INSURANCE COMPANIES (CONDUCT OF BUSINESS) REGULATIONS 1996

Subsidiary 1996/064

Regulations made under section 118 of the Insurance Companies Act 1987.

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(LN 1996/064)

1.7.1996

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:
Directive 92/49/EEC
Directive 92/96/EEC

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred on it by section 118 of the Insurance Companies Ordinance 1987, and of all other enabling powers, and for the purpose of transposing into the national law of Gibraltar Council Directives 92/49/EEC and 92/96/EEC, the Government has made the following regulations–

Title and commencement.

1. These regulations may be cited as the Insurance Companies (Conduct of Business) Regulations 1996 and shall come into effect on the 1st day of July 1996.

Interpretation.

2.In these regulations, unless the context shall otherwise require,–

"associated company", in relation to a body corporate, means a subsidiary or holding company or subsidiary of the holding company of that body;

"authorised", in relation to an insurer, means authorised to carry on insurance business in Gibraltar;

"contract of insurance", in relation to regulations 7 and 8 only, does not include a contract of reinsurance or a contract of insurance the effecting and carrying out of which constitutes the carrying on of insurance business of groups 3 and 4 as specified in Part II of Schedule 1 to the Act;

"controller", in relation to a body corporate which is not an insurer, means a person who is or would be, if he were a company, a holding company of that body;

"intermediary" means a person to whom the requirements of sub-regulation (1) or (2) of regulation 7 apply in respect of an invitation issued by him;

"manager", in relation to a body corporate which is not an insurer, means a person who directly or indirectly takes part in or is connected in the management of the affairs of that body;

"permitted", in relation to an insurer, means permitted to carry on insurance business in Gibraltar otherwise than by virtue of a licence issued under the Act.

Contents of advertisements.

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3. (1) Subject to regulation 5, sub-regulations (2) and (3) apply to any insurance advertisement which relates to a contract of insurance with an insurer which, at the time when the advertisement is issued–

(a) does not have its head office in Gibraltar or an EEA State; and

(b) is not authorised to carry on insurance business in Gibraltar.

(2) An advertisement to which this paragraph applies shall include the following statement, that is to say–

"This advertisement relates to an insurer which is not authorised to carry on insurance business in Gibraltar. This means that the management and solvency of the insurer are not supervised by the regulatory authority in Gibraltar. Holders of any policies issued by the insurer are not protected in Gibraltar by any guarantee scheme if the insurer should be unable to meet its liabilities to you.".

(3) An advertisement to which this sub-regulation applies and in which an insurer is named (whether by his full name or by a name under which he ordinarily carries on business) shall include the full name of the insurer, the country where the insurer is registered and the country where the principal office is situated (if different).

(4) Subject to regulation 5, any insurance advertisement in respect of long term business which either does not relate to a contract of insurance, or relates to such a contract but does not name the insurer, shall include a statement that the advertisement is about insurance if that advertisement is issued by or on behalf of an insurer which, at the time when the advertisement is issued–

(a) does not have its head office in Gibraltar or an EEA State; and

(b) is not authorised to carry on long term business in Gibraltar.

Contents of advertisements: statement of capital.

4. Any insurance advertisement which contains the name of an insurer licensed under the Act, or of an EEA insurer carrying on insurance business in Gibraltar, being a company incorporated with a share capital, and which states the amount of the authorised capital of the company shall also state the amount of that capital which has been subscribed and the amount thereof which has been paid up at the time the advertisement is issued.

Provisions supplemental to regulations 3 and 4.

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5. (1) For the purposes of regulations 3 and 4, "insurance advertisement" means an insurance advertisement which invites any person to enter into or offer to enter into, or which contains information calculated to lead directly or indirectly to any person entering into or offering to enter into, any contract of insurance other than a contract of reinsurance.

(2) The matters required to be included in an advertisement pursuant to regulation 3 shall be shown prominently, clearly and legibly.

(3) The words specified in regulation 3(2) shall appear prominently and shall, if the insurer is named, appear–

(a) immediately after or alongside the statement of the full name of the insurer, or

(b) if the name (whether the full name or any other name) of the insurer is stated more than once in the advertisement, immediately after or alongside the most prominent statement of the name, and, for this purpose, if two or more statements of the name are equally prominent, that which appears first in the advertisement shall be treated as the most prominent.

(4) Regulations 3 and 4 shall not apply to insurance advertisements which–

(a) relate to a contract which will cover large risks only; or

(b) are investment advertisements approved by a licensee under regulation 3 of the Financial Services (Advertisements) Regulations 1991.

Intermediaries: connected persons.

6. (1) For the purposes of regulation 7 a person is connected with an insurer if–

(a) that person, or any partner, director, controller or manager of that person, is a partner, director, controller or manager of the insurer or of any controller thereof;

(b) the insurer, or any partner, director, controller or manager of the insurer, is a partner, director, controller or manager of that person or of any controller thereof;

(c) that person or any controller thereof has an interest in 10 per centum or more of the shares of the insurer or of any controller thereof;

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(d) the insurer or any controller thereof has an interest in 10 per centum or more of the shares of that person or of any controller thereof;

(e) that person, under any contract, not being a contract of employment, or under any other arrangement (whether legally enforceable or not) with the insurer or with any associated company, undertakes not to perform any services relating to any class or part of a class of insurance business for any insurer other than the insurer and, where the undertaking also relates to any associated company, the associated company.

(2) For the purposes of paragraphs (c) and (d) of sub-regulation (1), a person shall be treated as having an interest in shares of a company if, by virtue of Schedule 6 to the Insurance Companies (Accounts and Statements) Regulations 1996 (other than paragraph 4(b)), he would be so treated.

Invitation by intermediary.

7. (1) Subject to regulation 8, any person who invites another person who is ordinarily resident in Gibraltar to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurer shall, if he is connected with that insurer at the time the invitation is issued, provide the person to whom the invitation is issued, in the manner specified in sub-regulation (3), with information indicating the circumstances of his connection with that insurer.

(2) Subject to regulation 8, any person, who in the course of carrying on any business or profession, invites another person who is ordinarily resident in Gibraltar to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurer which is not an authorised or permitted insurer shall provide the person to whom the invitation is issued, in the manner specified in sub-regulation (3), with information indicating that the insurer to which the invitation relates is not an authorised or permitted insurer in respect of the contract in question.

(3) An intermediary shall provide the information required under sub-regulation (1) or (2) in the following manner–

(a) where the invitation is issued in writing and is sent or delivered, by sending or (as the case may be) by delivering with the invitation a written statement containing that information;

(b) where the invitation is issued orally, by supplying that person with the information orally, and–

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(i) if the person is present when the invitation is issued, by delivering to him immediately thereafter a written statement containing that information; or

(ii) if the person is not so present, by sending by post or causing to be delivered to him as soon as reasonably practicable, at the address supplied by him for the purpose or his last known address, a written statement containing that information.

(4) The requirement of the written statement referred to in sub-regulation (3) shall be deemed to have been complied with where the invitation issued by the intermediary under sub-regulation (1) is issued on stationery having printed upon it, in prominent positions, on the side on which the invitation is contained, the name of the intermediary, the name of the insurer and a clear statement of the relationship between them and which contains in the body of the invitation a clear indication of the insurer to which the invitation relates, expressed in the same style as in the printed statement.

Cases excepted from regulation 7.

8. (1) Regulation 7 shall not apply to–

(a) an invitation for the renewal or amendment of the terms of any contract of insurance effected before the 1st day of July 1996;

(b) an invitation for the renewal or amendment of the terms of a contract of insurance effected as a result of an invitation issued by an intermediary in accordance with regulation 7 where there has been no significant change in the circumstances relevant to the information provided when the contract was first effected;

(c) an amendment of an invitation issued by an intermediary in accordance with regulation 7 where there has been no significant change in the circumstances relevant to the information provided when the invitation was first issued;

(d) an invitation for the effecting of a contract of insurance in respect of general business where–

(i) the contract relates to business of group 2 or 5 as specified in Part II of Schedule 1 to the Act and the initial premium to be paid in respect of that contract exceeds £5,000, or where the person to whom the invitation is made has, through the intermediary, prior to

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that invitation entered into other contracts of insurance of the class to which the contract relates and has paid premiums in respect thereof which in the aggregate either exceed £5,000 in the previous calendar year or exceed that figure in the calendar year during which the invitation in question is made; or

(ii) the contract relates to any other class of insurance business and the initial premium to be paid exceeds £1000, or where the person to whom the invitation is made has, through the intermediary, prior to that invitation entered into contracts of insurance of the class to which the contract relates and has paid premiums in respect thereof which in the aggregate either exceed £1000 in the previous calendar year or exceed that figure in the calendar year during which the invitation is made;

(e) an invitation for the effecting of a contract of insurance with such persons as are mentioned in section 18(b) or (c).

(2) Regulation 7(1) shall not apply to an invitation for the effecting of a contract of insurance the carrying out of which is to be shared between two or more insurers where the share to be taken by any insurer, or the share in the aggregate to be taken by two or more insurers, with which the intermediary is connected, does not exceed one-quarter of the total.

(3) Regulation 7(2) shall not apply to an invitation for the effecting of a contract of insurance the carrying out of which is to be shared between two or more insurers where the share to be taken by any insurer which is not an authorised or permitted insurer, or the share in the aggregate to be taken by two or more insurers which are not authorised or permitted insurers, does not exceed one-quarter of the total.

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