insurer) is deemed to hold a "vetted supervised role". A person may not become a holder of such a role without giving prior notice to the Commission and receiving written confirmation that the Commission has no objection. However, if the Commission has not responded within 60 days then written confirmation will be deemed to have been given.

A person who is appointed or becomes a significant shareholder, a company secretary or an auditor is deemed to hold a "notified supervised role". Where any person becomes or ceases to hold a notified supervised role written notice must be given to the Commission within 14 days.

5.5 FINANCIAL REQUIREMENTS

- **Minimum Capital**

The minimum statutory capital requirement (“Capital Floor”) is currently £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 levels of capital that are higher than the minimum.

- **Margin of Solvency**

Licenced 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 (as defined in the Insurance Business (Solvency) Rules and Guidance, 2021) over the value of its liabilities.

The Commission also requires insurers to determine and justify their own margin of solvency, subject to the minimum amounts specified above and provides guidance on how this it to be calculated in the Insurance Business (Solvency) Rules and Guidance, 2021.

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.

- **Minimum shareholders’ funds**

Every insurer must maintain shareholders’ funds (i.e., assets in excess of liabilities) of at least 75% of the Capital Floor.

5.6 APPOINTMENT OF ACTUARY

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

5.7 ANNUAL ACCOUNTS

An insurer must keep accounting records in the Bailiwick which are sufficient to show and explain the insurer’s transactions and which:

a) disclose with reasonable accuracy, at any time, the state of affairs of the insurer; and
b) enable the insurer to prepare annual financial statements.

An insurer must prepare accounts each year and must provide these to the Commission within 4 months after the end of the financial period. The accounts must:

a) be prepared in accordance with Recognised Accounting Standards (the Standards used must be stated);
b) give a true and fair view of:
    i. the insurer’s state of affairs at the balance sheet date; and
    ii. its profit or loss for the financial period ending on that date.

5.8 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. The Commission maintains a list of Approved Auditors.

Where an appointment comes to an end the insurer must advise the Commission and explain the reasons. The insurer has 28 days to find a replacement.

The insurer must advise the Commission if an auditor signs a qualified audit report.

5.9 ANNUAL RETURN

Each financial year and/or as prescribed by the Commission an insurer must prepare a return comprising:

a) an up-to-date business plan;
b) a calculation of the insurer's capital resources calculated in accordance with Rules issued by the Commission;
c) a declaration of reliance on reinsurers;
d) a 12 month financial forecast;
e) audited accounts
f) a copy of the auditors' management letter or confirmation from the general representative that no management letter has been issued;
g) a certificate signed by the general representative (or other prescribed person) confirming that:
   - the insurer has complied with the capital resources requirements per the Commission's rules throughout the period;
   - the insurer has complied with the insurer's code of conduct rules, or any other code issued under the Law throughout the period;
   - the insurer has complied with this Law and any other relevant laws throughout the period;
   - that the accounts have been prepared in accordance with the Law;
   - that, where applicable, the actuarial report has been prepared in accordance with the Law;

h) the names and other prescribed particulars of the holders of supervised roles or the officers or the employees of the insurer;
i) the number of staff employed;
j) the number of policyholders and clients either in total or split by different classes or descriptions of insurance;
k) the insurer's estimate of the value of assets held by it or on its behalf;
l) any other information or documentation prescribed by the Commission.

5.10 SIGNIFICANT SHAREHOLDING

A person proposing to obtain an equity interest of 15% or more in an insurer must obtain the consent of the Commission before doing so. This also applies if a person proposes to increase his holding by 5% or any successive percentage. Approval will be deemed to have been given if the Commission has not responded within 60 days of notification. Where there is a reduction in a significant shareholding until the shareholding is less than 15% the Commission must be notified.

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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 are the two main licence classes of (re)insurers in Guernsey? 2. Provide an explanation of two Minimum Criteria for licencing? 3. Does the Insurance Law allow for corporate directors of an insurer? 4. It is recommended you visit the GFSC website and looked through the section on Insurance to gain a general feel for the content available on the site.

Summary of learning outcomes
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