SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 2,364 of 2nd JULY, 1987.

LEGAL NOTICE NO. 103 OF 1987

INSURANCE COMPANIES ACT 1987.
(Act 1987 No. 10)

INSURANCE COMPANIES (SOLVENCY MARGINS AND GUARANTEE FUNDS) REGULATIONS, 1987.

In exercise of the powers conferred on him by section 118 of the Insurance Companies Act 1987, and of all other enabling powers, the Governor has made the following regulations.

Title.

1. These regulations may be cited as the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations, 1987.

Interpretation.

2. In these regulations, unless the context otherwise requires,-

"cede" and "cession", in relation to reinsurance, include retrocede and retrocession;

"mutual" means an insurance company or undertaking which is-

(a) a body corporate having no share capital, not being a wholly owned subsidiary with no share capital but limited by guarantee; or

(b) a society registered under the Friendly Societies Act carrying on insurance business other than of a class authorized by that Act;

"pure reinsurer" means a company whose business in Gibraltar is restricted to reinsurance.

"zillmerising" means the method known by that name for modifying the net premium reserve method of valuing a long term policy by increasing the part of the future premiums for which credit is taken so as to allow for initial expenses.

Solvency margins.

Calculation of solvency margins.

3. The solvency margins which, under section 59 of the Act, a licensed insurer is required to maintain shall be calculated-

(a) in relation to general business, in accordance with Schedules 1 and 2 to these Regulations, the higher of the resulting figures being that to be adopted;

(b) in relation to long term business, in accordance with Schedule 3:

Provided that in the case of long term business, where owing to the nature of the long term business more that one solvency margin is produced, the required solvency margin will be the aggregate of such margins.

Mixed long term and general contracts.

4. In assessing solvency margins, a contract for long term business which contains provisions which constitute general business within classes 1 and 2 of Schedule 1 to the Act shall be apportioned and the proportion which relates to general business shall be assessed in accordance with Schedule 1 to these regulations, excluding paragraphs 12 and 13 thereof, and the proportion which relates to long term business in accordance with Schedule 3.

Items that may be treated as assets.

Explicit items that may be taken into account.

5. The following items, referred to as explicit items, may be taken into account as assets ranking for inclusion in solvency margins-

(a) the paid up share capital or, in the case of a mutual, the paid up amount of its fund;

(b) one half of the unpaid capital or fund, if at least one quarter of the capital or fund has been paid up;

Provided that if shares were issued at a premium, the amount to be taken into account shall be one half of the total amount unpaid on such shares and premium if at least one quarter of the aggregate of the nominal value of the shares and the premium has been paid up;

(c) in the case of a mutual which does general business, any claim which the mutual has against its members by way of a call for supplementary contributions for a financial year:

Provided that, in calculating the solvency margin the amount of the claim shall not exceed-

(i) one half of the difference between the maximum contributions and the contributions called in; or

(ii) one half of the required solvency margin;

(d) statutory reserves and free reserves not corresponding to underwriting liabilities;

(e) any carry forward of profits or profit reserves capable of being used to cover losses, which have not been made available for distribution.

Implicit items that may be taken into account.

6. (1) The following items, referred to as implicit items, may be taken into account as assets ranking for inclusion in solvency margins, to such extent as the Supervisor may allow and subject to the qualifications contained in regulations 7, 8 and 9:

(a) for general business
hidden reserves;

(b) for long term business-

(i) hidden reserves;
(ii) future profits; and
(iii) zillmerising.

(2) An insurer which desires to include any implicit item among its assets shall apply in writing to the Supervisor and shall furnish such evidence in support of its application as the Supervisor may require.

Hidden reserves.

7. Hidden reserves may be taken into account as assets where they result from the under-estimation of assets and the over-estimation of liabilities other than mathematical reserves) and provided that they are not of an exceptional nature.

Future profits - long term business.

8. The amount that may be taken into account as future profits shall not be more than one half the amount of such profits calculated in accordance with the following directions-

(a) the future profits shall be arrived at by multiplying the estimated annual profit by the average number of years remaining to run on the policies or by 10, whichever is the lesser;

(b) the average number of years remaining to run on policies shall be calculated:

(i) by multiplying the number of years to run on each policy by the actuarial value of the benefits payable under the policy, aggregating the products so obtained and dividing the total by the aggregate of the actuarial values of the benefits under all policies, or

(ii) by an approximation of this method of calculation to the circumstances of the case, including, where appropriate, an approximation involving the grouping of contracts,

appropriate allowance being made in either case for the premature termination of contracts;

(c) where annual actuarial valuations of the long term business have been carried out, the estimated annual profit shall be one fifth of the surpluses, excluding substantial items of an exceptional nature, less any deficiencies, shown in the long term fund on those valuations over a period of five years (the relevant period) ending on the last day of the most recent financial year for which an actuarial valuation has been carried out;

(d) where annual actuarial valuations of the long term business have not been carried out, the estimated annual profit shall be one fifth of the surpluses, excluding substantial items of an exceptional nature, less any deficiencies, that have arisen in the long term fund since the last valuation before the relevant period:

Provided that any surplus or deficiency in the first valuation made within the relevant period shall be proportionately reduced to allow for any time outside the relevant period.

(e) where an insurer has not carried on long term business throughout the relevant period, the estimated annual profit shall be one fifth of the surpluses, excluding substantial items of an exceptional nature, less any deficiencies, that have arisen in the long term fund during that part of the relevant period during which long term business has been carried on.

Zillmerising.

9.(1) The implicit item for zillmerising shall not be valued at an amount exceeding-

(a) the difference between-

(i) any non-zillmerized or partially zillmerised mathematical reserve maintained, and

(ii) a mathematical reserve of not less than the amount prescribed, zillmerised at a rate equal to the loading for acquisition costs included in the premium;

but not exceeding

(b) 3.5 per cent of the difference between-

(i) the relevant capital sums; and

(ii) the mathematical reserve, excluding mathematical reserves for temporary assurances;

and shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.

(2) For the purposes of sub-regulation (1)-

(a) reserves for vested reversionary bonuses are not to be included in the mathematical reserves; and

(b) the following are relevant capital sums-

(i) for whole life assurance: the sum assured;
(ii) for policies where a sum is payable on maturity, including policies where a sum is also payable on earlier death: the sum payable on maturity;

(iii) for deferred annuities: the capitalised value of the annuity at the vesting date, or the cash option, whichever is the greater;

(iv) for capital redemption contracts, the sum payable at the end of the contract period; and

(v) for linked long term contracts within the description of Class III in Schedule 2 to the Act, not withstanding sub-paragraphs (i) to (iv) above, the lesser of;

(i) the amount for the time being payable on death, and

(ii) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the premiums remaining to be paid during such of the term of the contract as is appropriate for zillmerising or, if such premiums are payable beyond the age of seventy-five, until that age.

excluding in all cases any vested reversionary bonuses and capital sums for temporary assurances.

(3) Where, under a contract relating to any of the classes of business mentioned in sub-regulation (2), the payment of premiums is to stop before the sum assured becomes due, the relevant capital sums shall mean the mathematical reserves appropriate for the contract when the premiums cease to be payable.

Guarantee Funds.

Minimum guarantee funds.

10. The minimum guarantee funds referred to in section 60(2)(b) of the Act shall be as set out in Schedule 4 to these regulations, according to the class of business carried on.

Insurers from outside the Community.

11. The minimum guarantee funds to be maintained by an insurer having its head office outside the Community shall be one half of the appropriate amount set out in Schedule 4 for the class of business carried on in Gibraltar.

Composition of guarantee funds in the case of long term business.

12. In the case of long term business items that are not implicit items must be large enough to cover the minimum guarantee fund or 50 per cent of the guarantee fund, whichever is the greater.

Application of other assets to long term business.

Application of other assets to long term business.

13. Where long term and general business are carried on and separate solvency margins are maintained in accordance with section 59(5), assets, other than those representing funds maintained for the tong term business or used to cover the liabilities and solvency margin for general business, may be included among the assets taken into account in covering the long term business liabilities and solvency margin.

SCHEDULE 1.

Regulation 3

GENERAL BUSINESS SOLVENCY MARGIN: FIRST METHOD OF CALCULATION (PREMIUM BASIS).

Definitions

1. In this Schedule-

"gross premiums", in relation to an insurance company and a financial year-

(a) means premium after deduction of discounts, refunds and rebates of premium but before deduction of premiums for reinsurance ceded and before deduction of commission payable by the company, and

(b) includes premiums receivable by the company under re-insurance contracts accepted by the company;

"receivable", in relation to an insurance company, a financial year and a premium, means recorded in the company's books as due to the company in respect of-

(a) a contract commencing in that year, or

(b) a contract not accounted for in an annual revenue account of the company prior to that year, even though the contrad commenced in an earlier financial year,

whether or not the company has received the premium;

"recoverable", in relation to an insurance company and a financial year, means recorded in the company's books as due in that year, whether or not the company has received any payment.

2. (1) For the purposes of paragraph 8 below-

(a) the amount of claims paid, in relation to an insurance company and a financial year, is the amount that is recorded in the company's books as at the end of the financial year as paid by it (whether or not payment has been effected in that year) in full or partial settlement of-

(i) the claims described in sub-paragraph (2) below, and

(ii) the expenses described in sub-paragraph (3) below, less any recoverable amounts within the meaning of subparagraph (4) below;

(b) the provision for claims outstanding, in relation to an insurance company and a financial year, is (subject to any applicable valuation regulations) the amount set aside by the company as at the beginning or end of the financial year as being an amount likely to be sufficient to meet-

(i) the claim described in sub-paragraph (5) below, and

(ii) the expenses described in sub-paragraph (6) below,

less any recoverable amounts within the meaning of subparagraph (7) below.

(2) The claims mentioned in sub-paragraph (1)(a) above are claims under contracts of insurance (and under contracts of reinsurance accepted by the company) including claims relating to business accounted for over a longer period than a financial year.

(3) The expenses mentioned in sub-paragraph (1)(a) above are expenses (such as, for example, legal, medical, surveying or engineering costs) which are incurred by the company, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual claims, whether or not the individual claims in question are those mentioned in sub-paragraph (1)(a) above.

(4) Recoverable amounts for the purposes of sub-paragraph (1)(a) above are amounts recoverable by the company in respect of the claims mentioned in that sub-paragraph or other claims, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurers but excluding amounts recoverable in respect of reinsurance ceded by the company.

(5) The claims mentioned in sub-paragraph (1)(b) above are claims under contracts of insurance (and under contracts of reinsurance accepted by the company) in respect of incidents occurring-

(a) in the case of an amount set aside as at the beginning of the financial year, before the beginning of that year, and

(b) in the case of an amount set aside as at the end of a financial year, before the end of that year,

being claims which have not been treated as claims paid and including claims relating to business accounted for over a longer period than a financial year, claim the amounts of which have not been determined and claims arising out of incidents that have not been notified to the company.

(6) The expenses mentioned in sub-paragraph (1)(b) above are expenses (such as, for example, legal, medical, surveying or engineering costs) which are likely to be incurred by the company, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual claims, whether or not the individual clams in question are those mentioned in sub-paragraph (1)(b) above.

(7) Recoverable amounts for the purposes of sub-paragraph (1)(b) above are amounts estimated by the company to be recoverable by it in respect of the claims mentioned in that sub-paragraph, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurers but excluding amounts recoverable in respect of reinsurance ceded by the company.

Procedure
(First Step)

3. The gross premiums receivable in respect of the company's entire general business for the last preceding financial year shall be aggregated.

4. From the aggregate arrived at under paragraph 3 above there shall be deducted-

(a) any taxes included in the premiums mentioned in paragraph 3 above,and

(b) any levies that are related to premiums and are recorded in the company's books as payable in the last preceding financial year in respect of general business.

5. The amount arrived at under paragraph 4 above shall be multiplied by twelve and divided by the number of months in the financial year.

(Second Step)

6. If the amount arrived at under paragraph 5 above is more than 10 million units of account, it shall be divided into two portions the former consisting of 10 million units of account and the latter comprising the excess.

7.(1) Where there has been a division into two portions pursuant to paragraph 6 above there shall be calculated and added together 18 per cent and 16 per cent of the two portions respectively.

(2) Where there has been no division pursuant to paragraph 6 above there shall be calculated 18 per cent of the amount arrived at under paragraph 5 above.

(Third Step)

8.(1) If the provision for claims outstanding at the end of the last preceding financial year exceeds the provision for claims outstanding at the beginning of that year, the amount of the excess shall be added to the amount of claims paid in the last preceding financial year.

(2) If the provision for claims outstanding at the beginning of the last preceding financial year exceeds the provision for claims outstanding at the end of that year the amount of the excess shall be deducted from the amount of claims paid in the last preceding financial year.

9. From the amount determined under paragraph 8(1) or (2) above there shall be deducted the total sum recoverable in respect of that amount under reinsurance contracts ceded.

10. The amount determined under paragraph 9 above shall be expressed as a percentage of the amount determined under paragraph 8(1) or (2) above.

(Fourth Step)

11. The sum arrived at under paragraph 7 above shall be multiplied-

(a) where the percentage arrived at under paragraph 10 above is greater than 50 per cent but not greater than 100 per cent, by the percentage so arrived at.

(b) where the percentage so arrived at is greater than 100 per cent, by 100 per cent, and

(c) in any other case, by 50 per cent.

Special provision for health insurance

12. In the case of general business consisting of health insurance based on actuarial principles, the same procedure as in paragraphs 3 to 11 shall apply but substituting in paragraph 7 above "6 per cent" for "18 per cent" and "5 1/3 per cent" for "16 per cent", if all the following conditions are satisfied:-

(a) the gross premiums receivable are calculated on the basis of sickness tables appropriate to insurance business;

(b) the reserves include provision for increasing age;

(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;

(d) it is not possible for the insurer to cancel the contract after the end of the third year of insurance;

(e) the contract provides for the possibility of increasing premiums or reducing payments during its currency.

13. Where paragraph 12 above applies to a company whose general business consists partly of health insurance based on actuarial principles and partly of other business, the procedure provided in paragraphs 3 to 11 above shall operate separately for each part of the general business, so as to produce a sum under paragraph 12 above for the health insurance and a sum under paragraph 7 above for the other business.

SCHEDULE 2.

Regulation 3.

GENERAL BUSINESS SOLVENCY MARGIN: SECOND METHOD OF CALCULATION (CLAIMS BASIS).

1. In this Schedule "reference period", in relation to an insurance company, means either-

(a) the three last preceding financial years, or

(b) the seven last preceding financial years if more than one-half of the gross premiums receivable (as defined in Schedule 1) in that period were in respect of all or any of the following, namely, storm (as included in general business class g), hail (as included in general business class 9) and frost (as included in general business class 9).

2. If a company has not been in existence long enough to acquire a reference period, this Schedule shall be deemed to give a lower result than that given by Schedule 1 and shall otherwise not apply to the company.

(First Step)

3. (1) If the provision for claims outstanding at the end of the reference period exceeds the provision for claims outstanding at the beginning of the reference period, the amount of the excess shall be added to the amount of claims paid in the reference period.

(2) If the provision for claims outstanding at the beginning of the reference period exceeds the provision for claims outstanding at the end of the reference period, the amount of the excess shall be deducted from the amount of claims paid in the reference period.

(3) For the purposes of this paragraph, the expressions "amount of claims paid" and "Provision for claims outstanding" have, in relation to a reference period, the same meaning as they have in paragraph 2(1) of Schedule 1 in relation to a financial year.

(Second Step)

4. The aggregate obtained under paragraph 3(1) or (2) above shall be divided by the number of months in the reference period and multiplied by twelve.

(Third step)

5. If the amount arrived at under paragraph 4 above is more than 7 million units of account, it shall be divided into two portions, the former consisting of 7 million units of account and the latter comprising the excess.
6.(1) Where there has been a division into two portions pursuant to paragraph 5 above, there shall be calculated and added together 26 per cent and 23 per cent of the two portions respectively;

(2) Where there has been no division pursuant to paragraph 5 above, there shall be calculated 26 per cent of the amount arrived at under paragraph 4 above.

(Fourth Step)

7. The sum arrived at under paragraph 6 above shall be multiplied by the same percentage as is applicable for the purposes of paragraph 11 of Schedule 1.

Special Provisions for health insurance

8. In the case of general business consisting of health insurance based on actuarial principles, paragraph 6 above shall apply with the substitution of "8 2/3 per cent" for "26 per cent" and "7 2/3 per cent" for "23 per cent", but only if all the conditions mentioned in paragraph 12 of Schedule 1 are satisfied.

9. In a case of the kind mentioned in paragraph 13 of Schedule 1, that paragraph shall apply (with the necessary modifications) so as to produce separate sums under paragraphs 6 and 8 above.

SCHEDULE 3

Regulation 3.

SOLVENCY MARGINS
Part I. Direct long term business.

Class of business	Required margin of solvency
I Life and annuity. II Marriage and birth	1. The aggregate of the results obtained from the following two calculations:- (A) First calculation (i) 4& of total mathematical reserves for direct business and reinsurance acceptances – without any deduction for reinsurance cessions (ii) multiplied by- (a) the percentage made up by the ratio:- total mathematical reserves at end of last preceding financial year less reinsurance cessions and retrocessions Total of such mathematical reserves gross of reinsurance; Or (b) 85% - whichever is the greater. (B) Second calculation (i) 0.3% of the capital at risk for contracts on which the capital at risk is not a negative figure (ii) multiplied by- (a) the percentage made up by the ratio; total capital at risk at the end of the last preceding financial year for contracts on which the capital at risk is not a negative figure, after the deductionof reinsurance cessions. ——— Total of such capital at risk before deduction of reinsurance cessions; Of (b) 50% - whichever is the greater.

SOLVENCY MARGINS.
Part I. Ddirect long term business

Class of business	Required margin of solvency
I and II continued	2. In the case of a contract the benefits of which are payable only on death within a specified period- (a) where the contract is valid for a period of not more than three years from the date when the contract is first made, the percentage to be taken for the purposes of (B)(i) above is to be 0.1%; (b) where the contract is valid for a period of more than three years but not more than five years, the percentage to be taken for the purposes of (B)(i) above is to be 0.15%.

NOTES:
(1) Where, for the purposes of A(i) and B(i) above respectively, the amount of the mathematical reserves or the amount of the capital at risk is calculated for the purposes of determining the required margin of solvency, the day as on which that amount is calculated shall be the same as that as on which the margin of solvency is determined (but see Note 3 below).
(2) The capital at risk is:

(a) in any case in which an amount is payable in consequence of death other than a case falling within (b) below, the amount payable on death, and

(b) in any case in which the benefit under the contract in question consists of the making, in consequence of death, of the payment of an annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit,

less in either case the mathematical reserves in respect of the relevant contract.
(3) For the purposes of Note 2, the mathematical reserves shall also be calculated as on the day indicated in Note 1 when the capital at risk in question is that referred to in B (i) above. When the capital at risk in question is that referred to in B (ii) above, the mathematical reserves shall be calculated as at the end of the last preceding financial year.
(4) The period of validity of the contract evidencing a group polity is the period from the date when premium rates under the contract were last reviewed for which premium rates are guaranteed.

SCHEDULE 3.

SOLVENCY MARGINS.

Part I. Direct long term business.

In the case of pure reinsurers the required solvency margins shall be calculated in accordance with Part 1 of this Schedule for the diffeent classes of long term business but with the application of the following percentages:-

Class of business	Required margin of solvency
III Linked long term.	3. In so far as the insurance company bears an investment risk, the required margin of solvency is to be as in the first calculation for Classes I and II. 4. in so far as- (i) the insurance company bears no investment risk, and (ii) the total expired and unexpired term of the relevant contract exceeds five years, and (iii) the allocation to cover management expenses in the relevant contract has a fixed upper limit which is effective as a limit for a period exceeding five years, the required margin of solvency is to be calculated as in the first calculation for Classes I and II but applying 1% instead of 4%. 5. If neither paragraph 3 nor paragraph 4 applies, then, subject to paragraph 6 below, the required margin of solvency is zero. 6. Where an insurance company covers a death risk, there shall be added to any required margin of solvency a sum arrived at by applying the second calculation for Classes I and II disregarding however the provisions in paragraph 2.
IV. Permanent Health.	7. The margin of solvency is to be determined by applying the first calculation required for Classes I and II.
V. Tontines.	8. The margin of solvency is to be equal to 1% of the assets of the relevant tontine.
VI. Capital redemption.	9. The margin of solvency is to be determined by applying the first calculation required for Classes I and II.
VII. Pension fund management.	10. As for Class III.

SCHEDULE 3.

SOLVENCY MARGINS.

Part II. Long term business – Pure Reinsurers.

In the case of pure reinsurers the required solvency margins shall be calculated in accordance with Part 1 of this Schedule for the different classes of long term business but with the application of the following percentages:-

(a)	In paragraph 1(A)(ii)(b)	:	50% (instead of 85%) and
(b)	In paragraph 1(B)(i)	:	0.1% (instead of 0.3%)

SCHEDULE 4.

Regulations 10 and 11.

MINIMUM GUARANTEE FUNDS.

Long Term Business

1. The minimum guarantee fund for long term business shall be

(a) in the case of a pure reinsurer which-

(i) is the wholly-owned subsidiary of an insurer carrying on long term business, and

(ii) carries on only such reinsurance business as is ceded to it by the insurer: 200,000 units of account,

(b) in the case of a mutual: 600,000 units of account, and

(c) in any other case: 800,000 units of account.

General Business

2. The minimum guarantee fund for general business shall be the amount shown in the table below as applicable to the general business class for which the company is authorised (or the highest such amount if the company is authorised for more than one class).

GENERAL BUSINESS CLASS	AMOUNT
Class 10, 11, 12, 13, 14 or 15	400,000 units of account
Class 1, 2, 3, 4, 5, 6, 7, 8 or 16	300,000 units of account
Class 9 or 17	200,000 units of account

3. A company authorised for part of a class shall for the purposes of paragraph 2 above, be regarded as authorised for the whole of the class.

4. In the case of a mutual, the minimum guarantee fund required by paragraph 2 and 3 above shall be reduced by 25 per cent.

Long Terrn and General Business

5. In the case of a company whose business in Gibraltar is restricted to reinsurance the minimum guarantee fund for long term or general business shall be one-half of the amount arrived at by applying the foregoing provisions of this Schedule.

Dated this 2nd day of July, 1987.

By Command,

J. K. E. BROADLEY,
Deputy Governor.