

Subsidiary Legislation made under s. 118 of the Insurance Companies Act and by s. 23 of the Interpretation and General Clauses Act.

**INSURANCE COMPANIES (SPECIAL PURPOSE
VEHICLES) REGULATIONS 2009****(LN. 2009/012)***Commencement* **5.3.2009**

Amending enactments	Relevant current provisions	Commencement date
LN. 2015/199	rr. 2(1), 4(1)(b), 7(i), (j), (k), Sch. 1, 2, 3	9.11.2015

EU Legislation/International Agreements involved:

Directive 73/239/EEC,
Directive 92/49/EEC,
Directive 98/78/EC
Directive 2002/83/EC
Directive 2005/68/EC

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INSURANCE COMPANIES (SPECIAL PURPOSE VEHICLES) REGULATIONS 2009

Subsidiary
2009/012

In exercise of the powers conferred on it by section 118 of the Insurance Companies Act and by section 23 of the Interpretation and General Clauses Act, and all other enabling powers, the Government has made the following regulations to transpose, in part, into the law of Gibraltar Directive 2005/68/EC of 16 November 2005 on reinsurance.

Title and commencement.

1. These Regulations may be cited as the Insurance Companies (Special Purpose Vehicles) Regulations 2009 and come into operation on the day of publication.

Interpretation.

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

“cession undertaking” means an insurer making a cession, or a reinsurer making a retrocession, under a contract;

“EEA SPV” means an SPV whose head office is in an EEA State and which is authorised in accordance with Article 46 of the reinsurance Directive;

“EEA reinsurer” means a reinsurance company—

- (a) which is incorporated in or formed under the law of an EEA State;
- (b) whose head office is in that EEA State; and
- (c) which is authorised in accordance with Article 3 of the reinsurance Directive (as extended, where applicable, by the EEA Agreement);

“licensed SPV” means an SPV which is licensed in Gibraltar in accordance with these Regulations;

“licensed reinsurer” means a reinsurer which holds a valid licence issued under the provisions of the Act;

“protected cell company” means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Protected Cell Companies Act 2001;

“reinsurance Directive” means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Directives 73/239/EEC, 92/49/EEC, 98/78/EC and 2002/83/EC; and

“special purpose vehicle” (“SPV”) means an undertaking, whether incorporated or not, other than an existing insurer or reinsurer, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of such a vehicle.

(2) Expressions, other than those in sub-regulation (1), used in these Regulations which are also used in the reinsurance Directive shall have the same meaning for the purposes of these Regulations as they have for the purposes of the reinsurance Directive.

General Restriction.

3.(1) No person shall carry on reinsurance business of the kind to which these Regulations apply in or from within Gibraltar except in compliance with a licence issued under this regulation.

(2) The Commission may license an SPV to carry on in or from within Gibraltar reinsurance business which consists of assuming risks of such particular kind from insurers or reinsurers as may be specified in the licence.

(3) A person who contravenes the provisions of sub-regulation (1) shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for two years and to a fine, or on summary conviction to a fine not exceeding level 4 on the standard scale.

General criteria for a licence.

4.(1) The Commission shall not issue a licence to an SPV—

- (a) unless it is incorporated in or formed under the law of Gibraltar and whose head office is in Gibraltar;
- (b) unless its objects are limited to carrying on business as an SPV, or, in the case of a protected cell company, the purposes for which the protected cell company is established are limited to carrying on business as an SPV;

- (c) if it has an issued share capital, any part of which was issued after the commencement of these Regulations, but is not fully paid up;
- (d) if it appears to it that any director, manager or officer of the SPV is not a fit and proper person to hold the position held by him or does not have the professional qualifications and experience necessary to operate an SPV;
- (e) if it appears to it that any controller having a qualifying holding is not a fit and proper person to be such a controller; and
- (f) if it appears to it that any trustee of the assets or shares of the SPV is not a fit and proper person to hold that position.

Application for a licence.

5.(1) An application by an SPV for a licence to carry on reinsurance business in or from within Gibraltar shall be addressed to the Commission and shall be accompanied by such information as is required by regulation 6.

(2) The Commission may require an SPV to submit such further information as it may reasonably consider necessary for the assessment of the application.

Determination of applications.

6.(1) The Commission shall only issue a licence to an SPV if—

- (a) the SPV has submitted an application to the Commission in such form as may be prescribed with such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with these Regulations; and
- (b) the Commission is satisfied on the basis of those proposals, forecasts, the information required under sub-regulations (2) and (3) and any other information required by it, that the application ought to be granted.

(2) An application for a licence under sub-regulation (1)(a) shall be accompanied by—

- (a) a business plan which shall include the information required under sub-regulation (3);
 - (b) a copy of the proposed SPV contract or a statement containing a description of that contract which shall include any triggering event and the aggregate limit of the SPV contract;
 - (c) a copy of the SPV's memorandum and articles of association; and
 - (d) information about and the identities of—
 - (i) the directors or managers of the SPV and their professional qualifications and experience;
 - (ii) any controller of the SPV with a qualifying holding and the extent of that holding expressed as a percentage of the shares of the SPV;
 - (iii) any trustee holding the assets or shares of the SPV; and
 - (iv) the persons who provide or will provide management, accounting and other professional services.
- (3) The business plan required under sub-regulation (2) shall include—
- (a) a description of the SPV's objects, the risks to be covered and its structure and accountabilities;
 - (b) financial projections which should demonstrate that the SPV will be fully funded under all reasonably foreseeable scenarios, taking into account operating costs;
 - (c) a forecast opening balance sheet position;
 - (d) independent legal confirmation that the agreements surrounding the operation of the SPV are legally effective and that these agreements are such as to ensure that the repayment rights of debt holders are subordinated to the SPV's reinsurance obligations; and
 - (e) details of third party agreements if administration systems and internal controls functions are to be outsourced by the SPV.

(4) The Commission shall decide an application for a licence within six months of receiving all the information referred to in this regulation and if it refuses to issue the licence the Commission shall inform the SPV in writing of the reasons for the refusal and of the SPV's right of appeal against the decision.

Duties of Licensees.

7. Every licensed SPV shall—

- (a) maintain sound administrative and accounting procedures, adequate internal control mechanisms and risk management procedures;
- (b) meet accounting, prudential and statistical information requirements as may be imposed by the Commission;
- (c) maintain an adequate margin of solvency by ensuring that at all times it is fully funded under all reasonably foreseeable scenarios, taking into account operating costs;
- (d) not issue debt securities, unless the documents specifying the rights of the holders of the securities—
 - (i) make it clear that the SPV is a legal entity separate from any third party involved in the establishment of the SPV;
 - (ii) state the manner in which claims relating to such securities rank as between different security holders and limited in the event of insufficient funds; and
 - (iii) make it a condition of securities issued that the holders of the securities undertake not to initiate or participate in insolvency proceedings against it until those securities are discharged.
- (e) cap its reinsurance liabilities at a level which is no greater than the value of the assets available to fund those liabilities;
- (f) maintain prudent investment principles in accordance with regulation 8 for its assets and liabilities;
- (g) ensure that under the terms of any issue of debt securities or other financing arrangement used to fund its liabilities, the rights of the providers of that debt or other financing are fully

- subordinated to the claims of creditors under its contracts of reinsurance;
- (h) only enter into contracts or otherwise assume obligations which are necessary for it to give effect to the reinsurance arrangements which represent the special purpose for which it has been established;
 - (i) include in each of its contracts of reinsurance terms which secure that its aggregate maximum liability at any time under those contracts of reinsurance does not exceed the amount of its assets at that time;
 - (j) have its assets held by it or on its behalf or on behalf of the ceding undertaking in a manner that ensures adequate security of the assets; and
 - (k) hold a level of capital of £500 or such amount as is prescribed by the Commission with the Minister's consent from time to time.

Restriction on the use of the words "special purpose vehicle".

8.(1) Subject to sub-regulation (2), no person other than a licensed SPV or an EEA SPV shall use the words "special purpose vehicle" or "insurance special purpose vehicle" or any derivative or cognate expressions thereof, in relation to or in connection with any business carried on in or from within Gibraltar in such manner as to indicate or cause people to believe that it is carrying on the business of an SPV.

(2) Sub-regulation (1) shall not apply to a representative or authorised agent of an SPV, when advertising or referring to its services, provided that the SPV is permitted under the terms of sub-regulation (1) to use the words which the representative or agent proposes to use.

(3) A person who uses words in contravention of this section is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine or, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Register of licences.

9. Section 15 of the Act under which the Commission maintains a register of licences and publishes lists of current holders of licences issued under the

Act shall likewise apply to licences issued, renewed, varied or cancelled under these Regulations.

Modification of provisions in the Act.

10. For the purposes of these Regulations—

- (a) the sections and schedules of the Act listed in Schedule 1 shall apply, *mutatis mutandis*, to SPV's as they apply to Gibraltar insurers;
- (b) the sections and schedules of the Act listed in Schedule 2 shall apply, *mutatis mutandis*, to the recognition in EEA States of Gibraltar SPV's as they apply to the recognition of Gibraltar insurers; and
- (c) the sections and schedules of the Act listed in Schedule 3 shall apply, *mutatis mutandis*, to EEA SPV's as they apply to EEA insurers carrying on business in Gibraltar.

Administrative notices.

11.(1) The Commission shall cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which it proposes to exercise its functions under these Regulations, including, in particular, its powers to grant, revoke or restrict authorisation or to impose conditions of general application on SPV's.

(2) The Commission may also publish with the consent of the Minister codes of practice and guidance notes as administrative instruments to facilitate compliance with the requirements of these Regulations and publish with the consent of the Minister in the form of administrative notices under this regulation criteria to facilitate compliance in Gibraltar with the provisions of the reinsurance Directive relating to SPV's.

SCHEDULE 1

Regulation 10

**PROVISIONS IN THE ACT THAT APPLY TO SPV's AS THEY
APPLY TO GIBRALTAR INSURERS****Sections**

21. Licensed insurer not to carry on other business.
24. Gibraltar companies may be required to change name.
- 24A. Gibraltar applicants.
27. Restrictions on issue of licence by the Commission.
28. Criteria for determining applications.
32. Form and contents of licence.
33. Notice of issue of licence.
34. Duration of licence.
35. Licence not transferable.
36. Display of licence.
37. Surrender of licence.
38. Lost licence, etc.
39. Change of name.
40. Approval of proposed managing director or chief executive.
41. Approval of proposed controller where section 40 does not apply.
42. Approval of acquisition of notifiable holding in Gibraltar insurer.
43. Further provisions with respect to controllers of Gibraltar insurers.
44. Duty to notify change of director, controller or manager.
47. Appointment of auditors.
48. Manner of audit.
- 48A. Communication by auditor with the Commission.
49. Accounts to be kept in Gibraltar.
50. Annual accounts.
51. Change of financial year.
52. Submission of accounts and statements.
54. Extension of time.
55. Power for Commission to call for accounts, etc.
56. Copies of accounts.
- 56A. Documents deposited with the Commission.
57. Offences under Part V by licensed insurers.
60. Financial recovery plan.
62. Failure to maintain technical reserves.
- 62A. Failure to maintain a margin of solvency (provided that section 62A shall apply as if the reference to section 59 were a reference to regulation 7(c) of these Regulations).
63. *Omitted.*

- 63A. General business - equalisation reserve.
- 64A. Form and situation of assets.
- 64B. Adequacy of assets.
- 65. Maintenance of assets in Gibraltar.
- 66. Custody of assets.
- 66A. Prohibition on disposal of assets.
- 66B. Limitation of premium income.
- 67. Grounds for exercise of powers of intervention.
- 69. Determination of the value of assets and the amount of liabilities and the matching thereof.
- 70. Offences by licensed insurers.
- 70A. Insurance Advertisements.
- 70D. Penalties and offences.
- 91. Transfers of long term and general business.
- 92. Issue of certificates by the Commission.
- 93. Effect of transfers authorised in EEA States.
- 94. Offences under Part IX by licensed insurers.
- 98. Powers to obtain information and require production of documents.
- 99. Duty to furnish information.
- 100. Power for Commission to issue directions.
- 100A. General investigations.
- 100B. Privilege from disclosure.
- 101. Appointment of inspectors.
- 102. Powers of inspectors.
- 103. Inspector's report.
- 104. Duty to produce records, etc.
- 105. Power to prohibit insurers from undertaking new business.
- 105A. Notice of withdrawal under section 105.
- 105B. Suspension of authorisation in urgent cases.
- 106. Final withdrawal of authorisation.
- 107. Grounds for the exercise of powers of intervention.
- 108. Notice of proposed exercise of powers on ground of unfairness of certain persons.
- 109. Rescission, variation and publication of requirements.
- 111. Right of appeal.
- 112. Powers of the court.
- 114A. Law applicable to certain contracts of insurance.
- 115. False statements, etc.
- 116. Criminal liability of directors, etc.
- 117. General penalty.

Schedules

- 8. Winding-up of insurance companies incorporated in Gibraltar.
- 9. Law applicable to certain contracts of insurance.

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10. Transfers of insurance business.
11. Further provisions with respect to controllers of Gibraltar insurers.
15. Criteria of sound and prudent management.

SCHEDULE 2

Regulation 10

**PROVISIONS IN THE ACT THAT APPLY TO THE RECOGNITION
OF GIBRALTAR SPV's IN EEA STATES AS THEY APPLY TO THE
RECOGNITION OF GIBRALTAR INSURERS**

Section 90B. Recognition in EEA States of Gibraltar insurers.

Schedule 14. Recognition in EEA States of Gibraltar insurers (provided that subparagraph 1(3) of schedule 14 shall apply as if the reference to “the minimum margin of solvency calculated in accordance with the Solvency Directive” were a reference to “the minimum margin of solvency calculated in accordance with regulation 7(c) of these Regulations”).

SCHEDULE 3

Regulation 10

**PROVISIONS IN THE ACT THAT APPLY TO THE RECOGNITION
IN GIBRALTAR OF EEA SPV's AS THEY APPLY TO THE
RECOGNITION OF EEA INSURERS**

Sections

- 24B. Applicants from EEA States, etc.
- 64. Insurers supervised in EEA States.
- 90A. Recognition in Gibraltar of EEA insurers.

Schedule 13. Recognition in Gibraltar of EEA insurers (provided that subparagraph 1(3) of schedule 13 shall apply as if the reference to “the minimum margin of solvency calculated in accordance with the Solvency Directive” were a reference to “the minimum margin of solvency calculated in accordance with the relevant legislation applicable to SPVs in that home State”).