

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3390 of 5 February, 2004

LEGAL NOTICE NO. 17 OF 2004

INSURANCE COMPANIES ORDINANCE

**INSURANCE COMPANIES (VALUATION OF ASSETS AND
LIABILITIES) (AMENDMENT NO. 2) REGULATIONS 2004**

In exercise of the powers conferred on it by section 118 of the Insurance Companies Ordinance, and all other enabling powers, and in order to implement in the law of Gibraltar Council Directive 98/78/EC on the regulatory supervision of insurance groups, the Government has made the following regulations-

Title.

1. These regulations may be cited as the Insurance Companies (Valuation of Assets and Liabilities) (Amendment No. 2) Regulations 2004.

2. The Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 are amended as follows-

(a) the following definitions are inserted in regulation 2 in the appropriate alphabetical places-

(i) "group undertaking" means

(a) the insurer;

(b) its related undertakings;

(c) its participating undertakings; and

(d) the related undertakings of its participating undertakings;

(ii) "insurance undertaking" means an undertaking, whether or not an insurer which carries on insurance business;

- (iii) “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;
- (iv) “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;
- (v) “notional required minimum margin” means—
 - (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 requirements 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);
- (vi) “participation” means—
 - (a) the holding of a participating interest within the meaning of section 2(37) of the Ordinance; or

- (b) the holding, directly or indirectly of 20% or more of the voting rights or capital;
 - (vii) “participating undertaking” means an undertaking which holds a participation in the undertaking in question;
 - (viii) “relevant regulatory requirements” means, for the purposes 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
 - (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 2002 shall apply;
 - (ix) “related undertaking” means an undertaking in which a participation is held by another undertaking or which is a subsidiary undertaking;
 - (x) “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.
- (b) regulation 6(2)(b) is deleted;

- (c) regulations 12 and 13 are deleted and replaced by the following–

“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 regulation 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 regulation 15(1)(a) to (c)) of its surplus assets; and
 - (ii) the value of those shares as determined under regulation 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 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 undertaking or 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.”;
 - (c) the following regulation is inserted after regulation 19A–

“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.”;
- (d) Schedule 2 is deleted and the following paragraphs are inserted after paragraphs 11 and 15 respectively of Part I of Schedule 1–

“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 dependant as if it were an insurer (whether it is or not).

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.”.

Dated the 5th day of February, 2004.

P R CARUANA Q.C.,
Chief Minister,
for the Government.