

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 0000 of 00 January, 2000

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LEGAL NOTICE NO. 42 OF 1995.

## INSURANCE COMPANIES ORDINANCE 1987

### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

#### INSURANCE COMPANIES ORDINANCE (GENERAL INSURANCE AND LONG TERM INSURANCE DIRECTIVES) REGULATIONS 1995

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Ordinance, and of all other enabling powers, and for the purpose of transposing into the national laws of Gibraltar Council Directives 78/473/EEC, 84/641/EEC, 87/343/EEC, 87/344/EEC, 88/357/EEC, 90/618/EEC, 90/619/EEC, 91/371/EEC, 92/49/EEC and 92/96/EEC the Government has made the following regulations —

#### 1. Title and commencement.

These regulations may be cited as the Insurance Companies Ordinance (General Insurance and Long Term Insurance Directives) Regulations 1995 and shall come into effect on the 1st day of April 1995.

#### 2. Amendment to section 2.

Section 2 of the Insurance Companies Ordinance (hereinafter called "the Ordinance") is amended —

(a) in sub-section (1)(b) —

(i) by inserting after the words "some other business" the words "carried on by the person effecting them";

(ii) by omitting the colon after the word "reinsurance" and substituting therefor a full-stop;

(iii) by omitting the proviso;

(b) in sub-section (2) by —

(i) inserting after the definition of “accounting class” the following definition

—

““authorised Gibraltar representative” means a representative fulfilling the requirements of section 25A or an individual representative of the kind described in sub-section (5) of that section;”;

(ii) omitting the definitions “associate” and “chief executive”;

(iii) inserting after the definition of “Commissioner” the following definition

—

““commitment” means a commitment represented by insurance business of any of the Classes specified in Schedule 2;”;

(iv) omitting the definition “Community” and substituting therefor the following definitions—

““Community co-insurance operation” and, in relation to such an operation, “leading insurer” have the same meanings as in Council Directive 78/473/EEC of the 30th May 1978 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance;

“criteria of sound and prudent management” means the criteria set out in Schedule 15;”;

(v) omitting the definition “controller”;

(vi) omitting the definition “director” and substituting therefor the following new definition —

““director” includes any person occupying the position of director by whatever named called;”;

(vii) inserting after the definition of “director” the following definitions —

"EEA" means the territories to which the EEA Agreement applies;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

"EEA insurer" means an insurance 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 is authorised in accordance with Article 6 of the first general insurance Directive (as extended, where applicable, by the EEA Agreement) or Article 6 of the first long term insurance Directive (as so extended);

"EEA Margin of solvency", of an insurer, means its margin of solvency computed by reference to the assets and liabilities of the business carried on by the insurer in EEA States (taken together);

"EEA State" means a State which is a Contracting Party to the EEA Agreement but, until the EEA Agreement comes into force in relation to Liechtenstein, does not include the State of Liechtenstein;

"fellow subsidiary undertakings" mean undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other;"

(viii) inserting after the definition of "general business" the following new definitions —

"Gibraltar insurer" means an insurance company -

- (a) which is incorporated in Gibraltar;
- (b) whose head office is in Gibraltar;
- (c) which is licensed in Gibraltar;
- (d) whose business is not restricted to —

- (i) reinsurance business;
- (ii) business which is excluded from the first long term insurance Directive by Article 2(2) or (3) of that Directive;
- (iii) business which is excluded from the first general insurance Directive by Article 2(2)(b) of that Directive; and
- (iv) business which is exempted from the authorisation requirements by Section 18 of this Ordinance; and
  - (e) which is not excluded from each Directive mentioned in sub-section (d) by Article 3 of that Directive;

and any reference to an applicant or body which is a Gibraltar insurer includes a reference to an applicant or body which would be such an insurer if the authorisation sought by it were issued;

"Gibraltar margin of solvency", of an insurer, means the margin of solvency computed by reference to the assets and liabilities of the business carried on by the insurer in Gibraltar;

"group undertaking", in relation to an undertaking, means an undertaking which is

- (a) a parent undertaking or subsidiary undertaking of that undertaking, or
- (b) a subsidiary undertaking of any parent undertaking of that undertaking;

"home State", in relation to an EEA insurer, means the member State in which the insurer's head office is situated;";

- (ix) inserting after the definition of "licensed insurer" the following definitions—

"linked benefits" in relation to a contract of insurance, means benefits payable to the policy holder which are determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or to an index of, the value of property of any description (whether or not so specified);

"linked long term contract" means a contract of insurance -

- (a) the effecting of which constitutes the carrying on of long term business; and
- (b) under which linked benefits are payable to the policy holder;

but does not include a contract the effecting of which constitutes the carrying on of long term business of class VII(a);

(x) omitting the definition "manager";

(xi) inserting after the definition of "mathematical reserves" the following definition —

"margin of solvency", of an insurer, means the excess of the value of its assets over the amount of its liabilities, that value and amount being determined in accordance with any applicable valuation regulations;

(xii) omitting the definition "member State" and substituting therefor the following definitions —

"non-EEA insurer" means an insurance company -

- (a) whose head office is not in the EEA;
- (b) which is licensed in Gibraltar; and
- (c) whose business in Gibraltar is not restricted to reinsurance;

"notifiable holding" means voting rights or shares which, if acquired by any person, will result in his becoming a 10 per centum shareholder controller, a 20 per cent shareholder controller, a 33 per cent shareholder controller, a 50 per cent shareholder controller or a majority shareholder controller;

(xiii) in the definition of "principal Gibraltar representative" omitting everything after the words "officer or employee" and substituting therefor the words "within section 24B(4)(b) or 25(7);

(xiv) inserting after the definition of "principal Gibraltar executive" the following new definitions —

"relevant motor vehicle risks" means risks falling within Class 10 of Schedule 1 (motor vehicle liability), but excluding carrier's liability;

"state of the commitment", in relation to a commitment entered into at any date, means—

- (a) where the policy holder is an individual, Gibraltar or the EEA State in which he had his habitual residence at that date;
- (b) where the policy holder is not an individual, Gibraltar or the EEA State in which the establishment of the policy holder to which the commitment relates was situated at that date,

and "EEA State of the commitment" shall be construed accordingly;";

(xv) omitting the definition "solvency margin";

(xvi) omitting the definition "subsidiary company";

(xvii) inserting after the definition of "Supervisor" the following definitions —

"supervisory authority", in relation to an EEA State or in relation to Switzerland, means the authority responsible in that State or country for supervising insurance companies;

"Swiss general insurance company" means an insurance company Ñ

- (a) whose head office is in Switzerland;
- (b) which is authorised in Gibraltar to carry on general business; and
- (c) whose authorisation is not restricted to reinsurance business;";

(xviii) omitting the definition "undertaking" and substituting therefor the following new definition —

"undertaking" means

- (a) a body corporate or a partnership; or
  - (b) an unincorporated association carrying on a trade or business with or without a view to profit;”;
- (xix) in the definition of “unit of account” inserting after the figure “3108/78” the words “as amended”;
- (c) by inserting after sub-section (4) the following new sub-sections —

"(5) In this Ordinance —

- (a) “the first general insurance Directive” means Council Directive 73/239/EEC of the 24th of July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance;
- (b) “the second general insurance Directive” means Council Directive 88/357/EEC of the 22nd June 1988 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;
- (c) “the third general insurance Directive” means Council Directive 92/49/EEC of 18th June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC;

and “the general insurance Directives” means those Directives as amended and such other Directives as make provision with respect to the business of direct insurance other than life assurance.

(6) Without prejudice to the generality of sub-section (5) the Directives amending the general insurance Directives referred to in that sub-section include Council Directive 90/618/EEC amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC.

(7) In this Ordinance —

- (a) "the first long term insurance Directive" means Council Directive 79/267/EEC of 5th March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of direct life assurance;
- (b) "the second long term insurance Directive" means Council Directive 90/619/EEC of 8th November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC;
- (c) "the third long term insurance Directive" means Council Directive 92/96/EEC of 10th November 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC;

and "the long term insurance Directives" means those Directives as amended and such other Directives as make provision with respect to the business of direct life assurance.

(8) In this Ordinance, in relation to an insurer, "establishment" means the head office or a branch of the insurer; and references to an insurer being established in a State mean that the insurer has its head office or a branch there.

(9) Any permanent presence of an insurer in a State other than that in which it has its head office shall be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which —

- (a) is managed by the insurer's own staff;
- (b) is an agency of the insurer; or
- (c) is managed by a person who is independent but has permanent authority to act for the insurer in the same way as an agency.

(10) References in this Ordinance to the member State where the risk is situated are —

- (a) where the insurance relates to buildings or to buildings and their contents (insofar as the contents are covered by the same policy), to the member State in which the property is situated;



- (b) where the insurance relates to vehicles of any type, to the member State of registration;
  - (c) in the case of policies of a duration of four months or less covering travel or holiday risk (whatever the Class concerned), to the member State where the policy holder took out the policy;
  - (d) in a case not covered by paragraphs (a) to (c) Ñ
- (i) where the policy holder is an individual, to the member State where he has his habitual residence;
- (ii) otherwise, to the member State where the establishment of the policy holder to which the policy relates is situated.

(11) In this Ordinance, "large risks" means —

- (a) risks falling within Classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1;
- (b) risks falling within Classes 14 and 15 of Part I of Schedule 1 which relate to a business carried on by the policy holder;
- (c) risks falling with Classes 3, 9, 10, 13 and 16 of Part I of Schedule 1 where the policy holder carries on a business in respect of which the condition specified in sub-section (12) is met.

(12) The condition referred to in sub-section (11)(c) is that at least two of the three following criteria were exceeded in the most recent financial year for which the information is available —

- (a) balance sheet total, 6.2 million ECU;
- (b) net turnover, 12.8 million ECU;
- (c) number of employees, 250,

and for the purposes of this sub-section —

- (i) "balance sheet total" means in relation to an insurer's financial year, the aggregate of the insurer's assets;

(ii) "net turnover", in relation to an insurer, means the amounts derived from the provision of services falling within the insurer's ordinary activities, after deduction of discounts;

(iii) "number of employees" means the average number of persons employed by the insurer in the year (determined on a weekly basis),

and for a financial year which is an insurer's financial year but not, in fact, a year, the net turnover of the insurer shall be proportionately adjusted.

(13) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC) are drawn up, the question whether the condition in sub-section (12) is met shall be determined by reference to those accounts.

(14) In this Ordinance reference to the provision of insurance in Gibraltar or in an EEA State are references to either or both of the following —

- (a) the covering (otherwise than by way of reinsurance) of a risk situated there through an establishment in Gibraltar or in an EEA State ("the provision of general insurance"); and
- (b) the covering (otherwise than by way of reinsurance) of a commitment situated there through an establishment in Gibraltar or in an EEA State ("the provision of long term insurance").

(15) In this Ordinance "controller", in relation to an insurer, means —

- (a) a managing director of the insurer or of a body corporate of which the insurer is a subsidiary;
- (b) a chief executive of the insurer or of a body corporate, being an insurer, of which the insurer is a subsidiary;
- (c) a person in accordance with whose directions or instructions the directors of the insurer or of a body corporate of which it is a subsidiary are accustomed to act;
- (d) in the case of a Gibraltar insurer, a person who satisfies the requirements of sub-section (16); or

- (e) except in the case of a Gibraltar insurer, a person who either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per centum or more of the voting power at any general meeting of the insurer or of a body corporate of which it is a subsidiary.

(16) A person satisfies the requirements of this sub-section in relation to a Gibraltar insurer if, either alone or with any associate or associates —

- (a) he holds 10 per centum or more of the shares in the insurer or another company of which it is a subsidiary undertaking;
- (b) he is entitled to exercise, or control the exercise of, 10 per centum or more of the voting power at any general meeting of the insurer or another company of which it is a subsidiary undertaking; or
- (c) he is able to exercise a significant influence over the management of the insurer or another company of which it is such an undertaking by virtue of —

(i) a holding of shares in; or

(ii) an entitlement to exercise, or to control the exercise of, the voting power at any general meeting of,

the insurer or, as the case may be, that other company.

(17) In this Ordinance —

"shareholder controller" means a person who is a controller of a Gibraltar insurer by virtue of sub-section (16);

"10 per centum shareholder controller" means a shareholder controller in whose case the percentage referred to in sub-section (16) is 10 or more but less than 20;

"20 per centum shareholder controller" means a shareholder controller in whose case that percentage is 20 or more but less than 33;

"33 per centum shareholder controller" means a shareholder controller in whose case that percentage is 33 or more but less than 50;

"50 per centum shareholder controller" means a shareholder controller in whose case that percentage is 50;

"majority shareholder controller" means a shareholder controller whose shareholding is such that the Gibraltar insurer is his subsidiary undertaking.

(18) For the purpose of determining for the purposes of this Ordinance whether any person is a controller of an insurer or is a shareholder controller, or a shareholder controller of any particular description, of a Gibraltar insurer, "associate" means, subject to sub-section (19) —

(a) the wife or husband or minor son (including stepson) or daughter (including stepdaughter) of that person;

(b) the trustees of any settlement under which that person has a life interest in possession;

(c) any company of which that person is a director;

(d) any person who is an employee or partner of that person;

(e) if that person is a company —

(i) any director of that company;

(ii) any subsidiary undertaking of that company;

(iii) any director or employee of any such subsidiary undertaking; and

(f) if that person has made an agreement or arrangement with any other person —

(i) with respect to the acquisition, holding or disposal of shares or other interests in the company concerned or another company of which it is a subsidiary undertaking; or

(ii) under which they undertake to act together in exercising their voting power in relation to the company concerned or another company of which it is such an undertaking,

that other person.

(19) For the purpose of determining for the purposes of this Ordinance whether any person is a controller of an insurer other than a Gibraltar insurer, sub-section (18) shall have effect as if -

- (a) paragraphs (b) and (f) of that sub-section were omitted; and
- (b) in paragraph (e) for the words "subsidiary undertaking", in both places where they occur, there were substituted the word "subsidiary".

(20) Any reference in this section to a Gibraltar or non-EC insurer includes a reference to a company which, if any authorisation sought by it were issued, would be such an insurer.

(21) In this Ordinance "manager" —

- (a) in relation to a Gibraltar insurer, means any person (other than an employee of the insurer) appointed by the insurer to manage any part of its business, or any employee of the insurer (other than a chief executive) who, under the immediate authority of a director or chief executive of the insurer -

(i) exercises managerial functions, or is responsible for maintaining accounts or other records of the insurer; and

(ii) is not a person whose functions relate exclusively to business conducted from a place of business which is not in an EEA State;

- (b) in relation to an insurer which is not a Gibraltar insurer, means an employee of the insurer (other than a chief executive) who, under the immediate authority of a director or chief executive of the insurer —

(i) exercises managerial functions, or is responsible for maintaining accounts or other records of the insurer; and

(ii) is not a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar.

(22) In this Ordinance "chief executive" in relation to an insurer or body corporate, means an employee of that insurer or body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that insurer or body corporate.

(23) In this Ordinance "main agent" —

- (a) in relation to a Gibraltar insurer, means a person appointed by the insurer to be its agent in respect of general business in Gibraltar or one or more EEA States, with authority to enter into contracts on behalf of the insurer in any financial year —

(i) without limit on the aggregate amount of premiums; or

(ii) with a limit in excess of 10 per centum of the premium limit as determined in accordance with sub-sections (25) to (28);

- (b) in relation to an insurer which is not a Gibraltar insurer, means, subject to such exceptions as may be prescribed, a person appointed by the insurer to be its agent in respect of general business in Gibraltar with authority to enter into contracts on behalf of the insurer in any financial year —

(i) without limit on the aggregate amount of premiums; or

(ii) with a limit in excess of 10 per centum of that premium limit.

(24) A person shall not be regarded as falling within sub-section (23)(a)(i) in relation to a financial year unless —

- (a) the insurer is of the opinion that the aggregate amount of premiums, on contracts entered into by him on behalf of the insurer in that year in respect of general business in Gibraltar and in the EEA State or States concerned, will be in excess of 10 per centum of the premium limit as determined in accordance with sub-sections 25 to 28; or
- (b) the aggregate amount of premiums, on contracts so entered into, actually is in excess of 10 per centum of that premium limit.

(25) Subject to sub-sections (26) and (27) the premium limit for the purposes of this section is the aggregate of the amounts of gross premiums shown in the annual accounts relating to the insurer's business last deposited under section 52 as receivable in respect of general business in the financial year to which the accounts relate.

(26) If the accounts so deposited relate to a financial year which is not a period of 12 months, the aggregate of the amounts of gross premiums shown in the accounts as receivable in that financial year shall be divided by the number of months in that financial year and multiplied by twelve.

(27) If no accounts have been deposited under section 52 the aggregate amount of gross premiums shall be the amount or, if more than one amount, the lower or lowest amount, shown in respect of gross premiums relating to the insurer's business in the financial forecast last submitted by the insurer in accordance with regulations made for the purposes of section 26(7).

(28) Any reference in sub-section (25) or (26) to the insurer's business is, in the case of an insurer which is not a Gibraltar insurer, a reference to its business in Gibraltar.

(29) In this Ordinance "claims representative", in relation to an insurer and an EEA State, means a person who -

(a) has been designated as the insurer's representative in that EEA State ("the EEA State concerned"); and

(b) in the case of —

(i) an individual, is resident in the EEA State concerned;

(ii) a corporation, has a place of business in that EEA State; and

(c) is authorised —

(i) to act on behalf of the insurer and to represent, or to instruct others to represent, the insurer in relation to any matters giving rise to relevant claims;

(ii) to pay sums in settlement of relevant claims;

(iii) to accept service on behalf of the insurer of proceedings in respect of relevant claims;

(iv) to represent the insurer in any proceedings or enquiry to establish the existence or validity of a policy issued by the insurer which covers or purports to cover relevant motor vehicle risks in the EEA State concerned.

(30) The authorisation referred to in sub-section (29)(c) shall not extend to the settlement of relevant claims and in this sub-sections and sub-section (29) "relevant claim" means any claim which may be made against a policy issued by the insurer to the extent that it covers relevant motor vehicle risks situated in the EEA State concerned, whether or not submitted to the insurer and whether by a policy holder or by a third party having rights of action against the insurer or a policy holder or by both.

(31) Without prejudice to sub-section (29)(c), the claims representative shall not be authorised act on behalf of the insurer in the carrying on in the EEA State concerned of its general business (other than its reinsurance business, if any).

(32) In this Ordinance, unless the context otherwise requires —

(a) an undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if —

(i) it holds a majority of the voting rights in the undertaking, or

(ii) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or

(iii) it has the right to exercise a dominant influence over the undertaking —

(aa) by virtue of provisions contained in the undertaking's memorandum or articles, or

(bb) by virtue of a control contact, or

(iv) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(33) For the purpose of sub-section (32) an undertaking shall be treated as a member of another undertaking —

(a) if any of its subsidiary undertakings is a member of that undertaking, or

(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(34) In this Ordinance —



(a) an undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking and —

(i) it actually exercises a dominant influence over it, or

(ii) it and the subsidiary undertaking are managed on a unified basis;

(b) a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings, and references to its subsidiary undertakings shall be construed accordingly; and

(c) a "parent company" means a parent undertaking which is a company.

(35) Schedule 17 contains provisions explaining expressions used in sub-sections (32) to (34) and otherwise supplementing those sections.

(36) In this Ordinance references to shares —

(a) in relation to an undertaking with a share capital, are to the allotted shares;

(b) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and

(c) in relation to an undertaking without capital, are to interests —

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(37) In this Ordinance —

(a) a "participating interest" means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest;

- (b) a holding of 20 per centum or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(38) The reference in sub-section (37) to an interest in shares includes —

- (a) an interest which is convertible into an interest in shares, and
- (b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(39) For the purpose of sub-section (37) an interest held on behalf of an undertaking shall be treated as held by it and —

- (a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings, and
- (b) the reference in sub-section (36) to the purpose and activities of an undertaking includes the purpose and activities of any of its subsidiary undertakings and of the group as a whole."

### 3. Amendment to section 3.

Section 3 of the Ordinance is amended —

- (a) in sub-section (1) —

(i) in paragraph (a) by omitting the word "Community" and substituting therefor the expression "EEA States";

(ii) in paragraphs (b) and (c) by omitting the word "member" in each place where it occurs and substituting therefor the expression "EEA";

- (b) in sub-section (2) —

(i) by omitting the word "member" in the four places where it occurs and substituting therefor the expression "EEA";

(ii) by omitting the word "Community" and substituting therefor the expression "EEA States".

4. Amendment to section 5.

Section 5 of the Ordinance is amended by -

- (a) inserting after the figure "5" the figure "(1)";
- (b) omitting in sub-section (1) as now so designated, the words "classes" and "class" wherever they appear and substituting therefor the words "Classes" and "Class" respectively;
- (c) inserting in sub-section (1)(a) as now so designated, after the expression "Class 14 or 15" the expression "or (except as mentioned in sub-section (2)) Class 17";
- (d) inserting after sub-section (1), as now so designated, the following new sub-section (2) -

"(2) Sub-section (1)(a) applies to a contract the principal object of which is within one of the Classes of general business, but which contains subsidiary provision within Class 17 of Part I of Schedule 1 if —

- (a) the principal object of the contract is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or
- (b) those subsidiary provisions concern disputes or risks arising out of, or in connection with, the use of sea-going vessels."

5. Amendment to section 6.

Section 6 of the Ordinance is amended —

- (a) by omitting sub-section (1) and substituting therefor the following sub-section -

"(1) Subject to the provisions of sub-section (2), no person other than -

- (a) a licensed insurer; or
- (b) an insurer which has its head office outside Gibraltar but in an EEA State and is authorised to carry on insurance business in that State,

shall use the words " insurance" or assurance", or any derivatives or cognate expressions thereof, in relation to or in connection with any business carried on in Gibraltar in such manner as to indicate or cause people to believe that it is carrying on the business of insurance.";

- (b) in sub-section (2) by omitting paragraph (a) and substituting therefor the following paragraph -

"(a) a representative or authorised agent of an insurer to which sub-section (1) applies, when advertising or referring to its services;".

6. Amendment to section 16.

Section 16 of the Ordinance is amended in sub-section (2) —

- (a) by omitting the words "member State or territory" and substituting therefor the expression "EEA State";
- (b) in paragraphs (a) and (b) by omitting the words "State or territory" in each place where they occur and substituting therefor the expression "EEA State".

7. Amendment to Part III.

Part III of the Ordinance is amended by inserting before section 17 the following sections 16A and 16B —

"General Restriction.

16A (1) The Commissioner may authorise an insurer to carry on in Gibraltar such of the Classes of insurance business specified in Schedule 1 or 2 or such part of these Classes, as may be specified in the authorisation.

(2) An authorisation may be restricted to reinsurance business only.

(3) An authorisation may identify classes or parts of classes of general business by referring to the appropriate groups specified in Part II of Schedule 1.

(4) On the issue to a body of an authorisation, any previous authorisation of that body shall lapse.

#### Transitional Provisions.

16B. Where immediately before the coming into force of the Insurance Companies Ordinance (General Insurance and Long Term Insurance Directives) Regulations 1995, any body was licensed to carry on, and was carrying on, insurance business which, if those regulations had then been in force, would have been insurance business of Class 18, the body shall be deemed to be licensed to carry on business of that Class by virtue of this section."

#### 8. Amendment to section 17.

Section 17 of the Ordinance is amended by omitting sub-section (2) and substituting therefor the following new sub-sections —

"(2) Except as otherwise provided by sub-section (2A) and Part 1 of Schedule 13, sub-section (1) does not apply to an EEA insurer in so far as it is carrying on insurance business through a branch in respect of which such of the requirements of Part 1 of Schedule 13 to this Ordinance as are applicable have been complied with.

(2A) Notwithstanding sub-section (2) —

- (a) sections 16, 92, 93, Schedule 8 and Schedule 16; and
- (b) section 91 and Schedule 10 so far as relating to the transfer of policies which evidence contracts of reinsurance,

apply to an EEA insurer to which, by virtue of that sub-section, sub-section (1) does not apply."

#### 9. Amendment to section 18.

Section 18 of the Ordinance is amended in paragraph (d) by omitting the words "or miscellaneous financial loss" and substituting therefor a comma and the words "miscellaneous financial loss, legal expenses or assistance".

Repeal and replacement of section 20.

10. Section 20 of the Ordinance is repealed and replaced with the following section —

"20. The Commissioner shall not licence an insurer to carry on both long term business and general business unless —

- (a) the long term business is restricted to reinsurance; or
- (b) the insurer, at the time of the commencement of the Insurance Companies Ordinance (General Insurance and Long Term Insurance Directives) Regulations 1995, was lawfully carrying on in Gibraltar, otherwise than under paragraph (c), both long term and general business (in neither case restricted to reinsurance); or
- (c) in the case of a Gibraltar insurer, the general business is restricted to Group 1 of Part II Schedule 1 (accident and health) or to any Class or part of a Class of insurance within that group."

11. Repeal and replacement of section 21.

Section 21 of the Ordinance is repealed and replaced with the following section —

"21. No insurer licensed under this Ordinance shall undertake any activities in Gibraltar or elsewhere other than that of insurance, except for the purposes of and in connection with the insurance business which it is licensed to carry on."

12. Amendment to Part IV.

Part IV of the Ordinance is amended by inserting after section 24 the following sections —

"Gibraltar applicants.

24A. (1) The Commissioner shall not issue a licence to an applicant whose head office is in Gibraltar unless the applicant is a company as defined in section 2(1) of the Companies Ordinance.

(2) The Commissioner shall not issue a licence to an applicant -

- (a) whose head office is in Gibraltar; and
- (b) which is not an applicant to which section 26(2A) applies,

if it appears to him that any director, controller, manager or main agent of the applicant is not a fit and proper person to hold the position held by him.

Applicants from EEA States etc..

24B. (1) The Commissioner shall not issue a licence to an applicant to which this section applies —

(a) unless the applicant has a representative fulfilling the requirements of section 25A; or

(b) if it appears to him that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by him.

(2) Where an applicant to which this section applies seeks an authorisation restricted to reinsurance business —

(a) the Commissioner shall not issue the authorisation unless he is satisfied that the applicant is a body corporate entitled under the law of that State to carry on insurance business there; and

(b) paragraph (b) of sub-section (1) shall have effect as if the reference to any relevant executive were a reference to any person who is a director, controller or manager of the applicant or a person within paragraph (a) or (b) of sub-section (4).

(3) An applicant is one to which this section applies if —

(a) its head office is in an EEA State and it is not an EEA insurer; or

(b) its head office is in Switzerland and the authorisation sought by it is an authorisation to carry on general business which is not restricted to reinsurance business.

(4) In this section "relevant executive" in relation to the applicant means a person who is —

(a) the representative referred to in sub-section (1) or the individual referred to in section 25A(5);

(b) an officer or employee of the applicant who, either alone or jointly with others, is responsible for the conduct of the whole of the



insurance business carried on by the applicant in Gibraltar, not being a person who —

(i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere, and

(ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in Gibraltar; or

(c) is an employee of the applicant who, under the immediate authority of a director or of an officer or employee within paragraph (b), —

(i) exercises managerial functions, or

(ii) is responsible for maintaining accounts or other records of the applicant,

not being a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar."

### 13. Repeal and Replacement of section 25.

Section 25 of the Ordinance including the marginal note thereto is repealed and replaced by the following section —

"Applicants from non-EEA States.

25. (1) Subject to sub-sections (2) and (3), the Commissioner shall not issue a licence in respect of long term or general business to an applicant to which this section applies unless he is satisfied —

(a) that the applicant is a body corporate entitled under the law of the place where its head office is situated to carry on long term or, as the case may be, general business there; and

(b) that the applicant has in Gibraltar assets of such value as may be prescribed; and

(c) that the applicant has made a deposit of such amount and with such person as may be prescribed.

(2) Where the applicant seeks to carry on insurance business in Gibraltar and in one or more EEA States, the Commissioner and the supervisory authority in the EEA State or States concerned may agree that this sub-section shall apply to the applicant, and in that event —

- (a) paragraph (b) of sub-section (1) shall have effect as if the reference to Gibraltar were a reference to Gibraltar and the EEA State or States taken together; and
- (b) paragraph (c) of that sub-section shall have effect as if the reference to such person as may be prescribed were a reference to such person as may be agreed between the Commissioner and the other supervisory authority or authorities concerned.

(3) Paragraph (c) of sub-section (1) shall not apply where the licence sought is one restricted to reinsurance.

(4) The Commissioner shall not issue a licence to an applicant to which this section applies unless the applicant has a representative fulfilling the requirements of section 25A.

(5) The Commissioner shall not issue a licence which is restricted to reinsurance business to an applicant to which this section applies if it appears to him that —

- (a) the representative of the applicant referred to in sub-section (4) or the individual referred to in section 25A(5), or
- (b) any director, controller or manager of the applicant, or
- (c) a main agent of the applicant,

is not a fit and proper person to hold the position held by him.

(6) An applicant is one to which this section applies if —

- (a) its head office is not in an EEA State; and
- (b) it is not an applicant to which section 24B applies.

(7) For the purposes of this section the controllers of the applicant shall be taken to include any officer or employee who, either alone or jointly with others, is responsible

for the conduct of the whole of the insurance business carried on by the applicant in Gibraltar, not being a person who —

- (a) is also responsible for the conduct of insurance business carried on by it elsewhere; and
- (b) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in Gibraltar.

(8) Regulations under this Ordinance may make such provisions as to deposits under this section as appears to the Governor, after consultation with the Commissioner, to be necessary or expedient, including provision for the deposit of securities instead of money."

Further amendment to Part IV.

14. Part IV of the Ordinance is further amended by inserting after section 25 the following section —

"General Representatives.

25A. (1) The requirements referred to in section 24B(1)(a) and 25(4) are those set out in the following provisions of this section.

(2) The representative shall be a person resident in Gibraltar who has been designated as the applicant's representative for the purposes of this section.

(3) The representative shall be authorised to act generally, and to accept service of any document, on behalf of the applicant.

(4) The representative shall not be an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the applicant.

(5) If the representative is not an individual, it shall be a company with its head office in Gibraltar and shall itself have an individual representative resident in Gibraltar who is authorised to act generally and to accept service of any document, on behalf of the company, in its capacity as representative of the applicant."

15. Amendment to section 26.

Section 26 of the Ordinance is amended —

(a) in sub-section (1) by omitting the expression “sub-section (2)” and substituting therefor the expression “sub-sections (2), (2A) and (6)”;

(b) by inserting after sub-section (2) the following sub-section —

“(2A) The Commissioner shall not issue a licence to an applicant which is a Gibraltar or non-EEA insurer if it appears to him that the criteria of sound and prudent management are not or will not be fulfilled with respect to the applicant.”;

(c) by inserting after sub-section (5) the following sub-sections —

“(6) The Commissioner may defer a decision on an application for a licence for such period as may be necessary for the purpose of implementing any decision of the Council or Commission of the Communities under -

(a) Article 29b(4) of the first general insurance Directive; or

(b) Article 32b(4) of the first long term insurance Directive.

(7) Regulations made under this section may prescribe the information which an applicant for a licence may be required to be submitted in support of that application and for the purpose of enabling the Commissioner to satisfy himself that the requirements of this Ordinance in respect of the grant of that application are met and without prejudice to the generality, such regulations may prescribe information as to the manner in which the applicant proposes to carry on business and in respect of financial forecasts.”.

Amendment to section 28.

16. Section 28 of the Ordinance is amended in sub-section (2) —

(a) by omitting the words “The Commissioner may refuse an application” and substituting therefor the words “In addition to satisfying the requirements detailed elsewhere in this Part, the Commissioner may also refuse an application”;

(b) by omitting the semi-colon at the end of paragraph (b) together with paragraphs (c) and (d) and substituting therefor a full stop.

Amendment to Part V.

17. Part V of the Ordinance is amended —

- (a) by omitting the sub-heading to the Part and substituting therefor the following sub-heading —

*“Changes of director, controller or manager etc.”;*

- (b) by omitting sections 40 to 46 inclusive together with the marginal notes thereto and substituting therefor the following new sections —

*“Approval of proposed managing director or chief executive.*

40. (1) No licensed insurer shall appoint a person as managing director or chief executive unless —

- (a) the insurer has served on the Commissioner a written notice stating that it proposes to appoint that person to that position and containing such particulars as may be prescribed; and
- (b) either the Commissioner has, before the expiration of the period of three months beginning with the date of service of that notice, notified the insurer in writing that there is no objection to that person being appointed to that position or that period has elapsed without the Commissioner having served on the insurer a written notice of objection.

(2) A notice served by an insurer under sub-section (1)(a) shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.

(3) The Commissioner may serve a notice of objection under sub-section (1) on the ground —

- (a) that it appears to him that the person proposed to be appointed is not a fit and proper person to be appointed to the position in question; or
- (b) in the case of a Gibraltar or non-EEA insurer, that it appears to him that, if that person were appointed, the criteria of sound and prudent

management would not or might not continue to be fulfilled in respect of the insurer.

(4) Before serving such a notice the Commissioner shall serve on the insurer and on the person proposed to be appointed a preliminary notice stating —

- (a) that the Commissioner is considering the service on the insurer of a notice of objection on that ground; and
- (b) that the insurer or that person may, within the period of one month from the date of service of the preliminary notice, make written and oral representations to the Commissioner.

(5) The Commissioner shall not be obliged to disclose to the insurer or to the person proposed to be appointed any particulars on the ground on which he is considering the service on the insurer of a notice of objection.

(6) Where representations are made in accordance with this section the Commissioner shall take them into consideration before serving the notice of objection.

Approval of proposed controller where section 40 does not apply.

41. (1) No person shall become a controller of an insurer licensed under this Ordinance otherwise than by virtue of an appointment in relation to which section 40 has effect unless —

- (a) he has served on the Commissioner a written notice stating that he intends to become a controller of that insurer and containing such particulars as may be prescribed; and
- (b) either the Commissioner has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming a controller of the insurer or that period has elapsed without the Commissioner having served on him a written notice of objection.

(2) The Commissioner may serve a notice of objection under sub-section (1) on the ground —

- (a) that it appears to him that the person concerned is not a fit and proper person to become a controller of the insurer; or
  - (b) in the case of a Gibraltar or non-EEA insurer, that it appears to him that, if that person were to become such a controller, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.
- (3) Before serving such a notice, the Commissioner shall serve on the person proposing to become a controller a preliminary notice stating —
- (a) that the Commissioner is considering the service on that person of a notice of objection on that ground; and
  - (b) that that person may, within the period of one month from the date of service of the preliminary notice, make written and oral representations to the Commissioner.
- (4) The Commissioner may serve a notice of objection under sub-section (1) for the purpose of implementing any decision of the Council or Commission of the Communities under —
- (a) Article 29b(4) of the first general insurance Directive; or
  - (b) Article 32b(4) of the first long term insurance Directive.
- (5) The Commissioner shall not be obliged to disclose to any person any particulars of the ground on which he is considering the service on him of a notice of objection.
- (6) Where representations are made in accordance with this section the Commissioner shall take them into consideration before serving the notice of objection.

Approval of acquisition of notifiable holding in Gibraltar insurer.

42. (1) No person who is a controller of a Gibraltar insurer shall acquire a notifiable holding in that insurer, or in another company of which it is a subsidiary undertaking, unless —

- (a) he has served on the Commissioner a written notice stating —

- (i) that he intends to acquire such a holding; and
  - (ii) the number of the shares or details of the voting rights which he proposes to acquire; and
- (b) either the Commissioner has, before the expiration of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his proposed acquisition of the holding, or that period has elapsed without the Commissioner having served on him a written notice of objection.
- (2) The Commissioner may serve a notice of objection under sub-section (1) on the ground —
- (a) that it appears to him that the person concerned is not a fit and proper person to acquire such a holding; or
  - (b) that it appears to him that, if that person were to acquire such a holding, the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.
- (3) Sub-section (3) to (6) of section 41 shall (with the necessary modifications) apply for the purposes of this section as they apply for the purposes of that section.

Further provisions with respect to controllers of Gibraltar insurers.

43. Schedule 11 (which makes further provision with respect to persons becoming or continuing to be controllers of Gibraltar insurers, and persons who are such controllers acquiring or dealing with holdings in such insurers) shall have effect.

Duty to notify change of director, controller or manager.

44. (1) If in the case of a licensed insurer, a person becomes or ceases to be —

- (a) a controller of the insurer; or



- (b) in the case of a Gibraltar insurer, a 10 per centum shareholder controller, a 20 per centum shareholder controller, a 33 per centum shareholder controller, a 50 per centum shareholder controller or a majority shareholder controller of the insurer,

he shall, before the expiration of the period of 7 days beginning with the day next following that on which he does so notify the insurer in writing of that fact and of such other matters as may be prescribed.

(2) If, after ceasing to be a shareholder controller of any description mentioned in paragraph (b) of sub-section (1), a person will still be a shareholder controller of the insurer, his notice under that sub-section shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

(3) A person who becomes a director or manager of a licensed insurer shall, before the expiration of the period of 7 days beginning with the day next following that on which he does so, notify the insurer in writing of such matters as may be prescribed.

(4) A licensed insurer shall give written notice to the Commissioner of the fact that any person has become or ceased to be a director, controller or manager of the insurer and of any matter of which such person is required to notify the insurer under sub-section (1), (2) or (3), and that notice shall be given before the expiration of the period of fourteen days beginning with the day next following that on which that fact or matter comes to the insurer's knowledge.

Change of manager, etc. of insurer from outside Gibraltar.

45. (1) In relation to a non-EEA insurer or a Swiss general insurance company, —

- (a) Section 40 shall have effect as if the reference to a managing director or chief executive were reference to a principal Gibraltar executive;
- (b) Section 41 shall not apply;
- (c) Section 44 shall have effect as if references to a director or manager were references to a principal Gibraltar executive, an employee within Section 24B(4)(c) or an authorised Gibraltar representative.

- (2) In relation to any other insurer whose head office is outside Gibraltar —
- (a) Section 40 shall have effect as if the references to a chief executive included references to a principal Gibraltar executive; and
  - (b) Section 44 shall have effect as if the references to a director included references to a principal Gibraltar executive and to an authorised Gibraltar representative.

Duty to notify change of main agent.

46. (1) A licensed insurer shall give written notice to the Commissioner of the fact that any person has become or ceased to be a main agent of the insurer and, if the main agent is a body corporate or a firm, of the fact that any person has become or ceased to be a director of the body or partner of the firm.

(2) A notice under this section shall be given before the expiration of the period of 14 days beginning with the day following that on which the change comes to the knowledge of the insurer.”.

Repeal and replacement of section 48.

18. Section 48 of the Ordinance including the marginal note thereto is repealed and replaced with the following section —

“Account and statements regulations.

48. (1) The accounts and balance sheet of every insurer to which this Ordinance applies shall be audited in the prescribed manner by a person of the prescribed description, and regulations made for the purposes of this section may apply to such insurers, subject to such adaptations and modifications as may appear necessary or expedient.

(2) In sub-section (1) the reference to accounts and balance sheets shall include a reference to any statement or report annexed thereto giving information authorised or required by virtue of section 50(1A) to be given in a statement or a report annexed.”.

Amendment to section 49.

19. Section 49 of the Ordinance is amended by omitting sub-section (2) and substituting therefor the following sub-section —

“(2)A licensed insurer -

(a) whose head office is not in an EEA State; and

(b) which is not a Swiss general insurance company,

shall keep in Gibraltar proper accounts and records in respect of the insurance business carried on in Gibraltar."

Amendment to section 50.

20. Section 50 of the Ordinance is amended by inserting after sub-section (1) the following sub-sections —

"(1A) The contents of the documents required by sub-section (1) to be prepared shall be such as may be prescribed, but regulations may provide for enabling information required to be given by such documents to be given instead in a note thereon or statement or report annexed thereto or may require there to be given in such a note, statement or report such information in addition to that given in the documents as may be prescribed.

(1B) Regulations may, as respects such matters stated in such documents as aforesaid or in statements or reports annexed thereto as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the documents certificates of such matters as may be prescribed.

(1C) If a form is prescribed —

(a) for any such document as aforesaid, or

(b) as that in which information authorised or required to be given in a statement or report annexed to any such document is to be given, or

(c) for a certificate to be so annexed,

the document shall be prepared, the information shall be given or, as the case may be, the certificate shall be framed, in that form."

Amendment to section 51.

21. Section 51 of the Ordinance is amended in sub-section (3) by omitting the words "a member" in the two places where they occur and substituting therefor the expression "an EEA".



Amendment to section 52.

22. Section 52 of the Ordinance is amended —

- (a) by inserting after the figure "52" the figure "(1)";
- (b) by inserting after sub-section (2) the following sub-sections —

"(3) There shall be deposited with the Commissioner, at the same time as the documents mentioned in sub-section (1), two printed copies of a statement of the names and the connection with the insurer of any persons who, during the period to which those documents relate —

- (a) were authorised by the insurer to issue, or to the knowledge of the insurer have issued, any such invitation in relation to the insurer as is mentioned in sub-section (1)(a) of section 70C; and
- (b) were connected with the insurer as provided by regulations under that section.

(4) The Commissioner shall consider the documents deposited under sub-sections (1) and (3), and if any document appears to him to be inaccurate or incomplete in any respect he shall communicate with the insurer with a view to the correction of any such inaccuracies and the supply of deficiencies.

(5) In this section any reference to an account or balance sheet includes a reference to any statement or report annexed thereto giving information authorised or required by virtue of sub-section (1A) of section 50 to be so given and any certificate so annexed by virtue of sub-section (1B) of that section."

Amendment to section 53.

23. Section 53 of the Ordinance is amended —

- (a) in the marginal note thereto by omitting the word "Community" and substituting therefor the expression "EEA States";
- (b) by omitting the word "Community" and substituting therefor the expression "EEA States".

Amendment to section 55.

24. Section 55 of the Ordinance is amended by omitting the word "Notwithstanding" and substituting therefor the words "Where one or more of the grounds specified in section 107(2) (applied to this section by section 107(1)) applies and notwithstanding".

Amendment to section 56.

25. Section 56 of the Ordinance is amended by omitting the words "the latest published annual accounts and balance sheet and the auditor's report thereon" and substituting therefor the words "all documents submitted to the Commissioner under section 52".

Repeal and replacement of section 59.

26. Section 59 of the Ordinance including the marginal note thereto is repealed and replaced by the following new section —

"Margins of solvency.

59. (1) Every licensed insurer —

- (a) whose head office is in Gibraltar, or
- (b) whose business in Gibraltar is restricted to reinsurance,

shall maintain a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(2) Subject to sub-section (3), every licensed insurer whose head office is not in an EEA State shall maintain —

- (a) a margin of solvency, and
- (b) a Gibraltar margin of solvency,

of such amount as may be prescribed by or determined in accordance with regulations made for the purpose of this section.

(3) Sub-section (2) shall not apply to a licensed insurer if its business in Gibraltar is restricted to reinsurance or if it is a Swiss general insurance company, or if section 25(2) applies to it, but an insurer that has made a deposit in Gibraltar in accordance with section 25(2)(b) shall maintain —

- (a) a margin of solvency, and
- (b) an EEA margin of solvency,

of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(4) In the case of a licensed insurer that carries on both long term and general business, sub-sections (1), (2) and (3) shall have effect as if —

- (a) the requirements to maintain a margin of solvency, and
- (b) where the insurer carries on both kinds of business in Gibraltar, the requirement to maintain a Gibraltar margin of solvency, and
- (c) where the insurer carries on both kinds of business in EEA States (taken together), the requirement to maintain an EEA margin of solvency,

were requirement to maintain separate margins in respect of the two kinds of business (and accordingly as if the reference to assets and liabilities were references to assets and liabilities relating to the kind of business in question).".

Amendment to section 62.

27. Section 62 of the Ordinance is amended by —

- (a) omitting the figure “(1)”;
- (b) omitting sub-section (2).

Amendment to Part VI.



28. Part VI of the Ordinance is amended by inserting after section 59 the following new section 61A —

"Special provisions for licensed insurers that have their head office in a country outside the EEA.

61A. (1) Any undertaking which has requested or obtained authorisation from more than one EEA State may apply for the following advantages which may be granted only jointly -

- (a) that the solvency margin shall be calculated in relation to the entire business which it carries on within the EEA, and in such case, account be taken only of the operations effected by all the agencies of branches established within the EEA for purposes of this calculation;
- (b) that the deposit required under section 25 be lodged in only one of those EEA States;
- (c) that the assets representing the guarantee fund be localised in any one of the States in which it carries on its activities.

(2) Applications to benefit from the advantages provided for in sub-section (1) shall be made to the competent authorities of the EEA States concerned and shall state the authority of the EEA State of the selected supervisory authority which in future is to supervise the solvency of the entire business of the agencies or branches established within the EEA, giving reasons for the choice of the authority made by the undertaking.

(3) The deposit shall be lodged with the EEA State of the selected supervisory authority.

(4) The advantages provided for in sub-section (1) may only be granted if the competent authorities of all EEA States in which an application has been made agree to them, and shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the agencies or branches within the EEA.

(5) The selected supervisory authority shall obtain from the other EEA States the information necessary for the supervision of the overall solvency of the agencies and branches established in their territory.

(6) At the request of one or more of the EEA States concerned, the advantages granted under this section shall be withdrawn simultaneously by all EEA States concerned.

(7) Where an undertaking qualifies for the advantages provided for in subsection (1), the selected supervisory authority shall be treated in the same way as the authority of the State in the territory of which the head office of an EEA undertaking is situated."

Further amendment to Part VI.

29. Part VI of the Ordinance is further amended by inserting after section 62 the following section —

"Failure to maintain a margin of solvency.

62A. A licensed insurer that fails to comply with Section 59 —

- (a) shall at the request of the Commissioner submit to him a plan for the restoration of a sound financial position;
- (b) shall propose modifications to the plan (or the plan as previously modified) if the Commissioner considers it inadequate;
- (c) shall give effect to any plan accepted by the Commissioner as adequate."

Repeal and replacement of sections 63 and 64.

30. Sections 63 and 64 of the Ordinance including the marginal notes thereto are repealed and replaced by the following sections —

"Failure to maintain minimum margin.

63. (1) If —

- (a) the margin of solvency of an insurer to which section 59(1) applies, or
- (b) the margin of solvency or Gibraltar margin of solvency of an insurer to which section 59(2) applies, or
- (c) the margin of solvency or EEA margin of solvency of an insurer to which section 59(3) applies,

falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the insurer shall at the request of the Commissioner submit to him a short-term financial scheme.

(2) An insurer that has submitted a scheme to the Commissioner under sub-section (1) shall propose modifications to the scheme (or the scheme as previously modified) if the Commissioner considers it inadequate, and shall give effect to any scheme accepted by him as adequate.

(3) Where an insurer is required by virtue of section 59(4) to maintain separate margins in respect of long term and general business, sub-section (1) shall have effect as if any reference to the margin of solvency, the Gibraltar margin of solvency or the EEA margin of solvency of the insurer were a reference to the margin in respect of either of the two kinds of business.

Insurers supervised in other EEA States.

64. (1) A licensed insurer -

- (a) whose head office is in another EEA State; or
- (b) which has in accordance with section 25(2) made a deposit in such a State, or
- (c) which is a Swiss general insurance company,

shall secure 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 regulations.

(2) In the case of an insurer that carries on in Gibraltar both long term and general business sub-section (1) shall have effect separately in relation to the assets and liabilities of the two kinds of business.”.

Further amendment to Part VI.

31. Part VI of the Ordinance is further amended by inserting after section 64 the following sections -

“Form and situation of assets.

64A. (1) Regulations may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of a licensed insurer are maintained in such places as may be prescribed and the nature of the assets is appropriate in relation to the currency in which the liabilities of the insurer are or may be required to be met.

(2) Regulation made for the purposes specified in sub-section (1) shall not have effect in relation to the assets of an insurer whose head office is in an EFTA State or which is a Swiss general insurance company so far as their value exceeds the amount of the liabilities of the business carried on by the insurer in Gibraltar, that value and amount being determined in accordance with any applicable valuation regulations.

Adequacy of assets.

64B. (1) A Gibraltar insurer shall secure —

- (a) that its liabilities under contracts of insurance entered into by it, other than liabilities in respect of linked benefits, are covered by assets of appropriate safety, yield and marketability having regard to the classes of business carried on; and
- (b) without prejudice to the generality of paragraph (a), that its investments are appropriately diversified and adequately spread and that excessive reliance is not placed on investments of any particular category or description.

(2) A Gibraltar insurer which has entered into a linked long term contract shall secure that, as far as practicable, its liabilities under the contract in respect of linked benefits are covered as follows —

- (a) if those benefits are linked to the value of units in an undertaking for collective investments in transferable securities or to the value of assets contained in an internal fund, by those units or assets;
- (b) if those benefits are linked to a share index or other reference value not mentioned in paragraph (a), by units which represent that reference value, or by assets of appropriate safety and marketability which

correspond, as nearly as may be, to the assets on which that reference value is based.

(3) A Gibraltar insurer which has entered into a linked long term contract shall also secure that such of its liabilities under the contract in respect of linked benefits as are not covered by contracts of reinsurance are covered by assets of a description prescribed by regulations under section 73A.

Adequacy of premiums: long term business.

64C. (1) Before entering into a contract of insurance the effecting of which constitutes the carrying on of long term business, a Gibraltar insurer shall satisfy himself that the aggregate of —

- (a) the premiums payable under the contract and the income which will be derived from them; and
- (b) any other resources of the insurer which will be available for the purpose,

will be sufficient, on reasonable actuarial assumptions, to meet all commitments arising under or in connection with the contract.

(2) A Gibraltar insurer shall not rely on other resources for the purposes of sub-section (1) in such a way as to jeopardise the solvency of the insurer in the long term.

Requirements about investments.

64D. (1) The Commissioner may require an insurer —

- (a) not to make investments of a specified class or description;
- (b) to realise, before the expiration of a specified period (or such longer period as the Commissioner may allow), the whole or a specified proportion of investments of a specified class or description held by the insurer when the requirement is imposed.

(2) A requirement under this section may be framed so as to apply only to investments which are (or, if made, would be) assets representing a fund or

funds maintained by the insurer in respect of its long term business or so as to apply only to other investments.

(3) A requirement under this section shall not apply to the assets of an insurer so far as their value exceeds —

(a) in the case of an insurer —

(i) which has in accordance with section 25(2) made a deposit in another EEA State, or

(ii) which is a Swiss general insurance company,

the amount of the liabilities of the business carried on by the insurer in Gibraltar;

(b) in any other case, the amount of the liabilities of the insurer;

that value and amount being determined in accordance with any applicable valuation regulations."

Repeal and replacement of section 65.

32. Section 65 of the Ordinance is repealed and replaced by the following section

"65. (1) The Commissioner may require —

(a) in the case of a Gibraltar insurer, that assets of the insurer of a value which at any time is equal to the whole or a specified proportion of the amount of its EEA liabilities shall be maintained in the EEA; and

(b) in the case of a non-Gibraltar insurer, that assets of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in Gibraltar.

(2) The Commissioner may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated —

(a) in the case of a Gibraltar insurer, as assets maintained in the EEA; and



- (b) in the case of a non-Gibraltar insurer, as assets maintained in Gibraltar.
- (3) The Commissioner may direct that for the purposes of any requirement under this section the EEA or domestic liabilities of an insurer, or such liabilities of any class or description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.
- (4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period (or such longer period as the Commissioner may allow).
- (5) In this section —
  - (a) any reference to an EEA liability is a reference of a liability to the business carried on by the insurer in the European Community; and
  - (b) any reference to a domestic liability is a reference to a liability of the business carried on by the insurer in Gibraltar."

Amendment to section 66.

33. Section 66 of the Ordinance is amended —

- (a) by omitting sub-section (1) and substituting therefor the following sub-sections —

"(1) The Commissioner may, in the case of an insurer on which a requirement has been imposed under section 65, impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by him for the purposes of the requirement under this section as trustee for the insurer.

(1A) Section 65(4) shall apply also to a requirement under this section.";

- (b) in sub-section (3) by omitting the expression "sub-section (1)" and substituting therefore the words "this section".

Further amendment to Part VI.

34. Part VI of the Ordinance is further amended by inserting after section 66 the following sections —

“Prohibition on disposal of assets.

66A. (1) If on the application of the Commissioner it appears to the Court that any of the grounds set out in section 67(3) are established in relation to a Gibraltar insurer, the court may grant an injunction restraining the insurer from disposing of or otherwise dealing with any of its assets to the value of its EEA liabilities.

(2) Where a court makes an order under sub-section (1), it may by subsequent orders make provision for such incidental, consequential and supplementary matters as are necessary to enable the Commissioner to perform his functions under this Ordinance.

(3) In this section "EEA liabilities" has the same meaning as in section 65.

Limitation of premium income.

66B. (1) The Commissioner may require an insurer to take all such steps as are requisite to secure that the aggregate of the premiums —

- (a) to be received by the insurer in consideration of the undertaking by it during a specified period of liabilities in the course of carrying on general business or any specified part of such business; or
- (b) to be received by it in a specified period in consideration of the undertaking by the insurer during that period of liabilities in the course of carrying on long term business or any specified part of such business;

shall not exceed a specified amount.

(2) A requirement under this section may apply either to the aggregate premiums to be received as mentioned in sub-section (1) or to the aggregate of those premiums after deducting any premiums payable by the insurer for reinsuring the liabilities in consideration of which the first-mentioned premiums are receivable."

Repeal and replacement of sections 67 and 68.

35. Sections 67 and 68 of the Ordinance are repealed and replaced by the following new section 67 —

“Powers of intervention.

67. (1) The powers conferred on the Commissioner by sections 64D to 66B shall be exercisable in relation to any licensed insurer to which this Ordinance applies and shall be exercisable in accordance with the following provisions of this section.

(2) The powers conferred by sections 64D and 66B shall be exercisable on any of the following grounds —

- (a) that the Commissioner considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the insurer against the risk that the insurer may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders;
- (b) that in the case of a Gibraltar or non-EEA insurer it appears to him that any of the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the insurer;
- (c) that it appears to him —
  - (i) that the insurer has failed to satisfy an obligation to which it was subject by virtue of this Ordinance;
  - (ii) that a company of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 84(1);
  - (iii) that a subordinate company of the insurer has failed to satisfy an obligation to which it is or was subject by virtue of section 22 or 73;
- (d) that it appears to him that the insurer has furnished to him misleading or inaccurate information under or for the purposes of any provision of this Ordinance;
- (e) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by

the insurer in the course of carrying on business, being risks of a class in the case of which he considers that such arrangements are required;

- (f) that there exists a ground on which he would be prohibited by section 24A, 24B or 25, from issuing an authorisation with respect to the insurer if it were applied for;
  - (g) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the insurer in accordance with section 26;
  - (h) that the insurer has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in an EFTA State where it has its head office or an EEA State where it has in accordance with section 25(2) made a deposit;
  - (i) that the insurer is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.
- (3) The powers conferred on the Commissioner by sections 65, 66 and 66A shall not be exercisable in relation to a licensed insurer except —
- (a) where the Commissioner has given (and not revoked) a direction in respect of the insurer under section 105 or 105(B); or
  - (b) on the ground that it appears to the Commissioner that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of section 62, 63, 64 or 64A; or
  - (c) on the ground that a submission by the insurer to the Commissioner of an account or statement specifies, as the amount of any liabilities of the insurer, an amount appearing to the Commissioner to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies; or
  - (d) on the grounds, that in the case of a Gibraltar or non-EEA insurer, it appears to the Commissioner that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of section 59, 62A or 64B.

(4) Any power conferred on the Commissioner by sections 64D to 66B shall also be exercisable, whether or not any of the grounds specified in sub-section (2) exists, in relation to —

- (a) any body in respect of which the Commissioner has issued an authorisation;
- (b) any licensed insurer to which this Ordinance applies in the case of which a person has become a controller;
- (c) any Gibraltar insurer in a case where a person has notified an intention to acquire a notifiable holding,

if that power is exercised before the expiration of the period of five years beginning with the date on which the authorisation was issued or that person became such a controller or acquired such a holding, as the case may be; but no requirement imposed by virtue of this sub-section shall continue in force after the expiration of the period of ten years beginning with that date.

(5) The Commissioner shall, when exercising any power conferred by sections 64D to 66B, state the ground on which he is exercising it or, if he is exercising it by virtue of sub-section (4), that he is so exercising it; but this sub-section shall not apply where the Commissioner has given notice under section 108 of the proposed exercise of the power.

(6) The grounds specified in sub-section 2(c) to (h) are without prejudice to the ground specified in sub-section 2(a).".

Amendment to section 69.

36. Section 69 of the Ordinance is amended in the marginal note thereto by inserting after the word "liabilities" the words "and the matching thereof".

New Part VIA.

37. The Ordinance is amended by inserting after section 70 the following new Part —

“PART VIA. — CONDUCT OF INSURANCE BUSINESS.

Insurance Advertisements.

70A. (1) Regulations may be made as to the form and contents of insurance advertisements.

(2) Regulations under this section may make different provision in relation to insurance advertisements of different classes or descriptions.

(3) Subject to sub-section (4), any person who issues an insurance advertisement which contravenes regulations under this section shall be guilty of an offence.

(4) A person who in the ordinary course of his business issues an advertisement to the order of another person, being an advertisement the issue of which by that other person constitutes an offence under sub-section (3), shall not himself be guilty of the offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.

(5) In this section "insurance advertisement" means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance, and an advertisement which contains information calculated to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them to do so.

(6) In this section "advertisement" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television, and references to the issue of an advertisement shall be construed accordingly.

(7) For the purposes of this section an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and for the purposes of any proceedings under this section an advertisement inviting persons to enter into or to offer to enter into contracts with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.

Information for policy holders of Gibraltar insurers and EEA insurers.

70B. Schedule 12 to this Ordinance (which makes provision with respect to information for policy holders of Gibraltar insurers and EC insurers) shall have effect.



Intermediaries in insurance transactions.

70C. (1) Regulations may be made for requiring any person who —

- (a) invites another person to make an offer or proposal or to take any other step with a view to entering into a contract of insurance with an insurer; and
- (b) is connected with that insurer as provided in the regulations,

to give the prescribed information with respect to his connection with the insurer to the person to whom the invitation is issued.

(2) Regulations may be made for requiring any person who, in the course of carrying on any business or profession, issues any such invitation as is mentioned in sub-section (1)(a) in relation to an insurer which is not an authorised insurer in respect of the contract in question to inform the person to whom the invitation is issued that the company is not such an insurer as aforesaid.

(3) In sub-section (2) "authorised insurer", in relation to a contract of any description, means a person entitled to carry on in Gibraltar insurance business of a class comprising the effecting of contracts of that description or an EEA insurer entitled to provide in Gibraltar insurance of such a class.

(4) Any person who contravenes regulations under this section shall be guilty of an offence.

Penalties and offences under Part VIA.

70D. (1) Any person guilty of an offence under section 70A or 70C shall be liable on summary conviction to a fine at level 3 on the standard scale.

(2) Any person who makes default in complying with, or with a requirement imposed under, any other provision of this Part shall be guilty of an offence and liable in summary conviction to a fine at level 3 on the standard scale.”.

Repeal and replacement of section 72.

38. Section 72 of the Ordinance is repealed and replaced by the following sections —

"72. (1) Subject to sub-section (7), unless the requirements of sub-section (2) are fulfilled —

- (a) no insurer which is licensed under this Ordinance and no EEA insurer shall enter into a contract the effecting of which constitutes the carrying on of long term business in Gibraltar; and
- (b) no Gibraltar or EEA insurer shall enter into a contract the effecting of which constitutes the provision of long term insurance in Gibraltar.

(2) The requirements of this sub-section are that —

- (a) the insurer sends by post to the other party to the contract, at or before the time when it is entered into, a statutory notice in relation to the contract; or
- (b) in the case of an EEA contract, a representative of the insurer gives such notice to that party at that time.

(3) Where, in the case of an EEA contract, a statutory notice is sent to the other party to the contract before the time when it is entered into, the insurer shall, not later than fourteen days after the contract has become binding, inform that party in writing that it has done so.

(4) For the purposes of this section a statutory notice is a notice which —

- (a) contains such matters (and no others) and is in such form as may be prescribed for the purposes of this section and complies with such requirements as may be prescribed for securing that the notice is easily legible; and
- (b) has annexed to it a form of notice of cancellation of the prescribed description under section 72A.

(5) The Commissioner may, on the application of any insurer, alter the requirements of any regulations made for the purposes of sub-section (4)(a)

so as to adapt those requirements to the circumstances of that insurer or to any particular kind of contract proposed to be entered into by that insurer.

(6) Any insurer who contravenes this section shall be guilty of an offence but, without prejudice to section 72A(2), no contract shall be invalidated by reason of the fact that the insurer has contravened this section in relation to that contract.

(7) Sub-section (1) does not apply to a contract if the party other than the insurer is habitually resident in an EEA State.

(8) For the purposes of this section and section 72A, "EEA contract" means a contract to which sub-section (1) applies which fulfils the following conditions, namely —

- (a) the insurer's head office is in an EEA State; and
- (b) the other party is habitually resident in Gibraltar;

and "non-EEA contract" means a contract to which sub-section (1) applies which is not an EEA contract.

(9) In the case of a contract involving two or more parties other than the insurer, this section and section 72A shall have effect as if a separate contract were being or had been entered into by the insurer with each of those parties.

(10) In sections 72A and 72B "statutory notice" has the same meaning as in this section.

Right to withdraw from transaction.

72A. (1) A person who has received a statutory notice in relation to an EEA contract may, before the expiration of the fourteenth day after that on which he is informed in writing that the contract has become binding, serve a notice of cancellation on the insurer.

(2) A person who has received a statutory notice in relation to a non-EEA contract may, before the expiration of —

- (a) the tenth day after that on which he received the notice, or

- (b) the earliest day on which he knows both that the contract has been entered into and that the first or only premium has been paid,

whichever is the later, serve a notice of cancellation on the insurer.

(3) A person to whom an insurer ought to have, but has not, sent a statutory notice in relation to any such contract as aforesaid may serve a notice of cancellation on the insurer, but if the insurer sends him a statutory notice in relation to that contract before he has served a notice of cancellation under this sub-section, then, without prejudice to his right to serve a notice of cancellation under sub-section (1) or (2), his right to do so under this sub-section shall cease.

(4) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however, expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.

(5) Where a person serves a notice of cancellation, then —

- (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
- (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the insurer by the person serving the notice of cancellation and as notice to the insurer that any such offer is withdrawn.

(6) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract —

- (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the insurer or to a person who is the agent of the insurer for the purpose of receiving that sum) shall be recoverable from the insurer by the person serving the notice;
- (b) any sum that the insurer has paid under the contract shall be recoverable by him from the person serving the notice.

(7) Any sum recoverable under sub-section (6) shall be recoverable as a simple contract debt.

Service of notice of cancellation

72B. (1) For the purposes of section 72A a notice of cancellation —

- (a) shall be deemed to be served on the insurer if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
- (b) where paragraph (a) applies, shall be deemed to be served on the insurer at the time when it is posted.

(2) Sub-section (1) shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that sub-section, whether the notice is served on the insurer or on a person who is the agent of the insurer for the purpose of receiving such a notice.

(3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with sub-section (1), shall be deemed to be served on him at the time when it is posted.”.

Amendment to Part VII.

39. Part VII of the Ordinance is amended by inserting after section 73 the following section —

“Linked long term policies.

73A. (1) Regulations may be made, as regards the matters specified in sub-section (2), in relation to contracts the effecting of which constitutes the carrying on of ordinary long term insurance business entered into by licensed insurers or EEA insurers and which are contracts under which the benefits payable to the policyholder are wholly or partly to be determined by reference to the value of, or the income from, assets of any description (whether or not specified in the contract) or by reference to the amount of liabilities of any description (whether or not so specified) or by reference to

fluctuations in, or in an index of, the value of assets or the amount of liabilities of any description (whether or not so specified).

(2) Regulations may make provision for —

- (a) restricting the descriptions of assets or liabilities or the indices of the value of assets by reference to which benefits under the contracts may be determined;
- (b) restricting the ways in which reference may be made to the value of assets, the amount of liabilities, or the value of indices for the purpose of determining benefits;
- (c) regulating the manner in which and the frequency with which assets of any description are to be valued or liabilities of any description to be determined for the purpose of determining such benefits and the times at which reference is to be made for that purpose to any index;
- (d) requiring insurers under the contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining such benefits (being valuers who comply with the prescribed requirements as to qualifications and independence from the insurer) and to furnish the Commissioner with the prescribed information in relation to such appointments;
- (e) requiring insurers under the contracts to furnish, in such manner and at such times or intervals as may be prescribed, such information relating to the value of benefits under the contracts as may be prescribed, whether by sending notices to policyholders, depositing statements with the Commissioner, publication in the press or otherwise;
- (f) requiring insurers under the contracts to furnish to the Commissioner, in such manner and at such times or intervals as may be prescribed, such information certified in such manner as may be prescribed with respect to so much of their business as is concerned with the contracts or with any class or description of the contracts, and enabling the Commissioner to publish such information in such ways as he thinks appropriate.

(3) Regulations made for the purposes of sub-section (2)(e) may, in relation to notices required to be sent to policyholders impose requirements for securing that such notices are easily legible.

(4) The Commissioner may, on the application of any insurer and to the extent specified in the regulations, alter the requirements of any regulations under this section so as to adapt those requirements to the circumstances of that insurer or to any particular kind of contract entered into or proposed to be entered into by that insurer.

(5) Directions under this section shall not apply in relation to any contract entered into by a licensed insurer by reason only that the policyholder is eligible to participate in any established surplus as defined in section 86(2).”.

Amendment to section 78.

40. Section 78 of the Ordinance is amended in sub-section (2) by —

- (a) omitting the word “Community” in the two places where it occurs and substituting therefor the expression “EEA States”;
- (b) omitting the words “a member” and substituting therefor the expression “an EEA”.

Repeal and replacement of section 82.

41. Section 82 of the Ordinance is repealed and replaced by the following section —

“82. (1) The Commissioner may require an insurer which carries on long term business —

- (a) to cause its actuary appointed under section 76(1) to make an investigation into its financial condition in respect of that business, or any specified part of that business, as at a specified date;
- (b) to cause an abstract of the actuary's report of the investigation to be made; and
- (c) to prepare a statement of its long term business or of that part thereof as at that date.

(2) For the purposes of any investigation made in pursuance of a requirement under this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

(3) The form and contents of any abstract or statement made in accordance with a requirement under this section shall be the same as for an abstract or statement made under section 78 and section 81 shall apply to an investigation made in pursuance of this section as it applies to an investigation to which section 80 relates.

(4) Two copies of any abstract or statement made in pursuance of a requirement under this section shall be deposited by the insurer with the Commissioner on or before such date as he may specify, and one of those copies shall be a copy signed by the persons required to sign copies of abstracts or statements made under section 78 which are deposited under section 52.

(5) The powers specified in this section are exercisable in the circumstances provided for in section 67(4)."

Amendment to section 86.

42. Section 86 of the Ordinance is amended in sub-section (2) by omitting the word "establish" and substituting therefor the word "established".

Amendment to section 87.

43. Section 87 of the Ordinance is amended by —

- (a) inserting after the figure "87" the figure "(1)";
- (b) inserting after sub-section (1), as now so designated, the following sub-section —

"(2) Any person who makes default in complying with, or with a requirement imposed under sections 72, 72A, 72B or 73A of this Ordinance shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale."



New Parts VIIA and VIIB.

44. The Ordinance is amended by inserting after section 87 the following new Parts —

"PART VIIA - SPECIAL PROVISIONS RELATING TO CREDIT  
INSURANCE.

Application of Part VIIA.

87A. The provisions of this Part apply to credit insurance business being all insurance business falling within Class 14 of Part I of Schedule 1 that is not re-insurance.

Equalisation Reserve.

87B.(1) Subject to section 87C —

- (a) every Gibraltar insurer which carries on credit insurance business; and
- (b) every non-EEA insurer which carries on credit insurance business in Gibraltar.

shall maintain an equalisation reserve in respect of that business, determined (at the option of the insurer) in accordance with one of the four methods set out in the Annex to Council Directive 87/343/EEC.

(2) For the purposes of section 59(4), the value of the insurer's liabilities shall be treated as being increased by the amount of the equalisation reserve.

Exemption from equalisation reserve requirement.

87C. (1) Section 87B shall not apply —

- (a) in the case of a Gibraltar insurer, where the premiums or contributions receivable in any financial year in respect of its credit insurance business are less than 4 per centum of the total premiums or contributions receivable by it in that financial year and less than 2.5 million ECU; and
- (b) in the case of a non-EEA insurer, where the premiums or contributions receivable in any financial year in respect of its credit insurance business carried on through a branch in Gibraltar are less than 4 per cent of the total premiums or contributions receivable by it in that financial year in respect of business carried on through that branch and less than 2.5 million ECU.

(2) For the purposes of sub-section (1), "premiums or contributions receivable" in any financial year in respect of any business means the premiums or contributions recorded in the insurer's book as due to it in respect of contracts relating to that business commencing in that year or commencing in earlier financial years but not accounted for in the insurer's revenue account prior to that financial year, whether or not received by the insurer during that financial year, after deducting discounts, refunds and

rebates of premiums as recorded in respect of the same period and after deducting premiums for re-insurance ceded in respect of that period, and for the purpose of determining whether a premium is due, no account shall be taken of any credit arrangements made in respect thereof.

Default in complying with section 87B(1).

87D. A Gibraltar or non-EEA insurer commits an offence if it makes default in complying with section 87B(1) and is liable on summary conviction to a fine at level 3 on the standard scale.

#### PART VIIB - SPECIAL PROVISIONS RELATING TO LEGAL EXPENSES INSURANCE.

Application of Part VIIB.

87E.(1) The provisions of this Part apply to all legal expenses insurance business except -

- (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 insurer's own interest under such cover;
- (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.

(2) In a case falling within sub-section (1)(c), the policy shall clearly state that the cover in question is limited to the circumstances referred to in paragraph (c) and is ancillary to that assistance.

(3) For the purposes of this Part —

"legal expenses insurance business" means insurance business (other than re-insurance business) falling within Class 17 of Part 1 of Schedule 1 and "legal expenses insurance contract" and "legal expenses cover" shall be construed accordingly;

"lawyer" means a person entitled to pursue his professional activities under one of the denominations laid down by Council Directive 77/249/EEC.

Requirement of separate policy or section.

87F.(1) Legal expenses cover shall be the subject of either -

- (a) a policy relating to that cover only, or
  - (b) where that cover is provided under a policy relating to one or more other Classes of general insurance business, a separate section of the policy relating to that cover only.
- (2) where legal expenses cover is included in a separate section of a policy, that section shall specify the nature of the legal expenses cover.

Arrangements for avoiding conflicts of interest.

87G. (1) An insurer carrying on legal expenses insurance business shall adopt at least one of the measures set out in sub-sections (2), (3) or (4).

(2) The insurer shall ensure that no member of staff who is concerned with the management of claims under legal expenses insurance contracts, or with legal advice in respect of such claims, carries on at the same time any other similar activity —

- (a) in relation to another class of general insurance business carried on by the insurer, or
- (b) in any other insurer, having financial, commercial or administrative links with the first insurer, which carries on one or more other classes of general insurance business.

(3) The insurer shall entrust the management of claims under legal expenses insurance contracts to an undertaking having separate legal personality, which shall be mentioned in a separate policy or section referred to in section 87F, and if that undertaking has financial, commercial or administrative links with another insurer which carries on one or more other Classes of general insurance business, members of the staff of the undertaking who are concerned with the processing of claims or with providing legal advice connected with such processing, shall not pursue the same or a similar activity in the other insurer at the same time.

(4) The insurer shall, in the policy, afford the insured person the right to entrust the defence of his interests, from the moment that he has the right to claim from the insurer under the policy, to a lawyer of his choice or, to the extent that the law of the relevant forum so permits, to any other appropriately qualified person.

Freedom to choose lawyer.

87H. Any contract of legal expenses insurance shall expressly provide that -

- (a) where recourse is had to a lawyer, or other person appropriately qualified according to the law of the relevant forum, in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person; and
- (b) the insured person shall be free to choose a lawyer or, if he so prefers and to the extent that the law of the relevant forum so permits, any other appropriately qualified person, to serve his interests whenever a conflict of interest arises.

Exemption from section 87H.

87J. Section 87H shall not apply where —

- (a) the legal expenses cover is limited to cases arising from the use of road vehicles in Gibraltar; and
- (b) the legal expenses cover is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle; and

- (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 where the parties to a dispute are insured in respect of legal expenses by the same insurer, legal advice and representation are provided for each of them by completely independent lawyers.

Arbitration.

87K. (1) Any dispute between the insurer and the insured arising out of a legal expenses insurance contract may be referred to arbitration.

(2) The policy shall mention the right of the insured to have recourse to arbitration.

Notification to insured of his rights.

87L. (1) Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the insurer and the insured under a legal expenses insurance contract, the insurer shall give written notice to the insured informing him of —

- (a) the right referred to in sub-paragraph (b) of section 87H, and
- (b) the possibility of having recourse to arbitration in accordance with section 87K.

(2) Where the management of claims is entrusted to a separate undertaking as mentioned in section 87G (3), the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

Enforcement.

87M. Breach by an insurer of any of the provisions of sections 87F to 87L shall be an offence falling within section 117."

Amendment to Part VIII.

45. The Ordinance is amended by inserting after section 88 the following section —

"Co-operation for the purposes of Council Directive 78/473/EEC.

88A. The Commissioner shall, for the purposes of implementation of Council Directive 78/473/EEC, co-operate closely with the competent authorities of EEA States and shall provide them with all the necessary information."

Amendment to section 89.

46. Section 89 of the Ordinance is amended by omitting the word "Community" in the two places where it occurs and substituting therefor the expression "EEA States".

Amendment to section 90.

47. Section 90 of the Ordinance is amended in sub-section (1) by —

- (a) omitting the word "Community" and substituting therefor the expression "EEA States";
- (b) omitting the word "member" and substituting therefor the expression "EEA".

New Part VIIIA.

48. The Ordinance is amended by inserting after section 90 the following new Part —

"PART VIIIA - RECOGNITION IN ACCORDANCE WITH INSURANCE  
DIRECTIVES.

Recognition in Gibraltar of EEA insurers.

Schedule 13 (which makes provision for or in connection with the



recognition in Gibraltar of EEA insurers) shall have effect.

Recognition in EEA States of Gibraltar insurers.

90B. Schedule 14 (which makes provision for or in connection with the recognition in EEA States of Gibraltar insurers) shall have effect.”.

Repeal and replacement of section 91 to 94.

49. Sections 91 to 94 inclusive of the Ordinance including the marginal notes thereto are repealed and replaced by the following sections —

“Consent required for transfers of long term and general business.

91. Schedule 10 shall have effect with respect to transfers of long term and general business.

Issue of Certificates by the Commissioner.

92. (1) Where it is proposed to execute an instrument by which —

(a) an EEA insurer, or a non-EEA insurer whose head office is in an EFTA State, is to transfer —

(i) to a Gibraltar insurer; or

(ii) to a non-EEA insurer whose solvency is supervised by the Commissioner in accordance with Article 29 or 30 of the first long term insurance Directive or Article 25 or 26 of the first general insurance Directive,

long term or general policies of such descriptions, as may be specified in the instrument; or

(b) an insurer which is authorised in accordance with Article 27 of the first long term insurance Directive, or Article 23 of the first general

insurance Directive, is to transfer to a Gibraltar insurer all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be so specified; or

- (c) a Swiss general insurance company is to transfer to a Gibraltar insurer all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Commissioner may, if he is satisfied that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account, issue a certificate to that effect.

(2) In this section —

"general policy" means a policy evidencing a contract the effecting of which constitutes the carrying on of general business, other than reinsurance;

"long term policy" means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business, other than reinsurance.

Effect of transfers authorised in other EEA States.

93. (1) This section applies where —

- (a) an EEA insurer transfers to another body all its rights and obligations under any Gibraltar policies and the transfer is authorised in its home State in accordance with —
  - (i) Article 11 of the third long term insurance Directive, or
  - (ii) Article 12 of the third general insurance Directive;
- (b) an insurer which is authorised in accordance with Article 27 of the first long term insurance Directive, or Article 23 of the first general insurance Directive transfers to another body all its rights and obligations under any Gibraltar policies and the transfer is authorised in an EEA State in accordance with —
  - (i) Article 31a of the first long term insurance Directive (as amended by Article 49 of the third long term insurance Directive), or

(ii) Article 28a of the first general insurance Directive (as amended by Article 53 of the third general insurance Directive).

(2) If notice of the execution of the instrument giving effect to the transfer is published in such manner as the Commissioner may from time to time direct, the instrument shall be effectual in law —

- (a) to transfer to the transferee all the transferor's rights and obligations under the Gibraltar policies included in the instrument, and
- (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(3) Regulations under this section may make different provisions for different cases or descriptions of case.

(4) A policy which evidences a contract of insurance is a Gibraltar policy for the purposes of this section if the law applicable to it is the law of Gibraltar.

Offences under Part IX by licensed insurers.

94. (1) Any person who causes or permits to be included in any statement sent out under paragraph 2(2)(b) of Schedule 10 or made available under paragraph 7(1)(c) of that Schedule, a statement which he knows to be false in a material particular or recklessly causes or permits to be so included any statement which is false in a material particular, shall be guilty of an offence.

(2) Any person who makes default in complying with, or with a requirement imposed under paragraph 2(3) or 5(5) of Schedule 10, shall be guilty of an offence.

(3) Any person guilty of an offence under sub-section (1) or (2) shall be liable on summary conviction to a fine at level 3 on the standard scale.

(4) An insurer shall not be guilty of an offence by reason of its default in complying with Part II of Schedule 10 (other than paragraph 7 (1)(c))."

Repeal and replacement of section 98.

50. Section 98 of the Ordinance including the marginal note thereto is repealed and replaced by the following section —

"Power to obtain information and require production of documents.

98. (1) The Commissioner may require a licensed insurer to furnish him, at specified times or intervals, with information about specified matters being, if he so requires, information verified in a specified manner.

(2) The Commissioner may —

- (a) require the insurer to produce at such time and place as he may specify, such documents as he may specify; or
- (b) authorise any person, on producing (if required so to do) evidence of his authority, to require an insurer to produce to him forthwith any documents which that person may specify.

(3) Sub-section (1) and (2) shall have effect as if any reference to an insurer included a reference to any person who is or has been a controller, officer, agent or employee of a Gibraltar or non-EEA insurer and to any body corporate which is or has been Ñ

- (a) a parent undertaking or subsidiary undertaking of such an insurer;
- (b) a subsidiary undertaking of a parent undertaking of such an insurer; or
- (c) a parent undertaking of a subsidiary undertaking of such an insurer.

(4) The Commissioner may require a Gibraltar or non-EEA insurer to furnish him, at a specified time, with a report by a specified person, being an actuary or accountant or other person with relevant professional skills, on any matter about which the Commissioner has required, or could require, the insurer to provide information under sub-section (1).

(5) Where by virtue of sub-section (2) the Commissioner or a person authorised by him has power to require the production of any document from any insurer, the Commissioner or that person shall have the like power to

require production of those documents from any person who appears to him to be in possession of them, but where any person from who such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(6) Any power conferred by or by virtue of sub-sections (2), (3) and (5) to require an insurer or other person to produce documents shall include power

-

(a) if the documents are produced -

(i) to take copies of them or extracts from them; and

(ii) to require that person, or any other person who is a present or past director, controller or auditor of, or is or has at any time been employed by, the insurer in question to provide an explanation to any of them;

(b) if the documents are not produced to require the person who was required to produce them to state, to the best of his knowledge and believe, where they are.

(7) Any person authorised by the Commissioner may, on producing if required evidence of his authority, enter any premises occupied by -

(a) a Gibraltar or non-EEA insurer on which a requirement under sub-section (1) or (2) has been imposed; or

(b) a person on whom or a body on which a requirement has been imposed by virtue of sub-section (3),

for the purpose of obtaining the information or documents required to be furnished or produced and exercising the powers conferred by sub-section (6).

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(9) In this section "document" includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require production of a copy of the information in legible form.

(10) The grounds on which sub-section (1) is exercisable include the grounds appearing in section 67(4).”.

Amendment to section 99.

51. Section 99 of the Ordinance is amended —

- (a) in sub-section (1) by omitting the expression “section 98(1)(a)” and substituting therefor the expression “sub-section (1) of section 98”;
- (b) in paragraph (a) of that sub-section by inserting after the word “information” the words “as may be required by under that section and”.

Repeal and replacement of section 100.

52. Section 100 of the Ordinance is repealed and replaced by the following section —

"100. (1) The Commissioner may issue to an insurer such directions in writing as he may consider necessary -

- (a) for the purposes of protecting policyholders or potential policyholder of the insurer against the risk that the insurer may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policyholders or potential policy holders; or
- (b) in the case of a Gibraltar or non-EEA insurer, for the purpose of ensuring that the criteria of sound and prudent management are fulfilled with respect to the insurer.

(2) The powers conferred by this section shall not be exercised in such a way as to restrict the insurer's freedom to dispose of its assets except where it is exercised -

- (a) after the Commissioner has given a direction under section 105 or 105B; or

- (b) on the ground that it appears to the Commissioner that the insurer has failed to satisfy an obligation to which it was subject by virtue of section 63, 64 or 64A; or
  - (c) where the ground for intervention arises out of the submission by the insurer to the Commissioner of an account or statement specifying, as the amount of any liabilities of the insurer, an amount appearing to the Commissioner to have been determined otherwise than in accordance with valuation directions or, where no such directions are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies; or
  - (d) on the grounds that, in the case of a Gibraltar or non-EEA insurer, it appears to the Commissioner that the insurer has failed to satisfy an obligation it is or was subject by virtue of section 59 or 64B.
- (3) The grounds on which this section is exercisable include the grounds appearing in section 67(4)."

Amendment to Part X.

53. Part X of the Ordinance is amended by inserting after section 100 the following section —

“General Investigation.

100A. (1) The Commissioner may appoint one or more competent persons to make an investigation into and report to the Commissioner on —

- (a) whether the criteria of sound and prudent management are fulfilled with respect to any insurer which is a Gibraltar or non-EEA insurer; or
- (b) where a person has notified the Commissioner under section 40 or 41 of his intention to become a controller of any such insurer, whether those criteria would be so fulfilled if that person became such a controller;

and the Commissioner shall give written notice of any such appointment to the insurer.

(2) It shall be the duty of every person who is or was a director, manager, controller, agent, actuary, auditor or solicitor of an insurer which is under investigation —

(a) to produce to the persons appointed under sub-section (1) within such time and at such place as they may require, all documents relating to the insurer which are in his custody or power;

(b) to attend before the persons so appointed at such time and place as they may require; and

(c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(3) For the purposes of exercising his powers under this section a person appointed under sub-section (1) may enter any premises occupied by an insurer which is being investigated by him under this section; but he shall not do so without notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him."

Amendment to section 101.

54. Section 101 of the Ordinance is amended in sub-section (2)(a) by omitting the word "is" and substituting therefor the words "may be may have been".

Amendment to section 105.

55. Section 105 of the Ordinance is amended —



- (a) in sub-section (2) by —
  - (i) omitting paragraph (b) and substituting therefor the following paragraph —

“(b) that there exists a ground on which he would be prohibited by section 24A, 24B or 25 from issuing an authorisation to the insurer;”;
  - (ii) in paragraph (e) —
    - (aa) inserting after the word “insurance” a comma;
    - (bb) omitting everything after the words “particular description” and substituting therefor a comma and the words “in an EEA State where it has its head office or where it has in accordance with section 25(2) made a deposit;”;
  - (iii) omitting paragraph (g);
  - (iv) omitting the full-stop at the end of paragraph (h) and substituting therefor a semi-colon;
  - (v) inserting after paragraph (h) the following paragraphs —
- “(j) that in the case of a Gibraltar insurer, it appears to the Commissioner that the insurer has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of an EEA State which Ñ
  - (i) gives effect to the general or long term insurance Directives; or
  - (ii) is otherwise applicable to the insurance activities of the insurer in that State;
- (k) that in the case of a Gibraltar or non-EEA insurer, it appears to the Commissioner that any of the criteria of sound and prudent management is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the insurer; or
- (l) that the insurer is a Swiss general assurance company which has ceased to be authorised to effect contracts of insurance or contracts of a particular description, in Switzerland.”;

- (b) omitting sub-sections (3), (4) and (5) and substituting therefor the following sections —

"(3) After giving a direction under this section otherwise than at the request of the licensed insurer concerned the Commissioner shall inform the company in writing of his reasons for giving the direction.

- (4) Where a direction under this section has been given in respect of —

- (a) an insurer which has its head office, or has in accordance with section 25(2) made a deposit, in an EEA State; or
- (b) a Swiss general insurance company,

the Commissioner may revoke or vary the direction if after consultation with the supervisory authority in that EEA State or, as the case may be, in Switzerland he considers it appropriate to do so.

(5) Subject to sub-section (4), a direction given under this section in respect of any licensed insurer may not be revoked or varied, but if the Commissioner subsequently issues to the insurer a licence to carry on insurance business of a Class to which the direction relates, the direction shall cease to have effect in relation to such business.

- (6) If, in respect of an insurer which is a limited company -

- (a) an order for the winding up of the insurer is made by a court of competent jurisdiction; or
- (b) a resolution is passed for voluntary winding-up;

the Commissioner may direct that the insurer shall not enter into new contracts of insurance, or contracts of any description specified in the direction.”.

Further amendment to Part X.

56. Part X of the Ordinance is further amended by inserting after section 105 the following sections —

“Notice of withdrawal under section 105.

105A. (1) Before giving a direction under section 105 otherwise than at the request of the licensed insurer concerned the Commissioner shall serve on the insurer a written notice stating -

(a) that he is considering giving a direction and the ground on which he is considering it; and

(b) that the insurer may, within the period of one month from the date of service of the notice, make written and oral representations to the Commissioner.

(2) Before giving a direction under section 105 in respect of an insurer on either of the grounds set up in sub-section (3), the Commissioner shall serve on the person whose fitness is in question a written notice stating -

(a) that he is considering giving a direction on that ground; and

(b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written and oral representation to the Commissioner.

(3) The grounds referred to in sub-section (2) are -

(a) in the case of a Gibraltar or non-EEA insurer it appears to the Commissioner that the second or third criterion of sound and prudent management is or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the insurer; and

(b) that there exists a ground on which the Commissioner would be prohibited by section 24A, 24B(1)(b) or 25(5) from issuing an authorisation to the insurer.

(4) Subject to sub-section (5), the Commissioner shall consider any representations made in response to a notice under sub-section (2), before serving a notice under sub-section (1).

(5) Sub-section (4) shall not apply where the position held by the person on whom the notice under sub-section (2) is served, and whose fitness for that position is in question, is controller of an insurer.

(6) A notice under sub-section (1) or (2) shall give particulars of the ground on which the Commissioner is considering giving a direction.

(7) Where representations are made in response to a notice under sub-section (1) or (2), the Commissioner shall take them into consideration before giving a direction.

(8) Any notice to be served on a person under sub-section (1) or (2) may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or place of business in Gibraltar.

(9) After giving a direction under section 105 the Commissioner shall publish notice of it in the Gibraltar Gazette and in such other ways as appear to him expedient for notifying the public.

Suspension of authorisation in urgent cases.

105B. (1) Where, in the case of a Gibraltar or non-EEA insurer, it appears to the Commissioner -

(a) that one of the grounds in section 105(2) exists in relation to the insurer, and

(b) that the authorisation should be suspended as a matter of urgency,

the Commissioner may direct that the insurer shall forthwith cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.

(2) A direction under this section -

(a) shall 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 Commissioner under sub-section (b), shall cease to have effect at the end of the relevant period.

(3) Where the Commissioner gives a direction under this section, he shall forthwith serve on the insurer a written notice stating -

- (a) the ground on which the direction is given; and
- (b) that the insurer may, within the period of one month from the date of service of the notice, make written and oral representations to the Commissioner.
- (4) Where the Commissioner gives a direction under this section on the ground set out in section 105(2)(1), the Commissioner shall forthwith serve on any person whose fitness is in question a written notice stating -
- (a) the ground for giving the direction; and
- (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written and oral representations to the Commissioner.
- (5) The Commissioner shall consider any representations made in response to a notice under sub-section (3) or (4) before confirming a direction under this section.
- (6) At any time before the end of the relevant period, the Commissioner may confirm a direction under this section by a notice served on the insurer.
- (7) Where a direction under this section is so confirmed, it may not be revoked or varied, but if the Commissioner subsequently issues a licence to the insurer to carry on insurance business of a Class to which the direction relates, the direction shall cease to have effect in relation to such business.
- (8) In this section "the relevant period", in relation to a direction under this section, means the period of two months beginning with the date on which the direction is given."

Repeal and replacement of section 106.

57. Section 106 of the Ordinance including the marginal note thereto is repealed and replaced by the following section —

“Final withdrawal of authorisation.

106(1) Where -

(a) a Gibraltar insurer ceases to carry on insurance business or insurance business of any class in the EEA States; or

(b) an insurer which is not a Gibraltar insurer ceases to carry on insurance business or insurance business of any class in Gibraltar,

the Commissioner may direct that it shall cease to be authorised to carry on insurance business or insurance business of that class.

(2) If an insurer licensed to carry on insurance business of any Class has not at any time carried on insurance business of that class, and at least twelve months have elapsed since the issue of the authorisation, the Commissioner may direct that the insurer shall cease to be authorised to carry on business of that class.

(3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of a class to which the direction relates."

Repeal and replacement of section 107.

58. Section 107 of the Ordinance is repealed and replaced by the following new section —

“Powers of Intervention.

107. (1) The powers conferred on the Commissioner by sections 55, 82, 98, 100 or 100A shall be exercisable in relation to any licensed insurer to which this Ordinance applies and shall be exercisable in accordance with the following provisions of this section.

(2) The powers conferred shall be exercisable on any of the following grounds -

(a) that the Commissioner considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the insurer against the risk that the insurer may be unable to meet its liabilities or, in the case of long term business, to fulfil the reasonable expectations of policy holders or potential policy holders;

- (b) that in the case of a Gibraltar or non-EEA insurer it appears to him that the criteria of sound and prudent management is not or has not been or may not be or may not have been fulfilled with respect to the insurer;
- (c) that it appears to him -
  - (i) that the insurer has failed to satisfy an obligation to which it was subject by virtue of this Ordinance;
  - (ii) that a company of which it is a subsidiary has failed to satisfy an obligation to which it is or was subject by virtue of section 84(1);
  - (iii) that a subordinate company of the insurer has failed to satisfy an obligation to which it is or was subject by virtue of section 22 or 73;
- (d) that it appears to him that the insurer has furnished to him misleading or inaccurate information under or for the purposes of any provision of this Ordinance;
- (e) that he is not satisfied that adequate arrangements are in force or will be made for the reinsurance of risks against which persons are insured by the insurer in the course of carrying on business, being risks of a class in the class in the case of which he considers that such arrangements are required;
- (f) that there exists a ground on which he would be prohibited by section 24A, 24B or 25 from issuing a licence with respect to the insurer if it were applied for;
- (g) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the insurer in accordance with section 26;
- (h) that the insurer has ceased to be authorised to effect contracts of insurance or contracts of a particular description, in a non-EEA State where it has its head office or an EEA State where it has in accordance with section 25(2) made a deposit;
- (j) that the insurer is a Swiss general insurance company which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.

(3) The power conferred on the Commissioner by sub-sections (2) to (6) of Section 98 shall also be exercisable on the ground that he considers the exercise of that power to be desirable in the general interests of persons who are or may become policy holders licensed insurers which this Ordinance applies.

(4) The powers conferred on the Commissioner by sections 98 and 100A shall be exercisable in respect of a Gibraltar or non-EEA insurer to obtain information to enable him to perform his functions under this Ordinance.

(5) Any power conferred on the Commissioner by section 82, 98(1) or 100 shall also be exercisable, whether or not any of the grounds specified in sub-section (2) and (3) exists, in relation to -

(a) any body in respect of which the Commissioner has issued an authorisation;

(b) any licensed insurer to which this Ordinance applies in the case of which a person has become a controller;

(c) any Gibraltar insurer in a case where a person has notified an intention to acquire a notifiable holding,

if that power is exercised before the expiration of the period of five years beginning with the date on which the authorisation was issued or that person became such a controller or acquired such a holding, as the case may be; but no requirement imposed by virtue of this subsection shall continue in force after the expiration of the period of ten years beginning with that date.

(6) The power conferred on the Commissioner by section 100 shall not be exercisable except in a case in which he considers that the purposes mentioned in that section cannot be appropriately achieved by the exercise of the powers conferred by any other section to which this section applies or by exercise of those powers alone.

(7) The Commissioner shall, when exercising any power conferred by section 55, 82, 100 or 100A, state the ground on which he is exercising it or, if he is exercising it by virtue of sub-section (5), that he is so exercising it but this sub-section shall not apply where the Commissioner has given notice under section 108 of the proposed exercise of the power.



(8) The grounds specified in sub-section 2(c) to (g) and (3) are without prejudice to the ground specified in sub-section (2)(a).”.

Further amendment to Part X.

59. Part X of the Ordinance is further amended by inserting after section 107 the following sections —

“Notice of proposed exercise of powers on ground of unfitness of certain persons.

108. (1) Before exercising with respect to an insurer any power or powers conferred by sections 55, 64D to 66B, 82, 98, 100 or 100A on the ground that he would be prohibited from issuing an authorisation to the insurer because of the unfitness of a person for the position held by him (not being that of controller of the insurer), the Commissioner shall serve on that person a written notice stating -

(a) that the Commissioner is considering exercising a power or powers conferred by those sections and the ground on which he is considering the exercise of the power or powers; and

(b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written and oral representations to the Commissioner.

(2) Unless the Commissioner, after considering any representations made in accordance with sub-section (1) by the person served with a notice under that sub-section, decide not to exercise the power or powers in relation to which the notice was served, he shall before exercising the power or powers, serve on the insurer a written notice -

(a) containing the matters mentioned in paragraph (a) and (b) of that sub-section, taking reference to the person there mentioned as reference to the insurer; and

(b) specifying the power or powers which he proposes to exercise and, if the power or one of them is that conferred by section 100, specifying the manner of its proposed exercise.

(3) A notice under this section shall give particulars of the ground on which the Commissioner is considering the exercise of the power or powers in question.

(4) Where representations are made in accordance with this section, the Commissioner shall take them into consideration before exercising the power or powers in question.

(5) A requirement imposed on the insurer in the exercise of any power or powers to which this section applies may be framed so as to come into effect after the expiration of a specified period (or such longer period as the Commissioner may allow) unless before the expiration of that period the person whose fitness is in question has ceased to hold the position concerned.

Rescission, variation and publication of requirements.

109. (1) The Commissioner may rescind a requirement imposed under sections 55, 64D to 66B, 82, 98, 100 or 100A if it appear to him that it is no longer necessary for the requirement to continue in force and may from time to time vary any such requirement.

(2) No requirement imposed by section 67(4) or 107(5) shall be varied after the expiration of the period of five years mentioned in those sub-sections except in a manner which relaxes that requirement.

(3) Where a requirement is imposed under section 66 or any such requirement is rescinded or varied the Commissioner shall forthwith serve a written notice stating that fact and, in the case of a notice of the imposition of a requirement, setting out the terms of the requirement, in the case of the notice of the rescission of a requirement, identifying the requirement and, in the case of a notice of a variation of a requirement, identifying the requirement and setting out the terms of the variation.”.

Amendment to Part XII.

60. Part XII of the Ordinance is amended by inserting after section 114 the following section -

"Law applicable to certain contracts of insurance.

114A. (1) The law applicable to a contract of insurance the effecting of which constitutes general business (not being a contract of reinsurance), and which covers risks situated in Gibraltar or an EEA State, shall be determined in accordance with the provisions of Part I of Schedule 9.

(2) The law applicable to a contract of insurance to which Article 1 of the first long term insurance Directive applies (not being a contract of reinsurance) shall be determined in accordance with the provisions of Part II of Schedule 9, if -

(a) where the policy holder is an individual, he is habitually resident in an EEA State; or

(b) where the policy holder is not an individual, the establishment of the policyholder to which the contract relates is situated in an EEA State."

Further amendment to Part XII.

61. Part XII of the Ordinance is further amended by inserting after section 115 the following section -

"Insurer incorporated outside Gibraltar.

115A. The provisions of Part IX of the Companies Ordinance, if apart from this section they would not so apply, shall apply in relation to an insurer incorporated outside Gibraltar which carries on insurance business in Gibraltar, as such provisions apply in relation to companies to which Part IX of that Ordinance applies."

Repeal and replacement of sections 118 and 119.

62. Sections 118 and 119 of the Ordinance are repealed and replaced by the following sections -

"Regulations.

118. (1) The Government may make regulations prescribing all matters which, by this Ordinance, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Ordinance.

- (2) Without prejudice to the generality of sub-section (1), regulations may -
- (a) prescribe -
    - (i) how assets and liabilities are to be valued for the purposes of the Ordinance and how the values are to be matched;
    - (ii) how the solvency margins required for general and long-term business are to be calculated;
    - (iii) the minimum guarantee fund for each class of insurance;
    - (iv) how technical reserves, including mathematical reserves, are to be calculated;
    - (v) the nature of assets which may comprise solvency margins, guarantee funds or technical reserves (including mathematical reserves) and the extent to which such assets may comprise such margins, funds or reserves;
    - (vi) the place or places where the whole or any part of the assets representing technical reserves (including mathematical reserves) are to be kept and the nature and appropriateness of such assets in relation to the currencies in which liabilities are to be met;
    - (vii) the deposits to be made by insurers which have their head offices outside the EEA States and the investment of such deposits;
  - (b) provide for -
    - (I) the form and contents of annual profit and loss or income and expenditure, accounts and balance sheets and auditors' and actuaries' reports and statements and any other documents;
      - (i) the manner in which accounts and balance sheets are to be audited;
      - (ii) the persons by whom accounts and balance sheets, abstracts, statements, reports and any other documents are to be signed;
      - (iii) the contents of any advertisements or invitations published by insurers or connected persons, and linked contracts;

(iv) the fees to be paid under this Ordinance and the person to whom they are to be paid.

(3) Where in this Ordinance or in regulations made thereunder there is reference to the form or forms, or to a specified form or forms, to be used or to be completed for a particular purpose, the form or forms, and the information to be supplied thereon, shall be that specified in respect of that purpose by the Commissioner and the Commissioner shall make available such form or forms or shall accept a like form generated by the person by whom it is required to be submitted.”.

New Part XIIIA.

63. The Ordinance is amended by inserting after section 119 the following new Part -

“PART XIIIA -STATISTICAL INFORMATION

Insurance statistics - EEA States.

119A. (1) Every Gibraltar insurer which in any calendar year -

(a) carries on general business in an EEA State through a branch in that State; or

(b) provides general insurance in such a State through an establishment in Gibraltar or an EEA State,

shall prepare in respect of general business so carried on by it or general insurance so provided by it a statement in the specified form or forms.

(2) Every Gibraltar insurer which in any calendar year -

(a) carries on long term business in an EEA State through a branch in that State; or

(b) provides long term insurance in such a State through an establishment in Gibraltar or an EEA State,

shall prepare in respect of long term business so carried on by it or long term insurance so provided by it a statement in the specified form or forms.

(3) The forms mentioned in sub-sections (1) and (2) shall be prepared separately in respect of each EEA State in which the insurer carries on the insurance business or provides the insurance.

(4) The statements required by this section shall be deposited with the Commissioner within nine months after the end of the calendar year to which they relate; but if in any case it is made to appear to the Commissioner that the circumstances are such that a longer period than nine months should be allowed, he may extend that period by such period not exceeding three months as he thinks fit.

(5) The statement deposited under sub-section (4) shall be signed by a director, a chief executive or the secretary of the insurer.

(6) Subject to sub-section (7), where a Gibraltar insurer which has notified the Commissioner -

(a) in accordance with paragraph 1 of Schedule 14, of its intention to establish a branch in an EEA State, or

(b) in accordance with paragraph 5 of that Schedule, of its intention to provide insurance in any such a State,

does not in any calendar year carry on insurance business or, as the case may be, provide insurance in that State, it shall send to the Commissioner a notification of that fact within nine months after the end of the calendar year to which the notification relates, signed by a director, a chief executive or the secretary of the insurer.

(7) Sub-section (6) shall not apply if the insurer has, before the beginning of the calendar year, informed the Commissioner, in accordance with paragraph 8 of Schedule 14, that it has ceased to carry on insurance business or, as the case may be, to provide insurance in the EEA State in question.

(8) The Commissioner shall consider any statements deposited under sub-section (4) and any notification given under sub-section (6) and, if any such statement or notification appears to him to be inaccurate or incomplete in any respect, he shall communicate with the insurer with a view to the correction of any such inaccuracies and the supply of deficiencies.

Default in complying with section 119A

119B. (1) A Gibraltar insurer commits an offence if it makes default in complying with section 119A.

(2) A person commits an offence if he causes or permits to be included in a form required by section 119A to be deposited with the Commissioner a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.

(3) A person committing an offence under this regulation is liable on summary conviction to a fine at level three on the standard scale.”.

Amendment to Schedule 1.

64. Schedule 1 to the Ordinance is amended -

(a) in Part 1 -

(i) in the entry in respect of Class 15 by omitting the word “Suretyships” where it appears in the second column and substituting therefor the word “Suretyship”;

(ii) in the entry in respect of Class 16 by -

(aa) omitting in paragraph (a) in the third column the words “or reduction in the scope of the business carried on by them” and substituting therefor the words “of business carried on by them or to reduction of the scope of business so carried on”;

(bb) inserting in paragraph (b) after the word “expenses” the expression “(other than loss such as is covered by contracts falling within Class 18 below)”;

(iii) in the entry in respect of Class 17 by omitting everything in the third column and substituting therefor the following words-

"Contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including cost of litigation).";

(iv) by inserting immediately after the entry in respect of Class 17, the following further Class -

“18	Assistance	Contracts of insurance providing either or both of the following benefits, namely -  (a) assistance (whether in cash or in kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or  (b) assistance (whether in cash or in kind) for persons who get into difficulties otherwise than as mentioned in paragraph (a);”;
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(b) in Part II by omitting the word "Group" and substituting therefor the word "Groups".

Amendment to Schedule 2.

65. Schedule 2 to the Ordinance is amended by inserting after the entry in respect of Class VII the following entries -

VIII	Collective insurance etc.	Contracts of a kind referred to in Article 1(2)(e) of the first long term insurance Directive.
IX	Social insurance	Contracts of a kind referred to in Article 1(3) of the first long term insurance Directive.”.

Amendment to Schedule 3.



66. Schedule 3 to the Ordinance is amended in the right hand column of the entry in respect of Accounting Class 8 by inserting after the figure “17” a comma and the figure “18”.

Amendment to Schedule 6.

67. Schedule 6 to the Ordinance is amended -

- (a) in Part I -
  - (i) by omitting the word “and “ at the end of the entry in respect of Class 13;
  - (ii) by inserting in the list of Classes in the appropriate position by reference to the number of the Class the following entries -

“Class 3 land vehicles,  
Class 10 motor vehicle liability,  
Class 14 credit,  
Class 15 suretyship.”;

- (b) in Part 2 -

- (i) in item 1 -

(aa) by omitting paragraph (b) and substituting therefor the following paragraph -

“(b) that the risk is situated (within the meaning of paragraph 2) within Gibraltar or an EEA State;”;

(bb) by omitting paragraph (c) and substituting therefor the following paragraph -

“(c) that at least one of the insurers participating in the operation does so through a head office or branch established in Gibraltar or an EEA State, other than that in which the leading insurer’s head office (or if the leading insurer is participating through a branch, that branch) is established.”;

- (ii) in item 2 -

(aa) by omitting the words “a member” and substituting therefor the expression “Gibraltar or an EEA”;

(bb) in paragraph (I) by omitting the words “that State” and substituting therefor the words “Gibraltar or an EEA State”.

Repeal and replacement of Schedule 7.

68. Schedule 7 to the Ordinance is repealed and replaced by the following Schedule -

“Schedule 7

Section 113

Provision which the Commissioner may modify.

Section	
21	Licensed insurers not to carry on other business.
22	Prescribed contracts and arrangements.
48	
52	Submission of accounts and statements.
48	Account and statements regulations.
49(2)	Accounts to be kept in Gibraltar.
50	Annual Accounts.
56	Copies of accounts.
58(3)	Technical reserves.
59	Margins of solvency.
63	Failure to maintain minimum margin.
64	Insurers supervised in other EEA States.
64A	Form and situation of assets.
64B	Adequacy of assets.
64C	Adequacy of premiums - long term business.
73	Prohibition of certain transactions.
75	Maintenance of separate accounts.
76	Appointment of actuaries.
78	Annual actuarial investigations.
83	Application of long term business assets.
84	Restriction on right to pay dividends.
85	Distribution of assets.
86	Allocations to policy holders.”.

Amendment to Schedule 8.

69. Schedule 8 to the Ordinance is amended in paragraph 2(2) by -

(a) omitting the full-stop at the end of sub-paragraph (2)(e) and substituting therefor a semi-colon;

(b) inserting the following new provision -

"(f) in the case of a Gibraltar insurer, that the insurer has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of an EEA State which -

(i) gives effect to the general or long term insurance Directives; or

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

New Schedules 9 to 17.

70. The Ordinance is amended by inserting after Schedule 8 the following new Schedules 9 to 17 -

#### "SCHEDULE 9

Section 114A.

#### LAW APPLICABLE TO CERTAIN CONTRACTS OF INSURANCE.

##### PART I

##### GENERAL BUSINESS

General Rules as to applicable law.

1.(1) Where the policy holder has his habitual residence or central administration within the territory where the risk is situated, whether in Gibraltar or in an EEA State, the law applicable to the contract is the law of Gibraltar or of that EEA State, as the case may be:

Provided however, that where the law of Gibraltar or of that EEA State, as the case may be, so allows, the parties may choose the law of another country.

(2) Where the policy holder does not have his habitual residence or central administration within the territory where the risk is situated, whether in Gibraltar or in an EEA State, the parties to the contract may choose to apply either -

- (a) the law of Gibraltar or of the EEA State where the risk is situated, or
- (b) the law of the country in which the policy holder has his habitual residence or central administration.

(3) Where the policy holder carries on a business and the contract covers two or more risks relating to his business which are situated in Gibraltar or different EEA States, the freedom of choice of the law applicable to the contract extends to the laws of Gibraltar or of those EEA States and of the country in which he has his habitual residence or central administration, and for the purposes of this sub-paragraph "business" includes a trade or profession.

(4) Where Gibraltar or the EEA States referred to in sub-paragraph (2) or (3) grants greater freedom of choice of the law applicable to the contract, the parties may take advantage of that freedom.

(5) Notwithstanding sub-paragraphs (1) to (3), when the risks covered by the contract are limited to events occurring in Gibraltar or an EEA State other than Gibraltar or the EEA State where the risk is situated, the parties may always choose the law of the former State.

(6) Where the risk is situated in Gibraltar or an EEA State and is a large risk, the parties to the contract may choose any law.

(7) Where the risk is situated in an EEA State which has implemented the transitional provisions in Article 27 of the second general insurance Directive, the meaning of "large risk" for the purposes of sub-paragraph (6) shall be determined in accordance with the law applicable in that State.

Applicable law in the absence of choice.

2.(1) The choice referred to in paragraph 1 shall be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.

(2) If that is not so, or if no choice has been made, the contract shall be governed by the law of the country (from amongst those considered in the relevant sub-paragraphs) with which it is most closely connected.

(3) Nevertheless a severable part of the contract which has a closer connection with another country (from amongst those considered in the relevant sub-paragraphs) may, by way of exception, be governed by the law of that other country.

(4) A contract is rebuttably presumed to be most closely connected with Gibraltar or the EEA State where the risk is situated.

#### Mandatory Rules.

3.(1) The fact that in the cases referred to in paragraph 1, the parties have chosen a law does not, where all the other elements relevant to the situation at the time of the choice are connected with Gibraltar or one EEA State only, prejudice the application of the mandatory rules of the law of Gibraltar or of that EEA State, which means the rules from which the law of Gibraltar or of that EEA State, as the case may be, allows no derogation by means of a contract.

(2) Nothing in this Part of this Schedule restricts the application of the rules of Gibraltar in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

#### Separate territorial units.

4. Where Gibraltar or an EEA State includes several territorial units each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purpose of identifying the applicable law.

#### Application of Contracts (Applicable Law) Ordinance 1993.

5.(1) Subject to the preceding provisions of this Part of this Schedule, a court in Gibraltar shall act in accordance with the provisions of the Contracts (Applicable Law) Ordinance 1993.

- (2) In particular, reference shall be made to those provisions -
- (a) to ascertain for the purposes of paragraph 1 (1) and (4) what freedom of choice the parties have under the law of Gibraltar; and
  - (b) to determine whether the mandatory rules of an EEA State should be applied in accordance with paragraph 3(1) where the law otherwise applicable is the law of Gibraltar.

## PART II

### LONG TERM BUSINESS

General Rules as to applicable law.

6. The law applicable to the contract is the law of the country (whether Gibraltar or an EEA State, as the case may be) of the commitment. However, where the law of Gibraltar or that EEA State, as the case may be, so allows, the parties may choose the law of another country.

7. Where the policy holder is an individual with his habitual residence in Gibraltar and he is a national of an EEA State, the parties may choose the law of that EEA State. Where the policy holder is an individual with his habitual residence in an EEA State and he is a national of Gibraltar, the parties may choose the law of Gibraltar.

Mandatory Rules.

8. Nothing in this Part of this Schedule restricts the application of the rules of Gibraltar in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

Separate territorial units.

9. Where an EEA State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

Application of Contracts (Applicable Law) Ordinance 1993.

10. (1) Subject to the preceding provisions of this Part of this Schedule, a court in Gibraltar shall act in accordance with the provisions of the Contracts (Applicable Law) Ordinance 1993.

(2) In particular, reference shall be made to those provisions to ascertain for the purposes of paragraph 6 what freedom of choice the parties have under the law of Gibraltar.”.

## SCHEDULE 10

Section 91

### TRANSFERS OF INSURANCE BUSINESS

#### PART I

### TRANSFERS OF LONG TERM BUSINESS

#### *Sanction of Court required*

1. (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by a holder of a licence issued under this Ordinance ("the transferor") is to be transferred to another body whether incorporated or not ("the transferee") and -

- (a) where the transferor is a Gibraltar insurer, the business proposed to be transferred is business carried on in Gibraltar or one or more EEA States;
- (b) where that insurer is not a Gibraltar insurer, the business proposed to be transferred is business carried on in Gibraltar,

the transferor or the transferee may apply to the Supreme Court ("the Court") by petition, for an order sanctioning the scheme.

(2) No such transfer as is mentioned in sub-paragraph (1) shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this Part of this Schedule.

(3) In this Part of this Schedule, "direct insurance" means insurance other than reinsurance.

*Procedure with respect to applications*

2. (1) The Court shall not determine an application under paragraph 1 unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the Court is satisfied that the requirements of sub-paragraph (2) have been complied with.

(2) The requirements referred to in paragraph are -

(a) that a notice stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) will be available as required by that paragraph has been published in the Gazette and, except where the Court has otherwise directed -

(i) in two newspapers circulating in Gibraltar; and

(ii) where the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, an EEA State is the State of the commitment, in two national newspapers in that EEA State;

(b) except where the Court has otherwise directed, that a statement -

(i) setting out the terms of the scheme; and

(ii) containing a summary of the report mentioned in sub-paragraph (1) sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the insurers concerned,

has been sent to each of those policy holders and to every member of those insurers;

(c) that a copy of the petition, of the report mentioned in sub-paragraph (1) and of any statement sent out under paragraph (b) has been served on the Commissioner and that a period of not less than twenty-one days has elapsed since the date of service;



(d) that copies of the petition and of the report mentioned in sub-paragraph (1) have been open to inspection -

(i) at offices in Gibraltar of the insurers concerned; and

(ii) where the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, an EEA State is the State of the commitment, at such place in that EEA State as the Court has directed,

for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a).

(3) Each of the insurers concerned shall, on payment of such fee as may be prescribed by rules of Court, furnish a copy of the petition and of the report mentioned in sub-paragraph (1) to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.

(4) On any petition under paragraph 1, the following shall be entitled to be heard, namely -

(a) the Commissioner, and

(b) any person (including any employee of the transferor or the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

*Determination of applications*

3. (1) Where the transferor is a Gibraltar or non-EEA insurer and any policy included in the proposed transfer evidences a contract of direct insurance, the Court shall not make an order sanctioning the scheme unless -

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

(i) licensed under this Ordinance to carry on, or

(ii) authorised in accordance with Article 6 of the first long term insurance Directive to carry on in an EEA State,

long term business of the Class or Classes to be transferred under the scheme;

(b) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and

(c) where the transferor is a Gibraltar insurer and the establishment from which the policies are to be transferred is situated in an EEA State, the Commissioner certifies -

(i) that the supervisory authority in that EEA State has been consulted about the proposed scheme; and

(ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.

(2) Where sub-paragraph (1) applies and, as regards any policy which is included in the proposed transfer and evidences a contract of direct insurance, an EEA State is the State of the commitment, the Court shall not make an order sanctioning the scheme unless the Commissioner certifies -

(a) that the supervisory authority in that EEA State has been notified of the proposed scheme; and

(b) either that the authority has consented to the scheme or that the authority has not refused its consent to the scheme within the period of three months beginning with the notification.

(3) Where the transferor is not a Gibraltar or non-EEA insurer or any policy included in the proposed transfer evidences a contract of reinsurance, the Court shall not make an order sanctioning the scheme unless it is satisfied that the transferee is, or will be immediately after the making of the order -

(a) licensed under this Ordinance to carry on, or

(b) an EEA insurer which is not precluded by Part I of Schedule 13 from carrying on,

long term business of the Class or Classes to be transferred under the scheme.

(4) In this paragraph "the relevant authority" means -

- (a) if the transferee is a Gibraltar insurer, the Commissioner;
- (b) if the transferee is an EEA insurer, the supervisory authority in its home State;
- (c) if the transferee does not fall within paragraphs (a) and (b), the Commissioner or other authority which, in accordance with Article 29 or 30 of the first long term insurance Directive, is responsible for supervising the company's margin of solvency.

*Rights of policy holders*

4. (1) This paragraph applies where the Court makes an order under this Part of this Schedule sanctioning a scheme and the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the transfer which evidences a contract of direct insurance, an EEA State is the State of the commitment.

(2) The Court shall direct that -

- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the EEA State which is the State of the commitment; and
- (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;

and the instrument or order shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.

(3) The law of the EEA State which is the State of the commitment shall determine -

- (a) whether the policy holder has a right to cancel the policy; and
- (b) the conditions applicable to any such right.

*Supplementary provisions*

5. (1) Where the Court makes an order under this Part of this Schedule sanctioning a scheme the Court may, either by that order or by any subsequent order, make provision for all or any of the following matters -

- (a) the transfer to the transferee of the whole or any part of the undertaking and of the property or liabilities of the transferor;
- (b) the allotting or appropriation by the transferee of any shares, debentures, policies or other like interests in that insurer which under the scheme are to be allotted or appropriated by that insurer to or for any person;
- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
- (d) the dissolution, without winding up, of the transferor;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.

(3) Where the transferor is a Gibraltar or non-EEA insurer, it is immaterial for the purposes of sub-paragraphs (1)(a), (c) and (e) and (2) that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State.

(4) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property, an order which by virtue of this paragraph operates to transfer any property shall be treated as an instrument of transfer.

(5) Where a scheme is sanctioned by an order of the Court under this Part of this Schedule, the transferee shall, within ten days from the date on which the order is made or such longer period as the Commissioner may allow, deposit two office copies of the order with the Commissioner.

(6) In this paragraph "property" includes property, rights and powers of every description, "liabilities" includes duties and "shares" and "debentures" have the same meaning as in the Companies Ordinance.

## PART II

### TRANSFERS OF GENERAL BUSINESS

#### *Approval of the Commissioner required*

6.(1) Where it is proposed to execute an instrument by which a holder of a licence issued under this Ordinance ("the transferor") is to transfer to another body ("the transferee") all its rights and obligations under such general policies, or general policies of such descriptions as may be specified in the instrument, and -

(a) where the transferor is a Gibraltar insurer, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in Gibraltar or one or more EEA States; or

(b) where the transferor is not a Gibraltar insurer, the performance by it of the obligations proposed to be transferred constitutes the carrying on of insurance business in Gibraltar,

the transferor may apply to the Commissioner for his approval of the transfer.

(2) Any notice or other document authorised or required to be given or served under this Part of this Schedule may, without prejudice to any other method of service, be served by post; and a letter containing the notice or other document shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in Gibraltar.

(3) In this Part of this Schedule -

"direct insurance" means insurance other than reinsurance;

"general policy" means a policy evidencing a contract the effecting of which constitutes the carrying on of general business.

*Procedure with respect to applications*

7.(1) The Commissioner shall not determine an application made under paragraph 6 unless he is satisfied that -

(a) a notice approved by him for the purpose has been published in the Gibraltar Gazette and, if he thinks fit -

(i) in two newspapers circulating in Gibraltar which have been so approved; and

(ii) where the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in an EEA State, in two national newspapers in that EEA State.

(b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor; and

(c) copies of a statement setting out particulars of the transfer and approved by him for the purpose have been available for inspection -

(i) at one or more places in Gibraltar; and

(ii) where the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, the risk is situated in an EEA State, at one or more places in that EEA State,

for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a).

(2) The notice referred to in sub-paragraph (1) shall include a statement that written representations concerning the transfer may be sent to the Commissioner before a specified day, which shall not be earlier than sixty days after the day of the first publication of the notice in accordance with

sub-paragraph (1)(a) and the Commissioner shall not determine the application until after considering any representations made to him before the specified day.

(3) For the purposes of this paragraph a policy holder is an "affected policy holder" in relation to a proposed transfer if -

- (a) his policy is included in the transfer, or
- (b) his policy is with the transferor and the Commissioner has certified, after consulting the transferor, that in the opinion of the Commissioner the policy holder's rights and obligations under the policy will or may be materially affected by the transfer.

*Determination of applications*

8. (1) Where the transferor is a Gibraltar or non-EEA insurer and any policy included in the proposed transfer evidences a contract of direct insurance, the Commissioner shall not approve the transfer unless -

- (a) he is satisfied that the transferee is, or will be immediately after the approval -
  - (i) licensed under this Ordinance to carry on, or
  - (ii) authorised in accordance with Article 6 of the first general insurance Directive to carry on in an EEA State,

general business of the Class or Classes to be transferred by the instrument;

- (b) he is also satisfied that every policy included in the transfer evidences a contract which was entered into before the date of the application;
- (c) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account;
- (d) where the transferor is a Gibraltar insurer and the establishment from which the policies are to be transferred is situated in an EEA State, the Commissioner is satisfied -

(i) that the supervisory authority in that EEA State has been consulted about the proposed transfer; and

(ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed; and

(e) in the opinion of the Commissioner the circumstances of the case justify the giving of his approval.

(2) Where sub-paragraph (1) applies and, as regards any policy which is included in the proposed transfer and evidences a contract of direct insurance, the risk is situated in an EEA State, the Commissioner shall not approve the transfer unless he is satisfied -

(a) that the supervisory authority in that EEA State has been notified of the proposed transfer;

(b) either that the authority has consented to the transfer or that the authority has not refused its consent to the transfer within the period of three months beginning with the notification.

(3) Where the transferor is not a Gibraltar or non-EEA insurer or any policy included in the proposed transfer evidences a contract of reinsurance, the Commissioner shall not approve the transfer on an application under paragraph 6 unless he is satisfied that -

(a) the transferee is, or will be immediately after the approval -

(i) licensed under this Ordinance to carry on, or

(ii) an EEA insurer which is not precluded by Part I of Schedule 13 to this Ordinance from carrying on,

general business of the Class or Classes to be transferred by the instrument; and

(b) every policy included in the proposed transfer evidences a contract which was entered into before the date of the application,

and in his opinion the transferee's financial resources and the other circumstances of the case justify the giving of his approval.



(4) Where the Commissioner determines an application under paragraph 6, he shall -

- (a) publish a notice of his decision in the Gibraltar Gazette and in such other manner as he may think fit, and
- (b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in paragraph 7(1);

and if he refuses the application he shall inform the transferor and the transferee in writing of the reasons for his refusal.

(5) In this paragraph "the relevant authority" means -

- (a) if the transferee is a Gibraltar insurer, the Commissioner;
- (b) if the transferee is an EEA insurer the supervisory authority in its home State;
- (c) if the transferee is a Swiss general insurance company, the supervisory authority in Switzerland;
- (d) if the transferee does not fall within paragraphs (a) to (c), the Commissioner or other authority which, in accordance with Article 25 or 26 of the first general insurance Directive, is responsible for supervising the transferee's margin of solvency.

*Rights of policy holders*

9. (1) This paragraph applies where the Commissioner approves an application made under paragraph 6 and the transferor is a Gibraltar or non-EEA insurer and, as regards any policy included in the transfer which evidences a contract of direct insurance, an EEA State is the State in which the risk is situated.

(2) The Commissioner shall direct that -

(a) notice of his decision, and of the execution of any instrument giving effect to the transfer, shall be published in the EEA State in which the risk is situated; and

(b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;

and the instrument shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.

(3) The law of the EEA State in which the risk is situated shall determine -

(a) whether the policy holder has a right to cancel the policy; and

(b) the conditions applicable to any such right.

*Effect of approval of the Commissioner*

10. (1) Subject to paragraph 9(2), an instrument giving effect to a transfer approved by the Commissioner under this Part of this Schedule shall be effectual in law -

(a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument, and

(b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Where the transferor is a Gibraltar or non-EEA insurer, it is immaterial for the purposes of sub-paragraph (1) that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State.

(3) Except in so far as the Commissioner may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by

it unless he has been given written notice of its execution by the transferor or the transferee.

SCHEDULE 11

Section 43

FURTHER PROVISIONS WITH RESPECT TO CONTROLLERS OF  
GIBRALTAR INSURERS.

*Provisions supplementing sections 40 to 42*

1. (1) This paragraph applies where -

- (a) a Gibraltar insurer which proposes to appoint a person as managing director or chief executive;
- (b) a person who proposes to become a controller of such an insurer; or
- (c) a person who is a controller of such an insurer and who proposes to acquire a notifiable holding,

has served notice on the Commissioner under subsection (1)(a) of section 40, 41 or 42 ("the relevant section").

(2) The Commissioner may by notice in writing require the person serving the notice or, in a case falling within sub-paragraph (1)(a), the person proposed to be appointed to provide such additional information or documents as he may reasonably require for the purpose of deciding whether to serve -

- (a) a notice of objection under the relevant section; or
- (b) a notice imposing conditions under paragraph 3.

(3) Where additional information or documents are required from any person by a notice under sub-paragraph (2), the time between the giving of that notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b) of the relevant section.

(4) The notice shall be of no effect for the purposes of subsection (1) of the relevant section if either the notice is withdrawn or -

(a) in the case of a notice under section 40(1)(a), the person proposed to be appointed as managing director or chief executive of the insurer is not so appointed;

(b) in the case of notice under section 41(1)(a) the person by whom it was served does not become a controller of the insurer; or

(c) in the case of notice under section 42(1)(a) the person by whom it was served does not acquire the holding specified in the notice,

before the end of the period of one year beginning with the date mentioned in sub-paragraph (5).

(5) The date referred to in sub-paragraph (4) is as follows -

(a) in a case where the Commissioner has, before the end of the period mentioned in subsection (1)(b) of the relevant section, given to the person serving the notice such a notification as is mentioned in that provision, the date of that notification;

(b) in a case where the Commissioner has, before the end of that period, served a notice imposing conditions on that person in accordance with paragraph 3 the date of the service of that notice; and

(c) in any other case, the date immediately following the end of that period.

(6) The period mentioned in subsection (1)(b) of the relevant section shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with that section.

*Notice of objection where requisite notice not given*

2.(1) This paragraph applies where -

(a) a Gibraltar insurer appoints a person as managing director or chief executive;

(b) a person becomes a controller of such an insurer otherwise than by virtue of an appointment in relation to which section 40 has effect; or

(c) a person who is a controller of such an insurer acquires a notifiable holding,

in contravention of subsection (1)(a) of section 40, 41 or 42; and references in this paragraph to the person in breach shall be construed accordingly.

(2) The Commissioner -

(a) may serve the person in breach with a notice of objection at any time within three months after he becomes aware of the contravention; and

(b) for the purpose of deciding whether to serve the person in breach with such a notice or with a notice imposing conditions under paragraph 3, may require that person by notice in writing to provide such information or document as he may reasonably require.

(3) Before serving a notice of objection under sub-paragraph (2), the Commissioner shall serve on the person in breach and, in a case falling within sub-paragraph (1)(a), on the person appointed as managing director or chief executive a preliminary written notice -

(a) stating that he is considering serving a notice of objection on the person in breach; and

(b) specifying the matters mentioned in sub-paragraph (5) as respects which he is not satisfied.

(4) A person served with a preliminary notice under sub-paragraph (3) may, within the period of one month from the date of service of that notice, make written and oral representations to the Commissioner.

(5) The Commissioner shall not serve a notice of objection under sub-paragraph (2) unless it appears to him -

(a) that the person appointed is or may not be fit and proper person to be the managing director or chief executive of the insurer or, as the case may be, that the person in breach is not or may not be a fit and proper person to be a controller of the insurer or to retain the notifiable holding in the insurer; or

(b) that the interests of policy holders and potential policy holders of the insurer are or may in some other manner be jeopardised by that person's ability to influence the insurer.

(6) Where representations are made in accordance with this paragraph the Commissioner shall take them into consideration before serving a notice of objection.

(7) The Commissioner shall not be obliged to disclose to the person in breach any particulars of the ground on which he is considering the service of a notice of objection.

(8) The period mentioned in sub-paragraph (2)(a) shall be deemed not to expire until fourteen days after the end of the period within which representations may be made in accordance with this paragraph.

(9) After a notice of objection has been served on an insurer in relation to a person who is a managing director or chief executive, the insurer shall forthwith remove that person from that office.

*Notices imposing conditions*

3.(1) This paragraph applies where either -

(a) paragraph 1 applies and the Commissioner is entitled to serve a notice of objection under the relevant section; or

(b) paragraph 2 applies;

and in this paragraph expressions which are also used in paragraph 1 or 2 have the same meanings as in that paragraph.

(2) If, in a case falling within sub-paragraph (1)(a) the Commissioner considers that, if certain conditions were complied with -

(a) by the person serving the notice under subsection (1)(a) of the relevant section; or

(b) where the notice is under section 40(1)(a), by the person proposed to be appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case may be, would be fulfilled in respect of the insurer, he may, instead of serving a notice of objection under the relevant section, serve a notice requiring the conditions in question to be complied with by that person ("the person concerned").

A notice under this sub-paragraph shall be served -

- (a) on the person concerned, and
- (b) where that person is proposed to be appointed as managing director or chief executive, on the insurer.

(3) If, in a case falling within sub-paragraph (1)(b), the Commissioner considers that, if certain conditions were complied with -

- (a) by the person in breach; or
- (b) where the contravention is of section 40(1)(a) above, by the person appointed as managing director or chief executive,

the criteria of sound and prudent management would continue to be or, as the case maybe, would be fulfilled in respect of the insurer, he may, instead of serving a notice of objection under paragraph 2, serve a notice requiring the conditions in question to be complied with by that person ("the person concerned").

A notice under this sub-paragraph shall be served -

- (a) on the person concerned, and
- (b) where that person has been appointed as managing director or chief executive, on the insurer.

(4) Before serving a notice under sub-paragraph (2) or (3), the Commissioner shall serve on the person concerned and, where that person is proposed to be or has been appointed as managing director or chief executive, on the insurer a preliminary written notice stating -

- (a) that the Commissioner is considering serving a notice under that sub-paragraph;

(b) the conditions which would be required by such a notice to be complied with by the person concerned;

(c) the criteria of sound and prudent management which he considers would not be fulfilled in respect of the insurer if he served neither such a notice nor a notice of objection under subsection (1)(a) of the relevant section or, as the case may be, paragraph 2; and

(d) that the person on whom the preliminary notice is served may, within the period of one month from the date of serving of that notice, make written and oral representations to the Commissioner.

(5) Where representations are made in accordance with this paragraph the Commissioner shall take them into consideration before serving a notice under sub-paragraph (2) or (3).

(6) The Commissioner shall not be obliged to disclose -

(a) to the person concerned; or

(b) where that person is proposed to be or has been appointed as managing director or chief executive, to the insurer,

any particulars of the ground on which he is considering the service of a notice under sub-paragraph (2) or (3) or a notice of objection under the relevant section or, as the case may be, paragraph 2.

*Objection to existing controller*

4. (1) Where it appears to the Commissioner that the criteria of sound and prudent management are not or may not be fulfilled in respect of a Gibraltar insurer by reason of the ability of a person who is a controller to influence the insurer, he may -

(a) where that person is the managing director or chief executive, serve on the insurer; and

(b) in any other case, serve on that person,



a written notice of objection to that person continuing to be a controller of the insurer.

(2) Before serving a notice of objection under this paragraph, the Commissioner shall serve -

- (a) on the person concerned; and
- (b) where that person is the managing director or chief executive, on the insurer,

a preliminary written notice stating that the Commissioner is considering serving a notice of objection under this paragraph.

(3) A notice under sub-paragraph (2) shall -

- (a) give particulars of the rights conferred by sub-paragraph (4); and
- (b) specify the criteria of sound and prudent management which are not or may not be fulfilled in respect of the insurer.

(4) A person served with a notice under sub-paragraph (2) may, within the period of one month beginning with the day on which the notice is served, make written and oral representations to the Commissioner.

(5) Where representations are made in accordance with this paragraph, the Commissioner shall take them into consideration before serving a notice of objection.

(6) The Commissioner shall not be obliged to disclose to the person concerned or to the insurer any particulars of the ground on which he is considering the service of a notice of objection.

(7) After a notice of objection has been served on an insurer in relation to a person who is a managing director or chief executive, the insurer shall forthwith remove that person from that office.

*Restrictions etc. as respects shareholdings*

5. (1) This paragraph applies where a person -

(a) has contravened section 41 or 42 by becoming a shareholder controller of a Gibraltar insurer, or by acquiring a notifiable holding in such an insurer;

(b) having become such a controller or acquired such a holding in contravention of section 41 or 42, continues to be such a controller or to retain that holding after being served with a notice of objection under paragraph 2;

(c) having been served with a notice imposing conditions under paragraph 3 in a case where -

(i) a notice of objection to his becoming such a controller or acquiring such a holding would otherwise have been served under section 41 or 42, or

(ii) a notice of objection to his continuing to be such a controller or retaining such a holding would otherwise have been served under paragraph 2,

has failed to comply with any of the conditions specified in the notice under paragraph 3; or

(d) having been served with a notice of objection under paragraph 4 to his continuing to be such a controller, continues to be such a controller;

and references in this paragraph to the person in breach shall be construed accordingly.

(2) The Commissioner may by notice in writing served on the person in breach direct that any specified shares to which this paragraph applies shall, until further notice, be subject to one or more of the following restrictions -

(a) any transfer of or agreement to transfer the shares, or (in the case of unissued shares) any transfer of or agreement to transfer the right to be issued with the shares, shall be void;

(b) no voting rights shall be exercisable in respect of the shares;

(c) no further shares shall be issued in right of the shares or in pursuance of any offer made to the holder of the shares;

(d) except in a liquidation, no payment shall be made of any sums due from the insurer in respect of the shares, whether by way of a repayment of capital or otherwise.

(3) The court may, on the application of the Commissioner, by order direct that any specified shares to which this paragraph applies -

(a) shall be sold; and

(b) if they are for the time being subject to any restrictions under sub-paragraph (2) shall cease to be subject to those restrictions.

(4) Where an order has been made under sub-paragraph (3) the Supreme Court may, on the application of the Commissioner make such further order relating to the sale or transfer of the shares as it thinks fit.

(5) Where the shares are sold in pursuance of an order under this section -

(a) the net proceeds of the sale shall be made into court for the benefit of persons beneficially interested in them; and

(b) any such person may apply to the court for the whole or any part of the proceeds to be paid to him.

(6) This paragraph applies to -

(a) all shares in the insurer which -

(i) are held by the person in breach; and

(ii) were not so held immediately before he became a shareholder controller of the insurer or, as the case may be, acquired a notifiable holding in the insurer; and

(b) where the person in breach became such a controller or acquired such a holding as a result of the acquisition by him of shares or voting rights in another company, all shares in that company which -

(i) are held by him; and

(ii) were not so held immediately before he became such a controller or acquired such a holding.

(7) Sub-paragraph (6) shall have effect as if references to the person in breach acquiring a notifiable holding in the insurer were -

(a) in a case falling within paragraph (a), (b) or (c)(ii) of sub-paragraph (1) references to his doing so in contravention of section 41 or 42; and

(b) in a case falling within paragraph (c)(i) of sub-paragraph (1), references to his doing so after the serve of the notice imposing conditions under paragraph 3.

(8) A copy of the notice served on the person in breach under sub-paragraph (2) shall be served on the company to whose shares or voting rights it relates.

#### SCHEDULE 12

#### Section 70B

#### INFORMATION FOR POLICY HOLDERS OF GIBRALTAR INSURERS AND EEA INSURERS

##### *Information before contract of long term insurance*

1. (1) Subject to sub-paragraph (2) and paragraph 5, this paragraph applies to a contract entered into by a Gibraltar or EEA insurer the effecting of which constitutes -

(a) the carrying on in Gibraltar of long term business which is not reinsurance business; or

(b) the provision there of long term insurance.

(2) This paragraph does not apply to a contract entered into by an authorised person the effecting of which constitutes the carrying on in Gibraltar of investment business; and in this sub-paragraph expressions which are also used in the Financial Services Ordinance have the same meanings as in that Ordinance.

(3) Before entering into a contract to which this paragraph applies, the insurer shall furnish the other party to the contract in writing with the following information -

- (a) the name and legal form of the insurer;
- (b) the insurer's home State and, where appropriate, the EEA State of the branch through which the contract is to be entered into;
- (c) the address of the insurer's head office and, where appropriate, the address of the branch through which the contract is to be entered into.
- (d) a definition of each benefit and option;
- (e) the term of the contract and the means by which it may be terminated;
- (f) the method of paying premiums and the duration of the payments;
- (g) the method of calculating bonuses and the distribution of bonuses;
- (h) an indication of surrender and paid-up values and the extent to which such values are guaranteed;
- (j) an indication of the premiums for each benefit, whether a main or supplementary benefit;
- (k) in the case of a contract for a unit-linked policy, a definition of the units to which benefits are linked and an indication of the nature of the underlying assets;
- (l) information as to the following, namely -
  - (i) the arrangements with respect to the period within which the policy holder may cancel the contract;
  - (ii) the tax arrangements applicable to the policy to be effected by the contract; and
  - (iii) the arrangements for handling any complaints concerning the contract, whether by the other party or any other person who is a life assured or beneficiary; and

(m) whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, the law which the insurer proposes to choose; and

(ii) if not, the law which will be so applicable.

(4) Any information required by sub-paragraph (3) shall be furnished in English except that, where the other party to the contract so requests, it may instead be furnished in an official language of an EEA State.

*Information during contract of long term insurance*

2. (1) This paragraph applies where a Gibraltar or EEA insurer has, on or after [the date on which amended Ordinance comes into effect], entered into a contract the effecting of which constitutes -

(a) the carrying on in Gibraltar of long term business which is not reinsurance business; or

(b) the provision there of long term insurance.

(2) If during the term of the contract there is any change in the information mentioned in paragraphs (a) to (j) of sub-paragraph (3) of paragraph 1, the insurer shall inform the other party to the contract in writing of the effect of the change.

(3) If the contract provides for the payment of bonuses, the insurer shall, at least once in every calendar year except the first, inform the other party to the contract in writing of the amount of any bonus -

(a) which has become payable under the contract, and

(b) of which that party has not been previously informed under this sub-paragraph.

(4) There is a sufficient compliance with sub-paragraph (3) if the insurer furnishes the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that sub-paragraph, or if the insurer informs that party of -

- (a) the total value of the benefits (including bonuses) which have accrued under the contract; and
  - (b) the rates of bonus which have been declared since that party was previously informed under this sub-paragraph.
- (5) In this paragraph "bonus" does not include a bonus the amount of which is specified in the contract.

*Information before contract of general insurance*

3. 1) This paragraph applies to a contract entered into by a Gibraltar or EEA insurer if -

- (a) the effecting of the contract constitutes -
  - (i) the carrying on in Gibraltar of general business which is not reinsurance business; or
  - (ii) the provision there of general insurance; and
- (b) the risk covered by the contract is situated in Gibraltar.

(2) Before entering into a contract to which this paragraph applies, the insurer shall, if the other party (or one of the other parties) to the contract is an individual, inform that party in writing -

- (a) of any arrangements which exist for handling complaints concerning the contract including, where appropriate, the name and address of any body which deals with complaints from any party to the contract;
- (b) that the existence of a complaints body does not affect any right of action which any party to the contract may have against the insurer; and
- (c) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -
  - (i) if so, of the law which the insurer proposes to choose; and
  - (ii) if not, of the law which will be so applicable.

(3) If the information required by sub-paragraph (2) is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.

4.(1) Subject to sub-paragraph (2), this paragraph applies to a contract to which paragraph 3 applies.

(2) This paragraph does not apply to a contract entered into by a Gibraltar insurer unless the effecting of the contract constitutes the provision of general insurance in Gibraltar.

(3) Before entering into a contract to which this paragraph applies, the insurer shall, unless the contract is for the coverage of large risks only, inform the other party to the contract in writing of the EEA State in which is situated the establishment which will cover the risks; and any document issued to that party by the insurer shall also contain that information.

(4) If the information required by sub-paragraph (3) is furnished otherwise than in writing before the time when the contract is entered into, there is a sufficient compliance with that sub-paragraph if it is also furnished in writing as soon as practicable after that time.

(5) Any relevant document issued by the insurer in relation to a contract to which this paragraph applies shall state -

(a) the address of the establishment through which the risk is to be covered; and

(b) where the contract relates to relevant motor vehicle risks and the effecting of the contract constitutes the provision of insurance in Gibraltar, the name and address of the claims representative.

(6) In this paragraph "relevant document", in relation to a contract to which this paragraph applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

*General*



5. (1) In the case of a contract involving two or more parties, this Schedule shall have effect as if a separate contract were being or had been entered into by the insurer with each of these parties.

(2) Paragraphs 1 and 2 of this Schedule shall not apply in relation to a contract unless the other party to the contract is habitually resident in Gibraltar at the time when the contract is entered into.

(3) In this paragraph "other party", in relation to a contract, means a party to the contract other than the insurer.

#### SCHEDULE 13

Section 90A

#### RECOGNITION IN GIBRALTAR OF EEA INSURERS.

##### PART I

##### EEA INSURERS CARRYING ON BUSINESS ETC. IN GIBRALTAR.

##### *Requirements for carrying on direct insurance business*

1. (1) An EEA insurer shall not carry on direct insurance business of a class or part of a class through a branch in Gibraltar unless -

(a) the insurer is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive to carry on insurance business of that class or part of a class; and

(b) the requirements of this paragraph have been complied with in respect of that branch.

(2) The requirements of this paragraph are -

(a) that the supervisory authority in the insurer's home State has sent to the Commissioner -

(i) a notice which contains the requisite details; and

- (ii) a certificate in accordance with sub-paragraph (3); and
- (b) that either -
  - (i) the Commissioner has informed that authority of the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
  - (ii) the period of two months beginning with the day on which the Commissioner received the notice and certificate mentioned in paragraph (a) has elapsed.
- (3) A certificate given in respect of the insurer by the supervisory authority in its home State is in accordance with this sub-paragraph if it -
  - (a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate -
    - (i) Articles 16 and 17 of the first general insurance Directive, and
    - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
    - (b) indicates the classes of business which the insurer is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.
  - (4) The Commissioner shall as soon as practicable acknowledge receipt of the documents sent by the supervisory authority in the insurer's home State.
- 2. (1) An EEA insurer shall not change the requisite details of a branch -
  - (a) which has been established by it in Gibraltar; and
  - (b) through which it carries on direct insurance business,unless the requirements of this paragraph have been complied with in relation to its making of the change.
- (2) Subject to sub-paragraph (3), the requirements of this paragraph are -

(a) that the insurer has given a notice to the Commissioner, and to the supervisory authority in its home State, stating the details of the proposed change not less than one month before the change is to take place;

(b) that the Commissioner has received from that authority a notice stating that it has approved the proposed change; and

(c) that either -

(i) the Commissioner has informed that authority of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or

(ii) the period of two months beginning with the day on which the insurer gave the Commissioner the notice under paragraph (a) has elapsed.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change), give a notice to the Commissioner, and to the supervisory authority in its home State, stating the details of the change.

(4) The Commissioner shall as soon as practicable -

(a) acknowledge receipt of the documents sent under sub-paragraph (2) or (3); and

(b) in the case of a notice under sub-paragraph (3), inform the supervisory authority in the home State of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch.

*Requisite details for purposes of paragraphs 1 and 2*

3. The requisite details for the purposes of paragraphs 1 and 2 are -

(a) the name of the insurer;

(b) the address of the branch in Gibraltar and confirmation that it is an address for service on the insurer's authorised agent;

- (c) the name of the insurer's authorised agent;
- (d) a scheme of operations prepared in accordance with such requirements as may be imposed by the supervisory authority in its home State; and
- (e) in the case of an insurer which intends to cover relevant motor vehicle risks, confirmation that the insurer has become a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the UK Companies Act 1929 on 14th June 1946).

*Requirements for carrying on reinsurance business*

4. (1) An EEA insurer shall not carry on reinsurance business of any description through a branch in Gibraltar unless -

- (a) the insurer is entitled under the law of its home State to carry on business of that description; and
- (b) the requirements of this paragraph have been complied with in respect of that branch.

(2) The requirements of this paragraph are -

- (a) that the insurer has served on the Commissioner -
  - (i) a written notice stating its intention to carry on reinsurance business and containing the requisite details; and
  - (ii) a statement from the supervisory authority in its home State stating the classes of business which the insurer carries on and declaring that the insurer has the required margin of solvency or minimum guarantee fund; and
- (b) that either -
  - (i) the Commissioner has informed the insurer that it may begin to carry on the reinsurance business; or
  - (ii) the period of three months beginning with the date of service of that notice has expired.

5. (1) An EEA insurer shall not change the requisite details of a branch -

- (a) which has been established by it in Gibraltar; and
- (b) through which it carries on reinsurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3), the requirements of this paragraph are that the insurer has given a notice to the Commissioner stating the details of the proposed change not less than one month before the change is to take place.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change), give a notice to the Commissioner stating the details of the change.

*Requisite details for purposes of paragraphs 4 and 5*

6. The requisite details for the purposes of paragraphs 4 and 5 are -

- (a) the name of the insurer;
- (b) the address of the branch in Gibraltar and confirmation that it is an address for service on the insurer's authorised agent;
- (c) the name of the insurer's authorised agent;
- (d) a scheme of operations containing particulars of the reinsurance business to be carried on through the branch.

*Power of the Commissioner where notice given under paragraph 4 or 5*

7. (1) This paragraph applies where the Commissioner receives from an EEA insurer a notice given in accordance with paragraph 4 or 5.

(2) The Commissioner may, before the end of the period of three months beginning with the day on which he receives the notice, direct that the insurer requires to be licensed under this Ordinance.

(3) Before giving a direction under sub-paragraph (2), the Commissioner shall serve on the insurer a written notice stating -

(a) that he is considering giving a direction and particulars of the ground on which he is considering it; and

(b) that the insurer may, within the period of one month from the date of service of the notice, make written and, if the insurer so requests oral representations to the Commissioner.

(4) Where representations are made in response to a notice under sub-paragraph (3), the Commissioner shall take them into account before giving a direction.

*Requirements for providing insurance*

8. (1) An EEA insurer shall not provide insurance of a class or part of a class in Gibraltar unless the insurer is authorised in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive to carry on insurance business of that class or part of a class and either -

(a) the requirements of this paragraph have been complied with in respect of that insurance; or

(b) the insurance is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer.

(2) The requirements of this paragraph are -

(a) that the supervisory authority in the insurer's home State has sent to the Commissioner a notice containing the requisite details and a certificate in accordance with sub-paragraph (3); and

(b) that the insurer has been notified by that authority that it has sent such a notice to the Commissioner.

(3) A certificate is in accordance with this sub-paragraph if it -

(a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate -

- (i) Articles 16 and 17 of the first general insurance Directive, and
- (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
- (b) indicates the classes of business which the insurer is authorised to carry on in accordance with Article 6 of the first general insurance Directive or Article 6 of the first long term insurance Directive.

9.(1) An EEA insurer shall not change the requisite details relating to the provision of insurance in Gibraltar unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3), the requirements of this paragraph are -

- (a) that the insurer has given a notice to the supervisory authority in its home State stating the details of the proposed change; and
- (b) that the authority has passed to the Commissioner the information contained in that notice.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall, as soon as practicable, give a notice to the supervisory authority in its home State stating the details of the change.

*Requisite details for purposes of paragraphs 8 and 9*

10. The requisite details for the purposes of paragraphs 8 and 9 are -

- (a) the name and address of the insurer;
- (b) the nature of the risks or commitments which the insurer proposes to cover in Gibraltar; and
- (c) in the case of an insurer which intends to cover relevant motor vehicle risks -
  - (i) the name and address of the claims representative, and

(ii) confirmation that the insurer has become a member of the Motor Insurer's Bureau (being a company limited by guarantee and incorporated under the UK Companies Act 1929 on 14th June 1946).

*Additional requirements for covering relevant motor vehicle risks*

11. An EEA insurer shall not provide insurance in Gibraltar to cover relevant motor vehicle risks unless -

(a) it is a member of the Motor Insurers' Bureau (being a company limited by guarantee and incorporated under the UK Companies Act 1929 on 14th June 1946); and

(b) either it has appointed a claims representative or the insurance is provided by it participating in a Community co-insurance operation otherwise than as the leading insurer.

*Power to prevent disposal of assets*

12. (1) The powers conferred on the Commissioner by section 66A shall be exercisable in relation to an EEA insurer if the supervisory authority in the insurer's home State has, in accordance with Article 20(5) of the first general insurance Directive or Article 24(5) of the first long term insurance Directive, requested the Commissioner to prohibit the free disposal of assets of that insurer and has confirmed -

(a) that the insurer has failed to comply with the requirements of Article 15 of the first general insurance Directive or Article 17 of the first long term insurance Directive;

(b) that the solvency margin of the insurer has fallen below the minimum required by Article 16(3) of the first general insurance Directive or Article 19 of the first long term insurance Directive; or

(c) that the solvency margin of the insurer has fallen below the guarantee fund as defined in Article 17 of the first general insurance Directive or Article 20 of the first long term insurance Directive.



(2) Those powers shall also be so exercisable if the Commissioner is notified by that authority that the insurer's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.

*Powers to obtain information*

13. (1) Subject to sub-paragraph (2), the powers conferred by section 98 on the Commissioner or persons authorised by him shall be exercisable in respect of an EEA insurer if either -

(a) the following requirements are fulfilled, namely -

(i) the supervisory authority in the insurer's home State has made a written request to the Commissioner to obtain information from the insurer; and

(ii) the Commissioner is satisfied that the information to be acquired is necessary to enable that supervisory authority to perform its obligations under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; or

(b) the Commissioner considers the exercise of those powers in respect of that insurer to be necessary to enable him to perform his functions under this Ordinance.

(2) The Commissioner shall not exercise the powers conferred by sub-section (3), (4) or (7) of section 98 in respect of an EEA insurer unless the requirements of sub-paragraph (1)(a) are fulfilled.

14. (1) The powers conferred by section 98 on the Commissioner shall be exercisable in respect of an EEA insurer by a person authorised by the supervisory authority in the insurer's home State if -

(a) the information to be requested by that person is necessary to enable the authority to perform its obligations in respect of the insurer under Article 19 of the first general insurance Directive or Article 23 of the first long term insurance Directive; and

(b) the authority has notified the Commissioner in writing of that person's intention to exercise those powers.

(2) An agent of the Commissioner may accompany a person so authorised while he is acting in the exercise of those powers.

*Residual power to protect policy holders*

15. The Commissioner may exercise his powers under section 100 in relation to an EEA insurer if the supervisory authority in the insurer's home State -

- (a) has informed the Commissioner that the insurer's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term Directive; and
- (b) in accordance with that Article, has requested the Commissioner to take measures in Gibraltar to safeguard the interests of policy holders of the insurer.

*Powers of intervention*

16. (1) Where it appears to the Commissioner that an EEA insurer has failed to comply with any provision of law applicable to its insurance activities in Gibraltar, he may require it to take such steps as he may specify to comply with that provision.

(2) If the insurer fails to comply with a requirement under sub-paragraph (1), the Commissioner shall notify the supervisory authority in the home State.

(3) If, after the Commissioner has taken the action mentioned in sub-paragraphs (1) and (2), the insurer persists in contravening the provision in question, the Commissioner may, after informing the supervisory authority of the home State, direct the insurer to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of any specified description, in Gibraltar.

(4) The Commissioner may exercise his powers under sub-paragraph (3) without the conditions there mentioned being fulfilled if he considers that those powers should be exercised as a matter of urgency.

(5) After giving a direction under this paragraph, the Commissioner shall by notice in writing inform the insurer of his reasons for doing so.

(6) A direction under this paragraph does not prevent the insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(7) A requirement or direction under this paragraph may be varied or revoked by the Commissioner.

*Power to withdraw recognition*

17. 1) This paragraph applies where -

(a) an EEA insurer is carrying on insurance business or providing insurance in Gibraltar; and

(b) the Commissioner is notified by the supervisory authority in the home State that the insurer's authorisation has been withdrawn, or has lapsed, in accordance with Article 22 of the first general insurance Directive or Article 26 of the first long term insurance Directive.

(2) The Commissioner may direct the insurer to cease to carry on insurance business or provide insurance, or to cease to carry on insurance business or provide insurance of a specified description, in Gibraltar through all, or any specified, establishments.

(3) After giving such a direction, the Commissioner shall by notice in writing inform the insurer of his reasons for doing so.

(4) A direction under this paragraph does not prevent the insurer from effecting or carrying out a contract of insurance in pursuance of a term of a subsisting contract of insurance.

PART II

SUPPLEMENTAL

*Offences*

18.(1) An EEA insurer commits an offence if -

- (a) it carries on insurance business in Gibraltar in contravention of paragraph 1 or 4;
- (b) in contravention of paragraph 2 or 5, it changes the requisite details of a branch established by it in Gibraltar;
- (c) it provides insurance in Gibraltar in contravention of paragraph 8 or 11;
- (d) in contravention of paragraph 9, it changes the requisite details relating to the provision of insurance in Gibraltar; or
- (e) it makes default in complying with, or with a requirement imposed under, any other provision of Part I of this Schedule.

(2) A person commits an offence if -

- (a) in purported compliance with a requirement under paragraph 13 or 14, he furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular; or
- (b) he causes or permits to be included in a document required by paragraph 1, 2, 4, 8 or 9 to be sent to the Commissioner a statement which he knows to be false in a material particular, or recklessly causes or permits to be so included a statement which is false in a material particular.

(3) A person committing an offence under this paragraph is liable on summary conviction to a fine at level 3 on the standard scale.

*Interpretation etc.*

19.(1) In this Schedule -

"authorised agent", in relation to an EEA insurer, means an agent or employee of the insurer who has authority -

- (a) to bind the insurer in its relations with third parties; and

(b) to represent the insurer in its relations with the supervisory authorities and courts in Gibraltar;

"direct insurance business" means insurance business other than reinsurance business.

(2) In this Schedule references in Part I to the provision of insurance in Gibraltar are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in Gibraltar through an establishment in an EEA State.

(3) An EEA insurer shall not be regarded for the purposes of this Ordinance as carrying on insurance business in Gibraltar by reason only of the fact that it provides insurance in Gibraltar.

*Gibraltar and the United Kingdom*

20. In paragraphs 21 and 22 "UK insurer" means an insurance company whose head office is in the United Kingdom.

21. (1) Where, in the case of an EEA insurer which is not a UK insurer, United Kingdom requirements corresponding to those of paragraph 1 have been complied with in respect of a branch, the requirements of that paragraph, and those of paragraph 2, shall not apply.

(2) Where, in the case of an EEA insurer which is not a UK insurer, United Kingdom requirements corresponding to those of paragraph 4 have been complied with in respect of a branch, the requirements of that paragraph, and those of paragraph 5, shall not apply.

(3) Where, in the case of an EEA insurer which is not a UK insurer, United Kingdom requirements corresponding to those of paragraph 8 have been complied with in respect of the provision of any insurance, the requirements of that paragraph, and those of paragraph 9, shall not apply.

(4) In this paragraph "United Kingdom requirements" means requirements imposed under any provision of the laws of the United Kingdom.

22.(1) Where, in the case of an EEA insurer which is not a UK insurer -

(a) the requirements of paragraph 1 or 4 are complied with in respect of a branch; and

(b) the requisite details for the purposes of that paragraph indicate that the insurer intends to carry on insurance business in the United Kingdom,

the Commissioner shall send to the supervisory authority in the United Kingdom a notice which contains those details.

(2) Where, in the case of an EEA insurer which is not a UK insurer -

(a) the requirements of paragraph 2 or 5 are complied with in respect of a branch; and

(b) the changes in requisite details for the purposes of that paragraph indicate that the insurer intends to carry on insurance business in the United Kingdom,

the Commissioner shall send to the supervisory authority in the United Kingdom a notice which contains details of the changes.

(3) Where, in the case of an EEA insurer which is not a UK insurer, the requirements of paragraph 8 are complied with in respect of the provision of any insurance, the Commissioner shall send to the supervisory authority in the United Kingdom a notice which contains the requisite details for the purposes of that paragraph.

SCHEDULE 14

Section 90B

RECOGNITION IN EEA STATES OF GIBRALTAR INSURERS

PART I

GIBRALTAR INSURERS CARRYING ON BUSINESS ETC. IN EEA STATES.

*Requirements for carrying on direct insurance business*

1. (1) A Gibraltar insurer shall not carry on direct insurance business of a class or part of a class through a branch in an EEA State unless -

- (a) the insurer is licensed under this Ordinance to carry on insurance business of that class or part of a class; and
- (b) the requirements of this paragraph have been complied with in respect of that branch.

(2) The requirements of this paragraph are -

- (a) that the insurer has given to the Commissioner a notice containing the requisite EEA details and the requisite Gibraltar details;
  - (b) that the Commissioner has given to the supervisory authority of the EEA State in which the branch is to be established ("the EEA State of the branch") -
    - (i) a notice which contains the requisite EEA details; and
    - (ii) a certificate in accordance with sub-paragraph (3); and
  - (c) that either -
    - (i) that authority has informed the Commissioner of the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or
    - (ii) the period of two months beginning with the day on which the Commissioner gave that authority the certificate mentioned in paragraph (b) has elapsed.
- (3) A certificate is in accordance with this sub-paragraph if it -

(a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate -

- (i) Articles 16 and 17 of the first general insurance Directive, and
  - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
- (b) indicates the classes of insurance business which the insurer is authorised to carry on in Gibraltar.

(4) The Commissioner shall, within the period of three months beginning with the date on which the insurer's notice was received -

- (a) give the notice and certificate referred to in sub-paragraph (2)(b); or
- (b) refuse to give either or both of those documents.

(5) The Commissioner shall, within the period of three months referred to in sub-paragraph (4), notify the insurer -

- (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b), stating the date on which he did so; or
- (b) that he has refused to give either or both of those documents, stating the reasons for the refusal.

(6) In the case of a Gibraltar insurer, the Commissioner shall not refuse to give the notice referred to in sub-paragraph (2)(b) unless, having regard to the business to be carried on through the branch, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.

(7) Where the supervisory authority of the EEA State of the branch has informed the Commissioner as mentioned in sub-paragraph (2)(c)(i), he shall forward the information to the insurer.

2. (1) A Gibraltar insurer shall not change the requisite EEA details of a branch -

- (a) which has been established by it in an EEA State ("the EEA State of the branch"); and



(b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3), the requirements of this paragraph are -

(a) that the insurer has given a notice to the Commissioner, and to the supervisory authority in the EEA State of the branch, stating the details of the proposed change not less than one month before the change is to take place;

(b) that the Commissioner has sent to that authority a notice in accordance with sub-paragraph (4)(a); and

(c) that either -

(i) that authority has informed the insurer of any consequential changes in the conditions which, in the interest of the general good, must be complied with by the insurer in carrying on insurance business through the branch; or

(ii) the period of two months beginning with the day on which the insurer gave that authority the notice of the proposed change in accordance with paragraph (a) has elapsed.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change) give a notice to the Commissioner, and to the supervisory authority in the EEA State of the branch, stating the details of the change.

(4) The Commissioner shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) -

(a) give notice to the supervisory authority in the EEA State of the branch informing it of the proposed change; or

(b) refuse to give such notice.

(5) The Commissioner shall, as soon as practicable after making a decision under sub-paragraph (4), notify the insurer -

(a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or

(b) that he refused to give the notice, stating the reasons for that refusal.

(6) In the case of a Gibraltar insurer, the Commissioner shall not refuse to give the notice referred to in sub-paragraph (4)(a) unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.

3. (1) A Gibraltar insurer shall not change the requisite Gibraltar details of a branch -

(a) which has been established by it in an EEA State; and

(b) through which it carries on direct insurance business,

unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) Subject to sub-paragraph (3), the requirements of this paragraph are that the insurer has given a notice to the Commissioner stating the details of the proposed change at least one month before the change is effected.

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable (whether before or after the change) give a notice to the Commissioner stating the details of the change.

*Requisite details for purposes of paragraphs 1 to 3*

4. (1) The requisite EEA details for the purposes of paragraphs 1 and 2 are -

(a) the EEA State in which the branch is to be or has been established ("the EEA State of the branch");

(b) the address of the branch and confirmation that it is an address for service on the insurer's authorised agent;

(c) the name of the insurer's authorised agent;

- (d) the classes or parts of classes of business to be carried on, and nature of the risks or commitments to be covered, in the EEA State of the branch;
- (e) details of the structural organisation of the branch;
- (f) the guiding principles as to reinsurance of business to be carried on in the EEA State of the branch, including the insurer's maximum retention per risk or event after all reinsurance ceded;
- (g) estimates of the following, namely -
  - (i) the costs of installing administrative services and the organisation for securing business in the EEA State of the branch;
  - (ii) the resources available to cover those costs; and
  - (iii) if risks within class 18 of Schedule 1 to this Ordinance are to be covered, the resources available for providing assistance;
- (h) for each of the first three financial years following the establishment of the branch -
  - (i) estimates of the insurer's margin of solvency and the margin of solvency required, and a statement showing how both have been calculated;
  - (ii) in the case of an insurer which intends to carry on long term business, the details mentioned in sub-paragraph (2) as respects the business to be carried on in the EEA State of the branch; and
  - (iii) in the case of an insurer which intends to carry on general business, the details mentioned in sub-paragraph (3) as respects the business to be so carried on;
- (j) in the case of an insurer which intends to cover relevant motor vehicle risks, confirmation that it has become a member of the national bureau and the national guarantee fund in the EEA State of the branch; and

(k) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

(2) The details referred to in sub-paragraph (1)(h)(ii) are -

(a) a statement showing, on both optimistic and pessimistic bases, for each type of contract or treaty -

(i) the number of contracts or treaties expected to be issued;

(ii) the total premium income, both gross and net of reinsurance ceded;

(iii) the total sums assured or the total amounts payable each year by way of annuity;

(b) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions; and

(c) estimates relating to the financial resources intended to cover underwriting liabilities.

(3) The details referred to in sub-paragraph (1)(h)(iii) are -

(a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current general expenses and commissions;

(b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and

(c) estimates relating to the financial resources intended to cover underwriting liabilities.

(4) The requisite Gibraltar details for the purposes of paragraphs 1 and 3 are -

(a) the names of the insurer's managers and main agents in the EEA State of the branch;

- (b) particulars of any association which exists or is proposed to exist between -
- (i) the directors and the controllers of the insurer; and
  - (ii) any person who will act as an insurance broker, agent, loss adjuster or reinsurer for the insurer in the EEA State of the branch;
- (c) the names of the principal reinsurers of business to be carried on in the EEA State of the branch;
- (d) the sources of business in the EEA State of the branch (for example, insurance brokers, agents, own employees or direct selling) with the approximate percentage expected from each of those sources;
- (e) copies or drafts of the following, namely -
- (i) any separate reinsurance treaties covering business to be written in the EEA State of the branch;
  - (ii) any standard agreements which the insurer will enter into with brokers or agents in the EEA State of the branch;
  - (iii) any agreements which the insurer will enter into with persons (other than employees of the insurer) who will manage the business to be carried on in the EEA State of the branch;
- (f) in the case of an insurer which intends to carry on long term business -
- (i) the technical bases which the actuary appointed in accordance with section 76 proposes to use for each class of business to be carried on in the EEA State of the branch, including the bases needed for calculating premium rates and mathematical reserves;
  - (ii) a statement by the actuary so appointed as to whether he considers that the premium rates which will be used in the EEA State of the branch are suitable;
  - (iii) a statement by that actuary as to whether he agrees with the information provided under sub-paragraphs (1)(f) and (2)(b) and (c); and

(iv) the technical bases used to calculate the statements and estimates referred to in sub-paragraph (2); and

(g) in the case of an insurer which intends to carry on general business, copies or drafts of any agreements which the insurer will have with main agents in the EEA State of the branch.

(5) In this paragraph "authorised agent" means an agent or employee of the insurer who has authority -

(a) to bind the insurer in its relations with third parties; and

(b) to represent the insurer in its relations with supervisory authorities and courts in the EEA State of the branch.

*Requirements for providing insurance*

5. (1) A Gibraltar insurer shall not provide insurance of any class or part of a class in an EEA State unless the insurer is licensed under this Ordinance to carry on insurance of that class or part of a class and either -

(a) the requirements of this paragraph have been complied with in relation to the provision of the insurance in that EEA State; or

(b) the insurance is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer.

(2) The requirements of this paragraph are -

(a) that the insurer has given to the Commissioner a notice containing the requisite details; and

(b) that the Commissioner has given to the supervisory authority in the EEA State in which the insurance is to be provided -

(i) a notice which contains the requisite details; and

(ii) a certificate in accordance with sub-paragraph (3).

(3) A certificate is in accordance with this sub-paragraph if it -

(a) attests that the insurer has the minimum margin of solvency calculated in accordance with such of the following as are appropriate -

- (i) Articles 16 and 17 of the first general insurance Directive, and
  - (ii) Articles 18, 19 and 20 of the first long term insurance Directive; and
- (b) indicates the classes of insurance business which the insurer is authorised to carry on in Gibraltar.

(4) Where the insurer intends to provide insurance in more than one EEA State, the requisite details may be contained in a single notification but must be set out separately in relation to each EEA State.

(5) The Commissioner shall, within the period of one month beginning with the date on which the insurer's notice was received -

- (a) give the notice and certificate referred to in sub-paragraph (2)(b) to the supervisory authority in the EEA State in which the insurer intends to provide insurance; or
- (b) refuse to give either or both of those documents.

(6) The Commissioner shall, within the period of one month referred to in sub-paragraph (5), notify the insurer -

- (a) that he has given the notice and certificate referred to in sub-paragraph (2)(b) to the supervisory authority in the EEA State in which the insurer intends to provide insurance, stating the date on which he did so; or
- (b) that he has refused to give either or both those documents, stating the reasons for the refusal.

(7) In the case of a Gibraltar insurer, the Commissioner shall not refuse to give the notice referred to in sub-paragraph (2)(b) unless, having regard to the insurance to be provided in the EEA State, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.

6. (1) A Gibraltar insurer shall not change the requisite details of the provision of insurance in an EEA State unless the requirements of this paragraph have been complied with in relation to its making of the change.

(2) The requirements of this paragraph are -

(a) that the insurer has given a notice to the Commissioner stating the details of the proposed change;

(b) that the Commissioner has sent to the supervisory authority in the EEA State in which the insurance is provided a notice in accordance with sub-paragraph (4)(a).

(3) In the case of a change occasioned by circumstances beyond the insurer's control, the requirements of this paragraph are that the insurer shall as soon as practicable give a notice to the Commissioner stating the details of the change.

(4) The Commissioner shall, as soon as practicable after receiving a notice under sub-paragraph (2)(a) either -

(a) give notice to the supervisory authority in the EEA State in which the insurance is provided informing it of the proposed change; or

(b) refuse to give such notice.

(5) The Commissioner shall, as soon as practicable after making a decision under sub-paragraph (4), notify the insurer -

(a) that he has given the notice referred to in that sub-paragraph, stating the date on which he did so; or

(b) that he has refused to give the notice, stating the reasons for the refusal.

(6) In the case of a Gibraltar insurer, the Commissioner shall not refuse to give the notice referred to in sub-paragraph (4)(a) unless, having regard to the proposed change, it appears to him that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.

*Requisite details for the purposes of paragraphs 5 and 6*

7. The requisite details for the purposes of paragraphs 5 and 6 are -



- (a) the EEA State in which the insurance is to be provided;
- (b) the nature of the risks or commitments which the insurer proposes to cover in that State;
- (c) in the case of an insurer which intends to provide insurance to cover relevant motor vehicle risks -
  - (i) a notice stating the name and address of the claims representative; and
  - (ii) a declaration that the insurer has become a member of the national bureau and the national guarantee fund in that State; and
- (d) in the case of an insurer which intends to cover health insurance risks, the technical bases which will be used for calculating premiums in respect of such risks.

*Requirement to notify cessation of insurance business etc.*

8. (1) A Gibraltar insurer which has ceased -

- (a) to carry on direct insurance business through a branch in an EEA State; or
- (b) to provide insurance in such an EEA State,

shall as soon as practicable notify the Commissioner in writing that it has done so.

(2) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

PART II

GIBRALTAR INSURERS PROVIDING INSURANCE IN GIBRALTAR  
THROUGH BRANCHES IN EEA STATES

9.(1) Where a Gibraltar insurer intends to provide insurance in Gibraltar, it shall before doing so notify the Commissioner in writing of its intention.

(2) The notification shall indicate -

(a) the EEA state in which is situated the branch through which the insurer intends to provide insurance in Gibraltar; and

(b) the nature of the risks or commitments which the insurer proposes to cover in Gibraltar.

(3) The insurer shall notify the Commissioner in writing if -

(a) it changes either of the details notified to the Commissioner under sub-paragraph (2); or

(b) it ceases to provide insurance in Gibraltar.

(4) Any insurance which is provided by the insurer participating in a Community co-insurance operation otherwise than as the leading insurer shall be disregarded for the purposes of this paragraph.

### PART III

#### SUPPLEMENTAL

##### *Offences*

10. (1) A Gibraltar insurer commits an offence if -

(a) it carries on insurance business in an EEA State in contravention of paragraph 1;

(b) in contravention of paragraph 2 or 3, it changes the requisite EEA details or, as the case may be, the requisite Gibraltar details of a branch established by it in such an EEA State;

(c) it provides insurance in such an EEA State in contravention of paragraph 5;

(d) in contravention of paragraph 6, it changes the requisite details relating to the provision of insurance in such an EEA State; or

(e) it makes default in complying with, or with a requirement imposed under, any other provision of this Schedule.

(2) A person commits an offence if he causes or permits to be included in a notification sent to the Commissioner under paragraph 1, 2, 3, 5 or 6 a statement which he knows to be false in a material particular or recklessly causes or permits to be so included a statement which is false in a material particular.

(3) A person committing an offence under this paragraph is liable on conviction on indictment, to a fine or, on summary conviction, to a fine at level 3 on the standard scale.

#### *Interpretation*

11. (1) In this Schedule -

"direct insurance business" means insurance business other than reinsurance business;

"health insurance risks", in relation to an EEA State, means risks falling within class 2 of Schedule 1 to this Ordinance (sickness) where -

(a) insurance contracts covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that State; and

(b) the law of that State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first sub-paragraph of Article 54(2) of the third general insurance Directive;

"national bureau", in relation to an EEA State, means a professional organisation -

(a) which has been constituted in that State in accordance with Recommendation No 5 adopted on 25th January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe; and

(b) which groups together insurance undertakings which in that State are authorised to conduct the business of motor vehicle liability insurance;

"national guarantee fund", in relation to an EEA State, means a body -

(a) which has been set up or authorised in that State in accordance with Article 1(4) of Council Directive 84/5/EEC; and

(b) which provides compensation for damage to property or personal injuries caused by unidentified vehicles or vehicles for which the insurance obligation provided for in Article 1(1) of that Directive has not been satisfied;

(2) In this Schedule -

(a) references in Part I to the provision of insurance in an EEA State are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in that EEA State through an establishment in an EEA State;

(b) references in Part II to the provision of insurance in Gibraltar are references to the covering (otherwise than by way of reinsurance) of a risk or commitment situated in Gibraltar through an establishment in an EEA State.

## SCHEDULE 15

Section 2(2)

### CRITERIA OF SOUND AND PRUDENT MANAGEMENT

*Integrity and skill*

1. The business of the insurer is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities.
2. Each director, controller, manager or main agent of the insurer is a fit and proper person to hold that position.
3. In the case of a non-EEA insurer -
  - (a) the representative referred to in section 25(4); or
  - (b) where that representative is not an individual, the individual representative referred to in section 25A(5),is a fit and proper person to hold that position.

*Direction and management of the insurer*

4. The insurer is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold.

*Business to be conducted in a sound and prudent manner*

5. The insurer conducts its business in a sound and prudent manner.
6. (1) The insurer shall not be regarded as conducting its business in a sound and prudent manner unless it maintains -
  - (a) adequate accounting and other records of its business; and
  - (b) adequate systems of control of its business and records.(2) Accounting and other records and systems of control shall not be regarded as adequate unless they are such as -
  - (a) to enable the business of the insurer to be prudently managed; and
  - (b) to enable the insurer to comply with the obligations imposed on it by or under this Ordinance and, in the case of a Gibraltar insurer, enactments in EEA States which apply to its insurance business.

(3) In determining whether any systems of control are adequate the Commissioner shall have regard to the functions and responsibilities for those systems which are held by the persons who are responsible for the direction and management of the insurer and to whom paragraph 2 applies.

7. The insurer shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders.

8. The insurers shall not be regarded as conducting its business in a sound and prudent manner if -

(a) it fails to satisfy an obligation to which it is subject by virtue of this Ordinance; or

(b) in the case of a Gibraltar insurer, it fails to satisfy an obligation to which it is subject by virtue of any provision of the law of an EEA State which applies to its insurance business in that State.

9. The insurer shall not be regarded as conducting its business in a sound and prudent manner if it fails to supervise the activities of a subsidiary undertaking -

(a) with due care and diligence; and

(b) without detriment to the insurer's business.

## SCHEDULE 16

## Section 16

### RESTRICTION ON DISCLOSURE OF INFORMATION

#### PART I

#### INFORMATION RELATING TO GIBRALTAR, EEA AND NON-EEA INSURERS.

##### *Restriction on disclosure*

1.(1) Subject to the following provisions of this Part of this Schedule, information which -

- (a) is restricted information for the purposes of this paragraph; and
- (b) relates to the business or other affairs of a relevant person,

shall not be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.

(2) Subject to sub-paragraph (3), information is restricted information for the purposes of this paragraph if it was obtained by the Commissioner for the purposes of, or in the discharge of, functions under this Ordinance or any rules or regulations made under this Ordinance (whether or not by virtue of any requirement to supply it made under those provisions).

(3) Information is not restricted information for the purposes of this paragraph if -

- (a) it has been made available to the public from other sources, or
- (b) it is information in the form of a summary or is information so framed as not to enable information relating to any particular person to be ascertained from it.

(4) The following are relevant persons for the purposes of this paragraph, namely -

- (a) any Gibraltar, EEA or non-EEA insurer; and
- (b) any controller, manager, chief executive, general representative, agent or employee of such an insurer.

(5) Any person who discloses information in contravention of this paragraph shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

*Disclosure for facilitating discharge of functions by the Commissioner*

2. (1) Paragraph 1 does not preclude the disclosure of information -

- (a) in any case in which disclosure is for the purpose of enabling or assisting the Commissioner to discharge his functions under this Ordinance or any rules or regulations made under this Ordinance (whether or not by virtue of any requirement to supply it made under those provisions);
- (b) if disclosure is in accordance with Article 16(6) of the third general insurance Directive, or Article 15(6) of third long term insurance Directive;
- (c) for the purpose of enabling or assisting any public or other authority to discharge any functions if disclosure is in accordance with Article 16 of the third general insurance Directive, or Article 15 of the third long term insurance Directive;
- (d) for the purpose of enabling or assisting an authority in a country or territory outside Gibraltar to exercise functions corresponding to those of the Financial Services Commissioner.

(2) Paragraph 2(1)(d) does not apply in relation to disclosure to an authority in a non-member State unless the Commissioner is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by this Part of this Schedule.

*Other permitted disclosures*

3.(1) Paragraph 1 does not preclude the disclosure of information -

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;
- (b) with a view to the institution of or otherwise for the purposes of any disciplinary proceedings relating to the exercise by an auditor or actuary of his professional duties;
- (c) in pursuance of an EEA obligation.

(2) Paragraph (1) does not preclude the disclosure by the Commissioner to appropriate legal authorities of -

- (a) information obtained by virtue of section 98, 100A, 102 or 104; or



(b) information in the possession of the Commissioner as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(3) Paragraph (1) shall not apply to the disclosure of any information -

(a) made to a person qualified in law, accountancy, valuation or any other matter requiring professional skill and knowledge, in order to obtain advice for the purposes of the Ordinance;

(b) made to or by a person engaged in the administration of the Ordinance, for the purpose of giving effect to the Ordinance; or

(c) permitted or required by this or any other Ordinance.

*Information supplied by a supervisory authority*

4. (1) Paragraph 1 applies also to information which -

(a) has been supplied to the Commissioner for the purposes of any relevant functions by a supervisory authority in an EEA State; or

(b) has been obtained for those purposes by the Commissioner, or by a person acting on his behalf, in an EEA State.

(2) Subject to sub-paragraphs (3) and (4), information supplied or obtained as mentioned in sub-paragraph (1)(a) or (b) shall not be disclosed except as provided by paragraph 1 or -

(a) for the purpose of enabling or assisting the Commissioner to discharge any relevant functions; or

(b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Ordinance, or otherwise.

(3) Information supplied as mentioned in sub-paragraph (1)(a) may be disclosed if the supervisory authority which supplied the information consents to its disclosure and the case is one in which information to which paragraph 1 applies could be so disclosed.

(4) Information obtained as mentioned in sub-paragraph (1)(b) may be disclosed if the supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to which paragraph 1 applies could be so disclosed.

(5) In this paragraph -

"relevant functions", in relation to the Commissioner, means his functions under this Ordinance.

## PART II

### INFORMATION RELATING TO OTHER PERSONS.

#### *Restriction on disclosure*

5. (1) Subject to paragraph 6, no information which -

- (a) has been obtained under section 98(2) to (6), 102 or 104; and
- (b) relates to the business or other affairs of a person who is not a relevant person for the purposes of paragraph 1,

shall be disclosed without the consent of the person from whom the information was obtained and, if different, the person to whom it relates.

#### *Permitted disclosures*

6. Paragraph 5 does not preclude the disclosure of information to any person who is a competent authority.

Schedule 17

Section 2(18)

Parent and subsidiary undertakings: supplemental provisions

#### Introduction

1. The provisions of this Schedule explain expressions used in section 2(18) (parent and subsidiary undertakings) and otherwise supplement that section.

#### Voting rights in an undertaking

2.(1) In section 2(18)(b)(i) and (iv) the references to the voting rights in an undertaking are to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertakings on all, or substantially all, matters.

(2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

#### Right to appoint and remove a majority of the directors

3. (1) In Section 2(18)(b)(ii) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking shall be treated as having the right to appoint to a directorship if -

(a) a person's appointment to it follows necessarily from his appointment as director of the undertaking, or

(b) the directorship is held by the undertaking itself.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

Right to exercise dominant influence

4.(1) For the purposes of section 2(18)(b)(iii) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with whether or not they are for the benefit of that other undertaking.

(2) A "control contract" means a contract in writing conferring such a right which -

(a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable, and

(b) is permitted by the law under which that undertaking is established.

(3) This paragraph shall not be read as affecting the construction of the expression "actually exercises a dominant influence" in section 2(18)(d)(i).

Rights exercisable only in certain circumstances or temporarily incapable of exercise.

5. (1) Rights which are exercisable only in certain circumstances shall be taken into account only -

(a) where the circumstances have arisen, and for so long as they continue to obtain, or

(b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another

6. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

7.(1) Rights held by a person as nominee for another shall be treated as held by the other.

(2) Rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

Rights attached to shares held by way of security

8. Rights attached to shares held by way of security shall be treated as held by the person providing the security -

(a) where apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions, and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

Rights attributed to parent undertakings

9.(1) Rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 8 rights shall be treated as being exercisable in accordance with the instructions or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

Disregard of certain rights

10. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

Supplementary

11. Reference in any provision of paragraphs 6 to 10 to rights held by a person include rights falling to be treated as held by him by virtue of any

other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.”.

Repeal of sections 19, 60, 61, 95 to 97, 107 and 110.

71. Sections 19, 60, 61, 95 to 97 inclusive, 107 and 110 are hereby repealed.

Consequential amendment.

72. The Contracts (Applicable Law) Ordinance 1993 is amended in section 3 by inserting after sub-section (1) the following new sub-section -

"(1A) The provisions of Schedule 9 to the Insurance Companies Ordinance 1987 (law applicable to certain contracts of insurance) are the internal law for the purposes of Article 1(3) of the Rome Convention."

Transitional and saving provisions

73. (1) If an insurer, which immediately after the coming into effect of these regulations, is an EEA insurer was immediately before that date lawfully carrying on insurance business of any Class or part of a Class in Gibraltar, it shall be treated for the purposes of the Ordinance as if the requirements of paragraph 1 or, as the case may be require, paragraph 4 of Schedule 13 to the Ordinance had been complied with in relation to insurance business of that Class or part of a Class.

(2) If an insurer, which immediately after the coming into effect of these regulations, is an EEA insurer was immediately before that date lawfully providing insurance of any Class or part of a Class in Gibraltar, it shall be treated for the purposes of the Ordinance as if the requirements of paragraph 8 of Schedule 13 to the Ordinance had been complied with in relation to that Class or part of a Class.

(3) If a Gibraltar insurer, which immediately after the coming into effect of these regulations, was immediately before that date lawfully carrying on insurance business of a Class or part of a Class in another member State, it shall be treated for the purposes of the Ordinance as if the requirements of paragraph 1 of Schedule 14 to the Ordinance had been complied with in relation to insurance business of that Class or part of a Class.

(4) If a Gibraltar insurer, which immediately before the coming into effect of these regulations, was immediately before that date lawfully providing insurance of a Class or part of a Class in another member State, it shall be treated for the purposes of the Ordinance as if the requirements of paragraph 5 of Schedule 14 to the Ordinance had been complied with in relation to insurance of that Class or part of a Class.

(5) In situations where an EEA State ("the defaulting State") has not implemented the third general insurance Directive and the third long term insurance Directive on or before the coming into effect of these regulations, then until such date as those Directives are fully or substantially implemented in the defaulting State, the Ordinance shall have effect in relation to an insurer whose head office is in that State as if that State were an EFTA State rather than an EEA State.

(6) Notwithstanding anything contained in these regulations, nothing contained in these regulations shall have the effect of varying the provisions of the Ordinance in respect of business which is reinsurance business.

Dated this 17th day of March 1995

J.J. BOSSANO  
Chief Minister.