

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 0000 of 00 January, 2000

LEGAL NOTICE NO. 50 OF 1995.

INSURANCE COMPANIES ORDINANCE 1987

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

**INSURANCE COMPANIES ORDINANCE (GENERAL INSURANCE
AND LONG TERM INSURANCE DIRECTIVES) (NO.2)
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, 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) (No.2) Regulations 1995 and shall be deemed to have come into effect on the 1st. day of April 1995.

2. Amendment to section 2.

Section 2 of the Insurance Companies Ordinance 1987 (hereinafter called “the Ordinance”) is amended —

- (a) in sub-section (2) by omitting the definition “margin of solvency” where it appears in the Ordinance and inserting it after the definition “long term business”;
- (b) in sub-section (10) by omitting the word “member” in each place where it occurs and substituting therefor the expression “EEA”;

- (c) in sub-section (18)(f)(i) by omitting the word “or” where it appears for the second time and substituting therefor the word “of”;
- (d) in sub-section (20) by omitting the expression “non-EC” and substituting therefor the expression “non-EEA”;
- (e) in sub-section (28) by omitting the figure “(26)” and substituting therefor the figure “(27)”;
- (f) by omitting sub-section (32) and substituting therefor the following subsection —

“ (32) In this Ordinance, unless the context otherwise requires an undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if —

- (a) it holds a majority of the voting rights in the undertaking, or
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
- (c) it has the right to exercise a dominant influence over the undertaking —

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

(ii) by virtue of a control contract, or

- (d) 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.”;
- (g) in sub-section (39) by omitting everything after the words “held by it” and substituting therefor a full-stop;
- (h) by inserting after sub-section (39) the following sub-section —

“ (40) For the purposes of sub-section (37) as it applies to the “participating interest” in sub-section (34) —

- (a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings, and

- (b) the reference in sub-section (37) 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. Repeal and replacement of section 16.

Section 16 of the Ordinance is repealed and replaced by the following section —

“16. Schedule 16 (which, subject to certain exceptions, restricts the disclosure of information obtained under or by virtue of this Ordinance) shall have effect.”.

4. Amendment to section 17.

Section 17 of the Ordinance is amended in sub-section (2A)(a) by inserting after the figure “93,” the figure “100B,”.

5. Amendment to section 24B.

5. Section 24B of the Ordinance is amended by omitting sub-section (4)(c) and substituting therefor the following sub-section —

“(c) 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) not being a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar, is responsible for maintaining accounts or other records of the applicant.”.

6. Amendment to section 25.

Section 25 of the Ordinance is amended by omitting the word “Governor” and substituting therefor the word “Government”.

7. Amendment to section 41.

Section 41 of the Ordinance is amended by omitting sub-section (5) and renumbering sub-section (6) as sub-section (5).

8. Amendment to section 42.

Section 42 of the Ordinance is amended in sub-section (3) by omitting the figure “(6)” and substituting therefor the figure “(5)”.

9. Amendment to section 48.

Section 48 is amended by omitting the marginal note thereto and substituting therefor the following marginal note —

“Manner of audit.”.

10. Amendment to section 61A.

Section 61A of the Ordinance is amended in sub-section (1)(c) by inserting before the word “States” the expression “EEA”.

11. Amendment to section 62.

Section 62 of the Ordinance is amended in sub-section (2) by omitting the words “a member” in the two places where they occur and substituting therefor in each such place the expression “an EEA”.

12. Amendment to section 64A.

Section 64A of the Ordinance is amended by omitting subsection (2) and substituting therefor the following sub-section —

“ (2) Regulations made for the purposes specified in sub-section (1) shall not have effect in relation to the assets of 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.”.

13. Amendment to section 64D.

Section 64D of the Ordinance is amended in sub-section (3)(a)(i) by omitting the word “another” and substituting therefor the word “an”.

14. Amendment to section 65.

Section 65 of the Ordinance is amended in sub-section (5) by omitting the words “European Community” and substituting therefor the expression “EEA States”.

15. Amendment to section 67.

Section 67 of the Ordinance is amended —

- (a) in sub-section (2) by —

- (i) omitting the words “an EFTA State where it has its head office or”;
- (ii) redesignating paragraph (i) as paragraph (j);
 - (b) in sub-section (3)(a) by omitting the figure “105(B)” and substituting therefor the figure “105B”.

16. Amendment to section 70B.

Section 70B of the Ordinance is amended by omitting the expression “EC” and substituting therefor the expression “EEA”.

17. Amendment to section 73A.

Section 73A of the Ordinance is amended in sub-section (5) by omitting the word “Directions” and substituting therefor the word “Regulations”.

18. Repeal and replacement of section 78.

Section 78 of the Ordinance including the marginal note thereto is repealed and replaced by the following section —

“Periodic actuarial investigation of insurer with long term business.

“78. (1) Every licensed insurer which carries on long term business -

- (a) shall, at least once in every period of twelve months, cause an investigation to be made into its financial condition in respect of that business by the actuary appointed under section 76; and
- (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the insurer in respect of its long term business has been made with a view to the

distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made.

- (2) An investigation to which sub-section (1)(b) relates shall include -
- (a) a valuation of the liabilities of the insurer attributable to its long term business; and
 - (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.
- (3) For the purposes of any investigation to which this section applies the value of any assets and the amount of any liabilities shall be determined in accordance with any valuation regulations.
- (4) The contents of any abstract under this section shall be such as may be prescribed.”.

19. Amendment to section 82.

Section 82 of the Ordinance is amended by omitting sub-section (3) and substituting therefor the following sub-section —

“(3) The contents of any abstract made in accordance with a requirement under this section shall be the same as the abstract made under section 78 and sub-section (2) of that section shall apply to an investigation made in pursuance of this section as it applies to an investigation to which sub-section (1)(b) of that section relates.”.

20. Amendment to section 87A.

Section 87A of the Ordinance is amended by omitting the word “re-insurance” and substituting therefor the word “reinsurance”.

21. Amendment to section 87C.

Section 87C of the Ordinance is amended in sub-section (2) by omitting the word “re-insurance” and substituting therefor the word “reinsurance”.

22. Amendment to section 87E.

Section 87E of the Ordinance is amended in sub-section (3) by omitting in the definition of “legal expenses insurance business” the word “re-insurance” and substituting therefor the word “reinsurance”.

23. Amendment to section 91.

Section 91 of the Ordinance is amended by omitting the marginal note thereto and substituting therefor the following marginal note —

“Transfers of long term and general business.”

24. Amendment to section 92.

Section 92 of the Ordinance is amended by omitting paragraph (a) of sub-section (1) and substituting therefor the following paragraph —

“(a) an EEA insurer, or a non-EEA insurer whose head office is in an EEA 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,

all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be specified in the instrument; or”.

25. Amendment to section 93.

Section 93 of the Ordinance is amended —

- (a) in the marginal note thereto by omitting the word “other”;
- (b) in sub-section (3) by omitting the word “Regulations” and substituting therefor the word “Directions”.

26. Amendment to section 98.

Section 98 of the Ordinance is amended —

- (a) in sub-section (5) by omitting the word “who” where it appears before the words “such production” and substituting therefor the word “whom”;
- (b) in sub-section (6)(b) by omitting the word “believe” and substituting therefor the word “belief”;
- (c) by omitting sub-section (10) and substituting therefor the following sub-section —

“ (10) The powers specified in sub-section (1) are exercisable in the circumstances provided for in section 67(4).”.

27. Amendment to section 100.

Section 100 of the Ordinance is amended —

- (a) in sub-section (2) by omitting the word “directions” in the two places where it occurs and substituting therefor in each such place the word “regulations”;
- (b) by omitting sub-section (3) and substituting therefor the following sub-section —

“ (3) The powers specified in this section are exercisable in the circumstances provided for in section 67(4).”.

28. Amendment to Part X.

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

“Privilege from disclosure.

100B. A requirement imposed under sub-sections (2) to (6) of section 98 or under section 100A shall not compel the production by any person of a document which he would in an action in the Supreme Court be entitled to refuse to produce on grounds of legal professional privilege or authorise the taking of any such document which is in his possession.”.

29. Amendment to section 101.

Section 101 of the Ordinance is amended in sub-section (2)(a) by inserting after the words “may be” the word “or”.

30. Amendment to section 105.

Section 105 of the Ordinance is amended in sub-section (2)(1) by omitting the word “assurance” and substituting therefor the word “insurance”.

31. Amendment to section 105A.

Section 105A of the Ordinance is amended in sub-section (9) by omitting the word "Gibraltar".

32. Amendment to section 105B.

Section 105B of the Ordinance is amended in sub-section (4) by omitting the letter "(l)" and substituting therefor the letter "(k)".

33. Amendment to section 107.

Section 107 of the Ordinance is amended by omitting sub-section (3) and substituting therefor the following sub-section —

" (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 of licensed insurers to which this Ordinance applies."

34. Amendment to section 118.

Section 118 of the Ordinance is amended in sub-section (2) by omitting paragraph (b) and substituting therefor the following paragraph —

"(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;
- (ii) the manner in which accounts and balance sheets are to be audited;
- (iii) the persons by whom accounts and balance sheets, abstracts, statements, reports and any other documents are to be signed;

(iv) the contents of any advertisements or invitations published by insurers or connected persons, and linked contracts;

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

35. Amendment to Schedule 1.

Schedule 1 to the Ordinance is amended —

- (a) in the third column of the entry in respect of Class 16 by omitting one of the semi-colons at the end of paragraph (a);
- (b) in the third column of the entry in respect of Class 18 by omitting the semi-colon at the end of paragraph (b) and substituting therefor a full stop.

36. Amendment to Schedule 6.

Schedule 6 to the Ordinance is amended in Part 2 by omitting in paragraphs (ii) and (iii) of item 2 the words “that State” and substituting therefor the words “Gibraltar or an EEA State”.

37. Amendment to Schedule 7.

Schedule 7 to the Ordinance is amended —

- (a) in the entry in respect of section 21 by omitting the word “business” and substituting therefor the word “businesses”;
- (b) by omitting the entry in respect of section 52;

- (c) by omitting the entry in the second column in respect of section 48 and substituting therefor the following entry “Manner of audit”;
- (d) by inserting after the entry in respect of section 50 the following entry —

“52	Submission of accounts and statements.”;
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- (e) in the entry in respect of section 64 by omitting the word “other”.

38. Amendment to Schedule 10.

Schedule 10 to the Ordinance is amended —

- (a) in paragraph 2(2) by omitting the word “paragraph” and substituting therefor the expression “sub-paragraph (1);
- (b) in paragraph 5(6) by omitting the words “and “shares” and “debentures” have” and substituting therefor the words “and “debentures” has”;
- (c) in paragraph 7(1)(a) by omitting the word “Gibraltar”;
- (d) in paragraph 8(4)(a) by omitting the word “Gibraltar”;
- (e) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

39. Amendment to Schedule 11.

Schedule 11 to the Ordinance is amended —

- (a) in paragraph 2(5)(a) by inserting before the words “fit and proper” where they appear for the first time the word “a”;

- (b) in paragraph 3(3)(b) by omitting the word “above”;
- (c) in paragraph 5 by —
- (i) omitting in sub-paragraph (5)(a) the word “made” and substituting therefor the word “paid”;
- (ii) omitting in sub-paragraph (7)(b) the word “serve” and substituting therefore the word “service”;
- (d) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

40. Amendment to Schedule 12.

Schedule 12 to the Ordinance is amended —

- (a) in paragraph 2 —
- (i) in sub-paragraph (1) by omitting the words “[the date on which the amended Ordinance comes in to effect]” and substituting therefor the expression “the 1st day of April 1995”;
- (ii) in sub-paragraph (2) by omitting the letter “(j)” and substituting therefor the letter “(k)”;
- (b) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

41. Amendment to Schedule 13.

Schedule 13 to the Ordinance is amended —

- (a) in paragraph 10(c)(ii) by omitting the word “Insurer’s” and substituting therefor the word “Insurers”;

- (b) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

42. Amendment to Schedule 14.

Schedule 14 to the Ordinance is amended —

- (a) in paragraph 2(5)(b) by omitting the words “the he” and substituting therefor the words “that he has”;
- (b) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

43. Amendment to Schedule 15.

Schedule 15 to the Ordinance is amended —

- (a) in paragraph 8 by omitting the word “insurers” and substituting therefor the word “insurer”;
- (b) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

44. Amendment to Schedule 16.

Schedule 16 to the Ordinance is amended —

- (a) in paragraph 2(2) by omitting the word “non-member” and substituting therefor the expression “non-EEA”;

- (b) in paragraph 4(4) by omitting the word “member” and substituting therefor the expression “EEA”;
- (c) by omitting paragraph headings appearing in italic script and substituting those same headings in the script of marginal notes.

45. Repeal and replacement of Schedule 17.

Schedule 17 to the Ordinance is repealed and replaced by the following schedule —

“SCHEDULE 17

Section 2(35)

PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTAL PROVISIONS

Introduction.

1. The provisions of this Schedule explain expressions used in sub-sections (32) to (34) of section 2 (parent and subsidiary undertakings) and otherwise supplement that section.

Voting rights in an undertaking.

2. (1) In paragraphs (a) and (d) of section 2(32) 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(32)(b) 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(32)(c) 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(34)(a)(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. (1) Rights held by a person in a fiduciary capacity shall be treated as not held by him.

(2) Rights held by a person as nominee for another shall be treated as held by the other.

(3) 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.

7. 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.

8. (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 6 or 7 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 7 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.

9. The voting rights in an undertaking shall be reduced by any rights held by the undertaking itself.

Supplementary.

10. Reference in any provision of paragraphs 6 to 9 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.”.

46. Repeal of sections 79 to 81.

Section 79, 80 and 81 are hereby repealed.

47. Amendment to the Insurance Companies Ordinance (General Insurance and Long Term Insurance Directives) Regulations 1995.

The Insurance Companies Ordinance (General Insurance and Long Term Insurance Directives) Regulations 1995 are amended —

- (a) by omitting regulation 27;
- (b) in regulation 64 by omitting everything after paragraph (a)(i)(bb) and substituting therefor the following —

“(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).”;

- (b) in Part II by omitting the word "Group" and substituting therefor the word "Groups".”;

(c) by inserting after regulation 64 the following regulation —

“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.”;

(d) in regulation 71 by omitting in the marginal note thereto and in the regulation the comma appearing before the figure “107” and the figure “107”;

(e) in regulation 73 —

(i) in sub-regulations (3) and (4) by omitting the words “another member” where they occur and substituting in each such place the expression “an EEA”;

(ii) in sub-regulation (5) by omitting the expression “an EFTA” and substituting therefor the expression “a non-EEA”.

Dated this day of March 1995.

Chief Minister

GIBRALTAR GAZETTE, No 0000, Thursday 00 January, 2000

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