

**FINANCIAL SERVICES
(INSURANCE COMPANIES) ACT****Repealed by Act.2019-26 as from 15.1.2020****Principal Act**

Act. No. 1987-10	<i>Commencement</i>	26.2.1987
	<i>Assent</i>	26.2.1987
Amending enactments	Relevant current provisions	Commencement date
Acts. 1987-21	ss.50 & 122	16.7.1987
1990-43	ss.2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 26, 27, 29, 30, 31, 32, 33, 37, 38, 47, 61, 82, 102, 105, 106 & 107, 108, 109 & 110	17.1.1991
1994-02	ss. 7, 8, 13	25.7.1994
LN. 1995/042	ss. 2, 3, 5, 6, 16, 16A, 16B, 17, 18, 19, 20, 21, 24A, 24B, 25, 25A, 26, 28, 118, 119, 119A, 119B, Schs. 2, 3, 6, 7, 8, 9-17	1.4.1995
1995/050	ss. 2, 16, 17, 24B, 25, 41, 42, 48, 61A, 62, 64A, 64D, 65, 67, 70B, 73A, 78, 79-81, 82, 87A, 87C, 87E, 91, 92, 93, 98, 100, 100B, 101, 105, 105A, 105B, 107, 118, Sch. 1, Sch. 6, Sch. 7, Sch. 10, Sch. 11, Sch. 12, Sch. 13, Sch. 14, Sch. 15, Sch. 16 & Sch. 17	1.4.1995
1995/051	<i>Corrigenda</i>	
1996/063	ss. 2, 3, 4, 5, 6, 16A, 21, 23, 24A, 24B, 25, 25A, 26, 40, 41, 44, 45, 46, 48, 52, 53, 56, Part V, ss. 59, 61A, 64, 64A, 65, 67, 72, 73A, 78, 87, 87B, 87C, 87H, 89, 92, 93, 98, 99, 100, 100B, 105A, 105B, 106, 107, 108, 109, 114A, 118, 119A, Sch. 1, Sch. 2, Sch. 4, Sch. 6, Sch. 7, Sch. 8, Sch. 9, Sch. 11, Sch. 12, Sch. 13, Sch. 14, Sch. 16 & Sch. 17	1.7.1996
1997-08	ss. 7(2), 22(1), 24A, 48A, 50(3), 52, 56, 59, 63A, 71, 75A & 82. Sch. 7	6.3.1997

1997/136	ss. 2(6), 2(7)(a), 2(32A), 2(33A), 2(34A), 2(34B), 2(35A), 2(35), 2(40), 27, 48A, 105(2)(b), 107(2)(f), Sch. 16 para.2A(1)(a), Sch.16 para. 4A, Sch. 17 para. 1 & 2(1).	6.11.1997
1998/118	Sch. 3	31.12.1998
2003-01	ss. 2(2), 29 to 31.	31.1.2003
2004-07	ss. 52 (2)(a)(b), 60, 92(1A) & Sch. 14 1(6A) & 5(8).	4.3.2004
2005-21	ss.6(1), 16A(1), 17(1), 23(1), 70C(3), 75A(1), 101(1)(a) & 106(1)(b)	1.7.2005
2005-55	ss.2(2), (7) & (7A), 18(b), 26(4)(b), 27(3)(d), 27(4)(b), 41(4)(b), 60(1), 92(1)(a)(ii), (1)(b) & (1A), 93(1)(a)(i), (i)(b) & (1)(b)(i), 114A(2), 118(1), Schs. 2, 10, 13, 14 & 16	1.12.2005
2006-07	s. 118(2)(c)	20.4.2006
2006-24	s.72A(1)	9.11.2006
2007-17	ss. 73(1) & 103(2)(a)	14.6.2007
2009-17	ss. 2(1A), (2) & (2A), 3, (6)(c), (7A), (14A), (15)(d) & (16), 6 & 6(2) & (b), 7, 8, 15, 16A(1) & (2), 20(a), 22, 23 & 23(2), 24, 24A, 24B & (2), 25(1), (3) & (5), 25, 26(1) & (5), 27 & 27(4)(a), 28, 29(8), 32(1), 33, 36, 37, 38, 39, 40, 41(1A), 42, 44, 46, 47, 48A, 50(2), 51, 52(1) & (5), 53(a), 54, 55, 56, 56A, 58(2A), (2B) & (3), 59(1)(b) & (3), 60(1) & (2), 62, 62(1A) & (3), 62A, 63, 63A(2)(b) &(4), 64D(1), 65, 66, 66A, 66B(1), 67 & (2), 70A, 70B(2), 71, 72(5) & (11), 72A(8), 72B(4), 74(1), 73A, 74, 76 & 76(2), 77, 82 & 82(4), 83(1), 87A, 87B(1)(c), (1), (1A) & (1B), 87C(1)(a), 88A, 91, 92(1), (1A), (1B), (1C) & (2), 93(1)(aa), 92 & 92(1A), (1B), (1C) & (2), 93(1)(aa), (2)(a) & (5), 98, 99, 100, 100A, 101, 102(3), 103 & (2) 105 &(2)(g), 105A, 105B, 106(1) &(c), (2) & (2A), 107, 108, 109, 111(1) & (e), 112 & (1), 113, 114, 114A , 114A(2) & (3), 116(b)(ii), 118 &	

	(2)(b)(vi) & (vii), 119A, 119B(2), Schs. 5, 8, 9, 10, 13, 14 & 16	9.4.2009
Act. 2009-32	ss. 2(10)(bb), 2(10A), 30(1) & Sch. 12	14.10.2010 ^a
LN. 2010/006	ss. 2A, 39A, 39B, 39C & 39D	15.1.2010
2012/201	s. 25AA	29.11.2012
2012/203	ss. 2(41), 26(5)(a), (b) & (c), 40(7) & (8), 44(5) & (6)	29.11.2012
Act. 2015-07	ss. 2(2), 21, 24A(1), 26(4), (6), 67(2)(cc), 106(2), (2A), 109A- 109D, Schs. 10, 12, 13, 14,	3.9.2015
“ ”	ss. 2(31), 2A(4)(c), 16A(1), (3A), (5), 16AA, 18(1)(a)-(d), (2), 23(3), 27(1), (5), 29(8), 32(3), 39(B), (3)(b), (7), 39C(1)(d), (1)(e), (5), 87J(2), (3), 87K(1), 87(K)(3), 88, 98A, 118(2)(iii), Schs. 1, 13	1.1.2016
LN. 2015/227	Sch. 13, 14	17.12.2015
2015/240	ss. 100(1), (2), 105(2), 106(1), 106(2B), (2C), 107(2)(c)(iv)	1.1.2016
2016/160	s. 109B(8), (11)	28.7.2016
2017/046	ss. 2, 5, 6A, 16A(1A)-(1D), 27(1), (2), 29(7), 72A(6A), 87E(1)-(3), Schs. 12, 13, 14	16.3.2017

EU Legislation/International Agreements involved:

Directive 73/239/EEC	Directive 93/6/EEC
Directive 77/249/EEC	Directive 93/22/EEC
Directive 78/473/EEC	Directive 94/19/EC
Directive 79/267/EEC	Directive 95/26/EC
Directive 83/349/EEC	Directive 98/78/EC
Directive 84/5/EEC	Directive 2000/12/EC
Directive 84/641/EEC	Directive 2000/26/EC
Directive 85/611/EEC	Directive 2001/34/EC
Directive 87/343/EEC	Directive 2002/83/EC
Directive 87/344/EEC	Directive 2002/87/EC
Directive 88/357/EEC	Directive 2004/39/EC
Directive 90/618/EEC	Directive 2005/1/EC
Directive 90/619/EEC	Directive 2005/68/EC
Directive 91/371/EEC	Directive 2006/48/EC
Directive 91/675/EEC	Directive 2007/44/EC
Directive 92/49/EEC	
Directive 92/96/EEC	

^a Commencement Notice LN. 2010/155

1987-10
Repealed

Financial Services (Insurance Companies)

English source:

None cited.

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PART I.
PRELIMINARY

Short title

1. This Act may be cited as the Financial Services (Insurance Companies) Act.

Interpretation

Interpretation

2. (1) For the purposes of this Act, “insurance business” means—
- (a) the effecting and carrying out of contracts of any of the classes or groups of classes specified in Schedules 1 and 2; and
 - (b) the effecting and carrying out (other than by a licensee under the Banking Act) of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds, or similar contracts of guarantee, being contracts effected by way of business and not merely incidental to some other business carried on by the person effecting them, in return for the payment of one or more premiums;

and, unless otherwise expressly provided, includes reinsurance.

(1A) For the purposes of this Act, “reinsurance” means the activity of accepting general reinsurance, long-term reinsurance and all kinds of reinsurance risks ceded by an insurance company or by another reinsurance company and in the case of the association of Lloyd’s underwriters, “reinsurance” also means the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance or reinsurance company other than the association of Lloyd’s underwriters.

- (2) In this Act, unless the context otherwise requires—

“accounting class,” means a class of insurance business specified in Schedule 3;

“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;

“close links” means a situation in which two or more natural or legal persons are–

- (a) linked by control or participation; or
- (b) permanently linked to one and the same person by a control relationship;

“co-insurance” means an insurance operation in which more than one insurer takes a direct share of a risk, but does not include a reinsurance acceptance;

“Commission” means the Commission of Insurance appointed under section 7;

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

“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;

“control” means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

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

“criteria of sound and prudent management” means the criteria set out in Schedule 15 as supplemented by section 19 of the Solvency Act;

“deposit back arrangement”, in relation to any contract of reinsurance, means an arrangement whereby an amount is deposited by the reinsurer with the cedant;

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

“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 and as amended, so far as relevant to this Act, by various Decisions of the EEA Joint Committee and by the Agreement on the participation of new EU States signed at Luxemburg on 14th October 2003;

“EEA insurer” means an insurance or reinsurance 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, in the case of an insurance company, is authorised in accordance with Article 6 of the first general insurance Directive (as extended, where applicable, by the EEA Agreement) or Article 4 of the long term insurance Directive (as so extended); or
- (d) which, in the case of a reinsurance company (an “EEA reinsurer”) is authorised in accordance with Article 3 of the reinsurance Directive (as extended, where applicable, by the EEA Agreement);

“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;

“establishment” of an undertaking means its head office or any of its branches;

“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;

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

“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 Directive 73/239/EEC and 88/357/EEC;

“general business” means those classes of insurance business set out in Schedule 1;

“Gibraltar insurer” means an insurance or reinsurance (a “Gibraltar reinsurer”) company –

- (a) which is incorporated in Gibraltar;
- (b) whose head office is in Gibraltar;
- (c) which is licensed in Gibraltar;
- (d) whose business in the case of an insurance company is not restricted to—
 - (i) *Omitted*
 - (ii) business which is excluded from the long term insurance Directive by Article 3(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 Act; and
- (e) which is not excluded from the first general insurance Directive by Article 3 of that Directive and the long term insurance Directive by Article 3(5) and (6) 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 EEA State in which the insurer’s head office is situated;

“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 other EEA States under Article 5 of the Fourth Motor Insurance Directive”

“investment firm” has the meaning assigned to it by the Financial Services Act 1998;

“licenced insurer” means an insurer which holds a valid licence issued under the provisions of this Act;

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 in 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);

“long term business” means those classes of insurance business set out in Schedule 2;

“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;

“mathematical reserves” means the provision made by an insurer to cover liabilities (other than liabilities that have fallen due and liabilities arising from deposit back arrangements) arising under or in connection with contracts for long term business;

“mixed financial holding company” has the meaning assigned to it by the Financial Services (Banking) Act;

“motor vehicles 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;

“non-EEA insurer” means an insurance or reinsurance company –

- (a) whose head office is not in the EEA; and
- (b) which is licensed in Gibraltar;

“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;

“principal Gibraltar executive” means an officer or employee within section 24B(4)(b) or 25(7);

“related operations” in relation to reinsurance, include a holding company function and activities with respect to credit institutions, financial institutions, mixed financial holding companies, investment firms, insurance and reinsurance companies; and the provision of statistical or actuarial advice or risk analysis for clients;

“relevant motor vehicle risks” means risks falling within Class 10 of Schedule I (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, as the case may be, in which he has his habitual residence at that date;

- (b) where the policy holder is not an individual, Gibraltar or the EEA State, as the case may be, in which the establishment of the policyholder to which the commitment relates was situated at that date,

and “EEA State of the commitment” shall be construed accordingly;

“the Solvency Act” means the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015;

“the Solvency Directive” means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“subordinate company,” means a company having share capital (excluding share capital which does not carry a right to participate beyond a specified amount in a distribution of dividends or capital) some or all of which

- (a) is held by an insurer as part of its long term business assets; or
- (b) is held by another company which is a subordinate company of an insurer, where the share capital so held amounts to more than half in nominal value of the subordinate company's share capital and confers on the insurer or the other company, as the case may be, the power to appoint or remove the holders of all or a majority of the directorship of the subordinate company and more than half the voting power at any of its general meetings.

“supervisory authority” means the national authority which is empowered by law or regulation to supervise insurance or reinsurance companies and, in the case of Gibraltar, means the Commission;

“Swiss general insurance company” means an insurance company–

- (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;

“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;

“unit of account” means the unit of account known as the euro and defined in Council Regulation (EEC) No. 3180/78 as amended.

(2A) In this Act, unless the context otherwise requires, “insurer” includes a reinsurer.

(3) In the definition of “subordinate company” in subsection (2), share capital—

- (a) held by any person as a nominee, shall be deemed to be held by the person for whom it is so held; and
- (b) held, or deemed to be held, by a trustee, shall be deemed to be held by the beneficiary.

(4) In this Act, a person is said to be connected with an insurer if—

- (a) being an individual,
 - (i) he controls, or is a partner of a person who controls, the insurer; or
 - (ii) he is a director of the insurer or the spouse or minor child, including a stepchild or adopted child, of such a director; or
- (b) being a company, other than a subordinate company of the insurer, it is controlled by the insurer or by another person who controls the insurer.

(5) In this Act—

- (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 –

- (a) Council Directive 90/618/EEC amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC; and
- (b) the Prudential Supervision Directive (95/26/EC) (as defined by the Insurance Companies (Prudential Supervision) Regulations 1997) amending (among others) Directive 73/239/EEC and Directive 92/49/EEC;
- (c) the reinsurance Directive (2005/68/EC) amending Directive 73/239/EEC, Directive 92/49/EEC and Directive 98/78/EC.

(7) In this Act, “the long term insurance Directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, as amended by the reinsurance Directive.

(7A) In this Act, “the reinsurance Directive” means European Parliament and Council Directive 2005/68/EC of 16 November 2005 on reinsurance.

(8) In this Act, 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 Act to the territory where the risk is situated (whether Gibraltar or an EEA State) 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 Gibraltar or EEA State, as the case may be, in which the property is situated;
- (b) where the insurance relates to vehicles of any type, to the territory of registration (whether Gibraltar or an EEA State);
- (bb) where the insurance relates to a vehicle dispatched to Gibraltar from an EEA State or to an EEA State from Gibraltar, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, to the territory of destination (and not the territory of registration as provided by sub-paragraph (b));
- (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the Class concerned), to Gibraltar or the EEA State, as the case may be, where the policy holder took out the policy;
- (d) in a case not covered by paragraphs (a) to (c) –
 - (i) where the policy holder is an individual, to Gibraltar or the EEA State, as the case may be, where he has his habitual residence;
 - (ii) otherwise, to Gibraltar or the EEA State, as the case may be, where the establishment of the policy holder to which the policy relates is situated.

(10A) Where the vehicle is involved in an accident during the 30 day period referred to in subparagraph (bb) of subsection (10) while being uninsured, the national insurers' bureau in the territory of destination shall be liable for the compensation.

(11) In this Act, “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, 8, 9, 10, 13 and 16 of Part I of Schedule 1 where the policyholder 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 euro;
- (b) net turnover, 12.8 million euro;
- (c) number of employees, 250,

and for the purposes of this sub-section—

- (i) “balance sheet total” means in relation to a company’s financial year, the aggregate of the company’s assets;
- (ii) “net turnover”, in relation to a company, means the amounts derived from the provision of services falling within the company’s ordinary activities, after deduction of discounts;
- (iii) “number of employees” means the average number of persons employed by the company in the year (determined on a weekly basis),

and for a financial year which is a company’s financial year but not, in fact, a year, the net turnover of the company 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 Act 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”).

(14A) In this Act, references to the provision of reinsurance in Gibraltar or in an EEA State are references to the accepting of a risk ceded by an insurer there through an establishment in Gibraltar or in an EEA State.

(15) In this Act “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 holds a qualifying holding under 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) In this Act, a person holds a “qualifying holding” 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 Act –

“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 Act 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 Act 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-EEA insurer includes a reference to a company, which, if any authorisation sought by it were issued, would be such an insurer.

(21) In this Act “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 Act “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 Act “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 (27) 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 Act “claims representative”, in relation to an insurer and Gibraltar or an EEA State, means a person who –

- (a) has been designated as the insurer’s representative in Gibraltar or in that EEA State; and

- (b) in the case of –
 - (i) an individual, is resident in the territory (whether Gibraltar or an EEA State) for which he has been designated as the insurer’s representative;
 - (ii) a corporation, has a place of business in the territory (whether Gibraltar or an EEA State) for which it has been designated as the insurer’s representative; 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 territory (whether Gibraltar or an EEA State) for which the person has been designated as the insurer’s representative.

(30) The authorisation referred to in sub-section (29)(c) shall not extend to the settlement of relevant claims and in this sub-section 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 territory (whether Gibraltar or an EEA State) for which the person has been designated as the insurer’s representative, 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 to act on behalf of the insurer in the carrying on in the territory (whether Gibraltar or an EEA State) for which he or it has been designated of its general business (other than its reinsurance business, if any) and may not be required to undertake activities on behalf of the non-life insurance undertaking which appointed him other than those set out in Article 152.1 of the Solvency Directive.

(32) In this Act, 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.

(32A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

- (a) it is a member of the undertaking and at all times since the beginning of the undertaking's preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; and
- (b) no other person is the undertaking's parent undertaking by virtue of paragraph (a), (b) or (c) of sub-section (32).

(33) For the purpose of sub-section (32) or (32A) 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.

(33A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking which—

- (a) entitles it to 20 per cent or more of the voting rights in the undertaking; or
- (b) comprises 20 per cent or more of the shares of the undertaking.

(34) In this Act–

- (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.

(34A) An undertaking (‘A’) shall not be treated as a parent undertaking of an undertaking (‘B’) only because another undertaking which is A’s subsidiary undertaking by virtue of sub-section (33A) is a parent undertaking of B.

(34B) Two subsidiary undertakings of the same parent undertaking shall not be fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue of sub-section (33A).

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

(35A) Any reference in this Act –

- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
- (b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of the Insurance Companies (Prudential Supervision) Regulations 1997.

- (36) In this Act 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 Act—
- (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.

(40) For the purposes of sub-section (37) as it applies to the “participating interest” in sub-sections (33A) or (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.

(41) Unless expressly stated, a reference in this Act to a Directive means that Directive as the same may be amended from time to time.

Meaning of “qualifying holding”: supplementary provisions.

2A.(1) For the purposes of section 2(16), in the context of subsections (3) and (4) and of the other levels of holding referred to in subsection (4), the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC¹, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account by the Commission.

(2) The Commission shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Schedule 1 to the Financial Services (Markets in Financial Instruments) Act 2006 provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

(3) The Commission shall not grant an undertaking authorisation to take up the business of insurance before it has been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

(4) The following provisions apply–

- (a) any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a Gibraltar insurer or to further increase, directly or indirectly, such a qualifying holding in a Gibraltar insurer as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the Gibraltar insurer would become its subsidiary (hereinafter referred to as the proposed acquisition), shall first notify in writing the Commission of their intention and the Gibraltar insurer in which they are seeking to acquire or

¹ Directive 2004/19/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38).

increase a qualifying holding, indicating the size of the intended holding and other relevant information, as referred to in section 39C(4). The Commission need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, it applies a threshold of one-third;

- (b) the Commission shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a Gibraltar insurer first to notify in writing the Commission, indicating the size of his intended holding. Such a person shall likewise notify the Commission if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the Gibraltar insurer would cease to be his subsidiary. The Commission need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, it applies a threshold of one-third;
- (c) on becoming aware of them, insurance undertakings shall inform supervisory authority of its home Member State—
 - (i) of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the thresholds referred to in paragraphs (a) and (b) and section 39B;
 - (ii) at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges;
- (d) where the influence exercised by the persons referred to in paragraph (a) is likely to operate against the prudent and sound management of an insurance undertaking, the Commission shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question;
- (e) paragraph (d) shall apply to natural or legal persons failing to comply with the obligation to provide prior information imposed in paragraph (a). If a holding is acquired despite the

opposition of the Commission, the Commission shall, regardless of any other sanctions to be adopted, seek an order from a judge of the Supreme Court either for the exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment;

- (f) the Commission shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an insurance undertaking, it is not satisfied as to the qualifications of the shareholders or members.

Meaning of “supervised by agreement in”.

3. (1) References in this Act to an insurer that is supervised by agreement in Gibraltar are to be read as meaning an insurer—

- (a) that has its head office in a country outside the EEA ;
- (b) that carries on insurance business in Gibraltar and in one or more EEA States; and
- (c) in respect of which it has been agreed between the Commission and the supervisory authorities in the EEA States concerned that the insurer is to be supervised in Gibraltar.

(2) References in this Act to an insurer that is supervised by agreement in a EEA State are to be read as meaning an insurer—

- (a) that has its head office in a country outside the EEA ;
- (b) that carries on insurance business in Gibraltar and in one or more EEA States; and
- (c) in respect of which it has been agreed between the Commission and the supervisory authorities in the EEA States concerned that the insurer is to be supervised in one of those EEA States.

Conversion of units of account.

4. For the purposes of this Act the rate of conversion from euro to sterling for each year beginning 31st December shall be the rate published in the Official Journal of the Communities on the last day of the preceding October for which euro conversion rates are so published for the currencies of all States that were then EEA States, subject to a minimum of 41.66 pence per unit.

Ancillary risks.

5.(1) An insurer which is authorised to insure a principal risk within one or more of the Classes of general business specified in Part 1 of Schedule 1 may also insure ancillary risks included in another of those Classes without the need for further authorisation if those risks—

- (a) are connected with the principal risk;
- (b) concern the object which is covered against the principal risk; and
- (c) are covered by the contract insuring the principal risk.

(2) Subject to subsection (3), the risks included in Classes 14, 15 and 17 of that Part shall not be regarded as risks ancillary to other classes.

(3) Legal expenses insurance within Class 17 of that Part may be regarded as a risk ancillary to Class 18 of that Part where the conditions in subsection (1) are met and either—

- (a) the main risk relates solely to the provision of assistance for persons who get into difficulties while travelling, while away from their home or habitual residence; or
- (b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

Restrictions on the use of the words “insurance”, “assurance” and “reinsurance”

Restrictions on the use of the words “insurance”, “assurance” and “reinsurance”.

6.(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 derivative or cognate expressions thereof, in relation to or in connection with any business carried on in or from within Gibraltar in such manner as to indicate or cause people to believe that it is carrying on the business of insurance.

(2) Nothing in subsection (1) shall apply to the use of the “insurance”, “assurance” or “reinsurance”, as the case may be, by–

- (a) a representative or authorised agent of an insurer, when advertising or referring to its services, provided that the insurer is permitted under the terms of sub-section (1) to use the word which the representative or agent proposes to use;
- (b) a holding or subsidiary company of an insurer which itself is authorised in writing by the Commission to use the word “insurance”, “assurance” or “reinsurance” in its name, provided that the use of the word does not indicate that the subsidiary or holding company is itself an insurer;
- (c) any association of employees of an insurer which itself is authorised to use the word “insurance”, “assurance” or “reinsurance” in its name or to any association of insurance brokers, so long as the use of the word does not indicate that the association itself is an insurer;
- (d) the funds mentioned in section 18(e).

(3) A person who uses either word in contravention of this section is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine or, on summary conviction, to a fine of £1,000.

Application to Solvency II firms.

6A. In relation to an insurer or reinsurer which is within the scope of the Solvency Directive, this Act shall be interpreted and applied in a manner which is consistent with the Solvency Act and, if any conflict arises between a provision of this Act and a provision of the Solvency Act, the Solvency Act shall prevail.

PART II.

ADMINISTRATION OF THE ACT

Commission of Insurance.

7. The Commission of Insurance shall be the Financial Services Commission established under section 3(1) of the Financial Services Commission Act, 2007.

8-13. *Repealed*

Notice of appointments.

14. Where any appointment is made under any of sections 7 or 8 or a person so appointed ceases to hold that appointment, notice of that fact shall be published in the Gazette.

Register of licences, etc.

15. (1) The Commission shall maintain a register recording the issue, renewal, variation or cancellation of every licence and such other matters as may be prescribed, and shall keep a duplicate of every licence issued.

(2) The register shall be available for inspection by any member of the public during normal working hours, on payment by him of the prescribed fee, if any.

(3) The Commission shall from time to time cause lists to be published in the Gazette of all current holders of licences issued under this Act.

Improper disclosure of information.

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

PART III.

**RESTRICTIONS ON THE RIGHT TO CONDUCT INSURANCE
BUSINESS**

General Restriction.

16A.(1) The Commission may authorise an insurer (other than a reinsurer) to carry on in or from within Gibraltar such of the Classes of insurance business specified in Schedule 1 or 2 or such parts of these Classes, as may be specified in the authorization and such authorisation shall permit the insurer to carry on its authorised insurance business throughout the entire EEA.

(1A) An insurer which is authorised under subsection (1) to carry on insurance business of a particular Class shall obtain a further authorisation from the Commission before carrying on—

- (a) insurance business of another Class; or
- (b) where the existing authorisation is for some of the risks within a particular Class, other insurance business within that Class.

(1B) An authorisation under subsection (1)–

- (a) shall be granted for one or more of the Classes of insurance business specified in Schedule 1 or 2;
- (b) shall cover each authorised Class entirely, unless the applicant wishes it to cover only some of the risks within a particular Class; and
- (c) shall not include within a particular Class any risk which forms part of another Class.

(1C) An insurer to which the Solvency Act applies may engage in the assistance activity referred to in section 5(2) of that Act only if it is authorised under this Act to carry on insurance business within Class 18 of Part 1 of Schedule 1 and, where it does so, the Solvency Act shall apply to the operations in question.

(1D) Subsections (1A), (1B)(c) and (1C) apply without limiting section 5.

(2) The Commission may authorise a reinsurer to carry on in or from within Gibraltar non-life reinsurance and related operations, life reinsurance and related operations or all kinds of reinsurance and related operations, as may be specified in the authorisation and such authorisation shall permit the reinsurer to carry on its authorised reinsurance business throughout the entire EEA.

(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.

(3A) Without prejudice to the generality of subsection (3), an authorisation for one of the classes may be limited to the operations set out in the scheme of operations referred to in sections 12 and 13 of the Solvency Act.

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

(5) An application for authorisation shall be considered in the light of the scheme of operations to be submitted pursuant to section 12(1)(a) of the Solvency Act.”; and the fulfilment of any conditions laid down for authorisation.

Notification of authorisations and withdrawal of authorisations.

16AA. The Commission shall notify every authorisation or withdrawal of authorisation to the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council.

Transitional Provisions.

16B. Where immediately before the coming into force of the Insurance Companies Act (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.

Restriction on the right to conduct insurance business.

17. (1) Subject to the provisions of section 18, no person shall carry on insurance business in or from within Gibraltar except in compliance with a licence issued under this Act.

(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 Act as are applicable have been complied with.

(2A) Notwithstanding sub-section (2)–

- (a) sections 16, 92, 93, 100B, 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.

(3) A person who contravenes the provisions of this section is guilty of an offence and is liable, on conviction on indictment, to imprisonment for two years and to a fine or, on summary conviction, to a fine of £1,000.

Exemptions.

18(1). Notwithstanding the provisions of section 17(1), no licence under this Act shall be required by or in respect of–

- (a) – (d) *omitted*

- (e) any of the following funds, namely:
 - (i) Employment Injuries Insurance Fund;
 - (ii) Gibraltar Government Insurance Fund;
 - (iii) Gibraltar Government Widows' and Orphans' Pensions Scheme; and
 - (iv) Social Insurance Fund;
- (f) the insurance of postal matters under the British Commonwealth and Foreign Post Regulations.

(2) For the purpose of ensuring compliance with paragraph 2 of Article 17 of the Solvency Directive, the Government must ensure that the bodies specified in subsection (1)(e) have insurance or re-insurance activities operations as their object which operate under conditions equivalent to those under which undertakings governed by private law operate.

19. *Repealed.*

Restrictions on conducting long term and general business

20. The Commission 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 and related operations; or
- (b) the insurer, at the time of the commencement of the Insurance Companies Act (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 of Schedule 1 (accident and health) or to any Class or part of a Class of insurance within that group.

Licensed insurer not to carry on other business.

21. Every insurer licensed under this Act shall limit its objects to the business of insurance and related operations arising directly from that business to the exclusion of all other commercial business except that, in the

case of a licensed reinsurer, that requirement may include a holding company function and activities with respect to financial sector activities such as are referred to in Article 18.1(b) of the Solvency Directive.

Prescribed contracts and arrangements.

22. (1) The Government may by regulations prescribe classes of contracts or of arrangements, which are, in its opinion, liable to prove unfavourable to the interests of policy holders.

(2) A licensed insurer, or a subordinate company of a licensed insurer, which enters into a contract or arrangement of a class prescribed by regulations made under subsection (1), shall furnish the Commission with a statement, within such period and containing such particulars of the contract or arrangement as may be prescribed.

(3) The Commission may cause the whole, or any part of, any such statement—

- (a) to be deposited with the Registrar of Companies; and
- (b) to be published in such manner as the Commission may determine,

PART IV.
LICENSING OF INSURERS

Applications.

23. (1) An application for a licence to carry on insurance business in or from within Gibraltar shall be addressed to the Commission and shall be accompanied by such information as may be prescribed by or in accordance with regulations under this Act and by the prescribed fee (if any).

(2) The Commission may require the applicant to submit such further information, as he may reasonably consider necessary for the assessment of the application.

(3) In the exercise of its powers under this section the Commission may not take into account the economic requirements of the market.

Gibraltar companies may be required to change name.

24. The Commission may require an applicant that is a company incorporated in Gibraltar to change its name as a condition of being

licenced, if he considers that the existing name closely resembles that of another insurer or might otherwise be misleading.

Gibraltar applicants.

24A. (1) The Commission shall not issue a licence to an applicant whose head office is in Gibraltar unless the applicant is a body specified in paragraph (27) of Annex III to the Solvency Directive which has its registered office in Gibraltar.

- (2) The Commission 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(2) 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.

(3) The Commission 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.

Applicants from EEA States etc.

24B. (1) The Commission 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 it that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by it.
- (2) *Omitted.*
- (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) 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.

Applicants from non-EEA States.

25.(1) Subject to sub-sections (2) and (3), the Commission shall not issue a licence in respect of long term or general business to an applicant to which this section applies unless it 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 Commission 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 Commission and the other supervisory authority or authorities concerned.

(3) *Omitted.*

(4) The Commission 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 Commission shall not issue a licence which is restricted to reinsurance business and related operations to an applicant to which this section applies if it appears to it that—

- (a) the representative of the applicant referred to in sub-section (4) or the individual representative 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 it.

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

- (a) its head office is not in the EEA; 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 Act may make such provision as to deposits under this section as appears to the Government, after consultation with the Commission, to be necessary or expedient, including provision for the deposit of securities instead of money.

Notifications in respect of non-EEA entities.

25AA.(1) The Commission shall notify the European Commission and the competent authorities of the EEA States—

- (a) of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed other than by the law of Gibraltar or an EEA State; or
- (b) whenever a parent undertaking which is governed other than by the law of Gibraltar or an EEA State acquires a holding in a Gibraltar insurer which would turn the latter into its subsidiary.

(2) Where subsection (1)(a) applies, the structure of the group shall be specified in the notification that the Commission shall address to the European Commission and the competent authorities of the EEA States.

General Representatives.

25A. (1) The requirement 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.

Determination of applications.

26.(1) The Commission shall not issue a licence unless –

- (a) the applicant has submitted to it such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations under this Act, and
- (b) it is satisfied on the basis of that and any other information received by it that the application ought to be granted.

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

(3) Subject to sub-section (4), the Commission shall decide an application for a licence within six months of receiving all the information referred to in sub-section (1)(a) and section 23, and if he refuses to issue the authorisation he shall inform the applicant in writing of the reasons for the refusal.

(4) *Omitted.*

(5) The Commission shall not issue a licence to an applicant which is a Gibraltar insurer, credit institution or investment firm authorised in an EEA State and which is–

- (a) a subsidiary of an EEA insurer;
- (b) a subsidiary of the parent undertaking of an EEA insurer, credit institution or investment firm authorised in an EEA State; or
- (c) controlled by the same person who controls an EEA insurer, credit institution or investment firm authorised in an EEA State;

without prior consultation with the supervisory authorities of the EEA State concerned.

(6) The Commission shall not issue a licence to an applicant which is a Gibraltar insurer and which is–

- (a) a subsidiary of a credit institution or investment firm authorised in the EEA,

- (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the EEA, or
- (c) controlled by the same person who controls a credit institution or investment firm authorised in the EEA,

without prior consultation with the authorities of the EEA State concerned who are responsible for the supervision of credit institutions or, as the case may require, investment firms.

Restrictions on issue of licence by the Commission.

27(1) The Commission shall not issue a licence to an applicant if it appears to the Commission that—

- (a) the applicant is an undertaking which is closely linked with any person; and
- (b) the Commission would be prevented from exercising its supervisory functions effectively in relation to the applicant by—
 - (i) the applicant's close links with that person;
 - (ii) the non-EEA measures to which that person is subject; or
 - (iii) the difficulties involved in enforcing those measures.

(2) In subsection (1) “non-EEA measures” means the laws, regulations or administrative provisions of a country or territory outside the EEA.

(3) The Commission shall not issue a licence to an applicant –

- (a) which is incorporated in Gibraltar;
- (b) whose head office is outside Gibraltar;
- (c) whose business is not restricted to business to which sub-section (4) applies; and
- (d) which is not excluded from the first general insurance Directive by Article 3 of that Directive and the long term insurance Directive by Article 3(5) and (6) of that Directive.

(4) The business referred to in paragraph (c) of sub-section (3) is –

- (a) *Omitted*

- (b) business which is excluded from the long term insurance Directive by Article 3(2) or (3) of that Directive;
- (c) business which is excluded from Directive 73/239/EEC by Article 2(2)(b) of that Directive; and
- (d) business which is exempted from the licensing requirements by section 18.

(5) In accordance with the Commission's requirements, licensed insurers shall provide the Commission, on a continuous basis, with the information it requires to monitor that the insurer does not fulfil the conditions which would entail refusal of a licence under subsection (1).

Criteria for determining applications.

28.(1) In determining an application, the Commission shall have regard to the need to protect the interests of those persons who may take out policies of insurance with the applicant if a licence is issued.

(2) In addition to satisfying the requirements detailed elsewhere in this Part, the Commission may also refuse an application –

- (a) if he is not satisfied that the applicant will carry on insurance business with integrity, prudence and with the professional skills necessary for the range and scale of business undertaken;
- (b) if it is shown that any information furnished by the applicant is untrue or misleading in some material particular, except where the Commission is satisfied that an error was made inadvertently.

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 representative does not constitute—

- (a) the opening of a branch for the purpose of Article 145 of the Solvency Directive; or
- (b) the opening of a branch or the creation of an establishment within the meanings given in Article 21(6) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

(8) Where a motor vehicle liability insurer does not have a claims representative in pursuance of subsection (1) then, unless approval is given in accordance with Article 152(4) of the Solvency Directive to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC assuming the function of the claims representative, the Commission 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 Commission may withdraw the 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 caused by a vehicle normally based in Gibraltar from an injured 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 the 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 representatives, 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.

Form and contents of licence.

32. (1) A licence shall be in the prescribed form and shall be signed for and on behalf of the Commission.

(2) A licence shall specify the name under which the insurer will carry on business and the classes or description of insurance business authorized.

(3) Where a licence is issued to an undertaking to which the Solvency Directive does not apply by virtue of subsections (1) to (3) of section 9 of that Act, the Commission may make it a term of the licence that the licensee complies with all, or such as may be specified in the licence, of the requirements of the Solvency Act which would apply if the undertaking were one to which that Act applied.

Notice of issue of licence.

33. The Commission shall cause notice of the issue of a licence and of the classes of insurance business authorized by the licence to be published in the Gazette.

Duration of licence.

34. A licence shall remain in force until is surrendered or revoked.

Licence not transferable.

35. A licence shall not be transferable.

Display of licence.

36. A licensed insurer shall cause its licence to be displayed prominently, so as to be visible to the public, in its principal place of business in Gibraltar:

Provided that the Commission may exempt any licenced insurer from the requirement of this section.

Surrender of licence.

37. A licensed insurer shall surrender its licence to the Commission within 48 hours of its revocation under section 106.

Lost licence, etc.

38. Where a licence has inadvertently been lost, destroyed or defaced, the Commission shall, on application in writing accompanied by the prescribed fee, supply the licensed insurer with a certified copy of the licence.

Change of name.

39. A licensed insurer that has its head office in Gibraltar shall not change its name without the prior consent in writing of the Commission

PART V.

MANAGEMENT AND REPRESENTATION OF LICENSED INSURERS

Changes of director, controller or manager etc.

Application of section 40 to 46.

39A. Sections 40 to 46 apply subject to the provisions of section 2A(4)(a) and (b) and sections 39A to 39D.

Commission Assessment Periods.

39B.(1) The Commission—

- (a) shall, promptly and in any event within two working days following receipt of the notification required under section 2A(4)(a) as well as following the possible subsequent receipt of

the information referred to in subsection (2) below, acknowledge receipt thereof in writing to the proposed acquirer;

- (b) shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Commission to be attached to the notification on the basis of the list referred to in section 39C(4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in section 39C(1) (hereinafter referred to as the assessment);
- (c) shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(2) The following provisions apply–

- (a) the Commission may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed;
- (b) for the period between the date of request for information by the Commission and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the Commission for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

(3) The Commission may extend the interruption referred to in subsection (2) up to 30 working days if the proposed acquirer is–

- (a) situated or regulated outside the EEA; or
- (b) a person who is not subject to supervision under–
 - (i) the Solvency Directive;
 - (ii) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS); or

- (iii) Directive 2004/39/EC, or Directive 2006/48/EC (Markets in Financial Instruments).

(4) Where the Commission, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, serve on the proposed acquirer a written notice of objection which shall include the reasons for that decision. Subject to the laws of Gibraltar, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent the Minister from allowing the Commission to make such disclosure in the absence of a request by the proposed acquirer.

(5) Where the Commission does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(6) The Commission may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(7) No requirement may be imposed for the notification to and approval by the Commission of direct or indirect acquisitions of voting rights or capital if it would be more stringent than the requirements set out in the Solvency Directive.

Appraisals of applications.

39C.(1) In assessing the notification provided for in section 2A(4)(a) and the information referred to in section 39B(2), the Commission shall, in order to ensure the sound and prudent management of the Gibraltar insurer in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the Gibraltar insurer, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria—

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the Gibraltar insurer as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the Gibraltar insurer in which the acquisition is proposed;
- (d) whether the Gibraltar insurer will be able to comply and continue to comply with the prudential requirements based on the Solvency Directive and, where applicable, other Directives,

notably, Directive 2002/87/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The Commission may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in subsection (1) or if the information provided by the proposed acquirer is incomplete.

(3) The Commission shall neither impose any prior conditions in respect of the level of holding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(4) The Commission shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the Commission at the time of notification referred to in section 2A(4)(a). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. The Commission shall not require information that is not relevant for a prudential assessment.

(5) Notwithstanding subsections (1) to (3) of section 39B. Where two or more proposals to acquire or increase qualifying holdings in the same insurance undertaking have been notified to the Commission, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Consultation.

39D.(1) The Commission shall work in full consultation with any appropriate home State regulator when carrying out the assessment if the proposed acquirer is one of the following—

- (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of the Financial Services (Collective Investment Schemes) Act 2005

(hereinafter referred to as the “UCITS management company”) authorised in a Member State or in a sector other than that in which the acquisition is proposed;

- (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State or in a sector other than that in which the acquisition is proposed; or
- (c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State or in a sector other than that in which the acquisition is proposed.

(2) The Commission shall, without undue delay, provide any appropriate home State regulator with any information which is essential or relevant for the assessment. In this regard, the Commission shall communicate to any appropriate home State regulator upon request all relevant information and shall communicate on its own initiative all essential information. A decision by the Commission assessing the notification shall indicate any views or reservations expressed by the home State regulator of the proposed acquirer.

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 Commission 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 Commission 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 Commission 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 Commission 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 Commission shall serve on the insurer and on the person proposed to be appointed a preliminary notice stating—

- (a) that the Commission 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, if the insurer or that person so requests, oral representations to the Commission.

(5) The Commission shall not be obliged to disclose to the insurer or to the person proposed to be appointed any particulars of 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 Commission shall take them into consideration before serving the notice of objection.

(7) Where the Commission assesses the reputation and experience of a proposed managing director who is involved in the management of another entity in the same group, the Commission shall consult with any appropriate supervisory authorities of the EEA States concerned.

(8) The Commission shall, without undue delay, provide any appropriate EEA supervisory authority with any information regarding the reputation and experience of managing directors which is of relevance to the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Approval of proposed controller where section 40 does not apply.

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

- (a) he has served on the Commission 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 Commission 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 Commission having served on him a written notice of objection.

(1A) If the acquirer of the notifiable holding referred to in sub-section (1) is—

- (a) an insurer, a credit institution or an investment firm authorised in the EEA;
- (b) the parent undertaking of an entity referred to in paragraph (a); or
- (c) a person who is a controller of an entity referred to in paragraph (a);

and if, as a result of that acquisition, the Gibraltar insurer in which the acquirer proposes to acquire such a holding would become a subsidiary of or subject to the control of the acquirer, the approval of the proposed acquisition of the holding shall be subject to prior consultation with the relevant supervisory authorities of the EEA States concerned.

(2) The Commission 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 Commission shall serve on the person proposing to become a controller a preliminary notice stating—

- (a) that the Commission 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 , if that person so requests, oral representations to the Commission.

(4) The Commission 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 59(4) of the long term insurance Directive.

(5) The Commission 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 Commission shall take them into consideration before service 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 Commission 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 Commission 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 Commission having served on him a written notice of objection.

(2) The Commission 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 (5) 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 Commission 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 any 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.

(5) Where the Commission assesses the reputation and experience of a proposed director who is involved in the management of another entity in the same group, the Commission shall consult with any appropriate supervisory authorities of the EEA States concerned.

(6) The Commission shall, without undue delay, provide any appropriate EEA supervisory authority with any information regarding the reputation and experience of directors which is of relevance to the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

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

45.(1) In relation to a Swiss general insurance company, –

- (a) Section 40 shall have effect as if the references to a managing director or chief executive were references 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 Commission 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 next following that on which the change comes to the knowledge of the insurer.

Auditors.

Appointment of auditors.

47.(1) Every licenced insurer shall appoint as its auditor in Gibraltar a person or firm—

- (a) registered in Part I or II of the Register maintained under the provisions of the Auditors Approval and Registration Act; and
- (b) approved by the Commission.

(2) A person shall not be eligible to be appointed as auditor to a licensed insurer or to continue in such appointment—

- (a) if he is, or becomes, a director, controller, principal Gibraltar executive, officer or agent of the insurer;
- (b) if he has, or acquires, without the previous consent in writing of the Commission, a financial or proprietary interest in the insurer, other than as a minority shareholder in a public company; or
- (c) if he ceases to be an approved auditor.

(3) When the auditor of a licensed insurer ceases to hold office on death, resignation or termination of contract, the insurer shall appoint a replacement as soon as practicable.

(4) If an auditor inherits a financial or proprietary interest in a licensed insurer of which he is the auditor, he shall, within 7 days of becoming aware of the fact, inform the Commission in writing and he shall, if he wishes to continue as auditor of the insurer and if the Commission so directs, dispose of that interest within such time as the Commission may determine.

Manner of audit.

48. (1) The accounts and balance sheets of every insurer licensed under this Act 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 the provisions relating to the audit of the accounts of companies under the Companies Act, 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.

Communication by auditor with the Commission.

48A. (1) No duty to which –

- (a) an auditor of an insurer licensed under this Act; or
- (b) an auditor of any body with which a Gibraltar or non-EEA insurer is closely linked by control who is also an auditor of the insurer,

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, 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 or body and which is relevant to any functions of the Commission under this Act.

(2) If it appears to the Commission 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 specifying circumstances in which matters are to be communicated to the Commission 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 Commission in the circumstances specified by the regulations.

(3) The matters to be communicated to the Commission 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 Commission that an auditor has failed to comply with the duty mentioned in sub-section (2), the Commission may disqualify him from being the auditor of an insurer or any class of insurer licensed under this Act; but the Commission 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 Act shall not appoint as auditor a person disqualified under sub-section (4).

Accounts

Accounts to be kept in Gibraltar.

49.(1) A licenced insurer that has its head office in Gibraltar shall maintain in Gibraltar proper accounts and records in respect of its entire business.

- (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 business carried on in Gibraltar.

Annual accounts.

50. (1) Every licenced insurer shall, with respect to each financial year, prepare, as appropriate to its business–

- (a) a revenue account for each accounting class of insurance business that it carries on and a summary general business revenue account;
- (b) a long term business revenue account;
- (c) a profit and loss account; and
- (d) a balance sheet as at the end of the year.

(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 report 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.

(2) Every licenced insurer shall publish every balance sheet and every profit and loss account, which is required by section 171 of the Companies Act to be laid before a company in a general meeting.

(3) *Revoked.*

Change of financial year.

51. (1) No licensed insurance shall change its financial year without the previous approval in writing of the Commission.

(2) The Commission may at any time require a licensed insurer to change the date for the end of its financial year, either to an earlier or a later date.

(3) The provision of this section shall not apply to an insurer that has its head office in an EEA State or to an insurer that is supervised by agreement in an EEA State.

Submission of accounts and statements.

52. (1) A licensed insurer shall submit to the Commission within six months of the end of the period to which they relate, two printed copies of each of the following documents –

- (a) every account and balance sheet prepared in compliance with section 50;
- (b) any report of the auditor of the insurer, made in pursuance of section 48, on any such account and balance sheet;
- (c) the abstract of the actuary's report prepared in accordance with section 78;
- (d) every published annual account and balance sheet and the report thereon by the auditor;

- (e) every report, if any, on the affairs of the insurer submitted to the shareholders or policy holders of the insurer.
- (2) (a) An insurer shall, in respect of any financial year ending from 31 December 2003 to 30 December 2004 (inclusive) submit, in addition to the documents in sub-section (1), the documents and information in paragraph (b).
 - (b) the documents and information are-
 - (i) Forms INS 3, INS 4 and INS 60 as amended by the Insurance Companies (Accounts and Statements) (Amendment) Regulations 2004, provided that the amended Form INS 60 need not be submitted if it contains no information different to the information in the un-amended Form INS 60; and
 - (ii) the amounts at line 12 of amended Form INS 7 and line 61 of the amended Form INS 5, if these lines contain amounts different from the amounts at the same lines of the unamended forms.
- (3) One of the copies of any document deposited under paragraph (a) or paragraph (c) of sub-section (1) shall be signed by such persons as may be prescribed.
- (4) One of the copies of any auditor's report deposited under paragraph (b) of sub-section (1) shall be a copy signed by the auditor.
- (5) The Commission shall consider the documents deposited under sub-section (1) , and if any such 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.
- (6) 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 and any certificate so annexed by virtue of sub-section (1B) of that section.

Additional requirements for insurers based outside the EEA.

53. A licensed insurer that has its head office in a country outside the EEA shall, in addition to the requirements of section 52–

- (a) submit to the Commission two copies of every account and balance sheet prepared in respect of the business which it carries on in Gibraltar and of the auditor's report thereon and of

every abstract, prepared by the actuary in respect of such business; and

- (b) submit with such accounts once in every two years a certificate from the supervisory authorities of the country in which it has its head office, that
 - (i) the insurer complies with the requirements of the laws of that country relating to insurance; and
 - (ii) the insurer continues to be authorised in that country to carry on the classes of insurance business for which it is licensed in Gibraltar.

Extension of time.

54. The Commission may, in its discretion, extend the time for the submission of any account, balance sheet, abstract, statement, report or certificate for a period not exceeding three months.

Power for Commission to call for accounts, etc.

55. Where one or more of the grounds specified in section 107(2) (applied to this section by section 107(1)) applies and notwithstanding that the period within which any document is to be submitted to the Commission under section 52 or section 53 has not expired, the Commission may at any time, if he considers it necessary, by notice in writing require the production to him of that document within such period as may be specified in the notice, not being less than one month from the date of the notice, or such extended period as the Commission may allow.

Copies of accounts.

56. (1) Subject to sub-section (2), an insurer shall forward by post or otherwise to any shareholder or policy holder who applies for one –

- (a) a printed copy of any of the documents last deposited by the insurer under sub-section (1) of section 52;
- (b) a copy of any document supplied to the Commission under sub-section (5) of that section which relates to any of those documents.

(2) If in the opinion of the Commission, the disclosure of information contained in the statement or report annexed to a document prepared in pursuance of section 50(1) by an insurer would be harmful to the business of the insurer or any of its subsidiaries, the Commission may dispense the

insurer from complying with the obligation imposed by sub-section (1) to forward a copy of the document containing the information to a shareholder or policy holder who applies for it.

Documents deposited with the Commission.

56A. (1) The Commission shall deposit with the Registrar of Companies one copy of –

- (a) any document deposited with the Commission under section 52, including any document obtained under sub-section (5) of that section;
- (b) any document deposited with him under section 82(4) or paragraph 5(5) of Schedule 10.

(2) Subject to sub-section (3), any document deposited under this section with the Registrar of Companies shall be open to inspection and copies thereof may be procured by any person on payment of such fees as may be prescribed.

(3) Sub-section (2) shall not apply to any document if it is a copy of a document in respect of which a dispensation has been granted under section 56(2).

(4) Every document deposited with the Commission under this section and certified by the Registrar of Companies to be a document so deposited shall be deemed to be a document so deposited, and every document purporting to be certified by the Registrar of Companies to be a copy of a document so deposited shall be deemed to be a copy of that document and shall be received in evidence as if it were the original document unless some variation between it and the original is proved.

Offences under Part V by licenced insurers.

57. (1) A licenced insurer that contravenes or fails to comply with the provisions of any of sections 40, 44, 46, 47, 49, 50 and 51(1) or fails to comply with a notice served under sections 42, 51(2) or 55 is guilty of an offence and is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine of £1,000.

(2) A licenced insurer that fails to comply with the requirements of section 52 or 53 within the prescribed time, or such time as extended, is guilty of an offence and is liable on summary conviction, to a fine of £40 for every day during which the offence continues.

PART VI.

RESERVES AND MARGINS

Technical reserves.

58. (1) A licensed insurer shall at all times maintain sufficient technical reserves to meet its underwriting liabilities, and where the insurer carries on long term business such technical reserves shall include sufficient mathematical reserves to meet its liabilities in respect of its long term business.

(2) The technical reserves, including mathematical reserves, shall be represented by equivalent assets expressed or realisable in the same currency as the underwriting liabilities they are intended to meet.

(2A) Where all or any part of the risks of a licensed insurer are localised within the EEA including Gibraltar, their equivalent assets shall be localised within the EEA including Gibraltar.

(2B) The Commission may, on application by a licensed insurer, waive the requirement in sub-section (2A) concerning the localisation of assets to the extent it sees fit.

(3) The Commission may determine the proportion of claims against reinsurers that may be included in the assets representing the technical reserves, including mathematical reserves and where those reinsurers are not Gibraltar or EEA reinsurers, it shall determine the conditions under which those claims may be so included.

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 and related operations,

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 Gibraltar or 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 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 Gibraltar and an EEA State (or States) (taken together), the requirement to maintain an EEA margin of solvency,

were requirements to maintain separate margins in respect of the two kinds of business (and accordingly as if the references to assets and liabilities in the definitions of “margin of solvency”, “Gibraltar margin of solvency” and “EEA margin of solvency” were references to assets and liabilities relating to the kind of business in question).

(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.

Financial recovery plan

60. When—

(1) the Commission has required a financial recovery plan within the meaning and in accordance with the requirements of Article 20a of the first general insurance Directive, Article 38 of the long term insurance Directive or Article 43 of the reinsurance Directive, as the case may be;

(2) the Commission is of the view that policyholders' rights or, as the case may be, that an insurer's obligations arising out of reinsurance contracts are threatened because the financial position of the insurer is deteriorating; and

(3) the Commission decides to require the insurer to hold more capital than would otherwise be required under the Act to ensure that the insurer will be able to fulfil the required margin of solvency in the near future.

then any such higher capital requirement will be based on the financial recovery plan.

61. *Repealed.*

Special provisions for insurers that have their head office in a country outside the EEA and are supervised by agreement in Gibraltar or in an EEA State.

61A. (1) Any undertaking which has requested or obtained authorisation from Gibraltar and one or more EEA States 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 or branches established within the EEA for purposes of this calculation;
- (b) that the deposit required under section 25 be lodged either in Gibraltar only or in only one of the EEA States where a branch or agency is also established ;
- (c) that the assets representing the guarantee fund be localised either in Gibraltar only or in only one of the EEA States where a branch or agency is also established in which it carries on its activities.

(2) Applications to benefit from the advantages provided for in subsection (1) shall be made to the competent authorities of Gibraltar and the EEA State or State concerned and shall state the authority of Gibraltar or the EEA State 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 country of the selected supervisory authority (being either Gibraltar or an EEA State).

(4) The advantages provided for in sub-section (1) may only be granted if the competent authorities of Gibraltar and the EEA State or States concerned 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) Where the selected supervisory authority is in Gibraltar, it shall obtain from the EEA State or States concerned the information necessary for the supervision of the overall solvency of the agencies and branches established in their territory.

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

Failure to maintain technical reserves.

62. (1) If a licensed insurer fails to maintain the reserves required by section 58 or to comply with any regulations relating to technical reserves, the Commission may by order prohibit the disposal by the insurer of any of its assets.

(1A) Where any of the assets included in an order under sub-section (1) are located in one or more EEA States where the licensed insurer carries on business, the Commission shall request the supervisory authorities of the EEA States concerned to prohibit the disposal by the insurer of such assets as are designated in the request.

(2) The Commission shall not make an order under subsection (1) in respect of the assets in Gibraltar of an insurer that has its head office in an EEA State or an insurer that is supervised by agreement in an EEA State without first informing the supervisory authorities in that State of his intention.

(3) The Commission shall at the request of a home State supervisory authority by order prohibit the disposal by an EEA insurer which carries on business in Gibraltar, of such assets of the insurer as are located in Gibraltar and which are designated in the request.

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 Commission submit to it 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 Commission considers it inadequate;
- (c) shall give effect to any plan accepted by the Commission as adequate.

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 Commission submit to it a short term financial scheme.

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

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 Act applies—

- (a) whose head office is in Gibraltar; or
- (b) whose business in Gibraltar is restricted to reinsurance and related operations; 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 Commission considers expedient.

Insurers supervised in EEA States.

64. (1) A licensed insurer—

- (a) whose head office is in an 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.

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) 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.

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.

Requirement about investments.

64D. (1) The Commission 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 Commission 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 an 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.

Maintenance of assets in Gibraltar.

65. (1) The Commission 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 Commission 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 Commission 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 Commission may allow).

(5) In this section—

- (a) any reference to an EEA liability is a reference to a liability of the business carried on by the insurer in the EEA ; and
- (b) any reference to a domestic liability is a reference to a liability of the business carried on by the insurer in Gibraltar.

Custody of assets.

66.(1) The Commission 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.

(2) Assets of an insurer held by a person as trustee for the insurer shall be taken to be held by him in compliance with a direction issued under this section if, and only if, they are assets in respect of which the insurer has given him written notice that they are to be held by him in compliance with such a direction or they are assets into which assets in respect of which the insurer has given him such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the insurer.

(3) No person who holds any assets as trustee for an insurer in compliance with a direction issued under this section shall, so long as the direction is in force, release those assets or any part of them except with the consent of the Commission.

(4) If a mortgage or charge is created by a licenced insurer at a time when there is in force a direction issued to the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee for the insurer in compliance with the direction, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

Prohibition on disposal of assets.

66A. (1) If on the application of the Commission 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 Commission to perform his functions under this Act.

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

Limitation of premium income.

66B. (1) The Commission 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.

Grounds for exercise of powers of intervention (sections 64D to 66B).

67.(1) The powers conferred on the Commission by sections 64D to 66B shall be exercisable in relation to any licensed insurer to which this Act 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 Commission 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 it 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 it—
 - (i) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Act;
 - (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;
- (cc) that it appears to it that the insurer or reinsurer has failed seriously in its obligations under the rules made for the purpose of implementing the Solvency Directive and to which it is subject;
- (d) that it appears to it that the insurer has furnished to it misleading or inaccurate information under or for the purposes of any provision of this Act;
- (e) that it 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 it considers that such arrangements are required;
- (f) that there exists a ground on which it 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 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 powers conferred on the Commission by sections 65, 66 and 66A shall not be exercisable in relation to a licensed insurer except—

- (a) where the Commission has given (and not revoked) a direction in respect of the insurer under section 105 or 105B ; or
- (b) on the ground that it appears to the Commission 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 Commission of an account or statement specifies, as the amount of any liabilities of the insurer, an amount appearing to the Commission 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 Commission 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 Commission 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 Commission has issued an authorisation;
- (b) any licensed insurer to which this Act 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 Commission shall, when exercising any power conferred by sections 64D to 66B, state the ground on which it is exercising it or, if it is exercising it by virtue of sub-section (4), that it is so exercising it; but this sub-section shall not apply where the Commission 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).

68. *Repealed.*

Determination of the value of assets and the amount of liabilities and the matching thereof.

69. In computing the amount of any liabilities for the purposes of this Part of the Act—

- (a) all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital; and
- (b) the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

Offences under Part VI by licenced insurers.

70. A licenced insurer that contravenes an order made under section 62 or section 63 or fails to comply with a requirement imposed or direction issued under section 65 or section 66 is guilty of an offence and is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine of £1,000.

PART VIA.
CONDUCT OF INSURANCE BUSINESS.

Insurance or reinsurance Advertisements.

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

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

(3) Subject to sub-section (4), any person who issues an insurance or reinsurance 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 subsection (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 or reinsurance advertisement” means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance or reinsurance, 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 policyholders of Gibraltar insurers and EEA insurers.

70B.(1) Schedule 12 to this Act (which makes provision with respect to information for policy holders of Gibraltar insurers and EEA insurers) shall have effect.

(2) This section and Schedule 12 shall not apply to a reinsurer.

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 or from within 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.

PART VII.

**SPECIAL PROVISIONS RELATING TO
LONG TERM BUSINESS**

Preliminary

Power to vary the definition of long term business for certain purposes.

71. (1) The Commission may, on the application or with the consent of a licenced insurer, by order direct that in relation to all or any of the provisions listed in Schedule 4—

- (a) any class of business not included in Schedule 2 shall be treated as long term business; or
- (b) any class of business included in Schedule 2 shall be treated as general business of a class to be specified in the order,

as regards the business of that insurer.

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

Contracts

Statutory notice.

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

- (a) no insurer which is licensed under this Act 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 Commission 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 Gibraltar or 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.

(11) This section shall not apply to a reinsurer.

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 thirtieth 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.

(6A) The other conditions and legal effects of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

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

(8) This section shall not apply to a reinsurer.

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.

(4) This section shall not apply to a reinsurer.

Prohibition of certain transactions.

73.(1) No licenced insurer that has its head office in Gibraltar, or subordinate company of any such insurer, shall enter into any transaction of a class to which this section applies when the aggregate value of the assets and the amount of the liabilities attributable to such transactions exceeds 5 per cent of the total value of the funds representing the insurer's long term business, or such other percentage as the Government may by regulation prescribe.

(2) The transactions to which this section applies are any under which—

- (a) a person connected with the licensed insurer will be indebted to the long term business funds of the insurer;
- (b) the licensed insurer will acquire with long term business funds shares in a company which is connected with it;
- (c) the licensed insurer undertakes a liability to meet with the funds of its long term business an obligation of a person connected with it or help such a person to meet an obligation;
- (d) the licensed insurer or a person connected with the licensed insurer will owe money to a subordinate company, not being money which can be properly paid out of the long term business funds of the insurer;
- (e) the subordinate company acquires shares in the licensed insurer or in a company connected with the insurer; or
- (f) the subordinate company undertakes a liability to meet an obligation of the licensed insurer or of a person connected with the insurer or to help the insurer or such connected person to meet an obligation.

(3) A subordinate company which carries on long term business may enter into a transaction of a kind mentioned in paragraphs (d), (e) or (f) of subsection (2) if—

- (a) the right to receive the money will constitute an asset of its long term business; or
- (b) the acquisition of the shares is made out of its long term business funds; or
- (c) the liability will fall to be discharged out of those funds.

as the case may be.

(4) The provisions of this section shall apply to a licensed insurer, which has its head office outside Gibraltar in respect of the use of long term funds representing long term business carried on in Gibraltar.

(5) Where an insurer enters into a transaction prohibited by this section, the fact that an offence is committed shall not invalidate the transaction or render it unenforceable.

Linked long term policies.

73A. (1) Regulations may be made, as regards the matters specified in subsection (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 Commission 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 Commission or the Registrar of Companies, publication in the press or otherwise;
 - (f) requiring insurers under the contracts to furnish to the Commission, 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 Commission 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 Commission 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) Regulations 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).

(6) Regulations under this section may, to such extent as may be specified therein, apply in relation to contracts entered into before the coming into operation of the regulations, including contracts entered into before 1st April 1995.

Duty to report contraventions.

74. (1) A licensed insurer or a subordinate company of a licensed insurer which becomes aware that it has contravened the provisions of section 73 shall forthwith report the contravention to the Commission.

(2) On receipt of any such report, the Commission may, in his discretion, allow the insurer or the subordinate company, as the case may be, a specified time within which to remedy the contravention, and if the contravention is remedied to the satisfaction of the Commission within that time, no person shall be charged with an offence.

Accounts.

Maintenance of separate accounts.

75. (1) A licensed insurer that carries on long term business shall maintain an account of all receipts in respect of that business, and such receipt shall be carried to and shall form one or more separate funds, appropriately named.

(2) The insurer shall also maintain such other records as may be necessary for identifying the assets representing each such fund and the liabilities attributable to its long term business.

Arrangements to avoid unfairness between separate insurance funds etc.

75A. (1) An insurer licensed under this Act which carries on long term business in or from within 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.

Actuarial investigations.

Appointment of actuaries.

76. (1) Every licensed insurer which carries on long term business shall appoint an actuary, who shall be—

- (a) an individual who:
 - (i) has attained the age of 30 years; and
 - (ii) is a fellow of the Institute of Actuaries or of the Faculty of Actuaries in the United Kingdom; or
 - (iii) is approved for appointment by the Commission on the application of the insurer, or
- (b) a firm of consulting actuaries, if the majority of partners in the firm are eligible for appointment under paragraph (a).

(2) A licensed insurer shall, within 14 days of the appointment of an actuary or of an actuary ceasing to hold that office, give notice thereof to the Commission.

Disqualification for office.

77. A person shall not be eligible for appointment as actuary to a licensed insurer and, if appointed, shall cease to hold office if—

- (a) he does not possess, or ceases to possess, the qualifications required by section 76; or
- (b) he holds or acquires any position in relation to the insurer which might, in the opinion of the Commission, result in a conflict of interest; or
- (c) he has, or acquires, without the written consent of the Commission, a financial or proprietary interest in the insurer, other than as a minority shareholder in a public company:

Provided that, if an actuary acquires such an interest by inheritance, he shall, within 7 days of becoming aware of the fact, inform the Commission in writing and he shall, if he wishes to continue as actuary to the insurer and if the Commission so directs, dispose of the interest within such time as the Commission may direct.

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(1) ; 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 applicable valuation regulations.

(4) The form and contents of any abstract under this section shall be such as may be prescribed.

79-81. Repealed.

Power for Commission to order actuarial investigation.

82. (1) The Commission 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; and
- (b) to cause an abstract of the actuary's report of the investigation to be made

(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 made in accordance with a requirement under this section shall be the same as for an 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.

(4) Two copies of any abstract made in pursuance of a requirement under this section shall be deposited by the insurer with the Commission on or before such date as it 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).

Disposal of assets.

Application of long term business assets.

83.(1) Assets representing long term funds—

- (a) shall be applied for the purposes of the insurer's long term business only; and
- (b) shall not be transferred so as to be available for other purposes, notwithstanding any arrangement for reimbursement, except to reimburse expenditure borne by other assets in discharging liabilities wholly or partly attributable to long term business:

Provided that the provisions of this section shall not prevent the transfer of assets found on actuarial investigation to be in excess of the liabilities attributable to the insurer's long term business if the transfer is effected before the date on which the abstract of the actuarial report on the investigation is submitted to the Commission.

(2) Any mortgage or charge (including a charge imposed by a court on the application of a judgement creditor) shall be void to the extent that it contravenes subsection (1).

Restriction on right to pay dividends.

84. (1) No licensed insurer which carries on long term business, and no company of which such a licensed insurer may be a subsidiary, shall declare a dividend at any time when the value of the assets representing the long term fund or funds of the insurer is less than the amount of the liabilities attributable to the long term business.

(2) A company of which a licensed insurer is a subsidiary, which declares a dividend in contravention of subsection (1) is guilty of an offence and is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine of £1,000.

Distribution of assets.

85. No licensed insurer shall make any distribution of assets which represent a long term business fund, or any part thereof, unless—

- (a) such assets form part of a surplus of assets over liabilities in respect of long term business, such surplus having been established by actuarial valuation; and
- (b) a distribution is first made to policy holders entitled to participate in the surplus:

Provided that nothing in this section shall prohibit the making of bonus payments to such policyholders as mentioned in paragraph (b) in advance of a valuation and in anticipation of a surplus.

Allocations to policy holders.

86. (1) Where—

- (a) there is an established surplus in which long term policy holders of a particular category are eligible to participate; and
- (b) an amount has been allocated to policy holders of that category in respect of a previously established surplus in which policy holders of that category were eligible to participate,

the licensed insurer shall not transfer or otherwise apply assets representing any part of such surplus as is mentioned in paragraph (a) unless the conditions set out in Schedule 5 are complied with.

(2) For the purposes of this section and Schedule 5, the term “established surplus” means an excess of assets representing the whole or a particular part of the fund or funds maintained by an insurer in respect of its long term business over the liabilities, or a particular part of the liabilities, of the insurer attributable to that business as shown by an investigation to which section 78 applies or which is made in pursuance of a requirement imposed under section 82.

Offences under Part VII by licensed insurers.

87. (1) A licensed insurer that contravenes the provisions of any of sections 73, 83, 84, 85 or 86 or fails to comply with the requirements of sections 75 or 78 or with a requirement imposed under section 82 is guilty of an offence and is liable, on conviction on indictment, to a fine or, on summary conviction, to a fine of £1,000.

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

PART VIIA.
SPECIAL PROVISIONS RELATING TO
CREDIT INSURANCE AND REINSURANCE.

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.

Equalisation Reserve.

87B.(1) Subject to section 87C—

- (a) every Gibraltar insurer which carries on credit insurance business;
- (b) every non-EEA insurer which carries on credit insurance business in Gibraltar, and
- (c) every Gibraltar or EEA reinsurer which reinsures credit insurance risks;

shall maintain an equalisation reserve in respect of that business which shall be represented by equivalent assets expressed or realisable in the same currency as the underwriting liabilities they are intended to meet, determined (at the option of the insurer) in accordance with one of the four methods set out in Point D of the Annex to the first general insurance Directive, as amended.

(1A) Where all or any part of the risks of an insurer to whom this section applies are localised within the EEA including Gibraltar, their equivalent assets shall be localised within the EEA including Gibraltar.

(1B) The Commission may, on application by a licensed insurer, waive the requirement in sub-section (1A) concerning the localisation of assets to the extent it sees fit.

(2) For the purposes of section 59 and the definitions of “margin of solvency”, “Gibraltar margin of solvency” and “EEA margin of solvency” in section 2(2), 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 or, as the case may be, credit reinsurance 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 euro; 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 centum 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 euro.

(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 reinsurance 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) This Part applies to legal expenses insurance within Class 17 of Part 1 of Schedule 1 under which an insurer promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following—

- (a) securing compensation for loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings; or

- (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

(1A) This part does not apply to—

- (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 insurers 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 (1A)(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 reinsurance business) falling within subsection (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.

(2) An exemption granted pursuant to this section shall not affect the application of sections 90 and 91 of the Solvency Act.

(3) In this section and section 87H “lawyer” includes a barrister or solicitor qualified to practice in Gibraltar and, subject to that, means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

Arbitration.

87K. (1) Any dispute between the insurer and the insured arising out of a legal expenses insurance contract may be referred to arbitration or other procedures offering comparable guarantees of objectivity.

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

(3) This section is without prejudice to any right of appeal to the High Court or the Supreme Court.

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.

PART VIII.

SPECIAL PROVISIONS RELATING TO CO-INSURANCE.

Application of Part VIII.

88. The provisions of this Part apply only to the Community co-insurance operations referred to in section 84(1) of the Solvency Act.

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

88A. The Commission 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.

Maintenance of statistical records.

89. A licensed insurer with its head office in Gibraltar that carries on co-insurance with other insurers that have their head offices in the EEA shall maintain statistical records showing—

- (a) the extent of such business within the EEA ; and

- (b) the countries in which the co-insurance operations are undertaken.

Provisions for claims.

90. (1) Where a licensed insurer undertakes from Gibraltar co-insurance business with a leading insurer that has its head office in the EEA States, it shall maintain for outstanding claims a reserve at least equal to that determined by the leading co-insurer according to the rules or practice of the EEA State where such insurer is established, reduced in the same proportion as the share of the risk covered by the licensed insurer bears to the risk covered by the leading insurer.

(2) For the purposes of this section “leading insurer” means an insurer who—

- (a) is recognised as the leading insurer by the other insurers in the co-insurance operation; and
- (b) assesses claims and fixes the minimum amount of reserves for outstanding claims.

PART VIII A

RECOGNITION IN ACCORDANCE WITH INSURANCE DIRECTIVES.

Recognition in Gibraltar of EEA insurers.

90A. 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.

PART IX.

TRANSFER OF BUSINESS

General business

Transfers of long term and general insurance and reinsurance business.

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

Issue of Certificates by the Commission.

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

- (a) an EEA insurer is to transfer—
 - (i) to a Gibraltar insurer; or
 - (ii) to a non-EEA insurer whose solvency is supervised by the Commission in accordance with Article 55 or 56 of the 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
- (b) an insurer which is authorized in accordance with Article 51 of the 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 Commission may, if it is satisfied that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account, issue a certificate to that effect.

(1A) If the transferee is licensed in Gibraltar, the Commission will need to certify that the transferee will meet its solvency margin requirement after the transfer.

(1B) If the Commission has required of a Gibraltar insurer a financial recovery plan of the kind mentioned in paragraph 1 of Article 38 of the long term insurance Directive or paragraph 1 of Article 20a of the first general insurance Directive, it will not issue a certificate for so long as it considers that policyholders' rights are threatened within the meaning of paragraph 1.

(1C) If the Commission has required of a Gibraltar reinsurer a financial recovery plan of the kind mentioned in paragraph 1 of Article 43 of the reinsurance Directive, it will not issue a certificate for so long as it considers that the reinsurer's obligations arising out of reinsurance contracts are threatened within the meaning of paragraph 1.

(2) In this section—

“general policy” means a policy evidencing a contract the effecting of which constitutes the carrying on of general business;

“long term policy” means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business;

Effect of transfers authorised in 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 14 of the long term insurance Directive; or
 - (ii) Article 12 of the third general insurance Directive; or
- (aa) an EEA reinsurer transfers to another body all its rights and obligations under any Gibraltar contracts and the transfer is authorised in its home State in accordance with Article 48 of the reinsurance Directive; 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, 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 53 of the 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 Commission 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 or Gibraltar contracts (in the case of a reinsurer) 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) Directions under this section may make different provision 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.

(5) A reinsurance contract is a Gibraltar contract 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)).

PART X.

SUPERVISION, INSPECTION AND REVOCATION OF LICENCES

Power to obtain information and require production of documents.

98.(1) The Commission 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 Commission 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-sections (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—

- (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 Commission 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 Commission has required or could require, the insurer to provide information under sub-section (1).

(5) Where by virtue of sub-section (2) the Commission or a person authorised by him has power to require the production of any document from any insurer, the Commission 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 whom 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 all 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 belief, where they are.

(7) Any person authorised by the Commission 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 subsection (1) or (2) has been imposed; or
- (b) a person on whom or a body on which such 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 powers specified in sub-section (1) are exercisable in the circumstances provided for in section 67(4).

Policy conditions and scales of premiums.

98A.(1) The Commission shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an insurer intends to use in its dealings with policy holders or ceding or retroceding undertakings.

(2) Notwithstanding subsection (1), for life insurance and for the sole purpose of verifying compliance with legal provisions concerning actuarial principles, the Commission may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions; but this requirement shall not constitute a prior condition for the issue of a licence.

(3) The Commission may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

(4) The Commission may subject undertakings seeking or having obtained a licence for class 18 in of Schedule 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to similar undertakings to meet their commitments arising out of that class.

Duty to furnish information.

99. (1) It shall be the duty of any person or body referred to in sub-section (1) of section 98 to furnish the Commission—

- (a) with such information as may be required under that section and as may from time to time be prescribed; and
- (b) with such other information and to produce such documents as the Commission may request concerning any insurance business with which such person or body may be connected.

(2) A person or body unable to comply with subsection (1) shall, at the request in writing of the Commission, furnish him with the name and address of any person who has, to the best of his knowledge and belief, possession of or control over any such information or document.

(3) Any person or body who wilfully fails to produce any information or document required to be produced by him under subsection (1) or who wilfully fails to comply with a request made by the Commission under subsection (2) is guilty of an offence and is liable on conviction on indictment to a fine or, on summary conviction, to a fine of £1,000, and, if he continues in such offence after conviction, is guilty of a further offence and is liable on summary conviction to a fine of £40 for each day on which that offence continues:

Provided that it shall be a defence for such person to prove that the information or document concerned was not in his possession or control and that it was not reasonably practicable for him to comply with the requirement to produce such information or notice.

Power for Commission to issue directions.

100. (1) The Commission may issue to an insurer such directions in writing as he may consider necessary—

- (a) for the purposes of 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 policyholders or potential policyholders; or
- (aa) in the exceptional circumstances referred to in section 46(9) of the Solvency Act; or
- (ab) for the purposes of exercising powers under section 47(3), 48(2), 51(4), 106(2B) or 106(2C) of that Act; 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 Commission has given a direction under section 105 or 105B; or
- (aa) in pursuance of section 46(9), 47(3), 48(2), 51(4), 106(2B) or 106(2C) of the Solvency Act; or
- (b) on the ground that it appears to the Commission 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 Commission of an account or statement specifying, as the amount of any liabilities of the insurer, an amount appearing to the Commission 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 Commission that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of section 59 or 64B.

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

General Investigations.

100A. (1) The Commission may appoint one or more competent persons to make an investigation into and report to the Commission 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 Commission 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 Commission 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 prior 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 settlement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

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.

Appointment of inspectors.

101.(1) The Commission may appoint any person whom he considers suitably qualified, to be an inspector to investigate the affairs, or any specific aspects of the affairs, of any person in Gibraltar who—

- (a) carries on, or is reasonably suspected of carrying on, insurance business in or from within Gibraltar; or
- (b) has carried on, or is reasonably suspected of having carried on, any such business,

and to report to him thereon.

(2) The power conferred by subsection (1) shall be exercised only if it appears to the Commission that—

- (a) insurance business may be or may have been being carried on without a licence;
- (b) insurance business is, or has been, carried on for an unlawful or fraudulent purpose, or conducted with intent to defraud creditors or the creditors of any other person, or in a manner oppressive of some members or policy holders;
- (c) persons concerned with the information of an insurance business or the management of its affairs in Gibraltar have in connection therewith been guilty of fraud or other misconduct towards the business, its members, creditors or policy holders;
- (d) members or policy holders are being denied information with regard to the affairs of an insurer, being information which they may reasonably expect;
- (e) a licensed insurer does not have the required solvency margin or guarantee fund; or
- (f) it is necessary to protect the interests of policy holders or prospective policy holders.

Powers of inspectors.

102. (1) An inspector appointed under section 101 may—

- (a) examine on oath the person whose affairs he was appointed to investigate, and any employee of such person, and any banker to or auditor, barrister or solicitor of such person, and where that person is a company, any of its officers, agents or employees, and for that purpose shall have power to administer oaths;
- (b) if he considers it necessary for the purpose of the investigation for which he was appointed, investigate the affairs of any other person who or which was at any relevant time a partner, associate, subsidiary or holding company of the person being investigated:

Provided that nothing in this subsection shall be construed so as to require a barrister or solicitor to disclose to any person any information or document which is privileged.

(2) Where an inspector exercises the powers conferred by subsection (1)(b), he shall include in his report only such matters concerning the other person as are directly relevant to the investigation for which he was appointed.

(3) The expenses of an investigation under section 101 shall be borne by the Commission.

Inspector's report.

103. (1) The inspector may, and if so directed by the Commission, shall, make interim reports to the Commission, and on the conclusion of the investigation shall make a final report to the Commission.

(2) The Commission may, if it thinks fit—

- (a) forward copies of any report made by the inspector to the person investigated, to the Minister responsible for financial services and to the supervisory authorities in any other country or territory where the person investigated has been, or is suspected of having been, carrying on insurance business;
- (b) furnish a copy on request to—

- (i) any member of a company or other body corporate which is the subject of the report;
 - (ii) the auditors of any such company or body corporate;
 - (iii) any person whose conduct is referred to in the report;
 - (iv) any person whose financial interests appear to the Commission to be affected by the matters dealt with in the report, whether as a creditor of the person investigated or otherwise; and
- (c) cause any such report to be printed and published.

Duty to produce records, etc.

104.(1) It shall be the duty of every person whose affairs are being investigated under the powers conferred by section 102 and of any other person whom an inspector examines under those powers, to produce to the inspector all books and documents in his possession or under his control.

(2) A person who refuses or fails to produce any such books or documents, or who refuses to answer any question lawfully put to him, is guilty of an offence and is liable on summary conviction to a fine of £40 for every day during which the offence continues.

Power to prohibit insurers from undertaking new business.

105.(1) The Commission may, at the request of a licensed insurer or on any of the grounds set out in subsection (2), by notice in writing, direct that the insurer shall not enter into new contracts of insurance or contracts of any description specified in the direction:

Provided that no such direction shall prevent the insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

- (2) The grounds for a direction referred to in subsection (1) are -
- (a) that the insurer is in breach of this Act or has failed to satisfy any obligation to which it is subject by virtue of this Act;
 - (aa) that the Commission is exercising its powers under section 51(1A), 58(3), or 61(2) of the Solvency Act;

- (b) that there exists a ground on which he would be prohibited by section 24A, 24B, 25 or 27 from issuing an authorisation to the insurer;
- (c) that the Commission is satisfied that the insurer has deliberately or recklessly supplied information that is untrue in some material respect;
- (d) that the insurer has carried on its business in a manner detrimental to the public interest or the interests of its policy holders;
- (e) that the insurer has ceased to be authorised to effect contracts of insurance , or contracts of a particular description , in an EEA State where it has its head office or where it has in accordance with section 25(2) made a deposit;
- (f) that the insurer has failed to remove a director, controller, manager, principal Gibraltar executive, representative or agent whom the Commission has found not to be a fit and proper person to hold his appointment;
- (g) that the insurer has failed, within such time as it was allowed, to give effect to a restoration plan under section 62A or a short term financial scheme under section 63;
- (h) that a receiver has been appointed of the property of the insurer;
- (j) that in the case of a Gibraltar insurer, it appears to the Commission 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;
- (k) that in the case of a Gibraltar or non-EEA insurer, it appears to the Commission 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

- (1) 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) After giving a direction under this section otherwise than at the request of the licensed insurer concerned the Commission 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 Commission 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 Commission 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 Commission may direct that the insurer shall not enter into new contracts of insurance, or contracts of any description specified in the direction.

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 Commission 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 Commission.

(2) Before giving a direction under section 105 in respect of an insurer on either of the grounds set out in sub-section (3), the Commission 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 Commission.

(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 Commission 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 Commission 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 Commission 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 Commission is considering giving a direction.

(7) Where representations are made in response to a notice under sub-section (1) or (2), the Commission 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 Commission shall publish notice of it in the 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 Commission—

- (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 Commission 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 Commission under sub-section (6), shall cease to have effect at the end of the relevant period.

(3) Where the Commission 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 Commission.

(4) Where the Commission gives a direction under this section on the ground set out in section 105(2) (k), the Commission 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 Commission.

(5) the Commission 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 Commission 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 Commission 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.

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; or
- (b) an insurer which is not a Gibraltar insurer ceases to carry on insurance business or insurance business of any class in or from within Gibraltar; or
- (c) a reinsurer which is not a Gibraltar or EEA reinsurer ceases to carry on reinsurance business in or from within Gibraltar; or
- (d) a Gibraltar insurer no longer fulfils the conditions for authorisation; or
- (e) a Gibraltar insurer fails seriously in its obligations under the regulations to which it is subject;

the Commission 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 or, as the case may be, a reinsurer licensed to carry on reinsurance business has—

- (a) not commenced to carry on insurance business of that class or reinsurance business and at least twelve months have elapsed since the issue of the authorisation; or

- (b) not carried on insurance business of that class or reinsurance business, as the case may be, for more than six months; or
- (c) expressly renounced its authorisation;
- (d) ceased to fulfil the conditions for authorisation; or
- (e) failed seriously in its obligations under those provisions to which it is subject.

the Commission may direct that the insurer shall cease to be authorised to carry on insurance business of a class to which the direction relates or the reinsurer shall cease to be authorised to carry on reinsurance business.

(2A) Where the Commission decides to withdraw authorisation and issues a direction under this section accordingly, it shall state the full reasons and—

- (a) shall communicate the decision to the insurance or reinsurance undertaking concerned; and
- (b) shall notify the supervisory authority of any EEA State where the insurer carries on insurance business of the nature and reason for its direction and request the supervisory authority to take appropriate measures to prevent the insurer from effecting contracts of insurance or reinsurance.

(2B) Where the Commission issues a direction under subsection (1) or (2) directing that an insurer or reinsurer shall cease to be authorised to carry on insurance business or reinsurance business, it shall, together with the supervisory authorities of host Member States, take all measures necessary to safeguard the interests of insured persons; and, in particular, it shall restrict the free disposal of the assets of the undertaking concerned.

(2C) Where the Commission is the supervisory authority of the host Member State and the supervisory authority of the home Member State requests action of the kind mentioned in subsection (2B), the Commission shall comply with that request.

(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.

Grounds for exercise of powers of Intervention (sections 55, 82, 98, 100 and 100A).

107.(1) The powers contained on the Commission by sections 55, 82, 98, 100 or 100A shall be exercisable in relation to any licensed insurer to which

this Act 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 Commission 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 it 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 it—
 - (i) that the insurer has failed to satisfy an obligation to which it was subject by virtue of this Act;
 - (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;
 - (iv) that the insurer has failed to satisfy an obligation to which it was subject by virtue of the Solvency Act;
 - (d) that it appears to it that the insurer has furnished to it misleading or inaccurate information under or for the purposes of any provision of this Act;
 - (e) that it 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 it considers that such arrangements are required;

- (f) that there exists a ground on which it would be prohibited by section 24A, 24B, 25 or 27 from issuing a licence with respect to the insurer if it were applied for;
- (g) that it appears to it 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 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 Commission by sub-sections (2) to (6) of section 98 shall also be exercisable on the ground that it 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 Act applies.

(4) The powers conferred on the Commission 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 Act.

(5) Any power conferred on the Commission by section 82, 98(1) or 100A 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 Commission has issued an authorisation;
- (b) any licensed insurer to which this Act 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.

(6) The power conferred on the Commission 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 Commission 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 Commission has given notice under section 108 of the proposed exercise of the power.

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

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 it 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 Commission shall serve on that person a written notice stating—

- (a) that the Commission is considering exercising a power or powers conferred by those sections and the ground on which it 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 Commission.

(2) Unless the Commission, after considering any representations made in accordance with sub-section (1) by the person served with a notice under that sub-section, decides not to exercise the power or powers in relation to which the notice was served, it 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 it 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 Commission is considering the exercise of the power or powers in question.

(4) Where representations are made in accordance with this section, the Commission 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 Commission 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 Commission may rescind a requirement imposed under sections 55, 64D to 66B, 82, 98, 100 or 100A if it appears 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 subsections 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 Commission 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.

Supervision of branches established in Member States other than the home State.

109A.(1) Where an insurer or reinsurer authorised in another Member State carries on business through a branch in Gibraltar, the supervisory authorities of the home Member State may, after having informed the Commission, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

(2) The Commission may participate in the verifications referred to in subsection (1).

(3) Where Gibraltar is the home state of an insurer or reinsurer which carries on business through a branch in another member State, the Commission, after having informed the supervisory authorities of the host state, may carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the Commission's financial supervision of the insurer or reinsurer.

(4) Where the Commission has informed the supervisory authorities of a host Member State that it intends to carry out on-site verifications in accordance with subsection (3) and where the Commission is prohibited from exercising its right to carry out those on-site verifications or where the Commission is unable in practice to exercise its right to participate in accordance with subsection (2), the Commission may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Powers exercisable for purposes of the Solvency Directive.

109B.(1) Insurance undertakings shall submit to the Commission the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in sections 10(1) and 11 of the Solvency Act; and that information shall include at least the information necessary for the following—

- (a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;
- (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

(2) The Commission shall have the following powers—

- (a) to determine the nature, the scope and the format of the information referred to in subsection (1) which they require insurance and reinsurance undertakings to submit at the following points in time—
 - (i) at predefined periods;
 - (ii) upon occurrence of predefined events; and
 - (iii) during enquiries regarding the situation of an undertaking;

- (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and
- (c) to require information from external experts, such as auditors and actuaries.

(3) The information which the Commission may require by virtue of this section shall comprise the following—

- (a) qualitative or quantitative elements, or any appropriate combination thereof;
- (b) historic, current or prospective elements, or any appropriate combination thereof; and
- (c) data from internal or external sources, or any appropriate combination thereof.

(4) The information referred to in subsection (3) must comply with the following principles—

- (a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;
- (b) it must be accessible, complete in all material respects, comparable and consistent over time; and
- (c) it must be relevant, reliable and comprehensible.

(5) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements laid down in this section as well as a written policy, approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, ensuring the ongoing appropriateness of the information submitted.

(6) Without prejudice to paragraph (7) and paragraph 57(1) of Schedule 1 to the Solvency Act, where the predefined periods referred to in subsection (2)(a)(i) are shorter than one year, the Commission may limit regular supervisory reporting, where—

- (a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking; and

(b) the information is reported at least annually.

(7) The Commission shall not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of section 103 of the Solvency Act, unless the undertaking can demonstrate to the satisfaction of the Commission that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

(8) The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20% of the life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions; and in this subsection “market” means the market in Gibraltar.

(9) The Commission may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where—

- (a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
- (b) the submission of that information is not necessary for the effective supervision of the undertaking;
- (c) the exemption does not undermine the stability of the financial systems concerned in the European Union; and
- (d) the undertaking is able to provide the information on an ad-hoc basis.

(10) The Commission shall not exempt from reporting on an item-by-item basis undertakings that are part of a group within the meaning of section 103 unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(11) The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20% of the life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market

share is based on gross technical provisions; and in this subsection "market" means the market in Gibraltar.

(12) Under subsections (8) and (11) the Commission shall give priority to the smallest undertakings when determining the eligibility of the undertakings for the limitations or exemptions concerned.

(13) For the purposes of subsections (6) to (12), as part of the supervisory review process, the Commission shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least—

- (a) the volume of premiums, technical provisions and assets of the undertaking;
- (b) the volatility of the claims and benefits covered by the undertaking;
- (c) the market risks that the investments of the undertaking give rise to;
- (d) the level of risk concentrations;
- (e) the total number of classes of life and non-life insurance for which authorisation is granted;
- (f) possible effects of the management of the assets of the undertaking on financial stability;
- (g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in subsection (5);
- (h) the appropriateness of the system of governance of the undertaking;
- (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and
- (j) whether the undertaking is a captive insurance or reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

Supervisory review process.

109C.(1) The Commission shall review and evaluate the strategies, processes and reporting procedures which are established by undertakings to

comply with the laws, regulations and administrative provisions adopted pursuant to the Solvency Directive.

(2) That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

(3) The Commission shall in particular review and evaluate compliance with the following—

- (a) the system of governance, including the own-risk and solvency assessment, as set out in sections 17 to 26 of the Solvency Act;
- (b) the technical provisions as set out in those sections;
- (c) the capital requirements as set out in section 43 of the Solvency Act and paragraphs 29 to 57 of Schedule 1 to that Act;
- (d) the investment rules as set out in paragraphs 58 to 60 of Schedule 1;
- (e) the quality and quantity of own funds as set out in paragraphs 18 to 28 of that Schedule;
- (f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in the provisions specified in paragraph (c);

and the Commission shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an undertaking and to monitor how that deterioration is remedied.

- (4) The Commission shall assess—
- (a) the adequacy of the methods and practices of the undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned; and
 - (b) the ability of the undertakings to withstand those possible events or future changes in economic conditions.

(5) The reviews, evaluations and assessments referred to in above shall be conducted regularly and the Commission shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

General supervisory powers.

109D.(1) Without prejudice to the powers which it has under this Act, the Commission shall have the following powers–

- (a) to take preventative and corrective measures to ensure that undertakings comply with the laws, regulations and administrative provisions with which they have to comply in Gibraltar;
- (b) to take any necessary measures, including where appropriate, those of an administrative or financial nature with regard to undertakings and the members of their administrative, management or supervisory body;
- (c) to require all information necessary to conduct supervision in accordance with section 31;
- (d) to develop, in addition to the calculation of the Solvency Capital Requirement, and where necessary, quantitative tools under the supervisory review process to assess the ability of undertakings to cope with possible events or future changes in economic conditions which could have unfavourable effects on their overall financial standing and to require that corresponding tests are performed by the undertakings; and
- (e) to carry out on-site investigations at the premises of undertakings.

(2) Supervisory powers shall be applied in a timely and proportionate manner.

(3) The powers with regard to undertakings referred to in subsection (1) shall also be available with regard to outsourced activities of undertakings.

(4) The powers conferred by this section shall be exercised, if need be and where appropriate, through judicial channels.

110. *Repealed.*

PART XI.
APPEALS

Right of appeal.

111.(1) Any person aggrieved by—

- (a) the refusal, variation or revocation of a licence;
- (b) the imposition of any condition on the grant of a licence;
- (c) the refusal of any approval or consent required under the Act;
- (d) a direction, determination or prohibition by the Commission; or
- (e) the failure of the Commission to deal with an application within the time prescribed;

may appeal to the Supreme Court.

(2) An appeal shall be instituted within 21 days of the notification to the appellant of the matter complained of, or, in the case of an appeal under paragraph (e) of subsection (1), within 21 days of the expiration of the period prescribed.

Powers of the court.

112.(1) The court may confirm, reverse or vary the decision appealed against or may direct the Commission to take any action which, under the Act, it has power to take.

(2) The court may make such order as to the costs of an appeal as it may consider proper.

(3) The institution of an appeal shall not operate as a stay of a decision appealed against, but the court shall have power, in its discretion, to order a stay.

PART XII.
MISCELLANEOUS

Power to modify certain provisions.

113.(1) The Commission may, on the application or with the consent of a licensed insurer or of a subordinate company of a licensed insurer, by order direct that any of the provisions listed in Schedule 7 or in any regulation

made either in respect of those provisions or relating to the valuation of an insurer's assets and liabilities—

- (a) shall not apply to such insurer or company; or
- (b) shall apply to such insurer or company with such modifications as may be specified in the order.

(2) An order made under subsection (1) may be made subject to such conditions as the Commission may determine, and may be revoked or, on the application of or with the consent of the insurer, varied.

Service of notices.

114.(1) A notice which is required to be served on a policy holder may be addressed and sent to the person to whom notices respecting that policy are usually sent, and a policy so addressed and sent shall be deemed to be notice to the holder.

(2) Where any person who claims to have an interest in a policy has given to the insurer notice in writing of his interest, any notice required to be sent to policy holders shall also be sent to that person at the address specified in the notice.

(3) Any notice or direction to be served on any person by the Commission may be served by post, and a letter containing the notice will be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business.

Law applicable to certain contracts of insurance.

114A.(1) The law applicable to a contract of insurance the effecting of which constitutes general business, 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 2 of the long term insurance Directive applies 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 Gibraltar or 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 Gibraltar or an EEA State.

(3) The law applicable to a contract of reinsurance the effecting of which constitutes general or long term business and which covers risks situated in Gibraltar or an EEA State, shall be determined in accordance with the provisions of Part I or II, as the case may be, of Schedule 9.

(4) In this section and Schedule 9 “policy holder” includes an insurer which has ceded reinsurance risks to a reinsurer.

False statements, etc.

115. A person, who—

- (a) knowingly or recklessly makes a statement, promise or forecast which is misleading, false or deceptive, or dishonestly conceals any material fact, in order to induce any other person to enter into a contract of insurance; or
- (b) furnishes information which is false in purported compliance with any obligation or requirement of this Act or any regulation made thereunder,

is guilty of an offence and is liable, on conviction on indictment, to imprisonment for two years and to a fine or, on summary conviction, to a fine of £1,000.

Insurer incorporated outside Gibraltar.

115A. The provisions of Part IX¹ of the Companies Act, 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 IX¹ of that Act applies.

Criminal liability of directors, etc.

116. Where an insurer commits an offence against this Act or any regulation made thereunder, every director, controller, manager or principal Gibraltar executive of that insurer is guilty of the same offence and is liable to the same penalty, and on conviction on indictment to imprisonment for two years unless he proves—

- (a) that the offence was committed without his knowledge; or
- (b) where the offence was committed with his knowledge:
 - (i) that it was committed without his consent; and

¹ As a consequence of the re-numbering of the Companies Act now Part X

- (ii) that he took all reasonable steps to prevent the commission of the offence and to report its commission forthwith to the Commission.

General penalty.

117. A person who contravenes any provision or fails to comply with any requirement of this Act for which no penalty is specifically provided is guilty of an offence and is liable, on summary conviction, to a fine of £400.

Regulations.

118. (1) The Minister with responsibility for financial services may make regulations prescribing all matters which, by this Act, 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 Act.

(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 Act 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 other than that to which paragraph 11 of Schedule 13 applies;
 - (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 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;
 - (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 Act and the person to whom they are to be paid;
 - (vi) the establishment of insurance special purpose vehicles and for their authorisation and supervision and for the conditions under which the business of such vehicles are to be carried on;
 - (vii) for the pursuit of finite reinsurance activities and for the objectives, requirements, conditions and procedures in respect of these activities.
- (c) provide for the Commission to determine–
- (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.

(3) Where in this Act 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 Commission and the Commission 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.

119. *Repealed.*

PART XIII
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 Commission 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 Commission 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 Commission—

- (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 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 Commission 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 Commission, 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 Commission 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 Commission 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.

PART XIII.

AMENDMENT, REPEAL AND SAVING

Modification of the Companies Act.

120. The provisions of the Companies Act which relate to the winding-up of companies shall, in relation to companies which carry on business as insurers, be read subject to the provisions contained in Schedule 8.

121. *Repealed.*

Saving.

122.(1) Notwithstanding the provisions of section 17, a person who, at the commencement of this Act, is authorised under the Act repealed by section 121 to carry on insurance business, may continue to carry on business of such classes as he was previously regularly transacting—

- (a) for twelve months from the commencement of this Act; or
- (b) pending the determination of an application for a licence under this Act made within that period,

whichever is the shorter, or

- (c) where the person has appealed against the refusal of a licence, until the determination of the appeal.

(2) A person who has ceased to be entitled to carry on insurance business under subsection (1) shall not enter into any new contract of insurance but may continue to carry on insurance business so far as is necessary for the performance of his existing obligations.

(3) The provisions of section 50(2) shall apply to a person to whom the provisions of this section apply.

SCHEDULE 1

Section 2

CLASSES OF GENERAL BUSINESS

PART 1

ANNEX I TO THE DIRECTIVE

CLASSES OF NON-LIFE INSURANCE

A. Classification of risks according to classes of insurance

1. *Accident* (including industrial injury and occupational diseases):

- fixed pecuniary benefits, -
- benefits in the nature of indemnity, -
- combinations of the two, -
- injury to passengers,

2. *Sickness*:

- fixed pecuniary benefits, -
- benefits in the nature of indemnity, -
- combinations of the two,

3. *Land vehicles* (other than railway rolling stock)

- All damage to or loss of -
- land motor vehicles,
- land vehicles other than motor vehicles.

4. *Railway rolling stock*

- All damage to or loss of railway rolling stock.

5. *Aircraft*

- All damage to or loss of aircraft.

6. *Ships (sea, lake and river and canal vessels)*

- All damage to or loss of -
- river and canal vessels,
- lake vessels,
- sea vessels.

7. *Goods in transit* (including merchandise, baggage, and all other goods)

- All damage to or loss of goods in transit or baggage, irrespective of the form of transport

8. *Fire and natural forces*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to—
fire,
explosion,
storm,
natural forces other than storm,
nuclear energy,
land subsidence.

9. *Other damage to property*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. *Motor vehicle liability*

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability).

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. *General liability*

All liability other than those referred to in classes 10, 11 and 12.

14. *Credit -*

insolvency (general),
export credit,
instalment credit,
mortgages,
agricultural credit.

15. *Suretyship -*

suretyship (direct), -
suretyship (indirect).

16. *Miscellaneous financial loss -*

employment risks,
insufficiency of income (general),
bad weather,
loss of benefits,
continuing general expenses,
unforeseen trading expenses,

loss of market value,
loss of rent or revenue,
other indirect trading loss,
other non-trading financial loss,
other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

B. Description of authorisations granted for more than one class of insurance

The following names shall be given to authorisations which simultaneously cover the following classes:

- (a) Classes 1 and 2: 'Accident and Health Insurance';
- (b) Classes 1 (fourth indent), 3, 7 and 10: 'Motor Insurance';
- (c) Classes 1 (fourth indent), 4, 6, 7 and 12: 'Marine and Transport Insurance';
- (d) Classes 1 (fourth indent), 5, 7 and 11: 'Aviation Insurance';
- (e) Classes 8 and 9: 'Insurance against Fire and other Damage to Property';
- (f) Classes 10, 11, 12 and 13: 'Liability Insurance';
- (g) Classes 14 and 15: 'Credit and Suretyship Insurance';
- (h) All classes, at the choice of the Member States, which shall notify the other Member States and the European Commission of their choice.

PART II

ANNEX V TO THE DIRECTIVE

**GROUPS OF NON-LIFE INSURANCE CLASSES FOR THE PURPOSES
OF SECTION 62**

1. accident and sickness (classes 1 and 2 of Annex I),

2. motor (classes 3, 7 and 10 of Annex I, the figures for class 10, excluding carriers' liability, being given separately),
3. fire and other damage to property (classes 8 and 9 of Annex I),
4. aviation, marine and transport (classes 4, 5, 6, 7, 11 and 12 of Annex I),
5. general liability (class 13 of Annex I),
6. credit and suretyship (classes 14 and 15 of Annex I),
7. other classes (classes 16, 17 and 18 of Annex I).

SCHEDULE 2

Section 2

CLASSES OF LONG TERM BUSINESS

Class	Description	Effecting and Carrying Out
I	Life and annuity	Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below or superannuation allowances and annuities payable out of any fund applicable solely to the relief of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons.
II	Marriage and birth	Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

IV	Permanent health	<p>Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or sickness or infirmity being contracts that:—</p> <p>(a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and</p> <p>(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.</p>
V	Tontines	<p>Contracts whereby associations of subscribers are set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased.</p>
VI	Capital redemption	<p>Contracts for capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specific duration and amount are undertaken being contracts effected and carried out by a company which transacts other insurance business.</p>

VII	Pension fund management	<p>(a) Contracts to manage the investments of pension funds where:–</p> <p>(i) the pension fund management business is carried on by a company which transacts other insurance business; and</p> <p>(ii) the pension funds are not solely for the benefit of the company's own officers or employees and their dependents or partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company (if any); or</p> <p>(b) contracts to manage the investment of pension funds that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.</p>
VIII	Collective insurance, etc.	Contracts of a kind referred to in Article 2(2)(e) of the long term insurance Directive.
IX	Social insurance.	Contracts of a kind referred to in Article 2(3) of the long term insurance Directive.

SCHEDULE 3

Section 2

ACCOUNTING CLASSES

Accounting Class	Corresponding group of classes under paragraph 1 of the Insurance Companies (Accounts Directive) Regulations 1997.	Corresponding business classes	general
1. Accident and health	accident and health	1(other than 1(p)),2	
2. Motor	Motor (third part liability) motor (other classes)	1(p), 10 3	
3. Aviation	} marine, aviation	1(p), 5, 11	
4. Marine	} and transport	1(p), 6, 12	
5. Transport	}	7	
6. Property	fire and other damage to property	4,8,9	
7. Third part liability	third party liability	13	
8. Miscellaneous and pecuniary	credit and suretyship, legal expenses, assistance, miscellaneous	14, 15, 16, 17, 18	
9. None-proportional treaty			
10. Proportional treaty			
11. Marine, aviation and transport treaty			

In this Schedule, “general business class 1(p)” means the effecting and carrying out of contracts of insurance against risks of death of or injury to passengers which normally fall within general business class 1, to the extent that an insurer has elected to attribute such risks to accounting class 2, 3 or 4, as appropriate.

SCHEDULE 4

Section 71

**PROVISIONS IN RELATION TO WHICH THE COMMISSION
MAY ENLARGE OR REDUCE THE
CLASSES OF LONG TERM BUSINESS**

Section Subject

50	Annual accounts
73	Prohibition of certain transactions
75	Maintenance of separate accounts
76	Appointment of actuaries
78	Periodic actuarial investigation of insurer with long term business.
82	Power for Commission to order actuarial investigation
83	Application of long term assets
84	Restriction on right to pay dividends
85	Distribution of assets
86	Allocation to policyholders

Schedule 8

Prohibition of voluntary winding-up
Application of assets
Meetings of creditors
Delinquent directors, etc
Continuation of long term business

SCHEDULE 5

Section 86

**CONDITIONS GOVERNING THE APPLICATION OF
ASSETS IN WHICH LONG TERM POLICY HOLDERS
ARE ELIGIBLE TO PARTICIPATE**

1. The insurer shall reduce the amount of the surplus to the extent that it has decided to carry forward any part of it unappropriated.

2. The insurer shall either:—

(a) allocate to the policy holders an amount not less than the amount represented by the formula

$$\frac{bxc}{a} - \frac{c}{200}$$

where “a” is the last previously established surplus in respect of which an amount was allocated to policy holders of the relevant category;

“b” is the amount so allocated; and

“c” is the surplus referred to in paragraph (a) of section 86 reduced by any amount being carried forward unappropriated; or

(b) serve on the Commission a written notice stating that it proposes to make no allocation of an amount, which shall be specified, smaller than the amount represented by the formula in paragraph (a); and

(c) at least 56 days previously published in the Gazette and in a newspaper circulating in Gibraltar, a statement approved by the Commission.

3. An amount shall be deemed to be allocated to policyholders if, and only if;—

(a) bonus payments are made to them; or

(b) reversionary bonuses are declared in their favour or a reduction is made to the premiums payable to them,

and the amount of the allocation is the amount of the payments or the amount of the liabilities assumed by the insurer in consequence of the declaration or reduction, as the case may be.

4. Any bonus payment made in anticipation of a surplus shall be treated as an amount allocated in respect of the next established surplus from which an amount is to be allocated to eligible policy holders generally and for the purposes of 2(a) above, the amount of any surplus in respect of which such an allocation is made shall be treated as increased by the amount of any such payments.

5. Policy holders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it, if it were carried forward unappropriated.

SCHEDULE 6

Section 88

**CLASSES OF AND CONDITIONS RELATING
TO CO-INSURANCE BUSINESS****PART 1**

The classes of business relevant to co-insurance are—

Class 3 -	land vehicle,
Class 4 -	railway rolling stock,
Class 5 -	aircraft,
Class 6 -	ships,
Class 7 -	goods in transit,
Class 8 -	fire and natural forces,
Class 9 -	damage to property,
Class 10-	motor vehicle liability,
Class 11 -	aircraft liability,
Class 12 -	liability for ships,
Class 13 -	general liability, excluding risks which concern damage arising from nuclear sources or from medicinal products,
Class 14-	Credit,
Class 15-	suretyship, and
Class 16 -	miscellaneous financial loss,

as specified in Part I of Schedule 1.

PART 2**1. The conditions to be satisfied are:—**

- (a) that the risk is covered by a single contract at an overall premium and for the same period by two or more insurers, each for his own part;
- (b) that the risk is situated (within the meaning of paragraph 2) within Gibraltar or an EEA State ;
- (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 the State (whether Gibraltar or an EEA State) in which the leading insurer's head office (or if the leading insurer is participating through a branch, that branch) is established.

2. A risk is situated in Gibraltar or an EEA State –

- (i) in the case of insurance relating to immovable property, if the property is situated in Gibraltar or an EEA State ;
- (ii) in the case of insurance relating to a registered vessel, aircraft or vehicle (including railway rolling stock), if the vessel, aircraft or vehicle is registered in Gibraltar or an EEA State ; and
- (iii) in any other case, if the policy holder is incorporated or has his habitual residence in Gibraltar or an EEA State .

SCHEDULE 7

Section 113

PROVISIONS WHICH THE COMMISSION MAY MODIFY.

Section

- 21 Licensed insurer not to carry on other businesses.
- 22 Prescribed contracts and arrangements.
- 48 Manner of audit
- 49(2) Accounts to be kept in Gibraltar.
- 50 Annual Accounts.
- 52 Submission of accounts and statements.
- 56 Copies of accounts.
- 58(3) Technical reserves.
- 59 Margins of solvency
- 63 Failure to maintain minimum margin.
- 63A General business - equalisation reserve.
- 64 Insurers supervised in 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.
- 75A Arrangements to avoid unfairness between separate insurance funds etc.
- 76 Appointment of actuaries.
- 78 Periodic actuarial investigation of insurer with long term business.
- 83 Application of long term business assets.
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SCHEDULE 8

Section 120

**WINDING-UP OF INSURANCE COMPANIES
INCORPORATED IN GIBRALTAR**

Long term businesses not to be wound up voluntarily.

1. Notwithstanding section 148¹ of the Companies Act, no company incorporated in Gibraltar which carries on long term business shall be wound up voluntarily.

Winding-up petitions.

2.(1) A petition for the winding-up of an insurance company incorporated in Gibraltar may, with the prior leave of the court, be presented by—

- (a) the Commission; or
- (b) any ten or more holders of long term business policies who individually own a policy of policies having an aggregate surrender value of not less than £100,000.

(1A) A petition for the winding-up of a reinsurance company incorporated in Gibraltar may, with the prior leave of the court, be presented by the Commission.

(2) The grounds on which the Commission may present a petition are—

- (a) that the company has failed to satisfy an obligation to which it was subject under the Act;
- (b) that the company has failed to keep proper records of its insurance business and as a result, the Commission is unable to ascertain whether the company is financially sound;
- (c) that the company is insolvent or unable to pay its debts;
- (d) that the winding-up of the company would be in the public interest;
- (e) that the company has been wound up in the United Kingdom;

¹ As a consequence of the re-numbering of the Companies Act now s. 213

- (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 the reinsurance Directive; or
 - (ii) is otherwise applicable to the insurance or reinsurance activities of the insurer in that State.

(3) The court shall not give leave for the presentation of a petition by policy holders unless they give security for costs in such amount as the court may determine.

(4) Where the court gives leave to policy holders to present a petition, a copy of the order shall be served on the Commission by the petitioners and the Commission shall be entitled to be heard on the petition.

Reduction of contracts.

3. Where an insurance or reinsurance company has been proved to be unable to pay its debts, the court may, if it thinks fit, instead of making a winding-up order, reduce the amount of the contracts of the company on such terms and subject to such conditions as the court may think just.

Application of assets.

4. Assets representing funds maintained in respect of long term business shall be applied only for meeting the liabilities of that business, and other assets of the company shall be applied only towards meeting the other liabilities of the company:

Provided that where in either case the value of the assets exceeds the amount of the liabilities attributable to them, the excess may be applied towards meeting any deficiency there may be in the assets attributable to the other business.

Meetings of creditors.

5. A liquidator winding up a company which carries on other business as well as long term business, exercising the powers conferred by section 178(2)¹ of the Companies Act, shall summon separate meetings of creditors in relation to the other business and the long term business.

Delinquent directors, etc.

¹ As a consequence of the re-numbering of the Companies Act now s. 242(3)

6. Where the court makes an order under section 252² of the Companies Act that any money or property be repaid or restored to the company or any sum be contributed to its assets, the court shall include in its order a direction as to how the money, property or contribution is to be applied in relation to the long term and other funds of the company.

Continuation of long term business.

7.(1) A liquidator shall, unless the court otherwise orders, carry on the long term business of an insurance company in liquidation with a view to its being transferred to another insurance or reinsurance company, either existing or to be incorporated.

(2) A liquidator carrying on a business under sub-paragraph (1) shall have power to agree to the variation of contracts but shall have no power to enter into new contracts of insurance.

(3) A liquidator may apply to the court for the appointment of a special manager for the long term business; a copy of such application shall be served by the liquidator on the Commission and the application shall not be heard until 14 days have elapsed from the date of service. The Commission shall have the right to be heard against the appointment of the person proposed to be appointed.

(4) The court shall have power, on the application of the liquidator, or of any special manager, or of the Commission, to appoint an independent actuary to investigate the business and to report on the desirability of carrying on the business or on any reduction he considers necessary in the amount of the outstanding contracts for the successful continuation of long term business, and on any such report, the court may reduce the amount of those contracts.

(5) Before transferring any long term business, a liquidator shall require the leave of the court under section 91 and Part 1 of Schedule 10 but shall not also require leave under section 177¹ of the Companies Act.

Penalties.

8. A liquidator who fails to comply with paragraph 5 or who contravenes paragraph 7 is guilty of an offence and is liable on summary conviction to a fine of £1000.

² As a consequence of the re-numbering of the Companies Act now s. 316

¹ As a consequence of the re-numbering of the Companies Act now s. 241

SCHEDULE 9

Section 114A.

**LAW APPLICABLE TO CERTAIN CONTRACTS OF
INSURANCE AND REINSURANCE.**

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 , as the case may be, 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 any of 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 a territory (whether Gibraltar or an EEA State) other than the territory (whether Gibraltar or the EEA State) where the risk is situated, the parties may always choose the law of the former territory.

(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 the territory in which the risk is situated, whether Gibraltar or an EEA State.

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) Act 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) Act 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) Act 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) Act 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 Act (“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.

1A.(1) Where undertakings with head offices in Gibraltar are authorised, as mentioned in Article 39(1) of the Solvency Directive, to transfer all or part of certain of their portfolios of contracts to an accepting undertaking established in another Member State, this Schedule shall have effect subject to the provisions of this paragraph.

(2) Such a transfer shall be authorised only if the supervisory authorities of the home Member State of the accepting undertaking issue a certificate that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement.

(3) The following provisions do not apply to reinsurance companies.

(4) Where a branch proposes to transfer all or part of its portfolio of contracts, the Member State where that branch is situated shall be consulted.

(5) In the circumstances referred to in paragraphs 1 and 4, where the Commission is the supervisory authority of the home Member State of the transferring insurance undertaking, the Commission shall authorise the transfer after obtaining the agreement of the authorities of the Member States where the contracts were concluded, either under the right of establishment or the freedom to provide services.

(6) Where the Commission is the supervisory authority of the Member State consulted, then within three months of receiving a request for consultation, the Commission shall give their opinion or consent to the authorities of the home Member State of the transferring insurance undertaking; and the absence of any response within that period from the Commission shall be considered as tacit consent.

(7) A transfer of portfolio authorised in accordance with the preceding provisions of this paragraph shall be published either prior to or following authorisation, as laid down by the national law of the home Member State, of the Member State in which the risk is situated, or of the Member State of the commitment.

(8) Transfers to which this paragraph applies shall automatically be valid against policy holders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

(9) Nothing in this paragraph shall affect the right of policy holders to exercise any option to which they may be entitled under this Schedule of cancelling contracts within a fixed period after a transfer.

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 sub-paragraph (1) 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 or reinsurance, 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 or reinsurance, 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 Commission, 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 or reinsurance, 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 Act to carry on;
 - (ii) authorised in accordance with Article 4 of the long term insurance Directive to carry on in an EEA State; or
 - (iii) authorised in accordance with Article 3 of the reinsurance 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 Commission 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 or reinsurance, an EEA State is the State of the commitment, the

Court shall not make an order sanctioning the scheme unless the Commission 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 Act 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 Commission;
- (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 Commission or other authority which, in accordance with Articles 55 and 56 of the long term insurance Directive, is responsible for supervising the company's margin of solvency;
- (d) if the transferee does not fall within paragraphs (a) and (b), the Commission or other authority which, in accordance with Article 38 or 39 of the reinsurance 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 or reinsurance, 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 policyholder 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 or reinsurance 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 Commission may allow, deposit two office copies of the order with the Commission.

(6) In this paragraph “property” includes property, right and powers of every description, “liabilities” includes duties “and “debentures” has the same meaning as in the Companies Act.

PART II

TRANSFERS OF GENERAL BUSINESS

Approval of the Commission required

6.(1) Where it is proposed to execute an instrument by which a holder of a licence issued under this Act (“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 Commission for its 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—

“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 Commission shall not determine an application made under paragraph 6 unless it is satisfied that—

- (a) a notice approved by him for the purpose has been published in the Gazette and, if it 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 or reinsurance, the risk is situated in an EEA State, in two national newspapers in that EEA State.
- (b) except in so far as it 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 transfer or is a Gibraltar or non-EEA insurer and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance or reinsurance 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 Commission 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 Commission 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 transfer or and the Commission has certified, after consulting the transferor, that in the opinion of the Commission 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 or reinsurance, the Commission shall not approve the transfer unless—

- (a) it is satisfied that the transferee is, or will be immediately after the approval—
 - (i) licensed under this Act to carry on,
 - (ii) authorised in accordance with Article 6 of the first general insurance Directive to carry on in an EEA State, or
 - (iii) authorised in accordance with Article 3 of the reinsurance Directive to carry on in an EEA State,

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

- (b) it 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 Commission 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 Commission 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 or reinsurance, the risk is situated in an EEA State, the Commission shall not approve the transfer unless it 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 Commission shall not approve the transfer on an application under paragraph 6 unless it is satisfied that—

- (a) the transferee is, or will be immediately after the approval—
 - (i) licensed under this Act to carry on, or
 - (ii) an EEA insurer which is not precluded by Part I of Schedule 13 to this Act 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 Commission determines an application under paragraph 6, it shall—

- (a) publish a notice of his decision in the Gazette and in such other manner as it 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 it refuses the application it 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 Commission;
- (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 Commission 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;
- (e) if the transferee does not fall within paragraphs (a) to (c), the Commission or other authority which, in accordance with Articles 37 or 39 of the reinsurance Directive, is responsible for supervising the transferee's margin of solvency.

Rights of policy holders

9.(1) This paragraph applies where the Commission 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 or reinsurance, an EEA State is the State in which the risk is situated.

- (2) The Commission 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 Commission

10.(1) Subject to paragraph 9(2), an instrument giving effect to a transfer approved by the Commission 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 or reinsurance included in the transfer is the law of an EEA State.

(3) Except in so far as the Commission 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 Commission under subsection (1)(a) of section 40, 41 or 42 (“the relevant section”).

(2) The Commission 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 Commission 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 Commission 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 Commission—
- (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 Commission 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, if that person so requests oral representations to the Commission.
- (5) The Commission 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 a 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 Commission shall take them into consideration before serving a notice of objection.

(7) The Commission 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 Commission 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 Commission 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 Commission 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), 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 Commission 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 Commission 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 service of that notice, make written and, if that person so requests, oral representations to the Commission.

(5) Where representations are made in accordance with this paragraph the Commission shall take them into consideration before serving a notice under sub-paragraph (2) or (3).

(6) The Commission 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 Commission 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 Commission 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 Commission 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, if that person so requests, oral representations to the Commission.

(5) Where representations are made in accordance with this paragraph, the Commission shall take them into consideration before serving a notice of objection.

(6) The Commission 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 share holdings

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 Commission 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 Commission, 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 paid 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 service 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 Act have the same meanings as in that Act.

(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 or territory (whether Gibraltar or an EEA State) and, where appropriate, the State or territory of the branch (whether Gibraltar or an EEA State) 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,
- (cc) a concrete reference to the report on the solvency and financial condition as laid down in section 27 of the Solvency Act, allowing the policy holder easy access to this information;
- (d) a definition of each benefit and option;

- (dd) the policy conditions, both general and special;
- (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.

(3A) In addition specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

(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 (other than that of the UK).

Information during contract of long term insurance

2.(1) This paragraph applies where a Gibraltar or EEA insurer has, on or after the 1st day of April 1995, 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 (k) 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 those 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.

Information in respect of past claims respecting an insured vehicle.

6.(1) A person who has one or more motor vehicles insured by a Gibraltar insurer may at any time request from the current insurer a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract during the preceding five years of the contractual relationship, or to the absence of such claims.

(2) Where a request is made under subparagraph (1), the insurer shall provide such a statement within ten working days.

7 Where Gibraltar is the Member State of the commitment, any detailed rules required for implementing this Schedule shall be laid down by the law of Gibraltar.

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 the Solvency 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 Commission—
 - (i) a notice which contains the requisite details; and
 - (ii) a certificate in accordance with sub-paragraph (3); and
- (b) that either—
 - (i) the Commission 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 Commission 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 covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with the Solvency Directive;
- (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 4 of the long term insurance Directive.

(4) The Commission 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 Commission, 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 Commission has received from that authority a notice stating that it has approved the proposed change; and
- (c) that either—
 - (i) the Commission 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 Commission 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 Commission, 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).

Requirement for carrying on reinsurance business.

4. An EEA reinsurer shall not carry on direct reinsurance business of any description through a branch in Gibraltar unless the reinsurer is authorised in accordance with the Solvency Directive to carry on reinsurance business of that description.

Requirement for providing reinsurance.

5. An EEA reinsurer shall not provide reinsurance of any description in Gibraltar unless the reinsurer is authorised in accordance with the Solvency Directive to carry on reinsurance business of that description.

Paras. 6 & 7 omitted.

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 the Solvency 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 Commission 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 Commission.

(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 the Solvency Directive;
- (b) indicates the classes of business which the insurer is authorised to carry on in accordance with the Solvency 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 that authority has passed to the Commission 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 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 Insurers' 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.(1) 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
- (aa) it makes a financial contribution towards the financing of the Motor Insurers' Bureau and its guarantee fund which—
 - (i) relates to risks, other than carrier's liability, within Class 10 of Part 1 of Schedule 1 covered by way of provision of services; and
 - (ii) is calculated on the same basis as for non-life insurance undertakings covering those risks through an establishment situated in Gibraltar, and by reference to the insurer's premium income from that class in Gibraltar or the number of risks in that class covered there; 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.

(2) In so far as the law of Gibraltar contains rules concerning the cover of aggravated risks, those rules shall apply to an insurance undertaking providing services as they apply to non-life insurance undertakings established in Gibraltar.

Power to prevent disposal of assets

12.(1) The powers conferred on the Commission 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 the Solvency Directive, requested the Commission to prohibit the free disposal of assets of that insurer and has confirmed—

- (a) that the insurer has failed to establish adequate technical provisions as required by paragraph 4 of Schedule 1 to the Solvency Act;
- (b) that the insurer no longer complies with Basic Solvency Capital Requirement calculated in accordance with paragraph 34 of that Schedule;
- (c) that the insurer no longer complies with the Minimum Capital Requirement referred to in paragraph 55 of that Schedule.

(2) Those powers shall also be so exercisable if the Commission is notified by that authority that the insurer's authorisation has been withdrawn, or has lapsed, the Solvency Directive Article 22 of the first general insurance Directive or Article 39 of the long term insurance Directive or Article 44 of the reinsurance Directive.

Powers to obtain information

13.(1) Subject to sub-paragraph (2), the powers conferred by section 98 on the Commission or persons authorised by it 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 Commission to obtain information from the insurer: and

- (ii) the Commission is satisfied that the information to be acquired is necessary to enable that supervisory authority to perform its obligations under any provision of the Solvency Directive; or
- (b) the Commission considers the exercise of those powers in respect of that insurer to be necessary to enable it to perform his functions under this Act.

(2) The Commission shall not exercise the powers conferred by subsection (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 Commission 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 any provision of the Solvency Directive; and
- (b) the authority has notified the Commission in writing of that person's intention to exercise those powers.

(2) An agent of the Commission may accompany a person so authorised while he is acting in the exercise of those powers.

Residual power to protect policy holders

15. The Commission 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 Commission that the insurer's authorisation has been withdrawn, or has lapsed, in accordance with a provision of the Solvency Directive; and
- (b) in accordance with that Article, has requested the Commission 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 Commission 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 Commission shall notify the supervisory authority in the home State.

(3) If, after the Commission has taken the action mentioned in sub-paragraphs (1) and (2), the insurer persists in contravening the provision in question, the Commission may, after informing the supervisory authority of the home State, direct the insurer to cease to carry on insurance or reinsurance business or provide insurance, or to cease to carry on insurance or reinsurance business or provide insurance of any specified description, in Gibraltar.

(4) The Commission 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 Commission 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 Commission.

(8) Where it appears to the Commission that an EEA insurer's activities in Gibraltar is being conducted in a manner which might be detrimental to the insurer's financial soundness, it may notify its concerns to the relevant supervisory authority of the home State.

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 Commission is notified by the supervisory authority in the home State that the insurer's authorisation has been withdrawn, or has lapsed, in accordance with a provision of the Solvency Directive.

(2) The Commission 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 Commission 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 or reinsurance in pursuance of a term of a subsisting contract of insurance or reinsurance.

17A. Where an EEA insurer is being wound-up in the EEA State where it is incorporated, commitments arising from insurance business carried on or provided in Gibraltar shall be met in the same way as those arising from the insurer's business in other states of commitment.

PART II

SUPPLEMENTAL

Offences.

18.(1) An EEA insurer commits an offence if—

- (a) it carries on insurance or reinsurance business in Gibraltar in contravention of paragraph 1 or 4;
- (b) in contravention of paragraph 2, it changes the requisite details of a branch established by it in Gibraltar;
- (c) it provides insurance or reinsurance 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, 8 or 9 to be sent to the Commission 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;

(2) In this Schedule references in Part I to the provision of insurance or reinsurance in Gibraltar are references to the covering 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 Act as carrying on insurance or reinsurance 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 or reinsurance 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) *Omitted.*

(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 or reinsurance, 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 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 Commission 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 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 Commission 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 Commission 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 Act 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 Commission a notice containing the requisite EEA details and the requisite Gibraltar details;
- (b) that the Commission 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 Commission 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 Commission 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 covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with the Solvency Directive;
 - (b) indicates the classes of insurance business which the insurer is authorised to carry on in Gibraltar.
- (4) The Commission 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 Commission shall, within the period of three months referred to in sub-paragraph (4), notify the insurer–
- (a) that it has given the notice and certificate referred to in sub-paragraph (2)(b), stating the date on which it did so; or
 - (b) that it 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 Commission 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 it that the criteria of sound and prudent management would not or might not continue to be fulfilled in respect of the insurer.
- (6A) If the Commission has required of a Gibraltar insurer a financial recovery plan of the kind mentioned in Article 54, Article 138, Article 142 or Article 239 of the Solvency Directive, it will not give the notice referred to in sub-paragraph (4) for so long as it considers that policyholders' rights are threatened within the meaning of paragraph 1.
- (7) Where the supervisory authority of the EEA State of the branch has informed the Commission as mentioned in sub-paragraph (2)(c)(i), it 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 Commission, 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 Commission 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 Commission, and to the supervisory authority in the EEA State of the branch, stating the details of the change.

(4) The Commission 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 Commission 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 that refusal.

(6) In the case of a Gibraltar insurer, the Commission 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 Commission 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 Commission 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 Act 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.

Requirement for carrying on direct reinsurance business.

4A. A Gibraltar reinsurer shall not carry on direct reinsurance business of any description through a branch in an EEA State unless the reinsurer is licensed under section 16A(2) to carry on reinsurance business of that description class.

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 Act 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 Commission a notice containing the requisite details; and
- (b) that the Commission 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 the Solvency Directive;
- (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 Commission 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 Commission 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 Commission 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.

(8) If the Commission has required of a Gibraltar insurer a financial recovery plan of the kind mentioned in Article 54, Article 138, Article 142 or Article 239 of the Solvency Directive, he will not give the notice referred to in sub-paragraph (5) for so long as he considers that policyholders' rights are threatened within the meaning of paragraph 1.

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 Commission stating the details of the proposed change;
- (b) that the Commission 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 Commission stating the details of the change.

(4) The Commission 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 Commission 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 Commission 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.

(7) The Commission shall not refuse a reinsurance contract or a retrocession contract concluded by a Gibraltar insurer with a Gibraltar or EEA insurer on grounds directly related to the financial soundness of any of those insurers.

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 for providing reinsurance business.

7A. A Gibraltar reinsurer shall not provide reinsurance of any description in an EEA State unless the reinsurer is licensed under section 16A(2) to carry on reinsurance business of that description.

Requirements to notify cessation of insurance business etc.

8.(1) A Gibraltar insurer which has ceased—

- (a) to carry on direct insurance or reinsurance business through a branch in an EEA State; or
- (b) to provide insurance or reinsurance in such an EEA State,

shall as soon as practicable notify the Commission 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 Commission 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 Commission in writing if–

(a) it changes either of the details notified to the Commission 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 or reinsurance business in an EEA State in contravention of paragraph 1 of 4A;

(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 or reinsurance in such an EEA State in contravention of paragraph 5 or 7A;

(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 Commission 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–

“health insurance risks”, in relation to an EEA State, means risks falling within class 2 of Schedule 1 to this Act (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” means a national insurers’ bureau as defined in Article 1(3) of Directive 72/166/EEC;

“national guarantee fund” means the body referred to in Article 1(4) of Directive 84/5/EEC;

(2) In this Schedule–

- (a) references in Part I to the provision of insurance or reinsurance in an EEA State are references to the covering of a risk or commitment situated in that EEA State through an establishment in another EEA territory;
- (b) references in Part II to the provision of insurance or reinsurance in Gibraltar are references to the covering 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 Act 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 Commission 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 insurer 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 Act; 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 insurers 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 Commission for the purposes of, or in the discharge of, functions under this Act or any rules or regulations made under this Act (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 Commission.

2. Paragraph 1 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Commission to discharge his functions under this Act or any rules or regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).

Disclosure for facilitating discharge of functions by other regulatory authorities.

2A.(1) Paragraph 1 does not preclude the disclosure of information—

- (a) if disclosure is in accordance with paragraphs (5a), (5b), (5c) or (6) of Article 16 of the third general insurance Directive, or Articles 16(6), 16(7), 16(8) and 16(9) of the long term insurance Directive or Articles 24 to 28 of the reinsurance Directive;
- (b) 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 16 of the long term insurance Directive or Articles 29 and 30 of the reinsurance Directive;
- (c) 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 2A(1)(c) does not apply in relation to disclosure to an authority in a non-EEA State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures 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 Act 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;
 - (d) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of the Financial Services Act if those proceedings relate to an insurance company.
- (2) Paragraph 1 does not preclude the disclosure by the Commission 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 Commission 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 Act;
 - (b) made to or by a person engaged in the administration of the Act, for the purpose of giving effect to the Act; or
 - (c) permitted or required by this or any other Act.

Information supplied by a supervisory authority.

- 4.(1) Paragraph 1 applies also to information which–
- (a) has been supplied to the Commission 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 Commission, 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 Commission 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 Act, 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 EEA State concerned consents to its disclosure and the case is one in which information to which paragraph 1 applies could be so disclosed.

(4A) Before the Commission discloses information to any person under sub-paragraph (3), he shall notify the supervisory authority which supplied the information of the name and responsibilities of that person.

(5) In this paragraph—

“relevant functions”, in relation to the Commission, means his functions under this Act.

PART II

INFORMATION RELATING TO OTHER PERSON.

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(35)

PARENT AND SUBSIDIARY UNDERTAKINGS: SUPPLEMENTAL PROVISIONS

Introduction.

1. The provisions of this Schedule explain expressions used in sub-sections (32) to (34B) 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) and paragraph (a) of section 2(33A) 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 undertaking 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 or 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 purpose 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(2) and (3) or paragraph 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.