

Financial Services (Insurance Companies)
INSURANCE COMPANIES (PRUDENTIAL SUPERVISION)
REGULATIONS 1997

1987-10

Subsidiary
1997/136

Regulations made under s. 23 of the Interpretation and General Clauses Act

**INSURANCE COMPANIES (PRUDENTIAL
SUPERVISION) REGULATIONS 1997**

(LN. 1997/136)

6.11.1997

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:

Directive 73/239/EEC
Directive 79/267/EEC
Directive 92/49/EEC
Directive 92/96/EEC
Directive 95/26/EC

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ARRANGEMENT OF REGULATIONS

Regulation

1. Title and interpretation.
2. Meaning of “closely linked” etc.
3. New section 27 of the Act.
4. Amendments of section 48A of the Act.
5. Amendment of sections 105 and 107 of the Act.
6. Disclosure of information by the Commissioner.
7. Duty to notify close links to the Commissioner.
8. Minor and consequential amendments of the Act.

SCHEDULE

MEANING OF ‘CLOSELY LINKED’: CHANGES TO THE ACT

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In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Ordinance, and for the purpose of transposing into the law of Gibraltar the amendments made by European Parliament and Council Directive 95/26/EC to Directives 73/239/EEC and 92/49/EEC in the field of Non-Life Insurance and Directives 79/267/EEC and 92/96/EEC in the field of Life Assurance, the Government has made the following regulations -

Title and interpretation.

1.(1) These regulations may be cited as the Insurance Companies (Prudential Supervision) Regulations 1997.

(2) In these regulations –

“the Act” means the Insurance Companies Act 1987;

“the Prudential Supervision Directive” means the European Parliament and Council Directive 95/26/EC of 29 June 1995 amending (among others) –

- (a) Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance; and
- (b) Directives 79/267/EEC and 92/96/EEC in the field of life assurance,

with a view to reinforcing prudential supervision;

“undertaking” has the same meaning as in section 2(2) of the Act.

(3) Any reference in these regulations –

- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
- (b) to an undertaking’s close links with a person;

shall be interpreted in accordance with regulation 2.

Meaning of “closely linked” etc.

2. (1) This regulation applies for the purposes of these regulations and the Act.

(2) An undertaking is closely linked with –

- (a) any person who is or, if he were an undertaking, would be its parent undertaking;
- (b) any undertaking which is its subsidiary undertaking;
- (c) any undertaking which is or, if any person falling within paragraph (a) were an undertaking, would be a fellow subsidiary undertaking; and
- (d) any person in accordance with whose directions or instructions its directors are accustomed to act;

and any reference to an undertaking's close links with any person must be construed accordingly.

(3) For the purpose of determining any question arising under sub-regulation (2), section 2(32) to 2(40) of, and Schedule 17 to, the Act apply with the changes made by the Schedule to these regulations.

(4) An undertaking which is closely linked with any person is closely linked with that person by control if, and only if, it would still be closely linked with that person if paragraph (a) of sub-section (34) of section 2 of the Act and paragraphs 4 to 9 of the Schedule to these regulations were omitted.

3. Inserts new section 27.

4. Amends section 48A.

5. Amends sections 105 and 107.

Disclosure of information by the Commission.

6. (1) *Amends sub-paragraph (1)(a) of paragraph 2A of Schedule 16.*

(2) *Inserts sub-paragraph (4A) to Schedule 16.*

(3) In relation to information relating to the business or other affairs of insurers which are neither Gibraltar nor non-EEA insurers within the meaning of the Act, paragraph 2A(1) of Schedule 16 to the Act has effect without the amendments made by sub-regulation (1).

Duty to notify close links to the Commissioner.

7.(1) This regulation applies where on any day –

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- (a) a Gibraltar or non-EEA insurer becomes closely linked with any person; and
 - (b) that person does not also become its controller, within the meaning of section 2(15) of the Act.
- (2) Within 30 days of that day, the insurer must give written notice to the Commissioner stating that it has become so linked.
- (3) A notice under sub-regulation (2) must also state –
- (a) the name of the person with whom the insurer is closely linked;
 - (b) the nature of its close links with that person; and
 - (c) the requisite particulars of that person.
- (4) The requisite particulars of any person are as follows –
- (a) where that person is a corporate body, the country or territory in which it is incorporated and, if it is registered, its registered number;
 - (b) where that person is an individual, the date and place of his birth; and
 - (c) where that person is a partnership, the particulars mentioned in paragraph (a) or (b) in respect of each partner.
- (5) Any person who does not comply with this regulation is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.
- (6) Where a Gibraltar or non-EEA insurer has become closely linked with any person before the day on which these regulations come into force, these regulations have effect as if the insurer had become closely linked with that person on that day.
- (7) In this regulation “Gibraltar insurer” and “non-EEA insurer” have the same meanings as in the Act.”

Minor and consequential amendments of the Act.

- 8. (1) *Replaces sub-section (6) of section 2.*
- (2) *Inserts sub-section (7A) of section 2.*

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(3) *Inserts sub-section (35A) of section 2.*

SCHEDULE

MEANING OF ‘CLOSELY LINKED’: CHANGES TO THE ACT

Regulation 2(3)

1. The following are the changes referred to in regulation 2(3).
2. After sub-section (32) of section 2 of the Act, the following sub-section is inserted –

“(32A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if –

 - (a) it is a member of the undertaking and, at all times since the beginning of the undertaking’s preceding financial year, a majority of the undertaking’s board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; and
 - (b) no other person is the undertaking’s parent undertaking by virtue of paragraph (a), (b) or (c) of sub-section (32).”.
3. In sub-section (33) of section 2, after the words “sub-section (32)”, the words “or (32A)” are inserted.
4. After sub-section (33) of section 2, the following sub-section is inserted –

“(33A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking which –

 - (a) entitles it to 20 per cent or more of the voting rights in the undertaking; or
 - (b) comprises 20 per cent or more of the shares of the undertaking.”.
5. After sub-section (34) of section 2, the following sub-sections are inserted–

“(34A) An undertaking (‘A’) shall not be treated as a parent undertaking of an undertaking (‘B’) only because another

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undertaking which is A's subsidiary undertaking by virtue of sub-section (33A) is a parent undertaking of B.

(34B) Two subsidiary undertakings of the same parent undertaking shall not be fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue of sub-section (33A)."

6. In sub-section (35) of section 2, "(34B)" is substituted for "(34)".
7. In sub-section (40) of section 2, for the words "in sub-section (34)," the words "in sub-sections (33A) or (34)" are substituted.
8. In paragraph 1 of Schedule 17, "(34B)" is substituted for "(34)".
9. In paragraph 2(1) of Schedule 17, after the words "paragraphs (a) and (d) of section 2(32)", the words "and paragraph (a) of section 2 (33A)" are inserted.