

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3,698 of 19th February, 2009

---

---

**B. 05/09**

**BILL**

**FOR**

**AN ACT** to transpose, in part, into the law of Gibraltar Directive 2005/68/EC, of the European Parliament and of the Council, of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC and 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; to transfer the powers and functions of the Commissioner of Insurance to a Commission of Insurance and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Insurance Companies (Amendment) Act 2009 and comes into operation on the day of publication.

**Amendment of the Insurance Companies Act.**

2.(1) The short title of the Insurance Companies Act is substituted by “The Financial Services (Insurance Companies) Act”.

(2) The Financial Services (Insurance Companies) Act, as re-titled, is further amended in accordance with sections 3 to 54.

**Amendment of section 2.**

3.(1) Section 2 is amended by inserting the following sub-section after sub-section (1)–

“(1A) For the purposes of this Act, “reinsurance” means the activity of accepting general reinsurance, long-term

reinsurance and all kinds of reinsurance risks ceded by an insurance company or by another reinsurance company and in the case of the association of Lloyd's underwriters, "reinsurance" also means the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance company other than the association of Lloyd's underwriters."

(2) Section 2(2) is amended by omitting the definitions of "Commissioner", "EEA insurer", "Supervisor" and "supervisory authority" and by inserting the following definitions in their appropriate alphabetical place—

"“Commission” means the Commission of Insurance appointed under section 7;

"credit institution" has the meaning assigned to it by the Financial Services (Banking) Act;

"EEA insurer" means an insurance or reinsurance company—

- (a) which is incorporated in or formed under the law of an EEA State;
- (b) whose head office is in that State; and
- (c) which, in the case of an insurance company, is authorised in accordance with Article 6 of the first general insurance Directive (as extended, where applicable, by the EEA Agreement) or Article 4 of the long term insurance Directive (as so extended); or
- (d) which, in the case of a reinsurance company (an "EEA reinsurer") is authorised in accordance with Article 3 of the reinsurance Directive (as extended, where applicable, by the EEA Agreement);

"financial institution" has the meaning assigned to it by the Financial Services (Banking) Act;

“investment firm” has the meaning assigned to it by the Financial Services Act 1998;

“mixed financial holding company” has the meaning assigned to it by the Financial Services (Banking) Act;

“related operations” in relation to reinsurance, include a holding company function and activities with respect to credit institutions, financial institutions, mixed financial holding companies, investment firms, insurance and reinsurance companies; and the provision of statistical or actuarial advice or risk analysis for clients;

“supervisory authority” means the national authority which is empowered by law or regulation to supervise insurance or reinsurance companies and, in the case of Gibraltar, means the Commission;”.

(3) Section 2(2) is further amended as follows–

- (a) in the definition of “EEA Agreement” by inserting “and as amended, so far as relevant to this Act, by various Decisions of the EEA Joint Committee and by the Agreement on the participation of new EU States signed at Luxemburg on 14<sup>th</sup> October 2003” at the end thereof;
- (b) in the definition of “Gibraltar insurer” by inserting “or reinsurance (a “Gibraltar reinsurer”)” immediately after “insurance”; by inserting “in the case of an insurance company” immediately after “business” the first time it appears and by omitting sub-paragraph (i); and
- (c) in the definition of “non-EEA insurer” by inserting “or reinsurance” immediately after “insurance”, by omitting “and” from the end of paragraph (b); by inserting it at the end of paragraph (a) and by omitting paragraph (c).

(4) Section 2 is further amended by inserting the following sub-section after sub-section (2)–

“(2A) In this Act, unless the context otherwise requires, “insurer” includes a reinsurer.”.

(5) Section 2(6) is amended by substituting a semi-colon for the full stop at the end of paragraph (b), by inserting “and” at the end of paragraph (b) and by inserting the following paragraph after that paragraph–

“(c) the reinsurance Directive (2005/68/EC) amending Directive 73/239/EEC, Directive 92/49/EEC and Directive 98/78/EC.”.

(6) Section 2(7) is amended by inserting “by the reinsurance Directive” at the end thereof.

(7) Section 2 is further amended by inserting the following sub-section after sub-section (7)–

“(7A) In this Act, “the reinsurance Directive” means European Parliament and Council Directive 2005/68/EC of 16 November 2005 on reinsurance.”.

(8) Section 2 is further amended by inserting the following sub-section after sub-section (14)–

“(14A) In this Act, references to the provision of reinsurance in Gibraltar or in an EEA State are references to the accepting of a risk ceded by an insurer there through an establishment in Gibraltar or in an EEA State.”.

(9) Section 2(15)(d) is amended by substituting “holds a qualifying holding under” for “satisfies the requirements of”.

(10) Section 2(16) is amended by substituting “In this Act, a person holds a “qualifying holding”” for “A person satisfies the requirements of this sub-section”.

**Amendment of section 6.**

4.(1) The title of the sub-part immediately before section 6 and section 6’s heading are both amended by substituting ““insurance”, “assurance” and “reinsurance”” for ““Insurance” and “Assurance””.

(2) Section 6(2) is amended by substituting ““insurance”, “assurance” or “reinsurance”” for ““insurance” or “assurance”” in the four places it appears.

**Substitution of section 7.**

5. Section 7 is substituted by–

**“Commission of Insurance.**

7. The Commission of Insurance shall be the Financial Services Commission established under section 3(1) of the Financial Services Commission Act, 2007.”.

**Omission of section 8.**

6. Section 8 is omitted.

**Amendment of section 16A.**

7.(1) Section 16A(1) is amended by inserting “(other than a reinsurer)” immediately after “insurer”.

(2) Section 16A(2) is substituted by the following sub-section–

“(2) The Commission may authorise a reinsurer to carry on in or from within Gibraltar non-life reinsurance and related operations, life reinsurance and related operations or all kinds of reinsurance and related operations, as may be specified in the authorisation and such authorisation shall permit the reinsurer to carry on its authorised reinsurance business throughout the entire EEA.”.

**Amendment of section 20.**

8. Section 20(a) is amended by inserting “and related operations” at the end thereof.

**Amendment of section 23.**

9. Section 23 is amended by substituting “Commission” for “ Commissioner through the Supervisor”.

**Amendment of section 24B.**

10. Section 24B is amended by omitting sub-section (2).

**Amendment of section 25.**

11.(1) Section 25(3) is omitted.

(2) Section 25(5) is amended by inserting “and related operations” immediately after “business”.

**Amendment of section 26.**

12. Section 26 is amended by inserting the following sub-section after sub-section (4)–

“(5) The Commission shall not issue a licence to an applicant which is a Gibraltar insurer and which is–

- (a) a subsidiary of an EEA insurer;
- (b) a subsidiary of the parent undertaking of an EEA insurer; or
- (c) controlled by the same person who controls an EEA insurer;

without prior consultation with the supervisory authorities of the EEA State concerned.”.

**Amendment of section 27.**

13. Section 27(4)(a) is omitted.

**Amendment of section 32.**

14. Section 32(1) is amended by substituting “for and on behalf of the Commission” for “by the Commissioner”.

**Amendment of section 41.**

15. Section 41 is amended by inserting the following sub-section after sub-section (1)–

“(1A) If the acquirer of the notifiable holding referred to in sub-section (1) is–

- (a) an insurer, a credit institution or an investment firm authorised in the EEA;
- (b) the parent undertaking of an entity referred to in paragraph (a); or
- (c) a person who is a controller of an entity referred to in paragraph (a);

and if, as a result of that acquisition, the Gibraltar insurer in which the acquirer proposes to acquire such a holding would become a subsidiary of or subject to the control of the acquirer, the approval of the proposed acquisition of the holding shall be subject to prior consultation with the relevant supervisory authorities of the EEA States concerned.”.

**Amendment of section 50.**

16. Section 50(2) is amended by substituting “171” for “115”.

**Amendment of section 52.**

17. Section 52(1) is amended by substituting “Commission” for “Supervisor”.

**Amendment of section 53.**

18. Section 53(a) is amended by substituting “Commission” for “Supervisor”.

**Amendment of section 54.**

19. Section 54 is amended by substituting “Commission” for “Supervisor and “its” for “his”.

**Amendment of section 55.**

20. Section 55 is amended by substituting “Commission” for “Supervisor”.

**Amendment of section 58.**

21.(1) Section 58 is amended by inserting the following sub-sections after sub-section (2)–

“(2A) Where all or any part of the risks of a licensed insurer are localised within the EEA including Gibraltar, their equivalent assets shall be localised within the EEA including Gibraltar.

(2B) The Commission may, on application by a licensed insurer, waive the requirement in sub-section (2A) concerning the localisation of assets to the extent it sees fit.”.

(2) Section 58(3) is amended by inserting “and where those reinsurers are not Gibraltar or EEA reinsurers, it shall determine the conditions under which those claims may be so included” at the end thereof.

**Amendment of section 59.**

22.(1) Section 59(1)(b) is amended by inserting “and related operations” immediately after “reinsurance”.

(2) Section 59(3) is amended by omitting “if its business in Gibraltar is restricted to reinsurance or”.

**Amendment of Section 60.**

23.(1) Section 60(1) is amended by inserting “and in accordance with the requirements” immediately after “meaning” and by inserting “, Article 38 of the long term insurance Directive or Article 43 of the reinsurance Directive, as the case may be” at the end thereof.



(2) Section 60(2) is amended by inserting “or, as the case may be, that an insurer’s obligations arising out of reinsurance contracts” immediately after “rights”.

**Amendment of section 62.**

24.(1) Section 62 is amended by inserting the following sub-section after sub-section (1)–

“(1A) Where any of the assets included in an order under sub-section (1) are located in one or more EEA States where the licensed insurer carries on business, the Commission shall request the supervisory authorities of the EEA States concerned to prohibit the disposal by the insurer of such assets as are designated in the request.”.

(2) Section 62 is further amended by inserting the following sub-section after sub-section (2)–

“(3) The Commission shall at the request of a home State supervisory authority by order prohibit the disposal by an EEA insurer which carries on business in Gibraltar, of such assets of the insurer as are located in Gibraltar and which are designated in the request.”.

**Amendment of section 63A.**

25. Section 63A(2)(b) is amended by inserting “and related operations” immediately after “reinsurance”.

**Amendment of section 70A.**

26.(1) The heading of section 70A is amended by inserting “or reinsurance” after “insurance”.

(2) Section 70A is amended by inserting “or reinsurance” after “insurance” in the five places it appears.

**Amendment of section 70B.**

27. Section 70B is amended by re-classifying it as sub-section (1) and by inserting the following sub-section after that sub-section–

“(2) This section and Schedule 12 shall not apply to a reinsurer.”.

**Amendment of section 72.**

28. Section 72 is amended by inserting the following sub-section after sub-section (10)–

“(11) This section shall not apply to a reinsurer.”.

**Amendment of section 72A.**

29. Section 72A is amended by inserting the following sub-section after sub-section (7)–

“(8) This section shall not apply to a reinsurer.”.

**Amendment of section 72B.**

30. Section 72B is amended by inserting the following sub-section after sub-section (3)–

“(4) This section shall not apply to a reinsurer.”.

**Amendment of section 74.**

31. Section 74(1) is amended by omitting “through the Supervisor”.

**Amendment of section 76.**

32. Section 76(2) is amended by omitting “through the Supervisor”.

**Amendment of section 83.**

33. Section 83(1) is amended by substituting “Commission” for “Supervisor”.

**Amendment of section 87A.**

34. Section 87A is amended by omitting the words “that is not reinsurance”.

**Amendment of section 87B.**

35.(1) Section 87B(1) is amended by omitting “and” at the end of paragraph (a); by inserting “and” at the end of paragraph (b) and by inserting the following paragraph after paragraph (b)–

“(c) every Gibraltar or EEA reinsurer which reinsures credit insurance risks;”.

(2) Section 87B(1) is further amended by inserting “which shall be represented by equivalent assets expressed or realisable in the same currency as the underwriting liabilities they are intended to meet” immediately after “of that business” and by substituting “Point D of the Annex to the first general insurance Directive, as amended” for “the Annex to Council Directive 87/343/EEC”.

(3) Section 87B is amended by inserting the following sub-sections after sub-section (1)–

“(1A) Where all or any part of the risks of an insurer to whom this section applies are localised within the EEA including Gibraltar, their equivalent assets shall be localised within the EEA including Gibraltar.

(1B) The Commission may, on application by a licensed insurer, waive the requirement in sub-section (1A) concerning the localisation of assets to the extent it sees fit.”.

**Amendment of section 87C.**

36. Section 87C(1)(a) is amended by inserting “or, as the case may be, credit reinsurance business” immediately after “business”.

**Amendment of the title of Part VIIIA.**

37. The title of Part VIIIA is amended by inserting “AND REINSURANCE” immediately after “INSURANCE”.

**Amendment of section 91.**

38.(1) The heading to section 91 is amended by inserting “insurance and reinsurance” immediately after “general”.

(2) Section 91 is amended by inserting “insurance and reinsurance” immediately after “general”.

**Amendment of section 92.**

39.(1) Section 92(1A) is substituted by the following three sub-sections–

“(1A) If the transferee is licensed in Gibraltar, the Commission will need to certify that the transferee will meet its solvency margin requirement after the transfer.

(1B) If the Commission has required of a Gibraltar insurer a financial recovery plan of the kind mentioned in paragraph 1 of Article 38 of the long term insurance Directive or paragraph 1 of Article 20a of the first general insurance Directive, it will not issue a certificate for so long as it considers that policyholders’ rights are threatened within the meaning of paragraph 1.

(1C) If the Commission has required of a Gibraltar reinsurer a financial recovery plan of the kind mentioned in paragraph 1 of Article 43 of the reinsurance Directive, it will not issue a certificate for so long as it considers that the reinsurer’s obligations arising out of reinsurance contracts are threatened within the meaning of paragraph 1.”.

(2) Section 92(2) is amended by omitting the words “, other than reinsurance” in the two places it appears.

**Amendment of section 93.**

40.(1) Section 93(1) is amended by inserting the following paragraph after paragraph (a)–

“(aa) an EEA reinsurer transfers to another body all its rights and obligations under any Gibraltar contracts and the transfer is

authorised in its home State in accordance with Article 48 of the reinsurance Directive; or”.

(2) Section 93(2)(a) is amended by inserting “or Gibraltar contracts (in the case of a reinsurer)” immediately after “policies”.

(3) Section 93 is further amended by inserting the following sub-section after sub-section (4)–

“(5) A reinsurance contract is a Gibraltar contract for the purposes of this section if the law applicable to it is the law of Gibraltar.”.

**Amendment of section 105.**

41. Section 105(2) is amended by inserting the following paragraph after paragraph (f)–

“(g) that the insurer has failed, within such time as it was allowed, to give effect to a restoration plan under section 62A or a short term financial scheme under section 63;”.

**Amendment of section 106.**

42.(1) Section 106(1) is amended by substituting a semi-colon for the fullstop at the end of paragraph (b); by inserting “or” after that paragraph and by inserting the following paragraph after that paragraph–

“(c) a reinsurer which is not a Gibraltar or EEA reinsurer ceases to carry on reinsurance business in or from within Gibraltar;”.

(2) Section 106(2) is substituted by the following sub-sections–

“(2) If an insurer licensed to carry on insurance business of any class or, as the case may be, a reinsurer licensed to carry on reinsurance business has–

(a) not commenced to carry on insurance business of that class or reinsurance business and at least twelve months have elapsed since the issue of the authorisation; or

- (b) not carried on insurance business of that class or reinsurance business, as the case may be, for more than six months;

the Commission may direct that the insurer shall cease to be authorised to carry on insurance business of a class to which the direction relates or the reinsurer shall cease to be authorised to carry on reinsurance business.

(2A) Where the Commission issues a direction under this section, it shall notify the supervisory authority of any EEA State where the insurer carries on insurance business of the nature and reasons for its direction and request the supervisory authority to take appropriate measures to prevent the insurer from effecting contracts of insurance or reinsurance.”.

**Amendment of section 111.**

43. Section 111(1)(e) is amended by omitting “or the Supervisor”.

**Amendment of section 114A.**

44.(1) Section 114A is amended by omitting “(not being a contract of reinsurance)” from the two places it appears.

(2) Section 114A is further amended by inserting the following sub-sections after sub-section (2)–

“(3) The law applicable to a contract of reinsurance the effecting of which constitutes general or long term business and which covers risks situated in Gibraltar or an EEA State, shall be determined in accordance with the provisions of Part I or II, as the case may be, of Schedule 9.

(4) In this section and Schedule 9 “policy holder” includes an insurer which has ceded reinsurance risks to a reinsurer.”.

**Amendment of section 118.**

45. Section 118(2)(b) is amended by substituting a semi-colon for the full stop at the end of sub-paragraph (v) and by inserting the following two sub-paragraphs after that sub-paragraph–

“(vi) the establishment of insurance special purpose vehicles and for their authorisation and supervision and for the conditions under which the business of such vehicles are to be carried on;

(vii) for the pursuit of finite reinsurance activities and for the objectives, requirements, conditions and procedures in respect of these activities.”.

**Amendment of Schedule 5.**

46. Paragraph 2 is amended by substituting “Commission” for “Supervisor” in the two places it appears.

**Amendment of Schedule 8.**

47.(1) Paragraph 2 is amended by inserting the following paragraph after sub-paragraph (1)–

“(1A) A petition for the winding-up of a reinsurance company incorporated in Gibraltar may, with the prior leave of the court, be presented by the Commission.”.

(2) Paragraph 2(2) is amended by substituting “Commission” for “Supervisor”; by inserting “or the reinsurance Directive” immediately after “Directives” and by inserting “or reinsurance” immediately after “insurance” the second time it appears.

(3) Paragraph 3 is amended by inserting “or reinsurance” immediately after “insurance”.

(4) Paragraph 7(1) is amended by inserting “or reinsurance” immediately after “insurance”.

**Amendment of Schedule 9.**

48. The title of Schedule 9 is amended by inserting “AND REINSURANCE” immediately after “INSURANCE”.

**Amendment of Schedule 10.**

49.(1) Paragraph 1(3) is omitted.

(2) Paragraph 2(2) is amended by inserting “or reinsurance” immediately after “direct insurance” in the two places it appears.

(3) Paragraph 3(1) is amended by inserting “or reinsurance” immediately after “direct insurance”.

(4) Paragraph 3(1)(a) is substituted by–

“(a) it is satisfied that the transferee is, or will be immediately after the making of the order–

- (i) licensed under this Act to carry on;
- (ii) authorised in accordance with Article 4 of the long term insurance Directive to carry on in an EEA State; or
- (iii) authorised in accordance with Article 3 of the reinsurance Directive to carry on in an EEA State;

long term business of the class or classes to be transferred under the scheme;”.

(5) Paragraph 3(2) is amended by inserting “or reinsurance” immediately after “direct insurance”.

(6) Paragraph 3(4) is amended by substituting a semi-colon for the full stop at the end thereof and by inserting the following sub-paragraph after sub-paragraph (c)–

“(d) if the transferee does not fall within paragraphs (a) and (b), the Commission or other authority which, in accordance with Article 38 or 39 of the reinsurance Directive, is responsible for supervising the company’s margin of solvency.”.

(7) Paragraph 4(1) is amended by inserting “or reinsurance” immediately after “direct insurance”.



(8) Paragraph 5(3) is amended by inserting “or reinsurance” immediately after “direct insurance”.

(9) Paragraph 6(3) is amended by omitting the definition of “direct insurance”.

(10) Paragraph 7(1) is amended by inserting “or reinsurance” immediately after “direct insurance” in the two places it appears.

(11) Paragraph 8 is amended by inserting “or reinsurance” immediately after “direct insurance” in the two places it appears.

(12) Paragraph 8(1)(a) is amended by omitting “or” from the end of sub-paragraph (i) and inserting it at the end of sub-paragraph (ii) and by inserting the following sub-paragraph immediately after sub-paragraph (ii)–

“(iii) authorised in accordance with Article 3 of the reinsurance Directive to carry on in an EEA State.”.

(13) Paragraph 8(5) is amended by substituting a semi-colon for the full stop at the end thereof and by inserting the following sub-paragraph after sub-paragraph (d)–

“(e) if the transferee does not fall within paragraphs (a) to (c), the Commission or other authority which, in accordance with Articles 37 or 39 of the reinsurance Directive, is responsible for supervising the transferee’s margin of solvency.”.

(14) Paragraph 9(1) is amended by inserting “or reinsurance” immediately after “direct insurance”.

(15) Paragraph 10(2) is amended by inserting “or reinsurance” immediately after “direct insurance”.

**Amendment of Schedule 13.**

50.(1) Paragraphs 4 to 7 are substituted by the following paragraphs–

**“Requirement for carrying on reinsurance business.**

4. An EEA reinsurer shall not carry on direct reinsurance business of any description through a branch in Gibraltar unless the reinsurer is authorised in accordance with Article 3 of the reinsurance Directive to carry on reinsurance business of that description.

**Requirement for providing reinsurance.**

5. An EEA reinsurer shall not provide reinsurance of any description in Gibraltar unless the reinsurer is authorised in accordance with Article 3 of the reinsurance Directive to carry on reinsurance business of that description.”.

(2) Paragraph 12(1) is amended by inserting “or Article 42 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(3) Paragraph 12(1)(a) is amended by inserting “or Article 32 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(4) Paragraph 12(1)(b) is amended by inserting “or Articles 37 and 38 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(5) Paragraph 12(1)(c) is amended by inserting “or Article 40 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(6) Paragraph 12(2) is amended by inserting “or Article 44 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(7) Paragraph 13(1)(a)(ii) is amended by inserting “or Article 17 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(8) Paragraph 14(1)(a) is amended by inserting “or Article 17 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(9) Paragraph 15(a) is amended by inserting “or Article 44 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(10) Paragraph 16(3) is amended by inserting “or reinsurance” immediately after “provide insurance” in the two places it appears.

(11) Paragraph 16 is amended by inserting the following sub-paragraph after sub-paragraph (7)–

“(8) Where it appears to the Commission that an EEA insurer’s activities in Gibraltar is being conducted in a manner which might be detrimental to the insurer’s financial soundness, it may notify its concerns to the relevant supervisory authority of the home State.”.

(12) Paragraph 17(1)(b) is amended by inserting “or Article 44 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(13) Paragraph 17(4) is amended by inserting “or reinsurance” immediately after “insurance” in the two places it appears.

(14) Schedule 13 is amended by inserting the following paragraph after paragraph 17–

“17A. Where an EEA insurer is being wound-up in the EEA State where it is incorporated, commitments arising from insurance business carried on or provided in Gibraltar shall be met in the same way as those arising from the insurer’s business in other states of commitment.”.

(15) Paragraph 18(1)(a) is amended by inserting “or reinsurance” immediately after “insurance”.

(16) Paragraph 18(1)(b) is amended by omitting “or 5”.

(17) Paragraph 18(1)(c) is amended by inserting “or reinsurance” immediately after “insurance” and by inserting “5,” after “paragraph”.

(18) Paragraph 18(2)(b) is amended by omitting “4.”.

(19) Paragraph 19(1) is amended by omitting the definition of “direct insurance business”.

(20) Paragraph 19(2) is amended by inserting “or reinsurance” immediately after “insurance” and by omitting “(otherwise than by way of reinsurance)”.

(21) Paragraph 19(3) is amended by inserting “or reinsurance” immediately after “insurance”.

(22) Paragraph 20 is amended by inserting “or reinsurance” immediately after “insurance”.

(23) Paragraph 21(2) is omitted.

(24) Paragraph 21(3) is amended by inserting “or reinsurance” immediately after “insurance”.

(25) Paragraph 22(1) is amended by omitting “or 4”.

(26) Paragraph 22(2) is amended by omitting “or 5”.

**Amendment of Schedule 14.**

51.(1) Paragraph 1(6A) is amended by inserting “or article 43 of the reinsurance Directive” immediately after “Directive” the second time it appears.

(2) Schedule 14 is amended by inserting the following paragraph immediately after paragraph 4–

**“Requirement for carrying on direct reinsurance business.**

4A. A Gibraltar reinsurer shall not carry on direct reinsurance business of any description through a branch in an EEA State unless the reinsurer is licensed under section 16A(2) to carry on reinsurance business of that description class.”.

(3) The following paragraph is inserted after paragraph 6(6)–

“(7) The Commission shall not refuse a reinsurance contract or a retrocession contract concluded by a Gibraltar insurer with a Gibraltar or EEA insurer on grounds directly related to the financial soundness of any of those insurers.”.

(4) Schedule 14 is further amended by inserting the following paragraph immediately after paragraph 7–

**“Requirement for providing reinsurance business.**

7A. A Gibraltar reinsurer shall not provide reinsurance of any description in an EEA State unless the reinsurer is licensed under section 16A(2) to carry on reinsurance business of that description.”.

(5) Paragraph 8 is amended by inserting “or reinsurance” immediately after “insurance” in the two places it appears.

(6) Paragraph 10(1)(a) is amended by inserting “or reinsurance” immediately after “insurance” and by inserting “or 4A” immediately after “1”.

(7) Paragraph 10(1)(c) is amended by inserting “or reinsurance” immediately after “insurance” and by inserting “or 7A” immediately after “5”.

(8) Paragraph 11(1) is amended by omitting the definition of “direct insurance business”.

(9) Paragraph 11(2) is amended by inserting “or reinsurance” immediately after “insurance” in the two places it appears and by omitting “(otherwise than by way of reinsurance)” from the two places it appears in.

**Amendment of Schedule 16.**

52. Paragraph 2A is amended—

- (a) in sub-paragraph (a) by inserting “or Articles 24 to 28 of the reinsurance Directive” at the end thereof; and
- (b) in sub-paragraph (b) by inserting “or Articles 29 and 30 of the reinsurance Directive” at the end thereof.

**Consequential amendments.**

53. Schedule 1 which lists consequential amendments to the Act as a result of the introduction of the Commission of Insurance to replace the Commissioner of Insurance has effect.

**Repeal.**

54. The Insurance Companies (Reinsurance Directive) Regulations 2007 are repealed.

**SCHEDULE 1**

Section 53

**Consequential Amendments**

1. The sections listed in column (a) of the following table are amended by substituting “Commission” for “Commissioner” in the number of places within those sections as are stated against the corresponding section in column (b)–

(a) Sections	(b) No. of Places
3	2
6(2)(b)	1
15	2
16A	1
20	1
22	3
23	1
24	1
24A	3
24B	2
25	6
26	4
27	4
28	3
29(8)	2
33	1
36	1
37	1
38	1
39	1
40	9
41	10
42	4
44	1
46	1
47	5
48A	10
51	2

52(5)	1
55	3
56	3
56A	4
58(3)	1
60	3
62	2
62A	3
63	3
63A(4)	1
64D(1)	2
65	4
66	2
66A	2
66B(1)	1
67	12
71	2
72(5)	1
73A	5
74	3
76	2
77	5
82	3
88A	1
92	3
93(2)	1
98	7
99	4
100	7
100A	4
101	2
102(3)	1
103	5
105	9
105A	10
105B	11
106(1)	1
107	9
108	7
109	2
111(1)	2



112(1)	1
113	2
114	1
116(b)(ii)	1
118	3
119A	6
119B(2)	1

2. The paragraphs of the schedules listed in the column (a) of the following table are amended by substituting “Commission” for “Commissioner” in the number of places within those paragraphs as are stated against the corresponding section in column (b)–

(a) Paragraphs	(b) No. of Places
Schedule 4	2
Schedule 7	
heading	1
Schedule 8	
2	4
7	3
Schedule 10	
2(4)	1
3	4
5(5)	2
6	2
7	5
8	8
9	2
10	3
Schedule 11	
1	4
2	6
3	8
4	6
5	2
Schedule 13	
1	4
2	5
8(2)	2
9(2)	1
12	3

13	5
14	3
15	3
18	1
16	7
17	3
22	3
Schedule 14	
1	9
2	6
3	2
5	6
6	6
8(1)	1
9	3
10	1
Schedule 15	
6(3)	1
Schedule 16	
1	1
2	2
2A(2)	1
3(2)	2
4	5

3. The following sections and paragraphs are amended by substituting “it” for “he”–

- (a) section 25(1); section 26(1) in the three places it appears; section 67 in the five places it appears; section 82(4); section 92(1); section 103(2); section 107 in the four places it appears; 108 in the two places it appears and section 112;
- (b) paragraphs 7 and 8 of Schedule 10 and paragraph 1 and paragraph 5(8) in the two places it appears in Schedule 14 in the five places it appears.

4. The following sections and paragraphs are amended by substituting “it” for “him”–

- (a) section 24B; section 25 in the two places it appears; section 26 in the three places it appears; section 27; section 62A; section 63 in the two places it appears; section 67(2) on the six places it appears and section 107 in the five places it appears;
- (b) paragraph 13 of Schedule 13 and paragraph 1 of Schedule 14 in the four places it appears.

5. The following sections and paragraphs are amended by substituting “its” for “his”–

- (a) section 54;
  - (b) paragraph 6 of Schedule 10.
-

### **EXPLANATORY MEMORANDUM**

The purpose of this Bill is twofold. Firstly it transposes, in part, into the primary law of Gibraltar Directive 2005/68/EC on reinsurance and secondly it vests the powers and functions currently exercised by the Commissioner of Insurance and the Insurance Supervisor on a Commission of Insurance. The Directive has already been transposed into Gibraltar law by the Insurance Companies (Reinsurance Directive) Regulations 2007, which are repealed by this Bill.

The EU Reinsurance Directive came into force on 10 December 2005 and it creates a single European reinsurance market, based on a partially harmonised prudential framework similar to the one existing for direct insurance. The Directive strengthens the international competitiveness of European reinsurance companies. Previously there have been no directives specifically relating to the prudential supervision of reinsurance business. The Insurance Companies Act and its subsidiary legislation have broadly carried over the requirements of the existing direct insurance directives to reinsurance companies whose business is restricted to reinsurance.

The transposition of the Directive is being effected by this Bill, which amends provisions in the Act, and by amending existing subsidiary legislation to implement the new requirements affecting reinsurance companies.

A reinsurance company is permitted to carry on related operations in conjunction with its reinsurance business and these operations include a holding company function and activities with respect to credit institutions, financial institutions, mixed financial holding companies, investment firms, insurance and reinsurance companies.

The Bill extends, with reinforcements, the existing authorisation and supervisory regime for insurance companies to reinsurance companies in the following main areas–

1. Restrictions on the right to conduct insurance business;
2. Method of application for authorisation;
3. Issue of licences;
4. Grounds for refusal of authorisation;
5. Notification of qualifying holdings;
6. Approval of directors, managers and controlling shareholders;

7. Requirement to establish adequate technical reserves;
8. Adequacy and localisation of assets covering technical reserves;
9. Requirement to maintain solvency margins;
10. Margins of solvency to be covered by eligible assets;
11. Determination of required margins of solvency;
12. Amount of the guarantee fund and minimum guarantee fund;
13. Requirement to prepare annual accounts;
14. Failure to maintain adequate technical reserves;
15. Submission of financial recovery plan when financial position threatened;
16. Conditions and procedure for transfer of business;
17. Powers of intervention and issue of directions;
18. Branches not complying with legal provisions;
19. Grounds for withdrawal of authorisation;
20. Winding-up of insurance business;
21. Right to apply to the courts against decisions taken;
22. Cooperation and exchange of information between supervisory authorities.

Much of the foregoing is being achieved by simply extending the definition of “Gibraltar insurer” to include a reinsurer and by including “reinsurer” in the expression “insurer”.

Schedule 1 lists the consequential amendments to the Act that are necessary as a result of the introduction of the Commission of Insurance to replace the Commissioner of Insurance.

---

**Printed by the Gibraltar Chronicle Limited  
Printing Office, 2, Library Gardens,  
Government Printers for Gibraltar,  
Copies may be purchased at 6, Convent Place, Price £1.45p**