

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,964 of 20th February, 1997**

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I ASSENT,

M.J.ROBINSON,

ACTING GOVERNOR.

20th February,1997



**GIBRALTAR**

**No. 8 of 1997**

**AN ORDINANCE** to amend the Insurance Companies Ordinance  
1987.

**E**NACTED by the Legislature of Gibraltar.

**Title and commencement.**

1. This Ordinance may be cited as the Insurance Companies (Amendment) Ordinance 1997, and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint.

**Amendment to section 7(2).**

2. Section 7(2) of the Insurance Companies Ordinance (hereinafter called “the principal Ordinance”) is amended by omitting the words “under section 13”.

**Amendment to section 22(1).**

3. Section 22(1) of the principal Ordinance is amended -

- (a) by omitting the word “Governor” and substituting therefor the word “Government”; and
- (b) by omitting the word “his” and substituting therefor the word “its”.

**Amendment to section 24A.**

4. Section 24A of the principal Ordinance is amended by inserting after sub-section (2) the following new sub-section -

“(3) The Commissioner shall not issue a licence to an applicant whose head office is in Gibraltar if it has an issued share capital any part of which was issued after the commencement of this sub-section but is not fully paid up.”.

**New section 48A.**

5. The principal Ordinance is amended by inserting after section 48 the following new section 48A -

**“Communication by auditor with the Commissioner.**

48A (1) No duty to which an auditor of an insurer licensed under this Ordinance may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Commissioner, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that insurer

and which is relevant to any functions of the Commissioner under this Ordinance.

(2) If it appears to the Commissioner that any auditor or class of auditor to whom sub-section (1) applies is not subject to satisfactory rules made, or guidance issued, by a professional body to the Commissioner as mentioned in that sub-section, the Government may make regulations applying to that auditor or class of auditor and specifying such circumstances, and it shall be the duty of an auditor to whom the regulations made by the Government apply to communicate a matter to the Commissioner in the circumstances specified by the regulations.

(3) The matters to be communicated to the Commissioner in accordance with any such rules or guidance or regulations may include matters relating to persons other than the insurer.

(4) If it appears to the Commissioner that an auditor has failed to comply with the duty mentioned in sub-section (2), the Commissioner may disqualify him from being the auditor of an insurer or any class of insurer licensed under this Ordinance; but the Commissioner may remove any disqualification imposed under this sub-section if satisfied that the person in question will in future comply with that duty.

(5) An insurer licensed under this Ordinance shall not appoint as auditor a person disqualified under sub-section (4)".

**Repeal of section 50(3).**

6. Section 50(3) of the principal Ordinance is repealed.

**Amendment to section 52.**

7. Section 52 of the principal Ordinance is amended -

- (a) by omitting sub-section (2);
- (b) by omitting "or under sub-section (2)" in sub-section (3); and
- (c) by replacing "sub-sections (1) and (2)" in sub-section (5) with "sub-section (1)".

**Amendment to section 56.**

8. Section 56 of the principal Ordinance is amended by omitting “or (2)” in sub-section (1)(a).

**Amendment to section 59.**

9. Section 59 of the principal Ordinance is amended by inserting after sub-section (4) the following new sub-section -

“(5) In applying the definitions of “margin of solvency”, “Gibraltar margin of solvency” and “EEA margin of solvency” as contained in section 2(2), the amount of the company’s liabilities shall be taken to be increased by the amount of any reserve maintained under section 63A.”.

**New section 63A.**

10. The principal Ordinance is amended by inserting after section 63 the following new section 63A -

**“General business - equalisation reserve.**

63A (1) Every insurer to which this section applies which carries on general business of a prescribed description shall maintain, in accordance with regulations made for the purposes of this section, a reserve (referred to as an “equalisation reserve”) in respect of its general business of that description.

(2) Subject to sub-section (3), this section applies to any insurer to which this Ordinance applies -

- (a) whose head office is in Gibraltar; or
- (b) whose business in Gibraltar is restricted to reinsurance; or
- (c) whose head office is not in Gibraltar or an EEA State.

(3) This section does not apply to an insurer of a description prescribed for the purposes of this sub-section.

(4) Without prejudice to the generality of sub-section (1), regulations made for the purposes of this section may make provision -

- (a) as to the circumstances in which, and times at which, amounts are to be placed to, or taken from, an equalisation reserve;

- (b) as to the determination of the amounts to be so placed or taken; and
- (c) as to such other matters incidental to the maintenance of an equalisation reserve as the Commissioner considers expedient.”.

**Amendment to section 71.**

11. Section 71 of the principal Ordinance is amended -

- (a) by inserting the figure “(1)” before the words “The Commissioner”;
- (b) by inserting the words “by order” before the word “direct”;
- (c) by inserting the words “all or any of” before the words “the provisions”;
- (d) by inserting after sub-section (1), as now designated, the following new sub-section -

“(2) An order under this section may be subject to conditions and may be varied or revoked at any time by the Commissioner.”.

**New section 75A.**

12. The principal Ordinance is amended by inserting after section 75 the following new section 75A -

**“ Arrangements to avoid unfairness between separate insurance funds etc.**

75A. (1) An insurer licensed under this Ordinance which carries on long term business in Gibraltar shall ensure that adequate arrangements are in force for securing that transactions affecting assets of the insurer (other than transactions outside its control) do not operate unfairly between the section 75 fund or funds and the other assets of the insurer or, in a case where the insurer has more than one identified fund, between those funds.

- (2) In this section -

“the section 75 fund or funds” means the assets representing the fund or funds maintained by the insurer under section 75(1); and

“identified fund”, in relation to an insurer, means assets representing the insurer’s receipts from a particular part of its long term business which can be identified as such by virtue of accounting or other records maintained by the insurer.”.

**Amendment to section 82.**

13. Section 82 of the principal Ordinance is amended -

- (a) by omitting sub-section (1)(c);
- (b) by omitting “; and” and inserting a fullstop at the end of sub-section (1)(b) and inserting “and” at the end of sub-section (1)(a); and
- (c) by omitting the words “or statement” in sub-section (4).

**Amendment to Schedule 7.**

14. Schedule 7 of the principal Ordinance is amended -

- (a) by inserting below the paragraph “63 Failure to maintain minimum margin”, the following new paragraph -  
“63A. General business - equalisation reserve.”; and
- (b) by inserting below the paragraph “75 Maintenance of separate accounts”, the following new paragraph -  
“75A. Arrangements to avoid unfairness between separate insurance funds etc.”.

*Insurance Companies (Amendment) Ordinance, 1997* [No.8 of 1997]

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Passed by the Gibraltar House of Assembly on the 14th day of February, 1997.

D. J. Reyes,

Clerk to the Assembly.





