

# **SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE**

**No. 2,968 of 20th March, 1997.**

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LEGAL NOTICE NO. 29 OF 1997.

## **INSURANCE COMPANIES ORDINANCE 1987**

### **INSURANCE COMPANIES (VALUATION OF ASSETS AND LIABILITIES) (AMENDMENT) REGULATIONS 1997**

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**INSURANCE COMPANIES ORDINANCE 1987**

**INSURANCE COMPANIES (VALUATION OF ASSETS AND  
LIABILITIES) (AMENDMENT) REGULATIONS 1997**

In exercise of the powers conferred on it by section 118 of the Insurance Companies Ordinance 1987, and of all other enabling powers, the Government has made the following regulations —

**Title.**

1. (1) These regulations may be cited as the Insurance Companies (Valuation of Assets and Liabilities) (Amendment) Regulations 1997.

(2) In these regulations, “the 1996 regulations” means the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996.

**Interpretation: Amendments of regulation 2(1) of the 1996 Regulations.**

2. Sub-regulation (1) of regulation 2 of the 1996 regulations is amended as follows -

(a) before the definition of “approved counterparty”, insert —

“ “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;”;

(b) in the definition of “approved counterparty”, delete “or” from the end of paragraph (b) and at the end insert “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;”;

(c) after the definition of “co-operative society” insert —

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

- (d) omit the definition of “debenture” and after the definition of “debt”, insert —

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

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

- (e) at the end of the definition of “derivative contract”, insert the words “and includes a contract under which the amount payable by either party is calculated by reference to the amortised value of any property.”;

- (f) omit the definitions of “equity share” and “equity share capital” and insert —

“ “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;”.

- (g) in the definition of “general business amount”, for the words “regulation 15(14)”, substitute “Schedule 1”;

- (h) after the definition of “index linked benefits”, insert —

“ “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;”;

(i) omit the definition of “insurance liabilities”;

(j) after the definition of “intermediary”, insert —

“ “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;”;

(k) for the definition of “listed”, substitute —

“ “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;”;

(l) in the definition of “long term business amount”, for the words “regulation 15(14)” substitute “Schedule 1”;

(m) omit the definition of “middle market quotation” and insert —

“ “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;”;

(n) in the definition of “options”, for the word “options” substitute the word “option”;

(o) after the definition of “option”, insert —

“ “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;”;

- (p) omit the definition of “price earnings ratio”;
- (q) in the definition of “regulated institution”, at the beginning of paragraph (a) insert “an insurer which is either”;
- (r) in the definition of “securities”, for the word “debentures” substitute the words “debt securities”;
- (s) omit the definition of “stock lending transaction”.
- (t) in the definition of “subordinated debt”, for the word “debtors” substitute the word “debtor”;
- (u) after the definition of “subordinated debt”, insert —

“ “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 transactions; 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;”;

- (v) after the definition of “Treasury Bills”, insert —

“ “variation margin” means —

- (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;”.

**Other amendments of regulation 2 of the 1996 regulations.**

3. (1) For sub-regulation (3) of regulation 2 of the 1996 regulations, substitute —

“(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 —
  - (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.”.

(2) For sub-regulation (4) of regulation 2 of the 1996 regulations, substitute —

“(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.”.

(3) After sub-regulation (4) of regulation 2 of the 1996 regulations, insert —

“(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 Ordinance.”.

**Application of Part II.**

4. Regulation 3 of the 1996 regulations is amended as follows -

(a) in sub-regulation (2), omit the words “in compliance with section 64B”;

(b) for sub-regulation (4), substitute —

“(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.”

(c) after sub-regulation (7), insert —

“(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.”.

**Deferred acquisition costs (substitution for regulation concerning listed investments).**

5. For regulation 5 of the 1996 regulations, substitute —

**“Deferred acquisition costs.**

5. In the case of general business, the value of deferred acquisition costs shall be the value as 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 (substitution for regulation concerning unlisted securities).**

6. For regulation 6 of the 1996 regulations, substitute —

**“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) investments in dependants;
- (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 —
  - (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.

(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. Regulation 7 of the 1996 regulations is amended as follows -

- (a) in sub-regulation (4) for the expression “regulation 5, 11 or 12(4)”, substitute “regulation 5, 12(4) or 14A”;

- (b) for sub-regulation (5), substitute —

“(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.”.

- (c) after sub-regulation (5), insert —

“(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.”.

- (d) in sub-regulation (6)(d), omit the words “or (8)”.

- (e) for sub-regulation (8), substitute —

“(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.”.

- (f) for sub-regulation (10), substitute —

“(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.”.

(g) for sub-regulation (11), substitute —

“(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.”.

(h) after sub-regulation (11), insert —

“(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).”.

**Beneficial interests in collective investment schemes (substitution for regulation concerning unit trusts).**

8. For regulation 10 of the 1996 regulations, substitute —

**“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 Ordinance 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
  - (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 (substitution for regulation concerning other assets).**

9. For regulation 11 of the 1996 regulations, substitute —

**“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
- (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 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.

(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).”.

**Derivative contracts.**

10. For regulation 14 of the 1996 regulations, substitute —

**“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 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.**

11. After regulation 14 of the 1996 regulations, insert —

**“14A. Contracts and assets having the effect of derivative contracts.**

(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
  - (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.**

12. For regulation 15 of the 1996 regulations, substitute —

**“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
- (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.”.

**Interpretation of Part III.**

13. Regulation 16 of the 1996 regulations is amended as follows -  
omit the definition of “general business liabilities” and insert —

“ “insurance liabilities” means amounts calculated in accordance with this Part 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 and general business.**

14. Regulation 18 of the 1996 regulations is amended as follows -

- (a) omit the word “liabilities” from the marginal note;
- (b) in sub-regulation (1), omit the words “in respect of long term and general business”;
- (c) In sub-regulation (2), for the words “but, save as” to the end of the sub-regulation substitute —  
  
“including all liabilities in respect of cumulative preference share capital but excluding other liabilities in respect of share capital.”;
- (d) omit sub-regulation (3).

**Provision for adverse changes.**

15. For regulation 19 of the 1996 regulations, substitute —

**“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 —

- (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.**

16. After regulation 19 of the 1996 regulations, insert —

**"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."

**Long term liabilities.**

17. At the end of sub-regulation (3)(d) of regulation 21 of the 1996 regulations, substitute -

- (a) a semi-colon for the full stop and insert "and";
- (b) after sub-regulation (3)(d), insert —

“(e) any rights under contracts of reinsurance in respect of long term business.”.

**Rates of interest.**

18. In sub-regulation (3) of regulation 26 of the 1996 regulations, for paragraph (b) substitute —

“(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.”.

**Rates of mortality and disability.**

19. In regulation 27 of the 1996 regulations, for the word “state” substitute the word “State”.

**Replacement of Schedule 1.**

20. For Schedule 1 to the 1996 regulations, substitute the following Schedule -

**“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
- (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” means the aggregate of the company’s insurance liabilities (net of reinsurance) in respect of general business and an amount equal to whichever is the greater of 400,000 units of account or 20 per cent of the general premium income;

“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;

“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” means the amount of the company’s insurance liabilities in respect of long term business (net of reinsurance ceded and excluding property linked liabilities), together with —

- (a) the amount of the required margin of solvency (or the amount of the minimum guarantee fund if greater) determined in accordance with regulations 3 and 9 of, and Schedule 3 to, the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 1996 (or, in the case of a company whose head office is not in Gibraltar, the amount which would apply if its head office were in Gibraltar) less the amount of any implicit item valued in accordance with regulations 6 to 8 of those Regulations; and
- (b) the amount of any deposit-back in connection with a contract of reinsurance in respect of long-term business,

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

“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 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 paragraphs 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.

**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.

**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.

**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 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 Ordinance), 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 counterparty	10%
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	10%
13. The aggregate of assets of any of the descriptions in paragraphs 2 and 12	

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%”

**Replacement of Schedule 3.**

21. For Schedule 3 to the 1996 regulations, substitute the following Schedule -

**“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 an EEA State (including Gibraltar), 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.

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.

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 —
- (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.”.

**22. Repeal of Schedule 4.**

Schedule 4 to the 1996 regulations is repealed.

**23. Transitional provisions.**

An insurer may, until 1st September 1997, for any of the purposes for which Part II of the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 apply, apply those regulations as if these regulations had not been made.

Dated this 20th day of March, 1997.

P. C. MONTEGRIFFO,

Minister for Trade & Industry

LEGAL NOTICE NO. 30 OF 1997.

**PUBLIC FINANCE (CONTROL AND AUDIT) ORDINANCE**

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**THE UTILITIES CONTRACTS REGULATIONS 1997**

**ARRANGEMENT OF REGULATIONS**

**PART I**

**GENERAL**

1. Title and commencement.



2. Interpretation.
3. Utilities.
4. Suppliers, contractors and services providers.
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