

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3634 of 20 December, 2007

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LEGAL NOTICE NO. 142 OF 2007.

**INSURANCE COMPANIES ACT**

**INSURANCE COMPANIES (SOLVENCY MARGINS AND  
GUARANTEE FUNDS) (AMENDMENT) REGULATIONS 2007**

In exercise of the powers conferred on him by sections 118 of the Insurance Companies Act and all other enabling powers, the Minister with responsibility for financial services has made the following regulations to transpose, in part, into the law of Gibraltar Directive 2005/68/EC of 16 November 2005 on reinsurance and which amends Directives 73/239/EEC, 92/49/EEC and 2002/83/EC.

**Title.**

1. These Regulations may be cited as the Insurance Companies (Solvency Margins and Guarantee Funds) (Amendment) Regulations 2007.

**Amendment of the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations.**

2. The Insurance Companies (Solvency Margins and Guarantee Funds) Regulations are amended in accordance with regulations 3 to 12.

**Amendment of regulation 2.**

3.(1) Regulation 2 is amended by re-numbering it as sub-regulation (1) and by inserting the following definitions in their appropriate alphabetical place—

“captive reinsurer” means a reinsurer owned either by a financial undertaking other than an insurer or a group of insurers to which the Insurance Companies (Supplementary Supervision) Regulations 2007 applies, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the insurer or insurers of the group to which the captive reinsurer is a member;

“credit institution” has the meaning assigned to it by section 2 of the Financial Services (Banking) Act;

“financial institution” has the meaning assigned to it by section 2 of the Financial Services (Banking) Act;

“financial undertaking” means a credit institution, financial institution, investment firm, insurer, insurance holding company or mixed financial holding company;

“insurance holding company” means a parent undertaking the main business of which is to acquire and hold participations in its subsidiaries, where those subsidiaries are exclusively or mainly insurers, reinsurers or non-EEA insurers, one at least of such subsidiaries being an insurer;

“investment firm” has the meaning assigned to it by regulation 2 of the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007;

“mixed financial holding company” means a parent undertaking, other than a credit institution, financial institution, investment firm, insurer or reinsurer, which together with its subsidiaries, at least one of which is such an entity with its head office in an EEA State, and with other entities constitutes a financial conglomerate;

“participation” means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of a company;

“special purpose vehicle” means an undertaking, whether incorporated or not, other than an existing insurer or reinsurer, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of such a vehicle.

(2) Regulation 2 is further amended by inserting the following sub-regulation after sub-regulation (1) as re-numbered—

“(2) For the purpose of these Regulations and the definition of non-directive insurer, the exchange rate from the euro to the pound

sterling for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union Member States were established in the Official Journal of the European Communities.”.

**Amendment of regulation 3.**

4.(1) Regulation 3(1)(b) is amended by inserting “(other than reinsurance)” immediately after “business”.

(2) Regulation 3 is amended by inserting the following two sub-regulations after sub-regulation (5)–

“(5A) Where a pure reinsurer reinsures long term business, the required margin of solvency shall be determined in accordance with regulation 3(1)(a).

(5B) Notwithstanding sub-regulation (5A), in the case of a reinsurer reinsuring–

(a) long term business classes I, II and III linked to investment funds or participating contracts; and

(b) long term business classes I, III, VI, VII and VIII;

the required margin of solvency shall be determined in accordance with regulation 3(1)(b), as appropriate.”.

(3) Regulation 3 is amended by inserting the following sub-regulations after sub-regulation (8)–

“(9) An insurer (other than a pure reinsurer) which carries on general business and also carries on reinsurance activities shall in respect of its entire business establish a minimum guarantee fund and for that purpose the provisions of paragraph 5A(1) of Schedule 4 shall apply to it where one of the conditions in sub-regulation (11) is met.

(10) An insurer (other than a pure reinsurer) which carries on long-term business and also carries on reinsurance acceptance activities shall maintain a margin of solvency in respect of

those activities and for that purpose the provisions of sub-regulations (1)(a), (5), (5A) and (5B) shall apply to it where one of the conditions in sub-regulation (11) is met.

- (11) For the purposes of sub-regulations (9) and (10) the condition to be met is–
- (a) the reinsurance premiums collected exceed 10% of its total premium;
  - (b) the reinsurance premiums collected exceed 50 million Euro; or
  - (c) the technical provisions resulting from its reinsurance acceptances exceed 10% of its total technical provisions.”.

**Amendment of regulation 4.**

5.(1) Regulation 4 is amended by omitting sub-regulations (6), (7) and (8) which are inserted as sub-regulations (1), (2) and (3) of new regulation 4A.

(2) Regulation 4 is amended by omitting sub-regulation (9) which is inserted as sub-regulation (2) of regulation 2.

(3) Regulation 4 is further amended by inserting the following sub-regulations after sub-regulation (5)–

- “(6) An insurer’s margin of solvency may also consist of cumulative preferential share capital and subject to sub-regulation (17), subordinated loan capital but only up to 50% of the margin of solvency or the required margin of solvency, whichever is the lesser, and no more than 25% of the lesser shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital:

Provided that, in the event of the bankruptcy or the placing into liquidation of the insurer, subordinated loan capital or cumulative preferential share capital may be taken into account if binding agreements exist under which such loan capital or share capital will rank after the claims of all other creditors and

is not to be repaid until all other debts outstanding at the time have been settled.

- (7) The subordinated loan capital shall be taken into account under sub-regulation (13) if it can meet the following conditions—
- (a) only fully paid-up funds may be taken into account;
  - (b) for a loans having a fixed maturity, the original maturity shall not be less than five years subject to—
    - (i) no later than one year before the repayment date the insurer submits to the Commissioner for approval a plan showing that its margin of solvency will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of its margin of solvency is gradually reduced during at least the five years preceding the repayment date; and
    - (ii) the Commissioner giving his approval to the early repayment of such loan if an application is made by the issuing insurer and the margin of solvency not falling below the required level;
  - (c) a loan, the maturity of which is not fixed shall be repayable only subject to five years' notice—
    - (i) unless the loan is no longer considered as a component of the margin of solvency; or
    - (ii) unless the prior consent of the Commissioner is specifically required for early repayment; and
    - (iii) the insurer notifies the Commissioner at least six months before the date of the proposed repayment, of the margin of solvency and the required margin of solvency both before and after that repayment;

- (d) the Commissioner may authorise repayment under paragraph (c)(ii) and (iii) only if he is satisfied that the insurer's margin of solvency will not fall below the required level;
  - (e) the loan agreement does not include any clause providing that in specified circumstances, other than the winding-up of the insurer, the debt will become repayable before the agreed repayment dates; and
  - (f) the loan agreement may be amended only with the Commissioner's consent.
- (8) An insurer's margin of solvency may also consist of securities with no specified maturity date and other instruments (including cumulative preferential shares other than those referred to in sub-regulations (6) and (7) up to 50 % of the margin of solvency or the required margin of solvency, whichever is the lesser, for the total of such securities and the subordinated loan capital referred to in those sub-regulations:

Provided that—

- (a) the securities or instruments may not be repaid on the initiative of the bearer or without the prior consent of the Commissioner;
- (b) the contract of issue enables the insurer to defer the payment of interest on the loan;
- (c) the lender's claims on the insurer (where applicable) shall rank entirely after those of all non-subordinated creditors; and
- (d) the document governing the issue of the securities or instruments provides for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurer to continue its business; and
- (e) only fully paid-up amounts may be taken into account.

- (9) An insurer which carries on general business may apply to the Commissioner for it to approve that the margin of solvency may consist of—
- (a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25% of that share capital or fund, up to 50% of its margin of solvency or required margin of solvency, whichever is the lesser;
  - (b) in the case of a non-life mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50% of its margin of solvency or required margin of solvency, whichever is the lesser; and
  - (c) any hidden net reserves arising out of the valuation of assets, provided they are not of an exceptional nature.”.

**Insertion of regulation 4A.**

6. The following regulation is inserted after regulation 4—

**“Reductions.**

- 4A.(1) The margin of solvency shall be reduced by the amount of own shares directly held by an insurer.
- (2) Subject to sub-regulation (3), in the case of an insurer which discounts or reduces its technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of the Insurance Accounts Directive, the margin of solvency shall be reduced by the difference between—
- (a) the undiscounted technical provisions for claims outstanding or the technical provisions for claims

- outstanding before deductions as disclosed in the notes to the accounts; and
- (b) the discounted technical provisions for claims outstanding or the technical provisions for claims outstanding after deductions and for these purposes, technical provisions shall be calculated net of reinsurance.
- (3) Sub-regulation (2) does not apply to risks of classes 1 or 2 or in respect of the discounting of annuities.
- (4) In addition to the deductions in sub-regulations (1) to (3), the margin of solvency shall be reduced by the following items–
- (a) participations which the insurer holds in the following entities–
    - (i) Gibraltar or EEA insurers or non-EEA insurers;
    - (ii) insurance holding companies; credit institutions, financial institutions and investment firms;
  - (b) each of the following items which the insurer holds in respect of the entities in paragraph (a) in which it holds a participation–
    - (i) instruments referred to in regulation 4(9);
    - (ii) instruments referred to in regulations 4(6) to (8);
    - (iii) subordinated claims and instruments referred to in Articles 35 and Article 36(3) of Directive 2000/12/ EC.
- (5) If an insurer temporarily hold shares in a credit institution, financial institution, investment firm, insurer or reinsurer or insurance holding company for the purpose of providing financial assistance to enable the entity to be reorganised and saved, the Commissioner may, on application by the insurer, waive the deductions in sub-regulation (4).



- (6) An insurer may, as an alternative to the deductions in sub-regulation (4) which it holds in credit institutions, financial institutions and investment firms, apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC subject to method 1 (*accounting consolidation*) being applied only if the Commissioner is satisfied with the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.
- (7) For its margin of solvency, an insurer subject to supplementary supervision in accordance with the Insurance Companies (Supplementary Supervision) Regulations 2007 need not effect the deductions in sub-regulation (4) which are held in credit institutions, financial institutions, investment firms, insurers or reinsurers or insurance holding companies which are included in the supplementary supervision.”.

**Amendment of regulation 5.**

7. Regulation 5 is amended by inserting the following sub-regulation after sub-regulation (6)–

“(7) The guarantee fund shall consist of the items listed in regulations 4(1), 4(6) to (8) and 6 and, with the consent of the Commissioner, in regulation 4(9)(c).”.

**Insertion of regulation 5A.**

8. The following regulation is inserted after regulation 5–

**“Saving.**

6. A reinsurer, which was on 10 December 2005 authorised to carry on insurance business (restricted to reinsurance only) under the Act, may continue to carry on business under the margin of solvency and guarantee fund requirements in force on that date until the 10 December 2008 by which date the reinsurer shall comply with the provisions of regulations 3, 4(1), 4(6) to (8), 5 and 6.”.

**Amendment of Schedule 1.**

9.(1) Schedule 1 is amended by inserting the following paragraphs after paragraph 3–

“3A. Premiums in respect of classes other than classes referred to in paragraph 3 may be increased by up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts in accordance with the procedure referred to in article 55(2) of the reinsurance Directive.

3B. Premiums, inclusive of charges ancillary to premiums, due in respect of direct reinsurance business in the previous financial year shall be aggregated.”.

(2) Paragraph 6 is amended by substituting “11” for “12”.

(3) Schedule 1 is further amended by substituting the following paragraph for paragraph 9–

“9. For the purposes of paragraph 8, the necessary conditions are–

- (a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;
- (b) a provision is set up for increasing age;
- (c) an additional premium is collected in order to set up a safety margin of an appropriate amount;
- (d) the insurer may cancel the contract before the end of the third year of insurance at the latest; and
- (e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.”.

(4) Schedule 1 is further amended by inserting the following paragraph after paragraph 16–

“17. An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may also be deducted as reinsurance.”.

**Amendment of Schedule 2.**

10.(1) Schedule 2 is amended by inserting the following paragraph after paragraph 3–

“3A. Claims, provisions and recoveries in respect of classes other than classes referred to in paragraph 3, may be increased by a reinsurer by up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of those activities or contracts, in accordance with the procedure referred to in article 55(2) of the reinsurance Directive.”.

(2) Paragraph 6 is amended by substituting “11” for “12”.

(3) Schedule 2 is further amended by inserting the following paragraph after paragraph 11–

“12. An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may also be deducted as reinsurance.”.

**Amendment of Schedule 3.**

11. Schedule 3 is amended by inserting the following sub-paragraph after paragraph 1(8)–

“(9) An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may be deducted as reinsurance in both the first and second results.”.

**Amendment of Schedule 4.**

12. Schedule 4 is amended by inserting the following paragraph after paragraph 5–

**“Reinsurers.**

5A.(1) The minimum guarantee fund for a reinsurer is 3.2 million Euro.

(2) The minimum guarantee fund for a captive reinsurer is 1 million Euro.”.

Dated this 20th day of December, 2007.

P R CARUANA,

Minister with responsibility for  
financial services.

Dated this 20th day of December, 2007.

P R CARUANA,  
Minister with responsibility for  
financial services.