L.N. 310 of 2004

INSURANCE BUSINESS (INSURERS' ASSETS AND LIABILITIES) REGULATIONS, 2004

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INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004

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 andcommencement.

1. (1) The title of these regulations is the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004.

(2) These regulations shall be deemed to have come into force on the 1st May, 2004 other than for sub-regulation (1) of regulation 4 and paragraph (b) of sub-regulation (3) of regulation 8 in so far as these regulations refer to a Swiss general insurer.

Interpretation.

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

"the Act" means the Insurance Business Act; Cap. 403.

"the 1981 Act" means the Insurance Business Act, 1981 repealed by the Act; Cap. 290.

"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 cover during that period and any adjustments to the profit or loss of providing insurance cover during earlier accounting periods;

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

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

"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;

Cap. 204.

"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 insurer whose head office is in an EEA State;

"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 paragraph (b) of sub-regulation (2) of regulation 9 of these regulations;

"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 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 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 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 and a financial year -

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

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

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

"gross premiums written" means the amounts required by the First Schedule to the Insurance Business (Companies Accounts) Regulations, 2000 to be shown in the profit and loss account of an insurer at general business technical account item I.1.(a); L.N. 103 of 2000.

"hypothec" shall be construed in accordance with Sub-title II of Title XXIII of the Civil Code; Cap. 16.

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

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

"insurer" means either an insurer having authorisation or an EEA insurance undertaking whose head office is in an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of article 2 of Directive 2002/83/EC or article 1 of Directive 73/239/EEC which has received authorisation under article 4 or article 6 respectively;

"insurer whose head office is in Malta" means a company authorised in terms of the Act, 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 co-insurance 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;

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

Cap. 330.

"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 of these regulations;

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

Cap 345.

"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 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 insurer, other than a pure reinsurer, whose head office is not in an EEA State;

"pure reinsurer" means an insurer whose business is restricted to business of 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, 2003;

Cap. 386.

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

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

"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 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;

"the Schedule" means the Schedule to these regulations;

"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 under contracts of reinsurance ceded by it (but excluding any rights of recovery in respect of insurance liabilities already discharged by the insurer), set aside by the insurer to meet its liabilities under or in connection with contracts of insurance; 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;

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

"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 Directive made by the competent authority by virtue of subarticle (3) of article 4 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 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.

PART II – MAINTENANCE OF ASSETS IN MALTA

Maintenance of assets in Malta in the case of insurers whose head office is in Malta.

3. The requirements of paragraph (b) of subarticle (1) of article 10 of the Act as applies to an insurer whose head office is in Malta shall be satisfied if an insurer applying for authorisation to carry on, or which is authorised to carry on, business of insurance in Malta possesses as respects the business the insurer is authorised to carry on, or is authorised to carry on, the amount of the guarantee fund which the insurer is required to maintain under article 16 of the Act;

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

4. (1) Subject to regulation 5 of these regulations, and subject to sub-regulation (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 of these regulations 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 paragraph (b) of sub-regulation (2) of regulation 8 of these regulations and indent (i) of paragraph (d) of sub-regulation 3 of regulation 8 of these regulations.

(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.

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 immediately before the coming into force of these regulations, pursuant to regulation 5 of Insurance Business (Companies Assets and Liabilities) Regulations, 2000 or such higher amount as determined by the competent authority.

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

6. (1) The assets mentioned in regulations 3 and 4 of these regulations 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 -

Kind of assets to be maintained in Malta.

(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 currency deposit in Maltese lira or any convertible foreign currency 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 currency deposit in Maltese lira or any convertible foreign currency 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 sub-regulation (1) of this regulation -

"approved security" has the same meaning as in sub-regulation (1) of regulation 49 of these regulations;

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

Cap. 371.

"convertible", in relation to any currency, has the same meaning as is assigned to it by article 2 of the Central Bank of Malta Act;

"deposit", in relation to any currency, has the same meaning as is assigned to it by subarticle (1) of article 2 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 of these regulations and "implicit item" shall be construed accordingly;

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

"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 –

(a) whose head office is in Malta; or

(b) whose business in Malta is restricted to reinsurance,

shall maintain a margin of solvency in accordance with this Part of these regulations.

(2) Subject to sub-regulation (3) of this regulation, 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) Sub-regulation (2) of this regulation shall not apply to an insurer if:

(a) its business in Malta is restricted to reinsurance;

(b) it is a Swiss general insurer;

(c) it is an EEA-deposit insurer; or

(d) it is a Malta deposit insurer which has made a deposit under regulation 4 of these regulations, but a Malta deposit insurer which has made a deposit under regulation 4 of these regulations 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 that carries on both long term business and general business, sub-regulations (1), (2) and (3) of this regulation shall have effect as if the requirement to maintain –

(a) a margin of solvency;

(b) a Malta margin of solvency; and

(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 liabilities shall be increased by the amount of any reserve maintained under Part VIII of these regulations.

Determination of margins of solvency.

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

(a) as regards long term business, in accordance with the provisions of the First Schedule, and

(b) as regards general business, by taking the greater of:

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

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

(2) 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 sub-regulation (1) of this regulation, but only to business carried on in Malta; and

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

(3) For a contract to which subarticle (3) of article 5 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 for that class, and

(b) in the case of so much of the contract as is within general business class 1 or 2, the method of calculation set out in paragraph (b) of sub-regulation (1) of this regulation.

(4) Where an insurer 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 in order to arrive at the insurer's required margin of solvency for long term business.

(5) 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.

(6) Subject to sub-regulation (7) of this regulation, in each case in which paragraph (b) of sub-regulation (1) of this regulation applies, including under sub-regulation (3) of this regulation and sub-paragraph (1) of paragraph 4 of the First Schedule to these regulations 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.

(7) For the purpose of sub-regulation (6) of this regulation -

(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

(iii) they are established by a pure reinsurer that is not authorised under the Act to effect contracts of insurance; and

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

(8) Where the nature or quality of reinsurance relied on to reduce the required margin of solvency changes significantly during the financial year, an insurer 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 of these regulations.

Valuation.

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

(2) Notwithstanding sub-regulation (2) of regulation 65 of these regulations, where an insurer has issued preference shares, liabilities in respect of such shares may be left out of account, in aggregate up to 50 per centum of the lesser of the margin of solvency and the required margin of solvency save that liabilities in respect of shares which are redeemable for the purposes of article 115 of the Companies Act may be left out of account, in aggregate only up to 25 per centum of the lesser of the margin of solvency and the required margin of solvency.

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

(4) Subject to sub-regulation (6) of this regulation, in the case of an insurer 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 sub-regulation (4) of these regulations, technical provisions must be calculated net of reinsurance.

(6) Sub-regulation (4) of this regulation does not apply to a pure reinsurer which does not have permission under the Act to effect contracts of insurance, risks of classes 1 or 2, or in respect of the discounting of annuities.

(7) Subject to paragraph (b) of sub-regulation (5) of regulation 11 of these regulations, the items mentioned in regulations 11 to 15 of these regulations 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 in writing in that behalf.

Implicit items: future profits.

11. (1) Subject to sub-regulation (5) of this regulation 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 sub-regulation (1) of this regulation, the full amount of future profits shall be obtained by multiplying the estimated annual profit by a factor which shall as nearly as may be represent 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 sub-regulation (2) of this regulation -

(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 paragraph (a) of sub-regulation (3) of this regulation -

(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 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 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 shall submit, by not later than 31 December 2004:

(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).

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 sub-regulation (6) of this regulation, 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 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 sub-regulation (6) of this regulation, the value given by sub-regulation (1) of this regulation (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 sub-regulation (6) of this regulation, the value given by sub-regulation (1) of this regulation (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 sub-regulations (2) and (3) of this regulation "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 sub-paragraphs (a) to (d) of this sub-regulation, 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 sub-regulation (4) of this regulation, the payment of premiums is to stop before the sum assured becomes due, then, notwithstanding the said sub-regulation (4), "relevant capital sums" in sub-regulations (1) to (3) of this regulation 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 sub-regulation (1), (2) or (3) of this regulation 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 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 the total value of the amounts unpaid may be taken into account as an asset; 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.

PART IV - GUARANTEE FUND AND MINIMUM GUARANTEE FUND

Guarantee fund and minimum guarantee fund.

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

(2) Subject to sub-regulations (3) and (4) of this regulation, 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.

Valuation.

17. The provisions of regulations 11 to 15 of these regulations 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 sub-regulation (1) of this regulation 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 sub-regulation (2) of regulation 50 of these regulations, 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 of these regulations);

(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 of these regulations.

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 of these regulations 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 sub-regulation (1) of regulation 49 of these regulations.

Matching: currency of general business liabilities.

20. (1) The currency of an insurer's general business liabilities shall, for the purposes of regulation 18 of these regulations, 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 sub-regulation (2) of this regulation.

(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 of these regulations 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 sub-regulations (1) and (2) of this regulation 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 sub-regulation (1) of regulation 49 of these regulations) where it is listed, or

(ii) there is a regulated market as defined in sub-regulation (1) of regulation 49 of these regulations 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 sub-regulation 4 of regulation 18 of these regulations;

"listed" and "unlisted" have the meaning given in sub-regulation (1) of regulation 49 of these regulations;

Exclusions from regulations 18 to 22.

23. (1) Regulations 18 to 22 of these regulations 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 any other insurer; 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 of these regulations 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 paragraph (b) of sub-regulation (2) of regulation 8 of these regulations 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 indent (ii) of paragraph (d) of sub-regulation (3) of regulation 8 of these regulations 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 of these regulations;

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

"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 of these regulations 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 of these regulations 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 of these regulations 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 sub-regulation (1) of this regulation 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 sub-regulation (2) of this regulation 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 or affiliated insurance.

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 of these regulations;

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

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

Making an amount of deposit.

30. (1) Subject to sub-regulation (2) of this regulation, every deposit made, or required to be made, pursuant to regulation 4 or 5 of these regulations shall be made with a custodian of assets in the manner set out in regulation 26 of these regulations 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 sub-regulation (1) of this regulation 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 of these regulations, and subject to sub-regulation (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 of these regulations 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 sub-regulation (1) of this regulation 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 sub-regulation (3) of this regulation, 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 30 days of receiving the details required to be

given under this sub-regulation; 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 sub-regulation (1) of this regulation, 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 sub-regulation (3) of these regulations, 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 of these regulations and subject to sub-regulations (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 30 days of receiving the details required to be given under this sub-regulation; 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 sub-regulation (1) of this regulation, 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 sub-regulation (1) of this regulation 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 sub-regulations (2) and (3) of this regulation shall relieve the insurer of the obligation imposed on him by regulation 30 of these regulations 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 sub-regulation (1) of this regulation accompanied by an appropriate declaration, determine the application having cognizance to the provisions of subarticle (4) of article 16, articles 28, 41 and 42 of the Act and direct the custodian in writing as it deems appropriate in the circumstances.

(3) In sub-regulation (2) of this regulation an "appropriate declaration" means a written declaration by the applicant as is required by subarticle (4) of article 16 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 sub-regulations of this regulation, any insurer to whom regulation 4 or 5 of these regulations 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 sub-regulation (1) of this regulation 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 of these regulations 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 of these regulations and, at a later date, elects to substitute that deposit with a security to be produced to the competent authority in accordance with sub-regulation (1) of this regulation, or

(b) an insurer produces to the competent authority a security in accordance with sub-regulation (1) of this regulation 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 of these regulations,

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 sub-regulations (1) and (2) of this regulation 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 of these regulations, 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 of these regulations –

"security" means –

(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 witha 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

TITLE I - PRELIMINARY

Interpretation.

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

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

"business categories corresponding to a scheduled class" means the business categories specified in the Sixth Schedule corresponding to the same general business classes;

"business group" means a group comprising descriptions of general business determined in accordance with regulation 42 of these regulations;

"business group maximum" has the meaning given in Part III of the Seventh Schedule;

"claim" means a claim against an insurer 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 own staff, are directly attributable to particular claims;

"consequential loss risks" means risks falling within general business class 16 comprising risks of the persons insured sustaining loss attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;

"contract of insurance" includes a contract of reinsurance;

"credit insurance business" means all business of insurance falling within general business class 14 that is not business of reinsurance;

"direct business" refers to business of insurance other than business of reinsurance;

"equalisation reserve" means a reserve to be maintained under subarticle (7) of article 17 of the Act;

"facultative business" refers to facultative business of reinsurance;

"general business policy" means a policy evidencing a contract the effecting of which constitutes the carrying on of general business of a relevant description;

"maximum reserve" means the aggregate value of the business group maxima as calculated in accordance with Part III of the Seventh Schedule;

"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;

"nuclear risks" means risks falling within any class of general business and arising in connection with the construction or use of any nuclear reactor or nuclear installation or the carriage of any nuclear matter;

"proportional reinsurance treaty" means a reinsurance treaty under which in return for a proportion of the premium a pre-determined proportion of each claim payment by the cedant under policies subject to the treaty is recoverable from the reinsurer; and "non-proportional reinsurance treaty" shall be construed accordingly;

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

"reinsurance recoveries" means amounts in respect of claims receivable by an insurer from a reinsurer under a contract of reinsurance;

"the shareholder accounts rules" means the rules contained in the First Schedule to the Insurance Business (Companies Accounts) Regulations, 2000 for the preparation of accounts by insurers;

"scheduled class" refers to the scheduled classes set out in the Sixth Schedule;

"technical provisions" means the items required by the First Schedule to the Insurance Business (Companies Accounts) Regulations, 2000 to be shown in the balance sheet of an insurer at liabilities items C.1 to 6;

"Title II business" and "Title III business" mean, respectively, business to which Title II and Title III of this Part of these regulations applies;

"Title II insurer" and "Title III insurer" mean, respectively, an insurer to which Title II and Title III of this Part of these regulations applies,

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.

Scope.

39. (1) For the purposes of article 17 of the Act, in so far as it refers to general business: equalisation reserve -

(a) Title II of this Part of these regulations makes provision in relation to business other than credit insurance business; and

(b) Title III thereof makes provision in relation to credit insurance business.

(2) In relation to Title II and Title III of this Part of these regulations -

(a) any business to which each Title applies is hereby prescribed for the purposes of subarticle (7) of article 17 of the Act as a description of general business; and

(b) for the purposes of subarticle (8) of that article (companies to which subarticle (7) of article 17 of the Act does not apply), there is hereby prescribed any insurer whose head office is in a country outside Malta.

TITLE II - BUSINESS OTHER THAN CREDIT INSURANCE BUSINESS

Application.

40. (1) This Title of this Part of these regulations applies to an insurer whose head office is in Malta.

(2) This Title of this Part of these regulations applies to general business falling within any of the following paragraphs -

(a) business in scheduled class 3 and corresponding proportional reinsurance treaty business categories;

(b) direct, facultative and proportional reinsurance treaty consequential loss risks;

(c) business in scheduled classes 1 and 2 and corresponding reinsurance treaty business categories;

(d) nuclear risks; and

(e) non-proportional reinsurance treaty business categories corresponding to business in scheduled class 3 and non-proportional reinsurance treaty consequential loss risks.

(3) For the purposes of sub-regulation (2) of this regulation, any business falling within paragraph (d) shall be treated as if it did not fall within paragraph (a), (b), (c) or (e).

Equalisation reserve.

41. (1) Subject to sub-regulations (2) and (3) of this regulation, a Title II insurer shall maintain an equalisation reserve in respect of Title II business in accordance with regulations 42 to 46 of these regulations.

(2) Regulations 42 to 46 of these regulations shall not apply in respect of any Title II business where net premiums written in a financial year of an insurer in respect of all that business are -

(a) less than 1,200,000 Euro; or

(b) less than 4 per centum of net premiums written in that financial year in respect of all its general business and less than 2,500,000 Euro,

and the insurer has no equalisation reserve to be brought forward from the previous financial year.

Business groups.

42. (1) For the purposes of applying this Title of this Part of these regulations, a Title II insurer shall classify its Title II business into separate business groups comprising -

(a) business group A - business falling within paragraph (a) of sub-regulation (2) of regulation 40 of these regulations;

(b) business group B - business falling within paragraph (b) of that sub-regulation;

(c) business group C - business falling within paragraph (c) of that sub-regulation;

(d) business group D - business falling within paragraph (d) of that sub-regulation; and

(e) business group E - business falling within paragraph (e) of that sub-regulation.

(2) The insurer must further divide its insurance business falling within each business group into business accounted for on an accident year basis and business accounted for on an underwriting year basis.

Transfers to and from the equalisation reserve.

43. (1) At the end of each financial year, a Title II insurer shall make transfers to the equalisation reserve and transfers from the equalisation reserve in accordance with sub-regulations (2) to (5) of this regulation.

(2) The insurer shall calculate -

(a) the aggregate value of transfers to be made to the equalisation reserve in accordance with Part I of the Seventh Schedule; and

(b) the aggregate value of transfers to be made from the equalisation reserve in accordance with Part II of the Seventh Schedule.

(3) Subject to sub-regulation (5) of this regulation, if the aggregate value of transfers to be made to the equalisation reserve exceeds the aggregate value of transfers to be made from the equalisation reserve, the insurer shall transfer an amount equal to the excess to the equalisation reserve.

(4) Subject to sub-regulation (5) of this regulation, if the aggregate value of transfers to be made from the equalisation reserve exceeds the aggregate value of transfers to be made to the equalisation reserve, the insurer shall transfer from the equalisation reserve an amount equal to such excess, or the amount of the equalisation reserve brought forward from the previous financial year (in this regulation referred to as the "previous year's equalisation reserve"), whichever is the lower.

(5) If the value of the previous year's equalisation reserve together with the aggregate value of transfers to be made to the equalisation reserve, less the aggregate value of transfers to be made from the equalisation reserve, exceeds the maximum reserve calculated in accordance with Part III of the Seventh Schedule, the insurer shall

transfer such an amount as is necessary to make the equalisation reserve equal to the maximum reserve.

Transfers of business by an insurer.

44. (1) If a Title II insurer transfers to another insurer all its rights and obligations under any general business policies (pursuant to a transfer approved by the competent authority under article 33 of the Act), the Seventh Schedule shall apply to that insurer at the end of the financial year in which such transfer takes place with the following modifications.

(2) For the purposes of calculating amounts to be transferred to the equalisation reserve (pursuant to Part I of the Seventh Schedule) and the business group maxima applicable to the insurer's business (pursuant to Part III of that Schedule), net premiums written in respect of policies which were the subject of the transfer shall be excluded.

(3) If all the insurer's rights and obligations under all general business policies falling within a business group have been transferred, the business group maximum for that business shall be zero.

Transfers of business to an insurer.

45. (1) If a Title II insurer acquires from another insurer (the "transferor") all the transferor's rights and obligations under any general business policies (pursuant to a transfer approved by the competent authority under article 33 of the Act), the Seventh Schedule shall apply to that insurer at the end of the financial year in which such acquisition takes place with the following modifications.

(2) Where consideration payable in respect of the acquisition is accounted for by the insurer as an adjustment to premiums -

(a) for the purposes of calculating amounts to be transferred to the equalisation reserve (pursuant to Part I of the Seventh Schedule) and the business group maxima applicable to the insurer's business (pursuant to Part III of that Schedule), net premiums earned or net premiums written, as the case may require, shall be adjusted by any amounts in respect of such consideration; and

(b) for the purposes of calculating amounts to be transferred from the equalisation reserve (pursuant to Part II of the Seventh Schedule), net premiums earned or net premiums written, as the case may require, shall include any amounts in respect of such consideration.

(3) Where consideration payable in respect of the acquisition is accounted for by the insurer as an adjustment to claims -

(a) for the purposes of calculating amounts to be transferred from the equalisation reserve (pursuant to Part II of the Seventh Schedule), net premiums earned or net premiums written, as the case may require, shall be such amount as would have been calculated had such consideration been accounted for by the insurer as an adjustment to premiums; and

(b) for the purposes of calculating amounts to be transferred from the equalisation reserve (pursuant to Part II of the Seventh Schedule), net claims incurred or net claims paid, as the case may require, shall be calculated as if such adjustment had not been made.

(4) For the purposes of sub-regulations (2) and (3) of this regulation, consideration payable in respect of the acquisition shall be apportioned between business groups (and within each business group between business accounted for on an accident year basis and business accounted for on an underwriting year basis) according to the business groups within which the general business policies which are the subject of the acquisition fall.

(5) For the avoidance of doubt, an adjustment to premiums or claims for the purposes of sub-regulation (2) and (3) of this regulation may, in either case, be by way of addition or deduction, as appropriate.

(6) In any financial year following that of the acquisition, the Seventh Schedule shall apply with the following modifications.

(7) Where any consideration payable in respect of the acquisition was accounted for by the insurer as an adjustment to premiums, for the purposes of calculating amounts to be transferred from the equalisation reserve pursuant to Part II of the Seventh Schedule, net premiums earned shall include an appropriate amount in respect of the consideration for the transfer.

(8) Where consideration payable in respect of the acquisition was accounted for by the insurer as an adjustment to claims, for the purposes of calculating amounts to be transferred from the equalisation reserve pursuant to Part II of the Seventh Schedule, net premiums earned shall be taken to be such amount as would have been calculated had the consideration been accounted for by the insurer as an adjustment to premiums.

Transfers from equalisation reserve where net premiums written fall below specified limits.

46. (1) This regulation applies to a Title II insurer where -

(a) the insurer has carried on Title II business for no less than five financial years and net premiums written in respect of all that business in two or more of the four financial years preceding the financial year in question are less than the amounts specified in paragraph (a) or (b) of sub-regulation (2) of regulation 41 of these regulations, as the case may be; or

(b) the insurer has carried on Title II business for less than five financial years and the average net premiums written in respect of all that business in those years is less than the amounts specified in paragraph (a) or (b) of sub-regulation (2) of regulation 41 of these regulations, as the case may be; and

(c) the insurer has an equalisation reserve to be brought forward from the preceding financial year; and

(d) net premiums written in the last financial year in question in respect of Title II business are less than the amounts specified in paragraph (a) or (b) of sub-regulation (2) of regulation 41 of these regulations, as the case may be.

(2) In this regulation "average net premiums written" means the average amount of net premiums written in respect of that business in a financial year and any previous financial years.

(3) For the purposes of sub-regulation (2) of this regulation, if any of the financial years which the insurer is required to take into account for the calculation of average net premiums written is an accounting period of more or of less than a period of twelve months, pursuant to subarticle (3) of article 164 of the Companies Act, the value of net premiums written in that financial year shall be the amount represented by the formula -

$$\frac{NPW \times 365}{d}$$

where -

NPW means net premiums written in the financial year concerned; and

d means the number of days falling in that financial year.

(4) An insurer to which this regulation applies shall, at the end of the financial year in question, make a transfer from the equalisation reserve of such an amount as is necessary to reduce the equalisation reserve to zero.

TITLE III - CREDIT INSURANCE BUSINESS

Application.

47. (1) This Title of this Part of these regulations applies to:

(a) an insurer whose head office is in Malta and is authorised to carry on credit insurance business; and

(b) non-EEA insurers which carry on credit insurance business in Malta.

(2) This Title of this Part of these regulations does not apply:

(a) in the case of an insurer 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; or

(b) in the case of a non-EEA insurer, where the net premiums written in any financial year in respect of its credit insurance business carried on through a branch in Malta 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.

48. A Title III insurer shall maintain an equalisation reserve in respect of credit insurance business carried on by the company in accordance with the Eighth Schedule.

PART IX - VALUATION OF ASSETS

Interpretation.

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

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

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

"approved credit institution" means an institution licensed as such under the Banking Act any other institution approved for such purpose 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 Caribbean Development Bank;

(xi) The European Investment Bank;

(xii) The European Community;

(xiii) The European Atomic Energy Community;

(xiv) The European Coal and Steel Community

"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 Zone A, as defined in the Banking Co-ordination Directive; and

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

"asset" includes part of an asset;

"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;

"Banking Co-ordination Directive" means Council Directive 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions;

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

"company" includes any body corporate;

"contract for differences" shall be construed in accordance with paragraph 6 of the Second Schedule to the Investment Services Act;

"counterparty" has the meaning set out in the Ninth 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, 2000;

"dependant" means a subsidiary undertaking, the value of whose shares is taken to be the value of its surplus assets under regulation 51;

"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 Ninth Schedule;

"exposure" –

(a) in relation to assets, means an amount determined in accordance with regulation 62 of, and paragraph 5 of the Ninth Schedule to these regulations; and

(b) in relation to a counterparty, means an amount determined in accordance with regulation 62 of, and paragraphs 17 to 21 of the Ninth Schedule to, these regulations;

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

"futures contract" means a contract which falls within paragraph 5 of the Second Schedule to the Investment Services Act;

"general business amount" has the meaning given in the Ninth 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, means any one of:

(a) the insurer;

(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;

"insurance holding company" means an undertaking whose main business is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings;

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

"intermediary" means a person authorised under article 13 of the Act or whose name appears in any of the lists established and maintained under article 7 or 31 of the Insurance Brokers and Other Cap. 404.

Intermediaries Act and includes any other persons who carry out similar activities;

"Investment Services Directive" means Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field;

"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 Tenth 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 70 of these regulations;

"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 insurers;

"notional required minimum margin" means:

(a) in the case of an insurer (other than a pure reinsurer) 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;

(b) in the case of a pure reinsurer that has its head office in the zone of countries, the amount that would be the required minimum margin, or equivalent, if the regulatory requirements of that state or territory, in the zone of countries, applicable to undertakings carrying on direct insurance business were applied to the pure reinsurer; and

(c) in all other cases, the amount of the required minimum margin that would apply if the insurer were an insurer whose head office is in Malta (whether it is or not).

"option" means any type of instrument falling within those instruments described in paragraph 3 of the Second Schedule to the Investment Services Act or a warrant;

"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;

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

"participating undertaking" means an undertaking which holds a participation in the undertaking in question;

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

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

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"regulated institution" means any of the following -

(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 20 and 21 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;

"reinsurance undertaking" means an undertaking, other than an insurance undertaking, or an non-EEA insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-EEA insurance undertaking or other reinsurance undertakings;

"related undertaking" means, in relation to an insurer -

(a) a subsidiary undertaking of the insurer, or

(b) a company of which the insurer is a subsidiary undertaking, or

(c) a subsidiary undertaking of a company of which the insurer is a subsidiary undertaking;

"relevant regulatory requirements" means, in the case of a group undertaking that is an insurer, 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:

(a) the regulatory requirements of that country applicable to an undertaking carrying on direct insurance

business (even if it carries on reinsurance business or is an insurance holding company); and

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

"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;

"subsidiary undertaking" means an undertaking within the meaning of paragraph (c) of subarticle 2 of article 2 of the Companies Act;

"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;

"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;

"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" means an instrument which falls within paragraph 3 of the Second Schedule to the Investment Services Act.

(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 62 of, and the Ninth Schedule to these regulations);

(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

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

(3) For the purposes of sub-regulation (2) of this regulation -

(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.

50. (1) Subject to sub-regulation (2) of this regulation, this Part of these regulations applies with respect to the determination of the value of assets of insurers for the purposes of -

(a) paragraph (c) of subarticle (1) of article 11, articles 14, 16, 17 and 18, subarticle (4) of article 41 and subarticles (2) and (3) of article 42 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 sub-regulation (4) of this regulation, 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 sub-regulation (1) of this regulation.

(4) The competent authority may, in exceptional circumstances, on an application made to it in writing in that behalf, permit any such asset as is referred to in sub-regulation (3) of this regulation 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 purpose by the competent authority.

(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 sub-regulation (5) of this regulation, 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 Zone A as defined in Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions and, where the issuer is an international organisation, whether it includes at least one EEA State among its members.

(7) Notwithstanding sub-regulation (1) of this regulation (but subject to the conditions set out in sub-regulation (8) thereof), 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 sub-regulation (7) of this regulation are -

(a) that 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) that 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 51 to 62 of these regulations.

(9) Where an insurer has entered into a contract for the conversion of currency which satisfies the conditions set out in sub-regulation (10) of this regulation, 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 sub-regulation (9) of this regulation 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.

Shares in a group undertaking.

51. (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 56, the value of any shares held in a group undertaking which is an insurance 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 paragraphs (a) to (c) of sub-regulation (1) of regulation 62), of its surplus assets.

(3) The value of any shares held in a group undertaking which is not an insurance 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 paragraphs (a) to (c) of sub-regulation (1) of regulation 62), of its surplus assets; and

(b) the value of those shares as determined under regulation 56 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;

(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 or an insurance holding company exceeds the value (or proportional share), determined in accordance with this Part of these regulations

(other than paragraphs (a) to (c) of sub-regulation (1) of regulation 62),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, 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 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, including assets that represent capital not owned, directly or indirectly, by the insurer;

(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 for which the adjusted solvency is calculated.

(5) The assets selected in paragraph (a) of sub-regulation (3) of this regulation to be excluded from the total assets:

(a) where the group undertaking is an insurance 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, 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 paragraphs (a) to (c) of sub-regulation (1) of regulation 62) and Part X of these regulations; and

(c) in both cases must not include:

(i) assets falling within paragraph (b) of sub-regulation 4 of this regulation, or

(ii) assets falling within paragraph (e) of sub-regulation 4 of this regulation, where the amount is due, or to become due, from a group undertaking; but

(d) notwithstanding (a) and (b), a liability of a group undertaking which is a debt due to the insurer 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.

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

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

(b) paragraphs (a) to (c) of sub-regulation (1) of regulation 62 (or its equivalent in a country falling within the zone of countries) do 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 subject to:

(a) a zero solvency requirement where it is an insurance holding company; and

(b) a notional required minimum margin where it is a reinsurance undertaking.

Debts due or to become due from a group undertaking.

52. 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 paragraph (a) of sub-regulation (4) of regulation 51; and

(b) any security in respect of the debt.

Debts and other rights.

53. (1) The value of any secured debt due, or to become due, to an insurer, other than a debt to which regulation 52 of these regulations or sub-regulation (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 by 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 52 of these regulations, sub-regulation (5) or (6) of this regulation or regulation 58 or 61 of these regulations 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 52 of these regulations 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 sub-regulation (7) of this regulation applies,

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

(7) For the purposes of paragraph (d) of sub-regulation (6) of this regulation, this sub-regulation 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 60 of these regulations does not apply, or under a contract or asset having the effect of a derivative contract to which the said regulation 60 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 sub-regulation (10) or (11) of this regulation; or

(e) a contract or asset which has the effect of a derivative contract except as provided under sub-regulation (10) or (11) of this regulation or under sub-regulation (4) or (5) of regulation 61 of these regulations.

Land.

54. (1) The value of any land of an insurer (other than land held by the insurer as security for a debt or to which sub-regulation (2) of this regulation or regulation 59 of these regulations 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.

55. 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.

56. (1) This regulation applies to the valuation of investments comprising securities and beneficial interests in commercial partnerships and, for the purposes of sub-regulation (5) of this regulation, 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 sub-regulation (2) of regulation 57 of these regulations; or

(c) contracts or assets having the effect of derivative contracts, except as provided in sub-regulation (4) of regulation 61 of these regulations.

(2) Subject to sub-regulations (4) and (5) of this regulation and regulation 61 of these regulations, the value of an investment to which this regulation applies shall be -

(a) where the investment is transferable and sub-regulation (3) of this regulation does not apply, the market value; and

(b) where the investment is transferable and sub-regulation (3) of this regulation 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 sub-regulation 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) Sub-regulation (3) of this regulation 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.

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

(a) a collective investment scheme within the meaning of the Investment Services Act and within the UCITS Directive; or

(b) any other collective investment scheme where:

(i) the scheme does not employ derivative contracts unless they are contracts to which regulation 60 of these regulations 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 60 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) of this sub-regulation, a value determined in accordance with regulation 56 of these regulations.

(3) Other than as provided in sub-regulation (4) of regulation 61 of these regulations, 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.

58. 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.

59. 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.

60. (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 sub-regulation (3) of this regulation 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 sub-regulation (3) for such purposes.

(3) The contract or asset described in this sub-regulation 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 66 of these regulations.

(5) For the purposes of determining in accordance with sub-regulation (4) of this regulation 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 sub-regulation (7) of this regulation applies or a futures contract or an option to either of which sub-regulation (8) of this regulation applies.

(7) This sub-regulation 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; or

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

(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 Zone A as defined in the Banking Co-ordination Directive;

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 sub-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.

61. (1) Subject to sub-regulation (3) of this regulation, 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 55 of these regulations 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 sub-regulation (3) of this regulation, 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 paragraph (a) of sub-regulation (1) of regulation 57 of these regulations) 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 paragraphs (a) to (c) of sub-regulation (1) of this regulation.

(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 sub-regulation (9) of regulation 50 of these regulations in respect of which the conditions set out in sub-regulation (10) of regulation 50 of these regulations have been satisfied.

(4) Rights in respect of a contract or asset which has the effect of a derivative contract to which regulation 60 of these regulations applies shall -

(a) where the asset is a security, be valued in accordance with regulation 56 of these regulations;

(b) where the asset comprises units or other beneficial interests in a collective investment scheme, be valued in accordance with regulation 57 of these regulations; and

(c) where the asset is a debt or other right, be valued in accordance with regulation 53 of these regulations.

(5) Rights in respect of a contract or asset having the effect of a derivative contract to which regulation 60 of these regulations does not apply shall have a value determined in accordance with sub-regulation (11) of regulation 53 of these regulations.

(6) For the purposes of determining whether a contract or asset has the effect of a derivative contract to which regulation 60 of these regulations 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.

62. (1) Subject to sub-regulations (5) and (6) of this regulation 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 sub-regulation (2) of regulation 60 of these regulations 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 sub-regulation (2) of regulation 60 of these regulations does not apply or a related contract,

as determined in accordance with the Ninth 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 paragraph (a) of sub-regulation (1) of this regulation 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 paragraph (b), (c), (d) or (e) of sub-regulation (1) of this regulation, 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 sub-regulation (3) of regulation 53 of these regulations applies;

(c) rights to which sub-regulation (5), (8) or (9) of regulation 53 of these regulations 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 Zone A as defined in the Banking Co-ordination Directive;

(f) shares in or debts due or to become due from a dependant falling within regulation 51 of these regulations;

(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 sub-regulation (1) of this regulation.

(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 sub-regulation (1) of these regulations.

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

PART X - DETERMINATION OF LIABILITIES

63. (1) In this Part of these Regulations - Interpretation.

"derivative contract" has the meaning given in sub-regulation (1) of regulation 49 of these regulations;

"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 sub-regulation (1) of regulation 49 of these regulations;

"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, 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.

(2) Every insurer carrying on long term business shall make available to the public bases and methods used in the calculation of the technical provisions relating to that business, including provisions for bonuses in the form, content and manner as may be determined by an Insurance Directive made by the competent authority for the purposes of this regulation.

Application.

64. This Part of these regulations applies with respect to the determination of the amount of liabilities of insurers for the purposes of -

(a) paragraph (c) of subarticle (1) of article 11, articles 14, 16, 17 and 18, subarticle (4) of article 41 and subarticles (2) and (3) of article 42 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.

65. (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 sub-regulation (3) of this regulation, in determining under sub-regulation (1) of this regulation 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 Directive 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, 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 Directive and subject to the conditions as may also be determined by the said Directive shall not, notwithstanding the provisions of sub-regulation (2) of this regulation, be taken as liabilities of the insurer for the purposes of the amount of the own funds of the insurer.

Provision for adverse changes.

66. (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 sub-regulation (1) of this regulation 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 sub-regulation (1) of regulation 49 of these regulations;

"property linked liabilities" has the meaning given in paragraph 2 of Part I of the Ninth 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 sub-regulation (5) of this regulation, 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, 2000 (whether such contract constitutes an asset or liability of the company);

(b) undertaken for the purposes of, or in connection with the making of, investments of the kind mentioned in paragraph (a) of this sub-regulation; 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.

67. (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 sub-regulation (1) of regulation 51 or paragraph (a) of sub-regulation (2) of regulation 51 (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 or 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 sub-regulation (1) of this regulation, the identification and valuation of assets available to cover liabilities and the notional required minimum margin must be determined in accordance with sub-regulation (4) of regulation 51.

General business liabilities.

68. 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, 2000.

Relevant co-insurance operations.

69. 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.

70. (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 sub-regulation (1) of this regulation, the amount of the long term liabilities shall be determined in compliance with each of regulations 71 to 81 of these regulations 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.

71. (1) Subject to sub-regulations (2), (3) and (4) of this regulation, 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.

72. (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 sub-regulation (2) of this regulation, 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.

73. (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 sub-regulation (4) of this regulation and regulation 74 of these regulations -

(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) of this sub-regulation 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 sub-regulation (1) of this regulation, 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 sub-regulations (1) to (3) of this regulation 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 sub-regulations.

Acquisition expenses.

74. (1) In order to take account of acquisition expenses, the maximum annual premium to be valued under regulation 73 of these regulations may (subject to sub-regulations (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 sub-regulation (1) of this regulation "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) of sub-regulation (4) of this regulation, where, under a contract relating to any such business as is mentioned in (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) of sub-regulation (4) of this regulation, for temporary assurances, the relevant capital sum means the sum assured on the relevant date.

Rates of interest.

75. (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 sub-regulation (1) of this regulation, 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 sub-regulations (3) to (7) of this regulation, 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 Ninth 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 sub-regulation (1) of

regulation 49 of these regulations) the yield on an asset, subject to sub-regulation (7) of this regulation, 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 sub-regulation (1) of regulation 49 of these regulations) that are equity shares or land, the yield on an asset, subject to sub-regulation (7) of this regulation, 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.

(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 sub-regulation (14) of this regulation, 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 sub-regulation (5) of this regulation,

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 sub-regulation (6) of this regulation, 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 sub-regulation (8) of this regulation, 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 sub-regulation (7) of this regulation, 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.

(9) Where sub-regulation (6) of this regulation 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 sub-regulations (7) and (8) of this regulation are not, or cannot be, met, then relevant amount is zero.

(11) Subject to sub-regulation (12) of this regulation, for variable interest investments (that is to say, investments which are not fixed interest securities as defined in sub-regulation (1) of regulation 49 of these regulations) other than equity shares or land, the yield on an asset, subject to sub-regulation (7) of this regulation, 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 sub-regulations (8) to (10) of this regulation; 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 57, 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 paragraph (b) of sub-regulation (13) of this regulation, for equity shares within the meaning of sub-regulation (6) of this regulation, 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 sub-regulation, category of asset has the same meaning as in paragraph (b) of sub-regulation (13) of this regulation.

(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 sub-regulations (16) and (17) of this regulation.

(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 10 years and not more than 15 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 sub-regulation (2) of this regulation adjusted linearly over the said three years to the yield determined in accordance with paragraph (a) of this sub-regulation.

(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 sub-regulation (16) of this regulation.

(18) In no case shall a rate of interest determined for the purposes of sub-regulation (1) of this regulation exceed the adjusted overall yield on assets calculated as the weighted average of the reduced yields on the individual assets arrived at under sub-regulation (2) thereof; 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 sub-regulation (1) of regulation 49 of these regulations), 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 sub-regulation (16) of this regulation shall be applied on the basis of the overall yield on the assets apportioned to the contracts in question.

Rates of mortality and disability.

76. 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.

77. (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 sub-regulation (1) of this regulation 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.

78. (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 sub-regulation (2) of this regulation 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 sub-regulation (3) of this regulation 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.

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

No credit for profits from voluntary discontinuance.

80. 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.

81. 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 71 to 80 of these regulations.

Contracts linked to UCITS or share index.

82. (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 insurance undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

(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 sub-regulation (1) of this regulation, 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 subarticle (3) of article 17 of the Act and of Part II of the Ninth Schedule shall not apply to assets held to match liabilities which are directly linked to the benefits referred to in sub-regulations (1) and (2) of this regulation. Reference to the long term business amount in Part I of the Ninth Schedule shall be to the liabilities excluding those in respect of liabilities mentioned in sub-regulation (1) of this regulation.

(4) Where the benefits referred to in sub-regulations (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 Ninth Schedule.

Part XI – PARENT UNDERTAKING SOLVENCY CALCULATION

Application and timing.

83. (1) This Part of these regulations applies to insurers (other than pure reinsurers) that are subsidiary undertakings of ultimate insurance parent undertaking*s* whose head office is in Malta.

(2) In this Part of these regulations:

"Insurance Groups Directive" means the Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group.

"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, all liabilities in respect of preference shares left out of account in accordance with sub-regulation (2) of regulation 10 of these regulations, 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 preference shares left out of account by its related insurance undertakings in accordance with sub-regulation (2) of regulation 10 of these regulations or the relevant regulatory requirements of the state or territory where the head office of the relevant insurance undertaking is situated, as the case may be.

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

(a) as at the end of the financial year of the insurer 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) following the relevant principles on accounting for subsidiary undertakings found in International Financial Reporting Standards issued by the International Accounting Standards Board; and

(c) as at a date not later than 12 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 sub-regulation 5 of this regulation, the information and calculations required under this Part of these regulations must be provided by not later than 6 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 paragraph (a) of sub-regulation 3 of this regulation.

(5) Where the parent undertaking solvency calculation is provided in accordance with sub-regulation (4) of regulation 84 of these regulations, the information and calculations required under this Part of these regulations must be provided not later than:

(a) 6 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 84, as the case may be,

whichever is the earlier.

Rules for determining surplus assets and Deficits.

84. (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 paragraph (d) of sub-regulation (4) of regulation 51;

(b) paragraph (f) of sub-regulation (4) of regulation 51 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 sub-regulation (2) of regulation 65, where the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking has issued 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

(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 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.

85. (1) Without prejudice to regulation 5 of these regulations and saving the provisions of the following sub-regulations of this regulation, Insurance Business (Companies Assets and Liabilities) Regulations, 2000 are hereby repealed without prejudice to anything done or omitted to be done thereunder.

L.N. 102 of 2000.

(2) Notwithstanding any other provision of these regulations, the amount of the minimum guarantee fund arrived at in accordance with Part IV of Insurance Business (Companies Assets and Liabilities) Regulations, 2000 and the Fourth Schedule thereto, shall, in so far as an insurer whose head office is in Malta which at the time of the coming into force of these regulations is authorised under the Act to carry on business of insurance, continue to apply until the 'specified date'.

(3) For the purposes of this regulation 'specified date' means the 20th March, 2007.

(4) (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 will no longer apply from the coming into force of

these regulations may apply in writing to the competent authority for the release of these assets;

(b) subject to paragraph (c) of this sub-regulation, the competent authority shall determine an application received under paragraph (a) of this sub-regulation within 2 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, 2004. L.N. 89 of 2004.

86. (1) The purpose of these regulations is to implement the provisions of Directives 73/239/EEC, 88/357/EEC, 92/49/EEC, 2002/83/EC, 2002/12/EC, 2002/13/EC and 98/78/EC, and shall be interpreted and applied accordingly. Implementation of Council Directives.

(2) In the event that any of these regulations conflict with the provisions of the Directives mentioned in sub-regulation (1) of this regulation, the latter shall prevail.

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 sub-paragraph (2) of this paragraph ("the first calculation") and the calculation described in sub-paragraphs (3) to (6) of this paragraph ("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 shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction, and

(c) the sum mentioned in indent (a) of this sub-paragraph shall be multiplied-

(i) where the percentage arrived at under indent (b) of this sub-paragraph is greater than 85 per centum (or, in the case of a pure reinsurer, 50 per centum), by that greater percentage, and

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

(3) For the second calculation -

(a) there shall be taken, subject to sub-paragraphs (4) to (6) of this paragraph, 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, 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) of this sub-paragraph shall be multiplied -

(i) where the percentage arrived at under indent (b) of this sub-paragraph is greater than 50 per centum, by that greater percentage, and

(ii) in any other case, by 50 per centum.

(4) Where, in a case other than that of a pure reinsurer, a contract provides for benefits payable only on death within a specified period and is valid for a period of not more than three years from the date when the contract was first made, the percentage to be taken for the purposes of indent (a) of sub-paragraph (3) of this paragraph 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 sub-paragraph (4) of this paragraph, 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) In the case of pure reinsurers, the percentage to be taken for the purposes of indent (a) of sub-paragraph (3) of this paragraph shall be 0.1 per centum.

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

(a) in any case in which an amount is payable in consequence of death other than a case falling within indent (b) of this sub-paragraph, the amount payable on death, and

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

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

(8) When the amount of the mathematical reserves referred to in indent (a) of sub-paragraph (2) of this paragraph, or the amount of the capital at risk referred to in indent (a) of sub-paragraph (3) thereof, 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 sub-paragraph (7) of this paragraph shall also be calculated as on that day when the capital at risk in question is that referred to in indent (a) of sub-paragraph (3) of this paragraph, 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 indent (b) of sub-paragraph (3) thereof.

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 sub-paragraphs (2) to (5) of this paragraph.

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

(3) In so far as -

(a) an insurer bears no investment risk, and

(b) the allocation to cover management expenses in the relevant contract has a fixed upper limit which is effective for a period exceeding 5 years,

the first calculation shall be applied, but as if indent (a) of sub-paragraph (2) of paragraph 2 of this Schedule contained a reference to 1 per centum instead of 4 per centum.

(4) In so far as -

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

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 sub-

paragraph (b) of paragraph (1) of regulation 9 of the regulations 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 sub-paragraph (1) of this paragraph and paragraph (b) of sub-regulation (3) of regulation 9 of the regulations apply, a single combined margin of solvency must be calculated under paragraph (b) of sub-regulation (1) of regulation 9 of the regulations 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 under a contract of insurance 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, a financial year and a premium, means due to the insurer in respect of contracts of insurance incepted during that financial year, whether or not the premium is received during that financial year;

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

2. The gross premiums receivable (or contributions, as the case may be) in respect of the insurer's entire general business for the financial year in question shall be aggregated and the method of calculation in paragraph 4 to 17 applied.

3. The gross premiums earned (or contributions, as the case may be) in respect of the company's entire general business for the financial year in question shall be aggregated and the method of calculation in paragraph 4 to 17 applied.

4. Except in the case of a pure reinsurer 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 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 11 of the Fourth Schedule, if the amount arrived at under paragraph 6 of this Schedule is more than 50 million Euro, it shall be divided into two portions, the former consisting of 50 million Euro, 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 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 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 books as at the end of the financial year -

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

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

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

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

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

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

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 as at the beginning or end of the period of 3 financial years as being an amount likely to be sufficient to meet -

(a) the claims described in sub-paragraph (2) of this paragraph, and

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

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

(2) The claims mentioned in sub-paragraph (1) of this paragraph are claims under contracts of insurance 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.

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

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

15. From the amount determined under sub-paragraph (1) or (2) of paragraph 12 of this Schedule there shall be deducted the total sum recoverable in respect of that amount under reinsurance contracts ceded 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 sub-paragraph (1) or (2) of paragraph 12 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, 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 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.

3. Except in the case of a pure reinsurer provisions and recoveries in respect of 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 sub-paragraph (1) or (2) of paragraph 4 of this Schedule shall be divided by the number of months in the reference period and multiplied by twelve.

6. Subject to paragraph 11 of the Fourth Schedule, if the amount arrived at under paragraph 4 of this Schedule is more than 35 million Euro, it shall be divided into two portions, the former consisting of 35 million Euro 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 5, 10 and 11 of this Schedule, the minimum guarantee fund for long term business shall be -

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

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

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

200,000 Euro;

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

(c) in any other case, 3,000,000 Euro.

General business

2. Subject to paragraphs 3 to 6 and 11 of this Schedule, the minimum guarantee fund for general business shall be 2,000,000 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 3,000,000 Euro.

4. In the case of a mutual, the minimum guarantee fund shall be reduced by 25 per centum.

Long term business and general business

5. In relation to a Malta margin of solvency or EEA margin of solvency maintained under paragraph (b) of sub-regulation (2) of regulation 8 and paragraph (d) of sub-regulation (3) of regulation 8 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

6. For non-directive insurers, subject to paragraphs 7 to 9 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

7. In the case where the risks covered fall within class 14 and where the annual amount of premiums or contributions of the insurer due in respect of that class for each of the financial years in question and the two previous financial years exceeded 2,500,000 Euro or 4 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.

8. 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.

9. In the case of a mutual, the minimum guarantee fund required by paragraphs 6 to 8 of this Schedule shall be reduced by 25 per centum.

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

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

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

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

200,000 Euro;

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

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

Increases to reflect consumer price index

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

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

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

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 convertible currency.

(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 sub-regulation (2) of regulation 6 of these regulations;

"convertible" has the meaning given in sub-regulation (2) of regulation 6 of these regulations;

"deposit" has the meaning given in sub-regulation (2) of regulation 6 of these regulations;

"regulated market" has the meaning given in sub-regulation (1) of regulation 49 of these regulations.

SIXTH SCHEDULE

(Regulation 38)

SCHEDULED CLASSES

Scheduled class	Corresponding general business classes
1 Aviation	1 (d), 5, 11
2 Marine	1 (d), 6, 12
3 Property	4, 8, 9

SEVENTH SCHEDULE

(Regulation 43)

METHODS OF CALCULATING THE EQUALISATION RESERVE

PART I

Methods of calculating transfers in

1. Amounts to be transferred to the equalisation reserve at the end of a financial year shall be calculated in accordance with paragraphs 2 to 3 of this Schedule.

2. For business falling within a business group, the amount to be transferred to the equalisation reserve shall be the percentage specified in the table contained in paragraph 3 of this Schedule of net premiums written in that financial year including adjustments in respect of all previous financial years in respect of that business.

3. The table referred to in paragraph 2 of this Schedule is as follows:

Business group	Percentage of net premiums written
A	3%
B	3%
C	6%
D	75%
E	11%

PART II

Methods of calculating transfers out

4. Amounts to be transferred from the equalisation reserve at the end of a financial year shall be calculated in accordance with paragraphs 5 to 9 of this Schedule.

5. For business falling within a business group which is accounted for on an accident year basis, the insurer shall determine the amount (the "abnormal loss"), if any, by which, taking into account any adjustments in respect of previous years' underwriting, net claims incurred in that financial year in respect of that business exceed the percentage specified in the table contained in paragraph 8 of this Schedule of net premiums earned in that financial year in respect of that business.

6. For business falling within a business group which is accounted for on an underwriting year basis, the insurer shall determine the amount (the "abnormal loss"), if any, by which net claims paid plus the increase (or less the decrease) in the net technical provisions (exclusive of any change in claims handling expenses and any equalisation reserve) in that financial year plus adjustments in respect of all previous financial years in respect of that business exceed the percentage specified in the table contained in paragraph 8 of this Schedule of net premiums written in that financial year plus adjustments in respect of all previous financial years in respect of that business.

7. For the purposes of paragraphs 5 and 6 of this Schedule, if net premiums earned or net premiums written, as the case may be, in respect of any business in any financial year are negative, their value shall be deemed to be zero for the purposes of calculating the abnormal loss in respect of that business.

8. The table referred to in paragraphs 5 and 6 of this Schedule is as follows:

Business group	Percentage of net premiums earned/written
A	72.5%
B	72.5%
C	95%
D	25%
E	100%

9. The abnormal loss for each business group accounted for on an accident year basis and business group accounted for on an underwriting year basis shall be aggregated and shall, subject to paragraph 10 of this Schedule, be the amount to be transferred from the equalisation reserve.

10. If the abnormal loss in respect of any business group pursuant to paragraph 9 of this Schedule exceeds the relevant business group maximum at that date, the loss to be aggregated in respect of that business group shall be the business group maximum.

PART III

Method of calculating business group maximum

11. The maximum reserve applicable to a business group (the "business group maximum") at the end of a financial year shall be calculated in accordance with paragraph 12 of this Schedule.

12. (1) The business group maximum at the end of a financial year shall be the percentage specified in the following table of average net premiums written in respect of that business group:

Business group	Percentage of average net premiums written
A	20%
B	20%
C	40%
D	600%
E	75%

(2) For the purposes of sub-paragraph (1) of this paragraph, the "average net premiums written" in respect of a business group means -

(a) in the case of an insurer which has carried on business falling within that business group for no less that five financial years, the average amount of net premiums written in respect of that business in a financial year, calculated on the basis of the financial year in question and the previous four financial years;

(b) in the case of an insurer which has carried on business falling within that business group for less than five financial years, the average amount of net premiums written in respect of that business in a financial year, calculated on the basis of the financial year in question and any previous financial years.

(3) For the purposes of sub-paragraph (2) of this paragraph, if any of the financial years which the insurer is required to take into account for the calculation of average net premiums written is an accounting period of more or of less than a period of twelve months, pursuant to subarticle (3) of article 164 of the Companies Act, the value of net premiums written in that financial year shall be the amount represented by the formula -

$$\frac{NPW \times 365}{d}$$

where -

NPW means net premiums written in the financial year concerned; and

d means the number of days falling in that financial year.

Method of calculating the maximum reserve

13. The maximum reserve at the end of a financial year shall be the aggregate value of the business group maxima as calculated in accordance with paragraph 12 of this Schedule.

EIGHTH SCHEDULE

(Regulation 48)

METHOD OF CALCULATING THE EQUALISATION RESERVE FOR CREDIT INSURANCE BUSINESS

1. The insurer 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.

NINTH SCHEDULE

(Regulation 62)

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) for an insurer carrying on only general business, the general business amount;

(b) for an insurer carrying on only long term business, the long term business amount;

(c) for an insurer carrying on both general business and long term business, in the case of its general business assets, the general business amount and in the case of its long term business assets, 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 general business and an amount equal to whichever is the greater of 500,000 Euro or 20 per centum of the general premium income;

"group" has the same meaning as is assigned to the term "group company" in subarticle (1) of article 2 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, 2000;

"long term business amount" means the higher of –

(a) the amount of the insurer's insurance liabilities in respect of long term business (net of reinsurance ceded and excluding property linked liabilities), together with:

(i) 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

(ii) 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 sub-regulation (3) of regulation 56 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 extend 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 sub-paragraph (e) in the definition of counterparty, 5 per centum of the business amount;

(c) where the counterparty is a body corporate or group, each of :

(i) 20 per centum of the business amount;

(ii) 10 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) 5 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

(b) for which paragraphs (a) to (c) of sub-regulation (1) of regulations 62 have (notwithstanding paragraph (b) of sub-regulation (5) of regulation 51) been applied when valuing the assets selected under paragraph (a) of sub-regulation (4) of regulation 51.

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 56 of these regulations) issued by any one counterparty and the value of all rights (determined in accordance with regulations 53, 60 and 61 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 paragraph (b) of sub-regulation (1) of regulation 57 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 12 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

(b) for which paragraphs (a) to (c) of sub-regulation (1) of regulation 62 have (notwithstanding paragraph (b) of sub-regulation (5) of regulation 51) been applied when valuing the assets selected under paragraph (a) of sub-regulation (4) of regulation 51.

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 sub-paragraph (c) of paragraph 4 of this Part of this Schedule, it shall make the deduction required under paragraph (b) of sub-regulation (1) of regulation 62 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 indent (ii) of sub-paragraph (2) of paragraph 4 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 5 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 5 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 indent (a) of paragraph 1 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 55 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 paragraph (b) of sub-regulation (1) of regulation 56 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 indent (b) of paragraph 1 and paragraph 11 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

$2^{1}/_{2}$%

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbug[fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*
Prezz Lm2.48c – *Price Lm2.48c*