



**Financial Services
Commission**

Insurance Linked Securities “ILS”

Our approach

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Introduction

This document provides guidance regarding the process to be followed, and the requirements, for the establishment and licensing of an ILS vehicle as an SPV in Gibraltar. The Gibraltar Financial Services Commission, (GFSC), is the competent authority in Gibraltar for the issuing of such licences and all requests for further information should be directed to the GFSC.

Applicants (Sponsors) should be guided by relevant Gibraltar legislation:

- the [Insurance Companies \(Special Purpose Vehicles\) Regulations 2009 \(“the Regulations”\)](#);
- the [Financial Services \(Insurance Companies\) Act 1987](#);
- the [Protected Cell Companies Act 2001](#);
- The Protected Cell Companies (Special Purpose Vehicles) Regulations 2015. .

Full details of these can be found on the GFSC website at www.fsc.gi.

Gibraltar has also transposed the Solvency II Directive and the Reinsurance Directive, the principal EU legislation which set the standards to be followed for the establishment and supervision of SPVs.

Under the Regulations (Regulations 2(1)), a Special Purpose Vehicle is defined as:

“an undertaking, whether incorporated or not, other than an existing insurer or reinsurer, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism, where the repayment rights of the providers of the debt or other financing mechanism are subordinated to the reinsurance obligations of such a vehicle”.

The Regulations outline the general criteria for a licence as follows.

“4(1) The Commission shall not issue a licence to an SPV –

- (a) unless it is incorporated in or formed under the law of Gibraltar and whose head office is in Gibraltar;
- (b) unless its objects are limited to carrying on business as an SPV, or, in the case of a protected cell company, the purposes for which the protected cell company is established are limited to carrying on business as an SPV;
- (c) if it has an issued share capital, any part of which was issued after the commencement of these Regulations, but is not fully paid up;
- (d) if it appears to it that any director, manager or officer of the SPV is not a fit and proper person to hold the position held by him or does not have the professional qualifications and experience necessary to operate an SPV;
- (e) if it appears to it that any controller having a qualifying holding is not a fit and proper person to be such a controller;

and

- (f) if it appears to it that any trustee of the assets or shares of the SPV is not a fit and proper person to hold that position.

The GFSC has introduced a streamlined process for the consideration of SPV applications which incorporates consultation both prior to the submission of the formal application and throughout every stage of the process.

Application Process

When considering an application for the granting of a SPV licence, the Commission will focus on the following key areas.

- The Applicant.
- Ownership Structure.
- Probity of proposed Controllers, Partners, Directors and Officers.
- Legal Structure.
- Objectives and Scheme of Operations.
- Capital and Financial projections.
- Documentation.
- Organisation and Governance.
- Risk Management.

Full details of the information required are set out in the SPV Application Form which can be downloaded from the GFSC website. An application for a licence should be accompanied by a business plan and all the information outlined in Regulation 6(2) and 6(3), before an application will be considered.

As many of these documents will be in draft form at this stage, copies of the final versions will be required on completion date or, where appropriate, within 30 days of commencement of business.

The application should be fully completed and signed by an authorised person on behalf of the SPV. As the Directors and officers may not be appointed until late in the application process, the GFSC will accept the signature of the SPV's legal advisor or that of an Insurance manager, where one has been appointed. If material changes are made to an application during the review process, a revised application incorporating the amendments should be submitted.

All applications must be accompanied by a non-refundable application fee. Details on the application fees can be found [here](#).

In line with the [Protected Cell Companies \(PCC\) Act 2001](#), applications to establish an ILS vehicle via a cell structure are permissible. An ILS vehicle can be established as a Protected Cell Company. This can be as (i) a cell of an existing insurance PCC or (ii) as a new SPV PCC. A new type of SPV PCC was recently introduced into PCC legislation to enable the second option.

If the ILS vehicle is to be established as a new cell under the management of an existing insurance PCC, this would be achieved by using the existing 'new cell' application form available on the GFSC's

Applicants webpage. The application fee for a cell established in this way can be found [here](#). An ILS cell established in this way would not be an SPV, since the PCC itself would be an “existing insurer” and would be treated in the same way as other cells within the PCC.

If the ILS vehicle is to be established by way of a new ILS SPV PCC, this will be achieved by using the standard SPV application form on the GFSC’s Applicants ILS section of the GFSC website. Under this route, the standard SPV application fee referred to above will apply. There is a fast-track application fee, which is explained below. Once an ILS SPV PCC has been established, new ILS cells can be added to the existing ILS SPV PCC by completing the existing ‘new cell’ application form.

The annual licence fee for a PCC plus any additional cells can be found on our [website](#). All fees are reviewed annually.

Authorisation

In normal circumstances, the GFSC anticipates being in a position to process new SPV applications in 4 weeks the “Standard Service”. However, where a quicker decision is required, an accelerated service, the “Fast Track Service”, is available where the process will be completed within 2 weeks.

Where “Fast Track Service” is requested, the application fee for “Standard Service” will be increased. Details of the fee that will be charged is available in the authorisations link on the [website](#). The annual licence fee remains the same, irrespective of which service is requested at the application stage.

In both cases, the timescale is well within the statutory timeframe, outlined in the Regulations, of 6 months.

Within this timeframe, the GFSC will;

- Acknowledge applications within 2 working days.
- Provide initial feedback within 5 working days for “Fast Track” and within 10 working days for “standard” service. Once the documentation is substantially complete, the Service Level Agreements apply.

These service standards can only be met when the application is complete and it is therefore up to the sponsor to ensure that a full and accurate submission has been made. Substantially complete draft documentation will be accepted at the “In Principle” approval stage, subject to there being no material changes from these on the signing of the contract and final full documentation to be submitted within 30 days.

If, after reviewing the application, it meets all the requirements under the legislation, an “In Principle Approval” letter will be issued, accompanied by a “Notice of Requirements” which outlines the terms under which a final licence would be granted. This does not constitute final approval and the SPV should not transact any business or enter into any formal contract at this stage.

The applicant will be given 21 days to respond and to either appeal the conditions or accept them.

Once the conditions of “Notice of Requirements” have been met and confirmation of this received from the SPV, the GFSC will issue the licence along with the terms under which the licence has been granted. The licence would normally be issued within 24 hours of confirmation from the SPV.

Where the GFSC proposes to refuse an application, it will first provide the applicant with full details behind its decision and provide them with an opportunity for the applicant to make representations in writing as to why the decision should be reconsidered. If the application is still refused, the GFSC will provide a notice of refusal, including full details of its rationale.

Requirements

The Applicant and Ownership Structure

The GFSC will not accept any proposed professional advisors which it does not feel to have the appropriate level of experience and expertise to assist the sponsor with the SPV application or the management of the SPV after licensing.

Copies of the Individual and Corporate Questionnaires can be downloaded from the GFSC website.

The structure chart supplied with the application should show the nature of the relationship between the SPV and all shareholders. For sponsors other than limited liability companies, this should show the nature of the relationship between members or partners. The application should also include a schematic outlining the applicant's group structure, up to the ultimate beneficial owners.

If Trusts are to be used to hold any portion of the SPV's assets, including holding the benefit of security interest on behalf of interested parties e.g. note holders, a copy of the Trust Agreement or Deed should be provided with the application or when available and within 30 days of commencement of business.

Prior to granting authorisation, the GFSC is required to consult with the supervisory authority in the state in which the insurance or reinsurance undertaking transferring risks is established. To minimise any delays, Applicants are encouraged to inform the relevant Home Regulator at an early stage of the process and to provide contact details for the person at that Home Regulator who is aware of the proposal and who would accept this contact from the GFSC.

Probity of Controllers, Directors and Managers

The good repute, fitness and propriety of all persons to be involved in the day-to-day management and operation of the SPV are conditions of authorisation. Thus all such persons should have appropriate professional qualifications, knowledge and a proven track-record in the management of insurance or reinsurance risks.

All Controllers, Directors, Partners, and Officers of the SPV should be competent to carry out their duties and meet the standards outlined in the GFSC "Fit and Proper Test" document which can be downloaded from the [website](#).

The GFSC will take up references where appropriate and contact relevant supervisory authorities when making their assessment of "Fit and Proper". The GFSC requires that a minimum of two directors be appointed to the board of the SPV and that a minimum of two resident directors be maintained.

Legal Structure

Under Regulation 4(1), the SPV must be incorporated or formed under the law of Gibraltar and its Head Office and management functions must be located in Gibraltar. If this is not the case at the time of application, an explanation of plans to re-domicile, and the anticipated date when the SPV will be able to comply with this requirement should be provided. It should be noted that under current legislation, only incorporated companies domiciled in a relevant state can apply to re-domicile in Gibraltar.

A draft of the Memorandum and Articles of Association, demonstrating that the objects of the operation are limited to operating as a qualifying SPV, should be supplied for approval. Where a sponsor is a company under formation at the time of the application, full details should be supplied once available and no later than 30 days after completion.

Whilst the Regulations permit the granting of a licence to unincorporated entities, it is assumed that most sponsors will be incorporated, limited, companies. Where the applicant is other than a limited company, a copy of the constitutional documentation should be supplied.

Regulation 2(1) defines an SPV as an undertaking which “assumes risks from insurance or re-insurance undertakings.” It is anticipated that the SPV assumes risks from an insurance or reinsurance undertaking through reinsurance contracts, or assumes insurance risks through similar arrangements.

Where insurance risks are to be transferred outside a reinsurance contract, but under other risk transfer mechanisms, full details of the contractual arrangements relating to the transfer of risks from an insurance or reinsurance undertaking to the SPV should be provided.

Objectives and Scheme of Operations

The application should outline in detail the structure of the proposed agreement between the SPV and the ceding undertaking. It should provide evidence that the SPV matches the definition, and meets the terms of the definition as set out in Regulation 2(1) and the requirements set out in Regulation 4(1).

The majority of SPV applications will involve a single ceding undertaking and an individual contract with the SPV and its investors. The Regulations permit the licensing of “Multi Arrangement Special Purpose Vehicles”, where the SPV assumes more than one contractual arrangement, relating to the transfer of risk from insurance or reinsurance undertakings, not necessarily belonging to the same insurance group.

The SPV should provide supporting details to permit the GFSC to assess its overall aggregate maximum risk exposure, and the aggregate limit of each individual contractual arrangement.

SPV licences will be granted for programme business (“Shelf SPVs”) or single transactions. Any new transaction to be undertaken by an authorised SPV needs prior approval from the GFSC, either at the time of the initial application, or at a later date when the SPV wishes to accept additional risks or when the obligations under the risk transfer agreement in the SPV have been exhausted. The re-approval process will take into account any actual or intended changes to the original contract terms.

Where there is no material change, the review process for such applications will be accelerated as the majority of the due diligence required will have already been completed. A turnaround time of 5 working days is anticipated and an application fee will be charged as per the fee structure noted on our website.

In support of the narrative explaining the proposed risk transfer mechanism, a diagram detailing how the transaction would operate should be provided, showing the risk and capital flows between the parties concerned in the SPV. When assessing this aspect of the application, the GFSC will look at the nature, scale and scope of the SPV's obligation to the ceding undertaking, source and type of capital proposed, the duration of the SPV, the repayment schedule and the rights of investors to the residual returns.

The contractual arrangements relating to the transfer of risk from a ceding undertaking to an authorised SPV, and from the SPV to the debt or financing providers, should ensure that the transfer of risk is effective in all circumstances and clearly defined.

Regulation 6(2)(b) requires an SPV to provide "a copy of the proposed SPV contract or a statement containing a description of that contract which shall include any triggering event and the aggregate limit of the SPV contract".

Insurance/reinsurance liabilities, or risk transfer by other risk transfer mechanisms, should be capped at a level which is no greater than the value of the assets available to fund those liabilities - the fully funded rule. A "Limited Recourse and Non Petition" clause, confirming that the rights to petitions for insolvency of the SPV are waived, should be included. Where this is not in place, the application needs to clarify how the necessary "bankruptcy remote" requirement, separating the SPV from the cedant/sponsor, will be met.

Multi-arrangement SPVs are similarly required to comply with the fully funded requirement which must be adhered to at the aggregate maximum risk exposure level for the SPV as a whole, as well as assessed at the level of each individual arrangement's maximum risk exposure.

Where the risk transfer contract does not incorporate an aggregate limit, typically under certain life insurance contracts, there is the potential for the vehicle's liabilities to exceed the market value of the assets held. In such cases, the GFSC would require a regular actuarial review to be undertaken. This should be submitted at least annually and more frequently if material developments require this. The SPV must demonstrate how it will maintain the fully funded status, including a reasonable plan for the payment of expenses permitted under the contract, in the event of adverse developments.

The Regulations accommodate a variety of "Trigger Mechanisms" although it is anticipated that the majority of applications will incorporate an Indemnity trigger. Where an alternative trigger is proposed, the SPV should provide detail in relation to the nature, level and treatment of basis risk.

Full details should be provided from the undertaking's original insurance/reinsurance contract outlining which risks, initially assumed by the company, will be transferred to the SPV including an assessment and description to confirm that these will comply with the Regulations. An actuarial assessment or data from a risk modelling agency, relating to the insurance risk to be transferred should also be provided, where appropriate.

Capital and Financial Projections

Under Regulation 7(c) the SPV is required to “maintain an adequate margin of solvency by ensuring that at all times it is fully funded under all reasonably foreseeable scenarios, taking into account “operating costs”.

To achieve this, the SPV should adhere to the following principles.

- 1 Any debt securities used to fund its liabilities must incorporate the principle that the repayment rights of the providers of debt or finance are fully subordinated to the reinsurance obligations of such a vehicle as specified in Regulation 2(1).
- 2 The SPV is the legal and/or beneficial owner of the assets relied upon to fund the liability contracted, free of any charge or encumbrance.
- 3 The right of the providers of debt or finance to repayment shall be subordinated to the reinsurance obligations of the SPV and such providers shall have neither rights of recourse to the assets of the SPV nor any rights to apply for the winding up of the SPV.
- 4 Payments to the providers of debt securities or financing may only be made to the extent that, following these payments, the SPV would continue to be fully funded in respect of remaining insurance or reinsurance liabilities.
- 5 Demonstrate that the link between the funding provided for a specific arrangement is matched to the related risks assumed and that they are sufficiently secured and segmented or ring-fenced to avoid any cross contagion risks.
- 6 Only enter into contracts, or otherwise assume obligations, which are necessary for the business to achieve the goals for which it was incorporated.
- 7 Maintain adequate “bankruptcy remote” protection for each of its contractual arrangements. Where a “collateral top-up” in the event of asset deterioration is permitted, full details of the named party who will provide this, how and when this would operate should be included in the contract from the outset.
- 8 Invest its assets in line with “prudent person principles “as specified in Solvency II Directive.
- 9 Any assets or rights of the SPV held or controlled by the cedant should be separately identified from the securitised assets and held in a collateral instrument outside the control of either the SPV or the cedant e.g. a Trust.

Confirmation of how and through which mechanisms the SPV will fully fund its liabilities, including the timing of such funding, is required. Full details should be provided on the types of tiers or tranches of finance being proposed, including information on ratings received for issued debt and on the rating agencies used.

Where contingent assets such as LOCs or contracts for differences, etc. are proposed as a source of collateral for the SPV, the commission shall expect an increased level of disclosure. This will include details of the issuer of these assets; where they are regulated; their financial rating and confirmation of their financial soundness. Any contingent assets should be fully disclosed within the monthly investment management accounts of the SPV.

Details on the intended approach to winding-up should be provided including conditions under which the SPV will be voluntarily wound up and the applicable procedures.

The Balance Sheet should distinguish between the actual classes of assets, liability and equity items, including debt or other financing mechanisms issued.

Lists of all debt securities or other financing mechanisms issued, regarding each individual contractual arrangement relating to the transfer of risk from an insurance or reinsurance undertaking, should be provided with the application.

The capital requirement for a fully funded SPV is currently £500.

Documentation

The Regulations (3)(d) require “independent legal confirmation that the agreements surrounding the operation of the SPV are legally effective and that those agreements are such to ensure that the repayment rights of debt holders are subordinated to the SPV’s reinsurance obligations”.

Details of all third party agreements should be supplied where the SPV has chosen to outsource any administration systems and internal controls/functions.

“Final form” copies of proposed transaction documentation regarding the issue of debt or financial mechanisms will be accepted, subject to confirmation that these are “close to final drafts”, and that any material differences thereafter would be brought to the commission’s attention, prior to the granting of a licence. Details of any currency contracts undertaken should be included and all such contracts should be consistent with the SPV’s liquidity strategy.

Where a rating agency report is prepared prior to the issue of the funding instruments, this should be submitted. It is understood that for many transactions this report will only be finalised at the last minute and become available “post-closing”.

The application should disclose any material conflicts of interest that may arise in respect of the interactions amongst the various parties to the transactions into which the SPV will enter.

Organisation and Governance

An authorised SPV should maintain a system of governance proportionate to the nature, scale and complexity of the risks that it assumes, and the uses for which it was licensed. This should include sound administrative and accounting procedures, including the maintenance of full records of all activities and transactions undertaken by the SPV.

Appropriate internal control mechanisms should be in place to enable it to meet accounting, prudential and statistical reporting requirements.

The primary responsibility for establishing and maintaining such systems and procedures rests with the Board and the Terms of Reference for the Board, and all linked Committees, should reflect this accountability.

The SPV may choose to appoint an Insurance Manager to provide administrative, tax, compliance and reporting support. In these circumstances, a copy of the draft agreement, including an outline of the systems in place to provide the agreed support to the SPV, should be submitted to the GFSC for approval.

Full details of the proposed Compliance function should be supplied including CVs for the appointed officials, to enable the GFSC to assess their suitability for this role.

To meet the prudential requirements of the GFSC, systems and procedures should be in place to ensure that the SPV is compliant with all its contractual obligations.

The GFSC has published "[Guidance Note 14 – System of Governance-Insurance Transition to Governance Requirements established under the Solvency II Directive](#)" and the application should ensure compliance with these principles".

Risk Management

The applicant should demonstrate that they will be operating an effective risk management system, based on the criteria of sound and prudent management in line with Solvency II requirements. SPVs are expected to organise their systems of governance in a manner that is proportionate to the nature, scale and complexity of the risks inherent in the undertaking.

The SPV would be expected to maintain policies and procedures to monitor and report counterparty risk to the Board. It should also demonstrate an ability to avail itself of all remedies afforded by the contract should any breach occur.

Appropriate due diligence, including legal advice and a review of any relevant financial ratings, should be carried out before accepting any counterparty. Details of the evaluation process should be supplied with the application.

Information should also be supplied on all quantifiable risks of the SPV including details of its liquidity risk and liquidity strategy, and how the SPV will remain fully-funded during the term of the contract. This should include a contingency plan in the event of the unexpected insolvency of any of the providers of credit or finance to the SPV.

Commentary should also examine the possibility of any spill-over, or cross-contamination between separate arrangements, or any unintended risk concentration resulting from assuming risks under multiple arrangements.

Copies of all Third Party agreements should be supplied for scrutiny, along with background information on the individual or firm involved, and an overview of the selection process.

General

The applicant is encouraged to submit further information to evidence its compliance with the regulatory requirements, or any further information that the SPV deems necessary for the consideration of its application.

Where applicable, the GFSC may request additional information from the sponsor after carrying out a review of the application and supporting documentation.

The applicant should also be familiar with and confirm that it will meet the requirements set out in the Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 regarding SPVs.