

Financial Services (Insurance Companies)

INSURANCE COMPANIES (VALUATION OF ASSETS AND LIABILITIES) REGULATIONS 1996

1987-10
Repealed
Subsidiary
1996/068

Regulations made under section 118 of the Insurance Companies Act 1987.

INSURANCE COMPANIES (VALUATION OF ASSETS AND LIABILITIES) REGULATIONS 1996

Repealed by LN.2020/044 as from 15.1.2020

(LN. 1996/068)

1.7.1996

Amending enactments	Relevant current provisions	Commencement date
LN. 1997/029	rr. 2(1), 2(3), 2(4), 2(5), 3(2) 3(4), 3(8), 5, 6, 7(4), 7(5), 7(5A), 7(6)(d), 7(8), 7(10), 7(11), 7(12),10, 11, 14, 14A, 15, 18(1)(2)(3), 19, 19A, 21(e), 26(3)(b) and 27. Sch. 1, 3 and 4	20.3.1997
1997/113	Sch. 1 para. Part II 12 and 13, Sch. 3 para. 3	23.10.1997
2004/010	Sch. 1	1.1.2004
2004/017	rr. 2, 6(2)(b), 12, 13 and 19B. Sch. 1 (11A) (15A) and Sch. 2	5.2.2004
2007/143	rr. 2(1), 15A, 15B, 41, 42 & 43	20.12.2007
2012/205	r. 2(1)	29.11.2012

Transposing:

Directive 73/239/EEC
Directive 79/267/EEC
Directive 88/357/EEC
Directive 92/49/EEC
Directive 92/96/EEC

Directive 93/6//EEC
Directive 93/22/EEC
Directive 98/78/EC
Directive 2000/12/EC
Directive 2002/87/EC

EU Legislation/International Agreements involved:

Directive 85/611/EEC
Directive 89/646/EEC
Directive 89/647/EEC

Directive 93/22/EEC
Directive 98/78/EC
Directive 2005/68/EC

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SCHEDULE 3

Permitted links

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In exercise of the powers conferred on it by section 118 of the Insurance Companies Ordinance 1987, and of all other enabling powers, and for the purpose of transposing into the national law of Gibraltar Council Directives 88/357/EEC, 92/49/EEC and 92/96/EEC, the Government has made the following regulations –

PART I PRELIMINARY

Title and Commencement.

1. These regulations may be cited as the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 and shall come into effect on the 1st day of July 1996.

Interpretation.

2. (1) In these regulations, unless the context shall otherwise require –

“amortised value” means the amortised value as determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurance companies;

“approved counterparty” means any of the following, that is to say, -

- (a) an approved credit institution;
- (b) a listed money market institution;
- (c) a person who is authorised in respect of investment business of a kind which includes entering into unlisted derivative contracts as principal; or
- (d) in respect of a transaction involving a new issue of securities which are to be listed, the issuer or an approved investment firm acting on behalf of the issuer;

“approved credit institution” means an institution recognised or permitted under the law of an EEA State to carry on any of the activities set out in Annex 1 to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast);

“approved financial institution” means any of the following, that is to say,

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- (a) the central bank of an EEA State;
- (b) the International Bank for Reconstruction and Development;
- (c) the International Finance Corporation;
- (d) the International Monetary Fund;
- (e) the Inter-American Development Bank;
- (f) the African Development Bank;
- (g) the Asian Development Bank;
- (h) the Caribbean Development Bank;
- (j) the European Investment Bank;
- (k) the European Community;
- (l) the European Atomic Energy Community; and
- (m) the European Coal and Steel Community;

“approved investment firm” means an investment firm as defined in Article 2 of Council Directive 93/22/EEC on investment services in the securities field;

“approved securities” means any of the following -

- (a) any securities issued or guaranteed by, or the repayment of the principal of which, or the interest on which is guaranteed by, and any loans to or deposits with, any of the following, namely, any government, public or local authority or nationalised industry or undertaking, which belongs to Zone A as defined in Council Directive 89/647/EEC on a solvency ratio for credit institutions;
- (b) any loan to, or deposit with, an approved financial institution;

“asset” includes part of an asset;

“building society” means a building society within the meaning given to that expression in the Building Societies Act;

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“collective investment scheme” has the meaning given to it in section 2(2) of the Financial Services Act 1989;

“company” includes any body corporate;

“contract for differences” means a contract which falls within paragraph 9 of Schedule 1 to the Financial Services Act 1989;

“co-operative society” means a co-operative society within the meaning given to that expression in the Co-operative Societies Act;

“counterparty” has the meaning set out in Schedule 1;

“debt” includes an obligation to pay a sum of money under a negotiable instrument;

“debt security” includes bonds, notes, debentures and debenture stock;

“deferred acquisition costs” means those items shown in GII under the heading “Assets” set out in paragraph 9 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997;

“derivative contract” means a contract for differences, a futures contract or an option and includes a contract under which the amount payable by either party is calculated by reference to the amortised value of any property;

“designated state or territory” means any EEA State, Switzerland, a state in the United States of America, Canada or a province in Canada, Australia, South Africa, Singapore and Hong Kong;

“equivalent securities” means securities issued by the same issuer being of an identical type and having the same nominal value, description and amount;

“exposure” in relation to assets means an amount determined in accordance with regulation 15 and paragraph 4 of Part I of Schedule 1;

“exposure” in relation to a counterparty means an amount determined in accordance with regulation 15 and paragraphs 13 to 15 of Part I of Schedule 1;

“fixed interest securities” means securities which under their terms of issue provide for fixed amounts of interest;

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“futures contract” means a contract which falls within paragraph 8 of Schedule 1 to the Financial Services Act 1989;

“general business amount” has the meaning given to it in Schedule 1;

“general business assets” and “general business liabilities” mean respectively assets and liabilities of an insurer which are not long term business assets or long term business liabilities;

“general premium income” means, in relation to any body in any year, the net amount, after deduction of any premiums payable for reinsurance, of the premiums receivable by the body in that year in respect of all insurance business other than long term business;

“group undertaking” means

- (a) the insurer;
- (b) its related undertakings;
- (c) its participating undertakings; and
- (d) the related undertakings of its participating undertakings;

“index linked benefits” means benefits -

- (a) provided for under any contract the effecting of which constitutes the carrying on of long term insurance business; and
- (b) determined by reference to fluctuations in any index of the value of property (whether specified in the contract or not);

“initial margin”, in respect of a derivative contract or a contract or asset having the effect of a derivative contract, means assets which, before or at the time the contract is entered into, are transferred by the insurance company subject to a condition that such assets (or where the assets transferred are securities, equivalent securities) will be returned to the company on completion of that contract;

“insurance holding company” means an undertaking whose main business is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings;

“insurance undertaking” means an undertaking, whether or not an insurer which carries on insurance business;

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“intermediary” means a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance with an insurer, other than a person who only publishes such invitations on behalf of, or to the order of, some other person;

“issuer” in respect of a collective investment scheme, means the manager or operator of the scheme and in respect of an interest in a limited partnership, means the partnership;

“linked assets” means in relation to an insurer, long term business assets of the insurer which are, for the time being, identified in the records of the insurer as being assets by reference to the value of which property linked benefits are to be determined;

“listed”, in relation to an investment, means that —

- (a) there has been granted and not withdrawn a listing in respect of that investment on any stock exchange in an EEA State which is a stock exchange within the law of that EEA State; or
- (b) facilities for dealing in that investment have been granted on a regulated market;

and “unlisted” shall be construed accordingly;

“listed money market institution” means a person included from time to time in a list maintained by the Commissioner and available from him on request;

“long term business amount” has the meaning given to it in Schedule 1;

“long term business assets” and “long term business liabilities” mean respectively assets of an insurer which are, for the time being, identified as representing the long term fund or funds maintained by the insurer in respect of its long term business and liabilities of the company which are attributable to its long term business;

“market value” means the market value as determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurance companies;

“notional required minimum margin” means-

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- (a) in the case of an insurance undertaking (other than a pure reinsurer) that has its head office in a designated state or territory, the amount of the required minimum margin, or equivalent, under the regulatory requirements of that state or territory;
- (b) in the case of a pure reinsurer that has its head office in a designated state or territory, the amount that would be the required minimum margin, or equivalent, if the regulatory requirement of that state or territory applicable to undertakings carrying on direct insurance business were applied to the pure reinsurer; and
- (c) in all other cases, the amount of the required minimum margin that would apply if the insurance undertaking were an insurer with its head office in Gibraltar (whether it is or not);

“option” means an option which falls within paragraph 7 of Schedule 1 to the Financial Services Act 1989 or a warrant;

“participating undertaking” means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

“participation” means—

- (a) the holding of a participating interest within the meaning of section 2(37) of the Act; or
- (b) the holding directly or indirectly of 20% or more of the voting rights or capital;

“permitted asset exposure limit” has the meaning set out in paragraph 2 of Part I of Schedule 1;

“permitted counterparty exposure limit” has the meaning set out in paragraph 3 of Part I of Schedule 1;

“proper valuation” means, in relation to land and buildings, a valuation made by a qualified valuer not more than 3 years before the relevant date which determined the amount which would be realised at the time of the valuation on an open market sale of the land and buildings free from any mortgage or charge;

“property linked benefits” means benefits other than index linked benefits provided for under any contract the effecting of which constitutes the carrying on of long-term insurance business and determined by reference to the value of, or the income from, property of any description (whether specified in the contract or not);

“proportionate share” means, in the case of a related undertaking of an insurer, the percentage holding (directly or indirectly) of the related undertaking’s capital;

“qualified valuer” in relation to any particular type of land and buildings in any particular area, means a person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors or a fellow or associate of the Incorporated Society of Valuers and Auctioneers or a fellow or associate of the Rating and Valuation Association or a person who has equivalent qualifications recognised for this purpose in an EEA State and either -

- (a) has knowledge of and experience in the valuation of that particular type of land and buildings in that particular area, or
- (b) has knowledge of and experience in the valuation of land and buildings and has taken advice from a valuer who he is satisfied has knowledge of and experience in the valuation of that particular type of land and buildings in that particular area;

“regulated institution” means any of the following -

- (a) an insurer which is either an EEA insurer or a Gibraltar insurer;
- (b) an approved credit institution;
- (c) a society falling within the scope of section 18(b);
- (d) a body registered under the United Kingdom enactments relating to friendly societies and which is authorised to carry on insurance business in the United Kingdom; and
- (e) an approved investment firm;

“regulated market” means a market which is characterised by -

- (a) regular operation;

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- (b) the fact that regulations issued or approved by the appropriate authority of the state where the market is situated -
 - (i) define the conditions for the operation of and access to the market;
 - (ii) define the conditions to be satisfied by a financial instrument in order for it to be effectively dealt in on the market; and
 - (iii) require compliance with reporting and transparency requirements comparable to those laid down in articles 20 and 21 of Council Directive 93/22/EEC on investment services in the securities field; and
- (c) in the case of a market situated other than in Gibraltar or any place in an EEA State, the fact that the financial instruments dealt in are of a quality comparable to those in a regulated market in Gibraltar or in any place in an EEA State;

“related company” means, in relation to an insurer, -

- (a) a dependant of the insurer, or
- (b) a company of which the insurer is a dependant, or
- (c) a dependant of a company of which the insurer is a dependant;

“related undertaking” means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

“relevant date” means, in relation to the valuation of any asset for any purpose for which these regulations apply, the date when the asset falls to be valued for that purpose;

“relevant regulatory requirements” means, for the purpose of regulations 12(2)(b) and 13(3)(a),-

- (a) in the case of a group undertaking that is an insurance undertaking established in a designated state or territory, at the option of the insurer, either-

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- (i) the regulatory requirement of that state or territory applicable to an insurance undertaking carrying on direct insurance business (even if it only carries on reinsurance business), or
 - (ii) the requirements referred to in (b); and
- (b) in the case of any other insurance undertaking, the Insurance Companies (Parent Undertaking Solvency Margin Calculation) Regulations 2004 shall apply;

“salvage right” means any right of an insurer under a contract of insurance to take possession of and to dispose of property by virtue of the fact that the insurer has made a payment or has become liable to make a payment in respect of a loss thereof;

“securities” includes shares, debt securities and Treasury Bills;

“settlement date” means any date on which the fulfilment of an obligation under a derivative contract is or may be required;

“share” includes stock;

“subordinated debt” means any debt which, on a winding up of the debtor, ranks for payment after the claims of general creditors and is not to be repaid until the claims of all the general creditors outstanding at the time have been settled;

“Talisman short term certificate” means a short term certificate provided by the Stock Exchange to Talisman account holders which have been endorsed by such account holders and passed to lenders as security under stock lending transaction; and for the purposes of this provision “the Stock Exchange” means the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

“the valuation date”, in relation to an actuarial investigation, means the date to which the investigation relates;

“Treasury Bills” includes bills issued by the Government of Gibraltar, Her Majesty’s Government in the United Kingdom, Northern Ireland Treasury Bills and bills issued by the Government of any other EEA State;

“variation margin” means—

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- (a) in respect of a derivative contract, or a contract having the effect of a derivative contract, assets (other than assets transferred by way of initial margin) which, at the relevant date, have been transferred by, to, or for the benefit of the company in pursuance of a condition in that contract or a related contract; and
- (b) in respect of an asset having the effect of a derivative contract, assets which, at the relevant date, have been transferred by, to, or for the benefit of, the company in pursuance of a contractual right conferred, or obligation imposed, by the holding of the asset having the effect of a derivative contract;

“warrant” means an instrument which falls within paragraph 4 of Schedule 1 to the Financial Services Act 1989.

(2) For the purposes of these regulations, a company is connected with another company if it is -

- (a) a subsidiary of that other company, or
- (b) the holding company of that other company, or
- (c) a subsidiary of the holding company of that other company.

(3) For the purposes of these regulations, a debt owed to (or an obligation to be fulfilled for the benefit of) an insurer shall be regarded as being secured only to the extent that it is—

- (a) secured by—
 - (i) a letter of credit established with an approved credit institution; or
 - (ii) a guarantee provided by an approved credit institution,

and the sum of the aggregate amount available under all letters of credit established for the benefit of the insurer with the same counterparty, the aggregate amount of all guarantees issued for the benefit of the insurer by that counterparty and the amount of any exposure of the insurer to that counterparty does not exceed the permitted counterparty exposure limit for that counterparty; or

- (b) secured by assets for the valuation of which provision is made in Part II and—

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- (i) the value of such assets (after deducting reasonable expenses of sale and the amount of any other debt or obligation secured thereon having priority to or ranking equally with the debt or obligation) is sufficient to enable the debt or obligation to be discharged in full;
- (ii) the value of the assets when aggregated with the insurer's exposure to assets of the same description does not exceed the permitted exposure limit for assets of that description (as defined in regulation 15 and Schedule 1); and
 - (iii) where the assets give rise to exposure to a counterparty, the exposure of the insurer to that counterparty, when added to the aggregate amount available under all letters of credit established for the benefit of the insurer with that counterparty, and to the aggregate amount of all guarantees issued for the benefit of the insurer by that counterparty, does not exceed the permitted counterparty exposure limit for that counterparty.

(4) For the purposes of sub-regulation (3) —

- (a) the aggregate amount available under letters of credit established with a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations in respect of which those letters of credit were established;
- (b) the aggregate amount of guarantees issued by a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations so guaranteed; and
- (c) assets which are securing any other debt owed to (or obligation to be fulfilled for the benefit of) the insurer shall be treated as if they were assets of the insurer.

(5) For the purposes of these regulations, a company is a dependant of another company if it is a subsidiary undertaking of that other company and "subsidiary undertaking" shall be construed in accordance with sub-sections (32) to (35) of section 2 of the Act.

PART II
VALUATION OF ASSETS

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Application of Part II.

3. (1) Subject to sub-regulation (2), this Part applies with respect to the determination of the value of assets of insurers for the purposes of -

- (a) sections 59, 64, 64A, 64D, 65, 73, 84 and 100,
- (b) any investigation to which section 78 applies,
- (c) any investigation made in pursuance of a requirement under section 82.

(2) Where an insurer has entered into any contracts providing for the payment of property linked benefits, this Part shall not apply with respect to the determination of the value of the linked assets to the extent that they are held to match liabilities in respect of such benefits.

(3) Any asset to which this Part applies (other than cash) for the valuation of which no provision is made in this Part shall be left out of account for the purposes specified in sub-regulation (1).

(4) Where in all the circumstances of the case it appears that the value of any asset is of a lesser value than the amount calculated in accordance with this Part, such lesser value shall be the value of the asset.

(5) For the purposes of sub-regulation (4), in determining whether it appears that an asset is of a lesser value than a specified amount, regard shall be had to the underlying security and, in the case of bonds, debt securities and other money and capital market instruments, the credit rating of the issuer, including whether the issuer belongs to Zone A as defined in Council Directive 89/647/EEC on a solvency ratio for credit institutions and, where the issuer is an international organisation, whether it includes at least one EEA State among its members.

(6) Notwithstanding sub-regulation (1) (but subject to the conditions set-out in sub-regulation (7)), an insurer may, for the purposes of an investigation to which section 78 applies or an investigation made in pursuance of a requirement under section 82, elect to assign to any of its assets the value given to the asset in question in the books or other records of the insurer.

(7) The conditions referred to in sub-regulation (6) are -

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- (a) that the election shall not enable the insurer to bring into account any asset for the valuation of which no provision is made in this Part;
- (b) that the value assigned to the aggregate of the assets shall not be higher than the aggregate of the value of those assets as determined in accordance with regulations 4 to 15.

(8) Where an insurer has entered into a contract for the conversion of currency which satisfies the conditions set out in sub-regulation (9), then for any of the purposes for which this Part applies, the insurer shall treat the conversion as having been made on the relevant date.

(9) The conditions referred to in sub-regulation (8) are that—

- (a) either—
 - (i) the contract provides for the conversion into another currency of an amount representing the sale of an asset which has, on the relevant date, been sold but not delivered, or
 - (ii) the contract provides for the purchase of currency for the purpose of settling the purchase of an asset which has, on the relevant date, been purchased but not delivered;
- (b) the conversion is to take place during a period which is—
 - (i) where the contract is in connection with the delivery of a listed security, a period commencing on the date of the contract and extending for the usual period of settlement as laid down by the rules of the relevant stock exchange or regulated market, or
 - (ii) where the contract is in connection with the delivery of any other asset, a period commencing on the date of the contract and extending for twenty working days thereafter; and
- (c) the contract is listed or has been entered into with an approved counterparty.

Land.

4. (1) The value of any land or buildings of an insurer (other than land or buildings held by the insurer as security for a debt or to which sub-

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regulation (2) or regulation 9 applies) shall be not greater than the amount which (after deduction of the reasonable expenses of sale) would be realised if the land or buildings were sold at a price equal to the most recent proper valuation of that land or buildings which has been provided to the insurer and any such land or buildings of which there is no proper valuation shall be left out of account for the purposes for which this Part applies.

(2) The value of any interest in land which is determinable upon the death of any person or upon the happening of some other future event or at some future time shall be the amount which would reasonably be paid by way of consideration for an immediate transfer thereof.

Deferred acquisition costs.

5. In the case of general business, the value of deferred acquisition costs shall be determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurance companies.

Securities and beneficial interests in limited partnerships.

6. (1) Subject to sub-regulation (2), this regulation applies to the valuation of investments comprising securities and beneficial interests in limited partnerships and, for the purposes of sub-regulation (6), investments includes loans.

(2) This regulation shall not apply to the valuation of securities which are—

- (a) derivative contracts;
- (b) *deleted*;
- (c) units or other beneficial interests in collective investment schemes, except as provided in regulation 10(2); or
- (d) contracts or assets having the effect of derivative contracts, except as provided in regulation 14A(4).

(3) Subject to sub-regulations (5) and (6) and regulation 14A, the value of an investment to which this regulation applies shall be —

- (a) where the investment is transferable and sub-regulation (4) does not apply, the market value; and
- (b) where the investment is transferable and sub-regulation (4) applies, the lower of —

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- (i) the market value; and
 - (ii) the amount which would reasonably be expected to be received by way of consideration for an assignment or transfer of the investment at a date not later than twelve months after the relevant date, it being assumed that negotiations for the assignment or transfer commenced on the relevant date and the assignment or transfer was made other than to the issuer or to an associate or an associated company of the issuer or of the insurer; and
- (c) where the investment is not transferable—
- (i) the amount payable on redemption on the relevant date or the most recent date before the relevant date on which the issuer of the investment could have been required to redeem the investment; or
 - (ii) where the investment cannot be redeemed, the amount which would reasonably be paid by way of compensation for the surrender of the interest in the investment.

(4) This sub-regulation applies where it is not reasonable to assume that, had negotiations for the assignment or transfer of the investment commenced not more than seven working days before the relevant date, the investment could have been assigned or transferred on the relevant date for an amount not less than 97.5 per cent of the market value other than to the issuer or to an associate or associated company of the issuer or of the insurer.

(5) Sub-regulation (4) shall be taken not to apply if it applies by reason only that—

- (a) the listing of the investment has been temporarily suspended following receipt of price sensitive information by the stock exchange on which the investment is listed or the regulated market on which facilities for dealing have been granted; or
- (b) the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5 per cent of the market value.

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(6) Where an insurer has made more than one unlisted investment (other than a number of investments exclusively comprising loans) and the value of such investments when taken together is greater than the aggregate of the values of each investment valued separately, then such higher value may be ascribed to the investments if it is reasonable to assume that none of the investments would be assigned or transferred separately.

Debts and other rights.

7. (1) The value of any secured debt due, or to become due, to an insurer other than a debt to which sub-regulations (2), (3) or (6) or regulation 12(4) applies, shall be -

- (a) in the case of any such debt which is due, or will become due, within twelve months of the relevant date (including any debt which would become due within that period if the insurer were to exercise any right to which it is entitled to require payment of the same), the amount which can reasonably be expected to be recovered in respect of that debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof); and
- (b) in the case of any other such debt, the amount which would reasonably be paid by way of consideration for an immediate assignment of the debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof).

(2) Any debt due, or to become due, to an insurer under a letter of credit shall be left out of account for the purposes of this Part.

(3) In the case of long term business carried on by an insurer, the value of any debt due, or to become due, to the insurer which is secured on a policy of insurance issued by the insurer and which (together with any other debt secured on that policy) does not exceed the amount payable on a surrender of that policy at the relevant date shall be the amount of that debt.

(4) The value of any unsecured debt due, or to become due, to an insurer, other than a debt to which sub-regulation (5) or (6) or regulation 5, 12(4) or 14A, applies, shall be -

- (a) in the case of any such debt which is due, or will become due, within twelve months of the relevant date (including any debt which would become due within that period if the insurer were to exercise any right to which it is entitled to require payment of the same), the amount which can reasonably be expected to

be recovered in respect of that debt (due account being taken of the terms and conditions for payment thereof); and

- (b) in the case of any other such debt, the amount which would reasonably be paid by way of consideration for an immediate assignment of the debt (due account being taken of the terms and conditions for payment thereof).

(5) Subject to sub-regulation (5A), the value of any rights of the insurer under a contract of reinsurance to which it is a party shall be the amount which can reasonably be expected to be recovered in respect of those rights.

(5A) Sub-regulation (5) shall not apply to-

- (a) rights under a contract of reinsurance in respect of long term business except to the extent that debts are due under such contracts; or
- (b) debts to which regulation 12(4) applies which are due or to become due.

(6) Any debt due, or to become due, to the insurer -

- (a) from an intermediary in respect of money advanced on account of commission to which that intermediary is not absolutely entitled at the relevant date, or
- (b) in respect of unpaid share capital of the insurer, or
- (c) from a company of which it is a dependant where such debt is subordinated debt, or
- (d) which is a debt to which sub-regulation (7) applies,

shall be left out of account for the purposes for which this Part applies.

(7) This sub-regulation shall apply to a debt which is a debt owed in respect of premiums (due account being taken of rebates, refunds and commissions payable) which is recorded in the insurer's accounting records as due and payable and has been outstanding for more than three months.

(8) In the case of general business carried on by an insurer, the value of any subrogation rights of the insurer shall be the amount which can reasonably be expected to be recovered by virtue of the exercise of those rights.

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(9) In the case of general business carried on by an insurer, the value of any salvage right of the insurer shall be the amount which can reasonably be expected to be recovered by virtue of the exercise of that right.

(10) The value of any right to recover assets transferred by way of initial margin shall be determined-

- (a) where the initial margin was a payment in cash, as if there were a debt owed to the insurer for that amount, and
- (b) where the initial margin took the form of a transfer of securities, as if there were a debt owed to the insurer of an amount equal to the value of such securities as determined in accordance with this Part.

(11) The value of any rights arising under a derivative contract to which regulation 14 does not apply, or under a contract or asset having the effect of a derivative contract to which regulation 14 does not apply, shall be the value of any right to recover assets transferred by way of initial margin together with the value of any other unconditional right to receive a specified amount.

(12) This regulation shall not apply to any rights (other than debts due) in respect of-

- (a) investments in dependants;
- (b) securities or beneficial interests in a limited partnership;
- (c) units or other beneficial interests in a collective investment scheme;
- (d) a derivative contract, except as provided under sub-regulations (10) or (11); or
- (e) a contract or asset which has the effect of a derivative contract except as provided under sub-regulations (10) or (11) or under regulation 14A(4) or 14A(5).

Equipment.

8. (1) The value of any computer equipment of an insurer -

- (a) in the financial year in which it is purchased, shall be not greater than three-quarters of the cost thereof to the insurer;

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- (b) in the first financial year thereafter, shall be not greater than one-half of that cost;
- (c) in the second financial year thereafter, shall be not greater than one-quarter of that cost; and
- (d) in any subsequent financial year, shall be left out of account for the purposes for which this Part applies.

(2) The value of any office machinery (other than computer equipment), furniture, motor vehicles and other equipment of an insurer shall be, in the financial year in which it is purchased, not greater than one-half of the cost thereof and shall be, in any subsequent financial year, left out of account for the purposes for which this Part applies.

Reversionary interests etc..

9. The value of any long term business asset of an insurer consisting of an interest in property which is a remainder, reversionary interest, right of fee subject to a life rent or other future interest, whether vested or contingent, shall be the amount which would reasonably be paid by way of consideration for an immediate transfer or assignment thereof.

Beneficial interests in collective investment schemes.

10. (1) Subject to sub-regulation (3), this regulation applies to holdings of units or other beneficial interests in —

- (a) a scheme falling within Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities;
- (b) an authorised unit trust scheme or a recognised scheme within the meaning of the Financial Services Act 1989 (not falling within paragraph (a)); or
- (c) any other collective investment scheme where —
 - (i) the scheme does not employ derivative contracts unless they are contracts to which regulation 14 applies;
 - (ii) the scheme does not employ contracts or assets having the effect of derivative contracts unless they have the effect of derivative contracts to which regulation 14 applies; and

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(iii) the property of the scheme does not include assets other than those for the valuation of which provision is made in this Part.

(2) The value of units or other beneficial interests in a collective investment scheme to which this regulation applies shall be—

- (a) where the issuer can be required to purchase the units or other beneficial interests from the holder upon the holder giving notice of one month or less, the price at which the issuer would have purchased the units or other beneficial interests on the relevant date or the most recent date before the relevant date on which it could have been required to make such a purchase; and
- (b) where the issuer cannot be required to purchase the units or other beneficial interests as set out in paragraph (a), a value determined in accordance with regulation 6.

(3) Other than as provided in regulation 14A(4), this regulation shall not apply to units or other beneficial interests in a collective investment scheme which has the effect of a derivative contract.

Assets sold to or purchased from an approved credit institution or an approved investment firm subject to an agreement for resale or repurchase.

11.(1) Where an insurer has sold securities to or purchased securities from an approved credit institution or an approved investment firm and such sale or purchase was made subject to an agreement that the approved credit institution or approved investment firm would, either on demand by the insurer or within six months of such sale or purchase, subsequently sell to or purchase from the insurer equivalent securities, then if at the relevant date such subsequent sale or purchase has not taken place and the conditions specified in sub-regulations (2) and either (3) or (4) as appropriate are satisfied, the insurer—

- (a) shall value—
 - (i) securities sold by it under such agreement as if such securities had been retained by it; and
 - (ii) assets provided by it as consideration for the purchase of securities under such agreement as if such consideration had not been provided by it; and

- (b) not ascribe a value to—
 - (i) any consideration received for the sale of securities under such agreement (or any assets purchased by it with such consideration) up to the limit of the value of the securities sold; or
 - (ii) any securities purchased by it under such agreement (or any assets purchased with the proceeds of the sale of any such securities) up to the limit of the consideration (valued in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurance companies) provided by it.

(2) The condition specified in this sub-regulation is that where at any time after the sale or purchase of securities by the insurer under an agreement described in sub-regulation (1) either—

- (a) the amount of the consideration received by the insurer for the sale of the securities fell below the value of the securities sold by it; or
- (b) the value of the securities purchased by the insurer fell below the value of the consideration provided by it,

by more than 2.5 per cent of the value of the securities sold or purchased, as the case may be, then the insurer demanded additional consideration whose amount was equal to the shortfall and such demand was complied with before the end of the working day next following the day on which such shortfall occurred.

(3) The conditions specified in this sub-regulation are that if the insurer purchases securities from an approved credit institution or an approved investment firm and the consideration provided by the insurer is other than by way of sale of securities—

- (a) the securities purchased are—
 - (i) approved securities;
 - (ii) listed securities; or
 - (iii) securities issued by an approved credit institution; and

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- (b) the securities purchased do not include—
 - (i) securities (other than approved securities) issued by the same counterparty whose aggregate value amounts to more than 15 per cent of the value of the securities purchased; or
 - (ii) in the event that the condition in paragraph (b)(i) is not satisfied, securities whose value when aggregated with the insurer's existing exposure to assets of the same description or to the same counterparty would exceed the appropriate permitted asset exposure limit or permitted counterparty exposure limit as determined in accordance with regulation 15 and Schedule 1.

(4) The conditions specified in this sub-regulation are that if the insurer sells securities to an approved credit institution or an approved investment firm —

- (a) the consideration provided by the approved credit institution or approved investment firm is —
 - (i) cash;
 - (ii) approved securities;
 - (iii) listed securities;
 - (iv) securities issued by an approved credit institution;
 - (v) a Talisman short term certificate;
 - (vi) a charge over assets set out in paragraphs (i) to (iv);
 - (vii) a letter of credit established with an approved credit institution; or
 - (viii) a guarantee provided by an approved credit institution; and
- (b) the consideration does not include—
 - (i) except to the extent that the condition in paragraph (b)(ii) is satisfied, consideration whose amount when aggregated with the insurer's existing exposure to assets

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of the appropriate description or to the relevant counterparty would exceed the appropriate permitted asset exposure limit or permitted counterparty exposure limit as determined in accordance with regulation 15 and Schedule 1; or

(ii) consideration, more than 15 per cent of the aggregate amount of which takes the form of securities (other than approved securities) issued by, letters of credit established with, guarantees provided by, cash deposited with, a charge over cash deposited with or a charge over securities issued by, the same counterparty; and—

(c) the consideration to be provided by the insurer for the subsequent purchase of equivalent securities is—

(i) where the consideration for the original purchase by the approved credit institution or approved investment firm was (wholly or in part) cash, cash denominated in the same currency, and

(ii) where the consideration was (wholly or in part) securities, securities equivalent to the securities provided by way of consideration.

(5) For the purposes of this regulation, where the company has received consideration in respect of any other sale of the kind described in sub-regulation (1), in addition to any other exposure to assets or to a counterparty—

(i) if such consideration takes the form of a letter of credit established with, or a guarantee provided by, an approved credit institution, it shall be considered to give rise to exposure to that institution by the amount of the consideration;

(ii) if such consideration takes the form of a charge over securities, it shall be considered to give rise to exposure to securities of the same description and to the issuer of those securities by the amount of the consideration; and

(iii) if such consideration takes the form of cash deposited with another party for the benefit of the company, or a charge over cash deposited with another party, it shall be considered to give rise to exposure to that party by the amount of the consideration.

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(6) For the purposes of this regulation, the amount of any consideration shall be—

- (a) where the consideration provided is a letter of credit established with an approved credit institution, the lower of the amount made available under the letter of credit and the value of the assets sold;
- (b) where the consideration is a guarantee provided by an approved credit institution, the lower of the amount of the guarantee and the value of the assets sold;
- (c) where the consideration takes the form of assets of the types mentioned in sub-regulation (4)(a)(i) to (iv), or a charge over such assets, the value of the assets as determined in accordance with this Part; or
- (d) where the consideration takes the form of a Talisman short term certificate, the value of the securities represented by that certificate.

(7) Where an insurer has entered into a number of agreements described in sub-regulation (1), for the purposes of sub-regulations (3) and (4) of this regulation —

- (a) any or all agreements under which the subsequent sale or purchase has not taken place at the relevant date may be treated as one agreement; and
- (b) in such case, the 15 per cent limits in sub-regulations (3)(b)(i) and (4)(b)(ii) shall be calculated by reference to the aggregate of the value of the securities purchased under sub-regulation (3) and the amount of any consideration under sub-regulation (4).

Shares in a group undertaking.

12(1) The value of any shares held in a group undertaking must not exceed—

- (a) where the shares held are in an insurance undertaking or insurance holding company the value, determined in accordance with Part II of these regulations (other than regulations 15(1)(a) to (c)), of its surplus assets;
- (b) where the shares held are not in an insurance undertaking or insurance holding company the greater of—

- (i) the value, determined in accordance with Part II of these regulations (other than regulations 15(1)(a) to (c)) of its surplus assets; and
- (ii) the value of those shares as determined under regulations 6.

(2) The surplus assets of a group undertaking are its total assets excluding—

- (a) the assets that are selected to cover liabilities and, in the case of a group undertaking which is an insurance undertaking, to cover the notional required minimum margin;
- (b) assets that are interests directly or indirectly held in-
 - (i) the group undertaking's own capital (as defined in the relevant regulatory requirements for that undertaking); or
 - (ii) the insurer's capital;
- (c) where the group undertaking carries on long term insurance business, profit reserves and future profits;
- (d) assets which represent either a long term insurance fund or a fund the allocation of which as between policyholders and other purposes has yet to be determined;
- (e) amounts due, or to become due, in respect of share capital, or other contributions from members of the group undertaking, subscribed or called for but not fully paid up; and
- (f) assets that cannot effectively be made available or realised to meet losses (if any) arising in the insurer, including assets that represent capital not owned, directly or indirectly, by the insurer.

(3) the assets selected in sub-regulation (2)(a) to be excluded from the total assets—

- (a) where the group undertaking is an insurance undertaking, must be identified and valued in accordance with relevant regulatory requirements as to the value, admissibility, nature, location or matching that apply to the assets available to cover its

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liabilities (determined under the relevant regulatory requirements) and the notional required minimum margin;

- (b) where the group undertaking is not an insurance undertaking, must be of a value at least equal to the amount of its liabilities, determining that value and that amount in accordance with Part II and III (other than regulation 15(1)(a) to (c)); and
- (c) in both cases, must not include—
 - (i) assets falling within sub-regulation (2)(b); or
 - (ii) assets falling within sub-regulation (2)(e) where the amount is due, or to become due, from a group undertaking.

(4) For the purpose of sub-regulation (3) the relevant regulatory requirements must be treated as if-

- (a) where regulations 4 to 7 of the Insurance Companies (Solvency Margin and Guarantee Funds) Regulations 1996 (or their equivalents in a designated state or territory) apply, the insurance undertaking satisfies the condition in regulation 4 of those Regulations;
- (b) regulation 15(1)(a) to (c) (or their equivalents in a designated territory) do not apply.

(5) Where the value of any shares held in a group undertaking which is not an insurance holding company is calculated by reference to sub-regulation (1)(b)(ii) that value must be reduced to the extent that those shares cannot be made available or realised to meet losses (if any) arising in the insurer.

Debts due or to become due from a group undertaking.

13. The value of any debt due, or to become due, from a group undertaking must not exceed the amount reasonably expected to be recovered in respect of the debt taking into account only the value of-

- (a) the assets identified in regulation 12(2)(a); and
- (b) any security held in respect of the debt.

Derivative contracts.

14. (1) The value of rights (other than rights to recover assets transferred by way of initial margin) under a derivative contract to which this regulation applies shall be—

- (a) in the case of a listed derivative contract, the market value; and
- (b) in the case of an unlisted derivative contract, the amount which would reasonably be paid by way of consideration for closing out that contract,

in either case taking into account the market value of any assets which, at the relevant date, have been transferred by way of variation margin.

(2) This regulation applies to an approved derivative contract which is covered and—

- (a) which is held in connection with a contract or asset of the type described in sub-regulation (3) for the purposes of reduction of investment risks or efficient portfolio management; or
- (b) which has the effect of an approved derivative contract held in connection with a contract or asset of the type mentioned in sub-regulation (3) for such purposes.

(3) The contract or asset described in this sub-regulation shall be either—

- (a) an approved derivative contract or a contract or asset having the effect of an approved derivative contract either of which, when taken together with the approved derivative contract the rights under which are being valued in accordance with this regulation, would have the effect that the company either holds an asset for the valuation of which provision is made in this Part or holds an approved derivative contract in connection with such an asset; or
- (b) an asset for the valuation of which provision is made in this Part, being neither a derivative contract nor a contract or asset having the effect of a derivative contract.

(4) For the purposes of this regulation an approved derivative contract is covered if it does not require a significant provision to be made in respect of it pursuant to regulation 19.

(5) For the purposes of determining in accordance with sub-regulation (4) whether a required provision is significant, regard shall be had to the obligations of the company under the contract and the volatility of the assets

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identified by the company as being suitable to cover such obligations, and the required provision in respect of any one derivative contract shall be deemed to be significant if—

- (a) the aggregate provision required in respect of all contracts having a similar effect is significant; or
- (b) the aggregate provision required in respect of all contracts with which it is connected is significant.

(6) In this regulation “approved derivative contract” means a derivative contract which—

- (a) either is listed or has been entered into with an approved counterparty;
- (b) the insurer reasonably believes may be readily closed out; and
- (c) is either a contract for differences to which sub-regulation (7) applies or a futures contract or an option to either of which sub-regulation (8) applies.

(7) This sub-regulation applies to—

- (a) a contract for differences under which the amount payable by either party is calculated solely by reference to fluctuations in any of the following, namely—
 - (i) the value of an asset for the valuation of which provision is made in this Part;
 - (ii) the amount of income from such an asset over a defined period;
 - (iii) an index of such assets, being an index in respect of which a derivative contract is listed; or
 - (iv) a national index of retail prices published by or under the authority of a government of a state belonging to Zone A as defined in Council Directive 89/647/EEC on a solvency ratio for credit institutions;

or an arithmetic average thereof, and—

- (b) a contract under which the amount payable by either party is calculated by reference to the difference between the market

value and the amortised value of any asset for the valuation of which provision is made in this Part.

(8) This sub-regulation applies to a futures contract or an option which in either case provides for the acquisition or disposal of assets for the valuation of all of which provision is made in this Part at a price which is determined by one or more of the following methods —

- (a) for each date on which the contract may be completed or the option exercised, the price is a fixed amount under the terms of the contract or option;
- (b) it is determined by reference to the market value or the amortised value of an asset for the valuation of which provision is made in this Part or the amount of income over a defined period from such an asset;
- (c) it is determined by reference to an index of the kind mentioned in sub-regulation (7)(iii) or (iv).

Contracts and assets having the effect of derivative contracts.

14A.(1) Subject to sub-regulation (3), for the purposes of this Part, a contract has the effect of a derivative contract if it is a contract (other than a derivative contract) which provides whether upon the exercise of a right by the insurer or otherwise—

- (a) for payment (at any time) of amounts which are determined by fluctuations in—
 - (i) the value of property of any description;
 - (ii) an index of the value of property of any description;
 - (iii) income from property of any description; or
 - (iv) an index of income from property of any description;
- (b) for delivery of an asset other than an asset for the valuation of which provision is made in regulation 8 to or by the insurer; or
- (c) for the conversion of an asset held by the insurer or another party to—
 - (i) an asset of a different type; or

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(ii) a different asset of the same type.

(2) Subject to sub-regulation (3), for the purposes of this Part an asset has the effect of a derivative contract if the asset is an asset (other than an approved security or an asset falling within regulation 10(1)(a)) and the holding of the asset confers contractual rights or imposes contractual obligations to make or accept payment, delivery or conversion as set out in paragraphs (a) to (c) of sub-regulation (1).

(3) A contract or asset does not have the effect of a derivative contract by reason only that —

(a) it provides for the unconditional delivery of assets, or for the payment for unconditional delivery of assets, such delivery or payment to be made within a period commencing at the date of the contract and extending —

(i) in the case of a listed security, for the usual period for delivery or payment as determined by the rules of the stock exchange or regulated market on which the securities are listed or facilities for dealing have been granted; or

(ii) in any other case, for twenty working days;

(b) it is a contract of the type described in regulation 3(8) in respect of which the conditions set out in regulation 3(9) have been satisfied; or

(c) it is a transaction to which regulation 11(1) applies.

(4) Rights in respect of a contract or asset which has the effect of a derivative contract to which regulation 14 applies shall —

(a) where the asset is a security, be valued in accordance with regulation 6;

(b) where the asset comprises units or other beneficial interests in a collective investment scheme, be valued in accordance with regulation 10; and

(c) where the asset is a debt or other right, be valued in accordance with regulation 7.

(5) Rights in respect of a contract or asset having the effect of a derivative contract to which regulation 14 does not apply shall have a value determined in accordance with regulation 7(11).

(6) For the purposes of determining whether a contract or asset has the effect of a derivative contract to which regulation 14 applies, it shall be deemed to have the effect of a derivative contract which is listed or transacted with an approved counterparty if it is itself listed or so transacted.

Assets to be taken into account only to a specified extent.

15. (1) Subject to sub-regulations (5) and (6) the aggregate value of the assets of an insurer as determined in accordance with this Part shall, for any of the purposes for which this Part applies, be reduced by an amount representing the aggregate of —

- (a) the amount by which the company is exposed to assets of any description in excess of the permitted asset exposure limit for assets of that description;
- (b) the amount by which the company is exposed to a counterparty in excess of the permitted counterparty exposure limit for such counterparty;
- (c) the amount by which the company has an excess concentration with a number of counterparties;
- (d) the value of any assets transferred to or for the benefit of the company in pursuance of a condition in a derivative contract to which regulation 14(2) does not apply or a related contract; and
- (e) the value of any assets transferred to or for the benefit of the company in pursuance of a contract having the effect of a derivative contract to which regulation 14(2) does not apply or a related contract,

as determined in accordance with Schedule 1.

(2) Where a company is exposed to assets of any description in excess of the permitted asset exposure limit for such assets, the reduction required to be made by sub-regulation (1)(a) shall be made —

- (a) by deducting (as far as possible) the amount of the excess from the assets of that description held by the insurer; and

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- (b) where the company does not hold sufficient assets of that description to eliminate the excess (or does not hold any assets of that description) by making an appropriate deduction from the aggregate value of the assets which the company would otherwise be permitted to take into account for any of the purposes for which this Part applies.

(3) Where an insurer is required to make a reduction in accordance with sub-regulation (1)(b), (c), (d) or (e), the reduction shall be made by making a deduction from the aggregate value of the assets which the company would otherwise be permitted to take into account for any of the purposes for which this Part applies.

(4) Where an insurer carrying on long term business has attributed assets partly to a long term business fund and partly to its other assets, any reduction required to be made by this regulation shall be made in the same proportion as the attribution.

(5) Assets of an insurer comprising —

- (a) approved securities or any interest accrued thereon;
- (b) debts to which regulation 7(3) applies;
- (c) rights to which regulation 7(5), (8) or (9) applies;
- (d) debts in respect of premiums;
- (e) moneys due from, or guaranteed by, the government of any state which belongs to Zone A as defined in Council Directive 89/647/EEC on a solvency ratio for credit institutions;
- (f) shares in or debts due or to become due from a dependant falling within regulation 12;
- (g) holdings in a scheme falling within Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities; or
- (h) deferred acquisition costs,

shall not be taken into account in any of the calculations described in sub-regulation (1).

(6) Where a company has entered into any contracts providing for the payment of index linked benefits, the provisions of sub-regulation (1)(a) shall not apply to assets of that company to the extent that they are held to match liabilities in respect of such benefits.

15A. Notwithstanding any limits placed by these Regulations on the investment of the technical reserves or equalisation reserves in any particular category, the insurer may apply to the Commissioner for it to authorise exceptions to those limits subject to the requirements of regulations 41(1) and (2) and 42 and provided that there are exceptional circumstances that warrant such an exception and that the measure is a temporary one for as long as the Commissioner may decide.

PART IIA
INVESTMENT OF ASSETS

Investment of reinsurers' assets.

15B. A reinsurer shall invest its assets in accordance with the following prudent investment rules—

- (a) the reinsurer's assets shall take account of the type of business it carries on, in particular the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments;
- (b) the reinsurer shall ensure that its assets are diversified and adequately spread and allow it to respond adequately to changing economic circumstances, in particular developments in the financial markets and real estate markets or major catastrophic events;
- (c) the reinsurer shall assess the impact of irregular market circumstances on its assets and shall diversify the assets in such a way as to reduce such impact;
- (d) the reinsurer's investment in assets which are not admitted to trading on a regulated financial market shall in any event be kept to prudent levels;
- (e) the reinsurer's investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management and they shall be valued on a prudent basis, taking into account the

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underlying assets, and included in the valuation of the institution's assets;

- (f) the reinsurer shall avoid excessive risk exposure to a single counter-party and to other derivative operations;
- (g) the reinsurer's assets shall be properly diversified in such a way as to avoid excessive reliance on any one particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole;
- (h) investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the reinsurer to excessive risk concentration.

PART III DETERMINATION OF LIABILITIES

Interpretation of Part III.

16. In this Part –

“insurance liabilities” means amounts calculated in accordance with this Part in respect of those items shown at C and D under heading “Liabilities” set out in paragraph 9 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997;

“long term liabilities” means liabilities of an insurer arising under or in connection with contracts for long term business, including liabilities arising from deposit back arrangements.

Application of Part III.

17. This Part applies to the determination of the amount of liabilities of insurers for the purposes of-

- (a) sections 59, 64, 64A, 64D, 65, 67(3), 73, 84 and 100;
- (b) an investigation to which section 78 applies; and
- (c) any investigation made in pursuance of a requirement under section 82.

Long term and general business.

18. (1) Subject to this Part, the amount of liabilities of an insurer shall be determined in accordance with generally accepted accounting concepts,

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bases and policies or other generally accepted methods appropriate for insurers.

(2) In determining under sub-regulation (1) the amount of liabilities of an insurer, all contingent and prospective liabilities shall be taken into account including all liabilities in respect of cumulative preference share capital but excluding other liabilities in respect of share capital.

(3) *omitted.*

Provision for adverse changes.

19. (1) An insurer which has or may have (following the exercise of any right by the company or any other party) an obligation to which this regulation applies to deliver assets or make a payment shall —

- (a) at all times identify the assets held by it which it considers to be the most suitable to cover such obligation; and
- (b) make prudent provision for the effect on the amount of its excess assets of adverse variations between the value of the assets identified and the value of the assets which it is or may be obliged to deliver or the amount of the payment which it is or may be obliged to make.

(2) For the purposes of sub-regulation (1) the company shall take into account all reasonably foreseeable adverse variations and shall have particular regard to past volatility in the value of the assets concerned (or assets of a similar nature) and the possibility of adverse changes in such volatility in the future.

(3) For the purposes of this regulation —

“property linked liabilities” has the meaning given in paragraph 2 of Part I of Schedule 1; and

“the amount of its excess assets” means the difference between the aggregate value of its assets (other than linked assets to the extent that they are held to match property linked liabilities), determined in accordance with Part II, and the amount of its liabilities (other than property linked liabilities or liabilities for which provision is made in accordance with this regulation).

(4) Subject to sub-regulation (5), this regulation applies to an obligation—

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- (a) under a contract relating to investments of the kinds mentioned in item C under the heading “Assets” in paragraph 9 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997 (whether such contract constitutes an asset or liability of the company);
- (b) undertaken for the purposes of, or in connection with the making of, investments of the kind mentioned in paragraph (a); or
- (c) under a contract providing for the purchase, sale or exchange of currency.

(5) This regulation shall not apply to a contract to the extent that it relates to, or is for the purposes of the making of an investment in, or is in connection with the making of an investment in, a building which is to be occupied by the company and used by the company for the conduct of its business.

General business liabilities.

19A. The amount of insurance liabilities which are general business liabilities shall be determined in accordance with the rules set out in Section D of Chapter II of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997.

Provision for related undertakings.

19B(1). An insurer must make provision in respect of a related undertaking that is an insurance undertaking or insurance holding company—

- (a) where the related undertaking is also a subsidiary undertaking of the insurer, for the whole of any deficit in the assets available to cover liabilities or represent the notional required minimum margin; and
- (b) in any other case, for the proportionate share of any such deficit.

(2) For the purposes of sub-regulation (1), the identification and valuation of assets available to cover liabilities must be determined in accordance with regulation 12(3), except that any liability which is a debt due to the insurer need not be valued at more than the value placed on that debt as an asset of the insurer.

Relevant co-insurance operations - general business.

20. (1) Where a relevant company determines the amount of a liability in order to make provision for outstanding claims arising under a relevant co-insurance operation, then, if the leading insurer has informed the company of the amount of the provision made by the leading insurer for such claims, the amount determined by the company -

- (a) shall be at least as great as the amount of the provision made by the leading insurer, or
- (b) in a case where it is not the practice in Gibraltar to make such provision separately, shall be sufficient, when all liabilities are taken into account, to include provision at least as great as that made by the leading insurer for such claims,

due regard being had in either case to the proportion of the risk covered by the company and by the leading insurer respectively.

(2) In sub-regulation (1) -

“leading insurer”, in relation to a relevant co-insurance operation, means an insurer who -

- (a) is recognised as the leading insurer by the other insurers involved in the operation, and
- (b) determines the terms and conditions of insurance for the operation;

“relevant co-insurance operation” has the meaning given by section 88 and Schedule 6 to the Act;

“relevant company”, in relation to a relevant co-insurance operation, means an insurer which is concerned in the operation but is not the leading insurer.

Long term liabilities.

21. (1) The determination of the amount of long term liabilities (other than liabilities which have fallen due for payment before the valuation date) shall be made on actuarial principles which have due regard to the reasonable expectations of policy holders and shall make proper provision for all liabilities on prudent assumptions that shall include appropriate margins for adverse deviation of the relevant factors.

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(2) The determination referred to in sub-regulation (1) shall take account of all prospective liabilities as determined by the policy conditions for each existing contract, taking credit for premiums payable after the valuation date.

(3) Without prejudice to the generality of sub-regulation (1), the amount of the long term liabilities shall be determined in compliance with each of the regulations 22 to 32 and shall take into account, *inter alia*, the following factors, that is to say -

- (a) all guaranteed benefits, including guaranteed surrender values;
- (b) vested, declared or allotted bonuses to which policy holders are already either collectively or individually contractually entitled;
- (c) all options available to the policy holder under the terms of the contract;
- (d) expenses, including commissions; and
- (e) any rights under contracts of reinsurance in respect of long term business.

Method of calculation.

22. (1) Subject to sub-regulations (2), (3) and (4), the amount of the long term liabilities shall be determined separately for each contract by a prospective calculation.

(2) A retrospective calculation may be applied to determine the liabilities where a prospective method cannot be applied to a particular type of contract or benefit, or where it can be demonstrated that the resulting amount of the liabilities would be no lower than would be required by a prudent prospective calculation.

(3) Appropriate approximations or generalisations may be made where they are likely to provide the same, or a higher, result than individual calculations of the same amount of the liabilities in respect of each contract.

(4) Where necessary, additional amounts shall be set aside on an aggregated basis for general risks which are not individualised.

(5) The method of calculation of the amount of the liabilities and the assumptions used shall not be subject to discontinuities from year to year arising from arbitrary changes and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.

(6) The liabilities for contracts under which the policy holder is eligible to participate in any established surplus as defined in section 86(2) shall have regard to the level of the premiums under the contracts, to the assets held in respect of those liabilities, and to the custom and practice of the insurer in the manner and timing of the distribution of profits or the granting of discretionary additions, as the case may be.

Avoidance of future valuation strain.

23. The amount of the liability determined in respect of a group of contracts shall not be less than such amount as, if the assumptions adopted for the valuation were to remain unaltered and were fulfilled in practice, would enable liabilities similarly determined at all times in the future to be covered from resources arising solely from the contracts and the assets covering the amount of the liability determined at the current valuation.

Valuation of future premiums.

24. (1) Where further specified premiums are payable by the policy holder under a contract (not being a linked long term contract) under which benefits (other than benefits arising from a distribution of profits) are determined from the outset in relation to the total premiums payable thereunder, then, subject to sub-regulation (4) and regulation 25 -

- (a) where the premiums under the contract are at a uniform rate throughout the period for which they are payable, the premiums to be valued shall not be greater than such level premiums as, if payable for the same period as the actual premiums under the contract and calculated according to the rates of interest and rates of mortality or disability which are to be employed in calculating the liability under the contract, would have been sufficient at the outset to provide for the benefits under the contract according to the contingencies upon which they are payable, exclusive of any additions for profits, expenses or other charges;
- (b) where the premiums under the contract are not at a uniform rate throughout the period for which they are payable, the premiums to be valued shall be not greater than such premiums as would be determined on the principles set out in paragraph (a) modified as appropriate to take account of the variations in the premiums payable by the policy holder in each year;

save that a premium to be valued shall in no year be greater than the amount of the premium payable by the policy holder.

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(2) Where the terms of the contract have changed since the contract was first made (the terms of the contract being taken to change for the purposes of this sub-regulation if the change is indicated in an endorsement on the policy but not if a new policy is issued), then, for the purposes of sub-regulation (1) it shall be assumed that those changes from the time they occurred were provided for in the contract at the time it was made.

(3) Where under a contract (not being a linked long term contract) -

- (a) each premium paid increases the benefits (other than benefits arising from a distribution of profits) provided under the contract, or
- (b) the amount of a premium payable in future is not determinable until it comes to be paid,

future premiums and the corresponding liability may be left out of account so long as adequate provision is made against any risk that the increase in the liabilities of the insurer resulting from the payment of future premiums might exceed the amount of the premiums.

(4) An alternative valuation method to that described in sub-regulations (1) to (3) may be used where it can be demonstrated that the alternative method results in reserves no less, in aggregate, than would result from the use of the method described in those sub-regulations.

Acquisition expenses.

25. (1) In order to take account of acquisition expenses, the maximum annual premium to be valued under regulation 24 may (subject to sub-regulation (2)) be increased by an amount not greater than the equivalent, taken over the whole period of premium payments and calculated according to the rates of interest and rates of mortality or disability employed in valuing the contract, of 3.5 per centum (or the defined percentage, if it is lower than 3.5 per centum) of the relevant capital sum under the contract.

(2) For the purposes of sub-regulation (1) “the defined percentage” is the percentage arrived at by taking (for all contracts of the same type as the contract in question for which an adjustment is made) the average of the percentages of the relevant capital sum under each such contract that represent the acquisition costs incurred which, after allowing for the effects of taxation, might reasonably be expected to be recovered from the premiums payable under the contract.

(3) The increase permitted by sub-regulation (1) shall be subject to the limitation that the amount of a future premium valued shall not in any event be greater than the amount of the premium actually payable by the policy holder.

(4) For the purposes of this regulation—

- (a) for contracts other than temporary assurances, the relevant capital sum under a contract shall be arrived at in accordance with regulation 8(2)(b) of the Insurance Companies (Solvency Margins & Guarantee Funds) Regulations 1996, and
- (b) for temporary assurances, the relevant capital sum shall be the sum assured on the valuation date.

Rates of interest.

26. (1) The rates of interest to be used in calculating the present value of future payments by or to an insurer shall be no greater than the rates of interest determined from a prudent assessment of the yields on existing assets attributed to the long term business and, to the extent appropriate, the yields which it is expected will be obtained on sums to be invested in the future.

(2) For the purposes of sub-regulation (1) the assumed yield on an asset attributed to the long term business, before any adjustment to take account of the effect of taxation, shall not exceed the yield on that asset calculated in accordance with sub-regulations (3) to (7), reduced by 2.5 per centum of that yield.

(3) For the purpose of calculating the yield on an asset -

- (a) the asset shall be valued in accordance with Part II, excluding any provision under which assets may be taken at lower book values for the purposes of any investigation to which section 78 applies or any investigation made in pursuance of a requirement under section 82, and
- (b) the future income from any asset required to be taken into account (whether interest, dividends or repayment of capital) shall be reduced by a proportion corresponding to such of the excess exposure to assets of that description, calculated in accordance with paragraph 12 of Part I of Schedule 1, as may reasonably be attributed to such assets.

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(4) For fixed interest investments (that is to say, investments which are fixed interest securities as defined in regulation 2(1)) the yield on an asset, subject to sub-regulation (7), shall be that annual rate of interest which, if used to calculate the present value of future payments of interest before the deduction of tax and the present value of repayments of capital, would result in the sum of those amounts being equal to the value of the asset.

(5) For variable interest investments (that is to say, investments which are not fixed interest securities as defined in regulation 2(1)) that are equity shares or land, the yield on an asset, subject to sub-regulation (7), shall be the ratio to the value of the asset of the income before deduction of tax which would be received in the period of twelve months following the valuation date on the assumption that the asset will be held throughout that period and that the factors which affect income will remain unchanged, so however that account shall be taken of any changes in those factors known to have occurred by the valuation date and in particular, without prejudice to the generality of the foregoing, of -

- (a) any known changes in the rental income from property or in dividends on equity shares,
- (b) any forecast changes in dividends which have been publicly announced by the valuation date,
- (c) the effect of any alterations in capital structure, and
- (d) the value (at the most recent date for which it is known at the valuation date) of any determinant of the amount of any future interest payment, the said value being deemed to remain unaltered for all subsequent dates.

(6) For variable interest investments (that is to say, investments which are not fixed interest securities as defined in regulation 2(1)) other than equity shares or land, the yield on an asset, subject to sub-regulation (7), shall be that annual rate of interest which, if used to calculate the present value of future payments of interest, before deduction of tax, and the present value of repayments of capital, where applicable, would result in the sum of these amounts being equal to the value of the asset, on the assumption that -

- (a) the value of any determinant of the amount of the next interest rate payment and capital repayment made during the following twelve months will be the value of that determinant at the most recent date for which it is known at the valuation date;
- (b) the amount of future interest payments and capital repayments will take account, where appropriate, of -

- (i) the right of either party to have the investment repaid, and
 - (ii) an assumed yield on other comparable investments made in the future not exceeding an amount determined in accordance with sub-regulations (8) to (10); and
 - (c) indices and all other factors which affect future income payments or capital repayments will remain unchanged after the valuation date.
- (7) In calculating the yield on an asset under this regulation -
- (a) if the asset does not consist of equity shares or land-
 - (i) a prudent adjustment shall be made to exclude that part of the yield estimated to represent compensation for the risk that the income from the asset might not be maintained or that capital repayments might not be received as they fall due, and
 - (ii) in making that adjustment, regard shall be had wherever possible to the yields on risk-free investments of a similar term in the same currency;
 - (b) for assets which are equity shares or land, adjustments to yields shall be made as appropriate to exclude that part, if any, of the yield from each category of asset that is needed to compensate for the risk that the aggregate income from that category of asset, taking one year with another, might not be maintained and for the purposes of this paragraph, a “category of asset” comprises assets of a similar nature, type and degree of risk.
- (8) To the extent that it is necessary to make an assumption about the yields which will be obtained on sums to be invested in future, the yield shall be determined in accordance with sub-regulations (9) and (10).
- (9) Where the liabilities are denominated in sterling, the yield assumed, before any adjustment to take account of the effect of taxation -
- (a) on any investment to be made more than three years after the valuation date shall not exceed the lowest of -
 - (i) the long term gilt yield current on the valuation date; or

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- (ii) 6 per centum per annum, increased by one quarter of the excess, if any, of the long term gilt yield current on the valuation date over 6 per centum per annum; or
- (iii) 7.5 per centum per annum,

where “the long term gilt yield” means the annualised equivalent of the 15 year medium coupon yield for United Kingdom Government fixed interest securities jointly compiled by the Financial Times, the Institute of Actuaries and the Faculty of Actuaries;

- (b) on any investment to be made at any time not more than three years after the valuation date shall not exceed the assumed yield determined under sub-regulation (2) adjusted linearly over the said three years to the yield determined in accordance with paragraph (a).

(10) Where the liabilities are denominated in currencies other than sterling, the yield shall be determined on assumptions that are as prudent as those made under sub-regulation (9).

(11) In no case shall a rate of interest determined for the purposes of sub-regulation (1) exceed the adjusted overall yield on assets calculated as the weighted average of the reduced yields on the individual assets arrived at under sub-regulation (2), and when that weighted average is calculated -

- (a) the weight given to each investment shall be its value as an asset determined in accordance with Part II, excluding any provision under which assets may be taken at lower book values for the purposes of any investigation to which section 78 applies or any investigation made in pursuance of a requirement under section 82, and
- (b) except in relation to the rate of interest used in valuing payments of property linked benefits (as defined in regulation 2(1)), both the yield and the value of any linked assets (as so defined) shall be omitted from the calculation.

(12) For the purpose of determining the rates of interest to be used in valuing a particular category of contracts, the assets may, where appropriate, be notionally apportioned between different categories of contracts.

Rates of mortality and disability.

27. The amount of the liability in respect of any category of contract shall, where relevant, be determined on the basis of prudent rates of mortality and disability that have regard to the State of the commitment.

Expenses.

28. (1) Provision for expenses, whether implicit or explicit, shall be not less than the amount required, on prudent assumptions, to meet the total net cost, after taking account of the effect of taxation, that would be likely to be incurred in fulfilling contracts if the insurer were to cease to transact new business twelve months after the valuation date.

(2) The provision mentioned in sub-regulation (1) shall have regard to, among other things, the insurer's actual expenses in the last twelve months before the valuation date and to the effects of inflation on future expenses on prudent assumptions as to the future rates of increase in prices and earnings.

Options.

29. (1) Provision shall be made on prudent assumptions to cover any increase in liabilities caused by policy holders exercising options under their contracts.

(2) Where a contract includes an option whereby the policy holder could secure a guaranteed cash payment within twelve months following the valuation date, the provision for that option shall be such as to ensure that the value placed on the contract is not less than the amount required to provide for the payments that would have to be made if the option were exercised.

Contracts not to be treated as assets.

30. No contract for long term business shall be treated as an asset.

No credit for profits from voluntary discontinuance.

31. Allowance shall not be made in the valuation for the voluntary discontinuance of any contract if the amount of the liability so determined would thereby be reduced.

Nature and term of assets.

32. The determination of the amount of long term liabilities shall take into account the nature and term of the assets representing those liabilities and

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the value placed upon them and shall include prudent provision against the effects of possible future changes in the value of the assets on -

- (a) the ability of the company to meet its obligations arising under contracts for long term business as they arise, and
- (b) the adequacy of the assets to meet the liabilities, as determined in accordance with regulations 22 to 31.

PART IV **MATCHING OF ASSETS AND LIABILITIES**

Matching - general requirement.

33. (1) Where, in the case of a licensed insurer, the liabilities of an insurer in any particular currency exceed 5 per centum of its total liabilities, it shall hold sufficient assets in that currency to cover at least 80 per centum of its liabilities in that currency.

(2) Where both long term and general business are carried on, the requirements of sub-regulation (1) apply to the assets and liabilities of each kind of business separately.

(3) Where the contract of insurance expresses any liability in terms of a particular currency, that liability shall be regarded as a liability in that currency.

(4) For the purposes of this regulation -

“assets”, except in the case of assets of the kind referred to in regulation 3(2), means assets valued in accordance with Part II; and

“liabilities” means provision by an insurer to cover liabilities arising under or in connection with contracts of insurance (not being liabilities relating to insurance business excluded by regulation 38).

(5) For the purposes of this regulation, references to assets in a currency shall be construed as references to assets expressed in or capable of being realised (without exchange risk) in that currency, and an asset is capable of being realised (without exchange risk) in a currency if it is reasonably capable of being realised in that currency without risk that changes in exchange rates would reduce the cover of liabilities in that currency.

(6) The provisions of this regulation have effect subject to regulations 34 to 36.

Matching - property linked benefits.

34. (1) In so far as the liabilities for property linked benefits and index linked benefits are covered by assets which determine the benefits payable under a linked long term contract, regulation 33 does not apply.

(2) In so far as the liabilities for property linked benefits are determined by reference to assets in a currency other than that in which the insurer's obligations to the policy holder are expressed, those liabilities shall for the purposes of regulation 33 be deemed to be liabilities in the first mentioned currency.

Matching - currency of general business liabilities.

35. (1) The currency of an insurer's general business liabilities shall, for the purposes of regulation 33, be determined in accordance with the provisions of this regulation.

(2) Where the liabilities are not expressed as liabilities in terms of a particular currency, they shall be regarded as liabilities in the currency of the country in which the risk is situated or, if the insurer on reasonable grounds so determines, in the currency in which the premium payable under the contract is expressed.

(3) However the insurer may regard its liabilities as liabilities in the currency which it will use in accordance with past experience or, in the absence of such experience, in the currency of the country in which it is established—

- (a) for contracts covering risks falling within general business classes 4, 5, 6, 7, 11, 12 and 13 (producer's liability only);
- (b) for contracts covering risks falling within any other general business class where, in accordance with the nature of the risks, the insurer's liabilities are liabilities in a currency other than that determined in accordance with sub-regulation (2).

(4) Where a claim has been notified to an insurer and the insurer's liability in respect of that claim is payable in a currency other than one which would result from the application of the above provisions, the liability shall be regarded as a liability in the currency in which the insurer is actually obliged to pay it.

(5) Where a claim is assessed in a currency which is known to the insurer in advance but which is different from a currency determined in

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accordance with the provisions of this regulation, the insurer may regard its liabilities as liabilities in that currency.

Matching - exception for certain liabilities.

36. (1) Subject to sub-regulations (2) and (3), an insurer need not cover its liabilities by assets in a particular currency if those assets would amount to 7 per centum or less of the remainder of its assets in other currencies.

(2) Until 31st December 1998, sub-regulation (1) has effect in relation to general business liabilities required to be covered by assets in Greek drachmas, Irish pounds or Portuguese escudos as if the amount of 2 million ECU, if less than the percentage mentioned in that sub-regulation, were substituted for that percentage.

(3) Until 31st December 1996, sub-regulation (1) has effect in relation to general business liabilities required to be covered by assets in Belgian francs, Luxembourg francs or Spanish pesetas as if the amount of 2 million ECU, if less than the percentage mentioned in that sub-regulation, were substituted for that percentage.

Localisation.

37. (1) Subject to sub-regulation (2), assets held pursuant to regulation 33 shall be held -

- (a) if they cover liabilities in sterling, in Gibraltar or elsewhere in any EEA State;
- (b) if they cover liabilities in any other currency, in Gibraltar or elsewhere in any EEA State or in the country of that currency.

(2) In the case of a relevant co-insurance operation and a relevant company, assets held pursuant to regulation 33 shall be held in Gibraltar or elsewhere in any EEA State.

(3) For the purpose of applying sub-regulations (1) and (2) to tangible assets and assets consisting of a claim against a debtor or a listed or unlisted investment, the following provisions shall have effect -

- (a) a tangible asset shall be regarded as held in the place where it is situated;
- (b) an asset consisting of a claim against a debtor shall be regarded as held in any place where it can be enforced by legal action;

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- (c) an asset consisting of a listed investment shall be regarded as held in any place where -
 - (i) there is a stock exchange (of the kind described in paragraph (a) of the definition of “listed” in regulation 2(1)) where it is listed, or
 - (ii) there is a regulated market as defined in regulation 2(1) where it is dealt in;
- (d) an asset consisting of an unlisted investment issued by an incorporated company shall be regarded as held in the place where the head office of that company is situated.

(4) In this regulation -

“assets” and “liabilities” have the same meaning as in regulation 33;

“leading insurer”, “relevant co-insurance operation” and “relevant company” have the same meaning as in regulation 20.

Exclusions from regulations 33 to 37.

38. (1) Nothing in regulations 33 to 37 shall apply to -

- (a) insurance business carried on by a Gibraltar insurer otherwise than in Gibraltar or any EEA State; or
- (b) insurance business carried on by any other licensed insurer outside Gibraltar; or
- (c) reinsurance business (unless it is facultative reinsurance written by an insurer who also carries on insurance business that is not reinsurance).

(2) Nothing in regulation 37 shall apply to insurance business of Groups 3 and 4 (within the meaning of Part II of Schedule 1 of the Act).

Margin of solvency of non-EEA insurer - location of assets.

39. Without prejudice to regulation 37 -

- (a) the assets representing a Gibraltar margin of solvency maintained under section 59(2)(b) by a non-EEA insurer which is not a Swiss general insurance company shall be kept -

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- (i) up to an amount at least equal to the appropriate guarantee fund or minimum guarantee fund (whichever is the greater), within Gibraltar, and
 - (ii) as to the remainder, within Gibraltar and places in the EEA States, and
- (b) the assets representing an EEA margin of solvency maintained under section 59(3)(b) by a non-EEA insurer which is not a Swiss general insurance company shall be kept -
- (i) up to an amount at least equal to the appropriate guarantee fund or minimum guarantee fund (whichever is the greater) within Gibraltar and places in the EEA States where the insurer carries on business (or in any one or more of those places), and
 - (ii) as to the remainder, within Gibraltar and places in the EEA States.

PART V LINKED CONTRACTS

Linked contracts.

40. (1) Benefits payable under any contract to which this regulation applies shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, property of any description other than property of any of the descriptions specified in Part I of Schedule 3, which, where appropriate, comply with the provisions of paragraph 15 of that Schedule.

(2) Benefits payable under any contract to which this regulation applies shall not be determined, whether directly or indirectly, either wholly or partly by reference to fluctuations in any index of the value of property other than an index described in Part II of Schedule 3.

- (3) This regulation applies to long-term contracts which are -
- (a) contracts entered into by -
 - (i) licensed insurers; or
 - (ii) EEA insurers the effecting of which constitutes the carrying on of long term insurance business in Gibraltar;

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- (b) contracts under which the benefits payable to the policy holder 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 contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and
 - (c) not contracts specified in sub-regulation (4) as being contracts to which this regulation does not apply.
- (4) The contracts referred to in sub-regulation (3)(c) as being contracts to which this regulation does not apply are—
- (a) contracts entered into by a licensed insurer which fall within sub-regulation (3)(b) by reason only that the policy holder is eligible to participate in any established surplus as defined in section 86(2);
 - (b) contracts entered into by an EEA insurer which fall within sub-regulation (3)(b) by reason only that the policy holder is eligible to participate in an excess of assets representing the whole or a particular part of the fund or funds maintained by the 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 determined in accordance with the law of the EEA State in which the head office of the insurer is situated;
 - (c) subject to sub-regulation (5), contracts to manage the investments of pension funds that are not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.
- (5) Benefits payable under contracts referred to in sub-regulation (4)(c) shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of derivative contracts other than permitted derivative contracts as defined in paragraph 14 of Schedule 3.
- (6) In this regulation, “long-term contract” means a contract for long-term insurance business.
- (7) Any reference in this regulation to contracts of a similar description to any specified contract is a reference to contracts which correspond with that contract in both the following respects -

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- (a) the provisions defining the descriptions of property or indices by reference to which the benefits payable thereunder are to be determined are the same as in that contract; and
- (b) the insurer or other person undertaking to pay the benefits provided for thereunder is the same as in that contract.

(8) This regulation does not apply in relation to contracts linked to property of the description in paragraph 11(b) of Schedule 3 entered into before the 1st day of July 1996 save to the extent that responsibility as mentioned in that paragraph extends at least to acts or omissions after that date.

(9) Paragraph 1 of Schedule 3 shall have effect as if “listed securities” included all debentures in respect of which there has been granted and not withdrawn a listing on any stock exchange in an EEA State which is a stock exchange within the meaning of the law of that EEA State and “unlisted securities” shall be construed accordingly.

PART VI TECHNICAL AND EQUALISATION RESERVES

Assets covering technical reserves.

41.(1) The assets covering the technical reserves which an insurer is required to maintain in accordance with section 58 of the Act shall take account of the type of business carried on by it in such a way as to secure the safety, yield and marketability of its investments.

(2) An insurer shall ensure that the investments under sub-regulation (1) are diversified and adequately spread.

(3) An insurer shall not cover its technical reserves with any category of assets other than those listed in regulation 43.

(4) An insurer shall not be required to invest in any particular category of assets.

Assets covering equalisation reserves.

42. The assets covering the equalisation reserve which an insurer is required to maintain in accordance with section 87B of the Act shall not be covered with any category of assets other than those listed in regulation 43.

Assets and categories of assets.

43.(1) The assets or categories of assets for the purposes of regulations 41 and 42 are—

- (a) Investments—
 - (i) debt securities, bonds and other money and capital market instruments;
 - (ii) loans;
 - (iii) shares and other variable yield participations;
 - (iv) units in collective investment schemes;
 - (v) land, buildings and immovable property rights;
- (b) Debts and claims—
 - (i) debts owed by reinsurers, including reinsurers' shares of technical provisions;
 - (ii) deposits with and debts owed by ceding undertakings;
 - (iii) debts owed by policyholders and intermediaries arising out of direct and reinsurance operations;
 - (iv) claims arising out of salvage and subrogation;
 - (v) tax recoveries;
 - (vi) claims against guarantee funds;
- (c) Others—
 - (i) tangible fixed assets, other than land and buildings, valued on the basis of prudent amortisation;
 - (ii) cash at bank and in hand, deposits with approved credit institutions and any other bodies authorised to receive deposits;
 - (iii) deferred acquisition costs;

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- (iv) accrued interest and rent, other accrued income and prepayments.

(2) In the case of the association of Lloyd's underwriters, any asset or category of assets shall also include guarantees and letters of credit issued by credit institutions or by insurers carrying on long term business, together with verifiable sums arising out of long term insurance policies, to the extent that they represent funds belonging to members.

(3) The Commissioner may, in his discretion, not accept any asset or category of asset listed in sub-regulation (1) as cover for technical reserves or may accept such asset or category of asset subject to such conditions as he may impose on their acceptance.

(4) Where the Commissioner imposes a condition under sub-regulation (3) he shall ensure that the following principles are complied with in determining a condition—

- (a) assets covering technical reserves shall be valued net of any debts arising out of their acquisition;
- (b) all assets shall be valued on a prudent basis, allowing for the risk of any amounts not being realisable;
- (c) tangible fixed assets other than land and buildings may be accepted as cover for technical reserves only if they are valued on the basis of prudent amortisation;
- (d) loans, whether to insurers, to EEA State authorities or international organisations, to local or regional authorities or to individuals may be accepted as cover for technical reserves if there are sufficient guarantees as to their security, whether these are based on the status of the borrower, mortgages, bank guarantees or guarantees granted by insurers or other forms of security;
- (e) derivative instruments such as options, futures and swaps in connection with assets covering technical reserves may be used in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management and they shall be valued on a prudent basis and may be taken into account in the valuation of the underlying assets;
- (f) transferrable securities which are not dealt in on a regulated market may be accepted as cover for technical reserves only if they can be realised in the short term;

- (g) debts owed by and claims against a third party may be accepted as cover for technical reserves only after deduction of all amounts owed to the same third party;
- (h) the value of any debts and claims accepted as cover for technical reserves shall be calculated on a prudent basis, with due allowance for the risk of any amounts not being realisable, particularly debts owed by policyholders and intermediaries arising out of insurance and reinsurance operations may be accepted only in so far as they have been outstanding for not more than three months;
- (i) where the assets held include an investment in a subsidiary which manages all or part of the insurer's investments on its behalf, account shall be taken of the underlying assets held by the subsidiary and the assets of other subsidiaries shall be treated in the same way;
- (j) deferred acquisition costs may be accepted as cover for technical reserves only to the extent that that is consistent with the calculation of the technical provision for unearned premiums.

(5) Notwithstanding sub-regulations (1) to (4), an insurer may apply to the Commissioner for him to authorise the acceptance of other categories of assets as cover for technical reserves subject to the requirements of regulations 41(1) and (2) and 42 and provided there are exceptional circumstances that warrant such an acceptance that the measure is a temporary one for as long as the Commissioner may decide.

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SCHEDULE 1

Regulation 15

ASSETS TO BE TAKEN INTO ACCOUNT ONLY TO A SPECIFIED
EXTENT

PART I

EXCESS EXPOSURE: METHOD OF CALCULATION

1. For the purposes of this Schedule —

“business amount” means —

- (a) for an insurer carrying on only general business, the general business amount;
- (b) for an insurer carrying on only long term business, the long term business amount; and
- (c) for an insurer carrying on both general business and long term business, in the case of its general business assets, the general business amount and in the case of its long term business assets, the long term business amount.

“connected company” of any company means —

- (a) that company’s holding company;
- (b) a subsidiary of that company; or
- (c) a subsidiary of the holding company of that company.

“counterparty” in relation to a company means —

- (a) any one individual;
- (b) any one unincorporated body of persons;
- (c) any one company not being a member of a group;
- (d) any group of companies excluding any companies within the group which are dependants of the insurer; or

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- (e) any government of a state together with all the public bodies, local authorities or nationalised industries of that state,

in which the insurer has made investments or against whom it has rights whether in pursuance of a contract entered into by the insurer or otherwise; and reference to dealings with or by a counterparty includes dealings with or by any person or body of persons included within the definition of counterparty;

“counterparty exposure” shall be determined in accordance with paragraph 13;

“debts due or to become due” includes any debts which would become due if the insurer were to exercise any right to which it is entitled to require payment or repayment of the same;

“diversified contract for differences” means a contract for differences whose value does not depend to a significant extent on fluctuations in the value of, or income from, assets of any of the descriptions in paragraphs 1 to 10, 12 or 14 to 20 of Part II of this Schedule and “undiversified contract for differences” shall be construed accordingly;

“excess concentration with a number of counterparties” shall be determined in accordance with paragraph 17;

“general business amount” is calculated as the higher of-

- (i) the insurer’s technical liabilities (net of reinsurance) and an amount equal to whichever is the greater of 3,000,000 euros or 20 per cent of the general premium income; or
- (ii) a higher amount not exceeding the net admissible assets determined in accordance with these Regulations;

“group” means a parent undertaking and its subsidiary undertakings;

“hybrid security” means a debt security, other than an approved security, the terms of which provide, or have the effect that, or contain an option which if exercised by the issuer would have the effect that the holder does not or would not have an unconditional entitlement to payment of interest and repayment of capital in full within seventy five years of the relevant date;

“index linked liabilities” means insurance liabilities in respect of index linked benefits;

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“insurance liabilities” means amounts calculated in accordance with Part III of these Regulations in respect of those items shown at C and D under the heading “Liabilities” set out in paragraph 9 of Schedule 1 to the Insurance Companies (Accounts Directive) Regulations 1997;

“long term business amount” is calculated as the higher of-

- (i) the insurer’s technical liabilities (net of reinsurance and excluding property linked liabilities) together with-
 - (a) the amount of any deposit back under a contract of long term reinsurance; plus
 - (b) the margin of solvency (or minimum guarantee fund, if greater) which the insurer if its head office is in Gibraltar, is required to maintain, or if its head office is elsewhere would be required to maintain if its head office were in Gibraltar; less
 - (c) any implicit items valued in accordance with an Order under section 113 of the Act;

save that for the purpose of assessing compliance with the permitted asset exposure limit, it shall further exclude linked liabilities; or

- (ii) a higher amount not exceeding the net admissible assets determined in accordance with these Regulations;

“permitted asset exposure limit” has the meaning set out in paragraph 2;

“permitted counterparty exposure limit” has the meaning set out in paragraph 3;

“property linked liabilities” means insurance liabilities in respect of property linked benefits;

“readily realisable” in relation to a listed investment means a listed investment to which regulation 6(4) either does not apply or applies by reason only that —

- (a) the listing of the investment has been temporarily suspended following receipt of price sensitive information by the stock

exchange on which the investment is listed or the regulated market on which facilities for dealing have been granted; or

- (b) the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5 per cent of the market value;

“short term deposit” means a sum of money which may be withdrawn at the discretion of the lender without penalty or loss of accrued interest by giving notice of withdrawal of one month or less.

2. The permitted asset exposure limit for assets of any of the descriptions in any paragraph of Part II of this Schedule is the percentage of the business amount set out immediately below that paragraph. In the case of an asset which is not covered by any of the descriptions in Part II of this Schedule (other than a derivative contract) the permitted asset exposure limit is nil.

3. The permitted counterparty exposure limit is —

- (a) where the counterparty is an individual or an unincorporated body of persons, 5 per cent of the business amount;
- (b) where the counterparty is a counterparty of the type mentioned in sub-paragraph (e) in the definition of counterparty, 5 per cent of the business amount; and
- (c) where the counterparty is a body corporate or group, each of —
 - (i) 20 per cent of the business amount;
 - (ii) 10 per cent of the business amount or such lower amount as the company may decide where the exposure arises other than by reason that debts are due or to become due as a result of short term deposits made with an approved credit institution;
 - (iii) 5 per cent of the business amount where the exposure is other than to bodies which are approved counterparties.

Calculation of exposure to assets.

4. A value shall be ascribed to assets of each description which shall be an amount determined in accordance with the provisions of Part II of these Regulations, or where the assets are of a description for the valuation of which no provision is made in Part II of these Regulations, an amount which

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would reasonably be paid by way of consideration for an immediate assignment or transfer of such assets. The amount by which the company is exposed to assets of each description shall be determined by adjusting the value of the assets in accordance with paragraph 5 to 11.

Adjustments in respect of futures contracts.

5. The figure arrived at under paragraph 4 in respect of assets of each description shall be increased or decreased by the value of assets of that description which the company is deemed to have acquired or disposed of pursuant to a futures contract.

6. For the purposes of paragraph 5, the company shall be deemed to have acquired or disposed of assets pursuant to a futures contract if, at the relevant date, it has entered into (and not closed out) a futures contract which —

- (a) provides for the acquisition of assets by that company;
- (b) is listed and provides for the disposal of assets by the company;
or
- (c) is not listed but provides for the disposal of assets by the company to an approved counterparty and it is prudent to assume that such disposal will take place within one year of the relevant date.

Adjustments in respect of options.

7. The figure arrived at under paragraphs 4 to 6 in respect of assets of each description shall be increased or decreased by the value of assets of that description which the company is deemed to have acquired or disposed of pursuant to an option.

8. For the purposes of paragraph 7, the company shall be deemed to have acquired or disposed of assets pursuant to an option if, at the relevant date, it is a party to an option and it is prudent to assume that the option will be exercised and the option is one which —

- (a) provides for the acquisition of assets by the company;
- (b) is listed and provides for the disposal of assets by the company;
or
- (c) is not listed but provides for the disposal of assets by the company to an approved counterparty and it is prudent to

assume that such disposal will take place within one year of the relevant date.

Adjustments in respect of initial margins.

9. The figure arrived at under paragraphs 4 to 8 in respect of assets of each description shall be increased by an amount representing the value of any assets of that description which have been transferred by the company by way of initial margin.

Adjustments in respect of an undiversified contract for differences or a contract or asset having the effect of a derivative contract.

10. The amount arrived at in accordance with paragraphs 4 to 9 shall be increased or decreased by an amount representing the value of assets which the company is deemed to have acquired or disposed of under —

- (a) an undiversified contract for differences; or
- (b) a contract or asset other than a diversified contract for differences which has the effect of a derivative contract.

11. For the purposes of paragraph 10, the company shall be deemed to have achieved the effect of such contract by entering into appropriate futures contracts or options. The assets deemed to be acquired or disposed of shall be dealt with in accordance with the provisions in paragraphs 5 and 7 respectively.

Adjustment in respect of subsidiary undertakings.

11A. The amount arrived at under paragraphs 4 to 11 must be increased by an amount representing the exposure, if any, of the insurer's dependants to assets of that description, calculating that exposure by applying paragraphs 4 to 11 to each dependent as if it were an insurer (whether it is or not).

Excess asset exposure.

12. The amount by which the company is exposed to assets of a particular description in excess of the permitted asset exposure limit shall be calculated by subtracting the permitted asset exposure limit for assets of that description from the corresponding amount of the exposure, calculated in accordance with paragraphs 4 to 11. For this purpose, exposure to assets shall be excluded to the extent that such exposure has caused the recognition of excess exposure to assets of a different description. If the figure arrived at is negative, it shall be taken to be zero.

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Calculation of exposure to a counterparty.

13. Subject to paragraphs 14 and 15, the value of all investments (determined in accordance with regulation 6) issued by any one counterparty and the value of all rights (determined in accordance with regulations 7, 11 and 14) against that counterparty, in each case up to the amount of the appropriate permitted asset exposure limit, shall be aggregated. Where the counterparty is an issuer of a collective investment scheme falling within regulation 10(1)(c), the value of units or other beneficial interest in the collective investment scheme shall be included.

14. Where an insurer has rights in respect of an obligation to be fulfilled by a counterparty and—

- (a) the obligation is a secured obligation which—
 - (i) is secured by cash deposited with, or a letter of credit established with, or securities issued by, or a guarantee provided by, an approved credit institution or an approved financial institution; and
 - (ii) is due to be fulfilled within 12 months of the relevant date; or
- (b) the obligation is a secured obligation which is secured by listed securities which are readily realisable or by approved securities which in either case—
 - (i) have been deposited with an approved credit institution, an approved financial institution or an approved investment firm; and
 - (ii) are beneficially owned by the counterparty but will not be available for the benefit of creditors generally in the event of the winding-up of the counterparty,

the aggregation required by paragraph 13 need not include the value of such rights.

15. If the insurer has liabilities to the counterparty which may be offset against the above-mentioned assets in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies, then such liabilities may be offset for the purposes of the aggregation required by paragraph 13.

Adjustment in respect of subsidiary undertakings.

15A. The amount arrived at in accordance with paragraphs 13 to 15 must be increased by the amount by which any dependant of the insurer is exposed to the same counterparty.

Excess counterparty exposure.

16. The amount by which the company is exposed to a counterparty in excess of the permitted counterparty exposure limit shall be calculated by subtracting from the amount of the exposure to such counterparty the amount of the permitted counterparty exposure limit for such counterparty. If the figure arrived at is negative, it shall be taken to be zero. If the company is exposed to a counterparty in excess of the permitted counterparty exposure limit in more than one of the circumstances set out in sub-paragraph (c) of paragraph 3, it shall make the deduction required under regulation 15(1)(b) only in respect of the circumstances leading to the greatest excess exposure.

Excess concentration with a number of counterparties.

17. Where there is exposure to a counterparty of the type mentioned in paragraph 3(c)(ii), 40 per cent of the business amount shall be deducted from the aggregate of such exposures. The amount so arrived at shall be the excess concentration with a number of counterparties. Where this amount is negative it shall be taken to be zero. For the purposes of this paragraph—

- (a) exposure to a counterparty shall be taken into account only up to the level of the permitted counterparty exposure limit for that counterparty;
- (b) exposure to a counterparty shall not be taken into account if it does not exceed 5 per cent of the business amount; and
- (c) exposure to a counterparty shall not be taken into account if the corresponding permitted counterparty exposure limit does not exceed 5 per cent of the business amount.

PART II

**DESCRIPTION OF ASSET AND CORRESPONDING BUSINESS
AMOUNT**

1. A piece of land or a number of pieces of land (or an interest in such pieces of land) to which in the most recent proper valuation of such pieces of land an aggregate value is

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ascribed which is greater than the value of each of such pieces of land valued separately	5%
2. A reversionary interest or a remainder not falling within paragraph 1	1%
3. All debts due or to become due from any one individual (other than an individual who is connected with the insurer within the meaning of section 2(4) of the Act), being debts which are fully secured on any dwelling or any land appurtenant thereto owned or to be purchased by the individual and used or to be used by him for his own residence	1%
4. All debts due or to become due from an individual, other than debts specified in paragraph 3	0.25%
5. All unsecured debts (other than debts arising under the terms of debt securities or debts from a regulated institution) due or to become due from any one counterparty other than an individual, body corporate or group	1%
6. All unsecured debts (other than debts arising under the terms of debt securities or debts from a regulated institution) due or to become due from any one company, taken together with all such debts due or to become due from a connected company of that company	1%
7. All unsecured debts (other than debts arising under the terms of debt securities or debts from an approved counterparty) due or to become due from any one regulated institution, taken together with all such debts due or to become due from a connected company of that institution	2.5%
8. All debts, other than debts arising under the terms of debt securities, due or to become due from any one counterparty which is not an approved counterparty taken together with all such debts due or to become due from any connected company (other than an approved counterparty) of that counterparty	5%
9. All debts, other than short-term deposits with an approved credit institution or debts arising under the terms of debt securities, due or to become due from any one approved counterparty, taken together with all such debts due or to become due from any connected company of that approved	10%

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| 10. All debts due or to become due from an approved credit institution (or a connected company of that institution) taken together | 20% |
| 11. The aggregate of debts of the descriptions in paragraphs 4, 5 and 6 | 5% |
| 12. All investments of a kind which may be valued in accordance with regulation 6 (other than secured debt securities, debt securities (other than hybrid securities) issued by a regulated institution or investments which are listed and readily realisable) issued by any one issuer taken together with — | |
| (a) all units or other beneficial interests in a collective investment scheme falling within regulation 10(1)(c) issued by that issuer; and | 1% |
| (b) all investments of the kinds mentioned in this paragraph issued by a connected company of that issuer | 1% |
| 13. The aggregate of assets of any of the descriptions in paragraphs 2 and 12 | 10% |
| 14. All shares and hybrid securities issued by any one issuer taken together with all such securities issued by a connected company of that issuer | 2.5% |
| 15. All securities issued by any one issuer which is not an approved counterparty taken together with all securities issued by a connected company, other than an approved counterparty, of that issuer | 5% |
| 16. All securities issued by any one counterparty | 10% |
| 17. All holdings in any one authorised unit trust scheme or recognised scheme | 5% |
| 18. All cash | 3% |
| 19. All computer equipment | 5% |
| 20. All office machinery (other than computer equipment) taken together with all furniture, motor vehicles and other equipment | 2.5% |

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SCHEDULE 2

Repealed.

SCHEDULE 3

Regulation 40

PERMITTED LINKS

PART I

DESCRIPTIONS OF PROPERTY BY REFERENCE TO WHICH
BENEFITS MAY BE DETERMINED

1. Listed securities which are readily realisable, not being securities which are —
 - (a) approved securities;
 - (b) loans or deposits of the kinds mentioned in paragraphs 4 and 7;
 - (c) units or other beneficial interests in a collective investment fund; or
 - (d) derivative contracts.

2. Unlisted securities which are readily realisable, not being securities which are —
 - (a) approved securities;
 - (b) loans or deposits of the kinds mentioned in paragraphs 4 and 7;
 - (c) units or other beneficial interests in a collective investment fund; or
 - (d) derivative contracts.

3. Land (including any interest in land) in Gibraltar, any other part of the EEA, Australia, Canada, the Channel Islands, Hong Kong, the Isle of Man, New Zealand, the Republic of South Africa, Singapore or the United States of America.

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4. Loans—
 - (a) which are fully secured by mortgage or charge on land (or any interest in land) which—
 - (i) is situated in any of the countries specified in paragraph 3; and
 - (ii) in the case of a loan made to a person other than a body corporate, is not used wholly or mainly for domestic purposes; and
 - (b) in relation to which the rate of interest and the due dates for the payment of interest and the repayment of principal can be fully ascertained from the terms of any agreement relating to the loan.
5. Units or other beneficial interests in—
 - (a) a scheme falling within Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities; or
 - (b) a collective investment fund which satisfies the following conditions—
 - (i) the property of the fund comprises property of any of the descriptions in paragraphs 1 to 10 of this Schedule;
 - (ii) the units are readily realisable at a price which represents the net value per unit of the assets and liabilities of the fund; and
 - (iii) the price at which the units may be bought and sold is published regularly.
6. Approved securities.
7. Loans to or deposits with an approved credit institution, an approved financial institution or an approved investment firm.
8. Income due, or to become due, in respect of property of any of the descriptions specified in the foregoing paragraphs of this Schedule.

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9. Permitted derivative contracts.
10. Cash.
11. Units, by whatever name called, in a real or notional fund (not being a scheme or undertaking of a kind mentioned in paragraph 5) which is limited to the descriptions of property mentioned above, not being property falling within sub-paragraphs (a) to (d) of paragraph 16, and which under the contract is to be managed either—
 - (a) wholly by the insurer; or
 - (b) wholly or to any extent by another person being a person for whose acts and omissions in managing the fund the insurer assumes responsibility towards the policyholder as if they were the acts or omissions of the insurer, and otherwise (if at all) by the insurer.

PART II

INDICES BY REFERENCE TO WHICH BENEFITS MAY BE DETERMINED

12. An approved index.

PART III

INTERPRETATION

13. For the purposes of this Schedule, “approved index” means either —
 - (a) an index which is —
 - (i) calculated independently;
 - (ii) published at least once every week;
 - (iii) based on constituents, each of which is property falling within paragraphs 1 to 8 or 10; and
 - (iv) calculated on a basis which is made available to the public and which includes both the rules for including and excluding constituents and the rules for the valuation which must use an arithmetic average of the value of the constituents;

- (b) a national index of retail prices published by or under the authority of a government of a state belonging to Zone A as defined in Council Directive 89/647/EEC on a solvency ratio for credit institutions; or
- (c) an index which is—
 - (i) based on constituents, each of which is property falling within paragraphs 1 to 8 or 10; and
 - (ii) in respect of which a derivative contract is listed.

14. (1) For the purposes of this Schedule, “permitted derivative contract” means a derivative contract which—

- (a) is covered; and—
 - (i) which is held in connection with property of the type described in sub-paragraph (2) for the purposes of reduction of investment risks or efficient portfolio management; or
 - (ii) which has the effect of a permitted derivative contract held in connection with such property for such purposes; and
 - (b) satisfies the conditions in regulation 14(6) to (8) except that for this purpose the references in regulation 14 to “an asset for the valuation of which provision is made in this Part of these Regulations” shall be construed as a reference to permitted connected property.
- (2) The property described in this paragraph is either—
- (a) permitted connected property, not being a contract or asset having the effect of a derivative contract; or
 - (b) a permitted derivative contract or a contract or asset having the effect of a permitted derivative contract either of which when taken together with the permitted derivative contract mentioned first in sub-paragraph (1) has the effect that the company holds either permitted connected property or a permitted derivative contract in connection with such property.

(3) For the purposes of this paragraph—

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- (a) a derivative contract shall be deemed to be covered if it would not require a significant provision to be made in respect of it pursuant to regulation 19 if it were a derivative contract to which Part II of these Regulations applied; and
- (b) “permitted connected property” means property of any of the descriptions in paragraphs 1 to 8 or 10 and which is not property falling within paragraph 16(a) to (d).

15. In this Schedule—

“collective investment fund” includes a collective investment scheme;
and

“readily realisable”, in respect of an investment, has the meaning set out in paragraph 1 of Part I of Schedule 1.

16. Benefits payable under any contract to which regulation 40 applies shall not be determined by reference to —

- (a) property of any of the descriptions specified in paragraphs 2, 5(b) or 7 if the value of such property is determined, either wholly or partly, by reference to the value of, or the income from or fluctuations in the value of, or fluctuations in the income from, property other than property of the descriptions in Part I of this Schedule;
- (b) property of the description specified in paragraph 2 in excess of 10 per cent of the aggregate property linked benefits under the contract;
- (c) property of the description specified in paragraph 5(b) which in aggregate value exceeds 10 per cent of the property linked benefits, unless the contract under which the benefits are payable has been marketed in accordance with any legal restrictions which apply to the marketing of the corresponding collective investment fund; or
- (d) property of any of the descriptions specified in Part I of this Schedule which has the effect of a derivative contract other than a permitted derivative contract.

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SCHEDULE 4

repealed.