

Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10.

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LN.2020/015

		<i>Commencement</i>	15.1.2020
Amending enactments	Relevant current provisions	Commencement date	
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	rr. 5(1)((b)-(c), 54(1)(a)-(b), (3)(b), 85A	11.6.2020	

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In exercise of the powers conferred upon the Minister under sections 6(1), 24(3)(v), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.

PART 1 PRELIMINARY

Title and commencement.

1. These Regulations may be cited as the Financial Services (Insurance Distribution) Regulations 2020 and come into operation on the day of publication.

Interpretation.

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

“the Act” means the Financial Services Act 2019;

“advice” means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;

“appointed intermediary” has the meaning given in regulation 7;

“auditor”, in relation to an insurance, reinsurance or ancillary insurance intermediary, means the person appointed by the intermediary to be its auditor for the purposes of the Act and these Regulations and who is in office at that time;

“authorised credit institution” means a credit institution with Part 7 permission or a credit institution that has received authorisation under Article 8 of the Capital Requirements Directive from its home state regulator and that has exercised its EEA right under Part 2 of Schedule 10 to the Act;

“branch” means an agency or a branch of an intermediary which is located in the territory of an EEA State other than the home State;

“close links” has the meaning given in Article 13(17) of the Solvency 2 Directive;

“durable medium” means any instrument which—

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- (a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- (b) allows the unchanged reproduction of the information stored;

“financial instrument” has the meaning given in paragraph 44(1) of Schedule 2 to the Act;

“Financial Services Ombudsman” means the Financial Services Ombudsman established under Part 14 of the Act;

“financial year”, in relation to an insurance, reinsurance or ancillary insurance intermediary, means—

- (a) the period beginning with the day on which the intermediary commences to carry on a regulated activity and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the intermediary is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the intermediary is so prepared;

“home State” means—

- (a) where the intermediary is an individual, the EEA State in which his or her residence is situated;
- (b) where the intermediary is a legal person, the EEA State in which its registered office is situated or, if under its national law it has no registered office, the EEA State in which its head office is situated;

“host State” means the EEA State in which an insurance or reinsurance intermediary has a permanent presence or establishment or provides services, and which is not its home State;

“insurance-based investment product” means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include—

- (a) non-life insurance products;

- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or the Solvency 2 Directive; or
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

“insurance distribution business” means carrying on the regulated activity of insurance or reinsurance distribution within the meaning of paragraph 34 or 35 of Schedule 2 to the Act;

“insurance distributor” means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;

“large risks” has the meaning given in Article 13(27) of the Solvency 2 Directive;

“money” includes any form of money, whether represented by a cheque, or other payable order, or otherwise;

“non-life insurance products” means the non-life insurance products listed in Annex I to the Solvency 2 Directive;

“Part 7 permission” means permission under Part 7 of the Act;

“primary place of business” means the location from where the main business is managed;

“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the provision of insurance distribution or reinsurance distribution, regulation 85;

“regulatory system” means the arrangements for regulating an insurance, reinsurance or ancillary insurance intermediary under the Act, these Regulations, other subordinate legislation made under the Act, and any rules or directions made by the GFSC that it is empowered to make under any statutory provision;

“reinsurance distributor” means any reinsurance intermediary or reinsurance undertaking;

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“remuneration” means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.

(2) In these Regulations any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of this chapter and required or allowed by that provision to be given in a note to the financial statements of the insurance, reinsurance or ancillary insurance intermediary in question.

(3) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Schedule 2 to the Act has the same meaning as it has for the purposes of that Schedule.

(4) Accordingly, in these Regulations, the expressions listed in the first column below are defined or otherwise explained by the provisions of Schedule 2 to the Act which are listed in the second column—

Expression

***Provision of Schedule 2
to the Act***

ancillary insurance intermediary	Paragraph 33
insurance distribution	Paragraph 33
insurance intermediary	Paragraph 33
insurance undertaking	Paragraph 33
reinsurance	Paragraph 33
reinsurance distribution	Paragraph 33
reinsurance intermediary	Paragraph 33
reinsurance undertaking	Paragraph 33

Application.

3. These Regulations apply to the taking up or pursuing of insurance distribution or reinsurance distribution in or from Gibraltar.

**PART 2
AUTHORISATION CONDITIONS**

Authorisation

Conditions for authorisation.

4.(1) This Part includes provisions which supplement the threshold conditions as they apply to insurance, reinsurance and ancillary insurance intermediaries.

(2) In giving or varying a Part 7 permission to an applicant to take up or pursue insurance distribution or reinsurance distribution, the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(3) An insurance, reinsurance or ancillary insurance intermediary which has a Part 7 permission must at all times comply with the threshold conditions and these Regulations.

(4) An applicant for a Part 7 permission to take up or pursue insurance distribution or reinsurance distribution must satisfy the GFSC that it meets, or will meet, the conditions set out in regulations 5 and 6.

(5) This regulation applies in addition to any other requirement relating to a Part 7 permission.

Application for permission or registration.

5.(1) An application for Part 7 permission or for registration under these Regulations must be made in the form and manner that the GFSC directs and, in addition to complying with any other requirements imposed by or under the Act or these Regulations, must include all of the following information—

- (a) the identities of shareholders or members, whether natural or legal persons, that have a holding of more than 10% in the intermediary, and the amounts of those holdings;
- (b) the identities of persons who have close links with the intermediary; and
- (c) information confirming that those holdings or close links do not prevent the effective exercise of the GFSC's supervisory functions.

(2) An applicant must promptly inform the GFSC of any change in any information provided as part of an application submitted in accordance with sub-regulation (1).

(3) The GFSC must not grant Part 7 permission to an intermediary if it would be prevented from exercising its supervisory functions effectively by—

- (a) the laws, regulations or administrative provisions of a territory outside of the EEA governing any person with which the intermediary has close links; or

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- (b) any difficulties involved in the enforcement of those laws, regulations or administrative provisions.

Compliance with certain organisational and prudential requirements.

6. Any Part 7 permission granted to an insurance, reinsurance or ancillary insurance intermediary to take up or pursue insurance distribution or reinsurance distribution is subject to the condition that the holder meets the applicable requirements of–

- (a) regulation 32;
- (b) regulation 33; and
- (c) regulation 54.

Appointed intermediaries

Appointed intermediaries.

7.(1) An insurance or reinsurance undertaking or intermediary (“the principal”) may appoint an insurance or reinsurance intermediary or an ancillary insurance intermediary (“the appointed intermediary”) to take up or pursue the activity of insurance distribution or reinsurance distribution under the responsibility of the principal.

(2) The principal–

- (a) is responsible for ensuring that its appointed intermediaries are registered under these Regulations; and
- (b) must ensure that its appointed intermediaries meet the conditions for registration under these Regulations, including the condition set out in regulation 5(1)(b); and
- (c) must ensure that its appointed intermediaries meet the conditions in Part 7 and Schedule 12 to the Act on information regarding close links.

Exemption from general prohibition.

8. An appointed intermediary is exempt from the general prohibition in relation to any regulated activity of insurance distribution or reinsurance distribution under the responsibility of its principal.

Exemption of ancillary insurance intermediary.

Exemption of ancillary insurance intermediary.

9. An ancillary insurance intermediary is exempt from the general prohibition and the other provisions of these Regulations in relation to any insurance distribution activity comprised in the activities of the ancillary insurance intermediary if the following conditions are met—

- (a) the insurance is complementary to the product or service supplied by a provider and covers—
 - (i) the risk of breakdown, loss of or damage to the product or non-use of the service supplied by that provider;
 - (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider; and
- (b) the premium paid for the insurance product does not exceed—
 - (i) €600 a year; or
 - (ii) where the insurance is complementary to a service of not more than three months' duration, €200 a person.

**PART 3
CONDUCT OF BUSINESS**

Use of intermediaries.

10.(1) Insurance and reinsurance undertakings and intermediaries must only use the distribution services of—

- (a) insurance, reinsurance or ancillary insurance intermediaries that—
 - (i) have Part 7 permission; and
 - (ii) are entered into the Register;
- (b) insurance, reinsurance or ancillary insurance intermediaries authorised in accordance with the Insurance Distribution Directive in an EEA State other than Gibraltar;
- (c) ancillary insurance intermediaries carrying out the insurance distribution activities set out in regulation 9; or

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(d) appointed intermediaries.

(2) When carrying out a distribution activity through an ancillary insurance intermediary which is exempt from the general prohibition by virtue of the exemption under regulation 9, an insurance undertaking or insurance intermediary must ensure that—

- (a) information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in regulation 29 allowing customers and other interested parties to lodge complaints;
- (b) appropriate and proportionate arrangements are in place to comply with regulations 11, 17 and 34 and to consider the demands and needs of the customer before the proposal of the contract; and
- (c) the insurance product information document referred to in regulation 13(8) is provided to the customer prior to the conclusion of the contract.

Information requirements and conduct of business rules

General principle.

11.(1) Insurance distributors, when carrying out insurance distribution, must always act honestly, fairly and professionally, in accordance with the best interests of their customers.

(2) Any information related to insurance distribution, including marketing communications, addressed by an insurance distributor to customers or potential customers must be fair, clear and not misleading and, in the case of marketing communications, must be clearly identifiable as such.

(3) Sub-regulation (2) applies without limiting the Consumer Protection (Unfair Trading) Act 2008.

General information provided by insurance intermediary or undertaking.

12.(1) An insurance intermediary must disclose to a customer the following in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance intermediary;
- (b) whether it provides advice about the insurance products sold;

- (c) the procedures under regulations 29 and 30 enabling customers and other interested parties to make complaints and seek out-of-court redress;
- (d) the register in which it has been included and the means for verifying that it has been registered; and
- (e) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

(2) An insurance undertaking must disclose the following to a customer in good time before an insurance contract is concluded—

- (a) its identity and address and that it is an insurance undertaking;
- (b) whether it provides advice about the insurance products sold; and
- (c) the procedures under regulations 29 and 30 enabling customers and other interested parties to make complaints and seek out-of-court redress.

Advice and sales where no advice is given.

13.(1) Before concluding an insurance contract, an insurance distributor must—

- (a) specify the demands and needs of the customer, based upon information obtained from that customer; and
- (b) provide the customer with objective information about the insurance product in a comprehensible form, to allow the customer to make an informed decision,

and any contract proposed must be consistent with the customer's insurance demands and needs.

(2) Where advice is provided before a specific contract is concluded, the insurance distributor must provide the customer with a personalised recommendation explaining why the particular product would best meet the customer's demands and needs.

(3) The level of detail provided under sub-regulations (1) and (2) may be varied according to the type of customer and the complexity of the insurance product being proposed.

(4) Where an insurance intermediary informs a customer that it gives advice on the basis of a fair and personal analysis, it must do so on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal

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recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

(5) Before an insurance contract is concluded, and regardless of whether or not advice is given or whether the insurance product is part of a package to which regulation 17 applies, an insurance distributor must provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision about the contract.

(6) The information provided under sub-regulation (5) may be varied according to the type of customer and the complexity of the insurance product being proposed.

(7) Sub-regulation (5) applies without limiting regulations 163 and 164 of the Financial Services (Insurance Companies) Regulations 2020.

(8) In relation to the distribution of non-life insurance products, the information required under sub-regulation (5) must be provided by means of a standardised insurance product information document drawn up by the manufacturer of the non-life insurance product.

(9) A standardised insurance product information document must—

- (a) be a short and stand-alone document provided on paper or on another durable medium;
- (b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- (c) be no less comprehensible if, having been originally produced in colour, it is printed or photocopied in black and white;
- (d) be written in an official language used in the part of the EEA State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;
- (e) be accurate and not misleading;
- (f) contain the title “insurance product information document” at the top of the first page; and
- (g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

(10) An insurance product information document must contain the following—

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums and the duration of payments;
- (d) the main exclusions where claims cannot be made;
- (e) the obligations—
 - (i) at the start of the contract;
 - (ii) during the term of the contract; and
 - (iii) in the event that a claim is made;
- (f) the term of the contract, including its start and end dates; and
- (g) the means of terminating the contract.

(11) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 20.9 of the Insurance Distribution Directive.

Information provided by ancillary insurance intermediaries.

14. An ancillary insurance intermediary must comply with regulations 12(1)(a), (c) and (d) and 35(1)(d).

Information exemptions and flexibility.

15.(1) The information referred to in regulations 12, 13 and 35 does not need to be provided when an insurance distributor carries out distribution activities in relation to the insurance of large risks.

(2) A professional client within the meaning of the Financial Services (Investment Services) Regulation 2020 does not need to be provided with the information referred to in—

- (a) regulation 20; and
- (b) regulation 21.

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(3) Where an insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred to in regulations 11 to 18, 34 and 35 must be provided to the employee promptly after the employee's enrolment in the arrangement concerned.

Information conditions.

16.(1) Any information which is provided in accordance with regulations 12, 13, 20 and 35 must be communicated to the customer—

- (a) free of charge;
- (b) in a clear and accurate manner, comprehensible to the customer;
- (c) in an official language of the EEA State in which the risk is situated, the EEA State of the commitment or in any other language agreed upon by the parties; and
- (d) on paper or, subject to sub-regulation (2)—
 - (i) another durable medium, where the conditions in sub-regulation (3) are met; or
 - (ii) a website, where the conditions in sub-regulation (4) are met.

(2) Where the information is provided using a durable medium other than paper or by means of a website, a paper copy must be provided to the customer upon request and free of charge.

(3) The information may be provided using a durable medium other than paper if the following conditions are met—

- (a) the use of that durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer; and
- (b) the customer has been given the choice between information on paper and on that durable medium, and has chosen the latter medium.

(4) The information may be provided by means of a website if—

- (a) it is addressed personally to the customer; or

(b) the following conditions are met—

- (i) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;
- (ii) the customer has consented to the provision of that information by means of a website;
- (iii) the customer has been notified electronically of the address of the website, and the place on the website where that information can be accessed; and
- (iv) the information will remain accessible on the website for such period of time as the customer may reasonably need to consult it.

(5) For the purposes of sub-regulations (3) and (4), the provision of information using a durable medium other than paper or by means of a website is to be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer if there is evidence that the customer has regular access to the internet, and the provision by the customer of an e-mail address for the purposes of that business is to be regarded as such evidence.

(6) In the case of telephone selling, the information given to the customer by the insurance distributor before the contract is concluded, including the insurance product information document, must be provided in accordance with the Financial Services (Distance Marketing) Act 2006 and, even if the customer has chosen to receive prior information on a durable medium other than paper in accordance with sub-regulations (3), information must be provided by the insurance distributor to the customer in accordance with sub-regulations (1) and (2) immediately after the insurance contract is concluded.

Cross-selling.

17.(1) When an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurance distributor must inform the customer whether it is possible to buy the different components separately and, if so, must provide an adequate description of the components of the agreement or package and the costs and charges for each component.

(2) Where the risk or insurance coverage resulting from such an agreement or package offered to a customer is different from that associated with the components taken separately, the insurance distributor must provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or insurance coverage.

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(3) Where an insurance product is ancillary to a product or service which is not insurance, as part of a package or the same agreement, the insurance distributor must offer the customer the possibility of buying the product or service separately.

(4) Sub-regulation (3) does not apply where an insurance product is ancillary to—

- (a) an investment service or activity within the meaning of Chapter 2 of Part 6 of Schedule 2 to the Act;
- (b) a mortgage credit agreement within the meaning of paragraph 116 of Schedule 2 to the Act; or
- (c) a payment account within the meaning of paragraph 15 of Schedule 2 to the Act.

(5) In any case where sub-regulation (1) or (3) applies, the insurance distributor must specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.

(6) Nothing in this regulation prevents the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

(7) The GFSC, acting on a case-by-case basis, may prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, where it can demonstrate that such sales are detrimental to consumers.

(8) This regulation must be applied having regard to any guidelines on the assessment and supervision of cross-selling practices issued by EIOPA under Article 24.4 of the Insurance Distribution Directive.

Product oversight and governance requirements.

18.(1) Insurance undertakings and intermediaries that manufacture insurance products for sale to customers must maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

(2) A product approval process must be proportionate and appropriate to the nature of the insurance product.

(3) A product approval process must—

- (a) specify an identified target market for each product; and

(b) ensure that–

- (i) all relevant risks to that identified target market are assessed;
- (ii) the intended distribution strategy is consistent with the identified target market; and
- (iii) reasonable steps are taken to ensure that the insurance product is distributed to the identified target market.

(4) An insurance undertaking must understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

(5) Insurance undertakings and intermediaries that manufacture insurance products must make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

(6) Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it must have in place adequate arrangements to obtain the information referred to in sub-regulation (5) and to understand the characteristics and identified target market of each insurance product.

(7) This regulation–

- (a) applies without limiting any other requirements under these Regulations, including those relating to disclosure, suitability or appropriateness, inducements and the identification and management of conflicts of interest; and
- (b) does not apply to insurance products which consist of the insurance of large risks.

(8) This regulation applies subject to any delegated acts adopted the European Commission under Article 25.2 of the Insurance Distribution Directive.

Additional requirements: insurance-based investment products

Scope of additional requirements.

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19. Where an insurance intermediary or insurance undertaking carries on the distribution of insurance-based investment products, the requirements of regulations 20, 21, 36 and 37 apply in addition to those of regulations 11, 12, 13, 34 and 35.

Information to customers

Information to customers.

20.(1) Without limiting regulations 12 or 35(1) and (3), customers or potential customers must be provided with appropriate information in good time, prior to the conclusion of a contract, with regard to the distribution of insurance-based investment products and all costs and related charges.

(2) That information must include—

- (a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in regulation 21;
- (b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- (c) as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.

(3) The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk must—

- (a) be provided in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment;
- (b) where the customer so requests, include an itemised breakdown of the costs and charges; and
- (c) where applicable, be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.

(4) The information in sub-regulations (1) to (3), which may be provided in a standardised format, must be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.

(5) Without limiting regulations 35(1)(d) and (e), (4) or any regulations made by the Minister, an insurance intermediary or insurance undertaking is regarded as fulfilling its obligations under regulation 11(1), 36 or 37 where—

- (a) in connection with the distribution of an insurance-based investment product or an ancillary service, it—
 - (i) pays or is paid any fee or commission to or by any party other than the customer or a person acting on the customer's behalf; or
 - (ii) provides or is provided with any non-monetary benefit to or by any party other than the customer or a person acting on the customer's behalf; and
- (b) the payment or benefit—
 - (i) does not have a detrimental impact on the quality of the relevant service to the customer; and
 - (ii) does not impair the insurance intermediary's or insurance undertaking's compliance with the duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

(6) This regulation applies subject to any delegated acts adopted by the European Commission under Article 29.4 of the Insurance Distribution Directive.

Assessment of suitability, appropriateness, and reporting to customers.

21.(1) Without limiting regulation 13(1) and (2), when providing advice on an insurance-based investment product, an insurance intermediary or insurance undertaking must obtain information regarding the customer's or potential customer's—

- (a) knowledge and experience in the investment field relevant to the specific type of product or service;
- (b) financial situation, including the ability to bear losses; and

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- (c) investment objectives, including the person's risk tolerance;

which is necessary to enable the insurance intermediary or insurance undertaking to recommend to the customer or potential customer insurance-based investment products that are suitable for that person and, in particular, accord with that person's risk tolerance and ability to bear losses.

(2) An insurance intermediary or insurance undertaking must ensure that, where it provides investment advice recommending a package of services or products bundled as provided for in regulation 17, the overall bundled package is suitable.

(3) Without limiting regulation 13(1) and (2) when carrying out insurance distribution activities other than those in sub-regulations (1) and (2), in relation to sales where no advice is given, an insurance intermediary or insurance undertaking must ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, in order to enable the insurance intermediary or insurance undertaking to assess whether—

- (a) the insurance service or product envisaged is appropriate for the customer; and
- (b) where a package of services or products bundled as provided for in regulation 17 is envisaged, the overall bundled package is appropriate for the customer.

(4) Where, on the basis of information received under sub-regulation (3), an insurance intermediary or insurance undertaking considers that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking must give the customer or potential customer a warning to that effect.

(5) Where a customer or potential customer does not provide the information requested under sub-regulation (3) or provides insufficient information regarding the person's knowledge and experience, the insurance intermediary or insurance undertaking must warn the person that it is not in a position to determine whether the product envisaged is appropriate for that person.

(6) Without limiting regulation 13(1) and (2), an insurance intermediary or insurance undertaking may carry out insurance distribution activity without the need to obtain the information or make the determination provided for in sub-regulations (3) to (5) where no advice is given in relation to insurance-based investment products and all the following conditions are met—

- (a) the customer or potential customer resides or is established in Gibraltar;
- (b) the activity relates to either of the following insurance-based investment products—

- (i) contracts which only provide investment exposure to financial instruments which are deemed to be non-complex under the MiFID 2 Directive and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or
 - (ii) other non-complex insurance-based investments;
- (c) the activity is carried out at the initiative of the customer or potential customer;
- (d) the customer or potential customer has been clearly informed that, in the providing the activity–
 - (i) the insurance intermediary or insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered; and
 - (ii) the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules; and
- (e) the insurance intermediary or insurance undertaking complies with its obligations under regulations 36 and 37.

(7) A warning under sub-regulation (4), (5) or (6)(d) may be provided in a standardised format.

(8) An insurance intermediary or insurance undertaking must establish a record that includes any document agreed between the insurance intermediary or insurance undertaking and a customer that sets out–

- (a) the rights and obligations of the parties; and
- (b) the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer;

and the rights and duties of the parties may be incorporated by reference to other documents or legal texts.

(9) An insurance intermediary or insurance undertaking must provide the customer, on a durable medium, with adequate reports on the service provided and those reports must include–

- (a) periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer; and

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- (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

(10) An insurance intermediary or insurance undertaking, when providing advice on an insurance-based investment product and before the contract is concluded, must provide to the customer, on a durable medium and in compliance with regulation 16(1) to (3), a suitability statement specifying the advice given and how that advice meets the customer's preferences, objectives and other characteristics.

(11) Where a contract is concluded using a means of distance communication which prevents the suitability statement being provided in advance, the insurance intermediary or insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by the contract if the following conditions are met—

- (a) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement before the contract is concluded; and
- (b) the customer has consented to receiving the suitability statement without undue delay after the contract is concluded.

(12) Where an insurance intermediary or insurance undertaking has informed a customer that it will carry out a periodic assessment of suitability, the periodic report must contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics.

(13) This regulation must be applied—

- (a) subject to any delegated acts adopted by the European Commission under Article 30.6 of the Insurance Distribution Directive; and
- (b) having regard to any guidelines issued by EIOPA under Article 30.7 or 30.8 of the Insurance Distribution Directive.

Customer relations

Customers' rights.

22. An insurance, reinsurance or ancillary insurance intermediary must not, in any written communication or agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which it has under the Act, these Regulations or the regulatory system;
- (b) any other duty to act with skill, care and diligence that it owes to a customer in carrying out its regulated activity in respect of that customer; or
- (c) any liability that it owes to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in carrying out its regulated activity in respect of that customer.

Charges.

23. The charges by an insurance, reinsurance or ancillary insurance intermediary to a customer must not be unfair in their incidence, or unreasonable in their amount, having regard to all relevant circumstances.

Independence

Inducements.

24. An insurance, reinsurance or ancillary insurance intermediary must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits, or accepts, any inducement that is likely to conflict with any duty owed to customers.

General

Compliance.

25.(1) An insurance, reinsurance or ancillary insurance intermediary must take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) its officers, employees and other representatives are aware of their obligations under the Act, these Regulations and the regulatory system, and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its regulated activity and compliance with the regulatory system.

(2) Records required to be maintained by the regulatory system must be kept available, for a period of not less than 6 years, by an insurance, reinsurance or ancillary insurance intermediary for inspection by any person duly authorised by the GFSC.

Introducers and counterparties.

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26.(1) An insurance, reinsurance or ancillary insurance intermediary must not accept introduction of insurance distribution business from any natural or legal person, or make any form of payment to any natural or legal person who effects introductions between the intermediary and potential customers, unless the intermediary is satisfied, on reasonable grounds, that the person is reputable or of good character, as the case may be.

(2) An insurance, reinsurance or ancillary insurance intermediary must ensure that any natural or legal person with which it is undertaking regulated financial service business is, if applicable, authorised to conduct that business by a relevant regulator.

(3) An insurance, reinsurance or ancillary insurance intermediary who accepts the introduction of insurance distribution business from a person must put in place an agreement with that person setting out as a minimum the following—

- (a) the duties of each party in respect of relations with customers;
- (b) complaints;
- (c) the responsibilities of each party in relation to compliance with anti-money laundering requirements; and
- (d) remuneration payable.

Essential staff.

27. An insurance, reinsurance or ancillary insurance intermediary must at all times have effective arrangements to safeguard the interests of customers in the event of the absence, illness, disability or death of any essential member of its staff.

Cessation of business.

28. Where an insurance, reinsurance or ancillary insurance intermediary decides, or is otherwise forced or required, to withdraw from its regulated activity, it must ensure to the satisfaction of the GFSC that any outstanding business under that activity is—

- (a) properly completed; or
- (b) transferred to another insurance, reinsurance or ancillary insurance intermediary, as the case may be.

Complaints.

29.(1) Customers and other interested parties may make complaints about insurance and reinsurance distributors to the GFSC.

(2) The GFSC must register and reply to any complaint received in relation to insurance and reinsurance distributors.

Out-of-court redress.

30.(1) Insurance and reinsurance distributors must ensure that they have adequate mechanisms for receiving and dealing with complaints from customers.

(2) An insurance and reinsurance distributor with Part 7 permission but which carries on insurance distribution business by means of a branch or appointed representative in another EEA State must—

- (a) have in place and operate appropriate and effective procedures for registering and responding to complaints from customers in that EEA State; and
- (b) adhere to an appropriate alternative dispute resolution entity in that EEA State in respect of consumer disputes arising from its insurance distribution business in that State.

(3) Part 14 of the Act applies to disputes arising between a consumer and an insurance distributor under these Regulations as it applies to a financial service dispute within the meaning of that Act.

(4) The Financial Services Ombudsman must cooperate in the resolution of cross-border disputes concerning rights and obligations arising under the Insurance Distribution Directive.

Cooperation and exchange of information with competent authorities of EEA States.

31.(1) The GFSC must take steps to cooperate with competent authorities in other EEA States and to exchange information with them on insurance and reinsurance distributors in order to ensure the proper application of the Insurance Distribution Directive.

(2) In particular, the GFSC must share information on—

- (a) the good repute, professional knowledge and competence of insurance and reinsurance distributors, whether derived from the registration process or on an ongoing basis; and
- (b) any insurance and reinsurance distributor that has been subject to a sanction or other measure under Part 11 of the Act or Chapter 2 of Part 8 of these Regulations which is likely to lead to its removal from the register.

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(3) Any person who receives or divulges information in connection with these Regulations is bound by the professional secrecy obligation in section 46 of Part 5 of the Act.

**PART 4
CORPORATE GOVERNANCE AND RISK MANAGEMENT**

Professional and organisational requirements

Knowledge, ability and continuing development requirements.

32.(1) Insurance and reinsurance distributors must possess, and must ensure that relevant individuals possess, appropriate knowledge and ability in order to complete their tasks and perform their duties adequately, having regard to the distribution activities which they undertake and the products distributed.

(2) In sub-regulation (1), “relevant individual” means—

- (a) an individual within the distributor’s management structure who is responsible for distribution in respect of insurance and reinsurance products;
- (b) an employee of the distributor who carries out insurance or reinsurance distribution activities; or
- (c) any other individual who is directly involved in the distributor’s insurance or reinsurance distribution activities.

(3) Insurance and reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and competence requirements in Schedule 1.

(4) In order to maintain an adequate level of performance corresponding to the role they perform and the relevant market—

- (a) insurance and reinsurance intermediaries;
- (b) employees of insurance and reinsurance undertakings; and
- (c) employees of insurance and reinsurance intermediaries;

must complete a minimum of 15 hours of continuing professional training and development in each 12 month period.

(5) Continuing professional training and development may encompass various types of facilitated learning opportunities, including courses, e-learning and mentoring, and must take account of–

- (a) the role and activity carried out by the person concerned; and
- (b) the type of distribution and the nature of the products sold.

(6) An insurance or reinsurance undertaking or intermediary whose employees are engaged in insurance or reinsurance distribution must–

- (a) take appropriate steps to verify that the knowledge and ability of those employees, having regard to the distribution activities which they undertake and the products distributed, meet the requirements of sub-regulation (1); and
- (b) where necessary, provide those employees with appropriate training or professional development in order to meet those requirements.

Fit and proper requirements.

33.(1) Individuals who–

- (a) work for–
 - (i) an insurance, reinsurance or ancillary insurance intermediary; or
 - (ii) an insurance or reinsurance undertaking; and
- (b) are directly involved in insurance or reinsurance distribution or form part of the management structure responsible for any staff directly involved in insurance or reinsurance distribution;

must be of good repute and, as a minimum, must not have been convicted of a serious criminal offence in respect of crimes against property or crimes related to financial activities or be an undischarged bankrupt.

(2) To ensure compliance with the requirements of this regulation and regulation 32, insurance and reinsurance undertakings must–

- (a) approve, implement and regularly review their internal policies and appropriate internal procedures;

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- (b) identify a function to ensure the proper implementation of those policies and procedures, and inform the GFSC at its request, of the name of the person responsible for that function; and
- (c) establish and maintain up-to-date records of all relevant documents regarding the application of this regulation and regulation 32.

(3) The GFSC may establish arrangements under which insurance and reinsurance distributors are permitted to verify and certify the good repute of their employees and, where appropriate, their insurance or reinsurance intermediaries.

Remuneration.

34. An insurance distributor must not—

- (a) be remunerated in a way that conflicts with its duty to act in the best interests of its customers; or
- (b) remunerate or assess the performance of its employees in a way which conflicts with that duty;

and, in particular, must not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to it or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

Conflicts of interest and transparency.

35.(1) An insurance intermediary must provide a customer with the following information in good time before an insurance contract is concluded—

- (a) whether it has a holding (direct or indirect) representing 10% or more of the voting rights or capital in a given insurance undertaking;
- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding (direct or indirect) representing 10% or more of the voting rights or capital in the insurance intermediary;
- (c) in relation to any contract proposed or advised upon—
 - (i) whether it gives advice on a fair analysis basis;

- (ii) whether it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and, if so, the names of those insurance undertakings; or
 - (iii) where it does not give advice on a fair analysis basis and is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, the names of the insurance undertakings with which it may and does conduct business;
- (d) the nature of the remuneration received in relation to the insurance contract;
- (e) whether in relation to the insurance contract, it works on the basis of–
- (i) a fee (remuneration paid directly by the customer);
 - (ii) a commission of any kind (remuneration included in the insurance premium);
 - (iii) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
 - (iv) any combination of the types of remuneration in sub-paragraphs (i) to (iii).

(2) In sub-regulation (1)(c)(i) and (iii) a “fair analysis basis” means a fair and personal analysis conducted in accordance with regulation 13(4).

(3) Where a fee is payable directly by the customer, the insurance intermediary must inform the customer of the amount of the fee or, where that is not possible, of the method for calculating the fee.

(4) If any payments are made by a customer under an insurance contract after it is concluded (other than the ongoing premiums and scheduled payments) the insurance intermediary must, in respect of each payment, make the disclosures required under sub-regulations (1) and (3).

(5) An insurance undertaking must inform a customer, in good time before an insurance contract is concluded, of the nature of any remuneration which the insurance undertaking’s employees will receive in relation to the insurance contract.

(6) If any payments are made by a customer under an insurance contract after it is concluded (other than ongoing premiums and scheduled payments) the insurance undertaking must, in respect of each payment, make the disclosure required under sub-regulation (5).

Prevention of conflicts of interest.

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36.(1) An insurance intermediary or insurance undertaking carrying on the distribution of insurance-based investment products must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as determined under regulation 37) from adversely affecting the interests of its customers.

(2) Any arrangements under sub-regulation (1) must be proportionate to the type of distributor, the activities performed and the insurance products sold.

(3) This regulation applies without limiting regulations 11 and 34.

Conflicts of interest.

37.(1) Insurance intermediaries and insurance undertakings must take all appropriate steps to identify conflicts of interest between themselves (including their managers, employees or any person directly or indirectly linked to them by control) and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

(2) Where organisational or administrative arrangements made by an insurance intermediary or insurance undertaking under regulation 36 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking must clearly disclose to the customer the general nature or source of the conflict of interest, in good time before an insurance contract is concluded.

(3) Despite regulation 16, any disclosure under sub-regulation (2) must—

- (a) be made on a durable medium; and
- (b) include sufficient detail, taking into account the nature of the customer, to enable that customer to reach an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

(4) This regulation applies subject to any delegated acts adopted by the European Commission under Article 28.4 of the Insurance Distribution Directive.

Accounting records.

Duty to keep accounting records.

38.(1) An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, keep accounting records which are sufficient to show and explain the transactions of the intermediary (whether effected on its own behalf or on behalf of others) and must be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the intermediary at that time;
- (b) demonstrate whether or not the intermediary is at that time complying with any financial resources requirements imposed by the GFSC; and
- (c) enable the intermediary to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records must in particular contain—

- (a) entries from day to day of all sums of money received and expended by the intermediary, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the intermediary including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of financial instruments made by the intermediary, distinguishing those which are made on its own account and those which are made on behalf of others;
- (d) entries from day to day of the receipt and despatch of documents of title, or documents evidencing title, to financial instruments which are in the possession or control of the intermediary;
- (e) a record of financial instruments, the documents of title, or the documents evidencing title, to which are in the possession or control of the intermediary identifying—
 - (i) where those documents are kept;
 - (ii) the beneficial owner of each of those financial instruments;
 - (iii) the purposes for which those documents are held; and
 - (iv) whether those financial instruments are subject to any charge;

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- (f) entries from day to day of–
 - (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Regulations;
 - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and
- (g) a record of–
 - (i) balances on individual customer bank accounts;
 - (ii) balances on individual customer accounts at intermediate brokers and exchanges;
 - (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
 - (iv) reconciliations made in accordance with regulations 38A and 38B.

Reconciliation of customer money.

38A.(1) An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, at least once every two months reconcile the balance on each customer bank account (as recorded by the intermediary) with the balance on that account (as set out on the statement issued by the authorised credit institution).

(2) Where a customer bank account contains the money of more than one customer an intermediary must, in addition to the reconciliation made under sub-regulation (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the intermediary).

(3) Where any difference arises on reconciliation under sub-regulations (1) or (2), the intermediary must promptly correct it unless the difference arises solely as a result of timing differences between the accounting systems of the authorised credit institution and the intermediary.

Reconciliation of customers' instruments held by intermediary.

38B.(1) An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, carry out a reconciliation in accordance with this regulation at least twice in every financial year and correct any discrepancy revealed.

(2) The first such reconciliation must be carried out at some time in the fifth and sixth months of the financial year and the second must be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are—

- (a) in relation to documents of title and documents evidencing title to financial instruments of the intermediary's customers which are in the possession of the intermediary or in the possession of the intermediary's own custodian, the intermediary must inspect and count all those documents and, in the case of registrable instruments, reconcile any results which show discrepancies with the books and records of the appropriate register;
- (b) in relation to documents of title or documents evidencing title to financial instruments of the intermediary's own customers which are in the possession of a custodian other than the intermediary's own custodian, the intermediary must obtain from that custodian a statement specifying in relation to each description of instrument the documents of title or certificates of title to which were held by that custodian for the intermediary, the amount of that instrument and, where the instrument is a registrable instrument, the amount so held in each different name, made up as at the date at which the reconciliation under (a) is carried out; and
- (c) the intermediary must reconcile the results of each inspection under (a) and the contents of each statement referred to in (b) with the records maintained by the intermediary under regulation 38(2)(e).

Records to be kept up to date.

39. The obligations under this chapter are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

Audit trail.

40.(1) Information required by this chapter to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the insurance, reinsurance or ancillary insurance intermediary.

(2) All records must be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

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Conformity with accounting standards.

41. The accounting records required to be kept by an insurance, reinsurance or ancillary insurance intermediary must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed.

Retention of records.

42. An insurance, reinsurance or ancillary insurance intermediary must preserve the accounting records which it is required to keep under regulation 38 for 6 years from the date on which they are made.

Inspection of records.

43. Accounting records which are required to be kept under regulation 38 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

Financial statements

Duty to prepare annual financial statements.

44. An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, prepare for each of its financial years annual financial statements which must consist of–

- (a) a balance sheet as at the last day of the financial year;
- (b) a profit and loss account for the financial year.

Balance sheet to give a true and fair view.

45. The balance sheet must give a true and fair view of the state of affairs of the insurance, reinsurance or ancillary insurance intermediary as at the end of the financial year.

Profit and loss account to give a true and fair view.

46. The profit and loss account must give a true and fair view of the profit or loss of the insurance, reinsurance or ancillary insurance intermediary for the financial year.

Form and content of financial statements.

47.(1) The financial statements of an insurance, reinsurance or ancillary insurance intermediary must comply with the provisions of Schedule 2 (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of Schedule 2, and the other provisions of these Regulations as to the matters to be included in the intermediary's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the intermediary must depart from that provision to the extent necessary to give a true and fair view.

(4) If the intermediary departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

Annual financial statements to be submitted to meeting of partners, etc.

48.(1) Where the insurance, reinsurance or ancillary insurance intermediary is not a sole proprietor, the annual financial statements of the intermediary must be submitted to a meeting of the partners or, if the intermediary is not a partnership, to a meeting of the directors or other governing body of the intermediary and the meeting must be invited to pass a resolution approving those statements.

(2) Where sub-regulation (1) applies, the balance sheet must contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the intermediary and, if so, the date on which they were approved.

Additional requirement in case of sole proprietor.

49. Where the insurance, reinsurance or ancillary insurance intermediary is a sole proprietor, the balance sheet must be accompanied by a statement (which must not be regarded as part of the annual financial statements of the intermediary for the purposes of regulation 52) stating whether, at the date as at which the balance sheet is made up—

- (a) his or her current assets exceed his or her current liabilities; and
- (b) his or her total assets exceed his or her total liabilities.

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Annual financial statements to be submitted to GFSC.

50. Each financial year an insurance, reinsurance or ancillary insurance intermediary must submit its annual financial statements to the GFSC within 4 months after the end of the financial year to which the annual financial statements relate.

Insurance, reinsurance or ancillary insurance intermediary to obtain auditor's report, etc.

51.(1) An insurance, reinsurance or ancillary insurance intermediary must submit its annual financial statements to its auditor for audit and must obtain an auditor's report thereon which report must comply with the requirements of regulation 52.

(2) An insurance, reinsurance or ancillary insurance intermediary must submit its auditor's report to the GFSC together with—

- (a) the annual financial statements in accordance with regulation 50; and
- (b) confirmation in writing that it has complied with each and every one of these Regulations with which it is required to comply and such further information or confirmation as may be prescribed.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the intermediary to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating—

- (a) whether all the accounting records of the intermediary have been made available to the auditor for the purposes of the auditor's audit;
- (b) whether all transactions undertaken by the intermediary have been properly reflected and recorded in the intermediary's accounting records; and
- (c) whether all other records of the intermediary and related information have been made available to the auditor.

Contents of auditor's report.

52.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the insurance, reinsurance or ancillary insurance intermediary have been audited in accordance with approved auditing standards.

- (2) The auditor's report must also state whether in the opinion of the auditor—
- (a) the annual financial statements of the intermediary have been properly prepared in accordance with these Regulations;
 - (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the intermediary as at the end of the financial year;
 - (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the intermediary for the financial year;
 - (d) the intermediary has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
 - (e) the balance sheet and the profit and loss account are in agreement with the intermediary's accounting records; and
 - (f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit.

Qualified reports.

53.(1) If the auditor is of the opinion that one or more of the requirements of regulation 52 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 52 have been met, the auditor must state that fact in the auditor's report and must specify those requirements and give the reasons why the auditor has been unable to form an opinion.

**PART 5
PRUDENTIAL REQUIREMENTS**

**Chapter 1
Indemnity Arrangements**

Indemnity arrangements.

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54.(1) Insurance and reinsurance intermediaries must hold professional indemnity insurance covering the whole of the EEA or some other comparable guarantee against liability arising from professional negligence, for at least—

- (a) €1,300,380 for each claim; and
- (b) €1,924,560 in aggregate per year for all claims;

unless that insurance or a comparable guarantee is provided by an insurance or reinsurance undertaking or other undertaking for which the intermediary is acting or is empowered to act, or such an undertaking has assumed full responsibility for the intermediary's actions.

(2) Ancillary insurance intermediaries must hold professional indemnity insurance or comparable guarantees at a level prescribed by the Minister in regulations, taking into account the nature of the products sold and the activity carried out.

(3) An insurance, reinsurance or ancillary insurance intermediary must, on a permanent basis—

- (a) ensure that money paid—
 - (i) by the customer to the intermediary is treated as having been paid to the undertaking; and
 - (ii) by the undertaking to the intermediary is not treated as having been paid to the customer until the customer actually receives it;
- (b) have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of €19,510; and
- (c) ensure that customers' money is only transferred via strictly segregated client accounts which cannot be used to reimburse other creditors in the event of insolvency or bankruptcy.

(4) This regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 10.7 of the Insurance Distribution Directive.

**Chapter 2
Customer Money.**

Application.

54A. This Chapter applies to any customer money held or received by an insurance, reinsurance or ancillary insurance intermediary in the course of carrying on insurance distribution business.

Customer money.

54B.(1) For the purposes of this Chapter “customer money” is money of any currency which, in the course of carrying on insurance distribution business, an intermediary–

- (a) holds or receives under sub-regulation (2); or
- (b) owes to a customer under sub-regulation (3).

(2) An intermediary holds or receives money for the purposes of sub-regulation (1) if it enters or expects to enter into an agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money–

- (a) which is not immediately due and payable on demand to the intermediary for its own account; or
- (b) which, although so due and payable, is held or received in respect of any obligation of the intermediary which has not yet been performed.

(3) An intermediary owes money to a customer for the purposes of sub-regulation (1) where money owed to a customer is immediately due and payable whether demanded or not.

Duty to segregate.

54C. An intermediary must pay all customer money coming into its hands for or from a customer into a specially created customer bank account which is segregated from any account holding money belonging to the intermediary.

Customer money to be held on trust and kept safe.

54D.(1) Customer money is held by the intermediary on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

(2) Customer money, unless paid out to or for a customer, must be kept in an account at an authorised credit institution on trust for the customer.

Accounting for and use of customer money.

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54E. An intermediary must account properly and promptly for customer money and, in particular, must ensure that—

- (a) customer money and other money do not become mixed;
- (b) the intermediary can at all times be sure how much customer money stands to the credit of each customer; and
- (c) money belonging to one customer is not used for another customer.

Customer bank accounts.

54F.(1) An intermediary which receives or holds customer money must open one or more customer bank accounts with an authorised credit institution.

(2) The intermediary must give written notice to the credit institution, requiring it to acknowledge to the intermediary in writing that—

- (a) all money standing to the credit of the customer bank account is held by the intermediary as trustee and that the credit institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the intermediary; and
- (b) interest payable to the account will be credited to the account.

(3) If the credit institution does not provide the acknowledgement referred to in sub-regulation (2) within 10 business days of the dispatch of the notice by the intermediary, the intermediary must—

- (a) withdraw all money standing to the credit of the account;
- (b) close that account; and
- (c) deposit the money in a customer bank account with another authorised credit institution.

Interest on customer money.

54G.(1) Except in so far as may be agreed in writing to the contrary between an intermediary and each of its customers, an intermediary must, at least once in every six months, credit interest to each customer on money held for that customer and standing (or which should be standing) to the customer's credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the authorised credit institution at which the account is held.

Payment of other money into a customer bank account.

54H. Money which is not customer money must not be paid into a customer bank account unless it is required—

- (a) to open or to maintain the account;
- (b) to restore an amount withdrawn in error from the account; or
- (c) to be paid in as part of the interest earned on the account.

Payment out of a customer bank account.

54I.(1) Subject to sub-regulation (2), money may be withdrawn from a customer bank account only if—

- (a) it is not customer money;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) An intermediary may withdraw money from a customer bank account for or towards payment of its own fees or commission only if—

- (a) it has given the customer seven days' notice of its intention and adequate detail of the breakdown of the proposed payment, and the customer has not objected;
- (b) the fees or commission accord with the arrangements agreed with the customer; or
- (c) the amount is agreed by the customer.

Intermediary as authorised credit institution.

54J.(1) Where the intermediary is an authorised credit institution it may hold a customer bank account with itself.

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(2) An intermediary is not liable to account to the customer for any profits it makes as a credit institution by using the funds in a customer bank account to which sub-regulation (1) applies if it—

- (a) observes normal banking practice relating to money of that kind; and
- (b) complies with these Regulations.

**PART 6
REPORTING AND NOTIFICATION**

**Chapter 1
General**

Publication of sanctions and other measures.

55.(1) This regulation applies—

- (a) where the GFSC has taken any sanctioning action under the Act or these Regulations in respect of a contravention of a regulatory requirement; and
- (b) instead of sections 616 to 617 of the Act.

(2) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(3) The information published must be limited to—

- (a) the identity of the individual or legal person responsible for it;
- (b) the type and nature of the contravention; and
- (c) the details of the sanctioning action taken.

(4) The GFSC must take one of the steps in sub-regulation (5) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (2)—
 - (i) the identity of the legal person involved; or
 - (ii) the personal data of the individual involved; or

- (b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(5) Those steps are—

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
- (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure—
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(6) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(7) Sub-regulation (2) does not apply while an appeal could be brought or is pending.

(8) But the GFSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and in such cases section 618 of the Act applies.

(9) The GFSC must ensure that any publication is of proportionate duration and remains on its website for not more than two years or, if longer, the period during which any sanction imposed applies (and, for the purposes of publication, a sanction which is imposed without a specific duration is to be regarded as having a duration of three years).

(10) The GFSC must ensure that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.

(11) The GFSC must inform EIOPA of any sanctioning action taken but not published in accordance with this regulation, including any related appeal and its outcome.

Reporting of breaches.

56.(1) The GFSC must establish effective mechanisms to enable and encourage the reporting to it of possible or actual breaches of these Regulations.

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(2) Those mechanisms must include—

- (a) specific procedures for the receipt and follow-up of reports;
- (b) access for employees and other persons who report breaches committed within insurance or reinsurance distributors to—
 - (i) information and advice on the legal procedures and remedies available to protect the person against retaliation, discrimination or other types of unfair treatment, including on the procedures for seeking compensation; and
 - (ii) effective assistance from the GFSC before any relevant authority involved in the person's protection against unfair treatment, including certification by the GFSC in any employment dispute of the reporting person's status as a person who has reported a breach.
- (c) protection of the identity of both the person who reports the breach and the individual who is allegedly responsible for the breach, at all stages of the procedure unless disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

Submitting information to EIOPA on sanctions and other measures.

57.(1) The GFSC must inform EIOPA of any administrative sanction or measure imposed under these Regulations but not published in accordance with regulation 55.

(2) The GFSC must provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with the Act and Chapter 2 of Part 8 of these Regulations for the purposes of performing its functions under these Regulations.

(3) Where the GFSC has disclosed an administrative sanction or other measure to the public, it must at the same time report it to EIOPA.

**Chapter 2
Appointment of auditors**

Auditor required.

58. An insurance, reinsurance or ancillary insurance intermediary must not carry on, or hold itself out as carrying on, any regulated activity unless it has appointed an auditor in accordance with the Act and these Regulations.

Qualification for appointment as auditor.

59. A person is not qualified for appointment as the auditor of an insurance, reinsurance or ancillary insurance intermediary unless the auditor is registered in accordance with sections 487 to 491 of Part 24 of the Act.

Ineligibility on ground of lack of independence.

60.(1) A person must not act as an auditor to an insurance, reinsurance or ancillary insurance intermediary if the person is ineligible for appointment to the office.

(2) A person is ineligible for appointment as auditor to an insurance, reinsurance or ancillary insurance intermediary if he or she is—

- (a) a director, officer, employee, shareholder or partner of the intermediary; or
- (b) a partner or employee of such a person.

(3) For the purposes of this regulation an auditor of an insurance, reinsurance or ancillary insurance intermediary is not regarded as an officer or employee of the intermediary.

Engagement letters.

61. An insurance, reinsurance or ancillary insurance intermediary must ensure that the auditor appointed under these Regulations has the powers and duties specified in section 165 of the Act and regulation 63 and that—

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the intermediary and the auditor; and
- (c) the intermediary retains a copy of the engagement letter.

Auditor to notify GFSC of certain matters.

62.(1) In the circumstances specified in sub-regulation (2) the auditor of a insurance, reinsurance or ancillary insurance intermediary must notify the GFSC of any matters which relate to the affairs of the insurance, reinsurance or ancillary insurance intermediary and of which the auditor becomes aware in its capacity as auditor.

(2) The circumstances referred to in sub-regulation (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either—

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- (a) whether a person is a fit and proper person to carry on insurance or reinsurance distribution business; or
- (b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect investors or customers from a significant risk of loss.

Report on financial statements.

63.(1) An auditor must submit a report to the GFSC on the annual financial statements in accordance with these Regulations and the report must state the matters specified in regulation 52.

(2) In preparing an auditor's report for the purposes of these Regulations, the auditor must carry out such investigations as will enable the auditor to form an opinion as to the matters required by regulation 52 to be stated in the auditor's report.

Notification to GFSC.

64. An insurance, reinsurance or ancillary insurance intermediary must, within 7 days, give written notice to the GFSC of the appointment, removal or resignation of an auditor.

Resignation or removal of auditors.

65.(1) Where an auditor resigns or is removed by an insurance, reinsurance or ancillary insurance intermediary, a notice to that effect sent to the GFSC under regulation 64 must contain either—

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the GFSC; or
- (b) a statement signed by the auditors of such circumstances as are mentioned in (a).

(2) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditor's term of office must be deemed to be a removal of that auditor.

PART 7

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Chapter 1

Incoming EEA intermediaries

Application and interpretation.

66.(1) This Chapter applies to an EEA insurance, reinsurance and ancillary insurance intermediary, unless the context requires otherwise.

(2) In this Chapter, an EEA insurance, reinsurance or ancillary insurance intermediary (“an EEA intermediary”) means an EEA firm within the meaning of paragraph 1(1)(g) of Part 1 of Schedule 10 to the Act.

Qualifying for authorisation: establishing branch in Gibraltar.

67.(1) This regulation applies to an EEA intermediary which intends to establish a branch or permanent presence in Gibraltar in exercise of an EEA right deriving from the Insurance Distribution Directive.

(2) Once an EEA intermediary to which this regulation applies satisfies the establishment conditions, the EEA intermediary qualifies for authorisation.

(3) The establishment conditions are that—

- (a) the GFSC has received notice from the EEA intermediary’s home State regulator (“a home state regulator notice”) containing information in connection with the intended provision of insurance or reinsurance distribution services in Gibraltar;
- (b) the home state regulator notice contains the following information which the EEA intermediary has given to its home State regulator—
 - (i) the intermediary’s name, address and registration number (if any);
 - (ii) the EEA States in which it intends to establish a branch or permanent presence;
 - (iii) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
 - (iv) the relevant classes of insurance, if applicable;
 - (v) the address in Gibraltar and in each of those EEA States from which documents may be obtained; and
 - (vi) the name of the person responsible for the management of each branch or permanent presence.

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- (c) the GFSC has promptly acknowledged receipt of the home state regulator notice received under sub-regulation (a) and, if applicable, provided details of the legal provisions (“general good rules”) which, under Article 11 of the Insurance Distribution Directive, apply in Gibraltar and with which the EEA intermediary must comply with; and
- (d) the GFSC has, within one month of receiving the home state regulator’s notice—
 - (i) assessed the information contained in it; and
 - (ii) provided the home state regulator with relevant information in connection with the EEA intermediary’s intended provision of insurance or reinsurance distribution services in Gibraltar;

(4) On qualifying for authorisation as a result of sub-regulation (2), an EEA intermediary has, in respect of each permitted activity which is a regulated activity, permission to carry on the regulated activity through its Gibraltar branch.

(5) The permission is to be treated as being on terms equivalent to those appearing from the home state regulator notice received under sub-regulation (3).

(6) In sub-regulation (4), “permitted activity” means an activity identified in the home state regulator notice.

Branch business of EEA intermediary.

68.(1) The GFSC may enter arrangements under sub-regulation (2) with a competent authority in another EEA State.

(2) Where an EEA intermediary has its primary place of business in Gibraltar, the GFSC may agree to act as if it was the home State regulator for that EEA intermediary with regard to the provisions of regulation 10(1)(a) to (c) and the following—

- (a) regulations 11 to 21, 29 to 37, 54 to 57 and 72;
- (b) Chapter 2 of Part 8;
- (c) Parts 11 and 28 of the Act for the purposes of performing its functions under these Regulations.

(3) The GFSC must promptly notify EIOPA and the EEA intermediary concerned in respect of any agreement reached under sub-regulation (2) and the home State competent regulator

has a similar notification obligation in respect of any agreement reached under sub-regulation (2).

(4) The GFSC, as the host State regulator, is—

- (a) responsible for ensuring that the services provided by an EEA intermediary in Gibraltar comply with the obligations in regulations 11 to 21 and 34 to 37 and any measures adopted under them; and
- (b) is entitled to examine an EEA intermediary's arrangements and request any changes to them which are needed to enable the GFSC to enforce those obligations with respect to the services or activities provided by the EEA intermediary in Gibraltar.

Breach of obligations when exercising freedom of establishment.

69.(1) The GFSC may take appropriate measures where it considers that an EEA intermediary acting in Gibraltar under the freedom of establishment is in breach of any of regulations 11 to 21 or 34 to 37.

(2) Where the GFSC considers that such an intermediary is in breach of an obligation under any other provision of these Regulations or the Insurance Distribution Directive, it must refer its findings to the home State regulator.

(3) Where, despite the measures taken by the home State regulator or because those measures prove to be inadequate or are lacking, the intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or the orderly functioning of insurance and reinsurance markets, the GFSC, after informing the home State regulator, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.

(4) Sub-regulations (2) and (3) do not affect the GFSC's power as host State regulator to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Gibraltar, including preventing an intermediary from carrying on new business in Gibraltar, where—

- (a) immediate action is strictly necessary to protect the rights of consumers in Gibraltar; and
- (b) the home State regulator has not taken equivalent measures or those it has taken are inadequate.

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(5) Where the GFSC imposes any measure under sub-regulation (4) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—

- (a) the intermediary's home State regulator;
- (b) EIOPA; and
- (c) the European Commission.

(6) The GFSC and the home State regulator may refer any matter arising under this regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Qualifying for authorisation: EEA intermediary providing services in Gibraltar.

70.(1) This regulation applies to an EEA intermediary which intends to provide insurance or reinsurance distribution services in Gibraltar in exercise of an EEA right deriving from the Insurance Distribution Directive.

(2) Once an EEA intermediary to which this regulation applies satisfies the service conditions, it qualifies for authorisation.

(3) The service conditions are that—

- (a) the GFSC has received notice from the EEA intermediary's home state regulator ("notice of intention") containing the information specified under sub-regulation (b) in connection with the intended provision of insurance or reinsurance distribution services;
- (b) the notice of intention contains the following information—
 - (i) the intermediary's name, address and registration number (if any);
 - (ii) the EEA States in which it intends to operate;
 - (iii) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented; and
 - (iv) the relevant classes of insurance, if applicable;
- (c) the GFSC has promptly acknowledged receipt of the notice of intention received under sub-regulation (a).

(4) On qualifying for authorisation as a result of sub-regulation (2), an EEA intermediary has, in respect of each permitted activity which is a regulated activity, permission to carry on the regulated activity by providing insurance distribution services in Gibraltar.

(5) The permission is to be treated as being on terms equivalent to those appearing from the notice of intention received from the intermediary's home State regulator under sub-regulation (3).

(6) In sub-regulation (4), "permitted activity" means an activity identified in the notice of intention.

Breach of obligations when exercising freedom to provide services.

71.(1) The GFSC, where it considers that an EEA insurance, reinsurance or ancillary insurance intermediary acting in Gibraltar under the freedom to provide services is in breach of an obligation under these Regulations or the Insurance Distribution Directive, must inform the intermediary's home State regulator.

(2) Where, despite the measures taken by the home State regulator or because those measures prove to be inadequate or are lacking, an intermediary persists in acting in a manner that is clearly detrimental to the interests of Gibraltar consumers on a large scale or to the orderly functioning of insurance and reinsurance markets, the GFSC, after informing the home State regulator, may take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the intermediary from carrying on new business in Gibraltar.

(3) Sub-regulation (2) does not affect the GFSC's power to take appropriate measures to prevent or penalise irregularities committed in Gibraltar where immediate action is necessary in order to protect the rights of consumers, including preventing an intermediary from carrying on new business in Gibraltar.

(4) Where the GFSC takes any action under sub-regulation (3) it must promptly inform the intermediary concerned of its decision and the reasons for it and provide that reasoned decision to—

- (a) the intermediary's home State regulator;
- (b) EIOPA; and
- (c) the European Commission.

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(6) The GFSC and the home State regulator may refer any matter arising under this section to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

GFSC's powers in relation to "general good" laws.

72.(1) The GFSC may take appropriate measures to prevent an insurance distributor established in another EEA State from carrying out activity in Gibraltar under the freedom to provide services or (where applicable) the freedom of establishment where the relevant activity—

- (a) is entirely or principally directed towards Gibraltar with the sole purpose of avoiding legal provisions which would apply if that insurance distributor had its residence or registered office in Gibraltar; and
- (b) seriously endangers the proper functioning of insurance and reinsurance markets in Gibraltar with respect to the protection of consumers.

(2) In sub-regulation (1), "appropriate measures" means all the appropriate measures needed in order to protect the rights of consumers in Gibraltar.

(3) The GFSC, before it takes any appropriate measures under sub-regulation (1), must inform the relevant insurance distributor's home State regulator.

(4) If any disagreement arises between the GFSC and an insurance distributor's home State regulator in relation to any action taken by the GFSC under sub-regulation (1), those authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(5) The GFSC is designated as the single point of contact responsible for providing information about any domestic legislation protecting the general good which—

- (a) applies to the carrying on of insurance and reinsurance distribution in Gibraltar; and
- (b) imposes specific requirements which are—
 - (i) additional to those imposed under these Regulations; or
 - (ii) stricter than those required under the Insurance Distribution Directive including, in particular, information about whether and how any stricter provisions under Article 29.3 of the Insurance Distribution Directive apply in Gibraltar.

(6) The GFSC must publish on its website, in an appropriate form, information about any legislation to which sub-regulation (5) applies and ensure that the information is updated on a regular basis.

Chapter 2

Gibraltar intermediaries

Application and interpretation.

73.(1) This Chapter applies to a Gibraltar insurance, reinsurance or ancillary insurance intermediary which has an EEA right deriving from the Insurance Distribution Directive.

(2) In this Chapter, a Gibraltar insurance, reinsurance or ancillary insurance intermediary (“a Gibraltar intermediary”) means a Gibraltar firm within the meaning of section 2(2) of Part 1 to the Act.

Extent of Gibraltar intermediary’s services in EEA State.

74.(1) If the requirements of regulations 75 or 77 are met, a Gibraltar intermediary—

- (a) may provide insurance or reinsurance distribution services and ancillary services in another EEA State if those services are covered by the intermediary’s Part 7 permission; but
- (b) may only provide ancillary services which are provided together with an insurance or reinsurance distribution services.

Gibraltar intermediary establishing branch in EEA State.

75.(1) A Gibraltar intermediary may exercise its EEA right in an EEA State by establishing a branch or permanent presence in that State.

(2) A Gibraltar intermediary that proposes to exercise an EEA right in accordance with sub-regulation (1) must notify the GFSC, in the form and manner it may direct, with the following information—

- (a) the intermediary’s name, address and registration number (if any);
- (b) the EEA States in which it intends to establish a branch or permanent presence;
- (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;

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- (d) the relevant classes of insurance, if applicable;
- (e) the address in each of those EEA States from which documents may be obtained;
and
- (f) the name of the person responsible for the management of each branch or permanent presence.

(2) An intermediary's permanent presence in another EEA State which is equivalent to a branch must be treated in the same way as a branch, unless the intermediary lawfully establishes that permanent presence in another legal form.

(3) Subject to sub-regulation (6), within one month of receiving the information referred to sub-regulation (2), the GFSC must send it to the host State regulator.

(4) The GFSC must inform the intermediary in writing that—

- (a) the host State regulator has—
 - (i) acknowledged receipt of the information sent to it in accordance with sub-regulation (3); and
 - (ii) provided details of the legal provisions (“general good rules”) which, under Article 11 of the Insurance Distribution Directive, apply in that EEA State and with which the intermediary must comply; and
- (b) the intermediary may commence business in that EEA State provided it complies with those legal provisions.

(5) If the host State regulator fails to provide a response of the kind in sub-regulation (4)(a) within one month of receiving the information sent by the GFSC under sub-regulation (3), the intermediary is entitled to establish its branch and commence business in that EEA State.

(6) The GFSC may refuse to send information provided to it under sub-regulation (1) to the host State regulator where, taking account of the distribution activities envisaged, it has reason to doubt the adequacy of the organisational structure or financial situation of the insurance intermediary.

(7) The GFSC must provide an intermediary with a reasoned decision for a refusal under sub-regulation (6), and a refusal under that sub-regulation or any other failure by the GFSC to send information provided under sub-regulation (1) to a host State regulator in accordance with sub-regulation (3) may be the subject of an appeal under section 615 of the Act.

(8) If an intermediary proposes to change any of the particulars provided under sub-regulation (1), it must notify the GFSC, in the form and manner it may direct, at least one month before implementing the change.

(9) Where the GFSC receives a notice under sub-regulation (8), it must inform the relevant host State regulator as soon as practicable and in any event within one month of receiving the notice.

Branch business of Gibraltar intermediary.

76.(1) The GFSC may enter arrangements under sub-regulation (2) with a competent authority in another EEA State.

(2) Where a Gibraltar intermediary has its primary place of business in an EEA State other than Gibraltar, the GFSC may arrange for the competent authority in that EEA State to act as if it was the home State competent regulator for that intermediary with regard to the provisions of regulation 10 (1)(a) to (c) and the following—

- (a) regulations 11 to 21, 29 to 37, 54 to 57 and 72;
- (b) Chapter 2 of Part 8;
- (c) Parts 11 and 28 of the Act for the purposes of performing its functions under these Regulations.

(3) The GFSC must promptly notify EIOPA and the intermediary concerned of any agreement reached under sub-regulation (2).

(4) Where the GFSC receives information from a host State regulator that a Gibraltar intermediary having a branch or permanent presence in the EEA State in question is in breach of an obligation under the applicable laws of that EEA State or the the Insurance Distribution Directive, the GFSC must—

- (a) assess the information received;
- (b) if applicable, promptly take steps to remedy the situation; and
- (c) inform the host State regulator of any steps taken.

(5) The GFSC and host State regulator may refer any matter arising under this regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

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Gibraltar intermediary providing services in EEA State.

77.(1) This regulation applies to a Gibraltar intermediary that intends to provide insurance or reinsurance distribution services in another EEA State under the freedom to provide services.

(2) The Gibraltar intermediary must provide the GFSC, in the form and manner it may direct, with the following information—

- (a) the intermediary's name, address and registration number (if any);
- (b) the EEA States in which it intends to operate;
- (c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented; and
- (d) the relevant classes of insurance, if applicable.

(3) The GFSC, within one month of receiving the information referred to sub-regulation (2), must send it to the host State regulator.

(4) The GFSC must inform the intermediary in writing that—

- (a) the host State regulator has acknowledged receipt of the information sent to it in accordance with sub-regulation (3);
- (b) the intermediary may commence business in that EEA State; and
- (c) in doing so the intermediary must comply with any general good rules which, under Article 11 of the Insurance Distribution Directive, apply in that EEA State, the details of which can be obtained through the means referred to in that Article.

(5) If an intermediary proposes to change any of the particulars provided under sub-regulation (2), it must notify the GFSC, in the form and manner it may direct, at least one month before implementing the change.

(6) Where the GFSC receives a notice under sub-regulation (5) it must inform the relevant host State regulator as soon as practicable and in any event within one month of receiving the notice.

Services business of Gibraltar intermediary.

78.(1) This regulation applies if the GFSC receives information from a host State regulator that a Gibraltar intermediary providing insurance or reinsurance distribution services in the EEA State in question is in breach of an obligation under the applicable laws of that EEA State or the the Insurance Distribution Directive.

(2) The GFSC must–

- (a) assess the information received;
- (b) if applicable, promptly take steps to remedy the situation; and
- (c) inform the host State regulator of any steps taken.

(3) The GFSC and the host State regulator may refer any matter arising under this regulation to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

PART 8 REGULATORY POWERS

Chapter 1 Investigatory and supervisory powers

Directions.

79.(1) If it appears to the GFSC that a person is not fit and proper to carry out any function in relation to insurance or reinsurance distribution carried on by an insurance, reinsurance or ancillary insurance intermediary, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC–

- (a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or
- (b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.

(3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice–

- (a) cannot be given because of urgency;

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- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or
- (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615.

(5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.

(6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.

(7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–

- (a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and
- (b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).

(8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

**Chapter 2
Sanctions for contravention**

Sanctioning powers.

80. Part 11 of the Act and this Chapter set out sanctioning powers for contravention of a regulatory requirement (including a regulatory requirement contained in these Regulations).

Contravention of regulatory requirements: failure to register.

81. The GFSC may exercise the sanctioning powers set out in Part 11 of the Act and in this Part against any person that has failed to register their insurance or reinsurance distribution activities in accordance with these Regulations and the Act.

Additional persons subject to sanctioning powers.

82. In the case of a contravention of a regulatory requirement by an insurance or reinsurance distributor, the GFSC may exercise the sanctioning powers set out in Part 11 of the Act and in this Chapter against the following persons, in addition to the persons referred to in section 147 of the Act—

- (a) one or more of the members of the management or supervisory body of the distributor;
- (b) any other person who was responsible for the contravention.

Additional sanctioning power: management prohibition order.

83.(1) This regulation applies to any individual (“P”) who—

- (a) has contravened a requirement of these Regulations and, at the time of the contravention, P was exercising a management function in an insurance intermediary or insurance undertaking; or
- (b) was knowingly concerned in respect of a contravention of a requirement of these Regulations by an insurance intermediary or insurance undertaking and, at the time of the contravention, P was exercising a management function in the insurance intermediary or insurance undertaking.

(2) The GFSC may issue a prohibition order against P, which prohibits P from—

- (a) discharging managerial responsibilities within a specified insurance intermediary or insurance undertaking; or
- (b) exercising management functions in insurance intermediaries or insurance undertakings.

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify the description of functions to which it applies.

(5) The provisions of sections 158 to 162 of the Act apply to any prohibition order issued under this regulation.

Maximum amounts of administrative penalty.

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84.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following—

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person -
 - (i) €5,000,000; or
 - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, €700,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 9
MISCELLANEOUS**

The Register: insurance or reinsurance distribution.

85.(1) This regulation makes provision as to the contents of the Register in connection with the provision of insurance or reinsurance distribution.

(2) The register must—

- (a) specify the names of the individuals within the management of an insurance or reinsurance distributor who are responsible for insurance or reinsurance distribution; and
- (b) indicate the EEA States in which an intermediary conducts business in exercise of the freedom of establishment or the freedom to provide services.

(3) Insurance and reinsurance undertakings and intermediaries must co-operate with the GFSC in relation to—

- (a) the registration of insurance, reinsurance and ancillary insurance intermediaries; and
 - (b) the application of–
 - (i) regulation 32;
 - (ii) regulation 33; and
 - (iii) regulation 54.
- (4) Insurance and reinsurance undertakings and their employees are not required to be registered under these Regulations.
- (5) The GFSC must promptly provide relevant information to EIOPA and provide it with access to data and any other assistance it may reasonably and lawfully require for the purposes of establishing and maintaining its register of insurance, reinsurance and ancillary insurance intermediaries under Article 3.4 of the Insurance Distribution Directive.
- (6) The GFSC must establish an online system which is easily accessible and allows applications for Part 7 permission or registration made in accordance with this regulation to be completed online.
- (7) The validity of registration under this section is subject to regular review by the GFSC.
- (8) Where an insurance, reinsurance or ancillary insurance intermediary ceases to meet the requirements of regulation 32, 33 or 54, the GFSC must–
- (a) revoke that person’s Part 7 permission or registration;
 - (b) remove the person’s name from the register maintained under this regulation; and
 - (c) where relevant, inform any host State competent authority.
- (9) These Regulations do not affect any other Gibraltar law in respect of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries which are established in a third country and operating in Gibraltar under the principle of freedom to provide services, where equal treatment is guaranteed to all persons carrying on or authorised to carry on insurance and reinsurance distribution activities in Gibraltar.

Monitoring etc.

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85A.(1) The GFSC must monitor the insurance and reinsurance distribution markets, including the market for ancillary insurance products which are marketed, distributed or sold in or from Gibraltar.

(2) The Minister must inform the European Commission of any general difficulties which insurance or reinsurance distributors in Gibraltar encounter in becoming established or carrying on insurance or reinsurance distribution activities in any third country.

Data protection.

86. Without limiting section 636 of the Act, the processing of personal data under these Regulations must comply with data protection legislation within the meaning of section 2(1) of the Data Protection Act 2004.

Revocation of 2006 Regulations.

87. The Financial Services (Conduct of Business: Investment Firms & Insurance Intermediaries) Regulations 2006 are revoked.

SCHEDULE 1

**MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE
REQUIREMENTS**

I. Non-life risks classified under classes 1 to 18 in Part A of Annex I to the Solvency 2 Directive–

- (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;
- (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- (c) minimum necessary knowledge of claims handling;
- (d) minimum necessary knowledge of complaints handling;
- (e) minimum necessary knowledge of assessing customer needs;
- (f) minimum necessary knowledge of the insurance market;
- (g) minimum necessary knowledge of business ethics standards; and
- (h) minimum necessary financial competency.

II. Insurance-based investment products–

- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
- (c) minimum necessary knowledge of financial risks borne by policyholders;
- (d) minimum necessary knowledge of policies covering life risks and other savings products;
- (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;

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- (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- (g) minimum necessary knowledge of the insurance market and of the saving products market;
- (h) minimum necessary knowledge of complaints handling;
- (i) minimum necessary knowledge of assessing customer needs;
- (j) conflicts of interest management;
- (k) minimum necessary knowledge of business ethics standards; and
- (l) minimum necessary financial competency.

III. Life risks classified in Annex II to the Solvency 2 Directive—

- (a) minimum necessary knowledge of policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
- (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
- (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti- money laundering law and, where applicable, relevant tax law and relevant social and labour law;
- (d) minimum necessary knowledge of the insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflicts of interest management;
- (h) minimum necessary knowledge of business ethics standards; and
- (i) minimum necessary financial competency.

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**SCHEDULE 2
FORM AND CONTENT OF FINANCIAL STATEMENTS**

**PART 1.
GENERAL RULES.**

1. Subject to the following provisions of this Schedule, the annual financial statements of an insurance, reinsurance or ancillary insurance intermediary must—

- (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
- (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.

2. Any item required in accordance with paragraph 1 to be shown in a financial statement of an insurance, reinsurance or ancillary insurance intermediary may be shown in greater detail than required by the appropriate format.

3. A financial statement of an insurance, reinsurance or ancillary insurance intermediary may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.

4.(1) In respect of every item shown in an insurance, reinsurance or ancillary insurance intermediary's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.

5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

6. In the case of an insurance, reinsurance or ancillary insurance intermediary which is a sole proprietor, the items to be included in the intermediary's financial statements prepared in accordance with these Regulations must be those which arise in the course of the regulated activity of that intermediary.

PART 2.

ACCOUNTING PRINCIPLES AND RULES.

7.(1) The amounts to be included in respect of all items shown in the annual financial statements of an insurance, reinsurance or ancillary insurance intermediary must be determined in accordance with the Companies Act 2014 and either Gibraltar Financial Reporting Standards or International Accounting Standards.

(2) Subparagraph (1) is subject to regulation 41.

8. Subject to paragraph 7, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

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APPENDIX 1

BALANCE SHEET FORMAT

A. FIXED ASSETS

- I. Intangible Assets
 - 1. Development costs
 - 2. Goodwill
 - 3. Other
- II. Tangible Assets
 - 1. Freehold land and buildings
 - 2. Leasehold land and buildings
 - 3. Motor vehicles
 - 4. Office equipment and computers
 - 5. Fixtures and fittings
 - 6. Payments on account
 - 7. Other tangible assets
- III. Investments
 - 1. Loans to and shares in group companies and connected companies
 - 2. Other listed financial instruments
 - 3. Other unlisted financial instruments

B. CURRENT ASSETS

- I. Physical stocks
- II. Debtors (1)
 - 1. Trade debtors (2)
 - 2. Other debtors
 - 3. Amounts due from connected and group companies
 - 4. Prepayments and accrued income
- III. Financial instruments (long positions)(3)
- IV. Cash at bank and in hand

**C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE
YEAR**

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Financial instruments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

D. NET CURRENT ASSETS (LIABILITIES)

E. TOTAL ASSETS LESS CURRENT LIABILITIES

F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

G. PROVISIONS FOR LIABILITIES AND CHARGES

1. Commissions on indemnity terms
2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

H. TOTAL ASSETS LESS TOTAL LIABILITIES

I. CAPITAL AND RESERVES

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve

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- 6. Other reserves
- 7. Profit and loss account.

Approved by the directors / partners / governing body on

Signature

Signature

NOTES ON THE BALANCE SHEET FORMAT

(1) Debtors

The amount falling due after more than one year must be shown separately for each item included under debtors.

(2) Trade debtors

(a) Fees

Outstanding for more than 30 days
Outstanding for 30 days or less.

(b) Commissions

Outstanding for more than 30 days
Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days
Amounts outstanding for 30 days or less.

(3) Financial instruments (long positions)

(i) Debt instruments

Residual Maturity

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	0- 90 days	90 days- 12 Months	12 months - 5 years	more than 5 years	Total
UK Government, Government of Gibraltar and Local Authority debt					
Accepted or issued by an authorised credit institution					
Floating Rate Notes					
Other debt instruments					
Marketable investments					
not marketable investments					

(ii) Shares (other than in group companies)

- UK listed
- UK unlisted –
- marketable financial instruments
- not marketable financial instruments
- Overseas listed on an established
investment exchange
- Overseas unlisted

(iii) Collective investment schemes

- Units in authorised and recognised unit trust schemes
- Other

(iv) Futures, options, contracts for differences

- Futures
- Purchased options
- Written options
- Contracts for differences

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(v) Shares in group companies

(vi) Other investments or financial instruments (specify)

(4) Trade Creditors

- (a) Amounts due to be paid against delivery of securities
- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.
- (c) Others

(5) Financial instruments (short positions)

The same detail should be given as that required by note (3) above

(6) Eligible subordinated loans

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

(7) Called up share capital

Any amount of share capital which has not been paid up must be shown separately.

(8) Contingent liabilities and commitments

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for
- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information must be given, where relevant—

- (i) Whether any valuable security has been provided by the insurance distributor in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

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APPENDIX 2

PROFIT AND LOSS ACCOUNT FORMAT

A. DEALING

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other – specify

B. REVENUE

I. Commissions on transactions in collective investment schemes

1. authorised unit trust schemes and recognised schemes
2. other – specify

II. Commissions on transactions in life insurance policies

1. commission on indemnity terms
2. other initial commission
3. renewal commission
4. other specify

III. Commissions on securities transactions

1. equities
2. debt instruments
3. other– specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures
2. options
3. contracts for differences
4. other– specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

VIII. Trustee fees

IX. Interest and dividends

1. financial instrument positions
2. loan accounts and margin accounts
3. in respect of balances in client bank accounts
4. other specify

X. Dealing and settlement services

XI. Revenue from research and consulting services

XII. Retained underwriting and placing commissions

XIII. Other revenue – specify if material

C. EXPENDITURE

I. Commissions

1. paid to staff
2. paid to other investment businesses
3. other (specify)

II. Salaries and other employment costs (exclusive of commission)

III. Directors' emoluments

IV. Staff bonuses

V. Interest charges

1. payable to customer in respect of customer's money balances
2. other (specify)

VI. Establishment costs

VII. Communications and marketing

VIII. Office equipment and services

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IX. Provisions for losses, bad and doubtful debts

X. Professional charges

XI. Investment exchange and clearing house charges

XII. Regulatory fees and expenses

XIII. Audit fees (including expenses)

XIV. Miscellaneous office expenses

XV. Other expenditure - specify if material

D. PROFIT OR LOSS BEFORE TAXATION

E. TAXATION

F. PROFIT OR LOSS AFTER TAXATION

G. EXTRAORDINARY ITEMS

H. PROFIT OR LOSS FOR THE FINANCIAL YEAR