Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 164(1), 166(2), 620(1), 621(1) and 627.

FINANCIAL SERVICES (INSURANCE MANAGEMENT) REGULATIONS 2020

LN.2020/023

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/421	rr. 2(1), 4A	26.11.2020

This version is out of date

ARRANGEMENT OF REGULATIONS.

Regulation

In exercise of the powers conferred upon the Minister under sections 6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 164(1), 166(2), 620(1), 621(1) and 627 of the Financial Services Act 2019, the Minister has made the following Regulations.

PART 1
PRELIMINARY

Title and commencement.

1. These Regulations may be cited as the Financial Services (Insurance Management) Regulations 2020 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

"the Act" means the Financial Services Act 2019;

"auditor", in relation to an insurance manager, means the person appointed by the insurance manager to be its auditor for the purpose of the Act and these Regulations and who is in office at that time;

"authorised credit institution" means a credit institution with a Part 7 permission or a credit institution that has received authorisation under Article 8 of the Capital Requirements Directive from its home state regulator and that has exercised its EEA right under Part 2 of Schedule 10 to the Act;

"contract for differences" means a financial instrument falling within paragraph 46 of Schedule 2 to the Act;

"customer" means any of the following with which an insurance manager has entered into or intends to enter into a management agreement–

(a) an insurance undertaking or reinsurance undertaking with a Part 7 Permission to carry on an activity of a kind specified by paragraph 24(1) or (2) of Schedule 2 to the Act;

(b) an insurance intermediary or ancillary insurance intermediary with a Part 7 permission to carry on the activity specified by paragraph 34 of that Schedule; or

(c) a reinsurance intermediary with a Part 7 permission to carry on the activity specified by paragraph 35 of that Schedule;

"financial instrument" has the meaning given in paragraph 44(1) of Schedule 2 to the Act;

"financial year", in relation to an insurance manager, means–

(a) the period beginning with the day on which the insurance manager commences to carry on insurance management business and ending with the date as at which it prepares its first annual balance sheet; and

(b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the insurance manager is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the insurance manager is so prepared;

"futures" means a financial instrument falling within paragraph 46 of Schedule 2 to the Act;

"insurance management business" means the regulated activity of insurance management within the meaning of paragraph 29 of Schedule 2 to the Act;

"insurance manager" means a person with a Part 7 permission to carry on insurance management business;

"management agreement" means the written agreement entered into by an insurance manager and a customer for the provision of insurance management services by the insurance manager;

"money" includes any form of money, whether represented by a cheque, or other payable order, or otherwise;

"option" means a financial instrument falling within paragraph 46 of Schedule 2 to the Act;

"Part 7 permission" means a permission under Part 7 of the Act;

"the Register" or "the GFSC Register" means the register which is established by the GFSC in accordance with both Part 4 of the Act and, for the purposes of insurance management business, regulation 55;

"regulatory system" means the arrangements for regulating an insurance manager under the Act, these Regulations and any other subsidiary legislation made under the Act.

(2) In these Regulations any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information, which is

required by any, provision of these Regulations and required or allowed by that provision to be given in a note to the insurance manager's financial statements.

Application.

3. These Regulations apply to insurance managers in respect of their insurance management business.

PART 2
AUTHORISATION CONDITIONS

Capital and financial resources

Initial capital requirement.

4.(1) The GFSC must not give an insurance manager a Part 7 permission unless it meets the initial capital requirement of whichever of the following is higher–

(a) £10,000 in paid up share capital; or

(b) an amount equal to one-third of the estimated total expenditure of the insurance manager in the first year following the grant of Part 7 permission.

(2) An insurance manager must at all times maintain a minimum level of financial resources of whichever of the following is the higher–

(a) £10,000; or

(b) one–third of the total expenditure of the insurance manager during the 12 months immediately preceding the date at which the last financial statements were, or should have been, made up.

Scope of authorisation.

4A.(1) An insurance manager must obtain the GFSC's consent before entering into a management agreement with or otherwise acting for an insurance, reinsurance or ancillary insurance intermediary.

(2) Part 7 permission to act as an insurance manager does not authorise the insurance manager to perform specified insurance distribution functions, whether for a customer or on the insurance manager's own account.

(3) A “specified insurance distribution function” means any of the functions in paragraphs (a)(i) or (ii) or (b) of the definition of “insurance distribution” in paragraph 33 of Schedule 2 to the Act.

PART 3
CONDUCT OF BUSINESS

Independence

Independence.

5. Where an insurance manager is advising or acting for a customer–

(a) it must not claim it is independent or impartial if it is not; and

(b) it must ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Material interest.

6. Where an insurance manager has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the insurance manager must not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless it has–

(a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or

(b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

Inducements.

7. An insurance manager must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

Advertising and marketing

Issue of advertisements.

8. Where an insurance manager issues an advertisement concerning insurance management services, it must have appropriate expertise in relation to the service concerned and take all reasonable steps to ensure that–

(a) the contents and presentation of the advertisement are demonstrably fair and not misleading; and

(b) the advertisement discloses fairly the risks involved in the service concerned.

Identification of issuer.

9. Where an insurance manager issues an advertisement concerning insurance management services, it must ensure that the advertisement identifies it as the issuer.

Fair and clear communications.

10.(1) An insurance manager may make a communication with another person which is designed to promote the provision of insurance management services only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) An insurance manager must take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers to whom it provides insurance management services is presented fairly and clearly.

Customers' understanding of risk.

11. An insurance manager may not–

(a) recommend a transaction to a customer, or effect a discretionary transaction with or for the customer, unless it has taken all reasonable steps to enable the customer to understand the risks involved; or

(b) mislead a customer as to any advantages or disadvantages of a contemplated transaction.

Information about insurance manager.

12. An insurance manager must take reasonable steps to ensure that a customer to whom it provides insurance management services is given adequate information about its identity and business address and the identity and status within the insurance manager of employees and other relevant representatives with whom the customer has contact.

Representatives of insurance manager.

13.(1) An insurance manager must satisfy itself on reasonable grounds and on a continuing basis that any representative it appoints is fit and proper to act for it in that capacity.

(2) The insurance manager must also satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

Customer relations.

Management agreements.

14. Where an insurance manager provides insurance management services to a customer on written contractual terms, the management agreement must set out in adequate detail the basis on which those services are provided.

Customers' rights.

15. An insurance manager must not, in any written communication or agreement seek to exclude or restrict–

(a) any duty or liability to a customer which it has under the Act, these Regulations or the regulatory system;

(b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer of insurance management services; or

(c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of insurance management services.

Charges.

16.(1) An insurance manager's charges must not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances.

(2) Before an insurance manager provides insurance management services to a customer it must disclose to the customer the basis or amount of its charges for the provision of those services and the nature of and amount of any other remuneration receivable by it and attributable to them.

Administration

Complaints.

17. An insurance manager must have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

Compliance.

18.(1) An insurance manager must take reasonable steps, including the establishment and maintenance of procedures, to ensure that–

(a) its officers, employees and other representatives are aware of their obligations under the Act, these Regulations and the regulatory system, and that they act in conformity with them; and

(b) sufficient information is recorded and retained about its insurance management business and compliance with the regulatory system.

(2) Records required to be maintained by the regulatory system must be kept available, for a period of not less than 6 years, by the insurance manager for inspection by any person duly authorised by the GFSC.

Supervision.

19. An insurance manager must establish and maintain procedures–

(a) for the supervision of each of its officers, employees and other representatives; and

(b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his or her competence to give or to provide.

Cessation of business.

20. Where an insurance manager decides to withdraw from insurance management business it must ensure to the satisfaction of the GFSC that any such business which is outstanding is properly completed or transferred to another insurance manager.

PART 4
PRUDENTIAL REQUIREMENTS

Accounting records

Duty to keep accounting records.

21.(1) An insurance manager must, in respect of its insurance management business, keep accounting records which are sufficient to show and explain the insurance manager's transactions (whether effected on its own behalf or on behalf of others) and must be such as to–

(a) disclose with reasonable accuracy, at any time, the financial position of the insurance manager at that time;

(b) demonstrate whether or not the insurance manager is at that time complying with any financial resources requirements imposed by the GFSC; and

(c) enable the insurance manager to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records must in particular contain–

(a) entries from day to day of all sums of money received and expended by the insurance manager, and the matters in respect of which the receipt and expenditure takes place;

(b) a record of all assets and liabilities of the insurance manager including any commitments or contingent liabilities;

(c) entries from day to day of all purchases and sales of financial instruments by the insurance manager;

(d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to financial instrument which are in the possession or control of the insurance manager;

(e) entries from day to day of–

(i) all money which is paid into or out of a customer bank account maintained for the purposes of these Regulations;

(ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and

(f) a record of–

(i) balances on individual customer bank accounts;

(ii) balances on individual customer accounts at intermediate brokers and exchanges;

(iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and

(iv) reconciliations made pursuant to regulation 22.

Reconciliation of customer money.

22.(1) An insurance manager must, a least once every 2 months, reconcile the balance on each customer bank account (as recorded by the insurance manager) with the balance on that account (as set out on the statement issued by the authorised credit institution).

(2) Where a customer bank account contains the money of more than one customer, an insurance manager must, in addition to the reconciliation made under sub-regulation (1), at least once every 2 months, reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the insurance manager).

(3) Where any difference arises on reconciliation under sub-regulation (1) or (2), the insurance manager must correct it forthwith unless the difference arises solely as a result of timing differences between the accounting systems of the authorised credit institution and of the insurance manager.

Records to be kept up to date.

23. The obligations under this Part are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

Audit trail.

24.(1) Information required by this Part to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the insurance manager.

(2) All records must be arranged, filed, indexed and cross-referenced so as to permit prompt access to any particular record.

Conformity with accounting standards.

25. The accounting records required to be kept by an insurance manager must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed by rules made by the GFSC.

Retention of records.

26. An insurance manager must preserve the accounting records which it is required to keep under regulation 21 for 6 years from the date on which they are made.

Inspection of records.

27. Accounting records which are required to be kept under regulation 21 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

Financial statements

Duty to prepare annual financial statements.

28. An insurance manager must, in respect of its insurance management business, prepare for each of its financial year's annual financial statements which must consist of–

(a) a balance sheet as at the last day of the financial year; and

(b) a profit and loss account for the financial year.

Balance sheet to give true and fair view.

29. The balance sheet must give a true and fair view of the state of the affairs of the insurance manager as at the end of the financial year.

Profit and loss account to give true and fair view.

30. The profit and loss account must give a true and fair view of the profit or loss of the insurance manager for the financial year.

Form and content of financial statements.

31.(1) The financial statements of an insurance manager must comply with the provisions of the Schedule (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of the Schedule and the other provisions of these Regulations as to the matters to be included in the insurance manager's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the insurance manager must depart from that provision to the extent necessary to give a true and fair view.

(4) If the insurance manager departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

Annual financial statements must be submitted to GFSC.

32. Each financial year an insurance manager must submit its annual financial statements to the GFSC within 4 months after the end of the financial year to which the annual financial statements relate.

Insurance manager must obtain auditor's report, etc.

33.(1) An insurance manager must submit its annual financial statements to its auditor for audit and must obtain an auditor's report thereon which report must comply with the requirements of regulation 34.

(2) An insurance manager must submit its auditor's report to the GFSC together with–

(a) the annual financial statements in accordance with regulation 32; and

(b) confirmation in writing that it has complied with each and every one of the provisions of this Part with which it is required to comply and such further information or confirmation as may be prescribed.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the insurance manager to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating–

(a) whether all the accounting records of the insurance manager have been made available to the auditor for the purposes of the audit;

(b) whether all transactions undertaken by the insurance manager have been properly reflected and recorded in the insurance manager's accounting records; and

(c) whether all other records of the insurance manager and related information have been made available to the auditor.

Contents of auditor's report.

34.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the insurance manager have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor–

(a) the annual financial statements of the insurance manager have been properly prepared in accordance with these Regulations;

(b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the insurance manager as at the end of the financial year;

(c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the insurance manager for the financial year;

(d) the insurance manager has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;

(e) the balance sheet and the profit and loss account are in agreement with the insurance manager's accounting records; and

(f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit.

Qualified reports.

35.(1) If the auditor is of the opinion that one or more of the requirements of regulation 34 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 34 have been met, the auditor must state that fact in the auditor's report and must specify those requirements and give the reasons why the auditor has been unable to form an opinion.

Customer money

Application.

36. An insurance manager must comply at all times with regulations 37 to 46 in respect of any customer money held or received by it in the course of carrying on insurance management business.

Customer money.

37.(1) For the purposes of these Regulations, customer money is money of any currency which, in the course of carrying on insurance management business, an insurance manager holds or receives under sub-regulation (2) or which an insurance manager owes to a customer under sub-regulation (3).

(2) An insurance manager holds or receives money for the purposes of sub-regulation (1) if it enters or expects to enter into an agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money–

(a) which is not immediately due and payable on demand to the insurance manager for its own account; or

(b) which, although so due and payable, is held or received in respect of any obligation of the insurance manager which has not yet been performed.

(3) An insurance manager owes money to a customer for the purposes of sub-regulation (1) where money owed to a customer is immediately due and payable whether demanded or not.

Duty to segregate.

38. An insurance manager must pay all customer money coming into its hands for or from a customer into a specially created customer bank account, which is segregated, from any account holding money belonging to the insurance manager.

Duty to keep customer money safe.

39. Customer money, unless paid out to or for a customer, must be kept in an account at an authorised credit institution on trust for the customer.

Customer money to be held on trust.

40. Any customer money held by an insurance manager is held on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

Accounting for and use of customer money.

41. An insurance manager must account properly and promptly for customer money and must ensure that –

(a) customer money and other money do not become mixed;

(b) it can at all times confirm how much customer money stands to the credit of each customer;

(c) money belonging to one customer is not used for another customer.

Customer bank accounts.

42.(1) An insurance manager which receives or holds customer money must open one or more customer bank accounts with an authorised credit institution.

(2) The insurance manager must give written notice to the authorised credit institution requiring the institution to acknowledge to the insurance manager in writing that–

(a) all money standing to the credit of the customer bank account is held by the insurance manager as trustee and that the authorised credit institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the insurance manager; and

(b) interest payable to the account will be credited to the account.

(3) In the event that the authorised credit institution does not provide the acknowledgement referred to in sub-regulation (2) within 10 working days of the dispatch of the notice by the insurance manager, the insurance manager must–

(a) withdraw all money standing to the credit of the account;

(b) close that account; and

(c) deposit the money in a customer bank account with another authorised credit institution.

Interest on customer money.

43.(1) Except in so far as may be agreed in writing to the contrary between an insurance manager and each of its customers, an insurance manager must, at least once in every 6 months, credit interest to each customer on money held for that customer and standing (or which should be standing) to the customer's credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the authorised credit institution at which the account is held.

Payment of other money into customer bank account.

44. Money which is not customer money must not be paid into a customer bank account unless it is required–

(a) to open or to maintain the account;

(b) to restore an amount withdrawn in error from the account; or

(c) to be paid in as part of the interest earned on the account.

Payment out of customer bank account.

45.(1) Subject to sub-regulation (2), money may be withdrawn from a customer bank account only if–

(a) it is not customer money;

(b) it is properly required for payment to or on behalf of a customer; or

(c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) An insurance manager may withdraw money from a customer bank account for or towards payment of its own fees or commission only if–

(a) it has given the customer 7 days' notice of its intention and adequate detail of the breakdown of the proposed payment, and the customer has not objected;

(b) the fees or commission accord with the arrangements agreed with the customer; or

(c) the amount is agreed by the customer.

Customer safeguard accounts.

46.(1) The provisions of this regulation apply where–

(a) for any financial year of an insurance manager, the manager maintains a customer safeguard account; and

(b) for any such financial year, the insurance manager expects to receive from customers specified mixed payments, that is to say, payments representing in part designated customer money which are disbursements (of which no individual disbursement exceeds £500) and in part other monies;

and in the following provisions of this regulation "relevant financial year" means a financial year for which the insurance manager has such an approved account.

(2) In this Part –

(a) a "customer safeguard account" means an account approved by the GFSC into which an insurance manager pays, out of its own money, one or more sums of money representing, as at the beginning of a relevant financial year, 110 percent of the insurance manager's best estimate of that portion of the mixed payments expected to be received during or in respect of that year which will be represented by designated customer money; and

(b) In relation to a financial year of an insurance manager, customer money is "designated" if it is designated by the insurance manager for the purposes of these Regulations before the beginning of, and in relation to, that year;

and a customer safeguard account must be under dual signatory control consistent with the four eyes requirement in the conduct of business.

(3) In this Part–

(a) "disbursement" and "disbursements" mean monies which are not immediately payable on demand to the insurance manager for its own account in respect of company registry filing fees, notary fees, apostille fees, overseas agent fees, yacht and ship registry filing fees and licences, annual tax in overseas jurisdictions, courier and postage costs, and any fees ancillary to any of the aforesaid; or

(b) although so due and payable to the insurance manager, are held or received in respect of an obligation of the insurance manager which has not yet been performed; or

(c) represent other disbursements which have not yet fallen due but which are the responsibility of the customer,

provided that a single disbursement must not exceed £500.

(4) An insurance manager who opens a customer safeguard account—

(a) must give written notice in clear terms to the authorised person of the nature of the account;

(b) must require the authorised person to designate it as such and to acknowledge in writing that it accepts the terms of the account;

(c) must at all times maintain records so as to show clearly the monies which the insurance manager has paid in and the monies which have been withdrawn as permitted by sub-regulation (8);

and, in the event that the insurance manager defaults on any of its commitments, a liquidator, authorised credit institution or other creditor must not have access to any money in the account except in so far as they exceed the amount representing designated customer money.

(5) The GFSC must not approve an account as a customer safeguard account unless–

(a) the application for the GFSC's approval is made at least 30 days before the beginning of that financial year;

(b) the account is with an authorised credit institution;

(c) the GFSC is satisfied that the calculation of the best estimate referred to in sub-regulation (2) is certified by the insurance manager's auditor as a fair calculation; and

(d) the insurance manager's auditor certifies that the balance in the account at the date of the application is an amount equal to not less than 110 percent of that best estimate.

(6) An insurance manager approved by the GFSC under sub-regulation (5) to operate a customer safeguard account on an ongoing basis must submit evidence to the GFSC of its compliance with sub-regulation (5)(b), (c) and (d) no later than 30 days before the beginning of the manager's financial year.

(7) Any mixed payments as defined in sub-regulation (1)(b) above received by an insurance manager in or in respect of a relevant financial year must be paid by the insurance manager into the manager's own account.

(8) A customer safeguard account must be regarded as a "customer bank account" for the purposes of regulations 22 and 42 and no withdrawal may be made from such an account unless it is towards the payment of fees or commissions payable to the insurance manager; and—

(a) the customer has been notified in writing that the monies will be applied against those fees or commissions and the customer has not disagreed;

(b) a director of the insurance manager or staff member who has been granted executive powers has expressly authorised the withdrawal; and

(c) either an appropriate time has elapsed since the date of delivery to the customer of the notification or the precise amount to be withdrawn has been agreed with the customer.

(9) If, at any time in a financial year, an insurance manager or the manager's auditor becomes aware that the balance in a customer safeguard account has fallen below the required minimum, that is to say, 110 percent of that portion of the mixed payments received during or in respect of that year which at that time represents designated customer monies—

(a) the insurance manager or, as the case may be, the auditor must within 7 days of that time notify the GFSC of that fact; and

(b) immediately on becoming aware of that fact, the insurance manager must take steps to pay into the account so much as is necessary to restore the balance to at least the required minimum;

(c) the GFSC may require the insurance manager to suspend or end the operation of the customer safeguard account, and at the end of each financial year of a customer safeguard account, the insurance manager's auditor must certify to the GFSC whether, throughout that financial year, the balance in the account was at all times equal to not less than the required minimum.

PART 5
REPORTING AND NOTIFICATION

Appointment of auditors

Auditor required.

47. An insurance manager must not carry on, or hold itself out as carrying on, insurance management business unless it has appointed an auditor in accordance with the Act and these Regulations.

Qualification for appointment as auditor.

48. A person is not qualified for appointment as the auditor of an insurance manager unless the person is registered in accordance with sections 487 to 491 of Part 24 of the Act.

Ineligibility on ground of lack of independence.

49.(1) A person must not act as an auditor to an insurance manager if the person is ineligible for appointment to the office.

(2) A person is ineligible for appointment as auditor to an insurance manager if the person is–

(a) a director, officer, employee, shareholder or partner of the insurance manager; or

(b) a partner or employee of such a person.

(3) For the purposes of this regulation, an auditor of an insurance manager is not regarded as an officer or employee of the insurance manager.

Engagement letters.

50. An insurance manager must ensure that the auditor appointed under these Regulations has the powers and duties specified in section 165 of the Act and that–

(a) those powers and duties are set out in an engagement letter;

(b) the engagement letter is signed by the insurance manager and the auditor; and

(c) the insurance manager retains a copy of the engagement letter.

Resignation or removal of auditors.

51.(1) This regulation includes provisions which supplement the requirements of section 168 of the Act, as they apply to insurance managers.

(2) An insurance manager must, within 7 days, give written notice to the GFSC of the appointment, removal or resignation of an auditor.

(3) Where an auditor resigns or is removed by an insurance manager, a notice to that effect sent to the GFSC under sub-regulation (2) must contain either–

(a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the GFSC; or

(b) a statement signed by the auditors of such circumstances as are mentioned in (a).

(4) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditor's term of office is deemed to be a removal of that auditor.

Duties of auditors and reporting in respect of annual financial statements.

52.(1) In the circumstances specified in subsection (2) the auditor of an insurance manager must notify the GFSC of any matters which relate to the affairs of the insurance manager and of which the auditor becomes aware in his or her capacity as auditor.

(2) The circumstances referred to in subsection (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either–

(a) whether a person is a fit and proper person to carry on insurance management business;

(b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect customers from a significant risk of loss.

(3) An auditor must submit a report to the GFSC on the annual financial statements of an insurance manager in accordance with these Regulations and the report must state the matters specified in regulation 34.

(4) In preparing an auditor's report for the purposes of these Regulations, the auditor must carry out such investigations as will enable the auditor to form an opinion as to the matters required by regulation 34 to be stated in his or her report.

PART 6
REGULATORY POWERS

Chapter 1
Supervisory powers

Directions.

53.(1) If it appears to the GFSC that a person is not fit and proper to carry out any function in relation to insurance management business carried on by an insurance manager, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC–

(a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or

(b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.

(3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice–

(a) cannot be given because of urgency;

(b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or

(c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.

(5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.

(6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.

(7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–

(a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and

(b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).

(8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

Chapter 2
Sanctions

Maximum amounts of administrative penalty.

54.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement (including a requirement contained in these Regulations) in connection with the carrying on of insurance management business must be of an amount which does not exceed the higher of the following –

(a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;

(b) in the case of a legal person–

(i) £250,000; or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;

(c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant

accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

PART 7
MISCELLANEOUS

The Register: insurance management.

55.(1) This regulation makes provision as to the contents of the GFSC Register in connection with insurance management business.

(2) The Register must contain such information as the GFSC considers appropriate and must include, at least, a list of insurance managers.

(3) The GFSC Register must include details of any variation or cancellation of an insurance manager's Part 7 permission.

(4) If it appears to the GFSC that a person in respect of whom there is an entry in the GFSC Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

SCHEDULE

FORM AND CONTENT OF FINANCIAL STATEMENTS

PART 1.
GENERAL RULES.

1. Subject to the following provisions of this Schedule, the annual financial statements of an insurance manager must–

(a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and

(b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.

2. Any item required in accordance with paragraph 1 to be shown in a financial statement of an insurance manager may be shown in greater detail than required by the appropriate format.

3. A financial statement of an insurance manager may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.

4.(1) In respect of every item shown in an insurance manager's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.

5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

PART 2.
ACCOUNTING PRINCIPLES AND RULES.

6.(1) The amounts to be included in respect of all items shown in the annual financial statements of an insurance manager must be determined in accordance with the Companies

Act 2014 and either Gibraltar Financial Reporting Standards or International Accounting Standards.

(2) Subparagraph (1) is subject to regulation 25 of these Regulations.

7. Subject to paragraph 6, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

APPENDIX 1

BALANCE SHEET FORMAT

A. FIXED ASSETS

I. Intangible Assets
1. Development costs
2. Goodwill
3. Other

II. Tangible Assets
1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

III. Investments
1. Loans to and shares in group companies and connected companies
2. Other listed financial instruments
3. Other unlisted financial instruments

B. CURRENT ASSETS

I. Physical stocks

II. Debtors (1)

1. Trade debtors (2)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

III. Financial instruments (long positions)(3)

IV. Cash at bank and in hand

C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Financial instruments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

D. NET CURRENT ASSETS (LIABILITIES)

E. TOTAL ASSETS LESS CURRENT LIABILITIES

F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

G. PROVISIONS FOR LIABILITIES AND CHARGES

1. Commissions on indemnity terms
2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

H. TOTAL ASSETS LESS TOTAL LIABILITIES

I. CAPITAL AND RESERVES

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account.

Approved by the directors / partners / governing body on

____
Signature

____
Signature

NOTES ON THE BALANCE SHEET FORMAT

(1) Debtors

The amount falling due after more than one year must be shown separately for each item included under debtors.

(2) Trade debtors

(a) Fees

Outstanding for more than 30 days
Outstanding for 30 days or less.

(b) Commissions

Outstanding for more than 30 days
Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days
Amounts outstanding for 30 days or less.

(3) Financial instruments (long positions)

(i) Debt instruments

Residual Maturity

	0- 90 days	90 days- 12 Months	12 months - 5 years	more than 5 years	Total
UK Government, Government of Gibraltar and Local Authority debt					
Accepted or issued by an authorised credit institution					
Floating Rate Notes					
Other debt instruments:					
marketable financial instruments					
not marketable financial instruments					

(ii) Shares (other than in group companies)

- UK listed
- UK unlisted:
- marketable financial instruments
- not marketable financial instruments
- Overseas listed on an established investment exchange
- Overseas unlisted

(iii) Collective investment schemes

- Units in authorised and recognised unit trust schemes
- Other

(iv) Futures, options, contracts for differences

- Futures
- Purchased options
- Written options
- Contracts for differences

(v) Shares in group companies

(vi) Other investments or financial instruments (specify)

(4) Trade Creditors

(a) Amounts due to be paid against delivery of securities

(b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.

(c) Others

(5) Financial instruments (short positions)

The same detail should be given as that required by note (3) above

(6) Eligible subordinated loans

(a) Eligible long term subordinated loans

(b) Eligible short term subordinated loans

(c) Committed undrawn subordinated loan facilities

(d) Bank Undertakings

(7) Called up share capital

Any amount of share capital which has not been paid up must be shown separately.

(8) Contingent liabilities and commitments

(a) Amounts subject to an investment position risk factor

(b) Other amounts arising in the ordinary course of business

(c) Other contingent liabilities not provided for

(d) Capital commitments contracted for but not provided for

(e) Capital commitments authorised but not contracted for

(f) Pension commitments not provided for

(g) Other financial commitments not provided for

The following additional information must be given, where relevant–

(i) Whether any valuable security has been provided by the insurance manager in connection with a contingent liability or commitment

(ii) The amounts which relate to undertakings on behalf of or forthe benefit of group and connected companies.

APPENDIX 2

PROFIT AND LOSS ACCOUNT FORMAT

A. DEALING

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other – specify

B. REVENUE

1. Commissions on transactions in collective investment schemes

1. authorised unit trust schemes and recognised schemes

2. other – specify

II. Commissions on transactions in life insurance policies

1. commission on indemnity terms

2. other initial commission

3. renewal commission

4. other – specify

III. Commissions on securities transactions

1. equities

2. debt instruments

3. other– specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures

2. options

3. contracts for differences

4. other– specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

VIII. Trustee fees

IX. Interest and dividends

1. investment positions

2. loan accounts and margin accounts

3. in respect of balances in client bank accounts

4. other specify

X. Dealing and settlement services

XI. Revenue from research and consulting services

XII Retained underwriting and placing commissions

XIII. Other revenue – specify if material

C. EXPENDITURE

I. Commissions

1. paid to staff

2. paid to other investment businesses

3. other (specify)

II. Salaries and other employment costs (exclusive of commission)

III. Directors' emoluments

IV. Staff bonuses

V. Interest charges

1. payable to customer in respect of customer's money balances

2. other (specify)

VI. Establishment costs

VII. Communications and marketing

VIII. Office equipment and services

IX. Provisions for losses, bad and doubtful debts

X. Professional charges

XI. Investment exchange and clearing house charges

XII. Regulatory fees and expenses

XIII. Audit fees (including expenses)

XIV. Miscellaneous office expenses

XV. Other expenditure - specify if material

D. PROFIT OR LOSS BEFORE TAXATION

E. TAXATION

F. PROFIT OR LOSS AFTER TAXATION

G. EXTRAORDINARY ITEMS

H. PROFIT OR LOSS FOR THE FINANCIAL YEAR