

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4227 of 24th December, 2015

LEGAL NOTICE NO. 240 OF 2015.

**FINANCIAL SERVICES (INSURANCE COMPANIES) (SOLVENCY
II DIRECTIVE) ACT 2015**

**FINANCIAL SERVICES (INSURANCE COMPANIES) (SOLVENCY
II DIRECTIVE) (ENFORCEMENT AND REGULATORY POWERS)
REGULATIONS 2015**

In exercise of the powers conferred upon him by sections 100 and 178 of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 and all other enabling powers, the Minister has made the following Regulations—

Introductory

Title and commencement.

1.(1) These regulations may be cited as the Financial Services (Insurance Companies) (Solvency II Directive) (Enforcement and Regulatory Powers) Regulations 2015.

(2) These Regulations come into operation on 1 January 2016.

Interpretation.

2. In these Regulations—

“the Solvency II Act” means the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015; and

“the Insurance Companies Act” means the Financial Services (Insurance Companies) Act.

Amendments of Solvency II Act

General power of enforcement.

3. In section 10 of the Solvency II Act (functions of the Commission) for subsection (5) substitute—

“(5) The Commission’s powers under the Insurance Companies Act shall extend to—

- (a) enforcing any provision of this Act, and
- (b) supervision of all the matters specified in Article 30(2);

and this subsection is without prejudice to the generality of those powers and without prejudice to any specific provision of this Act.”

Approval of models under Directive.

4. At the end of section 44 of the Solvency II Act (approval of full and partial internal models under the Directive) add—

“(5) If, after having granted an approval under this section, it appears to the Commission that the conditions for approving an application under subsection (1) or subsection (3) are not (or may not be) fulfilled, the Commission may—

- (a) vary or revoke the approval;
- (b) impose conditions for the restoration of the approval.”.

Non-compliance with Capital Requirements.

5. In section 46 of the Solvency II Act (non-compliance with Solvency Capital Requirement)—

- (a) in subsection (1)—
 - (i) for “Every undertaking” substitute “Every Gibraltar insurer (within the meaning of the Insurance Companies Act)”; and

- (ii) for “the undertaking concerned” substitute “the insurer concerned”;
 - (b) in subsection (2) for “the undertaking concerned” substitute “the insurer concerned”;
 - (c) in subsection (4)—
 - (i) for “affecting undertakings” substitute “affecting insurers”; and
 - (ii) for “affected undertakings” substitute “affected insurers”;
 - (d) in subsection (5) for “undertakings” substitute “insurers”;
 - (e) in subsection (6) for “undertakings” substitute “insurers”;
 - (f) in subsection (7) for “undertaking” substitute “insurer”; and
 - (g) in subsection (9) for “undertaking” substitute “insurer”.
6. In section 47 of the Solvency II Act (non-compliance with Minimum Capital Requirement)—
- (a) in subsection (1) for “Every undertaking” substitute “Every Gibraltar insurer (within the meaning of the Insurance Companies Act)”;
 - (b) in subsection (2) for “undertaking” substitute “insurer”;
 - (c) in subsection (3) for “undertaking” substitute “insurer”;
 - (d) subsections (4), (5) and (6) are repealed, and
 - (e) at the end of the section add—
 - “(7) Where the Commission is the supervisory authority of the host Member State and the supervisory authority of the home Member State makes a request of the kind mentioned in subsection (3), the Commission shall comply with that request.”.

Withdrawal of authorisation.

7. In section 51 of the Solvency II Act (withdrawal of authorisation)—

(a) for subsection (1) substitute—

“(1) Subsection (1A) applies where—

- (a) an undertaking fails to submit a finance scheme in accordance with section 47(2);
- (b) the Commission considers that the finance scheme submitted is manifestly inadequate; or
- (c) an undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

(1A) Where this subsection applies, the Commission—

- (a) shall withdraw an authorisation granted to the undertaking (in accordance with section 106 of the Insurance Companies Act) as soon as practicable, having regard to policy holders' interests;
- (b) shall prohibit the undertaking from undertaking new business (in accordance with section 105 of the Insurance Companies Act); and
- (c) shall suspend the authorisation of the undertaking by way of emergency action (in accordance with section 105B of the Insurance Companies Act).”;

(b) for subsection (4), substitute—

- “(4) The Commission shall, together with the supervisory authorities of other Member States, take all measures necessary to safeguard the interests of insured persons; and, in particular, the Commission—
- (a) where it is the supervisory authority of the home Member State, shall restrict the free disposal of the assets of the undertaking in accordance with section 47(3), and
 - (b) where it is the supervisory authority of the host Member State and another supervisory authority makes a request of the kind referred to in section 47(3), shall comply with that request.”.

Appeals.

8. After section 172 of the Solvency II Act insert—

“PART IVA

APPEALS

Right of appeal.

- 172A.(1) Any person aggrieved by a refusal of an approval under this Act may appeal to the Supreme Court.
- (2) Sections 111(2) and 112 (timing of appeal, and powers of the court) of the Insurance Companies Act shall have effect in relation to appeals under this section.”

Amendments of Insurance Companies Act

Miscellaneous amendments.

9.(1) The Insurance Companies Act is amended as follows.

(2) In section 100(1) (power for Commission to issue directions) after paragraph (a) insert—

“(aa) in the exceptional circumstances referred to in section 46(9) of the Solvency Act; or

(ab) for the purposes of exercising powers under section 47(3), 48(2), 51(4), 106(2B) or 106(2C) of that Act; or”.

(3) In section 100(2) after paragraph (a) insert—

“(aa) in pursuance of section 46(9), 47(3), 48(2), 51(4), 106(2B) or 106(2C) of the Solvency Act; or”.

(4) In section 105(2) (power to prohibit insurers from undertaking new business) after paragraph (a) insert—

“(aa) that the Commission is exercising its powers under section 51(1A), 58(3), or 61(2) of the Solvency Act;”.

(5) In section 106(1) (final withdrawal of authorisation) after paragraph (c) insert—

“or

(d) a Gibraltar insurer no longer fulfils the conditions for authorisation; or

(e) a Gibraltar insurer fails seriously in its obligations under the regulations to which it is subject;”.

(6) After section 106(2A) insert—

“(2B) Where the Commission issues a direction under subsection (1) or (2) directing that an insurer or reinsurer shall cease to be authorised to carry on insurance business or reinsurance business, it shall, together with the supervisory authorities of host Member States, take all measures necessary to safeguard the interests of insured persons; and, in particular, it shall restrict the free disposal of the assets of the undertaking concerned.

(2C) Where the Commission is the supervisory authority of the host Member State and the supervisory authority of the home Member State requests action of the kind mentioned in

subsection (2B), the Commission shall comply with that request.”

(7) In section 107(2)(c) (grounds for exercise of powers of intervention) after paragraph (iii) insert—

“(iv) that the insurer has failed to satisfy an obligation to which it was subject by virtue of the Solvency Act;”.

Dated 24th December, 2015.

AJ ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations make minor miscellaneous amendments in connection with enforcement of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.

