

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3634 of 20 December, 2007

LEGAL NOTICE NO. 143 OF 2007.

INSURANCE COMPANIES ACT

**INSURANCE COMPANIES (VALUATION OF ASSETS AND
LIABILITIES) (AMENDMENT) REGULATIONS 2007**

In exercise of the powers conferred on him by section 118 of the Insurance Companies Act and all other enabling powers, the Minister with responsibility for financial services has made the following regulations to transpose, in part, into the law of Gibraltar Directive 2005/68/EC of 16 November 2005 on reinsurance which amend, inter alia, Directive 92/49/EEC.

Title.

1. These Regulations may be cited as the Insurance Companies (Valuation of Assets and Liabilities) (Amendment) Regulations 2007.

Amendment of the Insurance Companies (Valuation of Assets and Liabilities) Regulations.

2. The Insurance Companies (Valuation of Assets and Liabilities) Regulations are amended in accordance with regulations 3 to 6.

Amendment of regulation 2(1).

3. Regulation 2(1) is amended by substituting “to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast)” for all the words after “Annex 1” in the definition of “approved credit institution”.

Insertion of regulation 15A

4. The following regulation is inserted after regulation 15–

“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.”

Insertion of new Part IIA.

5. The following Part is inserted after new regulation 15A–

**“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 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.”.

Insertion of Part VI.

6. The following Part is inserted after regulation 40–

**“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;
- (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.”.

Dated this 20th day of December, 2007.

P R CARUANA,
Minister with responsibility for
financial services.