

Subsidiary Legislation made under s. 118 of the Insurance Companies Act.

**INSURANCE COMPANIES (SUPPLEMENTARY  
SUPERVISION) REGULATIONS 2007**

**(LN. 2007/144)**

*Commencement*      **20.12.2007**

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**Transposing:**

Directive 73/239/EEC

Directive 2000/12/EC

Directive 79/267/EEC

Directive 2002/87/EC

Directive 92/49/EEC

Directive 2005/68/EC

Directive 92/96/EEC

Directive 2006/48/EC

Directive 93/6//EEC

Directive 2009/138/EC

Directive 93/22/EEC

Directive 2011/89/EU

Directive 98/78/EC

**EU Legislation/International Agreements involved:**

**Arrangement of Regulations**

**Regulation**

1. Title
2. Interpretation
3. Supplementary supervision
4. Application of supplementary supervision
- 4A. Level of application: mixed financial holding companies
5. Scope of supplementary supervision
6. Exclusions from supplementary supervision
7. Supervisory authority for exercising supplementary supervision
8. Availability and quality of information
9. Access to information
10. Cooperation between supervisory authorities
11. Intra-group transactions
12. Adjusted margin of solvency
13. Supplementary supervision of subsidiaries
14. Management body of insurance holding companies

**Schedule 1**

Calculation of adjusted solvency of insurers

**Schedule 2**

Supplementary supervision of insurers which are subsidiaries of insurance holding companies or non-EEA insurers

## INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION) REGULATIONS 2007

Subsidiary  
2007/144

*In exercise of the powers conferred on him by section 118 of the Insurance Companies Act and all other enabling powers, the Minister with responsibility for financial services has made the following regulations to transpose, in part, into the law of Gibraltar, Council Directive 2005/68/EC of 16 November 2005 on reinsurance which amends Directive 98/78/EC on the supplementary supervision of insurers and reinsurers—*

### **Title.**

1. These Regulations may be cited as the Insurance Companies (Supplementary Supervision) Regulations 2007.

### **Interpretation.**

2.(1) In these Regulations—

“Commission” has the meaning given to it in section 2(2) of the Financial Services (Insurance Companies) Act;

“insurance holding company” means a parent undertaking the main business of which is to acquire and hold participations in its subsidiaries, where those subsidiaries are exclusively or mainly insurers, reinsurers or non-EEA insurers, one at least of such subsidiaries being an insurer and which is not a mixed financial holding company;

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

“mixed financial holding company” means a parent undertaking which is not a regulated entity and which, together with its subsidiaries and other entities, constitutes a financial conglomerate, provided that at least one of its subsidiaries is a regulated entity having its head office in the EEA;

“parent undertaking” means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC and any undertaking which, in the opinion of the Commission, effectively exercises a dominant influence over another undertaking;

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

“participation” means the holding of a participating interest within the meaning of section 2(37) of the Act or the holding, directly or indirectly, of 20 % or more of the voting rights or capital;

“related insurer” means an insurer in which a participation is held by another insurer or which is a subsidiary;

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

“subsidiary” means a subsidiary undertaking within the meaning of article 1 of Directive 83/349/EEC and any undertaking over which, in the opinion of the Commission, a parent undertaking effectively exercises a dominant influence and all its subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the parent undertaking which is at the head of those undertakings.

(2) For the avoidance of doubt, in these Regulations “insurer” includes a reinsurer.

#### **Supplementary supervision.**

3. The Commission shall, in addition to its supervisory functions and powers under the Act, exercise supplementary supervision over any insurer to which these Regulations apply.

#### **Application of supplementary supervision.**

4. Subject to regulation 13, the Commission shall provide supplementary supervision over an insurer licensed in Gibraltar–

- (a) which is a participating undertaking in at least one Gibraltar or non-EEA insurer in accordance with regulations 8, 9, 11 and 12;
- (b) which is a subsidiary of an insurance holding company, a mixed financial holding company or a non-EEA insurer in accordance with regulations 8(2), 9, 11 and 13;
- (c) which is a subsidiary of a mixed activity insurance holding company in accordance with regulations 8(2), 9 and 11.

#### **Level of application: mixed financial holding companies.**

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**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007****Subsidiary  
2007/144**

4A.(1) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the Commission may, after consulting the other competent authorities concerned, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the Commission, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provision of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

(3) The Commission shall ensure that the European Banking Authority and the European Insurance and Occupational Pensions Authority are informed of any decisions taken under subregulation (1).

**Scope of supplementary supervision.**

5.(1) Where the Commission exercises supplementary supervision in accordance with regulation 4 it shall not imply that it is required to supervise such non-EEA insurer, insurance holding company, mixed financial holding company or mixed activity insurance holding company taken individually.

(2) Where the Commission exercises supplementary supervision he shall take into account the following undertakings referred to in regulations 8, 9, 11, 12 and 13–

- (a) related undertakings of the insurer;
- (b) participating undertakings in the insurer; and
- (c) related undertakings of a participating undertaking in the insurer.

(3) The Commission need not take into account in the supplementary supervision, undertakings having their registered office in a non-EEA State where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of paragraph 13 of Schedule 1 and paragraph 4 of Schedule 2.

**Exclusion from supplementary supervision.**

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**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007****Subsidiary  
2007/144**

6. Where the Commission exercises supplementary supervision he may decide on a case-by-case basis not to take an undertaking into account in the supplementary supervision if—

- (a) the undertaking which should be included is of negligible interest with respect to the objectives of the supplementary supervision of insurers; or
- (b) the inclusion of the financial situation of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary supervision of insurers.

**Supervisory authority for exercising supplementary supervision.**

7.(1) Supplementary supervision shall be exercised by the Commission only where an insurer is licensed in Gibraltar.

(2) Where a Gibraltar and one or more other insurers authorised in two or more EEA States have as their parent undertaking the same insurance holding company, non-EEA insurer, mixed financial holding company or mixed activity insurance holding company, the Commission and the supervisory authority of the EEA States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.

**Availability and quality of information.**

8.(1) An insurer which is subject to supplementary supervision by the Commission shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of such supplementary supervision.

(2) Nothing shall prevent insurers which are subject to supplementary supervision by the Commission and their related undertakings and participating undertakings from exchanging among themselves any information relevant for the purposes of such supplementary supervision.

**Access to information.**

9.(1) The Commission when exercising supplementary supervision shall have access to any information which would be relevant for the purpose of such supervision of an insurer.

(2) The Commission may require the undertakings referred to in regulation 5(2) to obtain the necessary information only if such information has been requested from the insurer and has not been supplied by it.

(3) The Commission may carry out, himself or through the intermediary of persons whom they appoint for that purpose, on-the-spot verification of the information referred to in paragraph 1 of—

- (a) the insurer;
- (b) a subsidiary of that insurer;
- (c) the parent undertakings of that insurer;
- (d) a subsidiary undertakings of a parent undertaking of that insurer.

(4) Where the Commission wishes to verify important information concerning an insurer situated in an EEA State which is a related insurer, a subsidiary, a parent undertaking or a subsidiary of a parent undertaking of the insurer subject to supplementary supervision, he shall ask the supervisory authority of that EEA State to have that verification carried out.

(5) Where the Commission receives such a request to carry out a verification as is mentioned in sub-regulation (4) he shall—

- (a) act on it within the limits of his jurisdiction by carrying out the verification himself; or
- (b) he may allow an inspector appointed under sections 101 and 102 of the Act to carry it out and produce a report under section 103 of the Act; or
- (c) allow the authorities making the request to carry it out.

(6) The competent authority which made the request under sub-regulation (5) may, if it so wishes, participate in the verification when it does not carry out the verification itself.

**Cooperation between supervisory authorities.**

10.(1) Where a Gibraltar insurer and one or more other insurers established in different EEA States are directly or indirectly related or have a common participating undertaking, the Commission shall communicate to the supervisory authority of each EEA State all relevant information which may allow or facilitate the exercise of supplementary supervision by those authorities and shall communicate of his own motion any information which appears to him to be essential for the other supervisory authority.

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**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007****Subsidiary  
2007/144**

(2) Information received and any exchange of information between the Commission and supervisory authority under these Regulations shall be subject to the restrictions on disclosure of information in accordance with Schedule 16 of the Act.

**Intra-group transactions.**

11.(1) The Commission when exercising supplementary supervision of an insurer shall supervise transactions which exceed £10,000 or its equivalent in another currency, between—

- (a) an insurer and—
  - (i) a related undertaking of the insurer;
  - (ii) a participating undertaking in the insurer;
  - (iii) a related undertaking of a participating undertaking in the insurer;
- (b) an insurer and any person who holds a participation in—
  - (i) the insurer or any of its related undertakings;
  - (ii) a participating undertaking in the insurer;
  - (iii) a related undertaking of a participating undertaking in the insurer.

(2) Without prejudice to the generality of sub-regulation (1), this regulation shall apply to the following transactions—

- (a) loans;
- (b) guarantees and off-balance-sheet transactions;
- (c) elements eligible for the margin of solvency;
- (d) investments;
- (e) reinsurance and retrocession operations;
- (f) agreements to share costs.

(3) An insurer shall report annually to the Commission significant transactions of the kind mentioned in sub-regulations (1) and (2).



(4) An insurer shall maintain adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions of the kind mentioned in sub-regulations (1) and (2) appropriately.

(5) The processes and mechanisms referred to in sub-regulation (4) shall be subject to overview by the Commission and if, on the basis of this information, it appears that the solvency of the insurer is, or may be, jeopardised, the Commission shall take such appropriate measures as he has powers to take under the Act in relation to the insurer.

**Adjusted margin of solvency.**

12.(1) Where the Commission exercises supplementary supervision in accordance with regulation 4 he shall require an adjusted margin of solvency calculated in accordance with Schedule 1.

(2) The calculation of the adjusted margin of solvency under sub-regulation (1) shall include related undertakings of a participating undertaking.

(3) If the calculation referred to in sub-regulation (1) demonstrates that the adjusted solvency is negative, the Commission shall take such appropriate measures as he has powers to take under the Act in relation to the insurer.

**Supplementary supervision of subsidiaries.**

13.(1) In the cases in regulation 4(b) the method of supplementary supervision shall be applied in accordance with Schedule 2.

(2) In the case referred to in Regulation 4(b) the calculation shall include all related undertakings of the insurance holding company, mixed financial holding company or the non-EEA insurer and shall be done in the manner provided for in Schedule 2.

(3) If, on the basis of that calculation, the Commission concludes that the solvency of a subsidiary insurer of the insurance holding company, mixed financial holding company or the non-EEA insurer is, or may be, jeopardised, he shall take such appropriate measures as he has powers to take under the Act in relation to the insurer.

**Management body of insurance holding companies.**

14.(1) This regulation applies to an insurance holding company incorporated in Gibraltar.

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**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007****Subsidiary  
2007/144**

(2) An insurance holding company shall take all reasonable steps to ensure that every person who is a director or manager of the business—

- (a) is a fit and proper person to hold that position; and
- (b) is suitably qualified and has sufficient experience to be able to perform his duties.

(3) An insurance holding company shall not appoint a person to a position by virtue of which the person will be concerned in the direction or management of the company unless it has previously notified the Commission of the proposal to make the appointment.

(4) An insurance holding company shall comply with any notice by the Commission directing it to provide it with such information, within such time as specified in the notice, concerning the reputation, qualifications and experience of its director and managers as he considers necessary.

(5) If the Commission is not satisfied on reasonable grounds that a person who is a director or manager of an insurance holding company—

- (a) is a fit and proper person;
- (b) is of sufficient good repute; or
- (c) is suitably qualified or has sufficient experience, to be a director or manager of the company,

he may, by notice, direct the company to take such action (including terminating the person's appointment as director or manager) within such time as specified in the notice, as it thinks fit.

(6) The Commission may, by further notice, vary or revoke a direction to an insurance holding company under this regulation to take effect from such date as may be specified in the notice.

(7) For the purposes of this section a person who is not a director of the insurance holding company but who, in the opinion of the Commission, effectively directs or has power to control the affairs of the company or is its chief executive, shall be considered a director of the company.

**CALCULATION OF THE ADJUSTED SOLVENCY OF INSURERS**

Regulation 12

**Part I**

**Choice of Calculation Method and General Principles.**

**Calculation method.**

1.(1) Subject to sub-paragraph (2), the calculation of the adjusted solvency of insurers referred to in regulation 4(a) shall be carried out according to method 1 specified in paragraph 14.

(2) The Commission may authorise an insurer or by notice direct an insurer to use method 2 or 3 specified in paragraph 15 or 16 respectively.

**Proportionality.**

2.(1) The calculation of the adjusted solvency of an insurer shall take account of the proportional share held by the participating undertaking in its related undertakings.

(2) Subject to sub-paragraph (3), when the related undertaking is a subsidiary and has a solvency deficit, the total solvency deficit of the subsidiary shall be taken into account.

(3) Where, in the opinion of the Commission, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, the Commission may authorise that the solvency deficit of the subsidiary be taken into account on a proportional basis.

(4) Where there are no capital ties between some of the undertakings in an insurance group, the Commission shall determine which proportional share shall be taken account of.

(5) In this schedule, “proportional share” means either, where method 1 or method 2 specified in paragraph 14 or 15 respectively is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking or, where method 3 specified in paragraph 16 is used, the percentages used for the establishment of the consolidated accounts.

**Elimination of double use of margin of solvency elements.****General treatment of margin of solvency elements.**

3.(1) In the calculation of the adjusted solvency of an insurer, the double use of elements eligible for the margin of solvency among the different insurers taken into account in that calculation shall be eliminated.

(2) When calculating the adjusted solvency of an insurer and where the methods described in paragraphs 14 to 16 do not provide for the elimination required by sub-paragraph (1), the following amounts shall be eliminated—

- (a) the value of any asset of that insurer which represents the financing of elements eligible for the margin of solvency of one of its related insurers;
- (b) the value of any asset of a related insurer of that insurer which represents the financing of elements eligible for the margin of solvency of that insurer; and
- (c) the value of any asset of a related insurer of that insurer which represents the financing of elements eligible for the margin of solvency of any other related insurer of that insurer.

**Treatment of certain elements.**

4.(1) Without prejudice to paragraph 3—

- (a) profit reserves and future profits arising in a related life insurer of the insurer for which the adjusted solvency is calculated; and
- (b) any subscribed but not paid-up capital of a related insurer of the insurer for which the adjusted solvency is calculated;

may only be included in the calculation in so far as they are eligible for covering the margin of solvency requirement of that related undertaking.

(2) Any subscribed but not paid-up capital—

- (a) which represents a potential obligation on the part of the participating undertaking;
- (b) of the participating insurer which represents a potential obligation on the part of a related insurer; and

**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007**

**Subsidiary  
2007/144**

- (c) of a related insurer which represents a potential obligation on the part of another related insurer of the same participating insurer;

shall be excluded from the calculation under sub-paragraph (1).

**Transferability.**

5.(1) If the Commission considers that certain elements eligible for the margin of solvency of a related insurer other than those referred to in paragraph 4 cannot effectively be made available to cover the margin of solvency requirement of the participating insurer for which the adjusted solvency is calculated, those elements may be included in the calculation only in so far as they are eligible for covering the margin of solvency requirement of the related undertaking.

(2) The sum of the elements referred to in paragraph 4 may not exceed the margin of solvency requirement of the related insurer.

**Elimination of the intra-group creation of capital.**

6.(1) When calculating the adjusted solvency, no account shall be taken of any element eligible for the margin of solvency arising out of reciprocal financing between the insurer and—

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

(2) No account shall be taken of any element eligible for the margin of solvency of a related insurer of the insurer for which the adjusted solvency is calculated when the element in question arises out of reciprocal financing with any other related undertaking of that insurer.

(3) For the purposes of this schedule, “reciprocal financing” exists when an insurer, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds an element eligible for the margin of solvency of the first undertaking.

(4) The adjusted solvency shall be calculated with the same frequency as that required for calculating the margin of solvency of insurers under the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations

and the value of the assets and liabilities shall be assessed in accordance with the Insurance Companies (Valuation of Assets and Liabilities) Regulations.

**Part III****Application of the calculation methods.****Related insurers.**

7.(1) The adjusted solvency calculation shall be carried out in accordance with the general principles and methods set out in this schedule.

(2) Where the insurer has more than one related insurer the adjusted solvency calculation shall be carried out by integrating each of these related insurers.

(3) In cases of successive participations (for example, where an insurer is a participating undertaking in another insurer which is also a participating undertaking in an insurer), the adjusted solvency calculation shall be carried out at the level of each participating insurer which has at least one related insurer.

**Waiving of calculation of adjusted solvency.**

8.(1) The Commission may waive the calculation of the adjusted solvency of an insurer if–

- (a) the insurer is a related undertaking of another insurer authorised in Gibraltar and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurer; or
- (b) if the insurer is a related undertaking of an insurance holding company or of a mixed financial holding company which has its registered office in Gibraltar and both the insurance holding company or mixed financial holding company and the related insurer are taken into account in the calculation carried out.

(2) The Commission may waive the calculation of the adjusted solvency of an insurer if it is a related insurer of another insurer, an insurance holding company or a mixed financial holding company which has its registered office in a EEA State, if the Commission has agreed to grant exercise of the supplementary supervision to the competent authority of that EEA State.

(3) The waiver under sub-paragraphs (1) and (2) may be granted only if the Commission is satisfied that the elements eligible for the margins of solvency

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## INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION) REGULATIONS 2007

Subsidiary  
2007/144

of the insurers included in the calculation are adequately distributed between those undertakings.

### **Related insurers in EEA States.**

9. The Commission may by notice direct that where the related insurer has its registered office in a EEA State other than that of the insurer for which the adjusted solvency calculation is carried out, the calculation shall take account, in respect of the related undertaking, of the solvency situation as assessed by the supervisory authority of that EEA State.

### **Intermediate insurance holding companies and intermediate mixed financial holding companies.**

10.(1) When calculating the adjusted solvency of an insurer which holds a participation in a related insurer or a non-EEA insurer, through an insurance holding company or a mixed financial holding company, the situation of the intermediate insurance holding company or intermediate mixed financial holding company shall be taken into account.

(2) For the sole purpose of undertaking the calculation in subparagraph (1) in accordance with the general principles and methods described in this Schedule, the insurance holding company or mixed financial holding company shall be treated as if it were subject to a zero solvency requirement and as if it were subject to the conditions laid down in the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations in respect of elements eligible for the solvency margin.

### **Related non-EEA insurers.**

11.(1) Subject to sub-paragraph (2), when calculating the adjusted solvency of an insurer which is a participating undertaking in a non-EEA insurer, the latter shall be treated solely for the purposes of the calculation, by analogy with a related insurer, by applying the general principles and methods specified in this schedule.

(2) Where the non-EEA State in which that undertaking has its registered office makes it subject to authorisation and imposes on it a solvency requirement at least comparable to that laid down in the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations, taking into account the elements of cover of that requirement, the Commission may by notice direct that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement by the non-EEA State in question.

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

12. When calculating the adjusted solvency of an insurer which is a participating undertaking in a credit institution, investment firm or financial institution, the rules laid down in the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations, on the deduction of such participations shall apply *mutatis mutandis*, as well as any provisions to allow alternative methods and to allow such participations not to be deducted.

**Non-availability of the necessary information.**

13. Where information necessary for calculating the adjusted solvency of an insurer, concerning a related undertaking with its registered office in an EEA State or a non-EEA State, is not available to the Commission, for whatever reason, the book value of that undertaking in the participating insurer shall be deducted from the elements eligible for the adjusted margin of solvency and, In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the adjusted margin of solvency.

**Part IV  
Calculation Methods.**

**Method 1: Deduction and aggregation method.**

14.(1) The adjusted solvency situation of the participating insurer is the difference between—

- (a) the sum of—
  - (i) the elements eligible for the margin of solvency of the participating insurer; and
  - (ii) the proportional share of the participating insurer in the elements eligible for the margin of solvency of the related insurer; and
- (b) the sum of—
  - (i) the book value in the participating insurer of the related insurer;
  - (ii) the solvency requirement of the participating insurer; and
  - (iii) the proportional share of the solvency requirement of the related insurer.



(2) Where the participation in the related insurer consists, wholly or in part, of an indirect ownership, then sub-paragraph (1)(b)(i) shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the amounts in sub-paragraph (1)(a)(ii) and (b)(iii) shall include the corresponding proportional shares of the elements eligible for the margin of solvency of the related insurer.

**Method 2: Requirement deduction method.**

15.(1) The adjusted solvency of the participating insurer shall be the difference between—

- (a) the sum of the elements eligible for the margin of solvency of the participating insurer; and
- (b) the sum of—
  - (i) the solvency requirement of the participating insurer; and
  - (ii) the proportional share of the solvency requirement of the related insurer.

(2) When valuing the elements eligible for the margin of solvency, participations shall be valued by the equity method, in accordance with the option set out in Article 59(2)(b) of Directive 78/660/EEC.

**Method 3: Accounting consolidation-based method.**

16.(1) The calculation of the adjusted solvency of the participating insurer shall be carried out on the basis of the consolidated accounts.

(2) The adjusted solvency of the participating insurer shall be the difference between the elements eligible for the margin of solvency calculated on the basis of consolidated data, and—

- (a) the sum of the solvency requirement of the participating insurer and of the proportional shares of the solvency requirements of the related insurers, based on the percentages used for the establishment of the consolidated accounts; or
- (b) the solvency requirement calculated on the basis of consolidated data.

(3) The provisions of the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations shall apply for the calculation of the elements

**1987-10**

**Financial Services (Insurance Companies)**

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**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)**

**Subsidiary  
2007/144**

**REGULATIONS 2007**

eligible for the margin of solvency and of the solvency requirement based on consolidated data.

SCHEDULE 2

Regulation 13

**SUPPLEMENTARY SUPERVISION OF INSURERS WHICH ARE  
SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A  
MIXED FINANCIAL HOLDING COMPANY OR A  
NON-EEA INSURER.**

1.(1) In the case of two or more insurers referred to in regulation 4(b) which are the subsidiaries of an insurance holding company, a mixed financial holding company or a non-EEA insurer and which are established in different EEA States, the Commission shall ensure that the method described in this schedule is applied in a consistent manner.

(2) The Commission shall exercise supplementary supervision with the same frequency as that laid down in the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations for calculating the margin of solvency of insurers.

2.(1) The Commission may waive the calculation provided for in this schedule with regard to an insurer if—

- (a) that insurer is a related undertaking of another insurer and if it is taken into account in the calculation provided for in this schedule carried out for that other undertaking;
- (b) that insurer and one or more other insurers licensed in Gibraltar have as their parent undertaking the same insurance holding company, a mixed financial holding company or non-EEA insurer and the insurer is taken into account in the calculation provided for in this schedule carried out for one of these other undertakings;
- (c) if that insurer and one or more other insurers authorised in EEA States have as their parent undertaking the same insurance holding company, mixed financial holding company or non-EEA insurer, and an agreement granting the exercise of the supplementary supervision covered by this schedule to the supervisory authorities of another EEA State has been concluded in accordance with regulation 7(2).

(2) Where insurance holding companies, mixed financial holding companies or non-EEA insurers hold successive participations (for example: an insurance holding company, a mixed financial holding company or a non-

**INSURANCE COMPANIES (SUPPLEMENTARY SUPERVISION)  
REGULATIONS 2007****Subsidiary  
2007/144**

EEA insurer, which is itself owned by another insurance holding company, mixed financial holding company or non-EEA insurer), in the insurance holding company, mixed financial holding company or non-EEA insurer, the Commission may apply the calculations provided in this schedule only at the level of the ultimate parent undertaking of the insurer which is an insurance holding company, a mixed financial holding company or a non-EEA insurer.

3.(1) The Commission shall ensure that calculations analogous to those described in Schedule 1 are carried out at the level of the insurance holding company, mixed financial holding company or non-EEA insurer.

(2) The analogy referred to in sub-paragraph (1) shall consist in applying the general principles and methods described in Schedule 1 at the level of the insurance holding company, mixed financial holding company or non-EEA insurer.

(3) For the sole purpose of the calculation under sub-paragraph (1), the parent undertaking shall be treated as if it were an insurer subject to—

- (a) a zero solvency requirement where it is an insurance holding company or a mixed financial holding company;
- (b) a solvency requirement determined in accordance with the principles of paragraph 11 of Schedule 1, where it is a non-EEA insurer, and is subject to the same conditions as laid down in the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations as regards the elements eligible for the margin of solvency.

4. Where information necessary for the calculation provided for in this schedule concerning a related undertaking with its registered office in an EEA State or a non-EEA State, is not available to the Commission, for whatever reason, the book value of that undertaking in the participating undertaking shall be deducted from the elements eligible for the calculation provided for in this schedule and in that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the calculation.