L.N. of 2007

INSURANCE BUSINESS (ASSETS AND LIABILITIES) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

List of Schedules

L.N. of 2007

INSURANCE BUSINESS ACT
(CAP. 403)

Insurance Business (Assets and Liabilities) Regulations, 2007

IN exercise of the powers conferred by articles 11, 14, 16, 17, 18, 63 and 64 of the Insurance Business Act the Prime Minister and the Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations-

PART I

PRELIMINARY

Citation and commencement.

1. (1) The title of these regulations is the Insurance Business (Assets and Liabilities) Regulations.

(2) These regulations shall come into force on the [ ] other than for regulation 4(1) and regulation 8(3)(*a*) in so far as these regulations refer to a Swiss general insurer.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

Cap.403

"the Act" means the Insurance Business Act;

"the 1981 Act" means the Insurance Business Act, 1981, repealed by the Act;

"accident year accounting" means the basis of accounting for general insurance business, whereby a result is determined at the end of the accounting period reflecting the profit or loss from providing insurance or reinsurance cover during that period and any adjustments to the profit or loss of providing insurance or reinsurance cover during earlier accounting periods;

"authorisation" means an authorisation under article 7 of the Act to carry on business of insurance;

“captive reinsurance undertaking” means a pure reinsurer owned either by a financial undertaking other than an insurer, an EEA insurer, a pure reinsurer, an EEA pure reinsurer or a group of insurance undertakings or reinsurance undertakings to which the Insurance Business (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations, 2004 apply, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking is a member;

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

Cap. 204.

"Central Bank of Malta" and "the Central Bank" mean the Central Bank of Malta established by article 3 of the Central Bank of Malta Act and includes any of its appointed agents;

"competent authority" means the Malta Financial Services Authority appointed under article 3 of the Act;

"deposit back arrangement", in relation to any contract of reinsurance, means an arrangement whereby an amount is deposited by the reinsurer with the cedant;

"EEA insurance undertaking or EEA insurer" means an insurance undertaking whose head office is in an EEA State, other than Malta, and which has received authorisation under article 4 of Directive 2002/83/EC or article 6 of Directive 73/239/EEC;

"EEA margin of solvency" means the margin of solvency of an insurer computed by reference to the assets and liabilities of the business carried on by the insurer in EEA States, taken together, in accordance with regulation 9(3)(*b*);

“EEA reinsurance undertaking or EEA pure reinsurer” means a reinsurance undertaking whose head office is in an EEA State, other than Malta, and which has received authorisation under article 3 of Directive 2005/68/EC;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on 17 March, 1993 and as amended from time to time;

“financial undertaking” means one of the following entities:

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

(b) an insurer, an EEA insurer, a pure reinsurer, an EEA pure reinsurer, or an insurance holding company within the meaning of Article 1(i) of Directive 98/78/EC;

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

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

"financial year" means:

(*a*) for the purposes of Part VIII of these regulations, a period of account; and

(*b*) for all other purposes of these regulations, each period at the end of which the balance of the accounts of the insurer or the pure reinsurer is struck or, if no such balance is struck, the calendar year;

"financial year in question" means the financial year which last ended before the date on which the accounts of an insurer or a pure reinsurer are required to be submitted to the competent authority under article 20 of the Act, and the preceding financial year and previous financial years shall be construed accordingly;

"gross premiums", in relation to an insurer or a pure reinsurer and a financial year:

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

(*b*) includes premiums receivable by the insurer or the pure reinsurer under reinsurance contracts accepted by the insurer or the pure reinsurer;

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

L.N 103 of 2000

"gross premiums written" means the amounts required by the First Schedule to the Insurance Business (Companies Accounts) Regulations, to be shown in the profit and loss account of an insurer or a pure reinsurer at general business technical account item I.1.(a);

Cap. 16.

"hypothec" shall be construed in accordance with Sub-title II of Title XXIII of the Civil Code;

"implicit items" shall be construed in accordance with regulation 7;

"insurance holding company" means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurers, EEA insurers, pure reinsurers, EEA pure reinsurers, non-EEA insurers or non-EEA pure reinsurers, at least one of such subsidiary undertakings being an insurer or a pure reinsurer and which is not a mixed financial holding company in terms of regulation 2 of the Financial Conglomerates Regulations;

L.N. 521 of 2004

"insurance parent undertaking", in relation to an insurer, an EEA insurer, a pure reinsurer or an EEA pure reinsurer, is a parent undertaking of that insurer, EEA insurer, pure reinsurer or EEA pure reinsurer which is either itself an insurance undertaking, a reinsurance undertaking or an insurance holding company;

"insurance undertaking" means an undertaking, whether or not an insurer, which carries on insurance business;

"insurer" means a company having authorisation to carry on business of direct insurance;

"insurer whose head office is in Malta" means an insurer whose head office is in Malta and which is entitled to carry on business of insurance in an EEA State, other than Malta, in exercise of a European right;

"leading insurance undertaking" in relation to a relevant coinsurance operation, means an insurance undertaking which:

(*a*) is recognised as the leading insurance undertaking by the other insurance undertakings involved in the operation; and

(*b*) determines the terms and conditions of insurance for the operation;

"linked long term contract" means a contract of the kind described in paragraph 2, Roman number III, of the Second Schedule to the Act;

Cap. 330.

"Malta Financial Services Authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act;

"Malta margin of solvency" means an insurer's margin of solvency computed by reference to the assets and liabilities of the business carried on by that insurer in Malta under regulation 9;

Cap. 345.

"Malta Stock Exchange" means the Malta Stock Exchange established by article 24 of the Financial Markets Act;

"Maltese liri" means Maltese liri or their equivalent in other currencies acceptable to the competent authority;

"margin of solvency" means the excess of the value of assets over the amount of liabilities, that value and amount being determined in accordance with Part IX and Part X and regulation 10 of these regulations;

"mathematical provisions" and "mathematical reserves" mean the provision made by a long term business insurer or pure reinsurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangements) arising under or in connection with contracts for long term business;

"mutual" means an insurance company which is a body corporate having no share capital (except a wholly owned subsidiary with no share capital but limited by guarantee);

"non-directive insurer" means -

(*a*) a mutual (carrying on long term business) -

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

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

(*b*) a mutual (carrying on general business) whose –

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

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

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

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

(*c*) an insurer whose business of insurance (other than reinsurance) is -

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

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

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

and whose business of insurance is limited to that described in the foregoing paragraphs (*a*) to (*c*).

"non-EEA insurer" means an insurance undertaking whose head office is not in an EEA State;

"non-EEA pure reinsurer" means a reinsurance undertaking whose head office is not in an EEA State;

"pure reinsurer" means a company having authorisation to carry on business restricted to reinsurance;

L.N. 3 of 2003.

"recognised investment exchange" means a person issued with a recognition order in terms of the Recognised Investment Exchange (Recognition Requirements) Regulations;

Cap. 386.

"Registrar of Companies" means the person appointed under article 400(1) of the Companies Act;

"reinsurance undertaking" means an undertaking, whether or not a pure reinsurer, whose business is restricted to reinsurance;

"required margin of solvency" means a margin of solvency required by article 14 of the Act and regulation 8;

"relevant co-insurance operation" means an insurance operation which:

(*a*) is not a reinsurance acceptance; and

(*b*) relates to classes 3 to 16 of general insurance business as outlined in Part I of the Third Schedule to the Act; and

(*c*) relates to a risk which is covered by a single contract at an overall premium and for the same period by two or more insurance companies, each for its own part; and

(*d*) relates to a risk which is situated within an EEA State; and

(*e*) is subject to the condition that one of the insurance companies participating in the operation does so through a head office or branch established in an EEA State other than that in which the leading insurance undertaking's head office (or if the leading insurance undertaking is participating through a branch, that branch) is established;

"relevant date" in relation to the valuation of any asset for any purpose for which Part IX of these regulations applies, the date when the asset falls to be valued for that purpose and in relation to the determination of any liability for which Part X of these regulations applies, the date when the liability falls to be determined for that purpose;

"relevant insurer" means an insurer whose business is restricted to reinsurance of the marine mutual on terms that provide that the marine mutual can cancel the reinsurance arrangements at any time and can require the insurer immediately to transfer its assets and liabilities to the marine mutual;

"relevant regulatory requirements" means, in the case of a group undertaking that is an insurance undertaking or a reinsurance undertaking, ultimate insurance parent undertaking or ultimate EEA insurance parent undertaking established in a country within the zone of countries at the option of the insurer or the pure reinsurer:

(*a*) the regulatory requirements of that country applicable to an undertaking carrying on business of insurance (even if it is an insurance holding company); or

(*b*) in the case of any other undertaking carrying on business of insurance or insurance holding company, the rules contained in these regulations applicable to an insurer whose head office is in Malta or to a pure reinsurer whose head office is in Malta (whether it is or not).

“special purpose vehicle” means an undertaking, whether incorporated or not, other than an existing insurer, EEA insurer, pure reinsurer or EEA pure reinsurer, which assumes risks from insurers or pure reinsurers and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of such a vehicle;

"subsidiary undertaking" means an undertaking within the meaning of article 2(2)(*c*) of the Companies Act; Cap. 386.

"Swiss general insurer" means an insurer -

(*a*) whose head office is in Switzerland,

(*b*) which is authorised in Malta to carry on general business, and

(c) whose authorisation is not restricted to reinsurance business;

"technical provisions" means the amount, net of the amount recoverable by an insurer or a pure reinsurer under contracts of reinsurance ceded by it (but excluding any rights of recovery in respect of insurance liabilities already discharged by the insurer or the pure reinsurer), set aside by the insurer or the pure reinsurer to meet its liabilities under or in connection with contracts of insurance or reinsurance; and includes mathematical provisions;

"the last financial year" means the financial year which last ended before the date on which financial statements of the insurer relating to that financial year are required to be forwarded to the competent authority pursuant to article 20 of the Act;

"ultimate EEA insurance parent undertaking" means an EEA insurance parent undertaking that is not itself the subsidiary undertaking of another EEA insurance parent undertaking;

"ultimate insurance parent undertaking" means an insurance parent undertaking that is not itself the subsidiary undertaking of another insurance parent undertaking;

"undertaking" has the same meaning as is assigned to it by article 2(1) of the Companies Act; Cap. 386.

"underwriting year accounting" means the method of accounting for general insurance business whereby premiums, claims and associated expenses are related to the underwriting year in which the policies incept

rather than the period of risk and the recognition of any underwriting profit is deferred until a subsequent accounting period;

"zone of countries" means a zone of countries as may be determined by an insurance rule made by the competent authority by virtue of article 4(3) of the Act for the purposes of any provision of any regulation made under the Act,

and the words and expressions which are also used in the Act shall, in these regulations, have the same meanings as in the Act.

(2) In these regulations any reference to "long term fund or funds" shall be deemed to be a reference to "technical provisions" which an insurer or a pure reinsurer establishes and maintains under the Act in respect of long term business.

(3) For the purposes of these regulations and the definition of non-directive insurer, the exchange rate from the Euro to the Maltese lira for each year beginning on 31 December is the rate applicable on the last day of the preceding October for which the exchange rates for the currencies of all the European Union Member States were published in the Official Journal of the European Communities.

Implementation of Council Directives.

3. The purpose of these regulations is to implement the provisions of Directives 73/239/EEC, 88/357/EEC, 92/49/EEC, 2002/83/EC, 2002/13/EC, 98/78/EC, 2002/87/EC and 2005/68/EC, and they shall be interpreted and applied accordingly.

PART II
MAINTENANCE OF ASSETS IN MALTA

Maintenance of assets in Malta in the case of non-EEA insurers.

4. (1) Subject to regulation 5, and subject to subregulation (2) of this regulation, a non-EEA insurer which is authorised under the Act to carry on direct insurance business, other than a Swiss general insurer, must make and maintain a deposit in Malta of any asset of the type mentioned in regulation 6 which is no less than one-half of the minimum guarantee fund appropriate to the margin of solvency which the insurer is required to maintain under regulation 8(2)(*b*) or regulation 8(3)(c)(ii)

(2) Where -

(*a*) the insurer carries on insurance business in Malta and one or more other EEA States; and

(*b*) the competent authority and the appropriate supervisory authority or authorities in the EEA States have agreed that this regulation should apply,

the insurer shall make and maintain the deposit with such person as may be agreed between the competent authority and the other authority or authorities.

Amount of assets to be maintained in Malta in the case of insurers carrying out servicing or run-off of business of insurance.

5. In the case of an insurer which at the time of coming into force of these regulations had ceased to carry on the business it was licensed to carry on under the 1981 Act or the Act and the insurer is only servicing or running-off that business, the amount of deposit which the insurer concerned is required to maintain in Malta shall be the amount of deposit which the insurer was required to maintain, pursuant to regulation 5 of the Insurance Business (Companies Assets and Liabilities) Regulations, 2000 or such higher amount as determined by the competent authority.

L.N. 102 of 2000.

Kind of assets to be maintained in Malta.

6. (1) The assets mentioned in regulation 4 shall be assets of the following kind and shall be treated to be assets of that kind only if they satisfy the conditions applicable to assets of that kind:

(*a*) an asset consisting of an approved security where the issuer is established in Malta or a country falling within the zone of countries if the security is in the name of, and held in custody for the insurer's account by, the Central Bank of Malta;

(*b*) an asset consisting of a deposit in Maltese lira or any currency acceptable to the competent authority with a bank or credit institution lawfully carrying on the business of banking in Malta if the deposit is in the name of the Malta Financial Services Authority for the insurer's account or pledged by the insurer concerned in favour of the Malta Financial Services Authority and the document constituting the pledge is delivered to the competent authority;

(*c*) an asset consisting of a deposit in Maltese lira or any currency acceptable to the competent authority with a foreign bank or credit institution of first class standing lawfully permitted in the country where the deposit is held to carry on the business of banking acceptable to the competent authority if the deposit is in the name of the Central Bank of Malta for the insurer's account;

(*d*) an asset consisting of a listed investment on the Malta Stock Exchange, or a recognised investment exchange if the investment is pledged in favour of the Malta Financial Services Authority and the document constituting the pledge is registered by the insurer concerned with the Central Securities Depository of the Malta Stock Exchange or a recognised investment exchange and delivered to the competent authority.

(2) For the purpose of subregulation (1) -

"approved security" has the same meaning as in regulation 41(1);

"bank" and "credit institution", in relation to local deposits, have the same meaning as is assigned to them by article 2(1) of the Banking Act;

Cap. 371

Cap. 371.

"deposit", in relation to any currency, has the same meaning as is assigned to it by article 2(1) of the Banking Act.

PART III
MARGINS OF SOLVENCY

Interpretation.

7. In this Part of these regulations -

"EEA-deposit insurer" means a non-EEA insurer which has made a deposit in an EEA State (other than in Malta) in accordance with the provisions of regulation 4 of these regulations;

"implicit items" has the meaning given by regulations 11 to 13 and "implicit item" shall be construed accordingly;

"Malta-deposit insurer" means a non-EEA insurer which has made a deposit in Malta in accordance with the provisions of regulation 4;

"zillmerising" means the method known by that name for modifying the net premium reserve method of valuing a long term business policy by increasing the part of the future premiums for which credit is taken so as to allow for initial expenses.

Basic requirement.

8. (1) Every insurer or pure reinsurer whose head office is in Malta shall maintain a margin of solvency in accordance with this Part of these regulations.

(2) Subject to subregulation (3), every insurer whose head office is not in Malta or an EEA State shall maintain -

(*a*) a margin of solvency; and

(b) a Malta margin of solvency,

in accordance with this Part of these regulations.

(3) Subregulation (2) shall not apply to an insurer if -

(*a*) it is a Swiss general insurer;

(*b*) it is an EEA-deposit insurer; or

(*c*) it is a Malta deposit insurance company which has made a deposit under regulation 4(2), but a Malta deposit insurance company which has made a deposit under regulation 4(2) must maintain -

(i) a margin of solvency; and

(ii) an EEA margin of solvency,

in accordance with this Part of these regulations.

(4) In the case of an insurer or a pure insurer that carries on both long term business and general business, subregulations (1), (2) and (3) shall have effect as if the requirement to maintain -

(*a*) a margin of solvency; and

(*b*) a Malta margin of solvency; or

(c) an EEA margin of solvency,

were requirements to maintain separate margins in respect of the two kinds of business.

(5) In calculating the margin of solvency, the Malta margin of solvency and the EEA margin of solvency, the amount of the insurer's or the pure reinsurer's liabilities shall be increased by the amount of any reserve maintained under Part VIII of these regulations.

Determination of margins of solvency.

9. (1) (a) Subject to subregulations (3) to (9), the margin of solvency to be maintained in respect of general business carried on by an insurer or a pure reinsurer and, subject to paragraph (b) in respect of long term business carried on by a pure reinsurer, shall be determined by taking the greater of –

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

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

(b) The margin of solvency to be maintained by a pure reinsurer in respect of classes of long term business covered by Article 2(1)(a) of Directive 2002/83/EC linked to investment funds or participating contracts and for the operations referred to in Article 2(1)(b), 2(2)(b), (c), (d) and (e) of Directive 2002/83/EC, may, with the approval of the competent authority upon application made to it in writing setting out the reasons of the change, be determined in accordance with the provisions of the First Schedule;

(c) A pure reinsurer which determines the margin of solvency in accordance with paragraph (b), may, with the approval of the competent authority upon application made to it in writing setting out the reasons of the change, determine the margin of solvency in accordance with paragraph (a).

(2) (a) Subject to subregulations (3) to (9), the margin of solvency to be maintained in respect of long term business carried on by an insurer shall, subject to paragraph (b), be determined in accordance with the provisions of the First Schedule;

(b) Where:

(i) the reinsurance premiums collected exceed 10% of the insurer's total premium;

(ii) the reinsurance premiums collected exceed EUR50,000,000; or

(iii) the technical provisions resulting from its reinsurance acceptances exceed 10% of its total technical provisions,

the margin of solvency in respect of the long term reinsurance business carried on by an insurer shall, subject to paragraph (c), be determined by taking the greater of –

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

(bb) the sum resulting from the application of the method of calculation set out in the Third Schedule;

(c) The margin of solvency to be maintained by an insurer in respect of classes of long term reinsurance business covered by Article 2(1)(a) of Directive 2002/83/EC linked to investment funds or participating contracts and for the operations referred to in Article 2(1)(b), 2(2)(b), (c), (d) and (e) of Directive 2002/83/EC, may, with the approval of the competent authority upon application made to it in writing setting out the reasons of the change, be determined in accordance with the provisions of the First Schedule;

(d) An insurer which determines the margin of solvency in accordance with paragraph (c), may, with the approval of the competent authority upon application made to it in writing setting out the reasons of the change, determine the margin of solvency in accordance with paragraph (a).

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

(*a*) the Malta margin of solvency shall be determined by applying subregulations (1) or (2), but only to business carried on in Malta; and

(*b*) the EEA margin of solvency shall be determined by applying subregulations (1) or (2), but only to business carried on in the EEA States taken together.

(4) For a contract of direct insurance to which article 5(3) of the Act applies, the required margin of solvency shall be determined by taking the aggregate of the results arrived at by applying -

(*a*) in the case of so much of the contract as is within any class of long term business, the appropriate method of calculation set out in the First Schedule, and

(*b*) in the case of so much of the contract as is within general business class 1 or 2, the method of calculation taking the greater of:

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

(ii) the sum resulting from the application of the method of calculation set out in the Third Schedule..

(5) Where an insurer or a pure reinsurer carries on long term business and owing to the nature of that business more than one margin of solvency is produced in respect of that business by the operation of this Part of these regulations, the margins in question shall be aggregated as regards the insurer or the pure reinsurer in order to arrive at the insurer's or the pure reinsurer's required margin of solvency for long term business.

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

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

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

(7) Subject to subregulation (8), in each case where the margin of solvency is determined in accordance with the Second or Third Schedule, including under subregulation (4) and paragraph 4(1) of the First Schedule is lower than the required margin of solvency of the prior financial year, then the margin of solvency must be adjusted so that it is at least equal to the required margin of solvency of the prior financial year multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the prior financial year and the amount of the technical provisions for claims outstanding at the beginning of the prior financial year.

(8) For the purpose of subregulation (7) -

(*a*) technical provisions must not be discounted, or reduced, to take account of investment income, unless-

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

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

(*b*) technical provisions shall be calculated net of reinsurance; but the ratio must not be higher than 1.

(9) Where the nature or quality of reinsurance relied on to reduce the required margin of solvency changes significantly during the financial year, an insurer or a pure reinsurer must notify the competent authority forthwith of the change, and the competent authority shall have the power to decrease the reduction based on reinsurance to the solvency margins as determined in accordance with the First, Second and Third Schedules.

Valuation.

10. (1) Where an insurer or a pure reinsurer has assets equal to or in excess of its liabilities, then, in addition to any other applicable valuation regulations, subregulations (2) to (4) shall have effect for determining the extent to which the value of the assets exceeds the amount of the liabilities in connection with the required margin of solvency.

(2) Notwithstanding regulations 58(2) and 76(2), liabilities may be left out of account in respect of:

(a) cumulative preferential share capital and subordinated loan capital up to fifty per centum of the value of the margin of solvency of the insurer or the pure reinsurer may be left out of account provided that no more than twenty-five per centum of margin of solvency shall consist of subordinated loans with a fixed maturity, or fixed term preferential share capital, and provided the following minimum criteria are met -

(i) in the event of the bankruptcy or liquidation of the insurer or pure reinsurer, binding agreements must exist under which the subordinated loan capital or the cumulative preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

(ii) subordinated loan capital must fulfil the following additional conditions -

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

(bb) for loans with a fixed maturity, the original maturity must be at least five years. Not later than one year before the repayment date the insurer or pure insurer must submit to the competent authority for its approval a plan showing how the margin of solvency of the insurer or the pure reinsurer will be kept at, or brought up to, the required level at maturity, unless the extent to which the loan may rank as component of the margin of solvency is gradually reduced during at least the last five years before the repayment date. The competent authority may authorise the early repayment of such loans provided application is made in writing by the issuing company and its margin of solvency will not fall below the required margin of solvency;

(cc) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered a component of the margin of solvency of the insurer or the pure reinsurer, or unless the prior consent of the competent authority is specifically required for early repayment. In the latter event, the insurer or the pure reinsurer must notify the competent authority in writing at least six months before the date of the proposed repayment, specifying the actual and required margin of

solvency both before and after that repayment. The competent authority shall authorise repayment only if the insurer's or pure reinsurer's value of the margin of solvency will not fall below the required margin of solvency;

(dd) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the insurer or the pure reinsurer, the debt will become repayable before the agreed repayment dates;

(ee) the loan agreement may be amended only after the competent authority has confirmed in writing that it has no objection to the amendment proposed.

(b) issued securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in subregulation (2)(a) of this regulation, up to fifty per centum of the value of the margin of solvency of the insurer or the pure reinsurer for the total of such securities and the subordinated loan capital referred to in that subregulation, provided that they fulfil the following -

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the insurer or the pure reinsurer to defer the payment of interest on the loan;

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

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

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

(3) The margin of solvency shall be reduced by the amount of own shares directly held by the insurer or the pure reinsurer.

(4) Subject to subregulation (6), in the case of an insurer or a pure reinsurer which discounts or reduces its technical provisions for claims outstanding to take account of investment income as permitted by article 60(1)(g) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, the margin of solvency must be reduced by the difference between -

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

(*b*) the discounted technical provisions for claims outstanding or the technical provisions for claims outstanding after deductions.

(5) For the purposes of subregulation (4), technical provisions must be calculated net of reinsurance.

(6) Subregulation (4) does not apply to risks of classes 1 or 2, or in respect of the discounting of annuities.

(7) The margin of solvency shall also be reduced by the following items:

(*a*) participations which the insurer or the pure reinsurer holds in -

(i) insurance undertakings;

(ii) reinsurance undertakings;

(iii) insurance holding companies;

(iv) credit institutions and financial institutions within the meaning of Article 4(1) and (5) of Directive 2006/48/EC of the European Parliament and of the Council of the 14th June, 2006 relating to the taking up and pursuit of the business of credit institutions (recast);

(v) investment firms and financial institutions within the meaning of Article 1(1) of Directive 2004/39/EC of the of the European Parliament and of the Council of the 21st April 2004 on markets and financial instruments and amending Council Diretcives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC and of Article 3(1)(d) and 3(2) of Directive 2006/49/EC of the Eurepean Parliament and of the Council of 14th June 2006 in the capital adequacy of investment firms and credit institutions (recast);

(*b*) each of the following items which the insurer or the pure reinsurer holds in respect of the entities defined in paragraph (*a*) in which it holds a participation:

(i) instruments referred to in regulation 10(2); and

(ii) subordinated claims and instruments referred to in Article 63 and Article 64(3) of Directive 2006/48/EC of the European Parliament and of the Council of the 14th June, 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

(8) Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may, upon application by the insurer or the pure reinsurer concerned, waive the provisions on deduction referred to under subregulation (7)(*a*) and (*b*).

(9) As an alternative to the deduction of the items referred to in subregulation (7)(*a*) and (*b*) which an insurer or a pure reinsurer holding an authorisation holds in credit institutions, investment firms and financial institutions, the insurer or the pure reinsurer may, with the approval of the competent authority given in writing, apply *mutatis mutandis* Methods 1, 2, or 3 of the First Schedule to the Financial Conglomerates Regulations, 2004:

L.N 521 of 2004

Provided that, the approval shall be given by the competent authority in respect of Method 1 of the First Schedule to the Financial Conglomerates Regulations, if the competent authority is confident about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over a period of time.

L.N 521 of 2004

(10) For the calculation of the margin of solvency, insurers or pure reinsurers subject to supplementary supervision in accordance with the Insurance Business (Supplementary Supervision of Insurance Undertakings

L.N. 311 of 2004

L.N 521 of 2004

in an Insurance Group) Regulations, or to supplementary supervision in accordance with the Financial Conglomerates Regulations, need not deduct the items referred to in subregulation (7)(*a*) and (*b*) which are held in credit institutions, investment firms, financial institutions, insurers, EEA insurers, pure reinsurers, EEA pure reinsurers or insurance holding companies which are included in the supplementary supervision.

(11) For the purposes of the deduction of participations referred to in subregulations (7) to (10) of this regulation, "participation" shall have the same meaning as is assigned to it in regulation 2 of the Insurance Business (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations.

(12) Subject to regulation 11(5), the items mentioned in regulations 11 to 15 shall have no value except with the approval of the competent authority given in writing upon application with supporting documentation made to it by an insurer or a pure reinsurer in writing in that behalf.

Implicit items: future profits.

11. (1) Subject to subregulation (5) in the case of long term business the implicit item relating to future profits may be valued at not more than 50 *per centum* of the full amount of future profits but not exceeding 25 *per centum* of the lesser of the margin of solvency and the required margin of solvency.

(2) For the purposes of subregulation (1), the full amount of future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average number of years remaining to run on policies but shall, if it exceeds 6, be reduced to 6.

(3) For the purposes of subregulation (2) -

(*a*) the estimated annual profit shall be taken to be one-fifth of the profits made in long term business over a period of five years ("the relevant period") ending on the last day of the most recent financial year for which a valuation under article 23 of the Act has been carried out, substantial items of an exceptional nature being excluded; and

(*b*) the average number of years remaining to run on policies shall be calculated -

(i) by multiplying the number of years to run on each policy by the actuarial value of the benefits payable under the policy, adding together the products so obtained and dividing the total by the aggregate of the actuarial values of the benefits payable under all the policies; or

(ii) by an approximation to this method of calculation suitable to the circumstances of the case, including, where appropriate, an approximation involving the grouping of contracts,

appropriate allowance being made in either case for premature termination of contracts.

(4) For the purposes of subregulation (3)(*a*) -

(*a*) where a valuation under article 23 of the Act has been carried out annually in relation to the relevant period, the profits made in long term business for any particular year of the relevant period shall be taken to be the surplus (if any) arising in the

long term fund since the last such valuation, and the profits so made for that period shall be taken to be the aggregate of those surpluses less any deficiencies in the long term fund during that period;

(*b*) where an insurer or a pure reinsurer has carried on long term business throughout the relevant period but valuations under article 23 of the Act have not been made annually in that period, the profits so made for that period shall be taken to be the aggregate of surpluses arising in the long term fund since the last valuation preceding the relevant period less any deficiencies in the long term fund since that last valuation, except that the surplus or deficiency arising in the period ending with the first valuation within the relevant period shall be proportionately reduced to allow for any period of time falling outside the relevant period;

(*c*) where an insurer or a pure reinsurer has not carried on long term business throughout the relevant period, the profits made in long term business for the relevant period shall be taken to be the aggregate of any surpluses arising in the long term fund during that part of the relevant period for which long term business was carried on less any deficiencies in the long term fund during that part of that period.

(5) Notwithstanding anything contained in this Part of these regulations, future profits shall have no value after 31 December 2009, and for this purpose, the insurer or the pure reinsurer shall submit:

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

(*b*) a plan as to how it intends to comply with the future limits on, and termination of use of, implicit items for future profits required by the Life Directive (2002/83/EC) or by the Reinsurance Directive (2005/68/EC).

Implicit items: zillmerising.

12. (1) In the case of long term business where zillmerising is appropriate but either is not practised or is at a rate less than the loading for acquisition costs included in the premium, then, subject to subregulation (6), the implicit item relating to zillmerising may be valued at an amount not exceeding the difference between -

(*a*) the non-zillmerised or partially zillmerised figure for mathematical reserves maintained by the insurer or the pure reinsurer concerned, and

(*b*) a figure for mathematical reserves (not less than those required by Part X of these regulations) zillmerised at a rate equal to the loading for acquisition costs included or allowed for in the premium.

(2) Where zillmerising is not practised, then, subject to subregulation (6), the value given by subregulation (1) (less any amount relating to temporary assurances) shall not exceed 3.5 per centum of the aggregate of the difference between -

(*a*) the relevant capital sums for long term business activities, and

(*b*) the mathematical reserves (excluding mathematical reserves for temporary assurances).

(3) Where zillmerising is practised but is at a rate less than the loading for acquisition costs, then, subject to subregulation (6), the value given by subregulation (1) (less any amount relating to temporary assurances) together with the difference between the partially zillmerised mathematical reserves and the non-zillmerised mathematical reserves shall not exceed 3.5 per centum of the aggregate of the difference between -

(*a*) the relevant capital sums of long term business activities, and

(*b*) the mathematical reserves (excluding mathematical reserves for temporary assurances).

(4) In subregulations (2) and (3) "relevant capital sums" means-

(*a*) for whole life assurances, the sum assured;

(*b*) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity;

(*c*) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);

(*d*) for capital redemption contracts, the sums payable at the end of the contract period; and

(*e*) for linked long term contracts, notwithstanding paragraphs (*a*) to (*d*), the lesser of -

(i) the amount for the time being payable on death, and

(ii) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the premiums remaining to be paid during such of the term of the contract as is appropriate for zillmerising or, if such premiums are payable beyond the age of seventy-five, until that age,

excluding in all cases any vested reversionary bonus and any capital sums for temporary assurances.

(5) Where, under the contract relating to any such business as is mentioned in subregulation (4), the payment of premiums is to stop before the sum assured becomes due, then, notwithstanding the said subregulation (4), "relevant capital sums" in subregulations (1) to (3) shall be taken to mean the mathematical reserves appropriate for that contract at the end of the premium-paying term.

(6) For the purposes of this regulation -

(*a*) reserves for vested reversionary bonuses shall not be regarded as mathematical reserves; and

(*b*) the result given by subregulations (1), (2) or (3) shall be reduced by the amount of any undepreciated acquisition costs brought into account as an asset.

Implicit items: hidden reserves.

13. The implicit item relating to hidden reserves, if it consists of hidden reserves resulting from the underestimation of assets and overestimation of liabilities (other than mathematical reserves), may, in so far as the hidden reserves in question are not of an exceptional nature, be given its full value.

Unpaid share capital or initial fund.

14. Where –

(*a*) an insurer or a pure reinsurer has issued shares some or all of which are not fully paid and the total paid-up value of all the shares is equal to or greater than one quarter of their nominal value or, in the case of shares issued at a premium, of the aggregate of their nominal value and the premium, or

(*b*) at least one quarter of the fund of a mutual is paid up,

an amount not greater than half of the lesser of the margin of solvency and the required margin of solvency may be taken into account as an asset upon application, by the insurer, with supporting evidence; and for the purposes of this paragraph a share shall not be regarded as fully paid if there are any amounts due but unpaid thereon.

Claims which a mutual with variable contributions has against its members by way of a call for supplementary contributions.

15. In the case of general business, any claim which a mutual with variable contributions has against its members by way of a call for supplementary contributions for a financial year an amount up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50 *per centum* of the lesser of the margin of solvency and the required margin of solvency may be taken into account as an asset, upon application, with supporting evidence, by the mutual.

PART IV
GUARANTEE FUND AND MINIMUM GUARANTEE FUND

Guarantee fund and minimum guarantee fund.

16. (1) An insurer or a pure reinsurer shall ensure that its margin of solvency does not fall below the guarantee fund.

(2) Subject to subregulations (3) and (4), one-third of the required margin of solvency constitutes the guarantee fund.

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

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

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

(6) In the case of long term business, unpaid share capital (or intial fund of a mutual) and implict items which relate to future profits and zillmerising shall not be taken into account in complying with subregulation (1).

Valuation.

17. The provisions of regulations 11 to 15 shall apply to a guarantee fund and a minimum guarantee fund in the same manner and to the same extent as they apply to a required margin of solvency.

PART V
CURRENCY MATCHING, LOCALISATION

Matching: general requirement.

18. (1) Where an insurer's liabilities in any particular currency exceed 5 *per centum* of its total liabilities, the company shall hold sufficient assets in that currency to cover at least 80 per centum of the company's liabilities in that currency.

(2) Where an insurer carries on both long term business and general business, the requirements of subregulation (1) apply to the assets and liabilities of each kind of business separately.

(3) Where the contract of insurance expresses any liability in terms of a particular currency, that liability shall be regarded as a liability in that currency.

(4) For the purposes of this regulation -

"assets", except in the case of assets of the kind referred to in regulation 42(2), means assets valued in accordance with Part IX of these regulations; and

"liabilities" means provision by an insurer to cover liabilities arising under or in connection with contracts of insurance (not being liabilities relating to business of insurance excluded by regulation 23).

(5) For the purposes of this regulation references to assets in a currency shall be construed as references to assets expressed in or capable of being realised (without exchange risk) in that currency; and an asset is capable of being realised (without exchange risk) in a currency if it is reasonably capable of being realised in that currency without risk that changes in exchange rates would reduce the cover of liabilities in that currency.

(6) The provisions of this regulation have effect subject to regulations 19 to 21.

Matching: property linked benefits.

19. (1) In so far as the liabilities for property linked benefits and index linked benefits are covered by assets which determine the benefits payable under a linked long term contract, regulation 18 does not apply.

(2) In so far as the liabilities for property linked benefits are determined by reference to assets in a currency other than that in which the insurer's obligations to the policyholder are expressed, those liabilities shall for the purposes of the said regulation 18 be deemed to be liabilities in the first-mentioned currency.

(3) In this regulation "property linked benefits" and "index linked benefits" have the meanings given by regulation 41(1).

Matching: currency of general business liabilities.

20. (1) The currency of an insurer's general business liabilities shall, for the purposes of regulation 18, be determined as follows.

(2) Where the liabilities are not expressed as liabilities in terms of a particular currency, they shall be regarded as liabilities in the currency of the country in which the risk is situated or, if the insurer on reasonable grounds so determines, in the currency in which the premium payable under the contract is expressed.

(3) However, the insurer may regard its liabilities as liabilities in the currency which it will use in accordance with past experience or, in the absence of such experience, in the currency of the country in which it is established -

(*a*) for contracts covering risks falling within general business classes 4, 5, 6, 7, 11, 12 and 13 (producer's liability only);

(*b*) for contracts covering risks falling within any other general business class where, in accordance with the nature of the risks, the insurer's liabilities are liabilities in a currency other than that determined in accordance with subregulation (2).

(4) Where a claim has been notified to an insurer and the insurer's liability in respect of that claim is payable in a currency other than one which would result from the application of the above provisions, the liability shall be regarded as a liability in the currency in which the insurer is actually obliged to pay it.

(5) Where a claim is assessed in a currency which is known to the insurer in advance but which is different from a currency determined in accordance with the above provisions, the insurer may regard its liabilities as liabilities in that currency.

Matching: exception for certain liabilities.

21. An insurer need not cover its liabilities by assets in a particular currency if those assets would amount to 7 *per centum* or less of the remainder of its assets in other currencies.

Localisation.

22. (1) Assets maintained pursuant to regulation 18 shall be maintained -

(*a*) if they cover liabilities in Maltese lira, in any EEA State;

(*b*) if they cover liabilities in any other currency, in any EEA State or the country of that currency.

(2) In the case of a relevant co-insurance operation and a relevant insurer, assets held pursuant to regulation 18 shall be held in any EEA State.

(3) For the purpose of applying subregulations (1) and (2) to tangible assets and assets consisting of a claim against a debtor or a listed or unlisted investment, the following provisions shall have effect:

(*a*) a tangible asset shall be regarded as maintained in the place where it is situated;

(*b*) an asset consisting of a claim against a debtor shall be regarded as maintained in any place where it can be enforced by legal action;

(*c*) an asset consisting of a listed investment shall be regarded as maintained in any place where:

(i) there is a stock exchange or a recognised investment exchange (of the kind described in paragraph (*a*) of the definition of "listed" in regulation 41(1)) where it is listed, or

(ii) there is a regulated market as defined in regulation 41(1) where it is dealt in;

(*d*) an asset consisting of an unlisted investment issued by a company shall be regarded as maintained in the place where the head office of that company is situated.

(4) In this regulation -

"assets" and "liabilities" have the same meaning as in regulation 18(4);

"listed" and "unlisted" have the meaning given in regulation 41(1).

Exclusions from regulations 18 to 22.

23. (1) Regulations 18 to 22 shall not apply to -

(*a*) business of insurance carried on outside the EEA States by an insurer whose head office is in Malta;

(*b*) business of insurance carried on in any country outside Malta by an authorised company whose head office is in a country outside Malta; or

(*c*) business of reinsurance (unless it is facultative reinsurance written by an insurer which also carries on business of insurance that is not reinsurance).

(2) Regulation 20 shall not apply to business of insurance of groups 3 and 4 (within the meaning of Part II of the Third Schedule to the Act).

Location of assets representing margin of solvency of a non-EEA insurer.

24. Without prejudice to regulation 22 -

(*a*) the assets covering a Malta margin of solvency maintained under regulation 8(2)(*b*) by a non-EEA insurer must be held:

(i) up to an amount at least equal to the appropriate guarantee fund or minimum guarantee fund (whichever is the greater) in Malta, and

(ii) as to the remainder, in the EEA States; and

(*b*) the assets covering an EEA margin of solvency maintained under regulation 8(3)(*c*)(ii) by a non-EEA insurer must be held:

(i) up to an amount at least equal to the appropriate guarantee fund or a minimum guarantee fund (whichever is the greater) within the EEA States where the insurer carries on insurance business (or in any one or more of them), and

(ii) as to the remainder, within the EEA States.

PART VI
CUSTODIAN OF ASSETS

Interpretation.

25. In this Part of these regulations -

"assets", in relation to a custodian of assets, shall be construed in accordance with the provisions of regulation 6;

"company", means an insurer which has made a deposit in accordance with the provisions of regulation 4;

"custodian of assets" and "custodian", in relation to assets held or required to be held in custody for a company's account by or under any provision of the Act, shall be construed in accordance with the provisions of regulation 27 and the Fifth Schedule.

Custody of assets maintained in Malta.

26. (1) The deposit required to be maintained in accordance with the provisions of regulation 4 shall be maintained by the company in Malta and shall be deposited with and held in custody for the company's account by a person as custodian of assets for the company; and the company shall deposit such assets with a person as prescribed by regulation 27 and that person shall hold such assets in custody for the company's account in accordance with written arrangements made between the company, that person and the competent authority.

(2) The arrangements referred to in subregulation (1) shall be made in such form and manner as to satisfy the provisions of the Act relevant to such requirement, these regulations and any such directive which the competent authority may, from time to time, either generally or specifically, issue in writing with respect to the purpose or security of those assets.

(3) The competent authority shall be party to those arrangements solely for the purpose of ensuring the enforceability of the provisions of those arrangements and the Act; and any expenses incurred by or under those arrangements shall be borne by the company concerned.

(4) Assets of a company held in custody for the company's account by a person as custodian for the company shall be taken to be held by that person in compliance with a requirement imposed by or under any provision of the Act if, and only if, they are assets in whose case the company has made with that person and the competent authority written arrangements in the form and manner specified in subregulation (2) that they are to be held by that person in compliance with such a requirement.

(5) No assets held in custody for a company's account by a person as custodian for the company in compliance with a requirement imposed by or under any provision of the Act shall, so long as the requirement is in force, be released except with the approval of the competent authority given in writing.

(6) The provisions of this regulation shall not apply to a company if the business carried on by the company is restricted to reinsurance.

Persons acting as custodian of assets.

27. For the purposes of article 18 of the Act and of the provisions of these regulations any person listed in the Fifth Schedule shall act as custodian of assets for a company and hold in custody for the company's account assets of a description specified and assigned to that person's custody in the said Schedule.

Assets deemed to be deposited with and held in custody by custodian.

28. Where assets of a company held in custody for the company's account by or under any provision of the Act by a person as custodian for the company are held by the Central Bank of Malta, such assets shall be deemed to have been deposited with and held by the Central Bank if, and only if, the documents of title of such assets are unassailable in that the assets held in custody by the Central Bank are not subject to any court injunction or encashment by the registered holder without the knowledge of the Central Bank on the basis of a duplicate certificate.

PART VII
DEPOSIT OF ASSETS

Interpretation.

29. In this Part of these regulations -

"custodian of assets" and "custodian" have the meaning given in regulation 25;

"deposit" means the assets required to be maintained in Malta by an insurer in accordance with regulations 4 or 5;

"required amount" means the amount of assets maintained in accordance with regulations 4 or 5.

Making an amount of deposit.

30. (1) Subject to subregulation (2), every deposit made, or required to be made, pursuant to regulations 4 or 5 shall be made with a custodian of assets in the manner set out in regulation 26 and shall be maintained by the insurer at all times during the continuance of the authorisation at a level equal to at least the appropriate required amount.

(2) Where an asset constituting or forming part of any deposit made in accordance with subregulation (1) is an asset expressed in a currency other than Maltese lira or Euro, a sum equal to ten *per centum* of the value of that asset to make good any loss of

value of that asset, in that other currency, which might arise out of exchange risk shall be aggregated with the amount of assets constituting the deposit.

Increasing the amount of deposit.

31. (1) For the purposes of regulation 5, and subject to subregulation (2) of this regulation, where it appears to the competent authority that the amount of assets constituting any deposit made in accordance with regulation 30 is likely to fall, or falls, below the appropriate required amount, or on the written application of the insurer having regard to such circumstances, the competent authority shall direct in writing the insurer to increase the amount of assets by a specified sum to maintain the appropriate required amount and the custodian to receive and hold in custody the specified sum and aggregate it with the amount of assets constituting the deposit.

(2) Any increase in the amount of deposit required to be made under subregulation (1) shall be made by the insurer as early as practicable but not later than fourteen days from the date of the competent authority's direction in that regard to the insurer.

Replacing assets of a kind with assets of any other kind.

32. (1) Subject to subregulation (3), where an insurer proposes to replace assets of a kind constituting or forming part of any deposit ("assets of the old kind") with assets of any other kind ("assets of the new kind"), the insurer shall make an application in writing to the competent authority in that regard giving the relevant details of the assets of the old kind and the assets of the new kind forming the object of the application and the competent authority shall determine the application within thirty days of receiving the details required to be given under this subregulation; and, if it refuses the application, the competent authority shall inform the insurer in writing of the reasons for the refusal.

(2) Where the competent authority approves of an application made under subregulation (1), the competent authority shall direct in writing the insurer to carry out the replacement of the assets of the old kind with the assets of the new kind in accordance with any conditions which it may deem fit to impose and the custodian to receive and hold in custody, under those conditions, the assets of the new kind and to release from custody, in accordance with subregulation (3), the assets of the old kind.

(3) Assets of any kind constituting or forming part of any deposit replaced or to be replaced with assets of any other kind shall not be released from custody unless and until the competent authority is satisfied that the assets replacing those assets have been received and held in custody in accordance with regulation 26 of these regulations.

Reducing the amount of assets.

33. (1) For the purposes of regulation 5 and subject to subregulations (3) and (4) of this regulation, where it appears to an insurer that the amount of assets constituting any deposit is higher than the appropriate required amount, the insurer may propose to reduce the amount of assets to an amount being an amount not less than the appropriate required amount by making an application in writing to the competent authority in that regard giving the relevant details and specifying the sum proposed to be reduced and the competent authority shall determine the application within thirty days of receiving the details required to be given under this subregulation; and, if it refuses the application, the competent authority shall inform the insurer in writing of the reasons for the refusal.

(2) Where the competent authority approves of an application made under subregulation (1), the competent authority shall direct in writing the insurer to reduce the amount of assets constituting the deposit by the sum specified by the insurer, or any other lower sum determined by the competent authority, and the custodian to release from custody an amount equal to the specified sum, or the lower sum, as the case may be.

(3) The competent authority shall not approve of an application made under subregulation (1) unless it is satisfied that the remaining amount of assets constituting the deposit after the release from custody of an amount equal to the specified sum or any other lower sum is adequate to maintain the appropriate required amount.

(4) Nothing in subregulations (2) and (3) shall relieve the insurer of the obligation imposed on him by regulation 30 to maintain at all times the deposit at least at the appropriate required amount.

Cessation of business.

34. (1) Where an insurer has ceased to carry on in Malta the business in respect of which the deposit was made, the insurer may apply in writing to the competent authority for those funds to be released to it.

(2) The competent authority shall, on receipt of an application under subregulation (1) accompanied by an appropriate declaration, determine the application having cognizance to the provisions of articles 16(4), 28, 41 and 42 of the Act and direct the custodian in writing as it deems appropriate in the circumstances.

(3) In subregulation (2) an "appropriate declaration" means a written declaration by the applicant as is required by article 16(4) of the Act or in consequence of a direction given in writing by the competent authority under article 28 of the Act -

(*a*) stating and proving by submission of documentary evidence acceptable to, or required by, the competent authority that to the best of his knowledge and belief the insurer has no further liability to discharge;, and

(*b*) if the applicant is not the insurer -

(i) declaring that the applicant is entitled to give a good discharge for the relevant funds; and

(ii) stating and proving by submission of documentary evidence acceptable to, or required by, the competent authority the circumstances in which the applicant is so entitled.

Effect of direction.

35. A direction given by the competent authority pursuant to this Part of these regulations shall be sufficient authority for a custodian of assets to comply with it.

Producing security in lieu of making a deposit.

36. (1) Notwithstanding anything contained in any other regulation in this Part of these regulations, subject to the following subregulations of this regulation, any insurer to whom regulation 4 or 5 applies may, in like manner, satisfy the requirements of that regulation by producing to the competent authority, in lieu of making a deposit with a custodian of assets under this Part of these regulations, a security on assets for an amount equal to at least the appropriate required amount and maintaining security on those assets for that amount at all times during the currency of the security.

(2) The content of every security produced under subregulation (1) shall have to be agreed in advance between the insurer, the issuer and the competent authority; and the security shall have to be reinstated by the depositor to secure the appropriate required amount each time the level of the amount is likely to fall, or falls, below the required amount.

(3) The provisions of regulations 31, 33, 34 and 35 shall apply *mutatis mutandis* in relation to a security as they apply in relation to a deposit.

(4) Where -

(*a*) an insurer makes a deposit with a custodian of assets in accordance with regulation 30 and, at a later date, elects to substitute that deposit with a security to be produced to the competent authority in accordance with subregulation (1); or

(*b*) an insurer produces to the competent authority a security in accordance with subregulation (1) and, at a later date, elects to substitute that security

with a deposit to be made with a custodian of assets in accordance with regulation 30,

in every case, the insurer shall make an application in writing to the competent authority in that regard, giving the relevant details, and -

(i) if the application is to substitute a deposit with a security, the competent authority shall direct in writing the insurer to carry out the substitution in accordance with subregulations (1) and (2) and, when the security is produced, the custodian to release from custody the deposit; and

(ii) if the application is to substitute a security with a deposit, the competent authority shall direct in writing the insurer to carry out the substitution in accordance with regulation 30, and when the deposit is made and held in custody, the issuer to terminate the security without prejudice to any claims which the competent authority may have, or may have had, against the security prior to its termination.

Interpretation of security.

37. For the purposes of regulation 36 -

"security" means -

Cap. 16.

(*a*) a contract of pledge as construed in Title XXI of the Civil Code;

(*b*) a guarantee provided by,or

(*c*) an irrevocable letter of credit established with, a bank or credit institution:

(i) licensed to carry on the business of banking under the laws of Malta, or

(ii) lawfully permitted to carry on the business of banking in a country outside Malta acceptable to the competent authority provided that the bank or credit institution is of first class standing,

and "issuer" shall be construed accordingly.

PART VIII

EQUALISATION RESERVE - CREDIT INSURANCE BUSINESS

Interpretation.

38. In this Part of these regulations, unless the context otherwise requires -

"accounted for" means reported in accordance with an insurance rule to be made by the competent authority for the purposes of article 32 of the Act;

"claim" means a claim against an insurer or a pure reinsurer under a contract of insurance;

"claims management costs" refers to those claims management costs required by the shareholder accounts rules (note (4) to the profit and loss account format) to be included in claims incurred other than those which, whether or not incurred through the employment of the insurer's or the pure reinsurer's own staff, are directly attributable to particular claims;

"contract of insurance" includes a contract of reinsurance;

"credit insurance business" means all business of insurance falling within general business class 14;

"equalisation reserve" means a reserve to be maintained under subarticle (6) of article 17 of the Act;

"net claims incurred" in respect of a financial year means claims arising from incidents occurring during that financial year (including direct claims handling expenses), net of reinsurance and other recoveries but excluding claims management costs;

"net claims paid" in respect of a financial year means claims paid during that financial year (including direct claims handling expenses), net of reinsurance and other recoveries but excluding claims management costs, regardless of whether incidents giving rise to such claims occurred during that financial year or any prior financial year;

"net operating expenses" means the net amount paid in a financial year in respect of commissions, other acquisition expenses, administrative expenses, reinsurers' commissions and profit participations;

"net premiums earned" and "net premiums written" mean, respectively, gross premiums earned, net of reinsurance premiums earned and gross premiums written, net of reinsurance premiums payable under reinsurance ceded;

"reinsurance" and "reinsurer" include retrocession and retrocessionaire respectively;

L.N. 103 of 2000

"the shareholder accounts rules" means the rules contained in the First Schedule to the Insurance Business (Companies Accounts) Regulations, for the preparation of accounts by insurers or pure reinsurers;

L.N. 103 of 2000

"technical provisions" means the items required by the First Schedule to the Insurance Business (Companies Accounts) Regulations, to be shown in the balance sheet of an insurer or a pure reinsurer at liabilities items C.1 to 6;

and references to a numbered class of general business are references to the class so numbered in Part I of the Third Schedule to the Act.

Application.

39. (1) This Part of these regulations applies to an insurer or a pure reinsurer authorised to carry on credit insurance business, pursuant to article 17(6) of the Act :

Provided that for the purposes of article 17(7) of the Act, there is hereby prescribed any insurer whose head office is in a country outside Malta.

(2) This Part of these regulations does not apply in the case of an insurer whose head office is in Malta or a pure reinsurer whose head office is in Malta, where the net premiums written in any financial year in respect of credit insurance business are less than 4% of the total net premiums written by it in that financial year and less than 2,500,000 Euro.

Equalisation reserve.

40. An insurer or pure reinsurer shall maintain an equalisation reserve in respect of credit insurance business carried on by the company in accordance with the Sixth Schedule .

PART IX
VALUATION OF ASSETS

Interpretation.

41. (1) In this Part of these regulations, unless the context otherwise requires -

"approved counterparty" means an approved credit institution or any other institution as may be approved for such purpose by the competent authority;

Cap. 371. "approved credit institution" means an institution licensed as such under the Banking Act and any other institution approved for such purposes by the competent authority;

"approved financial institution" means any of the following:

(i) The European Central Bank;

(ii) The Central Bank of an EEA State;

(iii) The International Bank for Reconstruction and Development;

(iv) The European Bank for Reconstruction and Development;

(v) The International Finance Corporation;

(vi) The International Monetary Fund;

(vii) The Inter-American Development Bank;

(viii) The African Development Bank;

(ix) The Asian Development Bank;

(x) The Nordic Investment Bank;

(xi) The Caribbean Development Bank;

(xii) The European Investment Bank;

(xiii) The European Investment Fund;

(xiv) The European Community;

(xv) The European Atomic Energy Community;

(xvi) The Council of Europe Development Bank;

(xvii) The Bank for International Settlements;

(xiv) The Multilateral Investment Guarantee Agency;

"approved securities" means any of the following -

(*a*) any securities issued or guaranteed by, or the repayment of the principal of which, or the interest on which is guaranteed by, and any loans to or deposits with any Government, public or local authority or nationalised industry or undertaking which belongs to the zone of countries; and

(*b*) any loan to, or deposit with, an approved financial institution;

"asset" includes part of an asset;

Cap. 386. "associated company" has the same meaning as is assigned to the term "associated undertaking" in paragraph 21 to the Fourth Schedule to the Companies Act;

Cap. 370. "collective investment scheme" has the same meaning as is assigned to it by article 2(1) of the Investment Services Act;

"company" includes any body corporate;

Cap. 370.

"contract for differences" shall be construed in accordance with the Second Schedule to the Investment Services Act;

"counterparty" has the meaning set out in the Seventh Schedule;

"debt" includes an obligation to pay a sum of money under a negotiable instrument;

"debt security" includes bonds, notes, debentures and debenture stock;

"deferred acquisition costs" means those items shown at GII under the heading "Assets" listed in the balance sheet format set out immediately following paragraph 15 of the First Schedule to the Insurance Business (Companies Accounts) Regulations;

L.N. 103 of 2000

"dependant" means a subsidiary undertaking, the value of whose shares is taken to be the value of its surplus assets under regulation 43;

"derivative contract" means a contract for differences, a futures contract or an option; and includes a contract under which the amount payable by either party is calculated by reference to the amortised value of any property;

"equivalent securities" means securities issued by the same issuer being of an identical type and having the same nominal value, description and amount;

"excess concentration with a number of counterparties" has the same meaning set out in the Seventh Schedule;

"exposure" -

(*a*) in relation to assets, means an amount determined in accordance with regulation 54, and paragraph 5 of the Seventh Schedule; and

(*b*) in relation to a counterparty, means an amount determined in accordance with regulation 54, and paragraphs 17 to 21 of the Seventh Schedule;

"fixed interest securities" means securities which under their terms of issue provide for fixed amounts of interest;

Cap. 370.

"futures contract" shall be construed in accordance with the Second Schedule to the Investment Services Act;

"general business amount" has the meaning given in the Seventh Schedule;

"general business assets" and "general business liabilities" mean respectively assets and liabilities of an insurer which are not long term business assets or long term business liabilities;

"general premium income" means, in relation to an insurer in any year, the net amount, after deduction of any premiums payable for reinsurance, of the premiums receivable by the insurer in that year in respect of all business of insurance other than long term business;

"group undertaking", in relation to an insurer or a pure reinsurer, means any one of:

(*a*) the insurer or the pure reinsurer;

(*b*) its related undertakings;

(*c*) its participating undertakings; and

(*d*) the related undertakings of its participating undertakings;

"index linked benefits" means benefits -

(*a*) provided for under any contract the effecting of which constitutes the carrying on of long term business of insurance; and

(*b*) determined by reference to fluctuations in any index of the value of property (whether specified in the contract or not);

"initial margin", in respect of a derivative contract or a contract or asset having the effect of a derivative contract, means assets which, before or at the time the contract is entered into, are transferred by the insurer subject to a condition that such assets (or where the assets transferred are securities, equivalent securities) will be returned to the insurer on completion of that contract;

"insurance group" means an insurance parent undertaking and its related undertakings that are:

(*a*) insurance undertakings;

(*b*) reinsurance undertakings; or

(*c*) insurance holding companies;

Cap. 487.

"intermediary" means a person enrolled under article 13 or article 37 of the Insurance Intermediaries Act and includes any other persons who carry out similar activities;

"Investment Services Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the Eureopan Parliament and of the Council and repealing Council Directives 93/22/EEC;

"issuer", in respect of a collective investment scheme, means the manager or operator of the scheme and in respect of an interest in a commercial partnership, means the partnership;

"land" means land or building; and "piece of land" shall be construed accordingly;

"linked assets" means, in relation to an insurer, long term business assets of the insurer which are, for the time being, identified in the records of the insurer as being assets by reference to the value of which property linked benefits are to be determined;

"listed", in relation to an investment, means that -

(*a*) there has been granted and not withdrawn a listing in respect of that investment on the Malta Stock Exchange or any other stock exchange or recognised investment exchange acceptable to or by the competent authority in any other state which is a stock exchange within the law of that state; or

(*b*) facilities for dealing in that investment have been granted on a regulated market,

and "unlisted" shall be construed accordingly;

"long term business amount" has the meaning given in paragraph 2 of the Seventh Schedule;

"long term business assets" and "long term business liabilities" mean respectively assets of an insurer which are, for the time being, identified as covering the long term fund or funds maintained by the company in respect of its long term business and liabilities of the insurer which are attributable to its long term business;

"long term business fund" refers to the long term liabilities that are required to be provided for under regulation 63;

"market value" means the market value as determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurer ;

"notional required minimum margin" means:

(*a*) in the case of an insurance undertaking or a reinsurance undertaking that has its head office in the zone of countries the amount of the required minimum margin, or equivalent, under the regulatory requirements of that country; and

(*b*) in all other cases, the amount of the required minimum margin that would apply if the insurance undertaking or the reinsurance undertaking were an insurer whose head office is in Malta or a pure reinsurer whose head office is in Malta (whether it is or not);

Cap. 370.

"option" shall be construed in accordance with the Second Schedule to the Investment Services Act or a warrant;

Cap. 386.

"parent undertaking" has the same meaning as is assigned to it by article 2 of the Companies Act;

"participation" means the holding of a participating interest or the holding, directly or indirectly, of 20% or more of the voting rights or capital;

Cap. 386.

"participating interest" shall have the meaning as is assigned to it by article 2 of the Companies Act;

"participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC of the 13th June, 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;

"permitted asset exposure limit" has the meaning set out in paragraph 3 of the Seventh Schedule;

"permitted counterparty exposure limit" has the meaning set out in paragraph 4 of the Seventh Schedule;

"proper valuation" means, in relation to land, a valuation made by a qualified valuer not more than three years before the relevant date which determined the amount which would be realised at the time of the valuation on an open market sale of the land free from any hypothec, mortgage or charge;

"property linked benefits" means benefits other than index linked benefits -

(*a*) provided for under any contract the effecting of which constitutes the carrying on of long term business of insurance; and

(*b*) determined by reference to the value of, or the income from, property of any description (whether specified in the contract or not);

"proportional share" in relation to a related undertaking, means the percentage which is the percentage holding (directly or indirectly) in the related undertaking's capital;

"qualified valuer", in relation to any particular type of land in any particular area, means a person who holds a warrant to practise as a building professional (*Perit*) granted under the Architecture and Civil Engineering Professionals (*Periti*) Act and, where the qualified valuer is a person whose country of domicile is a country outside Malta, a person who is duly qualified and authorised in the country of his domicile to practise as a building professional (equivalent to a *Perit*) under the laws of the country of his domicile governing architecture and civil engineering professionals acceptable to the competent authority;

Cap. 390.

"regulated institution" means any of the following:

Cap. 386.

(*a*) a company formed and registered under the Companies Act carrying on the business of insurance; and

(*b*) an approved credit institution;

"regulated market" means a market which is characterised by -

(*a*) regular operation;

(*b*) the fact that regulations issued or approved by the competent authority of the state where the market is situated -

(i) define the conditions for the operation of and access to the market;

(ii) define the conditions to be satisfied by a financial instrument in order for it to be effectively dealt in on the market; and

(iii) require compliance with reporting and transparency requirements comparable to those laid down in articles 25 of the Investment Services Directive, and

(*c*) in the case of a market situated outside the EEA States, the fact that the financial instruments dealt in are of a quality comparable to those in an international regulated market of good repute;

"related undertaking" means either a subsidiary or another undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of the Seventh Council Directive 83/349/ EEC of the 13th June, 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;

"salvage right" means any right of an insurer under a contract of insurance to take possession of and to dispose of property by virtue of the fact that the insurer has made a payment or has become liable to make a payment in respect of a loss thereof;

"securities" includes shares, debt securities, other similar instruments or Treasury Bills;

"settlement date" means any date on which the fulfilment of an obligation under a derivative contract is or may be required;

"share" includes stock, except where a distinction between stocks and shares is expressed or implied;

"subordinated debt" means any debt which, on a winding up of the debtor, ranks for payment after the claims of general creditors and is not to be repaid until the claims of all the general creditors outstanding at the time have been settled;

"UCITS Directive" means Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities;

"variation margin" means -

(*a*) in respect of a derivative contract, or a contract having the effect of a derivative contract, assets (other than assets transferred by way of initial margin) which, at the relevant date, have been transferred by, to, or for the benefit of, the insurer in pursuance of a condition in that contract or a related contract; and

(*b*) in respect of an asset having the effect of a derivative contract, assets which, at the relevant date, have been transferred by, to, or for the benefit of, the insurer in pursuance of a contractual right conferred, or obligation imposed, by the holding of the asset having the effect of a derivative contract;

"warrant" shall be construed in accordance with the Second Schedule of the Investment Services Act. Cap. 370.

(2) For the purposes of these regulations, a debt owed to (or an obligation to be fulfilled for the benefit of) an insurer shall be regarded as being secured only to the extent that it is -

(*a*) secured by -

(i) a letter of credit established with an approved credit institution; or

(ii) a guarantee provided by an approved credit institution,

and the sum of the aggregate amount available under all letters of credit established for the benefit of the insurer with the same counterparty, the aggregate amount of all guarantees issued for the benefit of the insurer by that counterparty and the amount of any exposure of the insurer to that counterparty does not exceed the permitted counterparty exposure limit for that counterparty; or

(*b*) secured by assets for the valuation of which provision is made in this Part of these regulations and -

(i) the value of such assets (after deducting reasonable expenses of sale and the amount of any other debt or obligation secured thereon having priority to or ranking equally with the debt or obligation) is sufficient to enable the debt or obligation to be discharged in full; and

(ii) the value of the assets when aggregated with the insurer's exposure to assets of the same description does not exceed the permitted exposure limit for assets of that description (as defined in regulation 54 and the Seventh Schedule);

(iii) where the assets give rise to exposure to a counterparty, the exposure of the insurer to that counterparty, when added to the aggregate amount available under all letters of credit established for the benefit of the insurer with that counterparty, and to the aggregate amount of all guarantees issued for the benefit of that insurer by that counterparty, does not exceed the permitted

counterparty exposure limit for that counterparty; or

Cap. 16.

(*c*) secured by a contract of pledge within the meaning of Title XXI of the Civil Code.

(3) For the purposes of subregulation (2) -

(*a*) the aggregate amount available under letters of credit established with a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations in respect of which those letters of credit were established; and

(*b*) the aggregate amount of guarantees issued by a counterparty shall be taken not to exceed the sum of the aggregate amount of all debts and the aggregate value of all obligations so guaranteed; and

(*c*) assets which are securing any other debt owed to (or obligation to be fulfilled for the benefit of) the insurer shall be treated as if they were assets of the insurer.

Application.

42. (1) Subject to subregulations (2) and (11), this Part of these regulations applies with respect to the determination of the value of assets of insurers for the purposes of -

(*a*) articles 11(1)(*c*), 17, 18, 41(4) and 42(2) and (3) of the Act;

(*b*) any investigation to which article 23 of the Act applies; and

(*c*) any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act.

(2) Where an insurer has entered into any contracts providing for the payment of property linked benefit*s*, this Part of these regulations shall not apply with respect to the determination of the value of the linked assets to the extent that they are held to match liabilities in respect of such benefits.

(3) Subject to subregulation (4), any asset to which this Part of these regulations applies (other than cash) for the valuation of which no provision is made in this Part of these regulations shall be left out of account for the purposes specified in subregulation (1).

(4) Subject to article 17(3) of the Act, the competent authority may, in exceptional circumstances, on application made to it in writing for that purpose -

(*a*) permit any asset as is referred to in subregulation (3) to be taken into account, or to be taken into account to a specified extent, and, if the asset is taken into account, or taken into account to a specified extent, the value of such asset shall be determined in accordance with specific valuation provisions issued in writing for such purposes by the competent authority; or

(*b*) temporarily and under a properly reasoned decision, permit any asset for which provision is made in this Part of these regulations for their valuation to be taken into account to an extent, other than that specified in Part II of the Seventh Schedule.

(5) Where in all the circumstances of the case it appears that the value of any asset is of a lesser value than the amount calculated in accordance with this Part of these regulations, such lesser value shall be the value of the asset.

(6) For the purposes of subregulation (5), in determining whether it appears that an asset is of a lesser value than a specified amount, regard shall be had to the

underlying security and, in the case of bonds, debt securities and other money and capital market instruments, the credit rating of the issuer, including whether the issuer belongs to the zone of countries, and where the issuer is an international organisation, whether it includes at least one EEA State among its members.

(7) Notwithstanding subregulation (1) (but subject to the conditions set out in subregulation (8)), an insurer may, for the purposes of an investigation to which article 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act, elect to assign to any of its assets the value given to the asset in question in the books or other records of the insurer.

(8) The conditions referred to in subregulation (7) are that-

(*a*) the election shall not enable the insurer to bring into account any asset for the valuation of which no provision is made in this Part of these regulations;

(*b*) the value assigned to the aggregate of the assets shall not be higher than the aggregate of the value of those assets as determined in accordance with regulations 43 to 54.

(9) Where an insurer has entered into a contract for the conversion of currency which satisfies the conditions set out in subregulation (10), then, for any of the purposes for which this Part of these regulations applies, the insurer shall treat the conversion as having been made on the relevant date.

(10) The conditions referred to in subregulation (9) are that -

(*a*) either -

(i) the contract provides for the conversion into another currency of an amount representing the sale of an asset which has, on the relevant date, been sold but not delivered, or

(ii) the contract provides for the purchase of currency for the purpose of settling the purchase of an asset which has, on the relevant date, been purchased but not delivered;

(*b*) the conversion is to take place during a period which is-

(i) where the contract is in connection with the delivery of a listed security, a period commencing on the date of the contract and extending for the usual period of settlement as laid down by the rules of the relevant stock exchange, recognised investment exchange or regulated market, or

(ii) where the contract is in connection with the delivery of any other asset, a period commencing on the date of the contract and extending for twenty working days thereafter; and

(*c*) the contract is listed or has been entered into with an approved counterparty;

(11) Regulations 43,44 and 55 shall apply to pure reinsurers for the purposes of -

(*a*) articles 17of the Act;

(*b*) an investigation to which article 23 of the Act applies; and

(*c*) any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act.

Shares in a group undertaking.

43. (1) Subject to the provisions of this regulation, the calculations required by any provision of this regulation shall be carried out at all levels of the undertakings forming part of the insurance group.

(2) Notwithstanding regulation 48, the value of any shares held in a group undertaking which is an insurance undertaking, a reinsurance undertaking or an insurance holding company may be taken as and, in any event, shall not exceed the value (or, where the shareholding, whether held directly or indirectly, is less than 100%, the relevant proportional share of the value), determined in accordance with this Part of these regulations (other than regulation 54(1)(*a*) to (*c*)), of its surplus assets.

(3) The value of any shares held in a group undertaking which is not an insurance undertaking, a reinsurance undertaking or an insurance holding company must not exceed the greater of -

(*a*) the value, (or, where the shareholding, whether held directly or indirectly, is less than 100% the relevant proportional share of the value), determined in accordance with this Part of these regulations (other than regulation 54(1)(*a*) to (*c*)), of its surplus assets; and

(*b*) the value of those shares as determined under regulation 48 reduced by:

(i) an appropriate amount, to the extent that the shares cannot effectively be made available or realised to meet losses (if any) arising in the insurer or the pure reinsurer;

(ii) an appropriate amount, to the extent needed to exclude goodwill generated from business with members of the insurance group; and

(iii) the amount by which the value of any shares held by the group undertaking in a related undertaking of the company which is an insurance undertaking, a reinsurance undertaking or an insurance holding company exceeds the value (or proportional share), determined in accordance with this Part of these regulations (other than regulation 54(1)(*a*) to (*c*)), of the surplus assets of the related undertaking.

(4) The surplus assets of a group undertaking are its total assets excluding -

(*a*) the assets that are selected to cover liabilities and, in the case of a group undertaking which is an insurance undertaking or a

reinsurance undertaking, to cover the notional required minimum margin;

(*b*) assets that are interests directly or indirectly held in:

(i) the group undertaking's own capital (as defined in the relevant regulatory requirements for that undertaking), or

(ii) the insurer's or the pure reinsurer's capital;

(*c*) where the group undertaking carries on long-term insurance business, profit reserves and future profits;

(*d*) assets which represent either a long term insurance fund or a fund the allocation of which as between policyholders and other purposes has yet to be determined;

(*e*) amounts due, or to become due, in respect of share capital, or other contributions from members of the group undertaking, subscribed or called for but not fully paid up; and

(*f*) amounts due, or to become due, in respect of loans or similar debts, from members of the group undertaking, if such amounts would have otherwise been eligible for the solvency margin of the group undertaking;

(*g*) assets that cannot effectively be made available or realised to meet losses (if any) arising in the insurer or the pure reinsurer, including assets that represent capital not owned, directly or indirectly, by the insurer or the pure reinsurer;

(*h*) any other item, which would otherwise be available to cover the solvency margin of a related insurance undertaking, which cannot effectively be made available to cover the solvency margin requirement of the participating insurance undertaking or the participating reinsurance undertaking for which the adjusted solvency is calculated.

(5) The assets selected in subregulation (4)(*a*) to be excluded from the total assets -

(*a*) where the group undertaking is an insurance undertaking or a reinsurance undertaking, must be identified and valued in accordance with relevant regulatory requirements as to the value, admissibility, nature, location or matching that apply to the assets available to cover its liabilities (determined under the relevant regulatory requirements) and the notional required minimum margin;

(*b*) where the group undertaking is not an insurance undertaking or a reinsurance undertaking, must be of a value at least equal to the amount of its liabilities, determining that value and that amount in accordance with this Part of these regulations (other than regulation 54(1)(*a*) to (*c*)) and Part X of these regulations; and

(*c*) in both cases must not include:

(i) assets falling within subregulation (4)(*b*), or

(ii) assets falling within subregulation (4)(*e*), where the amount is due, or to become due, from a group undertaking; but

(*d*) notwithstanding paragraphs (*a*) and (*b*), a liability of a group undertaking which is a debt due to the insurer or the pure reinsurer is not required to be determined at an amount which is higher than the value placed on that debt as an asset of the insurer or the pure reinsurer.

(6) For the purposes of subregulation (5), the relevant regulatory requirements must be treated as if -

(*a*) where regulation 10 (or its equivalent in a country falling within the zone of countries) applies, the insurance undertaking or the reinsurance undertaking satisfied the condition in regulation 10(1); and

(*b*) regulation 54(1)(*a*) to (*c*) (or its equivalent in a country falling within the zone of countries) does not apply for the purpose of valuing shares in group undertakings that are not dependants or for the purpose of the parent undertaking solvency calculation.

(7) For the purposes of the foregoing, the parent undertaking shall be treated as if it were an insurance undertaking or a reinsurance undertaking subject to a zero solvency requirement where it is an insurance holding company.

Debts due or to become due from a group undertaking.

44. The value of any debt due, or to become due, from a group undertaking must not exceed the amount reasonably expected to be recovered in respect of the debt taking into account only the value of -

(*a*) the assets identified in regulation 51(4)(*a*); and

(*b*) any security in respect of the debt.

Debts and other rights.

45. (1) The value of any secured debt due, or to become due, to an insurer, other than a debt to which regulation 44 or subregulation (2), (3) or (6) of this regulation applies, shall be -

(*a*) in the case of any such debt which is due, or will become due, within twelve months of the relevant date (including any debt which would become due within that period if the insurer were to exercise any right to which it is entitled to require payment of the same), the amount which can reasonably be expected to be recovered in respect of that debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof); and

(*b*) in the case of any other such debt, the amount which would reasonably be paid by way of consideration for an immediate assignment of the debt (due account being taken of the nature and quality of the security and the terms and conditions for payment thereof).

(2) Any debt due, or to become due, to an insurer under a letter of credit shall be left out of account for the purposes of this Part of these regulations.

(3) In the case of long term business carried on by an insurer, the value of any debt due, or to become due, to the insurer which is secured on a policy of insurance issued by the insurer and which (together with any other debt secured on that policy) does not exceed the amount payable on a surrender of that policy at the relevant date shall be the amount of that debt.

(4) The value of any unsecured debt due, or to become due, to an insurer, other than a debt to which regulation 44, subregulation (5) or (6) of this regulation or regulation 50 or 53 applies, shall be -

(*a*) in the case of any such debt which is due, or will become due, within twelve months of the relevant date (including any debt which would become due within that period if the insurer were to exercise any right to which it is entitled to require payment of the same), the amount which can reasonably be expected to be recovered in respect of that debt (due account being taken of the terms and conditions for payment

thereof); and

(*b*) in the case of any other such debt, the amount which would reasonably be paid by way of consideration for an immediate assignment of the debt (due account being taken of the terms and conditions for payment thereof).

(5) The value of any rights of the insurer under a contract of reinsurance to which it is a party shall be the amount which can reasonably be expected to be recovered in respect of those rights:

Provided that those provisions shall not apply to-

(*a*) rights under a contract of reinsurance in respect of long term business except to the extent that debts are due under such contracts; or

(*b*) debts to which regulation 44 applies which are due or to become due.

(6) Any debt due, or to become due, to the insurer -

(*a*) from an intermediary in respect of money advanced on account of commission to which that intermediary is not absolutely entitled at the relevant date; or

(*b*) in respect of unpaid share capital of the insurer; or

(*c*) from a company of which it is a subsidiary undertaking where such debt is subordinated debt; or

(*d*) which is a debt to which subregulation (7) applies,

shall be left out of account for the purposes for which this Part of these regulations applies.

(7) For the purposes of subregulation (6)(*d*), this subregulation applies to a debt which is a debt owed in respect of premiums (due account being taken of rebates, refunds, and commissions payable) which is recorded in the insurer's accounting records as due and payable and has been outstanding for more than three months.

(8) In the case of general business carried on by an insurer, the value of any subrogation rights of the insurer shall be the amount which can reasonably be expected to be recovered by virtue of the exercise of those rights.

(9) In the case of general business carried on by an insurer, the value of any salvage right of the insurer shall be the amount which can reasonably be expected to be recovered by virtue of the exercise of that right.

(10) The value of any right to recover assets transferred by way of initial margin shall be determined –

(*a*) where the initial margin was a payment in cash, as if there were a debt owed to the insurer for that amount, and

(*b*) where the initial margin took the form of a transfer of securities, as if there were a debt owed to the insurer of an amount equal to the value of such securities as determined in accordance with this Part of these regulations.

(11) The value of any rights arising under a derivative contract to which regulation 52 does not apply, or under a contract or asset having the effect of a derivative contract to which the said regulation 52 does not apply, shall be the value

of any right to recover assets transferred by way of initial margin together with the value of any other unconditional right to receive a specified amount.

(12) This regulation shall not apply to any rights (other than debts due) in respect of -

(*a*) investments in group undertakings;

(*b*) securities or beneficial interests in a commercial partnership;

(*c*) units or other beneficial interests in a collective investment scheme;

(*d*) a derivative contract, except as provided under subregulation (10) or (11); or

(*e*) a contract or asset which has the effect of a derivative contract except as provided under subregulation (10) or (11) or under regulation 53(4) or (5).

Land.

46. (1) The value of any land of an insurer (other than land held by the insurer as security for a debt or to which subregulation (2) or regulation 51 applies) shall be not greater than the amount which (after deduction of the reasonable expenses of sale) would be realised if the land were sold at a price equal to the most recent proper valuation of that land which has been provided to the company and any such land of which there is no proper valuation shall be left out of account for the purposes for which this Part of these regulations applies.

(2) The value of any interest in land which is determinable upon the death of any person or upon the happening of some other future event or at some future time shall be the amount which would reasonably be paid by way of consideration for an immediate transfer thereof.

Equipment.

47. The value of any office machinery (including computer equipment), furniture, motor vehicles and other equipment of an insurer -

(*a*) in the financial year of the insurer in which it is purchased, shall be not greater than 75 *per centum* of the cost thereof to the insurer;

(*b*) in the first financial year thereafter, shall be not greater than 50 *per centum* of that cost;

(*c*) in the second financial year thereafter, shall be not greater than 25 *per centum* of that cost; and

(*d*) in any subsequent financial year, shall be left out of account for the purposes for which this Part of these regulations applies.

Securities and beneficial interests in commercial partnerships.

48. (1) This regulation applies to the valuation of investments comprising securities and beneficial interests in commercial partnerships and, for the purposes of subregulation (5), investments includes loans. However, this regulation shall not apply to the valuation of securities which are -

(*a*) derivative contracts;

(*b*) units or other beneficial interests in collective investment schemes, except as provided in regulation 49(2); or

(*c*) contracts or assets having the effect of derivative contracts, except as provided in regulation 53(4).

(2) Subject to subregulations (4) and (5) of this regulation and regulation 53, the value of an investment to which this regulation applies shall be -

(*a*) where the investment is transferable and subregulation (3) does not apply, the market value; and

(*b*) where the investment is transferable and subregulation (3) applies, the lower of -

(i) the market value; and

(ii) the amount which would reasonably be expected to be received by way of consideration for an assignment or transfer of the investment at a date not later than twelve months after the relevant date, it being assumed that negotiations for the assignment or transfer commenced on the relevant date and the assignment or transfer was made other than to the issuer or to an associate or an associated company of the issuer or of the insurer; and

(*c*) where the investment is not transferable -

(i) the amount payable on redemption on the relevant date or the most recent date before the relevant date on which the issuer of the investment could have been required to redeem the investment; or

(ii) where the investment cannot be redeemed, the amount which would reasonably be paid by way of compensation for the surrender of the interest in the investment.

(3) This subregulation applies where it is not reasonable to assume that, had negotiations for the assignment or transfer of the investment commenced not more than seven working days before the relevant date, the investment could have been assigned or transferred on the relevant date for an amount not less than 97.5 *per centum* of the market value other than to the issuer or to an associate or associated company of the issuer or of the insurer.

(4) Subregulation (3) shall be taken not to apply if it applies by reason only that -

(*a*) the listing of the investment has been temporarily suspended following receipt of price sensitive information by the stock exchange or a recognised investment exchange on which the investment is listed or the regulated market on which facilities for dealing have been granted; or

(*b*) the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5 per centum of the market value.

(5) Where an insurer has made more than one unlisted investment (other than a number of investments exclusively comprising loans) and the value of such investments when taken together is greater than the aggregate of the values of each investment valued separately, then, such higher value may be ascribed to the investments if it is reasonable to assume that none of the investments would be assigned or transferred separately.

Beneficial interests in collective investment schemes.

49. (1) Subject to subregulation (3), this regulation applies to holdings of units or other beneficial interests in -

(*a*) a scheme falling within the UCITS Directive;

Cap. 370.

(b) a collective investment scheme within the meaning of the Investment Services Act (not falling within paragraph (a));

(c) an overseas scheme managed in a country falling within the zone of countries and recognised by the competent authority ("recognised scheme"); or

(*d*) any other collective investment scheme where:

(i) the scheme does not employ derivative contracts unless they are contracts to which regulation 52 applies; and

(ii) the scheme does not employ contracts or assets having the effect of derivative contracts unless they have the effect of derivative contracts to which the said regulation 52 applies; and

(iii) the property of the scheme does not include assets other than those for the valuation of which provisions is made in this Part of these regulations.

(2) The value of units or other beneficial interests in a collective investment scheme to which this regulation applies shall be -

(*a*) where the issuer can be required to purchase the units or other beneficial interests from the holder upon the holder giving notice of one month or less, the price at which the issuer would have purchased the units or other beneficial interests on the relevant date or the most recent date before the relevant date on which it could have been required to make such a purchase; and

(*b*) where the issuer cannot be required to purchase the units or other beneficial interests as set out in paragraph (*a*), a value determined in accordance with regulation 48.

(3) Other than as provided in regulation 53(4), this regulation shall not apply to units or other beneficial interests in a collective investment scheme which has the effect of a derivative contract.

Deferred acquisition costs.

50. In the case of general business, the value of deferred acquisition costs shall be the value as determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate to insurers.

Reversionary interests, etc.

51. The value of any long term business asset of an insurer consisting of an interest in property which is a remainder, reversionary interest, right of fee subject to a different or other future interest, whether vested or contingent, shall be the amount which would reasonably be paid by way of consideration for an immediate transfer or assignment thereof.

Derivative contracts.

52. (1) The value of rights (other than rights to recover assets transferred by way of initial margin) under a derivative contract to which this regulation applies shall be -

(*a*) in the case of a listed derivative contract, the market value; and

(*b*) in the case of an unlisted derivative contract, the amount which would reasonably be paid by way of consideration for closing out that contract,

in either case, taking into account the market value of any assets which, at the relevant date, have been transferred by way of variation margin.

(2) This regulation applies to an approved derivative contract which is covered and -

(*a*) which is held in connection with a contract or asset of the type described in subregulation (3) for the purposes of reduction of investment risks or efficient portfolio management; or

(*b*) which has the effect of an approved derivative contract held in connection with a contract or asset of the type mentioned in the said subregulation (3) for such purposes.

(3) The contract or asset described in this subregulation shall be either -

(*a*) an approved derivative contract or a contract or asset having the effect of an approved derivative contract either of which, when taken together with the approved derivative contract the rights under which are being valued in accordance with this regulation, would have the effect that the company either holds an asset for the valuation of which provision is made in this Part of these regulations or holds an approved derivative contract in connection with such an asset; or

(*b*) an asset for the valuation of which provision is made in this Part of these regulations, being neither a derivative contract nor a contract or asset having the effect of a derivative contract.

(4) For the purposes of this regulation, an approved derivative contract is covered if it does not require a significant provision to be made in respect of it pursuant to regulation 59.

(5) For the purposes of determining in accordance with subregulation (4) whether a required provision is significant, regard shall be had to the obligations of the insurer under the contract and the volatility of the assets identified by the insurer as being suitable to cover such obligations, and the required provision in respect of any one derivative contract shall be deemed to be significant if -

(*a*) the aggregate provision required in respect of all contracts having a similar effect is significant; or

(*b*) the aggregate provision required in respect of all contracts with which it is connected is significant.

(6) In this regulation "approved derivative contract" means a derivative contract which -

(*a*) either is listed or has been entered into with an approved counterparty; and

(*b*) the insurer reasonably believes may be readily closed out; and

(*c*) is either a contract for differences to which subregulation (7) applies or a futures contract or an option to either of which subregulation (8) applies.

(7) This subregulation applies to -

(*a*) a contract for differences under which the amount payable by either party is calculated solely by reference to fluctuations in any of the following, namely:

(i) the value of an asset for the valuation of which provision is made in this Part of these regulations;

(ii) the amount of income from such an asset over a defined period;

(iii) an index of such assets, being an index in respect of which a derivative contract is listed; or

(iv) a national index of retail prices published by or under the authority of the Government of Malta or a government of a State belonging to the zone of countries,

or an arithmetic average thereof, and -

(b) a contract under which the amount payable by either party is calculated by reference to the difference between the market value and the amortised value of any asset for the valuation of which provision is made in this Part of these regulations.

(8) This regulation applies to a futures contract or an option which in either case provides for the acquisition or disposal of assets for the valuation of all of which provision is made in this Part of these regulations at a price which is determined by one or more of the following methods:

(a) for each date on which the contract may be completed or the option exercised, the price is a fixed amount under the terms of the contract or option;

(b) it is determined by reference to the market value or the amortised value of an asset for the valuation of which provision is made in this Part of these regulations or the amount of income over a defined period from such an asset;

(c) it is determined by reference to an index of the kind mentioned in indent (iii) or (iv) of paragraph (a) of sub-regulation (7) of this regulation.

Contracts and assets having the effect of derivative contracts.

53. (1) Subject to subregulation (3), for the purposes of this Part of these regulations, a contract has the effect of a derivative contract if it is a contract (other than a derivative contract) which provides whether upon the exercise of a right by the insurer, or otherwise -

(*a*) for payment (at any time) of amounts which are determined by fluctuations in:

(i) the value of property of any description;

(ii) an index of the value of property of any description;

(iii) income from property of any description; or

(iv) an index of income from property of any description;

(*b*) for delivery of an asset other than an asset for the valuation of which provision is made in regulation 47 to or by the insurer; or

(*c*) for the conversion of an asset held by the insurer or another party to -

(i) an asset of a different type; or

(ii) a different asset of the same type.

(2) Subject to subregulation (3), for the purposes of this Part of these regulations an asset has the effect of a derivative contract if the asset is an asset (other than an approved security or an asset falling within regulation 49(1)(*a*)) and the holding of the asset confers contractual rights or imposes contractual obligations to make or accept payment, delivery or conversion as set out in subregulation (1)(*a*) to (*c*).

(3) A contract or asset does not have the effect of a derivative contract by reason only that -

(*a*) it provides for the unconditional delivery of assets, or for the payment for unconditional delivery of assets, such delivery or payment to be made within a period commencing at the date of the contract and extending:

(i) in the case of a listed security, for the usual period for delivery or payment as determined by the rules of the recognised investment exchange or stock exchange or regulated market on which the securities are listed or facilities for dealing have been granted;

(ii) in any other case, for twenty working days;

(*b*) it is a contract of the type described in regulation 42(9) in respect of which the conditions set out in regulation 42(10) have been satisfied.

(4) Rights in respect of a contract or asset which has the effect of a derivative contract to which regulation 52 applies shall -

(*a*) where the asset is a security, be valued in accordance with regulation 48;

(*b*) where the asset comprises units or other beneficial interests in a collective investment scheme, be valued in accordance with regulation 49; and

(*c*) where the asset is a debt or other right, be valued in accordance with regulation 45.

(5) Rights in respect of a contract or asset having the effect of a derivative contract to which regulation 60 does not apply shall have a value determined in accordance with regulation 45(11).

(6) For the purposes of determining whether a contract or asset has the effect of a derivative contract to which regulation 52 applies, it shall be deemed to have the effect of a derivative contract which is listed or transacted with an approved counterparty if it is itself listed or so transacted.

Assets to be taken into account only to a specified extent.

54. (1) Subject to subregulations (5) and (6) the aggregate value of the assets of an insurer as determined in accordance with this Part of these regulations shall, for any of the purposes for which this Part of these regulations apply, be reduced by an amount representing the aggregate of -

(*a*) the amount by which the insurer is exposed to assets of any description in excess of the permitted asset exposure limit for assets of that description;

(*b*) the amount by which the insurer is exposed to a counterparty in excess of the permitted counterparty exposure limit for such counterparty;

(*c*) the amount by which the insurer has an excess concentration with a number of counterparties;

(*d*) the value of any assets transferred to or for the benefit of the insurer in pursuance of a condition in a derivative contract to which regulation 52(2) does not apply or a related contract; and

(*e*) the value of any assets transferred to or for the benefit of the insurer in pursuance of a contract having the effect of a derivative contract to which regulation 52(2) does not apply or a related contract, as determined in accordance with the Seventh Schedule.

(2) Where an insurer is exposed to assets of any description in excess of the permitted asset exposure limit for such assets, the reduction required to be made by subregulation (1)(*a*) shall be made -

(*a*) by deducting (as far as possible) the amount of the excess from the assets of that description held by the insurer; and

(*b*) where the insurer does not hold sufficient assets of that description to eliminate the excess (or does not hold any assets of that description) by making an appropriate deduction from the aggregate value of the assets which the insurer would otherwise be permitted to take into account for any of the purposes for which this Part of these regulations applies.

(3) Where an insurer is required to make a reduction in accordance with subregulation (1)(*b*), (*c*), (*d*) or (*e*), the reduction shall be made by making a deduction from the aggregate value of the assets which the insurer would otherwise be permitted to take into account for any of the purposes for which this Part of these regulations applies.

(4) Where an insurer carrying on long term business has attributed assets partly to a long term business fund and partly to its other assets, any reduction required to be made by this regulation shall be made in the same proportion as the attribution.

(5) Assets of an insurer comprising -

(*a*) approved securities or any interest accrued thereon;

(*b*) debts to which 45(3) applies;

(*c*) rights to which regulation 45(5), (8) or (9) applies;

(*d*) debts in respect of premiums;

(*e*) moneys due from, or guaranteed by, the Government of Malta or a government of a State belonging to the zone of countries;

(*f*) shares in or debts due or to become due from a dependant falling within regulations 43 and 44;

(*g*) holdings in a scheme falling within the UCITS Directive; or

(*h*) deferred acquisition costs,

shall not be taken into account in any of the calculations described in subregulation (1).

(6) Assets of dependants of the insurer that are debts due or to become due from the insurer or from a dependant of the insurer must not be taken into account in any of the calculations described in subregulation (1).

(7) Where an insurer has entered into any contracts providing for the payment of index linked benefits, the provisions of subregulation (1)(*a*) shall not apply to assets of that insurer to the extent that they are held to match liabilities in respect of such benefits.

Investments for pure reinsurers.

55. A pure reinsurer shall invest its assets covering the technical provisions and the equalisation reserve in accordance with the following requirements:

(a) the assets shall take account of the type of business carried out by a pure reinsurer, in particular the nature, amount and duration of expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitibilty, and matching of its investments;

(b) the pure reinsurer shall ensure that the assets are diversified and adequately spread and allow the pure reinsurer to respond adequately to changing economic circumstances, in particular developments in the financial markets and real estate markets or major catastrophic events; the pure reinsurer shall assess the impact of irregular market circumstances on its assets and shall diversify the assets in such a way as to reduce such impact;

(c) investments in assets which are not admitted to trading on a regulated market shall be kept to prudent levels;

(d) investment in derivatives and quasi-derivatives shall contribute to a reduction of investment risks or facilitate efficient portfolio management and such investments shall be valued on a prudent basis, taking into account the underlying asets, and included in the valuation of the pure reinsurer's assets. The reinsurance undertaking shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;

(e) the assets shall be properly diversified in such a way as to avoid excessive relaince on any one particular asset, isssuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the pure reinsurer to excessive risk concentration;and

(f) paragraph (e) shall not apply to investment on government bonds.

PART X

DETERMINATION OF LIABILITIES

Interpretation.

56. In this Part of these regulations -

"derivative contract" has the meaning given in regulation 41(1);

"established surplus" means an excess of assets representing the whole or a particular part of the long term insurance fund or funds over the liabilities or a particular part of the liabilities, of the insurer attributable to the business as shown by an actuarial investigation to which article 23 of the Act applies;

"general business liabilities" has the same meaning as in regulation 41(1);

"insurance liabilities" means amounts calculated in accordance with this Part of these regulations in respect of those items shown at C and D under the heading "Liabilities" set out in the balance sheet format set immediately following paragraph 15 of the First Schedule to the Insurance Business (Companies Accounts) Regulations;

L.N. 103 of 2000

"long term liabilities" means liabilities of an insurer arising under or in connection with contracts for long term business, including liabilities arising from deposit back arrangements;

"the valuation date", in relation to an actuarial investigation, means the date to which the investigation relates.

Application.

57. (1) Subject to subreguation (2), this Part of these regulations applies with respect to the determination of the amount of liabilities of insurers, for the purposes of -

(*a*) articles 11(1)(*c*), 17, 18, 41(4) and 42(2) and (3) of the Act;

(*b*) an investigation to which article 23 of the Act applies; and

(*c*) any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act.

(2) Regulations 76 and 77 shall apply with respect to the determination of the amount of liabilities of pure reinsurers for the purposes of -

(*a*) articles 17 of the Act;

(*b*) an investigation to which article 23 of the Act applies; and

(*c*) any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act.

Long term business and general business.

58. (1) Subject to this Part of these regulations, the amount of liabilities of an insurer shall be determined in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.

(2) Subject to subregulation (3), in determining under subregulation (1) the amount of liabilities of an insurer, all contingent and prospective liabilities shall be taken into account including all liabilities in respect of preference share capital but excluding other liabilities in respect of share capital.

(3) In determining the amount of the own funds of an insurer pursuant to an insurance rule to be made by the competent authority for the purposes of the Act to determine the amount and the components which make up the own funds of the insurer, cumulative preference share capital and subordinated loan capital in an amount not to exceed the percentage of the amount of the own funds of the insurer as may be determined by the rule and subject to the conditions as may also be determined by the said rule shall not, notwithstanding the provisions of subregulation (2), be taken as liabilities of the insurer for the purposes of the amount of the own funds of the insurer.

Provision for adverse changes.

59. (1) An insurer which has or may have (following the exercise of any right by the insurer or any other party) an obligation to which this regulation applies to deliver assets or make a payment shall -

(*a*) at all times identify the assets held by it which it considers to be the most suitable to cover such obligation; and

(*b*) make prudent provision for the effect on the amount of its excess assets of adverse variations between the value of the assets identified and the value of the assets which it is or may be obliged to deliver or the amount of the payment which it is or may be obliged to make.

(2) For the purposes of subregulation (1) the insurer shall take into account all reasonably foreseeable adverse variations and shall have particular regard to past volatility in the value of the assets concerned (or assets of a similar nature) and the possibility of adverse changes in such volatility in the future.

(3) For the purposes of this regulation -

"linked assets" has the meaning given in regulation 41(1);

"property linked liabilities" has the meaning given in paragraph 2 of Part I of the Seventh Schedule;

"solvency deficit" means a deficit in the assets available to cover the undertaking's liabilities and represent its notional required minimum margin, if any;

"the amount of its excess assets" means the difference between the aggregate value of its assets (other than linked assets to the extent that they are held to match property linked liabilities), determined in accordance with Part IX of these regulations, and the amount of its liabilities (other than property linked liabilities or liabilities for which provision is made in accordance with this regulation).

(4) Subject to subregulation (5), this regulation applies to an obligation -

(*a*) under a contract relating to investments of the kinds mentioned in item C under the heading "Assets" set out in the balance sheet format set immediately following paragraph 15 of the First Schedule to the Insurance Business (Companies Accounts) Regulations (whether such contract constitutes an asset or liability of the company);

L.N 103 of 2000

(*b*) undertaken for the purposes of, or in connection with the making of, investments of the kind mentioned in paragraph (*a*); or

(*c*) under a contract providing for the purchase, sale or exchange of currency.

(5) This regulation shall not apply to a contract to the extent that it relates to, or is for the purposes of the making of an investment in, or is in connection with the making of an investment in, a building which is to be occupied by the insurer and used by the insurer for the conduct of its business.

Provision for related undertakings.

60. (1) Except to the extent that provision for the deficit has been made (whether in the calculation of surplus asset*s* or otherwise) in another group undertaking the value of whose shares is determined having regard to the value of its surplus assets under regulation 43(1) or regulation 43(3)(*a*) (but only to the extent of the insurer's proportional share of that undertaking), an insurer must make provision in respect of a related undertaking that is an insurance undertaking, a reinsurance undertaking or an insurance holding company -

(*a*) where the related undertaking is also a subsidiary undertaking of the insurer, for the whole of any solvency deficit; and

(*b*) in any other case, for the insurer's proportional share of any such deficit.

(2) For the purposes of subregulation (1), the identification and valuation of assets available to cover liabilities and the notional required minimum margin must be determined in accordance with regulation 43(4).

General business liabilities.

L.N 103 of 2000

61. The amount of insurance liabilities which are general business liabilities shall be determined in accordance with the rules set out in the "Rules for determining provisions" of Title II of the First Schedule to the Insurance Business (Companies Accounts) Regulations:

Provided that, the amount of any reserve maintained under article 17(6) of the Act shall be determined in accordance with Part VIII of these regulations.

Relevant coinsurance operations.

62. Where a relevant insurer determines the amount of a liability in order to make provision for outstanding claims arising under a relevant co-insurance operation, then, if the leading insurance undertaking has informed the relevant insurer of the amount of the provision made by the leading insurance undertaking for such claims, the amount determined by the relevant insurer:

(*a*) must be at least as great as the amount of the provision made by the leading insurance undertaking; or

(*b*) in a case where it is not the practice to make such provision separately, must be sufficient, when all liabilities are taken into account, to include provision at least as great as that made by the leading insurance undertaking for such claims,

due regard being had in either case to the proportion of the risk covered by the relevant insurer and by the leading insurance undertaking respectively.

Long term liabilities.

63. (1) The determination of the amount of long term liabilities (other than liabilities which have fallen due for payment before the valuation date) shall be made on actuarial principles which have due regard to the reasonable expectations of policyholders and shall make proper provision for all liabilities on prudent assumptions that shall include appropriate margins for adverse deviation of the relevant factors.

(2) The determination shall take account of all prospective liabilities as determined by the policy conditions for each existing contract, taking credit for premiums payable after the relevant date.

(3) Without prejudice to the generality of subregulation (1), the amount of the long term liabilities shall be determined in compliance with each of regulations 64 to 74 and shall take into account, *inter alia*, the following factors -

(*a*) all guaranteed benefits, including guaranteed surrender values;

(*b*) vested, declared or allotted bonuses to which policyholders are already either collectively or individually contractually entitled;

(*c*) all options available to the policyholder under the terms of the contract;

(*d*) discretionary charges and deductions, in so far as they do not exceed the reasonable expectations of policyholders;

(*e*) expenses, including commissions;

(*f*) any rights under contracts of reinsurance in respect of long term business.

Method of calculation.

64. (1) Subject to subregulations (2), (3) and (4), the amount of the long term liabilities shall be determined separately for each contract by a prospective calculation.

(2) A retrospective calculation may be applied to determine the liabilities where a prospective method cannot be applied to a particular type of contract or benefit, or where it can be demonstrated that the resulting amount of the liabilities would be no lower than would be required by a prudent prospective calculation.

(3) Appropriate approximations or generalisations may be made where they are likely to provide the same, or a higher, result than individual calculations of the same amount of the liabilities in respect of each contract.

(4) Where necessary, additional amounts shall be set aside on an aggregated basis for general risks which are not individualised.

(5) The method of calculation of the amount of the liabilities and the assumptions used shall not be subject to discontinuities from year to year arising from arbitrary changes and shall be such as to recognise the distribution of profits in an appropriate way over the duration of each policy.

(6) The liabilities for contracts under which the policyholder is eligible to participate in any established surplus shall have regard to the level of the premiums under the contracts, to the assets held in respect of those liabilities, and to custom and practice of the insurer in the manner and timing of the distribution of profits or the granting of discretionary additions, as the case may be.

Avoidance of future valuation strain.

65. (1) The amount of the liability determined in respect of a group of contracts shall not be less than such amount as, if the assumptions adopted for the valuation were to remain unaltered and were fulfilled in practice, would enable liabilities similarly determined at all times in the future to be covered from resources arising solely from the contracts and the assets covering the amount of the liability determined at the current valuation.

(2) The appointed actuary of an insurer shall include in the report of any investigation made under article 23 of the Act or in pursuance of a directive made by the competent authority under any other provision of the Act, a statement that premiums for new business are sufficient, on reasonable actuarial assumptions, to enable the company to meet all its commitments and, in particular, to establish and maintain adequate technical provisions.

(3) For the purposes of subregulation (2), all aspects of the financial situation of an insurer may be taken into account, without the input from resources other than premiums and income earned thereon being systemic and permanent in such way that it may jeopardise the insurer's solvency in the long term.

Valuation of future premiums.

66. (1) Where further specified premiums are payable by the policyholder under a contract (not being a linked long term contract) under which benefits (other than benefits arising from a distribution of profits) are determined from the outset in relation to the total premiums payable thereunder, then, subject to subregulation (4) and regulation 67 -

(*a*) where the premiums under the contract are at a uniform rate throughout the period for which they are payable, the premiums to be valued shall be not greater than such level premiums as, if payable for the same period as the actual premiums under the contract and calculated according to the rates of interest and rates of mortality or disability which are to be employed in calculating the liability under the contract, would have been sufficient at the outset to provide for the benefits under the contract according to the contingencies upon which they are payable,

exclusive of any additions for profits, expenses or other charges;

(*b*) where the premiums under the contract are not at a uniform rate throughout the period for which they are payable, the premiums to be valued shall be not greater than such premiums as would be determined on the principles set out in paragraph (*a*) modified as appropriate to take account of the variations in the premiums payable by the policyholder in each year;

save that a premium to be valued shall in no year be greater than the amount of the premium payable by the policyholder.

(2) Where the terms of the contract have changed since the contract was first made (the terms of the contract being taken to change for the purposes of this sub-regulation if the change is indicated in an endorsement on the policy but not if a new policy is issued), then, for the purpose of subregulation (1), one of the following assumptions must be made, namely that:

(*a*) the change from the date it occurred was provided for in the contract when it was made;

(*b*) the terms of the contract are those which apply from the date of change except that a single premium is payable, at the date of the change, of an amount equal to the liability under the policy immediately before the change, calculated on a basis consistent with this Part of these regulations and with the premiums actually payable from the date of the change; or

(*c*) the contract is in two parts, the first of which is for the benefits purchased by the actual premiums payable from the date of the change under the insurer's scales of premiums at that date, and the second of which is for all other benefits under the policy for which no premiums are payable after that date.

(3) Where under a contract (not being linked long term contract) the policy holder is eligible to participate in any established surplus, and -

(*a*) each premium paid increases the benefits (other than benefits arising from a distribution of profits) provided under the contract, or

(*b*) the amount of a premium payable in future is not determinable until it comes to be paid,

future premiums and the corresponding liability may be left out of account so long as adequate provision is made against any risk that the increase in the liabilities of the insurer resulting from the payment of future premiums might exceed the amount of the premiums.

(4) An alternative valuation method to that described in subregulations (1) to (3) may be used where it can be demonstrated that the alternative method results in reserves no less, in aggregate, than would result from the use of the method described in those subregulations.

Acquisition expenses.

67. (1) In order to take account of acquisition expenses, the maximum annual premium to be valued under regulation 66 may (subject to subregulations (2) and (3) of this regulation) be increased by an amount not greater than the equivalent, taken over the whole period of premium payments and calculated according to the rates of interest and rates of mortality or disability employed in valuing the contract, of 3.5 *per centum* (or the defined percentage, if it is lower than 3.5 *per centum*) of the relevant capital sum under the contract.

(2) For the purposes of subregulation (1) "the defined percentage" is the percentage arrived at by taking (for all contracts of the same type as the contract in question for which an adjustment is made) the average of the percentages of the relevant capital sum under each such contract that represent the acquisition costs incurred which, after allowing for the effects of taxation, might reasonably be expected to be recovered from the premiums payable under the contract.

(3) The amount of a future premium valued must not exceed the amount of the premium actually payable by the policyholder.

(4) For the purposes of this regulation -

(*a*) subject to paragraphs (*b*) and (*c*), relevant capital sum under a contract means:

(i) for whole life assurances, the sum assured;

(ii) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity;

(iii) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);

(iv) for capital redemption contracts, the sums payable at the end of the contract period; and

(v) for linked long term contracts, notwithstanding (i) to (iv), the lesser of:

(*aa*) the amount for the time being payable on death; and

(*bb*) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the premiums remaining to be paid during such of the term of the contract as is appropriate for zillmerising or, if such premiums are payable beyond the age of seventy-five, until that age, excluding in all cases any vested reversionary bonus;

(*b*) notwithstanding paragraph (*a*), where, under a contract relating to any such business as is mentioned in paragraph (*a*), the payment of premiums is to stop before the sum assured becomes due, relevant capital sum means the mathematical reserves appropriate for that contract at the end of the premium-paying term; and

(*c*) notwithstanding paragraph (*a*), for temporary assurances, the relevant capital sum means the sum assured on the relevant date.

Rates of interest.

68. (1) The rates of interest to be used in calculating the present value of future payments by or to an insurer shall be no greater than the rates of interest determined from a prudent assessment of the yields on existing assets attributed to the long term business and, to the extent appropriate, the yields which it is expected will be obtained on sums to be invested in the future.

(2) For the purposes of subregulation (1), the assumed yield on an asset attributed to the long term business, before any adjustment to take account of the effect of taxation, shall not exceed the yield on that asset calculated in accordance with subregulations (3) to (7), reduced by 2.5 *per centum* of that yield.

(3) For the purpose of calculating the yield on an asset -

(*a*) the asset shall be valued in accordance with Part IX of these regulations, excluding any provision under which assets may be taken at lower book values for the purposes of any investigation to which article 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act; and

(*b*) the future income from any asset required to be taken into account (whether interest, dividends or repayment of capital) shall be reduced by a proportion corresponding to such of the excess exposure to assets of that description, calculated in accordance with paragraph 16 of Part I of the Seventh Schedule, as may reasonably be attributed to such assets.

(4) For fixed interest investments (that is to say, investments which are fixed interest securities as defined in regulation 41(1)) the yield on an asset, subject to subregulation (7), shall be that annual rate of interest which, if used to calculate the present value of future payments of interest before the deduction of tax and the present value of repayments of capital, would result in the sum of those amounts being equal to the value of the asset.

(5) For variable interest investments (that is to say, investments which are not fixed interest securities as defined in regulation 41(1)) that are equity shares or land, the yield on an asset, subject to subregulation (7), shall be the ratio to the value of the asset of the income before deduction of tax which would be received in the period of twelve months following the valuation date on the assumption that the asset will be held throughout that period and that the factors which affect income will remain unchanged, so however that account shall be taken of any changes in those factors known to have occurred by the valuation date in particular, without prejudice to the generality of the foregoing, of -

(*a*) any known changes in the rental income from property or in dividends on equity shares;

(*b*) any forecast changes in dividends which have been publicly announced by the valuation date;

(*c*) the effect of any alterations in capital structure; and

(*d*) the value (at the most recent date for which it is known at the valuation date) of any determinant of the amount of any future interest payment, the said value being deemed to remain unaltered for all subsequent dates.

Cap. 386.

(6) For variable interest investments that are equity shares in companies subject to, or drawing up accounts as if subject to the Companies Act, the yield on an asset, subject to subregulation (14), must be the ratio to the value of the asset of:

(*a*) A + B; or

(b) 2 times A,

whichever is the lower,

where A is the income which would be received if it were calculated in

accordance with subregulation (5), and B is half the excess (if any) on the relevant amount over A, but if B is less than zero, then it is treated as zero.

(7) For the purposes of subregulation (6), the relevant amount in relation to equity shares is the issuing company's profits after taxation from its ordinary activities for the most recent financial year ending on or before the relevant date which is reported in accounts drawn up in accordance with subregulation (8), which are publicly available, in so far as attributable to those equity shares, so however, without prejudice to the generality of the foregoing, that account is taken of the effect of any alterations in capital structure.

(8) For the purposes of subregulation (7), the issuing company's profits after taxation from its ordinary activities from the relevant financial year must be derived from accounts drawn up in accordance with the Companies Act.

Cap. 386.

(9) Where subregulation (6) applies, and a company's accounting period is longer or shorter than a year, the amount of profits or losses for that period must be annualised, and the annualised figure must be used to calculate the yield.

(10) If the requirements of subregulations (7) and (8) are not, or cannot be, met, then relevant amount is zero.

(11) Subject to subregulation (12), for variable interest investments (that is to say, investments which are not fixed interest securities as defined in regulation 41(1)) other than equity shares or land, the yield on an asset, subject to subregulation (7), shall be that annual rate of interest which, if used to calculate the present value of future payments of interest, before deduction of tax, and the present value of repayments of capital, where applicable, would result in the sum of these amounts being equal to the value of the asset, on the assumption that -

(*a*) the value of any determinant of the amount of the next interest rate payment and capital repayment made during the following twelve months will be the value of that determinant at the most recent date for which it is known at the valuation date;

(*b*) the amount of future interest payments and capital repayments will take account, where appropriate, of -

(i) the right of either party to have the investment repaid, and

(ii) an assumed yield on other comparable investments made in the future not exceeding an amount determined in accordance with subregulations (8) to (10); and

(*c*) indices and all other factors which affect future income payments or capital repayments will remain unchanged after the valuation date.

(12) For investments in collective investment schemes given a value as an asset in accordance with regulation 49, the yield may be determined as the weighted average of the yields (as determined by this regulation) on each of the investments held by the collective investment scheme.

(13) In calculating the yield on an asset under this regulation -

(*a*) if the asset does not consist of equity shares or land -

(i) a prudent adjustment shall be made to exclude that part of the yield estimated to represent compensation for the risk that the income from the asset might not be maintained or that capital repayments might not be received as they fall due, and

(ii) in making that adjustment, regard shall be had wherever possible to the yields on risk-free investments of a similar term in the same currency;

(*b*) for assets which are equity shares or land, adjustments to yields shall be made as appropriate to exclude that part, if any, of the yield from each category of asset that is needed to compensate for the risk that the aggregate income from that category of asset, taking one year with another, might not be maintained: for the purposes of this paragraph, a "category of asset" comprises assets of a similar nature, type and degree of risk.

(14) Notwithstanding subregulation (13)(*b*), for equity shares within the meaning of subregulation (6), adjustments to yields must be made as appropriate to exclude that part, if any, of the yield from each 'category of asset' that is needed to compensate for this risk that the aggregate profits earned by the company might not be maintained; and for the purposes of this subregulation, category of asset has the same meaning as in subregulation (13)(*b*).

(15) To the extent that it is necessary to make an assumption about the yields which will be obtained on sums to be invested in future, the yield shall be determined in accordance with subregulations (16) and (17).

(16) Where the liabilities are denominated in Maltese lira, the yield assumed, before any adjustment to take account of the effect of taxation -

(*a*) on any investment to be made more than three years after the valuation date shall not exceed the yield of the most recent issue of any local development registered stock of a term of not less than ten years and not more than fifteen years or, in the absence of any such local development registered stock, such other determinant as the Minister may, after consultation with the competent authority, by Order in the Gazette, from time to time, establish for the purposes of this regulation;

(*b*) on any investment to be made at any time not more than three years after the valuation date shall not exceed the assumed yield determined under subregulation (2) adjusted linearly over the said three years to the yield determined in accordance with paragraph (*a*) of this subregulation.

(17) Where the liabilities are denominated in currencies other than Maltese lira, the yield shall be determined on assumptions that are as prudent as those made under subregulation (16).

(18) In no case shall a rate of interest determined for the purposes of subregulation (1) exceed the adjusted overall yield on assets calculated as the weighted average of the reduced yields on the individual assets arrived at under subregulation (2); and when that weighted average is calculated -

(*a*) the weight given to each investment shall be its value as an asset determined in accordance with Part IX of these regulations, excluding any provision under which assets may be taken at lower book values for the purposes of any investigation to which article 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the competent authority under any other provision of the Act; and

(*b*) except in relation to the rate of interest used in valuing payments of property linked benefits (as defined in regulation 41(1)), both the yield and the value of any linked assets (as so defined) shall be omitted from the calculation.

(19) For the purpose of determining the rates of interest to be used in valuing a particular category of contracts the assets may, where appropriate, be notionally apportioned between different categories of contracts and in such cases the limit under subregulation (16) shall be applied on the basis of the overall yield on the assets apportioned to the contracts in question.

Rates of mortality and disability.

69. The amount of the liability in respect of any category of contract shall, where relevant, be determined on the basis of prudent rates of mortality and disability that have regard to the country of the commitment.

Expenses.

70. (1) Provision for expenses, whether implicit or explicit, shall be not less than the amount required, on prudent assumptions, to meet the total net cost, after taking account of the effect of taxation, that would be likely to be incurred in fulfilling contracts if the insurer were to cease to transact new business twelve months after the valuation date.

(2) The provision mentioned in subregulation (1) shall have regard to, among other things, the insurer's actual expenses in the last twelve months before the valuation date and to the effects of inflation on future expenses on prudent assumptions as to the future rates of increase in prices and earnings.

Options.

71. (1) Provision shall be made on prudent assumptions to cover any increase in liabilities caused by policyholders exercising options under their contracts.

(2) Where a contract includes an option whereby the policyholder could secure a guaranteed cash payment within twelve months following the valuation date, the provision for that option shall be such as to ensure that the value placed on the contract is not less than the amount required to provide for the payments that would have to be made if the option were exercised.

(3) Where a contract includes an option whereby the policyholder could secure a cash payment but subregulation (2) does not apply, the provision for that option must be such as to ensure that, if the assumptions adopted for the valuation of the contract are fulfilled in practice -

(*a*) the resulting value (and therefore the provision) is not less than the amount required to provide for the payment which would have to be made if the option were exercised; and

(*b*) the payment when it falls due is covered from resources arising solely from the contract and from the assets covering the amount of the liability determined at the current valuation.

(4) For the purposes of subregulation (3) the amount of a cash payment secured by the exercise of an option is assumed to be:

(*a*) in the case of an accumulating with-profits policy, the lower of:

(i) the amount which would reasonably be expected to be paid if the option were exercised, having regard to the representations of the insurer; and

(ii) the amount, disregarding all discretionary adjustments; and

(*b*) in the case of any other policy to which this regulation applies, the amount which would reasonably be expected to be paid if the option were exercised, having regard to the representations of the insurer, without taking into account any expectations regarding future distributions of profits or the granting of discretionary additions in respect of an established surplus or in anticipation of such additions.

Contracts not to be treated as assets.

72. No contract for long term business shall be treated as an asset.

No credit for profits from voluntary discontinuance.

73. Allowance shall not be made in the valuation for the voluntary discontinuance of any contract if the amount of the liability so determined would thereby be reduced.

Nature and term of assets.

74. The determination of the amount of long term liabilities shall take into account the nature and term of the assets representing those liabilities and the value placed upon them and shall include prudent provision against the effects of possible future changes in the value of the assets on -

(*a*) the ability of the insurer to meet its obligations arising under contracts for long term business as they arise; and

(*b*) the adequacy of the assets to meet the liabilities as determined in accordance with regulations 64 to 73.

Contracts linked to UCITS or share index.

75. (1) Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurer, 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.

(2) 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 subregulation (1), the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, 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.

(3) The provisions of article 17(3) of the Act and of Part II of the Seventh Schedule shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in subregulations (1) and (2). Reference to the long term business amount in Part I of the Seventh Schedule shall be to the liabilities excluding those in respect of liabilities mentioned in subregulation (1).

(4) Where the benefits referred to in subregulations (1) and (2) include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional mathematical reserves shall be subject to subarticle 3 of article 17 of the Act, and of Part II of the Seventh Schedule.

Long term business and general business for pure reinurers L.N. 103 of 2000

76. (1) The amount of liabilities of a pure reinsurer shall be determined in accordance wih rules set out in the "Rules for determining provisions" of Title II of the First Schedule to the Insurance Business (Companies Accounts) Regulations.

Provided that, the amount of any reserve maintained under article 17(6) of the Act shall be determined in accordance with Part VIII of these regulations.

(2) Subject to subregulation (3), in determining under subregulation (1) the amount of liabilities of a pure reinsurer, all contingent and prospective liabilities shall be taken into account including all liabilities in respect of preference share capital but excluding other liabilities in respect of share capital.

(3) In determining the amount of the own funds of a pure reinsurer pursuant to an insurance rule to be made by the competent authority for the purposes of the Act to determine the amount and the components which make up the own funds of the pure reinsurer, cumulative preference share capital and subordinated loan capital in an amount not to exceed the percentage of the amount of the own funds of the pure reinsurer as may be determined by the rule and subject to the conditions as may also be determined by the said rule shall not, notwithstanding the provisions of subregulation (2), be taken as liabilities of the pure reinsurer for the purposes of the amount of the own funds of the pure reinsurer.

Provision for related undertakings of pure reinsurers

77. (1) Except to the extent that provision for the deficit has been made (whether in the calculation of surplus assets or otherwise) in another group undertaking the value of whose shares is determined having regard to the value of its surplus assets under regulation 43(1) or regulation 43(3)(*a*) (but only to the extent of the pure reinsurer's proportional share of that undertaking), a pure reinsurer must make provision in respect of a related undertaking that is an insurance undertaking, a reinsurance undertaking or an insurance holding company -

(*a*) where the related undertaking is also a subsidiary undertaking of the pure reinsurer, for the whole of any solvency deficit; and

(*b*) in any other case, for the pure reinsurer's proportional share of any such deficit.

(2) For the purposes of subregulation (1), the identification and valuation of assets available to cover liabilities and the notional required minimum margin must be determined in accordance with regulation 43(4).

PART XI
PARENT UNDERTAKING SOLVENCY CALCULATION

Application and timing.

78. (1) This Part of these regulations applies to insurers and to pure reinsurers that are subsidiary undertakings of ultimate insurance parent undertakings and whose head office is in Malta.

(2) In this Part of these regulations:

"used notional group solvency margin" in relation to an ultimate insurance parent undertaking or an ultimate EEA insurance parent undertaking, is the sum of:

(*a*) in the case of a parent, which is itself an insurance undertaking or a reinsurance undertaking, all liabilities in respect of cumulative preference shares left out of account in accordance with regulation 10(2), or in accordance with the relevant regulatory requirements of the state or territory where the head office of the parent is situated, as the case may be; and

(*b*) the parent's proportional share of all liabilities in respect of cumulative preference shares left out of account by its related insurance undertakings or related reinsurance undertakings in accordance with regulation 10(2) or the relevant regulatory requirements of the state or territory where the head office of the relevant insurance undertaking or the relevant reinsurance undertaking is situated, as the case may be.

(3) The information and calculations required to be provided under this Part of these regulations shall:

(*a*) be as at the end of the financial year of the insurer or the pure reinsurer or as at the end of the financial year of the ultimate EEA insurance

parent undertaking or as at the end of the financial year of the ultimate insurance parent undertaking;

(*b*) follow the relevant principles on accounting for subsidiary undertakings found in International Financial Reporting Standards issued by the International Accounting Standards Board; and

(*c*) be as at a date not later than twelve months from the day after the end of the financial year by reference to which the information and calculations were last provided.

(4) Subject to subregulation (5), the information and calculations required under this Part of these regulations must be provided by not later than six months from the end of:

(*a*) the financial year in question; or

(*b*) the financial year of the relevant parent, where the information and calculations are provided as at the end of the financial year under subregulation (3)(*a*).

(5) Where the calculation is provided in accordance with regulation 79(3), the information required under this Part of these regulations must be provided not later than:

(*a*) six months from the end of the financial year in question; or

(*b*) the date by which the parent undertaking solvency calculation is required in the EEA State of supplementary supervision or of the relevant head office under regulation 79, as the case may be,

whichever is the earlier.

Rules for determining surplus assets and deficits.

79. (1) Subject to the provisions of this regulation, the calculations required by any provision of this regulation shall be carried out at all levels of the undertakings forming part of the insurance group.

(2) The amount of any deficit and the identification of surplus assets shall be determined as though:

(*a*) the phrase "except in the case of an ultimate insurance parent undertaking or an ultimate EEA insurance parent undertaking which is a mutual which carries on long-term insurance business," was inserted before regulation 43(4)(*d*);

(*b*) regulation 43(4)(*f*) was replaced with "assets that cannot effectively be made available or realised to make good any deficiency of assets of the ultimate insurance parent undertaking or ultimate EEA insurance parent undertaking, as the case may be"; and

(*c*) notwithstanding regulation 58(2), where the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking has issued cumulative preference shares, liabilities in respect of such shares may be left out of account:

(i) to the extent that they (taken with the used notional group solvency margin) do not exceed 50 *per centum* of the notional group solvency margin, but

Cap. 386.

(ii) liabilities in respect of shares which are redeemable for the purposes of article 115 of the Companies Act may be left out of

account only to the extent that they (taken with the total of liabilities in respect of redeemable preference shares and subordinated debt with a fixed maturity in the used notional group solvency margin*)* do not exceed 25 *per centum* of the notional group solvency margin.

(3) In determining the surplus assets or solvency deficit of a group undertaking which is not a related undertaking of the insurer or the pure reinsurer appropriate approximations or generalisations may be applied where they are likely to provide the same, or a lower, amount of surplus assets or the same, or a higher, amount of solvency deficit to that which would otherwise have been required under this regulation.

PART XII
MISCELLANEOUS PROVISIONS

Repeals and Savings.

80. (1) Without prejudice to regulation 5 of these regulations and saving the provisions of the following sub-regulations of this regulation, Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004 are hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under these Regulations.

L.N. 102 of 2000

L.N. 102 of 2000

(3) (*a*) Every insurer (other than for a non-EEA insurer) that, pursuant to Insurance Business (Companies Assets and Liabilities) Regulations, 2000 was required to maintain in Malta assets of such an amount and of the kind as determined by Part II of Insurance Business (Companies Assets and Liabilities) Regulations, 2000 and to whom this requirement no longer applied from the coming into force of the Insurance Business (Insurers' Assets and Liabilities), 2004 may apply in writing to the competent authority for the release of these assets.

(*b*) Subject to paragraph (*c*), the competent authority shall determine an application received under paragraph (*a*) within two months of its receipt.

(*c*) The competent authority shall, in the case of an application submitted by an insurer whose head office is in an EEA State and which at the time of coming into force of these regulations was authorised under the Act to carry on business of insurance, determine such an application only if the insurer concerned elects to exercise a European right and satisfies the establishment or service conditions specified in Part I of the European Passport Rights for Insurance Undertakings Regulations.

FIRST SCHEDULE
(Regulation 9)
LONG TERM BUSINESS SOLVENCY MARGIN:
FIRST AND SECOND CALCULATIONS

1. In this Schedule -

"first calculation" and "second calculation" have the meaning given in paragraph 2 of this Schedule.

Long term business classes I, II and IX

2. (1) For long term business of class I, II or IX the required margin of solvency shall be determined by taking the aggregate of the results arrived at by applying the calculation described in subparagraph (2) ("the first calculation") and the calculation described in subparagraphs (3) to (5) ("the second calculation").

(2) For the first calculation -

(*a*) there shall be taken a sum equal to 4 *per centum* of the mathematical reserves for direct business and reinsurance acceptances without any deduction for reinsurance cessions,

(*b*) the amount of the mathematical reserves at the end of the prior financial year after the deduction of reinsurance cessions and, upon application, with supporting evidence, amounts recoverable from special purpose vehicles referred to in article 46 of Directive 2005/68/EC, shall be expressed as a percentage of the amount of those mathematical reserves before any such deductions, and

(*c*) the sum mentioned in indent (*a*) shall be multiplied -

(i) where the percentage arrived at under indent (*b*) is greater than 85 *per centum*, by that greater percentage, and

(ii) in any other case, by 85 *per centum*.

(3) For the second calculation -

(*a*) there shall be taken, subject to subparagraphs (4) and (5), a sum equal to 0.3 *per centum* of the capital at risk for contracts on which the capital at risk is not a negative figure,

(*b*) the amount of the capital at risk at the end of the prior financial year for contracts on which the capital at risk is not a negative figure, after the deduction of reinsurance cessions and, upon application, with supporting evidence, amounts recoverable from special purpose vehicles referred to in article 46 of Directive 2005/68/EC, shall be expressed as a percentage of the amount of that capital at risk before any such deduction, and

(*c*) the sum arrived at under indent (*a*) shall be multiplied -

(i) where the percentage arrived at under indent (*b*) is greater than 50 *per centum*, by that greater percentage, and

(ii) in any other case, by 50 *per centum*.

(4) Where a contract provides for benefits payable only on death within a specified period and is valid for a period of not more than three years from the date when the contract was first made, the percentage to be taken for the purposes of subparagraph (3)(*a*) shall be 0.1 *per centum*; and where the period of validity from that date is more than three years but not more than five years, the percentage to be so taken shall be 0.15 *per centum*.

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

(6) For the purposes of the second calculation, the capital at risk is -

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

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

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

(7) When the amount of the mathematical reserves referred to in subparagraph (2)(*a*), or the amount of the capital at risk referred to in subparagraph (3)(*a*), is to be calculated for the purposes of determining the required margin of solvency, the day as on which that amount is calculated shall be the same as that as on which the margin of solvency is determined; and the mathematical reserves referred to in subparagraph (6) shall also be calculated as on that day when the capital at risk in question is that referred to in subparagraph (3)(*a*), but shall be calculated as at the end of the prior financial year when the capital at risk in question is that referred to in paragraph (3)(*b*).

Long term business classes III, VII and VIII

3. (1) For long term business of class III, VII or VIII the required margin of solvency shall be determined in accordance with subparagraphs (2) to (5).

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

(3) In so far as -

(*a*) an insurer or a pure reinsurer bears no investment risk, and

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

the first calculation shall be applied, but as if paragraph 2(2)(*a*) of this Schedule contained a reference to 1 *per centum* instead of 4 *per centum*.

(4) In so far as -

(*a*) an insurer or a pure reinsurer bears no investment risk, and

(*b*) the allocation to cover management expenses in the relevant contract is not fixed for a period exceeding five years,

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

(5) Where an insurer or a pure reinsurer covers a death risk, a sum arrived at by applying the second calculation (paragraph 2(4) and (5) of this Schedule being disregarded) shall be added to any required margin of solvency, including a margin of solvency of zero, arrived at under subparagraph (2), (3) or (4).

Long term business classes IV and VI

4. (1) For long term business of class IV, the margin of solvency shall be determined by applying the first calculation plus the sum arrived at by applying the greater of the higher of the two sums resulting from the appliction of the method of calculation set out in the Second Schedule and the sum resulting from the application of the method of calculation set out in the Third Schedule as though it were general business of class 2.

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

(3) If both subparagraph (1) of this paragraph and regulation 9(4)(*b*) of the regulations apply, a single combined margin of solvency must be calculated by applying the greater of the higher of the two sums resulting from the applaction of the method of calculation set out in the Second Schedule and the sum resulting from the application of the method of calculation set out in the Third Schedule in respect of the class IV and supplementary general business classes 1 and 2.

Long term business class V

5. For long term business of class V the required margin of solvency shall be equal to 1 per centum of the assets of the relevant tontine.

SECOND SCHEDULE
(Regulation 9)
GENERAL BUSINESS SOLVENCY MARGIN:
FIRST METHOD OF CALCULATION
(PREMIUM BASIS)

1. In this Schedule -

"incepted" refers to the time when the liability to risk of an insurer or a pure reinsurer under a contract of insurance or reinsurance commenced and, for this purpose, a contract providing continuous cover shall be deemed to commence on each anniversary date of the contract;

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

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

2. The gross premiums receivable (or contributions, as the case may be) in respect of the insurer's or the pure reinsurer's general business for the financial year in question shall be aggregated and the method of calculation in paragraphs 4 to 17 applied.

3. The gross premiums earned (or contributions, as the case may be) in respect of the company's general business for the financial year in question shall be aggregated and the method of calculation in paragraphs 4 to 17 applied.

4. Premiums in respect of classes 11, 12 and 13 must be increased by 50 *per centum*. Statistical methods may be used to allocate the premiums in respect of these classes.

5. From each of the aggregates arrived at under paragraphs 2 and 3 of this Schedule there shall be deducted -

(*a*) any taxes included in the gross premiums, and

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

6. The amount arrived at under paragraph 5 of this Schedule shall be multiplied by twelve and divided by the number of months in the financial year.

7. Subject to paragraph 14 of the Fourth Schedule, if the amount arrived at under paragraph 6 of this Schedule in the case of an insurer is more than 53.1 million Euro or in the case of a pure reinsurer is more than 50 million Euro, it shall be divided into two portions, the former consisting of 53.1 million Euro or 50 million Euro as the case may be, and the latter comprising the excess.

8. Where there has been a division into two portions pursuant to paragraph 7 of this Schedule, there shall be calculated and added together 18 *per centum* and 16 *per centum* of the two portions respectively; and where there has

been no such division, there shall be calculated 18 *per centum* of the amount arrived at under paragraph 6 of this Schedule.

9. In the case of general business consisting of health insurance or reinsurance of health insurance based on actuarial principles, paragraph 8 of this Schedule shall apply with the substitution of "6 *per centum*" for "18 *per centum*" and "5 1/3 *per centum*" for "16 *per centum*", but only if all the necessary conditions are satisfied.

10. For the purposes of paragraph 9 of this Schedule, the necessary conditions are the following -

(*a*) the gross premiums shall be calculated on the basis of sickness tables appropriate to business of insurance;

(*b*) the reserves include provision for increasing age or, in the case of class IV, either the reserves include provision for increasing age, or the business is conducted on a group basis;

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

(*d*) the contract does not allow the insurer or the pure reinsurer to cancel the contract after the end of the third year of the contract; and

(*e*) the contract provides for the possibility of increasing premiums or reducing payments during its currency.

11. Where paragraph 9 of this Schedule applies to a company whose general business consists partly of health insurance based on actuarial principles and partly of other business, the procedure provided in paragraphs 2 to 9 of this Schedule shall operate separately for each part of the general business, so as to produce a sum under paragraph 9 thereof for the health insurance and a sum under paragraph 8 thereof for the other business.

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

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

13. (1) For the purposes of paragraph 12 of this Schedule, the amount of claims paid, in each financial year, is the amount that is recorded in the insurer's or the pure reinsurer's books as at the end of the financial year -

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

(*b*) in relation to general business class 18, as being the costs borne by the insurer or the pure reinsurer (whether or not borne in that year) in respect of the assistance given, less (in either case) any recoverable amounts within the meaning of subparagraph (4).

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

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

(4) Recoverable amounts for the purposes of subparagraph (1) are amounts recoverable by the company in respect of the claims mentioned in that subparagraph or other claims, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurance undertakings or reinsurance undertakings but excluding amounts recoverable in respect of reinsurance ceded by the insurer or the pure reinsurer respectively.

14. (1) For the purposes of paragraph 12 of this Schedule, the provision for claims outstanding, is (subject to any applicable provisions contained in Part IX and X of these regulations) the amount set aside by the insurer or the pure reinsurer as at the beginning or end of the period of three financial years as being an amount likely to be sufficient to meet -

(*a*) the claims described in subparagraph (2), and

(*b*) the expenses described in subparagraph (3),

less any recoverable amounts within the meaning of subparagraph (4).

(2) The claims mentioned in subparagraph (1) are claims under contracts of insurance or reinsurance in respect of incidents occurring -

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

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

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

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

(4) Recoverable amounts for the purposes of subparagraph (1) are amounts estimated by the insurer or the pure reinsurer to be recoverable by it in respect of the claims mentioned in that subparagraph, including amounts recoverable by way of salvage, amounts recoverable from third parties and amounts recoverable from other insurance undertakings or reinsurance undertakings but excluding amounts recoverable in respect of reinsurance ceded by the insurer or the pure reinsurer.

15. From the amount determined under paragraph 12(1) or (2) of this Schedule there shall be deducted the total sum recoverable in respect of that amount under reinsurance contracts ceded, including, upon application, with supporting evidence, amounts recoverable from special purpose vehicles referred to in article 46 of Directive 2005/68/EC, during the relevant period.

16. The amount determined under paragraph 15 of this Schedule shall be expressed as a percentage of the amount determined under paragraph 12(1) or (2) of this Schedule.

17. The sum arrived at under paragraph 8 or 9 of this Schedule or the aggregate of the sums arrived at under those paragraphs, as the case may be, shall be multiplied-

(*a*) where the percentage arrived at under paragraph 16 of this Schedule is greater than 50 *per centum* but not greater than 100 *per centum*, by the percentage so arrived at,

(*b*) where the percentage so arrived at is greater than 100 *per centum*, by 100 *per centum*, and

(*c*) in any other case, by 50 *per centum*.

THIRD SCHEDULE
(Regulation 9)
GENERAL BUSINESS SOLVENCY MARGIN: SECOND METHOD OF CALCULATION (CLAIMS BASIS)

1. In this Schedule "reference period", in relation to an insurer or a pure reinsurer, means either -

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

(*b*) the financial year in question and the six previous financial years if more than 50 *per centum* of the gross premiums in that period were in respect of all or any of the following, namely, storm (as included in general business class 8), hail (as included in general business class 9), frost (as included in general business class 9) and credit (as included in general business class 14);

2. If an insurer or a pure reinsurer has not been in existence long enough to acquire a reference period, this Schedule shall be deemed to give a lower result than that given by the Second Schedule and shall otherwise not apply to the insurer or the pure reinsurer.

3. Provisions and recoveries in respect of general business classes 11, 12 and 13 must be increased by 50 *per centum*. Statistical methods may be used to allocate the claims, provisions and recoveries in respect of these classes.

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

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

(3) For the purposes of this paragraph, the expressions "amount of claims paid" and "provision for claims outstanding" have, in relation to a reference period, the same meaning as they have in paragraph 12 of the Second Schedule.

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

6. Subject to paragraph 14 of the Fourth Schedule, if the amount arrived at under paragraph 4 of this Schedule in the case of an insurer is more than 37.2 million Euro or in the case of a pure reinsurer is more than 35 million Euro, it shall be divided into two portions, the former consisting of 37.2 million Euro or 35 million Euro, as the case may be, and the latter comprising the excess.

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

8. In the case of general business consisting of health insurance based on actuarial principles, paragraph 7 of this Schedule shall apply with the substitution of "8 2/3 *per centum*" for "26 *per centum*" and "7 2/3 *per centum*" for "23 *per centum*", but only if all the necessary conditions are satisfied.

9. The necessary conditions for the purposes of paragraph 8 of this Schedule are the same as those set out in paragraph 10 of the Second Schedule.

10. In a case of the kind mentioned in paragraph 11 of the Second Schedule, that paragraph shall apply (with the necessary modifications) so as to produce separate sums under paragraphs 7 and 8 of this Schedule.

11. The sum arrived at under paragraph 7 or 8 of this Schedule or the aggregate of the sums arrived at under those paragraphs, as the case may be, shall be multiplied by the same percentage as is applicable for the purposes of paragraph 17 of the Second Schedule.

.

FOURTH SCHEDULE

(Regulation 16)

MINIMUM GUARANTEE FUND

Long term business

1. Subject to paragraphs 8, 13 and 14 of this Schedule, the minimum guarantee fund for long term business shall be -

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

(b) in the case of a pure reinsurer, 3,000,000 Euro;

(c) in the case of a captive reinsurance undertaking, 1,000,000 Euro; and

(d) in any other case, 3, 200,000 Euro.

General business

2. Subject to paragraphs 3 to 9 and 14 of this Schedule, the minimum guarantee fund for general business shall be 2,200,000 Euro.

3. Where insurance business is carried on in respect of some or all of the risks included in classes 10 to 15, the minimum guarantee fund shall be 3,200,000 Euro.

4. In the case an insurer, which is also authorised to carry on reinsurance where –

(1) the reinsurance premiums collected exceed 10 per centum of the insurer's total premium;
(2) the reinsurnace premiums collected exceed 50,000,000 Euro; or
(3) the technical provisions resulting from its reinsurance acceptances exceed 10% of its total technical provisions,

the minimum guarantee fund shall be 3,000,000 Euro.

5. Where the business is restricted to that of a captive reinsurance undertaking, the minimum guarantee fund shall be 1,000,000 Euro.

6. In the case of a pure reinsurer, the minimum guarantee fund shall be 3,000,000 Euro.

7. In the case of a mutual, the minimum guarantee fund shall be reduced by 25 *per centum*.

Long term business and general business

8. In relation to a Malta margin of solvency or EEA margin of solvency maintained under regulation 8(2)(*b*) and regulation 8(3)(c)(ii) of these regulations respectively, the minimum guarantee fund for long term business or general business shall be one-half of the amount arrived at by applying the foregoing provisions of this Schedule.

Non-directive insurers

9. For non-directive insurers, subject to paragraphs 10 to 12 of this Schedule, the minimum guarantee fund for general business is the amount shown in the table below as applicable to the general business class (or the highest such amount if the insurer carries out business in more than one class).

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

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

11. An insurer which carries out insurance business for part of a class shall, for the purposes of paragraph 6 of this Schedule, be regarded as carrying out business for the whole of the class.

12. In the case of a mutual, the minimum guarantee fund required by paragraphs 9 to 11 of this Schedule shall be reduced by 25 *per centum*.

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

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

(*b*) in any other case, 800,000 Euro.

Increases to reflect consumer price index

14. The base amounts in Euro specified in paragraphs 1 and 2 of this Schedule and the Second and Third Schedules shall be reviewed in accordance with the provisions of article 17a of Directive 73/239/EEC, article 30 of Directive 2002/83/EC and article 41 of Directive 2005/68/EC.

FIFTH SCHEDULE
(Regulation 27)
PERSONS ACTING AS CUSTODIAN OF ASSETS

1. The persons listed in this Schedule shall act as custodian of assets for the purposes of article 18 of the Act and hold in custody for insurers' account assets of a description specified and assigned to their exclusive custody in this Schedule.

2. (1) The Central Bank of Malta shall act as custodian of assets of the following description -

(*a*) investments approved by the competent authority listed or dealt in on a foreign stock exchange or regulated market acceptable to the competent authority; and

(*b*) currency deposits acceptable to the competent authority in a bank or credit institution of first class standing lawfully carrying on the business of banking in a country outside Malta.

(2) Any document of title of assets of such description shall be made in the name of the Central Bank of Malta for the account of the company and be deposited with and held in custody by the Central Bank as custodian for the insurer.

3. (1) Any bank or credit institution lawfully carrying on the business of banking in Malta shall act as custodian of assets consisting of currency deposits whether such deposits are in Maltese lira or any other currency acceptable to the competent authority.

(2) Any such deposits shall be made in the name of the Malta Financial Services Authority for the account of the insurer.

4. For the purposes of this Schedule -

"bank" and "credit institution" have the meaning given in regulation 6(2) of these regulations;

"deposit" has the meaning given in regulation 6(2) of these regulations;

"regulated market" has the meaning given in regulation 41(1) of these regulations.

SIXTH SCHEDULE
(Regulation 40)
METHOD OF CALCULATING THE EQUALISATION RESERVE FOR CREDIT INSURANCE BUSINESS

1. The insurer or the pure reinsurer shall maintain a credit insurance equalisation reserve to which shall be charged, at the end of each financial year, any technical deficit arising in respect of credit insurance business during that financial year.

2. Subject to paragraph 4 of this Schedule, such reserve shall at the end of each financial year receive seventy-five per centum of any technical surplus arising in respect of credit insurance business, subject to a limit of twelve per centum of net premiums written during that financial year until the reserve has reached one hundred and fifty per centum of the highest annual amount of net premiums written during the previous five financial years.

3. For the purposes of this Schedule, technical surplus or technical deficit in respect of credit insurance business for a financial year means:

(*a*) for business which is accounted for on an accident year basis, the amount by which the aggregate of net premiums earned and other technical income exceeds, or falls short of, the aggregate of net claims incurred, claims management costs and any technical charges; and

(*b*) for business which is accounted for on an underwriting year basis, the amount by which the aggregate of net premiums written and other technical income exceeds, or falls short of, net claims paid plus the increase (or less the decrease) in the net technical provisions (exclusive of any change in the credit insurance equalisation reserve) and net operating expenses.

4. In determining any technical surplus referred to in paragraph 2 of this Schedule the calculation shall be made before tax and before any transfer to or from the credit insurance equalisation reserve. Investment income shall not be included in these calculations.

SEVENTH SCHEDULE
(Regulation 54)
ASSETS TO BE TAKEN INTO ACCOUNT ONLY TO A SPECIFIED EXTENT
PART I
EXCESS EXPOSURE: METHOD OF CALCULATION

1. Unless the context otherwise requires, words and expressions contained in this Schedule bear the same meaning as in Parts IX and X of the regulations.

2. For the purposes of this Schedule -

"business amount" means -

(*a*) in relation to business carried on by an insurer, the margin of solvency in respect of which is determined by the method of calculation set out in the Second and Third Schedules in terms of regulations 9(1) or 9(2), the general business amount;

(*b*) in relation to business carried on by an insurer, the margin of solvency in repsect of which is determined by the method of calculation set out in the First Schedule in terms of

reguation 9(1) or 9(2), the long term business amount..

"connected company" of any company means -

(*a*) that company's holding company;

(*b*) a subsidiary of that company;

(*c*) a subsidiary of the holding company of that company.

"counterparty" in relation to an insurer means -

(*a*) any one individual;

(*b*) any one unincorporated body of persons;

(*c*) any one company not being a member of a group;

(*d*) any group of companies excluding any companies within the group which are subsidiary undertakings of the insurer; or

(*e*) any government of a state as the competent authority may, from time to time, either generally or specifically, approve for such purpose together with all the public bodies, local authorities or nationalised industries of that state,

in which the insurer has made investments or against whom it has rights whether in pursuance of a contract entered into by the insurer or otherwise; and reference to dealings with or by a counterparty includes dealings with or by any person or body of persons included within the definition of counterparty;

"counterparty exposure" shall be determined in accordance with paragraph 13 of this Part of this Schedule;

"debts due or to become due" includes any debts which would become due if the insurer were to exercise any right to which it is entitled to require payment or repayment of the same;

"diversified contract for differences" means a contract for differences whose value does not depend to a significant extent on fluctuations in the value of, or income from, assets or any of the descriptions in paragraphs 1 to 9, 11 or 13 to 19 of Part II of this Schedule and "undiversified contract for differences" shall be construed accordingly;

"excess concentration with a number of counterparties" shall be determined in accordance with paragraph 23 of this Part of this Schedule;

"general business amount" means the aggregate of the insurer's insurance liabilities (net of reinsurance) in respect of:

(a) general business carried on by an insurer; and

(b) long term reinsurance business carried on by an insurer the margin of solvency in respect of which is determined by the method of calculation set out in the Second and Third Schedule in terms of regulation 9(2), and

an amount equal to whichever is the greater of the insurer's applicable minimum guarantee fund or 20 per centum of the general premium income.

"group" has the same meaning as is assigned to the term "group company" in article 2(1) of the Companies Act;

"hybrid security" means a debt security, other than an approved security, the terms of which provide, or

have the effect that, or contain an option which if exercised by the issuer would have the effect that the holder does not or would not have an unconditional entitlement to payment of interest and repayment of capital in full within seventy-five years of the relevant date;

"index linked liabilities" means insurance liabilities in respect of index linked benefits;

"insurance liabilities" means amounts calculated in accordance with Part X of the regulations in respect of those items shown at C and D under the heading "Liabilities" listed in the balance sheet format set out immediately following paragraph 15 of the First Schedule to the Insurance Business (Companies Accounts) Regulations;

"long term business amount" means the higher of -

(a) the amount of the insurer's insurance liabilities (net of reinsurance ceded and excluding property linked liabilities) in respect of:

(i) long term direct business carried on by an insurer; and

(ii) long term reinsurance business carried on by an insurer the margin of solvency in respect of which is determined by the method of calculation set out in the First Schedule in terms of regulation 9(2); and

together with:

(aa) the amount of the required margin of solvency (or the amount of the minimum guarantee fund if greater) determined in accordance with regulation 16 of these regulations and paragraphs 2 to 5 of the First Schedule thereto (or, in the case of an insurer whose head office is not in Malta, the amount which would apply if its head office were in Malta), less the amount of any implicit item valued in accordance with regulation 11 to 13 of the regulations; and

(bb) the amount of any deposit back in connection with a contract of reinsurance in respect of long term business; or

(*b*) such other amount as the insurer may select not exceeding the value of its assets (other than general insurance business assets if the insurer is a general insurer and excluding reinsurance recoveries and assets required to match property linked liabilities) in accordance with the provisions of Part IX of these regulations,

except that for the purposes of determining the permitted asset exposure limit under paragraph 3 of this Part of this Schedule, index linked liabilities must also be excluded from (*a*) and assets required to match such liabilities must also be excluded from (b).

"permitted asset exposure limit" has the meaning set out in paragraph 3 of this Part of this Schedule;

"permitted counterparty exposure limit" has the meaning set out in paragraph 4 of this Part of this Schedule;

"property linked liabilities" means insurance liabilities in respect of property linked benefits;

"readily realisable" in relation to a listed investment means a listed investment to which regulation 48(3) of the regulations either does not apply or applies by reason only that -

(*a*) the listing of the investment has been temporarily suspended following receipt of price sensitive information by the stock exchange on which the investment is listed or the regulated market on which facilities for dealing have been granted; or

(*b*) the extent of the holding would prevent an orderly disposal of the investment for an amount equal to or greater than 97.5 per cent of the market value;

"short term deposit" means a sum of money which may be withdrawn at the discretion of the lender without penalty or loss of accrued interest by giving notice of withdrawal of one month or less.

3. The permitted asset exposure limit for assets of any of the descriptions in any paragraph of Part II of this Schedule is the percentage of the business amount set out immediately below that paragraph. In the case of an asset which is not covered by any of the descriptions in Part II of this Schedule (other than a derivative contract) the permitted asset exposure limit is nil.

4. The permitted counterparty exposure limit is -

(*a*) where the counterparty is an individual or an unincorporated body of persons, 5 *per centum* of the business amount;

(*b*) where the counterparty is a counterparty of the type mentioned in paragraph (*e*) in the definition of counterparty, 10 *per centum* of the business amount;

(*c*) where the counterparty is a body corporate or group, each of:

(i) 30 *per centum* of the business amount;

(ii) 15 *per centum* of the business amount or such lower amount as the insurer may decide where the exposure arises other than by reason that debts are due or to become due as a result of short term deposits made with an approved credit institution;

(iii) 10 *per centum* of the business amount where the exposure is other than to bodies which are approved counterparties.

Calculation of exposure to assets

5. A value shall be ascribed to assets of each description which shall be an amount determined in accordance with the provisions of Part IX of the regulations, or where the assets are of a description for the valuation of which no provision is made in Part IX of the regulations, an amount which would reasonably be paid by way of consideration for an immediate assignment or transfer of such assets. The amount by which the insurer is exposed to assets of each description shall be determined by adjusting the value of the assets in accordance with paragraphs 6 to 13 of this Part of this Schedule.

Adjustments in respect of futures contracts

6. The figure arrived at under paragraph 5 of this Part of this Schedule in respect of assets of each description shall be increased or decreased by the value of assets of that description which the insurer is deemed to have acquired or disposed of pursuant to a futures contract.

7. For the purposes of paragraph 6 of this Part of this Schedule, the insurer shall be deemed to have acquired or disposed of assets pursuant to a futures contract if, at the relevant date, it has entered into (and not closed out) a futures contract which -

(*a*) provides for the acquisition of assets by that insurer; or

(*b*) is listed and provides for the disposal of assets by the insurer; or

(*c*) is not listed but provides for the disposal of assets by the insurer to an approved counterparty and it is prudent to assume that such disposal will take place within one year of the relevant date.

Adjustments in respect of options

8. The figure arrived at under paragraphs 5 to 7 of this Part of this Schedule in respect of assets of each description shall be increased or decreased by the value of assets of that description which the insurer is deemed to have acquired or disposed of pursuant to an option.

9. For the purposes of paragraph 8 of this Part of this Schedule, the insurer shall be deemed to have acquired or disposed of assets pursuant to an option if, at the relevant date, it is a party to an option and it is prudent to assume that the option will be exercised and the option is one which -

(*a*) provides for the acquisition of assets by the insurer; or

(*b*) is listed and provides for the disposal of assets by the insurer; or

(*c*) is not listed but provides for the disposal of assets by the insurer to an approved counterparty and it is prudent to assume that such disposal will take place within one year of the relevant date.

Adjustments in respect of initial margins

10. The figure arrived at under paragraphs 5 to 9 of this Part of this Schedule in respect of assets of each description shall be increased by an amount representing the value of any assets of that description which have been transferred by the insurer by way of initial margin.

Adjustments in respect of an undiversified contract for differences or a contract or asset having the effect of a derivative contract

11. The amount arrived at in accordance with paragraphs 6 to 10 of this Part of this Schedule shall be increased or decreased by an amount representing the value of assets which the insurer is deemed to have acquired or disposed of under -

(*a*) an undiversified contract for differences; or

(*b*) a contract or asset other than a diversified contract for differences which has the effect of a derivative contract.

12. For the purposes of paragraph 11 of this Part of this Schedule, the insurer shall be deemed to have achieved the effect of such contract by entering into appropriate futures contracts or options. The assets deemed to be acquired or disposed of shall be dealt with in accordance with the provisions in paragraphs 6 and 8 respectively.

Adjustments in respect of subsidiary undertakings

13. Subject to paragraphs 14 and 15 of this Part of this Schedule, the amount of the company's exposure to assets arrived at under paragraphs 5 to 12 of this Schedule must be increased by an amount representing the exposure, if any, of the insurer's dependants to assets of that description.

14. For the purposes of paragraph 13 of this Part of this Schedule, the exposure of each dependant must be calculated by applying paragraphs 5 to 12 of this Schedule to that dependant as if it were an insurance undertaking to which those provisions apply.

15. In relation to a dependant:

(*a*) which is an insurance undertaking or a reinsurance undertaking; or

(*b*) for which regulation 54(1)(*a*) to (*c*) has (notwithstanding regulation 43(5)(*b*)) been applied when valuing the assets selected under regulation 43(4)(*a*),

paragraph 13 of this Part of this Schedule applies only in relation to the dependant's surplus assets (or proportional share).

Excess asset exposure

16. The amount by which the insurer is exposed to assets of a particular description in excess of the permitted asset exposure limit shall be calculated by subtracting the permitted asset exposure limit for assets of that description from the corresponding amount of the exposure, calculated in accordance with paragraphs 5 to 12 of this Part of this Schedule. For this purpose, exposure to assets shall be excluded to the extent that such exposure has caused the recognition of excess exposure to assets of a different description. If the figure arrived at is negative, it shall be taken to be zero.

Calculation of exposure to a counterparty

17. Subject to paragraphs 18 and 19 of this Part of this Schedule, the value of all investments (determined in accordance with regulation 48 of these regulations) issued by any one counterparty and the value of all rights (determined in accordance with regulations 45, 52 and 53 of these regulations) against that counterparty, in each case up to the amount of the appropriate permitted asset exposure limit, shall be aggregated. Where the counterparty is an issuer of a collective investment scheme falling within regulation 49(1)(*b*) of these regulations, the value of units or other beneficial interest in the collective investment scheme shall be included.

18. Where an insurer has rights in respect of an obligation to be fulfilled by a counterparty and -

(*a*) the obligation is a secured obligation which:

(i) is secured by cash deposited with, or a letter of credit established with, or securities issued by, or a guarantee provided by, an approved credit institution or an approved financial institution; and

(ii) is due to be fulfilled within twelve months of the relevant date; or

(*b*) the obligation is a secured obligation which is secured by listed securities which are readily realisable or by approved securities which in either case:

(i) have been deposited with an approved credit institution or an approved financial institution; and

(ii) are beneficially owned by the counterparty but will not be available for the benefit of creditors generally in the event of the winding-up of the counterparty,

the aggregation required by paragraph 17 of this Part of this Schedule need not include the value of such rights.

19. If the insurer has liabilities to the counterparty which may be offset against the above-mentioned assets in accordance with generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers, then, such liabilities may be offset for the purposes of the aggregation required by paragraph 17 of this Part of this Schedule.

20. Subject to paragraph 21 of this Part of this Schedule, the amount arrived at in accordance with paragraphs 17 to 19 of this Part of this Schedule must be increased by the amount by which any dependant of the insurer is exposed to the same counterparty.

21. In relation to a dependant:

(*a*) which is an insurance undertaking or a reinsurance undertaking; or

(*b*) for which regulation 54(1)(*a*) to (*c*) has (notwithstanding regulation 43(5)(*b*)) been applied when valuing the assets selected under regulation 43(4)(*a*),

paragraph 20 applies only in relation to the dependant's surplus assets (or proportional share).

Excess counterparty exposure

22. The amount by which the insurer is exposed to a counterparty in excess of the permitted counterparty exposure limit shall be calculated by subtracting from the amount of the exposure to such counterparty the amount of the permitted counterparty exposure limit for such counterparty. If the figure arrived at is negative, it shall be taken to be zero. If the insurer is exposed to a counterparty in excess of the permitted counterparty exposure limit in more than one of the circumstances set out in paragraph 4(*c*) of this Part of this Schedule, it shall make the deduction required under regulation 54(1)(*b*) of the regulations only in respect of the circumstances leading to the greatest excess exposure.

Excess concentration with a number of counterparties

23. Where there is exposure to a counterparty of the type mentioned in paragraph 4(*c*)(ii) of this Part of this Schedule, 40 *per centum* of the business amount shall be deducted from the aggregate of such exposures. The amount so arrived at shall be the excess concentration with a number of counterparties. Where this amount is negative it shall be taken to be zero. For the purposes of this paragraph -

(*a*) exposure to a counterparty shall be taken into account only up to the level of the permitted counterparty exposure limit for that counterparty; and

(*b*) exposure to a counterparty shall not be taken into account if it does not exceed 10 *per centum* of the business amount; and

(*c*) exposure to a counterparty shall not be taken into account if the corresponding permitted counterparty exposure limit does not exceed 10 *per centum* of the business amount.

PART II
DESCRIPTION OF ASSET AND CORRESPONDING BUSINESS AMOUNT

1(a). A piece of land or a number of pieces of land (or an interest in such pieces of land) to which in the most recent proper valuation of such pieces of land an aggregate value is ascribed which is greater than the value of each of such pieces of land valued separately -

(*a*) in the case of general business amount:

(i)	value of a piece of land	10%
(ii)	aggregate value of a number of pieces of land	20%

(*b*) in the case of long term business amount:

(i)	value of a piece of land	10%
(ii)	aggregate value of a number of pieces of land	30%

Provided that, in the case of an aggregate value of a number of pieces of land, no individual piece of land exceeds the maximum permitted exposure to one piece of land.

1(b). A reversionary interest or a remainder not falling within paragraph 1(a) of this Part of this Schedule 1%

2. All debts due or to become due from any one individual being debts which are fully secured on any dwelling or any land appurtenant thereto owned or to be purchased by the individual and used or to be used by him for his own residence 1%

3. All debts due or to become due from an individual, other than debts specified in paragraph 2 of this Part of this Schedule $^{1}/_{4}$%

4. All unsecured debts (other than debts arising under the terms of debt securities or debts from a regulated institution) due or to become due from any one counterparty other than an individual, body corporate or group 1%

5. All unsecured debts (other than debts arising under the terms of debt securities or debts from a regulated institution) due or to become due from any one company, taken together with all such debts due or to become due from a connected company of that company 1%

6. All unsecured debts (other than debts arising under the terms of debt securities or debts from an approved counterparty) due or to become due from any one regulated institution, taken together with all such debts due or to become due from a connected company of that institution $2^1/_2$%

7. All debts, other than debts arising under the terms of debt securities, due or to become due from any one counterparty which is not an approved counterparty taken together with all such debts due or to become due from any connected company (other than an approved counterparty) of that counterparty 10%

8. All debts, other than short-term deposits with an approved credit institution or debts arising under the terms of debt securities, due or to become due from any one approved counterparty, taken together with all such debts due or to become due from any connected company of that approved counterparty 15%

9. All debts due or to become due from an approved credit institution (or a connected company of that institution) taken together 30%

10. The aggregate of debts of the descriptions in paragraphs 3, 4 and 5 of this Part of this Schedule 5%

11. All investments of a kind which may be valued in accordance with regulation 48 of the regulations (other than secured debt securities, debt securities (other than hybrid securities) issued by a regulated institution or investments which are listed and readily realisable) issued by any one issuer taken together with -

(*a*) all units or other beneficial interests in a collective investment scheme falling within regulation 49(1)(*b*) of the regulations issued by that issuer; and with

(*b*) all investments of the kinds mentioned in this paragraph issued by a connected company of that issuer 1%

12. The aggregate of assets of any of the descriptions in paragraph 11(*b*) of this Part of this Schedule 15%

13. All shares and hybrid securities issued by any one issuer taken together with all such securities issued by a connected company of that issuer 5%

14. All securities issued by any one issuer which is not an approved counterparty taken together with all securities issued by a connected company, other than an approved counterparty, of that issuer 10%

15. All securities issued by any one counterparty 15%

16. All holdings in any one licensed collective investment scheme or recognised scheme 15%

17. All cash 3%

18. All computer equipment 5%

19. All office machinery (other than computer equipment) taken together with all furniture, motor vehicles and other equipment $2^1/_2$%