Regulations made under s.118 of the Insurance Companies Act 1987.

INSURANCE COMPANIES (SOLVENCY MARGINS AND GUARANTEE FUNDS) REGULATIONS 2004

(LN. 2004/011)

1.1.2004

Amending enactments		Relevant current provisions	Commencement date
LN.	1997/028	r.4(2)(e), Sch.1, Sch. 2	20.3.1997
	2006/142	Sch. 1, 2 & 4	31.12.2006
	2007/142	rr. 2(1) & (2), 3(1)(b), (5A) & (5B), (9), (10) & (11), 4(6), (7), (8) & (9), 4A, 5(7), 5A, Sch.1, 2, 3 & 4	20.12.2007

EU Legislation/International Agreements involved:
Directive 73/239/EEC
Directive 79/267/EEC
Directive 84/641/EEC
Directive 87/343/EEC
Directive 92/49/EEC
Directive 92/96/EEC
Directive 2002/12/EC
Directive 2002/13/EC
Directive 2002/83/EC
Directive 2005/68/EC

INSURANCE COMPANIES (SOLVENCY MARGINS AND GUARANTEE FUNDS) REGULATIONS 2004

ARRANGEMENT OF REGULATIONS.

SCHEDULES

INSURANCE COMPANIES (SOLVENCY MARGINS AND GUARANTEE FUNDS) REGULATIONS 2004

In exercise of the powers conferred on it by section 118 of the Insurance Companies Ordinance 1987, and of all other enabling powers, and for the purposes of transposing into the law of Gibraltar Council Directive 73/239/EEC, as amended by Council Directives 84/641/EEC, 87/343/EEC, 92/49/EEC and 2002/13/EC and Council Directive 79/267/EEC, as amended by Council Directives 92/96/EEC and 2002/12/EC, the Government has made the following regulations–

Title and commencement.

1. These Regulations may be cited as the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 2004 and come into operation on the 1st day of January 2004 and shall apply to periods commencing on or after that date.

Interpretation.

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

"captive reinsurer" means a reinsuer owned either by a financial undertaking other than an insurer or a group of insurers to which the Insurance Companies (Supplementary Supervision) Regulations 2007 applies, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the insurer or insurers of the group to which the captive reinsurer in a member;

"cede" and "cession", in relation to reinsurance, include retrocede and retrocession;

"credit institution" has the meaning assigned to it by section 2 of the Financial Services (Banking) Act;

"financial institution" has the meaning assigned to it by section 2 of the Financial Services (Banking) Act;

"financial undertaking" means a credit institution, financial institution, investment firm, insurer, insurance holding company or mixed financial holding company;

"gross premiums", in relation to an insurer and a financial year–

(a) means premiums after deduction of discounts, refunds and rebates of premium but before deduction of premiums for reinsurance ceded and before deduction of commission payable by the insurer; and

(b) includes premiums receivable by the insurer under reinsurance contracts accepted by the insurer;

"gross premiums earned", in respect of a financial year, means such proportion of gross premiums written or gross premiums receivable, as the case may be, as is attributable to risk borne by the insurer during that financial year;

"gross premiums written", means the amounts required by the Insurance Companies (Accounts Directive) Regulations 1997 to be shown in the profit and loss account of a company at general business technical account item I.1(a), or for class IV business, at long-term business technical account item II.1(a).

"incepted" refers to the time when the liability to risk of an insurer under a contract of insurance commenced and, for this purpose, a contract providing continuous cover is deemed to commence on each anniversary of the contract;

"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;

"investment firm" has the meaning assigned to it by regulation 2 of the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007;

"margin of solvency" means the excess of the value of assets over the amount of liabilities, that value being determined in accordance with the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996 and regulation 4 of these Regulations;

"mixed financial holding company" means a parent undertaking, other than a credit institution, financial institution, investment firm, insurer or reinsurer, which together with its subsidiaries, at least one of which is such an entity with its head office in an EEA State, and with other entities constitutes a financial conglomerate;

"non-directive insurer" means–

(a) an insurer whose business is restricted to the provision of benefits which vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

(b) an insurer whose long-term business is restricted to the provision of benefits for employed and 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 such operations are fully covered at all times by mathematical reserves);

(c) an insurer which undertakes to provide benefits solely in the event of death where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

(d) a mutual (carrying on long-term business)–

(i) whose articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and

(ii) whose annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million Euro for each of the financial year in question and the two previous financial years;

(e) a mutual (carrying on general business) whose–

(i) articles of association contain provisions for calling up additional contributions from members or reducing their benefits;

(ii) business does not cover liability risks, other than ancillary risks, or credit or suretyship risks;

(iii) gross premium income (other than from contracts of reinsurance) for the financial year in question did not exceed 5 million Euro; and

(iv) members provided at least half of that gross premium income;

(f) an insurer whose business (other than reinsurance) is–

(i) restricted to the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence;

(ii) carried out exclusively on a local basis and consists only of benefits in kind; and

(iii) such that the gross premium income from the provision of assistance in the financial year in question did not exceed 200,000 Euro; or

(g) a mutual whose liabilities in respect of general insurance contracts are fully reinsured with or guaranteed by other mutuals (including friendly societies); and

whose insurance business is limited to that described in paragraphs (a) to (g);

"participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of a company;

"pure reinsurer" means an insurer whose insurance business is as a matter of fact restricted to effecting or carrying out contracts of reinsurance;

"receivable" in relation to an insurer, a financial year and a premium, means due to the insurer in respect of contracts of insurance incepted during that financial year, whether or not the premium is received during that financial year;

"recoverable" in relation to an insurer and a financial year, means recorded in the insurer's books as due in that year, whether or not the insurer has received any payments;

"special purpose vehicle" 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) For the purpose of these Regulations and the definition of non-directive insurer, the exchange rate from the euro to the pound sterling for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union Member States were established in the Official Journal of the European Communities.

Calculation of margins of solvency.

3.(1) Subject to sub-regulations (2) to (8), the margin of solvency to be maintained by an insurer shall be determined–

(a) as regards general business, by taking the greater of–

(i) the higher of the two sums resulting from the application of the method of calculation set out in Schedule 1; and

(ii) the sum resulting from the application of the method of calculation set out in Schedule 2; and

(b) as regards long term business (other than reinsurance), in accordance with Schedule 3.

(2) Where an insurer is required to maintain a Gibraltar margin of solvency or an EEA margin of solvency–

(a) the Gibraltar margin of solvency shall be determined by applying sub-regulation (1), but only to business carried on in Gibraltar; and

(b) the EEA margin of solvency shall be determined by applying sub-regulation (1), but only to business carried on in the EEA States taken together.

(3) For a contract of insurance to which section 5(1)(b) of the Act applies, the margin of solvency shall be determined by taking the aggregate of the results arrived at by applying–

(a) in the case of so much of the contract as is within general business class 1 or 2, the method of calculation set out in sub-regulation (1)(a); and

(b) in the case of so much of the contract as is within any class of long term business, the appropriate method of calculation set out in Schedule 3 for that class.

(4) Where an insurer carries on long-term business and owing to the nature of that business more that one margin of solvency is produced in respect of that business, the margins in question shall be aggregated in order to arrive at the insurer’s required margin of solvency.

(5) Where an insurer carries on both long-term and general business and is accordingly required to maintain separate margins of solvency in respect of the two kinds of business–

(a) these Regulations shall apply for determining the margin of solvency for each kind of business separately; and

(b) assets other than those representing the fund or funds maintained by the insurer in respect of its long-term business, if they are not included among the assets covering the liabilities, and the margin of solvency relating to the insurer's general business, may be included among the assets taken into account in covering the liabilities and the margin of solvency for the insurer's long-term business.

(5A) Where a pure reinsurer reinsures long term business, the required margin of solvency shall be determined in accordance with regulation 3(1)(a).

(5B) Notwithstanding sub-regulation (5A), in the case of a reinsurer reinsuring–

(a) long term business classes I, II and III linked to investment funds or participating contracts; and

(b) long term business classes I, III, VI, VII and VIII;

the required margin of solvency shall be determined in accordance with regulation 3(1)(b), as appropriate.

(6) Subject to sub-regulation (7), in each case in which sub-regulation (1)(a) applies, including under sub-regulation (3) and paragraph 3(1) of Schedule 3, if the margin of solvency under sub-regulation (1)(a) is lower that the required margin of solvency of the prior financial year, then the margin of solvency shall be adjusted so that it is at least equal to the required margin of solvency of the prior financial year multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the prior financial year and the amount of the technical provisions for claims outstanding at the beginning of the prior financial year.

(7) For the purposes of sub-regulation (6)–

(a) technical provisions shall not be discounted, or reduced, to take account of investment income, unless–

(i) they relate to risks in classes 1 or 2; or

(ii) they are reduced to reflect the discounting of annuities;

(b) technical provisions shall be calculated net of reinsurance; but

(c) the ratio shall not be higher than 1.

(8) Where the nature or quality of reinsurance relied on to reduce the required margin of solvency changes significantly during the financial year, an insurer shall notify the Commissioner forthwith of the change.

(9) An insurer (other than a pure reinsurer) which carries on general business and also carries on reinsurance activities shall in respect of its entire business establish a minimum guarantee fund and for that purpose the provisions of paragraph 5A(1) of Schedule 4 shall apply to it where one of the conditions in sub-regulation (11) is met.

(10) An insurer (other than a pure reinsurer) which carries on long-term business and also carries on reinsurance acceptance activities shall maintain a margin of solvency in respect of those activities and for that purpose the provisions of sub-regulations (1)(a), (5), (5A) and (5B) shall apply to it where one of the conditions in sub-regulation (11) is met.

(11) For the purposes of sub-regulations (9) and (10) the condition to be met is–

(a) the reinsurance premiums collected exceed 10% of its total premium;

(b) the reinsurance premiums collected exceed 50 million Euro; or

(c) the technical provisions resulting from its reinsurance acceptances exceed 10% of its total technical provisions.

Valuation.

4.(1) Where an insurer has assets equal to or in excess of its liabilities, then, in addition to any other applicable valuation regulations, sub-regulations (2) to (8) have effect for determining the extent to which the value of the assets exceeds the amount of liabilities in connection with the margin of solvency, the required margin of solvency, the guarantee fund and the minimum guarantee fund.

(2) Unpaid share capital or an unpaid amount on partly paid share capital (or initial fund of a mutual) has no value, and for the purposes of this sub-regulation a share is not to be regarded as partly paid if there are any amounts due but unpaid on it.

(3) Notwithstanding regulation 18(2) of the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996, where an insurer has issued cumulative preference shares, liabilities in respect of such shares may be left out of account, in aggregate up to 50% of the lesser of the margin of solvency and the required margin of solvency, save that liabilities in respect

of shares which are redeemable for the purposes of section 46[1] of the Companies Act may be left out of account, in aggregate only up to 25% of the lesser of the margin of solvency and the required margin of solvency.

(4) In the case of a mutual with variable contributions carrying on general business, any claim which the mutual has against its members by way of a call for supplementary contributions for a financial year has no value.

(5) The implicit items (which relate to future profits, zillmerising and hidden reserves) have no value. An insurer which applies for a waiver of this sub-regulation under section 113 of the Act with respect to future profits shall submit with the application for waiver–

(a) an actuarial report substantiating the likelihood of the emergence of the future profits in the future; and

(b) a plan as to how it intends to comply with the future limits on, and termination of use of, implicit items for future profits required by the Life Directive (2002/83/EC)

(6) An insurer's margin of solvency may also consist of cumulative preferential share capital and subject to sub-regulation (17), subordinated loan capital but only up to 50% of the margin of solvency or the required margin of solvency, whichever is the lesser, and no more than 25% of the lesser shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital:

Provided that, in the event of the bankruptcy or the placing into liquidation of the insurer, subordinated loan capital or cumulative preferential share capital may be taken into account if binding agreements exist under which such loan capital or share capital will rank after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

(7) The subordinated loan capital shall be taken into account under sub-regulation (13) if it can meet the following conditions–

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

(b) for a loans having a fixed maturity, the original maturity shall not be less than five years subject to–

(i) no later than one year before the repayment date the insurer submits to the Commissioner for approval a plan showing that its margin of solvency will be kept at or

[1] *As a consequence of the re-numbering of the Companies Act now s. 93*

brought to the required level at maturity, unless the extent to which the loan may rank as a component of its margin of solvency is gradually reduced during at least the five years preceding the repayment date; and

(ii) the Commissioner giving his approval to the early repayment of such loan if an application is made by the issuing insurer and the margin of solvency not falling below the required level;

(c) a loan, the maturity of which is not fixed shall be repayable only subject to five years' notice–

(i) unless the loan is no longer considered as a component of the margin of solvency; or

(ii) unless the prior consent of the Commissioner is specifically required for early repayment; and

(iii) the insurer notifies the Commissioner at least six months before the date of the proposed repayment, of the margin of solvency and the required margin of solvency both before and after that repayment;

(d) the Commissioner may authorise repayment under paragraph (c)(ii) and (iii) only if he is satisfied that the insurer's margin of solvency will not fall below the required level;

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

(f) the loan agreement may be amended only with the Commissioner's consent.

(8) An insurer's margin of solvency may also consist of securities with no specified maturity date and other instruments (including cumulative preferential shares other than those referred to in sub-regulations (6) and (7) up to 50 % of the margin of solvency or the required margin of solvency, whichever is the lesser, for the total of such securities and the subordinated loan capital referred to in those sub-regulations:

Provided that–

(a) the securities or instruments may not be repaid on the initiative of the bearer or without the prior consent of the Commissioner;

(b) the contract of issue enables the insurer to defer the payment of interest on the loan;

(c) the lender's claims on the insurer (where applicable) shall rank entirely after those of all non-subordinated creditors; and

(d) the document governing the issue of the securities or instruments provides for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurer to continue its business; and

(e) only fully paid-up amounts may be taken into account.

(9) An insurer which carries on general business may apply to the Commissioner for it to approve that the margin of solvency may consist of–

(a) 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 its margin of solvency or required margin of solvency, whichever is the lesser;

(b) in the case of a non-life mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50% of its margin of solvency or required margin of solvency, whichever is the lesser; and

(c) any hidden net reserves arising out of the valuation of assets, provided they are not of an exceptional nature.

Reductions.

4A.(1) The margin of solvency shall be reduced by the amount of own shares directly held by an insurer.

(2) Subject to sub-regulation (3), in the case of an insurer which discounts or reduces it technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of the Insurance Accounts Directive, the margin of solvency shall be reduced by the difference between–

(a) the undiscounted technical provisions for claims outstanding or the technical provisions for claims outstanding before deductions as disclosed in the notes to the accounts; and

(b) the discounted technical provisions for claims outstanding or the technical provisions for claims outstanding after deductions and for these purposes, technical provisions shall be calculated net of reinsurance.

(3) Sub-regulation (2) does not apply to risks of classes 1 or 2 or in respect of the discounting of annuities.

(4) In addition to the deductions in sub-regulations (1) to (3), the margin of solvency shall be reduced by the following items–

(a) participations which the insurer holds in the following entities–

(i) Gibraltar or EEA insurers or non-EEA insurers;

(ii) insurance holding companies; credit institutions, financial institutions and investment firms;

(b) each of the following items which the insurer holds in respect of the entities in paragraph (a) in which it holds a participation–

(i) instruments referred to in regulation 4(9);

(ii) instruments referred to in regulations 4(6) to (8);

(iii) subordinated claims and instruments referred to in Articles 35 and Article 36(3) of Directive 2000/12/ EC.

(5) If an insurer temporarily hold shares in a credit institution, financial institution, investment firm, insurer or reinsurer or insurance holding company for the purpose of providing financial assistance to enable the entity to be reorganised and saved, the Commissioner may, on application by the insurer, waive the deductions in sub-regulation (4).

(6) An insurer may, as an alternative to the deductions in sub-regulation (4) which it holds in credit institutions, financial institutions and investment firms, apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC subject to method 1 *(accounting consolidation)* being applied only if the Commissioner is satisfied with the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(7) For its margin of solvency, an insurer subject to supplementary supervision in accordance with the Insurance Companies (Supplementary Supervision) Regulations 2007 need not effect the deductions in sub-regulation (4) which are held in credit institutions, financial institutions, investment firms, insurers or reinsurers or insurance holding companies which are included in the supplementary supervision.

Guarantee fund and minimum guarantee fund.

5.(1) An insurer shall ensure that its margin of solvency does not fall below the "guarantee fund".

(2) Subject to sub-regulation (3) to (6), one third of the required margin of solvency constitutes the guarantee fund.

(3) The guarantee fund shall not be less than an amount (the minimum guarantee fund) arrived at in accordance with Schedule 4, whether the required margin of solvency is greater or less than that amount.

(4) In the case of long-term business, items that are not implicit items shall be at least large enough to cover either the minimum guarantee fund or 50% of the guarantee fund, whichever is the greater.

(5) In the case of general business, unpaid share capital (or initial fund of a mutual) and any claim which a mutual with variable contributions has against its members by way of a call for supplementary contributions for a financial year may not be taken into account in complying with sub-regulation (1).

(6) In the case of long-term business, unpaid share capital (or initial fund of a mutual) and implicit items which relate to future profits and zillmerising may not be taken into account in complying with sub-regulation (1).

(7) The guarantee fund shall consist of the items listed in regulations 4(1), 4(6) to (8) and 6 and, with the consent of the Commissioner, in regulation 4(9)(c).

Saving.

5A. A reinsurer, which was on 10 December 2005 authorised to carry on insurance business (restricted to reinsurance only) under the Act, may continue to carry on business under the margin of solvency and guarantee fund requirements in force on that date until the 10 December 2008 by which date the reinsurer shall comply with the provisions of regulations 3, 4(1), 4(6) to (8), 5 and 6.

Revocation.

6. The Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 1996 (Legal Notice No 67 of 1996) are revoked with effect from 30th December 2004.

INSURANCE COMPANIES (SOLVENCY MARGINS AND GUARANTEE FUNDS) REGULATIONS 2004

SCHEDULE 1

Regulation 3

GENERAL BUSINESS SOLVENCY MARGIN
FIRST METHOD OF CALCULATION
(PREMIUM BASIS)

1. The gross premiums receivable (or contributions, as the case may be) in respect of the insurer’s entire general business for the financial year in question shall be aggregated and the method of calculation in paragraphs 3 to 16 applied.

2. The gross premiums earned (or contributions, as the case may be) in respect of the insurer’s entire general business for the financial year in question shall be aggregated and the method of calculation in paragraphs 3 to 16 applied.

3. Premiums in respect of classes 11,12 and 13 shall be increased by 50%. Statistical methods may be used to allocate the premiums in respect of these classes.

3A. Premiums in respect of classes other than classes referred to in paragraph 3 may be increased by up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts in accordance with the procedure referred to in article 55(2) of the reinsurance Directive.

3B. Premiums, inclusive of charges ancillary to premiums, due in respect of direct reinsurance business in the previous financial year shall be aggregated.

4. From each of the aggregates arrived at under paragraphs 1 and 2 there shall be deducted–

(a) any taxes included in the gross premiums; and

(b) any levies that are related to premiums and are recorded in the insurer’s books as payable in the financial year in question in respect of general business.

5. The amount arrived at under paragraph 4 shall be multiplied by 12 and divided by the number of months in the financial year.

6. Subject to paragraph 11 of Schedule 4, if the amount arrived at under paragraph 5 is more than 53.1 million Euro, it shall be divided into two

portions, the former consisting of 53.1 million Euro and the latter comprising the excess.

7. Where there has been a division into two portions pursuant to paragraph 6, there shall be calculated and added together 18% and 16% of the two portions respectively; and where there has been no such division, there shall be calculated 18% of the amount arrived at under paragraph 5.

8. In the case of general business consisting of health insurance based on actuarial principles, paragraph 7 applies with the substitution of 6% for 18% and 5 and one-third % for 16%, but only if all ‘necessary conditions’ are satisfied.

9. For the purposes of paragraph 8, the necessary conditions are–

(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;

(b) a provision is set up for increasing age;

(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;

(d) the insurer may cancel the contract before the end of the third year of insurance at the latest; and

(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

10. Where paragraph 8 applies to an insurer whose general business consists partly of health insurance based on actuarial principles and partly of other business, the procedure provided in paragraphs 1 to 8 shall operate separately for each part of the general business, so as to produce a sum under paragraph 8 for the health insurance and a sum under paragraph 7 for the other business.

11.(1) If the ‘provision for claims outstanding’ at the end of the financial year in question exceeds the provision for claims outstanding at the beginning of the financial year two years prior to the financial year in question, then the amount of the excess shall be added to the ‘amount of claims paid’ in the 3 year period.

(2) If the ‘provision for the claims outstanding’ at the beginning of the financial year two years prior to the financial year in question exceeds the provision for claims outstanding at the end of the financial year in question, then the amount of the excess shall be deducted from the ‘amount of claims paid’ in the 3 year period.

12.(1) For the purposes of paragraph 11 the amount of claims paid in each financial year is the amount that is recorded in the insurer's books as at the end of the financial year–

(a) in relation to general business classes 1 to 17, as paid by the insurer (whether or not payment has been effected in that year) in full or partial settlement of the 'claims' described in (2) and the 'expenses' described in (3); or

(b) in relation to general business class 18, as being the costs borne by the insurer (whether or not borne in that year) in respect of the assistance given,

less (in either case) any 'recoverable' amounts within the meaning of sub-paragraph (4).

(2) The claims mentioned in sub-paragraph (1) are claims under contracts of insurance including claims relating to business accounted for over a longer period than a financial year.

(3) The expenses mentioned in sub-paragraph (1) are expenses (such as legal, medical, surveying or engineering costs) which are incurred by the insurer, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual claims, whether or not the individual claims in question are those mentioned in sub-paragraph (1).

(4) Recoverable amounts for the purpose of sub-paragraph (1) are amounts recoverable by the insurer, in respect of the 'claims' mentioned in sub-paragraph (1) or other claims, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurers but excluding amounts recoverable in respect of reinsurance ceded by the insurer.

13.(1) For the purposes of paragraph 11, the provision for claims outstanding, is (subject to the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996) the amount set aside by the insurer as at the beginning or end of the period of 3 financial years as being an amount likely to be sufficient to meet–

(a) the 'claims' described in sub-paragraph (2); and

(b) the 'expenses' described in sub-paragraph (3),

less any 'recoverable' amounts within the meaning of sub-paragraph (4).

(2) The claims mentioned in sub-paragraph (1) are claims under contracts of insurance in respect of incidents occurring –

(a) in the case of an amount set aside at the beginning of the financial year, before the beginning of that year; and

(b) in the case of an amount set aside at the end of the financial year, before the end of that year,

being claims which have not been treated as claims paid including claims relating to business accounted for over a longer period that a financial year, claims the amount of which have not been determined and claims arising out of incidents that have not been notified to the insurer.

(3) The expenses mentioned in sub-paragraph (1) are expenses (such as legal, medical, surveying or engineering costs) which are likely to be incurred by the insurer, whether through the employment of its own staff or otherwise, and are directly attributable to the settlement of individual claims, whether or not the individual claims in question are those mentioned in sub-paragraph (1).

(4) Recoverable amounts for the purposes of sub-paragraph (1) are amounts estimated by the insurer to be recoverable by it in respect of the ‘claims’ mentioned in sub-paragraph (1), including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurers but excluding amounts recoverable in respect of reinsurance ceded by the insurer.

14. From the amount determined under paragraph 11(1) or (2) there shall be deducted the total sum recoverable in respect of that amount under reinsurance contracts ceded during the relevant period.

15. The amount determined under paragraph 14 shall be expressed as a percentage of the amount determined under paragraph 11(1) or (2).

16. The sum arrived at under paragraphs 7 or 8 or the aggregate of the sums arrived at under those paragraphs, as the case may be, shall be multiplied–

(a) where the percentage arrived at under paragraph 15 is greater that 50% but not greater than 100%, by the percentage so arrived at;

(b) where the percentage so arrived at is greater than 100%, by 100%; and

(c) in any other case, by 50%.

17. An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may also be deducted as reinsurance.

Regulation 3

GENERAL BUSINESS SOLVENCY MARGIN
SECOND METHOD OF CALCULATION
(CLAIMS BASIS)

1. In this Schedule "reference period" in relation to an insurer, means either–

(a) the financial year in question and the two previous financial years; or

(b) the financial year in question and the six previous financial years if more than one–half of the gross premiums in that period were in respect of all or any of the following, namely, storm (as included in general business class 8), hail (as included in general business class 9), frost (as included in general business class 9) and credit (as included in general business class 14).

2. If an insurer has not been in existence long enough to acquire a 'reference period', this Schedule shall be treated as giving a lower result than that given by Schedule 1 and does not otherwise apply to the insurer.

3. Claims, provisions and recoveries in respect of classes 11, 12 and 13 shall be increased by 50%. Statistical methods may be used to allocate the claims, provisions and recoveries in respect of these classes.

3A. Claims, provisions and recoveries in respect of classes other than classes referred to in paragraph 3, may be increased by a reinsurer by up to 50%, for specific reinsurance activities or contract types, in order to take account of the specificities of those activities or contracts, in accordance with the procedure referred to in article 55(2) of the reinsurance Directive.

4.(1) If the 'provision for claims outstanding' at the end of the 'reference period' exceeds the 'provision for claims outstanding' at the beginning of the 'reference period', the amount of the excess shall be added to the 'amount of claims paid' in the 'reference period'.

(2) If the 'provision for claims outstanding' at the beginning of the 'reference period' exceeds the 'provision for claims outstanding' at the end of the 'reference period', the amount of the excess shall be deducted from the 'amount of claims paid' in the 'reference period'.

(3) For the purposes of this paragraph, the expressions amount of claims paid and provision for claims outstanding have, in relation to a 'reference period', the same meaning as they have in paragraph 11 of Schedule 1.

5. The aggregate obtained under paragraph 4(1) or (2) shall be divided by the number of months in the 'reference period' and multiplied by 12.

6. Subject to paragraph 11 of Schedule 4, if the amount arrived at under paragraph 5 is more than 37.2 million Euro, it shall be divided into two portions, the former consisting of 37.2 million Euro and latter compromising the excess.

7. Where there has been a division into two portions pursuant to paragraph 6, there shall be calculated and added together 26% and 23% of the two portions respectively; and where there has been no such division, there shall be calculated 26% of the amount arrived at under paragraph 5.

8. In the case of general business consisting of health insurance based on actuarial principles, paragraph 7 applies with the substitution of 8 and two-thirds % for 26% and 7 and two-thirds % for 23% but only if all the 'necessary conditions' are satisfied.

9. The necessary conditions for the purposes of paragraph 8 are the same as those set out in paragraph 9 of Schedule 1.

10. In a case of the kind mentioned in paragraph 10 of Schedule 1, that paragraph applies (with the necessary modifications) so as to produce separate sums under paragraphs 7 and 8.

11. The sum arrived at under paragraph 7 or 8 or the aggregate of the sums arrived at under those paragraphs, as the case may be, shall be multiplied by the same percentage as is applicable for the purposes of paragraph 16 of Schedule 1.

12. An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may also be deducted as reinsurance.

SCHEDULE 3

Regulation 3

SOLVENCY MARGINS
LONG TERM BUSINESS

Long term classes I, II and IX.

1.(1) For long-term business of class I, II or IX the margin of solvency shall be determined by taking the aggregate of the results arrived at by applying the calculation described in sub-paragraph (2) (the first calculation) and the calculation described in sub-paragraphs (3), (4), (5) and (6) (the second calculation).

(2) For the first calculation–

(a) a sum equal to 4% of the mathematical reserves for direct insurance business and reinsurance acceptances without any deduction for reinsurance cessions shall be taken;

(b) the amount of the mathematical reserves at the end of the prior financial year after the deduction of reinsurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(c) the sum mentioned in (a) shall be multiplied–

(i) where the percentage arrived at under (b) is greater than 85% (or in the case of a pure reinsurer, 50%), by that greater percentage; and

(ii) in any other case, by 85% (or, in the case of a pure reinsurer, 50%).

(3) For the second calculation–

(a) subject to sub-paragraphs (4), (5) and (6), a sum equal to 0.3% of the ‘capital at risk’ for contracts on which the ‘capital at risk’ is not a negative figure shall be taken;

(b) the amount of the ‘capital at risk’ at the end of the prior financial year for contracts on which the ‘capital at risk’ is not a negative figure, after the deduction of reinsurance cessions, shall be expressed as a percentage of the amount of that ‘capital at risk’ before any such deduction; and

(c) the sum arrived at under (a) shall be multiplied–

(i) where the percentage arrived at under (b) is greater than 50% by that greater percentage, and

(ii) in any other case, by 50%.

(4) Where, in a case other than that of a pure reinsurer, a contract provides for benefits payable only on death within a specified period and is valid for a period of not more than three years from the date when the contract was first made, the percentage to be taken for the purposes of sub-paragraph (3)(a) shall be 0.1%; and where the period of validity from that date is more than three years but not more than five years, the percentage to be so taken shall be 0.15%.

(5) For the purposes of sub-paragraph (4), the period of validity of a contract evidencing a group policy is the period from the date when the premium rates under the contract were last reviewed for which the premium rates are guaranteed.

(6) In the case of pure reinsurers, the percentage to be taken for the purposes of sub-paragraph (3)(a) is 0.1%.

(7) For the purposes of the second calculation, the capital at risk is–

(a) in any case in which an amount is payable in consequence of death other than a case falling within (b), the amount payable on death; and

(b) in any case in which the benefit under the contract in question consists of the making, in consequence of death, of the payment of an annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit,

less in either case the mathematical reserves in respect of the relevant contracts.

(8) When the amount of the mathematical reserves referred to in sub-paragraph (2)(a), or the amount of the ‘capital at risk’ referred to in sub-paragraph (3)(a), is calculated for the purposes of determining the margin of solvency, the day on which that amount is calculated shall be the same as that on which the margin of solvency is determined; and the mathematical reserves referred to in sub-paragraph (7) shall also be calculated as on that day when the ‘capital at risk’ in question is that referred to in sub-paragraph (3)(a), but shall be calculated as at the end of the prior financial year when the ‘capital at risk’ in question is that referred to in sub-paragraph (3)(b).

(9) An insurer may apply to the Commissioner for him to approve that amounts recoverable from special purpose vehicles may be deducted as reinsurance in both the first and second results.

Long term classes III, VII and VIII.

2.(1) For long-term business of class III, VII or VIII the margin of solvency shall be determined in accordance with (2) to (6).

(2) In so far as an insurer bears an investment risk, the first calculation shall be applied.

(3) In so far as–

(a) an insurer bears no investment risk; and

(b) the allocation to cover management expenses in the relevant contract has a fixed upper limit which is effective as a limit for a period exceeding five years,

the first calculation shall be applied, but as if paragraph 1(2)(a) contained a reference to 1% instead of 4%.

(4) In so far as–

(a) an insurer bears no investment risk; and

(b) the allocation to cover management expenses in the relevant contract does not have a fixed upper limit which is effective as a limit for a period exceeding five years,

the margin of solvency is an amount equivalent to 25% of the prior financial year's net administrative expenses pertaining to such business.

(5) Where an insurer covers a death risk, a sum arrived at by applying the second calculation (disregarding paragraphs 1(4) and (5)) shall be added to any margin of solvency, including a margin of solvency of zero, arrived at under sub-paragraphs (2), (3) or (4).

Long term classes IV and VI.

3.(1) For long-term business of class IV, the margin of solvency shall be determined by applying the first calculation plus the sum arrived at by treating the business as general business of class 2 and applying regulation 3(1)(a) to it.

(2) For long-term business of class VI, the margin of solvency shall be determined by applying the first calculation.

(3) If both sub-paragraph (1) and regulation 3(3)(a) apply, a single combined margin of solvency shall be calculated under regulation 3(1)(a) in respect of class IV and supplementary class 1 and 2 business.

Long-term class V.

4. For long-term business of class V, the margin of solvency shall be 1% of the assets of the relevant tontine.

Regulation 5

MINIMUM GUARANTEE FUND

Long-term business.

1. Subject to paragraphs 5, 10 and 11, the minimum guarantee fund for the long-term business is–

(a) in the case of a pure reinsurer which–

(i) is the wholly-owned subsidiary of an insurer carrying on long-term business, and

(ii) carries on only such reinsurance business as is ceded to it by that insurer,

200,000 Euro;

(b) in the case of a mutual, 2,250,000 Euro; and

(c) in any other case, 3.2 million Euro.

General business.

2. Subject to paragraphs 3 to 6 and 11, the minimum guarantee fund for general business is 2.2 million Euro.

3. Where insurance business is carried on in respect of some or all of the risks included in classes 10 to 15, the minimum guarantee fund is 3.2 million Euro.

4. In the case of a mutual, the minimum guarantee fund for general business is reduced by 25%.

Long-term and general business.

5. In relation to a Gibraltar margin of solvency or EEA margin of solvency maintained under section 59(2)(b) or (3)(b), the minimum guarantee fund for long-term or general business is one-half of the amount arrived at by applying paragraphs 1 to 4.

Reinsurers.

5A.(1) The minimum guarantee fund for a reinsurer is 3.2 million Euro.

(2) The minimum guarantee fund for a captive reinsurer is 1 million Euro.

Non-directive insurers.

6. For non-directive insurers, subject to paragraphs 7 to 9, the minimum guarantee fund for general business is the amount shown in the table below as applicable to the general business class for which the insurer has authorisation under the Act (or the highest such amount if the insurer has authorisation for more that one class).

General Business	Amount
Class 10, 11, 12, 13, 14 or 15	400,000 Euro
Class 1, 2, 3, 4, 5, 6, 7, 8, 16 or 18	300,000 Euro
Class 9 or 17	200,000 Euro

7. In the case where the risks covered fall within class 14 and where the annual amount of premiums or contributions of the insurer due in respect of that class for each of the financial years in question and the two previous financial years exceeded 2,500,000 Euro or 4% of the total amount of premiums or contributions receivable or earned by the insurer, for the amount of Euro given in the table in paragraph 6 there shall be submitted the amount of 1,400,000 Euro.

8. An insurer which has authorisation limited to part of a class is, for the purposes of paragraph 6 treated as having authorisation for the whole of the class.

9. In the case of a mutual, the minimum guarantee fund required by paragraph 6 to 8 is reduced by 25%.

10. For non-directive insurers, the minimum guarantee fund for long-term business is

(a) in the case of a pure reinsurer which–

(i) is the wholly-owned subsidiary of an insurer carrying on long-term insurance business, and

(ii) carries on only such reinsurance business as is ceded to it by that insurer, 200,000 Euro;

(b) in the case of a mutual, 600,000 Euro; and

(c) in any other case, 800,000 Euro.

Increases to reflect consumer price index.

11. Subject to paragraphs 12 and 13 the base amounts in Euro specified in paragraphs 1 and 2 and Schedules 1 and 2 will increase each year, starting on the first review date of 20 September 2003 (and annually after that), by the percentage change in the European index of consumer prices (comprising all EU member states as published by Eurostat) from 20 March 2002 to the relevant review date, rounded up to a multiple of 100,000 Euro.

12. In any year, if the percentage change since the last increase is less than 5%, then there will be no increase.

13. The increase will take effect 30 days after the EU Commission has informed the European Parliament and Council of its review and the relevant percentage change.