Subsidiary Legislation made under ss.6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 627 of, and paragraph 6 of Schedule 10.

Financial Services (Insurance Companies) Regulations 2020

LN.2020/044

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/208	r. 70(6)	30.6.2020
2020/421	rr. 61A-61C	26.11.2020
2021/040	rr. 3(1), 4(1), 5(5), (8), 8, 11(1), (3), 14(8), 16(1)(a), (3)(b), (g), 18(2)(a), 21(3)(a)-(b), (4), 23-24, 26(1), 28(1), (4)-(5), 29(2)(d), (3), 31, 33(1)(c), (2)(b), 34(2)(b), (f), (j), (5), (a), 37(3), (10), 38(1), 39(7), 41, 44(3), 46(9), 47(2)(a), 51(1)-(6), 53, 57(1), (3), 58(1), (f), (2)(a), (b)(ii), (4)(b)-(c), (7), 59-61, 66(3)(d), 67(8), 69(1)(d), (2)(b)-(c), 71-72, 87(2), 94(1), 95(2)(c), (3)(b), (5)(c), 97(1), (3), 118(2), 119, 119A, 121(1), 122(5)-(6), (8), (11), 123(3), (5), 124(1), 127(6)-(8), 128-150, 151(1)(a), (2)(a), (g), 153, 155(6), 156, 157(1)-(2), 158(4), 159-160, 161(1)(a), 162, 163(4)-(5), 164, 168, 169(1)(b), (7), 172-178, 179(2)(c), (4), 186, 190(2), 191(1), 192(3)(a)-(d), (4)-(7), 193(2)-(4), 194-196, 197(4)-(5), 198(1)-(2), (4)-(5), 199(3), 200(4)-(5), (a)-(c), 201(5), (7), 204(1)-(2), 205(4), 206(2), (b), (3), 207(1)-(2), (4), 208, 210(1)-(7), (c), 211(1), (b), (2), 212(7), 213(1), 214-220, 221(1)-(3), (b), (5)-(6), 222(1)-(2), (4), (b), (6)-(7), 223(1), (5), (6)(a), (7)-(8), 224-232, 233(4), 236(1)-(4), 237-240, 241(1)-(2), 242, 243(1)-(2), 244(1)-(5), 245(1)-(2), 246(1)-(3), (5), 247, 248(1)-(5), (7), 249, 251(6), 255, 256(1), 257(1)-(2), 258, 259(1)-(2), 260-262, 263(1), 264(1)-(2), 265-267, 268(1)-(4), 269-273, 274(2)(b)-(d), 279, 281, Sch.2-4	1.1.2021
2021/496	rr. 237(1), 240(2)	23.12.2021
2022/067	rr. 3(1), 61A(1), 275(2), Sch.1	17.3.2022

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2022/322	rr. 14(8), 192(3), (3A), (4), 197(1), 198(1), 200(5), 221(1), 222(1), 223(6), 224(1)-(2), 225(1), 225A, 240(3)	24.11.2022
2023/074	rr. 199(4)-(5), 239(5)-(7)	30.3.2023
2023/163	rr. 5(1)(a)-(c), (e), 14(8), 116(1)(d)(i)-(iii), 191(1)	29.6.2023
2023/259	rr. 36(5)	7.9.2023
2023/266	r. 51A	8.9.2023
2023/305	rr. 238(1), (2)(a), (3), (a)(i), (c), (4)	7.12.2023
Act. 2024-10	r. 13A	31.5.2024
LN. 2024/134	rr. 45(5A), (6)(b)(i), 68, 68A-68D, 69, 69A-69I, 71(1)(b), (2)(b)(ii), 276A	25.7.2024
2024/163	r. 281A	29.8.2024
2024/180	r. 51B	19.9.2024
2025/012	r. 41A	16.1.2025
2025/033	rr. 3(1), 43(5), 44(2)(a)(i), (iii), 45(1), (1A), (3)(c), (4), (4A)-(4B), (8), (11), 45A-45B, 46A, 47(1A)-(1B), (2)(a)-(c), 52(1), (2)(f), (3), (5), 54(5)-(6), 55(1A)-(1C), (3)(a), 56A-56G, 67(8), 68C(5), 69G(2), (3)(b), 70(1), 81(1)(b), 84(1), (1A)-(1B), (3)-(4), 85(3)-(4), 87(1)-(4), 88, 89(3)-(4), 89A, 93(1)-(2), 93A, 94(2A), 94A, 95(2)(c), (7)-(13), 98(3)-(7), 99(1)-(17), 101, 101A, 102, 102A-102C, 103, 104(1), 108(1A), (4)-(10), 109(1)-(2), (2A), (3A), (4), (7A)-(7B), (8)-(9), (11), (13)-(18), 111, 111A, 112(3)-(5), 113(2)(a), (c)-(e), 114(1)-(2), 116(1)(d), (1A), 190(2), 197A, 198A, 199(6), 199A, 200(5), 205(4), 207A, 210A, 211(3)-(4), 212A, 213(3), 237(5)(c), 238(1), (3)(a)(i), (6), 239(8), 276A(1), (3)(a), Schs. 1, 4	31.1.2025
2025/074	rr. 36(6), 39(1), 45(4), 56E(2A), 68(14), 99(17)(c), 102B(1)(b), 103A, 276A(ga)-(gc), Sch. 5	3.4.2025
2025/077	r. 36(4)(a)	10.4.2025
2025/221	rr. 3(1), 14(8), 39(5), 56D(2)(d)(i), 70(1), (1A)-(1C), 84(1A), (1AA)-(1AC), (5), 87(4)-(7), 101(3)-(6), 101A(1)(a), 109(4), 113(2)(a), 191A, 193(2A)-(2D), 199(4), (7)-(10), 201(5), 205(4)-(7), 206(2)-(5), 209(4A)-(4D), 210(1A), (2), (2A)-(2B), 276(1)(b)(i), (c)(i), (d)(i), (e)(i), (ea)-(ec), (fa)-(fc), (g)(i), (ga)(i)(bb), (ia), (gb)(i)(bb), (ia), (gc)(i)(bb), (ia), (h)(i), (i)(i), 276A(5)-(6), Schs. 1, 4	14.8.2025

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In exercise of the powers conferred on the Minister by sections 6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(7), 620(1), 621(1), 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 on the Government by section 23(g)(ii) of that Act and of all other enabling powers, the Minister and the Government have made these Regulations.

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Insurance Companies) Regulations 2020.

Commencement.

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

Interpretation.

3.(1) In these Regulations–

"the Act" means the Financial Services Act 2019;

"authorisation" means Part 7 permission to carry on direct life or non-life insurance or reinsurance business, given by the GFSC under the Act and these Regulations, and "authorised" is to be construed accordingly;

"capital add-on" means any increase to the Solvency Capital Requirement of an insurer, reinsurer, or insurance group, imposed by the GFSC under regulation 39;

"captive insurer" means an insurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of regulation 191; or

(ii) by a non-financial undertaking; and

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(b) the purpose of which is to provide insurance cover exclusively for the risks of–

(i) the undertaking or undertakings to which it belongs; or

(ii) an undertaking or undertakings of the group of which it is a member;

"captive reinsurer" means a reinsurance undertaking–

(a) which is owned either by–

(i) a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of regulation 191; or

(ii) a non-financial undertaking; and

(b) the purpose of which is to provide reinsurance cover exclusively for the risks of–

(i) the undertaking or undertakings to which it belongs; or

(ii) an undertaking or undertakings of the group of which it is a member;

"Class" is a reference to a class of insurance in Part 5 of Schedule 2 to the Act and a reference to a numbered Class is a reference to the Class of the same number in paragraph 22 or 23 of that Schedule;

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

(a) linked by control or participation; or

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

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

"control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in section 276 of the Companies Act 2014, or a similar relationship between any person and an undertaking;

"credit risk" means the risk of loss or adverse change in financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any

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debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

"diversification effects" means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

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

"external credit assessment institution" or "ECAI" means–

(a) a credit rating agency that is registered or certified in accordance with Regulation (EC) No. 1060/2009 of the European Parliament and of the Council, as it forms part of the law of Gibraltar; or

(b) a central bank issuing credit ratings which are exempt from the application of that Regulation;

"financial undertaking" means any of the following entities–

(a) a credit institution or financial institution, or an ancillary services undertaking within the meaning of regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of regulation 191;

(c) an investment firm or a financial institution; or

(d) a mixed financial holding company within the meaning of regulation 191;

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

"Gibraltar insurer" means an insurance undertaking authorised in Gibraltar;

"Gibraltar reinsurer" means a reinsurance undertaking authorised in Gibraltar;

"group supervisor" means the GFSC when acting as group supervisor in accordance with regulation 224;

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"insurance undertaking" means an undertaking which is authorised to carry on direct life or non-life insurance and references to "life insurance undertaking" and "non-life insurance undertaking" are to be construed accordingly;

"insurer"–

(a) means an insurance undertaking; and

(b) includes a reinsurance undertaking (other than in Part 12 or where the context otherwise requires);

"internal model requirements" means the requirements in regulations 103A and 108 to 114;

"internal model residual deviation" means a residual deviation, as determined by the GFSC, in the risk profile of an insurance or reinsurance undertaking, or a group (as appropriate), from the assumptions underlying the Solvency Capital Requirement (or group Solvency Capital Requirement, as appropriate) in circumstances where the undertaking's Solvency Capital Requirement (or group Solvency Capital Requirement of the undertaking's group, as appropriate) is calculated using an internal model. For this purpose, assumptions include proposed assumptions in an internal model permission application;

"internal model safeguard" means a limitation or requirement imposed by the GFSC on an insurance or reinsurance undertaking, whether in its internal model approval or otherwise, which either or both–

(a) to the extent that a residual model limitation relates to regulations 91(3) to (5), is intended to ensure compliance of the internal model with those provisions; or

(b) to the extent that a residual model limitation relates to the internal model requirements, is intended to mitigate the effect of that residual model limitation;

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

"large risks" means–

(a) risks falling within Classes 4, 5, 6, 7, 11 and 12;

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

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

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

(ii) a net turnover (within the meaning of Part 7 of the Companies Act 2014) of €12.8 million;

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

but if the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Part 7 of the Companies Act 2014 are drawn up, the criteria in sub-paragraphs (i) to (iii) apply on the basis of the consolidated accounts;

"liquidity risk" means the risk that an insurance or reinsurance undertaking is unable to realise investments and other assets in order to settle its financial obligations when they fall due;

"major business unit" means–

(a) in relation to an insurance or reinsurance undertaking, a defined segment of the insurance or reinsurance undertaking that operates independently from other parts of the undertaking and has dedicated governance resources and procedures within the undertaking and which contains risks that are material in relation to the entire business of the undertaking; or

(b) in relation to an insurance or reinsurance group, a defined segment of the group that operates independently from other parts of the group and has dedicated governance resources and procedures within the group and which contains risks that are material in relation to the entire business of the group; any legal entity belonging to the group is a major business unit or consists of several major business units;

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

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"Minimum Capital Requirement" means the minimum capital requirement provided for in regulation 116;

"the Minister" means the Minister with responsibility for financial services;

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

"outsourcing" means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

"Part 7 permission" means permission under Part 7 of the Act;

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

the "professional secrecy obligation" means the professional secrecy obligation in section 46 of the Act;

"qualifying central counterparty" means a central counterparty that has been either authorised in accordance with Article 14 of EMIR or recognised in accordance with Article 25 of EMIR;

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

"reinsurance" means–

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or

(b) in the case of Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

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"reinsurance undertaking" or "reinsurer" means an undertaking which has received authorisation to pursue reinsurance activities;

"Reporting Technical Standards" means the Technical Standards on Supervisory Reporting Requirements for Insurers and Reinsurers set out in the Annex to the Financial Services (Insurance Supervisory Reporting) (Technical Standards) Regulations 2025;

"residual model limitation" means, in relation to an internal model for which an insurance or reinsurance undertaking has, or in respect of which the undertaking is applying for, an internal model approval, an aspect of that internal model that prevents the undertaking from demonstrating that that internal model meets regulations 91(3) to (5) and all internal model requirements in all the circumstances in which it is, or is intended, to be used;

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

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

"scenario analysis" means the analysis of the impact of a combination of adverse events;

"Solvency Capital Requirement" means the solvency capital requirement provided for in regulation 90;

"Solvency 2 Technical Standards" means the Solvency 2 Technical Standards set out in the Annex to the Financial Services (Solvency 2) (Technical Standards) Regulations 2025;

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

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

"Swiss general insurer" has the meaning given in paragraph 2 of Schedule 3;

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"third country" means a country or territory outside Gibraltar;

"third-country insurance undertaking" means an undertaking which would require authorisation as an insurance undertaking in accordance with these Regulations if its head office were situated in Gibraltar;

"third-country reinsurance undertaking" means an undertaking which would require authorisation as a reinsurance undertaking in accordance with these Regulations if its head office were situated in Gibraltar;

"undertaking" (without further qualification) means an insurer or re-insurer; and

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

(2) Where a financial value is expressed in Euro in these Regulations, the exchange value to be used with effect from 31st December in each year is the value which applies on the last day of the preceding October for which exchange values for the Euro are available in all EU currencies.

Scope.

4.(1) *Omitted*.

(2) These Regulations apply–

(a) to direct life and non-life insurance undertakings which are or wish to become established in Gibraltar;

(b) with the exception of Part 12, to reinsurance undertakings which conduct only reinsurance activities and which are or wish to become established in Gibraltar; and

(c) in regard to non-life insurance, to activities in Classes 1 to 18.

(3) For the purposes of sub-regulation (2)(c), non-life insurance includes the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence and, in particular–

(a) comprises an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that

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person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract;

(b) the aid may comprise the provision of benefits in cash or in kind; and

(c) the provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

(4) The assistance activity referred to in sub-regulation (3) does not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

(5) In respect of life insurance these Regulations apply–

(a) to the following life insurance activities where they are on a contractual basis–

(i) life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance or birth assurance;

(ii) annuities;

(iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;

(iv) types of permanent health insurance not subject to cancellation currently existing in Gibraltar;

(b) to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance–

(i) operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);

(ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

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(iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(iv) the operations referred to in sub-paragraph (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

(c) to operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the law of Gibraltar.

Modified application to small undertakings

Small undertakings.

5.(1) Subject to sub-regulations (3) and (5) to (7), these Regulations do not apply to an insurance undertaking which fulfils all the following conditions–

(a) the undertaking's annual gross written premium income does not exceed €5,400,000;

(b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €26,600,000;

(c) where the undertaking belongs to a group, the total of the technical provisions of the group, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, does not exceed €26,600,000;

(d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of regulation 15; and

(e) the business of the undertaking does not include reinsurance operations exceeding €600,000 of its gross written premium income or €2,700,000 of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more

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than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

(2) If any of the amounts set out in sub-regulation (1) is exceeded for three consecutive years, these Regulations apply to the undertaking as from the fourth year.

(3) Despite sub-regulation (1), these Regulations apply to all undertakings seeking permission to pursue insurance and reinsurance activities of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in sub-regulation (1) within the following five years.

(4) Subject to sub-regulations (6) and (7), these Regulations cease to apply to those insurance undertakings for which the GFSC has verified that all of the following conditions are met–

(a) none of the thresholds set out in sub-regulation (1) has been exceeded for the three previous consecutive years; and

(b) none of the thresholds set out in sub-regulation (1) is expected to be exceeded during the following five years.

(5) Sub-regulation (1) does not apply to an insurance undertaking which pursues activities outside Gibraltar.

(6) Nothing in this regulation–

(a) permits any person to carry on the business of insurance of any Class, or any reinsurance without Part 7 permission; or

(b) prevents an undertaking from applying for or continuing to hold Part 7 permission in accordance with the Act and these Regulations.

(7) Where the GFSC gives Part 7 permission to an undertaking which fulfils the conditions in sub-regulation (1), the GFSC may make it a condition of that permission that the undertaking complies with all, or specified provisions of these Regulations (with or without modifications).

(8) An undertaking which is given permission in accordance with sub-regulation (7) is not entitled by virtue of that permission to pursue activities outside Gibraltar.

(9) This regulation applies without limiting regulations 6 to 10.

Exclusions from the scope of Regulations

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Exclusion: social security systems.

6. Without limiting regulation 4(5)(c), these Regulations do not apply to insurance forming part of a statutory system of social security.

Exclusions from scope: non-life

Exclusion: non-life insurance.

7. In respect of non-life insurance, these Regulations do not apply to the following operations–

(a) capital redemption operations;

(b) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

(c) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; and

(d) export credit insurance operations for the account of or guaranteed by the Government or where the Government is the insurer.

Exclusion: breakdown insurance.

8. These Regulations do not apply to breakdown insurance which fulfils all the conditions in paragraph 27 of Schedule 2 to the Act.

Exclusion: mutual undertakings.

9.(1) These Regulations do not apply to a mutual undertaking ("the ceding mutual") which pursues non-life insurance activities and which has concluded with another mutual undertaking ("the accepting mutual") an agreement–

(a) that provides for the full reinsurance by the accepting mutual of the insurance policies issued by the ceding mutual; or

(b) under which the accepting mutual is to meet the liabilities arising under the insurance policies issued by, and in the place of, the ceding mutual.

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(2) These Regulations do apply to the accepting mutual.

Exclusions from scope: life

Exclusion: life operations and organisations.

10. In respect of life insurance, these Regulations do not apply to the following operations and organisations–

(a) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

(b) operations carried out by organisations, other than insurance or reinsurance undertakings, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from those operations are fully covered at all times by mathematical provisions; and

(c) organisations which undertake to provide benefits solely in the event of death, where the amount of those benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exclusions from scope: reinsurance

Exclusions relating to re-insurance.

11.(1) In respect of reinsurance, these Regulations do not apply to reinsurance activity conducted or fully guaranteed by the government of Gibraltar or the government of a country or territory outside Gibraltar when acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where that role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

(2) These Regulations do not apply to a reinsurance undertaking which by 10th December 2007 had ceased to conduct new reinsurance contracts and exclusively administers its existing portfolio in order to terminate its activity.

PART 2
THRESHOLD CONDITIONS

Introduction.

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12.(1) This Part includes provisions which supplement the threshold conditions as they apply to–

(a) insurance or reinsurance undertakings applying for Part 7 permission to carry on the regulated activity in paragraph 24 of Schedule 2, of effecting and carrying out contracts of insurance; and

(b) insurance or reinsurance undertakings which are regulated firms with Part 7 permission to carry on that regulated activity.

(2) The GFSC must not give Part 7 permission to an insurance or reinsurance undertaking unless the GFSC is satisfied that the undertaking meets, and will continue to meet, all requirements imposed on insurance or reinsurance undertakings under the Act or these Regulations.

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

Permission required to carry insurance or reinsurance activity.

13.(1) A person must not carry on the business of insurance of any Class, or any reinsurance activity in Gibraltar unless the person has Part 7 permission to carry on that Class of insurance or reinsurance activity given in accordance with the Act and these Regulations.

(2) An application for Part 7 permission may be made to the GFSC by–

(a) an undertaking which has established or is establishing its head office in Gibraltar; or

(b) an insurance undertaking which has Part 7 permission to carry on insurance of a particular Class or any part of it and wishes to extend its business to the whole of that Class or to other Classes of insurance.

Requirement to consult Minister on certain permissions.

13A.(1) The GFSC must–

(a) consult the Minister before–

(i) giving an insurance undertaking Part 7 permission to carry on compulsory motor insurance; or

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(ii) varying the Part 7 permission of an insurance undertaking to permit it to carry on such insurance; and

(b) in deciding whether to give or vary the permission, take account of any response provided by the Minister concerning any matter affecting the macro-economic or other public interest of Gibraltar which the Minister considers may arise from the permission being given or varied.

(2) The GFSC must provide the Minister with such information as the Minister may reasonably require for the purpose of assessing the matters in sub-regulation (1)(b).

(3) In sub-regulation (1), "compulsory motor insurance" means a contract of motor insurance in respect of third party risks which complies with the requirements of the Insurance (Motor Vehicles) (Third Party Risk) Act 1986.

(4) Sub-regulation (1) does not apply in respect of an UK-authorised insurance undertaking which operates in Gibraltar by virtue of a deemed passporting right under the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 and the corresponding law of the United Kingdom.

Scope of permission.

14.(1) Part 7 permission given to an insurance undertaking must be given for a particular Class of insurance and cover the entire class, unless the applicant wishes to cover only some of the risks in respect of that Class.

(2) Subject to regulation 15, the risks included in a Class must not be included in any other Class.

(3) The GFSC may give Part 7 permission–

(a) for one or more Classes of insurance; or

(b) for the groups of Classes of non-life insurance set out in paragraph 22(2) of Schedule 2 to the Act.

(4) In respect to an application for Part 7 permission to which sub-regulation (3)(b) applies, the GFSC may limit the permission for one of the Classes to the operations set out in the scheme of operations referred to in regulation 17.

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(5) Without limiting regulation 15(1), an insurance undertaking may engage in the assistance activity referred to in regulation 8 only if it has been given permission for Class 18 and, it if does so, these Regulations apply to that activity.

(6) In respect of an application for Part 7 permission as a reinsurance undertaking, the GFSC may give permission for non-life reinsurance activity, life reinsurance activity or both after considering the application in the light of the scheme of operations to be submitted under regulation 16(3)(c) and the fulfilment of any other conditions for permission.

(7) Where the GFSC gives Part 7 permission to an insurance undertaking, to the extent that the GFSC is satisfied that relevant threshold conditions and other requirements contained in or made under the Act are met, the GFSC may specify that the permission also extends to providing insurance distribution activities.

(8) Subject to regulation 5(8), Part 7 permission given to an insurance or reinsurance undertaking in accordance with the Act and these Regulations permits the undertaking to carry on business in any country or territory where reciprocal arrangements are in place which allow Gibraltar insurers or Gibraltar reinsurers lawfully to do so.

Ancillary risks.

15.(1) An insurance undertaking which has permission to insure a principal risk within one or more of the Classes of general business may also insure ancillary risks included in another Class without the need for further permission if those ancillary risks–

(a) are connected with the principal risk;

(b) concern the object which is covered against the principal risk; and

(c) are covered by the contract insuring the principal risk.

(2) The risks included in Classes 14, 15 and 17 must not be regarded as risks ancillary to other Classes.

(3) But legal expenses insurance within Class 17 may be regarded as a risk ancillary to Class 18 where–

(a) the conditions in sub-regulation (1) are met; and

(b) either–

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(a) the main risk relates solely to the provision of assistance to persons who get into difficulties while travelling, while away from their home or habitual residence; or

(b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea going vessels.

Additional conditions for permission.

16.(1) Without limiting the requirements of the Act, an undertaking applying for Part 7 permission must–

(a) be–

(i) a company (whether limited by shares or by guarantee or unlimited) registered under the Companies Act 2014; or

(ii) a friendly society registered under the Friendly Societies Act; and

(b) have its head office and registered office in Gibraltar.

(2) Despite sub-regulation (1)(a), an undertaking set up in a form governed by public law may apply for Part 7 permission if it has as its object insurance or reinsurance operations under conditions equivalent to those under which undertakings governed by private law operate.

(3) An undertaking applying for permission must comply with the following conditions–

(a) where the application is for permission as an insurance undertaking, its objects must be limited to the business of insurance and operations arising directly from that business, to the exclusion of all other commercial business;

(b) where the application is for permission as a reinsurance undertaking, its objects must be limited to the business of reinsurance and related operations, which may include a holding company function and activities with respect to a financial sector within the meaning of regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020;

(c) it must submit a scheme of operations to the GFSC in accordance with regulation 17;

(d) it must hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in regulation 116;

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(e) it must provide the GFSC with evidence that the undertaking will be in a position to hold, on an ongoing basis–

(i) eligible own funds to cover the Solvency Capital Requirement, as provided for in regulation 90; and

(ii) eligible basic own funds to cover the Minimum Capital Requirement, as provided for in regulation 115;

(f) it must provide the GFSC with evidence that the undertaking will be in a position to comply with the system of governance in regulations 43 to 50;

(4) An insurance undertaking seeking permission to extend its business to another Class or extend a permission covering only some of the risks under a Class must submit to the GFSC–

(a) a scheme of operations in accordance with regulation 17; and

(b) evidence that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in regulations 90 and 115.

(5) Without limiting sub-regulation (4), an insurance undertaking pursuing life activities and seeking permission to extend its business to the risks in Class 1 or 2 as provided for in regulation 63 must–

(a) demonstrate that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as provided for in regulation 116; and

(b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.

(6) Without limiting sub-regulation (4), an insurance undertaking pursuing non-life activities for the risks listed in Class 1 or 2 and seeking permission to extend its business to life insurance risks as provided for in regulation 63 must–

(a) demonstrate that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as provided for in regulation 116; and

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((b) undertake to cover the minimum financial obligations referred to in regulation 64(3) on an ongoing basis.

Scheme of operations.

17.(1) The scheme of operations referred to in regulation 16(3)(c) must include particulars or evidence of the following–

(a) the nature of the risks or commitments which the insurance or reinsurance undertaking proposes to cover;

(b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;

(c) the guiding principles as to reinsurance and to retrocession;

(d) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement; and

(e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in Class 18, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

(2) In addition to the requirements in sub-regulation (1), for the first three financial years the scheme must include the following–

(a) a forecast balance sheet;

(b) estimates of the future Solvency Capital Requirement, as provided for in Chapter 3 of Part 6, on the basis of the forecast balance sheet, and the calculation method used to derive those estimates;

(c) estimates of the future Minimum Capital Requirement, as provided for in regulations 115 and 116, on the basis of the forecast balance sheet, and the calculation method used to derive those estimates;

(d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

(e) in regard to non-life insurance and reinsurance–

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(i) estimates of management expenses other than installation costs, in particular, current general expenses and commissions; and

(ii) estimates of premiums or contributions and claims; and

(f) in regard to life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Close links.

18.(1) Where close links exist between an insurance or reinsurance undertaking and other individuals or legal persons, the GFSC may give Part 7 permission to that undertaking only if those links do not prevent the effective performance of its supervisory functions.

(2) The GFSC must refuse permission if it would be prevented from performing its supervisory functions effectively by–

(a) the laws, regulations or administrative provisions of a country or territory outside Gibraltar governing one or more person with which an insurance or reinsurance undertaking has close links; or

(b) the difficulties involved in enforcing those measures.

(3) The GFSC may require an insurance or reinsurance undertaking to provide it with the information it requires to monitor, on a continuous basis, compliance with the conditions in sub-regulation (1).

Policy conditions and scales of premiums.

19.(1) The GFSC must not require the prior approval or systematic notification of–

(a) general and special policy conditions;

(b) scales of premiums;

(c) technical bases used, in particular, for calculating scales of premiums and technical provisions; or

(d) other forms and printed documents,

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which an insurance undertaking intends to use in its dealings with policy holders or ceding or retroceding undertakings.

(2) Despite sub-regulation (1), for life insurance, the GFSC may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions but that requirement–

(a) may only be imposed for the purpose of verifying compliance with legal provisions concerning actuarial principles; and

(b) must not constitute a prior condition for permission.

(3) The GFSC must not retain or introduce prior notification or approval of proposed increases in premium rates other than as part of general price-control systems.

(4) The GFSC may subject an undertaking which is seeking or has obtained Part 7 permission for insurance business in Class 18 to checks on its direct or indirect resources in staff and equipment, including the qualification of its medical teams and the quality of the equipment available to the undertaking to meet its commitments arising out of that Class.

Economic requirements of the market.

20. In considering any application for Part 7 permission the GFSC may not take account of the economic requirements of the market.

Shareholders and members with qualifying holdings.

21.(1) The GFSC must not give an undertaking Part 7 permission to take up the business of insurance or reinsurance unless it has been informed of the identities of the shareholders or members, direct or indirect, whether individuals or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

(2) The GFSC must not give Part 7 permission to an undertaking if, taking into account the need to ensure the sound and prudent management of the undertaking, it is not satisfied as to the qualifications of the shareholders or members.

(3) For the purposes of sub-regulation (1), the GFSC must take account of–

(a) voting rights referred to in sections 363 and 364 of the Act; and

(b) the conditions regarding their aggregation in section 366(7) and (9) of the Act.

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(4) The GFSC must not take account of the voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments or the placing of financial instruments on a firm commitment basis under paragraph 53 of Schedule 2 to the Act, where those rights–

(a) are not exercised or otherwise used to intervene in the management of the issuer; and

(b) are disposed of within one year of their acquisition.

Qualifying holdings: reporting of acquisitions and disposals.

22.(1) An insurance or reinsurance undertaking must–

(a) on becoming aware of it, inform the GFSC of any acquisition or disposal of holdings in the undertaking's capital that causes those holdings to exceed or fall below any of the thresholds in sections 114 to 116 of the Act; and

(b) at least once a year, inform the GFSC of–

(i) the names of the undertaking's shareholders and members who possess qualifying holdings; and

(ii) the size of those holdings,

as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

(2) Where the GFSC has reasonable grounds for considering that the influence exercised by a person who possesses a qualifying holding is likely to be prejudicial to the sound and prudent management of an insurance or reinsurance undertaking, the GFSC may take appropriate steps to resolve that situation.

(3) The steps which the GFSC may take under sub-regulation (2) include–

(a) imposing sanctions on the directors and other persons responsible for the management of the undertaking;

(b) directing that the voting rights exercisable by the person in question are to be suspended; or

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(c) applying to the Supreme Court for an order.

23. *Omitted*.

24. *Omitted*.

PART 3
SUPERVISION

Functions of the GFSC, etc.

Main objective of supervision.

25. Without limiting its regulatory objectives under the Act, the GFSC's main objective as the supervisory authority under these Regulations is the protection of policy holders and beneficiaries.

Financial stability and pro-cyclicality.

26.(1) Without limiting regulation 25, in the exercise of its general duties, the GFSC must consider the potential impact of its decisions on the stability of the financial system, in particular in emergency situations, taking account of the information available at the relevant time.

(2) The GFSC must take account of the potential pro-cyclical effects of its actions in times of exceptional movements in the financial markets.

General principles of supervision.

27.(1) The GFSC must take a prospective and risk-based approach to supervision and verify, on a continuous basis–

(a) the proper operation of insurance and reinsurance business; and

(b) compliance with supervisory provisions by insurance and reinsurance undertakings.

(2) The GFSC must supervise insurance and reinsurance undertakings by means of an appropriate combination of off-site activities and on-site inspections.

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(3) The GFSC must apply the requirements in these Regulations in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.

Scope of supervision.

28.(1) The GFSC has sole responsibility for the financial supervision of insurance and reinsurance undertakings.

(2) For the purposes of sub-regulation (1) financial supervision includes verification, in respect of the entire business of an insurance or reinsurance undertaking, of–

(a) its state of solvency;

(b) its establishment of technical provisions; and

(c) its assets and eligible own funds,

in accordance with these Regulations and other laws which apply in Gibraltar.

(3) Where an insurance undertaking has permission to cover the risks classified in Class 18, supervision extends to monitoring the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform.

Transparency and accountability.

29.(1) The GFSC must conduct its supervisory tasks in a transparent and accountable manner and with due respect for the protection of confidential information.

(2) The GFSC must publish the following information–

(a) the text of laws, administrative rules and general guidance in the field of insurance regulation;

(b) the general criteria and methods, including the tools to be used, in the supervisory review process;

(c) aggregate statistical data on key aspects of the application of the prudential framework;

(d) *Omitted.*

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(e) the objectives and main functions and activities of the supervision provided for by these Regulations.

(3) *Omitted*.

(4) The GFSC must publish and regularly update the information specified in sub-regulation (2) in a common format that is accessible at a single electronic location.

Prohibition of refusal of reinsurance and retrocession contracts.

30. The GFSC must not refuse–

(a) a reinsurance contract concluded by an insurance undertaking with a reinsurance undertaking or another insurance undertaking; or

(b) a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or another insurance undertaking,

on grounds directly related to the financial soundness of that reinsurance or insurance undertaking.

31. *Omitted*.

General supervisory powers.

32.(1) The provisions in this Part supplement the GFSC's powers under the Act.

(2) The GFSC may exercise its supervisory and sanctioning powers under the Act, these Regulations or any other relevant enactment in order to–

(a) take preventative and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they must comply in Gibraltar;

(b) take any necessary measures, including where appropriate, those of an administrative or financial nature with regard to undertakings and the members of their administrative, management or supervisory body;

(c) require all information necessary to conduct supervision in accordance with regulation 37;

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(d) develop, in addition to the calculation of the Solvency Capital Requirement, and where necessary, quantitative tools under the supervisory review process to assess the ability of undertakings to cope with possible events or future changes in economic conditions which could have unfavourable effects on their overall financial standing and to require that corresponding tests are performed by the undertakings; and

(e) carry out on-site investigations at the premises of undertakings.

(3) The GFSC must apply its supervisory powers in a timely and proportionate manner.

(4) The GFSC's powers under this regulation also apply to the outsourced activities of undertakings.

Directions.

33.(1) The GFSC may give an insurer any directions that the GFSC considers necessary–

(a) for the purposes of protecting the insurer's policyholders or potential policyholders against the risk that the insurer–

(i) may be unable to meet its liabilities; or

(ii) may, in respect of its long-term business, be unable to fulfil the reasonable expectations of policyholders or potential policyholders;

(b) in the exceptional circumstances referred to in regulation 122(11);

(c) for the purpose of exercising powers under regulation 123(3) or 124(2); or

(d) for the purpose of ensuring that the insurer fulfils the criteria of sound and prudent management.

(2) The power to give directions so as to restrict an insurer's freedom to dispose of its assets may only be exercised–

(a) where the GFSC has given a direction under regulation 34 or 35;

(b) for the purpose of exercising powers under regulation 122(11), 123(3) or 124(2);

(c) where it appears to the GFSC that the insurer has failed to satisfy an obligation under the Act or these Regulations as to its technical provisions, the Solvency

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Capital Requirement, the maintenance of own funds to cover the Minimum Capital Requirement or the adequacy, form or location of its assets; or

(d) where the insurer has submitted to the GFSC an account or statement specifying, as the amount of any liabilities of the insurer, an amount appearing to the GFSC to have been determined otherwise than in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.

(3) A direction under this regulation–

(a) must be given in writing and state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(4) The GFSC may at any time revoke or vary a direction issued under this regulation.

Prohibiting insurer from undertaking new business.

34.(1) The GFSC may–

(a) at the request of the insurer; or

(b) on any of the grounds in sub-regulation (2),

direct that an insurer must not enter into new contracts of insurance or contracts of a description specified in the direction.

(2) The grounds are that–

(a) the insurer is in breach of, or has failed to satisfy an obligation under, the Act or these Regulations;

(b) the GFSC is exercising its powers under regulation 127;

(c) a ground exists which would prohibit the GFSC from giving Part 7 permission to the insurer;

(d) the GFSC is satisfied that the insurer has deliberately or recklessly supplied information that is untrue in a material respect;

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(e) the insurer has carried on its business in a manner detrimental to the interests of its policyholders or the public interest;

(f) the insurer is a third-country insurance undertaking and has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in the country or territory where it has its head office;

(g) the insurer has failed to remove a director, controller, manager, representative or agent whom the GFSC has found not to be a fit and proper person;

(h) the insurer has failed, within such time as it was allowed, to give effect to–

(i) a recovery plan under regulation 122; or

(ii) a short term finance scheme under regulation 123;

(i) the insurer is in receivership or in liquidation within the meaning of section 3(1) of the Insolvency Act 2011;

(j) it appears to the GFSC that a Gibraltar insurer has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance activities of the insurer in that jurisdiction;

(k) it appears to the GFSC that a Gibraltar insurer or third-country insurance undertaking is not or has not been or may not be or may not have been fulfilling the criteria of sound and prudent management; or

(l) the insurer is a Swiss general insurer which has ceased to be authorised to effect contracts of insurance or contracts of a particular description, in Switzerland.

(3) A direction under this regulation does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.

(4) A direction under this regulation–

(a) must be given in writing and, in the case of a direction under sub-regulation (1)(b), state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(5) Where a direction under this regulation has been given in respect of–

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(a) an insurer which has its head office in a country or territory outside Gibraltar; or

(b) a Swiss general insurer,

the GFSC may revoke or vary the direction if, after consulting the relevant supervisory authority the GFSC considers it appropriate to do so.

(6) Subject to sub-regulation (5) a direction may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

Suspension of permission in urgent cases.

35.(1) Where it appears to the GFSC–

(a) that one of the grounds in regulation 34(2) exists in relation to an insurer; and

(b) that the insurer's Part 7 permission should be suspended as a matter of urgency,

the GFSC may, by direction, suspend the insurer's permission to effect contracts of insurance, or contracts of a description specified in the direction.

(2) A direction under this regulation–

(a) must be given in writing and state the reasons for giving the direction; and

(b) takes effect from the date of the direction or any later date that may be specified in the direction.

(3) A direction under this regulation–

(a) does not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance; and

(b) unless confirmed by the GFSC under sub-regulation (6), ceases to have effect at the end of the relevant period.

(3) Where the GFSC gives a direction under this regulation, it must promptly serve on the insurer a written notice stating that the insurer may, within one month from the date of service of the notice, make written and oral representations to the GFSC.

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(4) Where the GFSC gives a direction on the ground set out in regulation 34(2)(g), the GFSC must also promptly serve on any person whose fitness is in question–

(a) a copy of the direction; and

(b) a written notice stating that the person may, within one month from the date of service of the notice, make written and oral representations to the GFSC.

(5) the GFSC must consider any representations made in response to a notice under sub-regulation (3) or (4) before confirming a direction under this regulation.

(6) At any time before the end of the relevant period, the GFSC may confirm a direction under this regulation by a notice served on the insurer.

(7) A direction which is confirmed under sub-regulation (6) may not be varied or revoked, but if the GFSC subsequently gives the insurer Part 7 permission to carry on insurance business of a Class to which the direction relates, the direction ceases to have effect in relation to business of that Class.

(8) In this regulation "the relevant period", in relation to a direction means the period of two months beginning with the date on which the direction is given.

Procedure: Regulations 33 to 35.

36.(1) The GFSC must give the insurer–

(a) a warning notice, if the GFSC proposes to give a direction under regulation 33, 34(1)(b) or 35(1); or

(b) a decision notice, if the GFSC decides to–

(i) give a direction under regulation 33, 34(1)(b) or 35(1); or

(ii) confirm a direction under regulation 35(6).

(2) Sub-regulation (1)(a) does not apply where the GFSC is satisfied that–

(a) there is an immediate risk of substantial damage to–

(i) the interests of policyholders or consumers;

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(ii) the public interest; or

(iii) the reputation of Gibraltar; and

(b) the exercise of the power to give a direction with immediate effect is–

(i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

(ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the insurer that may result from that direction.

(3) A decision notice under sub-regulation (1)(b) takes effect immediately or on the date specified in the notice.

(4) A decision by the GFSC to–

(a) issue a decision notice under sub-regulation (1)(b) in respect of–

(i) a direction under regulation 33 which imposes a restriction which amounts to a specified restriction within the meaning of section 24(3A) of the Act; or

(ii) a direction under regulation 34(1)(b) or 35(1); or

(b) issue such a decision notice without first issuing a warning notice in accordance with sub-regulation (1)(a),

is a specified regulatory decision to which section 24(3) of the Act applies.

(5) Sub-regulation (4) does not apply to the issue of a decision notice where–

(a) the recipient has received a warning notice and–

(i) has agreed in writing to the steps proposed in the warning notice being taken; or

(ii) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed); or

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(b) in the case of a decision notice confirming a direction under regulation 35(6), the recipient–

(i) has agreed in writing to the direction being confirmed; or

(ii) has not made any representations in accordance with regulation 35(4)(b).

(6) The requirement to give notice under sub-regulation (1)(a) or (b) does not apply where the insurer has consented in writing to a direction being given under regulation 33, 34(1)(b) or 35(1) but, in that event, the GFSC must give the insurer written notice of the direction and the date from which it has effect.

Information for supervisory purposes.

37.(1) Insurance and reinsurance undertakings must submit to the GFSC any information which is necessary for the purposes of supervision, taking account of the objectives of supervision set out in regulations 25 and 26, and that information must include at least the information necessary for the following–

(a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management; and

(b) to make any appropriate decisions resulting from the exercise of the GFSC's supervisory rights and duties.

(2) The GFSC has the following powers–

(a) to determine the nature, the scope and format of the information referred to in sub-regulation (1) which it requires insurance and reinsurance undertakings to submit at the following points in time–

(i) at pre-defined periods;

(ii) on the occurrence of pre-defined events; and

(iii) during enquiries regarding the situation of an undertaking;

(b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and

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(c) to require information from external experts, such as auditors and actuaries.

(3) Without limiting sub-regulation (2), the GFSC may with the consent of the Minister require information to be submitted using a specified template and in a specified format.

(4) The information which the GFSC may require by virtue of this regulation comprises the following–

(a) qualitative or quantitative elements, or any appropriate combination of them;

(b) historic, current or prospective elements, or any appropriate combination of them; and

(c) data from internal or external sources, or any appropriate combination of them.

(5) The information referred to in sub-regulation (1) and (2) must comply with the following principles–

(a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;

(b) it must be accessible, complete in all material respects, comparable and consistent over time; and

(c) it must be relevant, reliable and comprehensible.

(6) Insurance and reinsurance undertakings must have appropriate systems and structures in place to fulfil the requirements set out in this regulation as well as a written policy, approved by the undertaking's administrative, management or supervisory body, ensuring the ongoing appropriateness of the information submitted.

(7) Without limiting sub-regulation (8) and regulation 116(4), where the pre-defined periods referred to in sub-regulation (2)(a)(i) are shorter than one year, the GFSC may limit regular supervisory reporting, where–

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking; and

(b) the information is reported at least annually.

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(8) The GFSC must not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of regulation 191, unless the undertaking can demonstrate to the satisfaction of the GFSC that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

(9) The limitation to regular supervisory reporting may be granted only to undertakings that do not represent more than 20% of Gibraltar's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

(10) The GFSC may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where–

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the submission of that information is not necessary for the effective supervision of the undertaking;

(c) the exemption does not undermine the stability of the financial system; and

(d) the undertaking is able to provide the information when required to do so.

(11) The GFSC must not exempt from reporting on an item by item basis undertakings that are part of a group within the meaning of regulation 191, unless the undertaking can demonstrate to the GFSC's satisfaction that reporting on an item by item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(12) The exemption from reporting on an item-by-item basis may be granted only to undertakings that do not represent more than 20% of Gibraltar's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

(13) The GFSC must give priority to the smallest undertakings when determining the eligibility for the limitation under sub-regulation (9) or the exemption under sub-regulation (12).

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(14) For the purposes of sub-regulations (7) to (13), as part of the supervisory review process, the GFSC must assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least–

(a) the volume of premiums, technical provisions and assets of the undertaking;

(b) the volatility of the claims and benefits covered by the undertaking;

(c) the market risks that the investments of the undertaking give rise to;

(d) the level of risk concentrations;

(e) the total number of Classes of life and non-life insurance for which permission is given;

(f) possible effects of the management of the assets of the undertaking on financial stability;

(g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in sub-regulation (6);

(h) the appropriateness of the system of governance of the undertaking;

(i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and

(j) whether the undertaking is a captive insurer or captive reinsurer only covering risks associated with the industrial or commercial group to which it belongs.

Supervisory review process.

38.(1) The GFSC must review and evaluate the strategies, processes and reporting procedures established by insurance and reinsurance undertakings to comply with these Regulations.

(2) That review and evaluation must comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

(3) The GFSC must, in particular, review and evaluate compliance with the following–

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(a) the system of governance, including the own-risk and solvency assessment, as set out in regulations 43 to 50;

(b) the technical provisions as set out in regulations 66 to 80;

(c) the capital requirements as set out in regulations 90 to 116;

(d) the investment rules as set out in regulations 117 to 119;

(e) the quality and quantity of own funds as set out in regulations 81 to 89;

(f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in regulations 101 to 114,

and the GFSC must have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in an undertaking and to monitor how that deterioration is remedied.

(4) The GFSC must assess–

(a) the adequacy of the methods and practices of the undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned; and

(b) the ability of the undertakings to withstand those possible events or future changes in economic conditions.

(5) The reviews, evaluations and assessments referred to in this regulation must be conducted regularly and the GFSC must establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

(6) The GFSC may require an insurance or reinsurance undertaking to remedy any weakness or deficiency identified in the supervisory review process.

Capital add-on.

39.(1) Following the supervisory review process the GFSC may impose a capital add-on for an insurance or reinsurance undertaking in the following circumstances–

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(a) where the GFSC concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with regulations 91 to 100; and–

(i) the requirement to use an internal model under regulation 107 is inappropriate or has been ineffective; or

(ii) while a partial or full internal model is being developed in accordance with that regulation;

(b) where the GFSC concludes that the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with regulations 101 to 114, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(c) where the GFSC concludes that the system of governance of an undertaking deviates significantly from the standards set out in regulations 66 to 80, that the deviation prevents it from being able properly to identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe; or

(d) where the insurance or reinsurance undertaking applies the matching adjustment referred to in regulation 68, the volatility adjustment referred to in regulation 70 or the transitional measures referred to in paragraphs 2 and 3 of Schedule 1 and the GFSC concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(2) In the circumstances set out in sub-regulation (1)(a) or (b) of the capital add-on must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).

(3) In the circumstances set out in sub-regulation (1)(c) the capital add-on must be proportionate to the material risks arising from the deficiencies which gave rise to the GFSC's decision to impose the add-on.

(4) In the circumstances set out in sub-regulation (1)(d), the capital add-on must be proportionate to the material risks arising from the deviation referred to in that provision.

(5) In the cases set out in sub-regulation (1)(b) and (c)–

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(a) the GFSC must ensure that the undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on; and

(b) the undertaking must be able to submit a progress report to the GFSC, at its request, setting out the measures taken, and the progress made, to remedy the deficiencies that led to the imposition of the capital add-on.

(6) The Solvency Capital Requirement, including the capital add-on imposed, must replace the inadequate Solvency Capital Requirement.

(7) This regulation and regulation 40 apply subject to any technical standards which further specify–

(a) the circumstances under which a capital add-on may be imposed;

(b) the methodologies for calculating capital add-ons; or

(c) the procedures for decisions to set, calculate and remove capital add-ons.

Review or cancellation of capital add-on.

40. Where the GFSC has imposed a capital add-on under regulation 39, it must–

(a) review the capital add-on at least once a year; and

(b) remove the capital add-on when the undertaking has remedied the deficiencies which led to its imposition.

Transfer of portfolios.

41. In Part 23 of the Act (which provides for the control of insurance business transfers) any reference to "the necessary margin of solvency" is to be construed as a reference to necessary eligible own funds required to cover the Solvency Capital Requirement under these Regulations.

Activity in different jurisdiction.

41A.(1) A proposal by an insurance undertaking to carry on compulsory motor insurance business in a different jurisdiction constitutes a material change to which section 83A of the Act applies.

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(2) An insurance undertaking must obtain the GFSC's consent under section 83A of the Act before implementing a change to which sub-regulation (1) applies.

(3) In deciding whether to give consent to such a change, the GFSC must consult the Minister and take account of any response the Minister may provide where, in the Minster's opinion, the change may affect the macro-economic or other public interest of Gibraltar.

(4) The insurance undertaking and the GFSC must provide the Minister with such information as the Minister may reasonably require for the purpose of assessing the matters in sub-regulation (3).

(5) In this regulation–

"compulsory motor insurance" means insurance which is required by law in respect of third party risks arising from the use of a motor vehicle; and

"different jurisdiction" means a country or territory which was not specified as a place in which an insurance undertaking will carry on motor insurance business–

(a) in the business plan which the undertaking provided to the GFSC when it obtained Part 7 permission to carry on motor insurance business; or

(b) in any more recent business plan which the undertaking has provided to, and which has been approved by, the GFSC.

PART 4
CONDITIONS GOVERNING BUSINESS

Corporate Governance

Compliance obligation.

42. Ultimate responsibility for an insurance or reinsurance undertaking's compliance with these Regulations and other applicable laws is–

(a) in the case of an insurance or reinsurance undertaking which is a company, a function of the directors and the chief executive; and

(b) in the case of any other insurance or reinsurance undertaking, a function of its administrative, management or supervisory body.

General governance requirements.

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43.(1) An insurance or reinsurance undertaking must have in place an effective system of governance which provides for sound and prudent management of the business.

(2) The system must include–

(a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;

(b) an effective system for ensuring the transmission of information; and

(c) compliance with the requirements of regulations 44 to 50.

(3) The system of governance must be subject to regular internal review.

(4) The system of governance must be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

(5) An insurance or reinsurance undertaking must establish, implement and maintain written policies and adequate procedures in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing and must ensure–

(a) that those policies are implemented and are reviewed at least annually;

(b) that the policies are subject to prior approval by the administrative, management or supervisory body; and

(c) that the policies are adapted in the light of any significant change in the system or area concerned.

(6) An insurance or reinsurance undertaking must take reasonable steps to ensure continuity and regularity in the performance of its activities, including the development of contingency plans and for that purpose it must employ appropriate and proportionate systems, resources and procedures.

(7) The GFSC must take all necessary steps–

(a) to verify the system of governance of insurance and reinsurance undertakings;

(b) to evaluate emerging risks identified by those undertakings which may affect their financial soundness; and

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(c) to require that the systems of governance be improved and strengthened to ensure compliance with the requirements set out in regulations 44 to 50.

Fit and proper persons and proof of good repute.

44.(1) Without limiting Part 8 of the Act, an insurance or reinsurance undertaking must ensure that all persons who effectively run the undertaking or have other key functions are at all times fit and proper to do so, in that–

(a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management of the undertaking; and

(b) they are of good repute and integrity.

(2) An insurance or reinsurance undertaking–

(a) must ensure that–

(i) any person who performs a regulated function (within the meaning of Part 8 of the Act) has been approved as a regulated individual under Part 8 of the Act by the GFSC to perform that function in the undertaking;

(ii) any regulated function within the undertaking is only performed by the appropriate regulated individual; and

(iii) they establish, implement and maintain documented policies and procedures to ensure that all persons who effectively run the undertaking or have another key function are at all times fit and proper; and

(b) without limiting its obligations under Part 8 of the Act, must notify the GFSC–

(i) of any change to the identity of any person (including a non-executive member of its administrative, management or supervisory body) who effectively runs the undertaking or is responsible for another key function; or

(ii) if any person referred to in sub-regulation (1) or paragraph (a) has been replaced because the person no longer fulfils the requirements of sub-regulation (1)(a) or (b).

Risk Management.

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45.(1) An insurance or reinsurance undertaking must establish, implement and maintain an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

(1A) The risk management must include the following–

(a) a clearly defined risk management strategy which is consistent with the undertaking's overall business strategy. The objectives and key principles of the strategy, the approved risk tolerance limits and the assignment of responsibilities across all the activities of the undertaking must be documented;

(b) a clearly defined procedure on the decision-making process;

(c) written policies which effectively ensure the definition and categorisation of the material risks by type to which the undertaking is exposed and the approved risk tolerance limits for each type of risk, and which implement the undertaking's risk strategy, facilitate control mechanisms and take into account the nature, scope and time periods of the business and the associated risks; and

(d) reporting procedures and processes which ensure that information on the material risks faced by the undertaking and the effectiveness of the risk management system are actively monitored and analysed and that appropriate modifications to the system are made where necessary.

(2) The risk-management system–

(a) must be effective and well-integrated into the organisational structure and decision-making processes of the undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions; and

(b) must cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in regulation 91(4) as well as the risks which are not or not fully included in that calculation.

(3) The risk-management system must cover at least the following areas–

(a) underwriting and reserving;

(b) asset-liability management;

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(c) investment risk management, in particular derivatives and similar commitments;

(d) liquidity and concentration risk management;

(e) operational risk management; and

(f) reinsurance and other risk-mitigation techniques.

(4) The written policies on risk management referred to in regulation 43(5) must include policies relating to the areas listed in sub-regulation (3)(a) to (f).

(4A) An insurance or reinsurance undertaking must ensure that, where appropriate, the performance of stress tests and scenario analysis with regard to all relevant risks faced by the undertaking is included in its risk management system.

(4B) An insurance or reinsurance undertaking must ensure that it takes into account the information reported as part of the risk management system in its decision-making process.

(5) An insurance or reinsurance undertaking which applies the matching adjustment referred to in regulation 68 or the volatility adjustment referred to in regulation 70 must set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(5A) Where an insurance or reinsurance undertaking applies the matching adjustment, it must manage any risks that are identified in the analysis undertaken in accordance with regulation 69G(1).

(6) As regards asset-liability management, an insurance or reinsurance undertaking must regularly assess–

(a) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in regulation 67;

(b) where the matching adjustment referred to in regulation 68 is applied–

(i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in regulation 69(4) and the possible effect of a forced sale of assets on its eligible own funds;

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(ii) the sensitivity of its technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;

(iii) the impact of a reduction of the matching adjustment to zero;

(c) where the volatility adjustment referred to in regulation 70 is applied–

(i) the sensitivity of its technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on its eligible own funds; and

(ii) the impact of a reduction of the volatility adjustment to zero.

(7) The insurance or reinsurance undertaking must submit the assessments referred to in sub-regulation (6)(a) to (c) to the GFSC annually (as part of the information reported under regulation 37) and, where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking must also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

(8) Where the volatility adjustment referred to in regulation 70 is applied, the written policies on risk management referred to in regulation 43(5) must include a policy on the criteria for the application of the volatility adjustment.

(9) An insurance or reinsurance undertaking must demonstrate that it complies with Chapter 5 of Part 6 as regards investment risk.

(10) An insurance or reinsurance undertaking must provide for a risk management function which is structured in such a way as to facilitate the implementation of the risk management system.

(11) An insurance or reinsurance undertaking must–

(a) ensure that its internal risk management methodologies do not rely solely or automatically on external credit assessments; and

(b) assess the appropriateness of those external credit assessments as part of its risk management by using additional assessments wherever practicably possible,

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and where an undertaking's calculation of technical provisions or the Solvency Capital Requirement is based on external credit assessments or the fact that an exposure is unrated, it does not exempt the undertaking from also considering other relevant information.

(12) Where an insurance or reinsurance undertaking uses a partial or full internal model approved in accordance with regulations 101 and 102, the risk-management function must cover the following additional tasks–

(a) to design and implement the internal model;

(b) to test and validate the internal model;

(c) to document the internal model and any subsequent changes made to it;

(d) to analyse the performance of the internal model and to produce summary reports of it; and

(e) to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

Policy on risk management.

45A.(1) For the purpose of assessing the appropriateness of external credit rating assessments used in the calculation of technical provisions and the Solvency Capital Requirement by way of additional assessments referred to in regulation 45(11), an insurance or reinsurance undertaking must include in its policy on risk management the following–

(a) the scope and frequency of the additional assessments;

(b) the manner in which the additional assessments are carried out, including the assumptions on which they are based; and

(c) the frequency of the regular review of the additional assessments and the conditions requiring an ad hoc review of the additional assessments.

(2) An insurance or reinsurance undertaking must ensure that its risk-management function covers the additional assessments in accordance with the risk management policy referred to in sub-regulation (1) and duly considers the results of the additional assessments in the calculation of technical provisions and the Solvency Capital Requirement.

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(3) When carrying out the additional assessments, an undertaking must use information that is derived from reliable sources that are up to date.

(4) In accordance with regulation 43, an insurance or reinsurance undertaking must review its additional assessments at least annually.

(5) An insurance or reinsurance undertaking must review the additional assessments on an ad hoc basis whenever any of the conditions under sub-regulation (1)(c) take place or if the assumptions on which those assessments are based are no longer valid.

(6) An insurance or reinsurance undertaking must document the following–

(a) the manner in which the additional assessments are carried out and the results of those assessments; and

(b) the extent to which the results of the additional assessments are taken into account in the calculation of technical provisions and the Solvency Capital Requirement.

Risk management areas.

45B. An insurance or reinsurance undertaking must ensure that the areas referred to in regulation 45(3) include all of the following policies–

(a) underwriting and reserving–

(i) actions to be taken by the undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions;

(ii) the sufficiency and quality of relevant data to be considered in the underwriting and reserving processes, as set out in Article 19 of the Solvency 2 Technical Standards, and their consistency with the standards of sufficiency and quality; and

(iii) the adequacy of claims management procedures including the extent to which they cover the overall cycle of claims;

(b) asset-liability management–

(i) the structural mismatch between assets and liabilities and in particular the duration mismatch of those assets and liabilities;

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(ii) any dependency between risks of different asset and liability classes;

(iii) any dependency between the risks of different insurance or reinsurance obligations;

(iv) any off-balance sheet exposures of the undertaking; and

(v) the effect of relevant risk-mitigating techniques on asset-liability management;

(c) investment risk management–

(i) actions to be taken by the undertaking to ensure that the undertaking's investments comply with the prudent person principle in regulation 117;

(ii) actions to be taken by the undertaking to ensure that the undertaking's investments take into account the nature of the undertaking's business, its approved risk tolerance limits, its solvency position and its long-term risk exposure;

(iii) the undertakings' own internal assessment of the credit risk of investment counterparties;

(iv) where the undertaking uses derivatives or any other financial instrument with similar characteristics or effects, the objectives of, and strategy underlying their use and the way in which they facilitate efficient portfolio management or contribute to a reduction of risks, as well as procedures to assess the risk of such instruments and the principles of risk management to be applied to them; and

(v) where appropriate in order to ensure effective risk-management, internal quantitative limits on assets and exposures, including off-balance sheet exposures;

(d) liquidity risk management–

(i) actions to be taken by the undertaking to take into account both short term and long term liquidity risk;

(ii) the appropriateness of the composition of the assets in terms of their nature, duration and liquidity in order to meet the undertaking's obligations as they fall due; and

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(iii) a plan to deal with changes in expected cash in-flows and out-flows;

(e) concentration risk management: actions to be taken by the undertaking to identify relevant sources of concentration risk to ensure that risk concentrations remain within established limits and actions to analyse possible risks of contagion between concentrated exposures;

(f) operational risk management: actions to be taken by the undertaking to assign clear responsibilities to regularly identify, document and monitor relevant operational risk exposures;

(g) reinsurance and other insurance risk mitigation techniques–

(i) actions to be taken by the undertaking to ensure the selection of suitable reinsurance and other risk mitigation techniques;

(ii) actions to be taken by the undertaking to assess which types of risk mitigation techniques are appropriate according to the nature of the risks assumed and the capabilities of the undertaking to manage and control the risks associated with those techniques; and

(iii) the undertakings' own assessment of the credit risk of the risk mitigation techniques; and

(h) deferred taxes–

(i) actions related to the undertaking's selection of methods and assumptions to demonstrate the amount and recoverability of the loss-absorbing capacity of deferred taxes;

(ii) involvement of the relevant key functions in the selection and assessment of methods and assumptions to demonstrate the amount and recoverability of the loss-absorbing capacity of deferred taxes, how the outcome of that assessment is reported to the administrative, management or supervisory body, including the assessment of the underlying assumptions applied for the projection of future taxable profit (for the purposes of recognising and valuing deferred taxes and making an adjustment for the loss-absorbing capacity of deferred taxes), and an explanation of any concerns about those assumptions, which must be carried out in each case by either the actuarial function or the risk management function; and

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(iii) risks that the undertaking is or could be exposed to, taking into account potential future changes in its risk profile due to its business strategy or the economic and financial environment, including operational risks and potential changes in its loss-absorbing capacity of deferred taxes. That assessment must include the overall reliance of the solvency and financial condition on deferred taxes and its consistency with the risk management policy.

Own risk and solvency assessment.

46.(1) As part of its risk-management system an insurance or reinsurance undertaking must conduct its own risk and solvency assessment.

(2) That assessment must include at least the following–

(a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

(b) the compliance, on a continuous basis, with the capital requirements, as set out in Chapters 2 and 3 of Part 6 and with the requirements regarding technical provisions specified in Chapter 1 of that Part;

(c) the significance with which the risk profile of the undertaking deviates from the assumptions underlying the Solvency Capital Requirement as set out in regulation 91(3), calculated with–

(i) the standard formula in accordance with regulations 93 to 100; or

(ii) its partial or full internal model in accordance with regulations 101 to 114.

(3) For the purposes of sub-regulation (2)(a), the undertaking–

(a) must have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed; and

(b) must demonstrate the methods used in that assessment.

(4) Where the undertaking applies–

(a) the matching adjustment referred to in regulation 68;

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(b) the volatility adjustment referred to in regulation 70; or

(c) the transitional measures referred to in paragraphs 2 and 3 of Schedule 1,

it must perform the assessment of compliance with the capital requirements referred to in sub-regulation (2)(b) with and without taking into account those adjustments and transitional measures.

(5) In the case referred to in sub-regulation (2)(c) when an internal model is used, the assessment must be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

(6) The own-risk and solvency assessment must be an integral part of the business strategy and must be taken into account on an on-going basis in the strategic decisions of the undertaking.

(7) An insurance or reinsurance undertaking must perform the assessment referred to in sub-regulation (2) regularly and without any delay following any significant change in its risk profile.

(8) An insurance or reinsurance undertaking must inform the GFSC of the results of each own-risk and solvency assessment.

(9) The own-risk and solvency assessment does not serve to calculate a capital requirement: and the Solvency Capital Requirement must be adjusted only in accordance with regulations 39 and 210 to 212.

ORSA supervisory report.

46A. The ORSA supervisory report must present the following–

(a) the qualitative and quantitative results of the own risk and solvency assessment and the conclusions drawn by the insurance or reinsurance undertaking from those results;

(b) the methods and main assumptions used in the own risk and solvency assessment;

(c) information on the undertaking's overall solvency needs and a comparison between those solvency needs, the regulatory capital requirements and the undertaking's own funds; and

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(d) qualitative information on, and where significant deviations have been identified, a quantification of the extent to which quantifiable risks of the undertakings are not reflected in the calculation of the Solvency Capital Requirement.

Internal control.

47.(1) An insurance or reinsurance undertaking must have in place an effective internal control system which includes–

(a) administrative and accounting procedures;

(b) an internal control framework;

(c) appropriate reporting arrangements at all levels of the undertaking; and

(d) a compliance function.

(1A) An undertaking must ensure that its internal control system ensures–

(a) the undertaking's compliance with applicable laws, regulations and administrative provisions;

(b) the effectiveness and the efficiency of the undertaking's operations in light of its objectives; and

(c) the availability and reliability of financial and non-financial information.

(1B) An undertaking must ensure that the compliance function required by sub-regulation (1)(d) establishes–

(a) a compliance policy that defines the responsibilities, competencies and reporting duties of the compliance function; and

(b) a compliance plan that sets out the planned activities of the compliance function which take into account all relevant areas of the activities of the undertaking and their exposure to compliance risk.

(2) The compliance function must include–

(a) advising the administrative, management or supervisory body on compliance with the Act, these Regulations and all other applicable laws and administrative provisions adopted in accordance with these Regulations;

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(b) an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking and the identification and assessment of compliance risk; and

(c) assessing the adequacy of the measures adopted by the undertaking to prevent non-compliance.

Internal audit.

48.(1) An insurance or reinsurance undertaking must provide for an effective internal audit function which includes an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The undertaking's internal audit function must be objective and independent from its operational functions.

(3) Any findings and recommendations of the internal audit must be reported to the administrative, management or supervisory body which must determine what actions are to be taken with respect to each of the internal audit findings and recommendations and ensure that those actions are carried out.

Actuarial function.

49.(1) An insurance or reinsurance undertaking must provide for an effective actuarial function–

(a) to co-ordinate the calculation of technical provisions;

(b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;

(c) to assess the sufficiency and quality of the data used in the calculation of technical provisions;

(d) to compare best estimates against experience;

(e) to inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;

(f) to oversee the calculation of technical provisions in the cases set out in regulation 77;

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(g) to express an opinion on the overall underwriting policy;

(h) to express an opinion on the adequacy of reinsurance arrangements; and

(i) to contribute to the effective implementation of the risk management system referred to in regulation 45, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapters 3 and 4 of Part 6 and to the assessment referred to in regulation 46.

(2) The actuarial function must be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Outsourcing.

50.(1) An insurance or reinsurance undertaking remains fully responsible for discharging all of its obligations under these Regulations when it outsources functions or any insurance or reinsurance activities.

(2) An insurance or reinsurance undertaking must not outsource critical or important operational functions or activities in such a way as to lead to any of the following–

(a) materially impairing the quality of the system of governance of the undertaking;

(b) unduly increasing the operational risk;

(c) impairing the ability of the GFSC to monitor the undertaking's compliance with its obligations; or

(d) undermining continuous and satisfactory service to policy holders.

(3) An insurance or reinsurance undertaking must, in a timely manner, notify the GFSC–

(a) before outsourcing any critical or important functions or activities; and

(b) of any subsequent material developments with respect to those functions or activities.

Supervision of outsourced functions and activities.

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51. Without limiting regulation 50, an insurance or reinsurance undertaking which outsources a function or an insurance or reinsurance activity to another person (a "service provider") must ensure that–

(a) the service provider cooperates with the GFSC in connection with the outsourced function or activity;

(b) the undertaking, its auditors and the GFSC have effective access to data related to the outsourced function or activity; and

(c) the GFSC has effective access to the service provider's business premises and is able to exercise that right of access.

Restriction on dividend payments.

51A.(1) An insurance or reinsurance undertaking may only make a dividend payment if–

(a) it has notified the GFSC of the intention to make the payment; and

(b) the GFSC has not objected to the payment being made.

(2) In this regulation a "dividend payment" means a dividend to shareholders or a distribution of capital of any other kind, including capital repayments for a loan to a parent or holding company or the return of premiums to the members of a mutual insurer.

(3) An insurance or reinsurance undertaking must give the GFSC notice of a proposed dividend payment at the earliest opportunity and, in any event, not less than 30 days before the day on which the undertaking proposes to declare (or otherwise decide to make) the dividend payment.

(4) A notice under sub-regulation (3) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by such information as the GFSC reasonably requires.

(5) Without limiting sub-regulation (4), the information which the GFSC may require an insurance or reinsurance undertaking to provide includes, in particular, information to demonstrate that the proposed dividend payment is appropriate in relation to the undertaking's–

(a) actual and projected business performance; and

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(b) current and future capital position.

(6) The GFSC may give notice (an "objection notice") that it objects to the dividend payment being made if, having regard to the information provided and, in particular, the matters in sub-regulation (5), it is not satisfied that the insurance or reinsurance undertaking has demonstrated that the payment is appropriate.

(7) An objection notice must be given to the insurance or reinsurance undertaking not less than 15 days before the day on which it proposes to declare (or otherwise decide to make) the dividend payment.

(8) An objection notice takes effect immediately and requires the insurance or reinsurance undertaking concerned to refrain from making–

(a) the proposed dividend payment; or

(b) any other dividend payment without the GFSC's consent.

(9) An insurance or reinsurance undertaking may appeal under section 615 of the Act against an objection notice as if it were a decision notice to which that section applies.

Restriction on transactions with connected persons.

51B.(1) An insurance or reinsurance undertaking must obtain the GFSC's prior written consent before entering into or varying a transaction with a connected person.

(2) In this regulation a "transaction with a connected person" means any arrangement (or any series or combination of arrangements) between an insurance or reinsurance undertaking and a connected person which will or may result in the undertaking–

(a) making payments to the connected person of more than £200,000 in any period of 12 months for the supply of one or more of the following–

(i) underwriting services;

(ii) claims settlement services;

(iii) management services;

(iv) investment management services; or

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(v) premises, computer facilities, equipment or staff;

(b) acquiring any property, or any interest in property, of the connected person where the aggregate amount to be paid for the property or interest is more than £200,000;

(c) selling or otherwise disposing of (including by lease, hire, mortgage, charge or assignment) any property, or any interest in property, to the connected person where the aggregate value of the property or interest is more than £200,000;

(d) making any loan to, purchasing a debt of, or assuming liability for any obligation of a connected person where the aggregate value of the loan, debt or liability is more than £200,000;

(e) acquiring one or more shares in a body corporate which is a connected person where the aggregate investment is more than £200,000; or

(f) ceding risks by way of reinsurance to a reinsurer which is a connected person where the aggregate value of the premium paid is more than £200,000.

(3) Sub-regulation (2)(e) also applies where a body corporate will become a connected person as a consequence of the acquisition and, in such a case, references to a connected person must be construed accordingly.

(4) In this regulation "connected person" in relation to an insurance or reinsurance undertaking means–

(a) a holding company of the undertaking;

(b) a subsidiary of the undertaking;

(c) a subsidiary of a holding company of the undertaking;

(d) a body corporate controlled by–

(i) the undertaking; or

(ii) a controller, director, manager or secretary of the undertaking;

(e) a person who is–

(i) a controller or director of the undertaking;

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(ii) a controller or director of a body corporate which is a connected person;

(iii) a partner in a partnership with a connected person; or

(iv) the spouse or civil partner, or a child or step-child under the age of 18, of a connected person;

(5) An application for consent under sub-regulation (1) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by such information as the GFSC reasonably requires.

(6) The GFSC must decide an application within 30 business days of receiving it unless, not more than 10 business days after receiving the application, the GFSC notifies the undertaking in writing of any delay in making a decision and the reasons for the delay.

(7) The GFSC may–

(a) consent to the transaction unconditionally;

(b) consent to the transaction subject to conditions; or

(c) refuse consent to the transaction.

(8) If the GFSC proposes to give consent subject to any condition or to refuse consent, before making a final decision the GFSC must–

(a) give the undertaking an opportunity to make representations; and

(b) consider any representations that are made.

(9) The GFSC must give the undertaking written notice of its decision on the application, including any conditions imposed under sub-regulation (7)(b).

(10) An insurance or reinsurance undertaking may appeal under section 615 of the Act against a notice under sub-regulation (9) as if it were a decision notice to which that section applies.

Solvency and financial condition report: structure and contents

Report on solvency and financial conditions: contents.

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52.(1) An insurance or reinsurance undertaking must disclose publicly, on an annual basis, a report on its solvency and financial condition and that report must–

(a) include the information required by regulation 37(4) and comply with the principles set out in regulation 37(5);

(b) contain the information specified in sub-regulation (2), either in full or by way of reference to equivalent information, both in nature and scope, published under other legal or regulatory requirements; and

(c) follow the structure set out in Article 51A of the Reporting Technical Standards and disclose the information in regulations 57B to 57H.

(2) The information referred to in sub-regulation (1)(b) is–

(a) a description of the business and the performance of the undertaking;

(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;

(e) a description of the capital management, including at least the following–

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and the Minimum Capital Requirement;

(iii) if applicable, the option set out in regulation 97 for the calculation of the Solvency Capital Requirement;

(iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of

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any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(f) a clear and concise summary understandable to policyholders. The summary of the report must highlight any material changes to the matters described in paragraphs (a), (b), (d) and (e) over the reporting period.

(3) For the purposes of sub-regulation (2)(d), where an insurance or reinsurance undertaking applies–

(a) a matching adjustment in accordance with regulation 68, the undertaking must include in the description–

(i) a description of the matching adjustment and of the relevant portfolio of insurance and reinsurance obligations and relevant portfolio of assets to which the matching adjustment is applied;

(ii) a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position including on the amount of its technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, basic own funds and eligible own funds to cover the Minimum Capital Requirement and the Solvency Capital Requirement; and

(iii) the disclosure in respect of the undertaking's attestation required by regulation 69H;

(b) a volatility adjustment in accordance with regulation 70, the undertaking must include in the description–

(i) a statement on whether the volatility adjustment referred to in regulation 70 is used by the undertaking; and

(ii) quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position, including on the amount of its technical provisions, the Solvency Capital Requirement, the Minimum

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Capital Requirement, basic own funds and eligible own funds to cover the Minimum Capital Requirement and the Solvency Capital Requirement.

(4) The description referred to in sub-regulation (2)(e)(i) must include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

(5) The disclosure of the Solvency Capital Requirement referred to in sub-regulation (2)(e)(ii) must–

(a) show separately the amount calculated in accordance with Chapter 3 of Part 6;

(b) except for any capital add-on imposed because of an internal model residual deviation, include the amount of any capital add-on imposed on the undertaking by the GFSC, together with concise information on the GFSC's justification for its imposition; and

(c) include the impact of the undertaking specific parameters the undertaking is required to use in accordance with regulation 100, together with concise information on the GFSC's justification for requiring its use.

(6) Without limiting any disclosure that is mandatory under any other legal or regulatory requirements, the GFSC may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with regulation 100(3) need not be separately disclosed during a transitional period ending no later than 31st December 2020.

(7) The disclosure of the Solvency Capital Requirement must be accompanied, where applicable, by an indication that its final amount is still subject to assessment by the GFSC.

53. *Omitted.*

Report on solvency and financial condition: applicable principles

54.(1) Subject to sub-regulation (4), the GFSC must permit insurance and reinsurance undertakings not to disclose information where–

(a) by disclosing the information, the competitors of the undertaking would gain significant undue advantage;

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(b) there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

(2) In any case where non-disclosure of information is permitted by the GFSC, an undertaking must make a statement to this effect in its report on solvency and financial condition and must state the reasons.

(3) The GFSC must permit insurance and reinsurance undertakings to make use of or refer to public disclosures made under other legal or regulatory requirements to the extent that those disclosures are equivalent in both nature and scope to the information required under regulation 52.

(4) In sub-regulations (1) and (2) "information" does not include any of the information referred to in regulation 52(2)(e).

(5) As soon as the solvency and financial condition report, or any updated version of that report, is disclosed by insurance and reinsurance undertakings it must be submitted to the GFSC.

(6) Where an insurance or reinsurance undertaking discloses publicly, any information or explanation related to its solvency and financial condition the public disclosure of which is not legally required, the undertaking must ensure that the information is consistent with any information it has provided to the GFSC under regulation 37.

Report on solvency and financial condition: updates and additional voluntary information.

55.(1) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with regulations 52 and 54, insurance and reinsurance undertakings must disclose appropriate information on the nature and effects of that major development.

(1A) Where the circumstances in sub-regulation (1) arise, the undertaking must publish an updated version of its solvency and financial condition report in accordance with sub-regulation (1B), regulations 52, 54(6), and 56A to 56E and, where applicable, Articles 57A to 57C, 57F(1) and (2) of the Reporting Technical Standards apply to that updated version.

(1B) Without limiting any disclosure which must be immediately provided by an undertaking in accordance with sub-regulations (1) and (2) to (5), any updated version of the solvency and financial condition report must be disclosed as soon as possible after the major development, in accordance with the provisions set out in Article 53B of the Reporting Technical Standards.

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(1C) Despite sub-regulations (1A) and (1B), an undertaking may decide, for the purposes of Article 53B of the Reporting Technical Standards, to disclose appropriate information on the nature and effects of any major development significantly affecting the relevance of its solvency and financial condition report in the form of amendments supplementing the initial report.

(2) For the purposes of sub-regulation (1), at least the following must be regarded as major developments–

(a) where non-compliance with the Minimum Capital Requirement is observed and the GFSC either considers that the undertaking will not be able to submit a realistic short-term finance scheme or does not obtain such a scheme within one month of the date when non-compliance was observed; and

(b) where significant non-compliance with the Solvency Capital Requirement is observed and the GFSC does not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

(3) In regard to sub-regulation (2)(a)–

(a) the undertaking must disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and

(b) where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it must be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

(4) In regard to sub-regulation (2)(b)–

(a) the GFSC must require the undertaking concerned to disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken; and

(b) where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it must be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures planned.

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(5) Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with regulations 52 and 54 and sub-regulation (1).

Report on solvency and financial condition: policy and approval.

56.(1) An insurance or reinsurance undertaking must have appropriate systems and structures in place to fulfil the requirements of regulations 52, 54 and 55, as well as having a written policy ensuring the continuing appropriateness of any information disclosed in accordance with those regulations.

(2) The solvency and financial condition report must be subject to approval by the undertaking's administrative, management or supervisory body and be published only after that approval.

Business and performance.

56A(1). The solvency and condition report must include the following information regarding the business of the insurance or reinsurance undertaking–

(a) the name and legal form of the undertaking;

(b) the GFSC's contact details and, where applicable, the name and contact details of the group supervisor of the group to which the undertaking belongs;

(c) the name and contact details of the external auditor of the undertaking;

(d) a description of the holders of qualifying holdings in the undertaking;

(e) where the undertaking belongs to a group, details of the undertaking's position within the legal structure of the group;

(f) the undertaking's material lines of business and material geographical areas where it carries out business;

(g) any significant business or other events that have occurred over the reporting period that have had a material impact on the undertaking;

(h) qualitative and quantitative information on the insurance or reinsurance undertaking's underwriting performance–

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(i) at an aggregate level and by material line of business and material geographical areas where it carries out business over the reporting period; and

(ii) together with a comparison of the information with that reported on the previous reporting period, as shown in the undertaking's financial statements;

(i) qualitative and quantitative information regarding the performance of the investments of the insurance or reinsurance undertaking over the reporting period, together with a comparison of the information with that reported on the previous reporting period, as shown in that undertaking's financial statements–

(i) information on income and expenses arising from investments by asset class and, where necessary for a proper understanding of the income and expenses, the components of such income and expenses;

(ii) information about any gains and losses recognised directly in equity; and

(iii) information about any investments in securitisation;

(j) a description of other material income and expenses of the undertaking incurred over the reporting period together with a comparison of the information with that reported on the previous reporting period, as shown in that undertaking's financial statements; and

(k) a separate section on any other material information regarding the business and performance of the undertaking.

System of governance.

56B.(1) The solvency and financial condition report must include the following information regarding the system of governance of the insurance or reinsurance undertaking–

(a) the structure of the undertaking's administrative, management or supervisory body, providing a description of its main roles and responsibilities and a brief description of the segregation of responsibilities within these bodies, in particular whether relevant committees exist within them, as well as a description of the main roles and responsibilities of key functions;

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(b) any material changes in the system of governance that have taken place over the reporting period;

(c) information on the remuneration policy and practices regarding administrative, management or supervisory body and, unless otherwise stated, employees, including–

(i) principles of the remuneration policy, with an explanation of the relative importance of the fixed and variable components of remuneration;

(ii) information on the individual and collective performance criteria on which any entitlement to share options, shares or variable components of remuneration is based; and

(iii) a description of the main characteristics of supplementary pension or early retirement schemes for the members of the administrative, management or supervisory body and other key function holders; and

(d) information about material transactions during the reporting period with shareholders, with persons who exercise a significant influence on the undertaking, and with members of the administrative, management or supervisory body.

(2) The solvency and financial condition report must include the following information regarding the "fit and proper" policy of the insurance or reinsurance undertaking–

(a) a description of the undertaking's specific requirements concerning skills, knowledge and expertise applicable to the persons who effectively run the undertaking or have other key functions; and

(b) a description of the undertaking's process for assessing the fitness and the propriety of the persons who effectively run the undertaking or have other key functions.

(3) The solvency and financial condition report must include the following information regarding the risk management system of the insurance or reinsurance undertaking–

(a) a description of the undertaking's risk management system comprising strategies, processes and reporting procedures, and how it is able to effectively identify, measure, monitor, manage and report, on a continuous basis, the risks on an individual and aggregated level, to which the undertaking is or could be exposed; and

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(b) a description of how the risk management system including the risk management function are implemented and integrated into the organisational structure and decision-making processes of the undertaking.

(4) The solvency and financial condition report must include the following information regarding the process the insurance or reinsurance undertaking has adopted to fulfil its obligation to conduct an own risk and solvency assessment–

(a) a description of the process undertaken by the undertaking to fulfil its obligation to conduct an own risk and solvency assessment as part of its risk management system including how the own risk and solvency assessment is integrated into the organisational structure and decision making processes of the undertaking;

(b) a statement detailing how often the own risk and solvency assessment is reviewed and approved by the undertaking's administrative, management or supervisory body; and

(c) a statement explaining how the undertaking has determined its own solvency needs given its risk profile and how its capital management activities and its risk management system interact with each other.

(5) The solvency and financial condition report must include the following information regarding the internal control system of the insurance or reinsurance undertaking–

(a) a description of the undertaking's internal control system; and

(b) a description of how the compliance function is implemented.

(6) The solvency and financial condition report must include the following information regarding the internal audit function of the insurance or reinsurance undertaking–

(a) a description of how the undertaking's internal audit function is implemented; and

(b) a description of how the undertaking's internal audit function maintains its independence and objectivity from the activities it reviews.

(7) The solvency and financial condition report must include a description of how the actuarial function of the insurance or reinsurance undertaking is implemented.

(8) The solvency and financial condition report must include a description of the outsourcing policy of the insurance or reinsurance undertaking, that undertaking's outsourcing of any

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critical or important operational functions or activities and the jurisdiction in which the service providers of such functions or activities are located.

(9) The solvency and financial condition report must include an assessment of the adequacy of the system of governance of the insurance or reinsurance undertaking to the nature, scale and complexity of the risks inherent in its business.

(10) The solvency and financial condition report must include in a separate section any other material information regarding the system of governance of the insurance or reinsurance undertaking.

Risk profile.

56C.(1) The solvency and financial condition report must include qualitative and quantitative information regarding the risk profile of the insurance or reinsurance undertaking, in accordance with sub-regulations (2) to (6), separately for the following categories of risk–

(a) underwriting risk;

(b) market risk;

(c) credit risk;

(d) liquidity risk;

(e) operational risk; and

(f) other material risks.

(2) The solvency and financial condition report must include the following information regarding the risk exposure of the insurance or reinsurance undertaking, including the exposure arising from off-balance sheet positions and the transfer of risk to special purpose vehicles–

(a) a description of the measures used to assess these risks within that undertaking, including any material changes over the reporting period;

(b) a description of the material risks that that undertaking is exposed to, including any material changes over the reporting period; and

(c) a description of how assets have been invested in accordance with the "prudent person principle" in regulation 117 so that the risks mentioned in that regulation and their proper management are addressed in that description.

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(3) With regard to risk concentration, the solvency and financial condition report must include a description of the material risk concentrations to which the insurance or reinsurance undertaking is exposed.

(4) With regard to risk mitigation, the solvency and financial condition report must include a description of the techniques used for mitigating risks, and the processes for monitoring the continued effectiveness of these risk-mitigation techniques.

(5) With regard to risk sensitivity the solvency and financial condition report must include a description of the methods used, the assumptions made and the outcome of stress testing and sensitivity analysis for material risks and events.

(6) The solvency and financial condition report must include in a separate section any other material information regarding the risk profile of the insurance or reinsurance undertaking.

Valuation for solvency purposes.

56D.(1) The solvency and financial condition report must include the following information regarding the valuation of the assets of the insurance or reinsurance undertaking for solvency purposes–

(a) separately for each material class of assets, the value of the assets, as well as a description of the bases, methods and main assumptions used for valuation for solvency purposes; and

(b) separately for each material class of assets, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for its valuation in financial statements.

(2) The solvency and financial condition report must include the following information regarding the valuation of the technical provisions of the insurance or reinsurance undertaking for solvency purposes–

(a) separately for each material line of business the value of technical provisions, including the amount of the best estimate and the risk margin, as well as a description of the bases, methods and main assumptions used for its valuation for solvency purposes;

(b) a description of the level of uncertainty associated with the value of technical provisions;

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(c) separately for each material line of business, a quantitative and qualitative explanation of any material differences between the bases, methods and main assumptions used by that undertaking for the valuation for solvency purposes and those used for their valuation in financial statements;

(d) where the matching adjustment in regulation 68 is applied, the undertaking must include–

(i) a description of the matching adjustment and of the relevant portfolio of insurance or reinsurance obligations and relevant portfolio of assets to which the matching adjustment is applied; and

(ii) a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position including on the amount of its technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, basic own funds and eligible own funds to cover the Minimum Capital Requirement and the Solvency Capital Requirement;

(e) where the volatility adjustment in regulation 70 is used, the undertaking must include–

(i) a statement that the volatility adjustment is used by the undertaking; and

(ii) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position, including on the amount of its technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, basic own funds and eligible own funds to cover the Minimum Capital Requirement and the Solvency Capital Requirement;

(f) a statement on whether the transitional risk-free interest rate-term structure paragraph 2 of Schedule 1 is applied and a quantification of the impact of not applying the transitional measure on the undertaking's financial position, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement;

(g) a statement on whether the transitional deduction in paragraphs 3 of Schedule 1 is applied and a quantification of the impact of not applying the deduction measure

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on the undertaking's financial position, including on the amount of technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, the basic own funds and the amounts of own funds eligible to cover the Minimum Capital Requirement and the Solvency Capital Requirement; and

(h) a description of the following–

(i) the recoverables from reinsurance contracts and special purpose vehicles; and

(ii) any material changes in the relevant assumptions made in the calculation of technical provisions compared to the previous reporting period.

(3) The solvency and financial condition report must include the following information regarding the valuation of the other liabilities of the insurance or reinsurance undertaking for solvency purposes–

(a) separately for each material class of other liabilities the value of other liabilities as well as a description of the bases, methods and main assumptions used for their valuation for solvency purposes; and

(b) separately for each material class of other liabilities, a quantitative and qualitative explanation of any material differences with the valuation bases, methods and main assumptions used by the undertaking for the valuation for solvency purposes and those used for their valuation in financial statements.

(4) For the purpose of complying with sub-regulations (1) and (3), the solvency and financial condition report must include information on alternative methods of valuation, as set out in Article 263 of the Solvency 2 Technical Standards.

(5) The solvency and financial condition report must include in a separate section any other material information regarding the valuation of assets and liabilities for solvency purposes.

Capital management.

56E.(1) The solvency and financial condition report must include the following information regarding the own funds of the insurance or reinsurance undertaking–

(a) information on the objectives, policies and processes employed by the undertaking for managing its own funds, including information on the time horizon used for business planning and on any material changes over the reporting period;

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(b) separately for each tier, information on the structure, amount and quality of own funds at the end of the reporting period and at the end of the previous reporting period, including an analysis of the significant changes in each tier over the reporting period;

(c) the eligible amount of own funds to cover the Solvency Capital Requirement, classified by tiers;

(d) the eligible amount of basic own funds to cover the Minimum Capital Requirement, classified by tiers;

(e) a quantitative and qualitative explanation of any material differences between equity as shown in the undertaking's financial statements and the excess of assets over liabilities as calculated for solvency purposes;

(f) for each basic own funds item that is subject to the transitional arrangements in paragraphs 1(5) and (6) of Schedule 1, a description of the nature of the item and its amount;

(g) for each material item of ancillary own funds, a description of the item, the amount of the ancillary own funds item and, where a method by which to determine the amount of the ancillary own funds item has been approved, that method as well as the nature and the names of the counterparty or group of counterparties for the items in regulation 83(1)(a) to (c);

(h) a description of any item deducted from own funds and a brief description of any significant restriction affecting the availability and transferability of own funds within the undertaking; and

(i) information regarding deferred taxes which as a minimum must contain all of the following–

(i) a description of the calculated amount of deferred tax assets without assessing their probable utilisation, and the extent to which those deferred tax assets have been recognised;

(ii) for deferred tax assets which have been recognised, a description of the assets likely to be utilised by reference to probable future taxable profit and by reference to the reversion of deferred tax liabilities relating to income taxes levied by the same taxation authority; and

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(iii) with regard to net deferred taxes assets calculated as the difference between the amount of deferred tax assets which has been recognised and the amount of deferred tax liabilities, all of the following information–

(aa) confirmation that those net deferred tax assets are available as basic own funds items classified as Tier 3 in accordance with Article 76(a)(iii) of the Solvency 2 Technical Standards;

(bb) a description of the amount of those net deferred tax assets that are recognised as eligible own funds, applying the eligibility limits set out in Article 82 of the Solvency 2 Technical Standards; and

(cc) where the amount of deferred tax assets is material, a description of the underlying assumptions used for the projection of probable future taxable profit for the purposes of Article 15 of the Solvency 2 Technical Standards.

(2) For the purposes of sub-regulation (1)(g), the names of the counterparties must not be disclosed where disclosure is legally not possible or impracticable or where the counterparties concerned are not material.

(2A) For the purposes regulation 52(2)(e)(ii), the disclosure of the amount of the Solvency Capital Requirement calculated using the undertaking's internal model under regulation 52(5)(a) and of the Solvency Capital Requirement split by risk categories under sub-regulation (3)(b) may include any capital add-on imposed because of an internal model residual deviation.

(3) The solvency and financial condition report must include the following information regarding the Solvency Capital Requirement and the Minimum Capital Requirement of the insurance or reinsurance undertaking–

(a) the amounts of the undertaking's Solvency Capital Requirement and the Minimum Capital Requirement at the end of the reporting period;

(b) the amount of the undertaking's Solvency Capital Requirement split by risk modules where that undertaking applies the standard formula, and by risk categories where the undertaking applies an internal model;

(c) information on whether and for which risk modules and sub-modules of the standard formula that undertaking is using simplified calculations;

(d) where the undertaking has been given approval to apply an undertaking specific parameter ("USP approval") by the GFSC in accordance with regulation 276A,

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information on whether and for which standard parameters of the standard formula the undertaking is using undertaking specific parameters;

(e) [Not used]

(f) the impact of any undertaking-specific parameters that undertaking is required to use in accordance with regulation 100 and the amount of any capital add-on applied to the Solvency Capital Requirement, together with concise information on its justification by the GFSC;

(g) information on the inputs used by the undertaking to calculate the Minimum Capital Requirement;

(h) any material change to the Solvency Capital Requirement and to the Minimum Capital Requirement over the reporting period, and the reasons for any such change; and

(i) information regarding the loss-absorbing capacity of deferred taxes that must contain–

(i) the amount with which the Solvency Capital Requirement has been adjusted for the loss-absorbing capacity of deferred taxes; and

(ii) a description of the deferred tax liabilities, carry-back and probable future taxable profit used to demonstrate likely utilisation.

(4) Where an internal model is used to calculate the Solvency Capital Requirement, the solvency and financial condition report must also include the following information–

(a) a description of the various purposes for which that undertaking is using its internal model;

(b) a description of the scope of the internal model in terms of business units and risk categories;

(c) where a partial internal model is used, a description of the technique which has been used to integrate any partial internal model into the standard formula including, where relevant, a description of alternative techniques used;

(d) a description of the methods used in the internal model for the calculation of the probability distribution forecast and the Solvency Capital Requirement;

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(e) an explanation, by risk module, of the main differences in the methodologies and underlying assumptions used in the standard formula and in the internal model;

(f) the risk measure and time period used in the internal model, and where they are not the same as those in regulation 91(3), an explanation of why the Solvency Capital Requirement calculated using the internal model provides policyholders and beneficiaries with a level of protection equivalent to that in regulation 91; and

(g) a description of the nature and appropriateness of the data used in the internal model.

(5) The solvency and financial condition report must include the following information regarding any non-compliance with the Minimum Capital Requirement or significant non-compliance with the Solvency Capital Requirement of the insurance or reinsurance undertaking–

(a) where non-compliance with the undertaking's Minimum Capital Requirement has not been subsequently resolved: the amount of the non-compliance at the reporting date;

(b) where a significant non-compliance with the undertaking's Solvency Capital Requirement has not been subsequently resolved: the amount of the non-compliance at the reporting date; and

(c) where paragraph (a) or (b) applies, an explanation of the origin and consequences of the non-compliance, any remedial measures taken, as provided for under regulation 52(2)(e)(v) and an explanation of the effects of those remedial measures.

(6) The solvency and financial condition report must include in a separate section any other material information regarding the capital management of the insurance or reinsurance undertaking.

Solvency and financial condition report: non-disclosure of information

Permitted non-disclosure.

56F.(1) Where, in accordance with regulation 54(1) and (2), the GFSC permits an insurance or reinsurance undertaking not to disclose certain information, that permission remains valid only for as long as the reason for non-disclosure continues to exist.

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(2) The insurance or reinsurance undertaking must notify the GFSC as soon as the reason for any permitted non-disclosure ceases to exist.

Solvency and financial condition report: deadlines, means of disclosure and updates

External audit of relevant elements of the SFCR.

56G.(1) The GFSC may direct an insurance or reinsurance undertaking or a relevant insurance group undertaking to ensure that its external auditor provides a report which includes an opinion about the relevant elements of the solvency and financial condition report (SFCR).

(2) A direction under sub-regulation (1) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

(3) Subject to sub-regulations (4), (5) and (7), the "relevant elements" of the SFCR are–

(a) the information that an undertaking and a group disclose under regulation 52(2)(e)(v), 52(3), 56D, 56E(1), (2) and (3) to (6), and Articles 7A(1)(d) and Articles 57A(1)(d) and (e) of the Reporting Technical Standards; and

(b) where appropriate, the following templates provided in accordance with the Reporting Technical Standards–

(i) IR.02.01.02;

(ii) IR.12.01.02;

(iii) IR.17.01.02;

(iv) IR.22.01.21;

(v) IR.22.01.22;

(vi) IR.23.01.01;

(vii) IR.23.01.04;

(viii) IR.25.04.21;

(ix) IR.25.04.22;

(x) IR.28.01.01;

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(xi) IR.28.02.01; and

(xii) IR.32.01.22.

(4) Where the information in sub-regulation (3)(a) and (3)(b) is, or derives from, the Solvency Capital Requirement, that information is only subject to external audit for undertakings which calculate their Solvency Capital Requirement using the standard formula.

(5) Where the information in sub-regulation (3)(a) and (3)(b) is, or derives from, the group Solvency Capital Requirement that information is only subject to external audit for relevant insurance group undertakings which calculate their group Solvency Capital Requirement using the standard formula.

(6) Subject to sub-regulation (7), an external auditor appointed by an undertaking or relevant insurance group undertaking must–

(a) undertake a reasonable assurance engagement on relevant elements of the SFCR;

(b) produce a report that includes an opinion addressed to the administrative, management or supervisory body confirming that the relevant elements of the SFCR are prepared in all material respects in accordance with the applicable law; and

(c) read and consider all information disclosed by the undertaking in its SFCR that is not a relevant element of the SFCR to identify material inconsistencies with the relevant elements of the SFCR and any knowledge obtained during the course of the audit of the SFCR engagement and (where applicable) audit of the financial statements.

(7) Where the relevant elements of the SFCR in a group SFCR that–

(a) pertains to an undertaking that is not an insurance and reinsurance undertaking authorised under the Act; and

(b) information has been prepared other than in accordance with the applicable law,

the external auditor must state in the report under sub-regulation (6) that the information has been properly compiled in accordance with the relevant law relating to that undertaking from information provided by undertakings in the group and the relevant insurance group undertaking.

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(8) In this regulation the "applicable law" means these Regulations and the Reporting Technical Standards.

Professional secrecy, exchange of information etc.

Professional secrecy.

57.(1) The professional secrecy obligation applies to information obtained or supplied under these Regulations.

(2) Despite sub-regulation (1), where an insurance or reinsurance undertaking has been declared insolvent or has been compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

Exchange of information with other authorities.

58.(1) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and any of the following (whether in Gibraltar or another country or territory)–

(a) authorities responsible for the supervision of–

(i) insurance undertakings or reinsurance undertakings;

(ii) credit institutions or other financial organisations; or

(iii) financial markets;

(b) bodies involved in the insolvency, liquidation or similar procedures in respect of insurance or reinsurance undertakings, and the authorities responsible for overseeing those bodies;

(c) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions, and the authorities responsible for overseeing those persons;

(d) bodies which administer compulsory winding-up proceedings or guarantee funds (to the extent necessary for the performance of their duties);

(e) independent actuaries of insurance or reinsurance undertakings carrying out legal supervision of those undertakings, and the bodies responsible for overseeing those actuaries; and

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(f) authorities responsible for supervising compliance by obliged entities with the Proceeds of Crime Act 2015 or the corresponding law prohibiting money laundering of a country or territory outside Gibraltar.

(2) Where the GFSC discloses any information in accordance with sub-regulation (1), it must ensure that–

(a) the information disclosed is subject to an obligation equivalent to the professional secrecy obligation; and

(b) in the case of disclosure to an oversight body under sub-regulation (1)(b) or (c) or an actuary or oversight body under sub-regulation (1)(e)–

(i) the disclosure is for the purpose of carrying out the oversight or legal supervision referred to in those provisions; and

(ii) where the information originates from a supervisory authority in another jurisdiction and that authority so requires, it is not disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(3) Nothing in regulation 57(1) precludes the exchange of information between the GFSC and the authorities or bodies responsible for the detection and investigation of breaches of company law where this is done with the aim of strengthening the stability and integrity of the financial system.

(4) Where the GFSC discloses any information in accordance with sub-regulation (3), it must ensure that–

(a) the information is intended for the purpose of detection and investigation as referred to in that sub-regulation;

(b) the authority or body to which it is disclosed is subject to an obligation equivalent to the professional secrecy obligation; and

(c) where the information originates from a supervisory authority in another jurisdiction and that authority so requires, it is not disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

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(5) Where the GFSC discloses any information to which sub-regulation (4)(c) applies, it must inform the supervisory authority from which the information originates of the name and precise responsibilities of the person to whom it is to be disclosed.

(6) To the extent that an authority or body to which sub-regulation (3) applies performs its task of detection or investigation with the aid of persons who are appointed for that purpose on the basis of their specific competence but are not employed in the public sector, the exchange of information under that sub-regulation may extend to those persons under the conditions set out in sub-regulation (4).

59. *Omitted*.

60. *Omitted*.

61. *Omitted*.

Accounts and statements

Preparation, submission and publication of accounts, etc.

61A.(1) An insurance undertaking must, in respect of each financial year, prepare Insurance Regulations accounts in accordance with the Financial Services (Insurance Companies) (Accounts) Regulations 2021.

(2) An insurance undertaking must submit to the GFSC, within six months of the end of the period to which they relate, a copy of each of the following documents–

(a) every account and balance sheet prepared in accordance with sub-regulation (1);

(b) any report of the insurer's auditor on any such account or balance sheet;

(c) every published annual account and balance sheet and the auditor's report on them; and

(d) every report, if any, on the insurer's affairs submitted to its shareholders or policyholders.

(3) An insurance undertaking must publish any balance sheet or profit and loss account which, in accordance with section 240 of the Companies Act 2014, is required to be laid before a company in general meeting.

Change of financial year.

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61B.(1) An insurance undertaking must not change its financial year without the prior consent of the GFSC.

(2) The GFSC may at any time require an insurance undertaking to change the date for the end of its financial year to an earlier or later date.

Copies of accounts etc.

61C.(1) An insurance undertaking must provide to any shareholder or policy holder, on request, a copy of any of the documents it last submitted to the GFSC under regulation 61A(2).

(2) Sub-regulation (1) does not apply where, in the GFSC's opinion, the disclosure by an insurance undertaking of information in a document submitted under regulation 61A(2) would be harmful to the business of the insurance undertaking or any of its subsidiaries.

Duties of auditors

Auditors.

62.(1) The auditors of an insurance or reinsurance undertaking must promptly report to the GFSC any fact or decision concerning that undertaking of which they have become aware while carrying out an audit or statutory task and which is liable to bring about any of the following–

(a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;

(b) the impairment of the continuous functioning of the undertaking;

(c) a refusal to certify the accounts or to the expression of reservations;

(d) non-compliance with the Solvency Capital Requirement; or

(e) non-compliance with the Minimum Capital Requirement.

(2) The auditors of an insurance or reinsurance undertaking must also report any facts or decisions in sub-regulation (1) of which they have become aware in the course of carrying out an audit or statutory task in relation to an undertaking which has close links with the insurance or reinsurance undertaking resulting from a control relationship.

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(3) Any disclosure by an auditor under sub-regulation (1) or (2) made in good faith to the GFSC or any other supervisory authority does not constitute a breach of any restriction on disclosure of information imposed by contract or by or under any enactment or any administrative provision or involve the auditor in liability of any kind.

PART 5
PURSUIT OF LIFE AND NON-LIFE ACTIVITY

Pursuit of life and non-life insurance activity.

63.(1) Subject to sub-regulation (2), insurance undertakings must not be given Part 7 permission to pursue life and non-life insurance activities simultaneously.

(2) The GFSC may permit–

(a) an undertaking with Part 7 permission to carry on life insurance activity to carry on non-life insurance activities for the risks listed in Classes 1 and 2; and

(b) an undertaking with Part 7 permission solely to carry on insurance activities for the risks listed in Classes 1 and 2 to carry on life insurance activity.

(3) An insurance undertaking which is given permission in accordance with sub-regulation (2)–

(a) must manage its life insurance activities and non-life insurance activities separately in accordance with regulation 64; and

(b) must comply with the accounting rules governing life insurance for both its life and non-life insurance activities.

(4) Where an insurance undertaking to which sub-regulation (2) applies carries on both life insurance and non-life insurance activities in Classes 1 and 2, in the event of a winding-up or reorganisation of the undertaking, the rules applicable to life insurance activities also apply to those non-life activities.

(5) Where an insurance undertaking–

(a) which carries on non-life insurance activities has financial, commercial or administrative links with a life insurance undertaking; or

(b) which carries on life insurance activities has financial, commercial or administrative links with a non-life insurance undertaking,

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it must provide the GFSC with any information that it may reasonably require in order to ensure that the accounts of the undertakings concerned are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

(6) An insurance undertaking which on 15th March 1979 carried on simultaneously both life and non-life insurance activities covered by the Solvency 2 Directive may continue to do so if each activity is separately managed in accordance with regulation 64.

(7) The Minister may, by order, direct insurance undertakings to which sub-regulation (6) applies to cease, within a specified period, the simultaneous carrying on of the life and non-life insurance activities in which they were engaged on 15th March 1979.

Separation of life and non-life insurance management.

64.(1) The separate management referred to in regulation 63 must be organised so that–

(a) life insurance activity is distinct from non-life insurance activity;

(b) the respective interests of life and non-life policy holders are not prejudiced; and

(c) in particular, profits from life insurance benefit life policy holders as if the undertaking only carried on the activity of life insurance.

(2) Without limiting regulations 90 and 115, an insurance undertaking to which regulation 63(2) or (6) applies must calculate–

(a) a notional life Minimum Capital Requirement with respect to its life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6); and

(b) a notional non-life Minimum Capital Requirement with respect to its non-life insurance or reinsurance activity, calculated as if the undertaking only carried on that activity, on the basis of the separate accounts specified in sub-regulation (6).

(3) As a minimum, an insurance undertaking to which regulation 63(2) or (6) applies must cover the following by an equivalent amount of eligible basic own-fund items–

(a) the notional life Minimum Capital Requirement, in respect of its life insurance activity; and

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(b) the notional non-life Minimum Capital Requirement, in respect of its non-life activity,

and the minimum financial obligation in respect of its life insurance activity or non-life activity must not be borne by the other activity.

(4) As long as the minimum financial obligations specified in sub-regulation (3) are fulfilled and the GFSC is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in regulation 90, the explicit eligible own-fund items which are still available for one or the other activity.

(5) The GFSC must analyse the results in both life and non-life insurance activities so as to ensure that the requirements of sub-regulations (1) to (4) are fulfilled.

(6) An insurance undertaking to which regulation 63(2) or (6) applies must draw up accounts–

(a) so as to show the sources of the results for life and non-life insurance separately, broken down according to origin, including–

(i) all income, in particular premiums, payments by reinsurers and investment income, and

(ii) expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business; and

(b) items common to both activities must be entered in the accounts in accordance with methods of apportionment accepted by the GFSC.

(7) An insurance undertaking must, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in sub-regulation (2) are clearly identified, in accordance with regulations 89(4).

(8) If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in sub-regulation (3)(a), the GFSC must apply to the deficient activity the measures provided for in these Regulations, whatever the results in the other activity.

(9) Despite sub-regulation (3)(b), those measures may include the GFSC authorising a transfer of explicit eligible basic own-fund items from one activity to the other.

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PART 6
VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES

CHAPTER 1
VALUATION OF ASSETS AND LIABILITIES AND RULES RELATING TO TECHNICAL PROVISIONS

Valuation of assets and liabilities

Valuation of assets and liabilities.

65.(1) An insurance or reinsurance undertaking must value–

(a) assets at the amount for which they could be exchanged between knowledgeable and willing parties in an arm's length transaction; and

(b) liabilities at the amount for which they could be transferred, or settled, between knowledgeable and willing parties in an arm's length transaction.

(2) For the purposes of sub-regulation (1)(b), when valuing liabilities no adjustment must be made to take account of the own credit standing of the undertaking.

Technical provisions

General provisions.

66.(1) An insurance or reinsurance undertaking must establish adequate technical provisions with respect to all of its insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.

(2) The value of technical provisions must correspond to the current amount that the undertaking would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.

(3) An insurance or reinsurance undertaking must calculate its technical provisions–

(a) using, and consistent with, information provided by the financial markets and generally available data on underwriting risks (market consistency);

(b) in a prudent, reliable and objective manner;

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(c) taking account of the principles in sub-regulation (2); and

(d) in accordance with regulations 67 to 71.

Calculation of technical provisions.

67.(1) The value of technical provisions must be equal to the sum of a best estimate and a risk margin, calculated in accordance with this regulation.

(2) The best estimate must–

(a) correspond to the probability-weighted average of future cashflows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure; and

(b) be calculated–

(i) based on up-to-date and credible information and realistic assumptions;

(ii) using adequate, applicable and relevant actuarial and statistical methods; and

(iii) gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, which must be calculated separately in accordance with regulation 76.

(3) The cash-flow projection used in the calculation of the best estimate (whether valued separately or on the basis of financial instruments in accordance with sub-regulation (6)) must take into account all the cash in-flows and out-flows required to settle the insurance and reinsurance obligations over their lifetime.

(4) The risk margin must be such as to ensure that the value of the technical provisions is equivalent to the amount that an insurance or reinsurance undertaking would be expected to require in order to take over and meet the insurance and reinsurance obligations.

(5) Subject to sub-regulation (6) an insurance or reinsurance undertaking must value the best estimate and the risk margin separately.

(6) In a case where–

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(a) future cash flows associated with insurance or reinsurance obligations can be replicated reliably; and

(b) that replication is provided using financial instruments; and

(c) those financial instruments have a reliable market value which is observable,

then the value of technical provisions associated with those future cash flows must be determined on the basis of the market value of those financial instruments.

(7) Where an insurance or reinsurance undertaking values the best estimate and risk margin separately, the risk margin must be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over their lifetime.

(8) The rate used in the determination of the cost of providing that amount of eligible own funds (the "cost of capital rate") must be the same for all insurance and reinsurance undertakings and must be assumed to be equal to 4%.

(9) The cost of capital rate used must be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Chapter 2, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over their lifetime.

(10) The determination of the relevant risk-free interest rate term structure referred to in sub-regulation (2)(a)–

(a) must make use of, and be consistent with, information derived from relevant financial instruments;

(b) must take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent; and

(c) must be extrapolated for maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent.

(11) The extrapolated part of the relevant risk-free interest rate term structure must be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

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Application of the matching adjustment.

68.(1) An insurance or reinsurance undertaking may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of its insurance or reinsurance obligations only with the GFSC's prior approval.

(2) The GFSC may give matching adjustment approval under regulation 68C where each of the conditions set out in sub-regulations (3) to (15) is met.

(3) The insurance or reinsurance undertaking must assign a portfolio of assets, consisting of bonds or other assets with similar cash flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations.

(4) The credit quality of the assets in the portfolio under paragraph (3) must be capable of being assessed through a credit rating or the insurance or reinsurance undertaking's internal credit assessment of a comparable standard.

(5) The insurance or reinsurance undertaking must maintain the assignment under sub-regulation (3) over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed.

(6) The portfolio of long-term insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets must be–

(a) identified; and

(b) organised and managed separately from the other activities of the insurance or reinsurance undertaking.

(7) Subject to sub-regulation (8), the expected cash flows of the assigned portfolio of assets must replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency.

(8) Any mismatch between the expected cash flows referred to in sub-regulation (7) must not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied.

(9) The cashflows of the assigned portfolio of assets must be fixed and not capable of being changed by the issuers of the assets or any third parties, except–

(a) where–

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(i) the risks to the quality of matching are not material; and

(ii) only such limited proportion of the portfolio as regulation 69B(2) provides for is affected;

(b) where the cash flows of the assigned portfolio of assets are linked to inflation, and the assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that are linked to inflation; or

(c) in a case where issuers of the assets or third parties have the right to change the cash flows of an asset, where sufficient compensation is paid to secure an equivalent cash flow by reinvesting the compensation in an asset of equivalent or better quality.

(See regulation 69B, which makes further provisions concerning assets with cashflows that are not fixed.)

(10) Subject to regulation 68A(1), the contracts underlying the assigned portfolio of insurance or reinsurance obligations do not give rise to future premium payments.

(11) The only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk, mortality risk or recovery time risk.

(12) Where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with regulations 90(2), 91 and 70(10) and complies with regulation 68B.

(13) The contracts underlying the portfolio of insurance or reinsurance obligations include–

(a) no options for the policyholder; or

(b) only a surrender option with a surrender value not exceeding the value of the assets, valued in accordance with regulation 65, covering the insurance or reinsurance obligations at the time the surrender option is exercised.

(14) The assigned portfolio of assets cannot be used to cover losses arising from the other activities of the insurance or reinsurance undertaking.

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(15) The assigned portfolio of assets and each individual asset contained in it meets the requirements of the prudent person principle in regulation 117.

(16) Subject to regulation 68A(2), for the purposes of this regulation the insurance or reinsurance obligations of an insurance or reinsurance contract must not be split into different parts when composing the assigned portfolio of insurance or reinsurance obligations.

Matching adjustment: eligible elements.

68A.(1) The condition in regulation 68(10) does not apply to an eligible element of the kind specified in sub-regulation (3)(a)(ii).

(2) Regulation 68(16) does not apply to an eligible element.

(3) In this regulation "eligible element" means a portion of insurance or reinsurance obligations forming part of a wider contract of insurance or reinsurance contract and which–

(a) comprises–

(i) the guaranteed element of a with-profits policy that is either an immediate annuity or a deferred annuity; or

(ii) the in-payment element of a group death in service dependants' annuity or an income protection policy,

in each case, where the element can be organised and managed separately in accordance with regulation 68(6); and

(b) would otherwise meet the matching adjustment eligibility conditions, but for the fact that it forms part of a contract of insurance or reinsurance contract which does not so comply, when taken as a whole.

Matching adjustment: mortality risks.

68B.(1) The mortality risk stress referred to in regulation 68(12) must be the more adverse of the following two scenarios in terms of its impact on basic own funds–

(a) an instantaneous permanent increase of 15% in the mortality rates used for the calculation of the best estimate; or

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(b) an instantaneous increase of 0.15 percentage points in the mortality rates (expressed as percentages) which are used in the calculation of technical provisions to reflect the mortality experience in the following 12 months.

(2) For the purpose of sub-regulation (1) the increase in mortality rates only applies to those policies for which the increase in mortality rates leads to an increase in technical provisions, taking into account the following–

(a) multiple policies in respect of the same insured person may be treated as if they were one policy; and

(b) where the calculation of technical provisions is based on groups of policies as referred to in Article 35 of Commission Delegated Regulation 2015/35, the identification of the policies for which technical provisions increase under an increase of mortality rates may also be based on those groups of policies instead of single policies, if that it yields a result which is not materially different.

(3) With regard to reinsurance obligations, the identification of the policies for which technical provisions increase under an increase of mortality rates applies only to the underlying insurance policies and must be carried out in accordance with sub-regulation (2).

Matching adjustment approval.

68C.(1) An application for matching adjustment approval must–

(a) be made in the form and manner that the GFSC directs; and

(b) contain or be accompanied by any information that the GFSC directs.

(2) An insurance or reinsurance which makes an application to the GFSC for matching adjustment approval must confirm in writing and submit documentary evidence to demonstrate that–

(a) the assigned portfolio of assets;

(b) the assigned portfolio of insurance or reinsurance obligations; and

(c) if the context requires, the insurance or reinsurance undertaking,

satisfy the matching adjustment eligibility conditions in regulation 68.

(3) The GFSC may–

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(a) give matching adjustment approval;

(b) give approval subject to conditions; or

(c) refuse approval.

(4) The GFSC may at any time vary or revoke a matching adjustment approval.

(5) In these regulations "matching adjustment approval" mean approval given by the GFSC under this regulation and in accordance with regulation 276A for an undertaking to apply a matching adjustment for the purposes of calculating the best estimate in relation to a relevant portfolio of insurance or reinsurance obligations.

(6) An insurance or reinsurance that has matching adjustment approval is referred to in regulations 68D to 69I as a "matching adjustment firm".

On-going compliance with eligibility conditions.

68D.(1) A matching adjustment firm must comply at all times with the matching adjustment eligibility conditions and the terms of its matching adjustment approval, including any applicable exposure limits.

(2) A matching adjustment firm that applies the matching adjustment to a portfolio of insurance or reinsurance obligations must not revert back to the approach that does not include a matching adjustment.

(3) A matching adjustment firm that applies the matching adjustment to assigned portfolio of insurance or reinsurance obligations must not apply a volatility adjustment under regulation 70 or risk-free interest rate transitional measure under paragraph 2 of Schedule 1 in respect of those obligations.

(4) Where a matching adjustment firm is no longer able to comply with the conditions set out in regulation 68, it must immediately–

(a) inform the GFSC; and

(b) take the necessary measures to restore compliance with those conditions as soon as possible.

(5) Where a matching adjustment firm is not able to restore compliance with the matching adjustment eligibility conditions within two months of the date of non-compliance it must then,

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on a monthly basis and for the duration of the period of non-compliance, adjust the matching adjustment it applies in respect of the assigned portfolio of insurance or reinsurance obligations according to the following formula–

$$MA^* = MA - (n - 1) \times p \times \max \{MA, 0\}$$

Where–

MA* is the reduced matching adjustment applied to the assigned portfolio of insurance or reinsurance obligations;

MA is the matching adjustment, where the matching adjustment is calculated assuming no restrictions relating to the breach of matching adjustment eligibility conditions;

n is the whole number of months since the date of non-compliance, and shall not be greater than 11; and

p is 10%.

Calculating matching adjustment.

69.(1) For each currency the matching adjustment referred to in regulation 68 must be equal to the difference of–

(a) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the portfolio of assigned assets; and

(b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure.

(2) For the purposes of the calculation in sub-regulation (1)–

(a) "assigned assets" only includes assets whose expected cash flows are required to replicate the cash flows of the portfolio of insurance and reinsurance obligations, excluding any assets in excess of that; and

(b) valuations must comply with the requirements set out in regulation 65.

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(3) In sub-regulation (2), the "expected cash flow" of an asset means the cash flow of the asset adjusted to allow for the probability of default of the asset that corresponds to the element of the fundamental spread set out in regulation 69A(3)(a) or, where no reliable credit spread can be derived from the default statistics, the portion of the long term average of the spread over the basic relevant risk-free interest rate (as provided in regulation 69A(4) and (5)).

(4) The matching adjustment must not include the fundamental spread (as calculated in accordance with regulation 69A) reflecting the risks retained by the insurance or reinsurance undertaking.

(5) The deduction of the fundamental spread under sub-regulation (4) from the result of the calculation set out in sub-regulation (1) must include only the portion of the fundamental spread (as calculated in accordance with regulation 69A) that has not already been reflected in the adjustment to the cash flows of the assigned portfolio of assets in accordance with sub-regulations (1) to (3).

Calculation of fundamental spread.

69A.(1) The fundamental spread in regulation 69 must be calculated in a transparent, prudent, reliable and objective manner that is consistent over time and based on relevant indices where available.

(2) The fundamental spread must be calculated in accordance with sub-regulations (3) to (9).

(3) The fundamental spread must be equal to the sum of the following–

(a) the credit spread corresponding to the probability of default of the assets; and

(b) the credit spread corresponding to the expected loss resulting from downgrading of the assets.

(4) For exposures to the government of Gibraltar or the government or central bank of the United Kingdom, where the fundamental spread would otherwise be lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets (the "average spread"), the fundamental spread must be 30% of the average spread.

(5) For assets other than those exposures, where the fundamental spread would otherwise be lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets (the "average spread"), the fundamental spread must be 35% of the average spread.

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(6) For the purposes of this regulation–

(a) the calculation of the "credit spread" must be based on the assumption that in case of default 30% of the market value of the assets can be recovered;

(b) the "probability of default" must be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class;

(c) the "expected loss" must be based on long-term statistics that are relevant to changes in the credit quality of the asset and correspond to the probability-weighted loss the matching adjustment firm incurs where the asset is downgraded to a lower credit quality and is replaced immediately afterwards, and the calculation of the expected loss must be based on the assumption that the replacing asset meets all of the following criteria–

(i) the replacing asset has the same cash flow pattern as the replaced asset before downgrade;

(ii) the replacing asset belongs to the same asset class as the replaced asset;

(iii) the replacing asset has the same credit quality as the replaced asset before downgrade or a higher one;

(d) the "long-term average of the spread over the risk-free interest rate" must be based on data relating to the previous 30 years;

(e) the methods to derive the fundamental spread of a bond must be the same for each currency and each country and may be different for government bonds and for other bonds.

(7) For the purposes of sub-regulation (6)(b) or (c), where no reliable credit spread can be derived from the statistics, the fundamental spread must be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in sub-regulation (4) or (5).

(8) Where part of the data in sub-regulation (6)(d) is not available or where the available data is not reliable, constructed data based on prudent assumptions may be used; and the constructed data must be based on available and reliable data relating to the previous 30 years.

(9) The fundamental spread calculated in accordance with this regulation must be increased in accordance with regulation 69E(2) or where doing so is necessary to ensure that it covers all risks retained by the firm.

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Assets with cashflows that are not fixed.

69B.(1) For the purposes of, and without limiting, regulation 68(9), assets with cashflows that are not fixed are only capable of being included in a matching adjustment firm's assigned portfolio of assets without giving rise to material risks to the quality of matching if those cashflows are highly predictable.

(2) For the purposes of the condition in regulation 68(9)(a)(ii), the proportion of a matching adjustment firm's assigned portfolio of assets that comprises assets with highly predictable cashflows is subject to the following limits–

(a) no more than 10% of the matching adjustment benefit is attributable to an asset with highly predictable cashflows, either on its own or when taken together with other assets with highly predictable cashflows in the assigned portfolio of assets; and

(b) any applicable exposure limit.

(3) For the purposes of sub-regulation (1), the cashflows of an asset are highly predictable where–

(a) the contractual terms of the asset provide for a bounded range of variability in respect of the timing and amount of the cash-flows; and

(b) failure to meet such contractual terms is a default.

(4) In assessing asset cashflows for the purposes of sub-regulation (3), a matching adjustment firm must–

(a) base the best estimate of the cashflows on the contractual payments of the asset;

(b) use assumptions consistent with the economics of the asset; and

(c) where expert judgment is used in determining the cashflows, ensure that it is subject to the level of controls specified in Article 2 of Commission Delegated Regulation 2015/35.

(5) For the purposes of sub-regulation (2)(a), the "matching adjustment benefit" means an amount equal to the impact on the matching adjustment firm's best estimate of the scenario set out in regulation 45(6)(b)(iii) (and for the purposes of this calculation, ignoring any impact of regulation 68D(5)).

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Fundamental spread to reflect differences in quality by rating notch.

69C.(1) Where an assigned asset has a credit rating or internal credit assessment of a comparable standard (within the meaning of regulation 69D(1)(a)) mapping to credit quality steps 1 to 5, a matching adjustment firm must make an adjustment to the fundamental spread derived from the credit quality step attributed to that asset in order to reflect the corresponding rating notch, in accordance with sub-regulations (3) and (4).

(2) The obligation in sub-regulation (1) does not apply in the circumstances described in sub-regulation (5).

(3) A matching adjustment firm must derive the adjustment referred to in sub-regulation (1) for at least–

(a) the probability of default referred to in regulation 69(3); and

(b) the overall fundamental spread,

in each case, applicable to the cash-flows of that asset.

(4) A matching adjustment firm must–

(a) derive the adjustments referred to in sub-regulation (3) using linear interpolation of the information referred to in regulation 71;

(b) use linear interpolation for each consecutive credit quality step pair; and

(c) assume for the purposes of this regulation that each intermediate rating notch is evenly spread between each consecutive credit quality step pair.

(5) Where there is no rating notch available for a particular asset falling within the scope of sub-regulation (1), a matching adjustment firm–

(a) must not adjust the fundamental spread, or any component of it, applied to the cashflows of that asset, other than to account for additions to the fundamental spread in accordance with regulation 69A(9); and

(b) must consider the appropriateness of the fundamental spread and matching adjustment in respect of that asset as part of its analysis and verification process and policy under regulation 69G, in relation to the attestation made regulation 69F.

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(6) In this regulation–

"credit quality step" means the credit quality steps 0 to 6 set out in the Annex to Commission Implementing Regulation 2016/1800; and

"rating notch" means, in respect of each credit quality step, the additional subcategories (if relevant) which differentiate the relative credit quality of assets within that credit quality step.

(7) A matching adjustment firm may, but is not required to, comply with the obligation in sub-regulation (1) during the period beginning on 30th June 2024 and ending on 30th December 2024.

Internal credit assessments and credit ratings.

69D.(1) Where a matching adjustment firm uses any internal credit assessment of assets within the assigned portfolio of assets, the firm must ensure on an ongoing basis–

(a) that, as required by regulation 68(4), such internal credit assessment is of a comparable standard to a credit rating; and

(b) the appropriateness of–

(i) its process to produce such internal credit assessments; and

(ii) the outcomes of such internal credit assessments.

(2) For the purposes of sub-regulation (1), a matching adjustment firm must ensure at a minimum that–

(a) the internal credit assessments have considered all possible sources of credit risk, both qualitative and quantitative, and how these types of credit risk may interact;

(b) the internal credit assessment outcomes lie within a plausible range of issue ratings that could have resulted from a credit rating agency;

(c) both at the level of the assigned portfolio of assets and of each asset type, there is broad consistency and no bias between–

(i) internal credit assessment outcomes; and

(ii) issue ratings that could have resulted from a credit rating agency;

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(d) the internal credit assessment process is subject to appropriate validation, and appropriate assessment of its on-going appropriateness;

(e) the firm has obtained proportionate independent external assurance in respect of paragraph (b); and

(f) the firm's internal credit assessment function is independent and there are effective controls to manage any potential conflicts of interest.

(3) A matching adjustment firm must be able to demonstrate its compliance with sub-regulation (1) to the GFSC on request.

(4) The use of credit ratings in the calculation of the matching adjustment must be in line with the specifications set out in Articles 4 to 6 of Commission Delegated Regulation (EU) 2015/35 and Commission Implementing Regulation 2016/1800.

Additions to the fundamental spread: assets with highly predictable cashflows.

69E.(1) A matching adjustment firm must identify all sources of uncertainty regarding the timing and amount of cashflows from any asset in the assigned portfolio of assets with cashflows that are highly predictable.

(2) A matching adjustment firm must add to the fundamental spread an amount that reflects the risks arising from the uncertainties identified in accordance with sub-regulation (1) to ensure that the fundamental spread reflects risks retained by the firm in accordance with regulation 69(4).

Attestation requirements.

69F.(1) A matching adjustment firm must provide the attestation set out in sub-regulation (2) to the GFSC in accordance with this regulation in respect of each assigned portfolio of assets as a whole held by the firm.

(2) The attestation is that, as at the applicable date–

(a) the fundamental spread used by the firm in calculating the matching adjustment reflects compensation for all retained risks in accordance with regulation 69(4); and

(b) the matching adjustment can be earned with a high degree of confidence from the assets held in the assigned portfolio of assets.

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(3) In sub-regulation (2) the "applicable date" means the date of the firm's applicable solvency and financial condition report or, where the attestation relates to a material change to which sub-regulation (4)(b) applies the date when that attestation is made.

(4) Subject to sub-regulation (6), the attestation must be provided–

(a) annually, no later than 14 weeks after the firm's financial year-end, commencing with its first financial year-end after its matching adjustment approval took effect; and

(b) where there is a material change in risk profile of the firm, as soon as reasonably practicable and in any event no later than three month after the change occurs.

(5) The attestation must be provided–

(a) by the regulated individual who is the firm's head of finance; and

(b) in the form specified in regulation 69I.

(6) A matching adjustment firm with a matching adjustment approval that took effect before 31st December 2024 may, but is not required to, provide the attestation set out in sub-regulation (2) in respect of any financial year-end or material change in risk profile during the period commencing on 30th June 2024 and ending on 30th December 2024.

Internal governance for attestation.

69G.(1) Before providing any attestation in accordance with regulation 69F a matching adjustment firm must conduct an analysis and be able to justify that–

(a) the fundamental spread used by the firm reflects compensation for all retained risks; and

(b) the matching adjustment can be earned with a high degree of confidence from the assets held in the assigned portfolio of assets.

(2) A matching adjustment firm must have in place appropriate internal processes, systems and controls to allow it to produce the analysis and justification required by sub-regulation (1) and ensure that its administrative, management or supervisory body has approved them.

(3) A matching adjustment firm must–

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(a) establish and maintain a policy on providing–

(i) the attestation in regulation 69F; and

(ii) the analysis and justification required under sub-regulation (1); and

(b) ensure that its administrative, management or supervisory body has approved that policy.

Disclosure of attestation.

69H. A matching adjustment firm must disclose in its solvency and financial condition report whether or not it has provided the attestation in accordance with regulation 69F in respect of the financial year to which that report relates.

Form of attestation.

69I.(1) The attestation required by regulation 69F must be–

(a) provided in the form of an attestation document which must include the information set out in sub-regulation (2); and

(b) accompanied by a supporting attestation report as set out in sub-regulation (3).

(2) The attestation document must include–

(a) the attestation in regulation 69F;

(b) the name and role of the regulated individual giving the attestation;

(c) the assigned portfolio of assets to which the attestation applies; and

(d) the date of the attestation.

(3) The supporting attestation report must include the following information–

(a) either–

(i) a copy of the latest version of the firm's policy under regulation 69G(3); or

(ii) confirmation that the policy has not been updated since it was last provided to the GFSC;

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(b) either–

(i) confirmation that the firm and attestor complied with the terms of the policy in making the attestation; or

(ii) details of the alternative approach followed by the firm and the attestor and an explanation as to why this occurred;

(c) a list detailing the evidence the attestor relied on in making the attestation; and

(d) in relation to any increase in the fundamental spread that the firm has decided to use in accordance with regulation 69A(9), a list of–

(i) all assets in each assigned portfolio of assets to which any increase applies;

(ii) the reasons for the increase; and

(iii) the amount of the increase and the matching adjustment resulting from those assets, as at the applicable attestation reference date.

Volatility adjustment to relevant risk-free interest rate term structure.

70.(1) An insurance or reinsurance undertaking may, with the GFSC's prior approval given under this regulation and in accordance with regulation 276A, apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in regulation 67(2).

(1A) An application for approval under sub-regulation (1) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(1B) The GFSC may–

(a) give approval;

(b) give approval subject to conditions; or

(c) refuse approval.

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(1C) The GFSC may at any time vary or revoke an approval given under sub-regulation (1).

(2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure must be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

(3) The reference portfolio for a currency must be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(4) The amount of the volatility adjustment to risk-free interest rates must correspond to 65% of the risk-corrected currency spread, which must be calculated as the difference between–

(a) the spread referred to in sub-regulation (2); and

(b) the portion of that spread attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(5) The volatility adjustment must apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with regulation 67(11) and the extrapolation of the relevant risk-free interest rate term structure must be based on those adjusted risk-free interest rates.

(6) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in sub-regulation (4) for the currency of that country must, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points.

(7) The increased volatility adjustment must be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country.

(8) The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

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(9) The volatility adjustment must not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under regulation 68.

(10) By way of derogation from regulation 91, the Solvency Capital Requirement must not cover the risk of loss of basic own funds resulting from changes to the volatility adjustment.

Use of approved technical information.

71.(1) An insurance or reinsurance undertaking must use the approved technical information in calculating–

(a) the best estimate in accordance with regulation 67;

(b) the matching adjustment in accordance with regulations 69 and 69A; and

(c) the volatility adjustment in accordance with regulation 70.

(2) The "approved technical information" means any technical information for each relevant currency–

(a) issued before IP completion day by EIOPA and the European Commission in accordance with Articles 77e.1 and 77e.2 of the Solvency 2 Directive; or

(b) issued or approved by the GFSC on or after IP completion day, setting out–

(i) a relevant risk-free interest rate term structure for calculating the best estimate in regulation 67, without any matching adjustment or volatility adjustment;

(ii) for each relevant duration, credit quality and asset class a fundamental spread for calculating the matching adjustment in regulations 69 and 69A; and

(iii) for each relevant national insurance market a volatility adjustment to the relevant risk-free interest rate term structure in regulation 70.

(3) Where, in respect to particular currencies and national markets, the approved technical information does not include a volatility adjustment to the relevant risk-free interest rate term structure, no volatility adjustment is to be applied to the relevant risk free interest rate term structure to calculate the best estimate.

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(4) The issue or approval by the GFSC of any technical information under sub-regulation (2)(b) must be published in a manner that the GFSC considers appropriate to bring it to the attention of persons who may be affected by it.

72. *Omitted*.

Other elements to be taken into account in calculation of technical provisions.

73. In addition to regulation 67, when calculating technical provisions, an insurance or reinsurance undertaking must take account of–

(a) all expenses that will be incurred in servicing insurance and reinsurance obligations;

(b) inflation, including expenses and claims inflation; and

(c) all payments to policy holders, including future discretionary bonuses, which the undertaking expects to make, whether or not those payments are contractually guaranteed.

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts.

74.(1) When calculating technical provisions, an insurance or reinsurance undertaking must take account of the value of financial guarantees and any contractual options included in contracts of insurance and reinsurance contracts.

(2) Any assumptions used by an insurance or reinsurance undertaking to determine the likelihood that policy holders will exercise contractual options, including lapses and surrenders, must–

(a) be realistic and based on current and credible information; and

(b) take into account, either explicitly or implicitly, the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Segmentation.

75. When calculating technical provisions, an insurance or reinsurance undertaking must segment its insurance and reinsurance obligations into homogeneous risk groups, and, as a minimum, by lines of business.

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Recoverables from reinsurance contracts and special purpose vehicles.

76.(1) An insurance or reinsurance undertaking must calculate amounts recoverable from reinsurance contracts and special purpose vehicles in accordance with regulations 66 to 75.

(2) For the purposes of sub-regulation (1), an undertaking must take into account the time difference between amounts becoming recoverable and the actual receipt of those amounts.

(3) An undertaking must adjust the calculation referred to in sub-regulation (1) to take into account expected losses due to the default of the counterparty.

(4) The adjustment referred to in sub-regulation (3) must be based on an assessment of the probability of default of the counterparty and the average loss that would result from that default (loss given default).

Data quality and application of approximations, including case-by-case approaches, for technical provisions.

77.(1) An insurance or reinsurance undertaking must have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of its technical provisions.

(2) Where an undertaking has insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of its insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, it may use appropriate approximations, including case-by-case approaches, in the calculation of the best estimate.

Comparison against experience.

78.(1) An insurance or reinsurance undertaking must have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

(2) Where a systematic deviation exists between the undertaking's best estimate calculation and experience, the undertaking must make appropriate adjustments to the actuarial methods being used or the assumptions being made, or both as the case may require.

Appropriateness of level of technical provisions.

79. An insurance or reinsurance undertaking must, at the GFSC's request, demonstrate to the GFSC–

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(a) the appropriateness of the level of the undertaking's technical provisions;

(b) the applicability and relevance of the methods applied; and

(c) the adequacy of the underlying statistical data used.

Increase of technical provisions.

80. If an insurance or reinsurance undertaking's calculation of technical provisions does not comply with regulations 66 to 78, the GFSC may require the undertaking to increase the amount of technical provisions so that they correspond to the level determined in accordance with those regulations.

CHAPTER 2
OWN FUNDS

Determination of own funds.

81.(1) An insurance or reinsurance undertaking's own funds comprise the sum of–

(a) basic own funds referred to in regulation 82; and

(b) subject to regulation 84(1), ancillary own funds referred to in regulation 83.

(2) For the purposes of this Part, an undertaking's surplus funds are to be regarded as accumulated profits of the undertaking which have not been made available for distribution to policy holders and beneficiaries.

Basic own funds.

82.(1) An insurance or reinsurance undertaking's basic own funds must consist of the following items–

(a) the excess of assets over liabilities, valued in accordance with Chapter 1; and

(b) subordinated liabilities.

(2) The excess amount referred to in sub-regulation (1) must be reduced by the amount of own shares held by the undertaking.

Ancillary own funds.

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83.(1) An insurance or reinsurance undertaking's ancillary own funds must consist of items (other than basic own funds) which can be called up to absorb losses, including the following (to the extent that they are not basic own fund items)–

(a) unpaid share capital or initial fund that has not been called up;

(b) letters of credit and guarantees;

(c) any other legally binding commitments received by the undertaking; and

(d) in the case of a mutual or mutual type association with variable contributions, any future claims which it may have against its members by way of a call for supplementary contribution within the following 12 months.

(2) Where an item of ancillary own funds becomes paid in or called up, the proceeds paid in or the amount due in respect of the call must be treated as an asset and the item must cease to be treated as an item of ancillary own funds.

Supervisory approval of ancillary own funds.

84.(1) When determining its own funds, an insurance or reinsurance undertaking must not take into account any item of ancillary own funds unless it has received an ancillary own funds approval in respect of that item specifying either–

(a) a monetary amount for the relevant item of ancillary own funds; or

(b) the method by which to determine the amount of the relevant item of ancillary own funds, together with the amount determined in accordance with that method for a specified time period.

(1A) In this regulation "ancillary own funds approval" means approval given to an undertaking by the GFSC under this regulation and in accordance with regulation 276A for the purpose of allowing the undertaking to take into account an item of ancillary own funds as part of its own funds.

(1AA) An application for ancillary own funds approval must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(1AB) The GFSC may–

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(a) give approval;

(b) give approval subject to conditions; or

(c) refuse approval.

(1AC) The GFSC may at any time vary or revoke an ancillary own funds approval.

(1B) Where, in respect of an ancillary own funds item, an insurance or reinsurance undertaking has received an ancillary own funds approval–

(a) that specifies a monetary amount, in accordance with sub-regulation (1)(a), the undertaking may only include that item in its own funds up to the monetary amount set out in the ancillary own funds approval; or

(b) that specifies a method by which to determine a monetary amount in accordance with sub-regulation (1)(b), the undertaking may only include that item in its own funds up to the monetary amount that has been determined by the method set out in, and only for the time period specified by, the ancillary own funds approval.

(2) An undertaking may only attribute an amount to an item of ancillary own funds to the extent that it–

(a) reflects the loss-absorbency of the item; and

(b) is based on prudent and realistic assumptions.

(3) *Omitted*

(4) *Omitted*

(5) *Omitted*.

Characteristics and features used to classify own funds into tiers.

85.(1) Own fund items must be classified into three tiers, depending on whether they are basic own fund or ancillary own fund items and the extent to which they possess the following characteristics–

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(a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis as well as in the case of winding-up (permanent availability); and

(b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations to policy holders, have been met (subordination).

(2) When assessing the extent to which own funds items possess the characteristics set out in sub-regulation (1), currently and in the future, due consideration must be given to–

(a) the duration of the item, in particular whether the item is dated or not and, where an own funds item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking (sufficient duration);

(b) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);

(c) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs); and

(d) whether the item is clear of encumbrances (absence of encumbrances).

(3) An insurance or reinsurance undertaking must not classify as Tier 1 own funds–

(a) paid-in ordinary share capital and related share premium account; or

(b) paid-in initial fund, member's contribution or the equivalent basic own funds for a mutual,

unless the undertaking has the right to cancel and withhold dividends or other distributions in respect of those items at any time prior to payment (and exercises that right) in the circumstances specified in Article 71(1)(l) of the Solvency 2 Technical Standards.

(4) An insurance or reinsurance undertaking must not classify as Tier 2 basic own funds–

(a) ordinary share capital and related share premium account; or

(b) initial fund, member's contribution or the equivalent basic own funds for a mutual,

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unless the undertaking has the right to defer dividends or other distributions in respect of those items at any time prior to payment (and exercises that right) in the circumstances specified in Article 73(1)(h) of the Solvency 2 Technical Standards.

Main criteria for classification into tiers.

86.(1) An insurance or reinsurance undertaking may only include an own funds item in its Tier 1 own funds if–

(a) it is an item of basic own funds; and

(b) it substantially possesses the characteristics set out in regulation 85(1) taking into consideration the features set out in regulation 85(2).

(2) An undertaking may only include an own funds item in its Tier 2 own funds if–

(a) where it is an item of basic own funds, it substantially possesses the characteristics set out in regulation 85(1)(b), taking into consideration the features set out in regulation 85(2); or

(b) where it is an item of ancillary own funds it substantially possesses the characteristics set out in regulation 85(1)(a) and (b), taking into consideration the features set out in regulation 85(2).

(3) Any basic or ancillary own fund items which do not fall within sub-regulation (1) or (2) must be classified in the undertaking's Tier 3 own funds.

(4) In so far as permitted by the GFSC, to the extent that surplus funds fulfil the criteria in sub-regulation (1), they must not be considered as insurance or reinsurance liabilities.

Classification of own funds into tiers.

87.(1) An insurance or reinsurance undertaking must classify its own fund items on the basis of the own funds lists.

(2) An insurance or reinsurance undertaking must not include an own funds item in its Tier 1 own funds, Tier 2 own funds or Tier 3 own funds if that own funds item is not covered by the own funds lists, unless it has received a classification of own funds approval in respect of that item.

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(3) An undertaking which has received a classification of own funds approval, may only classify as Tier 1 own funds basic own fund items that are not included in the own funds list where they are fully paid-in.

(4) In this regulation "classification of own funds approval" means approval given to an undertaking by the GFSC under this regulation and in accordance with regulation 276A for the purpose of allowing the undertaking to include in its Tier 1 own funds, Tier 2 own funds or Tier 3 own funds (as the case may be) an own funds item that is not included in the own funds lists.

(5) An application for classification of own funds approval must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(6) The GFSC may–

(a) give approval;

(b) give approval subject to conditions; or

(c) refuse approval.

(7) The GFSC may at any time vary or revoke a classification of own funds approval.

88. *Omitted*

Eligibility and limits applicable to Tiers 1, 2 and 3.

89.(1) As far as an insurance or reinsurance undertaking's compliance with its Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items must be subject to quantitative limits which ensure that the following condition are met–

(a) the proportion of Tier 1 items in the eligible own funds must be more than one third of the total amount of eligible own funds; and

(b) the eligible amount of Tier 3 items must be less than one third of the total amount of eligible own funds.

(2) As far as an undertaking's compliance with its Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital

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Requirement which are classified in Tier 2 must be subject to quantitative limits which ensure that, as a minimum, the proportion of Tier 1 items in the eligible basic own funds is more than 50% of the total amount of eligible basic own funds.

Notification of issue of own funds items.

89A.(1) This regulation does not apply in respect of the following–

(a) any item which an insurance or reinsurance undertaking intends to include within its basic own funds that is not included in the own funds lists but in respect of which the undertaking would need to receive a classification of own funds approval in accordance with regulation 87; and

(b) any item in respect of which the undertaking would need to receive an ancillary own funds approval in accordance with regulation 84.

(2) Subject to sub-regulation (6), an insurance or reinsurance undertaking must notify the GFSC in writing of its intention to issue an item which it intends to include in its basic own funds–

(a) at least one month before the intended date of issue; or

(b) where there are exceptional circumstances which make it impracticable to comply with paragraph (a), giving the GFSC–

(i) as much notice as is practicable in those circumstances; and

(ii) an explanation as to why the circumstances are considered exceptional.

(3) When giving notice, an insurance or reinsurance undertaking must–

(a) provide details of the amount of basic own funds the undertaking is seeking to raise through the intended issue and whether the item is intended to be issued to external investors or within its group;

(b) identify the classification of basic own funds the item is intended to fall within;

(c) provide a copy of the draft terms and conditions;

(d) provide a draft of a properly reasoned independent legal opinion from an appropriately qualified individual confirming that the item complies with the rules

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applicable to items of basic own funds included in the classification of the item identified in paragraph (b);

(e) for any item referred to in Article 82(3) of the Solvency 2 Technical Standards, provide a draft of a properly reasoned independent accounting opinion from an appropriately qualified individual as to the item's treatment in the undertaking's financial statements;

(f) include confirmation from the undertaking's administrative, management or supervisory body that the item complies with the rules applicable to items of basic own funds included in the classification of the item identified in (b); and

(g) state whether the item is encumbered or whether there are any connected transactions in respect of the item and, if so, provide details.

(4) If after an initial notification under sub-regulation (2), but prior to an item's issuance, an insurance or reinsurance undertaking proposes to change the information previously submitted, it must provide a further written notification of that change without delay.

(5) If an insurance or reinsurance undertaking proposes to establish or amend a debt securities programme for the issue of an item for inclusion within its basic own funds, it must–

(a) notify the GFSC of the establishment of the programme or of the proposed amendment to the programme; and

(b) provide the information required by sub-regulation (3),

at least one month before any proposed drawdown. The GFSC must be notified of any changes in accordance with sub-regulation (4).

(6) Sub-regulations (2) and (3) do not apply to–

(a) ordinary shares which–

(i) meet the classification criteria for ordinary share capital in Tier 1 own funds; and

(ii) are the same as ordinary shares previously issued by the undertaking;

(b) debt instruments issued from a debt securities programme, if–

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(i) the establishment of (and any subsequent amendment to) the programme was notified to the GFSC in accordance with sub-regulation (5) and the last such notification was given to the GFSC no more than twelve months prior to the date of the proposed drawdown;

(ii) the programme complies with, and the information previously notified to the GFSC in accordance with sub-regulation (5) in relation to the programme is unaffected by, any changes in law or regulation, or the interpretation or application of either, coming into effect since the last notification in accordance with sub-regulation (5); and

(iii) any instrument issued pursuant to the programme must, under the terms of the programme, constitute basic own funds; and

(c) any item which is to be issued on identical terms to one or more items included in basic own funds issued by the undertaking within the previous twelve months and notified to the GFSC in accordance with sub-regulations (2) and (3), excluding–

(i) the issue date;

(ii) the maturity date;

(iii) the amount of the issuance;

(iv) the currency of the issuance; and

(v) the rate of interest payable by the issuer.

(7) An insurance or reinsurance undertaking must notify the GFSC in writing, no later than the date of issue, of its intention to issue an item listed in sub-regulation (6) which it intends to include within its basic own funds and, when giving notice, an insurance or reinsurance undertaking must–

(a) provide the information set out in sub-regulation (3) other than sub-regulations (3)(c),(d) and (e); and

(b) for issuance of an item pursuant to sub-regulation (6)(a) or (c), confirm that the terms of the item have not changed since the previous issue by the undertaking of that type of item of basic own funds.

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(8) An insurance or reinsurance undertaking must notify the GFSC in writing of its intention to amend or otherwise vary the terms of any item included within its basic own funds at least one month before the intended date of such amendment or other variation.

(9) An insurance or reinsurance undertaking must provide to the GFSC as soon as practicable after the issuance of an item of basic own funds to which sub-regulations (2), (3), (5), (6)(a) or (6)(c) applies–

(a) a finalised copy of the draft legal opinion referred to in sub-regulation (3)(d);

(b) a finalised copy of the draft accounting opinion referred to in sub-regulation (3)(e) if applicable;

(c) a copy of the instrument's final terms and conditions; and

(d) a reasoned basis for the choice of coupon structure and any other provision that might suggest an incentive to redeem.

CHAPTER 3
SOLVENCY CAPITAL REQUIREMENT

General provisions.

90.(1) An insurance or reinsurance undertaking must hold eligible own funds covering its Solvency Capital Requirement.

(2) The undertaking must calculate its Solvency Capital Requirement either–

(a) in accordance with the standard formula (as set out in regulations 93 to 100); or

(b) using an internal model (as set out in regulations 101 to 114).

Calculation of Solvency Capital Requirement.

91.(1) An insurance or reinsurance undertaking must calculate its Solvency Capital Requirement in accordance with sub-regulations (2) to (6).

(2) The Solvency Capital Requirement must be calculated on the presumption that the undertaking will pursue its business as a going concern.

(3) The Solvency Capital Requirement–

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(a) must be calibrated so as to ensure that all quantifiable risks to which the undertaking is exposed are taken into account;

(b) must cover–

(i) existing business; and

(ii) new business expected to be written over the following 12 months; and

(c) with respect to existing business, must cover only unexpected losses.

(4) The Solvency Capital Requirement must correspond to the Value-at-Risk of the undertaking's basic own funds subject to a confidence level of 99.5% over a one-year period.

(5) The Solvency Capital Requirement must cover at least the following risks–

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk;

(e) credit risk; and

(f) operational risk,

and the operational risk referred to in paragraph (f) must include legal risks but exclude risks arising from strategic decisions and reputation risks.

(6) When calculating the Solvency Capital Requirement, an undertaking may take account of the effect of risk-mitigation techniques, if credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Frequency of calculation.

92.(1) An insurance or reinsurance undertaking–

(a) must calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the GFSC;

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(b) must hold eligible own funds which cover the last reported Solvency Capital Requirement;

(c) must monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis; and

(d) must recalculate the Solvency Capital Requirement without delay and report it to the GFSC if its risk profile deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement.

(2) Where there is evidence to suggest that the risk profile of an undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the GFSC may require the undertaking to recalculate the Solvency Capital Requirement.

Solvency Capital Requirement standard formula

Structure of the standard formula.

93.(1) Subject to sub-regulation (2), the Solvency Capital Requirement of an insurance or reinsurance undertaking, when calculated on the basis of the standard formula, must be the sum of the following items–

(a) the Basic Solvency Capital Requirement, as set out in regulation 94;

(b) the capital requirement for operational risk, as set out in regulation 98;

(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as set out in regulation 99.

(2) An insurance or reinsurance undertaking with–

(a) a ring-fenced fund (other than a ring-fenced fund in respect of which the reconciliation reserve has been reduced by the total amount of restricted own funds items in accordance with Article 81(2) of the Solvency 2 Technical Standards); or

(b) a matching adjustment portfolio,

must make an adjustment to the calculation of its Solvency Capital Requirement following the method set out in Articles 216 and 217 of the Solvency 2 Technical Standards.

Look through approach.

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93A.(1) An insurance or reinsurance undertaking must calculate its Solvency Capital Requirement on the basis of each of the underlying assets of collective investment undertakings and other investments packaged as funds.

(2) Subject to sub-regulation (6), an undertaking must also apply the look-through approach to the following–

(a) indirect exposures to market risk other than collective investment undertakings and investments packaged as funds;

(b) indirect exposures to underwriting risk; and

(c) indirect exposures to counterparty risk.

(3) Subject to Article 88 of the Solvency 2 Technical Standards, if an undertaking cannot apply the look-through approach to collective investment undertakings or investments packaged as funds, it may calculate its Solvency Capital Requirement on the basis of the target underlying asset allocation or, if the target underlying asset allocation is not available to the undertaking, on the basis of the last reported asset allocation, of the collective investment undertaking or fund, provided that, in either case–

(a) the underlying assets are managed in accordance with that target allocation or last reported asset allocation, as applicable; and

(b) exposures and risks are not expected to vary materially over a short period of time.

(4) For the purposes of the calculation in sub-regulation (3), an undertaking may use data groupings which–

(a) enable all relevant sub-modules and scenarios of the standard formula to be calculated in a prudent manner; and

(b) do not apply to more than 20% of the total value of the undertaking's assets.

(5) For the purposes of determining the percentage of assets where data groupings are used as referred to in sub-regulation (4)(b), an undertaking must not take into account underlying assets of the collective investment undertaking, or the investments packaged as funds, backing unit-linked liabilities or index-linked liabilities for which the market risk is borne by the policyholders.

(6) Sub-regulation (2) does not apply to investments in related undertakings, other than investments in respect of which all of the following requirements are met–

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(a) the main purpose of the related undertaking is to hold and manage assets on behalf of the participating undertaking;

(b) the related undertaking supports the operations of the participating undertaking related to investment activities, following a specific and documented investment mandate; and

(c) the related undertaking does not carry on any significant business other than investing for the benefit of the participating undertaking.

Design of Basic Solvency Capital Requirement.

94.(1) The Basic Solvency Capital Requirement must comprise individual risk modules, which are aggregated in accordance with paragraph 1 of Schedule 4, consisting of at least the following risk modules–

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk; and

(e) counterparty default risk.

(2) For the purposes of sub-regulation (1)(a) to (c), an insurance or reinsurance undertaking must allocate its insurance or reinsurance operations to the underwriting risk module that best reflects the technical nature of the underlying risks.

(2A) For the purposes of sub-regulation (1)(a) to (c), an undertaking must apply–

(a) the non-life underwriting risk module to non-life insurance and reinsurance obligations other than health insurance obligations and health reinsurance obligations;

(b) the life underwriting risk module to life insurance and reinsurance obligations other than health insurance obligations and health reinsurance obligations; and

(c) the health underwriting risk module to health insurance obligations and health reinsurance obligations.

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(3) The correlation coefficients for the aggregation of the risk modules referred to in sub-regulation (1), as well as the calibration of the capital requirements for each risk module, must result in an overall Solvency Capital Requirement which complies with the principles set out in regulation 91.

(4) Each of the risk modules referred to in sub-regulation (1) must be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one-year period and, where appropriate, diversification effects must be taken into account in the design of each risk module.

(5) The same design and specifications for the risk modules must be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as set out in regulation 100.

(6) With regard to risks arising from catastrophes, where appropriate, geographical specifications may be used for the calculation of the life, non-life and health underwriting risk modules.

(7) Subject to approval by the GFSC, an undertaking may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking when calculating the life, non-life and health underwriting risk modules and such parameters must be calibrated on the basis of the undertaking's internal data or data which is directly relevant for the undertaking's operations using standardised methods.

(8) In considering whether to grant approval under sub-regulation (7), the GFSC must verify the completeness, accuracy and appropriateness of the data used.

Scenario based calculations.

94A.(1) Where the calculation of a module or sub-module of the basic Solvency Capital Requirement is based on the impact of a scenario on the basic own funds of an insurance or reinsurance undertaking, the undertaking must make all of the following assumptions in that calculation–

(a) the scenario does not change the amount of the risk margin included in technical provisions;

(b) the scenario does not change the value of deferred tax assets and liabilities;

(c) the scenario does not change the value of future discretionary benefits included in technical provisions; and

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(d) no management actions are taken by the undertaking during the scenario.

(2) In calculating technical provisions arising as a result of determining the impact of a scenario on its basic own funds as referred to in sub-regulation (1), an undertaking must not change the value of future discretionary benefits, and must take account of all of the following–

(a) without prejudice to sub-regulation (1)(d), future management actions following the scenario, provided they comply with Article 23 of the Solvency 2 Technical Standards; and

(b) any material adverse impact of the scenario or the future management actions referred to in paragraph (a) on the likelihood that policyholders will exercise options relating to contracts of insurance.

(3) An undertaking may use simplified methods to calculate the technical provisions arising as a result of determining the impact of a scenario as referred to in sub-regulation (1) if the simplified method does not lead to a misstatement of the Solvency Capital Requirement that could influence the decision making or judgement of the user of the information relating to the Solvency Capital Requirement, unless the simplified calculation produces a Solvency Capital Requirement which exceeds the Solvency Capital Requirement that results from the calculation according to the standard formula.

(4) In calculating the assets and liabilities arising as a result of determining the impact of a scenario as referred to in sub-regulation (1), an undertaking must take account of the impact of the scenario on the value of any relevant risk mitigation instruments held by the undertaking which comply with Articles 209, 210 and 211 to 215 of the Solvency 2 Technical Standards.

(5) Where the scenario would result in an increase in its basic own funds, an undertaking must base the calculation of the module or sub-module on the assumption that the scenario has no impact on its basic own funds.

Calculation of Basic Solvency Capital Requirement.

95.(1) An insurance or reinsurance undertaking must calculate its Basic Solvency Capital Requirement in accordance with sub-regulations (2) to (6).

(2) The non-life underwriting risk module–

(a) must reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business;

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(b) must take account of the uncertainty in the undertaking's results related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months; and

(c) must be calculated, in accordance with paragraph (2) of Schedule 4, as a combination of the capital requirements for the following sub-modules–

(i) the non-life premium and reserve risk sub-module covering non-life premium and reserve risk;

(ii) the non-life catastrophe risk sub-module covering non-life catastrophe risk; and

(iii) the non-life lapse risk sub-module covering non-life lapse risk.

(3) The life underwriting risk module–

(a) must reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business; and

(b) must be calculated, in accordance with paragraph 3 of Schedule 4, as a combination of the capital requirements for at least the following sub-modules–

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);

(iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability-morbidity risk);

(iv) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life-expense risk);

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(v) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);

(vi) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk); and

(vii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).

(4) The health underwriting risk module–

(a) must reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business; and

(b) must cover at least the following risks–

(i) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

(ii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning; and

(iii) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

(5) The market risk module–

(a) must reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact on the value of the undertaking's assets and liabilities;

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(b) must properly reflect the structural mismatch between assets and liabilities, in particular with respect to their duration; and

(c) must be calculated, in accordance with paragraph 4 of Schedule 4, as a combination of the capital requirements for at least the following sub-modules–

(i) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

(ii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

(iii) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

(iv) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

(v) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk); and

(vi) additional risks to the undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

(6) The counterparty default risk module–

(a) must reflect possible losses due to unexpected default, or deterioration in the credit standing, of the undertaking's counterparties and debtors over the following 12 months;

(b) must cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module;

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(c) must take appropriate account of collateral or other security held by or for the account of the undertaking and the risks associated with it; and

(d) for each counterparty, must take account of the overall counterparty risk exposure of the undertaking to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

(7) An insurance or reinsurance undertaking must calculate the capital requirement for counterparty default risk in accordance with the following formula–

$$SCR_{def} = \sqrt{SCR_{(def,1)}^2 + 1.5 \cdot SCR_{(def,1)} \cdot SCR_{(def,2)} + SCR_{(def,2)}^2}$$

where–

(a) SCR(def,1) denotes the capital requirement for counterparty default risk on type 1 exposures as set out in sub-regulation (8); and

(b) SCR(def,2) denotes the capital requirement for counterparty default risk on type 2 exposures as set out in sub-regulation (9).

(8) An insurance or reinsurance undertaking must treat exposures in relation to the following as type 1 exposures–

(a) risk-mitigation contracts including reinsurance arrangements, special purpose vehicles and insurance securitisations;

(b) cash at bank as referred to in the Financial Services (Insurance Companies) (Accounts) Regulations 2021;

(c) deposits with ceding undertakings where the number of single name exposures does not exceed 15;

(d) commitments received by the undertaking which have been called up but are unpaid, where the number of single name exposures does not exceed 15, including called up but unpaid ordinary share capital and preference shares, called up but unpaid legally binding commitments to subscribe and pay for subordinated liabilities, called up but unpaid initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings, called up but unpaid guarantees, called up but unpaid letters of credit, called up but

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unpaid claims which mutual or mutual-type associations may have against their members by way of a call for supplementary contributions;

(e) legally binding commitments which the undertaking has provided or arranged and which may create payment obligations depending on the credit standing or default of a counterparty including guarantees, letters of credit and letters of comfort; and

(f) derivatives other than credit derivatives covered in the spread risk sub-module.

(9) An insurance or reinsurance undertaking must treat all credit exposures which are not covered in the spread risk sub-module and which are not type 1 exposures as type 2 exposures, including the following–

(a) receivables from intermediaries;

(b) policyholder debtors;

(c) mortgage loans which meet the requirements in Article 191(2) to (13) of the Solvency 2 Technical Standards;

(d) deposits with ceding undertakings where the number of single name exposures exceeds 15; and

(e) commitments received by the undertaking which have been called up but are unpaid as referred to in sub-regulation (8)(d), where the number of single name exposures exceeds 15.

(10) An insurance or reinsurance undertaking may, at its discretion, consider all exposures referred to in sub-regulation (9)(d) and (e) as type 1 exposures, regardless of the number of single name exposures.

(11) Where a letter of credit, a guarantee or an equivalent risk mitigation technique has been provided to fully secure an exposure and this risk mitigation technique complies with the requirements of Articles 209 to 210 and 211 to 215 of the Solvency 2 Technical Standards, the insurance or reinsurance undertaking may treat the provider of that letter of credit, guarantee or equivalent risk mitigation technique as the counterparty on the secured exposure for the purposes of assessing the number of single name exposures.

(12) An insurance or reinsurance undertaking must not include the following credit risks in the counterparty default risk module–

(a) the credit risk transferred by a credit derivative;

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(b) the credit risk on debt issuance by special purpose vehicles;

(c) the underwriting risk of credit and suretyship insurance or reinsurance as referred to in lines of business 9, 21 and 28 of Schedule 1 of the Solvency 2 Technical Standards;

(d) the credit risk on mortgage loans which do not meet the requirements in Article 191(2) to (9) of the Solvency 2 Technical Standards; and

(e) the credit risk on assets posted as collateral to a CCP or a clearing member that are bankruptcy remote.

(13) An insurance or reinsurance undertaking must treat investment guarantees on contracts of insurance provided to policy holders by a third party and for which the insurance or reinsurance undertaking would be liable should the third party default as derivatives in the counterparty default risk module.

Calculation of equity risk sub-module: symmetric adjustment mechanism.

96.(1) The equity risk sub-module calculated in accordance with the standard formula must include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

(2) The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with regulation 94(4), covering the risk arising from changes in the level of equity prices must be based on a function of the current level of an appropriate equity index and a weighted average level of that index, and that weighted average must be calculated over an appropriate period of time which must be the same for all insurance and reinsurance undertakings.

(3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices must not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Duration-based equity risk sub-module.

97.(1) Where, in circumstances falling within sub-regulation (2), a life insurance undertaking provides retirement benefits –

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(a) which are paid by reference to reaching, or the expectation of reaching, retirement; and

(b) where the premiums paid for those benefits have a tax deduction which is authorised to policy holders by the law of Gibraltar,

the GFSC may authorise the undertaking to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure over a time period which is consistent with a typical holding period of equity investments for the undertaking, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91 where the approach provided for in this sub-regulation is used only in respect of those assets and liabilities referred to in sub-regulation (2)(a).

(2) The circumstances referred to in sub-regulation (1) are where–

(a) all assets and liabilities corresponding to the business of the undertaking are ring-fenced, managed and organised separately from the other activities of the, undertaking without any possibility of transfer;

(b) the activities of the undertaking related to sub-regulation (1)(a) and (b), in relation to which the approach referred to in that sub-regulation is applied, are pursued only in Gibraltar; and

(c) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years.

(3) In the calculation of the Solvency Capital Requirement, those assets and liabilities must be fully considered for the purposes of assessing the diversification effects, without limiting the need to safeguard the interests of policy holders and beneficiaries.

(4) Subject to the approval of the GFSC, the approach set out in sub-regulation (1) must be used only where the solvency and liquidity positions as well as the strategies, processes and reporting procedures of the undertaking with respect to asset-liability management are such as to ensure, on an on-going basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking.

(5) The undertaking must be able to demonstrate to the GFSC that the condition in sub-regulation (4) is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91.

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(6) An undertaking must not revert to applying the approach set out in regulation 95 other than in duly justified circumstances and subject to the approval of the GFSC.

Capital requirement for operational risk.

98.(1) The capital requirement for operational risk–

(a) must reflect operational risks to the extent they are not already reflected in the risk modules referred to in regulation 94; and

(b) must be calibrated in accordance with regulation 91(3).

(2) With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk must take account of the amount of annual expenses incurred in respect of those insurance obligations.

(3) With respect to insurance and reinsurance operations other than those in sub-regulation (2), the calculation of the capital requirement for operational risk must take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations; and in that case, the capital requirement for operational risks must not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations; and must comply with sub-regulation (4).

(4) An insurance or reinsurance undertaking must calculate the capital requirement for the operational risk module in accordance with the following formula–

$$SCR_{Operational} = min(0.3 \cdot BSCR; Op) + 0.25 \cdot Exp_{ul}$$

where–

(a) BSCR denotes the Basic Solvency Capital Requirement;

(b) *Op* denotes the basic capital requirement for operational risk as referred to in sub-regulation (5); and

(c) Exp_{ul} denotes the amount of expenses incurred during the previous 12 months in respect of life insurance contracts where the investment risk is borne by policyholders.

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(5) An insurance or reinsurance undertaking must calculate the basic capital requirement for operational risk in accordance with the following formula–

$$Op = max\left(Op_{premiums}; Op_{provisions}\right)$$

where–

(a) $Op_{premiums}$ denotes the capital requirement for operational risk based on earned premiums; and

(b) $Op_{provisions}$ denotes the capital requirement for operational risk based on technical provisions.

(6) An insurance or reinsurance undertaking must calculate the capital requirement for operational risks based on earned premiums as follows–

$$Op_{premiums} = 0.04 \cdot \left(Earn_{life} - Earn_{life-ul}\right) + 0.03 \cdot Earn_{non-life} + max\left(0; 0.04 \cdot \left(Earn_{life} - 1.2 \cdot pEarn_{life} - \left(Earn_{life-ul} - 1.2 \cdot pEarn_{life-ul}\right)\right)\right) + max\left(0; 0.03\left(Earn_{non-life} - 1.2 \cdot pEarn_{non-life}\right)\right)$$

where–

(a) Earnlife denotes the premiums earned during the last 12 months for life insurance and reinsurance obligations, without deducting premiums for reinsurance contracts;

(b) Earnlife-ul denotes the premiums earned during the last 12 months for life insurance and reinsurance obligations where the investment risk is borne by the policyholders without deducting premiums for reinsurance contracts;

(c) Earnnon-life denotes the premiums earned during the last 12 months for non-life insurance and reinsurance obligations, without deducting premiums for reinsurance contracts;

(d) pEarnlife denotes the premiums earned during the 12 months prior to the last 12 months for life insurance and reinsurance obligations, without deducting premiums for reinsurance contracts;

(e) pEarnlife-ul denotes the premiums earned during the 12 months prior to the last 12 months for life insurance and reinsurance obligations where the investment risk is borne by the policyholders without deducting premiums for reinsurance contracts; and

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(f) pEarnnon-life denotes the premium earned during the 12 months prior to the last 12 months for non-life insurance and reinsurance obligations, without deducting premiums for reinsurance contracts.

For the purposes of this sub-regulation, earned premiums must be gross, without deduction of premiums for reinsurance contracts.

(7) An insurance or reinsurance undertaking must calculate the capital requirement for operational risk based on technical provisions in accordance with the following formula–

$$Op_{provisions} = 0.0045 \cdot max(0; TP_{life} - TP_{life-ul}) + 0.03 \cdot max(0; TP_{non-life})$$

where–

(a) TP_{life} denotes the technical provisions for life insurance and reinsurance obligations;

(b) $TP_{life-ul}$ denotes the technical provisions for life insurance obligations where the investment risk is borne by the policy holders; and

(c) $TP_{non-life}$ denotes the technical provisions for non-life insurance and reinsurance obligations.

For the purposes of this sub-regulation, technical provisions must not include the risk margin, and must be calculated without deduction of recoverables from reinsurance contracts and special purpose vehicles.

Adjustment for loss-absorbing capacity of technical provisions and deferred taxes.

99.(1) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes as referred to in regulation 93(c) must–

(a) reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two;

(b) take account of the risk mitigating effect provided by future discretionary benefits of contracts of insurance; and

(c) represent the sun of–

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(i) the adjustment for the loss-absorbing capacity of technical provisions calculated in accordance with sub-regulations (5) to (7); and

(ii) the adjustment for the loss-absorbing capacity of deferred taxes calculated in accordance with sub-regulations (8) to (14) and, if applicable, sub-regulations (15) to (17).

(2) For the purpose of sub-regulation (1)(b),

(a) an insurance or reinsurance undertaking must take account of the risk mitigating effect provided by future discretionary benefits to the extent that it can establish that a reduction in future discretionary benefits may be used to cover unexpected losses when they arise;

(b) the risk-mitigating effect provided by future discretionary benefits must be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits; and

(c) the value of future discretionary benefits under adverse circumstances must be compared to the value of those benefits under the underlying assumptions of the best-estimate calculation.

(3) *Omitted*.

(4) *Omitted*.

(5) An insurance or reinsurance undertaking must calculate the adjustment for the loss-absorbing capacity of technical provisions in accordance with the following formula—

$$Adj_{TP} = -max(min(BSCR - nBSCR; FDB); 0)$$

where–

(a) BSCR denotes the Basic Solvency Capital Requirement;

(b) nBSCR denotes the net Basic Solvency Capital Requirement calculated in accordance with sub-regulation (6); and

(c) FDB denotes the technical provisions without risk margin in relation to future discretionary benefits.

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(6) The net Basic Solvency Capital Requirement is the Basic Solvency Capital Requirement calculated in accordance with all the following modifications–

(a) where the calculation of a module or sub-module of the Basic Solvency Capital Requirement is based on the impact of a scenario on an insurance or reinsurance undertaking's basic own funds, the undertaking must assume that the scenario can change the value of the future discretionary benefits included in technical provisions;

(b) the scenario based calculations of the life underwriting risk module, the SLT health underwriting risk sub-module, the health catastrophe risk sub-module, the market risk module and the counterparty default risk module as well as the scenario-based calculation set out in paragraphs (c) and (d) must take into account the impact of the scenario on future discretionary benefits included in technical provisions and this must be done on the basis of assumptions on future management actions that comply with Article 23 of the Solvency 2 Technical Standards;

(c) instead of the capital requirement for counterparty default risk on type 1 exposures referred to in regulation 95(7), the calculation must be based on the capital requirement that is equal to the loss in the insurance or reinsurance undertaking's basic own funds that would result from an instantaneous loss, due to default events relating to type 1 exposures referred to in regulation 95(8), of the amount of the capital requirement for counterparty default risk on type 1 exposures referred to in regulation 95(7); and

(d) where an insurance or reinsurance undertaking uses a simplified calculation for a specific capital requirement as set out in Articles 91, 92, 93, 94, 95(1), 95(2), 96, 101, 103(1)(a), 103(1)(b) or 104 of the Solvency 2 Technical Standards, the undertaking must base the calculation on the capital requirement that is equal to the loss in its basic own funds that would result from an instantaneous loss of the amount of the capital requirement referred to in the relevant Article and must assume that the instantaneous loss is due to the risk that the capital requirement referred to in that Article captures.

(7) For the purposes of sub-regulation (6)(b), an insurance or reinsurance undertaking must take into account any legal, regulatory or contractual restrictions in the distribution of future discretionary benefits.

(8) An insurance or reinsurance undertaking must calculate the adjustment for the loss-absorbing capacity of deferred taxes as equal to the change in the value of deferred taxes that would result from an instantaneous loss of an amount that is equal to the sum of the following–

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(a) the Basic Solvency Capital;

(b) the adjustment for the loss-absorbing capacity of technical provisions referred to in sub-regulations (5) to (7); and

(c) the capital requirement for operational risk as set out in regulation 98(1) to (7).

(9) For the purposes of sub-regulation (8), deferred taxes must be valued in accordance with Article 15(1) and (2) of the Solvency 2 Technical Standards , without prejudice to sub-regulations (10) and (15) to (17).

(10) Where the loss referred to in sub-regulation (8) would result in the increase in the amount of deferred tax assets, an insurance or reinsurance undertaking must not utilise that increase for the purposes of calculating the adjustment referred to in sub-regulation (8), unless sub-regulations (15) to (17) apply.

(11) An insurance or reinsurance undertaking may assume the implementation of future management actions following the loss referred to in sub-regulation (8), provided that the provisions set out in Article 23 of the Solvency 2 Technical Standards are complied with.

(12) For the purposes of sub-regulation (8), a decrease in deferred tax liabilities or an increase in deferred tax assets must result in a negative adjustment for the loss-absorbing capacity of deferred taxes.

(13) Where the calculation of the adjustment in accordance with sub-regulation (8) results in a positive change of deferred taxes, the adjustment must be nil.

(14) Where it is necessary to allocate the loss referred to in sub-regulation (8) to its causes in order to calculate the adjustment for the loss-absorbing capacity of deferred taxes, an insurance or reinsurance undertaking must–

(a) allocate the loss to the risks that are captured by the Basic Solvency Capital Requirement and the capital requirement for operational risk;

(b) make that allocation consistent with the contribution of the modules and sub-modules of the standard formula to the Basic Solvency Capital Requirement; and

(c) where an insurance or reinsurance undertaking has an internal model approval to use a partial internal model and where the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes is not within the scope of the partial internal model, make that allocation consistent with the contribution of the

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modules and sub-modules of the standard formula which are outside of the scope of the partial internal model to the Basic Solvency Capital Requirement.

(15) For a transitional period ending on 30th December 2025, where the loss referred to in sub-regulation (8) would result in an increase in the amount of deferred tax assets, an insurance or reinsurance undertaking may utilise that increase for the purposes of calculating the adjustment referred to in regulation 99(8), if all of the following requirements are met–

(a) it is probable that future taxable profit will be available against which that increase can be utilised;

(b) the undertaking has determined that the requirement in (a) is met based on an assessment that–

(i) takes account of all of the matters referred to in sub-regulation (16); and

(ii) uses assumptions that comply with the requirements in sub-regulation (17);

(c) the undertaking has documentary evidence explaining how the requirements in (a) and (b) are met and can provide that evidence to the GFSC, if the GFSC requests it; and

(d) the undertaking has given the GFSC advance notice in writing that it proposes to utilise an increase in deferred tax assets in accordance with this sub-regulation.

(16) The relevant matters for the purpose of sub-regulation (15)(b)(i) are–

(a) any legal or regulatory requirements on the time limits relating to the carry-forward of unused tax losses or the carry-forward of unused tax credits;

(b) the magnitude of the loss referred to in regulation 99(8) and its impact on the current and future financial situation and on insurance product pricing, market profitability, insurance demand, reinsurance coverage and all other relevant macro-economic variables; and

(c) the increased uncertainty in future profit following the loss referred to in regulation 99(8), as well as the increasing degree of uncertainty relating to future taxable profit following that loss, as the projection horizon becomes longer.

(17) The relevant requirements for the purpose of sub-regulation (15)(b)(i) are–

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(a) an insurance or reinsurance undertaking must not assume new business sales in excess of those projected for the purposes of the business planning;

(b) an insurance or reinsurance undertaking must not assume new business sales after the end of the business planning horizon and, for this purpose, a business planning horizon must not exceed five years;

(c) the rates of return on the investments following the loss referred to in regulation 99(8) must be assumed to be equal to the implicit returns of the forward rates derived from the relevant risk-free interest rate term structure obtained after that loss, unless the insurance or reinsurance undertaking is able to demonstrate that returns in excess of those implicit returns are likely;

(d) where an insurance or reinsurance undertaking sets a projection horizon for profits from new business that is longer than its business planning horizon, it must–

(i) set a finite projection horizon–

(ii) apply appropriate haircuts to the profits from new business projected beyond the business planning horizon;

(iii) assume that such haircuts increase the further into the future the profits are projected; and

(e) an insurance or reinsurance undertaking must not apply assumptions that are more favourable than those used for valuation and utilisation of deferred tax assets in accordance with Article 15 of the Solvency 2 Technical Standards.

Standard formula: simplification and modification.

100.(1) An insurance or reinsurance undertaking may use a simplified calculation for a specific sub-module or risk module where–

(a) the nature, scale and complexity of the risks the undertaking faces justifies it; and

(b) it would be disproportionate to require all undertakings to apply the standardised calculation.

(2) Simplified calculations must be calibrated in accordance with regulation 91(3).

(3) Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 99 and sub-regulation (1)) because

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the risk profile of an undertaking deviates significantly from the assumptions underlying the standard formula calculation, the GFSC may direct the undertaking to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in with regulation 94(7).

(4) Those specific parameters must be calculated in such a way as to ensure that the undertaking complies with regulation 91(3).

(5) A direction under sub-regulation (3) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

Internal models

General provisions for approval of full and partial internal models.

101.(1) An insurance or reinsurance undertaking may calculate its Solvency Capital Requirement using an internal model that is either a full internal model or a partial internal model only–

(a) if it has been given an internal model approval in respect of that internal model; and

(b) to the extent of its internal model approval.

(2) An undertaking that has been given internal model approval must calculate its Solvency Capital Requirement using the internal model for which approval has been given.

(3) In these regulations "internal model approval" mean approval given by the GFSC to an undertaking under this regulation and in accordance with regulation 276A for the purpose of using an internal model to calculate all or part of its Solvency Capital Requirement and making changes to that internal model.

(4) An application for internal model approval must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(5) The GFSC may–

(a) give approval;

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(b) give approval subject to conditions; or

(c) refuse approval.

(6) The GFSC may at any time vary or revoke an internal model approval.

Specific provisions for approval of full and partial internal models.

101A.(1) An insurance or reinsurance undertaking applying for an internal model approval must either–

(a) confirm to the GFSC in writing and submit, as a minimum, documentary evidence that demonstrates that the internal model and, if the context requires, the undertaking satisfies regulation 91(3) to (5) and the internal model requirements; or

(b) identify any of the requirements in regulation 91(3) to (5) and any internal model requirements that are not satisfied by the internal model or, if the context requires, the undertaking, explain to the GFSC in writing why and in what way they are not satisfied and submit, as a minimum, documentary evidence demonstrating that the internal model or, if the context requires, the undertaking satisfies all other requirements in regulation 91(3) to (5) and internal model requirements.

(2) An undertaking applying for an internal model approval must demonstrate to the GFSC that its systems for identifying, measuring, monitoring, managing and reporting risk are adequate.

(3) When applying for an internal model approval, the undertaking must submit its internal model change policy to the GFSC.

(4) An undertaking with an internal model approval must be able to provide the GFSC, at its request, with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula.

Specific provisions for approval of partial internal models.

102.(1) Where an internal model approval application relates to the use of a partial internal model, the internal model requirements apply with any changes that are necessary to take account of the limited scope of the internal model.

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(2) An insurance or reinsurance undertaking applying for approval to use a partial internal model must–

(a) explain, and properly justify, the reason for the limited scope of the internal model;

(b) explain how the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and complies with regulations 90 to 92; and

(c) demonstrate that the design of its partial internal model is consistent with the principles in regulations 90 to 92 so as to allow the capital requirement generated by the partial internal model to be fully integrated into the standard formula Solvency Capital Requirement.

Transitional plan to extend the scope of the model.

102A.(1) An insurance or reinsurance undertaking which has applied for an internal model approval in respect of a partial internal model that only covers certain sub-modules of a specific risk module, or some of the business units of the undertaking with respect to a specific risk module, or parts of both, must be able to, upon request by the GFSC, submit a realistic transitional plan to extend the scope of the proposed partial internal model.

(2) The realistic transitional plan referred to in sub-regulation (1) must set out the manner in which the undertaking plans to extend the scope of the proposed partial internal model to other sub-modules or business units of the undertaking, in order to ensure that the internal model covers a predominant part of the undertaking's insurance business with respect to that specific risk module.

Transitional plan to reduce the scope of the model.

102B.(1) Where an insurance or reinsurance undertaking is failing or likely to fail to satisfy the requirements in regulations 39(1), 102C or 108(3), the undertaking must be able to, upon request by the GFSC, submit a realistic transitional plan to reduce the scope of its internal model, such that the internal model no longer covers–

(a) the risks contained in one or more major business units; or

(b) certain sub-modules of a specific risk module, or some of the business units of the undertaking with respect to a specific risk module, or parts of both,

in respect of which deficiencies arise.

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Internal model safeguards.

102C.(1) An insurance or reinsurance undertaking must make all reasonable efforts to remedy the residual model limitation that led to the imposition of an internal model safeguard.

(2) An undertaking must be able to, upon request by the GFSC, submit a progress report to the GFSC setting out the measures taken, and the progress made, pursuant to sub-regulation (1).

Policy for changing full and partial internal models.

103.(1) An insurance or reinsurance undertaking with internal model approval must not change its internal model otherwise than in accordance with the undertaking's internal model change policy that is covered by the undertaking's internal model approval.

(2) An undertaking's internal model change policy must include a specification of minor and major changes to the internal model and, to the extent the undertaking applies model limitation adjustments within the internal model for which it has approval, an explanation of governance arrangements for their application, including where they are specified as minor and major changes and the reasons they are specified as such.

(3) An undertaking with internal model approval must not–

(a) make any major change to its internal model; or

(b) make any change to its internal model change policy, other than those allowed by sub-regulation (4),

without obtaining the prior approval of the GFSC to vary the undertaking's internal model approval.

(4) An undertaking with internal model approval may make changes to its internal model change policy which are administrative in nature, and do not–

(a) make substantive changes to the process set out in the internal model change policy; or

(b) affect the outcome or scope of the internal model change policy.

(5) An undertaking that applies to the GFSC for prior approval to vary its internal model approval in order to make any major change to its internal model or to make a change to its

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internal model change policy must apply in accordance with the procedures set out in regulations 101A to 102A for obtaining internal model approval.

(6) For the purpose of sub-regulation (5), if an undertaking applying to the GFSC has an internal model approval that modifies any of the internal model requirements applicable to that undertaking, it must also submit documentary evidence for the purposes of regulation 101A(1)(a) or (b) by reference to the unmodified internal model requirements, and the undertaking must also–

(a) confirm, in accordance with 101A(1)(a); or

(b) explain, in accordance with 101A(1)(b),

by reference to the unmodified internal model requirements.

Integration of partial internal models.

103A.(1) Unless sub-regulation (2) or (3) applies, an insurance or reinsurance undertaking must use as a default integration technique the correlation matrices and formulae of the standard formula set out in Schedule 4 and Chapter 5 of Part 1 of the Solvency 2 Technical Standards, in order to fully integrate the capital requirement generated by a partial internal model into the standard formula Solvency Capital Requirement.

(2) Unless sub-regulation (3) applies, where it would not be appropriate to use the default integration technique referred to in sub-regulation (1) for any of the reasons referred to in sub-regulation (5), an undertaking must use the most appropriate integration technique of those set out in Schedule 5 and be able to explain and justify its choice.

(3) If the default integration technique referred to in sub-regulation (1) and all integration techniques set out in Schedule 5 are inappropriate for one or more reasons referred to in sub-regulation (5), an undertaking may use an alternative integration technique that is appropriate and must be able to explain and justify its choice.

(4) An undertaking must ensure that the alternative integration technique referred to in sub-regulation (3) that it uses results in a Solvency Capital Requirement that complies with the principles set out in regulations 90 to 92 and 101 to 114 and more appropriately reflects the risk profile of the undertaking.

(5) An integration technique must not be appropriate where any of the following conditions applies–

(a) the resulting Solvency Capital Requirement would not comply with regulation 91;

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(b) the resulting Solvency Capital Requirement would not appropriately reflect the risk profile of the undertaking; or

(c) the design of the partial internal model is consistent with the principles set out in regulations 91 and 92 but it would not be possible to use the integration technique to fully integrate the capital requirement generated by the partial internal model into the standard formula Solvency Capital Requirement.

Responsibilities of administrative, management or supervisory bodies.

104.(1) An insurance or reinsurance undertaking's administrative, management or supervisory body must approve–

(a) any application to the GFSC for internal model approval; and

(b) any application to the GFSC for approval to vary its internal model approval in order to make a major change to its internal model.

(2) An undertaking's administrative, management or supervisory body is responsible for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Reversion to standard formula

105. An insurance or reinsurance undertaking which has received approval for an internal model in accordance with regulation 101 must not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100) other than in duly justified circumstances and subject to the prior approval of the GFSC.

Non-compliance of internal model.

106.(1) If, after having received approval from the GFSC to use an internal model, an insurance or reinsurance undertaking ceases to comply with the requirements set out in regulations 108 to 113, it must, without delay–

(a) present to the GFSC a plan to restore compliance within a reasonable period; or

(b) demonstrate to the GFSC's satisfaction that the effect of non-compliance is immaterial.

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(2) Where the undertaking presents but fails to implement a plan under sub-regulation (1)(a), the GFSC may require the undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100).

Significant deviations from assumptions underlying standard formula calculation.

107.(1) Where, because an insurance or reinsurance undertaking's risk profile deviates significantly from the assumptions underlying the standard formula calculation, the GFSC considers it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula (as set out in regulations 93 to 100), the GFSC may direct the undertaking to use an internal model to calculate the Solvency Capital Requirement or the relevant risk modules.

(2) A direction under sub-regulation (1) must be given to the undertaking by notice in writing which includes the GFSC's reasons for giving it.

Use test.

108.(1) An insurance or reinsurance undertaking must demonstrate that its internal model is widely used in and plays an important role in the undertaking's system of governance referred to in regulations 43 to 50, and in particular, in its–

(a) risk-management system as set out in regulation 45 and its decision-making processes; and

(b) economic and solvency capital assessment and allocation processes, including the assessment referred to in regulation 46.

(1A) An internal model must not be considered to be widely used in or to play an important role in the system of governance of an undertaking where the quantifications of risks and the risk ranking produced by the internal model do not trigger timely and appropriate risk management actions, where relevant.

(2) In addition, the undertaking must demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which it uses its internal model for the other purposes covered by sub-regulation (1).

(3) The undertaking's administrative, management or supervisory body must be responsible for ensuring the ongoing appropriateness of the design and operations of its internal model, and that the internal model continues to appropriately reflect the undertaking's risk profile.

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(4) An undertaking must ensure that the design of the internal model is aligned with its activities, including by ensuring that–

(a) the internal model is capable of producing outputs that are sufficiently granular to play an important role in the relevant management decisions of the undertaking; and

(b) as a minimum, the outputs of the internal model differentiate between lines of business, between risk categories and between major business units.

(5) An undertaking must ensure that the internal model change policy provides that the internal model is to be adjusted for changes in the scope or nature of the activities of the undertaking.

(6) Subject to sub-regulation (1), where an undertaking decides not to use the internal model for a part of the system of governance, the undertaking must notify the GFSC and justify that decision.

(7) Where the internal model is used for different purposes, an undertaking must ensure consistency between the different outputs of the internal model.

(8) An undertaking must ensure that its administrative, management or supervisory body and any other persons who effectively run the undertaking have a sufficient understanding of the internal model which comprises knowledge about all of the following–

(a) the structure of the internal model and the way the internal model fits to the business and is integrated in the risk-management system of the undertaking;

(b) the scope and purposes of the internal model and the risks that are or are not included in the coverage of the internal model;

(c) the general methodology applied in the internal model calculations;

(d) the limitations of the internal model;

(e) the diversification effects taken into account in the internal model; and

(f) the material expert judgements used to set assumptions underlying the internal model.

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(9) An undertaking must ensure that the persons who effectively run the undertaking have a sufficiently detailed understanding of the parts of the internal model used in the area for which they are responsible.

(10) In order to meet the requirements in sub-regulation (2), the undertaking may use a simplified calculation of the Solvency Capital Requirement, in which it carries out only a part of the calculations usually necessary to determine the Solvency Capital Requirement, if and to the extent that the undertaking–

(a) uses results from the previous calculation of the Solvency Capital Requirement for the remaining part of the calculation;

(b) is able to demonstrate upon request by the GFSC that the results taken from the previous calculation of the Solvency Capital Requirement would not be materially different from the results of a new calculation; and

(c) does not use a simplified calculation of the Solvency Capital Requirement for the purposes of meeting regulation 92.

Statistical quality standards.

109.(1) An insurance or reinsurance undertaking's internal model and, in particular, the calculation of the probability distribution forecast generated by it, must comply with the criteria in sub-regulations (2) to (13).

(2) The methods used to calculate the probability distribution forecast–

(a) must be based on adequate, applicable and relevant actuarial and statistical techniques;

(b) must be consistent with the methods used to calculate technical provisions, except where this would result in the undertaking failing to comply with sub-regulation (7); and

(c) must be based on current and credible information and realistic assumptions that make adequate allowance for uncertainty,

(2A) The undertaking must be able to justify the assumptions underlying its internal model to the GFSC.

(3) Data used for the internal model must be accurate, complete and appropriate.

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(3A) Data used in the internal model must only be deemed complete for the purposes of sub-regulation (3) where data are available for all relevant internal model parameters and no such relevant data are excluded from use in the internal model without justification.

(4) The undertaking must update the data sets used in the calculation of the probability distribution forecast at least annually, and collect, process and apply data in a transparent and structured manner.

(5) The GFSC must not prescribe a particular method for the calculation of the probability distribution forecast.

(6) Regardless of the calculation method chosen, the undertaking must ensure that the ability of the internal model to rank risk is sufficient to ensure that it is widely used in and plays an important role in its system of governance, in particular its risk-management system and decision-making processes, and capital allocation in accordance with regulation 108.

(7) The internal model must cover all of the material risks to which the undertaking is exposed and must cover at least the risks set out in regulation 91(5).

(7A) For the purposes of sub-regulation (7), an undertaking must assess, at least on a quarterly basis, whether the internal model covers all material quantifiable risks within its scope. The assessment must take into account an appropriate set of qualitative and quantitative indicators.

(7B) The qualitative indicators referred to in sub-regulation (7A) must include any risks identified in the ORSA that are not included in the coverage of the internal model.

(8) An undertaking's internal model must only take into account–

(a) as regards diversification effects, dependencies within and across risk categories, if the undertaking's system for measuring those diversification effects is adequate;

(b) the effect of risk-mitigation techniques, if and to the extent that credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected (in accordance with sub-regulation (14) in the internal model; and

(c) future management actions, if and to the extent that–

(i) they are future management actions that the undertaking would, in a manner consistent with Article 23 of the Solvency 2 Technical Standards, applied in the context of this Part, reasonably expect to carry out in specific circumstances; and

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(ii) the undertaking makes allowance in its internal model for the time and expenses necessary to implement those actions.

(9) *Omitted*

(10) The undertaking must accurately assess–

(a) the particular risks associated with financial guarantees and any contractual options in its internal model, where material; and

(b) the risks associated with both policy holder options and contractual options and, for that purpose, must take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

(11) *Omitted*

(12) In its internal model, the undertaking must take account of all payments to policy holders and beneficiaries which it expects to make, whether or not those payments are contractually guaranteed.

(13) An undertaking's system used for measuring diversification effects referred to in sub-regulation (8)(a) must only be considered adequate where it–

(a) identifies the key variables driving dependencies; and

(b) takes into account all of the following–

(i) any non-linear dependence and any lack of diversification under extreme scenarios;

(ii) any restrictions of diversification which arise from the existence of a ring-fenced fund or matching adjustment portfolio; and

(iii) the characteristics of the risk measure used in the internal model.

(14) In order to comply with sub-regulation (8)(b), an undertaking must not include risks arising from any of the following situations–

(a) the contractual arrangements relating to the risk-mitigation technique are, in any relevant jurisdiction, not legally effective and enforceable or do not ensure that the transfer of risk is clearly defined and incontrovertible;

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(b) the undertaking does not have a direct claim on the counterparty in the event of the default, insolvency or bankruptcy of the counterparty or other credit event set out in the transaction documentation to the arrangements relating to the risk-mitigation technique; and

(c) the legal arrangements underlying the risk-mitigation technique do not contain an explicit reference to a specific risk exposure clearly defining the extent of the cover provided by the risk-mitigation technique.

(15) Where the risk-mitigation technique referred to in sub-regulation (14)(c) does not cover the risk exposure of the undertaking in all cases, an undertaking must ensure that its internal model takes into account the reduced effectiveness of the risk-mitigation technique resulting from this deviation of risk exposures, in order to comply with sub-regulation (8)(b).

(16) Where a risk-mitigation technique is subject to a condition, the fulfilment of which is outside the direct control of the undertaking and which could undermine the effective transfer of risk, an undertaking must ensure that its internal model takes into account the effect of the condition and any reduced effectiveness of that risk-mitigation technique, in order to comply with sub-regulation (8)(b).

(17) Where an undertaking uses in its internal model parts obtained from a third party, in order for the internal model to be considered adequate the undertaking must be able to demonstrate a sufficient understanding of those parts, including their limitations, such that the undertaking can–

(a) provide meaningful challenge in order to ensure that those parts operate to achieve the overall purpose for which they were developed; and

(b) explain how the operation of those parts enables the internal model and, if the context requires, the undertaking to comply with the internal model requirements and regulation 91(2) and (3).

(18) Where an undertaking uses in its internal model data obtained from a third party, in order for those data to be considered to be appropriate, an undertaking must be able to demonstrate a sufficient understanding of those data, including their limitations.

Calibration standards.

110.(1) An insurance or reinsurance undertaking may use a different time period or risk measure than that set out in regulation 91(3) for internal modelling purposes as long as the outputs of the internal model can be used by the undertaking to calculate the Solvency Capital

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Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in regulation 91.

(2) Where practicable, the undertaking must derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, using the Value-at-Risk measure set out in regulation 91(4).

(3) Where the undertaking cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by its internal model, the GFSC may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as the undertaking can demonstrate to the GFSC that policy holders are provided with a level of protection equivalent to that provided for in regulation 91.

(4) The GFSC may require the undertaking to run its internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

111. *Omitted*

Analysis of change.

111A.(1) An insurance or reinsurance undertaking with internal model approval must annually carry out an analysis comparing the change in–

(a) the undertaking's Solvency Capital Requirement as at the undertaking's most recent financial year end; and

(b) Subject to sub-regulation (2), the undertaking's Solvency Capital Requirement as at the undertaking's previous financial year end.

(2) Where, an undertaking given an internal model approval for the first time which takes effect part way through its financial year, the undertaking must compare its Solvency Capital Requirement as at the end of that financial year with the Solvency Capital Requirement that would have been calculated as at the undertaking's previous financial year end, if the undertaking's internal model approval had taken effect at that time.

(3) The analysis referred to in sub-regulation (1) must include reasons, and documentary evidence to support those reasons, explaining any change in Solvency Capital Requirement.

(4) Commencing with the undertaking's first financial year end on or after 31st December 2025, or if the undertaking first receives an internal model approval which takes effect after

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31st December 2025, commencing with its first financial year end after the date that internal model approval took effect, the undertaking must submit the analysis, reasons and documentary evidence in sub-regulation (1) to (3) to the GFSC as part of the information reported under regulation 37 and Article 2A of the Reporting Technical Standards.

(5) Sub-regulation (1) applies to an undertaking in respect of each of its financial years ending on or after 31st December 2024 or, if the undertaking first receives an internal model approval which takes effect after 31st December 2024, each of its financial years ending on or after the date that internal model approval took effect.

Validation standards.

112.(1) An insurance or reinsurance undertaking must have a regular cycle of model validation which includes–

(a) monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience;

(b) an effective statistical process for validating the internal model which enables the undertaking to demonstrate to the GFSC that the resulting capital requirements are appropriate;

(c) an analysis of the stability of the internal model and, in particular, the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions; and

(d) an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

(2) The statistical methods applied for the purposes of sub-regulation 1(b) must test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating to it.

(3) In order to be able to demonstrate to the GFSC that the resulting capital requirements are appropriate, the undertaking must–

(a) compare the coverage of the internal model with the scope of the internal model; and

(b) ensure that the statistical process for validating the internal model includes stress tests, including a reverse stress test, identifying the most probable stresses that would threaten the viability of the undertaking.

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(4) Where an undertaking observes in accordance with sub-regulations (1)(c) and (d) that changes in a key underlying assumption have a significant impact on the Solvency Capital Requirement, it must be able to explain the reasons for this sensitivity and how the sensitivity is taken into account in its decision making process. For the purposes of sub-regulations (1)(c) and (d) the key assumptions must include assumptions on future management actions and assumptions set using expert judgements.

(5) In order to ensure independence of the internal model validation process from the development and operation of the internal model, an undertaking must ensure that the persons or organisational unit must, when carrying out the internal model validation process, be free from influence from those responsible for the development and operation of the internal model.

Documentation standards.

113.(1) An insurance or reinsurance undertaking must document the design and operational details of its internal model;

(2) That documentation must–

(a) demonstrate compliance with regulations 103A and 108 to 112;

(b) provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model;

(c) indicate any circumstances under which the internal model does not work effectively;

(d) include all major changes to their internal model, as set out in regulation 103; and

(e) in the case of a partial internal model, in addition to the requirements in paragraphs (a) to (d)–

(i) include the justification for the limited scope of the internal model;

(ii) include a description of the integration technique used to fully integrate the capital requirement generated by the partial internal model into the standard formula Solvency Capital Requirement; and

(iii) demonstrate compliance with regulation 102(2)(b) and (c).

External models and data.

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114.(1) The use by an insurance or reinsurance undertaking of a model or data obtained from a third party does not justify exemption from any of the requirements for the internal model set out in regulations 108 to 113.

(2) An insurance or reinsurance undertaking must monitor any potential limitations arising from the use of external models or external data in the internal model to ensure the ongoing fulfilment of regulations 91, 102(2) and 102A, the internal model requirements, and in respect of a partial internal model.

CHAPTER 4
MINIMUM CAPITAL REQUIREMENT

General provisions.

115. An insurance or reinsurance undertaking must hold eligible basic own funds to cover the Minimum Capital Requirement.

Calculation of Minimum Capital Requirement.

116.(1) An insurance or reinsurance undertaking must calculate the Minimum Capital Requirement in accordance with the following principles–

(a) it must be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

(b) it must correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk if the undertaking was allowed to continue its operations;

(c) the linear function referred to in sub-regulation (2) used to calculate the Minimum Capital Requirement must be calibrated to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of 85% over a one-year period;

(d) subject to sub-regulation (1A), it must have an absolute floor of–

(i) £2,400,000 for a non-life insurance undertaking, including a captive insurer, except in the case where all or some of the risks included in one of Classes 10 to 15 are covered, in which case it must be £3,500,000;

(ii) £3,500,000 for a life insurance undertaking, including a captive insurer; or

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(iii) £3,500,000 for a reinsurance undertaking, other than a captive reinsurer, in which case the absolute floor must be £1,200,000.

(1A) For insurance undertakings that have obtained the authorisations referred to in regulation 63(2)(a) and (b) the absolute floor of the Minimum Capital Requirement must be–

(a) the sum of the amounts set out in sub-regulation (1)(d)(i) and (ii); or

(b) where the undertaking's non-life business is limited to Class 1 or 2 and the gross written premiums for either non-life or life insurance business do not exceed 10% of total gross written premiums of the undertaking as a whole, the amount set out in sub-regulation (1)(d)(ii).

(2) Subject to sub-regulation (3), an undertaking's Minimum Capital Requirement must be calculated as a linear function of a set or sub-set of the following variables measured net of reinsurance–

(a) technical provisions;

(b) written premiums;

(c) capital-at-risk;

(d) deferred tax; and

(e) administrative expenses.

(3) Without limiting sub-regulation (1)(d), the Minimum Capital Requirement must neither fall below 25% nor exceed 45% of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter 3 of Part 6. including any capital add-on imposed in accordance with regulation 39.

(4) An undertaking must calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to the GFSC.

(5) An undertaking is not required to calculate the Solvency Capital Requirement on a quarterly basis for the purposes of calculating the limits referred to in sub-regulation (3).

(6) Where either of the limits referred to in sub-regulation (3) determines an undertaking's Minimum Capital Requirement, the undertaking must provide the GFSC with the necessary information to allow the GFSC properly to understand the reasons for that.

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CHAPTER 5
INVESTMENTS

Prudent person principle.

117.(1) An insurance or reinsurance undertaking must invest all its assets in accordance with the prudent person principle, as specified in sub-regulations (2), (3) and (4).

(2) With respect to the whole portfolio of assets–

(a) the undertaking must only invest in assets and instruments whose risks it can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with regulation 46(2)(a);

(b) all assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, must be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole and, in addition, the localisation of those assets must be such as to ensure their availability; and

(c) assets held to cover the technical provisions must also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities and in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective; and

(d) if a conflict of interest arises, the undertaking or any entity which manages its asset portfolio, must ensure that the investment is made in the best interest of policy holders and beneficiaries.

(3) Without limiting sub-regulation (2), with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the following provisions apply–

(a) where the benefits provided by a contract are directly linked to the value of units in a UCITS (as defined in section 292(1) of the Act) or to the value of assets contained in an internal fund held by the undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets;

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(b) where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in sub-regulation (a), the technical provisions in respect of those benefits must be represented as closely as possible–

(i) by the units deemed to represent the reference value; or

(ii) in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based; and

(c) where the benefits referred to in sub-regulations (a) and (b) include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions are subject to sub-regulation (4).

(4) Without limiting sub-regulation (2), the following provisions apply with respect to assets other than those covered by sub-regulation (3)(a) or (b)–

(a) the use of derivative instruments is possible so far as they contribute to a reduction of risks or facilitate efficient portfolio management;

(b) investment and assets which are not admitted to trading on a regulated financial market must be kept to prudent levels;

(c) assets must be properly diversified so as to avoid excessive reliance on any particular asset, issuer or group of entities, or geographical area and excessive accumulation of risk in the portfolio as a whole; and

(d) investments in assets issued by the same issuer, or by issuers belonging to the same group, must not expose the undertaking to excessive risk concentration.

Freedom of investment.

118.(1) Subject to sub-regulation (2), the GFSC must not–

(a) require an insurance or reinsurance undertaking to invest in particular categories of assets; or

(b) subject the undertaking's investment decisions or those of its investment manager to any kind of prior approval or systematic notification requirements.

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(2) The GFSC may restrict the types of assets or reference values to which policy benefits may be linked where the investment risk is borne by a policy holder who is an individual, but any such restriction must not be more restrictive than those set out in the Financial Services (UCITS) Regulations 2020.

Localisation of assets and prohibition of pledging of assets.

119.(1) The GFSC must not require that the assets held to cover the technical provisions related to insurance risks situated in Gibraltar are localised within Gibraltar.

(2) The GFSC must not–

(a) require the localisation within Gibraltar of the assets representing the recoverables from reinsurance contracts; or

(b) retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions,

where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country or territory whose solvency regime is regarded as equivalent to that laid down in the law of Gibraltar.

Saving for Covered Agreement.

119A.(1) Nothing in these Regulations permits or requires the GFSC to apply any provision or exercise any function in a manner which is inconsistent with any condition or obligation of the Covered Agreement.

(2) Where the GFSC is the supervisory authority of an insurer or reinsurer which carries on activities to which the Covered Agreement applies, the GFSC must use all reasonable endeavours to enter into an arrangement with the supervisory authority of the relevant US State for co-operation in the exchange of information in respect of that insurer or reinsurer, substantially in the form of the Memorandum of Understanding set out in the Annex to the Covered Agreement.

(3) The "Covered Agreement" means the Agreement between the United Kingdom and the United States of America on prudential measures regarding insurance and reinsurance (which, by virtue of Article 2(r) of the Agreement, extends to Gibraltar).

PART 7
INSURANCE AND REINSURANCE UNDERTAKINGS IN DIFFICULTY

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Identification and notification of deteriorating financial conditions by the undertaking.

120. An insurance or reinsurance undertaking must have procedures in place to identify deteriorating financial conditions and must immediately notify the GFSC if such a deterioration occurs.

Non-compliance with technical provisions.

121.(1) Where an insurance or reinsurance undertaking does not comply with Regulations 66 to 80 the GFSC may prohibit the free disposal of the undertaking's assets.

(2) The GFSC must designate the assets to which a prohibition under sub-regulation (1) applies.

Non-compliance with Solvency Capital Requirement.

122.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Solvency Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.

(2) Within two months of non-compliance with the Solvency Capital Requirement being observed, the undertaking concerned must submit a realistic recovery plan for approval by the GFSC.

(3) Where sub-regulation (1) applies, the GFSC must require the undertaking concerned to take the necessary steps to achieve, within six months from the observation of non-compliance–

(a) the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement; or

(b) the reduction of its risk profile to ensure compliance with that Requirement.

(4) The GFSC may, if it considers it appropriate, extend the period of six months under sub-regulation (3) by a further three months.

(5) In the event of exceptional adverse situations affecting insurers representing a significant share of the market or of the affected lines of business, the GFSC may extend, for affected insurers, the period set out in sub-regulation (4) by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

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(6) For the purposes of this regulation, the GFSC may, with the consent of the Minister, declare the existence of exceptional adverse situations if insurers representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in sub-regulation (3).

(7) For the purposes of this regulation, exceptional adverse situations exist where the financial situation of insurers representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions–

(a) a fall in financial markets which is unforeseen, sharp and steep;

(b) a persistent low interest rate environment; or

(c) a high-impact catastrophic event.

(8) The GFSC must–

(a) assess on a regular basis whether the conditions in sub-regulation (7) still apply; and

(b) declare when an exceptional adverse situation has ceased to exist.

(9) The undertaking concerned must, every three months, submit a progress report to the GFSC setting out the measures taken and the progress made towards–

(a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or

(b) reducing the risk profile to ensure compliance with that Requirement.

(10) The extension referred to in sub-regulation (5) must be withdrawn where the progress report under sub-regulation (9) shows that, between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report, there was no significant progress in–

(a) re-establishing the level of eligible own funds covering the Solvency Capital Requirement; or

(b) reducing the risk profile to ensure compliance with that Requirement.

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(11) In exceptional circumstances, where the GFSC is of the opinion that the financial situation of the undertaking concerned will deteriorate further, the GFSC–

(a) may exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking's assets; and

(b) where it does so, must designate the assets covered by those measures.

Non-compliance with Minimum Capital Requirement.

123.(1) An insurance or reinsurance undertaking must inform the GFSC immediately if the undertaking observes that the Minimum Capital Requirement is no longer complied with or there is a risk of non-compliance in the following three months.

(2) Within one month of non-compliance with the Minimum Capital Requirement being observed, the undertaking concerned must submit for approval by the GFSC, a realistic short-term finance scheme to, within three months of that observation–

(a) restore the eligible basic own funds at least to the level of the Minimum Capital Requirement; or

(b) reduce its risk profile to ensure compliance with that Requirement.

(3) The GFSC–

(a) may also exercise any relevant powers under the Act or these Regulations to restrict or prohibit the free disposal of the undertaking's assets; and

(b) where it does so, must designate the assets covered by those measures.

(4) Without limiting sub-regulation (3), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

Prohibition of free disposal of assets

Prohibition of free disposal of assets located in Gibraltar.

124.(1) The GFSC may exercise any relevant powers under the Act or these Regulations to prohibit the free disposal of assets located in Gibraltar, in order to assist the supervisory authority of a country or territory outside Gibraltar with which it has reciprocal arrangements for the designation of the assets of insurers or reinsurers.

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(2) Without limiting sub-regulation (1), the steps that the GFSC may take under that sub-regulation include applying for an asset protection order under section 72 of the Act or giving directions under regulation 33.

Supervisory powers in deteriorating financial conditions.

125.(1) Despite regulations 122 and 123, where the solvency position of the undertaking continues to deteriorate, then the GFSC may take such measures as it considers necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

(2) Any measures taken under sub-regulation (1) must be proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

Recovery plan and finance scheme.

126.(1) Both the recovery plan referred to in regulation 122(2) and the finance scheme referred to in regulation 123(2) must include particulars or evidence concerning the following–

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement; and

(e) the overall reinsurance policy.

(2) Where the GFSC has required a recovery plan or a finance scheme in accordance with sub-regulation (1), the GFSC must refrain from issuing a certificate in accordance with section 465(6) of the Act for as long as it considers that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

Cancellation of permission.

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127.(1) The GFSC must cancel the Part 7 permission of an insurance or reinsurance undertaking which does not comply with the Minimum Capital Requirement where–

(a) the undertaking fails to submit a finance scheme in accordance with regulation 123(2);

(b) the GFSC considers that the finance scheme submitted is manifestly inadequate; or

(c) the undertaking fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

(2) Notice of the cancellation of an insurance or reinsurance undertaking's permission (a "cancellation notice") must–

(a) be given in writing;

(b) state the reasons for the cancellation; and

(c) inform the recipient of the right of appeal under sub-regulation (5).

(3) A cancellation notice takes effect immediately unless a later date is specified in the notice.

(4) A decision by the GFSC to issue a cancellation notice is a specified regulatory decision to which section 24(3) of the Act applies.

(5) A person aggrieved by a cancellation notice may appeal to the Supreme Court and, in respect to an appeal under this regulation, section 615 of the Act applies as if the reference–

(a) in subsection (1) to "decision notice other than one to which section 613(4) applies" were a reference to "cancellation notice";

(b) in subsection (2) to "decision notice" were a reference to "cancellation notice"; and

(c) in subsection (6) to "decision notice which under the provisions of this Act takes effect immediately" were a reference to "cancellation notice which takes effect immediately".

(6) *Omitted*.

(7) *Omitted*.

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(8) *Omitted*.

(9) This regulation applies without limiting the GFSC's powers–

(a) to suspend a permission under regulation 35; or

(b) to cancel a permission under section 68 or 69 of the Act.

PART 8
Omitted

128. to 150. *Omitted*.

PART 9
BRANCHES OF THIRD-COUNTRY INSURERS AND REINSURERS

Taking up of business: principle of permission and conditions.

151.(1) Access to the business of direct life and non-life insurance by an undertaking–

(a) which has a head office outside Gibraltar, and

(b) which is or wishes to become established in Gibraltar,

is subject to the undertaking being given Part 7 permission by the GFSC.

(2) The GFSC may give permission where the undertaking fulfils at least the following conditions–

(a) it is entitled to pursue insurance business under the law of the country or territory in which it has its head office;

(b) it establishes a branch in Gibraltar;

(c) it undertakes to set up at the branch's place of management, accounts specific to the business which it pursues there, and to keep there all the records relating to the business transacted;

(d) it designates a general representative, to be approved by the GFSC;

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(e) it possesses in Gibraltar assets of an amount equal to at least 50% of the absolute floor prescribed in regulation 116(1)(d) in respect of the Minimum Capital Requirement and deposits 25% of that absolute floor as security;

(f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements in regulations 90 and 115;

(g) *Omitted*

(h) it submits a scheme of operations in accordance with regulation 152;

(i) it fulfils the governance requirements set out in regulations 43 to 50.

(3) For the purposes of this Part, "branch" means a permanent presence in Gibraltar of an undertaking in sub-regulation (1), which receives permission and pursues insurance business.

Scheme of operations of branch.

152.(1) The scheme of operations referred to in regulation 151(2)(h) must set out the following–

(a) the nature of the risks or commitments which the undertaking proposes to cover;

(b) the guiding principles as to reinsurance;

(c) estimates of the future Solvency Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(d) estimates of the future Minimum Capital Requirement, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement;

(f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under Class 18, the resources available for the provision of the assistance; and

(g) information on the structure of the system of governance.

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(2) In addition to the requirements set out in sub-regulation (1), the scheme of operations must include the following, for the first three financial years–

(a) a forecast balance sheet;

(b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

(c) for non-life insurance–

(i) estimates of management expenses other than installation costs, in particular, current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

(d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

(3) In regard to life insurance, the GFSC may require insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

153. *Omitted*.

Technical provisions.

154.(1) An insurance undertaking which establishes a branch in Gibraltar must establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in Gibraltar, calculated in accordance with Chapter 2 of Part 6.

(2) The undertaking must value assets and liabilities in accordance with regulation 65 and determine own funds in accordance with Chapter 2 of Part 6.

Solvency Capital Requirement and Minimum Capital Requirement.

155.(1) An insurance undertaking which establishes a branch in Gibraltar must hold an amount of eligible own funds consisting of the items referred to in regulation 89(3).

(2) The Solvency Capital Requirement and the Minimum Capital Requirement must be calculated in accordance with these Regulations but, for the purpose of those calculations both

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for life and non-life insurance, account must be taken only of the operations effected by the branch concerned.

(3) The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement must be constituted in accordance with regulation 89(4).

(4) The eligible amount of basic own funds must not be less than half of the absolute floor required under regulation 116(1)(d).

(5) The deposit lodged in accordance with regulation 151(2)(e) must be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(6) The assets representing the Solvency Capital Requirement must be kept in Gibraltar up to the amount of the Minimum Capital Requirement.

156. *Omitted*.

Accounting, prudential and statistical information and undertakings in difficulty.

157. Regulations 32, 123(3), 124 and 125 apply for the purposes of this Part.

Separation of non-life and life business.

158.(1) A branch to which this Part applies must not be given permission to simultaneously pursue life and non-life insurance activities in Gibraltar.

(2) Despite sub-regulation (1), the GFSC may allow branches to which this Part applies that, on 15th March 1979, pursued both activities simultaneously in Gibraltar, to continue to do so if each activity is separately managed in accordance with regulation 64.

(3) If insurance undertakings are directed by an order under regulation 63(7) to cease the simultaneous pursuit in Gibraltar of the activities in which they were engaged on 15th March 1979, the GFSC must also impose this requirement on branches to which this Part applies that, simultaneously pursue both activities in Gibraltar.

159. *Omitted*.

Re-insurance

Equivalence in relation to reinsurance undertakings.

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160. A reinsurance contract concluded with an undertaking which has its head office in a third country must be treated in the same manner as a reinsurance contract concluded with an undertaking authorised in accordance with these Regulations where, in accordance with regulation 238, it is determined that the solvency regime of the third country is equivalent to that required under the law of Gibraltar.

Prohibition on pledging of assets or more favourable treatment.

161. A provision contained in or made under any enactment is void if–

(a) it purports to establish a system of gross reserving which requires pledging of assets to cover unearned premiums or outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency or supervisory regime has been determined to be equivalent to that under these Regulations; or

(b) it purports to apply to third-country reinsurance undertakings taking-up or pursuing reinsurance activity in Gibraltar provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in Gibraltar.

Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings

162. *Omitted*.

PART 10
SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

Compulsory insurance

Related Obligations.

163.(1) Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this regulation.

(2) Where the law of Gibraltar imposes a requirement to have non-life insurance, an insurance contract does not satisfy that requirement unless it complies with the specific provisions relating to that insurance laid down by that law.

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(3) In any case where the law of Gibraltar imposes a requirement to have insurance and requires the insurance undertaking to notify the GFSC of any cessation of cover, that cessation may be invoked against injured third parties only in the circumstances laid down by that law.

(4) *Omitted*.

(5) If, in the case of any particular insurance contract, the law of Gibraltar requires proof that the obligation to take out insurance has been complied with, the insurance undertaking must issue a certificate to an insured person which includes a declaration to the effect that the contract complies with the specific provisions relating to that insurance.

General good

General good.

164. No provision of the law of Gibraltar may prohibit a person from concluding a contract with an insurance undertaking so long as the conclusion of that contract does not conflict with legal provisions protecting the general good in Gibraltar.

Conditions of insurance contracts and scales of premiums

Non-life insurance

165.(1) In relation to non-life insurance, nothing in any enactment (whenever passed) requires the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

(2) Sub-regulation (1) does not apply to any requirement for non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with provisions concerning insurance contracts, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.

(3) In so far as insurance of any description is compulsory, before circulating the general and special condition of the insurance, any undertaking providing it may be required by the GFSC to communicate those conditions to it.

(4) Except as part of general price-control systems, no provision may be made by or under any enactment requiring the retention or introduction of an obligation of prior notification or approval of proposed increases in premium rates.

Life insurance.

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166.(1) The GFSC, in performing its supervisory functions, must not require life insurance undertakings to seek prior approval of or systematically notify–

(a) general and special policy conditions;

(b) scales of premiums;

(c) technical bases used in particular for calculating scales of premiums and technical provisions; or

(d) forms or other printed documents which the undertaking intends to use in its dealings with policy holders.

(2) Sub-regulation (1) does not apply to any requirement for systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions for the purpose of verifying compliance with provisions concerning actuarial principles, where those requirements do not constitute a prior condition for an insurance undertaking to pursue business.

Information for policy holders: non-life insurance

Non-life insurance: general information.

167.(1) Before a non-life insurance contract is concluded, the non-life insurance undertaking must inform the policy holder of the following–

(a) the law applicable to the contract, where the parties do not have a free choice; or

(b) the fact that the parties are free to choose the law applicable and the law the undertaking proposes to choose.

(2) The insurance undertaking must also inform the policy holder of the arrangements for handling policy holders' complaints concerning contracts including, where appropriate, the existence of a complaints body, without limiting the right of the policy holder to take legal proceedings.

(3) The obligations under sub-regulations (1) and (2) apply only where the policy holder is an individual.

168. *Omitted*.

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Life insurance

Life insurance: information for policy holders.

169.(1) Before a life insurance contract is concluded, the life insurance undertaking must communicate the following information to the policy holder–

(a) the name and legal form of the undertaking;

(b) *Omitted*

(c) the address of its head office and, where appropriate, of the branch concluding the contract;

(d) a concrete reference to the report on its solvency and financial condition, as set out in regulation 52, which allows the policy holder easy access to that information;

(e) a definition of each benefit and each option;

(f) the policy conditions, both general and special;

(g) the term of the contract and the means by which it may be terminated;

(h) the method of paying premiums and the duration of the payments;

(i) the method of calculating and distributing of bonuses;

(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;

(k) information on the premiums for each benefit, whether a main benefit or supplementary benefit;

(l) in the case of a contract for a unit-linked policy–

(i) a definition of the units to which the benefits are linked; and

(ii) an indication of the nature of the underlying assets;

(m) information as to–

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(i) the arrangements with respect to the 'cooling off' period in which the policy holder may cancel the contract;

(ii) the tax arrangements applicable to the policy to be effected by the contract;

(iii) the arrangements for handling any complaints concerning the contract (which must apply without limiting the right to take legal proceedings), whether made by the policy holder or a person who is a life assured or beneficiary including, where appropriate, the existence of any complaints body; and

(n) whether the parties are entitled to choose the law applicable to the contract and–

(i) if so, the law that the undertaking proposes to choose; or

(ii) if not, the applicable law.

(2) In addition, specific information must be supplied in order to provide the policy holder with a proper understanding of the risks underlying the contract which are assumed by the policy holder.

(3) The policy holder must be kept informed throughout the term of the contract–

(a) of any change concerning–

(i) the policy conditions, both general and special;

(ii) the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract; or

(iii) the information in sub-regulation (1)(h) to (m) in the event of a change in the policy conditions or amendment of the law applicable to the contract; and

(b) annually, on the state of bonuses.

(4) Where, in connection with an offer for or conclusion of a life insurance contract, other than a term insurance or contract, the undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the undertaking must–

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(a) provide the policy holder with a specimen calculation by which the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest; and

(b) inform the policy holder, in a clear and comprehensible manner, that–

(i) the specimen calculation is only a model of computation based on notional assumptions; and

(ii) the policy holder does not derive any contractual claims from the specimen calculation.

(5) In the case of insurances with profit participation, the undertaking must inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation and, where the undertaking has provided figures about the potential future development of the profit participation, the differences between the actual development and the initial data.

(6) The information in sub-regulations (1) to (5) must be provided in a clear and accurate manner, in writing–

(a) in English; or

(b) in another language if the policy holder so requests and is free to choose the law applicable.

(7) The GFSC may require life insurance undertakings to furnish information in addition to that listed in this regulation, but only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

Cancellation period.

170.(1) A person who has concluded a contract for an individual life insurance policy is entitled to cancel the policy by giving a cancellation notice to the life insurance undertaking within the period of 30 days from the date on which the person is informed that the contract has been concluded.

(2) The giving of a cancellation notice has the effect of releasing the person from any future obligation arising from the contract.

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(3) The other legal effects and the conditions of cancellation are determined by the law applicable to the contract, in particular, as regards the arrangements for informing a person that the contract has been concluded.

(4) Where the law of Gibraltar applies to the contract–

(a) a person is to be regarded as having been informed that a contract has been concluded–

(i) when the policy is delivered to the person; or

(ii) if the policy is sent to that person by post, on the date on which it is posted;

(b) a cancellation notice must clearly indicate that the person has withdrawn from the proposed contract,

(c) a cancellation notice is to be regarded as having been served on the undertaking–

(i) when the notice is delivered to the undertaking; or

(ii) if the notice is sent by post to an address specified by the undertaking, on the date on which it is posted;

(d) the undertaking must refund in full any sums paid in connection with the contract by the person serving the cancellation notice;

(e) in the case of the service of notice of cancellation in respect of a single premium life insurance contract, the undertaking may, when the person has withdrawn from the proposed contract, refund the amount of premium paid less any losses incurred by the undertaking as a result of fluctuations in the financial markets during the period of the validity of the contract.

(5) Sub-regulation (1) does not apply–

(a) to a contract with duration of six months or less;

(b) where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection including where:

(i) the contract is one where none of the proposers or policy holders is an individual;

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(ii) the contract is a contract of creditor insurance effected for the purpose of insuring the repayment of a loan and it is intended that the contract will be assigned or deposited with the lender;

(iii) the contract is a contract of reinsurance.

Provisions specific to non-life insurance

Policy conditions.

171. General and special policy conditions must not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

172. *Omitted*.

Community co-insurance

173. to 178. *Omitted*.

Legal expenses insurance

Legal expenses insurance.

179.(1) This regulation and regulations 180 to 185 ("the legal expenses provisions") apply to legal expenses insurance within Class 17 under which an insurer promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following–

(a) securing compensation for loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings; or

(b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

(2) The legal expenses provisions do not apply to–

(a) legal expenses insurance contracts concerning disputes or risks arising out of, or in connection with, the use of seagoing vessels;

(b) the activity pursued by the insurer providing civil liability cover for the purpose of defending or representing the insured person in any enquiry or proceedings if that

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activity is at the same time pursued in the insurers own interest under such cover; or

(c) legal expenses insurance undertaken by an assistance insurer where that cover is provided under a contract the principal object of which is the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence and where the costs are incurred outside the country or territory (including Gibraltar) in which the insured normally resides.

(3) In a case falling within paragraph (c) of sub-regulation (2), the policy must clearly state that the cover in question is limited to the circumstances referred to in that paragraph and is ancillary to that assistance.

(4) For the purposes of the legal expenses provisions–

"legal expenses insurance business" means insurance business (other than reinsurance business) falling within sub-regulation (1) and "legal expenses insurance contract" and "legal expenses cover" are to be construed accordingly;

"lawyer" means a person entitled to pursue professional legal activities and includes a barrister or solicitor qualified to practice in Gibraltar.

Separate contracts.

180. Legal expenses cover must be–

(a) the subject of a separate policy relating to that cover only, or

(b) dealt with in a separate section of a policy relating to one or more other Classes of insurance, in which the nature of the legal expenses cover is specified.

Management of claims.

181.(1) A Gibraltar insurer carrying on legal expenses insurance business must adopt at least one of the following arrangements for the management of claims.

(2) The insurer must ensure that no member of staff who is concerned with the management of legal expenses claims, or with legal advice in respect of their management, pursues at the same time a similar activity–

(a) in relation to another Class of insurance carried on by the insurer; or

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(b) in another undertaking which has financial, commercial or administrative links with the insurer and carries on one or more of the other Classes of insurance.

(3) The insurer must entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality and which must be mentioned in the separate policy or the separate section of a policy referred to in regulation 180 but, if the undertaking has links to an insurance undertaking which carries on one or more Classes of non-life insurance, members of staff of the undertaking who are concerned with the management of claims or with legal advice connected with their management must not pursue the same or a similar activity in the other insurance undertaking at the same time.

(4) The insurer must, in the policy, provide that the insured person may instruct a lawyer of their choice or, to the extent that the relevant forum so permits, any other appropriately qualified person, from the moment that the insured person has a claim under that policy.

Freedom to choose lawyer.

182. A contract of legal expenses insurance must expressly provide that–

(a) where recourse is had to a lawyer, or other appropriately qualified person to defend, represent or serve the interests of the insured person in any inquiry or proceedings, the insured person is free to choose such lawyer or other person; and

(b) the insured person is free to choose a lawyer or, any other appropriately qualified person, to serve insured person's interests whenever a conflict of interest arises.

Exception to free choice of lawyer.

183.(1) Regulation 182 does not apply where–

(a) the legal expenses cover is limited to cases arising from the use of road vehicles in Gibraltar;

(b) the legal expenses cover is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

(c) neither the legal expenses insurer nor the assistance insurer carries on any Class of liability insurance business; and

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(d) measures are taken so that the legal advice and representation of each party to a dispute is provided by completely independent lawyers where those parties are insured in respect of legal expenses by the same insurer.

(2) The exception in sub-regulation (1) does not affect the application of regulation 181.

Arbitration.

184.(1) Where a dispute arises between the insurer and the insured under a contract of legal expenses insurance, the insured person has the right to refer the dispute to arbitration in accordance with Part I of the Arbitration Act and, for that purpose, these Regulations are an enactment to which section 38 of that Act applies.

(2) The contract must inform the insured person of the right to invoke the arbitration procedure referred to in sub-regulation (1).

(3) This regulation applies without limiting any right of recourse to the courts.

Conflict of interest.

185.(1) Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the insurer and the insured person under a legal expenses insurance contract, the insurance undertaking must give the insured person written notice of–

(a) the right referred to in regulation 182; and

(b) the possibility of having recourse to arbitration in accordance with regulation 184.

(2) Where the management of claims is entrusted to an undertaking having separate legal personality as mentioned in regulation 181(4), the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

186. *Omitted*.

Provisions specific to life insurance

Prohibition on compulsory ceding of part of underwriting.

187. No provision of the law of Gibraltar may require life insurance undertakings to cede part of their underwriting of activities listed in regulation 4(5) to an organisation or organisations designated by that law.

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Premiums for new business.

188.(1) Premiums for new business must be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

(2) For the purposes of sub-regulation (1), all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned on them being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

Rules specific to reinsurance

Finite reinsurance.

189.(1) An insurance or reinsurance undertaking which concludes finite reinsurance contracts or pursue finite reinsurance activities must be able properly to identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

(2) For the purposes of this regulation "finite reinsurance" means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features–

(a) explicit and material consideration of the time value of money; or

(b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Special purpose vehicles.

190.(1) A special purpose vehicle must not be established in Gibraltar without the prior approval by the GFSC.

(2) A special purpose vehicle that was authorised in Gibraltar before 31st December 2015, continues to be subject to the law of Gibraltar under which it was authorised, but any new activity commenced by the special purpose vehicle after that date requires prior approval by the GFSC and is subject to these Regulations, the Solvency 2 Technical Standards and Commission Implementing Regulation (EU) 2015/462 as it forms part of the law of Gibraltar.

PART 11

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SUPERVISION OF GROUP UNDERTAKINGS

Preliminary

Interpretation of Part 11.

191.(1) In this Part–

"ancillary insurance services undertaking" means, in relation to any undertaking in a group, an undertaking which meets the following conditions–

(a) its principal activity consists of–

(i) owning or managing property;

(ii) managing data-processing services;

(iii) providing health and care services; or

(iv) any other similar activity;

(b) that activity is ancillary to the principal activity of one or more insurance undertakings; and

(c) those insurance undertakings are also members of that group;

"college of supervisors" means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;

"common management relationship" means a relationship between two or more undertakings which satisfies the following conditions–

(a) the undertakings are not connected in the manner described in section 276 of, and Schedule 20 to, the Companies Act 2014; and

(b) either–

(i) the undertakings are managed on a unified basis under a contract with one of them, or provisions in the undertakings' respective memoranda or articles of association; or

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(ii) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same persons in office during the financial year in respect of which it is being decided whether such a relationship exists;

"Financial Conglomerates Regulations" means the Financial Services (Financial Conglomerates) Regulations 2020;

"group" means a group of undertakings which–

(a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a common management relationship; or

(b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, which may include one between undertakings that are mutual or mutual-type associations if–

(i) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

(ii) the establishment and dissolution of the relationships are subject to prior approval by the GFSC,

and in such a case, the undertaking exercising the centralised coordination is to be regarded as the parent undertaking, and the other undertakings are to be regarded as subsidiaries;

"insurance holding company" means a parent undertaking which is not an insurance or reinsurance undertaking or a mixed financial holding company, the main business of which is to acquire and hold participations in subsidiary undertakings and which meets the following conditions–

(a) its subsidiary undertakings are either exclusively or mainly–

(i) insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings; or

(ii) the parent undertaking of mainly insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings;

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(b) more than 50% of two or more of–

(i) the parent undertaking's consolidated assets;

(ii) the parent undertaking's consolidated revenues; or

(iii) the group SCR (as if calculated at the level of the parent undertaking),

are derived from subsidiaries that are insurance or reinsurance undertakings, third country insurance or reinsurance undertakings or ancillary insurance services undertakings; and

(c) at least one of those subsidiary undertakings is an insurance or reinsurance undertaking;

"mixed-activity insurance holding company" means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

"mixed financial holding company" means a mixed financial holding company within the meaning of the Financial Conglomerates Regulations;

"participating undertaking" means an undertaking which is either a parent undertaking or another undertaking which holds a participation, or an undertaking linked with another undertaking by a common management relationship;

"related undertaking" means a subsidiary undertaking, another undertaking in which a participation is held or an undertaking linked with another undertaking by a common management relationship; and

"subsidiary undertaking" includes any undertaking over which in the opinion of the GFSC a parent undertaking effectively exercises a dominant influence.

(2) For the purposes of this Part–

(a) an undertaking which, in the opinion of the GFSC, effectively exercises a dominant influence over another undertaking is to be regarded as a parent of that other undertaking and that other undertaking is to be regarded as its subsidiary; and

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(b) the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the GFSC, a significant influence is effectively exercised is to be regarded as participation.

Classification of parent undertakings.

191A.(1) This regulation applies where, as a result of changes to a parent undertaking or within its group, a parent undertaking which is classified as–

(a) an insurance holding company considers that it should be re-classified as a mixed-activity insurance holding company; or

(b) a mixed-activity insurance holding company considers that it should be re-classified as an insurance holding company.

(2) A parent undertaking to which sub-regulation (1) may apply to the GFSC for re-classification by submitting an application–

(a) in the form and manner the GFSC directs; and

(b) which contains or is accompanied by any information the GFSC may reasonably require.

(3) The GFSC, acting under this regulation and in accordance with regulation 276A, may–

(i) give approval for re-classification;

(ii) give approval subject to conditions; or

(ii) refuse approval.

(4) The GFSC may at any time vary or revoke an approval given under sub-regulation (3).

(5) Nothing in the regulation limits the GFSC's power, on its own initiative, to reclassify a parent undertaking where the GFSC considers that it is appropriate to do so.

Application of group supervision.

192.(1) This Part provides for the supervision at group level of insurance and reinsurance undertakings which are part of a group.

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(2) The provisions of these Regulations which apply to insurance and reinsurance undertakings individually also apply to undertakings to which this Part applies, except where this Part provides otherwise.

(3) Supervision at the level of the group applies to–

(a) an insurance or reinsurance undertaking–

(i) which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking; or

(ii) the parent undertaking of which is a UK insurer or reinsurer;

(b) an insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in Gibraltar or the United Kingdom;

(c) an insurance or reinsurance undertaking, the parent undertaking of which is–

(i) an insurance holding company or a mixed financial holding company which has its head office in a third country other than the United Kingdom; or

(ii) a third-country insurance or reinsurance undertaking other than a UK insurer or reinsurer; or

(d) an insurance or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company.

(3A) In sub-regulation (3), a "UK insurer or reinsurer" means an insurance or reinsurance undertaking which–

(a) has its head office in the United Kingdom; and

(b) would require authorisation as an insurance or reinsurance undertaking in accordance with these Regulations if its head office were in Gibraltar.

(4) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a subsidiary undertaking of–

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(a) another insurance or reinsurance undertaking;

(b) another insurance holding company; or

(c) another mixed financial holding company,

which has its head office in Gibraltar or the United Kingdom, regulations 197 to 236 only apply at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in Gibraltar or the United Kingdom.

(5) Where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company referred to in sub-regulation (3)(a) and (b) is a related undertaking of a regulated entity or a mixed financial holding company that has its head office in Gibraltar, and which is subject to supplementary supervision in accordance with regulation 5 of the Financial Conglomerates Regulations, the GFSC may decide not to carry out either or both of–

(a) the supervision of risk concentration referred to in regulation 221; and

(b) the supervision of intra-group transactions referred to in regulation 222.

(6) Where a mixed financial holding company is subject to equivalent provisions under–

(a) these Regulations and the Financial Conglomerates Regulations, in particular in terms of risk-based supervision, the GFSC may apply only the relevant provisions of the Financial Conglomerates Regulations to that mixed financial holding company; and

(b) these Regulations and the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, in particular in terms of risk based supervision, the GFSC may, apply only the provisions of whichever set of those Regulations relates to the most significant sector, determined in accordance with regulation 3(2) of the Financial Conglomerates Regulations.

Scope of group supervision.

193.(1) The GFSC's exercise of group supervision in accordance with regulation 192 does not imply that the GFSC is required to play a supervisory role in relation to a third-country insurance undertaking, a third-country reinsurance undertaking, an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company

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taken individually (without limiting 235 as far as insurance holding companies or mixed financial holding companies are concerned).

(2) The GFSC may decide on a case-by-case basis not to include an undertaking in group supervision under regulation 192 where–

(a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information (without limiting regulation 208);

(b) the undertaking is of negligible interest with respect to the objectives of group supervision (except where several undertakings of the same group which are negligible individually, are not negligible when taken collectively); or

(c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

(2A) An undertaking within a group may be excluded from group supervision if and to the extent that the GFSC–

(a) has on its own initiative so decided; or

(b) on application by the relevant insurance group undertaking, has approved under this regulation and in accordance with regulation 276A.

(2B) An application for approval under sub-regulation (2A)(b) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(2C) The GFSC may–

(i) give approval;

(ii) give approval subject to conditions; or

(ii) refuse approval.

(2D) The GFSC may at any time vary or revoke an approval given under sub- regulation (2A)(b).

(3) *Omitted*.

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(4) Where the GFSC ceases to apply group supervision to an insurance or reinsurance undertaking under sub-regulation (2)(b) or (c), the GFSC may ask the undertaking which is at the head of the group for any information which may facilitate supervision of the insurance or reinsurance undertaking.

Levels

194. to 196. *Omitted*.

Group solvency

Supervision of group solvency.

197.(1) Subject to regulation 225A, the GFSC must supervise group solvency in relation to undertakings to which this Part applies, in accordance with this regulation.

(2) In a case falling within regulation 192(3)(a), participating insurance or reinsurance undertakings must ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with regulations 199 to 212.

(3) In a case falling within regulation 192(3)(b), insurance and reinsurance undertakings in a group must ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with regulation 213.

(4) The GFSC must subject the requirements in sub-regulations (2) and (3) to supervisory review in accordance with regulations 224 to 236, and regulations 120 and 122 apply with any necessary modifications.

Exclusion of special purpose vehicles.

197A.(1) A special purpose vehicle to which a participating undertaking or one of its subsidiaries has transferred risk must be excluded from the calculation of group solvency if the special purpose vehicle is–

(a) regulated by the GFSC and complies with the requirements in Articles 318 to 327 of the Solvency 2 Technical Standards and Articles 13 to 18 of Commission Implementing Regulation (EU) 2015/462; or

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(b) regulated by a UK or third country supervisory authority and complies with requirements equivalent to those Articles.

(2) For the purposes of this regulation, Articles 318 to 327 of the Solvency 2 Technical Standards and Articles 13 to 18 of Commission Implementing Regulation (EU) 2015/462 are to apply at the level of the group.

Frequency of calculations.

198.(1) Subject to regulation 225A, the GFSC must ensure that the calculations referred to in regulation 197(2) and (3) are carried out at least annually by the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.

(2) The relevant data for and results of that calculation must be submitted to the GFSC by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or by the undertaking in the group identified by the GFSC after consulting the group concerned.

(3) The insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company must monitor the group Solvency Capital Requirement on an ongoing basis.

(4) Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement must be recalculated without delay and reported to the GFSC.

(5) Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the GFSC may require a recalculation of the group Solvency Capital Requirement.

Group solvency: notice of issue of own funds items by group member.

198A.(1) This regulation applies to an insurance or reinsurance undertaking if another member of its group which is not subject to regulation 89A (a "relevant group entity") intends to issue an item for inclusion within the basic own funds forming the own funds eligible for the group Solvency Capital Requirement of the undertaking's group (the "eligible group own funds").

(2) This regulation does not apply in respect of any item which an insurance or reinsurance undertaking intends to include–

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(a) within the basic own funds forming the eligible group own funds that is not an own funds item set out in the own funds lists, but which may be included in the basic own funds forming the eligible group own funds only if the undertaking has received a classification of own funds approval in accordance with regulation 87; and

(b) within the ancillary own funds forming the eligible group own funds.

(3) Subject to sub-regulation (7), an insurance or reinsurance undertaking must notify the GFSC in writing of the intention of the "relevant group entity" to issue an item which it intends to include within the basic own funds forming the eligible group own funds, as soon as it becomes aware of the relevant group entity's intention.

(4) When giving notice, an undertaking must–

(a) provide details of the amount of basic own funds to be raised through the intended issue and whether the item is intended to be issued to external investors or within its group;

(b) identify the classification of basic own funds the item is intended to fall within;

(c) provide a copy of the draft terms and conditions;

(d) describe the proposed item's contribution to own funds eligible for the group Solvency Capital Requirement;

(e) describe the group's membership and structure, including the relationship between the insurance or reinsurance undertaking and the relevant group entity;

(f) provide a draft of a properly reasoned independent legal opinion from an appropriately qualified individual confirming that the item complies with the rules applicable to items of basic own funds included in the classification of the item identified in paragraph (b);

(g) for any item referred to in Article 82(3)(a) of the Solvency 2 Technical Standards , provide a draft of a properly reasoned independent accounting opinion from an appropriately qualified individual as to the item's treatment in the financial statements of the relevant group entity and of the group;

(h) include confirmation from the undertaking's administrative, management or supervisory body that the item complies with the rules applicable to items of basic own funds included in the classification of the item identified in paragraph (b); and

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(i) state whether the item is encumbered or whether there are any connected transactions in respect of the item and, if so, provide details.

(5) If, after giving notice under sub-regulations (3) and (4) but before an item is issued, the undertaking proposes to change the information previously submitted, it must provide the GFSC with written notice of that change without delay.

(6) If an insurance or reinsurance undertaking proposes to establish or amend a debt securities programme for the issue of an item which it intends to include within the basic own funds forming the eligible group own funds, as soon as the undertaking becomes aware of the proposed establishment or proposed amendment it must–

(a) notify the GFSC of the proposed establishment of the programme or the proposed amendment to it; and

(b) provide the information required by sub-regulations (3) and (4),

and the GFSC must be notified in accordance with sub-regulation (5) of any changes to the proposed establishment of, or proposed amendment to, the programme.

(7) Sub-regulations (3) and (4) do not apply to–

(a) ordinary shares issued by a relevant group entity which–

(i) meet the classification criteria for ordinary share capital in Tier 1 own funds; and

(ii) are the same as ordinary shares previously issued by that entity;

(b) debt instruments issued from a debt securities programme established by a relevant group entity, if–

(i) the establishment of, and any subsequent amendment to, the programme was notified to the GFSC in accordance with sub-regulation (6) and the last such notification was given to the GFSC no more than twelve months prior to the date of the proposed drawdown;

(ii) the programme complies with, and the information previously notified to the GFSC in accordance with sub-regulation (6) in relation to the programme is unaffected by, any changes in law or regulation, or the

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interpretation or application of either, coming into effect since the last notification in accordance with sub-regulation (6); and

(iii) any instrument issued pursuant to the programme must, under the terms of the programme, constitute basic own funds; and

(c) any item which is to be issued on identical terms to one or more items included in the basic own funds forming the eligible group own funds issued by the relevant group entity within the previous twelve months and notified to the GFSC in accordance with sub-regulation (4), excluding–

(i) the issue date;

(ii) the maturity date;

(iii) the amount of the issuance;

(iv) the currency of the issuance; and

(v) the rate of interest payable by the issuer.

(8) An insurance or reinsurance undertaking must notify the GFSC in writing, no later than the date of issue, of the intention of a relevant group entity to issue an item listed in sub-regulation (7) which it is intended to include within the basic own funds forming the eligible group own funds and, when giving notice, the undertaking must–

(a) provide the information set out in sub-regulation (4) other than sub-regulations (4)(c), (4)(f) and (4)(g); and

(b) for the issue of an item to which sub-regulation (7)(a) or (c) applies, confirm that the terms of the item have not changed since the previous issue of that type of item of basic own funds by the relevant group entity.

(9) An insurance or reinsurance undertaking must notify the GFSC in writing of the intention of a relevant group entity to amend or otherwise vary the terms of any item of own funds eligible for the group Solvency Capital Requirement as soon as it becomes aware of the relevant group entity's intention to do so.

(10) An insurance or reinsurance undertaking must, as soon as practicable after it becomes aware of the issue by a relevant group entity of an item of basic own funds to which sub-regulations (3), (4), (6), (7)(b) or (7)(c) applies, provide to the GFSC–

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(a) a finalised copy of the draft legal opinion referred to in sub-regulation (4)(f);

(b) a finalised copy of the draft accounting opinion referred to in sub-regulation (4)(g) if applicable;

(c) a copy of the instrument's final terms and conditions; and

(d) a reasoned basis for the choice of coupon structure and any other provision that might suggest an incentive to redeem.

Choice of calculation method.

199.(1) The calculation of solvency at the level of the group of insurance and reinsurance undertakings referred to in regulation 192(1)(a) must be carried out in accordance with the technical principles and one of the methods set out in regulations 200 to 212.

(2) Subject to sub-regulation (3) the method for that calculation must be Method 1 (the accounting consolidation-based method) set out in regulations 209 to 211.

(3) Where the GFSC is the group supervisor of a particular group, after consulting the group concerned, it may decide to apply to that group–

(a) Method 2 (the deduction and aggregation method) set out in regulation 212; or

(b) a combination of Method 1 and Method 2, where the exclusive application of Method 1 would not be appropriate.

(4) The GFSC may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under sub-regulation (3) or (7).

(5) The GFSC may revoke or vary a direction under sub-regulation (4).

(6) Notice of a direction under sub-regulation (4) or the variation or revocation of a direction under sub-regulation (5) must be given to the group in writing which includes the GFSC's reasons for giving it.

(7) A group for which the GFSC is the group supervisor may apply to the GFSC for approval to use Method 2 or a combination of Methods 1 and 2.

(8) An application for approval under sub-regulation (7) must–

(a) be made in the form and manner the GFSC directs; and

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(b) contain or be accompanied by any information the GFSC may reasonably require.

(9) The GFSC, acting in accordance with regulation 276A, may–

(a) give approval;

(b) give approval subject to conditions; or

(c) refuse approval.

(10) The GFSC may at any time vary or revoke an approval given under sub- regulation (7).

Combination of methods 1 and 2: minimum consolidated group Solvency Capital Requirement.

199A. Where the GFSC decides to apply a combination of methods 1 and 2 to a group, in accordance with regulation 199, the consolidated group Solvency Capital Requirement calculated for the part of the group which is covered by method 1 must have a minimum determined in accordance with the requirements in regulation 209(4) to (7).

Inclusion of proportional share.

200.(1) The calculation of group solvency must take account of the proportional share held by a participating undertaking in its related undertakings.

(2) The proportional share must comprise either of the following–

(a) where Method 1 is used, the percentages used for the establishment of the consolidated accounts; or

(b) where Method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(3) Regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary must be taken into account.

(4) Where in the opinion of the GFSC, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the GFSC may allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

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(5) The proportional share which must be taken into account in each of the following cases is as specified in this sub-regulation–

(a) where there are no capital ties between any of the undertakings in the group, an undertaking in the group must be treated as if it is a participating undertaking that holds a proportional share of 100% of each other undertaking in the group;

(b) where a participating undertaking has a participation in another undertaking because it effectively exercises a significant influence over that undertaking, the proportional share that must be taken account must be 100%; or

(c) where a participating undertaking is a parent undertaking of another undertaking because it effectively exercises a dominant influence over that undertaking, the proportional share that must be taken into account for the must be 100%.

Elimination of double use of eligible own funds.

201.(1) The double use of own funds eligible for the Solvency Capital Requirement is not allowed among the different insurance or reinsurance undertakings taken into account in that calculation.

(2) When calculating group solvency (and where the methods described in regulations 209 to 212 do not provide for it) the following amounts must be excluded–

(a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;

(b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking; and

(c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

(3) Without limiting sub-regulations (1) and (2), the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned–

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(a) surplus funds falling under regulation 81(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated; and

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

(4) However, the following must in any event be excluded from the calculation–

(a) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

(b) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking; and

(c) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

(5) Subject to Article 330(3) and (4) of the Solvency 2 Technical Standards, where the GFSC considers that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in sub-regulations (3) and (4) cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

(6) The sum of the own funds referred to in sub-regulations (3) and (5) must not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(7) Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the GFSC in accordance with regulation 84 may be included in the calculation only in so far as they have been so authorised.

Elimination of intra-group creation of capital.

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202.(1) When calculating group solvency, no account may be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following–

(a) a related undertaking;

(b) a participating undertaking; or

(c) another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account may be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated, where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

(3) In this regulation a reference to reciprocal financing includes (but is not limited to) circumstances where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Valuation.

203. The value of assets and liabilities must be assessed in accordance with regulation 65.

Related insurance and reinsurance undertakings.

204. Where an insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation must be carried out by including each of those related insurance or reinsurance undertakings.

Intermediate insurance holding companies.

205.(1) When calculating the group solvency of an insurance or reinsurance undertaking which holds, through an insurance holding company or a mixed financial holding company, a participation in–

(a) a related insurance undertaking;

(b) a related reinsurance undertaking;

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(c) a third-country insurance undertaking; or

(d) a third-country reinsurance undertaking,

the situation of that intermediate insurance holding company or intermediate mixed financial holding company must be taken into account.

(2) For the purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company must be treated as if it were an insurance or reinsurance undertaking subject to–

(a) the rules in Chapter 3 of Part 6 in respect of the Solvency Capital Requirement; and

(b) the same conditions in Chapter 2 of Part 6 in respect of own funds eligible for the Solvency Capital Requirement.

(3) Where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with regulation 89, they may be recognised as eligible own funds up to the amounts calculated by application of the limits set out in that regulation to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

(4) Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company which, if they were held by an insurance or reinsurance undertaking, would require ancillary own funds approval in accordance with regulation 84, must only be included in the calculation of the group solvency if and to the extent that doing so has been approved by the GFSC under this regulation and in accordance with regulation 276A.

(5) An application for approval under sub-regulation (4) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(6) The GFSC may–

(a) give approval;

(b) give approval subject to conditions; or

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(c) refuse approval.

(7) The GFSC may at any time vary or revoke an approval given under sub-regulation (4).

Equivalence concerning related third-country insurance and reinsurance undertakings.

206.(1) When calculating, in accordance with regulation 212, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter is to be treated for the purposes of that calculation as a related insurance or reinsurance undertaking.

(2) Where the law of the third country in which that undertaking has its head office–

(a) requires the undertaking to be authorised (however described); and

(b) imposes on it a solvency regime which, in accordance with regulation 238, is determined to be equivalent to that set out in Part 6,

the GFSC, on its own initiative or on application by the relevant insurance group undertaking, may permit the calculation to take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as prescribed by law in that third country.

(3) An application for permission under sub-regulation (2) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(4) The GFSC, acting under sub-regulation (2) and in accordance with regulation 276A, may–

(a) give permission;

(b) give permission subject to conditions; or

(c) refuse permission.

(5) The GFSC may at any time vary or revoke a permission given under sub-regulation (2).

Related credit institutions, investment firms and financial institutions.

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207.(1) When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the participating insurance or reinsurance undertaking may apply method 1 or method 2 set out in Schedule 1 to the Financial Conglomerates Regulations (with any necessary modifications), subject to sub-regulation (2).

(2) Method 1 in that Schedule may only be applied where the GFSC is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation.

(3) The method chosen under sub-regulation (1) must be applied in a consistent manner over time.

(4) The GFSC may decide, at the request of a participating undertaking or on its own initiative, to deduct any participation referred to sub-regulation (1) from the own funds eligible for the group solvency of the participating undertaking.

Treatment of specific related undertakings.

207A. Unless the book value of the relevant related undertaking has been deducted from the own funds eligible for the group solvency under regulation 208, the calculation of the group solvency must include the following–

(a) the capital requirements for related undertakings which are credit institutions, investment firms or financial institutions, and the own fund items of those undertakings, calculated in accordance with, as applicable, the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021;

(b) the capital requirements for related undertakings which are institutions for occupational retirement provision, and the own funds items of those undertakings, calculated in accordance with the Financial Services (Occupational Pensions Institutions) Regulations 2020;

(c) the capital requirements for related undertakings which are UCITS management companies, and the own funds of those undertakings, calculated in accordance with the Financial Services (UCITS) Regulations 2020;

(d) the capital requirements for related undertakings which are alternative investment fund managers, and the own funds of those undertakings, calculated in accordance with the Financial Services (Alternative Investment Fund Managers) Regulations 2020; and

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(e) the notional capital requirements and the own fund items of related undertakings which are non-regulated undertakings carrying out financial activities, where the notional capital requirement is the capital requirement with which the related undertaking would have to comply under the relevant sector rules if the undertaking were a regulated entity.

Non-availability of necessary information.

208. Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking is not available in respect of a related undertaking with its head office outside Gibraltar –

(a) the book value of that undertaking in the participating insurance or reinsurance undertaking must be deducted from the own funds eligible for the group solvency; and

(b) the unrealised gains connected with that participation must not be recognised as own funds eligible for the group solvency.

Method 1 (default method): the accounting consolidation-based method.

209.(1) The calculation of the group solvency of a participating insurance or reinsurance undertaking must be carried out on the basis of its consolidated accounts.

(2) Group solvency of a participating insurance or reinsurance undertaking is the difference between–

(a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and

(b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

(3) The rules laid down in regulations 81 to 114 apply for the calculation of the own funds eligible for the Solvency Capital Requirement and the Solvency Capital Requirement at group level based on consolidated data.

(4) The Solvency Capital Requirement at group level based on consolidated data ("the consolidated group Solvency Capital Requirement") must be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles in regulations 102 to 114.

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(4A) The GFSC, on application, may give permission for a group, on a temporary basis, to use more than one calculation approach when calculating its consolidated group Solvency Capital Requirement under Method 1–

(a) during the interim period before a new or enlarged group internal model has been granted permission; or

(b) before new group-specific parameters have been approved for an enlarged group.

(4B) An application for permission under sub-regulation (4A) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(4C) The GFSC, acting under sub-regulation (4A) and in accordance with regulation 276A, may–

(a) give permission;

(b) give permission subject to conditions; or

(c) refuse permission.

(4D) The GFSC may at any time vary or revoke a permission given under sub-regulation (4A).

(5) The consolidated group Solvency Capital Requirement must have as a minimum the sum of the following–

(a) the Minimum Capital Requirement as referred to in Chapter 4 of Part 6 of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

(6) The minimum amount must be covered by eligible basic own funds as determined under regulation 89.

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(7) For the purposes of determining whether eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in regulations 123 and 200 to 208 apply with any necessary modifications.

Group internal model.

210.(1) An application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model may be submitted to the GFSC –

(a) by an insurance or reinsurance undertaking and its related undertakings; or

(b) jointly by the related undertakings of an insurance holding company or a mixed financial holding company.

(1A) An application for permission under sub-regulation (1) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(2) The GFSC–

(a) may–

(i) give permission;

(ii) give permission subject to such terms and conditions as it may determine; or

(iii) refuse permission; and

(b) must provide the applicant with a document setting out its fully reasoned decision.

(2A) A permission under this regulation must be given by the GFSC in accordance with regulation 276A.

(2B) The GFSC may at any time vary or revoke a permission given under sub- regulation (2).

(3) *Omitted*

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(4) *Omitted*.

(5) *Omitted*.

(6) *Omitted*.

(7) Where the GFSC considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the GFSC's concerns, the GFSC may, in accordance with regulation 39, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model and–

(a) in exceptional circumstances, where such capital add-on would not be appropriate, the GFSC may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Chapter 3 of Part 6;

(b) in accordance with regulation 39(1)(a) and (c), the GFSC may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula; and

(c) the GFSC must explain any decision under this sub-regulation to the insurance or reinsurance undertaking.

Use test for group internal models.

210A.(1) Where, in accordance with regulation 209, an internal model is used to calculate the consolidated group Solvency Capital Requirement, the requirements in regulation 108 must be complied with by–

(a) the participating undertaking which calculates the consolidated group Solvency Capital Requirement on the basis of the group internal model;

(b) each related insurance and reinsurance undertaking whose business is fully or partly in the scope of the group internal model, only in relation to the output of the internal model at group level; and

(c) each related insurance holding company or mixed financial holding company whose business is fully or partly in the scope of the group internal model, only in relation to the output of the internal model at group level.

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(2) Where, in addition to sub-regulation (1), a group internal model is used in accordance with regulation 210, the requirements in regulation 108 must be complied with by–

(a) each participating undertaking in relation to the output of the internal model at the level of that undertaking; and

(b) each related insurance and reinsurance undertaking which calculates it solvency capital requirement on the basis of the group internal model, at the level of that undertaking.

(3) For the purposes of sub-regulations (1) and (2), an insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must only comply with the requirements in regulation 108(8) and (9) in relation to the parts of the group internal model which cover the risks of that undertaking and the risks of its related undertakings.

Group capital add-on.

211.(1) In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the GFSC must pay particular attention to any case where the circumstances referred to in regulation 39(1) may arise at group level; in particular where–

(a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

(b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed in accordance with regulations 39 and 210(7).

(2) Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed; and for that purpose regulations 39 and 40 apply with any necessary modifications.

(3) The relevant insurance group undertakings must make all reasonable efforts to remedy the residual model limitation that led to the imposition of a capital add-on arising as a result of an internal model residual deviation at the level of the group.

(4) At the request of the GFSC as group supervisor, a relevant insurance group undertaking must be able to submit a progress report to the GFSC setting out the measures taken, and the progress made, to remedy the deficiencies that led to the imposition of a capital add-on arising as a result of an internal model residual deviation, an internal model significant risk profile deviation or a significant system of governance deviation at the level of the group.

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Method 2 (alternative method): the deduction and aggregation method.

212.(1) The group solvency of a participating insurance or reinsurance undertaking is the difference between–

(a) the aggregated group eligible own funds, as provided for in sub-regulation (2); and

(b) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in sub-regulation (3).

(2) The aggregated group eligible own funds are the sum of–

(a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(3) The aggregated group Solvency Capital Requirement is the sum of–

(a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and

(b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(4) Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership–

(a) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings must incorporate the value of the indirect ownership, taking into account the relevant successive interests, and

(b) the items referred to in sub-regulations (2)(b) and (3)(b) must include the corresponding proportional shares of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

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(5) In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, regulation 210 applies with any necessary modifications.

(6) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in sub-regulation (3), appropriately reflects the risk profile of the group, the GFSC must pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

(7) Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, the GFSC may impose a capital add-on to the aggregated group Solvency Capital Requirement and, in such a case, regulations 39 and 40 apply with any necessary modifications.

Method 2: Elimination of intra-group creation of capital in relation to the best estimate.

212A.(1) The aggregated group eligible own funds must be adjusted to eliminate the impact of an intra-group transaction which affects the best estimates of the insurance and reinsurance undertakings in such way that the amount set out in sub-regulation (2) is differs depending on whether the intra-group transaction is eliminated in the calculation of that amount or not.

(2) The amount referred to in sub-regulation (2) is the sum of the following–

(a) the best estimate of the participating insurance or reinsurance undertaking calculated in accordance with regulations 65 to 80 of the Insurance Companies Regulations;

(b) the best estimate of the participating insurance or reinsurance undertaking calculated in accordance with regulations 65 to 80; and

(c) the proportional share referred to in regulation 200(2)(b) ns of the best estimate, calculated in accordance with regulations 65 to 80 for each related insurance and reinsurance undertaking and related third-country insurance and reinsurance undertaking.

Group solvency of an insurance holding company or mixed financial holding company.

213.(1) Where insurance or reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the GFSC must ensure that the calculation of

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the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying regulations 199 to 212.

(2) For the purpose of that calculation, the parent undertaking must be treated as if it were an insurance or reinsurance undertaking–

(a) subject to the rules in Chapter 3 of Part 6 as regards the Solvency Capital Requirement, and

(b) subject to the same conditions in Chapter 2 of Part 6 as regards the own funds eligible for the Solvency Capital Requirement.

(3) Where the parent undertaking has issued subordinated debt or has other eligible own funds subject to the limits set out in regulation 89, regulation 205(3) and (4) must apply.

Groups with centralised risk management

214. to 220. *Omitted*.

Risk concentration and intra-group transactions

Supervision of risk concentration.

221.(1) Subject to regulation 225A, the supervision of risk concentration at group level of a group of the kind in regulation 192(3)(a) or (b) must be exercised in accordance with this regulation and regulations 223 to 225, 235 and 236.

(2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the GFSC any significant risk concentration at the level of the group.

(3) The necessary information must be submitted to the GFSC –

(a) by the insurance or reinsurance undertaking which is at the head of the group, or

(b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or insurance or reinsurance undertaking in the group identified by the GFSC after consulting the group.

(4) Where the GFSC is the group supervisor, it must–

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(a) identify the undertaking which is to provide the information referred to in sub-regulation (3);

(b) identify the type of risks which insurance and reinsurance undertakings in the group must report in all circumstances;

(c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify significant risk concentrations which should be reported; and

(d) subject the risk concentrations to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

(5) In complying with sub-regulation (4)(a) to (c) the GFSC must consult the group.

(6) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.

Supervision of intra-group transactions.

222.(1) Subject to regulation 225A, the supervision of intra-group transactions must be exercised in accordance with this regulation and regulations 223 to 225, 235 and 236.

(2) An insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must report on a regular basis and at least annually to the GFSC all significant intra-group transactions by insurance and reinsurance undertakings within the group, including those performed with an individual with close links to an undertaking in the group.

(3) Very significant intra-group transactions must be reported as soon as practicable.

(4) The necessary information must be submitted to the GFSC by–

(a) the insurance or reinsurance undertaking which is at the head of the group, or

(b) where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, mixed financial holding company or insurance or reinsurance undertaking in the group identified by the GFSC after consulting the group.

(5) Where the GFSC is the group supervisor, it must–

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(a) identify the undertaking which is to provide the information referred to in sub-regulation (4);

(b) identify the type of intra-group transactions which insurance and reinsurance undertakings in the group must report in all circumstances;

(c) impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, or both, in order to identify intra-group transactions which should be reported; and

(d) subject the intra-group transactions to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

(6) In complying with sub-regulation (5)(a) to (c) the GFSC must consult the group.

(7) The GFSC must take account of the specific group and its risk-management structure when defining the type of risks that must be reported.

Risk management and internal control

Supervision of system of governance.

223.(1) Regulations 43 to 50 apply at the level of the group of the kind in regulation 192(3)(a) or (b) with any necessary modifications.

(2) Without limiting sub-regulation (1), the risk management and internal control systems and reporting procedures must be implemented consistently in all the undertakings included in the scope of group supervision under regulations 192 and 193 so that those systems and reporting procedures can be controlled at the level of the group.

(3) The group internal control mechanisms must include at least the following–

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks; and

(b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

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(4) A participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must undertake the own risk and solvency assessment required by regulation 46 at the level of the group.

(5) Where the calculation of the solvency at the level of the group is carried out in accordance with Method 1 in regulation 209, the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company must provide to the GFSC a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

(6) Subject to regulation 225A, where the GFSC is the group supervisor–

(a) it must supervise the systems and reporting procedures referred to in sub-regulations (1) to (3) in accordance with regulations 224, 225, 235 and 236;

(b) it must subject the own-risk and solvency assessment conducted at group level to supervisory review in accordance with those regulations; and

(c) it may consent to the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company

(i) undertaking at the same time, at the level of the group and of any subsidiary in the group, any assessments required under regulation 46; and

(ii) producing a single document covering all the assessments.

(7) *Omitted*.

(8) Where a group exercises the option provided in sub-regulation (6)(c), it does not exempt the subsidiaries concerned from the obligation to ensure that the requirements of regulation 46 are met.

Measures to facilitate group supervision

Group supervisor.

224(1). Subject to sub-regulation (2), where an insurance undertaking or reinsurance undertaking that is authorised by the GFSC under Part 7 of the Act is part of a group, the GFSC is the group supervisor and must supervise that group.

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(2) Nothing in sub-regulation (1) requires the GFSC to conduct group supervision in respect of requirements which do not apply, as may be determined by the GFSC under regulation 225A.

Functions of group supervisor and other supervisors.

225.(1) Subject to regulation 225A, sub-regulation (2) applies where the GFSC is the group supervisor of a group of the type in regulation 192(3)(a) or (b).

(2) The GFSC must–

(a) conduct supervisory reviews and assessments of the financial situation of the group;

(b) assess the group's compliance with the rules on solvency, risk concentration and intra-group transactions;

(c) assess the group's system of governance in accordance with regulation 223;

(d) assess whether the members of the administrative, management or supervisory body of the participating undertakings in the group are fit and proper to carry out their functions;

(e) determine applications for an internal model at group level as set out in regulations 210 and 212; and

(f) carry out the other tasks, measures and decisions assigned to the group supervisor by these Regulations.

Disapplication or modification of Regulations 197, 198, 221 to 223 and 225.

225A.(1) Where the GFSC relies on equivalent third country supervision, the GFSC may determine that one or more of the provisions in sub-regulation (2)–

(a) does not apply; or

(b) applies with such modifications as may be specified in the determination.

(2) The provisions are–

(a) regulation 197(1);

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(b) regulation 198(1);

(c) regulation 221(1);

(d) regulation 222(1);

(e) regulation 223(6); and

(f) regulation 225.

(3) In sub-regulation (1), "equivalent third country supervision" means group supervision exercised by–

(a) the Prudential Regulation Authority of the United Kingdom; or

(b) a third country supervisory authority which has a group supervision regime determined as equivalent in accordance with regulation 237.

(4) The GFSC may not give a determination under sub-regulation (1) unless it is satisfied that–

(a) compliance by insurance or reinsurance undertakings in the group with requirements imposed by the GFSC under the provision to which the determination relates would be unduly burdensome; and

(b) the determination would not adversely affect the advancement of any of the GFSC's regulatory objectives.

(5) The GFSC may vary or revoke a determination given under sub-regulation (1).

226. to 232. *Omitted*.

Group solvency and financial condition report.

233.(1) Participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group.

(2) For the purpose of sub-regulation (1) regulations 52 and 54 to 56 apply with any necessary modifications.

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(3) A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, with the consent of the group supervisor, provide a single report on its solvency and financial condition which must comprise the following–

(a) the information at the level of the group to be disclosed in accordance with sub-regulation (1);

(b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with regulations 52 and 54 to 56.

(4) *Omitted*.

(5) Where the GFSC has authorised a subsidiary in the group and the report referred to in sub-regulation (3) fails to include material information which the GFSC requires comparable undertakings to provide, the GFSC may require the subsidiary concerned to disclose the necessary additional information.

Group structure.

234. Insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies must disclose publicly on an annual basis the legal structure and the governance and organisational structure of the group, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies.

235.(1) An insurance holding company or mixed financial holding company must ensure that all persons who effectively run the company are fit and proper to perform their duties.

(2) Regulation 44 applies for the purposes of this regulation (with any necessary modifications).

Enforcement measures.

236.(1) Sub-regulation (2) applies if–

(a) one or more insurance or reinsurance undertakings in a group do not comply with the requirements in regulations 197 to 223;

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(b) those requirements are met but the solvency of the group or an insurance or reinsurance undertaking within it may nevertheless be jeopardised; or

(c) intra-group transactions or the risk concentrations are a threat to the financial position of one or more insurance or reinsurance undertakings in a group.

(2) Where the GFSC–

(a) has authorised an insurance or reinsurance undertaking in the group; or

(b) is the group supervisor of a group headed by an insurance holding company or mixed financial holding company the head office of which is in Gibraltar,

the GFSC must exercise its powers under the Act and these Regulations to rectify the position as soon as possible.

Third countries

Parent undertakings outside Gibraltar: equivalence.

237.(1) The GFSC may rely on the equivalent group supervision exercised by third country supervisory authorities where–

(a) either–

(i) the condition in sub-regulation (2) is met; or

(ii) the alternative condition in sub-regulation (3) is met; and

(b) the GFSC, having regard to the main objective of supervision, considers that it is appropriate to do so.

(2) The condition is that–

(a) either of the following determinations have been made–

(i) the Minister has made regulations under regulation 238(1) or the European Commission has adopted a delegated act under Article 260.3 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is equivalent; or

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(ii) the Minister has made regulations under regulation 238(3) or the European Commission has adopted a delegated act under Article 260.5 of the Solvency 2 Directive prior to IP completion day, determining that the prudential regime of the third country is temporarily equivalent;

(b) that determination still applies;

(c) there is no insurance undertaking or reinsurance undertaking situated in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country; and

(d) the GFSC has verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent or temporarily equivalent regime.

(3) The alternative condition is that the GFSC has verified that the group is subject to supervision by a third country supervisory authority which is equivalent in accordance with sub-regulation (4).

(4) Where the conditions in sub-regulation (2) do not apply, the GFSC acting in accordance with sub-regulation (5)–

(a) must take a decision on equivalence at the request of the parent undertaking or the insurance undertaking or reinsurance undertaking; and

(b) may take a decision on equivalence on its own initiative.

(5) Where the GFSC takes a decision on equivalence, the GFSC must–

(a) verify equivalence at the level of the ultimate third-country parent undertaking;

(b) ensure that its decision on equivalence does not contradict any previous decision taken in relation to the third country, except where it is necessary to do so in order to take account of significant changes to the supervisory regime in Gibraltar or the third country; and

(c) take its decision in accordance with the criteria in Article 380 of the Solvency 2 Technical Standards.

Determination of equivalence and temporary equivalence.

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238.(1) The Minister may by regulations determine that the relevant solvency or prudential regime of a third country is equivalent to the corresponding regime under these Regulations where the equivalence criteria in the following provisions of the Solvency 2 Technical Standards have been fulfilled by the third country–

(a) Article 378 (in respect of the solvency regime that applies to reinsurance activities of undertakings with their head office in that country);

(b) Article 379 (in respect of the solvency regime that applies to insurance and reinsurance undertakings with their head office in that country); or

(c) Article 380 (in respect of the prudential regime in that country for the supervision of groups).

(2) Regulations under sub-regulation (1) must be regularly reviewed by the Minister, in order to take account of–

(a) any changes to–

(i) the relevant solvency or prudential regime of the third country; or

(ii) the corresponding regime in Gibraltar; or

(b) any other change that may affect the decision on equivalence.

(3) Despite sub-regulation (1)(b), the Minister may by regulations determine that the solvency regime of a third country that applies to undertakings which have their head office in that country is, during the relevant period, temporarily equivalent to that laid down in these Regulations, if that third country–

(a) has given a commitment to the Minister–

(i) to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with Article 379 of the Solvency 2 Technical Standards before the end of the relevant period; and

(ii) to engage in the equivalence assessment process;

(b) has established a work programme and allocated sufficient resources to fulfil that commitment;

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(c) has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;

(d) has entered into written arrangements to cooperate and exchange confidential supervisory information with the GFSC;

(e) has an independent system of supervision; and

(f) has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with the GFSC.

(4) The "relevant period" in sub-regulation (3) must be 10 years unless, before the expiry of that period–

(a) the regulations made by the Minister have been revoked; or

(b) the Minister has by regulations made sub-regulation (3) determined that the solvency regime of that third country is equivalent to the corresponding regime under these Regulations.

(5) The GFSC must publish on its website a list of all third countries in respect of which the Minister has made regulations under sub-regulations (1) and (3).

Parent undertakings outside Gibraltar: absence of equivalence.

239.(1) This regulation applies where–

(a) a parent undertaking of an insurance undertaking or reinsurance undertaking established in Gibraltar has its head office in a third country;

(b) one of the conditions in sub-regulation (2) is satisfied, and

(c) one of the conditions in sub-regulation (3) is satisfied.

(2) The conditions are that the prudential group supervision regime of the third country–

(a) has not been determined to be equivalent; or

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(b) has been determined to be equivalent, but the GFSC has not verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent regime.

(3) The conditions are that the prudential group supervision regime of the third country–

(a) has not been determined to be temporarily equivalent; or

(b) has been determined to be temporarily equivalent, but the group–

(i) is not subject to that regime; or

(ii) contains an insurance undertaking or reinsurance undertaking in Gibraltar with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country.

(4) The GFSC must, at the level of the ultimate third-country parent undertaking–

(a) ensure appropriate supervision of the insurance undertakings and reinsurance undertakings that are authorised by the GFSC in the group; and

(b) ensure the objectives of group supervision are achieved.

(5) For the purposes of sub-regulation (4), the GFSC–

(a) may decide to apply such other methods of supervision or to take such other steps as it considers appropriate, in order to comply with that sub-regulation; and

(b) may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under paragraph (a).

(6) The GFSC may–

(a) give a direction subject to conditions; or

(b) revoke or vary a direction.

(7) Without limiting sub-regulation (5)(b), a direction may, in particular, require the group to establish an insurance holding company or mixed financial holding company with its head office in Gibraltar.

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(8) Notice of a direction under sub-regulation (5)(b) or any conditions imposed on, or the variation or revocation of, such a direction under sub-regulation (6) must be given to the group in writing which includes the GFSC's reasons for giving it.

Parent undertakings outside Gibraltar: levels

240.(1) Where the parent undertaking of an insurance undertaking or reinsurance undertaking with its head office outside Gibraltar is itself a subsidiary of–

(a) an insurance holding company or a mixed financial holding company which has its head office in a third country; or

(b) a third-country insurance or reinsurance undertaking,

regulation 237 only applies at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) Despite sub-regulation (1), the GFSC may–

(a) in the absence of an equivalence determination referred to in regulation 237, verify equivalence; or

(b) undertake group supervision,

at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) Where sub-regulation (2) applies–

(a) regulation 237 applies with any necessary modifications at that lower level; and

(b) the GFSC must explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs.

Mixed-activity insurance holding companies

Intra-group transactions.

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241.(1) Where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company and the GFSC is responsible for the supervision of one or more of those undertakings, it must exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

(2) Regulations 222 to 225, 235 and 236 apply (with any necessary modifications).

PART 12
REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

Preliminary

Scope of Part.

242. This Part applies to reorganisation measures and winding-up proceedings concerning insurance undertakings.

Interpretation of Part 12.

243. In this Part–

"administrator" means an administrator of an insurance undertaking appointed under the Insolvency Act 2011;

"insurance claim"–

(a) means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having a direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in regulation 4(5)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known; and

(b) includes any premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in paragraph (a) in accordance with the law applicable to such a contract or operation before the opening of winding-up proceedings;

"liquidator" means the liquidator of an insurance undertaking appointed under the Insolvency Act 2011;

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"reorganisation measures" means measures involving any intervention by the Supreme Court which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims; and

"winding-up proceedings" means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the Supreme Court, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory.

Reorganisation measures

Adoption of reorganisation measures: applicable law.

244.(1) Only the Supreme Court is entitled to decide on reorganisation measures in respect of a Gibraltar insurer.

(2) The adoption of reorganisation measures does not preclude the opening of winding-up proceedings in respect of an insurance undertaking.

(3) Reorganisation measures in respect of a Gibraltar insurer must be governed by the laws, regulations and procedures applicable in Gibraltar, unless otherwise provided in regulations 263 and 264.

Information to supervisory authorities.

245. The administrator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of his or her decision on any reorganisation measures, where possible before they are adopted or, failing that, immediately afterwards.

Publication of decisions on reorganisation measures.

246.(1) Subject to sub-regulation (5), where a reorganisation measure in Gibraltar is subject to a right of appeal, the Supreme Court or administrator must publish the decision on the reorganisation measure in the Gazette.

(2) *Omitted*.

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(3) Any publication under sub-regulation (1) must include the name and address of the administrator.

(4) Reorganisation measures apply and are fully effective as against creditors regardless of the provisions of this regulation concerning publication unless the Supreme Court provides otherwise.

(5) Where reorganisation measures only affect the rights of an insurance undertaking's shareholders, members or employees, sub-regulations (1), (3) and (4) do not apply and the Supreme Court must determine the manner in which those parties are to be informed.

247. *Omitted*.

Winding-up proceedings

Commencement of winding-up proceedings.

248.(1) Only the Supreme Court is entitled to decide on winding-up proceedings in respect of a Gibraltar insurer.

(2) A decision to commence winding-up proceedings in respect of an insurance undertaking may be taken in the absence, or following the adoption, of reorganisation measures.

(3) Winding-up proceedings in respect of a Gibraltar insurer must be governed by the laws, regulations and procedures applicable in Gibraltar, unless regulations 263 and 264 provide otherwise.

(4) *Omitted*.

(5) *Omitted*.

(6) The liquidator of a Gibraltar insurer must, as a matter of urgency, inform the GFSC of the decision to commence winding-up proceedings, where possible before the proceedings are commenced or, failing that, immediately afterwards.

249. *Omitted*.

Treatment of insurance claims.

250.(1) Insurance claims take precedence over other claims against an insurance undertaking as specified in sub-regulation (2).

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(2) With regard to–

(a) assets representing the technical provisions, insurance claims must take absolute precedence over any other claim on the undertaking; and

(b) the whole of the assets of the undertaking, insurance claims must take precedence over any claim on the undertaking other than–

(i) claims by employees arising from employment contracts and employment relationships;

(ii) claims by public bodies on taxes;

(iii) claims by social security systems; and

(iv) claims on assets subject to rights in rem.

(3) Despite sub-regulations (1) and (2), the expenses arising from the winding-up proceedings, as determined in accordance with the general law of Gibraltar, must take precedence over insurance claims.

Special register.

251.(1) An insurance undertaking must establish and keep up to date at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with these Regulations.

(2) Where an insurance undertaking carries on both life and non-life insurance activities, it must keep separate registers for each type of business.

(3) But an insurance undertaking which covers life and the risks in Classes 1 and 2 must keep a single register for the whole of its activities.

(4) The total value of the assets entered, valued in accordance with these Regulations, must at no time be less than the value of the technical provisions.

(5) Where an asset entered in the register is subject to a right in rem in favour of a creditor or third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact must be recorded in the register and the amount not available must not be included in the total value referred to in sub-regulation (4).

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(6) Where an asset representing the technical provisions of an insurance undertaking is subject to–

(a) a right in rem in favour of a creditor or third party, without meeting the conditions set out in sub-regulation (5);

(b) a reservation of title in favour of a creditor or third party; or

(c) a demand by a creditor for the set-off of the creditor's claim against the claim of the insurance undertaking,

in the winding-up of the undertaking those rights or reservations must be disregarded unless regulation 263 applies to that asset.

(7) Once winding-up proceedings have commenced, the composition of the assets entered in the register in accordance with sub-regulations (1) to (5) must not be changed and no alteration must be made in the register (other than the correction of purely clerical errors) without the approval of the Supreme Court or a person appointed for that purpose by the court.

(8) Despite sub-regulation (7), the liquidator must add to those assets their yield and the value of the pure premiums received in respect of the Class of insurance concerned between the commencement of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is affected.

(9) Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators must justify this to the Supreme Court or a person appointed for that purpose by the court.

Subrogation to a guarantee scheme.

252. If at any time the rights of insurance creditors are subrogated to a guarantee scheme established in Gibraltar, claims by that scheme must not benefit from the provisions of regulation 250(2).

Representation of preferential claims by assets.

253. An insurance undertaking must ensure that any claims which may take precedence over insurance claims under regulation 250(2)(b) and which are registered in the insurance undertaking's accounts are represented by assets at all times and independently of any possible winding-up.

Cancellation of permission.

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254.(1) The GFSC must cancel the Part 7 permission of an insurance undertaking in respect of which winding-up proceedings have been commenced.

(2) Permission must be cancelled in accordance with the procedure in regulation 127 and paragraph 5 of Schedule 13 to the Act but in a manner that does not prevent the liquidator or any other person appointed by the Supreme Court must from pursuing those activities of the insurance undertaking which–

(a) are necessary or appropriate for the purposes of winding-up; and

(b) are pursued with the consent and under the supervision of the GFSC.

Publication of decisions on winding-up proceedings.

255.(1) The Supreme Court, the liquidator or a person appointed for that purpose by the Supreme Court must publish in the Gazette the decision to commence winding-up proceedings.

(2) Any publication under sub-regulation (1) must include the name and address of the liquidator.

Information to known creditors.

256.(1) When winding-up proceedings are commenced, the Supreme Court or the liquidator must, without delay, individually inform by written notice each known creditor.

(2) The notice must include–

(a) the time limits in which steps must be taken by creditors;

(b) the consequences if particular steps are not taken within those time limits;

(c) the name and address of the liquidator for the purpose of lodging claims; and

(d) any other information of particular relevance to creditors.

(3) The notice must also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

(4) In the case of insurance claims, the notice must also indicate the general effects of the winding-up proceedings on the insurance contracts and, in particular–

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(a) the date on which the insurance contracts or operations will cease to produce effects; and

(b) the rights and duties of insured persons with regard to the contracts or operations.

Right to lodge claims.

257.(1) A creditor may lodge a claim or submit written observations relating to claims arising from the winding-up of an insurance undertaking.

(2) *Omitted*.

(3) Except where the law of Gibraltar provides otherwise, a creditor must send to the liquidator copies of any supporting documents and must indicate the following–

(a) the nature and the amount of the claim;

(b) the date on which the claim arose;

(c) whether the creditor alleges preference, security in rem or reservation of title in respect of the claim; and

(d) where appropriate, what assets are covered by the creditor's security.

(4) The precedence granted to insurance claims by regulation 250 does not need to be indicated.

258. *Omitted*.

Regular information to creditors.

259. The liquidator of an insurance undertaking must, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

Common provisions

260. to 262. *Omitted*.

Set-off.

263.(1) The commencement of reorganisation measures or winding-up proceedings does not affect the right of creditors to demand the set-off of their claims against the claims of the

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insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

(2) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors.

Regulated markets.

264.(1) The effects of a reorganisation measure or the commencement of winding-up proceedings on the rights and obligations of the parties to a regulated market are to be governed solely by the law applicable to that market.

(2) Sub-regulation (1) does not preclude actions for the nullity, voidability, or unenforceability of legal acts detrimental to creditors which may be taken to set aside payments or transactions under the law applicable to that market.

265. to 267. *Omitted*.

Administrators and liquidators.

268. The appointment of an administrator or liquidator of an insurance undertaking must be evidenced by a copy of the court order or notice of appointment under the Insolvency Act 2011.

269. to 271. *Omitted*.

Professional secrecy.

272. Any person who receives or divulges information in connection with the procedures in regulations 245 or 248 is bound by the professional secrecy obligation.

273. *Omitted*.

PART 13
MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

The Register: insurance and reinsurance activity

274.(1) This regulation makes provision as to the contents of the Register in connection with insurance and reinsurance activities.

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(2) The Register must contain such information as the GFSC considers appropriate and must include at least the following–

(a) insurance and reinsurance undertakings which are regulated firms;

(b) insurance and reinsurance undertakings which are regulated as small undertakings in accordance with regulation 5(7); and

(c) third-country insurance and reinsurance undertakings with a branch in Gibraltar.

(3) The Register must identify the insurance and reinsurance activities to which a regulated firm's Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of a regulated firm's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect of whom that provision applies, the GFSC may remove the entry from the Register.

(6) The GFSC must ensure that the Register is made available online for consultation by the public.

(7) In this regulation "the Register" means the register established by the GFSC in accordance with Part 4 of the Act.

Administrative penalties.

275.(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, twice the amount of that benefit;

(b) in the case of a legal person–

(i) €5,000,000 (or the sterling equivalent); or

(ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body; or

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(c) in the case of an individual, £250,000.

(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 Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b)(ii) 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.

(3) In sub-regulation (1) "the "sterling equivalent" means an equivalent amount in sterling based on the exchange rate on 15th January 2020.

Additional persons subject to powers.

276. In respect of a contravention of a regulatory requirement by a person to whom these Regulations apply the GFSC may, in addition to the persons specified in section 147 and 148 of the Act, exercise the sanctioning powers set out in Part 11 of the Act against the members of the administrative, management or supervisory body of an insurance or reinsurance undertaking.

Notices: specified decisions.

276A.(1) This regulation applies to a decision by the GFSC–

(a) under regulation 68C–

(i) to give matching adjustment approval under sub-regulation (3) or to give such approval subject to conditions;

(ii) to refuse matching adjustment approval under sub-regulation (3); or

(iii) to vary or revoke matching adjustment approval under sub-regulation (4).

(b) under regulation 70 to–

(i) to give approval for the application of a volatility adjustment for the purposes of calculating the best estimate or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(c) under regulation 84–

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(i) to give ancillary own funds approval or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(d) under regulation 87–

(i) to give classification of own funds approval or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(e) under regulation 101–

(i) to give approval for the use of an internal model for the calculation of all or part of an undertaking's Solvency Capital Requirement or to make changes to that internal model, or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(ea) under regulation 191A–

(i) to give approval for the re-classification of a parent undertaking or to or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(eb) under regulation 193(2A)(b)–

(i) to give approval for an undertaking to be excluded from group supervision or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(ec) under regulation 199–

(i) to give approval for the use of Method 2 or a combination of Methods 1 and 2 or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

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(f) under regulation 205(4)–

(i) to give approval for an intermediate insurance holding company's or intermediate mixed financial holding company's eligible own funds to be included in the calculation of group solvency or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(fa) under regulation 206–

(i) to give permission for a third country undertaking to be taken into account on an equivalence basis, in accordance with sub-regulation (2);

(ii) to give such permission subject to conditions; or

(iii) to refuse, vary or revoke such permission;

(fb) under regulation 209–

(i) to give permission, on a temporary basis, for a group to use more than one calculation approach when calculating its consolidated group Solvency Capital Requirement under Method;

(ii) to give such permission subject to conditions; or

(iii) to refuse, vary or revoke such permission;

(fc) under regulation 210–

(i) to give permission for the consolidated group Solvency Capital Requirement and the Solvency Capital Requirement of group undertakings to be calculated on the basis of an internal model;

(ii) to give such permission subject to terms and conditions; or

(iii) to refuse, vary or revoke such permission;

(g) under paragraph 2(1) of Schedule 1–

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(i) to give approval for the application of a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(ga) under Article 71 of the Solvency 2 Technical Standards–

(i) to give approval for an insurance or reinsurance undertaking–

(aa) to take any of the steps in paragraph (12)(a) to (d) in relation to basic own funds; or

(bb) in accordance with paragraph (14), to treat a significant non-compliance with the Solvency Capital Requirement without it being treated as a trigger event for the principal loss absorbency mechanism;

(ia) to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(gb) under Article 73 of the Solvency 2 Technical Standards–

(i) to give approval for an insurance or reinsurance undertaking–

(aa) to take any of the steps in paragraph (6)(a) to (d) in relation to basic own funds; or

(bb) in accordance with paragraph (7), to treat an exchange, conversion, repayment or redemption without it being deemed as a repayment or redemption;

(ia) to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(gc) under Article 77 of the Solvency 2 Technical Standards–

(i) to give approval for an insurance or reinsurance undertaking–

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(aa) to take any of the steps in paragraph (6)(a) to (c) in relation to basic own funds; or

(bb) in accordance with paragraph (7), to treat an exchange, conversion, repayment or redemption without it being deemed as a repayment or redemption;

(ia) to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval.

(h) under Article 218 of the Solvency 2 Technical Standards–

(i) to give approval for the application of an undertaking specific parameter ("USP approval") or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval;

(i) under Article 338 of the Solvency 2 Technical Standards–

(i) to give approval for the application of a group specific parameter ("GSP approval") or to give such approval subject to conditions; or

(ii) to refuse, vary or revoke such an approval.

(2) Where the GFSC gives an approval to which sub-regulation (1) applies, it must give the person concerned a written notice stating–

(a) that the approval is given;

(b) the conditions (if any) to which the approval is subject;

(c) unless the person concerned consents to those conditions (if any), the reasons on which the decision is based; and

(d) the date on which the approval takes effect.

(3) Where the GFSC refuses an approval to which sub-regulation (1) applies, it must give the person concerned a written notice stating–

(a) that the approval is refused;

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(b) the reasons on which the decision is based; and

(c) the date on which the decision takes effect.

(4) Where the GFSC varies or revokes an approval to which sub-regulation (1) applies, it must give the person concerned a written notice stating–

(a) that the approval is varied or revoked;

(b) if the approval is varied, the conditions (if any) to which the approval is subject;

(c) unless the person concerned consents to the variation or revocation (including any conditions to which the approval is subject), the reasons on which the decision is based; and

(d) the date on which the variation or revocation takes effect.

(5) The GFSC, on the application or with the consent of a person who is given an approval in accordance with this regulation, may specify within that approval provisions of these Regulations, the Solvency 2 Technical Standards or the Reporting Technical Standards which the person–

(a) is not required to apply; or

(b) is to apply subject to modifications specified in the approval,

where the GFSC is satisfied that requiring the specified provisions to apply (either at all or without modification) is incompatible with the approval.

(6) In sub-regulations (2) to (5), references to "approval" include permission under sub-regulation (1)(fa), (fb) or (fc).

Appeals.

277. Any right of appeal under these Regulations must be exercised in accordance with section 615 of the Act and, where applicable, as if notice of the decision appealed against were contained in a decision notice within the meaning of the Act.

Restriction on use of the words "insurance", "assurance" and "reinsurance".

278. (1) A person must not, in relation to or in connection with any business carried on in or from Gibraltar, use–

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(a) the word–

(i) "insurance";

(ii) "assurance"; or

(iii) "reinsurance"; or

(b) any cognate expression of a word in paragraph (a); or

(c) any word or words resembling a word in paragraph (a),

in a manner which indicates or is likely to cause any other person to believe that the person is, or is carrying on business as, an insurance or reinsurance undertaking.

(2) Sub-regulation (1) does not apply to the use of the words to which it relates–

(a) by an insurance or reinsurance undertaking, in respect only of a business encompassing the insurance or reinsurance activities which it is authorised to carry on;

(b) in the name of a holding or subsidiary company of an insurance or reinsurance undertaking, if use of the word does not indicate that the subsidiary or holding company is itself an insurance or reinsurance undertaking;

(c) by an intermediary or representative of an insurance or reinsurance undertaking which is permitted to use that word, when advertising or referring to its services on behalf of that insurance or reinsurance undertaking;

(d) in the name of–

(i) any association of employees of an insurance or reinsurance undertaking which itself is permitted to use that word; or

(ii) any association of insurance brokers,

but only if the word does not indicate that the association itself is an insurance or reinsurance undertaking;

(e) in the name of any government social insurance or assistance fund; or

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(f) with the prior written consent of the GFSC and in accordance with any conditions which the GFSC may impose in giving its consent.

(3) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

279. *Omitted*.

Rights acquired by existing reinsurance undertakings.

280.(1) A reinsurance undertaking which, before 10th December 2005–

(a) had its head offices in Gibraltar; and

(b) commenced reinsurance business there in accordance with an authorisation or entitlement under the provisions in force in Gibraltar,

is to be treated as a reinsurance undertaking authorised in accordance with these Regulations.

(2) A reinsurance undertaking to which sub-regulation (1) applies must comply with the provisions of these Regulations concerning the pursuit of reinsurance business and, in particular, is subject to the requirements of regulations 16(1)(b), (3)(b), (d), (e) and (f), 18 and 21 and Chapters 1 to 3 of Part 6.

Transitional Provisions.

281. The transitional provisions in Schedule 1 continue to have effect after IP completion day, but that Schedule is to be applied with any modifications necessary to take account of Gibraltar's withdrawal from the European Union and, in particular, any reference in that Schedule to an EU Directive is to read as a reference to that Directive as it applied immediately before IP completion day.

Delegated acts and technical standards.

281A.(1) The provisions of these Regulations specified in sub-regulation (2) which, before IP completion day, were required by the Solvency 2 Directive to be applied subject to delegated acts made under the provisions of that Directive identified in sub-regulation (2) are, after IP completion day–

(a) to continue to apply subject to the relevant delegated act, to the extent that it continues to form part of the law of Gibraltar; or

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(b) to apply subject to any technical standards made by the Minister under section 626A of the Act in place of the relevant delegated act (whether by revocation, amendment, modification or otherwise).

(2) The specified regulations and relevant Directive provisions are–

(a) regulation 29 (Article 31);

(b) regulations 39 and 40 (Article 37);

(c) regulations 43 to 50 (Article 50);

(d) regulations 52 to 56 (Article 56);

(e) regulation 65 (Article 75);

(f) regulations 66 to 80 (Article 86);

(g) regulations 81 to 84 (Article 92);

(h) regulations 85 to 88 (Article 97);

(i) regulation 89 (Article 99);

(j) regulations 93 to 100 (Articles 109a and 111);

(k) regulations 101 to 124 (Article 114);

(l) regulations 108 to 114 (Article 127);

(m) regulations 115 to 116 (Article 130);

(n) regulation 117 (Article 135);

(o) regulation 190 (Article 211);

(p) regulations 199 to 212 (Article 234); and

(q) regulation 233 (Article 256).

Liquidation: supplementary provisions.

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282. Schedule 2, which contains supplementary provisions relating to the liquidation of Gibraltar insurers and reinsurers, has effect.

Swiss general insurers.

283. Schedule 3, which applies to Swiss general insurers that establish and operate a branch in Gibraltar or propose to do so, has effect.

Revocations.

284. The following Regulations are revoked–

(a) the Insurance Companies (Licensing Application) Regulations 1990;

(b) the Insurance Companies Act (General Insurance and Long Term Insurance Directives) Regulations 1995;

(c) the Insurance Companies (Conduct of Business) Regulations 1996;

(d) the Insurance Companies (Deposits) Regulations 1996;

(e) the Insurance Companies (Forms) Regulations 1996;

(f) the Insurance Companies (Prescribed Particulars) Regulations 1996;

(g) the Insurance Companies (Valuation of Assets and Liabilities) Regulations 1996;

(h) the Insurance Companies (Auditors) Regulations 1997;

(i) the Insurance Companies (Prudential Supervision) Regulations 1997;

(j) the Insurance Companies (Accounts and Statements) Regulations 1998;

(k) the Insurance Companies (Parent Undertaking Solvency Margin Calculations) Regulations 2004;

(l) the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 2004;

(m) the Insurance Companies (Supplementary Supervision) Regulations 2007;

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(n) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2014;

(o) the Financial Services (Insurance Companies) (Solvency II Directive) (Miscellaneous Amendments) Regulations 2015;

(p) the Financial Services (Insurance Companies) (Solvency II Directive) (Enforcement and Regulatory Powers) Regulations 2015; and

(q) the Financial Services (Insurance Companies) (Solvency II Levy) Regulations 2015.

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SCHEDULE 1
TRANSITIONAL PROVISIONS

Regulation 281

General measures.

1.(1) Without limiting regulation 11, insurance or reinsurance undertakings which, by 1st January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity must not be subject to Titles I, II and III of the Solvency 2 Directive until the dates set out in sub-paragraph (2) where either –

(a) the undertaking has satisfied the GFSC that it will terminate its activity before 1st January 2019; or

(b) the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

(2) Insurance or reinsurance undertakings falling under–

(a) sub-paragraph (1)(a) must be subject to Titles I, II and III of the Solvency 2 Directive (which are transposed by Parts 1 to 11 of these Regulations) from 1st January 2019 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity;

(b) sub-paragraph (1)(b) must be subject to Parts 1 to 11 of these Regulations from 1 January 2021 or from an earlier date where the GFSC is not satisfied with the progress that has been made towards terminating the undertaking's activity.

(3) Insurance and reinsurance undertakings must be subject to the transitional measures in sub-paragraphs (1) and (2) only if the following conditions are met–

(a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;

(b) the undertaking must provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;

(c) the undertaking has notified the GFSC that it applies the transitional measures,

but sub-paragraphs (1) and (2) must not prevent any undertaking from operating in accordance with Parts 1 to 11 of these Regulations.

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(4) *Omitted*.

(5) Despite regulation 86, basic own-fund items must be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items–

(a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of the Solvency 2 Directive, whichever is the earlier;

(b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16.3 of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27.3 of Directive 2002/83/EC and Article 36.3 of Directive 2005/68/EC;

(c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with regulation 86.

(6) Despite regulation 86, basic own-fund items must be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items–

(a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of the Solvency 2 Directive, whichever is the earlier;

(b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16.3 of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27.3 of Directive 2002/83/EC and Article 36.3 of Directive 2005/68/EC.

(7) Despite regulations 90, 91(3) and 94, the following must apply–

(a) until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula must be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any EEA State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

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(b) in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk submodule in accordance with the standard formula must be reduced by 80% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State;

(c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk submodule in accordance with the standard formula must be reduced by 50% in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State;

(d) from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula must not be reduced in relation to exposures to EEA States' central governments or central banks denominated and funded in the domestic currency of any other EEA State.

(8) Despite regulations 90, 91(3) and 94, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in regulations 97, must be calculated as the weighted averages of–

(a) the standard parameter to be used when calculating the equity risk sub-module in accordance with that regulation; and

(b) the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in that regulation, and the weight for the parameter expressed in paragraph (b) of the first sub-paragraph must increase at least linearly at the end of each year from 0% during the year starting on 1 January 2016 to 100% on 1 January 2023.

(9) Despite regulation 122(3) and without limiting sub-regulation (5) of that regulation, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Gibraltar on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive but do not comply with the Solvency Capital Requirement in the first year of application of the Solvency 2 Directive–

(a) the GFSC must require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own

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funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017;

(b) the insurance or reinsurance undertaking concerned must, every three months, submit a progress report to the GFSC setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement; and

(c) the extension referred to in sub-paragraph (a) must be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

(10) The GFSC may allow the ultimate parent insurance or reinsurance undertaking based in Gibraltar, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

(11) Despite regulation 197(2) to (4)–

(a) the transitional provisions in sub-paragraphs (5) to (7) and paragraphs 2, 3, and 4 must apply mutatis mutandis at the level of the group; and

(b) the transitional provisions in sub-paragraph (9) must apply mutatis mutandis at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

Transitional measure on risk-free interest rates.

2.(1) An insurance and reinsurance undertaking may, with the GFSC's prior approval given under this paragraph and in accordance with regulation 276A, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

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(1A) An application for approval under sub-paragraph (1) must–

(a) be made in the form and manner the GFSC directs; and

(b) contain or be accompanied by any information the GFSC may reasonably require.

(1B) The GFSC may–

(a) give approval;

(b) give approval subject to conditions; or

(c) refuse approval.

(1C) The GFSC may at any time vary or revoke an approval given under sub-paragraph (1).

(2) For each currency the adjustment must be calculated as a portion of the difference between–

(a) the interest rate as determined by the insurance or reinsurance undertaking in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC at the last date of the application of that Directive;

(b) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in regulation 67(2) and (2).

(3) Where Gibraltar has adopted laws, regulations and administrative provisions pursuant to Article 20(1)B(a)(ii) of Directive 2002/83/EC, the interest rate referred to in sub-paragraph (2)(a) must be determined using the methods used by the insurance or reinsurance undertaking at the last date of the application of Directive 2002/83/EC; and the portion referred to in the sub-paragraph (2) must decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(4) Where insurance and reinsurance undertakings apply the volatility adjustment referred to in regulation 70, the relevant risk-free interest rate term structure referred to in sub-regulation (2)(b) must be the adjusted relevant risk-free interest rate term structure set out in that paragraph.

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(5) The admissible insurance and reinsurance obligations must comprise only insurance or reinsurance obligations that meet the following requirements–

(a) the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of the Solvency 2 Directive, excluding contract renewals on or after that date;

(b) until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;

(c) regulation 68 must not apply to insurance and reinsurance obligations.

(6) Insurance and reinsurance undertakings applying sub-paragraph (1) must–

(a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in regulation 70;

(b) not apply paragraph 3 of this Schedule;

(c) as part of their report on their solvency and financial condition referred to in regulation 52, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Transitional measure on technical provisions.

3.(1) Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions and that deduction may be applied at the level of homogeneous risk groups referred to in regulation 75.

(2) The transitional deduction must correspond to a portion of the difference between the following two amounts

(a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with regulation 66 at the first date of the application of the Solvency 2 Directive;

(b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and

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administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive; and the maximum portion deductible must decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

(3) Where insurance and reinsurance undertakings apply at the first date of the application of the Solvency 2 Directive the volatility adjustment referred to in regulation 70, the amount referred to in sub-paragraph (2)(a) must be calculated with the volatility adjustment at that date.

(4) Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in sub-paragraph (2)(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

(5) The deduction referred to in sub-paragraph (2) may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of the Solvency 2 Directive.

(6) Insurance and reinsurance undertakings which apply sub-paragraph (1)–

(a) must not apply paragraph 2;

(b) when they would not comply with the Solvency Capital Requirement without the application of the transitional deduction, must submit annually to the GFSC a report setting out the measures taken and the progress made to re-establish, at the end of the transitional period set out in sub-paragraph (2) a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement; and

(c) as part of their report on their solvency and financial condition referred to in regulation 52, must publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

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Phasing-in plan on transitional measures on risk-free interest rates and on technical provisions.

4.(1) Insurance and reinsurance undertakings that apply the transitional measures set out in paragraphs 2 and 3 must inform the GFSC as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures.

(2) The GFSC must require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(3) Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned must submit to the GFSC a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(4) The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

(5) The insurance and reinsurance undertakings concerned must submit annually a report to the GFSC setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

(6) The GFSC must revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

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SCHEDULE 2
LIQUIDATION OF GIBRALTAR INSURERS AND REINSURERS

Regulation 282

Long term businesses not to be liquidated voluntarily.

1. Despite Chapter 1 of Part X of the Companies Act 2014, a company incorporated in Gibraltar which carries on long-term business must not be liquidated voluntarily.

Appointment of liquidator.

2.(1) An application for the appointment by the court of a liquidator of a Gibraltar insurer may be made by–

(a) the GFSC; or

(b) any ten or more holders of long term business policies who individually own one or policy or policies having an aggregate surrender value of not less than £100,000.

(2) An application for the appointment by the court of a liquidator of a Gibraltar reinsurer may be made by the GFSC.

(3) Without limiting section 153 of the Insolvency Act 2011, the grounds on which the GFSC may make an application include–

(a) that the company has failed to satisfy an obligation under the Act or these Regulations;

(b) that the company has failed to keep proper records of its insurance business and, as a result, the GFSC is unable to ascertain whether the company is financially sound; or

(c) in the case of a Gibraltar insurer, that the company has failed to satisfy an obligation under the law of a country or territory outside Gibraltar which applies to the insurance or reinsurance activities of the insurer in that jurisdiction.

(4) The court must not appoint a liquidator on an application made under sub-paragraph (1)(b) unless the policyholders give security for costs in such amount as the court may determine.

(5) Where policyholders make an application under sub-paragraph (1)(b)–

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(a) the policyholders must serve a copy of the application on the GFSC; and

(b) the GFSC is entitled to be heard on the application.

Reduction of contracts.

3. Where an insurer or reinsurer has been proved to be unable to pay its debts, the court may, if it thinks fit, instead of appointing a liquidator, reduce the amount of the insurer's or reinsurer's contracts on such terms and subject to such conditions as the court may think just.

Application of assets.

4.(1) Assets representing funds maintained in respect of long-term business must be applied only for meeting the liabilities of that business, and other assets of the company must be applied only towards meeting the other liabilities of the company:

(2) Where in either case referred to in sub-paragraph (1), the value of the assets exceeds the amount of the liabilities attributable to them, the excess may be applied towards meeting any deficiency there may be in the assets attributable to the other business.

Meetings of creditors.

5. The liquidator of a company which carries on other business as well as long-term business, in exercising the general powers in section 177 of the Insolvency Act 2011 or section 377 of the Companies Act 2014, must summon separate meetings of creditors in relation to the other business and the long-term business.

Delinquent directors, etc.

6. Where the court makes an order under section 402 of the Companies Act 2014 that any money or property be repaid or restored to the company or any sum be contributed to its assets, the court must include in its order a direction as to how the money, property or contribution is to be applied in relation to the long-term and other funds of the company.

Continuation of long-term business.

7.(1) A liquidator carrying on the business of an insurer or reinsurer may agree to the variation of existing contracts but has no power to enter into new contracts of insurance.

(2) A liquidator may apply to the court for the appointment of a special manager for the long-term business.

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(3) The liquidator must serve on the GFSC a copy of any application made under sub-paragraph (2) and–

(a) the application must not be heard until 14 days have elapsed from the date of service; and

(b) the GFSC is entitled to be heard against the appointment of the proposed special manager.

(4) The court may, on the application of the liquidator, any special manager or the GFSC, appoint an independent actuary to investigate the business and report on–

(a) the desirability of carrying on the business; or

(b) any reduction in the amount of the outstanding contracts which the independent actuary considers necessary for the successful continuation of long term business,

and on any such report, the court may reduce the amount of those contracts.

(5) The liquidator requires the leave of the court before transferring any long-term business.

Penalties.

8. A liquidator who contravenes paragraph 5 or 7 commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

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SCHEDULE 3
SWISS GENERAL INSURERS

Regulation 283

Application

1. This Schedule applies to Swiss general insurers who, in accordance with the UK-Swiss Agreement, establish and operate a branch in Gibraltar or propose to do so.

Interpretation.

2. In these Regulations–

"principal Gibraltar executive" means an officer or employee of a Swiss general insurer–

(a) who (either alone or jointly with others) is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar; and

(b) who–

(i) is not also responsible for the conduct of any insurance business carried on by the insurer elsewhere; and

(ii) does not have a subordinate who is responsible for the conduct of the whole of the insurance business carried on by the insurer in Gibraltar.

"Swiss general insurer" means a body–

(a) whose head office is in Switzerland;

(b) which has permission in Gibraltar to carry on the regulated activities of effecting and carrying out of contracts of non-life insurance within the meaning of paragraph 22(1) of Schedule 2 to the Act; and

(c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

"UK-Swiss Agreement" means the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Direct Insurance other than Life Insurance (CP 26), as amended from time to time (which, by virtue of Article 43 of the Agreement, extends to Gibraltar)

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Approval of principal Gibraltar executive.

3.(1) A Swiss general insurer must not appoint a person as its principal Gibraltar executive unless–

(a) it has given the GFSC written notice of the proposed appointment of the person ("the candidate") to that position; and

(b) either–

(i) within three months of the date that notice under paragraph (a) was given, the GFSC has notified the insurer in writing that there is no objection to the candidate being appointed; or

(ii) that period has elapsed without the GFSC having given the insurer a written notice of objection.

(2) A notice under sub-paragraph (1)(a) must–

(a) be in the form and manner that the GFSC directs;

(b) contain or be accompanied by any information that the GFSC reasonably requires; and

(c) contain a statement signed by the candidate confirming that the notice is given with the candidate's knowledge and consent.

(3) The GFSC may issue a notice of objection under sub-paragraph (1)(b)(ii) if it appears to the GFSC that the candidate is not a fit and proper person to be appointed.

(4) Before issuing a notice of objection the GFSC must give the insurer and the candidate a preliminary notice stating that–

(a) the GFSC is proposing to issue a notice of objection; and

(b) the insurer or the candidate may, within one month of the date of service of the preliminary notice, make written or oral representations to the GFSC.

(5) The GFSC is not be obliged to disclose to the insurer or the candidate any particulars of the ground on which the GFSC is proposing to issue a notice of objection.

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(6) The GFSC must consider any representations made in accordance with sub-paragraph (4)(b) in deciding whether to issue a notice of objection.

(7) The GFSC must exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is the principal Gibraltar executive of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.

Duty to notify change of executive or representative.

4.(1) A Swiss general insurer must promptly inform the GFSC if a person–

(a) ceases to be the insurer's principal Gibraltar executive; or

(b) becomes or ceases to be–

(i) a relevant executive of the insurer; or

(ii) the insurer's general representative.

(2) A notice under sub-paragraph (1) must–

(a) be in the form and manner that the GFSC directs; and

(b) contain or be accompanied by any information that the GFSC reasonably requires.

(3) The GFSC must, exchange information with the supervisory authority in Switzerland regarding the suitability of any person who is a relevant executive or general representative of a Swiss general insurer where it is of relevance to that supervisory authority for the giving of permission or the ongoing assessment of compliance with operating conditions.

(4) In this paragraph–

"general representative" means a person designated as the insurer's representative in Gibraltar, who

(a) in the case of–

(i) an individual, is resident in Gibraltar; or

(ii) a corporation, has a place of business in Gibraltar and itself has an individual representative resident in Gibraltar who is authorised to act

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generally and to accept service of any document, on behalf of the corporation in its capacity as the insurer's representative;

(b) is not an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the insurer; and

(c) is authorised to act generally, and to accept service of any document, on the insurer's behalf.

"relevant executive" means an employee of the insurer who, under the immediate authority of its principal Gibraltar executive–

(a) exercises managerial functions, or

(b) is responsible for maintaining accounts or other records of the insurer,

other than a person whose functions relate exclusively to business conducted from a place of business outside Gibraltar.

Asset values.

5. A Swiss general insurer must ensure that the value of the assets of the business carried on by it in Gibraltar does not fall below the amount of the liabilities of that business, that value and amount being determined in accordance with any applicable valuation criteria.

Grounds for exercise of powers of intervention.

6. Without limiting the exercise of any other powers, the GFSC's powers of intervention under Parts 7 and 10 of the Act are exercisable in relation to a Swiss general insurer which has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in Switzerland.

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SCHEDULE 4
SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA

Regulations 94 and 95

Calculation of the Basic Solvency Capital Requirement.

1.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$\text{Basic SCR} = \sqrt{\sum_{i,j} \text{Corr}_{i,j} \times \text{SCR}_i \times \text{SCR}_j}$$

where–

SCR_i denotes the risk module i;

SCR_j denotes the risk module j; and

'i,j' means that the sum of the different terms should cover all possible combinations of i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following–

$SCR_{non\text{-}life}$ denotes the non-life underwriting risk module;

SCR_{life} denotes the life underwriting risk module;

SCR_{health} denotes the health underwriting risk module;

SCR_{market} denotes the market risk module; and

$SCR_{default}$ denotes the counterparty default risk module.

(3) The factor $Corr_{i,j}$ denotes the item set out in row i and column j of the following correlation matrix–

i\j	Market	Default	Life	Health	Non-life
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5

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Life	0.25	0.25	1	0.25	0
Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

(4) The Basic Solvency Capital Requirement must include a risk module for intangible asset risk and must be equal to the following–

$$BasicSCR = \sqrt{\sum_{i,j} Corr_{i,j} \cdot SCR_i \cdot SCR_j} + SCR_{intangibles}$$

where–

(a) the summation, Corri,j , SCRi and SCRj are specified as set out in sub-paragraph (1); and

(b) SCRintangibles denotes the capital requirement for intangible asset risk in of the Solvency 2 Technical Standards.

Calculation of the non-life underwriting risk module.

2.(1) The non-life underwriting risk module set out in regulation 95(2) must be calculated in accordance with the following formula–

$$SCR_{non-life} = \sqrt{\Sigma_{i,j} CorrNL_{(i,j)} \cdot SCR_i \cdot SCR_j}$$

where–

(a) the sum covers all possible combinations (*i, j*) of the sub-modules;

(b) $CorrNL_{(i,j)}$ denotes the correlation coefficient for non-life underwriting risk for sub-modules *i* and *j*; and

(c) SCR_i and SCR_j denote the capital requirements for risk sub-modules *i* and *j*, respectively.

(2) The correlation coefficient CorrNL(i,j) in sub-paragraph (1) denotes the item set out in row i and column j of the following correlation matrix–

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j i	Non-life premium and reserve	Non-life catastrophe	Non-life lapse
Non-life premium and reserve	1	0.25	0
Non-life catastrophe	0.25	1	0
Non-life lapse	0	0	1

Calculation of the life underwriting risk module.

3.(1) The life underwriting risk module must be aggregated in accordance with the following formula–

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \cdot SCR_i \cdot SCR_j}$$

where–

(a) SCRi denotes the sub-module i;

(b) SCRj denotes the sub-module j;

(c) 'i,j' means that the sum of the different terms should cover all possible combinations of i and j; and

(d) 'Corri,j' denotes the correlation coefficient for life underwriting risk for sub-modules i and j.

(2) In the calculation, SCR_i and SCR_j are replaced by the following–

$SCR_{mortality}$ denotes the mortality risk sub-module;

$SCR_{longevity}$ denotes the longevity risk sub-module;

$SCR_{disability}$ denotes the disability – morbidity risk sub-module;

$SCR_{life\ expense}$ denotes the life expense risk sub-module;

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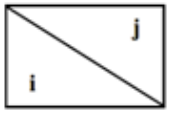
SCR $_{revision}$ denotes the revision risk sub-module;

SCR $_{lapse}$ denotes the lapse risk sub-module; and

SCR $_{life\ catastrophe}$ denotes the life catastrophe risk sub-module.

(3) The correlation coefficient Corri,j in sub-paragraph (1) must be equal to the item set out in row i and column j of the following correlation matrix–

	**Mortality**	**Longevity**	**Disability**	**Life expense**	**Revision**	**Lapse**	**Life catastrophe**
Mortality	1	–0.25	0.25	0.25	0	0	0.25
Longevity	–0.25	1	0	0.25	0.25	0.25	0
Disability	0.25	0	1	0.5	0	0	0.25
Life expense	0.25	0.25	0.5	1	0.5	0.5	0.25
Revision	0	0.25	0	0.5	1	0	0
Lapse	0	0.25	0	0.5	0	1	0.25
Life catastrophe	0.25	0	0.25	0.25	0	0.25	1

Calculation of the market risk module.

Structure of the market risk module

4.(1) The market risk module, set out in regulation 95(5) must be calculated in accordance with the following formula–

$$SCR_{market} = \sqrt{\Sigma_{i,j} Corr_{(i,j)} \cdot SCR_i \cdot SCR_j}$$

Where–

(a) the sum covers all possible combinations i, j of sub-modules;

(b) Corr(i,j) denotes the correlation coefficient for market risk for sub-modules i and j; and

(c) SCRi and SCRj denote the capital requirements for risk sub-modules i and j, respectively.

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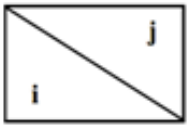
(2) The correlation coefficient Corr(i,j) in sub-paragraph (1) must be equal to the item set out in row i and column j of the following correlation matrix–

	**Interest rate**	**Equity**	**Property**	**Spread**	**Concentration**	**Currency**
Interest rate	1	A	A	A	0	0.25
Equity	A	1	0.75	0.75	0	0.25
Property	A	0.75	1	0.5	0	0.25
Spread	A	0.75	0.5	1	0	0.25
Concentration	0	0	0	0	1	0
Currency	0.25	0.25	0.25	0.25	0	1

(3) The coefficient A in the table must be equal to 0 where the capital requirement for interest-rate risk set out in Article 165 of the Solvency 2 Technical Standards is the capital requirement referred to in paragraph (1)(a) of that Article. In all other cases, the coefficient A must be equal to 0.5.

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SCHEDULE 5
INTEGRATION TECHNIQUES FOR PARTIAL INTERNAL MODELS

Regulation 103A

General provisions.

1.(1) For the purposes of this Schedule, the following definitions apply–

"unit of the partial internal model" is a component of the partial internal model that is separately calculated and not aggregated within the partial internal model; and

"basic Solvency Capital Requirement" means the basic Solvency Capital Requirement as supplemented or amended for the purposes of applying the relevant integration techniques in this Schedule.

(2) Where an insurance or reinsurance undertaking applies integration techniques 1 to 5, its Solvency Capital Requirement must be the sum of the following items–

(a) the Basic Solvency Capital Requirements as laid down in paragraphs 2 to 6;

(b) the capital requirement for operational risk as laid down in regulation 98, where that risk is not within the scope of the partial internal model, and generated by the partial internal model, where that risk is within the scope of the partial internal model;

(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in sub-paragraph (3), where that adjustment is not within the scope of the partial internal model, and generated by the partial internal model where that adjustment is within the scope of the partial internal model.

(3) Where the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes is not within the scope of the partial internal model, the undertaking must calculate it as laid down in Articles 205 to 207 of the Solvency 2 Technical Standards, but with the following changes–

(a) the Basic Solvency Capital Requirement referred to in Articles 206(1) and (2) and 207(1) of those Standards is calculated in accordance with paragraphs 2 to 6;

(b) Article 206(2)(a) to (d) of those Standards apply only to calculations with the standard formula;

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(c) for the purposes of Article 206(2) of those Standards the capital requirements used in the calculation of the Basic Solvency Capital Requirement that are generated by the partial internal must take into account the risk-mitigating effect provided by future discretionary benefits of insurance contracts;

(d) the capital requirement for operational risk referred to in Article 207(1)(c) of those Standards is calculated in accordance with sub-paragraph (2)(b).

Partial Internal Model Integration technique 1.

2. The Basic Solvency Capital Requirement must be equal to the sum of the capital requirements for the units of the partial internal model, the capital requirement derived by applying the standard formula for the Basic Solvency Capital Requirement only to the risks that are out of the scope of the partial internal model and the capital requirement for intangible asset risk as set out in Article 203 of the Solvency 2 Technical Standards.

Partial Internal Model Integration technique 2.

3.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$\mathrm{BSCR} = \sqrt{\sum_{i,j} \mathrm{Corr}_{(i,j)} \cdot \mathrm{SCR_i} \cdot \mathrm{SCR_j}} + \mathrm{SCR_{int}}$$

where–

(a) the sum covers all possible combinations (i,j) of the aggregation list set out in sub-paragraph (2);

(b) $Corr_{(i,j)}$ denotes the correlation parameter, for items i and j of the aggregation list;

(c) SCR_i and SCR_j denote the capital requirements for the items i and j of the aggregation list, respectively;

(d) SCR_{int} denotes the capital requirement for intangible asset risk as set out in Article 203 of the Solvency 2 Technical Standards.

(2) The items on the aggregation list must meet the following requirements–

(a) they must cover each of the units of the partial internal model;

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(b) they must include each of the following sub-modules of the standard formula excluding those within the scope of the partial internal model–

(i) the sub-modules of the non-life underwriting risk module set out in Article 114(1) of the Solvency 2 Technical Standards;

(ii) the sub-modules of the life underwriting risk module set out in regulation 95(3);

(iii) the sub-modules of the health underwriting risk module set out in Article 151(1) of the Solvency 2 Technical Standards; and

(iv) the sub-modules of the market risk module set out in regulation 95(5);

(c) they must include the counterparty default risk module of the standard formula unless it is within the scope of the partial internal model.

However, where none of the sub-modules of a module of the standard formula are within the scope of the partial internal module, the aggregation list must include that module instead of its sub-modules.

(3) The correlation parameters referred to in sub-paragraph (1)(b) must comply with the following requirements–

(a) for all items *i* and *j* from the aggregation list the correlation parameter $Corr_{(i,j)}$ must not be less than – 1 and must not exceed 1;

(b) for all items *i* and *j* from the aggregation list the correlation parameters $Corr_{(i,j)}$ and $Corr_{(j,i)}$ must be equal;

(c) for all items *i* from the aggregation list the correlation parameter $Corr_{(i,i)}$ must be equal to 1;

(d) for any assignment of real numbers to the items of the aggregation list the following must hold–

$$\sum_{i,j} \mathrm{Corr}_{(i,j)} \cdot x_i \cdot x_j \geq 0$$

where–

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(i) the sum covers all possible combinations (i,j) of the aggregation list; and

(ii) x_i and x_j are the numbers assigned to the items i and j, respectively, of the aggregation list;

(e) where the items i and j from the aggregation list are modules of the standard formula, the correlation parameter $Corr_{(i,j)}$ must be equal to the correlation parameter of the standard formula that is used to aggregate those two modules;

(f) where the items i and j from the aggregation list are sub-modules of the same module of the standard formula, then the correlation parameter $Corr_{(i,j)}$ must be equal to the correlation parameter of the standard formula that is used to aggregate those two sub-modules;

(g) for all items i and j from the aggregation list the correlation parameter $Corr_{(i,j)}$ must not be less than $Corr^{min}_{(i,j)}$ and must not exceed $Corr^{max}_{(i,j)}$, where $Corr^{min}_{(i,j)}$ and $Corr^{max}_{(i,j)}$ are appropriate lower and upper bounds selected by the undertaking.

An insurance or reinsurance undertaking must choose the correlation parameters referred to in sub-paragraph (1)(b) in such a way that no other set of correlation parameters that meets the requirements set out in sub-paragraphs (a) to (g) results in a higher Solvency Capital Requirement, calculated in accordance with sub-paragraph (1).

Partial Internal Model Integration technique 3.

4.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$\mathrm{BSCR} = \sqrt{\sum_{i,j} S_S^2 + 2S_S(\omega_1 \cdot P_C + \omega_2 \cdot P_S) + P^2} + \mathrm{SCR}_{\mathrm{int}}$$

where–

(a) S_S denotes the capital requirement derived by applying the standard formula for the Basic Solvency Capital Requirement only to the risks not covered by the partial internal model;

(b) ω_1 denotes the first implied correlation parameter as set out in sub-paragraph (2);

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(c) P_c denotes the capital requirement reflecting the risks that are both within the scope of the standard formula and the partial internal model, generated by the partial internal model;

(d) ω_2 denotes the second implied correlation parameter as set out in sub-paragraph (3);

(e) P_s is the capital requirement reflecting the risks within the scope of the partial internal model but not within the scope of the standard formula, generated by the partial internal model;

(f) P denotes the capital requirement reflecting the risks that are within the scope of the partial internal model, generated by the partial internal model.

(g) SCR_{int} denotes the capital requirement for intangible asset risk as set out in Article 203 of the Solvency 2 Technical Standards.

(2) The first implied correlation parameter must be equal to the following–

$$\omega_1 = \frac{S^2 - S_S^2 - S_C^2}{d_1 + 2 \cdot S_S \cdot S_C}$$

where–

(a) S denotes the capital requirement calculated in the same way as the Basic Solvency Capital Requirement by means of the standard formula, but where capital requirements for modules or sub-modules are replaced by capital requirements for those modules or sub-modules that are generated by the partial internal model, where possible;

(b) S_C denotes the capital requirement derived by applying the standard formula for the Basic Solvency Capital Requirement only to the risks that are within the scope of the standard formula and the partial internal model, but where the capital requirements for the modules and sub-modules are replaced by capital requirements for those modules or sub-modules that are generated by the partial internal model;

(c) S_S is defined as in sub-paragraph (1)(a);

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(d) d_1 is equal to 1 where S_S or S_C are zero and equal to zero where S_S and S_C are different from zero.

(3) The second implied correlation parameter must be equal to the following–

$$\omega_2 = \omega_1 \cdot \omega_3 + \frac{1}{2} \cdot \sqrt{(1-\omega_1^2) \cdot (1-\omega_3^2)}$$

Where ω 1 is as defined in sub-paragraph (2) and ω 3 is the third implied correlation parameter as set out in sub-paragraph (4).

(4) The third implied correlation parameter must be equal to the following–

$$\omega_3 = \frac{P^2 - P_S^2 - P_C^2}{d_2 + 2 \cdot P_S \cdot P_C}$$

where–

(a) P, P_s and P_c are as defined in sub-paragraph (1);

(b) d_2 is equal to 1 where P_s or P_c are zero and equal to zero where P_s and P_c are different from zero.

Partial Internal Model Integration technique 4.

5.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$BSCR = \sqrt{P^2 + S_S^2 + \sum_{j=k+1}^{n} 2 \cdot S_j \cdot (\sum_{i=1}^{l} Corr_{(i,j)} \cdot P_i + \sum_{i=l+1}^{k} Corr_{(i,j)} \cdot S_i)} + SCR_{int}$$

where–

(a) P denotes the capital requirement reflecting the risks that are within the scope of the partial internal model, generated by the partial internal model;

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(b) S_S denotes the capital requirement derived by applying the standard formula for the Basic Solvency Capital Requirement only to the risks not covered by the partial internal model;

(c) *k* denotes the number of modules of the standard formula that are within the scope of the partial internal model;

(d) *n* denotes the number of modules of the standard formula;

(e) *l* denotes the number of modules of the standard formula for each of which the capital requirement can be generated by the partial internal model;

(f) $Corr_{(i,j)}$ denotes the correlation parameter of the standard formula for the aggregation of modules *i* and *j*;

(g) P_i denotes the capital requirement for the module *i* of the standard formula, generated by the partial internal model;

(h) S_i and S_j denote the capital requirement for modules *i* and *j* of the standard formula, respectively, which are calculated in the following way–

(i) the module is generated by the standard formula provided that the module does not consists of sub-modules; and

(ii) the module is calculated in accordance with sub-paragraph (2) provided that the module consist of sub-modules.

(i) SCR_{int} denotes the capital requirement for intangible asset risk as set out in Article 203 of the Solvency 2 Technical Standards.

(2) For all modules of the standard formula referred to in sub-paragraph (1)(h)(ii), the capital requirement of a particular module must be generated by the formula set out in sub-paragraph (1), applying the following denominations–

(a) *P* denotes the capital requirement reflecting the risks of the sub-modules of that particular module which are within the scope of the partial internal model, generated by the partial internal model;

(b) S_S denotes the capital requirement derived by applying that particular module only to the risks not covered by the partial internal model;

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(c) k denotes the number of sub-modules of that particular module that are within the scope of the partial internal model;

(d) n denotes the number of sub-modules of that particular module;

(e) l denotes the number of sub-modules of that particular module for each of which the capital requirement can be generated by the partial internal model;

(f) $Corr_{(i,j)}$ denotes the correlation parameter of the standard formula for the aggregation of sub-modules i and j of that particular module;

(g) P_i denotes the capital requirement for the sub-module i of that particular module, generated by the partial internal model;

(h) S_i and S_j denote the capital requirement for sub-modules i and j of that particular module respectively which are calculated in the following way–

(i) the sub-module is generated by the standard formula provided that the sub-module does not consists of other sub-modules; and

(ii) the sub-module is calculated in accordance with paragraph 3 provided that the sub-module consist of other sub-modules;

(i) SCR_{int} must be set to zero.

(3) For all sub-modules of the standard formula referred to in paragraph (2)(h)(ii), the capital requirement of a particular sub-module must be generated by the formula set out in sub-paragraph (1), applying the following denominations–

(a) P denotes the capital requirement reflecting the risks of the sub-modules of that particular sub-module which are within the scope of the partial internal model, generated by the partial internal model;

(b) S_S denotes the capital requirement derived by applying that particular sub-module only to the risks not covered by the partial internal model;

(c) k denotes the number of sub-modules of that particular sub-module that are within the scope of the partial internal model;

(d) n denotes the number of sub-modules of that particular sub-module;

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(e) l denotes the number of sub-modules of that particular sub-module for each of which the capital requirement can be generated by the partial internal model;

(f) $Corr_{(i,j)}$ denotes the correlation parameter of the standard formula for the aggregation of sub-modules i and j of that particular sub-module;

(g) P_i denotes the capital requirement for the sub-module i of that particular sub-module, generated by the partial internal model;

(h) S_i and S_j denote the capital requirement for sub-modules i and j of that particular sub-module respectively which are calculated in the following way–

(i) the sub-module is generated by the standard formula provided that the sub-module does not consists of other sub-modules; and

(ii) the sub-module is calculated in accordance with this paragraph provided that the sub-module consist of other sub-modules;

(i) SCR_{int} must be set to zero.

Partial Internal Model Integration technique 5.

6.(1) The Basic Solvency Capital Requirement must be equal to the following–

$$BSCR = \sqrt{P^2 + S_S^2 + \frac{2 \cdot P}{\sqrt{\sum_{i=1}^{k} \sum_{j=1}^{k} Corr_{(i,j)} \cdot S_i \cdot S_j}} \cdot \sum_{j=1+1}^{k} \sum_{i=1}^{k} Corr_{(i,j)} \cdot S_i \cdot S_j + SCR_{int}}$$

where–

(a) P, S_S, k, n, $Corr_{(i,j)}$ and SCR_{in} are defined as in paragraph 5(1);

(b) S_i and S_j denote the capital requirement for modules i and j respectively of the standard formula which are calculated in the following way–

(i) the module is generated by the standard formula provided that the module does not consists of sub-modules;

(ii) the module is calculated in accordance with sub-paragraph (2) provided that the module consist of sub-modules.

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(2) For all modules of the standard formula referred to in sub-paragraph (1)(b)(ii), the capital requirement of a particular module must be generated by the formula set out in paragraph (1), applying the following denominations–

(a) P, S_S, k, n, $Corr_{(i,j)}$ and SCR_{int} are defined as in paragraph 5(2);

(b) S_i and S_j denote the capital requirement for sub-modules i and j of that particular module respectively which are calculated in the following way–

(i) the sub-module is generated by the standard formula provided that the sub-module does not consists of other sub-modules; and

(ii) the sub-module is calculated in accordance with sub-paragraph (3) provided that the sub-module consist of other sub-modules.

(3) For all modules of the standard formula referred to in sub-paragraph (2)(b)(ii), the capital requirement of a particular module must be generated by the formula set out in paragraph 1, applying the following denominations–

(a) P, S_S, k, n, $Corr_{(i,j)}$ and SCR_{int} are defined as in paragraph 5(3);

(b) S_i and S_j denote the capital requirement for sub-modules i and j of that particular module respectively which are calculated in the following way–

(i) the sub-module is generated by the standard formula provided that the sub-module does not consists of other sub-modules; and

(ii) the sub-module is calculated in accordance with this paragraph provided that the sub-module consist of other sub-modules.

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