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Subsidiary Legislation made under ss.6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 627 of, and paragraph 6 of Schedule 10.

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### LN.2020/044

	Commencement	15.1.2020
Amending enactments	Relevant current provisions	Commencement date
LN.2020/208 2020/421 2021/040	r. 70(6) rr. 61A-61C rr. 3(1), 4(1), 5(5), (8), 8, 11(1), (3), 14(8), 16(1)(a), (3)(b), (g), 18(2)(a), 21(3)(a)-(b), (4), 23-24, 26(1), 28(1), (4)-(5), 29(2)(d), (3), 31, 33(1)(c), (2)(b), 34(2)(b), (f), (j), (5), (a), 37(3), (10), 38(1), 39(7), 41, 44(3), 46(9), 47(2)(a), 51(1)-(6), 53, 57(1), (3), 58(1), (f), (2)(a), (b)(ii), (4)(b)-(c), (7), 59-61, 66(3)(d), 67(8), 69(1)(d), (2)(b)-(c), 71-72, 87(2), 94(1), 95(2)(c), (3)(b), (5)(c), 97(1), (3), 118(2), 119, 119A, 121(1), 122(5)-(6), (8), (11), 123(3), (5), 124(1), 127(6)-(8), 128-150, 151(1)(a), (2)(a), (g), 153, 155(6), 156, 157(1)-(2), 158(4), 159-160, 161(1)(a), 162, 163(4)-(5), 164, 168, 169(1)(b), (7), 172-178, 179(2)(c), (4), 186, 190(2), 191(1), 192(3)(a)-(d), (4)-(7), 193(2)-(4), 194-196, 197(4)-(5), 198(1)-(2), (4)-(5), 199(3), 200(4)-(5), (a)-(c), 201(5), (7), 204(1)-(2), 205(4), 206(2), (b), (3), 207(1)-(2), (4), 208, 210(1)-(7), (c), 211(1), (b), (2), 212(7), 213(1), 214-220, 221(1)-(3), (b), (5)-(6), 222(1)-(2), (4), (b), (6)-(7), 223(1), (5), (6)(a), (7)-(8), 224-232, 233(4), 236(1)-(4), 237-240, 241(1)-(2), 242, 243(1)-(2), 244(1)-(5), 245(1)-(2), 246(1)-(3), (5), 247, 248(1)-(5), (7), 249, 251(6), 255, 256(1), 257(1)-(2), 258, 259(1)-(2), 260-262, 263(1), 264(1)-(2), 265-267, 268(1)-(4), 269-273, 274(2)(b)-(d), 279, 281, Sch.2-4	30.6.2020 26.11.2020
2021/496	rr. 237(1), 240(2)	23.12.2021

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2022/067	rr. 3(1), 61A(1), 275(2), Sch.1	17.3.2022
2022/322	rr. 14(8), 192(3), (3A), (4), 197(1), 198(1), 200(5),	
	221(1), 222(1), 223(6), 224(1)-(2), 225(1), 225A,	
	240(3)	24.11.2022
2023/074	rr. 199(4)-(5), 239(5)-(7)	30.3.2023
2023/163	rr. 5(1)(a)-(c), (e), 14(8), 116(1)(d)(i)-(iii), 191(1)	29.6.2023
2023/259	rr. 36(5)	7.9.2023
2023/266	r. 51A	8.9.2023
2023/305	rr. 238(1), (2)(a), (3), (a)(i), (c), (4)	7.12.2023
Act. 2024-10	r. 13A	31.5.2024

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### SCHEDULE 4 SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA

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In exercise of the powers conferred on the Minister by sections 6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and of all other enabling powers, the Minister and the Government have made these Regulations.

#### PART 1 PRELIMINARY

#### Title.

1. These Regulations may be cited as the Financial Services (Insurance Companies) Regulations 2020.

#### Commencement.

2. These Regulations come into operation on the day of publication.

#### Interpretation.

- 3.(1) In these Regulations-
  - "the Act" means the Financial Services Act 2019;
  - "authorisation" means Part 7 permission to carry on direct life or non-life insurance or reinsurance business, given by the GFSC under the Act and these Regulations, and "authorised" is to be construed accordingly;
  - "capital add-on" means any increase to the Solvency Capital Requirement of an insurer, reinsurer, or insurance group, imposed by the GFSC under regulation 39;
  - "captive insurer" 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 regulation 191; or
      - (ii) by a non-financial undertaking; and
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- (b) the purpose of which is to provide insurance cover exclusively for the risks of—
  - (i) the undertaking or undertakings to which it belongs; or
  - (ii) an undertaking or undertakings of the group of which it is a member;
- "captive reinsurer" 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 regulation 191; or
    - (ii) a non-financial undertaking; and
  - (b) the purpose of which is to provide reinsurance cover exclusively for the risks of-
    - (i) the undertaking or undertakings to which it belongs; or
    - (ii) an undertaking or undertakings of the group of which it is a member;
- "Class" is a reference to a class of insurance in Part 5 of Schedule 2 to the Act and a reference to a numbered Class is a reference to the Class of the same number in paragraph 22 or 23 of that Schedule;
- "close links" means a situation in which two or more persons are-
  - (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 section 276 of the Companies Act 2014, or a similar relationship between any person and an undertaking;
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- "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;
- "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;
- "establishment" of an undertaking means its head office or any of its branches;
- "external credit assessment institution" or "ECAI" means-
  - (a) 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, as it forms part of the law of Gibraltar; or
  - (b) a central bank issuing credit ratings which are exempt from the application of that Regulation;
- "financial undertaking" means any of the following entities—
  - (a) a credit institution or financial institution, or an ancillary services undertaking within the meaning of regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
  - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of regulation 191;
  - (c) an investment firm or a financial institution; or
  - (d) a mixed financial holding company within the meaning of regulation 191;
- "function", within a system of governance, means an internal capacity to undertake practical tasks and includes the risk-management function, the compliance function, the internal audit function and the actuarial function;
- "Gibraltar insurer" means an insurance undertaking authorised in Gibraltar;
- "Gibraltar reinsurer" means a reinsurance undertaking authorised in Gibraltar;
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- "group supervisor" means the GFSC when acting as group supervisor in accordance with regulation 224;
- "insurance undertaking" means an undertaking which is authorised to carry on direct life or non-life insurance and references to "life insurance undertaking" and "non-life insurance undertaking" are to be construed accordingly;

#### "insurer"-

- (a) means an insurance undertaking; and
- (b) includes a reinsurance undertaking (other than in Part 12 or where the context otherwise requires);
- "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 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;
- (b) risks falling within Classes 14 and 15, 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 that activity;
- (c) risks falling within Classes 3, 8, 9, 10, 13 and 16, where the policy holder carries on business in respect of which at least two of the following criteria are exceeded—
  - (i) a balance-sheet total of €6.2 million;
  - (ii) a net turnover (within the meaning of Part 7 of the Companies Act 2014) of €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 Part 7 of the Companies Act 2014 are drawn up,

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- the criteria in sub-paragraphs (i) to (iii) apply on the basis of the consolidated accounts;
- "liquidity risk" means the risk that an insurance or reinsurance undertaking is unable to realise investments and other assets in order to settle its 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;
- "Minimum Capital Requirement" means the minimum capital requirement provided for in regulation 116;
- "the Minister" means the Minister with responsibility for financial services;
- "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;
- "Part 7 permission" means permission under Part 7 of the Act;
- "probability distribution forecast" means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;
- the "professional secrecy obligation" means the professional secrecy obligation in section 46 of the Act;
- "qualifying central counterparty" means a central counterparty that has been either authorised in accordance with Article 14 of EMIR or recognised in accordance with Article 25 of EMIR;
- "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;

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"reinsurance" means-

- (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; or
- (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;
- "reinsurance undertaking" or "reinsurer" means an undertaking which has received authorisation 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;
- "Solvency Capital Requirement" means the solvency capital requirement provided for in regulation 90;
- "Solvency 2 Regulation" means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing 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, as it forms part of the law of Gibraltar;
- "special purpose vehicle" means an undertaking (whether incorporated or not) other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and fully funds its exposure to those risks through the proceeds of a debt issuance or other financing mechanism where the repayment rights of the providers of the debt or financing mechanism are subordinated to the reinsurance obligations of the undertaking;
- "supervisory authority" means the national authority empowered by law to supervise insurance or reinsurance undertakings and, in the case of Gibraltar, means the GFSC;
- "Swiss general insurer" has the meaning given in paragraph 2 of Schedule 3;
- "third country" means a country or territory outside Gibraltar;
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- "third-country insurance undertaking" means an undertaking which would require authorisation as an insurance undertaking in accordance with these Regulations if its head office were situated in Gibraltar;
- "third-country reinsurance undertaking" means an undertaking which would require authorisation as a reinsurance undertaking in accordance with these Regulations if its head office were situated in Gibraltar;
- "undertaking" (without further qualification) means an insurer or re-insurer; and
- "underwriting risk" means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions.
- (2) Where a financial value is expressed in Euro in these Regulations, the exchange value to be used with effect from 31st December in each year is 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.

#### Scope.

- 4.(1) *Omitted*.
- (2) These Regulations apply–
  - (a) to direct life and non-life insurance undertakings which are or wish to become established in Gibraltar;
  - (b) with the exception of Part 12, to reinsurance undertakings which conduct only reinsurance activities and which are or wish to become established in Gibraltar; and
  - (c) in regard to non-life insurance, to activities in Classes 1 to 18.
- (3) For the purposes of sub-regulation (2)(c), non-life insurance includes 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) comprises an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that
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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 sub-regulation (3) does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.
- (5) In respect of life insurance these Regulations 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 or 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;
  - (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);

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- (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 sub-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.

#### Modified application to small undertakings

#### Small undertakings.

- 5.(1) Subject to sub-regulations (3) and (5) to (7), these Regulations do not apply to an insurance undertaking which fulfils all the following conditions—
  - (a) the undertaking's annual gross written premium income does not exceed €5,400,000;
  - (b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €26,600,000;
  - (c) where the undertaking belongs to a group, the total of the technical provisions of the group, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €26,600,000;
  - (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 regulation 15; and

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- (e) the business of the undertaking does not include reinsurance operations exceeding €600,000 of its gross written premium income or €2,700,000 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 sub-regulation (1) is exceeded for three consecutive years, these Regulations apply to the undertaking as from the fourth year.
- (3) Despite sub-regulation (1), these Regulations apply to all undertakings seeking permission 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 sub-regulation (1) within the following five years.
- (4) Subject to sub-regulations (6) and (7), these Regulations cease to apply to those insurance undertakings for which the GFSC has verified that all of the following conditions are met—
  - (a) none of the thresholds set out in sub-regulation (1) has been exceeded for the three previous consecutive years; and
  - (b) none of the thresholds set out in sub-regulation (1) is expected to be exceeded during the following five years.
- (5) Sub-regulation (1) does not apply to an insurance undertaking which pursues activities outside Gibraltar.
- (6) Nothing in this regulation—
  - (a) permits any person to carry on the business of insurance of any Class, or any reinsurance without Part 7 permission; or
  - (b) prevents an undertaking from applying for or continuing to hold Part 7 permission in accordance with the Act and these Regulations.
- (7) Where the GFSC gives Part 7 permission to an undertaking which fulfils the conditions in sub-regulation (1), the GFSC may make it a condition of that permission that the undertaking complies with all, or specified provisions of these Regulations (with or without modifications).

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- (8) An undertaking which is given permission in accordance with sub-regulation (7) is not entitled by virtue of that permission to pursue activities outside Gibraltar.
- (9) This regulation applies without limiting regulations 6 to 10.

Exclusions from the scope of Regulations

#### **Exclusion: social security systems.**

6. Without limiting regulation 4(5)(c), these Regulations do not apply to insurance forming part of a statutory system of social security.

Exclusions from scope: non-life

#### **Exclusion:** non-life insurance.

- 7. In respect of non-life insurance, these Regulations do 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; and
  - (d) export credit insurance operations for the account of or guaranteed by the Government or where the Government is the insurer.

#### **Exclusion:** breakdown insurance.

8. These Regulations do not apply to breakdown insurance which fulfils all the conditions in paragraph 27 of Schedule 2 to the Act.

#### **Exclusion: mutual undertakings.**

- 9.(1) These Regulations do not apply to a mutual undertaking ("the ceding mutual") which pursues non-life insurance activities and which has concluded with another mutual undertaking ("the accepting mutual") an agreement—
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- (a) that provides for the full reinsurance by the accepting mutual of the insurance policies issued by the ceding mutual; or
- (b) under which the accepting mutual is to meet the liabilities arising under the insurance policies issued by, and in the place of, the ceding mutual.
- (2) These Regulations do apply to the accepting mutual.

Exclusions from scope: life

#### **Exclusion: life operations and organisations.**

- 10. In respect of life insurance, these Regulations do 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 insurance or reinsurance undertakings, 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 trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from those 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 those benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exclusions from scope: reinsurance

#### **Exclusions relating to re-insurance.**

11.(1) In respect of reinsurance, these Regulations do not apply to reinsurance activity conducted or fully guaranteed by the government of Gibraltar or the government of a country or territory outside Gibraltar when acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where that role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

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(2) These Regulations do not apply to a reinsurance undertaking which by 10th December 2007 had ceased to conduct new reinsurance contracts and exclusively administers its existing portfolio in order to terminate its activity.

### PART 2 THRESHOLD CONDITIONS

#### Introduction.

- 12.(1) This Part includes provisions which supplement the threshold conditions as they apply to—
  - (a) insurance or reinsurance undertakings applying for Part 7 permission to carry on the regulated activity in paragraph 24 of Schedule 2, of effecting and carrying out contracts of insurance; and
  - (b) insurance or reinsurance undertakings which are regulated firms with Part 7 permission to carry on that regulated activity.
- (2) The GFSC must not give Part 7 permission to an insurance or reinsurance undertaking unless the GFSC is satisfied that the undertaking meets, and will continue to meet, all requirements imposed on insurance or reinsurance undertakings under the Act or these Regulations.
- (3) An insurance or reinsurance undertaking which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

#### Permission required to carry insurance or reinsurance activity.

- 13.(1) A person must not carry on the business of insurance of any Class, or any reinsurance activity in Gibraltar unless the person has Part 7 permission to carry on that Class of insurance or reinsurance activity given in accordance with the Act and these Regulations.
- (2) An application for Part 7 permission may be made to the GFSC by-
  - (a) an undertaking which has established or is establishing its head office in Gibraltar; or
  - (b) an insurance undertaking which has Part 7 permission to carry on insurance of a particular Class or any part of it and wishes to extend its business to the whole of that Class or to other Classes of insurance.
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#### Requirement to consult Minister on certain permissions.

#### 13A.(1) The GFSC must-

- (a) consult the Minister before-
  - (i) giving an insurance undertaking Part 7 permission to carry on compulsory motor insurance; or
  - (ii) varying the Part 7 permission of an insurance undertaking to permit it to carry on such insurance; and
- (b) in deciding whether to give or vary the permission, take account of any response provided by the Minister concerning any matter affecting the macro-economic or other public interest of Gibraltar which the Minister considers may arise from the permission being given or varied.
- (2) The GFSC must provide the Minister with such information as the Minister may reasonably require for the purpose of assessing the matters in sub-regulation (1)(b).
- (3) In sub-regulation (1), "compulsory motor insurance" means a contract of motor insurance in respect of third party risks which complies with the requirements of the Insurance (Motor Vehicles) (Third Party Risk) Act 1986.
- (4) Sub-regulation (1) does not apply in respect of an UK-authorised insurance undertaking which operates in Gibraltar by virtue of a deemed passporting right under the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 and the corresponding law of the United Kingdom.

#### Scope of permission.

- 14.(1) Part 7 permission given to an insurance undertaking must be given for a particular Class of insurance and cover the entire class, unless the applicant wishes to cover only some of the risks in respect of that Class.
- (2) Subject to regulation 15, the risks included in a Class must not be included in any other Class.
- (3) The GFSC may give Part 7 permission—
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- (a) for one or more Classes of insurance; or
- (b) for the groups of Classes of non-life insurance set out in paragraph 22(2) of Schedule 2 to the Act.
- (4) In respect to an application for Part 7 permission to which sub-regulation (3)(b) applies, the GFSC may limit the permission for one of the Classes to the operations set out in the scheme of operations referred to in regulation 17.
- (5) Without limiting regulation 15(1), an insurance undertaking may engage in the assistance activity referred to in regulation 8 only if it has been given permission for Class 18 and, it if does so, these Regulations apply to that activity.
- (6) In respect of an application for Part 7 permission as a reinsurance undertaking, the GFSC may give permission for non-life reinsurance activity, life reinsurance activity or both after considering the application in the light of the scheme of operations to be submitted under regulation 16(3)(c) and the fulfilment of any other conditions for permission.
- (7) Where the GFSC gives Part 7 permission to an insurance undertaking, to the extent that the GFSC is satisfied that relevant threshold conditions and other requirements contained in or made under the Act are met, the GFSC may specify that the permission also extends to providing insurance distribution activities.
- (8) Subject to regulation 5(8), Part 7 permission given to an insurance or reinsurance undertaking in accordance with the Act and these Regulations permits the undertaking to carry on business in any country or territory where reciprocal arrangements are in place with allow Gibraltar insurers or Gibraltar reinsurers lawfully to do so.

#### Ancillary risks.

- 15.(1) An insurance undertaking which has permission to insure a principal risk within one or more of the Classes of general business may also insure ancillary risks included in another Class without the need for further permission if those ancillary risks—
  - (a) are connected with the principal risk;
  - (b) concern the object which is covered against the principal risk; and
  - (c) are covered by the contract insuring the principal risk.
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- (2) The risks included in Classes 14, 15 and 17 must not be regarded as risks ancillary to other Classes.
- (3) But legal expenses insurance within Class 17 may be regarded as a risk ancillary to Class 18 where—
  - (a) the conditions in sub-regulation (1) are met; and
  - (b) either-
    - (a) the main risk relates solely to the provision of assistance to persons who get into difficulties while travelling, while away from their home or habitual residence; or
    - (b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea going vessels.

#### Additional conditions for permission.

- 16.(1) Without limiting the requirements of the Act, an undertaking applying for Part 7 permission must—
  - (a) be-
    - (i) a company (whether limited by shares or by guarantee or unlimited) registered under the Companies Act 2014; or
    - (ii) a friendly society registered under the Friendly Societies Act; and
  - (b) have its head office and registered office in Gibraltar.
- (2) Despite sub-regulation (1)(a), an undertaking set up in a form governed by public law may apply for Part 7 permission if it has as its object insurance or reinsurance operations under conditions equivalent to those under which undertakings governed by private law operate.
- (3) An undertaking applying for permission must comply with the following conditions—
  - (a) where the application is for permission as an insurance undertaking, its objects must be limited to the business of insurance and operations arising directly from that business, to the exclusion of all other commercial business;
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- (b) where the application is for permission as a reinsurance undertaking, its objects must be limited to the business of reinsurance and related operations, which may include a holding company function and activities with respect to a financial sector within the meaning of regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020;
- (c) it must submit a scheme of operations to the GFSC in accordance with regulation 17;
- (d) it must hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in regulation 116;
- (e) it must provide the GFSC with evidence that the undertaking will be in a position to hold, on an ongoing basis—
  - (i) eligible own funds to cover the Solvency Capital Requirement, as provided for in regulation 90; and
  - (ii) eligible basic own funds to cover the Minimum Capital Requirement, as provided for in regulation 115;
- (f) it must provide the GFSC with evidence that the undertaking will be in a position to comply with the system of governance in regulations 43 to 50;
- (4) An insurance undertaking seeking permission to extend its business to another Class or extend a permission covering only some of the risks under a Class must submit to the GFSC–
  - (a) a scheme of operations in accordance with regulation 17; and
  - (b) evidence that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in regulations 90 and 115.
- (5) Without limiting sub-regulation (4), an insurance undertaking pursuing life activities and seeking permission to extend its business to the risks in Class 1 or 2 as provided for in regulation 63 must—
  - (a) demonstrate that it 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 provided for in regulation 116; and
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- (b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.
- (6) Without limiting sub-regulation (4), an insurance undertaking pursuing non-life activities for the risks listed in Class 1 or 2 and seeking permission to extend its business to life insurance risks as provided for in regulation 63 must—
  - (a) demonstrate that it 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 provided for in regulation 116; and
  - ((b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.

#### Scheme of operations.

- 17.(1) The scheme of operations referred to in regulation 16(3)(c) must include particulars or evidence of the following—
  - (a) the nature of the risks or commitments which the insurance or reinsurance undertaking 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; and
  - (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, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.
- (2) In addition to the requirements in sub-regulation (1), for the first three financial years the scheme must include the following—
  - (a) a forecast balance sheet;
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- (b) estimates of the future Solvency Capital Requirement, as provided for in Chapter 3 of Part 6, on the basis of the forecast balance sheet, and the calculation method used to derive those estimates;
- (c) estimates of the future Minimum Capital Requirement, as provided for in regulations 115 and 116, on the basis of the forecast balance sheet, and 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-
  - (i) estimates of management expenses other than installation costs, in particular, current general expenses and commissions; and
  - (ii) estimates of premiums or contributions and claims; and
- (f) in regard to life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

#### Close links.

- 18.(1) Where close links exist between an insurance or reinsurance undertaking and other individuals or legal persons, the GFSC may give Part 7 permission to that undertaking only if those links do not prevent the effective performance of its supervisory functions.
- (2) The GFSC must refuse permission if it would be prevented from performing its supervisory functions effectively by-
  - (a) the laws, regulations or administrative provisions of a country or territory outside Gibraltar governing one or more person with which an insurance or reinsurance undertaking has close links; or
  - (b) the difficulties involved in enforcing those measures.
- (3) The GFSC may require an insurance or reinsurance undertaking to provide it with the information it requires to monitor, on a continuous basis, compliance with the conditions in sub-regulation (1).
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#### Policy conditions and scales of premiums.

- 19.(1) The GFSC must not require the prior approval or systematic notification of—
  - (a) general and special policy conditions;
  - (b) scales of premiums;
  - (c) technical bases used, in particular, for calculating scales of premiums and technical provisions; or
  - (d) other forms and printed documents,

which an insurance undertaking intends to use in its dealings with policy holders or ceding or retroceding undertakings.

- (2) Despite sub-regulation (1), for life insurance, the GFSC may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions but that requirement—
  - (a) may only be imposed for the purpose of verifying compliance with legal provisions concerning actuarial principles; and
  - (b) must not constitute a prior condition for permission.
- (3) The GFSC must not retain or introduce prior notification or approval of proposed increases in premium rates other than as part of general price-control systems.
- (4) The GFSC may subject an undertaking which is seeking or has obtained Part 7 permission for insurance business in Class 18 to checks on its direct or indirect resources in staff and equipment, including the qualification of its medical teams and the quality of the equipment available to the undertaking to meet its commitments arising out of that Class.

#### **Economic requirements of the market.**

20. In considering any application for Part 7 permission the GFSC may not take account of the economic requirements of the market.

#### Shareholders and members with qualifying holdings.

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- 21.(1) The GFSC must not give an undertaking Part 7 permission to take up the business of insurance or reinsurance unless it has been informed of the identities of the shareholders or members, direct or indirect, whether individuals or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.
- (2) The GFSC must not give Part 7 permission to an undertaking if, taking into account the need to ensure the sound and prudent management of the undertaking, it is not satisfied as to the qualifications of the shareholders or members.
- (3) For the purposes of sub-regulation (1), the GFSC must take account of-
  - (a) voting rights referred to in sections 363 and 364 of the Act; and
  - (b) the conditions regarding their aggregation in section 366(7) and (9) of the Act.
- (4) The GFSC must not take account of the voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or the placing of financial instruments on a firm commitment basis under paragraph 53 of Schedule 2 to the Act, where those rights—
  - (a) are not exercised or otherwise used to intervene in the management of the issuer; and
  - (b) are disposed of within one year of their acquisition.

#### Qualifying holdings: reporting of acquisitions and disposals.

- 22.(1) An insurance or reinsurance undertaking must—
  - (a) on becoming aware of it, inform the GFSC of any acquisition or disposal of holdings in the undertaking's capital that causes those holdings to exceed or fall below any of the thresholds in sections 114 to 116 of the Act; and
  - (b) at least once a year, inform the GFSC of-
    - (i) the names of the undertaking's shareholders and members who possess qualifying holdings; and
    - (ii) the size of those holdings,
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as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

- (2) Where the GFSC has reasonable grounds for considering that the influence exercised by a person who possesses a qualifying holding is likely to be prejudicial to the sound and prudent management of an insurance or reinsurance undertaking, the GFSC may take appropriate steps to resolve that situation.
- (3) The steps which the GFSC may take under sub-regulation (2) include—
  - (a) imposing sanctions on the directors and other persons responsible for the management of the undertaking;
  - (b) directing that the voting rights exercisable by the person in question are to be suspended; or
  - (c) applying to the Supreme Court for an order.
- 23. Omitted.
- 24. Omitted.

#### PART 3 SUPERVISION

Functions of the GFSC, etc.

#### Main objective of supervision.

25. Without limiting its regulatory objectives under the Act, the GFSC's main objective as the supervisory authority under these Regulations is the protection of policy holders and beneficiaries.

#### Financial stability and pro-cyclicality.

26.(1) Without limiting regulation 25, in the exercise of its general duties, the GFSC must consider the potential impact of its decisions on the stability of the financial system, in particular in emergency situations, taking account of the information available at the relevant time.

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(2) The GFSC must take account of the potential pro-cyclical effects of its actions in times of exceptional movements in the financial markets.

### General principles of supervision.

- 27.(1) The GFSC must take a prospective and risk-based approach to supervision and verify, on a continuous basis—
  - (a) the proper operation of insurance and reinsurance business; and
  - (b) compliance with supervisory provisions by insurance and reinsurance undertakings.
- (2) The GFSC must supervise insurance and reinsurance undertakings by means of an appropriate combination of off-site activities and on-site inspections.
- (3) The GFSC must apply the requirements in these Regulations 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.

#### Scope of supervision.

- 28.(1) The GFSC has sole responsibility for the financial supervision of insurance and reinsurance undertakings.
- (2) For the purposes of sub-regulation (1) financial supervision includes verification, in respect of the entire business of an insurance or reinsurance undertaking, of—
  - (a) its state of solvency;
  - (b) its establishment of technical provisions; and
  - (c) its assets and eligible own funds,

in accordance with these Regulations and other laws which apply in Gibraltar.

- (3) Where an insurance undertaking has permission to cover the risks classified in Class 18, supervision extends to monitoring the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform.
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### Transparency and accountability.

- 29.(1) The GFSC must conduct its supervisory tasks in a transparent and accountable manner and with due respect for the protection of confidential information.
- (2) The GFSC must publish the following information—
  - (a) the text of laws, administrative rules and general guidance in the field of insurance regulation;
  - (b) the general criteria and methods, including the tools to be used, in the supervisory review process;
  - (c) aggregate statistical data on key aspects of the application of the prudential framework;
  - (d) Omitted.
  - (e) the objectives and main functions and activities of the supervision provided for by these Regulations.
- (3) *Omitted*.
- (4) The GFSC must publish and regularly update the information specified in sub-regulation (2) in a common format that is accessible at a single electronic location.

#### Prohibition of refusal of reinsurance and retrocession contracts.

- 30. The GFSC must not refuse-
  - (a) a reinsurance contract concluded by an insurance undertaking with a reinsurance undertaking or another insurance undertaking; or
  - (b) a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or another insurance undertaking,

on grounds directly related to the financial soundness of that reinsurance or insurance undertaking.

- 31. Omitted.
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### General supervisory powers.

- 32.(1) The provisions in this Part supplement the GFSC's powers under the Act.
- (2) The GFSC may exercise its supervisory and sanctioning powers under the Act, these Regulations or any other relevant enactment in order to—
  - (a) take preventative and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they must comply in Gibraltar;
  - (b) 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) require all information necessary to conduct supervision in accordance with regulation 37;
  - (d) 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) carry out on-site investigations at the premises of undertakings.
- (3) The GFSC must apply its supervisory powers in a timely and proportionate manner.
- (4) The GFSC's powers under this regulation also apply to the outsourced activities of undertakings.

#### Directions.

- 33.(1) The GFSC may give an insurer any directions that the GFSC considers necessary—
  - (a) for the purposes of protecting the insurer's policyholders or potential policyholders against the risk that the insurer—
    - (i) may be unable to meet its liabilities; or
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- (ii) may, in respect of its long-term business, be unable to fulfil the reasonable expectations of policyholders or potential policyholders;
- (b) in the exceptional circumstances referred to in regulation 122(11);
- (c) for the purpose of exercising powers under regulation 123(3) or 124(2); or
- (d) for the purpose of ensuring that the insurer fulfils the criteria of sound and prudent management.
- (2) The power to give directions so as to restrict an insurer's freedom to dispose of its assets may only be exercised—
  - (a) where the GFSC has given a direction under regulation 34 or 35;
  - (b) for the purpose of exercising powers under regulation 122(11), 123(3) or 124(2);
  - (c) where it appears to the GFSC that the insurer has failed to satisfy an obligation under the Act or these Regulations as to its technical provisions, the Solvency Capital Requirement, the maintenance of own funds to cover the Minimum Capital Requirement or the adequacy, form or location of its assets; or
  - (d) where the insurer has submitted to the GFSC an account or statement specifying, as the amount of any liabilities of the insurer, an amount appearing to the GFSC to have been determined otherwise than in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.
- (3) A direction under this regulation—
  - (a) must be given in writing and state the reasons for giving the direction; and
  - (b) takes effect from the date of the direction or any later date that may be specified in the direction.
- (4) The GFSC may at any time revoke or vary a direction issued under this regulation.

### Prohibiting insurer from undertaking new business.

- 34.(1) The GFSC may-
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- (a) at the request of the insurer; or
- (b) on any of the grounds in sub-regulation (2),

direct that an insurer must not enter into new contracts of insurance or contracts of a description specified in the direction.

- (2) The grounds are that—
  - (a) the insurer is in breach of, or has failed to satisfy an obligation under, the Act or these Regulations;
  - (b) the GFSC is exercising its powers under regulation 127;
  - (c) a ground exists which would prohibit the GFSC from giving Part 7 permission to the insurer;
  - (d) the GFSC is satisfied that the insurer has deliberately or recklessly supplied information that is untrue in a material respect;
  - (e) the insurer has carried on its business in a manner detrimental to the interests of its policyholders or the public interest;
  - (f) the insurer is a third-country insurance undertaking and has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in the country or territory where it has its head office;
  - (g) the insurer has failed to remove a director, controller, manager, representative or agent whom the GFSC has found not to be a fit and proper person;
  - (h) the insurer has failed, within such time as it was allowed, to give effect to-
    - (i) a recovery plan under regulation 122; or
    - (ii) a short term finance scheme under regulation 123;
  - (i) the insurer is in receivership or in liquidation within the meaning of section 3(1) of the Insolvency Act 2011;

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- (j) it appears to the GFSC that a Gibraltar insurer has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance activities of the insurer in that jurisdiction;
- (k) it appears to the GFSC that a Gibraltar insurer or third-country insurance undertaking is not or has not been or may not be or may not have been fulfilling the criteria of sound and prudent management; or
- (l) the insurer is a Swiss general insurer which has ceased to be authorised to effect contracts of insurance or contracts of a particular description, in Switzerland.
- (3) A direction under this regulation does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- (4) A direction under this regulation—
  - (a) must be given in writing and, in the case of a direction under sub-regulation (1)(b), state the reasons for giving the direction; and
  - (b) takes effect from the date of the direction or any later date that may be specified in the direction.
- (5) Where a direction under this regulation has been given in respect of—
  - (a) an insurer which has its head office in a country or territory outside Gibraltar; or
  - (b) a Swiss general insurer,

the GFSC may revoke or vary the direction if, after consulting the relevant supervisory authority the GFSC considers it appropriate to do so.

(6) Subject to sub-regulation (5) a direction may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

### Suspension of permission in urgent cases.

- 35.(1) Where it appears to the GFSC-
  - (a) that one of the grounds in regulation 34(2) exists in relation to an insurer; and
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(b) that the insurer's Part 7 permission should be suspended as a matter of urgency, the GFSC may, by direction, suspend the insurer's permission to effect contracts of insurance, or contracts of a description specified in the direction.

- (2) A direction under this regulation—
  - (a) must be given in writing and state the reasons for giving the direction; and
  - (b) takes effect from the date of the direction or any later date that may be specified in the direction.
- (3) A direction under this regulation—
  - (a) does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and
  - (b) unless confirmed by the GFSC under sub-regulation (6), ceases to have effect at the end of the relevant period.
- (3) Where the GFSC gives a direction under this regulation, it must promptly serve on the insurer a written notice stating that the insurer may, within one month from the date of service of the notice, make written and oral representations to the GFSC.
- (4) Where the GFSC gives a direction on the ground set out in regulation 34(2)(g), the GFSC must also promptly serve on any person whose fitness is in question—
  - (a) a copy of the direction; and
  - (b) a written notice stating that the person may, within one month from the date of service of the notice, make written and oral representations to the GFSC.
- (5) the GFSC must consider any representations made in response to a notice under sub-regulation (3) or (4) before confirming a direction under this regulation.
- (6) At any time before the end of the relevant period, the GFSC may confirm a direction under this regulation by a notice served on the insurer.
- (7) A direction which is confirmed under sub-regulation (6) may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business
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of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

(8) In this regulation "the relevant period", in relation to a direction means the period of two months beginning with the date on which the direction is given.

### **Procedure: Regulations 33 to 35.**

- 36.(1) The GFSC must give the insurer-
  - (a) a warning notice, if the GFSC proposes to give a direction under regulation 33, 34(1)(b) or 35(1); or
  - (b) a decision notice, if the GFSC decides to-
    - (i) give a direction under regulation 33, 34(1)(b) or 35(1); or
    - (ii) confirm a direction under regulation 35(6).
- (2) Sub-regulation (1)(a) does not apply where the GFSC is satisfied that—
  - (a) there is an immediate risk of substantial damage to—
    - (i) the interests of policyholders or consumers;
    - (ii) the public interest; or
    - (iii) the reputation of Gibraltar; and
  - (b) the exercise of the power to give a direction with immediate effect is—
    - (i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and
    - (ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the insurer that may result from that direction.
- (3) A decision notice under sub-regulation (1)(b) takes effect immediately or on the date specified in the notice.
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- (4) A decision by the GFSC to-
  - (a) issue a decision notice under sub-regulation (1)(b); or
  - (b) issue such a decision notice without first issuing a warning notice in accordance with sub-regulation (1)(a),

is a specified regulatory decision to which section 24(3) of the Act applies.

- (5) Sub-regulation (4) does not apply to the issue of a decision notice where—
  - (a) the recipient has received a warning notice and-
    - (i) has agreed in writing to the steps proposed in the warning notice being taken; or
    - (ii) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed); or
  - (b) in the case of a decision notice confirming a direction under regulation 35(6), the recipient—
    - (i) has agreed in writing to the direction being confirmed; or
    - (ii) has not made any representations in accordance with regulation 35(4)(b).

### Information for supervisory purposes.

- 37.(1) Insurance and reinsurance undertakings must submit to the GFSC any information which is necessary for the purposes of supervision, taking account of the objectives of supervision set out in regulations 25 and 26, and that information must 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; and
  - (b) to make any appropriate decisions resulting from the exercise of the GFSC's supervisory rights and duties.
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- (2) The GFSC has the following powers—
  - (a) to determine the nature, the scope and format of the information referred to in subregulation (1) which it requires insurance and reinsurance undertakings to submit at the following points in time—
    - (i) at pre-defined periods;
    - (ii) on the occurrence of pre-defined 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) Without limiting sub-regulation (2), the GFSC may with the consent of the Minister require information to be submitted using a specified template and in a specified format.
- (4) The information which the GFSC may require by virtue of this regulation comprises the following—
  - (a) qualitative or quantitative elements, or any appropriate combination of them;
  - (b) historic, current or prospective elements, or any appropriate combination of them; and
  - (c) data from internal or external sources, or any appropriate combination of them.
- (5) The information referred to in sub-regulation (1) and (2) 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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- (6) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements set out in this regulation as well as a written policy, approved by the undertaking's administrative, management or supervisory body, ensuring the ongoing appropriateness of the information submitted.
- (7) Without limiting sub-regulation (8) and regulation 116(4), where the pre-defined periods referred to in sub-regulation (2)(a)(i) are shorter than one year, the GFSC 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.
- (8) The GFSC must 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 regulation 191, unless the undertaking can demonstrate to the satisfaction of the GFSC 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.
- (9) The limitation to regular supervisory reporting may be granted only to undertakings that do not represent more than 20% of Gibraltar's 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.
- (10) The GFSC 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;
  - (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 system; and
  - (d) the undertaking is able to provide the information when required to do so.
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- (11) The GFSC must not exempt from reporting on an item by item basis undertakings that are part of a group within the meaning of regulation 191, unless the undertaking can demonstrate to the GFSC's satisfaction that reporting on an item by item 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.
- (12) The exemption from reporting on an item-by-item basis may be granted only to undertakings that do not represent more than 20% of Gibraltar's 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.
- (13) The GFSC must give priority to the smallest undertakings when determining the eligibility for the limitation under sub-regulation (9) or the exemption under sub-regulation (12).
- (14) For the purposes of sub-regulations (7) to (13), as part of the supervisory review process, the GFSC must 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;
  - (e) the total number of Classes of life and non-life insurance for which permission is given;
  - (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 sub-regulation (6);
  - (h) the appropriateness of the system of governance of the undertaking;
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- (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and
- (j) whether the undertaking is a captive insurer or captive reinsurer only covering risks associated with the industrial or commercial group to which it belongs.

#### Supervisory review process.

- 38.(1) The GFSC must review and evaluate the strategies, processes and reporting procedures established by insurance and reinsurance undertakings to comply with these Regulations.
- (2) That review and evaluation must 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 GFSC must, 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 regulations 43 to 50;
  - (b) the technical provisions as set out in regulations 66 to 80;
  - (c) the capital requirements as set out in regulations 90 to 116;
  - (d) the investment rules as set out in regulations 117 to 119;
  - (e) the quality and quantity of own funds as set out in regulations 81 to 89;
  - (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 regulations 101 to 114,

and the GFSC must have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in an undertaking and to monitor how that deterioration is remedied.

(4) The GFSC must assess-

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- (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 this regulation must be conducted regularly and the GFSC must 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.
- (6) The GFSC may require an insurance or reinsurance undertaking to remedy any weakness or deficiency identified in the supervisory review process.

### Capital add-on.

- 39.(1) Following the supervisory review process the GFSC may impose a capital add-on for an insurance or reinsurance undertaking in the following exceptional circumstances—
  - (a) where the GFSC 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 regulations 91 to 100; and—
    - (i) the requirement to use an internal model under regulation 107 is inappropriate or has been ineffective; or
    - (ii) while a partial or full internal model is being developed in accordance with that regulation;
  - (b) where the GFSC concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with regulations 101 to 114, 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) where the GFSC concludes that the system of governance of an undertaking deviates significantly from the standards set out in regulations 66 to 80, that the deviation prevents it from being able properly to identify, measure, monitor,
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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; or

- (d) where the insurance or reinsurance undertaking applies the matching adjustment referred to in regulation 68, the volatility adjustment referred to in regulation 70 or the transitional measures referred to in paragraphs 2 and 3 of Schedule 1 and the GFSC 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 sub-regulation (1)(a) or (b) of the capital add-on must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).
- (3) In the circumstances set out in sub-regulation (1)(c) the capital add-on must be proportionate to the material risks arising from the deficiencies which gave rise to the GFSC's decision to impose the add-on.
- (4) In the circumstances set out in sub-regulation (1)(d), the capital add-on must be proportionate to the material risks arising from the deviation referred to in that provision.
- (5) In the cases set out in sub-regulation (1)(b) and (c) the GFSC must 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, must replace the inadequate Solvency Capital Requirement.
- (7) This regulation and regulation 40 apply subject to any technical standards which further specify—
  - (a) the circumstances under which a capital add-on may be imposed;
  - (b) the methodologies for calculating capital add-ons; or
  - (c) the procedures for decisions to set, calculate and remove capital add-ons.

### Review or cancellation of capital add-on.

- 40. Where the GFSC has imposed a capital add-on under regulation 39, it must—
  - (a) review the capital add-on at least once a year; and
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(b) remove the capital add-on when the undertaking has remedied the deficiencies which led to its imposition.

### Transfer of portfolios.

41. In Part 23 of the Act (which provides for the control of insurance business transfers) any reference to "the necessary margin of solvency" is to be construed as a reference to necessary eligible own funds required to cover the Solvency Capital Requirement under these Regulations.

# PART 4 CONDITIONS GOVERNING BUSINESS

## Corporate Governance

### Compliance obligation.

- 42. Ultimate responsibility for an insurance or reinsurance undertaking's compliance with these Regulations and other applicable laws is—
  - (a) in the case of an insurance or reinsurance undertaking which is a company, a function of the directors and the chief executive; and
  - (b) in the case of any other insurance or reinsurance undertaking, a function of its administrative, management or supervisory body.

### General governance requirements.

- 43.(1) An insurance or reinsurance undertaking must have in place an effective system of governance which provides for sound and prudent management of the business.
- (2) The system must include-
  - (a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
  - (b) an effective system for ensuring the transmission of information; and
  - (c) compliance with the requirements of regulations 44 to 50.
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- (3) The system of governance must be subject to regular internal review.
- (4) The system of governance must be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.
- (5) An insurance or reinsurance undertaking must have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing and must 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.
- (6) An insurance or reinsurance undertaking must take reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans and for that purpose it must employ appropriate and proportionate systems, resources and procedures.
- (7) The GFSC must 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 regulations 44 to 50.

### Fit and proper persons and proof of good repute.

- 44.(1) Without limiting Part 8 of the Act, an insurance or reinsurance undertaking must ensure that all persons who effectively run the undertaking or have other key functions are at all times fit and proper to do so, in that—
  - (a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management of the undertaking; and
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- (b) they are of good repute and integrity.
- (2) An insurance or reinsurance undertaking-
  - (a) must ensure that-
    - (i) any person who performs a regulated function (within the meaning of Part 8 of the Act) has been approved as a regulated individual under Part 8 of the Act by the GFSC to perform that function in the undertaking; and
    - (ii) any regulated function within the undertaking is only performed by the appropriate regulated individual; and
  - (b) without limiting its obligations under Part 8 of the Act, must notify the GFSC–
    - (i) of any change to the identity of any person (including a non-executive member of its administrative, management or supervisory body) who effectively runs the undertaking or is responsible for another key function; or
    - (ii) if any person referred to in sub-regulation (1) or paragraph (a) has been replaced because the person no longer fulfils the requirements of sub-regulation (1)(a) or (b).

### Risk Management.

- 45.(1) An insurance or reinsurance undertaking must 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) The risk-management system—
  - (a) must be effective and well-integrated into the organisational structure and decision-making processes of the undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions; and
  - (b) must cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in regulation 91(4) as well as the risks which are not or not fully included in that calculation.
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- (3) The risk-management system must 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; and
  - (f) reinsurance and other risk-mitigation techniques.
- (4) The written policy on risk management referred to in regulation 43(5) must comprise policies relating to the matters specified in sub-regulation (3)(a) to (f).
- (5) An insurance or reinsurance undertaking which applies the matching adjustment referred to in regulation 68 or the volatility adjustment referred to in regulation 70 must 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, an insurance or reinsurance undertaking must regularly assess—
  - (a) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in regulation 67;
  - (b) where the matching adjustment referred to in regulation 68 is applied—
    - (i) the sensitivity of its 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 regulation 69(1)(b) and the possible effect of a forced sale of assets on its eligible own funds;
    - (ii) the sensitivity of its 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;
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- (c) where the volatility adjustment referred to in regulation 70 is applied—
  - (i) the sensitivity of its 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 its eligible own funds; and
  - (ii) the impact of a reduction of the volatility adjustment to zero.
- (7) The insurance or reinsurance undertaking must submit the assessments referred to in subregulation (6)(a) to (c) to the GFSC annually (as part of the information reported under regulation 37) and, where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking must 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 regulation 70 is applied, the written policy on risk management referred to in regulation 43(5) must comprise a policy on the criteria for the application of the volatility adjustment.
- (9) An insurance or reinsurance undertaking must demonstrate that it complies with Chapter 5 of Part 6 as regards investment risk.
- (10) An insurance or reinsurance undertaking must provide for a risk management function which is structured in such a way as to facilitate the implementation of the risk management system.
- (11) Where an insurance or reinsurance undertaking uses an external credit rating assessment in the calculation of technical provisions or the Solvency Capital Requirement, in order to avoid over-reliance on external credit assessment institutions, the undertaking must assess the appropriateness of those external credit assessments as part of its risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.
- (12) Where an insurance or reinsurance undertaking uses a partial or full internal model approved in accordance with regulations 101 and 102, the risk-management function must cover the following additional tasks—
  - (a) to design and implement the internal model;
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- (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; and
- (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.

### Own risk and solvency assessment.

- 46.(1) As part of its risk-management system an insurance or reinsurance undertaking must conduct its own risk and solvency assessment.
- (2) That assessment must 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 Chapters 2 and 3 of Part 6 and with the requirements regarding technical provisions specified in Chapter 1 of that Part;
  - (c) the significance with which the risk profile of the undertaking deviates from the assumptions underlying the Solvency Capital Requirement as set out in regulation 91(3), calculated with—
    - (i) the standard formula in accordance with regulations 93 to 100; or
    - (ii) its partial or full internal model in accordance with regulations 101 to 114.
- (3) For the purposes of sub-regulation (2)(a), the undertaking—
  - (a) must 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
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- (b) must demonstrate the methods used in that assessment.
- (4) Where the undertaking applies—
  - (a) the matching adjustment referred to in regulation 68;
  - (b) the volatility adjustment referred to in regulation 70; or
  - (c) the transitional measures referred to in paragraphs 2 and 3 of Schedule 1,

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

- (5) In the case referred to in sub-regulation (2)(c) when an internal model is used, the assessment must 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 must be an integral part of the business strategy and must be taken into account on an on-going basis in the strategic decisions of the undertaking.
- (7) An insurance or reinsurance undertaking must perform the assessment referred to in sub-regulation (2) regularly and without any delay following any significant change in its risk profile.
- (8) An insurance or reinsurance undertaking must inform the GFSC of the results of each own-risk and solvency assessment.
- (9) The own-risk and solvency assessment does not serve to calculate a capital requirement: and the Solvency Capital Requirement must be adjusted only in accordance with regulations 39 and 210 to 212.

### Internal control.

- 47.(1) An insurance or reinsurance undertaking must have in place an effective internal control system which includes—
  - (a) administrative and accounting procedures;
  - (b) an internal control framework;
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- (c) appropriate reporting arrangements at all levels of the undertaking; and
- (d) a compliance function.
- (2) The compliance function must include—
  - (a) advising the administrative, management or supervisory body on compliance with the Act, these Regulations and all other applicable laws and administrative provisions adopted in accordance with these Regulations; and
  - (b) an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking and the identification and assessment of compliance risk.

#### Internal audit.

- 48.(1) An insurance or reinsurance undertaking must provide for an effective internal audit function which includes an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.
- (2) The undertaking's internal audit function must be objective and independent from its operational functions.
- (3) Any findings and recommendations of the internal audit must be reported to the administrative, management or supervisory body which must determine what actions are to be taken with respect to each of the internal audit findings and recommendations and ensure that those actions are carried out.

### Actuarial function.

- 49.(1) An insurance or reinsurance undertaking 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;
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- (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 regulation 77;
- (g) to express an opinion on the overall underwriting policy;
- (h) to express an opinion on the adequacy of reinsurance arrangements; and
- (i) to contribute to the effective implementation of the risk management system referred to in regulation 45, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapters 3 and 4 of Part 6 and to the assessment referred to in regulation 46.
- (2) The actuarial function must 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 undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

#### Outsourcing.

- 50.(1) An insurance or reinsurance undertaking remains fully responsible for discharging all of its obligations under these Regulations when it outsources functions or any insurance or reinsurance activities.
- (2) An insurance or reinsurance undertaking must not outsource critical or important operational functions or activities 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;
  - (b) unduly increasing the operational risk;
  - (c) impairing the ability of the GFSC to monitor the undertaking's compliance with its obligations; or
  - (d) undermining continuous and satisfactory service to policy holders.
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- (3) An insurance or reinsurance undertaking must, in a timely manner, notify the GFSC-
  - (a) before outsourcing any critical or important functions or activities; and
  - (b) of any subsequent material developments with respect to those functions or activities.

### Supervision of outsourced functions and activities.

- 51. Without limiting regulation 50, an insurance or reinsurance undertaking which outsources a function or an insurance or reinsurance activity to another person (a "service provider") must ensure that—
  - (a) the service provider cooperates with the GFSC in connection with the outsourced function or activity;
  - (b) the undertaking, its auditors and the GFSC have effective access to data related to the outsourced function or activity; and
  - (c) the GFSC has effective access to the service provider's business premises and is able to exercise that right of access.

### Restriction on dividend payments.

- 51A.(1) An insurance or reinsurance undertaking may only make a dividend payment if—
  - (a) it has notified the GFSC of the intention to make the payment; and
  - (b) the GFSC has not objected to the payment being made.
- (2) In this regulation a "dividend payment" means a dividend to shareholders or a distribution of capital of any other kind, including capital repayments for a loan to a parent or holding company or the return of premiums to the members of a mutual insurer.
- (3) An insurance or reinsurance undertaking must give the GFSC notice of a proposed dividend payment at the earliest opportunity and, in any event, not less than 30 days before the day on which the undertaking proposes to declare (or otherwise decide to make) the dividend payment.
- (4) A notice under sub-regulation (3) must-
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- (a) be made in the form and manner the GFSC directs; and
- (b) contain or be accompanied by such information as the GFSC reasonably requires.
- (5) Without limiting sub-regulation (4), the information which the GFSC may require an insurance or reinsurance undertaking to provide includes, in particular, information to demonstrate that the proposed dividend payment is appropriate in relation to the undertaking's—
  - (a) actual and projected business performance; and
  - (b) current and future capital position.
- (6) The GFSC may give notice (an "objection notice") that it objects to the dividend payment being made if, having regard to the information provided and, in particular, the matters in subregulation (5), it is not satisfied that the insurance or reinsurance undertaking has demonstrated that the payment is appropriate.
- (7) An objection notice must be given to the insurance or reinsurance undertaking not less than 15 days before the day on which it proposes to declare (or otherwise decide to make) the dividend payment.
- (8) An objection notice takes effect immediately and requires the insurance or reinsurance undertaking concerned to refrain from making—
  - (a) the proposed dividend payment; or
  - (b) any other dividend payment without the GFSC's consent.
- (9) An insurance or reinsurance undertaking may appeal under section 615 of the Act against an objection notice as if it were a decision notice to which that section applies.

#### Public disclosure

#### Report on solvency and financial conditions: contents.

- 52.(1) An insurance or reinsurance undertaking must disclose publicly, on an annual basis, a report on its solvency and financial condition and that report must—
  - (a) include the information required by regulation 37(4) and comply with the principles set out in regulation 37(5); and
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- (b) contain the information specified in sub-regulation (2), either in full or by way of reference to equivalent information, both in nature and scope, published under other legal or regulatory requirements.
- (2) The information referred to in sub-regulation (1)(b) is—
  - (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 the Minimum Capital Requirement;
    - (iii) if applicable, the option set out in regulation 97 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 reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.
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- (3) Where the matching adjustment referred to in regulation 68 is applied, the description referred to in sub-regulation (2)(d) must include—
  - (a) a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied;
  - (b) a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position;
  - (c) a statement on whether the volatility adjustment referred to in regulation 70 is used by the undertaking; and
  - (d) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.
- (4) The description referred to in sub-regulation (2)(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.
- (5) The disclosure of the Solvency Capital Requirement referred to in sub-regulation (2)(e)(ii) must show separately the amount calculated in accordance with Chapter 3 of Part 6 and any capital add-on imposed in accordance with regulation 39 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with regulation 100, together with concise information on its justification by the GFSC.
- (6) Without limiting any disclosure that is mandatory under any other legal or regulatory requirements, the GFSC 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 regulation 100(3) need not be separately disclosed during a transitional period ending no later than 31st December 2020.
- (7) The disclosure of the Solvency Capital Requirement must be accompanied, where applicable, by an indication that its final amount is still subject to assessment by the GFSC.

#### 53. Omitted.

### Report on solvency and financial condition: applicable principles

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- 54.(1) Subject to sub-regulation (4), the GFSC must permit insurance and reinsurance undertakings not to disclose information where—
  - (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 GFSC, an undertaking must make a statement to this effect in its report on solvency and financial condition and must state the reasons.
- (3) The GFSC must 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 in both nature and scope to the information required under regulation 52.
- (4) In sub-regulations (1) and (2) "information" does not include any of the information referred to in regulation 52(2)(e).

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

- 55.(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with regulations 52 and 54, insurance and reinsurance undertakings must disclose appropriate information on the nature and effects of that major development.
- (2) For the purposes of sub-regulation (1), at least the following must be regarded as major developments—
  - (a) where non-compliance with the Minimum Capital Requirement is observed and the GFSC either considers that the undertaking will not be able to submit a realistic short-term finance scheme or does not obtain such a scheme within one month of the date when non-compliance was observed; and
  - (b) where significant non-compliance with the Solvency Capital Requirement is observed and the GFSC does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.
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- (3) In regard to sub-regulation (2)(a)-
  - (a) the GFSC must require the undertaking concerned to disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and
  - (b) where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it must 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 sub-regulation (2)(b)–
  - (a) the GFSC must require the undertaking concerned to disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and
  - (b) 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 must 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 regulations 52 and 54 and sub-regulation (1).

### Report on solvency and financial condition: policy and approval.

- 56.(1) An insurance or reinsurance undertaking must have appropriate systems and structures in place to fulfil the requirements of regulations 52, 54 and 55, as well as having a written policy ensuring the continuing appropriateness of any information disclosed in accordance with those regulations.
- (2) The solvency and financial condition report must be subject to approval by the undertaking's administrative, management or supervisory body and be published only after that approval.

Professional secrecy, exchange of information etc.

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#### Professional secrecy.

- 57.(1) The professional secrecy obligation applies to information obtained or supplied under these Regulations.
- (2) Despite sub-regulation (1), where an insurance or reinsurance undertaking has been declared insolvent 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.

### Exchange of information with other authorities.

- 58.(1) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and any of the following (whether in Gibraltar or another country or territory)—
  - (a) authorities responsible for the supervision of—
    - (i) insurance undertakings or reinsurance undertakings;
    - (ii) credit institutions or other financial organisations; or
    - (iii) financial markets;
  - (b) bodies involved in the insolvency, liquidation or similar procedures in respect of insurance or reinsurance undertakings, and the authorities responsible for overseeing those bodies;
  - (c) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions, and the authorities responsible for overseeing those persons;
  - (d) bodies which administer compulsory winding-up proceedings or guarantee funds (to the extent necessary for the performance of their duties);
  - (e) independent actuaries of insurance or reinsurance undertakings carrying out legal supervision of those undertakings, and the bodies responsible for overseeing those actuaries; and

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- (f) authorities responsible for supervising compliance by obliged entities with the Proceeds of Crime Act 2015 or the corresponding law prohibiting money laundering of a country or territory outside Gibraltar.
- (2) Where the GFSC discloses any information in accordance with sub-regulation (1), it must ensure that—
  - (a) the information disclosed is subject to an obligation equivalent to the professional secrecy obligation; and
  - (b) in the case of disclosure to an oversight body under sub-regulation (1)(b) or (c) or an actuary or oversight body under sub-regulation (1)(e)—
    - (i) the disclosure is for the purpose of carrying out the oversight or legal supervision referred to in those provisions; and
    - (ii) where the information originates from a supervisory authority in another jurisdiction and that authority so requires, it is not 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.
- (3) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and the authorities or bodies responsible for the detection and investigation of breaches of company law where this is done with the aim of strengthening the stability and integrity of the financial system.
- (4) Where the GFSC discloses any information in accordance with sub-regulation (3), it must ensure that—
  - (a) the information is intended for the purpose of detection and investigation as referred to in that sub-regulation;
  - (b) the authority or body to which it is disclosed is subject to an obligation equivalent to the professional secrecy obligation; and
  - (c) where the information originates from a supervisory authority in another jurisdiction and that authority so requires, it is not 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.
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- (5) Where the GFSC discloses any information to which sub-regulation (4)(c) applies, it must inform the supervisory authority from which the information originates of the name and precise responsibilities of the person to whom it is to be disclosed.
- (6) To the extent that an authority or body to which sub-regulation (3) applies performs its task of detection or investigation with the aid of persons who are appointed for that purpose on the basis of their specific competence but are not employed in the public sector, the exchange of information under that sub-regulation may extend to those persons under the conditions set out in sub-regulation (4).
- 59. Omitted.
- 60. Omitted.
- 61. Omitted.

#### Accounts and statements

### Preparation, submission and publication of accounts, etc.

- 61A.(1) An insurance undertaking must, in respect of each financial year, prepare Insurance Regulations accounts in accordance with the Financial Services (Insurance Companies) (Accounts) Regulations 2021.
- (2) An insurance undertaking must submit to the GFSC, within six months of the end of the period to which they relate, a copy of each of the following documents—
  - (a) every account and balance sheet prepared in accordance with sub-regulation (1);
  - (b) any report of the insurer's auditor on any such account or balance sheet;
  - (c) every published annual account and balance sheet and the auditor's report on them; and
  - (d) every report, if any, on the insurer's affairs submitted to its shareholders or policyholders.
- (3) An insurance undertaking must publish any balance sheet or profit and loss account which, in accordance with section 240 of the Companies Act 2014, is required to be laid before a company in general meeting.
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### Change of financial year.

- 61B.(1) An insurance undertaking must not change its financial year without the prior consent of the GFSC.
- (2) The GFSC may at any time require an insurance undertaking to change the date for the end of its financial year to an earlier or later date.

## Copies of accounts etc.

- 61C.(1) An insurance undertaking must provide to any shareholder or policy holder, on request, a copy of any of the documents it last submitted to the GFSC under regulation 61A(2).
- (2) Sub-regulation (1) does not apply where, in the GFSC's opinion, the disclosure by an insurance undertaking of information in a document submitted under regulation 61A(2) would be harmful to the business of the insurance undertaking or any of its subsidiaries.

### Duties of auditors

### Auditors.

- 62.(1) The auditors of an insurance or reinsurance undertaking must promptly report to the GFSC any fact or decision concerning that undertaking of which they have become aware while carrying out an audit or statutory 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 authorisation or which specifically govern pursuit of the activities of insurance and reinsurance 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; or
  - (e) non-compliance with the Minimum Capital Requirement.
- (2) The auditors of an insurance or reinsurance undertaking must also report any facts or decisions in sub-regulation (1) of which they have become aware in the course of carrying out
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an audit or statutory task in relation to an undertaking which has close links with the insurance or reinsurance undertaking resulting from a control relationship.

(3) Any disclosure by an auditor under sub-regulation (1) or (2) made in good faith to the GFSC or any other supervisory authority does not constitute a breach of any restriction on disclosure of information imposed by contract or by or under any enactment or any administrative provision or involve the auditor in liability of any kind.

# PART 5 PURSUIT OF LIFE AND NON-LIFE ACTIVITY

## Pursuit of life and non-life insurance activity.

- 63.(1) Subject to sub-regulation (2), insurance undertakings must not be given Part 7 permission to pursue life and non-life insurance activities simultaneously.
- (2) The GFSC may permit-
  - (a) an undertaking with Part 7 permission to carry on life insurance activity to carry on non-life insurance activities for the risks listed in Classes 1 and 2; and
  - (b) an undertaking with Part 7 permission solely to carry on insurance activities for the risks listed in Classes 1 and 2 to carry on life insurance activity.
- (3) An insurance undertaking which is given permission in accordance with sub-regulation (2)–
  - (a) must manage its life insurance activities and non-life insurance activities separately in accordance with regulation 64; and
  - (b) must comply with the accounting rules governing life insurance for both its life and non-life insurance activities.
- (4) Where an insurance undertaking to which sub-regulation (2) applies carries on both life insurance and non-life insurance activities in Classes 1 and 2, in the event of a winding-up or reorganisation of the undertaking, the rules applicable to life insurance activities also apply to those non-life activities.
- (5) Where an insurance undertaking–

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- (a) which carries on non-life insurance activities has financial, commercial or administrative links with a life insurance undertaking; or
- (b) which carries on life insurance activities has financial, commercial or administrative links with a non-life insurance undertaking,

it must provide the GFSC with any information that it may reasonably require in order to 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.

- (6) An insurance undertaking which on 15th March 1979 carried on simultaneously both life and non-life insurance activities covered by the Solvency 2 Directive may continue to do so if each activity is separately managed in accordance with regulation 64.
- (7) The Minister may, by order, direct insurance undertakings to which sub-regulation (6) applies to cease, within a specified period, the simultaneous carrying on of the life and non-life insurance activities in which they were engaged on 15th March 1979.

### Separation of life and non-life insurance management.

- 64.(1) The separate management referred to in regulation 63 must be organised so that—
  - (a) life insurance activity is distinct from non-life insurance activity;
  - (b) the respective interests of life and non-life policy holders are not prejudiced; and
  - (c) in particular, profits from life insurance benefit life policy holders as if the undertaking only carried on the activity of life insurance.
- (2) Without limiting regulations 90 and 115, an insurance undertaking to which regulation 63(2) or (6) applies must calculate—
  - (a) a notional life Minimum Capital Requirement with respect to its life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6); and
  - (b) a notional non-life Minimum Capital Requirement with respect to its non-life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6).
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- (3) As a minimum, an insurance undertaking to which regulation 63(2) or (6) applies must cover the following by an equivalent amount of eligible basic own-fund items—
  - (a) the notional life Minimum Capital Requirement, in respect of its life insurance activity; and
  - (b) the notional non-life Minimum Capital Requirement, in respect of its non-life activity,

and the minimum financial obligation in respect of its life insurance activity or non-life activity must not be borne by the other activity.

- (4) As long as the minimum financial obligations specified in sub-regulation (3) are fulfilled and the GFSC is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in regulation 90, the explicit eligible own-fund items which are still available for one or the other activity.
- (5) The GFSC must analyse the results in both life and non-life insurance activities so as to ensure that the requirements of sub-regulations (1) to (4) are fulfilled.
- (6) An insurance undertaking to which regulation 63(2) or (6) applies must draw up accounts—
  - (a) so as to show the sources of the results for life and non-life insurance separately, broken down according to origin, including—
    - (i) all income, in particular premiums, payments by reinsurers and investment income, and
    - (ii) expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business; and
  - (b) items common to both activities must be entered in the accounts in accordance with methods of apportionment accepted by the GFSC.
- (7) An insurance undertaking must, 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 sub-regulation (2) are clearly identified, in accordance with regulations 89(4).

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- (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 sub-regulation (3)(a), the GFSC must apply to the deficient activity the measures provided for in these Regulations, whatever the results in the other activity.
- (9) Despite sub-regulation (3)(b), those measures may include the GFSC authorising a transfer of explicit eligible basic own-fund items from one activity to the other.

#### PART 6

# VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES

# CHAPTER 1 VALUATION OF ASSETS AND LIABILITIES AND RULES RELATING TO TECHNICAL PROVISIONS

Valuation of assets and liabilities

### Valuation of assets and liabilities.

- 65.(1) An insurance or reinsurance undertaking must value—
  - (a) assets at the amount for which they could be exchanged between knowledgeable and willing parties in an arm's length transaction; and
  - (b) liabilities at the amount for which they could be transferred, or settled, between knowledgeable and willing parties in an arm's length transaction.
- (2) For the purposes of sub-regulation (1)(b), when valuing liabilities no adjustment must be made to take account of the own credit standing of the undertaking.

### Technical provisions

#### General provisions.

66.(1) An insurance or reinsurance undertaking must establish adequate technical provisions with respect to all of its insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.

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- (2) The value of technical provisions must correspond to the current amount that the undertaking would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.
- (3) An insurance or reinsurance undertaking must calculate its technical provisions-
  - (a) using, and 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 account of the principles in sub-regulation (2); and
  - (d) in accordance with regulations 67 to 71.

### Calculation of technical provisions.

- 67.(1) The value of technical provisions must be equal to the sum of a best estimate and a risk margin, calculated in accordance with this regulation.
- (2) The best estimate must—
  - (a) correspond to the probability-weighted average of future cashflows, 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 on up-to-date and credible information and realistic assumptions;
    - (ii) using adequate, applicable and relevant actuarial and statistical methods; and
    - (iii) gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, which must be calculated separately in accordance with regulation 76.
- (3) The cash-flow projection used in the calculation of the best estimate (whether valued separately or on the basis of financial instruments in accordance with sub-regulation (6)) must take into account all the cash in-flows and out-flows required to settle the insurance and reinsurance obligations over their lifetime.
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- (4) The risk margin must be such as to ensure that the value of the technical provisions is equivalent to the amount that an insurance or reinsurance undertaking would be expected to require in order to take over and meet the insurance and reinsurance obligations.
- (5) Subject to sub-regulation (6) an insurance or reinsurance undertaking must value the best estimate and the risk margin separately.
- (6) 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 must be determined on the basis of the market value of those financial instruments.

- (7) Where an insurance or reinsurance undertaking values the best estimate and risk margin separately, the risk margin must 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 lifetime.
- (8) The rate used in the determination of the cost of providing that amount of eligible own funds (the "cost of capital rate") must be the same for all insurance and reinsurance undertakings.
- (9) The cost of capital rate used must be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Chapter 2, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over their lifetime.
- (10) The determination of the relevant risk-free interest rate term structure referred to in sub-regulation (2)(a)–
  - (a) must make use of, and be consistent with, information derived from relevant financial instruments;

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- (b) must 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; and
- (c) must be extrapolated for maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent.
- (11) The extrapolated part of the relevant risk-free interest rate term structure must 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.

- 68.(1) An insurance or reinsurance undertaking 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 GFSC 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 the undertaking's other activities and the assigned portfolio of assets cannot be used to cover losses arising from those other activities;
  - (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;
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- (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 regulation 91(2) to (5);
- (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 regulation 65, 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.
- (2) Despite sub-regulation (1)(h), an insurance or reinsurance undertaking may use assets where the cash flows are fixed except for a dependence on inflation, if 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 must not disqualify the asset for admissibility to the assigned portfolio in accordance with sub-regulation (1)(h).
- (4) An insurance or reinsurance undertaking that applies the matching adjustment to a portfolio of insurance or reinsurance obligations must not revert back to an approach that does not include a matching adjustment.
- (5) Where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in sub-regulation (1)—
  - (a) it must immediately inform the GFSC and take the necessary measures to restore compliance with those conditions; and
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- (b) where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it must cease to apply the matching adjustment to any of its insurance or reinsurance obligations and must not apply the matching adjustment for a period of a further 24 months.
- (6) The matching adjustment must 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 regulation 70 or transitional measure on the risk free interest rates under paragraph 2 of Schedule 1.

### Calculating matching adjustment.

- 69.(1) For each currency the matching adjustment referred to in regulation 68 must 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 portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with regulation 65 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) despite 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 the Solvency 2 Regulation.
- (2) For the purposes of sub-regulation (1)(b), the fundamental spread must be—
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- (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 the government of Gibraltar or the government or central bank of the United Kingdom, 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 those exposures, no lower than 35% 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.
- (3) The probability of default referred to in sub-regulation (2)(a)(i) must 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 sub-regulation (2)(a)(ii), the fundamental spread must be equal to the portion of the long term average of the spread over the risk-free interest rate set out in sub-regulation (7)(b) and (c).

#### Volatility adjustment to relevant risk-free interest rate term structure.

- 70.(1) An insurance or reinsurance undertaking may, with the prior approval by the GFSC, apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in regulation 67(2).
- (2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure must 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.
- (3) The reference portfolio for a currency must 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.

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- (4) The amount of the volatility adjustment to risk-free interest rates must correspond to 65% of the risk-corrected currency spread, which must be calculated as the difference between—
  - (a) the spread referred to in sub-regulation (2); and
  - (b) the portion of that spread attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.
- (5) The volatility adjustment must apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with regulation 67(11) and the extrapolation of the relevant risk-free interest rate term structure must be based on those adjusted risk-free interest rates.
- (6) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in sub-regulation (4) for the currency of that country must, 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 85 basis points.
- (7) The increased volatility adjustment must be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country.
- (8) 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.
- (9) The volatility adjustment must 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 regulation 68.
- (10) By way of derogation from regulation 91, the Solvency Capital Requirement must not cover the risk of loss of basic own funds resulting from changes to the volatility adjustment.

### Use of approved technical information.

- 71.(1) An insurance or reinsurance undertaking must use the approved technical information in calculating—
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- (a) the best estimate in accordance with regulation 67;
- (b) the matching adjustment in accordance with regulation 69; and
- (c) the volatility adjustment in accordance with regulation 70.
- (2) The "approved technical information" means any technical information for each relevant currency—
  - (a) issued before IP completion day by EIOPA and the European Commission in accordance with Articles 77e.1 and 77e.2 of the Solvency 2 Directive; or
  - (b) issued or approved by the GFSC on or after IP completion day, setting out-
    - (i) a relevant risk-free interest rate term structure for calculating the best estimate in regulation 67, without any matching adjustment or volatility adjustment;
    - (ii) for each relevant duration, credit quality and asset class a fundamental spread for calculating the matching adjustment in regulation 69; and
    - (iii) for each relevant national insurance market a volatility adjustment to the relevant risk-free interest rate term structure in regulation 70.
- (3) Where, in respect to particular currencies and national markets, the approved technical information does not include a volatility adjustment to the relevant risk-free interest rate term structure, no volatility adjustment is to be applied to the relevant risk free interest rate term structure to calculate the best estimate.
- (4) The issue or approval by the GFSC of any technical information under sub-regulation (2)(b) must be published in a manner that the GFSC considers appropriate to bring it to the attention of persons who may be affected by it.

#### 72. Omitted.

#### Other elements to be taken into account in calculation of technical provisions.

- 73. In addition to regulation 67, when calculating technical provisions, an insurance or reinsurance undertaking must take account of—
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- (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 policy holders, including future discretionary bonuses, which the undertaking expects to make, whether or not those payments are contractually guaranteed.

### Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts.

- 74.(1) When calculating technical provisions, an insurance or reinsurance undertaking must 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 an insurance or reinsurance undertaking to determine the likelihood that policy holders will exercise contractual options, including lapses and surrenders, must—
  - (a) be realistic and based on current and credible information; and
  - (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.

75. When calculating technical provisions, an insurance or reinsurance undertaking must segment its insurance and reinsurance obligations into homogeneous risk groups, and, as a minimum, by lines of business.

### Recoverables from reinsurance contracts and special purpose vehicles.

- 76.(1) An insurance or reinsurance undertaking must calculate amounts recoverable from reinsurance contracts and special purpose vehicles in accordance with regulations 66 to 75.
- (2) For the purposes of sub-regulation (1), an undertaking must take into account the time difference between amounts becoming recoverable and the actual receipt of those amounts.
- (3) An undertaking must adjust the calculation referred to in sub-regulation (1) to take into account expected losses due to the default of the counterparty.
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(4) The adjustment referred to in sub-regulation (3) must 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.

- 77.(1) An insurance or reinsurance undertaking must have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of its technical provisions.
- (2) Where an undertaking has insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of its insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, it may use appropriate approximations, including case-by-case approaches, in the calculation of the best estimate.

### Comparison against experience.

- 78.(1) An insurance or reinsurance undertaking must 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.
- (2) Where a systematic deviation exists between the undertaking's best estimate calculation and experience, the undertaking must 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.

- 79. An insurance or reinsurance undertaking must, at the GFSC's request, demonstrate to the GFSC-
  - (a) the appropriateness of the level of the undertaking'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.

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80. If an insurance or reinsurance undertaking's calculation of technical provisions does not comply with regulations 66 to 78, the GFSC may require the undertaking to increase the amount of technical provisions so that they correspond to the level determined in accordance with those regulations.

### CHAPTER 2 OWN FUNDS

#### **Determination of own funds.**

- 81.(1) An insurance or reinsurance undertaking's own funds comprise the sum of—
  - (a) basic own funds referred to in regulation 82; and
  - (b) ancillary own funds referred to in regulation 83.
- (2) For the purposes of this Part, an undertaking's surplus funds are to be regarded as accumulated profits of the undertaking which have not been made available for distribution to policy holders and beneficiaries.

#### Basic own funds.

- 82.(1) An insurance or reinsurance undertaking's basic own funds must consist of the following items-
  - (a) the excess of assets over liabilities, valued in accordance with Chapter 1; and
  - (b) subordinated liabilities.
- (2) The excess amount referred to in sub-regulation (1) must be reduced by the amount of own shares held by the undertaking.

### Ancillary own funds.

- 83.(1) An insurance or reinsurance undertaking's ancillary own funds must 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 basic own fund items)—
  - (a) unpaid share capital or initial fund that has not been called up;
  - (b) letters of credit and guarantees;
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- (c) any other legally binding commitments received by the undertaking; 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 must be treated as an asset and the item must cease to be treated as an item of ancillary own funds.

### Supervisory approval of ancillary own funds.

- 84.(1) When determining its own funds, an insurance or reinsurance undertaking must not take into account any item of ancillary own funds without the GFSC's approval.
- (2) An undertaking 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 on prudent and realistic assumptions.
- (3) Where an item of ancillary own funds has a fixed nominal value, the amount of that item must be equal to its nominal value, where that value appropriately reflects its loss absorbency.
- (4) The GFSC may approve either-
  - (a) a monetary amount for each ancillary own-fund item; or
  - (b) a method by which to determine the amount of each ancillary own-fund item, in which case approval by the GFSC of the amount determined in accordance with that method must be granted for a specified period of time.
- (5) For each ancillary own-fund item, the GFSC must base its approval on an assessment of
  - (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-
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- (i) the legal form of the item; and
- (ii) 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 insurance or reinsurance undertakings have made for such ancillary own funds, to the extent that the information can be reliably used to assess the expected outcome of future calls.

### Characteristics and features used to classify own funds into tiers.

- 85.(1) Own fund items must 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 following characteristics—
  - (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 policy holders, have been met (subordination).
- (2) When assessing the extent to which own funds items possess the characteristics set out in sub-regulation (1), currently and in the future, due consideration must 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 undertaking (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).

#### Main criteria for classification into tiers.

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- 86.(1) An insurance or reinsurance undertaking 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 regulation 85(1) taking into consideration the features set out in regulation 85(2).
- (2) An undertaking 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 regulation 85(1)(b), taking into consideration the features set out in regulation 85(2); or
  - (b) where it is an item of ancillary own funds it substantially possesses the characteristics set out in regulation 85(1)(a) and (b), taking into consideration the features set out in regulation 85(2).
- (3) Any basic or ancillary own fund items which do not fall within sub-regulation (1) or (2) must be classified in the undertaking's Tier 3 own funds.
- (4) In so far as permitted by the GFSC, to the extent that surplus funds fulfil the criteria in sub-regulation (1), they must not be considered as insurance or reinsurance liabilities.

### Classification of own funds into tiers.

- 87.(1) An insurance or reinsurance undertaking must classify its own fund items on the basis of the criteria set out in regulation 86.
- (2) For that purpose, the undertaking must refer to the list of own-fund items in the Solvency 2 Regulation.
- (3) Where an own fund item is not covered by that list, the undertaking must assess and classify it in accordance with regulation 86, but any such classification must be approved by the GFSC.

### Classification of specific insurance own fund items.

- 88. Without limiting regulation 87, for the purposes of these Regulations the following classifications must be applied—
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- (a) surplus funds to which regulation 86(4) applies must be classified as Tier 1 own funds;
- (b) letters of credit and guarantees which are held in trust for the benefit of policy holders by an independent trustee and are provided by credit institutions must be classified as Tier 2;
- (c) any future claims which a which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in Classes 6, 12 and 17 may have against their members by way of a call for supplementary contributions, within the following 12 months, must 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) must be classified as Tier 2 where they substantially possess the characteristics set out in regulation 85(a) and (b), taking into consideration the features set out in regulation 85(2).

### Eligibility and limits applicable to Tiers 1, 2 and 3.

- 89.(1) As far as an insurance or reinsurance undertaking's compliance with its Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items must be subject to quantitative limits which ensure that the following condition are met—
  - (a) the proportion of Tier 1 items in the eligible own funds must be more than one third of the total amount of eligible own funds; and
  - (b) the eligible amount of Tier 3 items must be less than one third of the total amount of eligible own funds.
- (2) As far as an undertaking's compliance with its Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 must be subject to quantitative limits which ensure that, as a minimum, the proportion of Tier 1 items in the eligible basic own funds is more than 50% of the total amount of eligible basic own funds.
- (3) The eligible amount of own funds to cover the Solvency Capital Requirement must 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 must be equal to the sum of the amount of Tier 1 and the eligible amount of basic own funds items classified in Tier 2.

### CHAPTER 3 SOLVENCY CAPITAL REQUIREMENT

### General provisions.

- 90.(1) An insurance or reinsurance undertaking must hold eligible own funds covering its Solvency Capital Requirement.
- (2) The undertaking must calculate its Solvency Capital Requirement either—
  - (a) in accordance with the standard formula (as set out in regulations 93 to 100); or
  - (b) using an internal model (as set out in regulations 101 to 114).

### Calculation of Solvency Capital Requirement.

- 91.(1) An insurance or reinsurance undertaking must calculate its Solvency Capital Requirement in accordance with sub-regulations (2) to (6).
- (2) The Solvency Capital Requirement must be calculated on the presumption that the undertaking will pursue its business as a going concern.
- (3) The Solvency Capital Requirement–
  - (a) must be calibrated so as to ensure that all quantifiable risks to which the undertaking is exposed are taken into account;
  - (b) must cover-
    - (i) existing business; and
    - (ii) new business expected to be written over the following 12 months; and
  - (c) with respect to existing business, must cover only unexpected losses.
- (4) The Solvency Capital Requirement must correspond to the Value-at-Risk of the undertaking's basic own funds subject to a confidence level of 99.5% over a one-year period.
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- (5) The Solvency Capital Requirement must 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) must include legal risks but exclude risks arising from strategic decisions and reputation risks.

(6) When calculating the Solvency Capital Requirement, an undertaking may take account of the effect of risk-mitigation techniques, if credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

### Frequency of calculation.

- 92.(1) An insurance or reinsurance undertaking—
  - (a) must calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the GFSC;
  - (b) must hold eligible own funds which cover the last reported Solvency Capital Requirement;
  - (c) must monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis; and
  - (d) must recalculate the Solvency Capital Requirement without delay and report it to the GFSC if its risk profile deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement.

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(2) Where there is evidence to suggest that the risk profile of an undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the GFSC may require the undertaking to recalculate the Solvency Capital Requirement.

Solvency Capital Requirement standard formula

#### Structure of the standard formula.

- 93. The Solvency Capital Requirement of an insurance or reinsurance undertaking, when calculated on the basis of the standard formula, must be the sum of the following items—
  - (a) the Basic Solvency Capital Requirement, as set out in regulation 94;
  - (b) the capital requirement for operational risk, as set out in regulation 98;
  - (c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as set out in regulation 99.

### **Design of Basic Solvency Capital Requirement.**

- 94.(1) The Basic Solvency Capital Requirement must comprise individual risk modules, which are aggregated in accordance with paragraph 1 of Schedule 4, consisting 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 sub-regulation (1)(a) to (c), an insurance or reinsurance undertaking must allocate its insurance or reinsurance operations 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 subregulation (1), as well as the calibration of the capital requirements for each risk module, must
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result in an overall Solvency Capital Requirement which complies with the principles set out in regulation 91.

- (4) Each of the risk modules referred to in sub-regulation (1) must be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period and, where appropriate, diversification effects must be taken into account in the design of each risk module.
- (5) The same design and specifications for the risk modules must be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as set out in regulation 100.
- (6) With regard to risks arising from catastrophes, where appropriate, geographical specifications may be used for the calculation of the life, non-life and health underwriting risk modules.
- (7) Subject to approval by the GFSC, an undertaking may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking when calculating the life, non-life and health underwriting risk modules and such parameters must be calibrated on the basis of the undertaking's internal data or data which is directly relevant for the undertaking's operations using standardised methods.
- (8) In considering whether to grant approval under sub-regulation (7), the GFSC must verify the completeness, accuracy and appropriateness of the data used.

### Calculation of Basic Solvency Capital Requirement.

- 95.(1) An insurance or reinsurance undertaking must calculate its Basic Solvency Capital Requirement in accordance with sub-regulations (2) to (6).
- (2) The non-life underwriting risk module—
  - (a) must 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) must take account of the uncertainty in the undertaking'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) must be calculated, in accordance with paragraph 2 of Schedule 4, as a combination of the capital requirements for at least the following sub-modules—
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- (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) must reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business; and
  - (b) must be calculated, in accordance with paragraph 3 of Schedule 4, 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);
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- (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-

- (a) must 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) must 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) must reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact on the value of the undertaking's assets and liabilities;
- (b) must properly reflect the structural mismatch between assets and liabilities, in particular with respect to their duration; and
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- (c) must be calculated, in accordance with paragraph 4 of Schedule 4, 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);
  - (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 the undertaking 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) must reflect possible losses due to unexpected default, or deterioration in the credit standing, of the undertaking's counterparties and debtors over the following 12 months:
  - (b) must 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) must take appropriate account of collateral or other security held by or for the account of the undertaking and the risks associated with it; and
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(d) for each counterparty, must take account of the overall counterparty risk exposure of the undertaking to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

### Calculation of equity risk sub-module: symmetric adjustment mechanism.

- 96.(1) The equity risk sub-module calculated in accordance with the standard formula must include a symmetric adjustment to the equity capital 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 regulation 94(4), covering the risk arising from changes in the level of equity prices must 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 must be calculated over an appropriate period of time which must be the same for all insurance and reinsurance undertakings.
- (3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices must 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.**

- 97.(1) Where, in circumstances falling within sub-regulation (2), a life insurance undertaking provides retirement benefits
  - (a) which are paid by reference to reaching, or the expectation of reaching, retirement; and
  - (b) where the premiums paid for those benefits have a tax deduction which is authorised to policy holders by the law of Gibraltar,

the GFSC may authorise the undertaking 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 undertaking, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91 where the approach provided for in this sub-regulation is used only in respect of those assets and liabilities referred to in sub-regulation (2)(a).

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- (2) The circumstances referred to in sub-regulation (1) are where—
  - (a) all assets and liabilities corresponding to the business of the undertaking are ringfenced, managed and organised separately from the other activities of the, undertaking without any possibility of transfer;
  - (b) the activities of the undertaking related to sub-regulation (1)(a) and (b), in relation to which the approach referred to in that sub-regulation is applied, are pursued only in Gibraltar; and
  - (c) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years.
- (3) In the calculation of the Solvency Capital Requirement, those assets and liabilities must be fully considered for the purposes of assessing the diversification effects, without limiting the need to safeguard the interests of policy holders and beneficiaries.
- (4) Subject to the approval of the GFSC, the approach set out in sub-regulation (1) must be used only where the solvency and liquidity positions as well as the strategies, processes and reporting procedures of the undertaking 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 undertaking.
- (5) The undertaking must be able to demonstrate to the GFSC that the condition in subregulation (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 regulation 91.
- (6) An undertaking must not revert to applying the approach set out in regulation 95 other than in duly justified circumstances and subject to the approval of the GFSC.

### Capital requirement for operational risk.

- 98.(1) The capital requirement for operational risk-
  - (a) must reflect operational risks to the extent they are not already reflected in the risk modules referred to in regulation 94; and
  - (b) must be calibrated in accordance with regulation 91(3).

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- (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 must 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 in sub-regulation (2), the calculation of the capital requirement for operational risk must 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 that case, the capital requirement for operational risks must 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.

- 99.(1) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes referred to in regulation 93(c) must reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of them.
- (2) That adjustment must take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent that an insurance or reinsurance undertaking can establish that a reduction in such benefits may be used to cover unexpected losses when they arise.
- (3) The risk mitigating effect provided by future discretionary benefits must be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.
- (4) For the purposes of sub-regulations (2) and (3), the value of future discretionary benefits under adverse circumstances must be compared to the value of those benefits under the underlying assumptions of the best-estimate calculation.

### Standard formula: simplification and modification.

- 100.(1) An insurance or reinsurance undertaking may use a simplified calculation for a specific sub-module or risk module where-
  - (a) the nature, scale and complexity of the risks the undertaking faces justifies it; and
  - (b) it would be disproportionate to require all undertakings to apply the standardised calculation.
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- (2) Simplified calculations must be calibrated in accordance with regulation 91(3).
- (3) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 99 and sub-regulation (1)) because the risk profile of an undertaking deviates significantly from the assumptions underlying the standard formula calculation, the GFSC may direct the undertaking to 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 with regulation 94(7).
- (4) Those specific parameters must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).
- (5) A direction under sub-regulation (3) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

#### Internal models

### General provisions for approval of full and partial internal models.

- 101.(1) An insurance or reinsurance undertaking may calculate its Solvency Capital Requirement using a full or partial internal model as approved by the GFSC.
- (2) An undertaking 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 regulations 94 and 95;
  - (b) the capital requirement for operational risk as set out in regulation 98; or
  - (c) the adjustment referred to in regulation 99.
- (3) Partial modelling may be applied to an undertaking's whole business or only to one or more major business units.
- (4) In any application for approval, an undertaking must submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in regulations 108 to 113.

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- (5) Where an application for approval relates to a partial internal model, the requirements set out in regulations 108 to 113 must be adapted to take account of the limited scope of the application of the model.
- (6) The GFSC must determine the application within six months of receiving the complete application.
- (7) The GFSC may approve the application only if it is satisfied—
  - (a) that the undertaking's systems are adequate for identifying, measuring, monitoring, managing and reporting risk; and
  - (b) in particular, that the internal model fulfils the requirements in sub-regulations (4) and (5).
- (8) Where the GFSC refuses an application, it must promptly give the applicant a written notice of refusal, which must include a statement setting out the reasons for the refusal.
- (9) Where the GFSC has approved an application to use an internal model, it may require the undertaking to provide the GFSC with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in regulations 93 to 100.
- (10) A requirement under sub-regulation (9) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

### Specific provisions for approval of partial internal models.

- 102.(1) The GFSC must approve a partial internal model only where that model fulfils the requirements set out in regulation 101 and the following additional conditions—
  - (a) the reason for the limited scope of application of the model is properly justified by the undertaking;
  - (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and, in particular, complies with the principles set out in regulations 90 to 92; and
  - (c) its design is consistent with the principles set out in regulations 90 to 92 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.
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- (2) The GFSC, when assessing an application for the use of a partial internal model which only covers—
  - (a) certain sub-modules of a specific risk module;
  - (b) some of the business units of an undertaking with respect to a specific risk module; or
  - (c) parts of both,

may require the undertaking to submit a realistic transitional plan to extend the scope of the model.

(3) The transitional plan must set out the manner in which the undertaking 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.

- 103.(1) The GFSC, as part of its initial approval process of an insurance or reinsurance undertaking's internal model, must approve the policy for changing that model.
- (2) The undertaking may change its internal model in accordance with that policy.
- (3) The policy must include a specification of minor and major changes to the internal model.
- (4) Major changes to the internal model or changes to that policy must always be subject to prior approval by the GFSC in accordance with regulation 101.
- (5) Minor changes to the internal model which are developed in accordance with that policy do not require the GFSC's prior approval.

### Responsibilities of administrative, management or supervisory bodies.

- 104.(1) An insurance or reinsurance undertaking's administrative, management or supervisory body must approve any application to the GFSC for approval of the internal model referred to in regulation 101 or approval of any subsequent major changes to that model.
- (2) An undertaking's administrative, management or supervisory body is responsible for putting in place systems which ensure that the internal model operates properly on a continuous basis.
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#### Reversion to standard formula

105. An insurance or reinsurance undertaking which has received approval for an internal model in accordance with regulation 101 must not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100) other than in duly justified circumstances and subject to the prior approval of the GFSC.

### Non-compliance of internal model.

- 106.(1) If, after having received approval from the GFSC to use an internal model, an insurance or reinsurance undertaking ceases to comply with the requirements set out in regulations 108 to 113, it must, without delay—
  - (a) present to the GFSC a plan to restore compliance within a reasonable period; or
  - (b) demonstrate to the GFSC's satisfaction that the effect of non-compliance is immaterial.
- (2) Where the undertaking presents but fails to implement a plan under sub-regulation (1)(a), the GFSC may require the undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100).

#### Significant deviations from assumptions underlying standard formula calculation.

- 107.(1) Where, because an insurance or reinsurance undertaking's risk profile deviates significantly from the assumptions underlying the standard formula calculation, the GFSC considers it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100), the GFSC may direct the undertaking to use an internal model to calculate the Solvency Capital Requirement or the relevant risk modules.
- (2) A direction under sub-regulation (1) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

#### Use test.

- 108.(1) An insurance or reinsurance undertaking must demonstrate that its internal model is widely used in and plays an important role in the undertaking's system of governance referred to in regulations 43 to 50, and in particular, in its—
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- (a) risk-management system as set out in regulation 45 and its decision-making processes; and
- (b) economic and solvency capital assessment and allocation processes, including the assessment referred to in regulation 46.
- (2) In addition, the undertaking must demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which it uses its internal model for the other purposes covered by sub-regulation (1).
- (3) The undertaking's administrative, management or supervisory body must be responsible for ensuring the ongoing appropriateness of the design and operations of its internal model, and that the internal model continues to appropriately reflect the undertaking's risk profile.

### Statistical quality standards.

- 109.(1) An insurance or reinsurance undertaking's internal model and, in particular, the calculation of the probability distribution forecast underlying it, must comply with the criteria in sub-regulations (2) to (12).
- (2) The methods used to calculate the probability distribution forecast—
  - (a) must be based on adequate, applicable and relevant actuarial and statistical techniques;
  - (b) must be consistent with the methods used to calculate technical provisions; and
  - (c) must be based on current and credible information and realistic assumptions,

and the undertaking must be able to justify the assumptions underlying its internal model to the GFSC.

- (3) Data used for the internal model must be accurate, complete and appropriate.
- (4) The undertaking must update the data sets used in the calculation of the probability distribution forecast at least annually.
- (5) The GFSC must not prescribe a particular method for the calculation of the probability distribution forecast.
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- (6) Regardless of the calculation method chosen, the undertaking must ensure that the ability of the internal model to rank risk is sufficient to ensure that it is widely used in and plays an important role in its system of governance, in particular its risk-management system and decision-making processes, and capital allocation in accordance with regulation 108.
- (7) The internal model must cover all of the material risks to which the undertaking is exposed and must cover at least the risks set out in regulation 91(5).
- (8) The undertaking may take account in its internal model of dependencies within and across risk categories, so long as the GFSC is satisfied that the system used for measuring those diversification effects is adequate.
- (9) The undertaking may take full account of the effect of risk-mitigation techniques in its 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) The undertaking must accurately assess-
  - (a) the particular risks associated with financial guarantees and any contractual options in its internal model, where material; and
  - (b) the risks associated with both policy holder options and contractual options and, for that purpose, must take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.
- (11) In its internal model, the undertaking may take account of future management actions that it would reasonably expect to carry out in specific circumstances; and in such a case, the undertaking must make allowance for the time necessary to implement such actions.
- (12) In its internal model, the undertaking must take account of all payments to policy holders and beneficiaries which it expects to make, whether or not those payments are contractually guaranteed.

### Calibration standards.

110.(1) An insurance or reinsurance undertaking may use a different time period or risk measure than that set out in regulation 91(3) for internal modelling purposes as long as the outputs of the internal model can be used by the undertaking 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 regulation 91.

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- (2) Where practicable, the undertaking must derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, using the Value-at-Risk measure set out in regulation 91(4).
- (3) Where the undertaking cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, the GFSC may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as the undertaking can demonstrate to the GFSC that policy holders are provided with a level of protection equivalent to that provided for in regulation 91.
- (4) The GFSC may require the undertaking to run its 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.

- 111.(1) An insurance or reinsurance undertaking must review, at least annually, the causes and sources of profits and losses for each of its major business units.
- (2) The undertaking must 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 must reflect the risk profile of the undertaking.

#### Validation standards.

- 112.(1) An insurance or reinsurance undertaking must 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 undertaking to demonstrate to the GFSC 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
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- (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-regulation 1(b) must test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating to it.

#### **Documentation standards.**

- 113.(1) An insurance or reinsurance undertaking must document the design and operational details of its internal model;
- (2) That documentation must-
  - (a) demonstrate compliance with regulations 108 to 112;
  - (b) provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model;
  - (c) indicate any circumstances under which the internal model does not work effectively; and
  - (d) include all major changes to their internal model, as set out in regulation 103.

#### External models and data.

114. The use by an insurance or reinsurance undertaking of a model or data obtained from a third party does not justify exemption from any of the requirements for the internal model set out in regulations 108 to 113.

## CHAPTER 4 MINIMUM CAPITAL REQUIREMENT

#### General provisions.

115. An insurance or reinsurance undertaking must hold eligible basic own funds to cover the Minimum Capital Requirement.

### Calculation of Minimum Capital Requirement.

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- 116.(1) An insurance or reinsurance undertaking must calculate the Minimum Capital Requirement in accordance with the following principles—
  - (a) it must be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited:
  - (b) it must correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk if the undertaking was allowed to continue its operations;
  - (c) the linear function referred to in sub-regulation (2) used to calculate the Minimum Capital Requirement must be calibrated to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of 85% over a one-year period;
  - (d) it must have an absolute floor of-
    - (i) €2,700,000 for non-life insurance undertaking, including a captive insurer, except in the case where all or some of the risks included in one of Classes 10 to 15 are covered, in which case it must be €4,000,000;
    - (ii) €4,000,000 for a life insurance undertaking, including a captive insurer;
    - (iii) €3,900,000 for a reinsurance undertaking, other than a captive reinsurer, in which case the absolute floor must be €1,300,000; or
    - (iv) the sum of the amounts set out in sub-paragraphs (i) and (ii) for insurance undertakings referred to in regulation 63(6).
- (2) Subject to sub-regulation (3), an undertaking's Minimum Capital Requirement must be calculated as a linear function of a set or sub-set of the following variables measured net of reinsurance—
  - (a) technical provisions;
  - (b) written premiums;
  - (c) capital-at-risk;
  - (d) deferred tax; and
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- (e) administrative expenses.
- (3) Without limiting sub-regulation (1)(d), the Minimum Capital Requirement must neither fall below 25% nor exceed 45% of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter 3 of Part 6. including any capital add-on imposed in accordance with regulation 39.
- (4) An undertaking must calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to the GFSC.
- (5) An undertaking is not required to calculate the Solvency Capital Requirement on a quarterly basis for the purposes of calculating the limits referred to in sub-regulation (3).
- (6) Where either of the limits referred to in sub-regulation (3) determines an undertaking's Minimum Capital Requirement, the undertaking must provide the GFSC with the necessary information to allow the GFSC properly to understand the reasons for that.

### CHAPTER 5 INVESTMENTS

#### Prudent person principle.

- 117.(1) An insurance or reinsurance undertaking must invest all its assets in accordance with the prudent person principle, as specified in sub-regulations (2), (3) and (4).
- (2) With respect to the whole portfolio of assets-
  - (a) the undertaking must only invest in assets and instruments whose risks it 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 regulation 46(2)(a);
  - (b) all assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, must be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole and, in addition, the localisation of those assets must be such as to ensure their availability; and
  - (c) assets held to cover the technical provisions must also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities
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and in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective; and

- (d) if a conflict of interest arises, the undertaking or any entity which manages its asset portfolio, must ensure that the investment is made in the best interest of policy holders and beneficiaries.
- (3) Without limiting sub-regulation (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 a UCITS (as defined in section 292(1) of the Act) or to the value of assets contained in an internal fund held by the undertaking, 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-regulation (a), the technical provisions in respect of those benefits must be represented as closely as possible—
    - (i) by the units deemed to represent the reference value; or
    - (ii) 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; and
  - (c) where the benefits referred to in sub-regulations (a) and (b) include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions are subject to sub-regulation (4).
- (4) Without limiting sub-regulation (2), the following provisions apply with respect to assets other than those covered by sub-regulation (3)(a) or (b)–
  - (a) the use of derivative instruments is possible so far 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 must be kept to prudent levels;
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- (c) assets must be properly diversified so as to avoid excessive reliance on any particular asset, issuer or group of entities, 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, must not expose the undertaking to excessive risk concentration.

#### Freedom of investment.

- 118.(1) Subject to sub-regulation (2), the GFSC must not—
  - (a) require an insurance or reinsurance undertaking to invest in particular categories of assets; or
  - (b) subject the undertaking's investment decisions or those of its investment manager to any kind of prior approval or systematic notification requirements.
- (2) The GFSC may restrict the types of assets or reference values to which policy benefits may be linked where the investment risk is borne by a policy holder who is an individual, but any such restriction must not be more restrictive than those set out in the Financial Services (UCITS) Regulations 2020.

#### Localisation of assets and prohibition of pledging of assets.

119.(1) The GFSC must not require that the assets held to cover the technical provisions related to insurance risks situated in Gibraltar are localised within Gibraltar.

- (2) The GFSC must not-
  - (a) require the localisation within Gibraltar of the assets representing the recoverables from reinsurance contracts; or
  - (b) retain or introduce for the establishment of technical provisions 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 or territory whose solvency regime is regarded as equivalent to that laid down in the law of Gibraltar.

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### Saving for Covered Agreement.

- 119A.(1) Nothing in these Regulations permits or requires the GFSC to apply any provision or exercise any function in a manner which is inconsistent with any condition or obligation of the Covered Agreement.
- (2) Where the GFSC is the supervisory authority of an insurer or reinsurer which carries on activities to which the Covered Agreement applies, the GFSC must use all reasonable endeavours to enter into an arrangement with the supervisory authority of the relevant US State for co-operation in the exchange of information in respect of that insurer or reinsurer, substantially in the form of the Memorandum of Understanding set out in the Annex to the Covered Agreement.
- (3) The "Covered Agreement" means the Agreement between the United Kingdom and the United States of America on prudential measures regarding insurance and reinsurance (which, by virtue of Article 2(r) of the Agreement, extends to Gibraltar).

### PART 7 INSURANCE AND REINSURANCE UNDERTAKINGS IN DIFFICULTY

#### Identification and notification of deteriorating financial conditions by the undertaking.

120. An insurance or reinsurance undertaking must have procedures in place to identify deteriorating financial conditions and must immediately notify the GFSC if such a deterioration occurs.

#### Non-compliance with technical provisions.

- 121.(1) Where an insurance or reinsurance undertaking does not comply with Regulations 66 to 80 the GFSC may prohibit the free disposal of the undertaking's assets.
- (2) The GFSC must designate the assets to which a prohibition under sub-regulation (1) applies.

#### Non-compliance with Solvency Capital Requirement.

122.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Solvency Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.

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- (2) Within two months of non-compliance with the Solvency Capital Requirement being observed, the undertaking concerned must submit a realistic recovery plan for approval by the GFSC.
- (3) Where sub-regulation (1) applies, the GFSC must require the undertaking concerned to take the necessary steps to achieve, within six months from the observation of non-compliance—
  - (a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement; or
  - (b) the reduction of its risk profile to ensure compliance with that Requirement.
- (4) The GFSC may, if it considers it appropriate, extend the period of six months under sub-regulation (3) by a further three months.
- (5) In the event of exceptional adverse situations affecting insurers representing a significant share of the market or of the affected lines of business, the GFSC may extend, for affected insurers, the period set out in sub-regulation (4) by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.
- (6) For the purposes of this regulation, the GFSC may, with the consent of the Minister, 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 sub-regulation (3).
- (7) For the purposes of this regulation, 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; or
  - (c) a high-impact catastrophic event.
- (8) The GFSC must-
  - (a) assess on a regular basis whether the conditions in sub-regulation (7) still apply; and
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- (b) declare when an exceptional adverse situation has ceased to exist.
- (9) The undertaking concerned must, every three months, submit a progress report to the GFSC setting out the measures taken and the progress made towards—
  - (a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or
  - (b) reducing the risk profile to ensure compliance with that Requirement.
- (10) The extension referred to in sub-regulation (5) must be withdrawn where the progress report under sub-regulation (9) shows that, between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report, there was no significant progress in—
  - (a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or
  - (b) reducing the risk profile to ensure compliance with that Requirement.
- (11) In exceptional circumstances, where the GFSC is of the opinion that the financial situation of the undertaking concerned will deteriorate further, the GFSC–
  - (a) may exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking's assets; and
  - (b) where it does so, must designate the assets covered by those measures.

### Non-compliance with Minimum Capital Requirement.

- 123.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Minimum Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.
- (2) Within one month of non-compliance with the Minimum Capital Requirement being observed, the undertaking concerned must submit for approval by the GFSC, a realistic short-term finance scheme to, within three months of that observation—
  - (a) restore the eligible basic own funds at least to the level of the Minimum Capital Requirement; or
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- (b) reduce its risk profile to ensure compliance with that Requirement.
- (3) The GFSC-
  - (a) may also exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking's assets; and
  - (b) where it does so, must designate the assets covered by those measures.
- (4) Without limiting sub-regulation (3), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

Prohibition of free disposal of assets

### Prohibition of free disposal of assets located in Gibraltar.

- 124.(1) The GFSC may exercise any relevant powers under the Act or these Regulations to prohibit the free disposal of assets located in Gibraltar, in order to assist the supervisory authority of a country or territory outside Gibraltar with which it has reciprocal arrangements for the designation of the assets of insurers or reinsurers.
- (2) Without limiting sub-regulation (1), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

### Supervisory powers in deteriorating financial conditions.

- 125.(1) Despite regulations 122 and 123, where the solvency position of the undertaking continues to deteriorate, then the GFSC 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) Any measures taken under sub-regulation (1) must be proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

### Recovery plan and finance scheme.

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126.(1) Both the recovery plan referred to in regulation 122(2) and the finance scheme referred to in regulation 123(2) must 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; and
- (e) the overall reinsurance policy.
- (2) Where the GFSC has required a recovery plan or a finance scheme in accordance with sub-regulation (1), the GFSC must refrain from issuing a certificate in accordance with section 465(6) of the Act for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

#### Cancellation of permission.

- 127.(1) The GFSC must cancel the Part 7 permission of an insurance or reinsurance undertaking which does not comply with the Minimum Capital Requirement where—
  - (a) the undertaking fails to submit a finance scheme in accordance with regulation 123(2);
  - (b) the GFSC considers that the finance scheme submitted is manifestly inadequate; or
  - (c) the undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.
- (2) Notice of the cancellation of an insurance or reinsurance undertaking's permission (a "cancellation notice") must—
  - (a) be given in writing;
  - (b) state the reasons for the cancellation; and
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- (c) inform the recipient of the right of appeal under sub-regulation (5).
- (3) A cancellation notice takes effect immediately unless a later date is specified in the notice.
- (4) A decision by the GFSC to issue a cancellation notice is a specified regulatory decision to which section 24(3) of the Act applies.
- (5) A person aggrieved by a cancellation notice may appeal to the Supreme Court and, in respect to an appeal under this regulation, section 615 of the Act applies as if the reference—
  - (a) in subsection (1) to "decision notice other than one to which section 613(4) applies" were a reference to "cancellation notice";
  - (b) in subsection (2) to "decision notice" were a reference to "cancellation notice"; and
  - (c) in subsection (6) to "decision notice which under the provisions of this Act takes effect immediately" were a reference to "cancellation notice which takes effect immediately".
- (6) Omitted.
- (7) Omitted.
- (8) Omitted.
- (9) This regulation applies without limiting the GFSC's powers—
  - (a) to suspend a permission under regulation 35; or
  - (b) to cancel a permission under section 68 or 69 of the Act.

### PART 8 Omitted

128. to 150. Omitted.

### PART 9 BRANCHES OF THIRD-COUNTRY INSURERS AND REINSURERS

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### Taking up of business: principle of permission and conditions.

- 151.(1) Access to the business of direct life and non-life insurance by an undertaking-
  - (a) which has a head office outside Gibraltar, and
  - (b) which is or wishes to become established in Gibraltar,
  - is subject to the undertaking being given Part 7 permission by the GFSC.
- (2) The GFSC may give permission where the undertaking fulfils at least the following conditions—
  - (a) it is entitled to pursue insurance business under the law of the country or territory in which it has its head office;
  - (b) it establishes a branch in Gibraltar;
  - (c) it undertakes to set up at the branch's place of management, 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 GFSC;
  - (e) it possesses in Gibraltar assets of an amount equal to at least 50% of the absolute floor prescribed in regulation 116(1)(d) in respect of the Minimum Capital Requirement and deposits 25% 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 in regulations 90 and 115;
  - (g) Omitted
  - (h) it submits a scheme of operations in accordance with regulation 152;
  - (i) it fulfils the governance requirements set out in regulations 43 to 50.
- (3) For the purposes of this Part, "branch" means a permanent presence in Gibraltar of an undertaking in sub-regulation (1), which receives permission and pursues insurance business.

#### Scheme of operations of branch.

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152.(1) The scheme of operations referred to in regulation 151(2)(h) must 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, 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, 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;
- (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, the resources available for the provision of the assistance; and
- (g) information on the structure of the system of governance.
- (2) In addition to the requirements set out in sub-regulation (1), the scheme of operations must 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;
  - (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;
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- (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 GFSC 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.

#### 153. Omitted.

#### **Technical provisions.**

- 154.(1) An insurance undertaking which establishes a branch in Gibraltar must establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in Gibraltar, calculated in accordance with Chapter 2 of Part 6.
- (2) The undertaking must value assets and liabilities in accordance with regulation 65 and determine own funds in accordance with Chapter 2 of Part 6.

### Solvency Capital Requirement and Minimum Capital Requirement.

- 155.(1) An insurance undertaking which establishes a branch in Gibraltar must hold an amount of eligible own funds consisting of the items referred to in regulation 89(3).
- (2) The Solvency Capital Requirement and the Minimum Capital Requirement must be calculated in accordance with these Regulations but, for the purpose of those calculations both for life and non-life insurance, account must 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 must be constituted in accordance with regulation 89(4).
- (4) The eligible amount of basic own funds must not be less than half of the absolute floor required under regulation 116(1)(d).
- (5) The deposit lodged in accordance with regulation 151(2)(e) must 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 in Gibraltar up to the amount of the Minimum Capital Requirement.
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156. Omitted.

### Accounting, prudential and statistical information and undertakings in difficulty.

157. Regulations 32, 123(3), 124 and 125 apply for the purposes of this Part.

### Separation of non-life and life business.

- 158.(1) A branch to which this Part applies must not be given permission to simultaneously pursue life and non-life insurance activities in Gibraltar.
- (2) Despite sub-regulation (1), the GFSC may allow branches to which this Part applies that, on 15th March 1979, pursued both activities simultaneously in Gibraltar, to continue to do so if each activity is separately managed in accordance with regulation 64.
- (3) If insurance undertakings are directed by an order under regulation 63(7) to cease the simultaneous pursuit in Gibraltar of the activities in which they were engaged on 15th March 1979, the GFSC must also impose this requirement on branches to which this Part applies that, simultaneously pursue both activities in Gibraltar.

159. Omitted.

#### Re-insurance

### Equivalence in relation to reinsurance undertakings.

160. A reinsurance contract concluded with an undertaking which has its head office in a third country must be treated in the same manner as a reinsurance contract concluded with an undertaking authorised in accordance with these Regulations where, in accordance with regulation 238, it is determined that the solvency regime of the third country is equivalent to that required under the law of Gibraltar.

### Prohibition on pledging of assets or more favourable treatment.

- 161. A provision contained in or made under any enactment is void if—
  - (a) it purports to establish a system of gross reserving which requires pledging of assets to cover unearned premiums or outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a
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country whose solvency or supervisory regime has been determined to be equivalent to that under these Regulations; 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.

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

162. Omitted.

### PART 10 SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

### Compulsory insurance

### **Related Obligations.**

- 163.(1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this regulation.
- (2) Where the law of Gibraltar imposes a requirement to have non-life insurance, an insurance contract does not satisfy that requirement 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 a requirement to have insurance and requires the insurance undertaking to notify the GFSC of any cessation of cover, that cessation may be invoked against injured third parties only in the circumstances laid down by that law.
- (4) *Omitted*.
- (5) If, in the case of any particular insurance contract, the law of Gibraltar requires proof that the obligation to take out insurance has been complied with, the insurance undertaking must issue a certificate to an insured person which includes a declaration to the effect that the contract complies with the specific provisions relating to that insurance.

### General good

#### General good.

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164. No provision of the law of Gibraltar may prohibit a person from concluding a contract with an insurance undertaking so long as the conclusion of that contract does not conflict with legal provisions protecting the general good in Gibraltar.

Conditions of insurance contracts and scales of premiums

#### Non-life insurance

- 165.(1) In relation to non-life insurance, nothing in any enactment (whenever passed) requires 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) Sub-regulation (1) does not apply to any requirement for non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with provisions concerning insurance contracts, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.
- (3) In so far as insurance of any description is compulsory, before circulating the general and special condition of the insurance, any undertaking providing it may be required by the GFSC to communicate those conditions to it.
- (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.

- 166.(1) The GFSC, in performing its supervisory functions, must not require life insurance undertakings to seek prior approval of or systematically notify—
  - (a) general and special policy conditions;
  - (b) scales of premiums;
  - (c) technical bases used in particular for calculating scales of premiums and technical provisions; or
  - (d) forms or other printed documents which the undertaking intends to use in its dealings with policy holders.
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(2) Sub-regulation (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 purpose of verifying compliance with provisions concerning actuarial principles, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.

Information for policy holders: non-life insurance

### Non-life insurance: general information.

- 167.(1) Before a non-life insurance contract is concluded, the non-life insurance undertaking must inform the policy holder of the following—
  - (a) the law applicable to the contract, where the parties do not have a free choice; or
  - (b) the fact that the parties are free to choose the law applicable and the law the undertaking proposes to choose.
- (2) The insurance undertaking must also inform the policy holder of the arrangements for handling policy holders' complaints concerning contracts including, where appropriate, the existence of a complaints body, without limiting the right of the policy holder to take legal proceedings.
- (3) The obligations under sub-regulations (1) and (2) apply only where the policy holder is an individual.

168. Omitted.

#### Life insurance

### Life insurance: information for policy holders.

- 169.(1) Before a life insurance contract is concluded, the life insurance undertaking must communicate the following information to the policy holder—
  - (a) the name and legal form of the undertaking;
  - (b) Omitted
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- (c) the address of its head office and, where appropriate, of the branch concluding the contract;
- (d) a concrete reference to the report on its solvency and financial condition, as set out in regulation 52, which allows the policy holder easy access to that information;
- (e) a definition of each benefit and each option;
- (f) the policy conditions, both general and special;
- (g) the term of the contract and the means by which it may be terminated;
- (h) the method of paying premiums and the duration of the payments;
- (i) the method of calculating and distributing of bonuses;
- (j) an indication of surrender and paid-up values and the extent to which they are guaranteed;
- (k) information on the premiums for each benefit, whether a main benefit or supplementary benefit;
- (l) in the case of a contract for a unit-linked policy—
  - (i) a definition of the units to which the benefits are linked; and
  - (ii) an indication of the nature of the underlying assets;
- (m) information as to-
  - (i) the arrangements with respect to the 'cooling off' period in which the policy holder may cancel the contract;
  - (ii) the tax arrangements applicable to the policy to be effected by the contract;
  - (iii) the arrangements for handling any complaints concerning the contract (which must apply without limiting the right to take legal proceedings), whether made by the policy holder or a person who is a life assured or beneficiary including, where appropriate, the existence of any complaints body; and
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- (n) whether the parties are entitled to choose the law applicable to the contract and-
  - (i) if so, the law that the undertaking proposes to choose; or
  - (ii) if not, the applicable law.
- (2) In addition, specific information must be supplied in order to provide the policy holder with a proper understanding of the risks underlying the contract which are assumed by the policy holder.
- (3) The policy holder must be kept informed throughout the term of the contract—
  - (a) of any change concerning-
    - (i) the policy conditions, both general and special;
    - (ii) the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract: or
    - (iii) the information in sub-regulation (1)(h) to (m) in the event of a change in the policy conditions or amendment of the law applicable to the contract; and
  - (b) annually, on the state of bonuses.
- (4) Where, in connection with an offer for or conclusion of a life insurance contract, other than a term insurance or contract, the undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the undertaking must—
  - (a) provide the policy holder with a specimen calculation by which the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest; and
  - (b) inform the policy holder, in a clear and comprehensible manner, that—
    - (i) the specimen calculation is only a model of computation based on notional assumptions; and
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- (ii) the policy holder does not derive any contractual claims from the specimen calculation.
- (5) In the case of insurances with profit participation, the undertaking must inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation and, where the undertaking has provided figures about the potential future development of the profit participation, the differences between the actual development and the initial data.
- (6) The information in sub-regulations (1) to (5) must be provided in a clear and accurate manner, in writing—
  - (a) in English; or
  - (b) in another language if the policy holder so requests and is free to choose the law applicable.
- (7) The GFSC may require life insurance undertakings to furnish information in addition to that listed in this regulation, but only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

### Cancellation period.

- 170.(1) A person who has concluded a contract for an individual life insurance policy is entitled to cancel the policy by giving a cancellation notice to the life insurance undertaking within the period of 30 days from the date on which the person is informed that the contract has been concluded.
- (2) The giving of a cancellation notice has the effect of releasing the person from any future obligation arising from the contract.
- (3) The other legal effects and the conditions of cancellation are determined by the law applicable to the contract, in particular, as regards the arrangements for informing a person that the contract has been concluded.
- (4) Where the law of Gibraltar applies to the contract—
  - (a) a person is to be regarded as having been informed that a contract has been concluded—
    - (i) when the policy is delivered to the person; or
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- (ii) if the policy is sent to that person by post, on the date on which it is posted;
- (b) a cancellation notice must clearly indicate that the person has withdrawn from the proposed contract,
- (c) a cancellation notice is to be regarded as having been served on the undertaking-
  - (i) when the notice is delivered to the undertaking; or
  - (ii) if the notice is sent by post to an address specified by the undertaking, on the date on which it is posted;
- (d) the undertaking must refund in full any sums paid in connection with the contract by the person serving the cancellation notice;
- (e) in the case of the service of notice of cancellation in respect of a single premium life insurance contract, the undertaking may, when the person has withdrawn from the proposed contract, refund the amount of premium paid less any losses incurred by the undertaking as a result of fluctuations in the financial markets during the period of the validity of the contract.
- (5) Sub-regulation (1) does not apply–
  - (a) to a contract with duration of six months or less;
  - (b) where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection including where:
    - (i) the contract is one where none of the proposers or policy holders is an individual:
    - (ii) the contract is a contract of creditor insurance effected for the purpose of insuring the repayment of a loan and it is intended that the contract will be assigned or deposited with the lender;
    - (iii) the contract is a contract of reinsurance.

Provisions specific to non-life insurance

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### Policy conditions.

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

172. Omitted.

Community co-insurance

173. to 178. Omitted.

Legal expenses insurance

### Legal expenses insurance.

179.(1) This regulation and regulations 180 to 185 ("the legal expenses provisions") apply to legal expenses insurance within Class 17 under which an insurer promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following—

- (a) securing compensation for loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings; or
- (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.
- (2) The legal expenses provisions do not apply to—
  - (a) legal expenses insurance contracts concerning disputes or risks arising out of, or in connection with, the use of seagoing vessels;
  - (b) the activity pursued by the insurer providing civil liability cover for the purpose of defending or representing the insured person in any enquiry or proceedings if that activity is at the same time pursued in the insurers own interest under such cover; or
  - (c) legal expenses insurance undertaken by an assistance insurer where that cover is provided under a contract the principal object of which is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence and where the costs are

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incurred outside the country or territory (including Gibraltar) in which the insured normally resides.

- (3) In a case falling within paragraph (c) of sub-regulation (2), the policy must clearly state that the cover in question is limited to the circumstances referred to in that paragraph and is ancillary to that assistance.
- (4) For the purposes of the legal expenses provisions—
  - "legal expenses insurance business" means insurance business (other than reinsurance business) falling within sub-regulation (1) and "legal expenses insurance contract" and "legal expenses cover" are to be construed accordingly;
  - "lawyer" means a person entitled to pursue professional legal activities and includes a barrister or solicitor qualified to practice in Gibraltar.

### Separate contracts.

- 180. Legal expenses cover must be—
  - (a) the subject of a separate policy relating to that cover only, or
  - (b) dealt with in a separate section of a policy relating to one or more other Classes of insurance, in which the nature of the legal expenses cover is specified.

### Management of claims.

- 181.(1) A Gibraltar insurer carrying on legal expenses insurance business must adopt at least one of the following arrangements for the management of claims.
- (2) The insurer must ensure that no member of staff who is concerned with the management of legal expenses claims, or with legal advice in respect of their management, pursues at the same time a similar activity—
  - (a) in relation to another Class of insurance carried on by the insurer; or
  - (b) in another undertaking which has financial, commercial or administrative links with the insurer and carries on one or more of the other Classes of insurance.
- (3) The insurer must entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality and which must be mentioned in the
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separate policy or the separate section of a policy referred to in regulation 180 but, if the undertaking has links to an insurance undertaking which carries on one or more Classes of non-life insurance, members of staff of the undertaking who are concerned with the management of claims or with legal advice connected with their management must not pursue the same or a similar activity in the other insurance undertaking at the same time.

(4) The insurer must, in the policy, provide that the insured person may instruct a lawyer of their choice or, to the extent that the relevant forum so permits, any other appropriately qualified person, from the moment that the insured person has a claim under that policy.

#### Freedom to choose lawyer.

- 182. A contract of legal expenses insurance must expressly provide that-
  - (a) where recourse is had to a lawyer, or other appropriately qualified person to defend, represent or serve the interests of the insured person in any inquiry or proceedings, the insured person is free to choose such lawyer or other person; and
  - (b) the insured person is free to choose a lawyer or, any other appropriately qualified person, to serve insured person's interests whenever a conflict of interest arises.

#### Exception to free choice of lawyer.

- 183.(1) Regulation 182 does not apply where-
  - (a) the legal expenses cover is limited to cases arising from the use of road vehicles in Gibraltar;
  - (b) the legal expenses cover is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
  - (c) neither the legal expenses insurer nor the assistance insurer carries on any Class of liability insurance business; and
  - (d) measures are taken so that the legal advice and representation of each party to a dispute is provided by completely independent lawyers where those parties are insured in respect of legal expenses by the same insurer.
- (2) The exception in sub-regulation (1) does not affect the application of regulation 181.

#### Arbitration.

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- 184.(1) Where a dispute arises between the insurer and the insured under a contract of legal expenses insurance, the insured person has the right to refer the dispute to arbitration in accordance with Part I of the Arbitration Act and, for that purpose, these Regulations are an enactment to which section 38 of that Act applies.
- (2) The contract must inform the insured person of the right to invoke the arbitration procedure referred to in sub-regulation (1).
- (3) This regulation applies without limiting any right of recourse to the courts.

#### Conflict of interest.

- 185.(1) Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the insurer and the insured person under a legal expenses insurance contract, the insurance undertaking must give the insured person written notice of—
  - (a) the right referred to in regulation 182; and
  - (b) the possibility of having recourse to arbitration in accordance with regulation 184.
- (2) Where the management of claims is entrusted to an undertaking having separate legal personality as mentioned in regulation 181(4), the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

186. Omitted.

### Provisions specific to life insurance

### Prohibition on compulsory ceding of part of underwriting.

187. No provision of the law of Gibraltar may require life insurance undertakings to cede part of their underwriting of activities listed in regulation 4(5) to an organisation or organisations designated by that law.

#### Premiums for new business.

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

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(2) For the purposes of sub-regulation (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 on them 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.

- 189.(1) An insurance or reinsurance undertaking which concludes finite reinsurance contracts or pursue finite reinsurance activities must be able properly to identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.
- (2) For the purposes of this regulation "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; or
  - (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

### Special purpose vehicles.

- 190.(1) A special purpose vehicle must not be established in Gibraltar without the prior approval by the GFSC.
- (2) A special purpose vehicle that was authorised in Gibraltar before 31st December 2015, continues to be subject to the law of Gibraltar under which it was authorised, but any new activity commenced by the special purpose vehicle after that date requires prior approval by the GFSC and is subject to these Regulations, the Solvency 2 Regulation and Commission Implementing Regulation (EU) 2015/462 as it forms part of the law of Gibraltar.

### PART 11 SUPERVISION OF GROUP UNDERTAKINGS

Preliminary

#### **Interpretation of Part 11.**

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### 191.(1) In this Part-

- "ancillary insurance services undertaking" means, in relation to any undertaking in a group, an undertaking which meets the following conditions—
  - (a) its principal activity consists of-
    - (i) owning or managing property;
    - (ii) managing data-processing services;
    - (iii) providing health and care services; or
    - (iv) any other similar activity;
  - (b) that activity is ancillary to the principal activity of one or more insurance undertakings; and
  - (c) those insurance undertakings are also members of that group;
- "college of supervisors" means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;
- "common management relationship" means a relationship between two or more undertakings which satisfies the following conditions—
  - (a) the undertakings are not connected in the manner described in section 276 of, and Schedule 20 to, the Companies Act 2014; and
  - (b) either-
    - (i) the undertakings are managed on a unified basis under a contract with one of them, or provisions in the undertakings' respective memoranda or articles of association; or
    - (ii) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same persons in office during the financial year in respect of which it is being decided whether such a relationship exists;
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"Financial Conglomerates Regulations" means the Financial Services (Financial Conglomerates) Regulations 2020;

"group" means a group of undertakings which-

- (a) 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 common management relationship; or
- (b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, which may include one between undertakings that are mutual or mutual-type associations if—
  - (i) 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
  - (ii) the establishment and dissolution of the relationships are subject to prior approval by the GFSC,

and in such a case, the undertaking exercising the centralised coordination is to be regarded as the parent undertaking, and the other undertakings are to be regarded as subsidiaries:

- "insurance holding company" means a parent undertaking which is not an insurance or reinsurance undertaking or a mixed financial holding company, the main business of which is to acquire and hold participations in subsidiary undertakings and which meets the following conditions—
  - (a) its subsidiary undertakings are either exclusively or mainly-
    - (i) insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings; or
    - (ii) the parent undertaking of mainly insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings;
  - (b) more than 50% of two or more of-
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- (i) the parent undertaking's consolidated assets;
- (ii) the parent undertaking's consolidated revenues; or
- (iii) the group SCR (as if calculated at the level of the parent undertaking),

are derived from subsidiaries that are insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings; and

- (c) at least one of those subsidiary undertakings is 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;
- "mixed financial holding company" means a mixed financial holding company within the meaning of the Financial Conglomerates Regulations;
- "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 common management relationship;
- "related undertaking" means a subsidiary undertaking, another undertaking in which a participation is held or an undertaking linked with another undertaking by a common management relationship; and
- "subsidiary undertaking" includes any undertaking over which in the opinion of the GFSC a parent undertaking effectively exercises a dominant influence.
- (2) For the purposes of this Part–
  - (a) an undertaking which, in the opinion of the GFSC, effectively exercises a dominant influence over another undertaking is to be regarded as a parent of that other undertaking and that other undertaking is to be regarded as its subsidiary; and

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(b) the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the GFSC, a significant influence is effectively exercised is to be regarded as participation.

### Application of group supervision.

- 192.(1) This Part provides for the supervision at group level of insurance and reinsurance undertakings which are part of a group.
- (2) The provisions of these Regulations which apply to insurance and reinsurance undertakings individually also apply to undertakings to which this Part applies, except where this Part provides otherwise.
- (3) Supervision at the level of the group applies to—
  - (a) an insurance or reinsurance undertaking-
    - (i) which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking; or
    - (ii) the parent undertaking of which is a UK insurer or reinsurer;
  - (b) an 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 Gibraltar or the United Kingdom;
  - (c) an insurance or reinsurance undertaking, the parent undertaking of which is-
    - (i) an insurance holding company or a mixed financial holding company which has its head office in a third country other than the United Kingdom; or
    - (ii) a third-country insurance or reinsurance undertaking other than a UK insurer or reinsurer; or
  - (d) an insurance or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company.
- (3A) In sub-regulation (3), a "UK insurer or reinsurer" means an insurance or reinsurance undertaking which—
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- (a) has its head office in the United Kingdom; and
- (b) would require authorisation as an insurance or reinsurance undertaking in accordance with these Regulations if its head office were in Gibraltar.
- (4) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a subsidiary undertaking of—
  - (a) another insurance or reinsurance undertaking;
  - (b) another insurance holding company; or
  - (c) another mixed financial holding company,

which has its head office in Gibraltar or the United Kingdom, regulations 197 to 236 only apply 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 Gibraltar or the United Kingdom.

- (5) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a related undertaking of a regulated entity or a mixed financial holding company that has its head office in Gibraltar, and which is subject to supplementary supervision in accordance with regulation 5 of the Financial Conglomerates Regulations, the GFSC may decide not to carry out either or both of—
  - (a) the supervision of risk concentration referred to in regulation 221; and
  - (b) the supervision of intra-group transactions referred to in regulation 222.
- (6) Where a mixed financial holding company is subject to equivalent provisions under-
  - (a) these Regulations and the Financial Conglomerates Regulations, in particular in terms of risk-based supervision, the GFSC may apply only the relevant provisions of the Financial Conglomerates Regulations to that mixed financial holding company; and
  - (b) these Regulations and the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, in particular in terms of risk based supervision,
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the GFSC may, apply only the provisions of whichever set of those Regulations relates to the most significant sector, determined in accordance with regulation 3(2) of the Financial Conglomerates Regulations.

### Scope of group supervision.

193.(1) The GFSC's exercise of group supervision in accordance with regulation 192 does not imply that the GFSC is required to play a supervisory role in relation to a third-country insurance undertaking, a third-country reinsurance undertaking, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company taken individually (without limiting 235 as far as insurance holding companies or mixed financial holding companies are concerned).

- (2) The GFSC may decide on a case-by-case basis not to include an undertaking in group supervision under regulation 192 where–
  - (a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information (without limiting regulation 208);
  - (b) the undertaking is of negligible interest with respect to the objectives of group supervision (except where several undertakings of the same group which are negligible individually, are not negligible when taken collectively); or
  - (c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.
- (3) *Omitted*.
- (4) Where the GFSC ceases to apply group supervision to an insurance or reinsurance undertaking under sub-regulation (2)(b) or (c), the GFSC 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.

Levels

194. to 196. Omitted.

Group solvency

Supervision of group solvency.

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- 197.(1) Subject to regulation 225A, the GFSC must supervise group solvency in relation to undertakings to which this Part applies, in accordance with this regulation.
- (2) In a case falling within regulation 192(3)(a), participating insurance or reinsurance undertakings must 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 regulations 199 to 212.
- (3) In a case falling within regulation 192(3)(b), insurance and reinsurance undertakings in a group must 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 regulation 213.
- (4) The GFSC must subject the requirements in sub-regulations (2) and (3) to supervisory review in accordance with regulations 224 to 236, and regulations 120 and 122 apply with any necessary modifications.

### Frequency of calculations.

- 198.(1) Subject to regulation 225A, the GFSC must ensure that the calculations referred to in regulation 197(2) and (3) are carried out at least annually by the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.
- (2) The relevant data for and results of that calculation must be submitted to the GFSC 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, mixed financial holding company or by the undertaking in the group identified by the GFSC after consulting the group concerned.
- (3) The insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company must 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 must be recalculated without delay and reported to the GFSC.
- (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 GFSC may require a recalculation of the group Solvency Capital Requirement.

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### Choice of calculation method.

- 199.(1) The calculation of solvency at the level of the group of insurance and reinsurance undertakings referred to in regulation 192(1)(a) must be carried out in accordance with the technical principles and one of the methods set out in regulations 200 to 212.
- (2) Subject to sub-regulation (3) the method for that calculation must be Method 1 (the accounting consolidation-based method) set out in regulations 209 to 211.
- (3) Where the GFSC is the group supervisor of a particular group, after consulting the group concerned, it may decide to apply to that group—
  - (a) Method 2 (the deduction and aggregation method) set out in regulation 212; or
  - (b) a combination of Method 1 and Method 2, where the exclusive application of Method 1 would not be appropriate.
- (4) The GFSC may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under sub-regulation (3).
- (5) The GFSC may revoke or vary a direction under sub-regulation (4).

### Inclusion of proportional share.

- 200.(1) The calculation of group solvency must take account of the proportional share held by a participating undertaking in its related undertakings.
- (2) The proportional share must 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, 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 must be taken into account.

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- (4) Where in the opinion of the GFSC, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the GFSC may allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.
- (5) The GFSC must determine, after consulting the group concerned, the proportional share which must be taken into account in the following cases—
  - (a) where there are no capital ties between some of the undertakings in a group; or
  - (b) where the GFSC has determined that-
    - (i) the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in the GFSC's opinion, a significant influence is effectively exercised over that undertaking; or
    - (ii) an undertaking is a parent undertaking of another because, in the GFSC's opinion, it effectively exercises a dominant influence over that other undertaking.

### Elimination of double use of eligible own funds.

- 201.(1) The double use of own funds eligible for the Solvency Capital Requirement is not allowed among the different insurance or reinsurance undertakings taken into account in that calculation.
- (2) When calculating group solvency (and where the methods described in regulations 209 to 212 do not provide for it) the following amounts must 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; and
  - (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
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insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

- (3) Without limiting sub-regulations (1) and (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 regulation 81(2) 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.
- (4) However, the following must 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; and
  - (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 GFSC considers that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in sub-regulations (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 sub-regulations (3) and (5) must 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
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that are subject to prior authorisation from the GFSC in accordance with regulation 84 may be included in the calculation only in so far as they have been so authorised.

### Elimination of intra-group creation of capital.

- 202.(1) When calculating group solvency, no account may 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;
  - (b) a participating undertaking; or
  - (c) another related undertaking of any of its participating undertakings.
- (2) When calculating group solvency, no account may 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 regulation a reference to reciprocal financing includes (but is not limited to) circumstances 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.

203. The value of assets and liabilities must be assessed in accordance with regulation 65.

### Related insurance and reinsurance undertakings.

204. Where an insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation must be carried out by including each of those related insurance or reinsurance undertakings.

### Intermediate insurance holding companies.

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- 205.(1) When calculating the group solvency of an insurance or reinsurance undertaking which holds, through an insurance holding company or a mixed financial holding company, a participation in—
  - (a) a related insurance undertaking;
  - (b) a related reinsurance undertaking;
  - (c) a third-country insurance undertaking; or
  - (d) a third-country reinsurance undertaking,

the situation of that intermediate insurance holding company or intermediate mixed financial holding company must be taken into account.

- (2) For the purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company must be treated as if it were an insurance or reinsurance undertaking subject to—
  - (a) the rules in Chapter 3 of Part 6 in respect of the Solvency Capital Requirement; and
  - (b) the same conditions in Chapter 2 of Part 6 in respect of own funds eligible for the Solvency Capital Requirement.
- (3) 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 regulation 89, they may be recognised as eligible own funds up to the amounts calculated by application of the limits set out in that regulation to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.
- (4) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company which would require prior authorisation from a supervisory authority in accordance with regulation 84, 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 authorised by the GFSC.

### Equivalence concerning related third-country insurance and reinsurance undertakings.

- 206.(1) When calculating, in accordance with regulation 212, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country
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insurance or reinsurance undertaking, the latter is to be treated for the purposes of that calculation as a related insurance or reinsurance undertaking.

- (2) Where the law of the third country in which that undertaking has its head office—
  - (a) requires the undertaking to be authorised (however described); and
  - (b) imposes on it a solvency regime which, in accordance with regulation 238, is determined to be equivalent to that set out in Part 6,

the GFSC may permit the calculation to take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as prescribed by law in that third country.

## Related credit institutions, investment firms and financial institutions.

- 207.(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 or reinsurance undertaking may apply method 1 or method 2 set out in Schedule 1 to the Financial Conglomerates Regulations (with any necessary modifications), subject to sub-regulation (2).
- (2) Method 1 in that Schedule may only be applied where the GFSC 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) The method chosen under sub-regulation (1) must be applied in a consistent manner over time.
- (4) The GFSC may decide, at the request of a participating undertaking or on its own initiative, to deduct any participation referred to sub-regulation (1) from the own funds eligible for the group solvency of the participating undertaking.

### Non-availability of necessary information.

208. Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking is not available in respect of a related undertaking with its head office outside Gibraltar –

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

### Method 1 (default method): the accounting consolidation-based method.

- 209.(1) The calculation of the group solvency of a participating insurance or reinsurance undertaking must be carried out on the basis of its consolidated accounts.
- (2) Group solvency of a participating insurance or reinsurance undertaking is the difference between—
  - (a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and
  - (b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.
- (3) The rules laid down in regulations 81 to 114 apply for the calculation of the own funds eligible for the Solvency Capital Requirement and the Solvency Capital Requirement at group level based on consolidated data.
- (4) The Solvency Capital Requirement at group level based on consolidated data ("the consolidated group Solvency Capital Requirement") must be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles in regulations 102 to 114.
- (5) The consolidated group Solvency Capital Requirement must have as a minimum the sum of the following—
  - (a) the Minimum Capital Requirement as referred to in Chapter 4 of Part 6 of the participating insurance or reinsurance undertaking; and
  - (b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.
- (6) The minimum amount must be covered by eligible basic own funds as determined under regulation 89.
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(7) For the purposes of determining whether eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in regulations 123 and 200 to 208 apply with any necessary modifications.

## Group internal model.

- 210.(1) 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 may be submitted to the GFSC
  - (a) by an insurance or reinsurance undertaking and its related undertakings; or
  - (b) jointly by the related undertakings of an insurance holding company or a mixed financial holding company.
- (2) The GFSC must-
  - (a) decide whether to grant that permission and determine the terms and conditions, if any, to which it is subject; and
  - (b) provide the applicant with a document setting out its fully reasoned decision.
- (3) *Omitted*
- (4) *Omitted*.
- (5) *Omitted*.
- (6) *Omitted*.
- (7) Where the GFSC 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 GFSC's concerns, the GFSC may, in accordance with regulation 39, 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 GFSC may require the undertaking concerned to calculate its Solvency Capital
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Requirement on the basis of the standard formula referred to in Chapter 3 of Part 6;

- (b) in accordance with regulation 39(1)(a) and (c), the GFSC 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 GFSC must explain any decision under this sub-regulation to the insurance or reinsurance undertaking.

### Group capital add-on.

- 211.(1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the GFSC must pay particular attention to any case where the circumstances referred to in regulation 39(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 in accordance with regulations 39 and 210(7).
- (2) Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed; and for that purpose regulations 39 and 40 apply with any necessary modifications.

### Method 2 (alternative method): the deduction and aggregation method.

- 212.(1) The group solvency of a participating insurance or reinsurance undertaking is the difference between-
  - (a) the aggregated group eligible own funds, as provided for in sub-regulation (2); 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 sub-regulation (3).
- (2) The aggregated group eligible own funds are the sum of-

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- (a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and
- (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.
- (3) The aggregated group Solvency Capital Requirement is the sum of—
  - (a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and
  - (b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
- (4) 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 must incorporate the value of the indirect ownership, taking into account the relevant successive interests, and
  - (b) the items referred to in sub-regulations (2)(b) and (3)(b) must 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.
- (5) 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, regulation 210 applies with any necessary modifications.
- (6) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in sub-regulation (3), appropriately reflects the risk profile of the group, the GFSC must pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.
- (7) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, the GFSC may impose a
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capital add-on to the aggregated group Solvency Capital Requirement and, in such a case, regulations 39 and 40 apply with any necessary modifications.

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

- 213.(1) Where insurance or reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the GFSC must 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 regulations 199 to 212.
- (2) For the purpose of that calculation, the parent undertaking must be treated as if it were an insurance or reinsurance undertaking—
  - (a) subject to the rules in Chapter 3 of Part 6 as regards the Solvency Capital Requirement, and
  - (b) subject to the same conditions in Chapter 2 of Part 6 as regards the own funds eligible for the Solvency Capital Requirement.

Groups with centralised risk management

214. to 220. Omitted.

Risk concentration and intra-group transactions

### Supervision of risk concentration.

- 221.(1) Subject to regulation 225A, the supervision of risk concentration at group level of a group of the kind in regulation 192(3)(a) or (b) must be exercised in accordance with this regulation and regulations 223 to 225, 235 and 236.
- (2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the GFSC any significant risk concentration at the level of the group.
- (3) The necessary information must be submitted to the GFSC
  - (a) by 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, mixed financial holding company or insurance or
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reinsurance undertaking in the group identified by the GFSC after consulting the group.

- (4) Where the GFSC is the group supervisor, it must-
  - (a) identify the undertaking which is to provide the information referred to in sub-regulation (3);
  - (b) identify the type of risks which insurance and reinsurance undertakings in the group must report in all circumstances;
  - (c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify significant risk concentrations which should be reported; and
  - (d) subject the risk concentrations to supervisory review and, 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.
- (5) In complying with sub-regulation (4)(a) to (c) the GFSC must consult the group.
- (6) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.

#### Supervision of intra-group transactions.

- 222.(1) Subject to regulation 225A, the supervision of intra-group transactions must be exercised in accordance with this regulation and regulations 223 to 225, 235 and 236.
- (2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the GFSC all significant intra-group transactions by insurance and reinsurance undertakings within the group, including those performed with an individual with close links to an undertaking in the group.
- (3) Very significant intra-group transactions must be reported as soon as practicable.
- (4) The necessary information must be submitted to the GFSC by-
  - (a) the insurance or reinsurance undertaking which is at the head of the group, or
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- (b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or insurance or reinsurance undertaking in the group identified by the GFSC after consulting the group.
- (5) Where the GFSC is the group supervisor, it must—
  - (a) identify the undertaking which is to provide the information referred to in sub-regulation (4);
  - (b) identify the type of intra-group transactions which insurance and reinsurance undertakings in the group must report in all circumstances;
  - (c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify intra-group transactions which should be reported; and
  - (d) subject the intra-group transactions to supervisory review and, 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.
- (6) In complying with sub-regulation (5)(a) to (c) the GFSC must consult the group.
- (7) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.

Risk management and internal control

### Supervision of system of governance.

- 223.(1) Regulations 43 to 50 apply at the level of the group of the kind in regulation 192(3)(a) or (b) with any necessary modifications.
- (2) Without limiting sub-regulation (1), the risk management and internal control systems and reporting procedures must be implemented consistently in all the undertakings included in the scope of group supervision under regulations 192 and 193 so that those systems and reporting procedures can be controlled at the level of the group.
- (3) The group internal control mechanisms must include at least the following—

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- (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) A participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must undertake the own risk and solvency assessment required by regulation 46 at the level of the group.
- (5) Where the calculation of the solvency at the level of the group is carried out in accordance with Method 1 in regulation 209, the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must provide to the GFSC 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.
- (6) Subject to regulation 225A, where the GFSC is the group supervisor—
  - (a) it must supervise the systems and reporting procedures referred to in sub-regulations (1) to (3) in accordance with regulations 224, 225, 235 and 236;
  - (b) it must subject the own-risk and solvency assessment conducted at group level to supervisory review in accordance with those regulations; and
  - (c) it may consent to the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company
    - (i) undertaking at the same time, at the level of the group and of any subsidiary in the group, any assessments required under regulation 46; and
    - (ii) producing a single document covering all the assessments.
- (7) *Omitted*.
- (8) Where a group exercises the option provided in sub-regulation (6)(c), it does not exempt the subsidiaries concerned from the obligation to ensure that the requirements of regulation 46 are met.

Measures to facilitate group supervision

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## Group supervisor.

- 224(1). Subject to sub-regulation (2), where an insurance undertaking or reinsurance undertaking that is authorised by the GFSC under Part 7 of the Act is part of a group, the GFSC is the group supervisor and must supervise that group.
- (2) Nothing in sub-regulation (1) requires the GFSC to conduct group supervision in respect of requirements which do not apply, as may be determined by the GFSC under regulation 225A.

### Functions of group supervisor and other supervisors.

- 225.(1) Subject to regulation 225A, sub-regulation (2) applies where the GFSC is the group supervisor of a group of the type in regulation 192(3)(a) or (b).
- (2) The GFSC must—
  - (a) conduct supervisory reviews and assessments of the financial situation of the group;
  - (b) assess the group's compliance with the rules on solvency, risk concentration and intra-group transactions;
  - (c) assess the group's system of governance in accordance with regulation 223;
  - (d) assess whether the members of the administrative, management or supervisory body of the participating undertakings in the group are fit and proper to carry out their functions:
  - (e) determine applications for an internal model at group level as set out in regulations 210 and 212; and
  - (f) carry out the other tasks, measures and decisions assigned to the group supervisor by these Regulations.

#### Disapplication or modification of Regulations 197, 198, 221 to 223 and 225.

- 225A.(1) Where the GFSC relies on equivalent third country supervision, the GFSC may determine that one or more of the provisions in sub-regulation (2)–
  - (a) does not apply; or
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- (b) applies with such modifications as may be specified in the determination.
- (2) The provisions are—
  - (a) regulation 197(1);
  - (b) regulation 198(1);
  - (c) regulation 221(1);
  - (d) regulation 222(1);
  - (e) regulation 223(6); and
  - (f) regulation 225.
- (3) In sub-regulation (1), "equivalent third country supervision" means group supervision exercised by—
  - (a) the Prudential Regulation Authority of the United Kingdom; or
  - (b) a third country supervisory authority which has a group supervision regime determined as equivalent in accordance with regulation 237.
- (4) The GFSC may not give a determination under sub-regulation (1) unless it is satisfied that—
  - (a) compliance by insurance or reinsurance undertakings in the group with requirements imposed by the GFSC under the provision to which the determination relates would be unduly burdensome; and
  - (b) the determination would not adversely affect the advancement of any of the GFSC's regulatory objectives.
- (5) The GFSC may vary or revoke a determination given under sub-regulation (1).

226. to 232. Omitted.

Group solvency and financial condition report.

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- 233.(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.
- (2) For the purpose of sub-regulation (1) regulations 52 and 54 to 56 apply with any necessary modifications.
- (3) A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, with the consent of the group supervisor, provide a single report on its solvency and financial condition which must comprise the following—
  - (a) the information at the level of the group to be disclosed in accordance with sub-regulation (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 regulations 52 and 54 to 56.
- (4) Omitted.
- (5) Where the GFSC has authorised a subsidiary in the group and the report referred to in sub-regulation (3) fails to include material information which the GFSC requires comparable undertakings to provide, the GFSC may require the subsidiary concerned to disclose the necessary additional information.

#### Group structure.

234. Insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly on an annual basis the legal structure and the governance and organisational structure of the group, 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.

- 235.(1) An insurance holding company or mixed financial holding company must ensure that all persons who effectively run the company are fit and proper to perform their duties.
- (2) Regulation 44 applies for the purposes of this regulation (with any necessary modifications).
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### **Enforcement measures.**

236.(1) Sub-regulation (2) applies if-

- (a) one or more insurance or reinsurance undertakings in a group do not comply with the requirements in regulations 197 to 223;
- (b) those requirements are met but the solvency of the group or an insurance or reinsurance undertaking within it may nevertheless be jeopardised; or
- (c) intra-group transactions or the risk concentrations are a threat to the financial position of one or more insurance or reinsurance undertakings in a group.
- (2) Where the GFSC-
  - (a) has authorised an insurance or reinsurance undertaking in the group; or
  - (b) is the group supervisor of a group headed by an insurance holding company or mixed financial holding company the head office of which is in Gibraltar,

the GFSC must exercise its powers under the Act and these Regulations to rectify the position as soon as possible.

#### Third countries

### Parent undertakings outside Gibraltar: equivalence.

- 237.(1) The GFSC may rely on the equivalent group supervision exercised by third country supervisory authorities where—
  - (a) either-
    - (i) the condition in sub-regulation (2) is met; or
    - (ii) the alternative condition in sub-regulation (3) is met; and
  - (b) the GFSC, having regard to the main objective of supervision, considers that it is appropriate to do so.
- (2) The condition is that—
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- (a) either of the following determinations have been made-
  - (i) the Minister has made regulations under regulation 238(1) or the European Commission has adopted a delegated act under Article 260.3 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is equivalent; or
  - (ii) the Minister has made regulations under regulation 238(3) or the European Commission has adopted a delegated act under Article 260.5 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is temporarily equivalent;
- (b) that determination still applies;
- (c) there is no insurance undertaking or reinsurance undertaking situated in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country; and
- (d) the GFSC has verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent or temporarily equivalent regime.
- (3) The alternative condition is that the GFSC has verified that the group is subject to supervision by a third country supervisory authority which is equivalent in accordance with sub-regulation (4).
- (4) Where the conditions in sub-regulation (2) do not apply, the GFSC acting in accordance with sub-regulation (5)—
  - (a) must take a decision on equivalence at the request of the parent undertaking or the insurance undertaking or reinsurance undertaking; and
  - (b) may take a decision on equivalence on its own initiative.
- (5) Where the GFSC takes a decision on equivalence, the GFSC must-
  - (a) verify equivalence at the level of the ultimate third-country parent undertaking;
  - (b) ensure that its decision on equivalence does not contradict any previous decision taken in relation to the third country, except where it is necessary to do so in order
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to take account of significant changes to the supervisory regime in Gibraltar or the third country; and

(c) take its decision in accordance with the criteria in Article 380 of the Solvency 2 Regulation (as modified by regulation 238(6)).

## Determination of equivalence and temporary equivalence.

- 238.(1) The Minister may by regulations determine that the relevant solvency or prudential regime of a third country is equivalent to the corresponding regime under these Regulations where the equivalence criteria in the following provisions of the Solvency 2 Regulation have been fulfilled by the third country—
  - (a) Article 378 (in respect of the solvency regime that applies to reinsurance activities of undertakings with their head office in that country);
  - (b) Article 379 (in respect of the solvency regime that applies to insurance and reinsurance undertakings with their head office in that country); or
  - (c) Article 380 (in respect of the prudential regime in that country for the supervision of groups).
- (2) Regulations under sub-regulation (1) must be regularly reviewed by the Minister, in order to take account of—
  - (a) any changes to-
    - (i) the relevant solvency or prudential regime of the third country; or
    - (ii) the corresponding regime in Gibraltar; or
  - (b) any other change that may affect the decision on equivalence.
- (3) Despite sub-regulation (1)(b), the Minister may by regulations determine that the solvency regime of a third country that applies to undertakings which have their head office in that country is, during the relevant period, temporarily equivalent to that laid down in these Regulations, if that third country—
  - (a) has given a commitment to the Minister-
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- (i) to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with Article 379 of the Solvency 2 Regulation before the end of the relevant period; and
- (ii) to engage in the equivalence assessment process;
- (b) has established a work programme and allocated sufficient resources to fulfil that commitment:
- (c) has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;
- (d) has entered into written arrangements to cooperate and exchange confidential supervisory information with the GFSC;
- (e) has an independent system of supervision; and
- (f) has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with the GFSC.
- (4) The "relevant period" in sub-regulation (3) must be 10 years unless, before the expiry of that period—
  - (a) the regulations made by the Minister have been revoked; or
  - (b) the Minister has by regulations made sub-regulation (3) determined that the solvency regime of that third country is equivalent to the corresponding regime under these Regulations.
- (5) The GFSC must publish on its website a list of all third countries in respect of which the Minister has made regulations under sub-regulations (1) and (3).
- (6) For purposes of this regulation, Article 380 of the Solvency 2 Regulation is to apply with the following modifications—
  - (a) in the opening words for "Title III of Directive 2009/138/EC" substitute "the Financial Services (Insurance Companies) Regulations 2020"; and

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(b) in point (r), for "one of the calculation methods set out in Articles 230 and 233 of Directive 2009/138/EC", substitute "Method 1 or Method 2, as set out in regulations 209 and 212 respectively of the Financial Services (Insurance Companies) Regulations 2020".

### Parent undertakings outside Gibraltar: absence of equivalence.

- 239.(1) This regulation applies where—
  - (a) a parent undertaking of an insurance undertaking or reinsurance undertaking established in Gibraltar has its head office in a third country;
  - (b) one of the conditions in sub-regulation (2) is satisfied, and
  - (c) one of the conditions in sub-regulation (3) is satisfied.
- (2) The conditions are that the prudential group supervision regime of the third country–
  - (a) has not been determined to be equivalent; or
  - (b) has been determined to be equivalent, but the GFSC has not verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent regime.
- (3) The conditions are that the prudential group supervision regime of the third country—
  - (a) has not been determined to be temporarily equivalent; or
  - (b) has been determined to be temporarily equivalent, but the group-
    - (i) is not subject to that regime; or
    - (ii) contains an insurance undertaking or reinsurance undertaking in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country.
- (4) The GFSC must, at the level of the ultimate third-country parent undertaking—
  - (a) ensure appropriate supervision of the insurance undertakings and reinsurance undertakings that are authorised by the GFSC in the group; and
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- (b) ensure the objectives of group supervision are achieved.
- (5) For the purposes of sub-regulation (4), the GFSC–
  - (a) may decide to apply such other methods of supervision or to take such other steps as it considers appropriate, in order to comply with that sub-regulation; and
  - (b) may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under paragraph (a).
- (6) The GFSC may–
  - (a) give a direction subject to conditions; or
  - (b) revoke or vary a direction.
- (7) Without limiting sub-regulation (5)(b), a direction may, in particular, require the group to establish an insurance holding company or mixed financial holding company with its head office in Gibraltar.

#### Parent undertakings outside Gibraltar: levels

- 240.(1) Where the parent undertaking of an insurance undertaking or reinsurance undertaking with its head office outside Gibraltar is itself a subsidiary of—
  - (a) an insurance holding company or a mixed financial holding company which has its head office in a third country; or
  - (b) a third-country insurance or reinsurance undertaking,

regulation 237 only applies 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) Despite sub-regulation (1), the GFSC may-
  - (a) in the absence of an equivalence determination referred to in regulation 237, verify equivalence; or
  - (b) undertake group supervision,
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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.

- (3) Where sub-regulation (2) applies—
  - (a) regulation 237 applies with any necessary modifications at that lower level; and
  - (b) the GFSC must explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs.

Mixed-activity insurance holding companies

## Intra-group transactions.

- 241.(1) Where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company and the GFSC is responsible for the supervision of one or more of those undertakings, it must exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.
- (2) Regulations 222 to 225, 235 and 236 apply (with any necessary modifications).

## PART 12 REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

### Preliminary

### Scope of Part.

242. This Part applies to reorganisation measures and winding-up proceedings concerning insurance undertakings.

#### **Interpretation of Part 12.**

243. In this Part-

"administrator" means an administrator of an insurance undertaking appointed under the Insolvency Act 2011;

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"insurance claim"-

- (a) means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having a direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in regulation 4(5)(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
- (b) includes any premium owed by an insurance undertaking as a result of the nonconclusion or cancellation of an insurance contract or operation referred to in paragraph (a) in accordance with the law applicable to such a contract or operation before the opening of winding-up proceedings;
- "liquidator" means the liquidator of an insurance undertaking appointed under the Insolvency Act 2011;
- "reorganisation measures" means measures involving any intervention by the Supreme Court 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; and
- "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 Supreme Court, 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.

Reorganisation measures

### Adoption of reorganisation measures: applicable law.

- 244.(1) Only the Supreme Court is entitled to decide on reorganisation measures in respect of a Gibraltar insurer.
- (2) The adoption of reorganisation measures does not preclude the opening of winding-up proceedings in respect of an insurance undertaking.
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(3) Reorganisation measures in respect of a Gibraltar insurer must be governed by the laws, regulations and procedures applicable in Gibraltar, unless otherwise provided in regulations 263 and 264.

### Information to supervisory authorities.

245. The administrator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of his or her decision on any reorganisation measures, where possible before they are adopted or, failing that, immediately afterwards.

### Publication of decisions on reorganisation measures.

- 246.(1) Subject to sub-regulation (5), where a reorganisation measure in Gibraltar is subject to a right of appeal, the Supreme Court or administrator must publish the decision on the reorganisation measure in the Gazette.
- (2) *Omitted*.
- (3) Any publication under sub-regulation (1) must include the name and address of the administrator.
- (4) Reorganisation measures apply and are fully effective as against creditors regardless of the provisions of this regulation concerning publication unless the Supreme Court provides otherwise.
- (5) Where reorganisation measures only affect the rights of an insurance undertaking's shareholders, members or employees, sub-regulations (1), (3) and (4) do not apply and the Supreme Court must determine the manner in which those parties are to be informed.
- 247. Omitted.

#### Winding-up proceedings

### Commencement of winding-up proceedings.

- 248.(1) Only the Supreme Court is entitled to decide on winding-up proceedings in respect of a Gibraltar insurer.
- (2) A decision to commence winding-up proceedings in respect of an insurance undertaking may be taken in the absence, or following the adoption, of reorganisation measures.
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- (3) Winding-up proceedings in respect of a Gibraltar insurer must be governed by the laws, regulations and procedures applicable in Gibraltar, unless regulations 263 and 264 provide otherwise.
- (4) *Omitted*.
- (5) *Omitted*.
- (6) The liquidator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of the decision to commence winding-up proceedings, where possible before the proceedings are commenced or, failing that, immediately afterwards.

249. Omitted.

#### Treatment of insurance claims.

- 250.(1) Insurance claims take precedence over other claims against an insurance undertaking as specified in sub-regulation (2).
- (2) With regard to—
  - (a) assets representing the technical provisions, insurance claims must take absolute precedence over any other claim on the undertaking; and
  - (b) the whole of the assets of the undertaking, insurance claims must take precedence over any claim on the undertaking other than—
    - (i) claims by employees arising from employment contracts and employment relationships;
    - (ii) claims by public bodies on taxes;
    - (iii) claims by social security systems; and
    - (iv) claims on assets subject to rights in rem.
- (3) Despite sub-regulations (1) and (2), the expenses arising from the winding-up proceedings, as determined in accordance with the general law of Gibraltar, must take precedence over insurance claims.

#### Special register.

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- 251.(1) An insurance undertaking must establish and keep up to date at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with these Regulations.
- (2) Where an insurance undertaking carries on both life and non-life insurance activities, it must keep separate registers for each type of business.
- (3) But an insurance undertaking which covers life and the risks in Classes 1 and 2 must keep a single register for the whole of its activities.
- (4) The total value of the assets entered, valued in accordance with these Regulations, must 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 third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact must be recorded in the register and the amount not available must not be included in the total value referred to in sub-regulation (4).
- (6) Where an asset representing the technical provisions of an insurance undertaking is subject to—
  - (a) a right in rem in favour of a creditor or third party, without meeting the conditions set out in sub-regulation (5);
  - (b) a reservation of title in favour of a creditor or third party; or
  - (c) a demand by a creditor for the set-off of the creditor's claim against the claim of the insurance undertaking,

in the winding-up of the undertaking those rights or reservations must be disregarded unless regulation 263 applies to that asset.

- (7) Once winding-up proceedings have commenced, the composition of the assets entered in the register in accordance with sub-regulations (1) to (5) must not be changed and no alteration must be made in the register (other than the correction of purely clerical errors) without the approval of the Supreme Court or a person appointed for that purpose by the court.
- (8) Despite sub-regulation (7), the liquidator must add to those assets their yield and the value of the pure premiums received in respect of the Class of insurance concerned between

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the commencement 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 must justify this to the Supreme Court or a person appointed for that purpose by the court.

### Subrogation to a guarantee scheme.

252. If at any time the rights of insurance creditors are subrogated to a guarantee scheme established in Gibraltar, claims by that scheme must not benefit from the provisions of regulation 250(2).

### Representation of preferential claims by assets.

253. An insurance undertaking must ensure that any claims which may take precedence over insurance claims under regulation 250(2)(b) and which are registered in the insurance undertaking's accounts are represented by assets at all times and independently of any possible winding-up.

#### Cancellation of permission.

- 254.(1) The GFSC must cancel the Part 7 permission of an insurance undertaking in respect of which winding-up proceedings have been commenced.
- (2) Permission must be cancelled in accordance with the procedure in regulation 127 and paragraph 5 of Schedule 13 to the Act but in a manner that does not prevent the liquidator or any other person appointed by the Supreme Court must from pursuing those activities of the insurance undertaking which—
  - (a) are necessary or appropriate for the purposes of winding-up; and
  - (b) are pursued with the consent and under the supervision of the GFSC.

#### Publication of decisions on winding-up proceedings.

- 255.(1) The Supreme Court, the liquidator or a person appointed for that purpose by the Supreme Court must publish in the Gazette the decision to commence winding-up proceedings.
- (2) Any publication under sub-regulation (1) must include the name and address of the liquidator.
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#### Information to known creditors.

- 256.(1) When winding-up proceedings are commenced, the Supreme Court or the liquidator must, without delay, individually inform by written notice each known creditor.
- (2) The notice must include–
  - (a) the time limits in which steps must be taken by creditors;
  - (b) the consequences if particular steps are not taken within those time limits;
  - (c) the name and address of the liquidator for the purpose of lodging claims; and
  - (d) any other information of particular relevance to creditors.
- (3) The notice must 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 must also indicate the general effects of the winding-up proceedings on the insurance contracts and, in particular—
  - (a) the date on which the insurance contracts or operations will cease to produce effects; and
  - (b) the rights and duties of insured persons with regard to the contracts or operations.

## Right to lodge claims.

- 257.(1) A creditor may lodge a claim or submit written observations relating to claims arising from the winding-up of an insurance undertaking.
- (2) *Omitted*.
- (3) Except where the law of Gibraltar provides otherwise, a creditor must send to the liquidator copies of any supporting documents and must indicate the following—
  - (a) the nature and the amount of the claim;
  - (b) the date on which the claim arose;
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- (c) whether the creditor alleges preference, security in rem or reservation of title in respect of the claim; and
- (d) where appropriate, what assets are covered by the creditor's security.
- (4) The precedence granted to insurance claims by regulation 250 does not need to be indicated.

258. Omitted.

### Regular information to creditors.

259. The liquidator of an insurance undertaking must, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

### Common provisions

260. to 262. Omitted.

### Set-off.

- 263.(1) The commencement of reorganisation measures or winding-up proceedings does 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) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors.

### Regulated markets.

- 264.(1) The effects of a reorganisation measure or the commencement of winding-up proceedings on the rights and obligations of the parties to a regulated market are to be governed solely by the law applicable to that market.
- (2) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors which may be taken to set aside payments or transactions under the law applicable to that market.

265. to 267. Omitted.

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## Administrators and liquidators.

268. The appointment of an administrator or liquidator of an insurance undertaking must be evidenced by a copy of the court order or notice of appointment under the Insolvency Act 2011.

269. to 271. Omitted.

## Professional secrecy.

272. Any person who receives or divulges information in connection with the procedures in regulations 245 or 248 is bound by the professional secrecy obligation.

273. Omitted.

## PART 13 MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

### The Register: insurance and reinsurance activity

- 274.(1) This regulation makes provision as to the contents of the Register in connection with insurance and reinsurance activities.
- (2) The Register must contain such information as the GFSC considers appropriate and must include at least the following—
  - (a) insurance and reinsurance undertakings which are regulated firms;
  - (b) insurance and reinsurance undertakings which are regulated as small undertakings in accordance with regulation 5(7); and
  - (c) third-country insurance and reinsurance undertakings with a branch in Gibraltar.
- (3) The Register must identify the insurance and reinsurance activities to which a regulated firm's Part 7 permission relates.
- (4) The Register must include details of any variation or cancellation of a regulated firm's Part 7 permission.

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- (5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect of whom that provision applies, the GFSC may remove the entry from the Register.
- (6) The GFSC must ensure that the Register is made available online for consultation by the public.
- (7) In this regulation "the Register" means the register established by the GFSC in accordance with Part 4 of the Act.

### Administrative penalties.

- 275.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply 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, twice the amount of that benefit;
  - (b) in the case of a legal person—
    - (i)  $\in 5,000,000$  (or the sterling equivalent); or
    - (ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body; or
  - (c) in the case of an individual, £250,000.
- (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 Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b)(ii) 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.
- (3) In sub-regulation (1) "the "sterling equivalent" means an equivalent amount in sterling based on the exchange rate on 15th January 2020.

### Additional persons subject to powers.

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276. In respect of a contravention of a regulatory requirement by a person to whom these Regulations apply the GFSC may, in addition to the persons specified in section 147 and 148 of the Act, exercise the sanctioning powers set out in Part 11 of the Act against the members of the administrative, management or supervisory body of an insurance or reinsurance undertaking.

## Appeals.

277. Any right of appeal under these Regulations must be exercised in accordance with section 615 of the Act and, where applicable, as if notice of the decision appealed against were contained in a decision notice within the meaning of the Act.

### Restriction on use of the words "insurance", "assurance" and "reinsurance".

- 278. (1) A person must not, in relation to or in connection with any business carried on in or from Gibraltar, use—
  - (a) the word–
    - (i) "insurance";
    - (ii) "assurance"; or
    - (iii) "reinsurance"; or
  - (b) any cognate expression of a word in paragraph (a); or
  - (c) any word or words resembling a word in paragraph (a),

in a manner which indicates or is likely to cause any other person to believe that the person is, or is carrying on business as, an insurance or reinsurance undertaking.

- (2) Sub-regulation (1) does not apply to the use of the words to which it relates—
  - (a) by an insurance or reinsurance undertaking, in respect only of a business encompassing the insurance or reinsurance activities which it is authorised to carry on;
  - (b) in the name of a holding or subsidiary company of an insurance or reinsurance undertaking, if use of the word does not indicate that the subsidiary or holding company is itself an insurance or reinsurance undertaking;
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- (c) by an intermediary or representative of an insurance or reinsurance undertaking which is permitted to use that word, when advertising or referring to its services on behalf of that insurance or reinsurance undertaking;
- (d) in the name of-
  - (i) any association of employees of an insurance or reinsurance undertaking which itself is permitted to use that word; or
  - (ii) any association of insurance brokers,

but only if the word does not indicate that the association itself is an insurance or reinsurance undertaking;

- (e) in the name of any government social insurance or assistance fund; or
- (f) with the prior written consent of the GFSC and in accordance with any conditions which the GFSC may impose in giving its consent.
- (3) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

279. Omitted.

### Rights acquired by existing reinsurance undertakings.

- 280.(1) A reinsurance undertaking which, before 10th December 2005–
  - (a) had its head offices in Gibraltar; and
  - (b) commenced reinsurance business there in accordance with an authorisation or entitlement under the provisions in force in Gibraltar,

is to be treated as a reinsurance undertaking authorised in accordance with these Regulations.

(2) A reinsurance undertaking to which sub-regulation (1) applies must comply with the provisions of these Regulations concerning the pursuit of reinsurance business and, in particular, is subject to the requirements of regulations 16(1)(b), (3)(b), (d), (e) and (f), 18 and 21 and Chapters 1 to 3 of Part 6.

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### **Transitional Provisions.**

281. The transitional provisions in Schedule 1 continue to have effect after IP completion day, but that Schedule is to be applied with any modifications necessary to take account of Gibraltar's withdrawal from the European Union and, in particular, any reference in that Schedule to an EU Directive is to read as a reference to that Directive as it applied immediately before IP completion day.

## Liquidation: supplementary provisions.

282. Schedule 2, which contains supplementary provisions relating to the liquidation of Gibraltar insurers and reinsurers, has effect.

### Swiss general insurers.

283. Schedule 3, which applies to Swiss general insurers that establish and operate a branch in Gibraltar or propose to do so, has effect.

#### Revocations.

- 284. The following Regulations are revoked—
  - (a) the Insurance Companies (Licensing Application) Regulations 1990;
  - (b) the Insurance Companies Act (General Insurance and Long Term Insurance Directives) Regulations 1995;
  - (c) the Insurance Companies (Conduct of Business) Regulations 1996;
  - (d) the Insurance Companies (Deposits) Regulations 1996;
  - (e) the Insurance Companies (Forms) Regulations 1996;
  - (f) the Insurance Companies (Prescribed Particulars) Regulations 1996;
  - (g) the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996;
  - (h) the Insurance Companies (Auditors) Regulations 1997;
  - (i) the Insurance Companies (Prudential Supervision) Regulations 1997;
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- (j) the Insurance Companies (Accounts and Statements) Regulations 1998;
- (k) the Insurance Companies (Parent Undertaking Solvency Margin Calculations) Regulations 2004;
- (l) the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 2004;
- (m) the Insurance Companies (Supplementary Supervision) Regulations 2007;
- (n) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2014;
- (o) the Financial Services (Insurance Companies) (Solvency II Directive) (Miscellaneous Amendments) Regulations 2015;
- (p) the Financial Services (Insurance Companies) (Solvency II Directive) (Enforcement and Regulatory Powers) Regulations 2015; and
- (q) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2015.

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## SCHEDULE 1 TRANSITIONAL PROVISIONS

Regulation 281

#### General measures.

- 1.(1) Without limiting regulation 11, insurance or reinsurance undertakings which, by 1st January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity must not be subject to Titles I, II and III of the Solvency 2 Directive until the dates set out in sub-paragraph (2) where either
  - (a) the undertaking has satisfied the GFSC that it will terminate its activity before 1st 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) sub-paragraph (1)(a) must be subject to Titles I, II and III of the Solvency 2 Directive (which are transposed by Parts 1 to 11 of these Regulations) from 1st January 2019 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity;
  - (b) sub-paragraph (1)(b) must be subject to Parts 1 to 11 of these Regulations from 1 January 2021 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity.
- (3) Insurance and reinsurance undertakings must be subject to the transitional measures in sub-paragraphs (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;
  - (b) the undertaking must 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 GFSC that it applies the transitional measures,

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but sub-paragraphs (1) and (2) must not prevent any undertaking from operating in accordance with Parts 1 to 11 of these Regulations.

- (4) *Omitted*.
- (5) Despite regulation 86, basic own-fund items must 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 of the Solvency 2 Directive, 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 regulation 86.
- (6) Despite regulation 86, basic own-fund items must 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 of the Solvency 2 Directive, 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.
- (7) Despite regulations 90, 91(3) and 94, the following must 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 must be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic
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currency of any EEA 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 submodule in accordance with the standard formula must be reduced by 80% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State;
- (c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk submodule in accordance with the standard formula must be reduced by 50% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA 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 must not be reduced in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State.
- (8) Despite regulations 90, 91(3) and 94, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk submodule in accordance with the standard formula without the option set out in regulations 97, must 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 regulation; 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 regulation, and the weight for the parameter expressed in paragraph (b) of the first sub-paragraph must 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.
- (9) Despite regulation 122(3) and without limiting sub-regulation (5) of that regulation, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in 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

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Solvency 2 Directive but do not comply with the Solvency Capital Requirement in the first year of application of the Solvency 2 Directive—

- (a) the GFSC must 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 concerned must, every three months, submit a progress report to the GFSC 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 sub-paragraph (a) must be withdrawn where that progress report shows that there was no significant progress in achieving the reestablishment 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 noncompliance of the Solvency Capital Requirement and the date of the submission of the progress report.
- (10) The GFSC 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.
- (11) Despite regulation 197(2) to (4)—
  - (a) the transitional provisions in sub-paragraphs (5) to (7) and paragraphs 2, 3, and 4 must apply mutatis mutandis at the level of the group; and
  - (b) the transitional provisions in sub-paragraph (9) must 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.

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- 2.(1) Insurance and reinsurance undertaking 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 must 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 regulation 67(2) and (2).
- (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 sub-paragraph (2)(a) must 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 sub-paragraph (2) must decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.
- (4) Where insurance and reinsurance undertakings apply the volatility adjustment referred to in regulation 70, the relevant risk-free interest rate term structure referred to in sub-regulation (2)(b) must be the adjusted relevant risk-free interest rate term structure set out in that paragraph.
- (5) The admissible insurance and reinsurance obligations must 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 Solvency 2 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
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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) regulation 68 must not apply to insurance and reinsurance obligations.
- (6) Insurance and reinsurance undertakings applying sub-paragraph (1) must-
  - (a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in regulation 70;
  - (b) not apply paragraph 3 of this Schedule;
  - (c) as part of their report on their solvency and financial condition referred to in regulation 52, 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.

- 3.(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 regulation 75.
- (2) The transitional deduction must 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 regulation 66 at the first date of the application of the Solvency 2 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 Solvency 2 Directive; and the maximum portion deductible must 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 Solvency 2 Directive the volatility adjustment referred to in regulation 70, the amount
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referred to in sub-paragraph (2)(a) must 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 sub-paragraph (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 sub-paragraph (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 Solvency 2 Directive.
- (6) Insurance and reinsurance undertakings which apply sub-paragraph (1)–
  - (a) must not apply paragraph 2;
  - (b) when they would not comply with the Solvency Capital Requirement without the application of the transitional deduction, must submit annually to the GFSC a report setting out the measures taken and the progress made to re-establish, at the end of the transitional period set out in sub-paragraph (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 regulation 52, must 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.

4.(1) Insurance and reinsurance undertakings that apply the transitional measures set out in paragraphs 2 and 3 must inform the GFSC as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures.

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- (2) The GFSC must 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 must submit to the GFSC 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 must submit annually a report to the GFSC 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 GFSC must revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

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### SCHEDULE 2 LIQUIDATION OF GIBRALTAR INSURERS AND REINSURERS

Regulation 282

#### Long term businesses not to be liquidated voluntarily.

1. Despite Chapter 1 of Part X of the Companies Act 2014, a company incorporated in Gibraltar which carries on long-term business must not be liquidated voluntarily.

#### Appointment of liquidator.

- 2.(1) An application for the appointment by the court of a liquidator of a Gibraltar insurer may be made by—
  - (a) the GFSC; or
  - (b) any ten or more holders of long term business policies who individually own one or policy or policies having an aggregate surrender value of not less than £100,000.
- (2) An application for the appointment by the court of a liquidator of a Gibraltar reinsurer may be made by the GFSC.
- (3) Without limiting section 153 of the Insolvency Act 2011, the grounds on which the GFSC may make an application include—
  - (a) that the company has failed to satisfy an obligation under the Act or these Regulations;
  - (b) that the company has failed to keep proper records of its insurance business and, as a result, the GFSC is unable to ascertain whether the company is financially sound; or
  - (c) in the case of a Gibraltar insurer, that the company has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance or reinsurance activities of the insurer in that jurisdiction.
- (4) The court must not appoint a liquidator on an application made under sub-paragraph (1)(b) unless the policyholders give security for costs in such amount as the court may determine.

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- (5) Where policyholders make an application under sub-paragraph (1)(b)–
  - (a) the policyholders must serve a copy of the application on the GFSC; and
  - (b) the GFSC is entitled to be heard on the application.

#### **Reduction of contracts.**

3. Where an insurer or reinsurer has been proved to be unable to pay its debts, the court may, if it thinks fit, instead of appointing a liquidator, reduce the amount of the insurer's or reinsurer's contracts on such terms and subject to such conditions as the court may think just.

#### Application of assets.

- 4.(1) Assets representing funds maintained in respect of long-term business must be applied only for meeting the liabilities of that business, and other assets of the company must be applied only towards meeting the other liabilities of the company:
- (2) Where in either case referred to in sub-paragraph (1), the value of the assets exceeds the amount of the liabilities attributable to them, the excess may be applied towards meeting any deficiency there may be in the assets attributable to the other business.

### Meetings of creditors.

5. The liquidator of a company which carries on other business as well as long-term business, in exercising the general powers in section 177 of the Insolvency Act 2011 or section 377 of the Companies Act 2014, must summon separate meetings of creditors in relation to the other business and the long-term business.

#### Delinquent directors, etc.

6. Where the court makes an order under section 402 of the Companies Act 2014 that any money or property be repaid or restored to the company or any sum be contributed to its assets, the court must include in its order a direction as to how the money, property or contribution is to be applied in relation to the long-term and other funds of the company.

### Continuation of long-term business.

- 7.(1) A liquidator carrying on the business of an insurer or reinsurer may agree to the variation of existing contracts but has no power to enter into new contracts of insurance.
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- (2) A liquidator may apply to the court for the appointment of a special manager for the long-term business.
- (3) The liquidator must serve on the GFSC a copy of any application made under sub-paragraph (2) and-
  - (a) the application must not be heard until 14 days have elapsed from the date of service; and
  - (b) the GFSC is entitled to be heard against the appointment of the proposed special manager.
- (4) The court may, on the application of the liquidator, any special manager or the GFSC, appoint an independent actuary to investigate the business and report on—
  - (a) the desirability of carrying on the business; or
  - (b) any reduction in the amount of the outstanding contracts which the independent actuary considers necessary for the successful continuation of long term business,

and on any such report, the court may reduce the amount of those contracts.

(5) The liquidator requires the leave of the court before transferring any long-term business.

#### Penalties.

8. A liquidator who contravenes paragraph 5 or 7 commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

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### SCHEDULE 3 SWISS GENERAL INSURERS

Regulation 283

### **Application**

1. This Schedule applies to Swiss general insurers who, in accordance with the UK-Swiss Agreement, establish and operate a branch in Gibraltar or propose to do so.

#### Interpretation.

- 2. In these Regulations-
  - "principal Gibraltar executive" means an officer or employee of a Swiss general insurer-
    - (a) who (either alone or jointly with others) is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar; and
    - (b) who-
      - (i) is not also responsible for the conduct of any insurance business carried on by the insurer elsewhere; and
      - (ii) does not have a subordinate who is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar.

"Swiss general insurer" means a body-

- (a) whose head office is in Switzerland;
- (b) which has permission in Gibraltar to carry on the regulated activities of effecting and carrying out of contracts of non-life insurance within the meaning of paragraph 22(1) of Schedule 2 to the Act; and
- (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.
- "UK-Swiss Agreement" means the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Direct Insurance other
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than Life Insurance (CP 26), as amended from time to time (which, by virtue of Article 43 of the Agreement, extends to Gibraltar)

### Approval of principal Gibraltar executive.

- 3.(1) A Swiss general insurer must not appoint a person as its principal Gibraltar executive unless—
  - (a) it has given the GFSC written notice of the proposed appointment of the person ("the candidate") to that position; and
  - (b) either-
    - (i) within three months of the date that notice under paragraph (a) was given, the GFSC has notified the insurer in writing that there is no objection to the candidate being appointed; or
    - (ii) that period has elapsed without the GFSC having given the insurer a written notice of objection.
- (2) A notice under sub-paragraph (1)(a) must-
  - (a) be in the form and manner that the GFSC directs;
  - (b) contain or be accompanied by any information that the GFSC reasonably requires; and
  - (c) contain a statement signed by the candidate confirming that the notice is given with the candidate's knowledge and consent.
- (3) The GFSC may issue a notice of objection under sub-paragraph (1)(b)(ii) if it appears to the GFSC that the candidate is not a fit and proper person to be appointed.
- (4) Before issuing a notice of objection the GFSC must give the insurer and the candidate a preliminary notice stating that—
  - (a) the GFSC is proposing to issue a notice of objection; and
  - (b) the insurer or the candidate may, within one month of the date of service of the preliminary notice, make written or oral representations to the GFSC.
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- (5) The GFSC is not be obliged to disclose to the insurer or the candidate any particulars of the ground on which the GFSC is proposing to issue a notice of objection.
- (6) The GFSC must consider any representations made in accordance with sub-paragraph (4)(b) in deciding whether to issue a notice of objection.
- (7) The GFSC must exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is the principal Gibraltar executive of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.

### Duty to notify change of executive or representative.

- 4.(1) A Swiss general insurer must promptly inform the GFSC if a person—
  - (a) ceases to be the insurer's principal Gibraltar executive; or
  - (b) becomes or ceases to be-
    - (i) a relevant executive of the insurer; or
    - (ii) the insurer's general representative.
- (2) A notice under sub-paragraph (1) must-
  - (a) be in the form and manner that the GFSC directs; and
  - (b) contain or be accompanied by any information that the GFSC reasonably requires.
- (3) The GFSC must, exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is a relevant executive or general representative of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.
- (4) In this paragraph—
  - "general representative" means a person designated as the insurer's representative in Gibraltar, who
    - (a) in the case of-
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- (i) an individual, is resident in Gibraltar; or
- (ii) a corporation, has a place of business in Gibraltar and itself has an individual representative resident in Gibraltar who is authorised to act generally and to accept service of any document, on behalf of the corporation in its capacity as the insurer's representative;
- (b) is not an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the insurer; and
- (c) is authorised to act generally, and to accept service of any document, on the insurer's behalf.

"relevant executive" means an employee of the insurer who, under the immediate authority of its principal Gibraltar executive—

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the insurer,

other than a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar.

#### Asset values.

5. A Swiss general insurer must ensure that the value of the assets of the business carried on by it in Gibraltar does not fall below the amount of the liabilities of that business, that value and amount being determined in accordance with any applicable valuation criteria.

### Grounds for exercise of powers of intervention.

6. Without limiting the exercise of any other powers, the GFSC's powers of intervention under Parts 7 and 10 of the Act are exercisable in relation to a Swiss general insurer which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.

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### SCHEDULE 4 SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA

Regulations 94 and 95

### Calculation of the Basic Solvency Capital Requirement.

1.(1) The Basic Solvency Capital Requirement must be equal to the following—

$$\operatorname{Basic}\operatorname{SCR} = \sqrt{\sum_{i,j}\operatorname{Corr}_{i,j}\times\operatorname{SCR}_i\times\operatorname{SCR}_j}$$

where-

SCR<sub>i</sub> denotes the risk module i;

SCR<sub>i</sub> denotes the risk module j; and

'i,j' means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR<sub>i</sub> and SCR<sub>i</sub> are replaced by the following–

SCR<sub>non-life</sub> denotes the non-life underwriting risk module;

SCR<sub>life</sub> denotes the life underwriting risk module;

SCR<sub>health</sub> denotes the health underwriting risk module;

SCR<sub>market</sub> denotes the market risk module; and

SCR<sub>default</sub> denotes the counterparty default risk module.

(3) The factor Corr<sub>i,j</sub> denotes the item set out in row i and column j of the following correlation matrix—

i∖j	Market	Default	Life	Health	Non-life
Market	1	0.25	0.25	0.25	0.25

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Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

### Calculation of the non-life underwriting risk module.

2.(1) The non-life underwriting risk module set out in regulation 95(2) must be equal to the following-

$$SCR_{\text{non-life}} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where-

SCR<sub>i</sub> denotes the sub-module i;

SCR<sub>i</sub> denotes the sub-module j; and

i,j means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR<sub>i</sub> and SCR<sub>i</sub> are replaced by the following–

SCR<sub>nl</sub> premium and reserve denotes the non-life premium and reserve risk sub-module, and

SCR<sub>nl catastrophe</sub> denotes the non-life catastrophe risk sub-module.

### Calculation of the life underwriting risk module.

3.(1) The life underwriting risk module set out in regulation 95(3) must be equal to the following-

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

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where-

SCR<sub>i</sub> denotes the sub-module i;

SCR<sub>j</sub> denotes the sub-module j; and

'i,j' means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR<sub>i</sub> and SCR<sub>j</sub> are replaced by the following-

SCR mortality denotes the mortality risk sub-module;

SCR longevity denotes the longevity risk sub-module;

SCR disability denotes the disability – morbidity risk sub-module;

SCR life expense denotes the life expense risk sub-module;

SCR revision denotes the revision risk sub-module;

SCR <sub>lapse</sub> denotes the lapse risk sub-module; and

SCR life catastrophe denotes the life catastrophe risk sub-module.

#### Calculation of the market risk module.

Structure of the market risk module

4.(1) The market risk module, set out in regulation 95(5) must be equal to the following:

$$SCR_{market} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where-

SCR<sub>i</sub> denotes the sub-module i;

SCR<sub>i</sub> denotes the sub-module j; and

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- 'i,j' means that the sum of the different terms should cover all possible combinations of i and j.
- (2) In the calculation, SCR<sub>i</sub> and SCR<sub>i</sub> are replaced by the following-
  - SCR interest rate denotes the interest rate risk sub-module;
  - SCR <sub>equity</sub> denotes the equity risk sub-module;
  - SCR property denotes the property risk sub-module;
  - SCR spread denotes the spread risk sub-module;
  - SCR concentration denotes the market risk concentrations sub-module; and
  - SCR currency denotes the currency risk sub-module.