Subsidiary Legislation made under ss.6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 627 of, and paragraph 6 of Schedule 10.

FINANCIAL SERVICES (INSURANCE COMPANIES) REGULATIONS 2020

LN.2020/044

Commencement **15.1.2020**

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2019-26 Financial Services

2020/044 **FINANCIAL SERVICES (INSURANCE COMPANIES) REGULATIONS 2020**

This version is out of date

In exercise of the powers conferred on the Minister by sections 6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and of all other enabling powers, the Minister and the Government have made these Regulations.

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Insurance Companies) Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3.(1) In these Regulations–

"the Act" means the Financial Services Act 2019;

"authorisation" means–

(a) Part 7 permission to carry on direct life or non-life insurance or reinsurance business, given by the GFSC under the Act and these Regulations; or

(b) where the context requires, authorisation granted by a supervisory authority of another EEA State in accordance with Article 14 of the Solvency 2 Directive,

and "authorised" is to be construed accordingly;

"the Brussels I Regulation" means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time;

"capital add-on" means any increase to the Solvency Capital Requirement of an insurer, reinsurer, or insurance group, imposed by the GFSC under regulation 39;

"captive insurer" means an insurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of regulation 191; or

(ii) by a non-financial undertaking; and

(b) the purpose of which is to provide insurance cover exclusively for the risks of–

(i) the undertaking or undertakings to which it belongs; or

(ii) an undertaking or undertakings of the group of which it is a member;

"captive reinsurer" means a reinsurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of regulation 191; or

(ii) a non-financial undertaking; and

(b) the purpose of which is to provide reinsurance cover exclusively for the risks of–

(i) the undertaking or undertakings to which it belongs; or

(ii) an undertaking or undertakings of the group of which it is a member;

"Class" is a reference to a class of insurance in Part 5 of Schedule 2 to the Act and a reference to a numbered Class is a reference to the Class of the same number in paragraph 22 or 23 of that Schedule;

"close links" means a situation in which two or more persons are–

(a) linked by control or participation; or

(b) permanently linked to one and the same person by a control relationship;

"Commission Delegated Regulation (EU) 2015/35" means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended from time to time;

"concentration risk" means all risk exposures with a loss potential which is large enough to threaten the solvency or financial position of insurance and reinsurance undertakings;

"control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22 of the Accounting Directive, or a similar relationship between any person and an undertaking;

"credit risk" means the risk of loss or adverse change in financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

"diversification effects" means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

"EEA insurer" means an insurance undertaking whose home State is an EEA State other than Gibraltar;

"EEA reinsurer" means a reinsurance undertaking whose home State is an EEA State other than Gibraltar;

"EEA State in which the risk is situated" means any of the following–

(a) the EEA State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

(b) the EEA State of registration, where the insurance relates to vehicles of any type; or

(c) the EEA State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the Class concerned;

(d) in all other cases, the EEA State in which either of the following is situated–

(i) the habitual residence of the policy holder; or

(ii) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

"EEA State of the commitment" means the EEA State in which either of the following is situated–

(a) the habitual residence of the policy holder; or

(b) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

"establishment" of an undertaking means its head office or any of its branches;

"external credit assessment institution" or "ECAI" means–

(a) a credit rating agency that is registered or certified in accordance with Regulation (EC) No. 1060/2009 of the European Parliament and of the Council; or

(b) a central bank issuing credit ratings which are exempt from the application of that Regulation;

"financial undertaking" means any of the following entities–

(a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 3(1), (22) or (17) of the Capital Requirements Directive respectively;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of regulation 191;

(c) an investment firm or a financial institution within the meaning of Article 4.1(1) of the MiFID 2 Directive; or

(d) a mixed financial holding company within the meaning of Article 2.15 of the Financial Conglomerates Directive;

"function", within a system of governance, means an internal capacity to undertake practical tasks and includes the risk-management function, the compliance function, the internal audit function and the actuarial function;

"Gibraltar insurer" means an insurance undertaking whose home State is Gibraltar;

"Gibraltar reinsurer" means a reinsurance undertaking whose home State is Gibraltar;

"group supervisor" has the meaning given in regulation 224;

"home State" means–

(a) for non-life insurance, the EEA State in which the head office of the insurance undertaking covering the risk is situated;

(b) for life insurance, the EEA State in which the head office of the insurance undertaking covering the commitment is situated; or

(c) for reinsurance, the EEA State in which the head office of the reinsurance undertaking is situated;

"home State regulator" means the supervisory authority in an insurance or reinsurance undertaking's home State;

"host State" means the EEA State, other than the home State, in which an insurance or reinsurance undertaking has a branch or provides services; and for that purpose, the EEA State in which an insurance undertaking provides services in relation to life and non-life insurance means, respectively,

(a) the EEA State of the commitment; or

(b) the EEA State in which the risk is situated,

where that commitment or risk is covered by an insurance undertaking or branch situated in another EEA State;

"host State regulator" means the supervisory authority in an insurance or reinsurance undertaking's host State;

"insurance undertaking" means an undertaking which is authorised to carry on direct life or non-life insurance and references to "life insurance undertaking" and "non-life insurance undertaking" are to be construed accordingly;

"insurer"–

(a) means an insurance undertaking; and

(b) includes a reinsurance undertaking (other than in Part 12 or where the context otherwise requires);

"intra-group transaction" means any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

"large risks" means–

(a) risks falling within Classes 4, 5, 6, 7, 11 and 12;

(b) risks falling within Classes 14 and 15, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to that activity;

(c) risks falling within Classes 3, 8, 9, 10, 13 and 16, where the policy holder carries on business in respect of which at least two of the following criteria are exceeded–

(i) a balance-sheet total of €6.2 million;

(ii) a net turnover (within the meaning of the Accounting Directive) of €12.8 million;

(iii) an average number of 250 employees during the financial year,

but if the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of the Accounting Directive are drawn up, the criteria in sub-paragraphs (i) to (iii) apply on the basis of the consolidated accounts;

"Lawyers Services Directive" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, as amended from time to time;

"liquidity risk" means the risk that an insurance or reinsurance undertaking is unable to realise investments and other assets in order to settle its financial obligations when they fall due;

"market risk" means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

"Minimum Capital Requirement" means the minimum capital requirement provided for in regulation 116;

"the Minister" means the Minister with responsibility for financial services;

"the Motor Insurance Directive" means Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, as amended from time to time;

"national bureau" means a national insurers' bureau as defined in Article 1.3 of the Motor Insurance Directive;

"national guarantee fund" means the body referred to in Article 10.1 of the Motor Insurance Directive;

"operational risk" means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

"outsourcing" means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

"Part 7 permission" means permission under Part 7 of the Act;

"probability distribution forecast" means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

the "professional secrecy obligation" means the professional secrecy obligation in section 46 of the Act;

"qualifying central counterparty" means a central counterparty that has been either authorised in accordance with Article 14 of EMIR or recognised in accordance with Article 25 of EMIR;

"qualifying holding" means a direct or indirect holding in an undertaking which represents 10% or more of the capital or voting rights, or which makes it possible to exercise a significant influence over the management of that undertaking;

"regulated market" means–

(a) in the case of a market situated in an EEA State, a regulated market as defined in Article 4.1(21) of the MiFID 2 Directive; or

(b) in the case of a market situated in a third country, a financial market which fulfils the following conditions–

(i) it is recognised by the home State of the insurance undertaking and fulfils requirements comparable to those laid down in the MiFID 2 Directive; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home State;

"reinsurance" means–

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or

(b) in the case of Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

"reinsurance undertaking" or "reinsurer" means an undertaking which has received authorisation to pursue reinsurance activities;

"risk measure" means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

"risk-mitigation techniques" means all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

"the Rome 1 Regulation" means Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), as amended from time to time;

"Solvency Capital Requirement" means the solvency capital requirement provided for in regulation 90;

"special purpose vehicle" means an undertaking (whether incorporated or not) other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and fully funds its exposure to those risks through the proceeds of a debt issuance or other financing mechanism where the repayment rights of the providers of the debt or financing mechanism are subordinated to the reinsurance obligations of the undertaking;

"supervisory authority" means the national authority empowered by law to supervise insurance or reinsurance undertakings and, in the case of Gibraltar, means the GFSC;

"Swiss general insurer" has the meaning given in paragraph 2 of Schedule 3;

"third-country insurance undertaking" means an undertaking which would require authorisation as an insurance undertaking in accordance with Article 14 of the Solvency 2 Directive if its head office were situated in the EEA;

"third-country reinsurance undertaking" means an undertaking which would require authorisation as a reinsurance undertaking in accordance with Article 14 of the Solvency 2 Directive if its head office were situated in the EEA;

"undertaking" (without further qualification) means an insurer or re-insurer; and

"underwriting risk" means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions.

(2) Where a financial value is expressed in Euro in these Regulations, the exchange value to be used with effect from 31st December in each year is the value which applies on the last day of the preceding October for which exchange values for the Euro are available in all EU currencies.

Scope.

4.(1) These Regulations give effect to the Solvency 2 Directive.

(2) These Regulations apply–

(a) to direct life and non-life insurance undertakings which are or wish to become established in Gibraltar;

(b) with the exception of Part 12, to reinsurance undertakings which conduct only reinsurance activities and which are or wish to become established in Gibraltar; and

(c) in regard to non-life insurance, to activities in Classes 1 to 18.

(3) For the purposes of sub-regulation (2)(c), non-life insurance includes the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence and, in particular–

(a) comprises an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract;

(b) the aid may comprise the provision of benefits in cash or in kind; and

(c) the provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

(4) The assistance activity referred to in sub-regulation (3) does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

(5) In respect of life insurance these Regulations apply–

(a) to the following life insurance activities where they are on a contractual basis–

(i) life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance or birth assurance;

(ii) annuities;

(iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;

(iv) types of permanent health insurance not subject to cancellation currently existing in Gibraltar;

(b) to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance–

(i) operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);

(ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

(iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(iv) the operations referred to in sub-paragraph (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

(c) to operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the law of Gibraltar.

Modified application to small undertakings

Small undertakings.

5.(1) Subject to sub-regulations (3) and (5) to (7), these Regulations do not apply to an insurance undertaking which fulfils all the following conditions–

(a) the undertaking's annual gross written premium income does not exceed €5 million;

(b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €25 million;

(c) where the undertaking belongs to a group, the total of the technical provisions of the group, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €25 million;

(d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of regulation 15; and

(e) the business of the undertaking does not include reinsurance operations exceeding €500,000 of its gross written premium income or €2.5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

(2) If any of the amounts set out in sub-regulation (1) is exceeded for three consecutive years, these Regulations apply to the undertaking as from the fourth year.

(3) Despite sub-regulation (1), these Regulations apply to all undertakings seeking permission to pursue insurance and reinsurance activities of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in sub-regulation (1) within the following five years.

(4) Subject to sub-regulations (6) and (7), these Regulations cease to apply to those insurance undertakings for which the GFSC has verified that all of the following conditions are met–

(a) none of the thresholds set out in sub-regulation (1) has been exceeded for the three previous consecutive years; and

(b) none of the thresholds set out in sub-regulation (1) is expected to be exceeded during the following five years.

(5) Sub-regulation (1) does not apply to an insurance undertaking which pursues activities outside Gibraltar through a branch or the provision of services in accordance with regulations 128 to 133.

(6) Nothing in this regulation–

(a) permits any person to carry on the business of insurance of any Class, or any reinsurance without Part 7 permission; or

(b) prevents an undertaking from applying for or continuing to hold Part 7 permission in accordance with the Act and these Regulations.

(7) Where the GFSC gives Part 7 permission to an undertaking which fulfils the conditions in sub-regulation (1), the GFSC may make it a condition of that permission that the undertaking complies with all, or specified provisions of these Regulations (with or without modifications).

(8) An undertaking which is given permission in accordance with sub-regulation (7) is not entitled by virtue of that permission to exercise the freedom to provides services or establish branches in other EEA States.

(9) This regulation applies without limiting regulations 6 to 10.

Exclusions from the scope of Regulations

Exclusion: social security systems.

6. Without limiting regulation 4(5)(c), these Regulations do not apply to insurance forming part of a statutory system of social security.

Exclusions from scope: non-life

Exclusion: non-life insurance.

7. In respect of non-life insurance, these Regulations do not apply to the following operations–

(a) capital redemption operations;

(b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

(c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; and

(d) export credit insurance operations for the account of or guaranteed by the Government or where the Government is the insurer.

Exclusion: assistance activity.

8.(1) These Regulations do not apply to an assistance activity which fulfils all the following conditions–

(a) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the EEA State of the undertaking providing cover;

(b) the liability for the assistance is limited to the following operations–

(i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;

(ii) the conveyance of the vehicle to the nearest or most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means; and

(iii) where provided for by the home State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State; and

(c) it is not carried out by an undertaking which is subject to the Solvency 2 Directive.

(2) In the cases referred to in sub-regulations (1)(b)(i) and (ii), the condition that the accident or breakdown must have happened in the territory of the EEA State of the undertaking providing cover does not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement.

Exclusion: mutual undertakings.

9.(1) These Regulations do not apply to a mutual undertaking ("the ceding mutual") which pursues non-life insurance activities and which has concluded with another mutual undertaking ("the accepting mutual") an agreement–

(a) that provides for the full reinsurance by the accepting mutual of the insurance policies issued by the ceding mutual; or

(b) under which the accepting mutual is to meet the liabilities arising under the insurance policies issued by, and in the place of, the ceding mutual.

(2) These Regulations do apply to the accepting mutual.

Exclusions from scope: life

Exclusion: life operations and organisations.

10. In respect of life insurance, these Regulations do not apply to the following operations and organisations–

(a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

(b) operations carried out by organisations, other than insurance or reinsurance undertakings, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from those operations are fully covered at all times by mathematical provisions; and

(c) organisations which undertake to provide benefits solely in the event of death, where the amount of those benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exclusions from scope: reinsurance

Exclusions relating to re-insurance.

11.(1) In respect of reinsurance, these Regulations do not apply to reinsurance activity conducted or fully guaranteed by the government of an EEA State when acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where that role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

(2) These Regulations do not apply to a reinsurance undertaking which by 10th December 2007 had ceased to conduct new reinsurance contracts and exclusively administers its existing portfolio in order to terminate its activity.

(3) The Government must draw up a list of the reinsurance undertakings (if any) falling within sub-regulation (2) and communicate that list to all the other EEA States.

PART 2
THRESHOLD CONDITIONS

Introduction.

12.(1) This Part includes provisions which supplement the threshold conditions as they apply to–

(a) insurance or reinsurance undertakings applying for Part 7 permission to carry on the regulated activity in paragraph 24 of Schedule 2, of effecting and carrying out contracts of insurance; and

(b) insurance or reinsurance undertakings which are regulated firms with Part 7 permission to carry on that regulated activity.

(2) The GFSC must not give Part 7 permission to an insurance or reinsurance undertaking unless the GFSC is satisfied that the undertaking meets, and will continue to meet, all requirements imposed on insurance or reinsurance undertakings under the Act or these Regulations.

(3) An insurance or reinsurance undertaking which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

Permission required to carry insurance or reinsurance activity.

13.(1) A person must not carry on the business of insurance of any Class, or any reinsurance activity in Gibraltar unless the person has Part 7 permission to carry on that Class of insurance or reinsurance activity given in accordance with the Act and these Regulations.

(2) An application for Part 7 permission may be made to the GFSC by–

(a) an undertaking which has established or is establishing its head office in Gibraltar; or

(b) an insurance undertaking which has Part 7 permission to carry on insurance of a particular Class or any part of it and wishes to extend its business to the whole of that Class or to other Classes of insurance.

Scope of permission.

14.(1) Part 7 permission given to an insurance undertaking must be given for a particular Class of insurance and cover the entire class, unless the applicant wishes to cover only some of the risks in respect of that Class.

(2) Subject to regulation 15, the risks included in a Class must not be included in any other Class.

(3) The GFSC may give Part 7 permission–

(a) for one or more Classes of insurance; or

(b) for the groups of Classes of non-life insurance set out in paragraph 22(2) of Schedule 2 to the Act.

(4) In respect to an application for Part 7 permission to which sub-regulation (3)(b) applies, the GFSC may limit the permission for one of the Classes to the operations set out in the scheme of operations referred to in regulation 17.

(5) Without limiting regulation 15(1), an insurance undertaking may engage in the assistance activity referred to in regulation 8 only if it has been given permission for Class 18 and, it if does so, these Regulations apply to that activity.

(6) In respect of an application for Part 7 permission as a reinsurance undertaking, the GFSC may give permission for non-life reinsurance activity, life reinsurance activity or both after considering the application in the light of the scheme of operations to be submitted under regulation 16(3)(c) and the fulfilment of any other conditions for permission.

(7) Where the GFSC gives Part 7 permission to an insurance undertaking, to the extent that the GFSC is satisfied that relevant threshold conditions and other requirements contained in or made under the Act are met, the GFSC may specify that the permission also extends to providing insurance distribution activities.

(8) Subject to regulation 5(8), Part 7 permission given to an insurance or reinsurance undertaking in accordance with the Act and these Regulations is valid in all EEA States and permits the undertaking to carry on business in all of those States by means of establishment or the freedom to provide services.

Ancillary risks.

15.(1) An insurance undertaking which has permission to insure a principal risk within one or more of the Classes of general business may also insure ancillary risks included in another Class without the need for further permission if those ancillary risks–

(a) are connected with the principal risk;

(b) concern the object which is covered against the principal risk; and

(c) are covered by the contract insuring the principal risk.

(2) The risks included in Classes 14, 15 and 17 must not be regarded as risks ancillary to other Classes.

(3) But legal expenses insurance within Class 17 may be regarded as a risk ancillary to Class 18 where–

(a) the conditions in sub-regulation (1) are met; and

(b) either–

(a) the main risk relates solely to the provision of assistance to persons who get into difficulties while travelling, while away from their home or habitual residence; or

(b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea going vessels.

Additional conditions for permission.

16.(1) Without limiting the requirements of the Act, an undertaking applying for Part 7 permission must–

(a) be an entity specified in paragraph (27) of Annex III to the Solvency 2 Directive; and

(b) have its head office and registered office in Gibraltar.

(2) Despite sub-regulation (1)(a), an undertaking set up in a form governed by public law may apply for Part 7 permission if it has as its object insurance or reinsurance operations under conditions equivalent to those under which undertakings governed by private law operate.

(3) An undertaking applying for permission must comply with the following conditions–

(a) where the application is for permission as an insurance undertaking, its objects must be limited to the business of insurance and operations arising directly from that business, to the exclusion of all other commercial business;

(b) where the application is for permission as a reinsurance undertaking, its objects must be limited to the business of reinsurance and related operations, which may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of the Financial Conglomerates Directive;

(c) it must submit a scheme of operations to the GFSC in accordance with regulation 17;

(d) it must hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in regulation 116;

(e) it must provide the GFSC with evidence that the undertaking will be in a position to hold, on an ongoing basis–

(i) eligible own funds to cover the Solvency Capital Requirement, as provided for in regulation 90; and

(ii) eligible basic own funds to cover the Minimum Capital Requirement, as provided for in regulation 115;

(f) it must provide the GFSC with evidence that the undertaking will be in a position to comply with the system of governance in regulations 43 to 50; and

(g) where the application is for permission as a non-life insurance undertaking and the risks to be covered include those in Class 10 (other than carrier's liability) it must provide the GFSC with the names and addresses of the claims representatives it has appointed under Article 21 of the Motor Insurance Directive in each EEA State other than Gibraltar.

(4) An insurance undertaking seeking permission to extend its business to another Class or extend a permission covering only some of the risks under a Class must submit to the GFSC–

(a) a scheme of operations in accordance with regulation 17; and

(b) evidence that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in regulations 90 and 115.

(5) Without limiting sub-regulation (4), an insurance undertaking pursuing life activities and seeking permission to extend its business to the risks in Class 1 or 2 as provided for in regulation 63 must–

(a) demonstrate that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as provided for in regulation 116; and

(b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.

(6) Without limiting sub-regulation (4), an insurance undertaking pursuing non-life activities for the risks listed in Class 1 or 2 and seeking permission to extend its business to life insurance risks as provided for in regulation 63 must–

(a) demonstrate that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as provided for in regulation 116; and

((b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.

Scheme of operations.

17.(1) The scheme of operations referred to in regulation 16(3)(c) must include particulars or evidence of the following–

(a) the nature of the risks or commitments which the insurance or reinsurance undertaking proposes to cover;

(b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;

(c) the guiding principles as to reinsurance and to retrocession;

(d) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement; and

(e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in Class 18, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

(2) In addition to the requirements in sub-regulation (1), for the first three financial years the scheme must include the following–

(a) a forecast balance sheet;

(b) estimates of the future Solvency Capital Requirement, as provided for in Chapter 3 of Part 6, on the basis of the forecast balance sheet, and the calculation method used to derive those estimates;

(c) estimates of the future Minimum Capital Requirement, as provided for in regulations 115 and 116, on the basis of the forecast balance sheet, and the calculation method used to derive those estimates;

(d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

(e) in regard to non-life insurance and reinsurance–

(i) estimates of management expenses other than installation costs, in particular, current general expenses and commissions; and

(ii) estimates of premiums or contributions and claims; and

(f) in regard to life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Close links.

18.(1) Where close links exist between an insurance or reinsurance undertaking and other individuals or legal persons, the GFSC may give Part 7 permission to that undertaking only if those links do not prevent the effective performance of its supervisory functions.

(2) The GFSC must refuse permission if it would be prevented from performing its supervisory functions effectively by–

(a) the laws, regulations or administrative provisions of a country or territory outside of the EEA governing one or more person with which an insurance or reinsurance undertaking has close links; or

(b) the difficulties involved in enforcing those measures.

(3) The GFSC may require an insurance or reinsurance undertaking to provide it with the information it requires to monitor, on a continuous basis, compliance with the conditions in sub-regulation (1).

Policy conditions and scales of premiums.

19.(1) The GFSC must not require the prior approval or systematic notification of–

(a) general and special policy conditions;

(b) scales of premiums;

(c) technical bases used, in particular, for calculating scales of premiums and technical provisions; or

(d) other forms and printed documents,

which an insurance undertaking intends to use in its dealings with policy holders or ceding or retroceding undertakings.

(2) Despite sub-regulation (1), for life insurance, the GFSC may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions but that requirement–

(a) may only be imposed for the purpose of verifying compliance with legal provisions concerning actuarial principles; and

(b) must not constitute a prior condition for permission.

(3) The GFSC must not retain or introduce prior notification or approval of proposed increases in premium rates other than as part of general price-control systems.

(4) The GFSC may subject an undertaking which is seeking or has obtained Part 7 permission for insurance business in Class 18 to checks on its direct or indirect resources in staff and equipment, including the qualification of its medical teams and the quality of the equipment available to the undertaking to meet its commitments arising out of that Class.

Economic requirements of the market.

20. In considering any application for Part 7 permission the GFSC may not take account of the economic requirements of the market.

Shareholders and members with qualifying holdings.

21.(1) The GFSC must not give an undertaking Part 7 permission to take up the business of insurance or reinsurance unless it has been informed of the identities of the shareholders or members, direct or indirect, whether individuals or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

(2) The GFSC must not give Part 7 permission to an undertaking if, taking into account the need to ensure the sound and prudent management of the undertaking, it is not satisfied as to the qualifications of the shareholders or members.

(3) For the purposes of sub-regulation (1), the GFSC must take account of–

(a) voting rights referred to in Articles 9 and 10 of the Transparency Directive; and

(b) the conditions regarding their aggregation in Articles 12.4 and 12.5 of that Directive.

(4) The GFSC must not take account of the voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or the placing of financial instruments on a firm commitment basis under point (6) of Section A of Annex I to the MiFID 2 Directive, where those rights–

(a) are not exercised or otherwise used to intervene in the management of the issuer; and

(b) are disposed of within one year of their acquisition.

Qualifying holdings: reporting of acquisitions and disposals.

22.(1) An insurance or reinsurance undertaking must–

(a) on becoming aware of it, inform the GFSC of any acquisition or disposal of holdings in the undertaking's capital that causes those holdings to exceed or fall below any of the thresholds in sections 114 to 116 of the Act; and

(b) at least once a year, inform the GFSC of–

(i) the names of the undertaking's shareholders and members who possess qualifying holdings; and

(ii) the size of those holdings,

as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

(2) Where the GFSC has reasonable grounds for considering that the influence exercised by a person who possesses a qualifying holding is likely to be prejudicial to the sound and prudent management of an insurance or reinsurance undertaking, the GFSC may take appropriate steps to resolve that situation.

(3) The steps which the GFSC may take under sub-regulation (2) include–

(a) imposing sanctions on the directors and other persons responsible for the management of the undertaking;

(b) directing that the voting rights exercisable by the person in question are to be suspended; or

(c) applying to the Supreme Court for an order.

Prior consultation of other supervisory authorities.

23.(1) The GFSC must consult the home State regulator before giving Part 7 permission to–

(a) a subsidiary of an insurance or reinsurance undertaking authorised in that EEA State;

(b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in that EEA State; or

(c) an undertaking controlled by an individual or legal person who controls an insurance or reinsurance undertaking authorised in that EEA State.

(2) The GFSC must consult the relevant authority in another EEA State which is responsible for the supervision of credit institutions or investment firms before giving Part 7 permission to an insurance or reinsurance undertaking which is–

(a) a subsidiary of a credit institution or investment firm authorised in the EEA;

(b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the EEA; or

(c) an undertaking controlled by an individual or legal person who controls a credit institution or investment firm authorised in the EEA.

(3) In particular, the GFSC must consult the authorities referred to in sub-regulations (1) and (2) when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of an entity of the same group.

(4) The GFSC must exchange information with the authorities referred to in sub-regulations (1) and (2) regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run an undertaking or have other key functions where it is of relevance to the authority concerned for the giving of permission or the ongoing assessment of compliance with operating conditions.

Notification of permissions or cancellations of permission.

24. The GFSC must notify EIOPA of every Part 7 permission which is given or cancelled under these Regulations.

PART 3
SUPERVISION

Functions of the GFSC, etc.

Main objective of supervision.

25. Without limiting its regulatory objectives under the Act, the GFSC's main objective as the supervisory authority under these Regulations is the protection of policy holders and beneficiaries.

Financial stability and pro-cyclicality.

26.(1) Without limiting regulation 25, in the exercise of its general duties, the GFSC must consider the potential impact of its decisions on the stability of the financial systems concerned within the EEA, in particular in emergency situations, taking account of the information available at the relevant time.

(2) The GFSC must take account of the potential pro-cyclical effects of its actions in times of exceptional movements in the financial markets.

General principles of supervision.

27.(1) The GFSC must take a prospective and risk-based approach to supervision and verify, on a continuous basis–

(a) the proper operation of insurance and reinsurance business; and

(b) compliance with supervisory provisions by insurance and reinsurance undertakings.

(2) The GFSC must supervise insurance and reinsurance undertakings by means of an appropriate combination of off-site activities and on-site inspections.

(3) The GFSC must apply the requirements in these Regulations in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.

Scope of supervision.

28.(1) The GFSC, as home State regulator, has sole responsibility for the financial supervision of insurance and reinsurance undertakings, including the business they pursue through branches or under the freedom to provide services.

(2) For the purposes of sub-regulation (1) financial supervision includes verification, in respect of the entire business of an insurance or reinsurance undertaking, of–

(a) its state of solvency;

(b) its establishment of technical provisions; and

(c) its assets and eligible own funds,

in accordance with these Regulations and other laws which apply in Gibraltar.

(3) Where an insurance undertaking has permission to cover the risks classified in Class 18, supervision extends to monitoring the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform.

(4) Where–

(a) an insurance or reinsurance undertaking authorised in an EEA State other than Gibraltar is carrying on business in Gibraltar; and

(b) the GFSC reasonably believes that the undertaking's activities may affect its financial soundness,

the GFSC must, without delay, notify its belief to the home State regulator.

(5) Where an insurance or reinsurance undertaking is carrying on business in an EEA State other than Gibraltar and–

(a) in the case of an insurance undertaking, the supervisory authority of–

(i) the EEA State in which the risk is situated; or

(ii) the EEA State of the commitment; or

(b) in the case of a reinsurance undertaking, the host State regulator,

notifies the GFSC that the activities of the undertaking may affect its financial soundness, the GFSC must determine whether the undertaking is complying with the prudential principles in these Regulations.

Transparency and accountability.

29.(1) The GFSC must conduct its supervisory tasks in a transparent and accountable manner and with due respect for the protection of confidential information.

(2) The GFSC must publish the following information–

(a) the text of laws, administrative rules and general guidance in the field of insurance regulation;

(b) the general criteria and methods, including the tools to be used, in the supervisory review process;

(c) aggregate statistical data on key aspects of the application of the prudential framework;

(d) the manner in which options under the Solvency 2 Directive have been exercised; and

(e) the objectives and main functions and activities of the supervision provided for by these Regulations.

(3) The GFSC must comply with sub-regulation (2) in a way which is sufficient to enable comparison to be made with the approaches to supervision adopted by the supervisory authorities of other EEA States.

(4) The GFSC must publish and regularly update the information specified in sub-regulation (2) in a common format that is accessible at a single electronic location.

Prohibition of refusal of reinsurance and retrocession contracts.

30. The GFSC must not refuse–

(a) a reinsurance contract concluded by an insurance undertaking with a reinsurance undertaking or another insurance undertaking; or

(b) a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or another insurance undertaking,

on grounds directly related to the financial soundness of that reinsurance or insurance undertaking.

Supervision of branches established in other EEA States.

31.(1) Where an EEA insurer or EEA reinsurer carries on business through a branch in Gibraltar, the home State regulator, after having informed the GFSC, may carry out itself or through the intermediary of persons appointed for that purpose on-site verification of the information necessary to ensure the financial supervision of the undertaking.

(2) The GFSC may participate in any verification under sub-regulation (1).

(3) Where a Gibraltar insurer or Gibraltar reinsurer carries on business through a branch in another EEA State, the GFSC, after having informed the host State regulator, may carry out itself or though the intermediary of persons appointed for that purpose on-site verification of the information necessary to ensure the GFSC's financial supervision of the undertaking.

(4) Where the GFSC–

(a) has informed the host State regulator that it intends to carry out on-site verification in accordance with sub-regulation (3) but is prevented from exercising its right to do so; or

(b) is unable in practice to exercise its right to participate in accordance with sub-regulation (2),

the GFSC may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

General supervisory powers.

32.(1) The provisions in this Part supplement the GFSC's powers under the Act.

(2) The GFSC may exercise its supervisory and sanctioning powers under the Act, these Regulations or any other relevant enactment in order to–

(a) take preventative and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they must comply in Gibraltar;

(b) take any necessary measures, including where appropriate, those of an administrative or financial nature with regard to undertakings and the members of their administrative, management or supervisory body;

(c) require all information necessary to conduct supervision in accordance with regulation 37;

(d) develop, in addition to the calculation of the Solvency Capital Requirement, and where necessary, quantitative tools under the supervisory review process to assess the ability of undertakings to cope with possible events or future changes in economic conditions which could have unfavourable effects on their overall financial standing and to require that corresponding tests are performed by the undertakings; and

(e) carry out on-site investigations at the premises of undertakings.

(3) The GFSC must apply its supervisory powers in a timely and proportionate manner.

(4) The GFSC's powers under this regulation also apply to the outsourced activities of undertakings.

Directions.

33.(1) The GFSC may give an insurer any directions that the GFSC considers necessary–

(a) for the purposes of protecting the insurer's policyholders or potential policyholders against the risk that the insurer–

(i) may be unable to meet its liabilities; or

(ii) may, in respect of its long-term business, be unable to fulfil the reasonable expectations of policyholders or potential policyholders;

(b) in the exceptional circumstances referred to in regulation 122(11);

(c) for the purpose of exercising powers under regulation 123(3), 124(2) or 127(8); or

(d) for the purpose of ensuring that the insurer fulfils the criteria of sound and prudent management.

(2) The power to give directions so as to restrict an insurer's freedom to dispose of its assets may only be exercised–

(a) where the GFSC has given a direction under regulation 34 or 35;

(b) for the purpose of exercising powers under regulation 122(11), 123(3), 124(2) or 127(8);

(c) where it appears to the GFSC that the insurer has failed to satisfy an obligation under the Act or these Regulations as to its technical provisions, the Solvency Capital Requirement, the maintenance of own funds to cover the Minimum Capital Requirement or the adequacy, form or location of its assets; or

(d) where the insurer has submitted to the GFSC an account or statement specifying, as the amount of any liabilities of the insurer, an amount appearing to the GFSC to have been determined otherwise than in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.

(3) A direction under this regulation–

(a) must be given in writing and state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(4) The GFSC may at any time revoke or vary a direction issued under this regulation.

Prohibiting insurer from undertaking new business.

34.(1) The GFSC may–

(a) at the request of the insurer; or

(b) on any of the grounds in sub-regulation (2),

direct that an insurer must not enter into new contracts of insurance or contracts of a description specified in the direction.

(2) The grounds are that–

(a) the insurer is in breach of, or has failed to satisfy an obligation under, the Act or these Regulations;

(b) the GFSC is exercising its powers under regulation 127, 142(3), or 146(2);

(c) a ground exists which would prohibit the GFSC from giving Part 7 permission to the insurer;

(d) the GFSC is satisfied that the insurer has deliberately or recklessly supplied information that is untrue in a material respect;

(e) the insurer has carried on its business in a manner detrimental to the interests of its policyholders or the public interest;

(f) the insurer has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in an EEA State where it–

(i) has its head office; or

(ii) has made a deposit in accordance with Article 162.2 of the Solvency 2 Directive;

(g) the insurer has failed to remove a director, controller, manager, representative or agent whom the GFSC has found not to be a fit and proper person;

(h) the insurer has failed, within such time as it was allowed, to give effect to–

(i) a recovery plan under regulation 122; or

(ii) a short term finance scheme under regulation 123;

(i) the insurer is in receivership or in liquidation within the meaning of section 3(1) of the Insolvency Act 2011;

(j) it appears to the GFSC that a Gibraltar insurer has failed to satisfy an obligation under the law of an EEA State which–

(i) gives effect to the Solvency 2 Directive; or

(ii) is otherwise applicable to the insurance activities of the insurer in that State;

(k) it appears to the GFSC that a Gibraltar insurer or third-country insurance undertaking is not or has not been or may not be or may not have been fulfilling the criteria of sound and prudent management; or

(l) the insurer is a Swiss general insurer which has ceased to be authorised to effect contracts of insurance or contracts of a particular description, in Switzerland.

(3) A direction under this regulation does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(4) A direction under this regulation–

(a) must be given in writing and, in the case of a direction under sub-regulation (1)(b), state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(5) Where a direction under this regulation has been given in respect of–

(a) an insurer which–

(i) has its head office in an EEA State; or

(ii) has made a deposit in an EEA State in accordance with Article 162.2 of the Solvency 2 Directive; or

(b) a Swiss general insurer,

the GFSC may revoke or vary the direction if, after consulting the supervisory authority in that EEA State or Switzerland (as the case may be) the GFSC considers it appropriate to do so.

(6) Subject to sub-regulation (5) a direction may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

Suspension of permission in urgent cases.

35.(1) Where it appears to the GFSC–

(a) that one of the grounds in regulation 34(2) exists in relation to an insurer; and

(b) that the insurer's Part 7 permission should be suspended as a matter of urgency,

the GFSC may, by direction, suspend the insurer's permission to effect contracts of insurance, or contracts of a description specified in the direction.

(2) A direction under this regulation–

(a) must be given in writing and state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(3) A direction under this regulation–

(a) does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and

(b) unless confirmed by the GFSC under sub-regulation (6), ceases to have effect at the end of the relevant period.

(3) Where the GFSC gives a direction under this regulation, it must promptly serve on the insurer a written notice stating that the insurer may, within one month from the date of service of the notice, make written and oral representations to the GFSC.

(4) Where the GFSC gives a direction on the ground set out in regulation 34(2)(g), the GFSC must also promptly serve on any person whose fitness is in question–

(a) a copy of the direction; and

(b) a written notice stating that the person may, within one month from the date of service of the notice, make written and oral representations to the GFSC.

(5) the GFSC must consider any representations made in response to a notice under sub-regulation (3) or (4) before confirming a direction under this regulation.

(6) At any time before the end of the relevant period, the GFSC may confirm a direction under this regulation by a notice served on the insurer.

(7) A direction which is confirmed under sub-regulation (6) may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

(8) In this regulation "the relevant period", in relation to a direction means the period of two months beginning with the date on which the direction is given.

Procedure: Regulations 33 to 35.

36.(1) The GFSC must give the insurer–

(a) a warning notice, if the GFSC proposes to give a direction under regulation 33, 34(1)(b) or 35(1); or

(b) a decision notice, if the GFSC decides to–

(i) give a direction under regulation 33, 34(1)(b) or 35(1); or

(ii) confirm a direction under regulation 35(6).

(2) Sub-regulation (1)(a) does not apply where the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of policyholders or consumers;

(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power to give a direction with immediate effect is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the insurer that may result from that direction.

(3) A decision notice under sub-regulation (1)(b) takes effect immediately or on the date specified in the notice.

(4) A decision by the GFSC to–

(a) issue a decision notice under sub-regulation (1)(b); or

(b) issue such a decision notice without first issuing a warning notice in accordance with sub-regulation (1)(a),

is a specified regulatory decision to which section 24(3) of the Act applies.

(5) Sub-regulation (4) does not apply to the issue of a decision notice where–

(a) the recipient has received a warning notice and agreed in writing to the steps proposed in the warning notice being taken; or

(b) in the case of a decision notice confirming a direction under regulation 35(6), the recipient has not made any representations in accordance with regulation 35(4)(b) or has agreed in writing to the direction being confirmed.

Information for supervisory purposes.

37.(1) Insurance and reinsurance undertakings must submit to the GFSC any information which is necessary for the purposes of supervision, taking account of the objectives of supervision set out in regulations 25 and 26, and that information must include at least the information necessary for the following–

(a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management; and

(b) to make any appropriate decisions resulting from the exercise of the GFSC's supervisory rights and duties.

(2) The GFSC has the following powers–

(a) to determine the nature, the scope and format of the information referred to in sub-regulation (1) which it requires insurance and reinsurance undertakings to submit at the following points in time–

(i) at pre-defined periods;

(ii) on the occurrence of pre-defined events; and

(iii) during enquiries regarding the situation of an undertaking;

(b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and

(c) to require information from external experts, such as auditors and actuaries.

(3) Without limiting sub-regulation (2), the GFSC may with the consent of the Minister require information to be submitted using a specified template and in a specified format where–

(a) the GFSC considers that doing so is appropriate in order to address requirements which are specific to the local market or the nature of insurance undertakings supervised in Gibraltar; and

(b) those requirements are not addressed by any reporting templates developed by EIOPA in accordance with Article 35.10 of the Solvency 2 Directive.

(4) The information which the GFSC may require by virtue of this regulation comprises the following–

(a) qualitative or quantitative elements, or any appropriate combination of them;

(b) historic, current or prospective elements, or any appropriate combination of them; and

(c) data from internal or external sources, or any appropriate combination of them.

(5) The information referred to in sub-regulation (1) and (2) must comply with the following principles–

(a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;

(b) it must be accessible, complete in all material respects, comparable and consistent over time; and

(c) it must be relevant, reliable and comprehensible.

(6) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements set out in this regulation as well as a written policy, approved by the undertaking's administrative, management or supervisory body, ensuring the ongoing appropriateness of the information submitted.

(7) Without limiting sub-regulation (8) and regulation 116(4), where the pre-defined periods referred to in sub-regulation (2)(a)(i) are shorter than one year, the GFSC may limit regular supervisory reporting, where–

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking; and

(b) the information is reported at least annually.

(8) The GFSC must not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of regulation 191, unless the undertaking can demonstrate to the satisfaction of the GFSC that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

(9) The limitation to regular supervisory reporting may be granted only to undertakings that do not represent more than 20% of Gibraltar's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

(10) The GFSC may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where–

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the submission of that information is not necessary for the effective supervision of the undertaking;

(c) the exemption does not undermine the stability of the financial systems concerned in the EEA; and

(d) the undertaking is able to provide the information when required to do so.

(11) The GFSC must not exempt from reporting on an item by item basis undertakings that are part of a group within the meaning of regulation 191, unless the undertaking can demonstrate to the GFSC's satisfaction that reporting on an item by item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(12) The exemption from reporting on an item-by-item basis may be granted only to undertakings that do not represent more than 20% of Gibraltar's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

(13) The GFSC must give priority to the smallest undertakings when determining the eligibility for the limitation under sub-regulation (9) or the exemption under sub-regulation (12).

(14) For the purposes of sub-regulations (7) to (13), as part of the supervisory review process, the GFSC must assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least–

(a) the volume of premiums, technical provisions and assets of the undertaking;

(b) the volatility of the claims and benefits covered by the undertaking;

(c) the market risks that the investments of the undertaking give rise to;

(d) the level of risk concentrations;

(e) the total number of Classes of life and non-life insurance for which permission is given;

(f) possible effects of the management of the assets of the undertaking on financial stability;

(g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in sub-regulation (6);

(h) the appropriateness of the system of governance of the undertaking;

(i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and

(j) whether the undertaking is a captive insurer or captive reinsurer only covering risks associated with the industrial or commercial group to which it belongs.

Supervisory review process.

38.(1) The GFSC must review and evaluate the strategies, processes and reporting procedures established by insurance and reinsurance undertakings to comply with these Regulations and the Solvency 2 Directive.

(2) That review and evaluation must comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

(3) The GFSC must, in particular, review and evaluate compliance with the following–

(a) the system of governance, including the own-risk and solvency assessment, as set out in regulations 43 to 50;

(b) the technical provisions as set out in regulations 66 to 80;

(c) the capital requirements as set out in regulations 90 to 116;

(d) the investment rules as set out in regulations 117 to 119;

(e) the quality and quantity of own funds as set out in regulations 81 to 89;

(f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in regulations 101 to 114,

and the GFSC must have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in an undertaking and to monitor how that deterioration is remedied.

(4) The GFSC must assess–

(a) the adequacy of the methods and practices of the undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned; and

(b) the ability of the undertakings to withstand those possible events or future changes in economic conditions.

(5) The reviews, evaluations and assessments referred to in this regulation must be conducted regularly and the GFSC must establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

(6) The GFSC may require an insurance or reinsurance undertaking to remedy any weakness or deficiency identified in the supervisory review process.

Capital add-on.

39.(1) Following the supervisory review process the GFSC may impose a capital add-on for an insurance or reinsurance undertaking in the following exceptional circumstances–

(a) where the GFSC concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with regulations 91 to 100; and–

(i) the requirement to use an internal model under regulation 107 is inappropriate or has been ineffective; or

(ii) while a partial or full internal model is being developed in accordance with that regulation;

(b) where the GFSC concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with regulations 101 to 114, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(c) where the GFSC concludes that the system of governance of an undertaking deviates significantly from the standards set out in regulations 66 to 80, that the deviation prevents it from being able properly to identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the

application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe; or

(d) where the insurance or reinsurance undertaking applies the matching adjustment referred to in regulation 68, the volatility adjustment referred to in regulation 70 or the transitional measures referred to in paragraphs 2 and 3 of Schedule 1 and the GFSC concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(2) In the circumstances set out in sub-regulation (1)(a) or (b) of the capital add-on must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).

(3) In the circumstances set out in sub-regulation (1)(c) the capital add-on must be proportionate to the material risks arising from the deficiencies which gave rise to the GFSC's decision to impose the add-on.

(4) In the circumstances set out in sub-regulation (1)(d), the capital add-on must be proportionate to the material risks arising from the deviation referred to in that provision.

(5) In the cases set out in sub-regulation (1)(b) and (c) the GFSC must ensure that the undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

(6) The Solvency Capital Requirement, including the capital add-on imposed, must replace the inadequate Solvency Capital Requirement.

Review or cancellation of capital add-on.

40. Where the GFSC has imposed a capital add-on under regulation 39, it must–

(a) review the capital add-on at least once a year; and

(b) remove the capital add-on when the undertaking has remedied the deficiencies which led to its imposition.

Transfer of portfolios.

41. In Part 23 of the Act (which provides for the control of insurance business transfers) any reference to "the necessary margin of solvency" is to be construed as a reference to necessary eligible own funds required to cover the Solvency Capital Requirement under these Regulations.

PART 4
CONDITIONS GOVERNING BUSINESS

Corporate Governance

Compliance obligation.

42. Ultimate responsibility for an insurance or reinsurance undertaking's compliance with these Regulations, the Solvency 2 Directive and other applicable laws is–

(a) in the case of an insurance or reinsurance undertaking which is a company, a function of the directors and the chief executive; and

(b) in the case of any other insurance or reinsurance undertaking, a function of its administrative, management or supervisory body.

General governance requirements.

43.(1) An insurance or reinsurance undertaking must have in place an effective system of governance which provides for sound and prudent management of the business.

(2) The system must include–

(a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;

(b) an effective system for ensuring the transmission of information; and

(c) compliance with the requirements of regulations 44 to 50.

(3) The system of governance must be subject to regular internal review.

(4) The system of governance must be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

(5) An insurance or reinsurance undertaking must have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing and must ensure–

(a) that those policies are implemented and are reviewed at least annually;

(b) that the policies are subject to prior approval by the administrative, management or supervisory body; and

(c) that the policies are adapted in the light of any significant change in the system or area concerned.

(6) An insurance or reinsurance undertaking must take reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans and for that purpose it must employ appropriate and proportionate systems, resources and procedures.

(7) The GFSC must take all necessary steps–

(a) to verify the system of governance of insurance and reinsurance undertakings;

(b) to evaluate emerging risks identified by those undertakings which may affect their financial soundness; and

(c) to require that the systems of governance be improved and strengthened to ensure compliance with the requirements set out in regulations 44 to 50.

Fit and proper persons and proof of good repute.

44.(1) Without limiting Part 8 of the Act, an insurance or reinsurance undertaking must ensure that all persons who effectively run the undertaking or have other key functions are at all times fit and proper to do so, in that–

(a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management of the undertaking; and

(b) they are of good repute and integrity.

(2) An insurance or reinsurance undertaking–

(a) must ensure that–

(i) any person who performs a regulated function (within the meaning of Part 8 of the Act) has been approved as a regulated individual under Part 8 of the Act by the GFSC to perform that function in the undertaking; and

(ii) any regulated function within the undertaking is only performed by the appropriate regulated individual; and

(b) without limiting its obligations under Part 8 of the Act, must notify the GFSC–

(i) of any change to the identity of any person (including a non-executive member of its administrative, management or supervisory body) who effectively runs the undertaking or is responsible for another key function; or

(ii) if any person referred to in sub-regulation (1) or paragraph (a) has been replaced because the person no longer fulfils the requirements of sub-regulation (1)(a) or (b).

(3) If the GFSC requires proof of good repute, proof of no previous bankruptcy or both in respect of persons to which sub-regulation (1) or (2) applies, in relation to nationals of other EEA States it must take account of Article 43 of the Solvency 2 Directive (which provides for requirements of that kind to be met by the production a judicial record extract or equivalent document issued by a competent judicial or administrative authority in another EEA State).

Risk Management.

45.(1) An insurance or reinsurance undertaking must have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

(2) The risk-management system–

(a) must be effective and well-integrated into the organisational structure and decision-making processes of the undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions; and

(b) must cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in regulation 91(4) as well as the risks which are not or not fully included in that calculation.

(3) The risk-management system must cover at least the following areas–

(a) underwriting and reserving;

(b) asset-liability management;

(c) investment, in particular derivatives and similar commitments;

(d) liquidity and concentration risk management;

(e) operational risk management; and

(f) reinsurance and other risk-mitigation techniques.

(4) The written policy on risk management referred to in regulation 43(5) must comprise policies relating to the matters specified in sub-regulation (3)(a) to (f).

(5) An insurance or reinsurance undertaking which applies the matching adjustment referred to in regulation 68 or the volatility adjustment referred to in regulation 70 must set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(6) As regards asset-liability management, an insurance or reinsurance undertaking must regularly assess–

(a) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in regulation 67;

(b) where the matching adjustment referred to in regulation 68 is applied–

(i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in regulation 69(1)(b) and the possible effect of a forced sale of assets on its eligible own funds;

(ii) the sensitivity of its technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;

(iii) the impact of a reduction of the matching adjustment to zero;

(c) where the volatility adjustment referred to in regulation 70 is applied–

(i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on its eligible own funds; and

(ii) the impact of a reduction of the volatility adjustment to zero.

(7) The insurance or reinsurance undertaking must submit the assessments referred to in sub-regulation (6)(a) to (c) to the GFSC annually (as part of the information reported under

regulation 37) and, where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking must also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

(8) Where the volatility adjustment referred to in regulation 70 is applied, the written policy on risk management referred to in regulation 43(5) must comprise a policy on the criteria for the application of the volatility adjustment.

(9) An insurance or reinsurance undertaking must demonstrate that it complies with Chapter 5 of Part 6 as regards investment risk.

(10) An insurance or reinsurance undertaking must provide for a risk management function which is structured in such a way as to facilitate the implementation of the risk management system.

(11) Where an insurance or reinsurance undertaking uses an external credit rating assessment in the calculation of technical provisions or the Solvency Capital Requirement, in order to avoid over-reliance on external credit assessment institutions, the undertaking must assess the appropriateness of those external credit assessments as part of its risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

(12) Where an insurance or reinsurance undertaking uses a partial or full internal model approved in accordance with regulations 101 and 102, the risk-management function must cover the following additional tasks–

(a) to design and implement the internal model;

(b) to test and validate the internal model;

(c) to document the internal model and any subsequent changes made to it;

(d) to analyse the performance of the internal model and to produce summary reports of it; and

(e) to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

Own risk and solvency assessment.

46.(1) As part of its risk-management system an insurance or reinsurance undertaking must conduct its own risk and solvency assessment.

(2) That assessment must include at least the following–

(a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

(b) the compliance, on a continuous basis, with the capital requirements, as set out in Chapters 2 and 3 of Part 6 and with the requirements regarding technical provisions specified in Chapter 1 of that Part;

(c) the significance with which the risk profile of the undertaking deviates from the assumptions underlying the Solvency Capital Requirement as set out in regulation 91(3), calculated with–

(i) the standard formula in accordance with regulations 93 to 100; or

(ii) its partial or full internal model in accordance with regulations 101 to 114.

(3) For the purposes of sub-regulation (2)(a), the undertaking–

(a) must have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed; and

(b) must demonstrate the methods used in that assessment.

(4) Where the undertaking applies–

(a) the matching adjustment referred to in regulation 68;

(b) the volatility adjustment referred to in regulation 70; or

(c) the transitional measures referred to in paragraphs 2 and 3 of Schedule 1,

it must perform the assessment of compliance with the capital requirements referred to in sub-regulation (2)(b) with and without taking into account those adjustments and transitional measures.

(5) In the case referred to in sub-regulation (2)(c) when an internal model is used, the assessment must be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

(6) The own-risk and solvency assessment must be an integral part of the business strategy and must be taken into account on an on-going basis in the strategic decisions of the undertaking.

(7) An insurance or reinsurance undertaking must perform the assessment referred to in sub-regulation (2) regularly and without any delay following any significant change in its risk profile.

(8) An insurance or reinsurance undertaking must inform the GFSC of the results of each own-risk and solvency assessment.

(9) The own-risk and solvency assessment does not serve to calculate a capital requirement: and the Solvency Capital Requirement must be adjusted only in accordance with regulations 39, 210 to 212 and 216.

Internal control.

47.(1) An insurance or reinsurance undertaking must have in place an effective internal control system which includes–

(a) administrative and accounting procedures;

(b) an internal control framework;

(c) appropriate reporting arrangements at all levels of the undertaking; and

(d) a compliance function.

(2) The compliance function must include–

(a) advising the administrative, management or supervisory body on compliance with the Act, these Regulations and all other applicable laws and administrative provisions adopted in accordance with these Regulations or the Solvency 2 Directive; and

(b) an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking and the identification and assessment of compliance risk.

Internal audit.

48.(1) An insurance or reinsurance undertaking must provide for an effective internal audit function which includes an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The undertaking's internal audit function must be objective and independent from its operational functions.

(3) Any findings and recommendations of the internal audit must be reported to the administrative, management or supervisory body which must determine what actions are to be taken with respect to each of the internal audit findings and recommendations and ensure that those actions are carried out.

Actuarial function.

49.(1) An insurance or reinsurance undertaking must provide for an effective actuarial function–

(a) to co-ordinate the calculation of technical provisions;

(b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;

(c) to assess the sufficiency and quality of the data used in the calculation of technical provisions;

(d) to compare best estimates against experience;

(e) to inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;

(f) to oversee the calculation of technical provisions in the cases set out in regulation 77;

(g) to express an opinion on the overall underwriting policy;

(h) to express an opinion on the adequacy of reinsurance arrangements; and

(i) to contribute to the effective implementation of the risk management system referred to in regulation 45, in particular with respect to the risk modelling

underlying the calculation of the capital requirements set out in Chapters 3 and 4 of Part 6 and to the assessment referred to in regulation 46.

(2) The actuarial function must be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Outsourcing.

50.(1) An insurance or reinsurance undertaking remains fully responsible for discharging all of its obligations under these Regulations when it outsources functions or any insurance or reinsurance activities.

(2) An insurance or reinsurance undertaking must not outsource critical or important operational functions or activities in such a way as to lead to any of the following–

(a) materially impairing the quality of the system of governance of the undertaking;

(b) unduly increasing the operational risk;

(c) impairing the ability of the GFSC to monitor the undertaking's compliance with its obligations; or

(d) undermining continuous and satisfactory service to policy holders.

(3) An insurance or reinsurance undertaking must, in a timely manner, notify the GFSC–

(a) before outsourcing any critical or important functions or activities; and

(b) of any subsequent material developments with respect to those functions or activities.

Supervision of outsourced functions and activities.

51.(1) Without limiting regulation 50, an insurance or reinsurance undertaking which outsources a function or an insurance or reinsurance activity to another person (a "service provider") must ensure that–

(a) the service provider cooperates with the GFSC in connection with the outsourced function or activity;

(b) the undertaking, its auditors and the GFSC have effective access to data related to the outsourced function or activity; and

(c) the GFSC has effective access to the service provider's business premises and is able to exercise that right of access.

(2) Where a service provider is located in an EEA State other than Gibraltar, in accordance with Article 38.2 of the Solvency 2 Directive, the GFSC may carry out an on-site inspection of the service provider's premises but must inform the appropriate authority in that EEA State before doing so.

(3) The GFSC may appoint an intermediary to carry out an on-site inspection under sub-regulation (2) on its behalf or delegate the carrying out of the on-site inspection to the appropriate authority in the EEA State where the service provider is located.

(4) Where an EEA insurer or EEA reinsurer outsources a function or activity to a service provider located in Gibraltar, the undertaking's home State regulator may carry out an on-site inspection of the service provider's premises but must inform the GFSC before doing so.

(5) The home State regulator may appoint an intermediary to carry out an on-site inspection under sub-regulation (4) on its behalf or delegate the carrying out of the on-site inspection to the GFSC.

(6) In any case where–

(a) the GFSC has informed the appropriate authority in an EEA State that it intends to carry out an on-site inspection in accordance with sub-regulation (2); or

(b) the GFSC attempts to carry out an on-site inspection in accordance with that sub-regulation but is unable in practice to exercise its right to do so,

the GFSC may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

Public disclosure

Report on solvency and financial conditions: contents.

52.(1) An insurance or reinsurance undertaking must disclose publicly, on an annual basis, a report on its solvency and financial condition and that report must–

(a) include the information required by regulation 37(4) and comply with the principles set out in regulation 37(5); and

(b) contain the information specified in sub-regulation (2), either in full or by way of reference to equivalent information, both in nature and scope, published under other legal or regulatory requirements.

(2) The information referred to in sub-regulation (1)(b) is–

(a) a description of the business and the performance of the undertaking;

(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;

(e) a description of the capital management, including at least the following–

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and the Minimum Capital Requirement;

(iii) if applicable, the option set out in regulation 97 for the calculation of the Solvency Capital Requirement;

(iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(3) Where the matching adjustment referred to in regulation 68 is applied, the description referred to in sub-regulation (2)(d) must include–

(a) a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied;

(b) a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position;

(c) a statement on whether the volatility adjustment referred to in regulation 70 is used by the undertaking; and

(d) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

(4) The description referred to in sub-regulation (2)(e)(i) must include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

(5) The disclosure of the Solvency Capital Requirement referred to in sub-regulation (2)(e)(ii) must show separately the amount calculated in accordance with Chapter 3 of Part 6 and any capital add-on imposed in accordance with regulation 39 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with regulation 100, together with concise information on its justification by the GFSC.

(6) Without limiting any disclosure that is mandatory under any other legal or regulatory requirements, the GFSC may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with regulation 100(3) need not be separately disclosed during a transitional period ending no later than 31st December 2020.

(7) The disclosure of the Solvency Capital Requirement must be accompanied, where applicable, by an indication that its final amount is still subject to assessment by the GFSC.

Information for and reports by EIOPA.

53. The GFSC must provide the following information to EIOPA on an annual basis–

(a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the GFSC during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows–

(i) for all undertakings;

(ii) for life insurance undertakings;

(iii) for non-life insurance undertakings;

(iv) for undertakings pursuing both life and non-life activities;

(v) for reinsurers;

(b) for each of the disclosures set out in paragraph (a), the proportion of capital add-ons imposed under paragraphs (a), (b) and (c) of regulation 39(1) respectively;

(c) the number of undertakings benefiting from the limitation from regular supervisory reporting and the number of undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in regulation 37, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all insurance and reinsurance undertakings;

(d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in regulation 231(3) together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

Report on solvency and financial condition: applicable principles

54.(1) Subject to sub-regulation (4), the GFSC must permit insurance and reinsurance undertakings not to disclose information where–

(a) by disclosing the information, the competitors of the undertaking would gain significant undue advantage;

(b) there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

(2) In any case where non-disclosure of information is permitted by the GFSC, an undertaking must make a statement to this effect in its report on solvency and financial condition and must state the reasons.

(3) The GFSC must permit insurance and reinsurance undertakings to make use of or refer to public disclosures made under other legal or regulatory requirements to the extent that those disclosures are equivalent in both nature and scope to the information required under regulation 52.

(4) In sub-regulations (1) and (2) "information" does not include any of the information referred to in regulation 52(2)(e).

Report on solvency and financial condition: updates and additional voluntary information.

55.(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with regulations 52 and 54, insurance and reinsurance undertakings must disclose appropriate information on the nature and effects of that major development.

(2) For the purposes of sub-regulation (1), at least the following must be regarded as major developments–

(a) where non-compliance with the Minimum Capital Requirement is observed and the GFSC either considers that the undertaking will not be able to submit a realistic short-term finance scheme or does not obtain such a scheme within one month of the date when non-compliance was observed; and

(b) where significant non-compliance with the Solvency Capital Requirement is observed and the GFSC does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

(3) In regard to sub-regulation (2)(a)–

(a) the GFSC must require the undertaking concerned to disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and

(b) where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it must be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(4) In regard to sub-regulation (2)(b)–

(a) the GFSC must require the undertaking concerned to disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and

(b) where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it must be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures planned.

(5) Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with regulations 52 and 54 and sub-regulation (1).

Report on solvency and financial condition: policy and approval.

56.(1) An insurance or reinsurance undertaking must have appropriate systems and structures in place to fulfil the requirements of regulations 52, 54 and 55, as well as having a written policy ensuring the continuing appropriateness of any information disclosed in accordance with those regulations.

(2) The solvency and financial condition report must be subject to approval by the undertaking's administrative, management or supervisory body and be published only after that approval.

Professional secrecy, exchange of information etc.

Professional secrecy.

57.(1) The professional secrecy obligation applies to information obtained or supplied under these Regulation.

(2) Despite sub-regulation (1), where an insurance or reinsurance undertaking has been declared insolvent or has been compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

(3) Nothing in sub-regulation (1) limits the European Parliament's right of inquiry under Article 226 of the Treaty on the Functioning of the European Union.

Exchange of information with other authorities.

58.(1) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and any of the following (whether in Gibraltar or another EEA State)–

(a) authorities responsible for the supervision of–

(i) insurance undertakings or reinsurance undertakings;

(ii) credit institutions or other financial organisations; or

(iii) financial markets;

(b) bodies involved in the insolvency, liquidation or similar procedures in respect of insurance or reinsurance undertakings, and the authorities responsible for overseeing those bodies;

(c) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions, and the authorities responsible for overseeing those persons;

(d) bodies which administer compulsory winding-up proceedings or guarantee funds (to the extent necessary for the performance of their duties);

(e) independent actuaries of insurance or reinsurance undertakings carrying out legal supervision of those undertakings, and the bodies responsible for overseeing those actuaries; and

(f) authorities responsible for supervising the obliged entities listed in Article 2.1(1) and (2) of the Money Laundering Directive for compliance with that Directive.

(2) Where the GFSC discloses any information in accordance with sub-regulation (1), it must ensure that–

(a) the information disclosed is subject to the obligation of professional secrecy in Article 64 of the Solvency 2 Directive; and

(b) in the case of disclosure to an oversight body under sub-regulation (1)(b) or (c) or an actuary or oversight body under sub-regulation (1)(e)–

(i) the disclosure is for the purpose of carrying out the oversight or legal supervision referred to in those provisions; and

(ii) where the information originates in another EEA State, it is not disclosed without the express agreement of the supervisory authority from which it

originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(3) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and the authorities or bodies responsible for the detection and investigation of breaches of company law where this is done with the aim of strengthening the stability and integrity of the financial system.

(4) Where the GFSC discloses any information in accordance with sub-regulation (3), it must ensure that–

(a) the information is intended for the purpose of detection and investigation as referred to in that sub-regulation;

(b) the authority or body to which it is disclosed is subject to the obligation of professional secrecy in Article 64 of the Solvency 2 Directive; and

(c) where the information originates in another EEA State, it is not disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(5) Where the GFSC discloses any information to which sub-regulation (4)(c) applies, it must inform the supervisory authority from which the information originates of the name and precise responsibilities of the person to whom it is to be disclosed.

(6) To the extent that an authority or body to which sub-regulation (3) applies performs its task of detection or investigation with the aid of persons who are appointed for that purpose on the basis of their specific competence but are not employed in the public sector, the exchange of information under that sub-regulation may extend to those persons under the conditions set out in sub-regulation (4).

(7) The GFSC must communicate to the European Commission and the other EEA States the names of the authorities, persons or bodies in Gibraltar which may receive information under sub-regulations (1) and (3).

Transmission of information to central banks, the ESRB, etc.

59.(1) The GFSC may transmit information intended for the performance of their tasks to–

(a) central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where the information is relevant to their

respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;

(b) where appropriate, other national public authorities responsible for overseeing payment systems; and

(c) the European Systemic Risk Board (ESRB) established by the ESRB Regulation, where that information is relevant to carrying out its tasks.

(2) In an emergency situation, including an emergency under Article 18 of the EIOPA Regulation, the GFSC may communicate, without delay, information to–

(a) the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system; and

(b) the ESRB, where the information is relevant to its tasks.

(3) Where a body in sub-regulation (1) or (2) transmits to the GFSC any information that it may need for the purposes of performing its functions, the professional secrecy obligation applies to the GFSC's use of that information.

Supervisory convergence.

60.(1) In performing its supervisory functions, the GFSC, together with other supervisory authorities, must have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the Solvency 2 Directive.

(2) For that purpose the GFSC must–

(a) participate in the activities of EIOPA; and

(b) make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of the EIOPA Regulation and provide reasons if it does not do so.

Cooperation with EIOPA.

61. The GFSC, for the purposes of the Solvency 2 Directive–

(a) must cooperate with EIOPA in accordance with the EIOPA Regulation; and

(b) must provide EIOPA, without delay, with any information necessary to carry out its duties in accordance with that Regulation.

Duties of auditors

Auditors.

62.(1) The auditors of an insurance or reinsurance undertaking must promptly report to the GFSC any fact or decision concerning that undertaking of which they have become aware while carrying out an audit or statutory task and which is liable to bring about any of the following–

(a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;

(b) the impairment of the continuous functioning of the undertaking;

(c) a refusal to certify the accounts or to the expression of reservations;

(d) non-compliance with the Solvency Capital Requirement; or

(e) non-compliance with the Minimum Capital Requirement.

(2) The auditors of an insurance or reinsurance undertaking must also report any facts or decisions in sub-regulation (1) of which they have become aware in the course of carrying out an audit or statutory task in relation to an undertaking which has close links with the insurance or reinsurance undertaking resulting from a control relationship.

(3) Any disclosure by an auditor under sub-regulation (1) or (2) made in good faith to the GFSC or any other supervisory authority does not constitute a breach of any restriction on disclosure of information imposed by contract or by or under any enactment or any administrative provision or involve the auditor in liability of any kind.

PART 5
PURSUIT OF LIFE AND NON-LIFE ACTIVITY

Pursuit of life and non-life insurance activity.

63.(1) Subject to sub-regulation (2), insurance undertakings must not be given Part 7 permission to pursue life and non-life insurance activities simultaneously.

(2) The GFSC may permit–

(a) an undertaking with Part 7 permission to carry on life insurance activity to carry on non-life insurance activities for the risks listed in Classes 1 and 2; and

(b) an undertaking with Part 7 permission solely to carry on insurance activities for the risks listed in Classes 1 and 2 to carry on life insurance activity.

(3) An insurance undertaking which is given permission in accordance with sub-regulation (2)–

(a) must manage its life insurance activities and non-life insurance activities separately in accordance with regulation 64; and

(b) must comply with the accounting rules governing life insurance for both its life and non-life insurance activities.

(4) Where an insurance undertaking to which sub-regulation (2) applies carries on both life insurance and non-life insurance activities in Classes 1 and 2, in the event of a winding-up or reorganisation of the undertaking, the rules applicable to life insurance activities also apply to those non-life activities.

(5) Where an insurance undertaking–

(a) which carries on non-life insurance activities has financial, commercial or administrative links with a life insurance undertaking; or

(b) which carries on life insurance activities has financial, commercial or administrative links with a non-life insurance undertaking,

it must provide the GFSC with any information that it may reasonably require in order to ensure that the accounts of the undertakings concerned are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

(6) An insurance undertaking which on 15th March 1979 carried on simultaneously both life and non-life insurance activities covered by the Solvency 2 Directive may continue to do so if each activity is separately managed in accordance with regulation 64.

(7) The Minister may, by order, direct insurance undertakings to which sub-regulation (6) applies to cease, within a specified period, the simultaneous carrying on of the life and non-life insurance activities in which they were engaged on 15th March 1979.

Separation of life and non-life insurance management.

64.(1) The separate management referred to in regulation 63 must be organised so that–

(a) life insurance activity is distinct from non-life insurance activity;

(b) the respective interests of life and non-life policy holders are not prejudiced; and

(c) in particular, profits from life insurance benefit life policy holders as if the undertaking only carried on the activity of life insurance.

(2) Without limiting regulations 90 and 115, an insurance undertaking to which regulation 63(2) or (6) applies must calculate–

(a) a notional life Minimum Capital Requirement with respect to its life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6); and

(b) a notional non-life Minimum Capital Requirement with respect to its non-life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6).

(3) As a minimum, an insurance undertaking to which regulation 63(2) or (6) applies must cover the following by an equivalent amount of eligible basic own-fund items–

(a) the notional life Minimum Capital Requirement, in respect of its life insurance activity; and

(b) the notional non-life Minimum Capital Requirement, in respect of its non-life activity,

and the minimum financial obligation in respect of its life insurance activity or non-life activity must not be borne by the other activity.

(4) As long as the minimum financial obligations specified in sub-regulation (3) are fulfilled and the GFSC is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in regulation 90, the explicit eligible own-fund items which are still available for one or the other activity.

(5) The GFSC must analyse the results in both life and non-life insurance activities so as to ensure that the requirements of sub-regulations (1) to (4) are fulfilled.

(6) An insurance undertaking to which regulation 63(2) or (6) applies must draw up accounts–

(a) so as to show the sources of the results for life and non-life insurance separately, broken down according to origin, including–

(i) all income, in particular premiums, payments by reinsurers and investment income, and

(ii) expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business; and

(b) items common to both activities must be entered in the accounts in accordance with methods of apportionment accepted by the GFSC.

(7) An insurance undertaking must, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in sub-regulation (2) are clearly identified, in accordance with regulations 89(4).

(8) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in sub-regulation (3)(a), the GFSC must apply to the deficient activity the measures provided for in these Regulations, whatever the results in the other activity.

(9) Despite sub-regulation (3)(b), those measures may include the GFSC authorising a transfer of explicit eligible basic own-fund items from one activity to the other.

PART 6
VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES

CHAPTER 1
VALUATION OF ASSETS AND LIABILITIES AND RULES RELATING TO TECHNICAL PROVISIONS

Valuation of assets and liabilities

Valuation of assets and liabilities.

65.(1) An insurance or reinsurance undertaking must value–

(a) assets at the amount for which they could be exchanged between knowledgeable and willing parties in an arm's length transaction; and

(b) liabilities at the amount for which they could be transferred, or settled, between knowledgeable and willing parties in an arm's length transaction.

(2) For the purposes of sub-regulation (1)(b), when valuing liabilities no adjustment must be made to take account of the own credit standing of the undertaking.

Technical provisions

General provisions.

66.(1) An insurance or reinsurance undertaking must establish adequate technical provisions with respect to all of its insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.

(2) The value of technical provisions must correspond to the current amount that the undertaking would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.

(3) An insurance or reinsurance undertaking must calculate its technical provisions–

(a) using, and consistent with, information provided by the financial markets and generally available data on underwriting risks (market consistency);

(b) in a prudent, reliable and objective manner;

(c) taking account of the principles in sub-regulation (2); and

(d) in accordance with regulations 67 to 72.

Calculation of technical provisions.

67.(1) The value of technical provisions must be equal to the sum of a best estimate and a risk margin, calculated in accordance with this regulation.

(2) The best estimate must–

(a) correspond to the probability-weighted average of future cashflows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure; and

(b) be calculated–

(i) based on up-to-date and credible information and realistic assumptions;

(ii) using adequate, applicable and relevant actuarial and statistical methods; and

(iii) gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, which must be calculated separately in accordance with regulation 76.

(3) The cash-flow projection used in the calculation of the best estimate (whether valued separately or on the basis of financial instruments in accordance with sub-regulation (6)) must take into account all the cash in-flows and out-flows required to settle the insurance and reinsurance obligations over their lifetime.

(4) The risk margin must be such as to ensure that the value of the technical provisions is equivalent to the amount that an insurance or reinsurance undertaking would be expected to require in order to take over and meet the insurance and reinsurance obligations.

(5) Subject to sub-regulation (6) an insurance or reinsurance undertaking must value the best estimate and the risk margin separately.

(6) In a case where–

(a) future cash flows associated with insurance or reinsurance obligations can be replicated reliably; and

(b) that replication is provided using financial instruments; and

(c) those financial instruments have a reliable market value which is observable,

then the value of technical provisions associated with those future cash flows must be determined on the basis of the market value of those financial instruments.

(7) Where an insurance or reinsurance undertaking values the best estimate and risk margin separately, the risk margin must be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over their lifetime.

(8) The rate used in the determination of the cost of providing that amount of eligible own funds (the "cost of capital rate") must be the same for all insurance and reinsurance undertakings as reviewed periodically by EIOPA.

(9) The cost of capital rate used must be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Chapter 2, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over their lifetime.

(10) The determination of the relevant risk-free interest rate term structure referred to in sub-regulation (2)(a)–

(a) must make use of, and be consistent with, information derived from relevant financial instruments;

(b) must take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent; and

(c) must be extrapolated for maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent.

(11) The extrapolated part of the relevant risk-free interest rate term structure must be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

Matching adjustment to relevant risk-free interest rate term structure.

68.(1) An insurance or reinsurance undertaking may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the GFSC where the following conditions are met–

(a) the undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

(b) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from the undertaking's other activities and the assigned portfolio of assets cannot be used to cover losses arising from those other activities;

(c) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;

(d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;

(e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;

(f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with regulation 91(2) to (5);

(g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with regulation 65, covering the insurance or reinsurance obligations at the time the surrender option is exercised;

(h) the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;

(i) the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

(2) Despite sub-regulation (1)(h), an insurance or reinsurance undertaking may use assets where the cash flows are fixed except for a dependence on inflation, if those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

(3) In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain

the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows must not disqualify the asset for admissibility to the assigned portfolio in accordance with sub-regulation (1)(h).

(4) An insurance or reinsurance undertaking that applies the matching adjustment to a portfolio of insurance or reinsurance obligations must not revert back to an approach that does not include a matching adjustment.

(5) Where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in sub-regulation (1)–

(a) it must immediately inform the GFSC and take the necessary measures to restore compliance with those conditions; and

(b) where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it must cease to apply the matching adjustment to any of its insurance or reinsurance obligations and must not apply the matching adjustment for a period of a further 24 months.

(6) The matching adjustment must not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under regulation 70 or transitional measure on the risk free interest rates under paragraph 2 of Schedule 1.

Calculating matching adjustment.

69.(1) For each currency the matching adjustment referred to in regulation 68 must be calculated in accordance with the following principles–

(a) the matching adjustment must be equal to the difference of the following–

(i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with regulation 65 of the portfolio of assigned assets;

(ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;

(b) the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance undertaking;

(c) despite paragraph (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

(d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with Commission Delegated Regulation (EU) 2015/35.

(2) For the purposes of sub-regulation (1)(b), the fundamental spread must be–

(a) equal to the sum of the following–

(i) the credit spread corresponding to the probability of default of the assets;

(ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets;

(b) for exposures to EEA States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

(c) for assets other than exposures to EEA States' central governments and central banks, no lower than 35% of the long term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

(3) The probability of default referred to in sub-regulation (2)(a)(i) must be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class and, where no reliable credit spread can be derived from the default statistics referred to in sub-regulation (2)(a)(ii), the fundamental spread must be equal to the portion of the long term average of the spread over the risk-free interest rate set out in sub-regulation (7)(b) and (c).

Volatility adjustment to relevant risk-free interest rate term structure.

70.(1) An insurance or reinsurance undertaking may, with the prior approval by the GFSC, apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in regulation 67(2).

(2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure must be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

(3) The reference portfolio for a currency must be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(4) The amount of the volatility adjustment to risk-free interest rates must correspond to 65% of the risk-corrected currency spread, which must be calculated as the difference between–

(a) the spread referred to in sub-regulation (2); and

(b) the portion of that spread attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(5) The volatility adjustment must apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with regulation 67(11) and the extrapolation of the relevant risk-free interest rate term structure must be based on those adjusted risk-free interest rates.

(6) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in sub-regulation (4) for the currency of that country must, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points.

(7) The increased volatility adjustment must be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country.

(8) The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

(9) The volatility adjustment must not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under regulation 68.

(10) By way of derogation from regulation 91, the Solvency Capital Requirement must not cover the risk of loss of basic own funds resulting from changes to the volatility adjustment.

Use of technical information produced by EIOPA.

71.(1) An insurance or reinsurance undertaking must use the technical information referred to in Article 77e.1 of the Solvency 2 Directive in calculating–

(a) the best estimate in accordance with regulation 67;

(b) the matching adjustment in accordance with regulation 69; and

(c) the volatility adjustment in accordance with regulation 70.

(2) Sub-regulation (1) only applies where that technical information is adopted by the European Commission in accordance with Article 77e.2 of the Solvency 2 Directive.

(3) With respect to currencies and national markets where the volatility adjustment referred to in Article 77e.1(c) of the Solvency 2 Directive is not included in the technical information adopted by the European Commission, no volatility adjustment is to be applied to the relevant risk free interest rate term structure to calculate the best estimate.

Review of long-term guarantees measures and measures on equity risk.

72. The GFSC must, on an annual basis until January 2021, provide EIOPA with the following information–

(a) the availability of long-term guarantees in insurance products in the national market and the behaviour of insurance and reinsurance undertakings as long-term investors;

(b) the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with regulation 122(4), the duration-based equity risk sub-module and the transitional measures set out in paragraphs 2 and 3 of Schedule 1;

(c) the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-

module and the transitional measures set out in paragraphs 2 and 3 of Schedule 1, at national level and in anonymised way for each undertaking;

(d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of insurance and reinsurance undertakings and whether they provide undue capital relief;

(e) the effect of any extension of the recovery period in accordance with regulation 122(4) on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement; and

(f) where insurance and reinsurance undertakings apply the transitional measures set out in paragraphs 2 and 3 of Schedule 1, whether they comply with the phasing-in plans referred to in paragraph 4 of Schedule 1 and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and the GFSC, taking into account the regulatory environment of Gibraltar.

Other elements to be taken into account in calculation of technical provisions.

73. In addition to regulation 67, when calculating technical provisions, an insurance or reinsurance undertaking must take account of–

(a) all expenses that will be incurred in servicing insurance and reinsurance obligations;

(b) inflation, including expenses and claims inflation; and

(c) all payments to policy holders, including future discretionary bonuses, which the undertaking expects to make, whether or not those payments are contractually guaranteed.

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts.

74.(1) When calculating technical provisions, an insurance or reinsurance undertaking must take account of the value of financial guarantees and any contractual options included in contracts of insurance and reinsurance contracts.

(2) Any assumptions used by an insurance or reinsurance undertaking to determine the likelihood that policy holders will exercise contractual options, including lapses and surrenders, must–

(a) be realistic and based on current and credible information; and

(b) take into account, either explicitly or implicitly, the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation.

75. When calculating technical provisions, an insurance or reinsurance undertaking must segment its insurance and reinsurance obligations into homogeneous risk groups, and, as a minimum, by lines of business.

Recoverables from reinsurance contracts and special purpose vehicles.

76.(1) An insurance or reinsurance undertaking must calculate amounts recoverable from reinsurance contracts and special purpose vehicles in accordance with regulations 66 to 75.

(2) For the purposes of sub-regulation (1), an undertaking must take into account the time difference between amounts becoming recoverable and the actual receipt of those amounts.

(3) An undertaking must adjust the calculation referred to in sub-regulation (1) to take into account expected losses due to the default of the counterparty.

(4) The adjustment referred to in sub-regulation (3) must be based on an assessment of the probability of default of the counterparty and the average loss that would result from that default (loss given default).

Data quality and application of approximations, including case-by-case approaches, for technical provisions.

77.(1) An insurance or reinsurance undertaking must have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of its technical provisions.

(2) Where an undertaking has insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of its insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, it may use appropriate approximations, including case-by-case approaches, in the calculation of the best estimate.

Comparison against experience.

78.(1) An insurance or reinsurance undertaking must have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

(2) Where a systematic deviation exists between the undertaking's best estimate calculation and experience, the undertaking must make appropriate adjustments to the actuarial methods being used or the assumptions being made, or both as the case may require.

Appropriateness of level of technical provisions.

79. An insurance or reinsurance undertaking must, at the GFSC's request, demonstrate to the GFSC–

(a) the appropriateness of the level of the undertaking's technical provisions;

(b) the applicability and relevance of the methods applied; and

(c) the adequacy of the underlying statistical data used.

Increase of technical provisions.

80. If an insurance or reinsurance undertaking's calculation of technical provisions does not comply with regulations 66 to 78, the GFSC may require the undertaking to increase the amount of technical provisions so that they correspond to the level determined in accordance with those regulations.

CHAPTER 2
OWN FUNDS

Determination of own funds.

81.(1) An insurance or reinsurance undertaking's own funds comprise the sum of–

(a) basic own funds referred to in regulation 82; and

(b) ancillary own funds referred to in regulation 83.

(2) For the purposes of this Part, an undertaking's surplus funds are to be regarded as accumulated profits of the undertaking which have not been made available for distribution to policy holders and beneficiaries.

Basic own funds.

82.(1) An insurance or reinsurance undertaking's basic own funds must consist of the following items–

(a) the excess of assets over liabilities, valued in accordance with Chapter 1; and

(b) subordinated liabilities.

(2) The excess amount referred to in sub-regulation (1) must be reduced by the amount of own shares held by the undertaking.

Ancillary own funds.

83.(1) An insurance or reinsurance undertaking's ancillary own funds must consist of items (other than basic own funds) which can be called up to absorb losses, including the following (to the extent that they are not basic own fund items)–

(a) unpaid share capital or initial fund that has not been called up;

(b) letters of credit and guarantees;

(c) any other legally binding commitments received by the undertaking; and

(d) in the case of a mutual or mutual type association with variable contributions, any future claims which it may have against its members by way of a call for supplementary contribution within the following 12 months.

(2) Where an item of ancillary own funds becomes paid in or called up, the proceeds paid in or the amount due in respect of the call must be treated as an asset and the item must cease to be treated as an item of ancillary own funds.

Supervisory approval of ancillary own funds.

84.(1) When determining its own funds, an insurance or reinsurance undertaking must not take into account any item of ancillary own funds without the GFSC's approval.

(2) An undertaking may only attribute an amount to an item of ancillary own funds to the extent that it–

(a) reflects the loss-absorbency of the item; and

(b) is based on prudent and realistic assumptions.

(3) Where an item of ancillary own funds has a fixed nominal value, the amount of that item must be equal to its nominal value, where that value appropriately reflects its loss absorbency.

(4) The GFSC may approve either–

(a) a monetary amount for each ancillary own-fund item; or

(b) a method by which to determine the amount of each ancillary own-fund item, in which case approval by the GFSC of the amount determined in accordance with that method must be granted for a specified period of time.

(5) For each ancillary own-fund item, the GFSC must base its approval on an assessment of–

(a) the status of the counterparties concerned, in relation to their ability and willingness to pay;

(b) the recoverability of the funds, taking account of–

(i) the legal form of the item; and

(ii) any conditions which would prevent the item from being successfully paid in or called up; and

(c) any information on the outcome of past calls which insurance or reinsurance undertakings have made for such ancillary own funds, to the extent that the information can be reliably used to assess the expected outcome of future calls.

Characteristics and features used to classify own funds into tiers.

85.(1) Own fund items must be classified into three tiers, depending on whether they are basic own fund or ancillary own fund items and the extent to which they possess the following characteristics–

(a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis as well as in the case of winding-up (permanent availability); and

(b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations to policy holders, have been met (subordination).

(2) When assessing the extent to which own funds items possess the characteristics set out in sub-regulation (1), currently and in the future, due consideration must be given to–

(a) the duration of the item, in particular whether the item is dated or not and, where an own funds item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking (sufficient duration);

(b) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);

(c) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs); and

(d) whether the item is clear of encumbrances (absence of encumbrances).

Main criteria for classification into tiers.

86.(1) An insurance or reinsurance undertaking may only include an own funds item in its Tier 1 own funds if–

(a) it is an item of basic own funds; and

(b) it substantially possesses the characteristics set out in regulation 85(1) taking into consideration the features set out in regulation 85(2).

(2) An undertaking may only include an own funds item in its Tier 2 own funds if–

(a) where it is an item of basic own funds, it substantially possesses the characteristics set out in regulation 85(1)(b), taking into consideration the features set out in regulation 85(2); or

(b) where it is an item of ancillary own funds it substantially possesses the characteristics set out in regulation 85(1)(a) and (b), taking into consideration the features set out in regulation 85(2).

(3) Any basic or ancillary own fund items which do not fall within sub-regulation (1) or (2) must be classified in the undertaking's Tier 3 own funds.

(4) In so far as permitted by the GFSC, to the extent that surplus funds fulfil the criteria in sub-regulation (1), they must not be considered as insurance or reinsurance liabilities.

Classification of own funds into tiers.

87.(1) An insurance or reinsurance undertaking must classify its own fund items on the basis of the criteria set out in regulation 86.

(2) For that purpose, the undertaking must refer to the list of own-fund items in Commission Delegated Regulation (EU) 2015/35.

(3) Where an own fund item is not covered by that list, the undertaking must assess and classify it in accordance with regulation 86, but any such classification must be approved by the GFSC.

Classification of specific insurance own fund items.

88. Without limiting regulation 87, for the purposes of these Regulations the following classifications must be applied–

(a) surplus funds to which regulation 86(4) applies must be classified as Tier 1 own funds;

(b) letters of credit and guarantees which are held in trust for the benefit of policy holders by an independent trustee and are provided by credit institutions must be classified as Tier 2;

(c) any future claims which a which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in Classes 6, 12 and 17 may have against their members by way of a call for supplementary contributions, within the following 12 months, must be classified as Tier 2; and

(d) any future claims which a mutual with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months which do not fall within paragraph (c) must be classified as Tier 2 where they substantially possess the characteristics set out in regulation 85(a) and (b), taking into consideration the features set out in regulation 85(2).

Eligibility and limits applicable to Tiers 1, 2 and 3.

89.(1) As far as an insurance or reinsurance undertaking's compliance with its Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items must be subject to quantitative limits which ensure that the following condition are met–

(a) the proportion of Tier 1 items in the eligible own funds must be more than one third of the total amount of eligible own funds; and

(b) the eligible amount of Tier 3 items must be less than one third of the total amount of eligible own funds.

(2) As far as an undertaking's compliance with its Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 must be subject to quantitative limits which ensure that, as a minimum, the proportion of Tier 1 items in the eligible basic own funds is more than 50% of the total amount of eligible basic own funds.

(3) The eligible amount of own funds to cover the Solvency Capital Requirement must be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

(4) The eligible amount of basic own funds to cover the Minimum Capital Requirement must be equal to the sum of the amount of Tier 1 and the eligible amount of basic own funds items classified in Tier 2.

CHAPTER 3
SOLVENCY CAPITAL REQUIREMENT

General provisions.

90.(1) An insurance or reinsurance undertaking must hold eligible own funds covering its Solvency Capital Requirement.

(2) The undertaking must calculate its Solvency Capital Requirement either–

(a) in accordance with the standard formula (as set out in regulations 93 to 100); or

(b) using an internal model (as set out in regulations 101 to 114).

Calculation of Solvency Capital Requirement.

91.(1) An insurance or reinsurance undertaking must calculate its Solvency Capital Requirement in accordance with sub-regulations (2) to (6).

(2) The Solvency Capital Requirement must be calculated on the presumption that the undertaking will pursue its business as a going concern.

(3) The Solvency Capital Requirement–

(a) must be calibrated so as to ensure that all quantifiable risks to which the undertaking is exposed are taken into account;

(b) must cover–

(i) existing business; and

(ii) new business expected to be written over the following 12 months; and

(c) with respect to existing business, must cover only unexpected losses.

(4) The Solvency Capital Requirement must correspond to the Value-at-Risk of the undertaking's basic own funds subject to a confidence level of 99.5% over a one-year period.

(5) The Solvency Capital Requirement must cover at least the following risks–

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk;

(e) credit risk; and

(f) operational risk,

and the operational risk referred to in paragraph (f) must include legal risks but exclude risks arising from strategic decisions and reputation risks.

(6) When calculating the Solvency Capital Requirement, an undertaking may take account of the effect of risk-mitigation techniques, if credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Frequency of calculation.

92.(1) An insurance or reinsurance undertaking–

(a) must calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the GFSC;

(b) must hold eligible own funds which cover the last reported Solvency Capital Requirement;

(c) must monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis; and

(d) must recalculate the Solvency Capital Requirement without delay and report it to the GFSC if its risk profile deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement.

(2) Where there is evidence to suggest that the risk profile of an undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the GFSC may require the undertaking to recalculate the Solvency Capital Requirement.

Solvency Capital Requirement standard formula

Structure of the standard formula.

93. The Solvency Capital Requirement of an insurance or reinsurance undertaking, when calculated on the basis of the standard formula, must be the sum of the following items–

(a) the Basic Solvency Capital Requirement, as set out in regulation 94;

(b) the capital requirement for operational risk, as set out in regulation 98;

(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as set out in regulation 99.

Design of Basic Solvency Capital Requirement.

94.(1) The Basic Solvency Capital Requirement must comprise individual risk modules, which are aggregated in accordance with point 1 of Annex IV to the Solvency 2 Directive, consisting of at least the following risk modules–

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk; and

(e) counterparty default risk.

(2) For the purposes of sub-regulation (1)(a) to (c), an insurance or reinsurance undertaking must allocate its insurance or reinsurance operations to the underwriting risk module that best reflects the technical nature of the underlying risks.

(3) The correlation coefficients for the aggregation of the risk modules referred to in sub-regulation (1), as well as the calibration of the capital requirements for each risk module, must result in an overall Solvency Capital Requirement which complies with the principles set out in regulation 91.

(4) Each of the risk modules referred to in sub-regulation (1) must be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period and, where appropriate, diversification effects must be taken into account in the design of each risk module.

(5) The same design and specifications for the risk modules must be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as set out in regulation 100.

(6) With regard to risks arising from catastrophes, where appropriate, geographical specifications may be used for the calculation of the life, non-life and health underwriting risk modules.

(7) Subject to approval by the GFSC, an undertaking may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking when calculating the life, non-life and health underwriting risk modules and such parameters must be calibrated on the basis of the undertaking's internal data or data which is directly relevant for the undertaking's operations using standardised methods.

(8) In considering whether to grant approval under sub-regulation (7), the GFSC must verify the completeness, accuracy and appropriateness of the data used.

Calculation of Basic Solvency Capital Requirement.

95.(1) An insurance or reinsurance undertaking must calculate its Basic Solvency Capital Requirement in accordance with sub-regulations (2) to (6).

(2) The non-life underwriting risk module–

(a) must reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business;

(b) must take account of the uncertainty in the undertaking's results related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months; and

(c) must be calculated, in accordance with point 2 of Annex IV to the Solvency 2 Directive, as a combination of the capital requirements for at least the following sub-modules–

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk); and

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).

(3) The life underwriting risk module–

(a) must reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business; and

(b) must be calculated, in accordance with point 3 of Annex IV to the Solvency 2 Directive, as a combination of the capital requirements for at least the following sub-modules–

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);

(iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability-morbidity risk);

(iv) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses

incurred in servicing insurance or reinsurance contracts (life-expense risk);

(v) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);

(vi) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk); and

(vii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).

(4) The health underwriting risk module–

(a) must reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business; and

(b) must cover at least the following risks–

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning; and

(iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

(5) The market risk module–

(a) must reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact on the value of the undertaking's assets and liabilities;

(b) must properly reflect the structural mismatch between assets and liabilities, in particular with respect to their duration; and

(c) must be calculated, in accordance with point 4 of Annex IV to the Solvency 2 Directive, as a combination of the capital requirements for at least the following sub-modules–

(i) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

(ii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

(iii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

(iv) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

(v) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk); and

(vi) additional risks to the undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

(6) The counterparty default risk module–

(a) must reflect possible losses due to unexpected default, or deterioration in the credit standing, of the undertaking's counterparties and debtors over the following 12 months;

(b) must cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module;

(c) must take appropriate account of collateral or other security held by or for the account of the undertaking and the risks associated with it; and

(d) for each counterparty, must take account of the overall counterparty risk exposure of the undertaking to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

Calculation of equity risk sub-module: symmetric adjustment mechanism.

96.(1) The equity risk sub-module calculated in accordance with the standard formula must include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

(2) The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with regulation 94(4), covering the risk arising from changes in the level of equity prices must be based on a function of the current level of an appropriate equity index and a weighted average level of that index, and that weighted average must be calculated over an appropriate period of time which must be the same for all insurance and reinsurance undertakings.

(3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices must not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Duration-based equity risk sub-module.

97.(1) Where, in circumstances falling within sub-regulation (2), a life insurance undertaking provides–

(a) occupational retirement provision in accordance with Article 4 of the IORPS 2 Directive; or

(b) retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policy holders in accordance with the law of Gibraltar,

the GFSC may authorise the undertaking to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure over a time period

which is consistent with a typical holding period of equity investments for the undertaking, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91 where the approach provided for in this sub-regulation is used only in respect of those assets and liabilities referred to in sub-regulation (2)(a).

(2) The circumstances referred to in sub-regulation (1) are where–

(a) all assets and liabilities corresponding to the business of the undertaking are ring-fenced, managed and organised separately from the other activities of the, undertaking without any possibility of transfer;

(b) the activities of the undertaking related to sub-regulation (1)(a) and (b), in relation to which the approach referred to in that sub-regulation is applied, are pursued only in Gibraltar; and

(c) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years.

(3) In the calculation of the Solvency Capital Requirement, those assets and liabilities must be fully considered for the purposes of assessing the diversification effects, without limiting the need to safeguard the interests of policy holders and beneficiaries in other EEA States.

(4) Subject to the approval of the GFSC, the approach set out in sub-regulation (1) must be used only where the solvency and liquidity positions as well as the strategies, processes and reporting procedures of the undertaking with respect to asset-liability management are such as to ensure, on an on-going basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking.

(5) The undertaking must be able to demonstrate to the GFSC that the condition in sub-regulation (4) is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91.

(6) An undertaking must not revert to applying the approach set out in regulation 95 other than in duly justified circumstances and subject to the approval of the GFSC.

Capital requirement for operational risk.

98.(1) The capital requirement for operational risk–

(a) must reflect operational risks to the extent they are not already reflected in the risk modules referred to in regulation 94; and

(b) must be calibrated in accordance with regulation 91(3).

(2) With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk must take account of the amount of annual expenses incurred in respect of those insurance obligations.

(3) With respect to insurance and reinsurance operations other than those in sub-regulation (2), the calculation of the capital requirement for operational risk must take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations; and in that case, the capital requirement for operational risks must not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Adjustment for loss-absorbing capacity of technical provisions and deferred taxes.

99.(1) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes referred to in regulation 93(c) must reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of them.

(2) That adjustment must take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent that an insurance or reinsurance undertaking can establish that a reduction in such benefits may be used to cover unexpected losses when they arise.

(3) The risk mitigating effect provided by future discretionary benefits must be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

(4) For the purposes of sub-regulations (2) and (3), the value of future discretionary benefits under adverse circumstances must be compared to the value of those benefits under the underlying assumptions of the best-estimate calculation.

Standard formula: simplification and modification.

100.(1) An insurance or reinsurance undertaking may use a simplified calculation for a specific sub-module or risk module where–

(a) the nature, scale and complexity of the risks the undertaking faces justifies it; and

(b) it would be disproportionate to require all undertakings to apply the standardised calculation.

(2) Simplified calculations must be calibrated in accordance with regulation 91(3).

(3) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 99 and sub-regulation (1)) because the risk profile of an undertaking deviates significantly from the assumptions underlying the standard formula calculation, the GFSC may direct the undertaking to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in with regulation 94(7).

(4) Those specific parameters must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).

(5) A direction under sub-regulation (3) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

Internal models

General provisions for approval of full and partial internal models.

101.(1) An insurance or reinsurance undertaking may calculate its Solvency Capital Requirement using a full or partial internal model as approved by the GFSC.

(2) An undertaking may use partial internal models for the calculation of one or more of the following–

(a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in regulations 94 and 95;

(b) the capital requirement for operational risk as set out in regulation 98; or

(c) the adjustment referred to in regulation 99.

(3) Partial modelling may be applied to an undertaking's whole business or only to one or more major business units.

(4) In any application for approval, an undertaking must submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in regulations 108 to 113.

(5) Where an application for approval relates to a partial internal model, the requirements set out in regulations 108 to 113 must be adapted to take account of the limited scope of the application of the model.

(6) The GFSC must determine the application within six months of receiving the complete application.

(7) The GFSC may approve the application only if it is satisfied–

(a) that the undertaking's systems are adequate for identifying, measuring, monitoring, managing and reporting risk; and

(b) in particular, that the internal model fulfils the requirements in sub-regulations (4) and (5).

(8) Where the GFSC refuses an application, it must promptly give the applicant a written notice of refusal, which must include a statement setting out the reasons for the refusal.

(9) Where the GFSC has approved an application to use an internal model, it may require the undertaking to provide the GFSC with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in regulations 93 to 100.

(10) A requirement under sub-regulation (9) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

Specific provisions for approval of partial internal models.

102.(1) The GFSC must approve a partial internal model only where that model fulfils the requirements set out in regulation 101 and the following additional conditions–

(a) the reason for the limited scope of application of the model is properly justified by the undertaking;

(b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and, in particular, complies with the principles set out in regulations 90 to 92; and

(c) its design is consistent with the principles set out in regulations 90 to 92 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.

(2) The GFSC, when assessing an application for the use of a partial internal model which only covers–

(a) certain sub-modules of a specific risk module;

(b) some of the business units of an undertaking with respect to a specific risk module; or

(c) parts of both,

may require the undertaking to submit a realistic transitional plan to extend the scope of the model.

(3) The transitional plan must set out the manner in which the undertaking plans to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of its insurance operations with respect to that specific risk module.

Policy for changing full and partial internal models.

103.(1) The GFSC, as part of its initial approval process of an insurance or reinsurance undertaking's internal model, must approve the policy for changing that model.

(2) The undertaking may change its internal model in accordance with that policy.

(3) The policy must include a specification of minor and major changes to the internal model.

(4) Major changes to the internal model or changes to that policy must always be subject to prior approval by the GFSC in accordance with regulation 101.

(5) Minor changes to the internal model which are developed in accordance with that policy do not require the GFSC's prior approval.

Responsibilities of administrative, management or supervisory bodies.

104.(1) An insurance or reinsurance undertaking's administrative, management or supervisory body must approve any application to the GFSC for approval of the internal model referred to in regulation 101 or approval of any subsequent major changes to that model.

(2) An undertaking's administrative, management or supervisory body is responsible for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Reversion to standard formula

105. An insurance or reinsurance undertaking which has received approval for an internal model in accordance with regulation 101 must not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100) other than in duly justified circumstances and subject to the prior approval of the GFSC.

Non-compliance of internal model.

106.(1) If, after having received approval from the GFSC to use an internal model, an insurance or reinsurance undertaking ceases to comply with the requirements set out in regulations 108 to 113, it must, without delay–

(a) present to the GFSC a plan to restore compliance within a reasonable period; or

(b) demonstrate to the GFSC's satisfaction that the effect of non-compliance is immaterial.

(2) Where the undertaking presents but fails to implement a plan under sub-regulation (1)(a), the GFSC may require the undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100).

Significant deviations from assumptions underlying standard formula calculation.

107.(1) Where, because an insurance or reinsurance undertaking's risk profile deviates significantly from the assumptions underlying the standard formula calculation, the GFSC considers it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100), the GFSC may direct the undertaking to use an internal model to calculate the Solvency Capital Requirement or the relevant risk modules.

(2) A direction under sub-regulation (1) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

Use test.

108.(1) An insurance or reinsurance undertaking must demonstrate that its internal model is widely used in and plays an important role in the undertaking's system of governance referred to in regulations 43 to 50, and in particular, in its–

(a) risk-management system as set out in regulation 45 and its decision-making processes; and

(b) economic and solvency capital assessment and allocation processes, including the assessment referred to in regulation 46.

(2) In addition, the undertaking must demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which it uses its internal model for the other purposes covered by sub-regulation (1).

(3) The undertaking's administrative, management or supervisory body must be responsible for ensuring the ongoing appropriateness of the design and operations of its internal model, and that the internal model continues to appropriately reflect the undertaking's risk profile.

Statistical quality standards.

109.(1) An insurance or reinsurance undertaking's internal model and, in particular, the calculation of the probability distribution forecast underlying it, must comply with the criteria in sub-regulations (2) to (12).

(2) The methods used to calculate the probability distribution forecast–

(a) must be based on adequate, applicable and relevant actuarial and statistical techniques;

(b) must be consistent with the methods used to calculate technical provisions; and

(c) must be based on current and credible information and realistic assumptions,

and the undertaking must be able to justify the assumptions underlying its internal model to the GFSC.

(3) Data used for the internal model must be accurate, complete and appropriate.

(4) The undertaking must update the data sets used in the calculation of the probability distribution forecast at least annually.

(5) The GFSC must not prescribe a particular method for the calculation of the probability distribution forecast.

(6) Regardless of the calculation method chosen, the undertaking must ensure that the ability of the internal model to rank risk is sufficient to ensure that it is widely used in and plays an important role in its system of governance, in particular its risk-management system and decision-making processes, and capital allocation in accordance with regulation 108.

(7) The internal model must cover all of the material risks to which the undertaking is exposed and must cover at least the risks set out in regulation 91(5).

(8) The undertaking may take account in its internal model of dependencies within and across risk categories, so long as the GFSC is satisfied that the system used for measuring those diversification effects is adequate.

(9) The undertaking may take full account of the effect of risk-mitigation techniques in its internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.

(10) The undertaking must accurately assess–

(a) the particular risks associated with financial guarantees and any contractual options in its internal model, where material; and

(b) the risks associated with both policy holder options and contractual options and, for that purpose, must take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

(11) In its internal model, the undertaking may take account of future management actions that it would reasonably expect to carry out in specific circumstances; and in such a case, the undertaking must make allowance for the time necessary to implement such actions.

(12) In its internal model, the undertaking must take account of all payments to policy holders and beneficiaries which it expects to make, whether or not those payments are contractually guaranteed.

Calibration standards.

110.(1) An insurance or reinsurance undertaking may use a different time period or risk measure than that set out in regulation 91(3) for internal modelling purposes as long as the outputs of the internal model can be used by the undertaking to calculate the Solvency Capital Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91.

(2) Where practicable, the undertaking must derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, using the Value-at-Risk measure set out in regulation 91(4).

(3) Where the undertaking cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, the GFSC may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as

long as the undertaking can demonstrate to the GFSC that policy holders are provided with a level of protection equivalent to that provided for in regulation 91.

(4) The GFSC may require the undertaking to run its internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Profit and loss attribution.

111.(1) An insurance or reinsurance undertaking must review, at least annually, the causes and sources of profits and losses for each of its major business units.

(2) The undertaking must demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses.

(3) The categorisation of risk and attribution of profits and losses must reflect the risk profile of the undertaking.

Validation standards.

112.(1) An insurance or reinsurance undertaking must have a regular cycle of model validation which includes–

(a) monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience;

(b) an effective statistical process for validating the internal model which enables the undertaking to demonstrate to the GFSC that the resulting capital requirements are appropriate;

(c) an analysis of the stability of the internal model and, in particular, the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions; and

(d) an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

(2) The statistical methods applied for the purposes of sub-regulation 1(b) must test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating to it.

Documentation standards.

113.(1) An insurance or reinsurance undertaking must document the design and operational details of its internal model;

(2) That documentation must–

(a) demonstrate compliance with regulations 108 to 112;

(b) provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model;

(c) indicate any circumstances under which the internal model does not work effectively; and

(d) include all major changes to their internal model, as set out in regulation 103.

External models and data.

114. The use by an insurance or reinsurance undertaking of a model or data obtained from a third party does not justify exemption from any of the requirements for the internal model set out in regulations 108 to 113.

CHAPTER 4
MINIMUM CAPITAL REQUIREMENT

General provisions.

115. An insurance or reinsurance undertaking must hold eligible basic own funds to cover the Minimum Capital Requirement.

Calculation of Minimum Capital Requirement.

116.(1) An insurance or reinsurance undertaking must calculate the Minimum Capital Requirement in accordance with the following principles–

(a) it must be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

(b) it must correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk if the undertaking was allowed to continue its operations;

(c) the linear function referred to in sub-regulation (2) used to calculate the Minimum Capital Requirement must be calibrated to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of 85% over a one-year period;

(d) it must have an absolute floor of–

(i) €2,500,000 for non-life insurance undertaking, including a captive insurer, except in the case where all or some of the risks included in one of Classes 10 to 15 are covered, in which case it must be €3,700,000;

(ii) €3,700,000 for a life insurance undertaking, including a captive insurer;

(iii) €3,600,000 for a reinsurance undertaking, other than a captive reinsurer, in which case the absolute floor must be €1,200,000; or

(iv) the sum of the amounts set out in sub-paragraphs (i) and (ii) for insurance undertakings referred to in regulation 63(6).

(2) Subject to sub-regulation (3), an undertaking's Minimum Capital Requirement must be calculated as a linear function of a set or sub-set of the following variables measured net of reinsurance–

(a) technical provisions;

(b) written premiums;

(c) capital-at-risk;

(d) deferred tax; and

(e) administrative expenses.

(3) Without limiting sub-regulation (1)(d), the Minimum Capital Requirement must neither fall below 25% nor exceed 45% of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter 3 of Part 6. including any capital add-on imposed in accordance with regulation 39.

(4) An undertaking must calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to the GFSC.

(5) An undertaking is not required to calculate the Solvency Capital Requirement on a quarterly basis for the purposes of calculating the limits referred to in sub-regulation (3).

(6) Where either of the limits referred to in sub-regulation (3) determines an undertaking's Minimum Capital Requirement, the undertaking must provide the GFSC with the necessary information to allow the GFSC properly to understand the reasons for that.

CHAPTER 5
INVESTMENTS

Prudent person principle.

117.(1) An insurance or reinsurance undertaking must invest all its assets in accordance with the prudent person principle, as specified in sub-regulations (2), (3) and (4).

(2) With respect to the whole portfolio of assets–

(a) the undertaking must only invest in assets and instruments whose risks it can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with regulation 46(2)(a);

(b) all assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, must be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole and, in addition, the localisation of those assets must be such as to ensure their availability; and

(c) assets held to cover the technical provisions must also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities and in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective; and

(d) if a conflict of interest arises, the undertaking or any entity which manages its asset portfolio, must ensure that the investment is made in the best interest of policy holders and beneficiaries.

(3) Without limiting sub-regulation (2), with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the following provisions apply–

(a) where the benefits provided by a contract are directly linked to the value of units in a UCITS (as defined in section 292(1) of the Act) or to the value of assets contained in an internal fund held by the undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as

closely as possible by those units or, in the case where units are not established, by those assets;

(b) where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in sub-regulation (a), the technical provisions in respect of those benefits must be represented as closely as possible–

(i) by the units deemed to represent the reference value; or

(ii) in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based; and

(c) where the benefits referred to in sub-regulations (a) and (b) include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions are subject to sub-regulation (4).

(4) Without limiting sub-regulation (2), the following provisions apply with respect to assets other than those covered by sub-regulation (3)(a) or (b)–

(a) the use of derivative instruments is possible so far as they contribute to a reduction of risks or facilitate efficient portfolio management;

(b) investment and assets which are not admitted to trading on a regulated financial market must be kept to prudent levels;

(c) assets must be properly diversified so as to avoid excessive reliance on any particular asset, issuer or group of entities, or geographical area and excessive accumulation of risk in the portfolio as a whole; and

(d) investments in assets issued by the same issuer, or by issuers belonging to the same group, must not expose the undertaking to excessive risk concentration.

Freedom of investment.

118.(1) Subject to sub-regulation (2), the GFSC must not–

(a) require an insurance or reinsurance undertaking to invest in particular categories of assets; or

(b) subject the undertaking's investment decisions or those of its investment manager to any kind of prior approval or systematic notification requirements.

(2) The GFSC may restrict the types of assets or reference values to which policy benefits may be linked where the investment risk is borne by a policy holder who is an individual, but any such restriction must not be more restrictive than those set out in the UCITS Directive.

Localisation of assets and prohibition of pledging of assets.

119.(1) With respect to insurance risks situated in the EEA, the GFSC must not require that the assets held to cover the technical provisions related to those risks are localised within the EEA or in any particular EEA State.

(2) With respect to recoverables from reinsurance contracts against undertakings authorised in accordance with the Solvency 2 Directive or which have their head office in a third country whose solvency regime is treated as equivalent in accordance with Article 172 of the Solvency 2 Directive, the GFSC must not require the localisation within the EEA of the assets representing those recoverables.

(3) The GFSC must not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is an insurance or reinsurance undertaking authorised in accordance with the Solvency 2 Directive.

PART 7
INSURANCE AND REINSURANCE UNDERTAKINGS IN DIFFICULTY

Identification and notification of deteriorating financial conditions by the undertaking.

120. An insurance or reinsurance undertaking must have procedures in place to identify deteriorating financial conditions and must immediately notify the GFSC if such a deterioration occurs.

Non-compliance with technical provisions.

121.(1) Where an insurance or reinsurance undertaking does not comply with Regulations 66 to 80 the GFSC may prohibit the free disposal of the undertaking's assets after having communicated its intentions to the host States' supervisory authorities.

(2) The GFSC must designate the assets to which a prohibition under sub-regulation (1) applies.

Non-compliance with Solvency Capital Requirement.

122.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Solvency Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.

(2) Within two months of non-compliance with the Solvency Capital Requirement being observed, the undertaking concerned must submit a realistic recovery plan for approval by the GFSC.

(3) Where sub-regulation (1) applies, the GFSC must require the undertaking concerned to take the necessary steps to achieve, within six months from the observation of non-compliance–

(a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement; or

(b) the reduction of its risk profile to ensure compliance with that Requirement.

(4) The GFSC may, if it considers it appropriate, extend the period of six months under sub-regulation (3) by a further three months.

(5) In the event of exceptional adverse situations affecting insurers representing a significant share of the market or of the affected lines of business, as declared by EIOPA and, where appropriate, after consulting the ESRB, the GFSC may extend, for affected

insurers, the period set out in sub-regulation (4) by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

(6) For the purposes of this regulation, the GFSC may request that EIOPA declare the existence of exceptional adverse situations if insurers representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in sub-regulation (3).

(7) For the purposes of this regulation, exceptional adverse situations exist where the financial situation of insurers representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions–

(a) a fall in financial markets which is unforeseen, sharp and steep;

(b) a persistent low interest rate environment; or

(c) a high-impact catastrophic event.

(8) The GFSC must co-operate with EIOPA in assessing on a regular basis whether the conditions in sub-regulation (7) still apply and where EIOPA declares that an exceptional adverse situation has ceased to exist.

(9) The undertaking concerned must, every three months, submit a progress report to the GFSC setting out the measures taken and the progress made towards–

(a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or

(b) reducing the risk profile to ensure compliance with that Requirement.

(10) The extension referred to in sub-regulation (5) must be withdrawn where the progress report under sub-regulation (9) shows that, between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report, there was no significant progress in–

(a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or

(b) reducing the risk profile to ensure compliance with that Requirement.

(11) In exceptional circumstances, where the GFSC is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may exercise any relevant

powers under the Act or these Regulations to restrict or prohibit the free disposal of the assets of that undertaking and, where it does so, the GFSC–

(a) must inform the host States supervisory authorities of any measures it has taken and may request that those authorities take the same measures; and

(c) must designate the assets covered by those measures.

Non-compliance with Minimum Capital Requirement.

123.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Minimum Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.

(2) Within one month of non-compliance with the Minimum Capital Requirement being observed, the undertaking concerned must submit for approval by the GFSC, a realistic short-term finance scheme to, within three months of that observation–

(a) restore the eligible basic own funds at least to the level of the Minimum Capital Requirement; or

(b) reduce its risk profile to ensure compliance with that Requirement.

(3) The GFSC as home State regulator may also exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the assets of the undertaking and, where it does so, the GFSC–

(a) must inform the host States regulators accordingly and may request that those regulators take the same measures; and

(b) must designate the assets covered by those measures.

(4) Without limiting sub-regulation (3), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

(5) Where the GFSC as host State regulator receives from the home State regulator a request of the kind in sub-regulation (3), the GFSC must comply with that request.

Prohibition of free disposal of assets

Prohibition of free disposal of assets located in Gibraltar.

124.(1) The GFSC may exercise any relevant powers under the Act or these Regulations to prohibit the free disposal of assets located in Gibraltar, in order to comply with a request from the supervisory authority of another EEA State which is empowered to designate an insurer's or reinsurer's assets for the purposes of Articles 137 to 139 or Article 144.2 of the Solvency 2 Directive.

(2) Without limiting sub-regulation (1), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

Supervisory powers in deteriorating financial conditions.

125.(1) Despite regulations 122 and 123, where the solvency position of the undertaking continues to deteriorate, then the GFSC may take such measures as it considers necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

(2) Any measures taken under sub-regulation (1) must be proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

Recovery plan and finance scheme.

126.(1) Both the recovery plan referred to in regulation 122(2) and the finance scheme referred to in regulation 123(2) must include particulars or evidence concerning the following–

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement; and

(e) the overall reinsurance policy.

(2) Where the GFSC has required a recovery plan or a finance scheme in accordance with sub-regulation (1), the GFSC must refrain from issuing a certificate in accordance with

section 465(6) of the Act for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

Cancellation of permission.

127.(1) The GFSC must cancel the Part 7 permission of an insurance or reinsurance undertaking which does not comply with the Minimum Capital Requirement where–

(a) the undertaking fails to submit a finance scheme in accordance with regulation 123(2);

(b) the GFSC considers that the finance scheme submitted is manifestly inadequate; or

(c) the undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

(2) Notice of the cancellation of an insurance or reinsurance undertaking's permission (a "cancellation notice") must–

(a) be given in writing;

(b) state the reasons for the cancellation; and

(c) inform the recipient of the right of appeal under sub-regulation (5).

(3) A cancellation notice takes effect immediately unless a later date is specified in the notice.

(4) A decision by the GFSC to issue a cancellation notice is a specified regulatory decision to which section 24(3) of the Act applies.

(5) A person aggrieved by a cancellation notice may appeal to the Supreme Court and, in respect to an appeal under this regulation, section 615 of the Act applies as if the reference–

(a) in subsection (1) to "decision notice other than one to which section 613(4) applies" were a reference to "cancellation notice";

(b) in subsection (2) to "decision notice" were a reference to "cancellation notice"; and

(c) in subsection (6) to "decision notice which under the provisions of this Act takes effect immediately" were a reference to "cancellation notice which takes effect immediately".

(6) The GFSC, as the home State regulator, must notify the supervisory authorities of the other EEA States of the cancellation of an insurance or reinsurance undertaking's permission.

(7) Where the GFSC is an insurance or reinsurance undertaking's home State regulator, but receives a notification of the kind in sub-regulation (6), it must take appropriate measures to prevent the undertaking from commencing new operations within Gibraltar.

(8) The GFSC must, together with the supervisory authorities of other EEA States, take all measures necessary to safeguard the interests of insured persons; and, in particular, the GFSC–

(a) where it is the home State regulator, must restrict the free disposal of the assets of the undertaking, in accordance with regulation 123(3); and

(b) where it is the host State regulator and another supervisory authority makes a request of the kind in regulation 123(3), must comply with that request.

(9) This regulation applies without limiting the GFSC's powers–

(a) to suspend a permission under regulation 35; or

(b) to cancel a permission under section 68 or 69 of the Act.

PART 8
RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Establishment by insurance undertakings

Establishment of branch in another EEA State.

128.(1) A Gibraltar insurer that proposes to establish a branch in another EEA State must notify the GFSC and provide it with the following information–

(a) the EEA State in which it proposes to establish a branch;

(b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

(c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurer and to represent it in relations with the authorities and courts of the host State (the "authorised agent"); and

(d) the address in the host State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

(2) For the purposes of sub-regulation (1) a branch includes any permanent presence of a Gibraltar insurer in another EEA State, which consists of an office managed by the insurer's staff or by an independent person who has permanent authority to act as agent for the insurer.

(3) Where a Gibraltar non-life insurer intends its branch to cover risks in Class 10 (other than carrier's liability) it must confirm to the GFSC that it has become a member of the national bureau and national guarantee fund of the host State.

(4) The Gibraltar insurer may establish and commence business from the branch from the date on which the GFSC receives the information referred to in regulation 129(5) from the host State regulator or, if no information is received, two months after the GFSC has sent to the host State regulator the information referred to in regulation 129(1) and (2).

(5) In the event of a change in any of the particulars provided to the GFSC under sub-regulation (1)(b) to (d), the insurer must give written notice of the change to the GFSC and the host State regulator at least one month before it is made, so that they may fulfil their respective obligations under Article 146 of the Solvency 2 Directive.

Communication of information to other EEA State.

129.(1) The GFSC, within three months of receiving it, must communicate the information referred to in regulation 128(1) to the host State regulator and inform the insurer that it has done so unless, taking account of the business envisaged, the GFSC has reason to doubt–

(a) the adequacy of the system of governance or the financial situation of the insurer; or

(b) that the authorised agent meets the fit and proper requirements in accordance with regulation 44.

(2) The GFSC must also certify to the host State regulator that the insurer covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with regulations 90 and 116.

(3) If the GFSC decides not to communicate the information referred to in regulation 128(1) to the host State regulator, it must inform the insurer of its decision and the reasons for it within three months of receiving all the information in question.

(4) A Gibraltar insurer may appeal to the Supreme Court, in accordance with regulation 277, against the GFSC's decision not to communicate that information to the host State regulator.

(5) Where, in relation to a Gibraltar insurer proposing to establish a branch in another EEA State, the GFSC receives information from that State concerning the conditions under which, in the interest of the general good, business must be pursued in that State, the GFSC must communicate that information to the insurer.

Establishment of branch in Gibraltar.

130.(1) Before the branch of an EEA insurer commences business in Gibraltar, the GFSC, within two months of receiving the information referred to in Article 145(2) of the Solvency 2 Directive and a certificate confirming that the undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement, must notify the home State regulator of the conditions under which, in the interest of the general good, that business must be pursued in Gibraltar.

(2) For the purposes of sub-regulation (1) a branch includes any permanent presence in Gibraltar of an EEA insurer, which consists of an office managed by the insurer's staff or by an independent person who has permanent authority to act as agent for the insurer.

(3) The EEA insurer may establish and commence business from the branch in Gibraltar from the date on which its home State regulator has received notification from the GFSC in accordance with sub-regulation (1) or, if no notification is received, after the end of the period of two months mentioned in that sub-regulation.

(4) In the event of a change in any of the particulars provided to the home State regulator under Article 145(2) of the Solvency 2 Directive, the EEA insurer must give written notice of the change to that regulator and the GFSC at least one month before it is made, so that they may fulfil their respective obligations under Article 146 of the Solvency 2 Directive.

Freedom to provide services by insurance undertakings

Provision of services in another EEA State.

131.(1) A Gibraltar insurer that proposes to pursue business for the first time in another EEA State under the freedom to provide services must notify the GFSC, indicating the nature of the risks or commitments it proposes to cover.

(2) The GFSC, within one month of notification under sub-regulation (1), must communicate the following to the supervisory authority of the EEA State in which the insurer intends to pursue business–

(a) a certificate confirming that the insurer covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with regulations 90 and 116;

(b) the Classes of insurance which the insurer is permitted to offer; and

(c) the nature of the risks or commitments which the insurer proposes to cover in that EEA State.

(3) The GFSC must, at the same time, inform the insurer of that communication, which may commence business in that EEA State from the date on which it is informed of the communication.

(4) If the GFSC decides not to communicate the information referred to in sub-regulation (1) to the host State regulator within the period mentioned in that sub-regulation, it must inform the insurer of its decision and the reasons for it within that period.

(5) An insurer may appeal to the Supreme Court, in accordance with regulation 277, against the GFSC's decision not to communicate that information to the host State regulator.

Provision of services in Gibraltar.

132.(1) An EEA insurer may carry on insurance business in Gibraltar under the freedom to provide services from the date on which its home State regulator confirms that it has provided the GFSC with the certificate and information required under Article 148.1 of the Solvency 2 Directive.

(2) Where the GFSC receives a certificate and information in accordance with sub-regulation (1), it must notify the home State regulator of the conditions under which, in the interest of the general good, the insurance business may be carried on in Gibraltar.

Changes in the nature of the risks or commitments.

133. A Gibraltar insurer which intends to make a change in the nature of the risks or commitments information notified under regulation 131(1) must give the GFSC written notice of that change, and the procedure in regulations 131 and 132 applies to that proposed change (with any necessary modifications).

Third party motor liability

Compulsory insurance on third party motor vehicle liability.

134.(1) A non-life insurer which proposes, under the freedom to provide services, to cover a risk which is situated in Gibraltar under Class 10 (other than carrier's liability) must–

(a) become a member of the Motor Insurers' Bureau (a company limited by guarantee incorporated under the UK Companies Act 1929 on 14th June 1946); and

(b) make a contribution to the financing of the Motor Insurers' Bureau and its guarantee fund which–

(i) relates to risks within Class 10 (other than carrier's liability) covered by way of the provision of services; and

(ii) is calculated on the same basis as for non-life insurers covering those risks through an establishment in Gibraltar and by reference to the insurer's premium income from that Class in Gibraltar or the number of risks in that Class covered there; and

(c) notify the GFSC of the name and address of–

(i) the insurer's representative, appointed in accordance with regulation 136; and

(ii) if different, the insurer's motor claims representative in Gibraltar, appointed in accordance with regulation 137.

(2) In so far as the law of Gibraltar contains rules concerning the cover of aggravated risks, those rules shall apply to an insurer providing services as they apply to non-life insurers established in Gibraltar.

Non-discrimination of persons pursuing claims.

135. An EEA insurer must ensure that persons pursuing claims arising out of events occurring in Gibraltar are not placed in a less favourable situation as a result of the fact that the insurer is covering a risk classified under Class 10 (other than carrier's liability) by way of the provision of services rather than through an establishment in Gibraltar.

Representative.

136.(1) For the purposes of regulation 135, an EEA insurer covering a risk classified under Class 10 (other than carrier's liability) by way of the provision of services in Gibraltar must appoint a person who–

(a) has been designated as the insurer's representative in Gibraltar;

(b) in the case of–

(i) an individual, is resident in Gibraltar; or

(ii) a corporation, has a place of business in Gibraltar; and

(c) is authorised–

(i) to collect all necessary information in relation to claims;

(ii) to represent the insurer in relation to persons suffering damage who could pursue claims, including the payment of those claims; and

(iii) to represent the insurer (or, where necessary, appoint others to do so) before the courts or any relevant authority in Gibraltar in relation to those claims.

(2) The representative may also be required to represent the insurer before the GFSC with regard to checking the existence and validity of motor vehicle liability insurance policies.

(3) The GFSC must not require the representative to undertake activities on behalf of the insurer other than those set out in sub-regulations (1) and (2).

(4) The appointment of a representative under this regulation does not, of itself, constitute the opening of a branch for the purpose of regulation 128.

(5) If an insurer fails to appoint a representative in accordance with this regulation, the functions of that representative may be undertaken by the insurer's motor claims representative referred to in regulation 137.

Motor vehicle liability claims

Motor claims representatives.

137.(1) An insurance undertaking covering risks under Class 10 (other than carrier's liability) must appoint a claims representative in each EEA State other than its home State

who is responsible for handling and settling claims arising from an accident in the cases referred to in Article 20.1 of the Motor Insurance Directive.

(2) An insurance undertaking must provide the name, address and other contact details of each of its claims representatives to the information centre in Gibraltar and other EEA States when–

(a) a claims representative is first appointed; and

(b) there is a material change to the information provided under paragraph (a).

(3) An insurance undertaking must ensure that each claims representative–

(a) in the case of–

(i) an individual, is resident in the EEA State for which he or she is appointed; or

(ii) a corporation, has a place of business in the EEA State for which it is appointed;

(b) is capable of examining cases in the official language of the EEA State of residence of the injured party;

(c) is responsible for, and has sufficient delegated authority from the insurance undertaking for which it is appointed, to be able to–

(i) collect all information and take all measures, reasonably necessary to negotiate a settlement of;

(ii) handle and settle;

(iii) represent, or arrange appropriate representation for the insurance undertaking (whether in negotiation, in court or otherwise) in relation to,

claims arising from an accident occurring in an EEA State, other than the EEA State of residence of the injured party, involving the use of a vehicle insured and normally based in an EEA State.

(4) The appointment of a claims representative does not constitute–

(a) the opening of a branch for the purpose of Article 145 of the Solvency 2 Directive; or

(b) the creation of an establishment within the meaning of the Solvency 2 Directive or the Brussels I Regulation.

(5) Nothing in this regulation prevents a claims representative from acting for more than one insurance undertaking.

Claims handling by motor insurers.

138.(1) Within three months of receipt of a claim to which regulation 137 applies, whether directly or to its motor claims representative, the receiving insurance undertaking must (directly or through its claims representative)−

(a) make a reasoned offer of compensation, if liability is not contested and damages have been fully quantified; or

(b) provide a reasoned reply to the points made in the injured party's claim, if liability is denied, not clearly established or damages have not been fully quantified.

(2) If liability is initially denied or has not been clearly established, within three months of any subsequent acceptance of liability, the insurance undertaking must (directly or through its claims representative) make a reasoned offer of compensation, if by that time, the injured party has provided the insurance undertaking with a fully quantified claim for damages.

(3) If an injured party cannot, or does not, fully quantify the damages claimed when the injured party first makes a claim against an insurance undertaking, within three months of the receipt of the injured party's fully quantified claim for damages, the insurance undertaking must (directly or through its claims representative) make a reasoned offer of compensation, if liability is not contested.

(4) A claim for compensation is only quantified under sub-regulation (1)(a), (2) or (3) if the injured party provides written evidence which substantiates or supports the amounts claimed.

(5) If the insurance undertaking or its claims representatives does not comply with sub-regulation (1)(a), (2) or (3), the insurance undertaking must pay simple interest on any compensation eventually paid, unless interest is awarded by any court or tribunal which determines the injured party's claim.

(6) The amount of any interest payable under sub-regulation (5) is to be calculated as follows–

(a) the period during which interest is payable begins three months after-

(i) receipt of the claim for compensation, if the insurance undertaking or its claims representative is in breach of sub-regulation (1)(a);

(ii) any subsequent admission of liability, if the insurance undertaking or its claims representative complies with sub-regulation (1)(a) but is in breach of sub-regulation (2); or

(iii) the subsequent receipt of a fully quantified claim for compensation, if the insurance undertaking or its claims representative complies with sub-regulation (1)(a) and (2) but is in breach of sub-regulation (3);

(b) the period during which interest is payable ends on the date when the insurance undertaking pays compensation to the injured party or the injured party's authorised representative; and

(c) the interest rate to be applied throughout the period during which interest is payable, determined in accordance with paragraphs (a) and (b), is the Bank of England's base rate (from time to time), plus four per cent.

(7) An insurance undertaking is to be regarded as having received a claim or a fully quantified claim for damages when it is delivered to the insurance undertaking or its claims representative by any person by any method of delivery which is lawful in the insurance undertaking's or its claims representative's respective EEA States of residence or establishment, as the case may be.

Rights of injured parties.

139. Nothing in regulation 137 or 138 affects the right of an injured party or that party's insurance undertaking to institute proceedings directly against the person who caused the accident or that person's insurance undertaking.

Where Gibraltar is the host State

Language.

140. The GFSC may require any information which it is authorised to request with regard to the business of EEA insurers operating in Gibraltar to be supplied to it in English.

Prior notification and prior approval.

141.(1) The GFSC must not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of

life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an EEA insurer intends to use in its dealings with policy holders in Gibraltar.

(2) The GFSC may only require an EEA insurer that proposes to pursue insurance business in Gibraltar to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with the law concerning insurance contracts, and that requirement must not constitute a prior condition for an EEA insurer to pursue its business in Gibraltar.

(3) The GFSC must not retain or introduce a requirement for prior notification or approval of proposed increases in premium rates by an EEA insurer which conducts business in Gibraltar except as part of general price-control systems.

Non-compliance by EEA insurer.

142.(1) Where the GFSC establishes that an EEA insurer conducting business in Gibraltar through a branch or under the freedom to provide services is not complying with the applicable law in Gibraltar, it must require the insurer to remedy the irregularity.

(2) If the insurer fails to take the necessary action, the GFSC must inform the insurer's home State regulator.

(3) If, despite the measures taken by the home State regulator or because those measures prove inadequate, the insurer persists in not complying with the applicable law, after informing the home State regulator, the GFSC may–

(a) take appropriate measures to prevent or penalise further irregularities, including, so far as is strictly necessary, preventing the insurer from continuing to conclude new insurance contracts in Gibraltar; and

(b) refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

(4) Sub-regulations (1) to (3) do not affect the GFSC's powers–

(a) to take appropriate emergency measures to prevent or penalise irregularities in Gibraltar including preventing an EEA insurer from concluding new insurance contracts in Gibraltar; or

(b) to penalise infringements in Gibraltar by EEA insurers.

(5) Where an EEA insurer which has committed an infringement has an establishment or possesses property in Gibraltar, the GFSC may apply any administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

(6) Where the GFSC adopts any measures under sub-regulation (1) to (5) which involve sanctions or restrictions on the conduct of an EEA insurer's insurance business, it must provide the insurer with a reasoned decision.

(7) The GFSC may direct an EEA insurer to which this regulation applies to submit to the GFSC any documents which it requires for the purposes of sub-regulations (1) to (6) and which it could direct a Gibraltar insurer to provide.

(8) The GFSC must ensure that the European Commission and EIOPA are informed of the number and types of cases in which it has–

(a) taken measures under sub-regulation (3) or (4); or

(b) refused to communicate information under regulation 129(3) or 131(4).

Non-compliance by Gibraltar insurer in another EEA State.

143. Where the GFSC is informed by a host State regulator that a Gibraltar insurer is not complying with the applicable law in that State, the GFSC–

(a) must, at the earliest opportunity –

(i) take all appropriate steps to ensure that the insurer remedies the irregularity; and

(ii) inform the host State regulator of the steps it has taken; and

(b) may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

Advertising.

144. An EEA insurer may advertise its services through all available means of communication in Gibraltar if it complies with the rules governing the form and content of advertising in Gibraltar adopted in the interest of the general good.

Taxes on premiums.

145.(1) An insurance contract under which the risk or commitment is situated in Gibraltar is subject exclusively to the indirect taxes and para-fiscal charges on insurance premiums payable under the law of Gibraltar.

(2) For the purposes of sub-regulation (1), movable property contained in a building in Gibraltar, except for goods in commercial transit, must be considered as a risk situated in Gibraltar, even where the building and its contents are not covered by the same insurance policy.

(3) The law applicable to the contract under the Rome 1 Regulation does not affect the applicable fiscal arrangements.

Re-insurance

Non-compliance by EEA reinsurer.

146.(1) Where the GFSC establishes that an EEA reinsurer conducting business in Gibraltar through a branch or under the freedom to provide services is not complying with the applicable law in Gibraltar, it must–

(a) require the reinsurer to remedy the irregularity; and

(b) refer its findings to the reinsurer's home State regulator.

(2) If, despite the measures taken by the home State or because those measures prove inadequate, the reinsurer persists in not complying with the applicable law, after informing the home State regulator, the GFSC may–

(a) take appropriate measures to prevent or penalise further irregularities, including, so far as is strictly necessary, preventing the reinsurer from continuing to conclude new reinsurance contracts in Gibraltar; and

(b) refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

(3) Where the GFSC adopts any measures under sub-regulation (1) or (2) which involve sanctions or restrictions on the conduct of a reinsurer's reinsurance business, it must provide the reinsurer with a reasoned decision.

Non-compliance by Gibraltar reinsurer in another EEA State.

147. Where the GFSC is informed by a host State regulator that a Gibraltar reinsurer is not complying with the applicable law in that State, the GFSC–

(a) must, at the earliest opportunity–

(i) take all appropriate steps to ensure that the reinsurer remedies the irregularity; and

(ii) inform the host State regulator of the steps it has taken; and

(b) may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

Statistical information

Statistical information on cross-border activities.

148.(1) A Gibraltar insurer must inform the GFSC, separately by EEA State, in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, as follows–

(a) for life insurance, by lines of business in accordance with Commission Delegated Regulation (EU) 2015/35; and

(b) for non-life insurance, by lines of business in accordance with that Regulation.

(2) As regards business in Class 10 (other than carrier's liability) the insurer must also inform the GFSC of the frequency and average cost of claims.

(3) The GFSC must forward the information referred to sub-regulation (1) and (2) within a reasonable time and in aggregate form to the supervisory authorities of each of the EEA States concerned at their request.

(4) The GFSC may request the home State regulator of an EEA insurer conducting business in Gibraltar under the right of establishment or the freedom to provide services to provide the GFSC with the information referred to in Article 159 of the Solvency 2 Directive which has been provided to the supervisory authority by the insurer.

Treatment of contracts of branches in winding-up proceedings

Winding-up of insurance undertakings.

149. Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services must be met in the

same way as those arising out of the other insurance contracts of that undertaking, without distinction as to the nationality of insured persons and beneficiaries.

Winding-up of reinsurance undertakings.

150. Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services must be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

PART 9
BRANCHES OF THIRD-COUNTRY INSURERS AND REINSURERS

Taking up of business: principle of permission and conditions.

151.(1) Access to the business of direct life and non-life insurance by an undertaking–

(a) which has a head office outside of the EEA, and

(b) which is or wishes to become established in Gibraltar,

is subject to the undertaking being given Part 7 permission by the GFSC.

(2) The GFSC may give permission where the undertaking fulfils at least the following conditions–

(a) it is entitled to pursue insurance business under the law of the state in which it has its head office;

(b) it establishes a branch in Gibraltar;

(c) it undertakes to set up at the branch's place of management, accounts specific to the business which it pursues there, and to keep there all the records relating to the business transacted;

(d) it designates a general representative, to be approved by the GFSC;

(e) it possesses in Gibraltar assets of an amount equal to at least 50% of the absolute floor prescribed in regulation 116(1)(d) in respect of the Minimum Capital Requirement and deposits 25% of that absolute floor as security;

(f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements in regulations 90 and 115;

(g) it communicates the name and address of the claims representative appointed in each EEA State other than Gibraltar where the risks to be covered are classified under Class 10 (other than carrier's liability);

(h) it submits a scheme of operations in accordance with regulation 152;

(i) it fulfils the governance requirements set out in regulations 43 to 50.

(3) For the purposes of this Part, "branch" means a permanent presence in Gibraltar of an undertaking in sub-regulation (1), which receives permission and pursues insurance business.

Scheme of operations of branch.

152.(1) The scheme of operations referred to in regulation 151(2)(h) must set out the following–

(a) the nature of the risks or commitments which the undertaking proposes to cover;

(b) the guiding principles as to reinsurance;

(c) estimates of the future Solvency Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(d) estimates of the future Minimum Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement;

(f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under Class 18, the resources available for the provision of the assistance; and

(g) information on the structure of the system of governance.

(2) In addition to the requirements set out in sub-regulation (1), the scheme of operations must include the following, for the first three financial years–

(a) a forecast balance sheet;

(b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

(c) for non-life insurance–

(i) estimates of management expenses other than installation costs, in particular, current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

(d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

(3) In regard to life insurance, the GFSC may require insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

Transfer of portfolio.

153. In Chapter 5 of Part 23 of the Act (which provides for the transfer of business from EEA branches of third-country insurance or reinsurance undertakings) any reference to "the necessary margin of solvency" is to be construed as a reference to necessary eligible own funds required to cover the Solvency Capital Requirement under these Regulations.

Technical provisions.

154.(1) An insurance undertaking which establishes a branch in Gibraltar must establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in Gibraltar, calculated in accordance with Chapter 2 of Part 6.

(2) The undertaking must value assets and liabilities in accordance with regulation 65 and determine own funds in accordance with Chapter 2 of Part 6.

Solvency Capital Requirement and Minimum Capital Requirement.

155.(1) An insurance undertaking which establishes a branch in Gibraltar must hold an amount of eligible own funds consisting of the items referred to in regulation 89(3).

(2) The Solvency Capital Requirement and the Minimum Capital Requirement must be calculated in accordance with these Regulations but, for the purpose of those calculations both for life and non-life insurance, account must be taken only of the operations effected by the branch concerned.

(3) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement must be constituted in accordance with regulation 89(4).

(4) The eligible amount of basic own funds must not be less than half of the absolute floor required under regulation 116(1)(d).

(5) The deposit lodged in accordance with regulation 151(2)(e) must be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(6) The assets representing the Solvency Capital Requirement must be kept in Gibraltar up to the amount of the Minimum Capital Requirement and the excess must be kept in one or more EEA States.

Advantages to undertakings authorised in more than one EEA State.

156.(1) Where an insurance undertaking has obtained permission from the GFSC in relation to a branch in Gibraltar and has also obtained authorisation from the relevant supervisory authority for a branch in one or more other EEA States, the undertaking may request the following advantages which may be granted only jointly–

(a) for the Solvency Capital Requirement to be calculated in relation to the entire business which it pursues within the EEA;

(b) for the deposit required under regulation 151(2)(e) to be lodged as required by regulation 119 only in Gibraltar or one of those other EEA States; and

(c) for the assets representing the Minimum Capital Requirement to be localised, in any one of the EEA States (including Gibraltar) in which it pursues its activities;

(2) For the purposes of the calculation in sub-regulation (1)(a), account must be taken only of the operations effected by all the undertaking's branches established in the EEA.

(3) An application to benefit from the advantages provided for in sub-regulation (1)–

(a) must be made to the GFSC and the supervisory authorities of the other EEA States concerned;

(b) must state the authority of the EEA State which in future is to supervise the solvency of the entire business of the branches established within the EEA ("the selected authority"); and

(c) must give reasons for the choice of the selected authority made by the undertaking.

(4) The deposit referred to in regulation 151(2)(e) must be lodged with the selected authority.

(5) The advantages provided for in sub-regulation (1)–

(a) may be granted only where the supervisory authorities of all EEA States in which an application has been made agree to them; and

(b) take effect from the time when the selected authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the EEA.

(6) Where the GFSC is the selected authority it must obtain from each of the other supervisory authorities the information necessary for the supervision of the overall solvency of the branches established in their territory.

(7) Where another supervisory authority is the selected authority, the GFSC must provide the selected authority with the information necessary for the supervision of the overall solvency of the branch in Gibraltar.

(8) At the request of the GFSC or another supervisory authority concerned, the advantages granted under this regulation must be withdrawn simultaneously by all EEA States concerned.

Accounting, prudential and statistical information and undertakings in difficulty.

157.(1) Regulations 32, 123(3), 124 and 125 apply for the purposes of this Part.

(2) Where the GFSC is an insurance undertaking's selected authority under regulation 156, Gibraltar is to be treated as the undertaking's home State for the purposes of applying regulations 121 to 123.

Separation of non-life and life business.

158.(1) A branch to which this Part applies must not be given permission to simultaneously pursue life and non-life insurance activities in Gibraltar.

(2) Despite sub-regulation (1), the GFSC may allow branches to which this Part applies that, on 15th March 1979, pursued both activities simultaneously in Gibraltar, to continue to do so if each activity is separately managed in accordance with regulation 64.

(3) If insurance undertakings are directed by an order under regulation 63(7) to cease the simultaneous pursuit in Gibraltar of the activities in which they were engaged on 15th March 1979, the GFSC must also impose this requirement on branches to which this Part applies that, simultaneously pursue both activities in Gibraltar.

(4) Branches to which this Part applies whose head office in Gibraltar simultaneously pursues both activities and which on 15th March 1979 pursued in another EEA State solely life insurance activity may continue to pursue that activity there through a subsidiary.

Withdrawal of permission for undertakings authorised in more than one EEA State.

159.(1) Where the GFSC is an insurance undertaking's selected authority under regulation 156, and the GFSC withdraws the permission given to the undertaking, it must notify the supervisory authorities of the other relevant Member States to enable them to take appropriate steps.

(2) Where another supervisory authority is the selected authority under Article 167 of the Solvency 2 Directive and it notifies the GFSC of the withdrawal of an undertaking's authorisation, the GFSC must take whatever steps it considers appropriate (including, where appropriate, withdrawal of permission).

(3) Where the reason for the withdrawal of authorisation by another supervisory authority is the inadequacy of the undertaking's overall state of solvency, as agreed by the GFSC and other supervisory authorities under Article 167 of the Solvency 2 Directive, the GFSC must also withdraw permission.

Re-insurance

Equivalence in relation to reinsurance undertakings.

160.(1) A reinsurance contract concluded with an undertaking which has its head office in a third country must be treated in the same manner as a reinsurance contract concluded with an undertaking authorised in accordance with these Regulations where–

(a) the solvency regime of the third country has been determined to be equivalent to that under the Solvency 2 Directive, in accordance with a delegated act adopted by the European Commission under Article 172.2 of the Solvency 2 Directive; or

(b) the solvency regime of the third country has been determined to be temporarily equivalent to that under the Solvency 2 Directive, in accordance with a delegated act adopted by the European Commission under Article 172.4 of the Solvency 2 Directive.

(2) Sub-regulation (1)(b) only applies until 31st December 2020 or any later which may be determined in accordance with Article 172.5 of the Directive.

Prohibition on pledging of assets or more favourable treatment.

161. A provision contained in or made under any enactment is void if–

(a) it purports to establish a system of gross reserving which requires pledging of assets to cover unearned premiums or outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency or supervisory regime has been determined to be equivalent to that under the Solvency 2 Directive, as set out in regulation 156; or

(b) it purports to apply to third-country reinsurance undertakings taking-up or pursuing reinsurance activity in Gibraltar provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in Gibraltar.

Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings

Information from the GFSC to European Commission, EIOPA etc.

162.(1) The GFSC must inform the European Commission, EIOPA and the supervisory authorities of the other EEA States of any permission given to a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country.

(2) The information provided under sub-regulation (1) must contain an indication of the structure of the group concerned.

(3) Where–

(a) an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the EEA which would turn that insurance or reinsurance undertaking into a subsidiary of that third-country undertaking; and

(b) Gibraltar is that undertaking's home State,

the GFSC must ensure that the European Commission and the supervisory authorities of the other EEA States are informed of the position.

(4) Where the GFSC becomes aware that an insurance or reinsurance undertaking whose home State is Gibraltar is encountering difficulties in establishing itself or carrying on business in a third country, the GFSC must inform the European Commission and EIOPA of those difficulties.

PART 10
SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

Compulsory insurance

Related Obligations.

163.(1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this regulation.

(2) Where the law of Gibraltar imposes a requirement to have non-life insurance, an insurance contract does not satisfy that requirement unless it complies with the specific provisions relating to that insurance laid down by that law.

(3) In any case where the law of Gibraltar imposes a requirement to have insurance and requires the insurance undertaking to notify the GFSC of any cessation of cover, that cessation may be invoked against injured third parties only in the circumstances laid down by that law.

(4) The GFSC must ensure that the European Commission is informed about the risks against which insurance is compulsory under the law of Gibraltar, stating the following–

(a) the specific legal provisions relating to that insurance; and

(b) the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where the law of Gibraltar requires proof that the obligation to take out insurance has been complied with.

(5) If, in the case of any particular insurance contract, the law of Gibraltar so requires, the particulars referred to in sub-regulation (4)(b) must include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

General good

General good.

164. No provision of the law of Gibraltar may prohibit a person from concluding a contract with an insurance undertaking so long as the conclusion of that contract does not conflict with legal provisions protecting the general good in Gibraltar, whether as the EEA State in which the risk is situated or as the EEA State of the commitment.

Conditions of insurance contracts and scales of premiums

Non-life insurance

165.(1) In relation to non-life insurance, nothing in any enactment (whenever passed) requires the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

(2) Sub-regulation (1) does not apply to any requirement for non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with provisions concerning insurance contracts, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.

(3) In so far as insurance of any description is compulsory, before circulating the general and special condition of the insurance, any undertaking providing it may be required by the GFSC to communicate those conditions to it.

(4) Except as part of general price-control systems, no provision may be made by or under any enactment requiring the retention or introduction of an obligation of prior notification or approval of proposed increases in premium rates.

Life insurance.

166.(1) The GFSC, in performing its supervisory functions, must not require life insurance undertakings to seek prior approval of or systematically notify–

(a) general and special policy conditions;

(b) scales of premiums;

(c) technical bases used in particular for calculating scales of premiums and technical provisions; or

(d) forms or other printed documents which the undertaking intends to use in its dealings with policy holders.

(2) Sub-regulation (1) does not apply to any requirement for systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions for the purpose of verifying compliance with provisions concerning actuarial principles, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.

Information for policy holders: non-life insurance

Non-life insurance: general information.

167.(1) Before a non-life insurance contract is concluded, the non-life insurance undertaking must inform the policy holder of the following–

(a) the law applicable to the contract, where the parties do not have a free choice; or

(b) the fact that the parties are free to choose the law applicable and the law the undertaking proposes to choose.

(2) The insurance undertaking must also inform the policy holder of the arrangements for handling policy holders' complaints concerning contracts including, where appropriate, the existence of a complaints body, without limiting the right of the policy holder to take legal proceedings.

(3) The obligations under sub-regulations (1) and (2) apply only where the policy holder is an individual.

Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services.

168.(1) Where an undertaking offers non-life insurance under the right of establishment or the freedom to provide services, before any commitment is entered into the policy holder must be informed of the EEA State in which the head office of the undertaking or, where appropriate, the branch with which the contract is to be concluded, is situated.

(2) Any documents issued to the policy holder must convey the information specified in sub-regulation (1).

(3) The obligations imposed in sub-regulations (1) and (2) do not apply to large risks.

(4) The contract or any other document granting cover, together with the insurance proposal where it is binding on the policy holder, must state–

(a) the address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover; and

(b) where relevant, the name and address of the motor claims representative of the non-life insurance undertaking referred to in regulation 137.

Life insurance

Life insurance: information for policy holders.

169.(1) Before a life insurance contract is concluded, the life insurance undertaking must communicate the following information to the policy holder–

(a) the name and legal form of the undertaking;

(b) the EEA State in which its head office and, where appropriate, the branch concluding the contract is situated;

(c) the address of its head office and, where appropriate, of the branch concluding the contract;

(d) a concrete reference to the report on its solvency and financial condition, as set out in regulation 52, which allows the policy holder easy access to that information;

(e) a definition of each benefit and each option;

(f) the policy conditions, both general and special;

(g) the term of the contract and the means by which it may be terminated;

(h) the method of paying premiums and the duration of the payments;

(i) the method of calculating and distributing of bonuses;

(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;

(k) information on the premiums for each benefit, whether a main benefit or supplementary benefit;

(l) in the case of a contract for a unit-linked policy–

(i) a definition of the units to which the benefits are linked; and

(ii) an indication of the nature of the underlying assets;

(m) information as to–

(i) the arrangements with respect to the 'cooling off' period in which the policy holder may cancel the contract;

(ii) the tax arrangements applicable to the policy to be effected by the contract;

(iii) the arrangements for handling any complaints concerning the contract (which must apply without limiting the right to take legal proceedings), whether made by the policy holder or a person who is a life assured or beneficiary including, where appropriate, the existence of any complaints body; and

(n) whether the parties are entitled to choose the law applicable to the contract and–

(i) if so, the law that the undertaking proposes to choose; or

(ii) if not, the applicable law.

(2) In addition, specific information must be supplied in order to provide the policy holder with a proper understanding of the risks underlying the contract which are assumed by the policy holder.

(3) The policy holder must be kept informed throughout the term of the contract–

(a) of any change concerning–

(i) the policy conditions, both general and special;

(ii) the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract; or

(iii) the information in sub-regulation (1)(h) to (m) in the event of a change in the policy conditions or amendment of the law applicable to the contract; and

(b) annually, on the state of bonuses.

(4) Where, in connection with an offer for or conclusion of a life insurance contract, other than a term insurance or contract, the undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the undertaking must–

(a) provide the policy holder with a specimen calculation by which the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest; and

(b) inform the policy holder, in a clear and comprehensible manner, that–

(i) the specimen calculation is only a model of computation based on notional assumptions; and

(ii) the policy holder does not derive any contractual claims from the specimen calculation.

(5) In the case of insurances with profit participation, the undertaking must inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation and, where the undertaking has provided figures about the potential future development of the profit participation, the differences between the actual development and the initial data.

(6) The information in sub-regulations (1) to (5) must be provided in a clear and accurate manner, in writing–

(a) in English; or

(b) in another language if the policy holder so requests and is free to choose the law applicable.

(7) Where Gibraltar is the EEA State of the commitment, the GFSC may require life insurance undertakings to furnish information in addition to that listed in this regulation, but only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

Cancellation period.

170.(1) A person who has concluded a contract for an individual life insurance policy is entitled to cancel the policy by giving a cancellation notice to the life insurance undertaking within the period of 30 days from the date on which the person is informed that the contract has been concluded.

(2) The giving of a cancellation notice has the effect of releasing the person from any future obligation arising from the contract.

(3) The other legal effects and the conditions of cancellation are determined by the law applicable to the contract, in particular, as regards the arrangements for informing a person that the contract has been concluded.

(4) Where the law of Gibraltar applies to the contract–

(a) a person is to be regarded as having been informed that a contract has been concluded–

(i) when the policy is delivered to the person; or

(ii) if the policy is sent to that person by post, on the date on which it is posted;

(b) a cancellation notice must clearly indicate that the person has withdrawn from the proposed contract,

(c) a cancellation notice is to be regarded as having been served on the undertaking–

(i) when the notice is delivered to the undertaking; or

(ii) if the notice is sent by post to an address specified by the undertaking, on the date on which it is posted;

(d) the undertaking must refund in full any sums paid in connection with the contract by the person serving the cancellation notice;

(e) in the case of the service of notice of cancellation in respect of a single premium life insurance contract, the undertaking may, when the person has withdrawn from the proposed contract, refund the amount of premium paid less any losses incurred by the undertaking as a result of fluctuations in the financial markets during the period of the validity of the contract.

(5) Sub-regulation (1) does not apply–

(a) to a contract with duration of six months or less;

(b) where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection including where:

(i) the contract is one where none of the proposers or policy holders is an individual;

(ii) the contract is a contract of creditor insurance effected for the purpose of insuring the repayment of a loan and it is intended that the contract will be assigned or deposited with the lender;

(iii) the contract is a contract of reinsurance.

Provisions specific to non-life insurance

Policy conditions.

171. General and special policy conditions must not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Participation in guarantee scheme.

172. An insurance undertaking which offers non-life insurance in Gibraltar under the right of establishment or the freedom to provide services must join and participate, on the same terms as non-life insurance undertakings authorised in Gibraltar, in any mandatory scheme established in Gibraltar designed to guarantee the payment of insurance claims to insured persons and injured third parties.

Community co-insurance

Community co-insurance operations.

173.(1) This regulation and regulations 174 to 178 ("the Community co-operation provisions") apply to those Community co-insurance operations which relate to one or more risks classified under Classes 3 to 16 and which fulfil the following conditions–

(a) the risk is a large risk;

(b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;

(c) the risk is situated within the EEA;

(d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;

(e) at least one of the co-insurers participates in the contract through a head office or a branch established in an EEA State other than that of the leading insurance undertaking;

(f) the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(2) Regulations 131 to 136 apply only to the leading insurance undertaking.

(3) Co-insurance operations which are not Community co-insurance operations within the meaning of sub-regulation (1) are subject to these Regulations but not the Community co-operation provisions.

Participation in Community co-insurance.

174. The right of insurance undertakings to participate in Community co-insurance must not be made subject to any provisions other than the Community co-operation provisions.

Technical provisions and statistical data.

175.(1) Co-insurers must, in respect of a liability arising under Community co-insurance operations, establish and maintain technical provisions calculated in accordance with the rules fixed by their home State or, in the absence of such rules, according to customary practice in that State.

(2) The technical provisions must be at least equal to those determined by the leading insurer according to the rules of its home State.

(3) Co-insurers must keep statistical data showing the extent of the Community co-insurance operations in which they participate and the EEA States concerned.

Treatment of co-insurance contracts in winding-up proceedings.

176. In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts must be met in the same way as those arising under the other insurance contracts of the undertaking without distinction as to the nationality of the insured or the beneficiaries.

Exchange of information between supervisory authorities.

177. The GFSC must, in the framework of the cooperation referred to in regulations 57 to 61 and in accordance with sections 46 to 48 of the Act, provide other relevant supervisory authorities with all information necessary for the implementation of the Community co-operation provisions.

Cooperation on implementation.

178.(1) The GFSC must cooperate closely with the European Commission and other supervisory authorities for the purposes of examining any difficulties which might arise in implementing the Community co-operation provisions.

(2) In the course of that cooperation the GFSC must, in particular, examine any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

Legal expenses insurance

Legal expenses insurance.

179.(1) This regulation and regulations 180 to 185 ("the legal expenses provisions") apply to legal expenses insurance within Class 17 under which an insurer promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following–

(a) securing compensation for loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings; or

(b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

(2) The legal expenses provisions do not apply to–

(a) legal expenses insurance contracts concerning disputes or risks arising out of, or in connection with, the use of seagoing vessels;

(b) the activity pursued by the insurer providing civil liability cover for the purpose of defending or representing the insured person in any enquiry or proceedings if that activity is at the same time pursued in the insurers own interest under such cover; or

(c) legal expenses insurance undertaken by an assistance insurer where that cover is provided under a contract the principal object of which is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence and where the costs are incurred outside the EEA State in which the insured normally resides.

(3) In a case falling within paragraph (c) of sub-regulation (2), the policy must clearly state that the cover in question is limited to the circumstances referred to in that paragraph and is ancillary to that assistance.

(4) For the purposes of the legal expenses provisions–

"legal expenses insurance business" means insurance business (other than reinsurance business) falling within sub-regulation (1) and "legal expenses insurance contract" and "legal expenses cover" are to be construed accordingly;

"lawyer" means a person entitled to pursue professional activities under one of the denominations in the Lawyers Services Directive and includes a barrister or solicitor qualified to practice in Gibraltar.

Separate contracts.

180. Legal expenses cover must be–

(a) the subject of a separate policy relating to that cover only, or

(b) dealt with in a separate section of a policy relating to one or more other Classes of insurance, in which the nature of the legal expenses cover is specified.

Management of claims.

181.(1) A Gibraltar insurer carrying on legal expenses insurance business must adopt at least one of the following arrangements for the management of claims.

(2) The insurer must ensure that no member of staff who is concerned with the management of legal expenses claims, or with legal advice in respect of their management, pursues at the same time a similar activity–

(a) in relation to another Class of insurance carried on by the insurer; or

(b) in another undertaking which has financial, commercial or administrative links with the insurer and carries on one or more of the other Classes of insurance.

(3) The insurer must entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality and which must be mentioned in the separate policy or the separate section of a policy referred to in regulation 180 but, if the undertaking has links to an insurance undertaking which carries on one or more Classes of non-life insurance, members of staff of the undertaking who are concerned with the management of claims or with legal advice connected with their management must not pursue the same or a similar activity in the other insurance undertaking at the same time.

(4) The insurer must, in the policy, provide that the insured person may instruct a lawyer of their choice or, to the extent that the relevant forum so permits, any other appropriately qualified person, from the moment that the insured person has a claim under that policy.

Freedom to choose lawyer.

182. A contract of legal expenses insurance must expressly provide that–

(a) where recourse is had to a lawyer, or other appropriately qualified person to defend, represent or serve the interests of the insured person in any inquiry or proceedings, the insured person is free to choose such lawyer or other person; and

(b) the insured person is free to choose a lawyer or, any other appropriately qualified person, to serve insured person's interests whenever a conflict of interest arises.

Exception to free choice of lawyer.

183.(1) Regulation 182 does not apply where–

(a) the legal expenses cover is limited to cases arising from the use of road vehicles in Gibraltar;

(b) the legal expenses cover is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

(c) neither the legal expenses insurer nor the assistance insurer carries on any Class of liability insurance business; and

(d) measures are taken so that the legal advice and representation of each party to a dispute is provided by completely independent lawyers where those parties are insured in respect of legal expenses by the same insurer.

(2) The exception in sub-regulation (1) does not affect the application of regulation 181.

Arbitration.

184.(1) Where a dispute arises between the insurer and the insured under a contract of legal expenses insurance, the insured person has the right to refer the dispute to arbitration in accordance with Part I of the Arbitration Act and, for that purpose, these Regulations are an enactment to which section 38 of that Act applies.

(2) The contract must inform the insured person of the right to invoke the arbitration procedure referred to in sub-regulation (1).

(3) This regulation applies without limiting any right of recourse to the courts.

Conflict of interest.

185.(1) Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the insurer and the insured person under a legal expenses insurance contract, the insurance undertaking must give the insured person written notice of–

(a) the right referred to in regulation 182; and

(b) the possibility of having recourse to arbitration in accordance with regulation 184.

(2) Where the management of claims is entrusted to an undertaking having separate legal personality as mentioned in regulation 181(4), the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

Abolition of specialisation of legal expenses insurance.

186. In so far as any enactment (whenever passed) prohibits an insurance undertaking from pursuing within Gibraltar legal expenses insurance and other Classes of insurance at the same time, it must cease to have effect.

Provisions specific to life insurance

Prohibition on compulsory ceding of part of underwriting.

187. No provision of the law of Gibraltar may require life insurance undertakings to cede part of their underwriting of activities listed in regulation 4(5) to an organisation or organisations designated by that law.

Premiums for new business.

188.(1) Premiums for new business must be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

(2) For the purposes of sub-regulation (1), all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned on them being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

Rules specific to reinsurance

Finite reinsurance.

189.(1) An insurance or reinsurance undertaking which concludes finite reinsurance contracts or pursue finite reinsurance activities must be able properly to identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

(2) For the purposes of this regulation "finite reinsurance" means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features–

(a) explicit and material consideration of the time value of money; or

(b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Special purpose vehicles.

190.(1) A special purpose vehicle must not be established in Gibraltar without the prior approval by the GFSC.

(2) A special purpose vehicle that was authorised in Gibraltar before 31st December 2015, continues to be subject to the law of Gibraltar under which it was authorised, but any new activity commenced by the special purpose vehicle after that date is subject to these Regulations and the Solvency 2 Directive and requires prior approval by the GFSC.

PART 11
SUPERVISION OF GROUP UNDERTAKINGS

Preliminary

Interpretation of Part 11.

191.(1) In this Part–

"college of supervisors" means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group established in accordance with Article 212.1(e) of the Solvency 2 Directive;

"group" means a group of undertakings which–

(a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22.7 of the Accounting Directive; or

(b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, which may include one between undertakings that are mutual or mutual-type associations if–

(i) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

(ii) the establishment and dissolution of the relationships are subject to prior approval by the group supervisor,

and in such a case, the undertaking exercising the centralised coordination is to be regarded as the parent undertaking, and the other undertakings are to be regarded as subsidiaries;

"insurance holding company" means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of those subsidiary undertakings being an insurance or reinsurance undertaking;

"mixed-activity insurance holding company" means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

"mixed financial holding company" means a mixed financial holding company as defined in Article 2.15 of the Financial Conglomerates Directive;

"participating undertaking" means an undertaking which is either a parent undertaking or another undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22.7 of the Accounting Directive;

"related undertaking" means a subsidiary undertaking, another undertaking in which a participation is held or an undertaking linked with another undertaking by a relationship as set out in Article 22.7 of the Accounting Directive; and

"subsidiary" undertaking includes any undertaking over which in the opinion of the GFSC a parent undertaking effectively exercises a dominant influence.

(2) For the purposes of this Part–

(a) an undertaking which, in the opinion of the GFSC, effectively exercises a dominant influence over another undertaking is to be regarded as a parent of that other undertaking and that other undertaking is to be regarded as its subsidiary; and

(b) the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the GFSC, a significant influence is effectively exercised is to be regarded as participation.

Application of group supervision.

192.(1) This Part provides for the supervision at group level of insurance and reinsurance undertakings which are part of a group.

(2) The provisions of these Regulations which apply to insurance and reinsurance undertakings individually also apply to undertakings to which this Part applies, except where this Part provides otherwise.

(3) Supervision at the level of the group applies to–

(a) an insurance or reinsurance undertaking, which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with regulations 197 to 236;

(b) an insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the EEA, in accordance with regulations 197 to 236;

(c) an insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or which is a third-country insurance or reinsurance undertaking, in accordance with regulations 237 to 240; or

(d) an insurance or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with regulations 241.

(4) In the cases referred to in sub-regulation (3)(a) and (b), where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the EEA is a related undertaking of, a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5.2 of the Financial Conglomerates Directive, the GFSC (when acting as group supervisor) may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in regulation 221, the supervision of intra-group transactions referred to in regulation 222, or both.

(5) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and under the Financial Conglomerates Directive, in particular in terms of risk-based supervision, the GFSC (when acting as group supervisor) may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of the Financial Conglomerates Directive to that mixed financial holding company.

(6) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and the Capital Requirements Directive, in particular in terms of risk-based supervision, the GFSC (when acting as group supervisor) may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of whichever of these Regulations or that Directive relates to the most significant sector as determined in accordance with Article 3.2 of the Financial Conglomerates Directive.

(7) The GFSC (when acting as group supervisor) must inform the EBA and EIOPA of any decision taken under sub-regulation (5) or (6).

Scope of group supervision.

193.(1) The GFSC's exercise of group supervision in accordance with regulation 192 does not imply that the GFSC is required to play a supervisory role in relation to a third-country

insurance undertaking, a third-country reinsurance undertaking, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company taken individually (without limiting 235 as far as insurance holding companies or mixed financial holding companies are concerned).

(2) The GFSC (when acting as group supervisor) may decide on a case-by-case basis not to include an undertaking in group supervision under regulation 192 where–

(a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information (without limiting regulation 208);

(b) the undertaking is of negligible interest with respect to the objectives of group supervision (except where several undertakings of the same group which are negligible individually, are not negligible when taken collectively); or

(c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

(3) The GFSC (when acting as group supervisor) must consult any other supervisory authorities concerned before ceasing to apply group supervision to an insurance or reinsurance undertaking under sub-regulation (2)(b) or (c).

(4) Where the GFSC (when acting as group supervisor) ceases to apply group supervision to an insurance or reinsurance undertaking under sub-regulation (2)(b) or (c), the GFSC may ask the undertaking which is at the head of the group for any information which may facilitate supervision of the insurance or reinsurance undertaking.

Levels

Ultimate parent undertaking at EEA level.

194.(1) Where a participating insurance or reinsurance undertaking or an insurance holding company or mixed financial holding company referred to in regulation 192(3)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the EEA, regulations 197 to 236 apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the EEA.

(2) Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the EEA is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5.2 of the Financial Conglomerates Directive, the GFSC (when

acting as group supervisor) may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in regulation 221, the supervision of intra-group transactions referred to in regulation 222, or both.

Ultimate parent undertaking at national level.

195.(1) Where a participating insurance or reinsurance undertaking or an insurance holding company or mixed financial holding company referred to in regulation 192(3)(a) and (b) has its head office in Gibraltar but the ultimate parent undertaking referred to in regulation 194 has its head office in an EEA State other than Gibraltar, the GFSC may decide, after consulting the group supervisor and the ultimate parent undertaking, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

(2) In such a case, the GFSC must explain its decision to both the group supervisor and the ultimate parent undertaking (and the group supervisor is responsible for informing the college of supervisors).

(3) Regulations 197 to 236 apply to group supervision under sub-regulation (1) subject to the other provisions of this regulation and to any other necessary modifications.

(4) The GFSC may restrict group supervision of the ultimate parent undertaking at national level to any provision of regulations 197 to 223.

(5) The GFSC must recognise decisions of other supervisory authorities as required by Article 216.3 and 216.4 of the Solvency 2 Directive.

(6) Where Article 216.4 of the Solvency 2 Directive applies, if the GFSC considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model for which permission has been obtained under that Article, for as long as that undertaking does not properly address the GFSC's concerns, the GFSC may–

(a) impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of the internal model; or

(b) in exceptional circumstances, where a capital add-on would not be appropriate, require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

(7) The GFSC must explain any decision under sub-regulation (6) to both the undertaking concerned and the group supervisor (and the group supervisor must inform the college of supervisors).

(8) Where the GFSC decides to apply regulations 197 to 220 to the ultimate parent undertaking at national level, that undertaking may not introduce in accordance with regulation 214, an application for permission to subject any of its subsidiaries to regulations 216 and 217.

(9) Sub-regulation (1) does not apply where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at EEA level referred to in regulation 194 and the latter has obtained, in accordance with regulation 214 or 215, permission for that subsidiary to be subject to regulations 216 and 217.

Parent undertaking covering several EEA States.

196.(1) The GFSC may conclude an agreement with the supervisory authority in another EEA State where another related ultimate parent undertaking at national level has its head office, with a view to carrying out group supervision at the level of a sub-group covering Gibraltar and that State.

(2) Where such an agreement is concluded, group supervision must not be carried out at the level of any ultimate parent undertaking at national level in EEA States other than the EEA State where the sub-group is located.

(3) In such a case, the GFSC and the other supervisory authority must explain the agreement to the group supervisor and the ultimate parent undertaking at EEA level (and the group supervisor must inform the college of supervisors).

(4) Regulation 195 applies for the purposes of this regulation with any necessary modifications.

Group solvency

Supervision of group solvency.

197.(1) The GFSC must supervise group solvency in relation to undertakings to which this Part applies, in accordance with this regulation.

(2) In a case falling within regulation 192(3)(a), participating insurance or reinsurance undertakings must ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with regulations 199 to 212.

(3) In a case falling within regulation 192(3)(b), insurance and reinsurance undertakings in a group must ensure that eligible own funds are available in the group which are always at

least equal to the group Solvency Capital Requirement as calculated in accordance with regulation 213.

(4) The GFSC (as group supervisor) must subject the requirements in sub-regulations (2) and (3) to supervisory review in accordance with regulations 224 to 236, and regulations 120 and 122 apply with any necessary modifications.

(5) Where the GFSC (as group supervisor) is informed by a participating undertaking that the group no longer complies with the Solvency Capital Requirement or that there is a risk of non-compliance within the following three months, the GFSC must inform the other supervisory authorities within the college of supervisors, so that the college can analyse the situation of the group.

Frequency of calculations.

198.(1) The GFSC (as group supervisor) must ensure that the calculations referred to in regulation 197(2) and (3) are carried out at least annually by the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.

(2) The relevant data for and results of that calculation must be submitted to the GFSC (as group supervisor) by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or by the undertaking in the group identified by the GFSC (as group supervisor) after consulting the other supervisory authorities concerned and the group itself.

(3) The insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company must monitor the group Solvency Capital Requirement on an ongoing basis.

(4) Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement must be recalculated without delay and reported to the GFSC (as group supervisor).

(5) Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the GFSC (as group supervisor) may require a recalculation of the group Solvency Capital Requirement.

Choice of calculation method.

199.(1) The calculation of solvency at the level of the group of insurance and reinsurance undertakings referred to in regulation 192(1)(a) must be carried out in accordance with the technical principles and one of the methods set out in regulations 200 to 212.

(2) Subject to sub-regulation (3) the method for that calculation must be Method 1 (the accounting consolidation-based method) set out in regulations 209 to 211.

(3) Where the GFSC is the group supervisor of a particular group, after consulting any other supervisory authority concerned and the group itself, it may decide to apply to that group–

(a) Method 2 (the deduction and aggregation method) set out in regulation 212; or

(b) a combination of Method 1 and Method 2, where the exclusive application of Method 1 would not be appropriate.

Inclusion of proportional share.

200.(1) The calculation of group solvency must take account of the proportional share held by a participating undertaking in its related undertakings.

(2) The proportional share must comprise either of the following–

(a) where Method 1 is used, the percentages used for the establishment of the consolidated accounts; or

(b) where Method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(3) Regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary must be taken into account.

(4) Where in the opinion of the GFSC (as group supervisor) and any other supervisory authority concerned, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the GFSC may allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(5) The GFSC (as group supervisor) must determine, after consulting any other supervisory authority concerned and the group itself, the proportional share which must be taken into account in the following cases–

(a) where there are no capital ties between some of the undertakings in a group;

(b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in the opinion of that supervisory authority, a significant influence is effectively exercised over that undertaking; or

(c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Elimination of double use of eligible own funds.

201.(1) The double use of own funds eligible for the Solvency Capital Requirement is not allowed among the different insurance or reinsurance undertakings taken into account in that calculation.

(2) When calculating group solvency (and where the methods described in regulations 209 to 212 do not provide for it) the following amounts must be excluded–

(a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;

(b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking; and

(c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

(3) Without limiting sub-regulations (1) and (2), the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned–

(a) surplus funds falling under regulation 81(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated; and

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

(4) However, the following must in any event be excluded from the calculation–

(a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

(b) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking; and

(c) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

(5) Where the GFSC or any other supervisory authority considers that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in sub-regulations (3) and (4) cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

(6) The sum of the own funds referred to in sub-regulations (3) and (5) must not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(7) Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority of that related undertaking in accordance with regulation 84 may be included in the calculation only in so far as they have been authorised by that supervisory authority.

Elimination of intra-group creation of capital.

202.(1) When calculating group solvency, no account may be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following–

(a) a related undertaking;

(b) a participating undertaking; or

(c) another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account may be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated, where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

(3) In this regulation a reference to reciprocal financing includes (but is not limited to) circumstances where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation.

203. The value of assets and liabilities must be assessed in accordance with regulation 65.

Related insurance and reinsurance undertakings.

204.(1) Where an insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation must be carried out by including each of those related insurance or reinsurance undertakings.

(2) Where the related insurance or reinsurance undertaking has its head office in an EEA State other than Gibraltar, the calculation is to take account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other EEA State.

Intermediate insurance holding companies.

205.(1) When calculating the group solvency of an insurance or reinsurance undertaking which holds, through an insurance holding company or a mixed financial holding company, a participation in–

(a) a related insurance undertaking;

(b) a related reinsurance undertaking;

(c) a third-country insurance undertaking; or

(d) a third-country reinsurance undertaking,

the situation of that intermediate insurance holding company or intermediate mixed financial holding company must be taken into account.

(2) For the purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company must be treated as if it were an insurance or reinsurance undertaking subject to–

(a) the rules in Chapter 3 of Part 6 in respect of the Solvency Capital Requirement; and

(b) the same conditions in Chapter 2 of Part 6 in respect of own funds eligible for the Solvency Capital Requirement.

(3) Where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with regulation 89, they may be recognised as eligible own funds up to the amounts calculated by application of the limits set out in that regulation to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

(4) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company which would require prior authorisation from a supervisory authority in accordance with regulation 84, if they were held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been authorised by the GFSC (as group supervisor).

Equivalence concerning related third-country insurance and reinsurance undertakings.

206.(1) When calculating, in accordance with regulation 212, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter is to be treated for the purposes of that calculation as a related insurance or reinsurance undertaking.

(2) Where the law of the third country in which that undertaking has its head office–

(a) requires the undertaking to be authorised (however described); and

(b) imposes on it a solvency regime at least equivalent to that set out in Part 6,

the GFSC (as group supervisor) may permit the calculation to take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as prescribed by law in that third country.

(3) This regulation must be applied in accordance with any delegated acts adopted under Article 227.4 or 227.5 of the Solvency 2 Directive or, if no delegated act has been adopted in accordance with those provisions, in accordance with the procedure in Article 227.2 of the Solvency 2 Directive.

Related credit institutions, investment firms and financial institutions.

207.(1) When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance or reinsurance undertaking may apply method 1 or method 2 set out in Annex I to the Financial Conglomerates Directive (with any necessary modifications), subject to sub-regulation (2).

(2) Method 1 in that Annex may only be applied where the GFSC (as group supervisor) is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(3) The method chosen under sub-regulation (1) must be applied in a consistent manner over time.

(4) The GFSC (as group supervisor) may decide, at the request of a participating undertaking or on its own initiative, to deduct any participation referred to sub-regulation (1) from the own funds eligible for the group solvency of the participating undertaking.

Non-availability of necessary information.

208. Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking is not available in respect of a related undertaking with its head office in an EEA State or a third country–

(a) the book value of that undertaking in the participating insurance or reinsurance undertaking must be deducted from the own funds eligible for the group solvency; and

(b) the unrealised gains connected with that participation must not be recognised as own funds eligible for the group solvency.

Method 1 (default method): the accounting consolidation-based method.

209.(1) The calculation of the group solvency of a participating insurance or reinsurance undertaking must be carried out on the basis of its consolidated accounts.

(2) Group solvency of a participating insurance or reinsurance undertaking is the difference between–

(a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and

(b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

(3) The rules laid down in regulations 81 to 114 apply for the calculation of the own funds eligible for the Solvency Capital Requirement and the Solvency Capital Requirement at group level based on consolidated data.

(4) The Solvency Capital Requirement at group level based on consolidated data ("the consolidated group Solvency Capital Requirement") must be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles in regulations 102 to 114.

(5) The consolidated group Solvency Capital Requirement must have as a minimum the sum of the following–

(a) the Minimum Capital Requirement as referred to in Chapter 4 of Part 6 of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

(6) The minimum amount must be covered by eligible basic own funds as determined under regulation 89.

(7) For the purposes of determining whether eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in regulations 123 and 200 to 208 apply with any necessary modifications.

Group internal model.

210.(1) An application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model may be submitted to the group supervisor–

(a) by an insurance or reinsurance undertaking and its related undertakings; or

(b) jointly by the related undertakings of an insurance holding company or a mixed financial holding company.

(2) The GFSC must cooperate with the other supervisory authorities concerned–

(a) to decide whether to grant that permission and to determine the terms and conditions, if any, to which it is subject; and

(b) with the aim of reaching a joint decision on the application within six months from the date of receipt of the application by the group supervisor.

(3) Where the GFSC is the group supervisor, it must–

(a) inform the other supervisory authorities concerned and forward the application to them without delay; and

(b) where the supervisory authorities concerned reach a joint decision on the application, provide the applicant with a document setting out the fully reasoned decision;

(4) If a joint decision is not adopted within the period specified in sub-regulation (2)(b), the GFSC (as group supervisor) may make its own decision on the application and, for that purpose must–

(a) take account of any views and reservations of the other supervisory authorities concerned expressed during that six-month period; and

(b) provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

(5) If during the period specified in sub-regulation (2)(b), a supervisory authority refers the matter to EIOPA in accordance with Article 19 of the EIOPA Regulation, the GFSC (as group supervisor) must defer its decision and await any decision that EIOPA may take in accordance with Article 19.3 of that Regulation, and must take its decision in conformity with EIOPA's decision.

(6) Where, in accordance with Article 41.2 and 41.3 and Article 44.1 and 44.3 of the EIOPA Regulation, the decision proposed by the panel (referred to in those Articles) is rejected, the GFSC (as group supervisor) must take a final decision.

(7) Where the GFSC (as a member of the college of supervisors) considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the GFSC's concerns, the GFSC may, in accordance with regulation 39, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model and–

(a) in exceptional circumstances, where such capital add-on would not be appropriate, the GFSC may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Chapter 3 of Part 6;

(b) in accordance with regulation 39(1)(a) and (c), the GFSC may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula; and

(c) the GFSC must explain any decision under this sub-regulation to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

Group capital add-on.

211.(1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the GFSC (as group supervisor) must pay particular attention to any case where the circumstances referred to in regulation 39(1) may arise at group level; in particular where–

(a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

(b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by supervisory authorities in accordance with regulations 39 and 210(7).

(2) Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed; and for that purpose regulations 39 and 40 (together with implementing measures taken in accordance with Article 37.6 to 37.8 of the Solvency 2 Directive) apply with any necessary modifications.

Method 2 (alternative method): the deduction and aggregation method.

212.(1) The group solvency of a participating insurance or reinsurance undertaking is the difference between–

(a) the aggregated group eligible own funds, as provided for in sub-regulation (2); and

(b) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in sub-regulation (3).

(2) The aggregated group eligible own funds are the sum of–

(a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(3) The aggregated group Solvency Capital Requirement is the sum of–

(a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(4) Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership–

(a) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings must incorporate the value of the indirect ownership, taking into account the relevant successive interests, and

(b) the items referred to in sub-regulations (2)(b) and (3)(b) must include the corresponding proportional shares of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(5) In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related

undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, regulation 210 applies with any necessary modifications.

(6) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in sub-regulation (3), appropriately reflects the risk profile of the group, the GFSC must pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

(7) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, the GFSC (as group supervisor) may impose a capital add-on to the aggregated group Solvency Capital Requirement and, in such a case, regulations 39 and 40 (together with implementing measures taken in accordance with Article 37.6 to 37.8 of the Solvency 2 Directive) apply with any necessary modifications.

Group solvency of an insurance holding company or mixed financial holding company.

213.(1) Where insurance or reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the GFSC (as group supervisor) must ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying regulations 199 to 212.

(2) For the purpose of that calculation, the parent undertaking must be treated as if it were an insurance or reinsurance undertaking–

(a) subject to the rules in Chapter 3 of Part 6 as regards the Solvency Capital Requirement, and

(b) subject to the same conditions in Chapter 2 of Part 6 as regards the own funds eligible for the Solvency Capital Requirement.

Groups with centralised risk management

Subsidiaries of an insurance or reinsurance undertaking: conditions.

214. Regulations 216 and 217 apply to any insurance or reinsurance undertaking which is a subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied–

(a) the subsidiary has not been the subject of a decision by the GFSC under Article 214.2 of the Solvency 2 Directive and is included in the group supervision

carried out by the group supervisor at the level of the parent undertaking in accordance with this Part;

(b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary, and the parent undertaking satisfies all supervisory authorities concerned regarding the prudent management of the subsidiary;

(c) the parent undertaking has received the agreement referred to in–

(i) the third sub-paragraph of Article 246.4 of the Solvency 2 Directive; and

(ii) Article 256.2 of the Solvency 2 Directive; and

(d) an application for permission to be subject to regulations 216 and 217 has been submitted by the parent undertaking and a favourable decision has been made on the application in accordance with the procedure set out in regulation 215.

Subsidiaries of an insurance or reinsurance undertaking: decision on the application.

215.(1) Where an application is made for permission to be subject to the rules in regulations 216 and 217 (or the equivalent rules of another EEA State), the GFSC must work in full cooperation with the supervisory authorities concerned within the college of supervisors, to decide whether or not to grant the permission sought and to determine any terms or conditions to which the permission should be subject.

(2) An application may be submitted to the GFSC only if it authorised the subsidiary.

(3) Where the GFSC receives an application it must, without delay, inform the other supervisory authorities within the college of supervisors and forward the complete application to them.

(4) The GFSC must do everything in its power to reach a joint decision on the application with the other supervisory authorities within three months from the date that the complete application was received by all of the supervisory authorities within the college of supervisors.

(5) If, within that three-month period, the GFSC or any of the other supervisory authorities refers the matter to EIOPA in accordance with Article 19 of the EIOPA Regulation, the GFSC (as group supervisor) must defer its decision, await any decision that EIOPA may take in accordance with Article 19.3 of that Regulation and take its decision in conformity with EIOPA's decision.

(6) The GFSC may not refer the matter to EIOPA after the end of the three-month period or a joint decision has been reached.

(7) If, in accordance with Article 41.1 and 41.3 and Article 44.1(3) of the EIOPA Regulation, the decision proposed by the panel (as referred to in those Articles) is rejected, the GFSC (as group supervisor) must take a final decision, which must be recognised as determinative and applied by the supervisory authorities concerned.

(8) Where the supervisory authorities concerned have reached a joint decision, the GFSC, if it authorised the subsidiary, must provide the applicant with the full reasoned decision.

(9) In the absence of a joint decision within the three-month period specified in sub-regulation (4), the GFSC must take its own decision with regard to the application and, in doing so, must consider–

(a) any views and reservations expressed during that three month period by the supervisory authorities concerned; and

(b) any reservations expressed during that period by the other supervisory authorities within the college of supervisors.

(10) The GFSC must provide the applicant and the other supervisory authorities concerned with a fully reasoned decision which explains any significant deviation from the reservations of the other supervisory authorities.

Subsidiaries of an insurance or reinsurance undertaking: determination of Solvency Capital Requirement.

216.(1) Without limiting regulation 210, the Solvency Capital Requirement of a subsidiary which has approval under regulation 215 must be calculated as follows.

(2) Sub-regulation (3) applies where–

(a) the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with regulation 210;

(b) the GFSC, as the supervisory authority which authorised the subsidiary, considers that its risk profile deviates significantly from that internal model, and

(c) the undertaking has not properly addressed the GFSC's concerns.

(3) The GFSC may, in the cases referred to in regulation 39, propose–

(a) to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of that model, or

(b) in exceptional circumstances where a capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.

(4) The GFSC must–

(a) inform the subsidiary and the college of supervisors of the grounds for the GFSC's proposal, and

(b) discuss its proposal within the college of supervisors.

(5) Sub-regulation (6) applies where–

(a) the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula,

(b) the GFSC, having authorised the subsidiary, considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and

(c) the undertaking has not properly addressed the concerns of the GFSC.

(6) The GFSC may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in regulation 100, or in the cases referred to in regulation 39, to set a capital add-on to the Solvency Capital Requirement of the subsidiary.

(7) The GFSC must–

(a) inform the subsidiary and the college of supervisors of the grounds for the GFSC's proposal, and

(b) discuss its proposal within the college of supervisors.

(8) The GFSC must do everything within its power to reach an agreement with the college of supervisors on the GFSC's proposal or on other possible measures, and the agreement must be recognised as determinative and applied by the supervisory authorities concerned.

(9) Where the GFSC disagrees with the group supervisor or, as group supervisor, disagrees with a supervisory authority making a proposal, it may, within one month from the making

of the proposal, refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

(10) The GFSC may not refer the matter to EIOPA after the end of that one-month period or after an agreement has been reached within the college in accordance with sub-regulation (8).

(11) The GFSC, if it authorised the subsidiary, must defer its decision, await any decision that EIOPA may take in accordance with Article 19 of that Regulation and take its decision in conformity with EIOPA's decision (which must be recognised as determinative and applied by the supervisory authorities concerned).

(12) The GFSC must provide the subsidiary and the college of supervisors with a fully reasoned decision.

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with Solvency and Minimum Capital Requirements.

217.(1) Without limiting regulation 122, this regulation applies where a subsidiary authorised by the GFSC fails to comply with the Solvency Capital Requirement.

(2) The GFSC must, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement–

(a) the re-establishment of the level of eligible own funds; or

(b) the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(3) The GFSC must work with the college of supervisors with the aim of reaching an agreement on a proposal of the GFSC regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

(4) In the absence of agreement, the GFSC must decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(5) Where, in accordance with regulation 120, the GFSC identifies deteriorating financial conditions in relation to a subsidiary which it authorised it must–

(a) notify the college of supervisors without delay of the proposed measures to be taken;

(b) discuss the measures to be taken within the college of supervisors, except in emergency situations;

(c) work with the college of supervisors with the aim of reaching an agreement on the proposed measures to be taken within one month of notification; and

(d) in the absence of agreement, decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(6) Without limiting regulation 123, this regulation also applies where a subsidiary authorised by the GFSC fails to comply with the Minimum Capital Requirement.

(7) The GFSC must, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed–

(a) the re-establishment of the level of eligible own funds covering the Minimum Capital Requirement; or

(b) the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement.

(8) The GFSC must also inform the college of supervisors of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

(9) The GFSC, whether as supervisory authority or as group supervisor, may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation where there is disagreement regarding–

(a) the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in sub-regulation (3); or

(b) the approval of the proposed measures, within the one month period referred to in sub-regulation (5).

(10) The matter must not be referred to EIOPA–

(a) after the end of that four-month or one-month period;

(b) after an agreement has been reached within the college in accordance with the sub-regulation (3) or (5); or

(c) in the case of emergency situations as referred to in sub-regulation (5)(b).

(11) The GFSC, if it authorised the subsidiary, must defer its decision, await any decision that EIOPA may take in accordance with Article 19.3 of that regulation and take its final decision in conformity with EIOPA's decision (which must be recognised as determinative and be applied by the supervisory authorities concerned).

(12) The GFSC must provide the subsidiary and the college of supervisors with a fully reasoned decision.

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary.

218.(1) The rules provided for in regulations 216 and 217 cease to apply where–

(a) the condition referred to in regulation 214(a) is no longer complied with;

(b) the condition referred to in regulation 214(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time; or

(c) the conditions referred to in regulation 214(c) and (d) are no longer complied with.

(2) In the case referred to in sub-regulation(1)(a), where the GFSC (as group supervisor) decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it must immediately inform the supervisory authority concerned and the parent undertaking.

(3) For the purposes of regulation 214(b), (c) and (d), the parent undertaking must be responsible for ensuring that the conditions are complied with on an ongoing basis.

(4) In the event of non-compliance, the parent undertaking–

(a) must inform the group supervisor and the supervisor of the subsidiary concerned without delay, and

(b) must present a plan to restore compliance within an appropriate period of time.

(5) Despite sub-regulation (3), the GFSC as group supervisor–

(a) must verify at least annually, on its own initiative, that the conditions referred to in regulation 214(b), (c) and (d) continue to be complied with, and

(b) must also perform such verification on request from a supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

(6) Where the verification performed identifies weaknesses, the GFSC (as group supervisor) must require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(7) Where, after consulting the college of supervisors, the GFSC determines that the plan referred to in sub-regulation (4) or (6) is insufficient or is not being implemented within the agreed period of time, the GFSC must–

(a) conclude that the conditions referred to in Article 236(b), (c) and (d) of the Solvency 2 Directive are no longer complied with, and

(b) immediately inform any supervisory authority concerned.

Subsidiaries of an insurance or reinsurance undertaking: new applications.

219. The regime provided for in regulations 216 and 217 applies where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in regulation 215.

Subsidiaries of an insurance holding company or mixed financial holding company.

220. Regulations 215 to 219 apply, with any necessary modifications, to insurance and reinsurance undertakings which are subsidiaries of an insurance holding company or mixed financial holding company.

Risk concentration and intra-group transactions

Supervision of risk concentration.

221.(1) The supervision of risk concentration at group level must be exercised in accordance with this regulation and regulations 223 to 236.

(2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the group

supervisor any significant risk concentration at the level of the group, unless regulation 194(2) applies.

(3) The necessary information must be submitted to the group supervisor–

(a) by the insurance or reinsurance undertaking which is at the head of the group, or

(b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the group and the other supervisory authorities concerned.

(4) Where the GFSC is the group supervisor, it must–

(a) identify the undertaking which is to provide the information referred to in sub-regulation (3);

(b) identify the type of risks which insurance and reinsurance undertakings in the group must report in all circumstances;

(c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify significant risk concentrations which should be reported; and

(d) subject the risk concentrations to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

(5) In complying with sub-regulation (4)(a) to (c) the GFSC must consult the group and the other supervisory authorities concerned.

(6) The GFSC must take account of the specific group and its risk-management structure when–

(a) as group supervisor, defining the type of risks that must be reported; or

(b) as another supervisory authority concerned, giving its opinion about them.

Supervision of intra-group transactions.

222.(1) The supervision of intra-group transactions must be exercised in accordance with this regulation and regulations 223 to 236.

(2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within the group, including those performed with an individual with close links to an undertaking in the group, unless regulation 194(2) applies.

(3) Very significant intra-group transactions must be reported as soon as practicable.

(4) The necessary information must be submitted to the group supervisor by–

(a) the insurance or reinsurance undertaking which is at the head of the group, or

(b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the group and the other supervisory authorities concerned.

(5) Where the GFSC is the group supervisor, it must–

(a) identify the undertaking which is to provide the information referred to in sub-regulation (4);

(b) identify the type of intra-group transactions which insurance and reinsurance undertakings in the group must report in all circumstances;

(c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify intra-group transactions which should be reported; and

(d) subject the intra-group transactions to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

(6) In complying with sub-regulation (5)(a) to (c) the GFSC must consult the group and the other supervisory authorities concerned.

(7) The GFSC must take account of the specific group and its risk-management structure when–

(a) as group supervisor, defining the type of intra-group transactions that must be reported; or

(b) as another supervisory authority concerned, giving its opinion about them.

Risk management and internal control

Supervision of system of governance.

223.(1) Regulations 43 to 50 apply at the level of the group with any necessary modifications.

(2) Without limiting sub-regulation (1), the risk management and internal control systems and reporting procedures must be implemented consistently in all the undertakings included in the scope of group supervision under regulations 192 and 193 so that those systems and reporting procedures can be controlled at the level of the group.

(3) The group internal control mechanisms must include at least the following–

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks; and

(b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

(4) A participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must undertake the own risk and solvency assessment required by regulation 46 at the level of the group.

(5) Where the calculation of the solvency at the level of the group is carried out in accordance with Method 1 in regulation 209, the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(6) Where the GFSC is the group supervisor–

(a) it must supervise the systems and reporting procedures referred to in sub-regulations (1) to (3) in accordance with regulations 224 to 236;

(b) it must subject the own-risk and solvency assessment conducted at group level to supervisory review in accordance with those regulations; and

(c) it may consent to the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company

(i) undertaking at the same time, at the level of the group and of any subsidiary in the group, any assessments required under regulation 46; and

(ii) producing a single document covering all the assessments.

(7) Before giving its consent under sub-regulation (6)(c) the GFSC must consult the members of the college of supervisors and take account of their views or reservations.

(8) Where a group exercises the option provided in sub-regulation (6)(c)–

(a) it must submit the document to all supervisory authorities concerned at the same time; and

(b) the exercise of the option does not exempt the subsidiaries concerned from the obligation to ensure that the requirements of regulation 46 are met.

Measures to facilitate group supervision

Group Supervisor.

224.(1) In these Regulations the "group supervisor" means the single supervisor responsible for co-ordinating and exercising the supervision of a group, designated from among the supervisory authorities of the EEA States concerned.

(2) The GFSC must act as the group supervisor–

(a) where all the insurance and reinsurance undertakings in a group are authorised by the GFSC; or

(b) subject to sub-regulations (4) to (11), in any case to which sub-regulation (3) applies.

(3) Those cases are–

(a) where the group is headed by an insurance or reinsurance undertaking which is authorised by the GFSC; or

(b) where the group is not headed by an insurance or reinsurance undertaking and–

(i) the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, and that insurance or reinsurance undertaking is authorised by the GFSC;

(ii) more than one insurance or reinsurance undertaking have the same parent insurance holding company or mixed financial holding company, which has its head office in Gibraltar, and one of those insurance or reinsurance undertakings is authorised by the GFSC;

(iii) the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different EEA States, there is an insurance or reinsurance undertaking in each of those States and the insurance or reinsurance undertaking with the largest balance sheet total is authorised by the GFSC;

(iv) more than one insurance or reinsurance undertaking have the same parent insurance holding company or mixed financial holding company, none of those undertakings has been authorised in the EEA State in which the insurance holding company or mixed financial holding company has its head office, and the insurance or reinsurance undertaking with the largest balance sheet total is authorised by the GFSC; or

(v) the group is a group without a parent undertaking, or in any circumstances not referred to in sub-paragraph (i) to (iv), the insurance or reinsurance undertaking with the largest balance sheet total is authorised by the GFSC.

(4) In a particular case, the GFSC may request that the supervisory authorities take a joint decision to derogate from sub-regulation (3) and designate a different supervisory authority as group supervisor where the application of that sub-regulation would be inappropriate, taking into account the structure of the group and the relative importance of the activities of the insurance or reinsurance undertakings in different countries.

(5) The GFSC must do everything in its power to reach a joint decision with the other supervisory authorities concerned on the choice of a group supervisor within three months of any request for a discussion, whether made by the GFSC under sub-regulation (4) or by another supervisory authority under and in respect of the corresponding provisions of its domestic law.

(6) A request under sub-regulation (4) must not be submitted more often than once a year and the group concerned must be given an opportunity to state its opinion before any joint decision is taken.

(7) Where the GFSC is designated as group supervisor by a joint decision of the supervisory authorities, it must provide the group with the fully reasoned joint decision.

(8) If the GFSC or another supervisory authority refers the matter to EIOPA in accordance with Article 19 of the EIOPA Regulation within the three month period referred to in sub-regulation (5), the GFSC and other supervisory authorities must defer any joint decision, await any decision that EIOPA may take in accordance Article 19.3 of that Regulation and take their joint decision in conformity with EIOPA's decision.

(9) The choice of group supervisor must not be referred to EIOPA–

(a) after the end of that three month period; or

(b) after a joint decision has been reached.

(10) The GFSC must recognise as determinative and apply a joint decision taken in accordance with Article 247 of the Solvency 2 Directive.

(11) In the absence of a joint decision, the GFSC must act as group supervisor in accordance with sub-regulation (3).

Functions of group supervisor and other supervisors: College of supervisors.

225.(1) The GFSC, when acting as group supervisor, has the following functions–

(a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

(b) supervisory review and assessment of the financial situation of the group;

(c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in regulations 197 to 222;

(d) assessment of the system of governance of the group, as set out in regulation 223, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the fit and proper requirements set out in regulations 44 and 235;

(e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group; and

(f) other functions assigned to the group supervisor by or deriving from the application of the Solvency 2 Directive including, in particular–

(i) leading the process for validation of any internal model at group level, as set out in regulations 210 and 212; and

(ii) leading the process for permitting the application of the regime established under regulations 215 to 219.

(2) The GFSC must participate in the establishment and operation of the college of supervisors in accordance with Article 248 of the Solvency 2 Directive and, in particular, the GFSC–

(a) must take any necessary steps to ensure that the college ensures that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III of the Solvency 2 Directive, with a view to promoting the convergence of their respective decisions and activities;

(b) may refer a matter to EIOPA in the circumstances referred to in Article 248.2 or 248.4 of the Solvency 2 Directive; and

(c) must otherwise act in accordance with that Article.

Cooperation and exchange of information between supervisory authorities.

226.(1) The GFSC, whether as group supervisor or where it is responsible for supervising an insurance or reinsurance undertaking in a group–

(a) must cooperate closely with the other supervisory authorities, in particular, in cases where an insurance or reinsurance undertaking encounters financial difficulties;

(b) must provide those other supervisory authorities with relevant information, in order to facilitate the exercise of their supervisory duties under the Solvency 2 Directive and with the object of ensuring that the same amount of relevant information is available to the GFSC and the other authorities concerned;

(c) must communicate without delay all relevant information as soon as it becomes available or exchange it on request (including, but not limited to, information about the actions of the group and supervisory authorities and information provided by the group); and

(d) must immediately call for a meeting of all the supervisory authorities involved in group supervision where–

(i) it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance undertaking or reinsurance undertaking;

(ii) it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with regulations 209 to 212; or

(iii) where other exceptional circumstances are occurring or have occurred.

(3) The GFSC, where it is the group supervisor, must provide the other supervisory authorities and EIOPA with information about the group, in accordance with regulations 18, 52(1) and 231(2) and, in particular, regarding the group's legal structure and its governance and organisational structure.

(4) Where another supervisory authority–

(a) has not communicated relevant information to the GFSC; or

(b) has rejected, or within two weeks has not acted on, a request from the GFSC for co-operation, in particular to exchange relevant information,

the GFSC may refer the matter to EIOPA.

Consultation between supervisory authorities.

227.(1) Without limiting regulation 225, the GFSC must consult the other members of the college of supervisors before taking a decision which is of importance to the supervisory tasks of another member with regard to–

(a) changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group which require the approval or authorisation of supervisory authorities;

(b) the decision on the extension of the recovery period under regulation 122(3) to (5);

(c) major sanctions or exceptional measures taken, including–

(i) the imposition of a capital add-on to the Solvency Capital Requirement under regulation 39; or

(ii) the imposition of a limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under regulations 101 to 114.

(2) For the purposes of sub-regulation (1)(b) and (c), the group supervisor must always be consulted.

(3) The GFSC must also consult the other members of the college of supervisors before taking a decision which is based on information received from other supervisory authorities.

(4) The GFSC may decide not to consult the other supervisory authorities in cases of urgency or where consultation could jeopardise the effectiveness of a decision but, in that event, the GFSC must promptly inform the other supervisory authorities concerned.

Requests from the group supervisor to other supervisory authorities.

228.(1) The GFSC (as group supervisor) may invite the supervisory authority of the EEA State in which a parent undertaking has its head office and which does not exercise group supervision under Article 247 of the Solvency 2 Directive, to request from the parent undertaking any information which would be relevant for the exercise of the GFSC's coordination functions under regulation 225 and to transmit that information to the GFSC.

(2) Where the GFSC (as group supervisor) needs information referred to in regulation 231 which has already been given to another supervisory authority, whenever possible, the GFSC must contact that authority in order to prevent duplication of reporting to the various authorities involved in supervision.

Cooperation with authorities responsible for credit institutions and investment firms.

229.(1) This regulation applies where–

(a) an insurance or reinsurance undertaking is directly or indirectly related to or has a common participating undertaking with either or both–

(i) a credit institution, as defined in the Capital Requirements Directive; or

(ii) an investment firm, as defined in the MiFID 2 Directive; and

(b) different supervisory authorities are responsible for the supervision of the insurance or reinsurance undertaking and the credit institution or investment firm.

(2) The GFSC, where it authorised the insurance or reinsurance undertaking but is not responsible for supervision of the credit institution or investment firm, must cooperate closely with the supervisory authority responsible for the supervision of the credit institution or investment firm.

(3) Without affecting their respective responsibilities, the GFSC and the supervisory authority concerned must provide one another with any information likely to simplify their respective tasks, in particular, as set out in this Part.

Professional secrecy and confidentiality.

230. The GFSC may exchange information with other supervisory authorities in accordance with regulations 226 to 229, subject to the professional secrecy obligation.

Access to information.

231.(1) Individuals, legal persons and their related and participating undertakings which are within the scope of group supervision may exchange any information which may be relevant for the purposes of group supervision.

(2) The GFSC may require access to any information which is relevant for the purpose of group supervision, regardless of the nature of the undertaking concerned, and for that purpose regulation 37(1) to (5) applies with any necessary modifications.

(3) The GFSC, where it is the group supervisor–

(a) may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance or reinsurance undertakings within the group benefit from the limitation under regulation 37(7) to (9) taking into account the nature, scale and complexity of the risks inherent in the business of the group.

(b) may exempt from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption under regulation 37(10), taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

(4) Where the GFSC has requested information from an insurance or reinsurance undertaking which is subject to group supervision and it has not been provided within a reasonable time, the GFSC may address the undertakings in the group directly in order to obtain the necessary information.

Verification of information.

232.(1) The GFSC, either directly or through the intermediary of a person it appoints for that purpose, may conduct on-site verification of the information referred to in regulation 231 on the premises of–

(a) an insurance or reinsurance undertaking subject to group supervision;

(b) a related undertaking of that insurance or reinsurance undertaking;

(c) a parent undertaking of that insurance or reinsurance undertaking; or

(d) a related undertaking of a parent undertaking of that insurance or reinsurance undertaking.

(2) Section 134 of the Act applies to any on-site verification conducted under sub-regulation (1), as if the persons specified in paragraphs (a) to (d) were relevant persons within the meaning of Part 10 of the Act.

(3) Where in a specific case the GFSC wishes to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another EEA State, the GFSC–

(a) must ask the supervisory authority of that EEA State to have the verification carried out; and

(b) may participate in the verification.

(4) Where the GFSC receives a request for on-site verification from another supervisory authority, the GFSC must–

(a) act on the request by–

(i) carrying out the verification itself;

(ii) allowing an auditor or expert to carry it out, or

(iii) allowing the requesting authority to carry it out; and

(b) inform the group supervisor of the action taken.

(5) The requesting authority may participate in the verification if it does not carry out the verification directly.

(6) Where a request for verification under sub-regulation (3) made by the GFSC to another supervisory authority has not been acted on within two weeks or where, in practice, the GFSC is unable to exercise its right to participate in the verification, the GFSC may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation.

(7) In accordance with Article 21 of that Regulation, EIOPA may participate in any on-site verification which is carried out jointly by the GFSC and another supervisory authority.

Group solvency and financial condition report.

233.(1) Participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group.

(2) For the purpose of sub-regulation (1) regulations 52 and 54 to 56 apply with any necessary modifications.

(3) A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, with the consent of the group supervisor, provide a single report on its solvency and financial condition which must comprise the following–

(a) the information at the level of the group to be disclosed in accordance with sub-regulation (1);

(b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with regulations 52 and 54 to 56.

(4) The GFSC, where it is the group supervisor, must consult and take account of any views and reservations of the members of the college of supervisors before granting consent under sub-regulation (3).

(5) Where the GFSC has authorised a subsidiary in the group and the report referred to in sub-regulation (3) fails to include material information which the GFSC requires comparable undertakings to provide, the GFSC may require the subsidiary concerned to disclose the necessary additional information.

Group structure.

234. Insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly on an annual basis the legal structure and the governance and organisational structure of the group, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies.

235.(1) An insurance holding company or mixed financial holding company must ensure that all persons who effectively run the company are fit and proper to perform their duties.

(2) Regulation 44 applies for the purposes of this regulation (with any necessary modifications).

Enforcement measures.

236.(1) Sub-regulations (2) to (4) apply if–

(a) one or more insurance or reinsurance undertakings in a group do not comply with the requirements in regulations 197 to 223;

(b) those requirements are met but the solvency of the group or an insurance or reinsurance undertaking within it may nevertheless be jeopardised; or

(c) intra-group transactions or the risk concentrations are a threat to the financial position of one or more insurance or reinsurance undertakings in a group.

(2) Where the GFSC–

(a) has authorised an insurance or reinsurance undertaking in the group; or

(b) is the group supervisor of a group headed by an insurance holding company or mixed financial holding company,

the GFSC must exercise its powers under the Act and these Regulations to rectify the position as soon as possible.

(3) Where the GFSC–

(a) is the group supervisor and the head office of an insurance or reinsurance undertaking in the group is in another EEA State; or

(b) is the group supervisor of a group headed by an insurance holding company or mixed financial holding company and the head office of the insurance holding company or mixed financial holding company is in another EEA State,

the GFSC must inform the supervisory authority of that EEA State of the GFSC's findings with a view to enabling that supervisory authority to take the necessary measures.

(4) The GFSC must, where appropriate–

(a) co-ordinate its enforcement measures with the other supervisory authorities concerned; and

(b) cooperate closely with other supervisory authorities concerned, in accordance with Article 258.2 of the Solvency 2 Directive, to ensure that sanctions or measures in respect of insurance holding companies and mixed financial holding companies are effective.

Third countries

Parent undertakings outside the EEA: verification of equivalence.

237.(1) In the case referred to in regulation 192(3)(c), the GFSC must verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the EEA, are subject to supervision by a third-country supervisory authority which is equivalent to that provided for in this Part on the supervision at the level of the group of insurance and reinsurance undertakings referred to in regulation 192(3)(a) and (b).

(2) Where no delegated act has been adopted in accordance with Article 260.3 or 260.5 of the Solvency 2 Directive, the verification must be carried out by the GFSC (as "acting group supervisor"), if the criteria set out in regulation 224(2) apply, at the request of the parent undertaking or any of the insurance and reinsurance undertakings authorised in the EEA or on its own initiative.

(3) The GFSC must participate in assistance provided by EIOPA in accordance with Article 33.2 of the EIOPA Regulation.

(4) The GFSC as acting group supervisor–

(a) with EIOPA's assistance, must consult the other supervisory authorities concerned before taking a decision on equivalence; and

(b) must take that decision in accordance with the criteria adopted under Article 260.2 of the Solvency 2 Directive.

(5) The GFSC as acting group supervisor must not take any decision in relation to a third country that is in opposition to any previous decision taken in respect of that third country, except where it is necessary to take account of significant changes to the supervisory regime under the Solvency 2 Directive or to the supervisory regime in the third country.

(6) If the GFSC is not the acting group supervisor and disagrees with a decision taken in accordance with Article 260(1) of the Solvency 2 Directive, it may refer the matter to EIOPA and request its assistance in accordance with Article 19 of the EIOPA Regulation within three months after notification of the decision by the acting group supervisor.

(7) Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with Article 260.5 of the Solvency 2 Directive, regulation 238 applies unless there is an insurance or reinsurance undertaking situated in an EEA State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the EEA; and in that case, the task of the group supervisor must be exercised by the acting group supervisor.

Parent undertakings outside the EEA: equivalence.

238.(1) In the event of equivalent supervision referred to in regulation 237, the GFSC must rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with this regulation.

(2) Regulations 224 to 236 apply to the cooperation with third-country supervisory authorities (with any necessary modifications).

Parent undertakings registered in a third country: absence of equivalence.

239.(1) In the absence of equivalent supervision referred to in regulation 237 or where regulation 238 is disapplied in the event of temporary equivalence in accordance with regulation 237(7), the GFSC (as group supervisor) must apply to insurance and reinsurance undertakings either–

(a) regulations 197 to 213 and 221 to 236 (with any necessary modifications); or

(b) one of the methods set out in sub-regulation (4).

(2) The general principles and methods set out in regulations 197 to 236 apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

(3) For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the conditions in Chapter 2 of Part 6 as regards the own funds eligible for the Solvency Capital Requirement and a Solvency Capital Requirement determined in accordance with the principles in either–

(i) regulation 205 where it is an insurance holding company or mixed financial holding company; or

(ii) regulation 206 where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

(4) The GFSC may apply other methods which, as group supervisor, it has agreed on after consulting the other supervisory authorities concerned and which ensure appropriate supervision of the insurance and reinsurance undertakings in a group.

(5) The GFSC may, in particular, require the establishment of an insurance holding company which has its head office in the EEA or a mixed financial holding company which has its head office in the EEA and apply this Part to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

(6) The methods chosen must allow the objectives of the group supervision as defined in this Part to be achieved and must be notified to the other supervisory authorities concerned and the European Commission.

Parent undertakings outside the EEA: levels.

240.(1) Where the parent undertaking referred to in regulation 237 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, the verification provided for in that regulation must be applied only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) But the GFSC may decide, in the absence of equivalent supervision referred to in regulation 237, to carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country

insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) In such a case, the GFSC must explain its decision to the group.

(4) Regulation 239 applies to the case addressed by this regulation (with any necessary modifications).

Mixed-activity insurance holding companies

Intra-group transactions.

241.(1) Where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company and the GFSC is responsible for the supervision of one or more of those undertakings, it must exercise general supervision (along with the other supervisory authorities concerned) over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

(2) Regulations 222 to 236 apply (with any necessary modifications).

PART 12
REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

Preliminary

Scope of Part.

242. This Part applies to reorganisation measures and winding-up proceedings concerning–

(a) insurance undertakings; or

(b) branches in an EEA State of third-country insurance undertakings.

Interpretation of Part 12.

243.(1) In this Part–

"administrator" means–

(a) in Gibraltar, an administrator of an insurance undertaking appointed under the Insolvency Act 2011; or

(b) in another EEA State, any person appointed by the competent authority for the purpose of administering reorganisation measures in relation to an insurance undertaking authorised in that State;

"branch" means a permanent presence of an insurance undertaking in an EEA State other than the home State which pursues insurance activities;

"competent authority" means–

(a) in Gibraltar, the Supreme Court; or

(b) in another EEA State, the administrative or judicial authority which is competent for the purposes of reorganisation measures or winding-up proceedings;

"insurance claim"–

(a) means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having a direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in regulation 4(5)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known; and

(b) includes any premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in paragraph (a) in accordance with the law applicable to such a contract or operation before the opening of winding-up proceedings;

"liquidator" means–

(a) in Gibraltar, the liquidator of an insurance undertaking appointed under the Insolvency Act 2011; or

(b) in another EEA State, any person appointed by the competent authority or the governing body of an insurance undertaking authorised in that State for the purpose of administering winding-up proceedings in relation to that undertaking;

"reorganisation measures" means measures involving any intervention by the competent authority which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; and

"winding-up proceedings" means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authority, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory.

(2) For the purpose of applying this Part to reorganisation measures and winding-up proceedings concerning a branch in an EEA State of a third-country insurance undertaking–

"competent authority" means the home State competent authority;

"home State" means the EEA State in which the branch was authorised in accordance with Articles 145 to 149 of the Solvency 2 Directive; and

"supervisory authority" means the home State regulator;

Reorganisation measures

Adoption of reorganisation measures: applicable law.

244.(1) Only the competent authority of an insurance undertaking's home State is entitled to decide on reorganisation measures in respect of the undertaking, including its branches in other EEA States.

(2) The adoption of reorganisation measures does not preclude the opening of winding-up proceedings in respect of an insurance undertaking, including its branches in other EEA States.

(3) Reorganisation measures in respect of a Gibraltar insurer, including its branches in other EEA States, must be governed by the laws, regulations and procedures applicable in Gibraltar, unless otherwise provided in regulations 260 to 267.

(4) Reorganisation measures adopted by the competent authority of another EEA State, in accordance with the law of that State, in respect of an EEA insurer authorised in that State, including any branch in Gibraltar, are fully effective in Gibraltar without any further formalities once they become effective in the home State.

(5) Reorganisation measures to which sub-regulation (3) or (4) applies, once they have become effective in Gibraltar or the relevant home State respectively, are effective throughout the EEA, including against third parties in EEA States, and even where the law of

an EEA State does not provide for such reorganisation measures or makes their implementation subject to conditions which are not fulfilled.

Information to supervisory authorities.

245.(1) The administrator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of his or her decision on any reorganisation measures, where possible before they are adopted or, failing that, immediately afterwards.

(2) The GFSC must, without delay, inform the supervisory authorities of all other EEA States of the decision to adopt those reorganisation measures and of their possible practical effects.

Publication of decisions on reorganisation measures.

246.(1) Subject to sub-regulation (5), where a reorganisation measure in Gibraltar is subject to a right of appeal, the Supreme Court or administrator must–

(a) publish the decision on the reorganisation measure in the Gazette, and

(b) publish in the Official Journal of the European Union at the earliest opportunity an extract from the document establishing the reorganisation measure.

(2) Where, in accordance with Article 270 of the Solvency 2 Directive, the GFSC is informed by the supervisory authority of an EEA State of the decision on a reorganisation measure, the GFSC may publish the decision in the Gazette.

(3) Publication under sub-regulation (1) or (2) must be made in English and include–

(a) the name of the home State competent authority;

(b) the name and address of the administrator; and

(c) the law applicable to the reorganisation measure.

(4) Reorganisation measures apply and are fully effective as against creditors regardless of the provisions of this regulation concerning publication unless the Supreme Court provides otherwise.

(5) Where reorganisation measures only affect the rights of an insurance undertaking's shareholders, members or employees, sub-regulations (1) to (4) do not apply and the Supreme Court must determine the manner in which those parties are to be informed.

Information to known creditors: right to lodge claims.

247.(1) Where the law of Gibraltar requires a claim to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors whose habitual residence, domicile or head office is in Gibraltar, the Supreme Court or the administrator must also inform known creditors whose habitual residence, domicile or head office is in another EEA State, in accordance with regulations 256 and 258(1).

(2) If the law of Gibraltar provides for the right of creditors whose habitual residence, domicile or head office is in Gibraltar to lodge claims or to submit observations concerning their claims, creditors whose habitual residence, domicile or head office is in another EEA State must have the same right in accordance with regulations 257 and 258(4).

Winding-up proceedings

Commencement of winding-up proceedings.

248.(1) Only the competent authority of an insurance undertaking's home State is entitled to decide on winding-up proceedings in respect of the undertaking, including its branches in other EEA States.

(2) A decision to commence winding-up proceedings in respect of an insurance undertaking, including its branches in other EEA States, may be taken in the absence, or following the adoption, of reorganisation measures.

(3) Winding-up proceedings in respect of a Gibraltar insurer, including its branches in other EEA States, must be governed by the laws, regulations and procedures applicable in Gibraltar, unless regulations 260 to 267 provide otherwise.

(4) A decision concerning the commencement of winding-up proceedings, adopted in accordance with the law of Gibraltar in respect of a Gibraltar insurer, including its branches in other EEA States, is fully effective in all EEA States without any further formalities once it becomes effective in Gibraltar).

(5) A decision concerning the commencement of winding-up proceedings by the competent authority of another EEA State, adopted in accordance with the law of that State in respect of an EEA insurer authorised in that State, including any branch in Gibraltar, is fully effective in Gibraltar and in all other EEA States without any further formalities once it becomes effective in the home State.

(6) The liquidator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of the decision to commence winding-up proceedings, where possible before the proceedings are commenced or, failing that, immediately afterwards.

(7) The GFSC must, without delay, inform the supervisory authorities of all other EEA States of the decision to commence winding-up proceedings and the possible practical effects of those proceedings.

Applicable law.

249.(1) Winding-up proceedings in respect of an insurance undertaking, including its branches in other EEA States, must be governed by the general law of Gibraltar unless regulations 260 to 267 provide otherwise.

(2) The law of Gibraltar must determine at least the following–

(a) the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the commencement of the winding-up proceedings;

(b) the respective powers of the insurance undertaking and the liquidator;

(c) the conditions under which set-off may be invoked;

(d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;

(e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in regulation 267;

(f) the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the commencement of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the commencement of winding-up proceedings by virtue of a right in rem or through a set-off;

(i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;

(j) rights of the creditors after the closure of winding-up proceedings;

(k) the party who is to bear the cost and expenses incurred in the winding-up proceedings; and

(l) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

Treatment of insurance claims.

250.(1) Insurance claims take precedence over other claims against an insurance undertaking as specified in sub-regulation (2).

(2) With regard to–

(a) assets representing the technical provisions, insurance claims must take absolute precedence over any other claim on the undertaking; and

(b) the whole of the assets of the undertaking, insurance claims must take precedence over any claim on the undertaking other than–

(i) claims by employees arising from employment contracts and employment relationships;

(ii) claims by public bodies on taxes;

(iii) claims by social security systems; and

(iv) claims on assets subject to rights in rem.

(3) Despite sub-regulations (1) and (2), the expenses arising from the winding-up proceedings, as determined in accordance with the general law of Gibraltar, must take precedence over insurance claims.

Special register.

251.(1) An insurance undertaking must establish and keep up to date at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with these Regulations.

(2) Where an insurance undertaking carries on both life and non-life insurance activities, it must keep separate registers for each type of business.

(3) But an insurance undertaking which covers life and the risks in Classes 1 and 2 must keep a single register for the whole of its activities.

(4) The total value of the assets entered, valued in accordance with these Regulations, must at no time be less than the value of the technical provisions.

(5) Where an asset entered in the register is subject to a right in rem in favour of a creditor or third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact must be recorded in the register and the amount not available must not be included in the total value referred to in sub-regulation (4).

(6) Where an asset representing the technical provisions of an insurance undertaking is subject to–

(a) a right in rem in favour of a creditor or third party, without meeting the conditions set out in sub-regulation (5);

(b) a reservation of title in favour of a creditor or third party; or

(c) a demand by a creditor for the set-off of the creditor's claim against the claim of the insurance undertaking,

in the winding-up of the undertaking those rights or reservations must be disregarded unless regulation 261, 262 or 263 applies to that asset.

(7) Once winding-up proceedings have commenced, the composition of the assets entered in the register in accordance with sub-regulations (1) to (5) must not be changed and no alteration must be made in the register (other than the correction of purely clerical errors) without the approval of the Supreme Court or a person appointed for that purpose by the court.

(8) Despite sub-regulation (7), the liquidator must add to those assets their yield and the value of the pure premiums received in respect of the Class of insurance concerned between the commencement of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is affected.

(9) Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators must justify this to the Supreme Court or a person appointed for that purpose by the court.

Subrogation to a guarantee scheme.

252. If at any time the rights of insurance creditors are subrogated to a guarantee scheme established in Gibraltar, claims by that scheme must not benefit from the provisions of regulation 250(2).

Representation of preferential claims by assets.

253. An insurance undertaking must ensure that any claims which may take precedence over insurance claims under regulation 250(2)(b) and which are registered in the insurance undertaking's accounts are represented by assets at all times and independently of any possible winding-up.

Cancellation of permission.

254.(1) The GFSC must cancel the Part 7 permission of an insurance undertaking in respect of which winding-up proceedings have been commenced.

(2) Permission must be cancelled in accordance with the procedure in regulation 127 and paragraph 5 of Schedule 13 to the Act but in a manner that does not prevent the liquidator or any other person appointed by the Supreme Court must from pursuing those activities of the insurance undertaking which–

(a) are necessary or appropriate for the purposes of winding-up; and

(b) are pursued with the consent and under the supervision of the GFSC.

Publication of decisions on winding-up proceedings.

255.(1) The Supreme Court, the liquidator or a person appointed for that purpose by the Supreme Court must–

(a) publish the decision to commence winding-up proceedings in the Gazette; and

(b) publish in the Official Journal of the European Union at the earliest opportunity an extract from the winding-up decision.

(2) Where, in accordance with Article 273(3) of the Solvency 2 Directive, the GFSC is informed by the supervisory authority of an EEA State of a decision to commence winding-up proceedings, the GFSC may publish the decision in the Gazette.

(3) Publication under sub-regulation (1) or (2) must be made in English and include–

(a) the name of the home State competent authority;

(b) the name and address of the liquidator; and

(c) the law applicable to the winding-up.

Information to known creditors.

256.(1) When winding-up proceedings are commenced, the Supreme Court or the liquidator must, without delay, individually inform by written notice each known creditor whose habitual residence, domicile or head office is in an EEA State other than Gibraltar.

(2) The notice must include–

(a) the time limits in which steps must be taken by creditors;

(b) the consequences if particular steps are not taken within those time limits;

(c) the name and address of the liquidator for the purpose of lodging claims; and

(d) any other information of particular relevance to creditors.

(3) The notice must also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

(4) In the case of insurance claims, the notice must also indicate the general effects of the winding-up proceedings on the insurance contracts and, in particular–

(a) the date on which the insurance contracts or operations will cease to produce effects; and

(b) the rights and duties of insured persons with regard to the contracts or operations.

Right to lodge claims.

257.(1) A creditor whose habitual residence, domicile or head office is in an EEA State other than Gibraltar, including a public authority of an EEA State, may lodge a claim or submit written observations relating to claims arising from the winding-up of an insurance undertaking.

(2) The claims of all creditors referred to in sub-regulation (1) must be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors whose habitual residence, domicile or head office is in Gibraltar.

(3) Except where the law of Gibraltar provides otherwise, a creditor must send to the liquidator copies of any supporting documents and must indicate the following–

(a) the nature and the amount of the claim;

(b) the date on which the claim arose;

(c) whether the creditor alleges preference, security in rem or reservation of title in respect of the claim; and

(d) where appropriate, what assets are covered by the creditor's security.

(4) The precedence granted to insurance claims by regulation 250 does not need to be indicated.

Languages and form.

258.(1) The information in the notice referred to in regulation 256(1) must be provided in English.

(2) The form which is used for the purposes of that notice bear (in all the official languages of the European Union) the following heading–

(a) "Invitation to lodge a claim; time-limits to be observed"; or

(b) where the law of Gibraltar provides for the submission of observations relating to claims, "Invitation to submit observations relating to a claim; time-limits to be observed".

(3) Where a known creditor is the holder of an insurance claim, the information in the notice referred to in regulation 256(1) must be provided in an official language of the EEA State in which the creditor's habitual residence, domicile or head office is situated.

(4) A creditor whose habitual residence, domicile or head office is in an EEA State other than Gibraltar may lodge a claim or submit observations relating to a claim in an official language of that EEA State but, where a creditor does so, the claim or observations must bear, as appropriate, the heading "Lodgement of claim" or "Submission of observations relating to claims" in English.

Regular information to creditors.

259.(1) The liquidator of an insurance undertaking must, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

(2) The GFSC–

(a) may request information from the home State regulator on developments in the winding-up of an EEA insurer; and

(b) must cooperate with requests for information from other supervisory authorities on developments in the winding-up of a Gibraltar insurer.

Common provisions

Effects on certain contracts and rights.

260.(1) Despite regulations 244 and 249 the effects of the commencement of reorganisation measures or winding-up proceedings on–

(a) employment contracts and employment relationships must be governed exclusively by the law of the EEA State applicable to the employment contract or employment relationship.

(b) a contract conferring the right to make use of or acquire immovable property must be governed exclusively by the law of the EEA State in which the immovable property is situated.

(c) the rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register must be governed exclusively by the law of the EEA State under whose authority the register is kept.

Rights in rem of third parties.

261.(1) The commencement of reorganisation measures or winding-up proceedings does not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (whether specific assets or collections of indefinite assets as a whole which change from time to time) which belong to the insurance undertaking and which are situated in an EEA State other than the undertaking's home State at the time those measures or proceedings are commenced.

(2) The rights referred to in sub-regulation (1) include–

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular, by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular, a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right to the beneficial use of assets.

(3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of sub-regulation (1) may be obtained, is to be regarded as a right in rem.

(4) Sub-regulation (1) does not preclude actions for nullity, voidability or unenforceability referred to in regulation 249(2)(l).

Reservation of title.

262.(1) The commencement of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset does not affect the rights of a seller which are based on reservation of title where those measures or proceedings–

(a) are commenced in Gibraltar and, at that time, the asset is situated in another EEA State; or

(b) are commenced in another EEA State and, at that time, the asset is situated in Gibraltar.

(2) The commencement of reorganisation measures or winding-up proceedings against an insurance undertaking selling an asset does not constitute grounds for rescinding or terminating the sale or prevent the purchaser from acquiring title where those measures or proceedings–

(a) are commenced in Gibraltar and, at that time, the asset is situated in another EEA State; or

(b) are commenced in another EEA State and, at that time, the asset is situated in Gibraltar.

(3) Sub-regulations (1) and (2) do not preclude actions for nullity, voidability, or unenforceability referred to in regulation 249(2)(l).

Set-off.

263.(1) The commencement of reorganisation measures or winding-up proceedings does not affect the right of creditors to demand the set-off of their claims against the claims of the

insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

(2) Sub-regulation (1) does not preclude actions for nullity, voidability, or unenforceability referred to in regulation 249(2)(l).

Regulated markets.

264.(1) Without limiting regulation 261 the effects of a reorganisation measure or the commencement of winding-up proceedings on the rights and obligations of the parties to a regulated market are to be governed solely by the law applicable to that market.

(2) Sub-regulation (1) does not preclude actions for nullity, voidability, or unenforceability referred to in regulation 249(2)(l) which may be taken to set aside payments or transactions under the law applicable to that market.

Detrimental acts.

265. Regulation 249(2)(l) does not apply where a person who has benefited from a legal act which is detrimental to all the creditors is able to prove–

(a) that act is subject to the law of an EEA State other than the home State; and

(b) that law does not allow any means of challenging that act in the relevant case.

Protection of third party purchasers.

266. Where, by an act concluded after the adoption of a reorganisation measure or the commencement of winding-up proceedings, an affected insurer disposes, for consideration, of–

(a) an immovable asset situated in Gibraltar or another EEA State;

(b) a ship or an aircraft subject to registration in a public register in Gibraltar or another EEA State; or

(c) securities whose existence or transfer presupposes entry into a register or account laid down by the law of Gibraltar or another EEA State or which are placed in a central deposit system governed by the law of Gibraltar or another EEA State.

the validity of that act is to be determined in accordance with the law of Gibraltar or the other EEA State in which the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

Lawsuits pending.

267.(1) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending in Gibraltar concerning an asset or a right of which the insurance undertaking has been divested must be governed solely by the law of Gibraltar.

(2) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending in another EEA State concerning such an asset or right must be governed solely by the law of that EEA State.

Administrators and liquidators.

268.(1) The appointment of an administrator or liquidator of an insurance undertaking must be evidenced by a copy of the court order or notice of appointment under the Insolvency Act 2011.

(2) An administrator or liquidator of an insurance undertaking who wishes to act in another EEA State must provide a translation of the court order or notice of appointment in an official language of that EEA State if required to do so by the competent authority of that State.

(3) The appointment of an administrator or liquidator to an EEA insurer must be evidenced in Gibraltar by–

(a) a certified copy of the original decision of appointment, or

(b) by any other certificate issued by the competent authority of the EEA insurer's home State.

(4) A document in sub-regulation (3) which is not in English must be accompanied by a translation in English.

Administrators and liquidators: exercise of powers in other EEA States.

269.(1) The administrator or liquidator of a Gibraltar insurer is entitled to exercise in other EEA States all the powers which he or she is entitled to exercise in Gibraltar.

(2) The administrator or liquidator may appoint persons to assist or represent him or her in another EEA State in the course of the reorganisation measure or winding-up proceedings, in particular, in order to help overcome any difficulties encountered by creditors in that State.

(3) In exercising his or her powers under the law of Gibraltar, an administrator or liquidator, when taking action in another EEA State–

(a) must comply with the law of that State, in particular, with regard to procedures for the realisation of assets and the informing of employees; and

(b) may not resort to the use of force or make any ruling in relation to any legal proceeding or dispute.

Administrators and liquidators: exercise of powers in Gibraltar.

270.(1) The administrator or liquidator of an EEA insurer is entitled to exercise in Gibraltar all the powers which he or she is entitled to exercise in the EEA insurer's home State.

(2) The administrator or liquidator may, if the law of that State so permits, appoint persons to assist or represent him or her in Gibraltar in the course of the reorganisation measure or winding-up proceedings, in particular, in order to help overcome any difficulties encountered by creditors in Gibraltar.

(3) In exercising his or her powers under the law of that State, an administrator or liquidator, when taking action in Gibraltar–

(a) must comply with the law of Gibraltar, in particular, with regard to procedures for the realisation of assets and the informing of employees; and

(b) may not resort to the use of force or make any ruling in relation to any legal proceeding or dispute.

Registration in a public register.

271.(1) The Registrar of companies must, at the request of the administrator or liquidator of an EEA insurer or by any other relevant authority in the EEA insurer's home State, register under the Companies Act 2014 any reorganisation measure or decision to commence winding-up proceedings in respect of the EEA insurer which is capable of being registered under that Act.

(2) The administrator or liquidator of a Gibraltar insurer must, if required to do so by the law of another EEA State, take the necessary steps to register a reorganisation measure or a decision to commence winding-up proceedings in any public register kept in that State.

(3) The costs of registration must be regarded as costs and expenses incurred in the in the reorganisation or winding-up proceedings.

Professional secrecy.

272. Any person who receives or divulges information in connection with the procedures in regulations 245, 248 or 273 is bound by the professional secrecy obligation.

Treatment of branches of third-country insurance undertakings.

273.(1) Where a third-country insurance undertaking has branches established in more than one EEA State, each branch must be treated independently with regard to the application of this Part.

(2) The Supreme Court and the GFSC must endeavour to coordinate their actions with the competent authorities and supervisory authorities of EEA States and any administrators or liquidators must likewise endeavour to coordinate their actions.

PART 13
MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

The Register: insurance and reinsurance activity

274.(1) This regulation makes provision as to the contents of the Register in connection with insurance and reinsurance activities.

(2) The Register must contain such information as the GFSC considers appropriate and must include at least the following–

(a) insurance and reinsurance undertakings which are regulated firms;

(b) insurance and reinsurance undertakings which are regulated as small undertakings in accordance with regulation 5(7);

(c) EEA insurance and reinsurance undertakings exercising EEA rights in Gibraltar;

(d) EEA insurance and reinsurance undertakings with a branch in Gibraltar.

(3) The Register must identify the insurance and reinsurance activities to which a regulated firm's Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of a regulated firm's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect of whom that provision applies, the GFSC may remove the entry from the Register.

(6) The GFSC must ensure that the Register is made available online for consultation by the public.

(7) In this regulation "the Register" means the register established by the GFSC in accordance with Part 4 of the Act.

Administrative penalties.

275.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person–

(i) €5,000,000 (or the sterling equivalent); or

(ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, £250,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b)(ii) is the total annual turnover (or the corresponding type of income) in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(3) In sub-regulation (1) "the "sterling equivalent" means an equivalent amount in sterling based on the exchange rate on 15th January 2020.

Additional persons subject to powers.

276. In respect of a contravention of a regulatory requirement by a person to whom these Regulations apply the GFSC may, in addition to the persons specified in section 147 and 148 of the Act, exercise the sanctioning powers set out in Part 11 of the Act against the members

of the administrative, management or supervisory body of an insurance or reinsurance undertaking.

Appeals.

277. Any right of appeal under these Regulations must be exercised in accordance with section 615 of the Act and, where applicable, as if notice of the decision appealed against were contained in a decision notice within the meaning of the Act.

Restriction on use of the words "insurance", "assurance" and "reinsurance".

278. (1) A person must not, in relation to or in connection with any business carried on in or from Gibraltar, use–

(a) the word–

(i) "insurance";

(ii) "assurance"; or

(iii) "reinsurance"; or

(b) any cognate expression of a word in paragraph (a); or

(c) any word or words resembling a word in paragraph (a),

in a manner which indicates or is likely to cause any other person to believe that the person is, or is carrying on business as, an insurance or reinsurance undertaking.

(2) Sub-regulation (1) does not apply to the use of the words to which it relates–

(a) by an insurance or reinsurance undertaking, in respect only of a business encompassing the insurance or reinsurance activities which it is authorised to carry on;

(b) in the name of a holding or subsidiary company of an insurance or reinsurance undertaking, if use of the word does not indicate that the subsidiary or holding company is itself an insurance or reinsurance undertaking;

(c) by an intermediary or representative of an insurance or reinsurance undertaking which is permitted to use that word, when advertising or referring to its services on behalf of that insurance or reinsurance undertaking;

(d) in the name of–

(i) any association of employees of an insurance or reinsurance undertaking which itself is permitted to use that word; or

(ii) any association of insurance brokers,

but only if the word does not indicate that the association itself is an insurance or reinsurance undertaking;

(e) in the name of any government social insurance or assistance fund; or

(f) with the prior written consent of the GFSC and in accordance with any conditions which the GFSC may impose in giving its consent.

(3) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

Rights acquired by existing branches and insurance undertakings.

279.(1) A branch which commenced business in Gibraltar before 1st July 1994, in accordance with the provisions in force in Gibraltar, is presumed to have complied with regulations 128 and 129.

(2) Regulations 131 and 132 do not affect rights acquired by an insurance undertaking carrying on business in Gibraltar under the freedom to provide services before 1st July 1994.

Rights acquired by existing reinsurance undertakings.

280.(1) A reinsurance undertaking which, before 10th December 2005–

(a) had its head offices in Gibraltar; and

(b) commenced reinsurance business there in accordance with an authorisation or entitlement under the provisions in force in Gibraltar,

is to be treated as a reinsurance undertaking authorised in accordance with these Regulations.

(2) A reinsurance undertaking to which sub-regulation (1) applies must comply with the provisions of these Regulations concerning the pursuit of reinsurance business and, in particular, is subject to the requirements of regulations 16(1)(b), (3)(b), (d), (e) and (f), 18 and 21 and Chapters 1 to 3 of Part 6.

Transitional Provisions.

281. The transitional provisions in Schedule 1 have effect.

Liquidation: supplementary provisions.

282. Schedule 2, which contains supplementary provisions relating to the liquidation of Gibraltar insurers and reinsurers, has effect.

Swiss general insurers.

283. Schedule 3, which applies to Swiss general insurers that establish and operate a branch in Gibraltar or propose to do so, has effect.

Revocations.

284. The following Regulations are revoked–

(a) the Insurance Companies (Licensing Application) Regulations 1990;

(b) the Insurance Companies Act (General Insurance and Long Term Insurance Directives) Regulations 1995;

(c) the Insurance Companies (Conduct of Business) Regulations 1996;

(d) the Insurance Companies (Deposits) Regulations 1996;

(e) the Insurance Companies (Forms) Regulations 1996;

(f) the Insurance Companies (Prescribed Particulars) Regulations 1996;

(g) the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996;

(h) the Insurance Companies (Auditors) Regulations 1997;

(i) the Insurance Companies (Prudential Supervision) Regulations 1997;

(j) the Insurance Companies (Accounts and Statements) Regulations 1998;

(k) the Insurance Companies (Parent Undertaking Solvency Margin Calculations) Regulations 2004;

(l) the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 2004;

(m) the Insurance Companies (Supplementary Supervision) Regulations 2007;

(n) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2014;

(o) the Financial Services (Insurance Companies) (Solvency II Directive) (Miscellaneous Amendments) Regulations 2015;

(p) the Financial Services (Insurance Companies) (Solvency II Directive) (Enforcement and Regulatory Powers) Regulations 2015; and

(q) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2015.

This version is out of date

SCHEDULE 1
TRANSITIONAL PROVISIONS

Regulation 281

General measures.

1.(1) Without limiting regulation 11, insurance or reinsurance undertakings which, by 1st January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity must not be subject to Titles I, II and III of the Solvency 2 Directive until the dates set out in sub-paragraph (2) where either –

(a) the undertaking has satisfied the GFSC that it will terminate its activity before 1st January 2019; or

(b) the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

(2) Insurance or reinsurance undertakings falling under–

(a) sub-paragraph (1)(a) must be subject to Titles I, II and III of the Solvency 2 Directive (which are transposed by Parts 1 to 11 of these Regulations) from 1st January 2019 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity;

(b) sub-paragraph (1)(b) must be subject to Parts 1 to 11 of these Regulations from 1 January 2021 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity.

(3) Insurance and reinsurance undertakings must be subject to the transitional measures in sub-paragraphs (1) and (2) only if the following conditions are met–

(a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;

(b) the undertaking must provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;

(c) the undertaking has notified the GFSC that it applies the transitional measures,

but sub-paragraphs (1) and (2) must not prevent any undertaking from operating in accordance with Parts 1 to 11 of these Regulations.

(4) The GFSC must draw up and supply to the Government a list of the insurance and reinsurance undertakings concerned for onward communication to all the other EEA States.

(5) Despite regulation 86, basic own-fund items must be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items–

(a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of the Solvency 2 Directive, whichever is the earlier;

(b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16.3 of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27.3 of Directive 2002/83/EC and Article 36.3 of Directive 2005/68/EC;

(c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with regulation 86.

(6) Despite regulation 86, basic own-fund items must be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items–

(a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of the Solvency 2 Directive, whichever is the earlier;

(b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16.3 of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27.3 of Directive 2002/83/EC and Article 36.3 of Directive 2005/68/EC.

(7) Despite regulations 90, 91(3) and 94, the following must apply–

(a) until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula must be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any EEA State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

(b) in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk submodule in accordance with the standard

formula must be reduced by 80% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State;

(c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk submodule in accordance with the standard formula must be reduced by 50% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State;

(d) from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula must not be reduced in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State.

(8) Despite regulations 90, 91(3) and 94, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in regulations 97, must be calculated as the weighted averages of–

(a) the standard parameter to be used when calculating the equity risk sub-module in accordance with that regulation; and

(b) the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in that regulation, and the weight for the parameter expressed in paragraph (b) of the first sub-paragraph must increase at least linearly at the end of each year from 0% during the year starting on 1 January 2016 to 100% on 1 January 2023.

(9) Despite regulation 122(3) and without limiting sub-regulation (5) of that regulation, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Gibraltar on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive but do not comply with the Solvency Capital Requirement in the first year of application of the Solvency 2 Directive–

(a) the GFSC must require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017;

(b) the insurance or reinsurance undertaking concerned must, every three months, submit a progress report to the GFSC setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement; and

(c) the extension referred to in sub-paragraph (a) must be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

(10) The GFSC may allow the ultimate parent insurance or reinsurance undertaking based in Gibraltar, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

(11) Despite regulation 197(2) to (4)–

(a) the transitional provisions in sub-paragraphs (5) to (7) and paragraphs 2, 3, and 4 must apply mutatis mutandis at the level of the group; and

(b) the transitional provisions in sub-paragraph (9) must apply mutatis mutandis at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

Transitional measure on risk-free interest rates.

2.(1) Insurance and reinsurance undertaking may, subject to prior approval by their supervisory authority, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

(2) For each currency the adjustment must be calculated as a portion of the difference between–

(a) the interest rate as determined by the insurance or reinsurance undertaking in accordance with the laws, regulations and administrative provisions which are

adopted pursuant to Article 20 of Directive 2002/83/EC at the last date of the application of that Directive;

(b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in regulation 67(2) and (2).

(3) Where Gibraltar has adopted laws, regulations and administrative provisions pursuant to Article 20(1)B(a)(ii) of Directive 2002/83/EC, the interest rate referred to in sub-paragraph (2)(a) must be determined using the methods used by the insurance or reinsurance undertaking at the last date of the application of Directive 2002/83/EC; and the portion referred to in the sub-paragraph (2) must decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(4) Where insurance and reinsurance undertakings apply the volatility adjustment referred to in regulation 70, the relevant risk-free interest rate term structure referred to in sub-regulation (2)(b) must be the adjusted relevant risk-free interest rate term structure set out in that paragraph.

(5) The admissible insurance and reinsurance obligations must comprise only insurance or reinsurance obligations that meet the following requirements–

(a) the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of the Solvency 2 Directive, excluding contract renewals on or after that date;

(b) until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;

(c) regulation 68 must not apply to insurance and reinsurance obligations.

(6) Insurance and reinsurance undertakings applying sub-paragraph (1) must–

(a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in regulation 70;

(b) not apply paragraph 3 of this Schedule;

(c) as part of their report on their solvency and financial condition referred to in regulation 52, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Transitional measure on technical provisions.

3.(1) Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions and that deduction may be applied at the level of homogeneous risk groups referred to in regulation 75.

(2) The transitional deduction must correspond to a portion of the difference between the following two amounts

(a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with regulation 66 at the first date of the application of the Solvency 2 Directive;

(b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive; and the maximum portion deductible must decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(3) Where insurance and reinsurance undertakings apply at the first date of the application of the Solvency 2 Directive the volatility adjustment referred to in regulation 70, the amount referred to in sub-paragraph (2)(a) must be calculated with the volatility adjustment at that date.

(4) Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in sub-paragraph (2)(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

(5) The deduction referred to in sub-paragraph (2) may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the

laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive.

(6) Insurance and reinsurance undertakings which apply sub-paragraph (1)–

(a) must not apply paragraph 2;

(b) when they would not comply with the Solvency Capital Requirement without the application of the transitional deduction, must submit annually to the GFSC a report setting out the measures taken and the progress made to re-establish, at the end of the transitional period set out in sub-paragraph (2) a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement; and

(c) as part of their report on their solvency and financial condition referred to in regulation 52, must publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Phasing-in plan on transitional measures on risk-free interest rates and on technical provisions.

4.(1) Insurance and reinsurance undertakings that apply the transitional measures set out in paragraphs 2 and 3 must inform the GFSC as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures.

(2) The GFSC must require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(3) Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned must submit to the GFSC a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(4) The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

(5) The insurance and reinsurance undertakings concerned must submit annually a report to the GFSC setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(6) The GFSC must revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

SCHEDULE 2
LIQUIDATION OF GIBRALTAR INSURERS AND REINSURERS

Regulation 282

Long term businesses not to be liquidated voluntarily.

1. Despite Chapter 1 of Part X of the Companies Act 2014, a company incorporated in Gibraltar which carries on long-term business must not be liquidated voluntarily.

Appointment of liquidator.

2.(1) An application for the appointment by the court of a liquidator of a Gibraltar insurer may be made by–

(a) the GFSC; or

(b) any ten or more holders of long term business policies who individually own one or policy or policies having an aggregate surrender value of not less than £100,000.

(2) An application for the appointment by the court of a liquidator of a Gibraltar reinsurer may be made by the GFSC.

(3) Without limiting section 153 of the Insolvency Act 2011, the grounds on which the GFSC may make an application include–

(a) that the company has failed to satisfy an obligation under the Act or these Regulations;

(b) that the company has failed to keep proper records of its insurance business and, as a result, the GFSC is unable to ascertain whether the company is financially sound; or

(c) in the case of a Gibraltar insurer, that the company has failed to satisfy an obligation under the law of another EEA State which–

(i) gives effect to the Solvency 2 Directive; or

(ii) is otherwise applicable to the insurance or reinsurance activities of the insurer in that State.

(4) The court must not appoint a liquidator on an application made under sub-paragraph (1)(b) unless the policyholders give security for costs in such amount as the court may determine.

(5) Where policyholders make an application under sub-paragraph (1)(b)–

(a) the policyholders must serve a copy of the application on the GFSC; and

(b) the GFSC is entitled to be heard on the application.

Reduction of contracts.

3. Where an insurer or reinsurer has been proved to be unable to pay its debts, the court may, if it thinks fit, instead of appointing a liquidator, reduce the amount of the insurer's or reinsurer's contracts on such terms and subject to such conditions as the court may think just.

Application of assets.

4.(1) Assets representing funds maintained in respect of long-term business must be applied only for meeting the liabilities of that business, and other assets of the company must be applied only towards meeting the other liabilities of the company:

(2) Where in either case referred to in sub-paragraph (1), the value of the assets exceeds the amount of the liabilities attributable to them, the excess may be applied towards meeting any deficiency there may be in the assets attributable to the other business.

Meetings of creditors.

5. The liquidator of a company which carries on other business as well as long-term business, in exercising the general powers in section 177 of the Insolvency Act 2011 or section 377 of the Companies Act 2014, must summon separate meetings of creditors in relation to the other business and the long-term business.

Delinquent directors, etc.

6. Where the court makes an order under section 402 of the Companies Act 2014 that any money or property be repaid or restored to the company or any sum be contributed to its assets, the court must include in its order a direction as to how the money, property or contribution is to be applied in relation to the long-term and other funds of the company.

Continuation of long-term business.

7.(1) A liquidator carrying on the business of an insurer or reinsurer may agree to the variation of existing contracts but has no power to enter into new contracts of insurance.

(2) A liquidator may apply to the court for the appointment of a special manager for the long-term business.

(3) The liquidator must serve on the GFSC a copy of any application made under sub-paragraph (2) and–

(a) the application must not be heard until 14 days have elapsed from the date of service; and

(b) the GFSC is entitled to be heard against the appointment of the proposed special manager.

(4) The court may, on the application of the liquidator, any special manager or the GFSC, appoint an independent actuary to investigate the business and report on–

(a) the desirability of carrying on the business; or

(b) any reduction in the amount of the outstanding contracts which the independent actuary considers necessary for the successful continuation of long term business,

and on any such report, the court may reduce the amount of those contracts.

(5) The liquidator requires the leave of the court before transferring any long-term business.

Penalties.

8. A liquidator who contravenes paragraph 5 or 7 commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

SCHEDULE 3
SWISS GENERAL INSURERS

Regulation 283

Application

1. This Schedule applies to Swiss general insurers who, in accordance with the EU-Swiss Direct Insurance Agreement, establish and operate a branch in Gibraltar or propose to do so.

Interpretation.

2. In these Regulations–

"the EU-Swiss Direct Insurance Agreement" means the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance (OJ L205, 27.07.1991), as amended from time to time.

"principal Gibraltar executive" means an officer or employee of a Swiss general insurer–

(a) who (either alone or jointly with others) is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar; and

(b) who–

(i) is not also responsible for the conduct of any insurance business carried on by the insurer elsewhere; and

(ii) does not have a subordinate who is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar.

"Swiss general insurer" means a body–

(a) whose head office is in Switzerland;

(b) which has permission in Gibraltar to carry on the regulated activities of effecting and carrying out of contracts of non-life insurance within the meaning of paragraph 22(1) of Schedule 2 to the Act; and

(c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

Approval of principal Gibraltar executive.

3.(1) A Swiss general insurer must not appoint a person as its principal Gibraltar executive unless–

(a) it has given the GFSC written notice of the proposed appointment of the person ("the candidate") to that position; and

(b) either–

(i) within three months of the date that notice under paragraph (a) was given, the GFSC has notified the insurer in writing that there is no objection to the candidate being appointed; or

(ii) that period has elapsed without the GFSC having given the insurer a written notice of objection.

(2) A notice under sub-paragraph (1)(a) must–

(a) be in the form and manner that the GFSC directs;

(b) contain or be accompanied by any information that the GFSC reasonably requires; and

(c) contain a statement signed by the candidate confirming that the notice is given with the candidate's knowledge and consent.

(3) The GFSC may issue a notice of objection under sub-paragraph (1)(b)(ii) if it appears to the GFSC that the candidate is not a fit and proper person to be appointed.

(4) Before issuing a notice of objection the GFSC must give the insurer and the candidate a preliminary notice stating that–

(a) the GFSC is proposing to issue a notice of objection; and

(b) the insurer or the candidate may, within one month of the date of service of the preliminary notice, make written or oral representations to the GFSC.

(5) The GFSC is not be obliged to disclose to the insurer or the candidate any particulars of the ground on which the GFSC is proposing to issue a notice of objection.

(6) The GFSC must consider any representations made in accordance with sub-paragraph (4)(b) in deciding whether to issue a notice of objection.

(7) The GFSC must exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is the principal Gibraltar executive of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.

Duty to notify change of executive or representative.

4.(1) A Swiss general insurer must promptly inform the GFSC if a person–

(a) ceases to be the insurer's principal Gibraltar executive; or

(b) becomes or ceases to be–

(i) a relevant executive of the insurer; or

(ii) the insurer's general representative.

(2) A notice under sub-paragraph (1) must–

(a) be in the form and manner that the GFSC directs; and

(b) contain or be accompanied by any information that the GFSC reasonably requires.

(3) The GFSC must, exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is a relevant executive or general representative of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.

(4) In this paragraph–

"general representative" means a person designated as the insurer's representative in Gibraltar, who

(a) in the case of–

(i) an individual, is resident in Gibraltar; or

(ii) a corporation, has a place of business in Gibraltar and itself has an individual representative resident in Gibraltar who is authorised to act generally and to accept service of any document, on behalf of the corporation in its capacity as the insurer's representative;

(b) is not an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the insurer; and

(c) is authorised to act generally, and to accept service of any document, on the insurer's behalf.

"relevant executive" means an employee of the insurer who, under the immediate authority of its principal Gibraltar executive–

(a) exercises managerial functions, or

(b) is responsible for maintaining accounts or other records of the insurer,

other than a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar.

Asset values.

5. A Swiss general insurer must ensure that the value of the assets of the business carried on by it in Gibraltar does not fall below the amount of the liabilities of that business, that value and amount being determined in accordance with any applicable valuation criteria.

Grounds for exercise of powers of intervention.

6. Without limiting the exercise of any other powers, the GFSC's powers of intervention under Parts 7 and 10 of the Act are exercisable in relation to a Swiss general insurer which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.