SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4350 of 16 March, 2017

LEGAL NOTICE NO. 46 OF 2017.

FINANCIAL SERVICES (INSURANCE COMPANIES) (SOLVENCY II DIRECTIVE) ACT 2015

INTERPRETATION AND GENERAL CLAUSES ACT

FINANCIAL SERVICES (INSURANCE COMPANIES) (SOLVENCY II DIRECTIVE) ACT 2015 (AMENDMENT) REGULATIONS 2017

In exercise of the powers conferred upon the Minister by sections 100 and 178 of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015, and conferred upon the Government by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to further transpose Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), the Minister and the Government have made the following Regulations-

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 (Amendment) Regulations 2017.

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

Amendment of 2015 Act.

2.(1) The Financial Services (Insurance Companies) (Solvency II Directive) Act 2015 is amended as follows.

(2) After section 1 insert–

"Overview.

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

(a) the taking-up and pursuit of the self-employed activities of direct insurance and reinsurance;

(b) the supervision of insurance and reinsurance groups;

(c) the reorganisation and winding-up of direct insurance undertakings.

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

(3) In section 2–

(a) after the definition of "capital add-on" insert–

""captive insurance undertaking" means an insurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of section 103; or

(ii) by a non- financial undertaking; and

(b) the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

"captive reinsurance undertaking" means a reinsurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of section 103; or

(ii) a non-financial undertaking; and

(b) the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

"close links" means a situation in which two or more natural or legal persons are–

(a) linked by control or participation; or

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

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

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

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

(b) after the definition of "the Directive" insert–

""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;";

(c) after the definition of "EIOPA" insert–

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

(d) after the definition of "external credit assessment institution" insert–

""financial undertaking" means any of the following entities–

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC respectively;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of section 103;

(c) an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2004/39/EC; or

(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

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

(e) after the definition of "Gibraltar solvency II firm" insert–

""home Member State" means–

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

(b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or

(c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

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

(f) after the definition of "the Insurance Companies Act" insert–

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

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

"large risks" means–

(a) risks falling within Classes 4, 5, 6, 7, 11 and 12 of Part 1 of Schedule 1 to the Insurance Companies Act;

(b) risks falling within Classes 14 and 15 of Part 1 of that Schedule, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risks falling within Classes 3, 8, 9, 10, 13 and 16 of Part 1 of that Schedule, where the policyholder carries on a business in respect of which at least two of the following criteria are exceeded–

(i) a balance-sheet total of EUR 6.2 million;

(ii) a net turnover (within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies) of EUR 12.8 million;

(iii) an average number of 250 employees during the financial year;

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

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

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

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

"Member State in which the risk is situated" means any of the following–

(a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

(b) the Member State of registration, where the insurance relates to vehicles of any type;

(c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;

(d) in all other cases, the Member State in which either of the following is situated–

(i) the habitual residence of the policy holder; or

(ii) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

"Member State of the commitment" means the Member State in which either of the following is situated–

(a) the habitual residence of the policy holder;

(b) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;";

(g) after the definition of "the Minister" insert–

""national bureau" means a national insurers' bureau as defined in Article 1(3) of Directive 72/166/EEC;

"national guarantee fund" means the body referred to in Article 1(4) of Directive 84/5/EEC;";

(h) after the definition of "the Omnibus 2 Directive" insert–

""operational risk" means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

"outsourcing" means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an

activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

"probability distribution forecast" means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;";

(i) after the definition of "the professional secrecy provisions" insert–

""qualifying central counterparty" means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised in accordance with Article 25 of that Regulation;

"qualifying holding" means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or voting rights, or which makes it possible to exercise a significant influence over the management of that undertaking;

"regulated market" means either of the following–

(a) in the case of a market situated in a Member State, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC; or

(b) in the case of a market situated in a third country, a financial market which fulfils the following conditions–

(i) it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

"reinsurance" means–

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

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

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

(j) after the definition of "solvency capital requirement" insert–

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

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

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

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

(k) Omit subsection (5).

(4) After section 3 insert–

"References to repealed Directives.

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

(5) In section 98–

(a) re-number the existing section as subsection (1); and

(b) after that subsection insert–

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

(6) In section 146, after subsection (3) insert–

"(3A) As an exception to subsection (3), in respect of the effects of reorganisation measures upon employment contracts and employment relationships, those contracts and relationships shall be governed exclusively by the laws of the Member State applicable to them.".

(7) In section 151, after subsection (2) insert–

"(3) As an exception to subsection (1), in respect of the effects of winding-up proceedings upon employment contracts and employment relationships, those contracts and relationships

shall be governed exclusively by the laws of the Member State applicable to them.".

(8) Omit section 177.

(9) In Schedule 1, in paragraph 24(5), omit "or sub-paragraph (3)".

(10) Omit Schedule 6.

Amendment of Insurance Companies Act.

3.(1) The Financial Services (Insurance Companies) Act is amended as follows.

(2) In section 2, in subsection (2)–

(a) after the definition of "authorised Gibraltar representative" insert–

""close links" means a situation in which two or more natural or legal persons are–

(a) linked by control or participation; or

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

(b) after the definition of "Community co-insurance operation" insert–

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

(c) after the definition of "EEA State" insert–

""establishment" of an undertaking means its head office or any of its branches;".

(3) For section 5 substitute–

"Ancillary risks.

5.(1) An insurer which is authorised to insure a principal risk within one or more of the Classes of general business specified in Part 1 of Schedule 1 may also insure ancillary risks included in another of those Classes without the need for further authorisation if those 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.

(2) Subject to subsection (3), the risks included in Classes 14, 15 and 17 of that Part shall not be regarded as risks ancillary to other classes.

(3) Legal expenses insurance within Class 17 of that Part may be regarded as a risk ancillary to Class 18 of that Part where the conditions in subsection (1) are met and either–

(a) the main risk relates solely to the provision of assistance for 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.".

(4) After section 6 insert–

"Application to Solvency II firms.

6A. In relation to an insurer or reinsurer which is within the scope of the Solvency Directive, this Act shall be interpreted and applied in a manner which is consistent with the Solvency Act and, if any conflict arises between a provision of this Act and a provision of the Solvency Act, the Solvency Act shall prevail.".

(5) In section 16A, after subsection (1) insert–

"(1A) An insurer which is authorised under subsection (1) to carry on insurance business of a particular Class shall obtain a further authorisation from the Commission before carrying on–

(a) insurance business of another Class; or

(b) where the existing authorisation is for some of the risks within a particular Class, other insurance business within that Class.

(1B) An authorisation under subsection (1)–

(a) shall be granted for one or more of the Classes of insurance business specified in Schedule 1 or 2;

(b) shall cover each authorised Class entirely, unless the applicant wishes it to cover only some of the risks within a particular Class; and

(c) shall not include within a particular Class any risk which forms part of another Class.

(1C) An insurer to which the Solvency Act applies may engage in the assistance activity referred to in section 5(2) of that Act only if it is authorised under this Act to carry on insurance business within Class 18 of Part 1 of Schedule 1 and, where it does so, the Solvency Act shall apply to the operations in question.

(1D) Subsections (1A), (1B)(c) and (1C) apply without limiting section 5.".

(6) In section 27, for subsections (1) and (2) substitute–

"(1) The Commission shall not issue a licence to an applicant if it appears to the Commission that–

(a) the applicant is an undertaking which is closely linked with any person; and

(b) the Commission would be prevented from exercising its supervisory functions effectively in relation to the applicant by–

(i) the applicant's close links with that person;

(ii) the non-EEA measures to which that person is subject; or

(iii) the difficulties involved in enforcing those measures.

(2) In subsection (1) "non-EEA measures" means the laws, regulations or administrative provisions of a country or territory outside the EEA.".

(7) In section 29, for subsection (7) substitute–

"(7) The appointment of a representative does not constitute–

(a) the opening of a branch for the purpose of Article 145 of the Solvency Directive; or

(b) the opening of a branch or the creation of an establishment within the meanings given in Article 21(6) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.".

(8) In section 72A, after subsection (6) insert–

"(6A) The other conditions and legal effects of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policy holder that the contract has been concluded.".

(9) In section 87E–

(a) in subsection (1), for the opening words substitute–

"(1) This Part applies to legal expenses insurance within Class 17 of Part 1 of Schedule 1 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.

(1A) This part does not apply to–";

(b) in subsection (2), for "(1)" substitute "(1A)"; and

(c) in subsection (3), for "Class 17 of Part I of Schedule 1" substitute "subsection (1)".

(10) In Schedule 12, after paragraph 1(3)(d) insert–

"(dd) the policy conditions, both general and special;".

(11) In Schedule 13, in paragraph 11(1) for paragraph (aa) substitute–

"(aa) it makes a financial contribution towards the financing of the Motor Insurers' Bureau and its guarantee fund which–

(i) relates to risks, other than carrier's liability, within Class 10 of Part 1 of Schedule 1 covered by way of provision of services; and

(ii) is calculated on the same basis as for non-life insurance undertakings covering those risks through an establishment situated in Gibraltar, and by reference to the insurer's premium income from that class in Gibraltar or the number of risks in that class covered there; and".

(12) In Schedule 14, in paragraph 11(1)–

(a) for the definition of "national bureau" substitute–

""national bureau" means a national insurers' bureau as defined in Article 1(3) of Directive 72/166/EEC;"; and

(b) for the definition of "national guarantee fund" substitute–

"national guarantee fund" means the body referred to in Article 1(4) of Directive 84/5/EEC;".

Amendment of the Financial Services (Occupational Pensions Institutions) Act 2006.

4.(1) The Financial Services (Occupational Pensions Institutions) Act 2006 is amended as follows.

(2) Omit section 4A.

(3) In section 10, in subsection (1), for paragraph (ba) substitute–

"(ba) an institution to which section 13(1) applies is failing to hold additional assets in accordance with that section.".

(4) In section 13, for subsection (2) substitute–

"(2) The Schedule applies for the purposes of calculating the minimum amount of the additional assets.".

(5) After section 19, insert the following Schedule–

"SCHEDULE

CALCULATING THE MINIMUM ADDITIONAL ASSETS

Available solvency margin.

1.(1) An institution to which section 13(1) applies must at all times and in respect of its entire business have an adequate available solvency margin which is at least equal to that required by this Act.

(2) The available solvency margin shall consist of the assets of the institution free of any foreseeable liabilities, less any intangible items, including–

(a) the paid-up share capital or, in the case of an institution taking the form of a mutual undertaking, the effective initial fund plus any accounts of the members of the mutual undertaking which fulfil the following criteria–

(i) the memorandum and articles of association must stipulate that payments may be made from those accounts to members of the mutual undertaking only in so far as this does not cause the available solvency margin to fall below the required level or, after the dissolution of the undertaking, where all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in sub-paragraph (i) for reasons other than the individual termination of membership in the mutual undertaking, that the Authority must be notified at least one month in advance and can prohibit the payment within that period; and

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the Authority has declared that it has no objection to the amendment, without prejudice to the criteria in sub-paragraphs (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities; and

(c) the profit or loss brought forward after deduction of dividends to be paid.

(3) The available solvency margin shall be reduced by the amount of own shares directly held by the institution.

(4) The available solvency margin may also comprise–

(a) cumulative preferential share capital and subordinated loan capital up to 50% of the lesser of the available solvency margin and the required solvency margin, no more than 25% of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that binding agreements exist under which, in the event of the bankruptcy or liquidation of the institution, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those referred to in paragraph (a), to a maximum of 50% of the available solvency margin, or the required solvency margin, whichever the lesser, for the total of such securities, and the subordinated loan capital referred to in paragraph (a) provided they fulfil the following conditions–

(i) they must not be repaid on the initiative of the bearer or without the prior consent of the Authority;

(ii) the contract of issue must enable the institution to defer the payment of interest on the loan;

(iii) the lender's claims on the institution must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the institution to continue its business; and

(v) only fully paid-up amounts must be taken into account.

(5) For the purposes of sub-paragraph (4)(a), subordinated loan capital shall also fulfil the following conditions–

(a) only fully paid-up funds shall be taken into account;

(b) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the institution shall submit to the Authority for its approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the five years before the repayment date. The Authority may authorise the early repayment of such loans provided application is made by the issuing institution and its available solvency margin will not fall below the required level;

(c) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the Authority is specifically required for early repayment. In the latter event the institution shall notify the Authority at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The Authority shall authorise repayment only where the institution's available solvency margin will not fall below the required level;

(d) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the institution, the debt will become repayable before the agreed repayment dates; and

(e) the loan agreement may be amended only after the Authority has declared that it has no objection to the amendment.

(6) Upon application, with supporting evidence, by the institution to the Authority and with the agreement of the Authority, the available solvency margin may also comprise–

(a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium;

(b) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

(c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25% of that share capital or fund, up to 50% of the available or required solvency margin, whichever is the lesser.

(7) The figure referred to in sub-paragraph (6)(a) shall not exceed 3.5% of the sum of the differences between the relevant capital sums of life assurance and occupational retirement provision activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset.

Required solvency margin.

2.(1) Subject to paragraph 3, the required solvency margin shall be determined in accordance with sub-paragraphs (2) to (6) according to the liabilities underwritten.

(2) The required solvency margin shall be equal to the sum of the following results–

(a) the first result:

a 4% fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, which shall not be less than 85%, for the previous financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions;

(b) the second result:

for policies on which the capital at risk is not a negative figure, a 0.3% fraction of such capital underwritten by the institution shall be multiplied by the ratio, which shall not be less than 50%, for the previous financial year, of the total capital at risk retained as the institution's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance.

for temporary assurances on death of a maximum term of three years, that fraction shall be 0.1%. For such assurance of a term of more than three years but not more than five years, that fraction shall be 0.15%.

(3) For supplementary insurances referred to in Article 2(3)(a)(iii) of the Solvency II Directive, the required solvency margin shall be equal to the required solvency margin for institutions as laid down in paragraph 4.

(4) For capital redemption operations referred to in Article 2(3)(b)(ii) of the Solvency II Directive, the required solvency margin shall be equal to a 4% fraction of the mathematical provisions calculated in compliance with sub-paragraph (2)(a).

(5) For operations referred to in Article 2(3)(b)(i) of the Solvency II Directive, the required solvency margin shall be equal to 1% of their assets.

(6) For assurances covered by Article 2(3)(a)(i) and (ii) of the Solvency II Directive linked to investment funds and for the operations referred to in Article 2(3)(b)(iii), (iv) and (v) of that Directive, the required solvency margin shall be equal to the sum of the following–

(a) in so far as the institution bears an investment risk, a 4% fraction of the technical provisions, calculated in accordance with sub-paragraph (2)(a);

(b) in so far as the institution bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1% fraction of the

technical provisions, calculated in accordance with sub-paragraph (2)(a);

(c) in so far as the institution bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25% of the net administrative expenses of the previous financial year pertaining to such business;

(d) in so far as the institution covers a death risk, a 0.3% fraction of the capital at risk calculated in accordance with sub-paragraph (2)(b).

(7) In this paragraph "the Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), as amended from time to time.

Guarantee fund.

3.(1) One third of the required solvency margin as specified in paragraph 2 shall constitute the guarantee fund.

(2) That fund shall comprise the items listed–

(a) in paragraphs 1(2) and 1(4); and

(b) subject to the agreement of the Authority, in paragraph 1(6)(b).

(3) The guarantee fund shall be not less than EUR 3 million or, in the case of a mutual or mutual type undertaking, not less than EUR 2.25 million.

Required solvency margin for the purpose of paragraph 2(3).

4.(1) The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

(2) The amount of the required solvency margin shall be equal to the higher of the two results as set out in sub-paragraphs (3) and (4).

(3) The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions–

(a) the premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the previous financial year shall be aggregated;

(b) to that sum there shall be added the amount of premiums accepted for all reinsurance in the previous financial year;

(c) from that sum there shall then be deducted the total amount of premiums or contributions cancelled in the previous financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate;

(d) the amount so obtained shall be divided into two portions, the first extending up to EUR 50 million, the second comprising the excess; 18% of the first portion and 16% of the second shall be added together; and

(e) the sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50%.

(4) The claims basis shall be calculated, as follows–

(a) the amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in sub-paragraph (1) shall be aggregated;

(b) to that sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the previous

financial year both for direct business and for reinsurance acceptances;

(c) from that sum there shall be deducted the amount of recoveries effected during the periods specified in sub-paragraph (1);

(d) from the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances;

(e) one third of the amount so obtained shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26% of the first portion and 23% of the second, shall be added together; and

(f) the sum so obtained shall be multiplied by the ratio existing in respect of the sum of the previous three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims. That ratio shall be no less than 50%.

(5) Where the required solvency margin as calculated under sub-paragraphs (2) to (4) is lower than the required solvency margin of the preceding year, the required solvency margin shall be at least equal to the required solvency margin of the preceding year, multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the previous financial year and the amount of the technical provisions for claims outstanding at the beginning of the previous financial year. In those calculations technical provisions shall be calculated net of reinsurance but the ratio may be no higher than 1.".

Dated 16th March, 2017.

A J ISOLA,
Minister with responsibility for financial services
and for the Government.

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EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015, the Financial Services (Insurance Companies) Act and the Financial Services (Occupational Pensions Institutions) Act 2006, in order to further transpose Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

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