The DFSA Rulebook

Prudential – Insurance Business Module

(PIN)

1 APPLICATION

1.1 Application

1.1.1 Subject to Rule 1.1.2, this module (PIN) applies to every Insurer except to the extent that a provision specifies a narrower application.

Guidance

1. An Insurer is defined in the GLO as an Authorised Firm which is authorised under its Licence to carry on in or from the DIFC, one or more of the Financial Services constituting Insurance Business.

2. A Person will not be granted a Licence authorising it to conduct Insurance Business unless, amongst other things that Person is either:

   a. a limited liability company incorporated under the Companies Law 2004, including a Protected Cell Company; or

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   b. a body corporate incorporated with limited liability under the laws of a jurisdiction other than the DIFC.

3. The Rules in PIN apply in relation to all activities of an Insurer, whether carried on within the DIFC or elsewhere.

1.1.2 Chapters 2, 3, 4, 6, 7 and 9 do not apply to an Insurer that is an Authorised ISPV, unless expressly provided otherwise.

2 MANAGEMENT AND CONTROL OF RISK

2.1 Introduction

2.1.1 This chapter applies to every Insurer.

Guidance

1. All Authorised Firms are subject to the systems and controls provisions of GEN chapter 5. This chapter expands on the relevant requirements of GEN as those provisions apply in the context of an Insurer.

2. App2 contains guidance for Insurers in respect of specific areas of risk management that are of particular relevance to Insurers.

2.2 Risk management

2.2.1 An Insurer's risk management systems must:

(a) be appropriate to the size, business mix and complexity of the Insurer's operations; and

(b) address all material risks, financial and non-financial, to which the Insurer is likely to be exposed.

2.2.2 The risk management systems maintained by an Insurer must include:

(a) a written risk management strategy approved by senior management, which in the opinion of senior management addresses all material risks to which the Insurer is likely to be exposed;

(b) risk management policies and procedures that in the opinion of senior management are adequate to identify, assess, mitigate, control, monitor and report on the material risks to which the Insurer is exposed; and

(c) clearly identified managerial responsibilities and controls, designed to ensure that the policies and procedures established for risk management are adhered to at all times.

2.2.3 Subject to Rule 2.2.4, where an Insurer is a member of a Group, the Insurer must take reasonable actions to ensure that the Group as a whole complies with the requirements of Rule 2.2.1 and 2.2.2 as though the Group as a whole were an Insurer.

2.2.4 Rule 2.2.3 does not apply in respect of a Group where the Insurer is not the Holding Company and where the Holding Company of the Group is:

(a) another Insurer; or

(b) a Subsidiary of another Holding Company.

Guidance

The effect of Rule 2.2.4 is to avoid duplication arising from complex Group structures. If an Insurer is a member of a Group whose Holding Company is another Insurer, the first Insurer need not apply Rule 2.2.3 in respect of that Group, because the Insurer that is the Holding Company is already required to apply that Rule. Where an Insurer is a member of two or more Groups that are also sub-groups of a single Group, the Insurer may consider that single group as a whole for the purposes of this section. An Insurer that is a Holding Company is however still required to apply Rule 2.2.3 in respect of any Group of which the Insurer is the Holding Company.

2.3 Management of particular risks

2.3.1 An Insurer must develop, implement and maintain a risk management system to identify and address balance sheet and market risk, including but not limited to:

(a) reserving risk;

(b) investment risk (including risks associated with the use of derivatives);

(c) underwriting risk;

(d) claims management risk;

(e) product design and pricing risk; and

(f) liquidity management risk.

2.3.2 An Insurer must develop, implement and maintain a risk management system to identify and address credit quality risk.

2.3.3 An Insurer must develop, implement and maintain a risk management system to identify and address the non-financial or operational risk of that Insurer, including but not limited to:

(a) technology risk (including processing risks);

(b) reputational risk;

(c) fraud and other fiduciary risks;

(d) compliance risk;

(e) outsourcing risk;

(f) business continuity planning risk;

(g) legal risk; and

(h) key person risk.

2.3.4 An Insurer must develop, implement and maintain a risk management system to identify and address reinsurance risk. Reinsurance risk refers to risks associated with the Insurer's use of reinsurance arrangements as cedant.

2.3.5 Without limiting the generality of Rule 2.3.4, an Insurer's risk management system in respect of its use of reinsurance arrangements must include the development, implementation and maintenance of a written reinsurance management strategy, appropriate to the size and complexity of the operations of the Insurer, defining and documenting the Insurer's objectives and strategy in respect of reinsurance arrangements.

2.3.6 An Insurer must develop, implement and maintain a risk management system to identify and address Group risk, including but not limited to:

(a) risks associated with:

(i) its relationship with other members of its Group; and

(ii) the activities and adequacy of funding of other members of its Group; and

(b) risks associated with any Associates that the Insurer has.

2.3.7 For the purposes of Rule 2.3.6, an Insurer may:

(a) take into account:

(i) its position within the Group,

(ii) the materiality of the risk to which it is exposed because of its membership of the Group, and

(iii) the access that it has to the systems and controls of other members of its Group and any information produced by them or by Associates; and

(b) consider together Groups whose Holding Companies are all members of the same Group, except for any Group of which the Insurer is the Holding Company.

Guidance

The effect of Rule 2.3.7(b) is that, where an Insurer is a member of two or more Groups that are also sub-Groups of a single Group, the Insurer may consider that Group as a whole for the purposes of this section. An Insurer that is a Holding Company is however still required to give specific consideration to the risks to which it is exposed as Holding Company.

2.4 Record-keeping

2.4.1 An Insurer must maintain records adequate to enable it to:

(a) fulfil its obligations under Contracts of Insurance effected by it; and

(b) demonstrate that it complies with the Rules in PIN.

3 LONG-TERM INSURANCE BUSINESS

3.1 Introduction

3.1.1 This chapter applies to all Insurers.

Guidance

1. This chapter sets out requirements in respect of Long-Term Insurance Business. An Insurer is required to maintain a separate fund in respect of Long-Term Insurance Business or to subject itself to the same restrictions as apply to a Long-Term Insurance Fund.

2. COB part 1 provides that Long-Term Insurance Business conducted by Insurers is limited to reinsurance.

3.2 Establishment of long-term insurance funds

3.2.1 An Insurer that is required, under the provisions of section 3.3, to establish or maintain a Long-Term Insurance Fund in respect of a part of its business must identify separately in its books and records the assets, liabilities, revenues and expenses attributable to that business. Those assets, liabilities, revenues and expenses must be recorded separately and accounted for as a Long-Term Insurance Fund.

3.2.2 Where an Insurer that is not a Protected Cell Company carries on Long-Term Insurance Business that, under the provisions of section 3.3, must be attributed to a Long-Term Insurance Fund, it must either:

(a) establish one or more Long-Term Insurance Funds; or

(b) notify the DFSA in writing that the Insurer is deemed to constitute a single Long-Term Insurance Fund.

3.2.3 When an Insurer that is a Protected Cell Company carries on, through a Cell, Long-Term Insurance Business that, under the provisions of section 3.3, must be attributed to a Long-Term Insurance Fund, it must either:

(a) establish, in respect of that Cell, one or more Long-Term Insurance Funds; or

(b) notify the DFSA in writing that the Cell is deemed to constitute a single Long-Term Insurance Fund.

Guidance

Because of the prohibition set out in COB part 1, Insurance Business of an Insurer that is a Protected Cell Company can only carried out through its Cells.

3.2.4 An Insurer that is not a DIFC Incorporated Insurer, that is subject to a regulatory requirement in another jurisdiction to arrange its affairs in a manner that is equivalent or substantially equivalent to the maintenance of a Long-Term Insurance Fund required by this section, may make a written application to the DFSA for that arrangement of its affairs to be deemed for the purposes of these Rules to constitute a Long-Term Insurance Fund. If the DFSA approves that application, it must inform the Insurer in writing, and must state in its notice to the Insurer the manner in which the arrangement will be deemed for the purpose of these Rules to constitute a Long-Term Insurance Fund.

3.2.5 An Insurer, or a Cell of an Insurer, that is deemed in accordance with Rule 3.2.2(b) or Rule 3.2.3(b) to constitute a single Long-Term Insurance Fund, shall be treated for all purposes relating to these Rules as though the Insurer had established a Long-Term Insurance Fund to which all of the assets and liabilities of the Insurer or of the Cell are attributed.

3.3 Attribution of contracts to a fund

3.3.1 All contracts of Long-Term Insurance effected by a DIFC Incorporated Insurer must be attributed to a Long-Term Insurance Fund.

3.3.2 All contracts of Long-Term Insurance effected by an Insurer that is not a DIFC Incorporated Insurer through an establishment in the DIFC must be attributed to a Long-Term Insurance Fund.

3.3.3 Except as allowed in Rule 3.3.4, an Insurer may not attribute General Insurance contracts to a Long-Term Insurance Fund.

3.3.4 An Insurer may attribute insurance contracts in General Insurance Class 1 or Class 2 to a Long-Term Insurance Fund.

3.4 Segregation of assets and liabilities

3.4.1 All assets, liabilities, revenues and expenses in respect of a Contract of Insurance that is attributed to a Long-Term Insurance Fund must be recorded as assets, liabilities, revenues and expenses of that Long-Term Insurance Fund.

3.4.2 An Insurer may at any time attribute any of its assets to a Long-Term Insurance Fund that were not previously attributed to such a Long-Term Insurance Fund.

Guidance

A transaction described in Rule 3.4.2 is sometimes described as a transfer of capital into the Long-Term Insurance Fund.

3.4.3 All revenues and expenses arising by way of earnings, revaluation or other change to the assets and liabilities of a Long-Term Insurance Fund must be recorded as revenues and expenses, or movements in capital, of that Long-Term Insurance Fund.

3.4.4 An Insurer which is required to maintain a Long-Term Insurance Fund must maintain adequate accounting and other records to identify the contracts and the assets, liabilities, revenues and expenses attributable to the Long-Term Insurance Fund.

3.5 Limitation on use of assets in long-term insurance fund

3.5.1 Except as provided in this section, assets that are attributable to a Long-Term Insurance Fund must be applied only for the purposes of the business attributed to the Long-Term Insurance Fund.

3.5.2 Assets attributable to a Long-Term Insurance Fund may not be transferred so as to be available for other purposes of the Insurer except:

(a) where the transfer constitutes appropriation of a surplus determined in accordance with section 7.3, provided that the transfer is performed within four months of the Reference Date of the actuarial investigation referred to in that Rule;

(b) where the transfer constitutes a payment of dividend or return of capital, in accordance with Rule 3.5.4;

(c) where the transfer is made in exchange for other assets at fair value;

(d) where the transfer constitutes reimbursement of expenditure borne on behalf of the Long-Term Insurance Fund, and in respect of expenses attributable to the Long-Term Insurance Fund; or

(e) where the transfer constitutes reattribution of assets attributed to the Long-Term Insurance Fund in error.

3.5.3 Assets attributable to a Long-Term Insurance Fund must not be distributed by way of dividend or by way of return of capital, except by an Insurer or a Cell that is deemed to constitute a single Long-Term Insurance Fund.

3.5.4 A dividend or return of capital by an Insurer or a Cell that is deemed to constitute a single Long-Term Insurance Fund may only be made where the dividend or return of capital constitutes appropriation of a surplus determined in accordance with section 7.3, and:

(a) if the payment is made within four months of the Reference Date of the actuarial investigation determining that surplus, the payment does not cause the total aggregate amount of the dividends or returns of capital made by the Insurer or the Cell since that Reference Date to exceed the amount of that surplus; or

(b) If the payment is made more than four months after the Reference Date of the actuarial investigation determining that surplus, the payment does not cause the total aggregate amount of the dividends or returns of capital made by the Insurer or the Cell since that Reference Date to exceed 50 per cent of the amount of that surplus.

3.5.5 Assets attributable to a Long-Term Insurance Fund must not be lent or otherwise made available for use for any other purposes of the Insurer or any purposes of any party Related to the Insurer.

3.5.6 An Insurer may not enter into any arrangement, whether or not described as a contract of reinsurance, whereby a Long-Term Insurance Fund of the Insurer stands in the same relation to the Insurer as though the Insurer were the reinsurer in a contract of reinsurance in which the Long-Term Insurance Fund is the cedant.

Guidance

Rule 3.5.6 operates to prohibit reinsurance between Long Term Insurance Funds of the same Insurer, as well as arrangements of the nature of internal contracts of reinsurance where the cession transaction is attributed to a Long-Term Insurance Fund but the corresponding reinsurance acceptance transaction is not.

4 CAPITAL ADEQUACY

4.1 Introduction

4.1.1 This chapter applies to all Insurers.

Guidance

1. The amount of capital is fundamental to the financial health of any insurance undertaking and therefore to the protection of its policyholders. All Insurers are therefore required to maintain a minimum level of capital resources in accordance with this chapter.

2. This chapter establishes minimum required levels of capital resources applicable to Insurers of different types. Section 4.2 establishes provisions that are applicable to all Insurers, wherever they are incorporated and of whatever type they are. Section 4.3 establishes Minimum Capital Requirements in respect of Insurers other than Protected Cell Companies, and section 4.4 establishes equivalent requirements in respect of Protected Cell Companies. Additional provisions are established by section 4.5, in respect of Insurers carrying on Insurance Business of Class 7, by section 4.6, in respect of Insurers maintaining Long-Term Insurance Funds, and by section 4.7, in respect of Insurers that are not DIFC Incorporated Insurers.

3. The DFSA has the power under the Regulatory Law 2004 to act if it believes that any requirement of this chapter is breached, or that it may be breached in the future.

4.1.2 For the purposes of this chapter, assets and liabilities must be valued in accordance with chapter 5.

4.1.3 In this chapter and in the appendices referred to in this chapter, references to ratings are made according to the rating hierarchy (AAA, AA, etc) of Standard & Poor's. Where, for the purposes of a provision of this chapter or of an appendix, an Insurer uses ratings from a Rating Agency other than Standard & Poor's, the Insurer must apply that provision as though the Standard & Poor's rating referred to in the provision were replaced by the rating from that other Rating Agency that is equivalent to the Standard & Poor's rating.

4.1.4 An Insurer must not, for the purposes of this chapter or the appendices referred to in this chapter, use ratings provided by any Rating Agency other than Standard & Poor's, Moody's, AM Best, and Fitch Ratings, except where the DFSA has given written approval to the Insurer for the use of ratings provided by that other Rating Agency.

4.2 Basic requirement

4.2.1 This section applies to all Insurers.

4.2.2 An Insurer must always have capital resources that are, in the opinion of its directors formed on reasonable assumptions, adequate for the conduct of its business, taking into consideration the size of the Insurer and the mix and complexity of its business.

4.2.3 Systems and controls maintained by directors for the purposes of Rule 4.2.2 must include analysis of realistic scenarios relevant to the circumstances of the Insurer and the effects that the occurrences of those scenarios would have on the capital requirements of the Insurer and on its capital resources.

Guidance

Because an Insurer is required to maintain adequate capital resources at all times, its systems and controls need to enable the directors to determine and monitor the capital requirements of the Insurer and the capital resources that it has available, and to identify occurrences where the capital resources fall short of the capital requirements or may fall short in the future. An Insurer is not required to measure the precise amount of its capital resources and its capital requirements on a daily basis. However an Insurer should be in a position to demonstrate its capital adequacy at any time if asked to do so by the DFSA.

4.3 Minimum capital requirement for insurers that are not protected cell companies

4.3.1 This section applies only to Insurers that are not Protected Cell Companies.

4.3.2 An Insurer that is not a Protected Cell Company must always have Adjusted Capital Resources equal to or higher than the amount of its Minimum Capital Requirement.

4.3.3 An Insurer's Adjusted Capital Resources must be calculated in accordance with App3.

4.3.4 An Insurer's Minimum Capital Requirement must be calculated in accordance with App4.

4.4 Minimum capital requirement for insurers that are protected cell companies

4.4.1 This section applies only to Insurers that are Protected Cell Companies.

4.4.2 An Insurer that is a Protected Cell Company must ensure that at all times the Insurer has Adjusted Non-Cellular Capital Resources equal to or higher than the amount of the Minimum Non-Cellular Capital Requirement.

4.4.3 An Insurer that is a Protected Cell Company must ensure that at all times, in respect of each of its Cells, the Insurer has Adjusted Cellular Capital Resources equal to or higher than the amount of the Minimum Cellular Capital Requirement in respect of that Cell.

4.4.4 The Adjusted Non-Cellular Capital Resources in respect of an Insurer that is a Protected Cell Company must be calculated in accordance with App5.

4.4.5 The Minimum Non-Cellular Capital Requirement in respect of an Insurer that is a Protected Cell Company must be calculated in accordance with App6.

4.4.6 The Adjusted Cellular Capital Resources in respect of a Cell must be calculated in accordance with App5.

4.4.7 The Minimum Cellular Capital Requirement in respect of a Cell must be calculated in accordance with App6.

4.5 Insurers that undertake credit and surety insurance business

4.5.1 This section applies only to Insurers that undertake Insurance Business in Class 7.

4.5.2 An Insurer that undertakes Insurance Business in Class 7 must calculate a Class 7 Capital Requirement in respect of that business.

4.5.3 An Insurer that is a Protected Cell Company that undertakes Insurance Business in Class 7 must calculate a Class 7 Capital Requirement in respect of every Cell to which such business is attributable.

4.5.4 The Class 7 Capital Requirement must be calculated in accordance with principles notified to the Insurer by the DFSA.

4.5.5 An Insurer intending to undertake Insurance Business in Class 7 must notify the DFSA in writing before commencing to undertake such business.

4.6 Insurers that undertake long-term insurance business

4.6.1 Subject to Rule 4.6.2, this section applies only to Insurers that undertake Long-Term Insurance Business through a Long-Term Insurance Fund.

4.6.2 This section does not apply to either:

(a) an Insurer that is deemed to constitute a single Long-Term Insurance Fund in accordance with Rule 3.2.2(b); or

(b) an Insurer that is a Protected Cell Company in respect of a Cell that is deemed to constitute a single Long-Term Insurance Fund in accordance with Rule 3.2.3(b).

4.6.3 An Insurer that undertakes Long-Term Insurance Business through a Long-Term Insurance Fund must ensure that at all times, in respect of each Long-Term Insurance Fund maintained by it, the Insurer has Adjusted Fund Capital Resources equal to or higher than the amount of the Minimum Fund Capital Requirement in respect of that Long-Term Insurance Fund.

4.6.4 The Adjusted Fund Capital Resources in respect of a Long-Term Insurance Fund maintained by an Insurer must be calculated in accordance with App7.

4.6.5 The Minimum Fund Capital Requirement in respect of a Long-Term Insurance Fund maintained by an Insurer must be calculated in accordance with App8.

4.7 Availability of assets of insurers incorporated outside the DIFC

4.7.1 This section applies only to Insurers that are not DIFC Incorporated Insurers.

Guidance

The provisions in this section require an Insurer to have assets, of a minimum quality, available to meet its gross Insurance Liabilities arising from its DIFC Insurance Business plus a margin. Although the Insurer is required to cover its Insurance Liabilities gross of reinsurance, an Insurer still has benefit of its reinsurance arrangements because assets may include amounts receivable from reinsurers in respect of gross Insurance Liabilities, including amounts potentially receivable from reinsurers in respect of the exposures reflected in the Insurer's Premium Liability. No credit, however, may be taken in respect of a reinsurer that is Rated worse than BBB.

4.7.2 An Insurer that is not a DIFC Incorporated Insurer must always have assets, of a type referred to in Rule 4.7.3, that are available to meet Insurance Liabilities of the Insurer arising in respect of operations conducted by the Insurer in the DIFC, at least equal to the sum of the following:

(a) the sum of the default risk component and the investment volatility risk component in respect of those assets, calculated according to the methods set out in sections A4.4 and A4.5 respectively, applying those methods so far as concerns those assets only;

(b) Insurance Liabilities of the Insurer in respect of its DIFC Insurance Business;

(c) the amount determined by applying, in respect of any DIFC Insurance Business of the Insurer that is Class 7 Insurance Business, the principles referred to in Rule 4.5.4, taking no account of any reinsurance contracts entered into by the Insurer as cedant in respect of that business; and

(d) the Insurer's DIFC Business Risk Capital Requirement, calculated in accordance with App9.

Guidance

1. Assets are not normally available to meet Insurance Liabilities of an Insurer arising in respect of operations conducted by the Insurer in the DIFC, if those assets are required to meet liabilities of the Insurer in jurisdictions other than the DIFC, except where those liabilities are also Insurance Liabilities of the Insurer arising in respect of operations conducted by the Insurer in the DIFC.

2. Assets are not normally available to meet Insurance Liabilities of an Insurer arising in respect of operations conducted by the Insurer in the DIFC, if those assets are required, under the laws of any jurisdiction, to be located in a jurisdiction other than the DIFC, except where the assets are required to be located in that jurisdiction to meet, or as collateral against, either:

   a. liabilities that are Insurance Liabilities of the Insurer arising in respect of operations conducted by the Insurer in the DIFC; or

   b. liabilities that may arise in the future and that would, if they arose, be Insurance Liabilities of the Insurer arising in respect of operations conducted by the Insurer in the DIFC.

4.7.3 The assets available to an Insurer for the purposes of Rule 4.7.2 may comprise any combination of the following types of asset:

(a) bonds Rated 'BBB' or better;

(b) equities listed on an Approved Stock Exchange;

(c) reinsurance recoverable in respect of General Insurance Liabilities referred to in Rule 4.7.2(b), where the reinsurer is Rated 'BBB' or better; and

(d) land and buildings.

4.7.4 An Insurer subject to this section must demonstrate to the satisfaction of the DFSA that the Insurer complies with Rule 4.7.2, when the DFSA requests it by written notice to do so.

4.8 Failure to comply with this chapter

4.8.1 An Insurer that becomes aware that it does not comply with this chapter:

(a) must immediately notify the DFSA in writing;

(b) must not effect any Contracts of Insurance through an establishment in the DIFC until the DFSA has given it written permission to recommence business;

(c) must not, if the Insurer is a DIFC Incorporated Insurer, effect any Contracts of Insurance until the DFSA has given it written permission to recommence business; and

(d) must not make any distribution of profits or surplus however called or described, or return of capital, without the written permission of the DFSA.

4.8.2 An Insurer that believes that it may not be in compliance with this chapter or may not continue to comply with this chapter in the future must immediately provide the DFSA with a written statement of:

(a) the reasons for the Insurer's belief that it may not be in compliance or may not continue to comply; and

(b) the action that the Insurer is taking to avoid non-compliance.

4.8.3 An Insurer to which Rule 4.8.2 applies must not make any distribution of profits or surplus, however called or described, or return of capital without the written permission of the DFSA.

Guidance

In dealing with non-compliance, or possible non-compliance, with this chapter, the DFSA's primary concern will be the interests of policyholders, both existing and prospective. It recognises that there will be circumstances in which a problem may be resolved quickly, for example by support from a parent company, without jeopardising the interests of policyholders. In such circumstances, it will be in the interests of all parties for there to be minimum disruption to the Insurer's business. The DFSA's normal approach will be to seek to work cooperatively with firms to deal with any problems. There will, however, be other circumstances in which it is necessary to take firm action to avoid exposing further policyholders to the risk of the Insurer's failure, and the DFSA will not hesitate to do so.

4.9 Limitations on distributions by insurers

4.9.1 No Insurer may make any distribution of profits or surplus, however called or described, or return of capital if such distribution or return would cause the Insurer to fail to comply with any provision of this chapter.

5 MEASUREMENT OF ASSETS AND LIABILITIES OF INSURERS

5.1 General provisions

5.1.1 This chapter applies to an Insurer in relation to Returns made to the DFSA.

Guidance

1. This chapter establishes a set of principles for the consistent measurement of the assets and liabilities of Insurers for the purposes of reporting under chapter 6 and for determining compliance with chapter 4.

2. This chapter is not intended to establish a basis of accounting for general purpose financial statements of Insurers. This chapter does not prevent Insurers from adopting measurements of assets and liabilities that might be considered excessively prudent if adopted in the Insurer's general purpose financial statements. Insurers are not however expected to mislead the DFSA as to the financial position or financial performance of the Insurer.

5.1.2 Subject to Rules 5.1.3, 5.1.4, 5.1.5 and 5.1.6, an Insurer must recognise and measure its assets and liabilities in accordance with so many of sections 5.3, 5.4, 5.5 and 5.6 as apply to the Insurer.

5.1.3 An Insurer may measure the value of an asset at less than the value determined in accordance with this chapter.

5.1.4 An Insurer may measure the value of a liability at more than the value determined in accordance with this chapter.

5.1.5 An Insurer may use approximate methods to measure an asset or a liability, where the result obtained by the use of that approximate method would not be materially different from the result obtained by applying a measurement method prescribed in this chapter.

5.1.6 Notwithstanding any other provision of this chapter, the DFSA may, by written notice, direct an Insurer to measure an asset or a liability in accordance with principles specified by the DFSA in that written notice.

5.2 Classification of insurance business

5.2.1 An Insurer must, in its own records, classify all insurance contracts effected by it as Insurer and all reinsurance contracts entered into by it as cedant, according to the Class of Business to which the contracts relate.

5.2.2 Where a contract relates to more than one Class of Business, the Insurer must record separately the portions of the contract that relate to each Class of Business, except that immaterial portions need not be separately recorded.

Guidance

1. The Classes of Business are set out in GEN App4.

2. A portion of a Contract of Insurance, insuring a risk of a Class of Business other than the principal Class of Business to which the contract relates, will not normally be regarded as material if the interest that it insures is both related and subsidiary to the principal interest or interests insured under the contract, and constitutes less than ten per cent of the Gross Written Premium under the contract.

5.3 Basic principles of recognition and measurement

5.3.1 Except where this chapter provides otherwise, the assets and liabilities of an Insurer must be recognised in accordance with a basis of accounting set out in Rule 5.3.2, and the values attributed to those assets and liabilities must be measured in accordance with that basis of accounting.

Guidance

The exceptions provided in this chapter relate to the following:

a. specific Rules in respect of certain assets and liabilities, intended to achieve a regulatory objective not achieved by application of either or both of the bases of accounting set out in Rule 5.3.2;

b. assets and liabilities that are not dealt with in either or both of the bases of accounting set out in Rule 5.3.2; and

c. the overriding power of the DFSA, set out in Rule 5.1.6, to require an Insurer to adopt a particular measurement for a specific asset or liability.

5.3.2 The basis of accounting adopted by an Insurer for the purposes of Rule 5.3.1 must be:

(a) in the case of a Takaful Insurer, the standards of the Accounting and Auditing Organisation for Islamic Financial Institutions; or

(b) in any other case, International Financial Reporting Standards.

5.3.3 Where the valuation of an asset or liability is dependent upon the adoption of assumptions or the adoption of a calculation method, any change in the assumptions or methods adopted must be reflected immediately in the value attributed to the asset or liability concerned. The recognition of the effects of changes in assumptions or methods may not be deferred to future reporting periods.

5.4 Recognition and measurement of insurance assets and liabilities in respect of general insurance

5.4.1 This section applies to assets and liabilities in respect of General Insurance contracts.

5.4.2 Premiums in respect of direct insurance contracts, facultative reinsurance contracts and non-proportional treaty reinsurance contracts entered into by an Insurer as insurer must be treated as receivable from the date of entering into the insurance contract.

5.4.3 Premiums in respect of proportional treaty reinsurance contracts entered into by an Insurer as insurer must be treated as receivable in accordance with the pattern of the cedant entering into the underlying insurance contracts.

5.4.4 Premiums in respect of facultative reinsurance contracts and non-proportional treaty contracts entered into by an Insurer as cedant must be treated as payable from the date of entering into the reinsurance contract.

5.4.5 Premiums in respect of proportional treaty reinsurance contracts entered into by an Insurer as cedant must be treated as payable in accordance with the pattern of effecting the underlying insurance contracts.

5.4.6 Expenses incurred in respect of insurance contracts effected by an Insurer must be treated as payable at the time the contracts are effected.

5.4.7 An Insurer must treat as a liability, the premium liability, which is the value of future claim payments and associated direct and indirect settlement costs, arising from future events insured under policies that are in force as at the Solvency Reference Date.

Guidance

The liability referred to in Rule 5.4.7 is commonly represented by insurers as two separate provisions, the unearned premium provision and the premium deficiency provision. The sum of the two provisions is sometimes referred to as the unexpired risk reserve, though this term is also sometimes used to describe the premium deficiency provision alone.

5.4.8 An Insurer must treat as a liability the value of future claims payments and associated direct and indirect settlement costs, arising from insured events that have occurred as at the Solvency Reference Date.

Guidance

The liability referred to in Rule 5.4.8 is commonly referred to as the liability for outstanding claims. Some insurers represent this liability as three separate provisions, being the liability in respect of reported claims, the liability in respect of claims incurred but not reported, and the liability in respect of settlement costs, also known as loss adjustment expenses.

5.4.9 An Insurer must treat as an asset the value of reinsurance and other recoveries expected to be received in respect of claims referred to in Rules 5.4.7 and 5.4.8.

5.4.10 Where this section requires an Insurer to recognise as a liability the value of expected future payments, that liability must be measured as the net present value of those expected future payments.

5.4.11 Where this section requires an Insurer to recognise as an asset the value of expected future receipts, that asset must be measured as the net present value of those expected future receipts.

5.4.12 Rules 5.4.10 and 5.4.11 do not require an Insurer to obtain a valuation by an Actuary of the assets and liabilities referred to in those Rules, at a Solvency Reference Date other than the Insurer's annual reporting date.

Guidance

An Insurer is also required to provide a periodic report on its General Insurance Liabilities and associated assets, prepared by an Actuary. The relevant provisions are contained in chapter 7.

5.5 Discount rates

5.5.1 The DFSA may specify actuarial principles to be used by an Insurer in measuring assets and liabilities.

5.5.2 For the purposes of determining the net present value of expected future payments in accordance with Rule 5.4.10, an Insurer must use as a discount rate the gross redemption yield, as at the Solvency Reference Date, of a portfolio of AAA-Rated sovereign risk securities with a similar expected payment profile to the liability being measured.

5.5.3 For the purposes of determining the net present value of expected future receipts in accordance with Rule 5.4.11, an Insurer must use as a discount rate the gross redemption yield, as at the Solvency Reference Date, of a portfolio of AAA-Rated

sovereign risk securities with a similar expected payment profile to the asset being measured.

Guidance

1. Where an Insurer's Insurance Business includes more than one Class of Business, the Insurer will normally be expected to establish payment profiles separately for each material Class of Business.

2. Where the expected payment profile of assets or liabilities cannot be matched – for example, because the duration is too long – the Insurer should assume a discount rate regarded as consistent with the intention of this section.

5.6 Recognition and measurement of assets and liabilities in respect of long-term insurance

5.6.1 This section applies to assets and liabilities in respect of Long-Term Insurance contracts.

Guidance

GEN provides that Long-Term Insurance Business conducted by Insurers is limited to reinsurance.

5.6.2 Premiums in respect of reinsurance contracts entered into by an Insurer as insurer must be treated as receivable from the date on which the premium on the underlying insurance contract is due and receivable by the cedant.

5.6.3 Premiums in respect of reinsurance contracts entered into by an Insurer as cedant must be treated as payable from the date on which the premium on the underlying insurance contract is due and receivable by the cedant.

5.6.4 Expenses incurred in respect of insurance contracts entered into by an Insurer must be treated as payable:

(a) in the case of expenses directly related to the premiums in respect of the contract, at the same time as the premium is treated as receivable; and

(b) in the case of expenses not directly related to the premiums in respect of the contract, at the time the contract is effected.

5.6.5 An Insurer must treat as a liability the amount of Policy Benefits that are due for payment on or before the Solvency Reference Date.

5.6.6 An Insurer must treat as a liability the net value of future Policy Benefits under policies that are in force as at the Solvency Reference Date, taking into account all prospective liabilities as determined by the policy conditions for each existing contract, and taking credit for premiums payable after the Solvency Reference Date.

5.6.7 In measuring the liability referred to in Rule 5.6.6, the Insurer must:

(a) use actuarial principles;

(b) make proper provision for all liabilities on prudent assumptions that include appropriate margins for adverse deviation of the relevant factors; and

(c) take specifically into account:

(i) all guaranteed Policy Benefits, including guaranteed surrender values;

1.2

(ii) vested, declared or allotted bonuses to which policy holders are already either collectively or individually contractually entitled;

1.3

(iii) all options available to the policy holder under the terms of the contract;

1.4

(iv) discretionary charges and deductions from Policy Benefits, in so far as they do not exceed the reasonable expectations of policy holders;

1.5

(v) expenses, including commissions; and

1.6

(vi) any rights under contracts of reinsurance in respect of Long-Term Insurance Business.

5.6.8 The DFSA may specify actuarial principles to be followed by Insurers in measuring the liability referred to in Rule 5.6.6.

5.6.9 Rule 5.6.6 does not require an Insurer to obtain a valuation by an Actuary of the liability referred to in that Rule, at a Solvency Reference Date other than the Insurer's annual reporting date.

Guidance

An Insurer is also required to provide a periodic report on its Long-Term Insurance Liabilities, prepared by an Actuary, including an actuarial investigation of the financial condition of its Long-Term Insurance Business. The relevant provisions are set out in section 7.3.

5.7 Value of investments in subsidiaries and associates that are subject to minimum capital requirements

5.7.1 This section applies to all Insurers.

5.7.2 Where an Insurer has an investment in a Subsidiary or in an Associate that is subject to a regulatory requirement in the jurisdiction in which it is incorporated, obliging the Subsidiary or Associate to maintain a Minimum Capital Requirement or its equivalent, the value of the Insurer's investment in the Subsidiary or Associate must be reduced by the Insurer's proportionate share of the amount of that Minimum Capital Requirement or its equivalent.

5.7.3 In Rule 5.7.2, the Insurer's proportionate share of the Subsidiary's or Associate's Minimum Capital Requirement or equivalent means the amount of the Subsidiary's or Associate's Minimum Capital Requirement or equivalent, multiplied by the proportion of the Subsidiary's or Associate's total ownership rights that is held by the Insurer.

5.8 Transfer of risk by an Insurer to an ISPV

5.8.1 This section applies to all Insurers.

5.8.2 An Insurer may not:

(a) treat amounts recoverable from an ISPV as:

(i) an asset; or

(ii) reinsurance for the purposes of calculating its liabilities under contracts of insurance it has effected; or

(b) otherwise ascribe a value to such amounts;

unless it has first obtained a waiver from the DFSA.

Guidance

In considering:

(a) whether to grant such a waiver; and

(b) the amount which the DFSA will allow the Insurer to bring into account for these purposes;

the DFSA will take into account the following factors:

(i) where the ISPV is an Authorised ISPV, the DFSA will wish to be satisfied that the ISPV complies with Rules 10.1.2 to 10.1.7 The DFSA may rely on information supplied in connection with the ISPV's application for Authorisation. However, if the application for a waiver is made some time after authorisation was granted, the DFSA may request confirmation that there has been no material change to the information originally supplied.

(ii) where the ISPV is not Authorised, the DFSA will expect to receive confirmation that the ISPV is subject to regulation by a financial services regulator in a jurisdiction acceptable to the DFSA. In addition, it will need details of the debt issuance or other financing mechanism by which the ISPV's reinsurance liabilities are funded. The DFSA will also expect to receive information about the ISPV's key management and control functions, including details of the ISPV's auditors and arrangements for claims handling, and any material outsourcing agreements. The DFSA will also need information about the structure of any group of which the ISPV is a member.

(iii) no credit will be allowed for a contract of reinsurance with an ISPV unless there is an effective transfer of risk to the ISPV. The DFSA will require evidence that the contract of reinsurance and the extent of the credit that the Insurer proposes to take for it satisfy the risk transfer principle.

(iv) the DFSA will also expect to receive an analysis of the potential for risk to revert to the Insurer or any of its associates under realistic adverse scenarios or for liabilities to arise in respect of the risks transferred for which no provision has been made.

6 FINANCIAL AND OTHER REPORTING BY INSURERS

6.1 Introduction

6.1.1 This chapter applies to all Insurers.

Guidance

This chapter sets out requirements for reporting by Insurers to the DFSA, including requirements for audit of the Annual Regulatory Return. The Quarterly Regulatory Return is not subject to audit.

6.2 Annual regulatory return

6.2.1 An Insurer must, at the end of each reporting period, prepare an Annual Regulatory Return.

6.2.2 The Annual Regulatory Return must comprise the statements set out in PRU chapter 3, together with any Supplementary Notes pertaining to those forms, and including a Statement by Directors.

6.2.3 The form and content of the statements comprising the Annual Regulatory Return (including the Statement by Directors) is set out in PRU chapter 3.

6.2.4 Where an Insurer includes in its Annual Regulatory Return a value for General Insurance Liabilities or for assets associated with those liabilities which is inconsistent with the amount referred to in Rule 7.2.4 (b), the Insurer must notify the DFSA in writing of:

(a) the reasons for not including in its Annual Regulatory Return the value of General Insurance Liabilities or of associated assets as reported by the Actuary; and

(b) details of the alternative assumptions and methodologies used for determining the value of General Insurance Liabilities or of associated assets.

Guidance

Assets that are associated with Insurance Liabilities will predominantly be reinsurance recoveries, which are reported as assets in accordance with widely accepted accounting practice. Assets representing salvage or subrogation recoveries may also be associated with Insurance Liabilities.

6.2.5 Where an Insurer includes in its Annual Regulatory Return a value for Long-Term Insurance Liabilities which is inconsistent with the amount referred to in Rule 7.3.6 (b), the Insurer must notify the DFSA in writing of;

(a) the reasons for not including in its Annual Regulatory Return the value of Long-Term Insurance Liabilities as reported by the Actuary; and

(b) details of the alternative assumptions and methods used by the Insurer for determining the value of Long-Term Insurance Liabilities.

6.3 Quarterly regulatory return

6.3.1 Subject to Rule 6.3.4, an Insurer must, at the end of March, June, September and December in each year, prepare a Quarterly Regulatory Return in respect of the period commencing at the start of the Insurer's reporting period and ending on that date.

6.3.2 The Quarterly Regulatory Return shall comprise the statements set out in PRU chapter 3, together with any Supplementary Notes pertaining to those forms, and including a Statement by Directors.

6.3.3 The form and content of the statements comprising the Quarterly Regulatory Return (including the Statement by Directors) is set out in PRU chapter 3.

6.3.4 The following Insurers are not required to prepare a Quarterly Regulatory Return unless required in writing by the DFSA to do so:

(a) a Class 1 Captive Insurer; and

(b) an Insurer that is a Protected Cell Company where every Cell maintained by the Insurer is a Captive Cell.

6.4 Audit of annual regulatory return

6.4.1 Subject to Rule 6.4.2, the Annual Regulatory Return of every Insurer must be audited in accordance with International Statements on Auditing relevant to the audit of the Annual Regulatory Return, by the Insurer's auditor.

Guidance

The qualifications and appointment of the auditor of an Authorised Firm are specified in GEN chapter 8.

6.4.2 The statements in the Annual Regulatory Return that are subject to audit are set out in PRU chapter 3.

6.4.3 The report of the auditor on the Annual Regulatory Return must be made in writing to the directors of the Insurer and to the DFSA and must state whether, in the opinion of the Auditor and so far as concerns those parts of the Annual Regulatory Return that are subject to audit:

(a) the Annual Regulatory Return has been prepared in accordance with this chapter;

(b) the statements in the Annual Regulatory Return present fairly, in accordance with the basis of preparation prescribed in this chapter, the financial position of the Insurer as at the reporting date and financial performance of the Insurer during the reporting period ended on that date, and the other information required to be presented; and

(c) the statements in the Annual Regulatory Return are in accordance with the books and records of the Insurer.

6.5 Filing of accounts with the DFSA

6.5.1 The Annual Regulatory Return, accompanied by the auditor's report on the Annual Regulatory Return, and any actuarial report prepared as at the reporting date in accordance with section 7.2 or 7.3, must be filed in writing by the Insurer with the DFSA, within four months of the Insurer's reporting date.

6.5.2 The statement of directors in the Annual Regulatory Return must be signed by:

(a) the Senior Executive Officer; and

(b) a Director of the Insurer not being the Person in (a).

6.5.3 An auditor's report or an actuarial report filed with the Annual Regulatory Return must be signed by the auditor or the Actuary preparing that report.

6.5.4 The Quarterly Regulatory Return must be filed in writing by the Insurer with the DFSA within two months of the end of each period in respect of which the Insurer is required to prepare a Quarterly Regulatory Return.

6.5.5 The statement of directors in the Quarterly Regulatory Return must be signed by:

(a) if the Insurer is a DIFC Incorporated Insurer, one Director of the Insurer; or

(b) if the Insurer is not a DIFC Incorporated Insurer, the Senior Executive Officer and, if that Person is not a Director, one Director of the Insurer.

6.5.6 If within 24 months of the date that an Annual Regulatory Return or Quarterly Regulatory Return is filed with the DFSA, the DFSA notifies the Insurer that that document appears to be inaccurate or incomplete, the Insurer must consider the matter and within one month of the date of notification it must correct any inaccuracies and make good any omissions and deposit the relevant parts of the documents again.

6.5.7 An Insurer must file, at the same time as every Annual Regulatory Return of that Insurer or as soon as practicable thereafter, any report on the affairs of the Insurer submitted to the shareholders or policyholders of the Insurer in respect of the reporting period to which the Annual Regulatory Return relates.

Guidance

Because of the effect of GEN section 6.2, a document that is required by these Rules to be submitted in writing may be submitted electronically, without the need for printed copies. Where a document is required to be signed, an Insurer may submit an electronic image of the signed document. Insurers that submit signed documents electronically should still retain the original signed documents for a reasonable period. Insurers are, like all Authorised Firms, required by GEN to retain adequate records in relation to regulatory matters.

7 ACTUARIES

7.1 Introduction

Guidance

This chapter requires an Insurer to provide the DFSA with a report by an Actuary in respect of its Insurance Liabilities and assets arising in respect of those liabilities (that is, assets which are contingent on the existence and amount of the liabilities, such as reinsurance, salvage and subrogation recoveries). Separate provisions apply in respect of reports on General Insurance Business and Long-Term Insurance Business.

7.2 The requirement for an actuarial report on general insurance business

7.2.1 Subject to Rule 7.2.2, this section applies to Insurers conducting General Insurance Business.

7.2.2 Where an Insurer attributes General Insurance Business to a Long-Term Insurance Fund in accordance with Rule 3.3.4, this section does not apply to that business.

7.2.3 Every Insurer must provide to the DFSA as at each reporting date a written report relating to its General Insurance Business, prepared by an Actuary who has the qualifications set out in section 7.5.

7.2.4 This report must provide details in respect of each Class of Business, of:

(a) significant aspects of the recent experience of the Insurer;

(b) the Actuary's estimate of the value of General Insurance Liabilities and of assets arising in respect of those liabilities, determined in accordance with chapter 5;

(c) where there has been a change in the assumptions or in valuation method from that adopted at the previous valuation, the effect of these changes on the General Insurance Liabilities and assets arising in respect of those liabilities, as at the reporting date;

(d) the adequacy and appropriateness of data made available to the Actuary by the Insurer;

(e) procedures undertaken by the Actuary to assess the reliability of the data;

(f) the model or models used by the Actuary;

(g) the assumptions used by the Actuary in the valuation process including, without limitation, assumptions made as to inflation and discount rates, future expense rates and, where relevant, future investment income;

(h) the approach taken to estimate the variability of the estimate; and

(i) the nature and findings of sensitivity analyses undertaken.

7.3 The requirement for an actuarial investigation of and report on long-term insurance business

7.3.1 This section applies to Insurers conducting Long-Term Insurance Business, in respect of each Long-Term Insurance Fund maintained or deemed to be maintained by the Insurer.

7.3.2 Every Insurer must arrange for an actuarial investigation of the assets and liabilities of every Long-Term Insurance Fund maintained or deemed to be maintained by it, including a determination of surplus in each such fund, to be performed as at a Reference Date which must be not more than one year later than the date of establishment of the Long-Term Insurance Fund or the previous Reference Date (if later).

7.3.3 An investigation of the type set out in Rule 7.3.2 must in any case be performed as at every reporting date of the Insurer.

7.3.4 An actuarial investigation under this section must be performed by an Actuary who has the qualifications set out in section 7.5, and must be conducted according to principles approved by the DFSA.

Guidance

Principles set out in professional standards issued by a professional actuarial body that is a full member of the International Actuarial Association will normally be approved by the DFSA for the purposes of Rule 7.3.4, to the extent that they do not conflict with the provisions of this chapter.

7.3.5 When an Insurer arranges for an actuarial investigation under this section, the Insurer must provide to the DFSA a written report prepared by the Actuary conducting the actuarial investigation, not later than four months from the Reference Date of the actuarial investigation.

7.3.6 This report must provide details of, in respect of each Class of Business:

(a) significant aspects of the recent experience of the Insurer;

(b) the Actuary's estimate of the value of Long-Term Insurance Liabilities, determined in accordance with chapter 5;

(c) where there has been a change in the assumptions or in valuation method from that adopted at the previous valuation, the effect of these changes on the Long-Term Insurance Liabilities as at the Reference Date;

(d) a determination of the value of surplus in the Long-Term Insurance Fund, before any distribution of such surplus;

(e) the assumptions used by the Actuary in the valuation process;

(f) the adequacy and appropriateness of data made available to the Actuary by the Insurer;

(g) procedures undertaken by the Actuary to assess the reliability of the data;

(h) the model or models used by the Actuary;

(i) the approach taken to estimate the variability of the estimate; and

(j) the sensitivity analyses undertaken.

7.4 Additional provisions relating to the report

7.4.1 When appointing an Actuary to prepare a report under section 7.2 or 7.3, an Insurer must ensure that there is an agreement in writing which legally binds the Actuary in accordance with the following provisions:

(a) the contract must require the Actuary to prepare his report in accordance with the provisions of section 7.2 or 7.3 as the case may be;

(b) the contract must require the Actuary to prepare the report using assumptions and methods that are, in the opinion of the Actuary, appropriate for the purposes of the report;

(c) the contract must require the Actuary to deliver the report to the Insurer's directors within such time as to give the directors a reasonable opportunity to consider and use the report in preparing the Insurer's Annual Regulatory Return for the reporting period ended on the reporting date;

(d) the contract must require and permit the Actuary to address the directors of the Insurer if the Actuary believes that there is a matter relating to the financial position or operations of the Insurer that should be brought to the attention of the directors; and

(e) the contract must require and permit the Actuary to address the DFSA if the Actuary believes that a matter brought to the attention of the directors of the Insurer is not adequately dealt with by bringing it to the attention of the directors.

7.4.2 An Insurer that has appointed an Actuary to provide a report under section 7.2 or 7.3 must make arrangements to enable the Actuary to undertake his functions, and in particular must:

(a) keep the Actuary informed of the Insurer's business and other plans;

(b) ensure that the Actuary is fully informed of the Rules in PIN applicable to the Insurer, as well as any other information that the DFSA has provided to the Insurer that may assist the Actuary in performing his duties; and

(c) ensure that the Actuary has access at appropriate times to all relevant data and people which the Actuary reasonably believes is necessary to fulfil his obligations to the Insurer in respect of this chapter.

7.4.3 The Insurer must submit the reports referred to in section 7.2 and section 7.3 to the DFSA, at the same time as it submits its Annual Regulatory Return for the reporting period ended on the reporting date.

7.4.4 Where an Insurer is not a DIFC Incorporated Insurer, a report prepared under section 7.2 or 7.3 must deal separately with the DIFC Insurance Business of the Insurer, and the Insurance Business of the Insurer as a whole.

7.4.5 Abbreviated details may be provided in a report prepared under the requirements of this chapter in respect of a Class of Business that is not material.

Guidance

For the purposes of Rule 7.4.5, a Class of Business that accounts for less than ten per cent of the Insurer's Net Written Premium in the reporting period ended on the reporting date and that accounts for less than ten per cent of the Insurer's Insurance Liabilities as at the reporting date, will normally be considered immaterial.

7.5 Qualifications of the actuary

7.5.1 An Actuary appointed to provide an actuarial report under this chapter must:

(a) have experience in the determination of liabilities in the Classes of Business dealt with in the actuarial report; and

(b) have the required skill and experience to perform his functions under the DIFC regulatory system.

Guidance

The Rules do not require an Insurer to use the same Actuary for all reports. An Insurer may provide separate reports, prepared by more than one Actuary, where the Insurer undertakes different Classes of Business, provided that each Actuary is appropriately qualified for the Classes of Business on which he reports. Similarly, an Insurer may appoint different Actuaries, each appropriately qualified, to provide reports in respect of Insurance Business conducted in or in respect of different geographical locations, for example DIFC Insurance Business and other Insurance Business.

7.5.2 An Insurer must notify the DFSA in writing of the name, professional qualifications and relevant experience of each person that the Insurer proposes to appoint to provide an actuarial report under this chapter.

7.5.3 The DFSA may, if it does not believe that the Actuary proposed by the Insurer possesses the qualifications set out in Rule 7.5.1, notify the Insurer in writing that another Actuary must be appointed.

8 CONSOLIDATED SUPERVISION

8.1 Introduction

8.1.1 This chapter applies to all Insurers, except for Rule 8.4.1 which applies only to DIFC Incorporated Insurers.

Guidance

1. An Insurer is exposed to risks through the relationships that it has with other insurance and non-insurance companies. This chapter requires an Insurer to provide the DFSA periodically with information relating to the structure and financial position of any Group of which it is a member, to assess significant related party transactions, and to notify certain transactions. Provisions in respect of management of Group risk are contained in chapter 2.

2. An Insurer is subject to separate reporting requirements in respect of changes in its Controllers. Those requirements are set out in AUT. It may also be required to provide reports in respect of any Close Links it possesses.

8.1.2 In this chapter, the term 'surplus' means:

(a) in the case of an Insurer that is not a Protected Cell Company, the Insurer's Adjusted Capital Resources; and

(b) in the case of an Insurer that is a Protected Cell Company, the Insurer's Adjusted Cellular Capital Resources in respect of the Cell to which the transaction relates, where the transaction relates to a Cell, and otherwise the Insurer's Adjusted Non-Cellular Capital Resources.

8.1.3 In this chapter, a series of connected transactions between an Insurer and a Related party, or between an Insurer and parties who are Related to each other, is deemed to constitute a single transaction.

8.2 Adequacy of capital resources of the group

8.2.1 The DFSA may, by written notice, require an Insurer to provide the DFSA with a statement of the consolidated financial position of any Group of which the Insurer is a member, made up as at a date specified by the DFSA in that notice and in accordance with principles stated by the DFSA in the notice.

8.2.2 An Insurer receiving a notice under Rule 8.2.1 shall have not less than three months to comply with the notice.

Guidance

An Insurer will normally be permitted to comply with a notice given under Rule 8.2.1 by presenting a copy of a statement, relating to the Group specified in the notice, made up in compliance with an equivalent or substantially equivalent regulatory requirement to which the Insurer or a Subsidiary or Associate of the Insurer is subject in a jurisdiction other than the DIFC. If that statement is not in English, the Insurer will be required to provide a certified translation of the statement into English.

8.3 Transactions within a group

8.3.1 This section applies to all Insurers in respect of all transactions that are material.

Guidance

A single transaction or series of connected transactions that constitute a sale, purchase, exchange, loan or extension of credit, investment or guarantee involving one-half of one percent (0.5%) or less of surplus as at the end of the reporting period immediately preceding the effective date of the transaction will not normally be considered material for the purposes of this section.

8.3.2 Transactions entered into by an Insurer with Related entities must comply with the following conditions:

(a) the terms of the transactions must be fair and reasonable; and

(b) the books, accounts and records of the Insurer must clearly and accurately disclose the nature and details of the transactions including any accounting information necessary to support the fairness and reasonableness of the terms and conditions of the transactions.

8.4 Significant transactions other than group transactions

8.4.1 A DIFC Incorporated Insurer must not enter into a transaction of the type described in this Rule unless the directors of the Insurer are satisfied following reasonable enquiry that the transaction does not adversely affect the interests of policyholders. The transactions to be considered are:

(a) a sale, purchase, exchange, loan or extension of credit, guarantee or investment where the amount of the transaction, as at the end of the reporting period immediately preceding the transaction, equals or exceeds three per cent of the Insurer's surplus;

(b) a loan or extension of credit to any Person who is not Related to the Insurer, where the Insurer makes the loan or extension of credit with the agreement or understanding that the proceeds of the transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to purchase assets of, or to make investments in, any Related party of the Insurer making the loans or extensions of credit, where the amount of the transaction, as at the end of the reporting period immediately preceding the transaction, equals or exceeds three per cent of the Insurer's surplus;

(c) a reinsurance agreement or modification to a reinsurance agreement in which the reinsurance premium or a change in the Insurer's liabilities equals or exceeds five per cent of the Insurer's surplus;

(d) a reinsurance agreement or modification to a reinsurance agreement involving the transfer of assets from an Insurer to a Person not Related to the Insurer, if an agreement or understanding exists between the Insurer and that Person that any portion of the assets will be transferred to one or more other Persons Related to the Insurer and the reinsurance premium or a change in the Insurer's liabilities equals or exceeds five per cent of the Insurer's surplus; and

(e) any management agreement, service contract or cost-sharing arrangement.

8.4.2 An Insurer must report to the DFSA all dividends and other distributions to shareholders within 21 days following the declaration of the dividend or distribution. [Amended][VER4/02-07][RM42/07]

8.4.3 An Insurer that is a Takaful Insurer must report to the DFSA all distributions of profit or surplus (however called or described) to policyholders within 21 days of the date of declaration of the distribution. [Amended][VER4/02-07][RM42/07]

8.4.4 An Insurer must notify the DFSA in writing within 30 days if the Insurer makes an investment in a body corporate to which it is Related, if the total investment in the Related body corporate by the Insurer and other bodies corporate to which the Insurer is Related exceeds ten per cent of the body corporate's paid-up capital or voting rights.

9 INSURERS IN RUN-OFF

9.1 Introduction

9.1.1 Subject to Rule 9.1.2, chapter applies to all Insurers.

9.1.2 In the case of an Insurer that is not a DIFC Incorporated Insurer, this chapter applies only in respect of Insurance Business carried on by the Insurer through an establishment in the DIFC.

Guidance

1. This chapter sets out prudential provisions applying to Insurers that cease to carry on Insurance Business, either wholly or in respect of a particular Class of Business. The provisions are also applicable to Cells and Long-Term Insurance Funds of Insurers, but do not (because of the effect of Rule 9.1.2) apply to non-DIFC Insurance Business of Insurers that are not DIFC Incorporated Insurers.

2. Sections 9.2 and 9.3 set out actions that an Insurer is required to take when it decides to cease to effect or carry out Contracts of Insurance. Sections 9.4, 9.5 and 9.6 give the DFSA specific powers relating to the supervision of such Insurers.

9.1.3 For the purposes of this chapter, in determining whether an Insurer is effecting Contracts of Insurance, or has ceased effecting Contracts of Insurance, including Contracts of Insurance effected through a Cell or a Long-Term Insurance Fund, Contracts of Insurance effected under a term of an existing Contract of Insurance must be ignored.

Guidance

The effect of Rule 9.1.3 is to disregard, for the purposes of determining whether the chapter applies, Contracts of Insurance that are effected by the Insurer, as a consequence of a term of an existing Contract of Insurance. A contract will normally only be regarded as being effected under a term of an existing contract if the Insurer does not have discretion to decline to effect the new contract, or if it would be unreasonable for the Insurer, having regard to the interests of the policyholder, to decline to effect it.

9.1.4 In this chapter:

(a) an Insurer in run-off means an Insurer that has ceased to effect Contracts of Insurance in respect of the whole of its Insurance Business (or, in the case of an Insurer that is not a DIFC Incorporated Insurer, the whole of its Insurance Business carried on through an establishment in the DIFC), and a Cell in run-off and a Long-Term Insurance Fund in run-off are construed accordingly; and

(b) going into run-off or placing Insurance Business into run-off means ceasing to effect Contracts of Insurance, and placing a Cell or a Long-Term Insurance Fund into run-off are construed accordingly.

9.2 Insurers ceasing to effect contracts of insurance in a class of business

9.2.1 This section applies to an Insurer that ceases or decides to cease to effect new Contracts of Insurance:

(a) in a Class of Business in which the Insurer has previously carried on Insurance Business; or

(b) in respect of a Cell or a Long-Term Insurance Fund, in a Class of Business in which the Insurer has previously carried on Insurance Business through that Cell or Long-Term Insurance Fund.

9.2.2 An Insurer to which this section applies must, within 28 days of a decision to cease to effect new Contracts of Insurance in a Class of Business, notify the DFSA of its decision, in a written notice specifying the following details:

(a) the effective date of the decision to cease effecting Contracts of Insurance;

(b) the Class of Business to which the decision relates; and

(c) where relevant, the Cell or Long-Term Insurance Fund to which the decision relates.

9.2.3 An Insurer which has provided a notice to the DFSA in accordance with Rule 9.2.2 must not effect any Contracts of Insurance in that Class of Business without the written permission of the DFSA. Where the notice referred to in Rule 9.2.2 relates to a Cell or Long-Term Insurance Fund of the Insurer, the restriction set out in this Rule applies only to that Cell or Long-Term Insurance Fund.

9.3 Run-off plans

9.3.1 This section applies to:

(a) Insurers that are in run-off or that maintain Cells or Long-Term Insurance Funds that are in run-off;

(b) Insurers that go into run-off or that place Cells or Long-Term Insurance Funds into run-off;

(c) Insurers that make a decision to go into run-off or to place a Cell or Long-Term Insurance Fund into run-off; and

(d) Insurers whose permission to effect Contracts of Insurance in respect of their entire Insurance Business or in respect of the entire business of a Cell or Long-Term Insurance Fund is withdrawn by the DFSA.

9.3.2 If an Insurer takes a decision to go into run-off or to place a Cell or a Long-Term Insurance Fund into run-off, the Insurer must, at the same time as the notice referred to in Rule 9.2.2, provide the DFSA with a written run-off plan in respect of the Insurance Business being placed into run-off.

9.3.3 If the DFSA withdraws an Insurer's permission to effect Contracts of Insurance in respect of the Insurer's entire Insurance Business or the entire Insurance Business of a Cell or Long-Term Insurance Fund, the Insurer must, within 28 days of the written notice of withdrawal of permission (or, if later, the period specified in that notice), provide the DFSA with a written run-off plan in respect of that Insurance Business.

9.3.4 A run-off plan provided to the DFSA in accordance with this section must cover the period until all liabilities to policyholders relating to the Insurance Business in run-off are met and must include:

(a) an explanation of how, or to what extent, all liabilities to policyholders will be met in full as they fall due;

(b) an explanation of how, or to what extent, the Insurer will maintain its compliance with the requirements of chapter 4 until such time as all liabilities to policyholders are met;

(c) a description, appropriate to the scale and complexity of the Insurer's business, of the Insurer's business strategy;

(d) financial projections showing, in a form appropriate to the scale and complexity of the Insurer's operations, the forecast financial position of the Insurer as at the end of each reporting period during the period to which the run-off plan relates; and

(e) an assessment of the sensitivity of the financial position of the Insurer to stress arising from realistic scenarios relevant to the circumstances of the Insurer.

9.3.5 Where an Insurer's Insurance Business in run-off relates to a Cell or a Long-Term Insurance Fund of that Insurer, the run-off plan must deal with the matters set out in Rule 9.3.4 so far as they relate to that Cell or Long-Term Insurance Fund.

9.3.6 An Insurer that has provided a written run-off plan to the DFSA must monitor the matters contained in the run-off plan and must notify the DFSA promptly and in writing of any significant departure from the run-off plan.

Guidance

An Insurer should decide whether a matter constitutes a significant departure from a run-off plan, having regard to the nature and size of the matter and its materiality relative to the size and complexity of the Insurer and, where relevant, the size and complexity of the Cell or Long-Term Insurance Fund concerned. The following matters will normally be considered as representing a significant departure from a run-off plan:

a. significant revision of the Insurer's strategy for managing risks, and in particular its strategy for the use of reinsurance;

b. a significant deterioration in the Insurer's claims experience, financial position or solvency position (the amount by which the Insurer's capital resources, determined in accordance with the provisions of chapter 4 relevant to that Insurer, exceed the applicable minimum capital requirements set out in that chapter); or

c. any other transaction or circumstance that is likely to have a material effect upon the Insurer's solvency position.

9.3.7 Where an Insurer has notified a matter to the DFSA in accordance with Rule 9.3.6, the DFSA may by notice in writing require the Insurer to provide an amended run-off plan. The Insurer must provide an amended run-off plan within 28 days of receipt of the notice, unless the notice specifies a longer period.

9.4 Requirements for collateral for insurers in run-off

Guidance

This section contains provisions that enable the DFSA to require an Insurer that is in run-off or going into run-off to post collateral assets or make equivalent arrangements by letter of credit, to support the Insurance Liabilities and Minimum Capital Requirements applicable to the Insurer. In considering whether to exercise the powers in this section, the DFSA will have regard to the circumstances of the Insurer and the interests of policyholders.

9.4.1 This section applies only to an Insurer that:

(a) is in run-off as regards its entire Insurance Business or the entire Insurance Business of a Cell or Long-Term Insurance Fund;

(b) has provided a notice to the DFSA in accordance with Rule 9.2.2 in respect of its entire Insurance Business or the entire Insurance Business of a Cell or Long-Term Insurance Fund; or

(c) has received a written notice from the DFSA withdrawing the Insurer's permission to effect Contracts of Insurance in respect of its entire Insurance Business or the entire Insurance Business of a Cell or Long-Term Insurance Fund.

9.4.2 The DFSA may, by written notice (referred to in this chapter as a 'collateral notice') require an Insurer to make available assets:

(a) of a type and in a manner described in Rule 9.4.6; and

(b) having a value, determined in accordance with the provisions of chapter 5, of the lower of:

(i) the amount, if any, specified in the notice; and

(ii) the amount determined in accordance with Rule 9.4.5.

9.4.3 An insurer must comply with the requirements of a collateral notice within the period (if any) specified in the notice, or within two months of the date of the notice, whichever is the longer.

9.4.4 The DFSA may at any time, by written notice to the Insurer, vary or revoke a collateral notice issued under Rule 9.4.2.

9.4.5 The amount referred to in Rule 9.4.2(b)(ii) is calculated as follows:

(a) in the case of an Insurer that is not a DIFC Incorporated Insurer, the amount of the assets that the Insurer is required by Rule 4.7.2 to make available;

(b) in the case of a Cell of an Insurer, the sum of the following three amounts:

(i) the Insurance Liabilities attributable to that Cell;

(ii) the Minimum Cellular Capital Requirement applicable to that Cell; and

(iii) any Class 7 Capital Requirement applicable to that Cell;

(c) in the case of a Long-Term Insurance Fund, subject to (e) and (f), the sum of the following two amounts:

(i) the Insurance Liabilities attributable to that Long-Term Insurance Fund; and

(ii) the Minimum Fund Capital Requirement applicable to that Long-Term Insurance Fund;

(d) in the case of an Insurer that is a DIFC Incorporated Insurer and that is not a Protected Cell Company, the sum of the following three amounts:

(i) the Insurer's Insurance Liabilities;

(ii) the Insurer's Minimum Capital Requirement; and

(iii) any Class 7 Capital Requirement applicable to the Insurer.

(e) in the case of an Insurer to which (a) and (c) both apply, the amount set out in (a); and

(f) in the case of an Insurer to which (c) and (d) both apply, the amount set out in (d).

Guidance

Rule 9.4.5 describes the maximum amount of assets that the DFSA may require to be made available as collateral. The Rule includes provisions to avoid imposing multiple collateral requirements on the same Insurer in respect of the same Insurance Business in run-off.

9.4.6 The assets referred to in Rule 9.4.2 must be made available in one of the following two manners or in a combination of those two manners:

(a) assets of a type described in Rule 4.7.3 may be deposited with a custodian nominated or approved in writing by the DFSA; or

(b) a financial institution nominated or approved in writing by the DFSA may issue a confirmed letter of credit in favour of the DFSA, for the amount of the assets required to be made available.

9.4.7 The terms and conditions of a custody arrangement referred to in Rule 9.4.6(a) or a letter of credit referred to in Rule 9.4.6(b) and any change to those terms and conditions, must be notified to the DFSA, which may within two months of such notification require the Insurer to make any change to the terms and conditions of the arrangement or letter of credit.

Guidance

The terms and conditions of an arrangement or letter of credit will normally be expected to include provisions having the following effect:

a. the arrangement or letter of credit is not revocable or cancellable at the option of the Insurer, and contains no provision for automatic cancellation on the insolvency of the Insurer;

b. the DFSA has the right to apply assets deposited, or to draw upon the letter of credit, for the purpose of meeting Insurance Liabilities of the Insurer and any expenses incidental to that activity;

c. in the case of a custody arrangement, the Insurer is prohibited from applying, directly or indirectly, the assets deposited, except in the following manners:

i. in settlement of Insurance Liabilities of the Insurer that are in respect of the Insurance Business that is in run-off;

ii. in exchange for fair value, for other assets of a type described in Rule 4.7.3 and deposited with the same custodian under the same conditions;

iii. in consideration for the transfer to another Insurer of Insurance Liabilities of the Insurer that are in respect of the Insurance Business that is, or has been placed into, run-off;

iv. withdrawal from the custody of the custodian for deposit with a different custodian approved by the DFSA;

v. withdrawal from the custody of the custodian in accordance with Rule 9.4.12 ; or

vi. withdrawal from the custody of the custodian in accordance with a written notice issued by the DFSA revoking or varying the collateral notice; and

d. in the case of a letter of credit, the amount of the letter of credit may be reduced only:

i. in order to achieve, in accordance with Rule 9.4.12 a reduction in the amount of assets made available by the Insurer; or

ii. in accordance with a written notice issued by the DFSA revoking or varying the collateral notice.

9.4.8 The DFSA may, by written notice to an Insurer, require the Insurer to charge in favour of the DFSA part or all of any assets deposited with a custodian in accordance with Rule 9.4.6(a).

9.4.9 The Insurer must reassess, as at the end of March, June, September and December in each year, the amount of the assets that the Insurer is required by a collateral notice to make available, and the amount of assets made available by the Insurer.

9.4.10 The Insurer must report to the DFSA, within two months of the date as at which the reassessment referred to in Rule 9.4.9 is performed, the results of that reassessment and details of any action taken or proposed to be taken as a result of that assessment.

9.4.11 If the reassessment referred to in Rule 9.4.9 shows that the amount of assets made available is less than the amount that the insurer is required to make available, the insurer must, within two months of the effective date of the reassessment, make additional assets available so that the Insurer complies with the requirements of the collateral notice.

9.4.12 If the reassessment shows that the amount of assets made available is more than the amount that the insurer is required to make available, the Insurer may, with the written consent of the DFSA, remove assets from those made available provided that the Insurer complies with the requirements of the collateral notice after the assets have been removed.

9.5 Provisions in respect of contracts relating to insurance business in run-off

9.5.1 This section applies to any Insurer referred to in Rule 9.4.1.

9.5.2 An Insurer to which this section applies must inform the DFSA in writing of the existence and principal features of any contract which it enters into in respect of its Insurance Business in run-off, including Insurance Business carried on through a Cell or a Long-Term Insurance Fund that is in run-off, or that is in existence at the time the Insurer places that Insurance Business into run-off, and that is of any of the following types:

(a) contracts, other than Contracts of Insurance effected by the Insurer prior to going into run-off, with parties that are Related to the Insurer;

(b) contracts relating to the management of the Insurance Business in run-off, and any other contracts with the same counterparty or parties Related to that counterparty; or

(c) contracts for reinsurance of the Insurance Business that is in run-off, and any other contracts with the same counterparty or parties Related to that counterparty.

9.5.3 The DFSA may by written notice require an Insurer to provide additional information as specified in that notice in respect of any contract notified to the DFSA in accordance with Rule 9.5.2

9.6 Limitations on distributions by DIFC incorporated insurers in run-off

9.6.1 No DIFC Incorporated Insurer that is in run-off may make any distribution of profits or surplus however called or described, or return of capital, or any payment of management fees (other than fees payable under a contract notified to the DFSA in accordance with Rule 9.5.2), without the written consent of the DFSA. Any such distribution or return of capital or payment of management fees must be made within the period, if any, specified in the written notice of consent given by the DFSA.

10 INSURANCE SPECIAL PURPOSE VEHICLES

10.1 Application

10.1.1 This Chapter applies only to Insurers that are Authorised ISPVs.

10.1.2 An Authorised ISPV must ensure that at all times its assets are equal to or greater than its liabilities.

Guidance

It is the policy of the DFSA that an Authorised ISPV should be fully funded. The DFSA considers that to be fully funded an ISPV must have actually received the proceeds of the debt issuance or other mechanism by which it is financed. The DFSA would not, for example, authorise an ISPV where part of the financing for its reinsurance liabilities was on a contingent basis, i.e. a stand by facility or letter of credit.

10.1.3 The assets of an Authorised ISPV must be held by, or on behalf of:

(a) the Authorised ISPV; or

(b) the insurer which cedes to the Authorised ISPV the risks in respect of which the relevant assets are held.

10.1.4 An Authorised ISPV must develop, implement and maintain a risk management system to address all material risks to which it is subject. In particular, it must have regard to the guidance on managing investment risk set out in Chapter A.2.6.

10.1.5 An Authorised ISPV must include in each of its contracts of reinsurance terms which ensure that its aggregate maximum liability at any time under those contracts of reinsurance does not exceed the amount of its assets at that time.

10.1.6 An Authorised ISPV must ensure that under the terms of any debt issuance or other financing arrangements used to fund its reinsurance liabilities the rights of the providers of that debt or other financing are fully subordinated to the claims of creditors under its contracts of reinsurance.

10.1.7 An Authorised ISPV must only enter into contracts or otherwise assume obligations which are necessary for it to give effect to the reinsurance arrangements which represent the special purpose for which it has been established.

10.1.8 Where the Authorised ISPV is a Protected Cell Company, Rules 10.1.2 to 10.1.7 should be read as applying to each Cell individually.