



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Authorisation Guidance

For applicants for authorisation under the Insurance Act 2008

30 June 2022

This document is guidance issued under section 34 of the Insurance Act 2008. It is intended to help those who conduct, or wish to conduct, regulated insurance activities to understand the Authority's authorisation process and requirements. It also continues to apply to authorised insurers, being persons that already hold an insurance authorisation. The Authority cannot provide legal advice. Applicants should seek appropriate legal advice on their particular circumstances.

Contents

Glossary.....	3
1. Introduction	4
2. Submission of the application.....	4
3. Structure and organisation of the applicant.....	5
3.1 Structure.....	5
3.2 Applicants that are part of groups	5
3.3 Applicants that are companies under the Companies Act 2006	5
3.4 Ownership by a trust or foundation.....	6
3.4.1 Trust	6
3.4.2 Foundation	7
4. Fit and proper test	7
5. Real presence.....	8
5.1 Board composition	8
5.2 Outsourcing	9
6. Decision on the application	10
6.1 Indicative timescales	10
6.2 Section 33 requirements and conditions	11

Glossary

The Act	Insurance Act 2008
The Authority	Isle of Man Financial Services Authority
CGC	the Corporate Governance Code of Practice for Insurers 2021, or its successor
Fully funded	an applicant that maintains sufficient acceptable financial resources, at all times, to cover the larger of its current, or proposed future, year's aggregate annual limit plus an amount to cover any known outstanding loss reserves and incurred but not reported reserves
Fully managed	an applicant that outsources all of its day to day management to a registered insurance manager
Long-term	those applicants proposing to hold classes 1-2 or class 10 authorisation or classes 1-2 or class 10 within class 12
Non long-term	those applicants proposing to hold any class of authorisation not included within the definition of long-term, except class 13
Registered insurance manager	an insurance manager which is registered under Part 6 of the Act
Regulated insurance activities	the insurance activities in respect of which this application is being made
Section 33 requirement	a requirement to take one or more action(s) or refrain from taking such action(s) under Section 33 of the Act

1. Introduction

The Authority regulates and supervises persons undertaking regulated insurance activities under the Act.

A company, a cell or limited partnership situated in the Island carrying on, or holding itself out as carrying on, insurance business in or from the Isle of Man is required to be authorised under section 8 of the Act. The Authority may also issue a permit, under section 22 of the Act, to a foreign insurer, upon application to Authority, if carrying on any class of insurance business in a country other than the Island in accordance with the laws of that country. The applicant should be familiar with all statutory provisions applicable to insurance businesses in the Isle of Man, details of which are found on the Authority's website – www.iomfsa.im.

2. Submission of the application

Initially, the applicant should contact the Insurance and Pensions Division of the Authority for a preliminary meeting to discuss the application (long-term: life@iomfsa.im or non long-term: non-life@iomfsa.im).

Subsequent to a preliminary meeting, the applicant is required to submit a completed authorisation application form with all necessary supporting documentation, including a business plan, and the relevant [application fee](#). The application forms can be found on the Authority's website: www.iomfsa.im.

The applicant is required, at least, to:

- (i) Have sound business and financial plans;
- (ii) Have a corporate or group structure that does not hinder effective supervision (see section 3);
- (iii) Establish that the applicant's board members, both individually and collectively, senior management, and key persons in control functions are suitable (see section 4);
- (iv) Have a suitable governance framework; and
- (v) Satisfy capital requirements.

Support for the above requirements should be provided within, or enclosed with, the business plan (refer to the [Business Plan Guidance](#) for further information).

The Authority is not responsible for delays arising from the submission of incomplete, inaccurate or changing applications. During the processing of any application, two-way communication with the Authority is essential. This dialogue will allow the processing team to gain a better understanding of the business, which may speed up the application process and vice versa.

If an applicant makes material changes to its application, the applicant should submit a revised application form and supporting information incorporating all of the changes and clearly highlighting where changes have been made and explaining where necessary.

If the authorisation process is not completed within 6 months of the submission of the original application due to outstanding items required from the applicant, then the Authority can require a new application, a further application fee and updated supporting documentation.

The circumstances of each applicant will not be identical. The Authority examines all relevant matters and considers each application on its own merits. All applications will be subject to risk assessment by the Authority and may, as a consequence, be made subject to conditions¹ or requirements² of authorisation.

3. Structure and organisation of the applicant

3.1 Structure

The ownership structure of an applicant should be as simple and transparent as possible and must not inhibit the Authority's supervision of the authorised applicant. If an ownership structure appears to be unduly complex and/or appears to lack transparency, the applicant must explain and justify the rationale for the structure.

The applicant's structure should identify:

- Ultimate beneficial owners of the applicant;
- The persons who exercise control over the appointment of the senior management team (directors and controllers);
- The senior management team; and
- Persons in Controlled Functions and any other key persons.

As the exercise of options over shares within the ownership structure can impact on the applicant's controlling interests, the Authority requires to be notified of any existing options and may wish to consider the terms of any such options.

3.2 Applicants that are part of groups

The Authority will supervise an authorised insurer on both a solo and consolidated basis, where applicable. Where an authorised insurer is part of a group, the Authority may want to assess the whole group – such assessment would be tailored to the insurer's and group's specific circumstances. This means that the Authority reserves the right to ask for information about other group entities from the applicant, other regulators and, if necessary, the group entities themselves.

3.3 Applicants that are companies under the Companies Act 2006

To ensure appropriate levels of public disclosure, an authorisation issued to a 2006 Act company will be subject to the following conditions:

- (i) Maintain in force an election under section 203 (filing of the register of members) of the Companies Act 2006;

¹ Refer to Section 8 of the Act

² Refer to Section 33 of the Act

- (ii) Register, under Section 138 (registration of charges) of the Companies Act 2006, any charges created over its property.
- (iii) Maintain up to date copies of the minutes of meetings and resolutions respectively of its directors, members, committees of directors and classes of members, at its business premises in the Isle of Man or at the office of the its registered agent;
- (iv) Notify the Authority as it becomes aware of any intention of its registered agent to resign as its registered agent;
- (v) Have only natural persons as directors; and
- (vi) Without prejudice to any other applicable regulatory requirement, have at least two directors.

The following additional conditions may also be applied:

- (i) Advance approval from the Authority prior to any restructuring including any reductions in share capital;
- (ii) Advance approval from the Authority prior to any merger, consolidation or amalgamation; and
- (iii) Advance approval from the Authority prior to re-registering as a 1931 Act company.

3.4 Ownership by a trust or foundation

3.4.1 Trust

In considering an application involving a trust in the ownership structure, the Authority will examine the trust deed or other document relating to its establishment and any other documents it considers relevant (e.g. the settlor's letter of wishes, deeds of appointment etc.). In addition, the applicant must provide full details of the rationale and commercial reasons which justify the use of the trust in its ownership structure as well as the details of persons directly or indirectly involved with the trust arrangements.

The applicant must satisfy the Authority that all 'influential parties' to that trust meet the fit and proper criteria. 'Influential parties' are likely to be considered to be in the Controlled Functions of controller (R1 or R3) or otherwise key persons (R10)³, and include:

- The trustee(s); and
- Any person (in relation to the applicant, its administration or ownership) that the trustee(s) turn to for guidance, views or advice, or to whom they are obliged, instructed or requested to turn to for advice or instructions, or on whose directions or instructions they are accustomed to act (other than a person advising purely in a professional capacity); and possibly
- The settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

The Authority should be notified about any subsequent changes to the trust deed or other document relating to the trust's establishment and/or changes to the 'influential parties'.

³ See Regulatory Guidance – Fitness and Propriety

3.4.2 Foundation

In considering an application involving a foundation in the ownership structure, the Authority will examine the foundation instrument and the foundation rules and any other document relating to the foundation's establishment, or that the Authority considers relevant. In addition, the applicant must provide full details of the rationale and commercial reasons which justify the use of the foundation in its ownership structure as well as the details of persons directly or indirectly involved with the foundation arrangements.

The applicant must satisfy the Authority that all relevant 'influential parties' in relation to the foundation meet the fit and proper criteria. 'Influential parties' are likely to be considered to be in the Controlled Functions of controller (R1 or R3) or otherwise key persons (R10)⁴, and include:

- The members of the Council of a Foundation; and
- Any person (in relation to the applicant, its administration or ownership) that the Council members turn to for guidance, views or advice, or to whom they are obliged, instructed or requested to turn to for advice or instructions, or on whose directions or instructions they are accustomed to act (other than a person advising purely in a professional capacity); and possibly,
- The founders, dedicators, enforcers and beneficiaries of the foundation, depending on their formal powers and/or level of influence over the Council.

The Authority should be notified about any subsequent changes to the foundation instrument or rules or other document relating to the foundation's establishment and/or changes to the influential parties.

4. Fit and proper test

Before granting an authorisation, the Authority must be satisfied that the applicant is fit and proper to undertake the regulated activity. The fit and proper test will be applied to the business as a whole and also to the persons responsible for the management and control of the business (including owners) and key persons (persons in Controlled Functions).

The fit and proper test is an initial test (at authorisation) and a continuing test (in the ongoing conduct of the regulated activities). The Authority can take regulatory action if an authorised insurer does not continue to satisfy the fit and proper criteria.

It is for the applicant and relevant persons to satisfy the Authority that they are fit and proper, rather than the Authority to prove that the applicant and relevant persons are not fit and proper.

As part of the fit and proper test, the Authority considers:

- (i) The applicant's integrity, competence, financial standing, structure and organisation (both internally and from a group perspective);
- (ii) The integrity, competence and financial standing of the applicant's controllers, directors and persons in Controlled Functions;

⁴ See Regulatory Guidance – Fitness and Propriety

- (iii) The nature of the business the applicant proposes to carry on;
- (iv) The applicant's ability to comply with relevant legislation and regulations; and
- (v) The risk posed by the applicant to the stability of the Isle of Man financial system.

The Authority will scrutinise the adequacy of the proposed management arrangements in detail. Significant weight will be given to an application which is fully managed. If an application is not fully managed, there may be a more lengthy approval process, and the Authority will expect the proposed control function role holders to demonstrate an in depth level of knowledge and experience in managing an insurer in order for the Authority to be satisfied that they are capable of meeting the competency requirements under the fit and proper test.

In assessing the fitness and propriety of a controller that is not an individual the Authority will consider that entity's business activities, its financial standing and the integrity, competence and financial standing of its directors and its controllers.

The Authority has set out the criteria it will normally apply in considering fitness and propriety in the [Regulatory Guidance – Fitness and Propriety](#) and the [Training and Competency Framework](#).

5. Real presence

The Authority will expect the applicant to have established a real presence and an adequate number of employees on the Isle of Man to ensure that, once authorised, it will be appropriately managed and controlled in the Island and so that it can undertake the regulated activity for which it seeks an authorisation.

Although the Authority will not authorise a business that is a mere shell without real presence, it may authorise an applicant where the applicant on its own does not fully meet the real presence test if the applicant's regulated activity will be managed in the Island by a registered insurance manager.

The governance and control requirements for an authorised insurer are outlined in detail in the CGC. Applicants will be required to demonstrate that they will meet the requirements of the CGC as well as other regulatory requirements.

5.1 Board composition

Without limiting the requirements outlined in the CGC, the Authority expects a long-term and not fully managed non long-term non-class 12 authorised insurer, as a minimum, to have –

- A Chief Executive Officer, or equivalent, resident in the Isle of Man;
- A Chief Financial Officer; and
- Two independent Non-Executive Directors.

Fully managed non long-term non-class 12 authorised insurers are expected, as a minimum, to have –

- Two independent Non-Executive Directors.

Consideration will be given to Executive Directors having other responsibilities, for example within group, but applicants will need to demonstrate:

- Sufficiency of resource; and
- That any potential conflicts have been considered and addressed.

5.2 Outsourcing

The Authority will give consideration to applications where an applicant considers it appropriate, as part of its proposed business model, to outsource certain significant activities or functions. Applicants are required to retain the same degree of oversight and accountability for any outsourced activity or function as would apply if the activity was not outsourced. Such oversight and control is required to be exercised from the Isle of Man.

In accordance with the CGC, where the board of an applicant delegates any of its activities or functions in relation to the applicant, it must do so in a manner that does not –

- Dilute its ultimate accountability in relation to the applicant; and
- Reduce its ability to discharge properly its duties and responsibilities or carry out its activities and functions in relation to the applicant.

Where an application for authorisation includes proposals for outsourced activities or functions, either to group or other third parties, scrutiny will be given to the proposed oversight of these activities or functions in line with these principles.

Specific consideration will also be given to the proposed arrangements for the following activities:

- (i) New business processing and the determination of terms;
- (ii) The acceptance and maintenance of all insurance contracts;
- (iii) The processing of claims and policy redemptions;
- (iv) Statutory reporting, financial and actuarial (as applicable);
- (v) The management and collection of premiums; and
- (vi) Bank account and cash control.

The Authority will also seek to ensure that applicants are capable of managing all risks locally. This means that the risks associated with the business of the applicant will be governed, managed and mitigated by the board of the applicant. As part of the risk management system, the Authority will therefore expect a well-designed internal control framework commensurate with the nature, scale and complexity of the business model.

Important Note:

The substance requirements set out in this section are restricted to those that will be considered as part of an application to carry on insurance business. They are not intended to provide guidance on requirements for economic substance for tax residency, which is published separately⁵.

⁵ <https://www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/economic-substance/>

6. Decision on the application

The Authority will advise the applicant in writing whether or not authorisation will be granted and, where relevant, any conditions or requirements that will be imposed. If the decision is not to grant authorisation the applicant will be advised of the reasons, to assist the applicant should it wish to make a new application.

Once an authorisation decision has been determined, the applicant should fulfil any 'subject to' matters expeditiously and at the latest within 3 months. If these matters are not fulfilled within 3 months, the Authority may consider an extension of time, depending on the circumstances. However, it is also possible that the Authority may require a new application to be made. Where a new application is required the relevant application fee is also payable.

An authorised insurer is expected to start its regulated activities within 6 months of the date on which an authorisation is issued unless the Authority has agreed otherwise in writing. An authorised insurer must notify the Authority if it has not started regulated activities within 4 months of the authorisation date.

6.1 Indicative timescales

The Authority will look to complete its consideration of the application within the following indicative timescales:

- Long-term applicant – 6 months
- Non long-term non class 12 applicant – 3 to 6 months
- Class 12 applicant – 6 weeks to 3 months.

The indicative timescales are dependent upon receipt of an application that the Authority deems to be complete and are subject to a number of factors including:

- Satisfactory completion of the fitness and propriety process; and/or
- Receipt of any inter-regulatory communications; and/or
- The nature of the application; and/or
- The quality of the application.

The Authority may consider an accelerated timescale of 4 to 6 weeks for completion where the applicant is lower risk. The indicators of a lower risk applicant may include any combination of the following:

- A pure related party class 12 insurer/reinsurer (i.e. not including informed consent and de minimis);
- A pure related party class 12 (direct or indirect) authorised cell of an insurance manager sponsored protected cell company;
- Fully funded;
- Fully managed by an established registered insurance manager; and
- Nature of the insurance business written.

The accelerated timescale will only apply with prior written agreement from the Authority. It should be noted that the Authority will take into account the past performance of an insurance manager in relation to applications and associated matters in determining whether to approve an accelerated timescale.

6.2 Section 33 requirements and conditions

The Authority may impose Section 33 requirements or conditions upon authorisation. For new authorisations, these may include restrictions on the applicant for a number of years from authorisation (usually a minimum of 3 years). The extent of any Section 33 requirements or conditions will take into account a number of factors including:

- How well developed the risk management systems are at the date of application and authorisation; and/or
- The nature of the insurance business; and/or
- Legal structure of the company; and/or
- The quality of the application.