

2015-07
Repealed

Financial Services (Insurance Companies) (Solvency II Directive)

Regulations (EC) No. 1060/2009
Regulations (EC) No. 1094/2010
Regulations (EC) No. 1095/2010

EU Legislation/International Agreements involved:

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR PROVISIONS OF DIRECTIVE 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE TAKING UP AND PURSUIT OF THE BUSINESS OF INSURANCE AND RE-INSURANCE (SOLVENCY II), AND PROVISIONS OF DIRECTIVE 2014/51/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVES 2003/71/EC AND 2009/138/EC AND REGULATIONS (EC) NO 1060/2009, (EU) NO 1094/2010 AND (EU) NO 1095/2010 IN RESPECT OF THE POWERS OF THE EUROPEAN SUPERVISORY AUTHORITY (THE EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY) AND THE EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN SECURITIES AND MARKETS AUTHORITY) AND RELATED MATTERS.

Preliminary

Short title and commencement.

1.(1) This Act may be cited as the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.

(2) Subject to subsection (3), this Act shall come into force on such day as the Minister may appoint and different days may be appointed for different provisions.

(3) Any provision of this Act for which a day is not appointed under subsection (2) shall come into force on 1st January 2016.

Overview.

1A.(1) This Act makes provision in respect of–

- (a) the taking-up and pursuit of the self-employed activities of direct insurance and reinsurance;
- (b) the supervision of insurance and reinsurance groups;
- (c) the reorganisation and winding-up of direct insurance undertakings.

(2) The Insurance Companies Act also provides for the regulation of insurance and reinsurance business.

Interpretation.

2.(1) In this Act, except where the context otherwise provides,–

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“Article” means an article of the Solvency II Directive;

“authorisation” includes a licence under the Insurance Companies Act;

“the Commission”, except in the phrase “the European Commission” means the Financial Services Commission;

“capital add-on” means any increase to the Solvency Capital Requirement of an insurer or reinsurer, or an insurance group, made by the Commission pursuant to section 15;

“captive insurance undertaking” means an insurance undertaking—

- (a) which is owned either by—
 - (i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of section 103; or
 - (ii) by a non- financial undertaking; and
- (b) the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

“captive reinsurance undertaking” means a reinsurance undertaking—

- (a) which is owned either by—
 - (i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of section 103; or
 - (ii) a non-financial undertaking; and
- (b) the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

“close links” means a situation in which two or more natural or legal persons are—

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- (a) linked by control or participation; or
- (b) permanently linked to one and the same person by a control relationship;

“concentration risk” means all risk exposures with a loss potential which is large enough to threaten the solvency or financial position of insurance and reinsurance undertakings;

“control” means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

“credit risk” means the risk of loss or adverse change in financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

“the Directive” or “the Solvency II Directive” means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as from time to time amended;

“diversification effects” means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

“EIOPA” means the European Insurance and Occupational Pensions Authority established under Regulation (EU) No 1094/2010 of the European Parliament and the Council establishing a European Supervisory Authority;

“establishment” of an undertaking means its head office or any of its branches;

“external credit assessment institution” or “ECAI” means a credit rating agency that is registered or certified in accordance with Regulation (EC) No. 1060/2009 of the European Parliament and of the Council or a central bank issuing credit ratings which are exempt from the application of that Regulation;

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“financial undertaking” means any of the following entities–

- (a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC respectively;
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of section 103;
- (c) an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2004/39/EC; or
- (d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

“function”, within a system of governance, means an internal capacity to undertake practical tasks; and a system of governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function;

“group supervisor” means the competent authority responsible, under section 133 for the exercise of group supervision in accordance with Title III of the Solvency II Directive;

“Gibraltar solvency II firm” has the meaning given by section 3;

“home Member State” means–

- (a) for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;
- (b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or
- (c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

“host Member State” means the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services; and for life and non- life insurance, the Member State of the provisions of services means, respectively, the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by an insurance undertaking or a branch situated in another Member State;

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“insurer” and “reinsurer” refer, in terms of the Directive, to an insurance undertaking and a reinsurance undertaking;

“the Insurance Companies Act” means the Financial Services (Insurance Companies) Act;

“insurance undertaking” means a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14 of the Directive;

“intra-group transaction” means any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

“large risks” means—

- (a) risks falling within Classes 4, 5, 6, 7, 11 and 12 of Part 1 of Schedule 1 to the Insurance Companies Act;
- (b) risks falling within Classes 14 and 15 of Part 1 of that Schedule, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;
- (c) risks falling within Classes 3, 8, 9, 10, 13 and 16 of Part 1 of that Schedule, where the policyholder carries on a business in respect of which at least two of the following criteria are exceeded—
 - (i) a balance-sheet total of EUR 6.2 million;
 - (ii) a net turnover (within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies) of EUR 12.8 million;
 - (iii) an average number of 250 employees during the financial year;

but if the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria in paragraph (c) shall be applied on the basis of the consolidated accounts;

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“liquidity risk” means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

“market risk” means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

“Member State” means a Member State of the European Economic Area (“EEA”) listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“Member State in which the risk is situated” means any of the following—

- (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
- (b) the Member State of registration, where the insurance relates to vehicles of any type;
- (c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
- (d) in all other cases, the Member State in which either of the following is situated—
 - (i) the habitual residence of the policy holder; or
 - (ii) if the policy holder is a legal person, that policy holder’s establishment to which the contract relates;

“Member State of the commitment” means the Member State in which either of the following is situated—

- (a) the habitual residence of the policy holder;
- (b) if the policy holder is a legal person, that policy holder’s establishment to which the contract relates;

“minimum capital requirement” shall be calculated in accordance with Part IV of Schedule 1 (giving effect to provisions of Section 5 of Chapter VI of Title I of the Directive);

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- “the Minister” means the Minister with responsibility for financial services;
- “national bureau” means a national insurers’ bureau as defined in Article 1(3) of Directive 72/166/EEC;
- “national guarantee fund” means the body referred to in Article 1(4) of Directive 84/5/EEC;
- “the Omnibus 2 Directive” means Directive 2014/51/EU and “Omni” followed by a number in parenthesis means that numbered paragraph of Article 2 of the Omnibus 2 Directive;
- “operational risk” means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;
- “outsourcing” means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;
- “probability distribution forecast” means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;
- “prescribed” means prescribed by regulations made by the Minister;
- “the professional secrecy provisions” means section 3 of the Financial Services (Information Gathering and Co-operation) Act 2013, taken together with sections 32 to 35 of this Act;
- “qualifying central counterparty” means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised in accordance with Article 25 of that Regulation;
- “qualifying holding” means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or voting rights, or which makes it possible to exercise a significant influence over the management of that undertaking;
- “regulated market” means either of the following—

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- (a) in the case of a market situated in a Member State, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC; or
- (b) in the case of a market situated in a third country, a financial market which fulfils the following conditions–
 - (i) it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and
 - (ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

“reinsurance” means one of the following–

- (a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking;
- (b) in the case of Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or
- (c) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council;

“reinsurance undertaking” means an undertaking which has received authorisation in accordance with Article 14 of the Directive to pursue reinsurance activities;

“risk measure” means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

“risk-mitigation techniques” means all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

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“the Solvency I Directive” means each of–

- (a) the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
- (b) the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services;
- (c) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive);
- (d) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;
- (e) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance;

“solvency capital requirement” shall be calculated in accordance with Part III of Schedule 1 (giving effect to provisions of Section 4 of Chapter VI of Title I of the Directive);

“supervisory authority” means the national authority which is empowered by law or regulation to supervise insurance or reinsurance undertakings and, in the case of Gibraltar, means the Commission;

“third-country insurance undertaking” means an undertaking which would require authorisation as an insurance undertaking in accordance with Article 14 of the Directive if its head office were situated in the EEA;

“third-country reinsurance undertaking” means an undertaking which would require authorisation as a reinsurance undertaking in accordance with Article 14 of the Directive if its head office were situated in the EEA;

“underwriting risk” means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

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“undertaking”, when used without any other qualification, means an insurer or re-insurer.

(2) Subject to subsection (1), any expression used in this Act which is used in the Directive has the meaning given by the Directive.

(3) Subject to subsections (1) and (2), expressions to which a meaning is assigned by the Insurance Companies Act have the same meaning in this Act except that "insurance" does not include reinsurance.

(4) Any reference in this Act to a numbered Article is to the Article bearing that number in the Directive.

(5) *Omitted.*

(6) In the event of any conflict between a provision of this Act and a provision of the Insurance Companies Act or of any Act relating to the Commission, the provision of this Act shall prevail.

(7) For the purposes of a financial value expressed in this Act, the exchange value to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the euro are available in all EU currencies.

Meaning of Gibraltar solvency I and II firm.

3.(1) A Gibraltar solvency II firm is an undertaking which is–

- (a) a licensed insurer and falls within subsection (2), (3) or (4); or
- (b) a licensed reinsurer,

and which (in either case) has its head office in Gibraltar.

(2) This subsection applies where the undertaking is a Gibraltar Solvency I firm and has not been verified to be excluded pursuant to section 9.

(3) This subsection applies where the undertaking is not a Gibraltar Solvency I firm and–

- (a) it is excluded from the Solvency II Directive pursuant to subsections (1) to (3) of section 9 but it has opted to be authorised pursuant to subsection (5) of that section; or
- (b) it is not excluded pursuant to subsections (1) to (3) of section 9.

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(4) This subsection applies where the undertaking is neither a Gibraltar Solvency I firm nor a non-Gibraltar Solvency I firm and—

- (a) it is excluded pursuant to subsections (1) to (3) of section 9 but it has opted to be authorised pursuant to subsection (5) of that section; or
- (b) it is not excluded pursuant to subsections (1) to (3) of section 9.

(5) In this section “Gibraltar Solvency I firm” means a firm that immediately before the commencement date was an insurance or reinsurance undertaking that fell within the scope of the Solvency I Directive.

(6) In this section “non-Gibraltar Solvency I firm” means a firm that immediately before the commencement date was not an insurance or reinsurance undertaking that fell within the scope of the Solvency I Directive.

(7) In subsections (5) and (6), “the commencement date” means the date on which subsection (1) comes into force.

References to repealed Directives.

3A. A reference in any law to a provision of a Directive which is repealed by Article 310 of the Solvency II Directive, where the circumstances require, shall be treated as a reference to the corresponding provision of the Solvency II Directive.

PART I

GENERAL RULES ON THE TAKING-UP AND PURSUIT OF DIRECT INSURANCE AND REINSURANCE ACTIVITIES

Scope of Act.

4.(1) This Act shall apply—

- (a) to direct life and non-life insurance undertakings which are established in Gibraltar or which wish to become established there; and
- (b) in regard to non-life insurance, to activities of the classes set out in Part I of Schedule 2 (reproducing Part A of Annex I to the Directive).

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(2) With the exception of Part IV, this Act shall apply to reinsurance undertakings which conduct only reinsurance activities and which are established in Gibraltar or which wish to become established there.

(3) For the purposes of subsection (1)(a), non-life insurance shall include the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence; and in particular—

- (a) it shall comprise an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract;
- (b) the aid may comprise the provision of benefits in cash or in kind; and
- (c) the provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

(4) The assistance activity referred to in subsection (3) shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

(5) In respect of life insurance this Act shall apply—

- (a) to the following life insurance activities where they are on a contractual basis—
 - (i) life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
 - (ii) annuities;
 - (iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;
 - (iv) types of permanent health insurance not subject to cancellation currently existing in Gibraltar;

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- (b) to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance—
 - (i) operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);
 - (ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
 - (iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
 - (iv) the operations referred to in paragraph (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;
- (c) to operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the law of Gibraltar.

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Exclusions from the scope of Act

Non-life insurance.

5.(1) In respect of non-life insurance, this Act does not apply to the following operations–

- (a) capital redemption operations;
- (b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;
- (c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; or
- (d) export credit insurance operations for the account of or guaranteed by the Government or where the Government is the insurer.

(2) Subject to subsection (3), this Act does not apply to an assistance activity which fulfils all the following conditions–

- (a) it is not carried out by an undertaking which is subject to the Solvency II Directive;
- (b) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover;
- (c) the liability for the assistance is limited to the following operations–
 - (i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;
 - (ii) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the

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nearest location from where they may continue their journey by other means; and

- (iii) where provided for by the home Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State.

(3) In the cases referred to in sub-paragraphs (i) and (ii) of subsection (2)(c), the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement.

(4) Without prejudice to section 4(4)(c), this Act shall not apply to insurance forming part of a statutory system of social security.

Mutual undertakings.

6.(1) This Act shall not apply to mutual undertakings which pursue non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking.

(2) In the case specified in subsection (1), the accepting undertaking shall be subject to the rules of this Act and the Directive.

Life insurance.

7. In respect of life insurance, this Act shall not apply to the following operations and organisations—

- (a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
- (b) operations carried out by organisations, other than undertakings referred to in section 4, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of

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trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions; and

- (c) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exclusions relating to re-insurance.

8.(1) In regard to reinsurance, this Act shall not apply to the activity of reinsurance conducted or fully guaranteed by the government of a Member State when that government is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

(2) Reinsurance undertakings which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity are not subject to this Act.

(3) The Government shall draw up a list of the reinsurance undertakings (if any) falling within subsection (2) and that list shall be communicated to all the other Member States.

Exclusion from scope due to size.

9.(1) Without prejudice to sections 5 to 7 but subject to subsections (5) and (6), this Act shall not apply to an insurance undertaking which fulfils all the following conditions–

- (a) the undertaking's annual gross written premium income does not exceed EUR 5 million;
- (b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in paragraph 5 of Schedule 1, does not exceed EUR 25 million;
- (c) where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 25 million;

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- (d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks, within the meaning of section 5 of the Insurance Companies Act;
 - (e) the business of the undertaking does not include reinsurance operations exceeding EUR 0,5 million of its gross written premium income or EUR 2,5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10 % of its gross written premium income or more than 10 % of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.
- (2) If any of the amounts set out in subsection (1) is exceeded for three consecutive years, this Act shall apply as from the fourth year.
- (3) Notwithstanding the provisions of subsection (1), this Act shall apply to all undertakings seeking authorisation to pursue insurance and reinsurance activities of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in subsection (1) within the following five years.
- (4) This Act shall cease to apply to those insurance undertakings for which the Commission has verified that all of the following conditions are met—
- (a) none of the thresholds set out in subsection (1) has been exceeded for the three previous consecutive years; and
 - (b) none of the thresholds set out in subsection (1) is expected to be exceeded during the following five years.
- (5) Nothing in this section shall prevent—
- (a) an undertaking from applying for authorisation or continuing to be authorised under this Act; nor
 - (b) the Commission from exercising the power conferred by section 32(5) of the Insurance Companies Act as amended by Schedule 3.
- (6) For as long as an insurance undertaking pursues activities in accordance with sections 52 to 54, subsection (1) shall not apply.

Functions of the Commission etc

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Functions of the Commission.

10.(1) As respects Gibraltar, the Commission shall be the supervisory authority for the purpose of the Solvency II Directive and shall have, as its main objective of supervision, the protection of policy holders and beneficiaries; and the Minister shall ensure that the Commission has the powers necessary to carry out its functions under this Act.

(2) The Commission shall cooperate—

- (a) with other supervisory authorities and with the European Commission for the purpose of facilitating the supervision of insurance and reinsurance and for any other purpose connected with the application of the Solvency II Directive; and
- (b) with EIOPA for the purposes of the Solvency II Directive in accordance with Regulation (EU) No 1094/2010;

and, for the purposes of paragraph (b) the Commission shall provide EIOPA, without delay, with all the information necessary to carry out its duties in accordance with that Regulation.

(3) Supervision shall be based on a prospective and risk-based approach and shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

(4) Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.

(5) The Commission's powers under the Insurance Companies Act shall extend to—

- (a) enforcing any provision of this Act, and
- (b) supervision of all the matters specified in Article 30(2);

and this subsection is without prejudice to the generality of those powers and without prejudice to any specific provision of this Act.

(6) The Commission shall apply the requirements laid down in the Directive in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.

(7) The Commission—

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- (a) shall conduct its tasks in a transparent and accountable manner with due respect for the protection of confidential information; and
- (b) shall ensure that the information specified in paragraphs (a) to (e) of Article 31.2 is disclosed in compliance with that Article.

(8) Where an undertaking has applied for verification that the Directive should cease to apply pursuant to section 9(4) the Commission shall verify whether the undertaking satisfies the conditions specified in that provision.

Financial stability and pro-cyclicality.

11. The Commission shall in the exercise of its duties under this Act and the Directive–

- (a) consider the potential impact of its decisions on the stability of the financial systems in other EEA States, such consideration, in particular in emergency situations, taking into account the information available at the relevant time;
- (b) in times of exceptional movements in the financial markets, take into account the potential pro-cyclical effects of its actions;
- (c) take into account, in an appropriate way, a European Union dimension.

Additional conditions for grant of licence.

12.(1) Without prejudice to the requirements of the Insurance Companies Act, the Commission shall not issue a licence to any applicant unless–

- (a) it submits a scheme of operations in accordance with section 13;
- (b) it holds the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in paragraph 56 (1)(d) of Schedule 1; and
- (c) it shows evidence that it will be, and, looking ahead, will continue to be, in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in paragraph 29 of Schedule 1;

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- (d) it shows evidence that it will be, and, looking ahead, will continue to be, in a position to hold eligible own funds to cover the Minimum Capital Requirement, as provided for in paragraph 55 of Schedule 1;
- (e) it shows evidence that it will be in a position to comply with the system of governance referred to in sections 17 to 25.

(2) An insurance undertaking seeking a licence to extend its business to other classes or to extend a licence covering only some of the risks pertaining to one class shall be required—

- (a) to submit a scheme of operations in accordance with section 13; and
- (b) to show proof that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in paragraphs 29(1) and 55 of Schedule 1.

(3) Without prejudice to subsection (2), an insurance undertaking pursuing life activities, and seeking a licence to extend its business to the risks listed in classes 1 or 2 in Part I of Schedule 2 as referred to in section 40, shall demonstrate that it—

- (a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in paragraph 56(1)(d) of Schedule 1;
- (b) undertakes to cover the minimum financial obligations referred to in section 41(3) on an on-going basis.
- (c) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in paragraph 56(1)(d) of Schedule 1;
- (d) undertakes to cover the minimum financial obligations referred to in section 41(3) on an on-going basis.

Scheme of operations.

13.(1) The scheme of operations referred to in section 12 shall include particulars or evidence of the following—

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- (a) the nature of the risks or commitments which the insurance or reinsurance undertaking concerned proposes to cover;
 - (b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
 - (c) the guiding principles as to reinsurance and to retrocession;
 - (d) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;
 - (e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in Part I of Schedule 2, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.
- (2) In addition to the requirements set out in subsection (1), for the first three financial years the scheme shall include the following—
- (a) a forecast balance sheet;
 - (b) estimates of the future Solvency Capital Requirement, as provided for in Part III of Schedule 1, on the basis of the forecast balance sheet referred to in paragraph (a), as well as the calculation method used to derive those estimates;
 - (c) estimates of the future Minimum Capital Requirement, as provided for in paragraphs 55 and 56 of Schedule 1, on the basis of the forecast balance sheet referred to in paragraph (a), as well as the calculation method used to derive those estimates;
 - (d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
 - (e) in regard to non-life insurance and reinsurance, also the following—
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of premiums or contributions and claims;

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- (f) in regard to life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

The scope of the Commission's supervision for passporting firms.

14. Where the Commission has reason to consider that the activities of an undertaking might affect its financial soundness and—

- (a) in the case of an insurer, Gibraltar is not the home Member State but is either—
 - (i) the Member State in which the risk is situated; or
 - (ii) the Member State of the commitment; or
- (b) in the case of a reinsurer, Gibraltar is the host member state,

it shall inform the supervisory authority of the insurer's or reinsurer's home Member State and it shall be the responsibility of that Member State to determine whether the undertaking is complying with the prudential principles laid down in the Directive.

Requirement of capital add-on.

15.(1) Following the supervisory review process referred to in Article 36, the Commission may in exceptional circumstances set a capital add-on for an undertaking by a decision stating the reasons; but that possibility shall exist only in the following cases—

- (a) the Commission concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with paragraphs 30 to 39 of Schedule 1; and
 - (i) the requirement to use an internal model under paragraph 47 of Schedule 1 is inappropriate or has been ineffective; or
 - (ii) while a partial or full internal model is being developed in accordance with that paragraph;
- (b) the Commission concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated

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using an internal model or partial internal model in accordance with paragraphs 40 to 54 of Schedule 1, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

- (c) the Commission concludes that the system of governance of an undertaking deviates significantly from the standards laid down in sections 17 to 24, that those deviations prevent it from being able properly to identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;
- (d) the insurance or reinsurance undertaking applies the matching adjustment referred to in paragraph 6 of Schedule 1, the volatility adjustment referred to in paragraph 8 of that Schedule or the transitional measures referred to in paragraphs 3 and 4 of Schedule 5 and the Commission concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(2) In the circumstances set out in paragraphs (a) and (b) of subsection (1) the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with paragraph 30(3) of Schedule 1.

(3) In the circumstances set out in subsection 1(c) the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the Commission to set the add-on.

(4) In the circumstances set out in subsection (1)(d), the capital add-on shall be proportionate to the material risks arising from the deviation referred to in that paragraph.

(5) In the cases set out in paragraphs (b) and (c) of subsection (1) the Commission shall ensure that the undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

(6) The Solvency Capital Requirement, including the capital add-on imposed, shall replace the inadequate Solvency Capital Requirement.

Review or cancellation of capital add-on.

16.(1) Where the Commission has imposed a capital add-on pursuant to section 15, it shall review the capital add-on of the undertaking at least once a year.

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(2) The capital add-on shall be cancelled when the undertaking has remedied the deficiencies which led to its imposition.

Corporate Governance

Compliance obligation.

17. The function of securing compliance specified in Article 40 shall—

- (a) in the case of an insurer or reinsurer which is a company, be a function of the Directors and the Chief Executive; and
- (b) in the case of any other insurer or reinsurer be a function of its administrative, management or supervisory body.

Systems of governance.

18.(1) Every insurance and reinsurance undertaking shall have in place an effective system of governance which provides for sound and prudent management of the business.

(2) The system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information; in particular it shall include compliance with the requirements laid down in sections 19 to 25.

(3) The system of governance shall be subject to regular internal review.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

(5) Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing and shall ensure—

- (a) that those policies are implemented and are reviewed at least annually;
- (b) that the policies are subject to prior approval by the administrative, management or supervisory body; and
- (c) that the policies are adapted in the light of any significant change in the system or area concerned.

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(6) Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans; and to that end, each undertaking shall employ appropriate and proportionate systems, resources and procedures.

(7) The Commission shall take all necessary steps –

- (a) to verify the system of governance of insurance and reinsurance undertakings;
- (b) to evaluate emerging risks identified by those undertakings which may affect their financial soundness; and
- (c) to require that the systems of governance be improved and strengthened to ensure compliance with the requirements set out in sections 19 to 25.

Fit and proper persons and proof of good repute.

19.(1) This section supplements the requirements of Schedule 15 to the Insurance Companies Act relating to the criteria of sound and prudent management and in the event of any conflict between the provisions of that Schedule and those of this section, the provisions of this section shall prevail.

(2) Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions at all times fulfil the following requirements–

- (a) they are fit to carry out their functions, that is to say, their professional qualifications, knowledge and experience are adequate to enable sound and prudent management; and
- (b) they are proper to carry out those functions, that is to say they are of good repute and integrity.

(3) Insurance and reinsurance undertakings shall–

- (a) notify the Commission of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper; and
- (b) shall notify the Commission if any of the persons referred to in paragraph (a) or subsection (2) have been replaced because

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they no longer fulfil the requirements referred to in paragraphs (a) and (b) of that subsection.

(4) If, in the case of any such personnel as are referred to in subsection (2), proof of good repute, proof of no previous bankruptcy, or both, is at any time required under any provision of the law or practice of Gibraltar, account shall be taken of the requirements of Article 43.

Risk Management.

20.(1) Undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

(2) That risk-management system—

- (a) shall be effective and well integrated into the organisational structure and in the decision-making processes of the undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions; and
- (b) shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in paragraph 30(4) of Schedule 1 as well as the risks which are not or not fully included in that calculation.

(3) The risk-management system shall cover at least the following areas—

- (a) underwriting and reserving;
- (b) asset–liability management;
- (c) investment, in particular derivatives and similar commitments;
- (d) liquidity and concentration risk management;
- (e) operational risk management;
- (f) reinsurance and other risk-mitigation techniques.

(4) The written policy on risk management referred to in section 18(5) shall comprise policies relating to paragraphs (a) to (f) of subsection (3).

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(5) Where undertakings apply the matching adjustment referred to in paragraph 6 of Schedule 1 or the volatility adjustment referred to in paragraph 8 of that Schedule they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(6) As regards asset-liability management, undertakings shall regularly assess—

- (a) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in paragraph 5 of Schedule 1;
- (b) where the matching adjustment referred to in paragraph 6 of that Schedule is applied—
 - (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in paragraph 7(1)(b) of that Schedule and the possible effect of a forced sale of assets on their eligible own funds;
 - (ii) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets; (iii) the impact of a reduction of the matching adjustment to zero;
 - (iii) the impact of a reduction of the matching adjustment to zero;
- (b) where the volatility adjustment referred to in paragraph 8 of Schedule 1 is applied—
 - (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds; and
 - (ii) the impact of a reduction of the volatility adjustment to zero.

(7) Undertakings shall submit the assessments referred to in paragraphs (a), (b) and (c) of subsection (6) annually to the Commission as part of the information reported under section 109B of the Insurance Companies Act; and where the reduction of the matching adjustment or the volatility

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adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

(8) Where the volatility adjustment referred to in paragraph 8 of Schedule 1 is applied, the written policy on risk management referred to in section 18(5) shall comprise a policy on the criteria for the application of the volatility adjustment.

(9) As regards investment risk, insurance and reinsurance undertakings shall demonstrate that they comply with Part V of Schedule 1.

(10) Insurance and reinsurance undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

(11) In order to avoid overreliance on external credit assessment institutions when they use external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, insurance and reinsurance undertakings shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

(12) For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with paragraphs 40 to 42 of Schedule 1 the risk-management function shall cover the following additional tasks—

- (a) to design and implement the internal model;
- (b) to test and validate the internal model;
- (c) to document the internal model and any subsequent changes made to it;
- (d) to analyse the performance of the internal model and to produce summary reports of it;
- (e) to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

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Own risk and solvency assessment.

21.(1) As part of its risk-management system every insurance undertaking and reinsurance undertaking shall conduct its own risk and solvency assessment.

(2) That assessment shall include at least the following—

- (a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;
- (b) the compliance, on a continuous basis, with the capital requirements, as set out in Parts II and III of Schedule 1 and with the requirements regarding technical provisions specified in Part I of that Schedule;
- (c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as set out in paragraph 30(3) of Schedule 1, calculated with the standard formula in accordance with paragraphs 32 to 39 of that Schedule or with its partial or full internal model in accordance with paragraphs 40 to 54 of that Schedule.

(3) For the purposes of subsection (2)(a), the undertaking concerned—

- (a) shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed; and
- (b) shall demonstrate the methods used in that assessment.

(4) Where the undertaking applies—

- (a) the matching adjustment referred to in paragraph 6 of Schedule 1, or
- (b) the volatility adjustment referred to in paragraph 8 of that Schedule, or
- (c) the transitional measures referred to in paragraphs 3 and 4 of Schedule 5,

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they shall perform the assessment of compliance with the capital requirements referred to in subsection (2)(b) with and without taking into account those adjustments and transitional measures.

(5) In the case referred to in subsection (2)(c) when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

(6) The own-risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an on-going basis in the strategic decisions of the undertaking.

(7) Insurance and reinsurance undertakings shall perform the assessment referred to in subsection (2) regularly and without any delay following any significant change in their risk profile.

(8) The insurance and reinsurance undertakings shall inform the Commission of the results of each own-risk and solvency assessment as part of the information reported under Part X of the Insurance Companies Act.

(9) The own-risk and solvency assessment shall not serve to calculate a capital requirement: and the Solvency Capital Requirement shall be adjusted only in accordance with sections 15 and sections 120 to 122 and 126.

Internal control.

22.(1) Insurance and reinsurance undertakings must have in place an effective internal control system which shall include at least—

- (a) administrative and accounting procedures;
- (b) an internal control framework;
- (c) appropriate reporting arrangements at all levels of the undertaking; and
- (d) a compliance function.

(2) The compliance function shall include—

- (a) advising the administrative, management or supervisory body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Act and the Directive; and
- (b) an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking

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concerned and the identification and assessment of compliance risk.

Internal audit.

23.(1) Insurance and reinsurance undertakings must provide for an effective internal audit function which shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The internal audit function must be objective and independent from the operational functions.

(3) Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

Actuarial function.

24.(1) Insurance and reinsurance undertakings must provide for an effective actuarial function—

- (a) to co-ordinate the calculation of technical provisions;
- (b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;
- (c) to assess the sufficiency and quality of the data used in the calculation of technical provisions;
- (d) to compare best estimates against experience;
- (e) to inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;
- (f) to oversee the calculation of technical provisions in the cases set out in paragraph 16 of Schedule 1;
- (g) to express an opinion on the overall underwriting policy;
- (h) to express an opinion on the adequacy of reinsurance arrangements; and

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- (i) to contribute to the effective implementation of the risk-management system referred to in section 20, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Parts III and IV of Schedule 1 and to the assessment referred to in section 21.

(2) The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

(3) Subsection (2) is without prejudice to section 76 of the Insurance Companies Act (which applies to the appointment of actuaries in the case of an undertaking carrying out long term business).

Outsourcing.

25.(1) Insurance and reinsurance undertakings shall remain fully responsible for discharging all of their obligations under this Act and the Directive when they outsource functions or any insurance or reinsurance activities.

(2) Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following–

- (a) materially impairing the quality of the system of governance of the undertaking concerned;
- (b) unduly increasing the operational risk;
- (c) impairing the ability of the Commission to monitor the compliance of the undertaking with its obligations; or
- (d) undermining continuous and satisfactory service to policy holders.

(3) Insurance and reinsurance undertakings shall, in a timely manner, notify the Commission prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

Supervision of outsourced functions and activities.

26.(1) Without prejudice to section 25, insurance and reinsurance undertakings which outsource a function or an insurance or reinsurance

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activity shall take the necessary steps to ensure that the following conditions are satisfied–

- (a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced function or activity;
- (b) the insurance and reinsurance undertakings, their auditors and the supervisory authorities must have effective access to data related to the outsourced functions or activities;
- (c) the supervisory authorities must have effective access to the business premises of the service provider and must be able to exercise those rights of access.

(2) Where the service provider is located in Gibraltar, the Commission shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site inspections at the premises of the service provider; and where the Commission is the supervisory authority of an insurance or reinsurance undertaking not located in Gibraltar, the Commission shall inform the appropriate authority prior to conducting the on-site inspection.

(3) In the case of a non supervised entity the appropriate authority shall be the supervisory authority.

(4) Where the Commission is the supervisory authority of the insurance or reinsurance undertaking, it may delegate any such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

(5) In any case where–

- (a) the Commission has informed the appropriate authority of the Member State of the service provider that it intends to carry out an on-site inspection in accordance with this section, or
- (b) the Commission, as the supervisory authority of an insurance undertaking not located in Gibraltar, carries out an on-site inspection in accordance with subsection (1),

but the Commission is unable in practice to exercise its right to carry out that on-site inspection, the Commission may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

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Public disclosure

Report on solvency and financial conditions; contents.

27.(1) Taking into account the information referred to in subsections (2) and (3) of section 109B of the Insurance Companies Act, the Commission shall require insurance and reinsurance undertakings to disclose publicly, on an annual basis, a report on their solvency and financial condition and that report shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements—

- (a) a description of the business and the performance of the undertaking;
- (b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;
- (c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
- (d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
- (e) a description of the capital management, including at least the following—
 - (i) the structure and amount of own funds, and their quality;
 - (ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;
 - (iii) the option (if applicable) set out in Article 304 used for the calculation of the Solvency Capital Requirement;
 - (iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
 - (v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the

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reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(2) Where the matching adjustment referred to in paragraph 6 of Schedule 1 is applied, the description referred to in subsection (1)(d)–

- (a) shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position; and
- (b) shall also include a statement on whether the volatility adjustment referred to in paragraph 8 of Schedule 1 is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

(3) The description referred to in subsection (1)(e)(i) must include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

(4) The disclosure of the Solvency Capital Requirement referred to in subsection (1)(e)(ii) must show separately the amount calculated in accordance with Part III of Schedule 1 and any capital add-on imposed in accordance with section 15 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with paragraph 39 of Schedule 1, together with concise information on its justification by the supervisory authority concerned.

(5) Without prejudice to any disclosure that is mandatory under any other legal or regulatory requirements, the Commission may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with paragraph 39(3) of Schedule 1 need not be separately disclosed during a transitional period ending no later than 31 December 2020.

(6) The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to assessment by the Commission.

Information for and reports by EIOPA.

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28. The Commission shall provide the following information to EIOPA on an annual basis–

- (a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the Commission during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows–
 - (i) for all undertakings;
 - (ii) for life insurers;
 - (iii) for non-life insurers;
 - (iv) for insurers pursuing both life and non-life activities;
 - (v) for reinsurers;
- (b) for each of the disclosures set out in paragraph (a), the proportion of capital add-ons imposed under paragraphs (a), (b) and (c) of section 15(1) respectively.
- (c) the number of undertakings benefiting from the limitation from regular supervisory reporting and the number of undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in section 109B of the Insurance Companies Act, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member State;
- (d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 254(2) of the Solvency II Directive together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

Report on solvency and financial condition: applicable principles.

29.(1) Subject to subsection (4), the Commission shall permit insurance and reinsurance undertakings not to disclose information where–

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- (a) by disclosing the information, the competitors of the undertaking would gain significant undue advantage;
- (b) there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

(2) In any case where non-disclosure of information is permitted by the Commission, an undertaking shall make a statement to this effect in its report on solvency and financial condition and shall state the reasons.

(3) The Commission shall permit insurance and reinsurance undertakings, to make use of – or refer to – public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under section 27 in both their nature and scope.

(4) In subsections (1) and (2) “information” does not include any of the information referred to in section 27(1)(e).

Report on solvency and financial condition: updates and additional voluntary information.

30.(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with sections 27 and 29, insurance and reinsurance undertakings shall disclose appropriate information on the nature and effects of that major development.

(2) For the purposes of subsection (1), at least the following shall be regarded as major developments–

- (a) non-compliance with the Minimum Capital Requirement is observed and the Commission either consider that the undertaking will not be able to submit a realistic short-term finance scheme or do not obtain such a scheme within one month of the date when non-compliance was observed;
- (b) significant non-compliance with the Solvency Capital Requirement is observed and the Commission does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

(3) In regard to subsection (2)(a), the Commission shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the

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Minimum Capital Requirement has not been resolved three months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(4) In regard to subsection (2)(b), the Commission shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken and where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures planned.

(5) Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with sections 27 and 29 and subsection (1).

Report on solvency and financial condition: policy and approval.

31.(1) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements laid down in sections 27, 29 and section 30, as well as having a written policy ensuring the continuing appropriateness of any information disclosed in accordance with those sections.

(2) The solvency and financial condition report shall be subject to approval by the administrative, management or supervisory body of the insurance or reinsurance undertaking and be published only after that approval.

Professional secrecy, exchange of information etc.

Cooperation agreements with third countries.

32.(1) Where the Government concludes cooperation agreements providing for the exchange of information between the Commission and the supervisory authorities of third countries or with authorities or bodies of third countries as defined in section 34(1) and (3), the information may be disclosed only if–

- (a) the information to be exchanged is subject to guarantees of secrecy at least equivalent to the professional secrecy provisions; and

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- (b) the exchange of information is intended for the performance of the supervisory task of those authorities or bodies.

(2) Where the information to be disclosed by the Commission to a third country originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority of that Member State and, where appropriate, solely for the purposes for which that authority gave its agreement.

Use of confidential information.

33.(1) Where the Commission receives confidential information relating to insurance and reinsurance undertakings, then, without prejudice to section 3 of the Financial Services (Information Gathering and Co-operation) Act 2013, it may use the information only in the course of its duties and for the following purposes—

- (a) to check that the conditions governing the taking-up of the business of insurance or reinsurance are met and to facilitate the monitoring of the conduct of that business, especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, and the system of governance;
- (b) to impose sanctions;
- (c) in administrative appeals against decisions of the Commission;
- (d) in court proceedings (whether under this Act or otherwise) relating to insurance and reinsurance undertakings.

(2) Notwithstanding the provisions of section 3 of the Financial Services (Information Gathering and Co-operation) Act 2013, where an insurance or reinsurance undertaking has been declared bankrupt or has been compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

(3) This section and section 3 of the Financial Services (Information Gathering and Co-operation) Act 2013 are without prejudice to the powers of investigation conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union.

Exchange of information with other authorities.

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34¹.(1) Nothing in the professional secrecy provisions shall preclude–

- (a) the exchange of information, in the discharge of their supervisory functions, between the Commission and any of the following which are situated in Gibraltar or another member State–
 - (i) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;
 - (ii) bodies involved in the liquidation and bankruptcy of insurance undertakings or reinsurance undertakings and in other similar procedures;
 - (iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;
- (b) the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary for the performance of their duties.

(2) The information received by the authorities, bodies and persons referred to above shall be subject to the professional secrecy provisions.

(3) Nothing in the professional secrecy provisions shall preclude the Government from authorising exchanges of information between the Commission and any of the following–

- (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and other similar procedures;
- (b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;
- (c) independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those

¹ *The coming into force of s.34 does not include so much of that section as transposes Article 65 of Directive 2009/138/EC (which relates to the exchange of information between supervisory authorities of different Member States).*

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undertakings and the bodies responsible for overseeing those actuaries.

(4) Where the Government authorises an exchange of information in accordance with subsection (3), it shall ensure that at least the following conditions are met—

- (a) the information must be for the purpose of carrying out the overseeing or legal supervision referred to in subsection (3)(a);
- (b) the information received must be subject to the professional secrecy provisions; and
- (c) where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(5) Nothing in the professional secrecy provisions shall preclude the Government from authorising the exchange of information between the Commission and the authorities or bodies responsible for the detection and investigation of breaches of company law if this is done with the aim of strengthening the stability, and integrity, of the financial system.

(6) Where the Government authorises an exchange of information in accordance with subsection (5), it shall ensure that at least the following conditions are met—

- (a) the information must be intended for the purpose of detection and investigation as referred to in that subsection;
- (b) the information received must be subject to the professional secrecy provisions; and
- (c) where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement;

and, in order to implement paragraph (c) the authorities or bodies referred to in subsection (5) shall communicate to the supervisory authority from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.

(7) To the extent that, in Gibraltar, the authorities or bodies referred to in subsection (5) perform their task of detection or investigation with the aid of

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persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in that subsection may be extended to those persons under the conditions set out in subsection (6).

(8) The Government shall ensure that the European Commission and other member States are informed of the names of the authorities, persons and bodies which may receive information pursuant to paragraphs (a) and (b) of subsection (3) or, as the case may be, subsection (5).

Disclosure of information to government administrations responsible for financial legislation.

35.(1) Nothing in the professional secrecy provisions shall preclude the Government from authorising, under provisions laid down by law, the disclosure of certain information to other departments of the Government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments but any such disclosure shall be made only where necessary for reasons of prudential control.

(2) Notwithstanding subsection (1)–

- (a) information received under section 34, and
- (b) information obtained by means of on-site verification referred to in section 109A of the Insurance Companies Act,

may be disclosed only with the express consent of the supervisory authority from which the information originated or of the supervisory authority of the Member State in which the on-site verification was carried out.

Transmission of information to central banks and monetary authorities, payment overseers and the European Systemic Risk Board.

36.(1) Without prejudice to the provisions of sections 32 to 35, the Commission may transmit information intended for the performance of their tasks to the following–

- (a) central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and

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securities settlement systems and safeguarding the stability of the financial system;

- (b) where appropriate, other national public authorities responsible for overseeing payment systems; and
- (c) the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council, where that information is relevant to carrying out its tasks.

(2) In an emergency situation, including an emergency situation as referred to in Article 18 of Regulation (EU) No 1094/2010, the Commission may communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where the information is relevant to its tasks.

(3) The authorities and bodies referred to above may also communicate to the Commission such information as it may need for the purposes of section 33; and information received in this context shall be subject to the professional secrecy provisions.

Supervisory convergence.

37.(1) In the exercise of its supervisory duties, the Commission, together with other supervisory authorities, shall have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the Solvency II Directive.

(2) For that purpose,—

- (a) the Commission shall participate in the activities of EIOPA;
- (b) the Commission shall make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and state reasons if it does not do so; and
- (c) no mandate conferred on the Commission under the law of Gibraltar shall inhibit the performance of the duties of the Commission under this Act as members of EIOPA or under the Solvency II Directive.

Duties of auditors

Auditors.

38.(1) Without prejudice to the duties imposed on auditors under the Companies Act or any other enactment, auditors who perform in an insurance or reinsurance undertaking the statutory audit of the undertaking or any other statutory task shall have a duty to report promptly to the Commission any fact or decision concerning that undertaking of which they have become aware while carrying out that task and which is liable to bring about any of the following–

- (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing licensing or authorisation or which specifically govern pursuit of the activities of undertakings;
- (b) the impairment of the continuous functioning of the undertaking;
- (c) a refusal to certify the accounts or to the expression of reservations;
- (d) non-compliance with the Solvency Capital Requirement;
- (e) non-compliance with the Minimum Capital Requirement.

(2) Auditors who perform in relation to an insurance or reinsurance undertaking (“the primary undertaking”) any such task as is referred to in subsection (1) shall also report any facts or decisions of which they have become aware in the course of carrying out such a task in relation to an undertaking which has close links resulting from a control relationship with the primary undertaking.

(3) The disclosure in good faith to the Commission or any other supervisory authority by an auditor of any such fact or decision as is referred to in subsection (1) or (2)–

- (a) shall not constitute a breach of any restriction on disclosure of information imposed by contract or by or under any enactment or any administrative provision; and
- (b) shall not involve the auditor in liability of any kind.

Pursuit of life and non-life insurance activity

Pursuit of life and non-life insurance activity.

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39.(1) Subject to subsection (2), insurance undertakings shall not be authorised to pursue life and non-life insurance activities simultaneously.

(2) With the consent of the Commission—

- (a) undertakings licensed to pursue life insurance activity may obtain a licence for non-life insurance activities for the risks listed in classes 1 and 2 in Part I of Schedule 2; and
- (b) undertakings licensed solely for the risks listed in classes 1 and 2 in Part I of Schedule 2 may obtain a licence to pursue life insurance activity;

but where an undertaking is licensed to pursue an additional activity as mentioned in paragraph (a) or paragraph (b), each activity shall be separately managed in accordance with section 40.

(3) The undertakings referred to in subsection (2) must comply with the accounting rules governing life insurance undertakings for all of their activities; and, pending coordination in this respect, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in Part I of Schedule 2 which are pursued by those undertakings shall be governed by the rules applicable to life insurance activities.

(4) Where a non-life insurance undertaking has financial, commercial or administrative links with a life insurance undertaking then, where Gibraltar is the home Member State, the Commission shall ensure that the accounts of the undertakings concerned are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

(5) Subject to subsection (6), undertakings which on 15th March 1979 pursued simultaneously both life and non-life insurance activities covered by the Directive may continue to pursue those activities simultaneously, provided that each activity is separately managed in accordance with section 40.

(6) Where subsection (5) applies, the Minister may by order direct the insurance undertakings concerned to cease, within a period to be determined by the order, the simultaneous pursuit of life and non-life insurance activities in which they were engaged on 15th March 1979.

Separation of life and non-life insurance management.

40.(1) The separate management referred to in section 39 shall be organised in such a way that the life insurance activity is distinct from non-life

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insurance activity and that the respective interests of life and non-life policy holders are not prejudiced and, in particular, that profits from life insurance benefit life policy holders as if the life insurance undertaking only pursued the activity of life insurance.

(2) Without prejudice to paragraphs 29 and 55 of Schedule 1, the insurance undertakings referred to in subsection (2) and (5) of section 39 shall calculate—

- (a) a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in subsection (6); and
- (b) a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in subsection (6).

(3) As a minimum, the insurance undertakings referred to in subsection (2) and (5) of section 39 shall cover the following by an equivalent amount of eligible basic own-fund items—

- (a) the notional life Minimum Capital Requirement, in respect of the life activity;
- (b) the notional non-life Minimum Capital Requirement, in respect of the non-life activity.

and neither the minimum financial obligation in respect of the life insurance activity nor the minimum obligation in respect of the non-life activity shall be borne by the other activity.

(4) As long as the minimum financial obligations referred to in subsection (3) are fulfilled and provided the Commission is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in paragraph 29 of Schedule 1, the explicit eligible own-fund items which are still available for one or the other.

(5) The Commission shall analyse the results in both life and non-life insurance activities so as to ensure that the requirements of subsections (1) to (4) are fulfilled.

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(6) Accounts shall be drawn up so as to show the sources of the results for life and non-life insurance separately: in particular,–

- (a) all income, in particular premiums, payments by reinsurers and investment income, and
- (b) expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business,

shall be broken down according to origin; and items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the Commission.

(7) Insurance undertakings shall, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in subsection (2) are clearly identified, in accordance with paragraph 28(4) of Schedule 1.

(8) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in subsection (3)(a), the Commission shall apply to the deficient activity the measures provided for in this Act, whatever the results in the other activity.

(9) Notwithstanding the provisions of subsection (3)(b), those measures referred may involve the authorisation by the Commission of a transfer of explicit eligible basic own-fund items from one activity to the other.

Valuation of assets

Supervisory approval of ancillary own funds.

41.(1) Where an insurer or reinsurer applies for supervisory approval of the amounts of ancillary own-funds for the purposes of Part II of Schedule 1, the Commission shall approve either of the following–

- (a) a monetary amount for each ancillary own-fund item; or
- (b) a method by which to determine the amount of such ancillary own-fund item,

and in the latter case supervisory approval of the amount determined in accordance with that method shall be granted for a specific period of time.

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(2) For each ancillary own-fund item, the Commission shall base its approval on an assessment of the following—

- (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- (b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up; and
- (c) any information on the outcome of past calls which insurers and reinsurers have made for each ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Classification of funds.

42. Where own fund items do not appear in the implementing technical standards made pursuant to Article 97(1)(a), the Commission shall consider the assessment and classification of those items made by undertakings and may approve them accordingly.

Solvency capital requirement and Minimum capital requirement

Verification of Basic Solvency Capital Requirement.

43. When granting supervisory approval of the basic Solvency Capital Requirement, for the purposes of Part III of Schedule 1, the Commission shall verify the completeness, accuracy and appropriateness of the data used.

Approval of full and partial internal models under the Directive.

44.(1) Where an undertaking has applied for the approval of a full or partial internal model as required by paragraph 40 of Schedule 1 then, in considering that application and in implementing measures made pursuant to Article 114, the Commission shall approve that model only if it is satisfied that—

- (a) the internal model fulfils the requirements of Part III of Schedule 1; and
- (b) the systems of the undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate; and

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(c) in the case of a partial model, it fulfils the requirements arising out of paragraph 41 of Schedule 1.

(2) The Commission must notify the applicant of its decision on an application for approval before the end of the period of six months beginning with the date on which the complete application is received.

(3) Where an undertaking applies for approval of—

- (a) major changes to the internal model; or
- (b) the policy for changing the internal model;

it shall apply to the Commission in accordance with subsection (1).

(4) A decision by the Commission to refuse to approve an application under subsection (1) or subsection (3) shall state the reasons on which it is based.

(5) If, after having granted an approval under this section, it appears to the Commission that the conditions for approving an application under subsection (1) or subsection (3) are not (or may not be) fulfilled, the Commission may—

- (a) vary or revoke the approval;
- (b) impose conditions for the restoration of the approval.

Insurance and reinsurance undertakings in difficulty or in an irregular situation

Identification and notification of deteriorating financial conditions by the undertaking.

45. Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the Commission when such a deterioration occurs.

Non-compliance with Solvency Capital Requirement.

46.(1) Every Gibraltar insurer (within the meaning of the Insurance Companies Act) shall inform the Commission immediately where they observe that the Solvency Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months; and within two months from the observation of non-compliance with the

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Solvency Capital requirement the insurer concerned shall submit a realistic recovery plan for approval by the Commission.

(2) Where subsection (1) applies, the Commission shall require the insurer concerned to take the necessary steps to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering that Requirement or the reduction of its risk profile to ensure compliance with that Requirement.

(3) If the Commission considers it appropriate, it may extend the period of six months referred to in subsection (2) by a further three months.

(4) In the event of exceptional adverse situations affecting insurers representing a significant share of the market or of the affected lines of business, as declared by EIOPA and, where appropriate, after consulting the ESRB, the Commission may extend, for affected insurers, the period set out in subsection (3) by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

(5) For the purposes of this section, the Commission may make a request to EIOPA to declare the existence of exceptional adverse situations if insurers representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in subsection (2),

(6) For the purposes of this section, exceptional adverse situations exist where the financial situation of insurers representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions—

- (a) a fall in financial markets which is unforeseen, sharp and steep;
- (b) a persistent low interest rate environment
- (c) a high-impact catastrophic event;

and the Commission shall co-operate with EIOPA in assessing on a regular basis whether the conditions referred to in this subsection still apply and also where EIOPA declares when an exceptional adverse situation has ceased to exist.

(7) The insurer concerned shall, every three months, submit a progress report to the Commission setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency

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Capital Requirement or to reduce the risk profile to ensure compliance with that Requirement.

(8) The extension referred to in subsections (3) and (4) shall be withdrawn where the progress report under subsection (7) shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

(9) In exceptional circumstances, where the Commission is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that insurer; and, where it does so,—

- (a) the Commission shall inform the supervisory authorities of the host Member States of any measures it has taken;
- (b) those authorities shall, at the request of the Commission, take the same measures; and
- (c) the Commission shall designate the assets to be covered by those measures.

Non-compliance with Minimum Capital Requirement.

47.(1) Every Gibraltar insurer (within the meaning of the Insurance Companies Act) shall inform the Commission immediately where they observe that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months.

(2) Within one month from the observation of non-compliance with the Minimum Capital Requirement, the insurer concerned shall submit, for approval by the Commission, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

(3) The Commission as the supervisory authority of the home Member State may also restrict or prohibit the free disposal of the assets of the insurer; and, where it does so—

- (a) the Commission shall inform the supervisory authorities of the host Member States accordingly; and

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- (b) those authorities shall, at the request of the Commission, take the same measures; and
- (c) the Commission shall designate the assets to be covered by those measures.

(4) *Repealed*

(5) *Repealed*

(6) *Repealed*

(7) Where the Commission is the supervisory authority of the host Member State and the supervisory authority of the home Member State makes a request of the kind mentioned in subsection (3), the Commission shall comply with that request.

Assets requirements: insurers and reinsurers

Assets requirements imposed on insurers or reinsurers.

48.(1) Where the Commission, as the supervisory authority of the home state of an insurer or reinsurer—

- (a) intends to impose an assets requirement on the undertaking because it has not complied with the rules relating to technical provisions in Part I of Schedule 1; or
- (b) has imposed an assets requirement on the undertaking because it is of the opinion that its financial situation will deteriorate further, and—
 - (i) the undertaking has breached Part III of Schedule 1 (implementing Article 100 with regard to the Solvency Capital Requirement); or
 - (ii) is at risk of non-compliance within three months,

the Commission must inform the supervisory authorities of the host member State, and the Commission shall designate the assets to be covered by the assets requirement.

(2) The Commission's power to impose an "assets requirement" is a requirement—

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- (a) prohibiting the disposal of, or other dealing with, any of the assets (whether in Gibraltar or elsewhere) of the undertaking or restricting such disposals or dealings, or
- (b) that all or any of the assets of the undertaking, or all or any assets belonging to consumers but held by the undertaking or to its order, must be transferred to and held by a trustee approved by the Commission.

(3) If the Commission imposes an assets requirement falling within subsection (2)(a) on any undertaking and gives notice to an institution with which the undertaking has an account, the giving of the notice has the following effects—

- (a) the institution does not act in breach of any contract with the undertaking if, having been instructed by it or on its behalf to transfer any sum or otherwise make any payment out of its account, the institution refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the assets requirement, and
- (b) if the institution complies with such an instruction, it shall be liable to pay to the Commission an amount equal to the amount transferred from, or otherwise paid out of, the undertaking's account in contravention of the requirement.

(4) If the Commission imposes an assets requirement falling within subsection (2)(b) on any undertaking, no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the Commission.

(5) If, while a requirement of the kind mentioned in subsection (2)(b) is in force, the undertaking concerned creates a charge over any of its assets held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of the undertaking's creditors.

(6) Assets held by a person as trustee are to be taken to be held by the trustee in accordance with any requirement mentioned in subsection (2)(b) only if—

- (a) the undertaking has given the trustee written notice that those assets are to be held by the trustee in accordance with the requirement, or

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- (b) they are assets into which assets to which paragraph (a) applies have been transposed by the trustee on the instructions of the undertaking.

(7) A person who contravenes subsection (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) Subsections (5) and (6) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (2)(b).

Supervisory powers in deteriorating financial conditions.

49.(1) Notwithstanding the provisions of sections 46 and 47, where the solvency position of the undertaking continues to deteriorate, then, subject to subsection (2), the Commission may take such measures as it considers necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

(2) The measures taken under this section shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

Recovery plan and finance scheme.

50.(1) Both the recovery plan referred to in section 46(1) and the finance scheme referred to in section 47(2) shall, at least, include particulars or evidence concerning the following—

- (a) estimates of management expenses, in particular current general expenses and commissions;
- (b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- (c) a forecast balance sheet;
- (d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;
- (e) the overall reinsurance policy.

(2) Where the Commission has required a recovery plan (as mentioned in section 46(1) or a finance scheme as mentioned in in section 47(2)) in accordance with subsection (1), the Commission shall refrain from issuing a certificate in accordance with paragraph 1A of Schedule 10 to the Insurance

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Companies Act for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

Withdrawal of authorisation.

51.(1) Subsection (1A) applies where—

- (a) an undertaking fails to submit a finance scheme in accordance with section 47(2);
- (b) the Commission considers that the finance scheme submitted is manifestly inadequate; or
- (c) an undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

(1A) Where this subsection applies, the Commission—

- (a) shall withdraw an authorisation granted to the undertaking (in accordance with section 106 of the Insurance Companies Act) as soon as practicable, having regard to policy holders' interests;
- (b) shall prohibit the undertaking from undertaking new business (in accordance with section 105 of the Insurance Companies Act); and
- (c) shall suspend the authorisation of the undertaking by way of emergency action (in accordance with section 105B of the Insurance Companies Act).

(2) In the event of the withdrawal or lapse of an authorisation, the Commission, as the supervisory authority of the home Member State, shall notify the supervisory authorities of the other Member States accordingly.

(3) Where the Commission is not the supervisory authority of the home member state in relation to an insurance or reinsurance undertaking but receives such a notification as is referred to in subsection (2), it shall take appropriate measures to prevent the undertaking from commencing new operations within Gibraltar.

(4) The Commission shall, together with the supervisory authorities of other Member States, take all measures necessary to safeguard the interests of insured persons; and, in particular, the Commission—

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- (a) where it is the supervisory authority of the home Member State, shall restrict the free disposal of the assets of the undertaking in accordance with section 47(3), and
- (b) where it is the supervisory authority of the host Member State and another supervisory authority makes a request of the kind referred to in section 47(3), shall comply with that request.

Right of establishment and freedom to provide services

Communication of information.

52.(1) This section and sections 53 and 54 supplement Schedule 13 to the Insurance Companies Act (Recognition in Gibraltar of EEA Insurers) and Schedule 14 to that Act (Recognition in EEA States of Gibraltar Insurers).

(2) Unless the Commission has reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with section 19 of the authorised agent (as defined in subsection (3)), taking into account the business planned, the Commission shall, within three months of receiving all the information specified in subsection (3), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

(3) The information referred to in subsection (2) is—

- (a) the Member State within the territory of which it proposes to establish a branch;
- (b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;
- (c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);
- (d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

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(4) The Commission shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with paragraphs 29 and 56 of Schedule 1.

(5) Where the Commission refuses to communicate the information specified in subsection (3) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question; and such a refusal or failure to act shall be subject to a right to apply to the courts of Gibraltar.

(6) Before the branch of an insurance undertaking starts business, the supervisory authorities of the information specified in subsection (3), inform the Commission of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State; and the Commission shall communicate this information to the insurance undertaking concerned.

(7) The insurance undertaking may establish the branch and start business as from the date upon which the Commission has received a communication as mentioned in subsection (5) or, if no such communication is received, on the expiry of the period referred to in subsection (5).

Freedom to provide services by insurance undertakings

Notification to and by home Member State.

53.(1) Where Gibraltar is the home member state of an insurance undertaking which intends to pursue business for the first time in one or more Member States under the freedom to provide services, the undertaking shall first notify the Commission, indicating the nature of the risks or commitments it proposes to cover.

(2) Within one month of the notification referred to in subsection (1), the Commission shall communicate the following to the Member State or States within the territories of which an insurance undertaking intends to pursue business under the freedom to provide services—

- (a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with paragraph 29 or paragraph 56 of Schedule 1;
- (b) the classes of insurance which the insurance undertaking has been authorised to offer;

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- (c) the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

At the same time, the Commission shall inform the insurance undertaking concerned of that communication.

(3) Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in Part 1 of Schedule 2, other than carrier's liability, may require that insurance undertaking to submit the following—

- (a) the name and address of the representative referred to in section 29(2) of the Insurance Companies Act; and
- (b) a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.

(4) If the Commission does not communicate the information referred to in subsection (2) within the period of one month referred to in subsection (1), the Commission shall state the reasons for their refusal to the insurance undertaking within that period.

(5) If the Commission fails to give their reasons as mentioned in subsection (4) or if the undertaking is dissatisfied with those reasons, the undertaking may refer the matter to the Supreme Court: and, on such a reference, the Court shall give such directions to the Commission or otherwise as the Court thinks fit.

(6) The insurance undertaking may start business as from the date on which it is informed of the communication referred to in subsection (2); or, if no such communication is received, on the expiry of the period specified in subsection (2).

Changes in nature of risks or commitments.

54. Any change which an insurance undertaking intends to make to the information referred to in section 53 shall be subject to the procedure provided for in that section.

Insurance on third party motor liability

Non-discrimination of persons pursuing claims.

55. Where Gibraltar is the host member state of an insurance undertaking providing, by way of services, insurance on third party motor liability, the undertaking shall ensure that persons pursuing claims arising out of events

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occurring in Gibraltar are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, classified under class 10 in Part I of Schedule 2, other than carrier's liability, by way of provision of services rather than through an establishment situated in Gibraltar.

Where Gibraltar is host Member State

Language.

56.(1) The provisions of this section and sections 57 and 58 apply where Gibraltar is the host member state of an insurance undertaking.

(2) The Commission, as the supervisory authority for Gibraltar, may require the information which they are authorised to request with regard to the business of the undertaking to be supplied to it in English.

Prior notification and prior approval.

57.(1) Gibraltar, as the host Member State, shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an insurance undertaking intends to use in its dealings with policy holders.

(2) The Commission may only require an insurance undertaking that proposes to pursue insurance business within Gibraltar to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with the laws of Gibraltar concerning insurance contracts, and that requirement shall not constitute a prior condition for an insurance undertaking to pursue its business.

(3) Gibraltar, as the host Member State shall not retain or introduce a requirement for prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Insurance undertakings not complying with legal provisions.

58.(1) Where the Commission, as the supervisory authority for Gibraltar, establishes that an insurance undertaking with a branch or pursuing business under the freedom to provide services in Gibraltar is not complying with the law applicable to it in Gibraltar, the Commission shall require the insurance undertaking concerned to remedy the irregularity.

(2) Where the insurance undertaking concerned fails to take the necessary action,—

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- (a) the Commission shall inform the supervisory authorities of the home Member State accordingly; and
- (b) at the earliest opportunity, those supervisory authorities shall take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation; and
- (c) those supervisory authorities shall inform the Commission of the measures taken.

(3) Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in Gibraltar,–

- (a) the Commission, after informing the supervisory authorities of the home Member State, may take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within Gibraltar; and
- (b) the Commission may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010;

and the Government shall ensure that it is possible in Gibraltar to serve on insurance undertakings the legal documents necessary for the measures referred to in paragraph (a).

(4) Subsections (1), (2) and (3) shall not affect–

- (a) the power of the authorities in Gibraltar to take appropriate emergency measures to prevent or penalise irregularities within Gibraltar; or
- (b) the power of those authorities to penalise infringements within Gibraltar;

and the power specified in paragraph (a) shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within Gibraltar;

(5) Where an insurance undertaking which has committed an infringement has an establishment or possesses property in Gibraltar, the Commission may, in accordance with national law, apply any administrative penalties

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prescribed for that infringement by way of enforcement against that establishment or property.

(6) Any measure adopted under subsections (2) to (5) involving restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned

(7) Insurance undertakings shall submit to the supervisory authorities of the host Member State at their request all documents requested of them for the purposes of subsections (1) to (6) to the extent that insurance undertakings the head office of which is in that Member State are also obliged to do so.

(8) The Government shall ensure that the European Commission and EIOPA are informed of the number and types of cases which led to refusals under Articles 146 and 148 or in which measures have been taken under subsection (3).

Advertising.

59. Where Gibraltar is the host member State of insurance undertakings with head offices in other Member States, the insurance undertakings may advertise their services, through all available means of communication, in Gibraltar, subject to the rules governing the form and content of advertising adopted in the interest of the general good.

Taxes on premiums.

60.(1) Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and para-fiscal charges on insurance premiums in the Member State in which the risk is situated or the Member State of the commitment.

(2) For the purposes of subsection (1), movable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even where the building and its contents are not covered by the same insurance policy.

(3) The law applicable to the contract under Regulation (EC) No 593/2008 shall not affect the fiscal arrangements applicable.

(4) Gibraltar shall be entitled to apply the law of Gibraltar to those insurance undertakings which cover risks or commitments situated within its territory for measures to ensure the collection of indirect taxes and para-fiscal charges due as mentioned in subsection (1).

Re-insurance

Reinsurance undertakings not complying with legal provisions.

61.(1) Where the Commission establishes that a reinsurance undertaking with a branch in Gibraltar or pursuing business there under the freedom to provide services is not complying with those provisions of the law of Gibraltar applicable to it, the Commission shall require the reinsurance undertaking concerned to remedy that irregular situation; and, at the same time, it shall refer those findings to the supervisory authority of the home Member State.

(2) Where, despite the measures taken by the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in Gibraltar, -

- (a) the Commission, after informing the supervisory authorities of the home Member State, may take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within Gibraltar; and
- (b) the Commission may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010;

and the Government shall ensure that it is possible in Gibraltar to serve on insurance undertakings the legal documents necessary for the measures referred to in paragraph (a).

(3) Any measure adopted under subsection (1) or (2) involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

Statistical information

Statistical information on cross-border activities.

62.(1) Every insurance undertaking for which Gibraltar is the home member state shall inform the Commission, separately by Member State, in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, as follows—

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- (a) for life insurance, by lines of business in accordance with the relevant delegated act;
- (b) for non-life insurance, by lines of business in accordance with the relevant delegated act;

and, as regards class 10 in Part I of Schedule 2, excluding carrier's liability, the undertaking concerned shall also inform the Commission of the frequency and average cost of claims.

(2) The Commission shall forward the information referred to in paragraphs (a) and (b) of subsection (1) within a reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned upon their request.

(3) Except in so far as there is duplication, the obligations imposed by this section are in addition to those specified in sections 89 and 119A of the Insurance Companies Act.

Treatment of contracts of branches in winding-up proceedings

Winding-up of insurance undertakings.

63. Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Winding-up of reinsurance undertakings.

64. Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

Branches established within the community and belonging to insurance or reinsurance undertakings with head offices situated outside the community

Taking up of business: principle of authorisation and conditions.

65.(1) Access to the business of direct life and non-life insurance by any undertaking—

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- (a) which has a head office outside of the Community, and
- (b) which is established in Gibraltar or which wishes to become established there,

shall be subject to an authorisation by the Commission.

(2) An authorisation may be granted where the undertaking fulfils at least the following conditions–

- (a) it is entitled to pursue insurance business under its national law;
- (b) it establishes a branch in Gibraltar;
- (c) it undertakes to set up at the place of management of the branch accounts specific to the business which it pursues there, and to keep there all the records relating to the business transacted;
- (d) it designates a general representative, to be approved by the Commission;
- (e) it possesses in Gibraltar assets of an amount equal to at least one half of the absolute floor prescribed in paragraph 56(1)(d) of Schedule 1 in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;
- (f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in paragraphs 29 and 55 of Schedule 1;
- (g) it communicates the name and address of the claims representative appointed in each Member State other than Gibraltar where the risks to be covered are classified under class 10 in Part I of Schedule 2, other than carrier's liability;
- (h) it submits a scheme of operations in accordance with the provisions in section 66;
- (i) it fulfils the governance requirements laid down in sections 18 to 25.

(3) In this section and sections 66 to 73 "this Group of sections" means those sections.

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(4) For the purposes of this Group of sections, ‘branch’ means a permanent presence in the territory of a Member State of an undertaking referred to in subsection (1), which receives authorisation in that Member State and which pursues insurance business.

Scheme of operations of branch.

66.(1) The scheme of operations of the branch referred to in section 65(2)(h) shall set out the following—

- (a) the nature of the risks or commitments which the undertaking proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) estimates of the future Solvency Capital Requirement, as laid down in Part III of Schedule 1, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (d) estimates of the future Minimum Capital Requirement, as laid down in Part IV of Schedule 1, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement as referred to in Parts IV and V of Schedule 1;
- (f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under class 18 in Part I of Schedule 2, the resources available for the provision of the assistance;
- (g) information on the structure of the system of governance.

(2) In addition to the requirements set out in subsection (1), the scheme of operations shall include the following, for the first three financial years—

- (a) a forecast balance sheet;
- (b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement,

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- (c) for non-life insurance—
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of premiums or contributions and claims;
- (d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

(3) In regard to life insurance, the Commission may require insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

Transfer of portfolio.

67.(1) Under the conditions laid down by the law of Gibraltar, the Commission shall authorise branches set up within Gibraltar and covered by this Group of sections to transfer all or part of their portfolios of contracts to an accepting undertaking established in Gibraltar where the Commission or, where appropriate, the supervisory authorities of the Member State referred to in section 70, certify that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in paragraph 29(1) of Schedule 1.

(2) Under the conditions laid down by the law of Gibraltar, the Commission shall authorise branches set up within Gibraltar and covered by this Group of sections to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State where the supervisory authorities of that Member State certify that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in paragraph 29(1) of Schedule 1.

(3) Where, in accordance with the law of Gibraltar, the Commission authorises branches set up within Gibraltar and covered by this Group of sections to transfer all or part of their portfolios of contracts to a branch—

- (a) covered by this Group of sections; and
- (b) set up within the territory of another Member State,

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the Commission shall ensure that the supervisory authorities of the Member State of the accepting undertaking or, if appropriate, of the Member State referred to in section 70 certify that—

- (i) after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement;
- (ii) the law of the Member State of the accepting undertaking permits such a transfer; and
- (iii) that Member State has agreed to the transfer.

(4) In the circumstances referred to in subsections (1) to (3), the Commission shall authorise the transfer after obtaining the agreement of the supervisory authorities of the Member State in which the risks are situated, or the Member State of the commitment, where different from Gibraltar.

(5) The supervisory authorities of the Member States consulted shall give their opinion or consent to the Commission within three months of receiving a request; and the absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

(6) A transfer authorised in accordance with the preceding provisions of this section shall be published as laid down by the national law in the Member State in which the risk is situated or the Member State of the commitment; and all such transfers shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

Technical provisions.

68.(1) The Commission shall require undertakings to establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in Gibraltar calculated in accordance with paragraphs 4 to 19 of Schedule 1.

(2) The Commission shall require undertakings to value assets and liabilities in accordance with paragraph 3 of Schedule 1 and determine own funds in accordance with Part 2 of that Schedule.

Solvency Capital Requirement and Minimum Capital Requirement.

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69.(1) The Commission shall require for branches which are set up in Gibraltar an amount of eligible own funds consisting of the items referred to in paragraph 33(1) to (3) of Schedule 1.

(2) The Solvency Capital Requirement and the Minimum Capital Requirement shall be calculated in accordance with Parts III and IV of Schedule 1, except that, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.

(3) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with paragraph 28(4) of Schedule 1.

(4) The eligible amount of basic own funds shall not be less than half of the absolute floor required under paragraph 56(1)(d) of Schedule.

(5) The deposit lodged in accordance with section 65(2)(e) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(6) The assets representing the Solvency Capital Requirement must be kept within the Member State (including Gibraltar) where the activities are pursued up to the amount of the Minimum Capital Requirement and the excess within the Community.

Advantages to undertakings authorised in more than one Member State.

70.(1) Any undertaking which has requested or obtained authorisation from the Commission and one or more other Member States may apply for the following advantages which may be granted only jointly—

- (a) the Solvency Capital Requirement referred to in section 69 shall be calculated in relation to the entire business which it pursues within the Community;
- (b) the deposit required under section 65(2)(e) shall be lodged in Gibraltar or only one of those other Member States;
- (c) the assets representing the Minimum Capital Requirement shall be localised, in accordance with paragraph 55 of Schedule 1, in any one of the Member States (including Gibraltar) in which it pursues its activity;

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but, in the cases referred to in subsection (1)(a), account shall be taken only of the operations effected by all the branches established within the Community for the purposes of this calculation.

(2) Application to benefit from the advantages provided for in subsection (1)–

- (a) shall be made to the supervisory authorities of the Member States concerned;
- (b) shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established within the Community (in this section referred to as "the selected authority"); and
- (c) shall give reasons for the choice of the selected authority made by the undertaking;

and the deposit referred to in section 65(2)(e) shall be lodged with the Member State for which that authority is the supervisory authority.

(3) The advantages provided for in subsection (1)–

- (a) may be granted only where the supervisory authorities of all Member States in which an application has been made agree to them; and
- (b) shall take effect from the time when the selected authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the Community;

and the selected authority shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the branches established in their territory.

(4) At the request of one or more of the Member States concerned, the advantages granted under this section shall be withdrawn simultaneously by all Member States concerned.

Accounting, prudential and statistical information and undertakings in difficulty.

71.(1) For the purposes of this Group of sections, sections 47(3), 48 and 49 and Part X of the Insurance Companies Act shall apply.

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(2) As regards the application of sections 46, 47 and 48 of the Insurance Companies Act, where an undertaking qualifies for the advantages provided for in section 70, and the Commission is the supervisory authority responsible for verifying the solvency of branches established within the Community with respect to their entire business, the Commission shall be treated in the same way as the supervisory authority of the Member State in the territory of which is situated the head office of the undertaking established in the Community.

Separation of non-life and life business

72.(1) Branches referred to in this Group of sections shall not simultaneously pursue life and non-life insurance activities in the same member State.

(2) By way of derogation from subsection (1) the Commission may provide that branches referred to in this Group of sections which, on 15th March 1979, pursued both activities simultaneously in Gibraltar may continue to do so there provided that each activity is separately managed in accordance with section 40.

(3) If, under section 39(6), the Commission requires undertakings established in Gibraltar to cease the simultaneous pursuit of the activities in which they were engaged on 15th March 1979, the Commission must also impose this requirement on branches referred to in this Group of sections which are established in Gibraltar and simultaneously pursue both activities there.

(4) Branches referred to in this Group of sections whose head office in Gibraltar simultaneously pursues both activities and which on 15th March 1979 pursued in the territory of another Member State solely life insurance activity may continue their activity there.

(5) Where the undertaking wishes to pursue non-life insurance activity in that territory it may only pursue life insurance activity through a subsidiary.

Withdrawal of authorisation for undertakings authorised in more than one Member State.

73.(1) In the case of a withdrawal of authorisation by the Commission, the Commission shall notify the supervisory authorities of the other Member States where the undertaking operates and those authorities shall take the appropriate measures.

(2) Where the reason for that withdrawal is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request

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referred to in section 70, the Member States which gave their approval shall also withdraw their authorisations.

Re-insurance

Equivalence in relation to reinsurance undertakings.

74.(1) Where, in accordance with paragraph 2 of Article 172 of the Directive, the solvency regime of a third country has been determined, by a delegated act adopted by the European Commission, to be equivalent to that laid down in the Directive, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with this Act and the Insurance Companies Act.

(2) Where, in accordance with paragraph 4 of Article 172 of the Directive, the solvency regime of a third country has been determined, by a delegated act adopted by the European Commission, to be for a limited period temporarily equivalent to that laid down in the Directive, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated during the limited period in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with this Act and the Insurance Companies Act.

Pledging assets and principle and conditions for conducting reinsurance activity.

75.(1) A provision (whenever passed or made) which is contained in or made under any enactment shall be void if—

- (a) it purports to establish a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent to that laid down in the Directive in accordance with Article 172; or
- (b) it purports to apply to third-country reinsurance undertakings taking-up or pursuing reinsurance activity in Gibraltar provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in Gibraltar.

(2) Subsection (1)(a) shall also apply to reinsurance undertakings having their head office in a third country, the supervisory regime of which has

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been deemed temporarily equivalent as mentioned in subsection (2) of section 74.

Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings

Information from the Commission to European Commission, EIOPA etc.

76.(1) The Commission shall inform the European Commission, EIOPA and the supervisory authorities of the other Member States of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country.

(2) The information referred to in subsection (1) shall also contain an indication of the structure of the group concerned.

(3) Where—

- (a) an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the Community which would turn that insurance or reinsurance undertaking into a subsidiary of that third country undertaking, and
- (b) Gibraltar is the home Member State of that undertaking,

the Commission shall ensure that the European Commission and the supervisory authorities of the other Member States are informed of the position.

PART II

SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

Compulsory insurance

Related Obligations.

77.(1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this section.

(2) In so far as the law of Gibraltar imposes any obligation to have non-life insurance of any description, an insurance contract shall not satisfy that

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obligation unless it complies with the specific provisions relating to that insurance laid down by that law.

(3) In any case where the law of Gibraltar imposes any obligation to have compulsory insurance and the insurance undertaking is required to notify the Commission of any cessation of cover, that cessation may be invoked against injured third parties only in the circumstances laid down by that Member state.

(4) The Commission shall ensure that the European Commission is informed about the risks against which insurance is compulsory under the law of Gibraltar, stating the following—

- (a) the specific legal provisions relating to that insurance; and
- (b) the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where the law of Gibraltar requires proof that the obligation to take out insurance has been complied with.

(5) If, in the case of any particular insurance contract, the law of Gibraltar so requires, the particulars referred to in subsection (4)(b) shall include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

Conditions of insurance contracts and scales of premiums

Non-life insurance.

78.(1) In relation to non-life insurance, nothing in any enactment (whenever passed) shall require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

(2) Subsection (1) does not apply to any requirement for non-systematic notification of those policy conditions and other documents only for the purpose of verifying compliance with provisions concerning insurance contracts; but those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

(3) In so far as any description of insurance is compulsory, before circulating the general and special condition of the insurance, any undertaking providing it may be required by the Commission to communicate those conditions to it.

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(4) Except as part of general price-control systems, no provision may be made by or under any enactment requiring the retention or introduction of an obligation of prior notification or approval of proposed increases in premium rates.

Life insurance.

79.(1) In relation to life insurance, nothing in any enactment (whenever passed) shall require the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policy holders.

(2) Subsection (1) does not apply to any requirement for systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions for the sole purpose of verifying compliance with provisions concerning actuarial principles; but those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

Information for policy holders

Non-life insurance: general information.

80.(1) Before a non-life insurance contract is concluded, the non-life insurance undertaking shall inform the policy holder of the following—

- (a) the law applicable to the contract, where the parties do not have a free choice;
- (b) the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

(2) The insurance undertaking shall also inform the policy holder of the arrangements for handling complaints of policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.

(3) The obligations referred to in subsections (1) and (2) apply only where the policy holder is an individual.

(4) Where the risk is situated in Gibraltar, the detailed rules for implementing subsections (1) and (2) shall be laid down by or under an enactment of the Parliament of Gibraltar.

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Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services.

81.(1) Subject to subsection (3), where an undertaking offers non-life insurance under the right of establishment or the freedom to provide services, the policy holder shall, before any commitment is entered into, be informed of the Member State in which the head office of the undertaking or, where appropriate, the branch with which the contract is to be concluded is situated.

(2) Any documents issued to the policy holder shall convey the information referred to in subsection (1).

(3) The obligations imposed in subsections (1) and (2) shall not apply to large risks.

(4) The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state—

- (a) the address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover; and
- (b) if so required under the law of Gibraltar, the name and address of the representative of the non-life insurance undertaking referred to in section 29 of the Insurance Companies Act.

Life insurance: information for policy holders.

82.(1) The provisions of this section relate to life insurance only and are without prejudice to the requirements of Schedule 12 to the Insurance Companies Act (life insurance: information for policy holders of Gibraltar insurers and EEA insurers).

(2) Where, in connection with an offer for or conclusion of a life insurance contract, other than a term insurance or contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest.

(3) The insurer shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

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(4) In the case of insurances with profit participation, the insurer shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation and, furthermore, where the insurer has provided figures about the potential future development of the profit participation, the insurer shall inform the policy holder of differences between the actual development and the initial data.

(5) The information referred to above shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment; but any such information may be in another language if the policy holder so requests and the law of Gibraltar so permits or the policy holder is free to choose the law applicable.

(6) Gibraltar, as the Member State of the commitment, may require life insurance undertakings to furnish information in addition to that listed in this section and Schedule 12 to the Insurance Companies Act only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

(7) Where Gibraltar is the Member State of the commitment, the detailed rules for implementing this section shall be laid down by the law of Gibraltar.

Provisions specific to non-life insurance

Policy conditions.

83. General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Community co-insurance

Community co-insurance operations.

84.(1) This section and sections 85 to 89 (“the Community co-operation provisions”) apply to those Community co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part I of Schedule 2 and which fulfil the following conditions–

- (a) the risk is a large risk;
- (b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;

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- (c) the risk is situated within the Community;
- (d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
- (e) at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
- (f) the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(2) Sections 53, 54 and 55 of, and paragraphs 1(2), 10 and 25 of Schedule 3 to this Act and sections 25A and 29 of and Schedules 13 and 14 to the Insurance Companies Act shall apply to the leading insurance undertaking.

(3) Co-insurance operations which do not satisfy the conditions set out in subsection (1) shall remain subject to the provisions of this Act except the Community co-operation provisions.

Participation in Community co- insurance.

85. Notwithstanding anything in any enactment, the right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of the Community co-operation provisions.

Technical provisions and statistical data.

86.(1) The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.

(2) The technical provisions shall, however, be at least equal to those determined by the leading insurer according to the rules of its home Member State.

(3) Co-insurers shall keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

Treatment of co-insurance contracts in winding-up proceedings.

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87. In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Exchange of information between supervisory authorities.

88. For the purposes of the implementation of the Community co-operation provisions the supervisory authorities of the Member States shall, in the framework of the cooperation referred to in sections 32 to 37, provide each other with all necessary information.

Cooperation on implementation.

89.(1) The European Commission and the Commission shall cooperate closely, and together with the supervisory authorities of the other Member States, for the purposes of examining any difficulties which might arise in implementing the Community co-operation provisions.

(2) In the course of that cooperation they shall examine in particular any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

Assistance

Legal expenses insurance.

90.(1) Part VIIB of the Insurance Companies Act (special provisions relating to legal expenses insurance) as supplemented by sections 91 to 93 (and as amended by Schedule 3) has effect to transpose Articles 198 to 205.

(2) Any reference in the following provisions of this Act to the “legal expenses provisions” is a reference to—

- (a) Part VIIB of the Insurance Companies Act;
- (b) this section; and
- (c) sections 91 to 93.

Management of claims.

91.(1) In respect of insurance undertakings for which Gibraltar is the home Member State, the undertakings shall adopt,—

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- (a) in accordance with the option chosen by the Commission, or
- (b) at their own choice where the Commission so agrees,

at least one of the three options for the management of claims set out in section 92, and in exercise of their powers under this section, the Commission shall be regarded as exercising the functions of the home Member State under Article 200.

(2) Whichever solution is adopted, the interests of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under the legal expenses provisions.

(3) This section and section 92 have effect in place of section 87G of the Insurance Companies Act; and, accordingly that section is hereby repealed.

The options.

92.(1) The first of the options referred to in section 91 is as follows—

Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Part I of Schedule 2; and composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.

(2) The second of the options is as follows—

The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality and that undertaking shall be mentioned in the separate contract or separate section referred to in section 87F of the Insurance Companies Act.

(3) Where the undertaking referred in subsection (2) as having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Part I of Schedule 2, members of the staff of that undertaking who are concerned with the management of claims or with legal advice connected with that management shall not pursue the same or a similar activity in the other insurance

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undertaking at the same time; and, if the Government so provides, the same requirements shall be imposed on the members of the administrative, management or supervisory body.

(4) The third of the options is as follows—

The contract shall provide that the insured persons may instruct a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

Abolition of specialisation of legal expenses insurance.

93. In so far as any enactment (whenever passed) prohibits an insurance undertaking from pursuing within Gibraltar legal expenses insurance and other classes of insurance at the same time it shall cease to have effect

Provisions specific to life insurance

Prohibition on compulsory ceding of part of underwriting.

94. No provision of the law of Gibraltar may require life insurance undertakings to cede part of their underwriting of activities listed in section 4(4) to an organisation or organisations designated by that law.

Premiums for new business.

95.(1) Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

(2) For the purposes of subsection (1), all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

Rules specific to reinsurance

Finite reinsurance.

96.(1) The Commission shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities are able properly to identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

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(2) For the purposes of this section, "finite reinsurance" means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features—

- (a) explicit and material consideration of the time value of money;
- (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Special purpose vehicles.

97.(1) The establishment of special purpose vehicles in Gibraltar shall be subject to prior supervisory approval by the Commission.

(2) In so far as any special purpose vehicles were authorised in Gibraltar prior to 31 December 2015, they shall continue to be subject to the law of Gibraltar; except that any new activity commenced by such a special purpose vehicle after that date shall be subject to subsection (1).

Miscellaneous

Transposition of Articles 75 to 134.

98.(1) Schedule 1 has effect with respect to the matters derived from Chapter VI of Title I of the Directive, namely—

- (a) the valuation of assets and liabilities and associated technical provisions;
- (b) own funds;
- (c) solvency capital requirement;
- (d) minimum capital requirement; and
- (e) investment rules.

(2) On the application of a non-life insurer which meets the requirements of Parts I, III and IV of Schedule 1, the Minister may, by Order, exempt the insurer from any restrictive measures in respect of mortgages, deposits, securities and similar matters which the Minister may consider appropriate and specify in the Order.

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Classes of life insurance, non-life insurance etc.

99. Schedule 2, which reproduces Part A of Annex I, Annex II and Annex V to the Directive, shall have effect.

Amendments of Insurance Companies Act.

100.(1) The amendments of the Insurance Companies Act in Schedule 3 shall have effect.

(2) The Minister may by regulations make such modifications of provisions of the Insurance Companies Act as he considers appropriate the better to give effect to the provisions of the Directive, as from time to time amended.

(3) In this section “modifications” includes amendments, additions, and repeals.

PART III GROUP UNDERTAKINGS

Preliminary

Application.

101.(1) This Part provides for the supervision at group level of insurance and reinsurance undertakings which are part of a group (as specified in section 102).

(2) This Part gives effect to Title III of the Solvency II Directive.

(3) The provisions of this Act which provide for the supervision of insurance and reinsurance undertakings individually also apply to undertakings to which this Part applies, except where this Part provides otherwise.

Scope.

102.(1) This Part applies to the following insurance and reinsurance undertakings to which this Act applies and which are part of a group (subject to subsection (2))–

- (a) insurance or reinsurance undertakings, which are participating undertakings in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258 of the Solvency II Directive;

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- (b) any insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the European Union, in accordance with Articles 218 to 258 of the Solvency II Directive;
- (c) any insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263 of the Solvency II Directive;
- (d) any insurance or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265 of the Solvency II Directive.

(2) In addition to the functions conferred on the Commission by this Part as group supervisor, the Commission must also exercise any function under the Solvency II Directive as a supervisory authority, where another supervisory authority of a Member State is group supervisor.

(3) In the cases referred to in subsection (1)(a) and (b), where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the Commission as group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in section 130, the supervision of intra-group transactions referred to in section 131, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

(4) Where a mixed financial holding company is subject to equivalent provisions under this Act and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the Commission as group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

(5) Where a mixed financial holding company is subject to equivalent provisions under this Act and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the Commission as group supervisor may, in agreement with the consolidating supervisor in the banking and

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investment services sector, apply only the provisions of whichever of this Act and that Directive relates to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

(6) The Commission as group supervisor shall inform the European Supervisory Authority (European Banking Authority) of any decisions taken under subsections (4) and (5).

(7) Nothing in this Part requires the Commission to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually (without prejudice to section 135 as far as insurance holding companies or mixed financial holding companies are concerned).

(8) The Commission may decide (on a case-by-case basis) to cease to apply this Part to an undertaking if—

- (a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of section 118;
- (b) the undertaking to which this Part would otherwise apply is of negligible interest with respect to the objectives of group supervision (except where several undertakings of the same group, taken individually, are not negligible collectively); or
- (c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

(9) The Commission must consult any other supervisory authorities concerned before ceasing to apply this Part to an insurance or reinsurance undertaking under subsection (1)(b) or (c).

(10) Where the Commission ceases to apply this Part to an insurance or reinsurance undertaking under subsection (1)(b) or (c), the Commission may ask the undertaking which is at the head of the group for any information which may facilitate supervision of the insurance or reinsurance undertaking.

Interpretation.

103. In this Part—

“college of supervisors” means the permanent but flexible structure for the cooperation, coordination and facilitation of decision making

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concerning the supervision of a group established in accordance with Article 212(1)(e) of the Solvency II Directive;

“group” means a group of undertakings which–

- (i) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; or
- (ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations;
- (iii) so long as–
 - (a) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and
 - (b) the establishment and dissolution of such relationships for the purposes of this Part are subject to prior approval by the Commission;

and the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

“insurance holding company” means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;

“mixed-activity insurance holding company” means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

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“mixed financial holding company” means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;

“parent” undertaking includes any undertaking which in the opinion of the Commission effectively exercises a dominant influence over another undertaking;

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

“participation” includes the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the Commission, a significant influence is effectively exercised;

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

“subsidiary” undertaking includes any undertaking over which in the opinion of the Commission a parent undertaking effectively exercises a dominant influence.

Levels

Ultimate parent undertaking at Community level.

104.(1) Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in section 102(1)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the European Union, sections 107 to 136 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the European Union.

(2) Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the European Union, as referred to in subsection (1), is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the Commission as group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in section 130, the supervision of intra-group

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transactions referred to in section 131, or both, at the level of that ultimate parent undertaking or company.

Ultimate parent undertaking at national level.

105.(1) Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the European Union, as referred to in section 102(1)(a) and (b), does not have its head office in Gibraltar, the Commission may decide, after consulting the group supervisor and that ultimate parent undertaking at European Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

(2) In such a case, the Commission shall explain its decision to both the group supervisor and the ultimate parent undertaking at European Union level (and the group supervisor shall inform the college of supervisors).

(3) Sections 107 to 136 shall apply subject to the provisions of this section (and to any other necessary modifications).

(4) The Commission may restrict group supervision of the ultimate parent undertaking at national level to any provision of sections 107 to 132.

(5) The Commission shall recognise decisions of authorities of other Member States as required by Article 216 of the Solvency II Directive.

(6) Where Article 216(4) of the Solvency II Directive applies, if the Commission considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, the Commission may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

(7) The Commission shall explain such decisions to both the undertaking and the group supervisor (and the group supervisor shall inform the college of supervisors).

(8) Where the Commission decides to apply sections 107 to 129 to the ultimate parent undertaking at national level, that undertaking may not introduce, in accordance with section 124, an application for permission to subject any of its subsidiaries to sections 126 and 127.

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(9) No decision may be made or maintained under subsection (1) where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at Community level referred to in section 104 and the latter has obtained in accordance with section 125 or 124 permission for that subsidiary to be subject to sections 126 and 127.

Parent undertaking covering several Member States.

106.(1) The Commission may decide to conclude an agreement with other supervisory authorities of Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

(2) Where the supervisory authorities concerned have concluded such an agreement, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in section 105 present in Member States other than the Member State where the subgroup is located.

(3) In such a case, the Commission shall explain the agreement to the group supervisor and the ultimate parent undertaking at Union level (and the group supervisor shall inform the college of supervisors).

(4) Section 105 shall apply for the purposes of this section (with any necessary modifications).

Group solvency

Supervision of group solvency.

107.(1) The Commission shall supervise group solvency in relation to undertakings to which this Part applies, in accordance with this section.

(2) In the case of an undertaking falling within section 102(1)(a), the Commission shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with sections 109 to 122.

(3) In the case of an undertaking falling within section 102(1)(b), the Commission shall require insurance and reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with section 123.

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(4) The requirements referred to in subsections (2) and (3) shall be subject to supervisory review by the Commission in accordance with sections 133 to 136; and sections 45 and 46 shall apply with any necessary modifications.

(5) If the participating undertaking informs the Commission that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the Commission shall inform the other supervisory authorities within the college of supervisors, so that it can analyse the situation of the group.

Frequency of calculations.

108.(1) The Commission as group supervisor shall ensure that the calculations referred to in section 107(2) and (3) are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial holding company.

(2) The relevant data for and the results of that calculation shall be submitted to the Commission by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the Commission after consulting the other supervisory authorities concerned and the group itself.

(3) The insurance undertaking, reinsurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis.

(4) Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the Commission.

(5) Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.

Choice of calculation method.

109.(1) The calculation of solvency at the level of the group of the insurance and reinsurance undertakings referred to in section 102(1)(a) shall be carried out in accordance with the technical principles and one of the methods set out in sections 110 to 122.

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(2) The calculation of solvency at the level of the group of insurance and reinsurance undertakings referred to in section 102(1)(a) shall be carried out in accordance with method 1, which is laid down in sections 119 to 121.

(3) The Commission may, however, as group supervisor of a particular group, decide, after consulting any other supervisory authorities concerned and the group itself, to apply to that group method 2 (laid down in section 122), or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Inclusion of proportional share.

110.(1) Calculation of group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

(2) The proportional share shall comprise either of the following—

- (a) where method 1 is used, the percentages used for the establishment of the consolidated accounts; or
- (b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(3) Regardless of the method used, however, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

(4) Where in the opinion of the Commission and any other supervisory authorities concerned, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the Commission may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

(5) The Commission shall determine, after consulting any other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases—

- (a) where there are no capital ties between some of the undertakings in a group;
- (b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;

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- (c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Elimination of double use of eligible own funds.

111.(1) This section prevents the double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation.

(2) When calculating group solvency (and where the methods described in sections 119 to 122 do not provide for it) the following amounts shall be excluded—

- (a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;
- (b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;
- (c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

(3) Without prejudice to subsection (2), the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned—

- (a) surplus funds falling under section paragraph 24(5) of Schedule 1 arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated; and
- (b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

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(4) However, the following shall in any event be excluded from the calculation—

- (a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
- (b) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;
- (c) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

(5) Where the Commission and the other supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in subsections (3) and (4) cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

(6) The sum of the own funds referred to in subsections (3) and (5) shall not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(7) Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the Commission in accordance with section 41 and paragraph 23 of Schedule 1 shall be included in the calculation only in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Elimination of intra-group creation of capital.

112.(1) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following—

- (a) a related undertaking;

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- (b) a participating undertaking;
- (c) another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated, where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

(3) In this section a reference to reciprocal financing includes (but is not limited to) the case where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation.

113. The value of assets and liabilities shall be assessed in accordance with paragraph 3 of Schedule 1.

Related insurance and reinsurance undertakings.

114.(1) This section applies where an insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking.

(2) The group solvency calculation shall be carried out by including each of those related insurance or reinsurance undertakings.

(3) Where the related insurance or reinsurance undertaking has its head office outside Gibraltar and in a Member State, the calculation is to take account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

Intermediate insurance holding companies.

115.(1) This section applies in relation to the calculation of the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company.

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(2) The situation of the insurance holding company or mixed financial holding company shall be taken into account.

(3) For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were—

- (a) an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I of the Solvency II Directive in respect of the Solvency Capital Requirement, and
- (b) subject to the same conditions as are laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I of that Directive in respect of own funds eligible for the Solvency Capital Requirement.

(4) In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with paragraph 28 of Schedule 1, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in that paragraph to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

(5) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the supervisory authority in accordance with paragraph 23 of Schedule 1 if they were held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the Commission as group supervisor.

Equivalence concerning related third-country insurance and reinsurance undertakings.

116.(1) This section applies in relation to the calculation, in accordance with section 122, of the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking.

(2) The third-country insurance or reinsurance undertaking shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

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(3) Where, however, the third country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI of the Solvency II Directive, the Commission may provide that the calculation shall take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country.

(4) If no delegated act has been adopted in accordance with Article 227(4) or (5) of the Solvency II Directive, the verification of whether the third-country regime is at least equivalent shall be carried out by the Commission (as group supervisor), at the request of the participating undertaking or on its own initiative.

(5) The Commission shall accept any assistance offered by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

(6) The Commission as group supervisor, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking a decision on equivalence.

(7) That decision shall be taken in accordance with the criteria adopted in accordance with Article 227(3) of the Solvency II Directive.

(8) The Commission as group supervisor shall not take any decision in relation to a third country that is contradicting any decision taken vis-à-vis that third country previously save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I, Chapter VI of the Solvency II Directive and to the supervisory regime in the third country.

(9) Where the Commission disagrees with a decision taken in accordance with Article 227(2) of the Solvency II Directive it may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor.

(10) This section shall be applied in accordance with any delegated acts adopted under Article 227 of the Solvency II Directive.

Related credit institutions, investment firms and financial institutions.

117.(1) When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance and reinsurance undertakings may apply method 1 or 2 set out in Annex I to

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Directive 2002/87/EC (with any necessary modifications), subject to subsection (2).

(2) Method 1 set out in that Annex may be applied only where the Commission is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(3) Whichever method is chosen under subsection (1) must be applied in a consistent manner over time.

(4) The Commission may decide, at the request of a participating undertaking or on its own initiative, to deduct any participation referred to subsection (1) from the own funds eligible for the group solvency of the participating undertaking.

Non-availability of necessary information.

118.(1) This section applies where information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in any Member State or in a third country, is not available to the Commission.

(2) Where this section applies—

- (a) the book value of the undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency, and
- (b) the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Method 1 (Default method): Accounting consolidation-based method.

119.(1) This section specifies method 1 for the calculation of group solvency.

(2) Group solvency of a participating insurance or reinsurance undertaking shall be calculated on the basis of the consolidated accounts, as described below.

(3) The group solvency is the difference between—

- (a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and

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(b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

(4) The rules laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 of the Solvency II Directive shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

(5) The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3 of the Solvency II Directive.

(6) The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following—

(a) the Minimum Capital Requirement as referred to in Part IV of Schedule 1 of the participating insurance or reinsurance undertaking, plus

(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

(7) The minimum amount shall be covered by eligible basic own funds as determined under paragraph 28(4) of Schedule 1.

(8) For the purposes of determining whether eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement for the purposes of this section, the principles set out in sections 110 to 118 and section 47(1) and (2) shall apply with any necessary modifications.

Group internal model.

120.(1) This section applies in the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or a mixed financial holding company.

(2) The application shall be made to the Commission as group supervisor; and the Commission shall cooperate with other supervisory authorities concerned to decide whether or not to grant that permission and to

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determine the terms and conditions, if any, to which such permission is subject.

(3) The Commission shall inform any other supervisory authorities concerned without delay.

(4) The Commission shall forward the complete application to the other supervisory authorities concerned without delay; and the Commission shall cooperate with the other supervisory authorities concerned with the aim of reaching a joint decision on the application within six months from the date of receipt of the complete application by the Commission.

(5) If during the period referred to in subsection (4) the Commission or another supervisory authority refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the Commission shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision (which shall be recognised as determinative and shall be applied by the Commission and any other supervisory authorities concerned).

(6) The Commission may not refer the matter to EIOPA after the end of period referred to in subsection (4) or after a joint decision has been reached.

(7) If, in accordance with Article 41(2) and (3) and Article 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the Commission shall take a final decision (which shall be recognised as determinative and shall be applied by the supervisory authorities concerned).

(8) Where the supervisory authorities concerned have reached a joint decision referred to in subsection (4), the Commission shall provide the applicant with a document setting out the full reasons.

(9) In the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the Commission shall make its own decision on the application; and for that purpose—

- (a) the Commission shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during that six-month period; and
- (b) the Commission shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision (which shall be recognised as

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determinative and shall be applied by the supervisory authorities concerned).

(10) Where the Commission (as one of the supervisory authorities concerned) considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the Commission's concerns, the Commission may, in accordance with section 15, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model; and—

- (a) in exceptional circumstances, where such capital add-on would not be appropriate, the Commission may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Part 3 of Schedule 1;
- (b) in accordance with section 15(1)(a) and (c), the Commission may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula; and
- (c) the Commission shall explain any decision referred to in this subsection to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

Group capital add-on.

121.(1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the Commission shall pay particular attention to any case where the circumstances referred to in section 15(1) may arise at group level; in particular where—

- (a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;
- (b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by supervisory authorities in accordance with sections 15 and 120(11).

(2) Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may

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be imposed; and for that purpose sections 15 and 16 (together with implementing measures taken in accordance with Article 37(6), (7) and (8) of the Solvency II Directive shall apply (with any necessary modifications).

Method 2 (Alternative method): Deduction and aggregation method.

122.(1) This section specifies method 2 for the calculation of group solvency.

(2) The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following—

- (a) the aggregated group eligible own funds, as provided for in subsection (3), and
- (b) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in subsection (4).

(3) The aggregated group eligible own funds are the sum of the following—

- (a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking, plus
- (b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(4) The aggregated group Solvency Capital Requirement is the sum of the following—

- (a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking, plus
- (b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(5) Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership—

- (a) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect

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ownership, taking into account the relevant successive interests, and

- (b) the items referred to in subsections (3)(b) and (4)(b) shall include the corresponding proportional shares of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(6) In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, section 120 shall apply (with any necessary modifications).

(7) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in subsection (4), appropriately reflects the risk profile of the group, the Commission shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

(8) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed; and in such a case sections 15 and 16 together with implementing measures taken in accordance with Article 37(6), (7) and (8) of the Solvency II Directive shall apply (with any necessary modifications).

Group solvency of an insurance holding company or a mixed financial holding company.

123.(1) Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the Commission as group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying sections 109 to 122.

(2) For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking—

- (a) subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I of the Solvency II Directive as regards the Solvency Capital Requirement, and

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- (b) subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I of that Directive as regards the own funds eligible for the Solvency Capital Requirement.

Groups with centralised risk management

Subsidiaries of an insurance holding company and mixed financial holding company: conditions.

124.(1) Sections 126 and 127 shall apply to any insurance or reinsurance undertaking which is a subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied—

- (a) the subsidiary has not been the subject of a decision by the Commission under section 102(2) and is included in the group supervision carried out by the Commission at the level of the parent undertaking in accordance with this Part;
- (b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary, and the parent undertaking satisfies all supervisory authorities concerned regarding the prudent management of the subsidiary;
- (c) the parent undertaking has received the agreement referred to in section 132(8);
- (d) the parent undertaking has received the agreement referred to in section 134(2);
- (e) an application for permission to be subject to sections 126 and 127 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in section 125.

(2) This section, and sections 125 to 129, apply to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company or mixed financial holding company (with any necessary modifications).

Subsidiaries of an insurance or reinsurance undertaking: decision on the application.

125.(1) Where an application is made for permission to be subject to the rules laid down in sections 126 and 127, the Commission shall work with

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the supervisory authorities concerned within the college of supervisors, in full cooperation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.

(2) An application may be submitted to the Commission only if it authorised the subsidiary.

(3) The Commission shall inform and forward the complete application to the other supervisory authorities within the college of supervisors without delay.

(4) The Commission shall work with the supervisory authorities concerned to do everything within their powers to reach a joint decision on the application, within three months from the date of receipt of the complete application, by all supervisory authorities within the college of supervisors.

(5) If, within the three-month period referred to in subsection (4), the Commission or any of the other supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the Commission shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision (which shall be recognised as determinative and shall be applied by the supervisory authorities concerned).

(6) The Commission may not refer the matter to EIOPA after the end of the three-month period or after a joint decision has been reached.

(7) If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the Commission shall take a final decision (which shall be recognised as determinative and shall be applied by the supervisory authorities concerned).

(8) Where the supervisory authorities concerned have reached a joint decision referred to in subsection (4), the Commission, if it authorised the subsidiary, shall provide the applicant with the decision stating the full reasons; and the joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

(9) In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in subsection (4), the Commission shall take its own decision with regard to the application; and during that period the Commission shall duly consider the following—

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- (a) any views and reservations of the supervisory authorities concerned;
- (b) any reservations of the other supervisory authorities within the college of supervisors.

(10) The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned.

(11) The Commission shall provide the applicant and the other supervisory authorities concerned with a copy of the decision (which shall be recognised as determinative and shall be applied by the supervisory authorities concerned).

**Subsidiaries of an insurance or reinsurance undertaking:
determination of Solvency Capital Requirement.**

126.(1) The Solvency Capital Requirement of a subsidiary shall be calculated as follows (without prejudice to section 120).

(2) Subsection (3) applies where—

- (a) the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with section 120,
- (b) the Commission, as the supervisory authority which authorised the subsidiary, considers that its risk profile deviates significantly from that internal model, and
- (c) the undertaking has not properly addressed the Commission's concerns.

(3) The Commission authority may, in the cases referred to in section 15, propose—

- (a) to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of that model, or
- (b) in exceptional circumstances where a capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.

(4) The Commission shall—

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- (a) inform the subsidiary and the college of supervisors of the grounds for the Commission's proposal, and
 - (b) discuss its proposal within the college of supervisors.
- (5) Subsection (6) applies where—
- (a) the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula,
 - (b) the Commission, having authorised the subsidiary, considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and
 - (c) the undertaking has not properly addressed the concerns of the supervisory authority.
- (6) The Commission may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in paragraph 39 of Schedule 1, or in the cases referred to in section 15, to set a capital add-on to the Solvency Capital Requirement of the subsidiary.
- (7) The Commission shall—
- (a) inform the subsidiary and the college of supervisors of the grounds for the Commission's proposal, and
 - (b) discuss its proposal within the college of supervisors.
- (8) The Commission shall work with the college of supervisors to do everything within its power to reach an agreement on the Commission's proposal of the supervisory authority or on other possible measures; and the agreement shall be recognised as determinative and shall be applied by the supervisory authorities concerned.
- (9) Where the Commission disagrees with the group supervisor, or where the Commission as group supervisor disagrees with a supervisory authority making a proposal, it may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.
- (10) The Commission may not refer the matter to EIOPA after the end of the one-month period referred to in subsection (9) or after an agreement has been reached within the college in accordance with subsection (8).

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(11) The Commission, if it authorised the subsidiary, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of that Regulation, and shall take its decision in conformity with EIOPA's decision (which shall be recognised as determinative, shall be applied by the supervisory authorities concerned, shall state the full reasons on which it is based and shall be submitted to the subsidiary and to the college of supervisors).

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with Solvency and Minimum Capital Requirements.

127.(1) This section applies where a subsidiary authorised by the Commission fails to comply with the Solvency Capital Requirement (without prejudice to section 46).

(2) The Commission shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

(3) The Commission shall work with the college of supervisors with the aim of reaching an agreement on a proposal of the Commission regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

(4) In the absence of agreement, the Commission shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(5) Where in accordance with section 45 the Commission identifies deteriorating financial conditions in relation to a subsidiary which it authorised it shall—

- (a) notify the college of supervisors without delay of the proposed measures to be taken;
- (b) discuss the measures to be taken within the college of supervisors, except in emergency situations;
- (c) work with the college of supervisors with the aim of reaching an agreement on the proposed measures to be taken within one month of notification; and

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- (d) in the absence of such agreement, decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

(6) This section also applies where a subsidiary authorised by the Commission fails to comply with the Minimum Capital Requirement (without prejudice to section 47).

(7) The Commission shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement.

(8) The Commission shall also inform the college of supervisors of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

(9) The Commission, whether as supervisory authority or as group supervisor, may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where there is disagreement regarding either of the following—

- (a) on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in subsection (3); or
- (b) on the approval of the proposed measures, within the one-month period referred to in subsection (5).

(10) The matter shall not be referred to EIOPA—

- (a) after the end of that four-month or one-month period,
- (b) after an agreement has been reached within the college in accordance with the subsection (3) or (5), or
- (c) in the case of emergency situations as referred to in subsection (5)(b).

(11) The Commission, if it authorised the subsidiary, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision (which shall be recognised as

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determinative, shall be applied by the supervisory authorities concerned, shall state the full reasons on which it is based and shall be submitted to the subsidiary and to the college of supervisors).

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary.

128.(1) The rules provided for in sections 126 and 127 shall cease to apply where—

- (a) the condition referred to in section 124(a) is no longer complied with;
- (b) the condition referred to in section 124(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time; or
- (c) the conditions referred to in section 124(c) and (d) are no longer complied with.

(2) In the case referred to in subsection(1)(a), where the Commission decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

(3) For the purposes of section 124(b), (c) and (d), the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis.

(4) In the event of non-compliance, the parent undertaking—

- (a) shall inform the group supervisor and the supervisor of the subsidiary concerned without delay, and
- (b) shall present a plan to restore compliance within an appropriate period of time.

(5) Despite subsection (3), the Commission as group supervisor—

- (a) shall verify at least annually, on its own initiative, that the conditions referred to in section 124(b), (c) and (d) continue to be complied with, and
- (b) shall also perform such verification upon request from a supervisory authority concerned, where the latter has

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significant concerns related to the ongoing compliance with those conditions.

(6) Where the verification performed identifies weaknesses, the Commission shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(7) Where, after consulting the college of supervisors, the Commission determines that the plan referred to in subsection (4) or (6) is insufficient or is not being implemented within the agreed period of time, the Commission shall—

- (a) conclude that the conditions referred to in Article 236(b), (c) and (d) are no longer complied with, and
- (b) immediately inform any supervisory authority concerned.

Subsidiaries of an insurance or reinsurance undertaking: new applications.

129. The regime provided for in sections 126 and 127 shall apply again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in section 125.

Risk concentration and intra-group transactions

Supervision of risk concentration.

130.(1) This section and sections 132 to 136 provide for supervision of risk concentration at group level.

(2) Each insurance and reinsurance undertaking, and each insurance holding company or mixed financial holding company, must report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, unless section 104(2) applies.

(3) The necessary information shall be submitted to the group supervisor by—

- (a) the insurance or reinsurance undertaking which is at the head of the group, or
- (b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the Commission as

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group supervisor after consulting the other supervisory authorities concerned and the group.

(4) The risk concentrations referred to in the first subparagraph shall be subject to supervisory review by the Commission as group supervisor.

(5) The Commission, after consulting other supervisory authorities concerned and the group, shall identify the type of risks that insurance and reinsurance undertakings in a particular group are required to report in all circumstances.

(6) When defining the Commission shall take into account the specific group and risk-management structure of the group.

(7) In order to identify significant risk concentration to be reported, the Commission, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both.

(8) When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

Supervision of intra-group transactions.

131.(1) This section and sections 132 to 136 provide for the supervision of intra-group transactions.

(2) Each insurance and reinsurance undertaking, and each insurance holding company or mixed financial holding company, must report on a regular basis and at least annually to the Commission as group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, unless section 104(2) applies.

(3) In addition, very significant intra-group transactions must be reported as soon as practicable.

(4) The necessary information shall be submitted to the Commission by–

- (a) the insurance or reinsurance undertaking which is at the head of the group, or
- (b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance

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undertaking in the group identified by the Commission as group supervisor after consulting the other supervisory authorities concerned and the group.

(5) The intra-group transactions shall be subject to supervisory review by the Commission as group supervisor.

(6) The Commission, after consulting other supervisory authorities concerned and the group, shall identify the type of intra-group transactions that insurance and reinsurance undertakings in a particular group must report in all circumstances; for which purpose section 130(3) shall apply (with any necessary modifications).

Risk management and internal control

Supervision of system of governance.

132.(1) The provisions of sections 18 to 25 shall apply at the level of the group (with any necessary modifications).

(2) Those risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to sections 101 and 102 so that those systems and reporting procedures can be controlled at the level of the group.

(3) The group internal control mechanisms shall include at least the following—

- (a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks; and
- (b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

(4) The Commission shall supervise the systems and reporting procedures in accordance with the rules laid down in sections 133 to 136.

(5) The participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company must undertake at the level of the group the assessment required by section 21.

(6) The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the Commission as group supervisor in accordance with sections 133 to 136.

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(7) Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in section 119, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the Commission as group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(8) The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the Commission as group supervisor, undertake any assessments required pursuant to section 21 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

(9) Before granting an agreement under subsection (8) the Commission shall consult the members of the college of supervisors and duly take into account their views or reservations.

(10) Where a group exercises the option provided in subsection (8)–

- (a) it shall submit the document to all supervisory authorities concerned at the same time; and
- (b) the exercise of the option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of section 21 are met.

Measures to facilitate group supervision

Group Supervisor.

133. The provisions of Schedule 4 (which make provision about the group supervisor) shall have effect.

Group solvency and financial condition report.

134.(1) Participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group; and for this purpose sections 27 and 29 to 31 apply (with any necessary modifications).

(2) A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the

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agreement of the Commission as group supervisor, provide a single report on its solvency and financial condition which shall comprise the following—

- (a) the information at the level of the group to be disclosed in accordance with subsection (1);
- (b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with sections 27 and 29 to 31.

(3) Before granting agreement, the Commission shall consult, and duly take into account any views and reservations of, the members of the college of supervisors.

(4) Where the report referred to in subsection (2) fails to include information which the Commission requires comparable undertakings to provide, and where the omission is material, the Commission may require the subsidiary concerned to disclose the necessary additional information.

(5) Insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies.

135.(1) All persons who effectively run an insurance holding company or a mixed financial holding company must be fit and proper to perform their duties.

(2) Section 19 shall apply for the purposes of this section (with any necessary modifications).

Enforcement measures.

136.(1) Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in sections 107 to 132 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, the Commission shall require the necessary measures in order to rectify the situation as soon as possible and shall comply with the information and coordination requirements of Article 258 of the Solvency II Directive.

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(2) Regulations under section 178 may include provision about the measures that the Commission may take for the purposes of this section (which may apply or make provision similar to any provision relating to other functions of the Commission).

Third countries

Parent undertakings outside the Community: verification of equivalence.

137.(1) In the case referred to in section 102(1)(c), the Commission shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the European Union, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by Title III of the Solvency II Directive on the supervision at the level of the group of insurance and reinsurance undertakings referred to in section 102(1)(a) and (b).

(2) Where no delegated act has been adopted in accordance with Article 260(2), (3) or (5) of the Solvency II Directive, the verification shall be carried out by the Commission if it would be the group supervisor if the criteria set out in Article 247(2) of the Solvency II Directive were to apply (as “acting group supervisor”), at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on its own initiative.

(3) The Commission shall participate in assistance provided by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

(4) As acting group supervisor the Commission shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence.

(5) That decision shall be taken in accordance with the criteria adopted in accordance with Article 260(2) of the Solvency II Directive.

(6) The Commission as acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I of the Solvency II Directive and to the supervisory regime in the third country.

(7) If the Commission disagrees with a decision taken in accordance with the third subparagraph of Article 260(1) of the Solvency II Directive, it may refer the matter to EIOPA and request its assistance in accordance with

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Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the acting group supervisor.

(8) Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with Article 260(5) of the Solvency II Directive, section 138 (and Article 261) shall apply, unless there is an insurance or reinsurance undertaking situated in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the Union; and in that case, the task of the group supervisor shall be exercised by the acting group supervisor.

Parent undertakings outside the Community: equivalence.

138.(1) In the event of equivalent supervision referred to in section 137, the Commission shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with this section.

(2) Sections 133 to 136 shall apply to the cooperation with third-country supervisory authorities (with any necessary modifications).

Parent undertakings registered in a third country: absence of equivalence.

139. In the absence of equivalent supervision referred to in section 137, or where section 138 is disapplied in the event of temporary equivalence in accordance with Article 260(7) of the Solvency II Directive, the Commission shall comply with the obligations under Article 262 of the Solvency II Directive.

Parent undertakings outside the Community: levels.

140.(1) Where the parent undertaking referred to in section 137 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, the verification provided for in section 137 shall be applied only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) However, the Commission may decide, in the absence of equivalent supervision referred to in section 137, to carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

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(3) In such a case, the Commission shall explain its decision to the group.

(4) Section 139 shall apply to the case addressed by this section (with any necessary modifications).

Mixed-activity insurance holding companies

Intra-group transactions.

141.(1) Where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the Commission shall exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

(2) Sections 131 to 136 shall apply (with any necessary modifications).

PART IV
REORGANISATION AND WINDING-UP OF INSURANCE
UNDERTAKINGS

Preliminary

Purpose of Part.

142. This Part gives effect to Title IV of the Solvency II Directive.

Repeal.

143. The Insurers (Reorganisation and Winding Up) Act 2004 is repealed.

Scope of Part.

144.(1) This Part applies to reorganisation measures and winding-up proceedings concerning the following—

- (a) insurance undertakings established in Gibraltar;
- (b) branches of third-country insurance undertakings situated in Gibraltar.

(2) Where the context requires, this Part also applies to decisions and actions taken in accordance with Title IV of the Solvency II Directive in relation to insurance undertakings and branches established or situated outside Gibraltar.

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Interpretation of Part

145.(1) In this Part–

- (a) “competent authorities” means the administrative or judicial authorities of Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
- (b) “branch” means a permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which pursues insurance activities;
- (c) “reorganisation measures” means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;
- (d) “winding-up proceedings” means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;
- (e) “administrator” means a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;
- (f) “liquidator” means a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;
- (g) “insurance claim” means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in

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section 4(3)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known; and the premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in this paragraph in accordance with the law applicable to such a contract or operation before the opening of the winding-up proceedings shall also be considered an insurance claim.

(2) For the purpose of applying this Part to reorganisation measures and winding-up proceedings concerning a branch of a third-country insurance undertaking situated in Gibraltar the following definitions shall apply—

- (a) “home Member State” means the Member State in which the branch was granted authorisation in accordance with sections 52 and 53 of and Schedule 13 to the Insurance Companies Act, as amended by paragraph 26 of Schedule 3 to this Act;
- (b) “supervisory authorities” means the supervisory authorities of the home Member State;
- (c) “competent authorities” means the competent authorities of the home Member State.

Reorganisation measures

Adoption of reorganisation measures: applicable law.

146.(1) Only the Commission may decide on reorganisation measures with respect to an insurance undertaking, including its branches.

(2) Reorganisation measures shall not preclude the opening of winding-up proceedings by the Commission.

(3) Reorganisation measures shall be governed by the laws, regulations and procedures applicable in Gibraltar, unless otherwise provided in sections 162 to 168.

(3A) As an exception to subsection (3), in respect of the effects of reorganisation measures upon employment contracts and employment relationships, those contracts and relationships shall be governed exclusively by the laws of the Member State applicable to them.

(4) Reorganisation measures taken in accordance with the legislation of the home Member State shall be fully effective in Gibraltar and throughout the Community without any further formalities—

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- (a) including against third parties in Member States, and
- (b) even where the legislation of a Member State does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.

(5) The reorganisation measures shall be effective in Gibraltar once they become effective in the home Member State (and are effective in Member States once they become effective in Gibraltar, where Gibraltar is the home Member State).

Information to supervisory authorities.

147. The Commission shall as a matter of urgency inform the supervisory authorities of all Member States of the decision to adopt reorganisation measures, including the possible practical effects of such measures.

Publication of decisions on reorganisation measures.

148.(1) Where an appeal is possible in Gibraltar against a reorganisation measure, the Commission or the administrator shall—

- (a) publish the decision on the reorganisation measure in the Gazette, and
- (b) publish in the Official Journal of the European Union at the earliest opportunity an extract from the document establishing the reorganisation measure.

(2) Where the Commission is informed of the decision on a reorganisation measure by the supervisory authorities of a Member State in accordance with Article 270 of the Solvency II Directive, the Commission may publish the decision in the Gazette.

(3) Publication under subsection (1) or (2) shall specify the competent authority of the home Member State, the applicable law as provided in Article 269(3) of the Solvency II Directive and the administrator appointed, if any; and a publication must be made in English.

(4) Reorganisation measures shall apply regardless of the provisions concerning publication set out in this section and shall be fully effective as against creditors.

(5) Where reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, subsections (1) to (4) shall not apply; and the

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Commission shall determine the manner in which those parties are to be informed.

Information to known creditors: right to lodge claims.

149.(1) Where the law of Gibraltar requires a claim to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors whose habitual residence, domicile or head office is situated in Gibraltar, the Commission or the administrator shall also inform known creditors whose habitual residence, domicile or head office is situated outside Gibraltar but in a Member State, in accordance with sections 158 and 160(1).

(2) Where the law of Gibraltar provides for the right of creditors whose habitual residence, domicile or head office is situated in Gibraltar to lodge claims or to submit observations concerning their claims, creditors whose habitual residence, domicile or head office is situated outside Gibraltar but in a Member State shall have the same right in accordance with sections 159 and 160(2).

Winding-up proceedings

Opening of winding-up proceedings: information to the supervisory authorities.

150.(1) Only the Commission may take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in Member States outside Gibraltar.

(2) A decision referred to in subsection (1) may be taken in the absence, or following the adoption, of reorganisation measures.

(3) A decision concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, adopted in accordance with the legislation of a home Member State shall be recognised without further formality in Gibraltar and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened (and decisions taken in Gibraltar as the home Member State are effective in Member States in the same way).

(4) The Commission shall inform as a matter of urgency the supervisory authorities of all Member States of the decision to open winding-up proceedings, including the possible practical effects of such proceedings.

Applicable law.

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151.(1) The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the general law of Gibraltar (where Gibraltar is the home Member State, and otherwise by the general law of the home Member State), unless otherwise provided in sections 162 to 168.

(2) The matters referred to in subsection (1) include at least the following—

- (a) the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the opening of the winding-up proceedings;
- (b) the respective powers of the insurance undertaking and the liquidator;
- (c) the conditions under which set-off may be invoked;
- (d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
- (e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in section 168;
- (f) the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the opening of winding-up proceedings;
- (g) the rules governing the lodging, verification and admission of claims;
- (h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;
- (i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;
- (j) rights of the creditors after the closure of winding-up proceedings;
- (k) the party who is to bear the cost and expenses incurred in the winding-up proceedings; and

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- (1) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

(3) As an exception to subsection (1), in respect of the effects of winding-up proceedings upon employment contracts and employment relationships, those contracts and relationships shall be governed exclusively by the laws of the Member State applicable to them.

Treatment of insurance claims.

152.(1) Insurance claims take precedence over other claims against an insurance undertaking as specified in subsections (2) and (3).

(2) With regard to assets representing the technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking.

(3) With regard to the whole of the assets of the insurance undertaking, insurance claims shall take precedence over any other claim on the insurance undertaking with the only exception of the following—

- (a) claims by employees arising from employment contracts and employment relationships;
- (b) claims by public bodies on taxes;
- (c) claims by social security systems; and
- (d) claims on assets subject to rights in rem.

(4) The whole or part of the expenses arising from the winding-up procedure, as determined by the general law of Gibraltar, shall take precedence over insurance claims (and subsections (1) to (3) are subject to this subsection).

(5) Insurance undertakings must establish and keep up to date a special register in accordance with section 153.

Special register.

153.(1) Every insurance undertaking shall keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the law of Gibraltar.

(2) Where an insurance undertaking carries on both life and non-life insurance activities, it shall keep at its head office separate registers for each type of business.

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(3) But insurance undertakings which cover life and the risks listed in classes 1 and 2 of Part A of Annex I to the Solvency II Directive must keep a single register for the whole of their activities.

(4) The total value of the assets entered, valued in accordance with the law applicable in Gibraltar, shall at no time be less than the value of the technical provisions.

(5) Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3.

(6) The treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the option provided for in section 152(1)(a) shall be determined by the law of Gibraltar, except where sections 162, 163 or 164 apply to that asset where—

- (a) the asset used to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions set out in subsection (5);
- (b) such an asset is subject to a reservation of title in favour of a creditor or of a third party; or
- (c) a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking.

(7) Once winding-up proceedings have been opened, the composition of the assets entered in the register in accordance with subsections (1) to (5) shall not be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the Commission.

(8) But the liquidators shall add to those assets their yield and the value of the pure premiums received in respect of the class of insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is affected.

(9) Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the Commission.

Subrogation to a guarantee scheme.

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154. If at any time the rights of insurance creditors have been subrogated to a guarantee scheme established in Gibraltar, claims by that scheme shall not benefit from the provisions of section 152.

Representation of preferential claims by assets.

155. Every insurance undertaking must ensure that the claims which may take precedence over insurance claims pursuant to section 152(3) and which are registered in the insurance undertaking's accounts are represented, at any moment and independently of a possible winding-up, by assets.

Withdrawal of authorisation.

156.(1) Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn in accordance with the procedure laid down in section 106 of the Insurance Companies Act, as amended by Schedule 3 to this Act, except to the extent necessary for the purposes of subsection (2).

(2) The withdrawal of authorisation pursuant to subsection (1) shall not prevent the liquidator from pursuing some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of winding-up.

(3) Such activities shall be pursued with the consent and under the supervision of the Commission.

Publication of decisions on winding-up proceedings.

157.(1) The Commission, the liquidator or any person appointed for that purpose by the Commission shall publish the decision to open winding-up proceedings in the Gazette and shall also publish an extract from the winding-up decision in the Official Journal of the European Union.

(2) If the Commission is informed of the decision to open winding-up proceedings in accordance with Article 273(3) of the Solvency II Directive by the supervisory authorities of a Member State the Commission may publish the decision in the Gazette.

(3) Publication under subsection (1) or (2) shall specify the competent authority of the home Member State, the applicable law and the liquidator appointed, and shall be in English.

Information to known creditors.

158.(1) When winding-up proceedings are opened, the Commission, the liquidator or any person appointed for that purpose by the Commission shall

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without delay individually inform by written notice each known creditor whose habitual residence, domicile or head office is situated outside Gibraltar and in a Member State.

(2) The notice shall cover time-limits, the sanctions laid down with regard to those time-limits, the body or authority empowered to accept the lodging of claims or observations relating to claims and any other measures.

(3) The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

(4) In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Right to lodge claims.

159.(1) Any creditor, including public authorities of a Member State, whose habitual residence, domicile or head office is situated outside Gibraltar in a Member State may lodge claims or submit written observations relating to claims.

(2) The claims of all creditors referred to in subsection (1) shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors whose habitual residence, domicile or head office is situated in Gibraltar, (so that the Commission and the courts and other authorities of Gibraltar are operating without discrimination at European Union level).

(3) Except where the law of Gibraltar provides for an exception, a creditor shall send to the Commission copies of any supporting documents and shall indicate the following—

- (a) the nature and the amount of the claim;
- (b) the date on which the claim arose;
- (c) whether he alleges preference, security in rem or reservation of title in respect of the claim;
- (d) where appropriate, what assets are covered by his security.

(4) The precedence granted to insurance claims by section 152 need not be indicated.

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Languages and form.

160.(1) The information in the notice referred to in section 158(1) shall be provided in English.

(2) For that purpose a form shall be used bearing either of the following headings in all the official languages of the European Union—

- (a) ‘Invitation to lodge a claim; time-limits to be observed’; or
- (b) where the law of Gibraltar provides for the submission of observations relating to claims, ‘Invitation to submit observations relating to a claim; time-limits to be observed’.

(3) However, where a known creditor is the holder of an insurance claim, the information in the notice referred to in section 158(1) shall be provided in the official language or one of the official languages of the Member State in which the habitual residence, domicile or head office of the creditor is situated.

(4) Creditors whose habitual residence, domicile or head office is situated in a Member State outside Gibraltar may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that Member State.

(5) However, in that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading ‘Lodgement of claim’ or ‘Submission of observations relating to claims’, as appropriate, in English.

Regular information to creditors.

161.(1) Liquidators shall, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

(2) The Commission—

- (a) may request information on developments in the winding-up procedure from the supervisory authorities of a home Member State outside Gibraltar; and
- (b) shall cooperate with requests for information from supervisory authorities of the Member States where Gibraltar is the home Member State.

Rights in rem of third parties.

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162.(1) The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – which belong to the insurance undertaking and which are situated outside Gibraltar but within the territory of a Member State at the time of the opening of such measures or proceedings.

- (2) The rights referred to in subsection (1) shall include at least–
- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
 - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
 - (c) the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;
 - (d) a right to the beneficial use of assets.
- (3) The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of subsection (1) may be obtained, shall be considered to be a right in rem.
- (4) Subsection (1) shall not preclude actions for nullity, voidability or unenforceability referred to in section 151(2)(1).

Reservation of title.

163.(1) The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within Gibraltar if the measures or proceedings were opened outside Gibraltar but in a Member State.

(2) The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within Gibraltar, if the measures or proceedings were opened outside Gibraltar but in a Member State.

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(3) Subsections (1) and (2) shall not preclude actions for nullity, voidability or unenforceability referred to in section 151(2)(1).

Set-off.

164.(1) The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

(2) Subsection (1) shall not preclude actions for nullity, voidability or unenforceability referred to in section 151(2)(1).

Regulated markets.

165.(1) Without prejudice to section 162 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

(2) Subsection (1) shall not preclude actions for nullity, voidability, or unenforceability referred to in section 151(2)(1) which may be taken to set aside payments or transactions under the law applicable to that market.

Detrimental acts.

166. Section 151(2)(1) shall not apply where a person who has benefited from a legal act which is detrimental to all the creditors provides proof of that act being subject to the law of a Member State outside Gibraltar, and proof that that law does not allow any means of challenging that act in the relevant case.

Protection of third-party purchasers.

167. The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for consideration, of any of the following—

- (a) in regard to immovable assets, the law of Gibraltar in the case of immovable property situated there, and otherwise the Member State where the immovable property is situated;
- (b) in regard to ships or aircraft subject to registration in a public register, the law of Gibraltar if the register is kept under the

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authority of the law of Gibraltar, and otherwise the Member State under the authority of which the register is kept;

- (c) in regard to transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by law, the law of Gibraltar where the register, account or system is kept under the authority of the law of Gibraltar, and otherwise the law of the Member State under the authority of which the register, account or system is kept.

Lawsuits pending.

168.(1) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending in Gibraltar concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of Gibraltar.

(2) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending outside Gibraltar in a Member State concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of that Member State.

Administrators and liquidators.

169.(1) The appointment of the administrator or the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the Commission, where Gibraltar is the home Member State, and otherwise by the competent authorities of the home Member State.

(2) If the administrator or liquidator wishes to act in Gibraltar the Commission may require a translation into English; and if an administrator or liquidator wishes to act outside Gibraltar in a Member State the competent authorities of that Member State may require a translation into the official language or one of the official languages of that Member State.

(3) No formal authentication of that translation or other similar formality shall be required.

(4) Administrators and liquidators shall be entitled to exercise within Gibraltar all the powers which they are entitled to exercise within the territory of the home Member State.

(5) Persons to assist or represent administrators and liquidators may be appointed, in accordance with the law of Gibraltar, in the course of the reorganisation measure or winding-up proceedings, in particular where

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Gibraltar is the host Member State and, specifically, in order to help overcome any difficulties encountered by creditors in Gibraltar.

(6) In exercising their powers according to the law of Gibraltar, administrators or liquidators shall comply with the law of the Member States within which they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees; and otherwise in exercising their powers according to the law of a Member State administrators or liquidators shall comply with the law of the Member States within which they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

(7) The powers under subsection (6) shall not include the use of force or the right to rule on legal proceedings or disputes.

Registration in a public register.

170.(1) The administrator, liquidator or any other authority or person duly empowered in a Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in any relevant public register kept in another Member State.

(2) Where a Member State provides for mandatory registration, the authority or person referred to in subsection (1) shall take all the measures necessary to ensure such registration.

(3) The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Professional secrecy.

171. All persons required to receive or divulge information in connection with the procedures laid down in sections 147, 150 and 172 shall be bound by the provisions on professional secrecy, with the exception of any judicial authorities to which existing provisions of the law of Gibraltar apply.

Treatment of branches of third-country insurance undertakings.

172.(1) Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Part.

(2) The Commission shall endeavour to coordinate its actions with competent authorities and supervisory authorities of Member States.

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(3) Any administrators or liquidators shall likewise endeavour to coordinate their actions.

PART IVA APPEALS

Right of appeal.

172A.(1) Any person aggrieved by a refusal of an approval under this Act may appeal to the Supreme Court.

(2) Sections 111(2) and 112 (timing of appeal, and powers of the court) of the Insurance Companies Act shall have effect in relation to appeals under this section.

PART V TRANSITIONAL AND FINAL PROVISIONS

Transitional Provisions.

173. The provisions of Schedule 5 shall have effect.

174. *Omitted.*

Rights acquired by existing branches and insurance undertakings.

175.(1) Branches situated in Gibraltar which started business, in accordance with the provisions in force in Gibraltar, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in section 52 of this Act and Schedule 13 to the Insurance Companies Act, as amended by paragraph 26 of Schedule 3.

(2) Nothing in section 53 shall affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

Rights acquired by existing reinsurance undertakings.

176.(1) Reinsurance undertakings which—

- (a) are subject to the Directive,
- (b) had their head offices in Gibraltar before 10 December 2005, and
- (c) were authorised or entitled to conduct reinsurance business in accordance with the law of Gibraltar

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shall be deemed to be authorised in accordance with section 16A of the Insurance Companies Act, as amended by this Act.

(2) In the pursuit of their business, reinsurance undertakings authorised in accordance with subsection (1) shall be subject to the obligations arising under the second paragraph of Article 308(1).

177. *Omitted.*

General Regulations.

178.(1) Without prejudice to sections 98(2) and 100(2), but subject to subsection (2), the Minister may by regulations make such provision as he considers appropriate to give further effect to—

- (a) provisions of the Directive;
- (b) any rules made by the European Commission for implementing or supplementing any provisions of the Directive;
- (c) any modifications of the Directive made by any Community Instrument.

and any such regulations may make modifications of this Act or the Insurance Companies Act and may repeal enactments in consequence of the repeal of any Directives which were transposed by those enactments.

(2) Subsection (1) does not apply to any provisions, rules, guidelines or other documents which, as mentioned in section 3(1) of the European Communities Act, are, without further enactment, to be given legal effect in Gibraltar.

(3) In subsection (1) “modifications” includes amendments, additions, and repeals.

Commission bound by adopted delegated acts.

179.(1) Where, by virtue of any provision of the Omnibus 2 Directive, the European Commission has a power or duty to adopt any delegated act, then, by virtue of this Act, any delegated act adopted in the exercise of that power or duty which is relevant to a function of the supervisory authorities shall be binding on the Commission, whether or not the delegated act is contained in a Regulation made by the European Commission.

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(2) The reference in subsection (1) to a provision of the Omnibus 2 Directive includes a reference to a provision of that Directive amending the Solvency II Directive.

SCHEDULE 1

Sections 2, 98

TRANSPOSITION OF ARTICLES 75 TO 134

PRELIMINARY

Application and scope.

1.(1) This Schedule applies to firms.

(2) This Schedule gives effect to provisions of Chapter VI of Title I of the Directive relating to—

- (a) valuation of assets and liabilities, technical provisions;
- (b) own funds;
- (c) solvency capital requirement;
- (d) minimum capital requirement; and
- (e) investments.

Interpretation.

2. In this Schedule, unless the context otherwise requires,

“eligible own funds” shall be construed in accordance with Part III of this Schedule;

“firm” means a Gibraltar Solvency II firm;

“SPV” means an undertaking, whether incorporated or not, other than a Solvency II undertaking, which has received authorisation in accordance with section 97 (referring to special purpose vehicles); and

- (a) which assumes risks from Solvency II undertakings; and
- (b) which fully funds its exposures to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of the debt or other financing mechanism are subordinated to the undertaking’s obligations in respect of the risks referred to in (a).

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“reinsurance contracts” has the same meaning as in the Insurance Companies Act;

“risk margin” shall be construed in accordance with paragraphs 5 to 11;
“Solvency II undertaking” means a firm or other undertaking to which the Directive applies;

“technical provisions” means technical provisions established in accordance with paragraphs 4 to 13.

PART I

VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS

Valuation of assets.

3.(1) Firms shall value—

- (a) assets at the amount for which they could be exchanged between knowledgeable willing parties in an arm’s length transaction; and
- (b) liabilities at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm’s length transaction.

(2) For the purposes of sub-paragraph (1)(b), when valuing liabilities no adjustment shall be made to take account of the own credit standing of the firm.

Rules relating to technical provisions

General provisions.

4.(1) Firms shall establish adequate technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders.

(2) The value of technical provisions must correspond to the current amount that the firm would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another Solvency II undertaking.

(3) Firms shall calculate their technical provisions—

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- (a) such that the calculation makes use of and is consistent with information provided by the financial markets and generally available data on underwriting risks (market consistency);
- (b) in a prudent, reliable and objective manner;
- (c) taking into account the principles set out in paragraph 3; and
- (d) in accordance with paragraphs 5 to 11.

Calculation of technical provisions.

5.(1) The value of technical provisions shall be equal to the sum of a best estimate and a risk margin which shall be calculated in accordance with this paragraph and paragraphs 6 to 11.

(2) In a case where—

- (a) future cash flows associated with insurance or reinsurance obligations can be replicated reliably; and
- (b) that replication is provided using financial instruments; and
- (c) those financial instruments have a reliable market value which is observable;

then the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments.

(3) Where sub-paragraph (2) does not apply, then firms shall value the best estimate and the risk margin separately.

(4) The best estimate shall—

- (a) correspond to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure; and
- (b) be calculated—
 - (i) based upon up-to-date and credible information and realistic assumptions;
 - (ii) using adequate, applicable and relevant actuarial and statistical methods; and

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- (iii) gross, without deduction of the amounts recoverable from reinsurance contracts and SPVs, which firms must calculate separately in accordance with paragraph 10.

(5) The cash-flow projection used in the calculation of the best estimate (whether valued separately or determined on the basis of financial instruments in accordance with sub-paragraph (2)) shall take into account all the cash in- and out-flows required to settle the insurance and reinsurance obligations over their lifetime.

(6) The determination of the relevant risk-free interest rate term structure referred to in subsection (4)(a)–

- (a) shall make use of, and be consistent with, information derived from relevant financial instruments; and
- (b) shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent.

(7) For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated and the extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

Matching adjustment to relevant risk-free interest rate term structure.

6.(1) Insurance and reinsurance undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the supervisory authorities where the following conditions are met–

- (a) the undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

- (b) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertaking, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertaking;
- (c) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;
- (d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;
- (e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;
- (f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with subparagraphs (2) to (5) of paragraph 30;
- (g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with paragraph 3, covering the insurance or reinsurance obligations at the time the surrender option is exercised;
- (h) the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;
- (i) the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

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(2) Notwithstanding subparagraph (1)(h), insurance or reinsurance undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

(3) In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with paragraph (1)(h).

(4) Insurance or reinsurance undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment; and where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in subparagraph (1),—

- (a) it shall immediately inform the Commission and take the necessary measures to restore compliance with those conditions; and
- (b) where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

(5) The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under paragraph 8 or transitional measure on the risk-free interest rates under paragraph 3 of Schedule 5.

Calculating matching adjustment.

7.(1) For each currency the matching adjustment referred to in paragraph 6 shall be calculated in accordance with the following principles—

- (a) the matching adjustment must be equal to the difference of the following—
 - (i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the

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portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with paragraph 3 of the portfolio of assigned assets;

- (ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;
 - (b) the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance undertaking;
 - (c) notwithstanding paragraph (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;
 - (d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with Article 111(1)(n).
- (2) For the purposes of subparagraph (1)(b), the fundamental spread shall be—
- (a) equal to the sum of the following—
 - (i) the credit spread corresponding to the probability of default of the assets;
 - (ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets;
 - (b) for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;
 - (c) for assets other than exposures to Member States' central governments and central banks, no lower than 35% of the long-term average of the spread over the risk-free interest rate of

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assets of the same duration, credit quality and asset class, as observed in financial markets.

(3) The probability of default referred to in subparagraph(2)(a)(i) shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class; and where no reliable credit spread can be derived from the default statistics referred to in subparagraph (2)(a)(ii), the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in subparagraph (7)(b) and (c).

Volatility adjustment to relevant risk-free interest rate term structure.

8.(1) Insurance and reinsurance undertakings shall require prior approval by the Commission to apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in paragraph 5(2).

(2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency; and the reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(3) The amount of the volatility adjustment to risk-free interest rates shall correspond to 65% of the risk-corrected currency spread; and that spread shall be calculated as the difference between the spread referred to in subparagraph (2) and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(4) The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with paragraph 5(7); and the extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

(5) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in subparagraph (3) for the currency of that country shall, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points.

(6) The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country; and the risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

(7) The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under paragraph 6.

(8) By way of derogation from paragraph 30, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Use of technical information produced by EIOPA.

9.(1) Where the technical information referred to in paragraph 1 of Article 77e of the Solvency II Directive is adopted by the European Commission in accordance with paragraph 2 of that Article, insurance and reinsurance undertakings shall use that technical information in calculating—

- (a) the best estimate in accordance with paragraph 5;
- (b) the matching adjustment in accordance with paragraph 7; and
- (c) the volatility adjustment in accordance with paragraph 8.

(2) With respect to currencies and national markets where the volatility adjustment to the relevant risk-free interest rate is not set out in the implementing acts referred to in paragraph 2 of Article 77e of the Solvency II Directive, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate.

Review of long-term guarantees measures and measures on equity risk.

10. The Commission shall, on an annual basis until January 2021, provide EIOPA with the following information—

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- (a) the availability of long-term guarantees in insurance products in their national markets and the behaviour of insurance and reinsurance undertakings as long-term investors;
- (b) the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with section 46(4), the duration-based equity risk sub-module and the transitional measures set out in paragraphs 3 and 4 of Schedule 5;
- (c) the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-module and the transitional measures set out in paragraphs 3 and 4 of Schedule 5, at national level and in anonymised way for each undertaking;
- (d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of insurance and reinsurance undertakings and whether they provide undue capital relief;
- (e) the effect of any extension of the recovery period in accordance with section 46(4) on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;
- (f) where insurance and reinsurance undertakings apply the transitional measures set out in paragraphs 3 and 4 of Schedule 5, whether they comply with the phasing-in plans referred to in paragraph 5 of that Schedule and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and supervisory authorities, taking into account the regulatory environment of Gibraltar.

Risk Margin.

11.(1) Where firms value the best estimate and risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over their

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lifetime, determined using the cost-of-capital rate; and that rate shall be the same for all firms and shall be reviewed periodically

(2) The cost-of-capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that a firm would incur holding an amount of eligible own funds, as set out in Part II of this Schedule, equal to the Solvency Capital Requirement referred to in subsection (1).

(3) The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that firms would be expected to require in order to take over and meet the insurance and reinsurance obligations.

(4) For the purposes of the calculation of the risk margin under this paragraph, the Solvency Capital Requirement shall not include any capital add-on imposed in accordance with section 15(1)(c).

Other elements to be taken into account in calculation of technical provisions.

12. In addition to paragraphs 5 to 11, when calculating technical provisions, firms shall take into account—

- (a) all expenses that will be incurred in servicing insurance and reinsurance obligations;
- (b) inflation, including expenses and claims inflation; and
- (c) all payments to policyholders, including future discretionary bonuses, which firms expect to make, whether or not those payments are contractually guaranteed

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts.

13.(1) When calculating technical provisions, firms shall take account of the value of financial guarantees and any contractual options included in contracts of insurance and reinsurance contracts.

(2) Any assumptions used by a firm to determine the likelihood that policyholders will exercise contractual options, including lapses and surrenders, shall—

- (a) be realistic and based on current and credible information; and

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- (b) take into account, either explicitly or implicitly, the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation.

14. When calculating technical provisions, firms shall segment their insurance and reinsurance obligations into homogeneous risk groups, and, as a minimum, by lines of business.

Recoverables from reinsurance contracts and special purpose vehicles.

15.(1) Firms shall calculate amounts recoverable from reinsurance contracts and SPVs in accordance with paragraphs 4 to 14.

(2) For the purposes of sub-paragraph (1), firms shall take into account the time difference between amounts becoming recoverable and the actual receipt of those amounts.

(3) Firms shall adjust the calculation referred to in sub-paragraph (1) to take into account expected losses due to the default of the counterparty.

(4) The adjustment referred to in sub-paragraph (3) shall be based on an assessment of the probability of default of the counterparty and the average loss that would result from that default (loss-given-default).

Data quality and application of approximations, including case-by-case approaches, for technical provisions.

16.(1) The Commission shall ensure that firms have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of the data used in the calculation of their technical provisions.

(2) Where firms have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and SPVs, firms may use appropriate approximations, including case-by-case approaches, in the calculation of the best estimate.

Comparison against experience.

17.(1) Firms shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

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(2) Where a systematic deviation exists between the firm's best estimate calculation and experience, the firm shall make appropriate adjustments to the actuarial methods being used or the assumptions being made, or both as the case may require..

Appropriateness of level of technical provisions.

18. Upon request by the Commission, the firm shall demonstrate to the Commission–

- (a) the appropriateness of the level of the firm's technical provisions;
- (b) the applicability and relevance of the methods applied; and
- (c) the adequacy of the underlying statistical data used.

Increase of technical provisions.

19. If a firm's calculation of technical provisions does not comply with paragraphs 4 to 17, the Commission may require the firm to increase the amount of technical provisions so that they correspond to the level determined in accordance with those paragraphs.

PART II

OWN FUNDS

Determination of own funds.

20.(1) A firm's own funds shall comprise the sum of basic own funds as referred to in paragraph 21 and ancillary own funds as referred to in paragraph 22.

(2) For the purposes of this Part, a firm's surplus funds shall be regarded as accumulated profits of the firm which have not been made available for distribution to policy holders and beneficiaries.

Basic own funds.

21.(1) A firm's basic own funds shall consist of the following items–

- (a) the excess of assets over liabilities, valued in accordance with Part I; and
- (b) subordinated liabilities.

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(2) The excess amount referred to in sub-paragraph (1) shall be reduced by the amount of own shares held by the firm.

Ancillary own funds.

22.(1) A firm's ancillary own funds shall, subject to paragraph 23 consist of items (other than basic own funds) which can be called up to absorb losses, including the following (to the extent that they are not items of basic own-fund items)–

- (a) unpaid share capital or initial fund that has not been called up;
- (b) letters of credit and guarantees;
- (c) any other legally binding commitments received by the firm;
and
- (d) in the case of a mutual or mutual type association with variable contributions any future claims which it may have against its members by way of a call for supplementary contribution within the following 12 months.

(2) Where an item of ancillary own funds becomes paid in or called up, the proceeds paid in or the amount due in respect of the call shall be treated as an asset and the item shall cease to be treated as an item of ancillary own funds.

Supervisory approval of ancillary own funds.

23.(1) When determining its own funds a firm shall not take into account any item of ancillary own funds unless it has received the Commission's approval under section 41 of either–

- (a) a monetary amount for the relevant item of ancillary own funds; or
- (b) a method by which to determine the amount of the relevant item of ancillary own funds, together with the amount determined in accordance with that method for a specified time period.

(2) Where a firm has received approval–

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- (a) under subsection (1)(a) of section 41, it may only include in its own funds the item of ancillary own funds for an amount up to the amount approved; or
 - (b) under subsection (1)(b) of section 41, it may only include in its own funds the item of ancillary own funds up to the amount determined using the method approved, and only for the time period for which approval is granted.
- (3) A firm may only attribute an amount to an item of ancillary own funds to the extent that it–
- (a) reflects the loss-absorbency of the item; and
 - (b) is based upon prudent and realistic assumptions.
- (4) Where an item of ancillary own funds has a fixed nominal value, the amount of that item that can be included in a firm's own funds will only be equal to its nominal value where that value appropriately reflects its loss-absorbency.

Main criteria for classification into tiers.

24.(1) Own fund items shall be classified into three tiers, depending on whether they are basic own fund or ancillary own fund items and the extent to which they possess the characteristics in paragraph 27.

- (2) A firm may only include an own funds item in its Tier 1 own funds if–
- (a) it is an item of basic own funds; and
 - (b) it substantially possesses the characteristics set out in paragraph 27(1)(a) and (b) taking into consideration the features set out in paragraph 27(2).
- (3) A firm may only include an own funds item in its Tier 2 own funds if–
- (a) where it is an item of basic own funds, it substantially possesses the characteristics set out in paragraph 27(1)(b), taking into consideration the features set out in paragraph 27(2); or
 - (b) where it is an item of ancillary own funds it substantially possesses the characteristics set out in paragraph 22(1)(a) and (b), taking into consideration the features set out in paragraph 22(2).

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(4) Any basic or ancillary own fund items which do not fall within sub-paragraph (2) or sub-paragraph (3) shall be classified in the firm's Tier 3 own funds.

(5) In so far as authorised by the Commission, to the extent that surplus funds fulfil the criteria in sub-paragraph (2), they shall not be considered as insurance or reinsurance liabilities.

Classification of own funds into tiers.

25.(1) In classifying its own funds items, a firm shall refer to the list of own funds items in the list laid down in accordance with implementing measures under Article 97.

(2) Where an own fund item is not covered by the list referred to in sub-paragraph (1), the firm shall classify it in accordance with paragraph 24 but no such classification shall be made without approval under section 42.

Classification of specific insurance own fund items.

26. Without prejudice to paragraph 25, for the purposes of these paragraphs the following classifications shall be applied–

- (a) approved surplus funds shall be classified as Tier 1 own funds;
- (b) letters of credit and guarantees which are held in trust for the benefit of policyholders by an independent trustee and are provided by credit institutions shall be classified as Tier 2;
- (c) any future claims which a mutual of ship-owners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part 1 of Schedule 2 may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified as Tier 2; and
- (d) any future claims which a mutual with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months which do not fall within paragraph (c) shall be classified as Tier 2 where they substantially possess the characteristics set out in paragraph 24(2)(b).

Characteristics and features used to classify own funds into tiers.

27.(1) The characteristics referred to in paragraph 24 are–

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- (a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis as well as in the case of winding-up (permanent availability); and
- (b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations to policyholders, have been met (subordination).

(2) When assessing the extent to which own funds items possess the characteristics set out in sub-paragraph (1), currently and in the future, due consideration shall be given to—

- (a) the duration of the item, in particular whether the item is dated or not and, where an own funds item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the firm (sufficient duration);
- (b) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);
- (c) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs); and
- (d) whether the item is clear of encumbrances (absence of encumbrances).

Eligibility and limits applicable to Tiers 1, 2 and 3.

28.(1) As far as the compliance with its Solvency Capital Requirement is concerned—

- (a) more than one-third of a firm's eligible own funds must be accounted for by Tier 1 own funds; and
- (b) less than one-third of a firm's eligible own funds must be accounted for by Tier 3 own funds

(2) As far as compliance with its Minimum Capital Requirement is concerned more than 50% of a firm's eligible own funds must be accounted for by Tier 1 own funds.

(3) The eligible amount of own funds to cover the Solvency Capital Requirement shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

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(4) The eligible amount of basic own funds to cover the Minimum Capital Requirement shall be equal to the sum of the amount of Tier 1 and the eligible amount of basic own funds items classified in Tier 2.

PART III **SOLVENCY CAPITAL REQUIREMENT**

General provisions.

29.(1) A firm shall hold eligible own funds covering its Solvency Capital Requirement.

(2) A firm shall calculate its Solvency Capital Requirement either in accordance with the standard formula as set out in paragraphs 32 to 39 or using an internal model as set out in paragraphs 40 to 54.

Calculation of Solvency Capital Requirement.

30.(1) The Solvency Capital Requirement shall be calculated in accordance with sub-paragraphs (2) to (5).

(2) The Solvency Capital Requirement shall be calculated on the presumption that a firm will pursue its business as a going concern.

(3) The Solvency Capital Requirement—

- (a) shall be calibrated so as to ensure that all quantifiable risks to which the firm is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the following 12 months. With respect to existing business, it shall cover only unexpected losses; and
- (b) shall correspond to the Value-at-Risk of the firm's basic own funds subject to a confidence level of 99.5% over a one-year period.

(4) The Solvency Capital Requirement shall cover at least the following risks—

- (a) non-life underwriting risk;
- (b) life underwriting risk;
- (c) health underwriting risk;
- (d) market risk;

- (e) credit risk; and
- (f) operational risk,

and the operational risk referred to in paragraph (f) shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

(5) When calculating the Solvency Capital Requirement, a firm shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Frequency of calculation.

31.(1) Firms–

- (a) shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the Commission;
- (b) shall hold eligible own funds which cover the last reported Solvency Capital Requirement;
- (c) shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis; and
- (d) shall recalculate the Solvency Capital Requirement without delay and report it to the Commission where its risk profile deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement.

(2) Where there is evidence to suggest that the risk profile of a firm has altered significantly since the date on which the Solvency Capital Requirement was last reported, the Commission may require the firm concerned to recalculate the Solvency Capital Requirement.

Solvency Capital Requirement standard formula

Structure of the standard formula.

32. The Solvency Capital Requirement calculated on the basis of the standard formula shall be the sum of the following items–

- (a) the Basic Solvency Capital Requirement, as set out in paragraph 33;

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- (b) the capital requirement for operational risk, as set out in paragraph 36;
- (c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as set out in paragraph 37.

Design of Basic Solvency Capital Requirement.

33.(1) The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with point (1) of Annex IV to the Directive and shall consist of at least the following risk modules—

- (a) non-life underwriting risk;
- (b) life underwriting risk;
- (c) health underwriting risk;
- (d) market risk; and
- (e) counterparty default risk.

(2) For the purposes of paragraphs (a), (b) and (c) of subparagraph (1), firms shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

(3) The correlation coefficients for the aggregation of the risk modules referred to in sub-paragraph (1), as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in paragraph 25.

(4) Each of the risk modules referred to in sub-paragraph (1) shall be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period. Where appropriate, diversification effects shall be taken into account in the design of each risk module.

(5) The same design and specifications for the risk modules shall be used for all firms, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in paragraph 38.

(6) With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.

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(7) Subject to approval by the Commission, firms may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the firm concerned when calculating the life, non-life and health underwriting risk modules. Such parameters shall be calibrated on the basis of the internal data of the firm concerned, or of data which is directly relevant for the operations of that firm using standardised methods.

(8) When granting supervisory approval, the Commission shall verify the completeness, accuracy and appropriateness of the data used.

Calculation of Basic Solvency Capital Requirement.

34.(1) The Basic Solvency Capital Requirement shall be calculated in accordance with sub-paragraphs (2) to (6).

(2) The non-life underwriting risk module–

- (a) shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business;
- (b) shall take account of the uncertainty in a firm's results related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months; and
- (c) shall be calculated, in accordance with point (2) of Annex IV to the Directive, as a combination of the capital requirements for at least the following sub-modules -
 - (i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk); and
 - (ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).

(3) The life underwriting risk module–

- (a) shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business; and

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- (b) shall be calculated, in accordance with point (3) of Annex IV to the Directive, as a combination of the capital requirements for at least the following sub-modules—
 - (i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);
 - (ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);
 - (iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);
 - (iv) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life-expense risk);
 - (v) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);
 - (vi) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk); and
 - (vii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).
- (4) The health underwriting risk module—

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- (a) shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business; and
 - (b) shall cover at least the following risks—
 - (i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;
 - (ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning; and
 - (iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.
- (5) The market risk module—
- (a) shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the firm;
 - (b) shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof; and
 - (c) shall be calculated, in accordance with point (4) of Annex IV to the Directive, as a combination of the capital requirements for at least the following sub-modules—
 - (i) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

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- (ii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);
- (iii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);
- (iv) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);
- (v) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk); and
- (vi) additional risks to a firm stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

(6) The counterparty default risk module–

- (a) shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of firms over the following 12 months;
- (b) shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module;
- (c) shall take appropriate account of collateral or other security held by or for the account of the firm and the risks associated therewith; and
- (d) for each counterparty, shall take account of the overall counterparty risk exposure of the firm concerned to that counterparty, irrespective of the legal form of its contractual obligations to that firm.

Calculation of equity risk sub-module: symmetric adjustment mechanism.

35.(1) The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital

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charge applied to cover the risk arising from changes in the level of equity prices.

(2) The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with paragraph 33(4), covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index; and that weighted average shall be calculated over an appropriate period of time which shall be the same for all firms.

(3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Duration –based equity risk sub-module.

36.(1) Where, in circumstances falling within sub-paragraph (2), a firm provides–

- (a) occupational retirement provision in accordance with Article 4 of Directive 2003/41/EC, or
- (b) retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policy holders in accordance with the law of Gibraltar,
- (c) the Commission may authorise the firm to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure over a time period, which is consistent with a typical holding period of equity investments for the firm, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in paragraph 25 where the approach provided for in this paragraph is used only in respect of those assets and liabilities referred to in sub-paragraph (2)(a).

(2) The circumstances referred to in subsection (1) are where–

- (a) all assets and liabilities corresponding to the business of the firm are ring-fenced, managed and organised separately from the other activities of the firm, without any possibility of transfer;

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- (b) the activities of the firm related to paragraphs (a) and (b) of sub-paragraph (1), in relation to which the approach referred to in that sub-paragraph is applied, are pursued only in Gibraltar; and
- (c) the average duration of the liabilities corresponding to the business held by the firm exceeds an average of 12 years.

(3) In the calculation of the Solvency Capital Requirement, those assets and liabilities shall be fully considered for the purposes of assessing the diversification effects, without prejudice to the need to safeguard the interests of policy holders and beneficiaries in other Member States.

(4) Subject to the approval of the Commission, the approach set out in sub-paragraph (1) shall be used only where the solvency and liquidity positions as well as the strategies, processes and reporting procedures of the firm with respect to asset-liability management are such as to ensure, on an on-going basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the firm.

(5) The undertaking shall be able to demonstrate to the Commission that the condition in sub-paragraph (4) is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in paragraph 25.

(6) Firms shall not revert to applying the approach set out in paragraph 34, except in duly justified circumstances and subject to the approval of the Commission.

Capital requirement for operational risk.

37.(1) The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in paragraph 33; and that requirement shall be calibrated in accordance with paragraph 30(3).

(2) With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.

(3) With respect to insurance and reinsurance operations other than those referred to in sub-paragraph (2), the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations; and in this case, the

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capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Adjustment for loss-absorbing capacity of technical provisions and deferred taxes.

38.(1) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes as referred to in paragraph 32(c) shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

(2) That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent firms can establish that a reduction in such benefits may be used to cover unexpected losses when they arise; and the risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

(3) For the purpose of sub-paragraph (2), the value of future discretionary benefits under adverse circumstances shall be compared to the value of those benefits under the underlying assumptions of the best-estimate calculation.

Standard formula: simplification and modification.

39.(1) Firms may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all firms to apply the standardised calculation.

(2) Simplified calculations shall be calibrated in accordance with paragraph 30(3).

(3) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in paragraphs 32 to 38 and sub-paragraph(1), because the risk profile of the firm concerned deviates significantly from the assumptions underlying the standard formula calculation, the Commission may, by means of a decision stating the reasons, require the firm concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that firm when calculating the life, non-life and health underwriting risk modules, as set out in paragraph 33(7).

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(4) Those specific parameters shall be calculated in such a way as to ensure that the firm complies with paragraph 30(3).

Solvency Capital Requirement full and partial internal models

General provisions for approval of full and partial internal models.

40.(1) Firms may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the Commission.

(2) Firms may use partial internal models for the calculation of one or more of the following—

- (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in paragraphs 33 and 34;
- (b) the capital requirement for operational risk as set out in paragraph 37;
- (c) the adjustment referred to in paragraph 38.

(3) Partial modelling may be applied to a firm's whole business, or only to one or more major business units.

(4) In any application for approval, firms shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in paragraphs 48 to 53 except that where the application for that approval relates to a partial internal model, the requirements set out in paragraphs 48 to 53 shall be adapted to take account of the limited scope of the application of the model.

(5) After having received approval from the Commission to use an internal model, firms may, by means of a decision stating the reasons, be required to provide the Commission with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in paragraphs 32 to 39.

Specific provisions for approval of partial internal models.

41. In the case of a partial internal model, supervisory approval shall be given only where that model fulfils the requirements set out in paragraph 40 and the following additional conditions—

- (a) the reason for the limited scope of application of the model is properly justified by the firm;

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- (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the firm and in particular complies with the principles set out in paragraphs 29 to 31;
- (c) its design is consistent with the principles set out in paragraphs 29 to 31 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.

Transitional plan to extend scope of the model.

42.(1) When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of a firm with respect to a specific risk module, or parts of both, the Commission may require the firm concerned to submit a realistic transitional plan to extend the scope of the model.

(2) The transitional plan shall set out the manner in which the firm plans to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of its insurance operations with respect to that specific risk module.

Policy for changing full and partial internal models.

43.(1) As part of the initial approval process of an internal model, the Commission shall approve the policy for changing the model of the firm; and firms may change their internal model in accordance with that policy.

(2) The policy shall include a specification of minor and major changes to the internal model.

(3) Major changes to the internal model, as well as changes to that policy, shall always be subject to prior supervisory approval, as laid down in paragraph 40.

(4) Minor changes to the internal model shall not be subject to prior supervisory approval, insofar as they are developed in accordance with that policy.

Responsibilities of administrative, management or supervisory bodies.

44.(1) The administrative, management or supervisory body of a firm shall approve the application to the Commission for approval of the internal model referred to in paragraph 40, as well as the application for approval of any subsequent major changes made to that model.

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(2) The administrative, management or supervisory body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Reversion to standard formula.

45. After having received approval in accordance with paragraph 40, a firm shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in paragraphs 32 to 39, except in duly justified circumstances and subject to the prior approval of the Commission.

Non-compliance of internal model.

46.(1) If, after having received approval from the Commission to use an internal model, a firm ceases to comply with the requirements set out in paragraphs 48 to 53, it shall, without delay, either present to the Commission a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

(2) In the event that a firm fails to implement the plan referred to in subparagraph (1), the Commission may require the firm to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in paragraphs 32 to 39.

Significant deviations from assumptions underlying standard formula calculation.

47. Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in paragraphs 32 to 39, because the risk profile of the firm concerned deviates significantly from the assumptions underlying the standard formula calculation, the Commission may, by means of a decision stating the reasons, require the firm concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

Use test.

48.(1) Firms shall demonstrate that the internal model is widely used in and plays an important role in their system of governance, referred to in sections 18 to 25, in particular–

- (a) their risk-management system as laid down in section 20 and their decision-making processes;
- (b) their economic and solvency capital assessment and allocation processes, including the assessment referred to in section 21.

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(2) In addition, firms shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by sub-paragraph (1).

(3) The administrative, management or supervisory body of a firm shall be responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the firm concerned.

Statistical quality standards.

49.(1) The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in sub-paragraphs (2) to (12).

(2) The methods used to calculate the probability distribution forecast—

- (a) shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions; and
- (b) shall be based upon current and credible information and realistic assumptions,;

and firms shall be able to justify the assumptions underlying their internal model to the Commission.

(3) Data used for the internal model shall be accurate, complete and appropriate.

(4) Firms shall update the data sets used in the calculation of the probability distribution forecast at least annually.

(5) No particular method for the calculation of the probability distribution forecast shall be prescribed.

(6) Regardless of the calculation method chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of a firm, in particular its risk-management system and decision-making processes, and capital allocation in accordance with paragraph 48.

(7) The internal model shall cover all of the material risks to which a firm is exposed; and internal models shall cover at least the risks set out in paragraph 30(4).

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(8) As regards diversification effects, a firm may take account in its internal model of dependencies within and across risk categories, so long as the Commission is satisfied that the system used for measuring those diversification effects is adequate.

(9) Firms may take full account of the effect of risk-mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.

(10) Firms shall accurately assess—

- (a) the particular risks associated with financial guarantees and any contractual options in their internal model, where material; and
- (b) the risks associated with both policy holder options and contractual options for firms;

and, for that purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

(11) In their internal model, firms may take account of future management actions that they would reasonably expect to carry out in specific circumstances; and in such a case, the firm concerned shall make allowance for the time necessary to implement such actions.

(12) In their internal model, firms shall take account of all payments to policy holders and beneficiaries which they expect to make, whether or not those payments are contractually guaranteed.

Calibration standards.

50.(1) Firms may use a different time period or risk measure than that set out in paragraph 30(3) for internal modelling purposes as long as the outputs of the internal model can be used by them to calculate the Solvency Capital Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in paragraph 30.

(2) Where practicable, firms shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by their internal model, using the Value-at-Risk measure set out in paragraph 30(3).

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(3) Where firms cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the Commission may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as the firm can demonstrate to the Commission that policy holders are provided with a level of protection equivalent to that provided for in paragraph 30.

(4) The Commission may require firms to run their internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Profit and loss attribution.

51.(1) Firms shall review, at least annually, the causes and sources of profits and losses for each major business unit.

(2) Firms shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses.

(3) The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the firm.

Validation standards.

52.(1) Firms shall have a regular cycle of model validation which includes–

- (a) monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience;
- (b) an effective statistical process for validating the internal model which enables the firm to demonstrate to the Commission that the resulting capital requirements are appropriate;
- (c) an analysis of the stability of the internal model and, in particular, the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions; and
- (d) an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

(2) The statistical methods applied for the purposes of sub-paragraph 1(b) shall test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating thereto.

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Documentation standards.

53.(1) Firms shall document the design and operational details of their internal model and shall demonstrate compliance with paragraphs 48 to 52;

- (2) The documentation referred to in sub-paragraph (1) shall—
- (a) provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model;
 - (b) indicate any circumstances under which the internal model does not work effectively;
 - (c) include all major changes to their internal model, as set out in paragraph 43.

External models and data.

54. The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in paragraphs 43 to 48.

PART IV

MINIMUM CAPITAL REQUIREMENT

General provisions.

55.(1) A firm must hold eligible basic own funds, to cover the Minimum Capital Requirement.

(2) By way of derogation from sections 47 and 51 and section 106(2) of the Insurance Companies Act, where firms comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16a of Directive 73/239/EEC or Article 37, 38 or 39 of Directive 2005/68/EC respectively on 31 December 2015 but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with subparagraph (1) by 31 December 2016.

(3) Where the undertaking concerned fails to comply with subparagraph (1) within the period set out in subparagraph (2), the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the Insurance Companies Act.

Calculation of Minimum Capital Requirement.

56.(1) The Minimum Capital Requirement shall be calculated in accordance with the following principles—

- (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
- (b) it shall correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk were firms allowed to continue their operations;
- (c) the linear function referred to in sub-paragraph (2) used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of a firm subject to a confidence level of 85% over a one-year period;
- (d) it shall have an absolute floor of—
 - (i) €2,500,000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part 1 of Schedule 2 are covered, in which case it shall be no less than €3,700,000;
 - (ii) €3,700,000 for life insurance undertakings, including captive insurance undertakings;
 - (iii) €3,600,000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than €1,200,000;
 - (iv) the sum of the amounts set out in sub-paragraphs (i) and (ii) for insurance undertakings as referred to in section 39(5).

(2) Subject to sub-paragraph (3), the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the firm's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses; and the variables used shall be measured net of reinsurance.

(3) Without prejudice to sub-paragraph (1)(d)—

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- (a) the Minimum Capital Requirement shall neither fall below 25% nor exceed 45% of the firm's Solvency Capital Requirement, calculated in accordance with paragraphs 27 to 34 or 35 to 49, and including any capital add-on imposed in accordance with section 15;
- (b) the Commission may, for a period ending no later than 31 December 2017, require a firm to apply the percentages referred to in sub-paragraph (a) exclusively to the firm's Solvency Capital Requirement calculated in accordance with paragraphs 32 to 39.

Quarterly calculation of Minimum Capital Requirement.

57.(1) Firms shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to the Commission.

(2) Where either of the limits referred to in paragraph 56(3) determines a firm's Minimum Capital Requirement, the firm shall provide to the Commission information allowing a proper understanding of the reasons therefore.

(3) For the purposes of calculating the limits referred to in paragraph 56(3), firms shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.

PART V

INVESTMENTS

Prudent person principle.

58.(1) Firms shall invest all their assets in accordance with the prudent person principle, as specified in sub-paragraphs (2), (3) and (4).

- (2) With respect to the whole portfolio of assets,—
 - (a) firms shall only invest in assets and instruments whose risks the firm concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with section 21(2)(a);
 - (b) all assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, quality,

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liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability; and

- (c) assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective;

and, in the case of a conflict of interest, firms, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries.

(3) Without prejudice to sub-paragraph (2), with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the following provisions apply–

- (a) where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in the Financial Services (Collective Investment Schemes) Act 2011, or to the value of assets contained in an internal fund held by the firm, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets;
- (b) where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in sub-paragraph (a), the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based;
- (c) where the benefits referred to in sub-paragraphs (a) and (b) include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to sub-paragraph (4).

(4) Without prejudice to sub-paragraph (2), the following provisions apply with respect to assets other than those covered by sub-paragraph (3)–

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- (a) the use of derivative instruments is possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management;
- (b) investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels;
- (c) assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole; and
- (d) investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the firm to excessive risk concentration.

Freedom of investment.

59.(1) Firms shall not be required to invest in particular categories of assets.

(2) The investment decisions of a firm or its investment manager shall not be subject to any kind of prior approval or systematic notification requirements.

(3) This paragraph is without prejudice to requirements restricting the types of assets or reference values to which policy benefits may be linked. Any such rules shall be applied only where the investment risk is borne by a policy holder who is a natural person and shall not be more restrictive than those set out in the Financial Services (Collective Investment Schemes) Act 2011.

Localisation of assets and prohibition of pledging of assets.

60.(1) With respect to insurance risks situated in the EEA, the Commission shall not require that the assets held to cover the technical provisions related to those risks are localised within the EEA or in any particular EEA State.

(2) With respect to recoverables from reinsurance contracts against undertakings authorised in accordance with the Directive or which have their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 172 of the Directive, the Commission shall not require the localisation within the EEA of the assets representing those recoverables.

(3) The Commission shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging

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of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is an insurance or reinsurance undertaking authorised in accordance with the Directive.

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SCHEDULE 2

Sections 4, 62, 99

PART I

ANNEX I TO THE DIRECTIVE

CLASSES OF NON-LIFE INSURANCE

A. Classification of risks according to classes of insurance

1. *Accident* (including industrial injury and occupational diseases):
fixed pecuniary benefits, -
benefits in the nature of indemnity, -
combinations of the two, -
injury to passengers,
2. *Sickness*:
fixed pecuniary benefits, -
benefits in the nature of indemnity, -
combinations of the two,
3. *Land vehicles* (other than railway rolling stock)
All damage to or loss of -
land motor vehicles,
land vehicles other than motor vehicles.
4. *Railway rolling stock*
All damage to or loss of railway rolling stock.
5. *Aircraft*
All damage to or loss of aircraft.
6. *Ships (sea, lake and river and canal vessels)*
All damage to or loss of -
river and canal vessels,
lake vessels,
sea vessels.
7. *Goods in transit* (including merchandise, baggage, and all other goods)
All damage to or loss of goods in transit or baggage, irrespective of the form
of transport
8. *Fire and natural forces*
All damage to or loss of property (other than property included in classes 3,
4, 5, 6 and 7) due to—

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fire,
explosion,
storm,
natural forces other than storm,
nuclear energy,
land subsidence.

9. *Other damage to property*

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. *Motor vehicle liability*

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11. *Aircraft liability*

All liability arising out of the use of aircraft (including carrier's liability).

12. *Liability for ships (sea, lake and river and canal vessels)*

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13. *General liability*

All liability other than those referred to in classes 10, 11 and 12.

14. *Credit -*

insolvency (general),
export credit,
instalment credit,
mortgages,
agricultural credit.

15. *Suretyship -*

suretyship (direct), -
suretyship (indirect).

16. *Miscellaneous financial loss -*

employment risks,
insufficiency of income (general),
bad weather,
loss of benefits,
continuing general expenses,
unforeseen trading expenses,
loss of market value,
loss of rent or revenue,
other indirect trading loss,

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other non-trading financial loss,
other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance for persons who get into difficulties while travelling, while away from their home or their habitual residence.

B. Description of authorisations granted for more than one class of insurance

The following names shall be given to authorisations which simultaneously cover the following classes:

- (a) Classes 1 and 2: 'Accident and Health Insurance';
- (b) Classes 1 (fourth indent), 3, 7 and 10: 'Motor Insurance';
- (c) Classes 1 (fourth indent), 4, 6, 7 and 12: 'Marine and Transport Insurance';
- (d) Classes 1 (fourth indent), 5, 7 and 11: 'Aviation Insurance';
- (e) Classes 8 and 9: 'Insurance against Fire and other Damage to Property';
- (f) Classes 10, 11, 12 and 13: 'Liability Insurance';
- (g) Classes 14 and 15: 'Credit and Suretyship Insurance';
- (h) All classes, at the choice of the Member States, which shall notify the other Member States and the European Commission of their choice.

PART II

ANNEX II TO THE DIRECTIVE

CLASSES OF LIFE INSURANCE

I. The life insurance referred to in points (a)(i), (ii) and (iii) of Article 2(3) excluding those referred to in II and III;

II. Marriage assurance, birth assurance;

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III. The insurance referred to in points (a)(i) and (ii) of Article 2(3), which are linked to investment funds;

IV. Permanent health insurance, referred to in point (a)(iv) of Article 2(3);

V. Tontines, referred to in point (b)(i) of Article 2(3);

VI. Capital redemption operations, referred to in point (b)(ii) of Article 2(3);

VII. Management of group pension funds, referred to in point (b)(iii) and (iv) of Article 2(3);

VIII. The operations referred to in point (b)(v) of Article 2(3);

IX. The operations referred to in Article 2(3)(c).

PART III

ANNEX V TO THE DIRECTIVE

GROUPS OF NON-LIFE INSURANCE CLASSES FOR THE PURPOSES OF SECTION 62

1. accident and sickness (classes 1 and 2 of Annex I),
2. motor (classes 3, 7 and 10 of Annex I, the figures for class 10, excluding carriers' liability, being given separately),
3. fire and other damage to property (classes 8 and 9 of Annex I),
4. aviation, marine and transport (classes 4, 5, 6, 7, 11 and 12 of Annex I),
5. general liability (class 13 of Annex I),
6. credit and suretyship (classes 14 and 15 of Annex I),
7. other classes (classes 16, 17 and 18 of Annex I).

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SCHEDULE 3

Section 100

AMENDMENTS OF INSURANCE COMPANIES ACT

Definitions, Fit and proper persons

1.(1) In section 2(2),–

- (a) in the definition of “criteria of sound and prudent management” after the words “Schedule 15” there shall be inserted the words “as supplemented by section 19 of the Solvency Act”; and
- (b) immediately before the definition of “subordinate company” there shall be inserted the following definitions–

“the Solvency Act” means the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015;

“the Solvency Directive” means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

(2) At the end of section 2(31) (claims representatives) there shall be added the words “and may not be required to undertake activities on behalf of the non-life insurance undertaking which appointed him other than those set out in Article 152.1 of the Solvency Directive.”

Qualifying holdings.

2. In section 2A, in subsection (4)(c) for the words from “the Commission” to the end of subparagraph (i) there shall be substituted the words – “supervisory authority of its home Member State–

- (i) of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the thresholds referred to in paragraphs (a) and (b) and section 39B.”.

Scope of authorisation.

3.(1) In section 16A, at the end of subsection (1) there shall be added the words “and such authorisation shall permit the insurer to carry on its authorised insurance business throughout the entire EEA”.

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(2) After subsection (3) of that section there shall be inserted the following subsection–

“(3A) Without prejudice to the generality of subsection (3), an authorisation for one of the classes may be limited to the operations set out in the scheme of operations referred to in sections 12 and 13 of the Solvency Act.”.

(3) After subsection (4) of that section there shall be inserted the following subsection:

“(5) An application for authorisation shall be considered in the light of the scheme of operations to be submitted pursuant to section 12(1)(a) of the Solvency Act.”; and the fulfilment of any conditions laid down for authorisation.”.

Notification and publication of authorisations or withdrawals of authorisation.

4. At the end of section 16A there shall be inserted the following section–

“Notification of authorisations and withdrawal of authorisations.

16AA. The Commission shall notify every authorisation or withdrawal of authorisation to the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council.”.

Bodies exempt from licensing.

5.(1) In section 18, paragraphs (a) to (d) shall be omitted.

(2) At the beginning of the section “(1)” shall be inserted after “18” and at the end there shall be inserted–

“(2) For the purpose of ensuring compliance with paragraph 2 of Article 17 of the Solvency Directive, the Government must ensure that the bodies specified in subsection (1)(e) have insurance or re-insurance activities operations as their object which operate under conditions equivalent to those under which undertakings governed by private law operate.”.

Licensed insurer not to carry on any other business.

6. For section 21 there shall be substituted the following section–

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“21 Every insurer licensed under this Act shall limit its objects to the business of insurance and related operations arising directly from that business to the exclusion of all other commercial business except that, in the case of a licensed reinsurer, that requirement may include a holding company function and activities with respect to financial sector activities such as are referred to in Article 18.1(b) of the Solvency Directive.”.

Applications for licences.

7. At the end of section 23 there shall be inserted the following subsection–

“(3) In the exercise of its powers under this section the Commission may not take into account the economic requirements of the market.”.

Conditions for issue of licence.

8. In section 24A, in subsection (1) for the words “a company registered under section 2(1) of the Companies Act”, there shall be substituted the words “a body specified in paragraph (27) of Annex III to the Solvency Directive which has its registered office in Gibraltar”.

Determination of licence applications.

9.(1) In section 26, subsection (4) shall be omitted.

(2) After subsection (5) of that section, there shall be inserted the following subsection–

“(6) The Commission shall not issue a licence to an applicant which is a Gibraltar insurer and which is–

- (a) a subsidiary of a credit institution or investment firm authorised in the EEA,
- (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the EEA, or
- (c) controlled by the same person who controls a credit institution or investment firm authorised in the EEA,

without prior consultation with the authorities of the EEA State concerned who are responsible for the supervision of credit institutions or, as the case may require, investment firms.”

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Restriction on issue of licences in case of “close links”.

10.(1) In subsection (1) of section 27, the words “which is a Gibraltar or non-EEA insurer” shall be omitted, and, in paragraph (b), for the words “his functions under this Act” there shall be substituted “its supervisory functions”.

(2) At the end of that section there shall be inserted the following subsection–

“(5) In accordance with the Commission's requirements, licensed insurers shall provide the Commission, on a continuous basis, with the information it requires to monitor that the insurer does not fulfil the conditions which would entail refusal of a licence under subsection (1).”.

Claims representatives.

11. In section 29, in subsection (8), after the words “subsection (1)”, there shall be inserted the words “then, unless approval is given in accordance with Article 152(4) of the Solvency Directive to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC assuming the function of the claims representative”.

Terms of licence for small scale undertaking.

12. At the end of section 32 there shall be inserted the following subsection–

“(3) Where a licence is issued to an undertaking to which the Solvency Directive does not apply by virtue of subsections (1) to (3) of section 9 of that Act, the Commission may make it a term of the licence that the licensee complies with all, or such as may be specified in the licence, of the requirements of the Solvency Act which would apply if the undertaking were one to which that Act applied.”.

Assessment period.

13.(1) In section 39B, in subsection (3), for paragraph (b) there shall be substituted–

“(b) a person who is not subject to supervision under–

- (i) the Solvency Directive;
- (ii) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative

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provisions relating to undertakings for collective investment in transferable securities (UCITS); or

- (iii) Directive 2004/39/EC, or Directive 2006/48/EC (Markets in Financial Instruments)”.

(2) At the end of that section there shall be added the following subsection—

- “(7) No requirement may be imposed for the notification to and approval by the Commission of direct or indirect acquisitions of voting rights or capital if it would be more stringent than the requirements set out in the Solvency Directive.”.

Assessment.

14.(1) In section 39C, in subsection (1)(d) for the words “based on this Act and, where applicable, other financial services legislation” there shall be substituted the words “based on the Solvency Directive and, where applicable, other Directives, notably, Directive 2002/87/EC”

(2) In subsection (1)(e) of that section, for the words “financing is being or has been committed or attempted”, there shall be substituted the words “financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted”.

(3) At the beginning of subsection (5) of that section there shall be inserted the words “Notwithstanding subsections (1) to (3) of section 39B.”.

Enlargement of powers of Commission to intervene.

15. In section 67(2), after paragraph (c), there shall be inserted the following paragraph—

- “(cc) that it appears to it that the insurer or reinsurer has failed seriously in its obligations under the rules made for the purpose of implementing the Solvency Directive and to which it is subject”.

Exception to free choice of lawyer.

16. At the end of section 87J there shall be added—

- “(2) An exemption granted pursuant to this section shall not affect the application of sections 90 and 91 of the Solvency Act.

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- (3) In this section and section 87H “lawyer” includes a barrister or solicitor qualified to practice in Gibraltar and, subject to that, means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services”.

Arbitration.

17.(1) At the end of subsection (1) of section 87K, there shall be added the words "or other procedures offering comparable guarantees of objectivity".

(2) At the end of section 87K there shall be added the following subsection–

- “(3) This section is without prejudice to any right of appeal to the High Court or the Supreme Court.”.

Co-insurance.

18. In section 88, for the words from “co-insurance operations” onwards there shall be substituted the words “the Community co-insurance operations referred to in section 84(1) of the Solvency Act”.

Withdrawal of authorisation.

19.(1) In section 106, in subsection (2), at the end of paragraph (b) there shall be inserted–

- “; or
(c) expressly renounced its authorisation;
(d) ceased to fulfil the conditions for authorisation; or
(e) failed seriously in its obligations under those provisions to which it is subject.”.

(2) For subsection (2A) of that section there shall be substituted–

“(2A) Where the Commission decides to withdraw authorisation and issues a direction under this section accordingly, it shall state the full reasons and–

- (a) shall communicate the decision to the insurance or reinsurance undertaking concerned; and

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- (b) shall notify the supervisory authority of any EEA State where the insurer carries on insurance business of the nature and reason for its direction and request the supervisory authority to take appropriate measures to prevent the insurer from effecting contracts of insurance or reinsurance.”.

Policy conditions and scales of premiums.

20. After section 98 there shall be inserted the following section–

“Policy conditions and scales of premiums.

- 98A.(1)The Commission shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an insurer intends to use in its dealings with policy holders or ceding or retro-ceding undertakings.
- (2) Notwithstanding subsection (1), for life insurance and for the sole purpose of verifying compliance with legal provisions concerning actuarial principles, the Commission may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions; but this requirement shall not constitute a prior condition for the issue of a licence.
- (3) The Commission may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.
- (4) The Commission may subject undertakings seeking or having obtained a licence for class 18 in of Schedule 1 to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to similar undertakings to meet their commitments arising out of that class.”

Extension of supervisory powers.

21. After section 109 there shall be inserted the following sections–

“Supervision of branches established in Member States other than the home State.

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- 109A.(1) Where an insurer or reinsurer authorised in another Member State carries on business through a branch in Gibraltar, the supervisory authorities of the home Member State may, after having informed the Commission, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.
- (2) The Commission may participate in the verifications referred to in subsection (1).
- (3) Where Gibraltar is the home state of an insurer or reinsurer which carries on business through a branch in another member State, the Commission, after having informed the supervisory authorities of the host state, may carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the Commission's financial supervision of the insurer or reinsurer.
- (4) Where the Commission has informed the supervisory authorities of a host Member State that it intends to carry out on-site verifications in accordance with subsection (3) and where the Commission is prohibited from exercising its right to carry out those on-site verifications or where the Commission is unable in practice to exercise its right to participate in accordance with subsection (2), the Commission may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Powers exercisable for purposes of the Solvency Directive.

- 109B.(1) Insurance undertakings shall submit to the Commission the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in sections 10(1) and 11 of the Solvency Act; and that information shall include at least the information necessary for the following—
- (a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;
- (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

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- (2) The Commission shall have the following powers–
- (a) to determine the nature, the scope and the format of the information referred to in subsection (1) which they require insurance and reinsurance undertakings to submit at the following points in time–
 - (i) at predefined periods;
 - (ii) upon occurrence of predefined events; and
 - (iii) during enquiries regarding the situation of an undertaking;
 - (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and
 - (c) to require information from external experts, such as auditors and actuaries.
- (3) The information which the Commission may require by virtue of this section shall comprise the following–
- (a) qualitative or quantitative elements, or any appropriate combination thereof;
 - (b) historic, current or prospective elements, or any appropriate combination thereof; and
 - (c) data from internal or external sources, or any appropriate combination thereof.
- (4) The information referred to in subsection (3) must comply with the following principles–
- (a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;
 - (b) it must be accessible, complete in all material respects, comparable and consistent over time; and
 - (c) it must be relevant, reliable and comprehensible.

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- (5) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements laid down in this section as well as a written policy, approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, ensuring the ongoing appropriateness of the information submitted.
- (6) Without prejudice to paragraph (7) and paragraph 57(1) of Schedule 1 to the Solvency Act, where the predefined periods referred to in subsection (2)(a)(i) are shorter than one year, the Commission may limit regular supervisory reporting, where—
 - (a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking; and
 - (b) the information is reported at least annually.
- (7) The Commission shall not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of section 103 of the Solvency Act, unless the undertaking can demonstrate to the satisfaction of the Commission that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.
- (8) The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20% of the life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions; and in this subsection “market” means the market in the United Kingdom and Gibraltar taken together.
- (9) The Commission may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where—
 - (a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

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- (b) the submission of that information is not necessary for the effective supervision of the undertaking;
 - (c) the exemption does not undermine the stability of the financial systems concerned in the European Union; and
 - (d) the undertaking is able to provide the information on an ad-hoc basis.
- (10) The Commission shall not exempt from reporting on an item-by-item basis undertakings that are part of a group within the meaning of section 103 unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-tem basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.
- (11) The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20% of the life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions; and in this subsection "market" means the market in the United Kingdom and Gibraltar taken together.
- (12) Under subsections (8) and (11) the Commission shall give priority to the smallest undertakings when determining the eligibility of the undertakings for the limitations or exemptions concerned.
- (13) For the purposes of subsections (6) to (12), as part of the supervisory review process, the Commission shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least–
- (a) the volume of premiums, technical provisions and assets of the undertaking;
 - (b) the volatility of the claims and benefits covered by the undertaking;
 - (c) the market risks that the investments of the undertaking give rise to;
 - (d) the level of risk concentrations;

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- (e) the total number of classes of life and non-life insurance for which authorisation is granted;
- (f) possible effects of the management of the assets of the undertaking on financial stability;
- (g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in subsection (5);
- (h) the appropriateness of the system of governance of the undertaking;
- (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and
- (j) whether the undertaking is a captive insurance or reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

Supervisory review process.

109C.(1) The Commission shall review and evaluate the strategies, processes and reporting procedures which are established by undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to the Solvency Directive.

- (2) That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.
- (3) The Commission shall in particular review and evaluate compliance with the following—
 - (a) the system of governance, including the own-risk and solvency assessment, as set out in sections 17 to 26 of the Solvency Act;
 - (b) the technical provisions as set out in those sections;

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- (c) the capital requirements as set out in section 43 of the Solvency Act and paragraphs 29 to 57 of Schedule 1 to that Act;
- (d) the investment rules as set out in paragraphs 58 to 60 of Schedule 1;
- (e) the quality and quantity of own funds as set out in paragraphs 18 to 28 of that Schedule;
- (f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in the provisions specified in paragraph (c);

and the Commission shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an undertaking and to monitor how that deterioration is remedied.

- (4) The Commission shall assess—
 - (a) the adequacy of the methods and practices of the undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned; and
 - (b) the ability of the undertakings to withstand those possible events or future changes in economic conditions.
- (5) The reviews, evaluations and assessments referred to in above shall be conducted regularly and the Commission shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

General supervisory powers.

109D.(1) Without prejudice to the powers which it has under this Act, the Commission shall have the following powers—

- (a) to take preventative and corrective measures to ensure that undertakings comply with the laws, regulations and

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administrative provisions with which they have to comply in Gibraltar;

- (b) to take any necessary measures, including where appropriate, those of an administrative or financial nature with regard to undertakings and the members of their administrative, management or supervisory body;
 - (c) to require all information necessary to conduct supervision in accordance with section 31;
 - (d) to develop, in addition to the calculation of the Solvency Capital Requirement, and where necessary, quantitative tools under the supervisory review process to assess the ability of undertakings to cope with possible events or future changes in economic conditions which could have unfavourable effects on their overall financial standing and to require that corresponding tests are performed by the undertakings; and
 - (e) to carry out on-site investigations at the premises of undertakings.
- (2) Supervisory powers shall be applied in a timely and proportionate manner.
 - (3) The powers with regard to undertakings referred to in subsection (1) shall also be available with regard to outsourced activities of undertakings.
 - (4) The powers conferred by this section shall be exercised, if need be and where appropriate, through judicial channels.”.

Guarantee fund.

22. In section 118 (regulations), in subsection (2)(iii) after the words “class of insurance” there shall be inserted the words “other than that to which paragraph 11 of Schedule 13 applies.”.

Classes and Groups of Insurance.

23. In Schedule 1, for the text of Part I there shall be substituted the text of Part I of Schedule 2 to the Solvency Act; and for the text of Part II there shall be substituted the text of Part III of Schedule 2 to that Act.

Transfers of Portfolio.

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24. In Schedule 10 (transfers of insurance business), after paragraph 1 there shall be inserted the following paragraph—

- “1A.(1) Where undertakings with head offices in Gibraltar are authorised, as mentioned in Article 39(1) of the Solvency Directive, to transfer all or part of certain of their portfolios of contracts to an accepting undertaking established in another Member State, this Schedule shall have effect subject to the provisions of this paragraph.
- (2) Such a transfer shall be authorised only if the supervisory authorities of the home Member State of the accepting undertaking issue a certificate that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement.
- (3) The following provisions do not apply to reinsurance companies.
- (4) Where a branch proposes to transfer all or part of its portfolio of contracts, the Member State where that branch is situated shall be consulted.
- (5) In the circumstances referred to in paragraphs 1 and 4, where the Commission is the supervisory authority of the home Member State of the transferring insurance undertaking, the Commission shall authorise the transfer after obtaining the agreement of the authorities of the Member States where the contracts were concluded, either under the right of establishment or the freedom to provide services.
- (6) Where the Commission is the supervisory authority of the Member State consulted, then within three months of receiving a request for consultation, the Commission shall give their opinion or consent to the authorities of the home Member State of the transferring insurance undertaking; and the absence of any response within that period from the Commission shall be considered as tacit consent.
- (7) A transfer of portfolio authorised in accordance with the preceding provisions of this paragraph shall be published either prior to or following authorisation, as laid down by the national law of the home Member State, of the Member State in which the risk is situated, or of the Member State of the commitment.
- (8) Transfers to which this paragraph applies shall automatically be valid against policy holders, the insured persons and any

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other person having rights or obligations arising out of the contracts transferred.

- (9) Nothing in this paragraph shall affect the right of policy holders to exercise any option to which they may be entitled under this Schedule of cancelling contracts within a fixed period after a transfer.

Life insurance: information for policy holders.

25.(1) In Schedule 12 (Information for policy holders of Gibraltar insurers and EEA insurers) in paragraph 1(3) after paragraph (c) there shall be inserted the following paragraph—

“(cc) a concrete reference to the report on the solvency and financial condition as laid down in section 27 of the Solvency Act, allowing the policy holder easy access to this information;”.

(2) After paragraph 1(3) of that Schedule there shall be inserted the following sub-paragraph—

“(3A) In addition specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder”.

(3) After paragraph 6 of that Schedule there shall be inserted the following sub-paragraph—

“(7) Where Gibraltar is the Member State of the commitment, any detailed rules required for implementing this Schedule shall be laid down by the law of Gibraltar.”.

Right of establishment and freedom to provide services.

26. In Schedule 13 (EEA insurers carrying on business etc. in Gibraltar) in paragraph 1(1), for paragraph (a) there shall be substituted—

“(a) the insurer is authorised in accordance with the Solvency Directive to carry on insurance business of that class or part of a class; and”.

(2) In paragraph 1(3)(a) of that Schedule, for the words following “in accordance with” there shall be substituted “the Solvency Directive; and”; and in paragraph 1(3)(b) for the words following “in accordance with” there shall be substituted “the Solvency Directive”.

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(3) In paragraphs 4 and 5 of that Schedule, for the words “Article 3 of the reinsurance Directive” there shall, in each case, be substituted “the Solvency Directive”.

(4) In paragraph 8 of that Schedule—

- (a) in subparagraph (1) for the words “Article 6 of the first general insurance Directive or Article 4 of the long term insurance Directive” there shall be substituted “the Solvency Directive”;
- (b) in subparagraph (3)(a) for the words following “in accordance with” there shall be substituted “the Solvency Directive; and”;
and
- (c) in subparagraph (3)(b) for the words following “in accordance with” there shall be substituted “the Solvency Directive”.

(5) In paragraph 11 of that Schedule (additional requirements for covering relevant motor vehicle risks), at the beginning there shall be inserted “(1)” and at the end of subparagraph (a) there shall be inserted—

“(aa) in accordance with paragraph 2 of Article 150 of the Solvency Directive, it makes a financial contribution towards the financing of the guarantee fund; and”;

and at the end of the paragraph there shall be added the following subparagraph—

“(2) In so far as the law of Gibraltar contains rules concerning the cover of aggravated risks, those rules shall apply to an insurance undertaking providing services as they apply to non-life insurance undertakings established in Gibraltar.”.

(6) In paragraph 12(1) of that Schedule, for the words “Article 20(5) of the first general insurance Directive or Article 37(5) of the long term insurance Directive or Article 42 of the reinsurance Directive” there shall be substituted “the Solvency Directive”; and for paragraphs (a) to (c) there shall be substituted—

- (a) that the insurer has failed to establish adequate technical provisions as required by paragraph 4 of Schedule 1 to the Solvency Act;
- (b) that the insurer no longer complies with Basic Solvency Capital Requirement calculated in accordance with paragraph 34 of that Schedule;

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(c) that the insurer no longer complies with the Minimum Capital Requirement referred to in paragraph 55 of that Schedule”.

(7) In paragraph 12 (2) of that Schedule, or the words following “in accordance with” there shall be substituted “the Solvency Directive”.

(8) In paragraph 13(1)(a)(ii) of that Schedule, for the words from “Article 19” to “reinsurance Directive” there shall be substituted “any provision of the Solvency Directive.”

(9) In paragraph 14(1)(a) of that Schedule, for the words from “Article 19” to “reinsurance Directive” there shall be substituted “any provision of the Solvency Directive.”

(10) In paragraph 15 of that Schedule, for the words from “Article 22” to “reinsurance Directive” there shall be substituted “a provision of the Solvency Directive”.

(11) In paragraph 17(1)(b) of that Schedule, for the words from “Article 22” to “reinsurance Directive” there shall be substituted “a provision of the Solvency Directive”.

Gibraltar insurers carrying on business in EEA States.

27.(1) In Schedule 14 in paragraph 1(3)(a) for the words following “in accordance with” there shall be substituted “the Solvency Directive”.

(2) In paragraph 1(6A) of that Schedule, for the words from “paragraph 1 of Article 38” to “reinsurance Directive” there shall be substituted “Article 54, Article 138, Article 142 or Article 239 of the Solvency Directive”.

(3) In paragraph 5(3)(a) of that Schedule, for the words following “in accordance with” there shall be substituted “the Solvency Directive”.

(4) In paragraph 5(8) of that Schedule, for the words from “paragraph 1 of Article 38” to “Non-Life Directive” there shall be substituted “Article 54, Article 138, Article 142 or Article 239 of the Solvency Directive”.

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SCHEDULE 4

Section 133

MEASURES TO FACILITATE GROUP SUPERVISION: GROUP SUPERVISOR

Group Supervisor.

1.(1) The Commission is designated to act as group supervisor in accordance with Article 247 of the Solvency II Directive.

(2) The Commission must cooperate with any other authority designated to act as group supervisor in any case in accordance with that Article.

Rights and duties of the group supervisor and the other supervisors: College of supervisors.

2.(1) The Commission shall have the following rights and duties in acting as group supervisor (and shall cooperate with the exercise of those rights and duties by other group supervisors)–

- (a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
- (b) supervisory review and assessment of the financial situation of the group;
- (c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in this Act and Articles 218 to 245 of the Solvency II Directive;
- (d) assessment of the system of governance of the group, as set out in Article 246 of the Solvency II Directive, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 42 and 257 of that Directive;
- (e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and

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complexity of the risks inherent in the business of all undertakings that are part of the group;

- (f) other tasks, measures and decisions assigned to the group supervisor by the of the Solvency II Directive or deriving from the application of this Act or the Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 of the Directive and leading the process for permitting the application of the regime established in Articles 237 to 240 of the Directive.

(2) The Commission shall participate in the establishment and operation of the college of supervisors in accordance with Article 248 of the Solvency II Directive; in particular, the Commission—

- (a) shall take any necessary steps to ensure that the college ensures that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III of the Solvency II Directive, with a view to promoting the convergence of their respective decisions and activities;
- (b) may refer a matter to EIOPA in the circumstances referred to in Article 248(2) or (4); and
- (c) shall otherwise act in accordance with that Article.

Cooperation and exchange of information between supervisory authorities.

3.(1) The Commission shall perform the cooperation, and provision of information, functions in accordance with Article 249 of the Solvency II Directive.

(2) The Commission may refer a matter to EIOPA in the circumstances referred to in Article 249(1a).

(3) The Commission as group supervisor or as authority responsible for the supervision of the individual insurance and reinsurance undertakings in a group shall call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances—

- (a) where it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital

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Requirement of an individual insurance or reinsurance undertaking;

- (b) where it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Title III, Chapter II, Section 1, Subsection 4 of the Solvency II Directive;
- (c) where other exceptional circumstances are occurring or have occurred.

Consultation between supervisory authorities.

4.(1) The Commission shall participate in consultation in accordance with Article 250 of the Solvency II Directive.

(2) Where the Commission decides not to consult in cases of urgency or where consultation could jeopardise the effectiveness of a decision, it shall, without delay, inform the other supervisory authorities concerned.

Requests from the group supervisor to other supervisory authorities.

5.(1) The Commission as group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 247 of the Solvency II Directive, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 248 of that Directive, and to transmit that information to the group supervisor.

(2) The Commission as group supervisor shall, when it needs information referred to in Article 254(2) of that Directive which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Cooperation with authorities responsible for credit institutions and investment firms.

6. The Commission shall participate in arrangements for cooperation, and the provision of information, in accordance with Article 252 of the Solvency II Directive (where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking).

Professional secrecy and confidentiality.

7.(1) The Commission and other authorities in Gibraltar may exchange information in accordance with Articles 249 to 252 and 295 of the Solvency II Directive.

(2) Any provision of the law of Gibraltar, or which has effect in accordance with the law of Gibraltar, concerning confidentiality of information, has effect subject to this Schedule and Title III of the Solvency II Directive.

Access to information.

8.(1) Natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, may exchange any information which could be relevant for the purposes of group supervision.

(2) The Commission shall have access to any information relevant for the purpose of that supervision regardless of the nature of the undertaking concerned, in accordance with the provisions of Article 254 of the Solvency II Directive.

(3) The Commission may address the undertakings in the group directly to obtain the necessary information, only where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Verification of information.

9.(1) The Commission may carry out within Gibraltar, either directly or through the intermediary of persons whom it appoints for that purpose, on-site verification of the information referred to in Article 254 of the Solvency II Directive on the premises of any of the following—

- (a) the insurance or reinsurance undertaking subject to group supervision;
- (b) related undertakings of that insurance or reinsurance undertaking;
- (c) parent undertakings of that insurance or reinsurance undertaking;

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- (d) related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

(2) Where the Commission wishes in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in a Member State, they shall ask the supervisory authorities of that Member State to have the verification carried out; and the Commission—

- (a) shall comply with the provisions of Article 255(2) of the Solvency II Directive;
- (b) shall cooperate with any request made under Article 255(2) by the authorities of another Member State; and
- (c) may refer matters to EIOPA in accordance with that Article.

EIOPA Guidelines etc.

10. The provisions of this Schedule shall be construed and applied in accordance with any relevant guidelines, standards and other instruments under Articles 247 to 255 of the Solvency II Directive.

SCHEDULE 5

Section 173

TRANSITIONAL PROVISIONS

Phasing-in.

1.(1) The Commission shall consider applications submitted by insurance and reinsurance undertakings for approval or permission in accordance with paragraphs 2 and 3 of Article 308a of the Solvency II Directive.

(2) The decisions taken by the Commission on any such applications for approval or permission shall not become applicable before 1 January 2016.

General measures.

2.(1) Without prejudice to section 8, insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Titles I, II and III of the Directive until the dates set out in paragraph 2 where either –

- (a) the undertaking has satisfied the supervisory authority that it will terminate its activity before 1 January 2019; or
- (b) the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

(2) Insurance or reinsurance undertakings falling under–

- (a) subparagraph (1)(a) shall be subject to Titles I, II and III of the Directive from 1 January 2019 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity;
- (b) subparagraph (1)(b) shall be subject to Titles I, II and III of the Directive from 1 January 2021 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity.

(3) Insurance and reinsurance undertakings shall be subject to the transitional measures in subparagraphs (1) and (2) only if the following conditions are met–

- (a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;

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- (b) the undertaking shall provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;
- (c) the undertaking has notified the Commission that it applies the transitional measures.

Subparagraphs (1) and (2) shall not prevent any undertaking from operating in accordance with Titles I, II and III of the Directive.

(4) The Commission shall draw up and supply to the Government a list of the insurance and reinsurance undertakings concerned for onward communication to all the other Member States.

(5) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

(6) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to disclose the information referred to in Article 51 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

(7) For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

(8) Subparagraphs (5), (6) and (7) of this paragraph shall apply *mutatis mutandis* to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to section 133, whereby the deadlines referred to in subparagraphs (5),(6) and (7) shall be extended by six weeks respectively.

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(9) Notwithstanding paragraph 24 of Schedule 1, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items—

- (a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- (b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC;
- (c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with paragraph 24 of Schedule 1.

(10) Notwithstanding paragraph 24 of Schedule 1, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items—

- (a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- (b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

(11) With respect to insurance and reinsurance undertakings investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements referred to in Article 135(2) shall apply only in circumstances where new underlying exposures were added or substituted after 31 December 2014.

(12) Notwithstanding paragraphs 29, 30(3) and 33 of Schedule 1, the following shall apply—

- (a) until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member

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States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

- (b) in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
- (c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
- (d) from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

(13) Notwithstanding paragraphs 29, 30(3) and 33 of Schedule 1, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in paragraph 36(1) of Schedule 1 shall be calculated as the weighted averages of—

- (a) the standard parameter to be used when calculating the equity risk sub-module in accordance with that section, and
- (b) the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in that section,

and the weight for the parameter expressed in paragraph (b) of the first subparagraph shall increase at least linearly at the end of each year from 0% during the year starting on 1 January 2016 to 100% on 1 January 2023.

(14) Notwithstanding subsection (3) of section 46 and without prejudice to subsections (4) to (7) of that section, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in

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Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Gibraltar on the day before those Directives are repealed pursuant to Article 310 of the Directive but do not comply with the Solvency Capital Requirement in the first year of application of the Directive–

- (a) the Commission shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017;
- (b) the insurance or reinsurance undertaking referred to in subparagraph (14) shall, every three months, submit a progress report to the Commission setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement; and
- (c) the extension referred to in subparagraph (a) shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

(15) Where, on 23 May 2014, Gibraltar applied provisions referred to in Article 4 of Directive 2003/41/EC, the Government may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, 27 to 30, 32 to 35 and 37 to 67 of Directive 2002/83/EC as in force on the last date of application of Directive 2002/83/EC until 31 December 2019.

(16) The Commission may allow the ultimate parent insurance or reinsurance undertaking based in Gibraltar, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

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(17) Notwithstanding section 107(2) to (4),–

- (a) the transitional provisions as referred to in subparagraphs (8) to (12) and (15) of this paragraph and paragraphs 3, 4, and 5 shall apply *mutatis mutandis* at the level of the group; and
- (b) the transitional provisions as referred to in subparagraph (14) shall apply *mutatis mutandis* at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

Transitional measure on risk-free interest rates.

3.(1) Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

(2) For each currency the adjustment shall be calculated as a portion of the difference between–

- (a) the interest rate as determined by the insurance or reinsurance undertaking in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC at the last date of the application of that Directive;
- (b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in subparagraphs (4) and (5) of paragraph 5 of Schedule 1.

(3) Where Gibraltar has adopted laws, regulations and administrative provisions pursuant to Article 20(1)B(a)(ii) of Directive 2002/83/EC, the interest rate referred to in subparagraph (2)(a) shall be determined using the methods used by the insurance or reinsurance undertaking at the last date of the application of Directive 2002/83/EC; and the portion referred to in the subparagraph (2) shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

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(4) Where insurance and reinsurance undertakings apply the volatility adjustment referred to in paragraph 8 of Schedule 1, the relevant risk-free interest rate term structure referred to in sub-paragraph (2)(b) shall be the adjusted relevant risk-free interest rate term structure set out in that paragraph.

(5) The admissible insurance and reinsurance obligations shall comprise only insurance or reinsurance obligations that meet the following requirements—

- (a) the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of the Directive, excluding contract renewals on or after that date;
- (b) until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;
- (c) paragraph 6 of Schedule 1 shall not apply to insurance and reinsurance obligations.

(6) Insurance and reinsurance undertakings applying subparagraph (1) shall—

- (a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in paragraph 8 of Schedule 1;
- (b) not apply paragraph 4 of this Schedule;
- (c) as part of their report on their solvency and financial condition referred to in section 27, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Transitional measure on technical provisions.

4.(1) Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions and that deduction may be applied at the level of homogeneous risk groups referred to in paragraph 14 of Schedule 1.

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(2) The transitional deduction shall correspond to a portion of the difference between the following two amounts–

- (a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with paragraph 4 of Schedule 1 at the first date of the application of the Directive;
- (b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Directive;

and the maximum portion deductible shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(3) Where insurance and reinsurance undertakings apply at the first date of the application of the Directive the volatility adjustment referred to in paragraph 8 of Schedule 1, the amount referred to in subparagraph (2)(a) shall be calculated with the volatility adjustment at that date.

(4) Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in subparagraph (2)(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

(5) The deduction referred to in subparagraph (2) may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Directive.

(6) Insurance and reinsurance undertakings which apply subparagraph (1)–

- (a) shall not apply paragraph 3;

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- (b) when they would not comply with the Solvency Capital Requirement without the application of the transitional deduction, shall submit annually to the Commission a report setting out the measures taken and the progress made to re-establish, at the end of the transitional period set out in subparagraph (2) a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement; and
- (c) as part of their report on their solvency and financial condition referred to in section 27, shall publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Phasing-in plan on transitional measures on risk-free interest rates and on technical provisions.

5.(1) Insurance and reinsurance undertakings that apply the transitional measures set out in paragraphs 3 and 4 shall inform the Commission as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures.

(2) The Commission shall require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(3) Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned shall submit to the Commission a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(4) The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

(5) The insurance and reinsurance undertakings concerned shall submit annually a report to the Commission setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(6) The Commission shall revoke the approval for the application of the transitional measure where that progress report shows that compliance with

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the Solvency Capital Requirement at the end of the transitional period is unrealistic.

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SCHEDULE 6
Omitted