

# Insurance Companies

---

## INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

**1987-10**

**Repealed**  
**Subsidiary**  
**2007/149**

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

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

**Repealed by Act 2009-17 as from 9.4.2009**

(LN. 2007/149)

*Commencement*      **20.12.2007**

Amending enactments	Relevant current provisions	Commencement date
None		

**EU Legislation/International Agreements involved:**  
Directive 2005/68/EC

---

### ARRANGEMENT OF REGULATIONS

Regulation.

1. Title.
2. Interpretation.
3. Restrictions on the use of the word “reinsurance”.
4. Restriction on the right to conduct reinsurance business.
5. Applicants from EEA States.
6. Applicants from non-EEA States etc.
7. Determination of applications.
8. Restrictions on issue of a licence.
9. Approval of proposed controller.
10. Technical reserves.
11. Margins of solvency.
12. Financial recovery plan.
13. Failure to maintain technical reserves.
14. Reinsurance advertisements.
15. Non-applicability of certain sections of the Act.
16. Credit insurance.
17. Equalisation reserve.

**1987-10**

**Repealed**  
**Subsidiary**  
**2007/149**

## Insurance Companies

---

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

18. Exemptions from equalisation reserve requirements.
19. Transfer of business.
20. Issue of certificates by Commissioner.
21. Transfers authorised in EEA States.
22. Power to prohibit new business.
23. Final withdrawal of authorisation.
24. Law applicable to certain contracts of reinsurance.
25. Regulations.
26. Winding-up of reinsurance companies.
27. Transfer of business.
28. Recognition in Gibraltar of EEA reinsurers.
29. Recognition in EEA States of Gibraltar reinsurers.
30. Restrictions on the disclosure of information.

# Insurance Companies

1987-10

---

## INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

**Repealed**  
**Subsidiary**  
**2007/149**

*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.**

1. These Regulations may be cited as the Insurance Companies (Reinsurance Directive) Regulations 2007.

### **Interpretation.**

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

“credit institution” has the meaning assigned to it by the Financial Services (Banking) Act;

“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 State; and
- (c) which is authorised in accordance with Article 3 of the reinsurance Directive (as extended, where applicable, by the EEA Agreement);

“financial institution” has the meaning assigned to it by the Financial Services (Banking) Act;

“Gibraltar reinsurer” means a reinsurance company—

- (a) which is incorporated in Gibraltar;
- (b) whose head office is in Gibraltar;
- (c) which is licensed in Gibraltar;
- (d) whose business is restricted to reinsurance business; and
- (e) whose business is not exempted from the authorisation requirements by section 18 of the Act;

## Insurance Companies

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

and any reference to an applicant or body which is a Gibraltar reinsurer includes a reference to an applicant or body which would be such a reinsurer if the authorisation sought by it were issued;

“investment firm” has the meaning assigned to it by the Financial Services Act 1998;

“non-EEA reinsurer” means a reinsurance company—

- (a) whose head office is not in the EEA;
- (b) which is licensed in Gibraltar; and
- (c) whose business in Gibraltar is restricted to reinsurance;

“mixed financial holding company” has the meaning assigned to it by the Financial Services (Banking) Act;

“reinsurance Directive” means the European Parliament and Council Directive 2005/68/EC of 16 November 2005 on reinsurance;

“related operations” in relation to reinsurance, include a holding company function and activities with respect to credit institutions, financial institutions, mixed financial holding companies, investment firms, insurance and reinsurance companies; and the provision of statistical or actuarial advice or risk analysis for clients.

(2) For the purposes of the Act and these Regulations, “reinsurance” means the activity of accepting general reinsurance, long-term reinsurance and all kinds of reinsurance risks ceded by an insurance company or by another reinsurance company and in the case of the association of Lloyd’s underwriters, “reinsurance” also means the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance or reinsurance company other than the association of Lloyd’s underwriters.

(3) For the purposes of the Act and these Regulations, unless the context otherwise requires—

- (a) “insurer” includes a reinsurer; and
- (b) “reinsurance” includes related operations.

(4) In these Regulations, references to the provision of reinsurance in Gibraltar or in an EEA State are references to the accepting of a risk ceded by an insurer there through an establishment in Gibraltar or in an EEA State.

## **Restrictions on the use of the word “reinsurance”.**

3. The restrictions on the use of the words “insurance” and “assurance”; the exemptions to such use and the offence for a contravention of the use of such words under section 6 of the Act shall extend to the use of the word “reinsurance”.

## **Restriction on the right to conduct reinsurance business.**

4. Notwithstanding the provisions of section 16A(2) of the Act, the Commissioner may authorise a reinsurer to carry on in or from within Gibraltar non-life reinsurance and related operations, life reinsurance and related operations or all kinds of reinsurance and related operations, as may be specified in the authorisation and such authorisation shall permit the reinsurer to carry on its authorised reinsurance business throughout the entire EEA.

## **Applicants from EEA States.**

5. Notwithstanding the provisions of section 24B(2) and (3) of the Act, those provisions shall not apply to an EEA reinsurer which is authorised in accordance with Article 3 of the reinsurance Directive.

## **Applicants from non-EEA States etc.**

6. Notwithstanding the provisions of section 25(3) of the Act, section 25(1) of the Act shall apply to an applicant who seeks a licence restricted to reinsurance.

## **Determination of applications.**

7. Where the Commissioner determines an application under section 26 of the Act, he shall not issue a licence to an applicant which is a Gibraltar reinsurer and which is—

- (a) a subsidiary of an EEA insurer;
- (b) a subsidiary of the parent undertaking of an EEA insurer; or
- (c) controlled by the same person who controls an EEA insurer;

without prior consultation with the supervisory authorities of the EEA State concerned.

## **Restrictions on issue of a licence.**

## Insurance Companies

---

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

8. Notwithstanding of provisions of section 27(3) and (4)(a), the Commissioner may issue a licence restricted to reinsurance.

#### **Approval of proposed controller.**

9. Where the acquirer of the notifiable holding referred to in section 41(1) of the Act is—

- (a) an insurer, a credit institution or an investment firm authorised in the EEA;
- (b) the parent undertaking of an entity referred to in paragraph (a);  
or
- (c) a person who is a controller of an entity referred to in paragraph (a);

and if, as a result of that acquisition, the Gibraltar reinsurer in which the acquirer proposes to acquire such a holding would become a subsidiary of or subject to the control of the acquirer, the approval of the proposed acquisition of the holding shall be subject to prior consultation by the Commissioner with the relevant supervisory authorities of the EEA States concerned.

#### **Technical reserves.**

10.(1) Where all or any part of the risks of a licensed insurer are localised within the EEA including Gibraltar, the equivalent assets required under section 58(2) of the Act shall be localised within the EEA including Gibraltar.

(2) The Commissioner may, on application by a licensed insurer, waive the requirement in sub-regulation (1) concerning the localisation of assets to the extent he sees fit.

(3) Where the Commissioner determines the proportion of claims against reinsurers which are not Gibraltar or EEA reinsurers which may be included in assets representing technical reserves he shall determine the conditions under which those claims may be so included.

#### **Margins of solvency.**

11. Notwithstanding the provisions of section 59(3) of the Act a licensed insurer whose business in Gibraltar is restricted to reinsurance and related operations shall maintain a margin of solvency as if it were a licensed insurer to whom section 58(2) of the Act applies.

### **Financial recovery plan.**

12.(1) The financial recovery plan described in section 60(1) of the Act may in addition be a financial recovery plan within the meaning of Article 38 of the long term insurance Directive or Article 43 of the reinsurance Directive.

(2) Where the Commissioner is of the view that a reinsurer's obligations arising out of reinsurance contracts are threatened because the financial position of the reinsurer is deteriorating and he decides to require it to hold more capital than would be required under the Act to ensure that the reinsurer will be able to fulfil the required margin of solvency in the near future, then any such higher capital requirement shall be based on the financial recovery plan.

### **Failure to maintain technical reserves.**

13.(1) Where any of the assets included in an order section 62(1) of the Act are located in one or more EEA States where the licensed insurer carries on business, the Commissioner shall request the supervisory authorities of the EEA States concerned to prohibit the disposal by the insurer of such assets as are designated in the request.

(2) The Commissioner shall at the request of a home State supervisory authority by order prohibit the disposal by an EEA insurer which carries on business in Gibraltar, of such assets of the insurer as are located in Gibraltar and which are designated in the request.

### **Reinsurance advertisements.**

14. The power to make regulations under section 70A of the Act as to the form and contents of advertisements shall extend to reinsurance advertisements.

### **Non-applicability of certain sections of the Act.**

15. For the avoidance of doubt, sections 70B, 72, 72A and 72B shall not apply to a reinsurer.

### **Credit insurance.**

16. Notwithstanding the provisions of section 87A of the Act, the provisions of Part VIIA of the Act shall apply to reinsurance.

### **Equalisation reserve.**

## Insurance Companies

---

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

17.(1) The equalisation reserve required to be maintained under section 87B of the Act shall be maintained by every Gibraltar reinsurer which reinsures credit insurance risks.

(2) The equalisation reserve required to be maintained under section 87B of the Act and sub-regulation (1) shall be represented by equivalent assets expressed or realisable in the same currency as the underwriting liabilities they are intended to meet.

(3) Where all or any part of the risks of an insurer to whom section 87B of the Act applies are localised within the EEA including Gibraltar, their equivalent assets shall be localised within the EEA including Gibraltar.

(4) The Commissioner may, on application by a licensed insurer, waive the requirement in sub-regulation (3) concerning the localisation of assets to the extent it sees fit.

#### **Exemptions from equalisation reserve requirements.**

18. The exemption granted under section 87C(1) of the Act shall extend to credit reinsurance business.

#### **Transfer of business.**

19. Section 91 of the Act which gives effect to Schedule 10 of the Act with respect to the transfer of long term and general business shall also have effect with respect to the transfer of long term and general reinsurance business.

#### **Issue of certificates by Commissioner.**

20.(1) If the Commissioner has required of a Gibraltar reinsurer a financial recovery plan of the kind mentioned in paragraph 1 of Article 43 of the reinsurance Directive, he shall not issue a certificate for so long as he considers that the reinsurer's obligations arising out of reinsurance contracts are threatened within the meaning of paragraph 1.

(2) The definitions of "general policy" and "long term policy" in section 92(2) of the Act shall extend to policies evidencing reinsurance contracts.

#### **Transfers authorised in EEA States.**

21.(1) Section 93 of the Act shall also apply where an EEA reinsurer transfers to another body all its rights and obligations under any Gibraltar contracts and the transfer is authorised in its home State in accordance with Article 48 of the reinsurance Directive.



---

**INSURANCE COMPANIES (REINSURANCE DIRECTIVE)  
REGULATIONS 2007**

**Repealed  
Subsidiary  
2007/149**

(2) Section 93(2)(a) of the Act shall apply as if the reference to Gibraltar policies included Gibraltar contracts in the case of a reinsurer.

(3) For the purposes of section 93 of the Act a contract of reinsurance is a Gibraltar contract for the purposes of that section if the law applicable to it is the law of Gibraltar.

**Power to prohibit new business.**

22. The grounds for a direction referred to in section 105(2) shall be extended to include that the insurer has failed, within such time as it was allowed, to give effect to a restoration plan under section 62A of the Act or a short term financial scheme under section 63 of the Act.

**Final withdrawal of authorisation.**

23.(1) The Commissioner may direct under section 106(1) of the Act that—

- (a) a Gibraltar reinsurer which ceases to carry on reinsurance business in the EEA; or
- (b) a reinsurer which is not a Gibraltar reinsurer ceases to carry on reinsurance business in or from within Gibraltar;

shall cease to be authorised to carry on reinsurance business or reinsurance business of a particular class.

(2) If a reinsurer licensed to carry on reinsurance business has—

- (a) not commenced to carry on reinsurance business and at least twelve months have elapsed since the issue of the authorisation; or
- (b) not carried on reinsurance business for more than six months;

the Commissioner may direct that the reinsurer shall cease to be authorised to carry on reinsurance business.

(3) Where the Commissioner issues a direction under sub-regulation (2), he shall notify the supervisory authorities of any EEA States where the insurer carries on reinsurance business of the nature and reasons for his direction and request the supervisory authorities to take appropriate measures to prevent the reinsurer from effecting contracts of reinsurance.

**Law applicable to certain contracts of reinsurance.**

## Insurance Companies

---

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

24.(1) Notwithstanding the provisions of section 114A of the Act, the law applicable to a contract of reinsurance the effecting of which constitutes general or long term business and which covers risks situated in Gibraltar or an EEA State, shall be determined in accordance with the provisions of Part I or II, as the case may be, of Schedule 9.

(2) In section 114A and Schedule 9 of the Act, “policy holder” shall include an insurer which has ceded reinsurance risks to a reinsurer.

#### **Regulations.**

25. The power to make regulations under section 118 of the Act shall extend to regulations providing for the establishment of insurance special purpose vehicles and for their authorisation and supervision and for the conditions under which the business of such vehicles are to be carried on.

#### **Winding-up of reinsurance companies.**

26.(1) A petition for the winding-up of a reinsurance company incorporated in Gibraltar under the provisions of Schedule 8 of the Act may, with the prior leave of the court, be presented by the Commissioner.

(2) The grounds on which the Commissioner may present a petition in addition to those grounds referred to in paragraph 2(2) of Schedule 8 of the Act, are that, in the case of a Gibraltar reinsurer, that the reinsurer has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of an EEA State which gives effect to the reinsurance Directive or is otherwise applicable to the reinsurance activities of the reinsurer in that State.

(3) The provisions of paragraphs 3 and 7 of Schedule 8 of the Act shall extend to a reinsurer.

#### **Transfer of business.**

27.(1) Notwithstanding the provisions of paragraphs 1(3) and 6(3) of Schedule 10 of the Act, Parts I and II of that schedule shall apply as if the meaning of “direct insurance” included reinsurance.

(2) The provisions of paragraph 3(1) of Schedule 10 of the Act shall extend to a transferee which is or will be immediately after the making of the order is authorised in accordance with Article 3 of the reinsurance Directive to carry on in an EEA State long term business of the class or classes to be transferred under the scheme.

(3) The definition of “the relevant authority” in paragraph 3(4) of Schedule 10 of the Act is extended to include, in the case of a transferee

which does not fall within paragraph 3(4)(a) or (b) of that schedule, the Commissioner or other authority which, in accordance with Article 38 or 39 of the reinsurance Directive, is responsible for supervising the company's margin of solvency.

(4) The Commissioner shall not approve a proposed transfer of reinsurance policies under paragraph 8(1) of Schedule 10 of the Act unless he is satisfied that the transferee is or will immediately after the approval be authorised in accordance with Article 3 of the reinsurance Directive to carry on in an EEA State general business of the class or classes to be transferred by the instrument.

(5) The definition of "the relevant authority" in paragraph 8(5) of Schedule 10 of the Act is extended to include, in the case of a transferee which does not fall within paragraph 8(5)(a) to (c) of that schedule, the Commissioner or other authority which, in accordance with Articles 37 or 39 of the reinsurance Directive, is responsible for supervising the transferee's margin of solvency.

### **Recognition in Gibraltar of EEA reinsurers.**

28.(1) An EEA reinsurer shall not carry on reinsurance business of a class or part of a class through a branch in Gibraltar unless the reinsurer is authorised in accordance with Article 3 of the reinsurance Directive and paragraphs 4 to 7 of Schedule 13 of the Act shall not apply to it.

(2) An EEA reinsurer shall not provide reinsurance of a class or part of a class in Gibraltar unless it is authorised in accordance with Article 3 of the reinsurance Directive.

(3) The power to prohibit the free disposal of assets under paragraph 12(1) of Schedule 13 of the Act shall also be exercisable at the request of a reinsurer' home State supervisory authority under Article 42 of the reinsurance Directive if the reinsurer—

- (a) has failed to comply with the requirements of Article 32 of that Directive; or
- (b) the reinsurer's margin of solvency has fallen below the minimum required by Articles 37 and 38 of that Directive; or
- (c) the reinsurer's margin of solvency has fallen below the guarantee fund as defined in Article 40 of that Directive; or
- (d) the reinsurer's authorisation has been withdrawn or has lapsed in accordance with Article 44 of that Directive.

## Insurance Companies

---

### INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

(4) The powers conferred by section 98 of the Act shall be exercisable in respect of an EEA reinsurer to enable the reinsurer's home State supervisory authority to perform its obligations under Article 17 of the reinsurance Directive.

(5) The powers conferred by section 100 of the Act shall be exercisable in respect of an EEA reinsurer if the Commissioner has been informed by the reinsurer's home State supervisory authority that the reinsurer's authorisation has been withdrawn or has lapsed in accordance with Article 44 of the reinsurance Directive.

(6) Where it appears to the Commissioner that an EEA reinsurer's activities in Gibraltar is being conducted in a manner which might be detrimental to the reinsurer's financial soundness, he may notify his concerns to the relevant supervisory authority of the home State.

(7) The provisions of paragraph 17(1) of Schedule 13 of the Act shall also apply where the Commissioner is notified by the home State supervisory authority that a reinsurer's authorisation has been withdrawn or has lapsed in accordance with Article 44 of the reinsurance Directive.

(8) The provisions of paragraph 17(4) of Schedule 13 of the Act shall apply to contracts of reinsurance.

(9) Where an EEA reinsurer is being wound-up in the EEA State where it is incorporated, commitments arising from reinsurance business carried on or provided in Gibraltar shall be met in the same way as those arising from the insurer's business in other states of commitment.

(10) The provisions of paragraph 18(1)(c) of Schedule 13 of the Act shall apply to the provision of reinsurance.

(11) Notwithstanding the provisions of paragraph 19(1) of Schedule 13 of the Act, that schedule shall apply as if the meaning of "direct insurance" included reinsurance.

(12) Notwithstanding the provisions of paragraph 19(2) of Schedule 13 of the Act, references to the provision of insurance in Gibraltar shall also be references to the covering of a reinsurance risk or commitment in Gibraltar through an establishment in an EEA State.

(13) The provisions of paragraph 19(3) of Schedule 13 of the Act shall extend to reinsurance business.

(14) In paragraphs 21 and 22 of Schedule 13 of the Act "UK insurer" shall include a reinsurer.

# Insurance Companies

1987-10

---

## INSURANCE COMPANIES (REINSURANCE DIRECTIVE) REGULATIONS 2007

**Repealed**  
**Subsidiary**  
**2007/149**

(15) The provisions of paragraph 21(3) of Schedule 13 of the Act shall extend to the provision of reinsurance.

### **Recognition in EEA States of Gibraltar reinsurers.**

29.(1) A Gibraltar reinsurer shall not carry on reinsurance business of a class or part of a class through a branch in an EEA State unless it is licensed under regulation 4 to carry on reinsurance business of that class or part of a class.

(2) A Gibraltar reinsurer shall not provide insurance of any class or part of a class in an EEA State unless it is licensed under regulation 4 to carry on reinsurance business of that class or part of a class.

(3) The Commissioner shall not refuse a reinsurance contract or a retrocession contract concluded by a Gibraltar reinsurer with a Gibraltar or EEA reinsurer on grounds directly related to the financial soundness of any of those reinsurers.

(4) Notwithstanding the definition of “direct insurance business” in paragraph 11(1) of Schedule 14 of the Act, that definition shall be read as including reinsurance business.

(5) Notwithstanding the provisions of paragraph 11(2) of Schedule 14 of the Act references in Part I and II of that schedule to the provision of insurance in an EEA State or Gibraltar shall include the provision of reinsurance.

### **Restrictions on the disclosure of information.**

30. The provisions of paragraph 1 of Schedule 16 of the Act shall not preclude the disclosure of information if such disclosure is in accordance with Articles 24 to 28 of the reinsurance Directive or for the purposes of enabling or assisting the discharge of functions if disclosure is in accordance with Articles 29 and 30 of that Directive.