

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,326 of 6 February, 2003**

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I ASSENT,

DAVID DURIE

GOVERNOR.

31 JANUARY 2003



**GIBRALTAR**

**No. 1 of 2003**

**AN ORDINANCE** to amend the Insurance Companies Ordinance 1987 for the purposes of transposing in part Directive 2000/26/EC on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth Motor Insurance Directive).

**ENACTED** by the Legislature of Gibraltar.

**Title.**

1. This Ordinance may be cited as the Insurance Companies (Amendment) Ordinance, 2003.

**Amendment of section 2.**

2. Section 2(2) of the Insurance Companies Ordinance (the principal Ordinance) is amended by inserting–

- (i) after the definition of “fellow subsidiary undertakings”, the following definition–

““Fourth Motor Insurance Directive” means Directive 2000/26/EC of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC;”;

- (ii) after the definition of "home state", the following definitions–

““injured party” means a person entitled to compensation as a result of any loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than his usual EEA State of residence which is caused by the use of a motor vehicle insured and normally based in an EEA State;

“information centre” means the Information Centre established whether in Gibraltar or in othe EEA States under Article 5 of the Fourth Motor Insurance Directive;”;

- (iii) after the definition of “mathematical reserves”, the following definitions–

““motor vehicle liability insurance business” means general insurance business of class 10, other than

carrier's liability and pure reinsurance of that class;

“motor vehicle liability insurer” means an insurer carrying on in Gibraltar motor vehicle liability insurance business.”.

**Insertion of sections 29 to 31.**

3. The principal Ordinance is amended by inserting after section 28, the following sections—

**“Claims representatives for motor vehicle liability insurers.**

29.(1) Every motor vehicle liability insurer carrying on a motor vehicle liability insurance business and every person who seeks to carry on a motor vehicle liability insurance business shall have a claims representative in each EEA State other than that in which they have received their official authorisation with responsibility for handling and settling claims arising from an accident in the cases referred to in Article 1(2) of the Fourth Motor Insurance Directive.

(2) A motor vehicle liability insurer shall give the name, address and telephone number for each claims representative to the information centre in Gibraltar and in other EEA States when—

- (a) a claims representative is first appointed; and
- (b) any material change of the information provided under paragraph (a) occurs.

(3) A motor vehicle liability insurer must ensure that each claims representative is—

- (a) resident or established in the EEA State for which it is appointed;
- (b) capable of examining cases in the official language(s) of the EEA State of residence of the injured party;

- (c) responsible for, and has sufficient delegated authority from the motor vehicle liability insurer for which it is appointed, to be able to—
  - (i) handle and settle;
  - (ii) collect any information, and take all measures, reasonably necessary to negotiate a settlement of; and
  - (iii) represent, or arrange appropriate representation for the motor vehicle liability insurer (whether in negotiation, in court or otherwise) in relation to,  
  
claims arising from an accident occurring in an EEA State, other than the EEA State of residence of the injured party, involving the use of a vehicle insured and normally based in an EEA State.

(4) Subsection (3)(c)(iii) does not prevent a claims representative from seeking additional authority or instruction from a motor vehicle liability insurer, if its existing authority or instructions are insufficient to allow it to handle and settle a claim referred to in section 29(1).

(5) However, subsection (3)(c)(iii) does prevent a claims representative from purporting to decline to deal with, or transfer responsibility for, claims properly referred to that claim representative by an injured party, or an injured party's representative.

(6) Nothing in this section prevents a claims representative from acting for more than one insurer.

(7) The appointment of a claims representative does not in itself constitute the opening of a branch or the creation of an establishment within the meanings referred to in Article 4(8) of the Fourth Motor Insurance Directive.

(8) Where a motor vehicle liability insurer does not have a claims representative in pursuance of subsection (1), the Commissioner may direct that the motor vehicle liability

insurer shall not enter into new contracts of motor vehicle liability insurance business and if it subsequently appoints a claims representative the Commissioner may withdraw that direction.

(9) Any person seeking to carry on motor vehicle liability insurance business in Gibraltar shall not be entitled to carry on such business unless he complies with subsection (1).

(10) Any motor vehicle liability insurer who fails to comply with subsection (2) or any direction given under subsection (8) shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

**Claims handling by motor vehicle liability insurer.**

30.(1) Within three months of receipt, whether directly, by a claims representative or from an injured party, of a claim for compensation from an insured party, or his motor vehicle liability insurer, or that insurer's claims representative, the receiving motor vehicle liability insurer must (directly or through a claims representative)–

- (a) make a reasoned offer of compensation, if liability is not contested and damages have been fully quantified; or
- (b) provide a reasoned reply to the points made in the injured party's claim, if liability is denied, or not clearly established, or damages have not been fully quantified.

(2) If liability is initially denied, or it has not been clearly established, within three months of any subsequent acceptance of liability, the motor vehicle liability insurer must (directly or through a claims representative) make a reasoned offer of compensation, if, by that time, the injured party has provided the motor vehicle liability insurer with a fully quantified claim for damages.

(3) If an injured party cannot, or does not, fully quantify the damages claimed when the injured party first makes a claim

against a motor vehicle liability insurer, within three months of receipt of the injured party's fully quantified claim for damages, whether directly, by a claims representative or from its insured, the motor vehicle liability insurer must (directly, or through a claims representative) make a reasoned offer of compensation, if liability is not contested.

(4) A claim for compensation shall only be quantified under subsection (1)(a), (2) or (3) if the injured party provides written evidence which substantiates or supports the amounts claimed.

(5) If the receiving motor vehicle liability insurer, or its claims representative, does not comply with subsection (1)(a), (2) or (3), the motor vehicle liability insurer shall pay simple interest on any compensation eventually paid, unless interest is awarded by any court or tribunal which determines the injured party's claim.

(6) If subsection (5) applies, the amount of interest that the motor vehicle liability insurer shall pay shall be calculated as follows—

(a) the interest calculated period—

(i) begins three months after—

(A) receipt of the claim for compensation, if the motor vehicle liability insurer or its claims representative is in breach of subsection (1)(a); or

(B) any subsequent admission of liability, if the motor vehicle liability insurer or its claims representative complies with subsection (1)(a) but is in breach of subsection (2); or

(C) the subsequent receipt of a fully quantified claim for compensation, if the motor vehicle liability insurer or its claims representative complies with subsection (1)(a) and (2) but is in breach of subsection (3); and

- (ii) ends on the date when the motor vehicle liability insurer pays compensation to the injured party, or the injured party's authorised representative;
- (b) the interest rate to be applied throughout the period in paragraph (a) above is the Bank of England's base rate (from time to time), plus four per cent.

(7) A motor vehicle liability insurer shall be deemed to have received a claim, or a fully quantified claim for damages, when that claim or a fully quantified claim for damages, is delivered to the motor vehicle liability insurer, or a claims representative, by any person by any method of delivery which is lawful in the motor vehicle liability insurer's, or its claims representatives' respective states of residence or establishment as the case may be.

**Rights of motor vehicle liability insurers.**

31. Sections 29 and 30 do not restrict any rights which the injured party, or its motor vehicle liability insurer, or any other insurer acting on its behalf, may have and which would enable any of them to begin legal proceedings against the person causing the accident or that person's, or the motor vehicle's insurers."

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*Insurance Companies (Amendment) Ordinance, 2003* [No. 1 of 2003]

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Passed by the Gibraltar House of Assembly on the 21st day of January, 2003.

Dennis J Reyes

Clerk to the Assembly.