



**Financial Services
Commission**

Consultation Paper

System of Governance - Insurance Transition to Governance Requirements established under the Solvency II Directive

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Introduction

The European Insurance and Occupational Pensions Authority ("EIOPA") published final "System of Governance" Guidelines on 31 October 2013. These Guidelines apply to National Competent Authorities ("NCAs"), such as the Financial Services Commission ("FSC"), and provide guidance as to how NCAs should proceed in the preparatory phase leading up to the application of the Solvency II Directive.

These Guidelines are seen as essential for fostering preparation with respect to key areas of Solvency II in order to ensure proper management of undertakings and to ensure that supervisors have sufficient information at hand.

The EIOPA Guideline sets out 52 Guidelines relating to corporate governance arrangements that should be in place for individual insurance and reinsurance undertakings ("insurance undertakings") and at the level of the group.

Current Gibraltar legislation sets out requirements for an insurance undertaking to manage its business in a sound and prudent manner. The FSC has issued two Guidance Notes on "Systems of control over investments (and counterparty exposure) including the use of derivatives" and "Systems of control over general business claims provisions". However, it has not previously provided guidance on matters directly relating to Corporate Governance. It now intends to do so.

Executive Summary

The purpose of EIOPA's Guidelines is to ensure consistent and convergent supervision of insurance undertakings in the European Union. Its recently issued Guidelines are seen as preparatory work to ensure that NCAs and insurance undertakings are well prepared and able to apply the new corporate governance requirements when the Solvency II directive takes effect.

Although the Guidelines are addressed to NCAs they require that NCAs take actions to ensure that insurance undertakings take appropriate steps to build an effective system of governance in accordance with the Solvency II Directive which provides for sound and prudent management, build an effective risk management system and provide qualitative information. Subject to the concept of proportionality, the FSC is therefore proposing to issue a Guidance Note for the industry which sets out Guidelines with which the FSC expects undertakings to comply.

Certain of the EIOPA Guidelines relate to matters that the FSC considers already fall within the criteria of sound and prudent management with which insurance undertakings in Gibraltar are required to comply under Gibraltar's existing legislative framework. However, a number of the Guidelines relate to matters that the FSC would not expect all insurance undertakings to have in place now, being related to specific new requirements of the Solvency II directive..

The draft Guidance Note on which the FSC is now consulting, which may be found on the FSC's website at <http://www.fsc.gi/firms/consultation.htm>, reflects the fact that when the Solvency II directive takes effect it will impose new and enhanced expectations on insurance undertakings. As a result the FSC's Guidance Note distinguishes between Guidelines which are a "Solvency II Requirement" and for which the FSC will be expecting insurance undertakings to be taking necessary steps to ensure that they meet the relevant corporate governance requirement when the Solvency II directive takes effect and those that are currently relevant for insurance undertakings.



Basis of consultation

The Consultation Paper focuses on the Detailed Guidelines, which the FSC proposes:

1. are to be applied by insurance undertakings immediately; or, in the case of matters which are not currently required under Gibraltar legislation, but will be required when the Solvency II directive takes effect
2. guide an insurance undertaking so that it can take the necessary steps to ensure that it will meet the Guideline when the Solvency II directive takes effect.

Stakeholders are asked to consider the Guidelines set out in the FSC's draft Guidance Note, as well as the ultimate objective of these Guidelines and to provide the FSC with any comment that it considers relevant.

The full text of the EIOPA Guideline is available via the following link –

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/guidelines/System_of_Governance/Final_EN_SoG_Clean.pdf

Following the end of the consultation period, the FSC will consider the responses. The final Guidance Note will then be submitted to the Minister with Responsibility for Financial Services for his consideration. Where comments are received during the consultation process with which the FSC does not concur, these will also be advised to the Minister together with the FSC's reason for not accepting them.

All responses to the Consultation Paper will be made available for inspection, at Government's disposal, or on the FSC's website, unless there are particular reasons not to do so or confidential information needs to be protected.

Feedback on the consultation paper should be addressed to:

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to reach him by no later than close of business on 29 November 2013.

To view the FSC policy on public consultation, please see:

<http://www.fsc.gi/firms/consultation.htm>

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Regulatory objectives and principles of good regulation – checklist

Which regulatory objectives are the proposals aimed to facilitate:?	
(a) To promote market confidence;	Yes/ No
(b) The reduction of systemic risk;	Yes/ No
(c) To promote public awareness;	Yes /No
(d) The protection of the reputation of Gibraltar;	Yes/ No
(e) The protection of consumers;	Yes/ <u>No</u>
(f) The reduction of financial crime, including the funding of terrorism;	Yes/ No
Do the proposals accord with the following principles of good regulation?	
1. The need to use our resources in the most efficient, effective and economic way;	Yes. The Guidance provides clarity to Gibraltar insurers of expectations of the FSC in relation to systems of governance and places on them the responsibility for ensuring that insurers will meet comply with those standards. The FSC will continue to review the actual governance arrangements that Gibraltar insurers put in place.
2. The principle that the duty to manage a business falls upon the senior management of that business. The Directors of a licence holder, both executive and non-executive have ultimate responsibility for ensuring that the business is properly run and operates in accordance with regulatory requirements;	Yes. The contents of this Guidance Paper are very clear that it is the responsibility of the Board and management of insurers to ensure that its operations, and Group companies for which it is responsible for governance, comply with the Guidelines.
3. The principle that a burden or restriction which is imposed upon authorised firms should be commensurate with the benefits expected to result from such action, so ensuring that the Authority is striking the right balance between achieving the statutory objectives and ensuring that the impact on those being regulated is not such as to be counterproductive;	Yes. The FSC agrees with the view of EIOPA that its guidelines, on which this Guidance Note is based, are in most cases principle based or drafted with a view to the outcome The FSC intends to apply this Guidance in a proportionate manner when it reviews the systems of governance of Gibraltar insurers and of Groups for which it takes responsibility for governance matters.
4. The desirability of facilitating innovation in connection with regulated activities;	Yes. Maintaining good governance should encourage insurers to deliver valuable and innovative products for their customers.
5. The international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar; and	Yes. This Guidance Note has been developed in a manner that guidance from Gibraltar will be harmonised with guidance provided in other European



	jurisdictions where EU Directives apply.
6. The need to consider the adverse effects of regulation on competition and consumer choice.	Yes. This Guidance Note has been developed in a manner that guidance from Gibraltar will be harmonised with guidance provided in other European jurisdictions where EU Directives apply
7. Does this match UK supervisory practices	Yes. It also ensures that the FSC matches EU practice that the UK will apply.