L.N. 102 of 2000

INSURANCE BUSINESS ACT

(CAP. 403)

Insurance Business (Companies Assets and Liabilities) Regulations, 2000

IN exercise of the powers conferred by sections 11, 14, 16, 17, 18, 63 and 64 of the Insurance Business Act, the Minister of Finance, after consultation with the Malta Financial Services Centre, has made the following regulations:–

PART I – PRELIMINARY

Citation and commencement.

1. (1) These regulations may be cited as the Insurance Business (Companies Assets and Liabilities) Regulations, 2000.

(2) These regulations shall come into force on the 1st January, 2001.

Interpretation.

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

"the Act" means the Insurance Business Act;

"the 1981 Act" means the Insurance Business Act, 1981 repealed by the Act; Cap. 290.

"appointed date" shall be construed in accordance with subsection (3) of section 69 of the Act;

"authorised company" means a company authorised under section 7 of the Act to carry on business of insurance and "insurance company" shall be construed accordingly;

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

Cap. 204.

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

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

"gross premiums", in relation to an authorised company 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 company, and

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

Cap. 16.

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

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

Cap. 330.

"Malta Financial Services Centre" and "the Centre" mean the Malta Financial Services Centre established by section 3 of the Malta Financial Services Centre Act and appointed under section 3 of the Act to be the Competent Authority for the purposes of the Act;

Cap 345.

"Malta Stock Exchange" means the Malta Stock Exchange established by section 3 of the Malta Stock Exchange Act;

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

"mathematical provisions" and "mathematical reserves" mean the provision made by a company authorised to carry on long term business 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);

"pure reinsurer" means –

(a) a company whose head office is in Malta and whose business is restricted to business of reinsurance; and

(b) a company whose head office is in a country outside Malta and whose business in or from Malta is restricted to business of reinsurance;

"Registrar of Companies" means the person appointed under subsection (1) of section 400 of the Companies Act, 1995; Act No. XXV of 1995.

"Schedule" means Schedule to these regulations;

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

"undertaking" has the same meaning as is assigned to it by subsection (1) of section 2 of the Companies Act, 1995;

"zone of countries" means a zone of countries as may be determined by an Insurance Directive made by the Centre by virtue of sub-section (3) of section 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 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 authorised company establishes and maintains under the Act in respect of long term business.

PART II – MAINTENANCE OF ASSETS IN MALTA

3. Pursuant to paragraph (b) of subsection (1) of section 10 of the Act, a company whose head office is in Malta applying for an authorisation to carry on, or which is authorised to carry on, business of insurance shall maintain in Malta at all times during the continuance of Maintenance of assets in Malta in the case of companies with head office in Malta.

the authorisation, as respects the business the company applies to carry on, or is authorised to carry on, the amount of the guarantee fund which the company is required to maintain under section 16 of the Act.

Maintenance of assets in Malta in the case of companies with head office outside Malta.

4. Pursuant to paragraph (c) of subsection (1) of section 11 of the Act, a company whose head office is in a country outside Malta applying for an authorisation to carry on, or which is authorised to carry on, business of insurance shall maintain in Malta at all times during the continuance of the authorisation, as respects the business the company applies to carry on, or is authorised to carry on, in Malta, assets of an amount mentioned in regulation 5 of these regulations.

Amount of assets to be maintained in Malta in the case of companies with head office outside Malta.

5. (1) Where a company to which regulation 4 of these regulations applies proposes to carry on, or carries on, in Malta, long term business, the amount of assets which the company is required to maintain in Malta in accordance with that regulation shall be of not less than twenty-five per centum and not more than seventy-five per centum as the Centre may, from time to time, either generally or specifically, determine of –

(a) in the case of a company which proposes to carry on that business, the gross premiums estimated to be written by the company in Malta in the first twelve months in the scheme of operations relating to that business submitted by the company;

(b) in the case of a company which carries on that business:

(i) the gross premiums written by the company in Malta as regards that business with respect to the immediately preceding financial year, or

(ii) the mathematical provisions with respect to that business written by the company in Malta as at the close of the immediately preceding financial year

whichever is the greater amount.

(2) Where a company as aforesaid applies to carry on, or carries on, in Malta, general business, the amount of assets which the company is required to maintain in Malta in accordance with regulation 4 of these regulations shall be of –

(a) in the case of a company which proposes to carry on that business, not less than forty per centum of the gross premiums estimated to be written by the company in Malta in the first twelve months in the scheme of operations relating to that business submitted by the company;

(b) in the case of a company other than the Recognised Insurance Body known as Lloyd's which carries on that business:

(i) not less than the amount of the company's provision for unearned premiums with respect to that business written by the company in Malta, or

(ii) not less than forty per centum of the gross premiums written by the company in Malta as regards that business with respect to the immediately preceding financial year

whichever is the greater amount;

(c) in the case of the Recognised Insurance Body known as Lloyd's which carries on that business, not less than forty per centum of the gross premiums written by Lloyd's in Malta as regards that business with respect to the immediately preceding financial year.

(3) For the purposes of paragraph (2) of this regulation, "provision for unearned premiums", in relation to general business, shall comprise the amount representing that part of gross premiums written which is estimated to be earned in the following financial year or any subsequent financial years.

(4) Any amount of assets required by any provision of this regulation to be maintained in Malta for the purposes of regulation 4 of these regulations shall be of not less than the amount of the appropriate guarantee fund which a company is required to maintain in Malta under subsection (1) of section 16 of the Act.

Kind of assets to be maintained in Malta.

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 –

(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 company'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 Centre for the

company's account or pledged by the company concerned in favour of the Malta Financial Services Centre and the document constituting the pledge is delivered to the Centre;

(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 Centre if the deposit is in the name of the Central Bank of Malta for the company's account;

(d) an asset consisting of a listed investment on the Malta Stock Exchange, if the investment is pledged in favour of the Malta Financial Services Centre and the document constituting the pledge is registered by the company concerned with the Central Securities Depository of the Malta Stock Exchange and delivered to the Centre.

(2) For the purpose of paragraph (1) of this regulation –

"approved security" has the same meaning as in paragraph (1) of regulation 48 of these regulations;

Act No. XV of 1994.

"bank" and "credit institution", in relation to local currency deposits, have the same meaning as is assigned to them by subsection (1) of section 2 of the Banking Act, 1994;

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

"deposit", in relation to any currency, has the same meaning as is assigned to it by subsection (1) of section 2 of the Banking Act, 1994.

PART III – MARGINS OF SOLVENCY

Interpretation.

7. In this Part of these regulations –

"implicit items" has the meaning given by paragraph (5) of regulation 9 of these regulations and "implicit item" shall be construed accordingly;

"required margin of solvency" means a margin of solvency required by section 14 of the Act;

"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.

Determination of margins of solvency.

8. (1) Subject to paragraphs (2) to (5) of this regulation, the margin of solvency to be maintained by an authorised company 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 the two sums resulting from the application of the two methods of calculation set out in the Second and Third Schedules respectively.

(2) Where an authorised company is required to maintain a Malta margin of solvency, the Malta margin of solvency shall be determined by applying paragraph (1) of this regulation, but only to business carried on in Malta.

(3) For a contract to which subsection (3) of section 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 the Second Schedule (excluding paragraphs 7, 8 and 9).

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

(5) Where an authorised company 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 company 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 company'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) Notwithstanding anything contained in the foregoing paragraphs of this regulation, in the case of a company whose head office is in a country outside Malta, the margin of solvency to be maintained by the authorised company shall be determined as respects long term business and general business in accordance with the provisions of the law or regulations of the country of its head office governing the margins of solvency of insurance companies and that determination shall, for the purposes of this Part of these regulations, be deemed to have been determined by this regulation provided that the Centre is satisfied that such provisions do not materially detract from, or are otherwise as prudent as, the main objects of the provisions of this Part of these regulations and the company produces annually to the Centre a certificate of solvency issued by the overseas regulatory authority of that country.

Valuation.

9. (1) Where an authorised company has assets equal to or in excess of its liabilities, then, in addition to any other applicable valuation regulations, paragraphs (2) to (5) 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) Where –

(a) a company 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.

(3) Notwithstanding paragraph (2) of regulation 64 of these regulations, where a company has issued cumulative preference shares, liabilities in respect of such shares may be left out of account, in aggregate up to 50 per centum of the required margin of solvency save that liabilities in respect of shares which are redeemable –

(a) in the case of a company whose head office is in Malta, for the purposes of section 115 of the Companies Act, 1995; and

(b) in the case of a company whose head office is in a country outside Malta, for the purposes of provisions contained in the law of the country of its head office governing the regulation of companies and other commercial partnerships which do not materially detract from the main objects of the provisions of the said section,

may be left out of account, in aggregate only up to 25 per centum of the required margin of solvency.

(4) In the case of a mutual carrying on general business, any claim which the mutual has against its members by way of a call for supplementary contributions for a financial year shall have its full value for that financial year, subject to the limitation that the value shall not exceed the lesser of -

(a) 50 per centum of the difference between the maximum contributions and the contributions called in, or

(b) 50 per centum of the required margin of solvency.

(5) The items mentioned in regulations 10 to 12 of these regulations (which relate to future profits, zillmerising and hidden reserves and shall be known as "implicit items") shall have no value except with the approval of the Centre given in writing upon application with supporting documentation made to it by a company in writing in that behalf; but in pursuance of such an approval -

(a) any of the implicit items may be valued in accordance with the said regulations 10 to 12 as respects long term business, and

(b) the implicit item relating to hidden reserves may be valued in accordance with regulation 12 as respects general business.

Implicit items: future profits.

10. (1) The implicit item relating to future profits may be valued at not more than 50 per centum of the full amount of future profits.

(2) For the purposes of paragraph (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 10, be reduced to 10.

(3) For the purposes of paragraph (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 section 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 sub-paragraph (a) of paragraph (3) of this regulation -

(a) where a valuation under section 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 authorised company has carried on long term business throughout the relevant period but valuations under section 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 authorised company 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.

Implicit items: zillmerising.

11. (1) 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 paragraph (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 company 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 paragraph (6) of this regulation, the value given by paragraph (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 paragraph (6) of this

regulation, the value given by paragraph (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 paragraphs (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 paragraph, 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 paragraph (4) of this regulation, the payment of premiums is to stop before the sum assured becomes due, then, notwithstanding the said paragraph (4), "relevant capital sums" in paragraphs (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 paragraph (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.

12. 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.

PART IV – GUARANTEE FUND AND MINIMUM GUARANTEE FUND

Interpretation.

13. In this Part of these regulations –

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

"required margin of solvency" means a margin of solvency required by section 14 of the Act.

Amount of the minimum guarantee fund.

14. (1) For the purposes of section 16 of the Act, there is hereby prescribed an amount (the "minimum guarantee fund") arrived at in accordance with the Fourth Schedule; and the amount of assets of the guarantee fund required to be maintained in Malta by an authorised company under that section shall be not less than the amount of the minimum guarantee fund.

(2) In the case of long term business, the required margin of solvency is that arrived at in accordance with paragraph (4) of regulation 8 of these regulations.

(3) In the case of long term business, items that are not implicit items must 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.

15. The provisions of regulations 9 to 12 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.

16. (1) Where in the case of an authorised company the company'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 authorised company carries on both long term business and general business, the requirements of paragraph (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 paragraph (2) of regulation 49 of these regulations, means assets valued in accordance with Part IX of these regulations; and

"liabilities" means provision by an authorised company to cover liabilities arising under or in connection with contracts of insurance (not being liabilities relating to business of insurance excluded by regulation 21 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 17 to 19 of these regulations.

Matching: property linked benefits.

17. (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 16 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 company's obligations to the policyholder are expressed, those liabilities shall for the purposes of the said regulation 16 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 paragraph (1) of regulation 48 of these regulations.

Matching: currency of general business liabilities.

18. (1) The currency of an authorised company's general business liabilities shall, for the purposes of regulation 16 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 company on reasonable grounds so determines, in the currency in which the premium payable under the contract is expressed.

(3) However, the company 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 company's liabilities are liabilities in a currency other than that determined in accordance with paragraph (2) of this regulation.

(4) Where a claim has been notified to an authorised company and the company'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 company is actually obliged to pay it.

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

Matching: exception for certain liabilities.

19. An authorised company 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.

20. (1) Assets maintained pursuant to regulation 16 of these regulations shall be maintained -

(a) if they cover liabilities in Maltese lira, in Malta or a country falling within the zone of countries;

(b) if they cover liabilities in any other currency, in Malta or the country of that currency, or a country falling within the zone of countries.

(2) For the purpose of applying paragraph (1) 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 (of the kind described in paragraph (a) of the definition of "listed" in paragraph (1) of regulation 48 of these regulations) where it is listed, or

(ii) there is a regulated market as defined in paragraph (1) of regulation 48 of these regulations where it is dealt in;

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

(3) In this regulation -

"assets" and "liabilities" have the same meaning as in paragraph 4 of regulation 16 of these regulations;

"listed" and "unlisted" have the meaning given in paragraph (1) of regulation 48 of these regulations.

Exclusions from regulations 16 to 20.

21. (1) Regulations 16 to 20 of these regulations shall not apply to –

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

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

(c) business of reinsurance (unless it is facultative reinsurance written by a company which also carries on business of insurance that is not reinsurance); or

(d) business of affiliated insurance.

(2) Regulation 16 of these regulations shall not apply to business of insurance carried on in Malta by a company whose head office is in a country outside Malta where the company's liabilities relating to risks situated in Malta do not exceed 5 per centum of its total liabilities.

(3) 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).

PART VI – CUSTODIAN OF ASSETS

Interpretation.

22. 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", in relation to assets held or required to be held in custody, means a company applying for, or holding, an authorisation under section 7 of the Act;

"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 24 of these regulations and the Fifth Schedule.

Custody of assets maintained in Malta.

23. (1) Where there is imposed on a company by or under any provision of the Act a requirement that the whole or a specified proportion of the assets required to be maintained by the company in Malta under any provision of the Act shall be deposited with and held in custody for the company's account by a person as custodian of assets for the company, the company shall deposit such assets with a person as prescribed by regulation 24 of these regulations for the purposes of section 18 of the Act 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 Centre.

(2) The arrangements referred to in paragraph (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 Centre may, from time to time, either generally or specifically, issue in writing with respect to the purpose or security of those assets.

(3) The Centre 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 Centre written arrangements in the form and manner specified in paragraph (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 Centre 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.

24. For the purposes of section 18 of the Act 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.

Persons acting as custodian of assets.

25. 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.

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

PART VII – DEPOSIT OF ASSETS

26. In this Part of these regulations –

Interpretation.

"custodian of assets" and "custodian" have the meaning given in regulation 22 of these regulations;

"deposit" means the assets required to be maintained in Malta by a company and deposited with a custodian of assets by the company mentioned in paragraph (b) of subsection (1) of section 10 of the Act or regulation 5 of these regulations made for the purposes of paragraph (c) of subsection (1) of section 11 of the Act, and "depositor" means a company applying for an authorisation, or holding an authorisation, under the Act making, or intending to make, such a deposit;

"required amount", in relation to a deposit –

(a) in the case of a depositor to whom paragraph (b) of subsection (1) of section 10 of the Act applies, means the amount of the minimum guarantee fund, and

(b) in the case of a depositor to whom paragraph (c) of subsection (1) of section 11 of the Act applies, means the amount of assets mentioned in regulation 5 of these regulations.

27. (1) Subject to paragraph (2) of this regulation, every deposit made, or required to be made, pursuant to regulation 3 or 4 of these regulations shall be made with a custodian of assets in the manner set out in regulation 23 of these regulations and shall be maintained by the

Making and amount of deposit.

depositor at all times during the continuance of the authorisation at a level equal to at least the appropriate required amount.

(2) In the case of a company whose head office is in Malta, the deposit mentioned in paragraph (1) of this regulation shall be limited to the amount of the minimum guarantee fund.

(3) Where an asset constituting or forming part of any deposit made in accordance with paragraph (1) of this regulation is an asset expressed in a currency other than Maltese lira, a sum equal to ten per centum of the value of that asset to make good any loss of value of that asset which might arise out of exchange risk shall be aggregated with the amount of assets constituting the deposit.

Increasing the amount of deposit.

28. (1) Subject to paragraph (2) of this regulation, where it appears to the Centre that the amount of assets constituting any deposit made in accordance with regulation 27 of these regulations is likely to fall, or falls, below the appropriate required amount, or on the written application of the depositor having regard to such circumstances, the Centre shall direct in writing the depositor to increase the amount of assets by a sum specified in Maltese liri 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 paragraph (1) of this regulation shall be made by the depositor as early as practicable but not later than fourteen days from the date of the Centre's direction in that regard to the depositor.

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

29. (1) Subject to paragraph (3) of this regulation, where a depositor 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 depositor shall make an application in writing to the Centre 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 Centre shall determine the application within 30 days of receiving the details required to be given under this paragraph; and, if it refuses the application, the Centre shall inform the depositor in writing of the reasons for the refusal.

(2) Where the Centre approves of an application made under paragraph (1) of this regulation, the Centre shall direct in writing the depositor 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 paragraph (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 Centre is satisfied that the assets replacing those assets have been received and held in custody in accordance with regulation 17 of these regulations.

Reducing the amount of assets.

30. (1) Subject to paragraphs (3) and (4) of this regulation, where it appears to a depositor that the amount of assets constituting any deposit is higher than the appropriate required amount, the depositor 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 Centre in that regard giving the relevant details and specifying the sum proposed to be reduced in Maltese liri and the Centre shall determine the application within 30 days of receiving the details required to be given under this paragraph; and, if it refuses the application, the Centre shall inform the depositor in writing of the reasons for the refusal.

(2) Where the Centre approves of an application made under paragraph (1) of this regulation, the Centre shall direct in writing the depositor to reduce the amount of assets constituting the deposit by the sum specified by the depositor, or any other lower sum determined by the Centre, 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 Centre shall not approve of an application made under paragraph (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 paragraphs (2) and (3) of this regulation shall relieve the depositor of the obligation imposed on him by regulation 27 of these regulations to maintain at all times the deposit at least at the appropriate required amount.

Cessation of business.

31. (1) Where a depositor has ceased to carry on in Malta the business in respect of which the deposit was made, the depositor or any person who is entitled to give a good discharge for the funds representing the deposit may apply in writing to the Centre for those funds to be released to the depositor or to that other person, as the case may be.

(2) The Centre shall, on receipt of an application under paragraph (1) of this regulation accompanied by an appropriate declaration, determine the application having cognizance to the provisions of subsection (4) of section 16, sections 28, 41 and 42 of the Act and direct the custodian in writing as it deems appropriate in the circumstances.

(3) In paragraph (2) of this regulation an "appropriate declaration" means a written declaration by the applicant as is required by subsection (4) of section 16 of the Act or in consequence of a direction given in writing by the Centre under section 28 of the Act –

(a) stating and proving by submission of documentary evidence acceptable to, or required by, the Centre that to the best of his knowledge and belief the depositor has no further liability to discharge, and

(b) if the applicant is not the depositor: –

(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 Centre the circumstances in which the applicant is so entitled.

Effect of direction.

32. A direction given by the Centre 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 of deposit.

33. (1) Notwithstanding anything contained in any other regulation of this Part of these regulations, subject to the following paragraphs of this regulation, any depositor to whom regulation 3 or 4 of these regulations applies may, in like manner, satisfy the requirements of that regulation by producing to the Centre, 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 paragraph (1) of this regulation shall have to be agreed in advance between the depositor, the issuer and the Centre; 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 28, 30, 31 and 32 of these regulations shall apply *mutatis mutandis* in relation to a security as they apply in relation to a deposit.

(4) Where –

(a) a depositor makes a deposit with a custodian of assets in accordance with regulation 27 of these regulations and, at a later date, elects to substitute that deposit with a security to be produced to the Centre in accordance with paragraph (1) of this regulation, or

(b) a depositor produces to the Centre a security in accordance with paragraph (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 27 of these regulations,

in every case, the depositor shall make an application in writing to the Centre in that regard, giving the relevant details, and -

(a) if the application is to substitute a deposit with a security, the Centre shall direct in writing the depositor to carry out the substitution in accordance with paragraphs (1) and (2) of this regulation and, when the security is produced, the custodian to release from custody the deposit, and

(b) if the application is to substitute a security with a deposit, the Centre shall direct in writing the depositor to carry out the substitution in accordance with regulation 27 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 Centre may have, or may have had, against the security prior to its termination.

(5) For the purposes of this regulation –

"security" means –

(a) a contract of pledge as construed in Title XXI of Part II of Book Second of the Civil Code;

(b) a guarantee provided by, or

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

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

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

and "issuer" shall be construed accordingly.

Making deposit of assets maintained in Malta in accordance with the 1999 Regulations.

L.N. 62 of 1999.

34. (1) Every depositor who on the appointed date was a depositor by virtue of a licence to operate as an insurer held under the 1981 Act and whose assets held on that date under paragraph (b) of subsection (1) of section 5 or section 22 of the 1981 Act were, pursuant to regulation 6 of the Insurance Business (Custodian of Assets) Regulations, 1999 ("the 1999 Regulations"), deemed to be assets or a proportion of assets which the depositor is required to maintain in Malta under paragraph (c) of subsection (1) of section 11 of the Act shall, not later than three months from the date of coming into force of these regulations, determine the appropriate required amount and kind of assets constituting the deposit to be made by the depositor in relation to the business carried on in Malta by the depositor in accordance with Part II of these regulations and, if the amount or kind of assets maintained in Malta pursuant to the 1999 Regulations does not satisfy the requirements of regulation 27 of these regulations, the depositor shall make the necessary arrangements to ensure that the deposit satisfies the requirements of the said regulation 27.

(2) Any determination of amount of assets made under paragraph (1) of this regulation in relation to the business carried on in Malta by a depositor shall be calculated as appropriate in accordance with the provisions of regulation 5 of these regulations:

Provided that, in relation to general business run-off by a depositor pursuant to section 22 of the 1981 Act, such amount shall be the appropriate guarantee fund which the depositor is required to maintain in Malta under subsection (1) of section 16 of the Act or such other higher amount commensurate with the Malta liabilities of the depositor as the Centre may from time to time determine.

(3) Where, in relation to a depositor to whom paragraph (1) of this regulation applies, the amount of assets maintained in Malta by the depositor pursuant to regulation 6 of the 1999 Regulations exceeds

the amount of assets required to be maintained in Malta by the depositor in accordance with regulation 5 of these regulations, or the kind of assets maintained in Malta as aforesaid is not of a kind required by regulation 6 of these regulations, the excess amount, or the assets of such kind, as the case may be, shall, on an application made in writing to the Centre by the depositor in that regard giving the relevant details and specifying the excess amount in Maltese liri or submitting to the satisfaction of the Centre evidence that the assets of such kind have been substituted by assets of the kind required by regulation 6 of these regulations, be released from custody by the person who for the time being is custodian of those assets for the purposes of regulation 6 of the 1999 Regulations on direction given in writing by the Centre to that person in that regard.

PART VIII –EQUALISATION RESERVE

TITLE I – PRELIMINARY

Application.

35. This Part of these regulations shall have effect in respect of any financial year of a company ending on or after the appointed date.

Interpretation.

36. 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 Centre for the purposes of section 32 of the Act;

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

"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 40 of these regulations;

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

"business group maximum" has the meaning given in Part III

of the Seventh Schedule;

"claim" means a claim against a company 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 company's own staff, are directly attributable to particular claims;

"company" means an authorised insurance company;

"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 subsection (7) of section 17 of the Act;

"facultative business" refers to facultative business of reinsurance;

"financial year" means a period of account;

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

"gross premiums earned" in respect of a financial year means such proportion of gross premiums written as is attributable to risks borne by the company 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 insurance company at general business technical account item I.1.(a);

"the last financial year" means the financial year which last ended before the date on which financial statements of the company relating to that financial year are required to be forwarded to the Centre pursuant to section 20 of the Act;

"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 a company 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 insurance companies;

"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 insurance company 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 company" and "Title III company" mean, respectively, a company 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.

37. (1) For the purposes of section 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 subsection (7) of section 17 of the Act as a description of general business; and

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

TITLE II – BUSINESS OTHER THAN CREDIT INSURANCE BUSINESS

Application.

38. (1) This Title of this Part of these regulations applies to a company 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 sub-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 paragraph (2) of this regulation, any business falling within sub-paragraph (d) shall be treated as if it did not fall within sub-paragraph (a), (b), (c) or (e).

(4) Any reference in this Title of this Part of these regulations, the Sixth Schedule and Parts I and II of the Seventh Schedule

to "business group maximum" and "maximum reserve", in relation to a company whose business is restricted to business of reinsurance which is granted approval by the Centre to apply the alternative maximum, shall respectively be deemed to be a reference to "business group alternative maximum" and "alternative maximum reserve".

(5) For the purposes of paragraph (4) of this regulation "alternative maximum", in relation to a business group, means a percentage higher than the percentage of average net premiums written relating to that business group specified in the table contained in sub-paragraph (1) of paragraph 11 of the Seventh Schedule but not higher than the percentage of average net premiums written relating to that same business group specified in the table contained in sub-paragraph (2) of paragraph 13 of the said Seventh Schedule as may be approved by the Centre from year to year on an application made to it in writing in that behalf by a company whose business is restricted to reinsurance which elects to apply the alternative maximum.

Equalisation reserve.

39. (1) Subject to paragraphs (2) and (3) of this regulation, a Title II company shall maintain an equalisation reserve in respect of Title II business in accordance with regulations 40 to 44 of these regulations.

(2) Regulations 40 to 44 of these regulations shall not apply in respect of any Title II business where net premiums written in a financial year of a company in respect of all that business are –

(a) less than five hundred thousand Maltese liri; 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 one million Maltese liri,

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

(3) Regulations 40 to 44 of these regulations shall apply in respect of any Title II business of a company whose business is restricted to reinsurance notwithstanding the company satisfies the provisions of paragraph (2) of this regulation, if the company elects to maintain an equalisation reserve in respect of Title II business.

Business groups.

40. For the purposes of applying this Title of this Part of these regulations, a Title II company shall classify its Title II business into separate business groups comprising –

(a) business group A – business falling within sub-paragraph (a) of paragraph (2) of regulation 38 of these regulations;

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

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

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

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

Transfers to and from the equalisation reserve.

41. (1) At the end of each financial year, a Title II company shall make transfers to the equalisation reserve and transfers from the equalisation reserve in accordance with paragraphs (2) to (5) of this regulation.

(2) The company 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 paragraph (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 company shall transfer an amount equal to the excess to the equalisation reserve.

(4) Subject to paragraph (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 company 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 company shall transfer such an amount as is necessary to make the equalisation reserve equal to the maximum reserve.

Transfers of business by authorised insurance company.

42. (1) If a Title II company transfers to another company all its rights and obligations under any general business policies (pursuant to a transfer approved by the Centre under section 33 of the Act), the Seventh Schedule shall apply to that company 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 company'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 company'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 authorised insurance company.

43. (1) If a Title II company acquires from another company (the "transferor") all the transferor's rights and obligations under any general business policies (pursuant to a transfer approved by the Centre under section 33 of the Act), the Seventh Schedule shall apply to that company 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 company 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 company'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 company 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 company 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 paragraphs (2) and (3) of this regulation, consideration payable in respect of the acquisition shall be apportioned between business groups 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 paragraphs (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 company 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 company 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 company as an adjustment to premiums.

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

44. (1) This regulation applies to a Title II company where –

(a) the company 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 last financial year are less than the amounts specified in sub-paragraph (a) or (b) of paragraph (2) of regulation 39 of these regulations, as the case may be; or

(b) the company 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 sub-paragraph (a) or (b) of paragraph (2) of regulation 39 of these regulations, as the case may be; and

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

(d) net premiums written in the last financial year in respect of Title II business are less than the amounts specified in sub-paragraph (a) or (b) of paragraph (2) of regulation 39 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 ending on or after the appointed date.

(3) For the purposes of paragraph (2) of this regulation, if any of the financial years which the company 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 sub-section (3) of section 164 of the Companies Act, 1995, 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) A company to which this regulation applies shall, at the end of the financial year, make a transfer from the equalisation reserve of such an amount as is necessary to reduce the equalisation reserve to zero.

Accelerated start-up.

45. (1) Subject to paragraph (2) of this regulation, any company which is a Title II company which immediately before the date of coming into force of the Act held a licence under the 1981 Act to operate as an insurer and to carry on business of insurance of any one or more classes falling within any one or more business groups which draws up its financial statements pursuant to the provisions of section 20 of the Act and in the form and content prescribed by the Insurance Business (Companies Accounts) Regulations, 2000 for the first time immediately after the appointed date may once only, and only at the end of the financial year to which the statements relate, transfer out of the reserve fund maintained by the company under subsection (1) of section 8 of the 1981 Act ("the reserve fund") into the equalisation reserve an amount which –

(a) where the value of the reserve fund of the company equals or exceeds the value of the business group maximum in respect of that business group or the aggregate value of the business group maxima in respect of those business groups, as the case may be, is, in either case, equal to or less than the value of the business group maximum or the aggregate value of the business group maxima;

(b) where the value of the reserve fund of the company is less than the value of the business group maximum in respect of that business group or the aggregate value of the business group maxima in respect of those business groups, as the case may be, is, in either case, equal to or less than the value of the reserve fund.

(2) Where any Title II company as aforesaid has drawn up its financial statements pursuant to the provisions of section 20 of the Act and in the form and content determined by a directive issued to the company in writing for such purpose by the Centre for the first time immediately after the appointed date, the company shall, for the purposes of transferring of funds from the reserve fund to the equalisation reserve, be deemed to have drawn up the financial statements pursuant to subsection (1) of this section.

TITLE III – CREDIT INSURANCE BUSINESS

Application.

46. (1) This Title of this Part of these regulations applies to a company whose head office is in Malta authorised to carry on credit insurance business.

(2) This Title of this Part of these regulations applies to credit insurance business.

(3) Subject to paragraph (4) of this regulation, this Title of this Part of these regulations does not apply in the case of a company as aforesaid, where the net premiums written in any financial year in respect of its credit insurance business are less than 4 per centum of the total net premiums written by it in that financial year and less than one million Maltese liri.

(4) This Title of this Part of these regulations shall apply in the case of a company as aforesaid notwithstanding the company satisfies the provisions of paragraph (3) of this regulation if the company elects to maintain an equalisation reserve in respect of its credit insurance business.

Equalisation reserve.

47. A Title III company 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.

48. (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 insurance companies;

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

"approved credit institution" means an institution licensed as such under the Banking Act, 1994 or any other institution approved for such purpose by the Centre with an appropriate credit rating as may from time to time be agreed;

Act No. XXII of 1994.

"approved financial institution" means any financial institution licensed as such under the Financial Institutions Act, 1994 or any other institution approved for such purpose by the Centre with an appropriate credit rating as may from time to time be agreed;

"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, the Government of Malta or a government of a state of any country falling within the zone of countries;

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

"asset" includes part of an asset;

"collective investment scheme" has the same meaning as is assigned to it by subsection (1) of section 2 of the Investment Services Act, 1994; Act No. XIV of 1994.

"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, 1994;

"counterparty" has the meaning set out in the Tenth 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;

"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;

"exposure" –

(a) in relation to assets, means an amount determined in accordance with regulation 61 of, and paragraph 5 of the Tenth Schedule to, these regulations; and

(b) in relation to a counterparty, means an amount determined in accordance with regulation 61 of, and paragraphs 12 to 15 of the Tenth 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, 1994;

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

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

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

"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 insurance company subject to a condition that

such assets (or where the assets transferred are securities, equivalent securities) will be returned to the company on completion of that contract;

"intermediary" means a person authorised under section 13 of the Act or whose name appears in any of the lists established and maintained under section 7 or 31 of the Insurance Brokers and Other Intermediaries Act, 1998; Act No. XVIII of 1998.

"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 insurance company, long term business assets of the company which are, for the time being, identified in the records of the company 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 acceptable to the Centre 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 insurance company 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 company which are attributable to its long term business;

"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 insurance companies;

"option" means any type of instrument falling within those instruments described in paragraph 3 of the Second Schedule to the Investment Services Act, 1994 or a warrant;

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

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

"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 Centre;

Act XIV of 1996.

"regulated institution" means any of the following –

(a) a company formed and registered under the Companies Act, 1995 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 set out in an international regulated market of good repute; and

(c) the fact that the financial instruments dealt in are of a quality comparable to those in an international regulated market of good repute;

"related company" means, in relation to an insurance company –

(a) a dependant of the insurance company, or

(b) a company of which the insurance company is a dependant, or

(c) a dependant of a company of which the insurance company is a dependant;

"relevant date" means, in relation to the valuation of any asset for any purpose for which this Part of these regulations applies, the date when the asset falls to be valued for that purpose;

"salvage right" means any right of an insurance company under a contract of insurance to take possession of and to dispose of property by virtue of the fact that the company 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;

"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;

"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 company 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 company 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, 1994.

(2) For the purposes of these regulations, a company is a dependant of another company if it is a subsidiary undertaking of that other company and "subsidiary undertaking" shall be construed in accordance with paragraph (c) of subsection (2) of section 2 of the Companies Act, 1995.

(3) For the purposes of these regulations, a debt owed to (or an obligation to be fulfilled for the benefit of) an insurance company 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 company with the same counterparty, the aggregate amount of all guarantees issued for the benefit of the company by that counterparty and the amount of any exposure of the company 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 insurance company's exposure to assets of the same description does not exceed the permitted exposure limit for assets of that description (as defined in regulation 61 of, and the Tenth Schedule to, these regulations);

(iii) where the assets give rise to exposure to a counterparty, the exposure of the company to that counterparty, when added to the aggregate amount available under all letters of credit established for the benefit of the company with that counterparty, and to the aggregate amount of all guarantees issued for the benefit of that company 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 Part II of Book Second of the Civil Code.

(4) For the purposes of paragraph (3) 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 company shall be treated as if they were assets of the company.

Application

49. (1) Subject to paragraph (2) of this regulation, this Part of these regulations applies with respect to the determination of the value of assets of insurance companies for the purposes of –

(a) paragraph (c) of subsection (1) of section 11, sections 14, 16, 17 and 18, subsection (4) of section 41 and subsections (2) and (3) of section 42 of the Act;

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

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

(2) Where an insurance company has entered into any contracts providing for the payment of property linked benefits, 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 paragraph (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 paragraph (1) of this regulation.

(4) The Centre may, in exceptional circumstances, on an application made to it in writing in that behalf, permit any such asset as is referred to in paragraph (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 Centre.

(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 paragraph (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 any country falling within the zone of countries.

(7) Notwithstanding paragraph (1) of this regulation (but subject to the conditions set out in paragraph (8) thereof), an insurance company may, for the purposes of an investigation to which section 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the Centre 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 company.

(8) The conditions referred to in paragraph (7) of this regulation are –

(a) that the election shall not enable the company 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 50 to 61 of these regulations.

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

(10) The conditions referred to in paragraph (9) of this regulations 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 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 and debts due or to become due from dependants.

50. (1) Subject to paragraph (2) of this regulation, the value of any share in a dependant of an insurance company shall be not greater than that part of the net asset value of the dependant which would be payable in respect of the share if the dependant were in liquidation and the net asset value were the amount distributable to the shareholders in the winding up.

(2) In valuing an asset of an insurance company which consists of shares in another company which is a dependant, any part of that value which arises from an interest by that other company, direct or indirect, in the shares of the insurance company shall be left out of account.

(3) In this regulation, "net asset value" means, in relation to a dependant, the amount by which the value of its assets, as determined in accordance with regulation 51 of these regulations, exceeds the amount of its liabilities as determined in the case of a dependant which is an insurance company, in accordance with the said regulation 51.

(4) The value of any debt due, or to become due, to an insurance company from a dependant (other than a debt to which paragraph (2), (3) or (6) of regulation 52 of these regulations) shall be the amount which would reasonably be expected to be recovered in respect of that debt (due account being taken of any security held in respect thereof and of the terms and conditions for payment) if the dependant were in liquidation and -

(a) in the case of a dependant which is an insurance company, the amount realised from its assets and the amount of its liabilities in the liquidation were equal to the value of those assets and the amount of those liabilities, as determined in accordance with regulation 51 of these regulations, and

(b) in the case of a dependant which is not an insurance company, the amount realised from its assets in the liquidation were equal to the value of those assets, as determined in accordance with the said regulation 51.

(5) Any share in a dependant –

(a) in which there is no excess of assets over liabilities as is mentioned in paragraph (3) of this regulation, or

(b) in relation to which an insurance company cannot reasonably ascertain the amount of the liabilities of the dependant for the purposes of the said paragraph (3),

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

(6) Where an insurance company is unable to determine the value of any debt due, or to become due, to the company from a dependant because it cannot reasonably ascertain the amount of the liabilities of the dependant for the purpose of ascertaining what would reasonably be expected to be recovered in respect of that debt in accordance with paragraph (4) of this regulation, the debt shall be left out of account for the purposes for which this Part of these regulations applies.

Valuation of assets and liabilities of dependants for the purposes of regulation 50.

51. (1) This regulation shall apply with respect to the determination of the value of the assets and the amount of the liabilities of a dependant for the purposes of regulation 50 of these regulations.

(2) In the case of a dependant which is an insurance company, whether or not it is a company authorised under the Act –

(a) subject to paragraph (4) of this regulation and paragraph 3 of the Ninth Schedule, the value of its assets shall be determined in accordance with this Part of these regulations;

(b) subject to sub-paragraphs (c), (d), (e) and (f) of this paragraph, the amount of its liabilities shall be determined in accordance with Part X of these regulations;

(c) where the dependant carries on general business, its general business liabilities shall be deemed to include an amount equal to whichever is the greater of 200,000 Maltese liri or 20 per

centum of the general premium income;

(d) where the dependant carries on long term business, its long term business liabilities shall be deemed to include whichever is the greatest of the following three amounts –

(i) an amount ("the first amount") which is one-sixth of the required margin of solvency that would be arrived at by regarding the dependant as having its head office in Malta (whether it has or not) and applying the provisions of the First Schedule;

(ii) an amount which is six times the first amount, reduced by the implicit figure within the meaning of sub-paragraph (e) of this paragraph;

(iii) 400,000 Maltese liri;

(e) for the purposes of indent (ii) of sub-paragraph (d) of this paragraph the implicit figure is -

(i) in the case of a dependant having its head office in Malta, the amount of any implicit items relating to future profits, zillmerising or hidden reserves which the dependant is permitted to count by virtue of an approval given under paragraph (5) of regulation 9 of these regulations and the application of paragraph (5) of regulation 9 and regulations 10,11 and 12 of these regulations, and

(ii) in the case of a dependant having its head office in a country outside Malta, the amount of any implicit items relating to future profits or zillmerising which would be arrived at by regarding the dependant as having its head office in Malta and as having been permitted to count by virtue of an approval given under paragraph (5) of regulation 9 of these regulations and by applying paragraph (5) of regulation 9 and regulations 10 and 11 of these regulations accordingly;

(f) in any case where the dependant is required to establish a long term business fund or funds under section 17 of the Act, its long term business liabilities shall be deemed to be not less than the value of the assets covering that fund or funds.

(3) In the case of a dependant which is not an insurance company –

(a) the value of its assets shall be determined in accordance with this Part of these regulations, subject to the provisions of and the modifications provided for in paragraphs 3 and 4 of the Ninth Schedule;

(b) subject to paragraph (4) of this regulation, assets of the dependant which are of a relevant description shall be taken into account only to the extent that their value does not exceed the permitted limit applicable to the dependant in relation to those assets; and

(c) any equipment leased by the dependant exclusively to any person other than its subsidiary or holding company or a subsidiary of its holding company shall be valued as a debt for the purposes of this Part of these regulations.

(4) Where–

(a) the dependant is an insurance company and has general business assets of a relevant description or is not an insurance company and has assets of a relevant description,

(b) the value of such assets exceeds the permitted limit applicable to the dependant in relation to those assets, and

(c) the insurance company has no assets of the same description of the relevant class, or has assets of the same description of the relevant class and their value is less than the permitted limit applicable to the insurance company in relation to those assets,

then, for the purpose of determining the value of the assets of the dependant, there shall be added to the permitted limit applicable to the dependant in relation to the assets referred to in sub-paragraph (a) of this paragraph an amount equal to the supplementary amount determined in accordance with Part I of the Ninth Schedule.

(5) In this regulation and the Ninth Schedule –

"assets of a relevant description" means assets of a description specified in Part II of the Tenth Schedule or, in the case of a dependant which is not an insurance company, assets which would be of such a description if it were an insurance company;

"the insurance company" means the company the value of whose shares in or debt due or to become due from the dependant

is being determined in accordance with regulation 50 of these regulations;

"permitted limit" means, in relation to assets of a relevant description –

(a) in the case of the insurance company, or a dependant which is an insurance company, an amount equal to the percentage of the general business amount or, as the case may be, the long term business amount applicable in relation to assets of that description in accordance with regulation 61 of these regulations (as applied in the case of a dependant pursuant to paragraph (2) of this regulation); and

(b) in the case of a dependant which is not an insurance company, an amount equal to the percentage specified in the Tenth Schedule, with respect to assets of that description, of the liabilities of the dependant, other than liabilities to the insurance company or any other related company of the insurance company;

and references to assets held by any company being of the same description as assets held by a dependant mean -

(i) in relation to land of the dependant of a description specified in paragraph 1 of Part II of the Tenth Schedule, any interest of that other company in that land, and

(ii) in relation to assets of the dependant of a description specified in paragraphs 2 to 17 of Part II of the Tenth Schedule, assets of that other company which, if held by the dependant, would be assets of that description.

(6) Save as otherwise provided in sub-paragraph (5) of paragraph 3 of the Ninth Schedule, references in this regulation and in the Tenth Schedule to assets of the insurance company being of a relevant class mean –

(a) where this regulation and the Ninth Schedule are being applied for the purpose of determining the value of a long term business asset of the insurance company, assets of the insurance company which are long term business assets, and

(b) in any other case, assets of the insurance company which are general business assets.

(7) Where the insurance company cannot reasonably ascertain in accordance with the provisions of this regulation –

(a) the value of any asset of the dependant, or

(b) the amount of the permitted limit applicable in relation to any asset of the dependant,

that asset shall be left out of account in determining the value of the assets of the dependant under this regulation.

Debts and other rights.

52. (1) The value of any secured debt due, or to become due, to an insurance company, other than a debt to which paragraph (4) of regulation 50 of these regulations or paragraph (2), (3) or (7) 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 company 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 insurance company 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 a company, the value of any debt due, or to become due, to the company which is secured on a policy of insurance issued by the company 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 insurance company, other than a debt to which paragraph (4) of regulation 50 of these regulations, paragraph (5), (6) or (7) of this regulation or regulation 57 or 60 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 company 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 company 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 paragraph (4) of regulation 50 of these regulations applies which are due or to become due.

(6) Notwithstanding paragraph (5) of this regulation, for the purposes of section 17 of the Act, the amount recoverable by an authorised company under contracts of reinsurance ceded by the company to be netted from the amount set aside by the company to meet its liabilities under contracts of insurance shall not exceed 75 per centum of the amount of such cession. However, any reduction in the technical provisions arising from reinsurance shall be restricted to the extent of the insurance risk transferred under the reinsurance arrangements.

(7) Any debt due, or to become due, to the company -

(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 company, or

(c) from a company of which it is a dependant where such debt is subordinated debt, or

(d) which is a debt to which paragraph (8) of this regulation applies,

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

(8) This paragraph shall apply 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 company's accounting records as due and payable and has been outstanding for more than three months:

Provided that, where a debt is debt which –

(a) has been outstanding for more than three months but not more than six months since it was due and payable; and

(b) is attributed to a transaction which is recorded in the company's accounting records as due and payable for not more than twelve months,

the debt shall be taken into account for the purposes for which this Part of these regulations applied but only to the extent that the value of the debt shall be reduced not to exceed seventy-five per centum of 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).

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

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

(11) 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 insurance company 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 insurance company of an amount equal to the value of such securities as determined in accordance with this Part of these regulations.

(12) The value of any rights arising under a derivative contract to which regulation 59 of these regulations does not apply, or under a contract or asset having the effect of a derivative contract to which the said regulation 59 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.

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

(a) investments in dependants;

(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 paragraph (11) or (12) of this regulation; or

(e) a contract or asset which has the effect of a derivative contract except as provided under paragraph (11) or (12) of this regulation or under paragraph (4) or (5) of regulation 60 of these regulations.

Land.

53. (1) The value of any land of an insurance company (other than land held by the company as security for a debt or to which paragraph (2) of this regulation or regulation 58 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.

54. The value of any office machinery (including computer equipment), furniture, motor vehicles and other equipment of an insurance company – Equipment.

(a) in the financial year of the company in which it is purchased, shall be not greater than three-quarters of the cost thereof to the company;

(b) in the first financial year thereafter, shall be not greater than one-half of that cost;

(c) in the second financial year thereafter, shall be not greater than one-quarter 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.

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

(a) derivative contracts;

(b) investments in dependants;

(c) units or other beneficial interests in collective investment schemes, except as provided in paragraph (2) of regulation 56 of these regulations; or

(d) contracts or assets having the effect of derivative contracts, except as provided in paragraph (4) of regulation 13 of these regulations.

(2) Subject to paragraphs (4) and (5) of this regulation and regulation 60 of these regulations, the value of an investment to which this regulation applies shall be –

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

(b) where the investment is transferable and paragraph (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 insurance company; 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 paragraph 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 insurance company.

(4) Paragraph (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 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 insurance company 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.

56. (1) Subject to paragraph (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, 1994; or

(b) any other collective investment scheme where:

(i) the scheme does not employ derivative contracts unless they are contracts to which regulation 59 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 59 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 sub-paragraph (a) of this paragraph, a value determined in accordance with regulation 55 of these regulations.

(3) Other than as provided in paragraph (4) of regulation 60 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.

57. 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 insurance companies.

Reversionary interests etc.

58. The value of any long term business asset of a company 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.

59. (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 paragraph (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 paragraph (3) for such purposes.

(3) The contract or asset described in this paragraph 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 65 of these regulations.

(5) For the purposes of determining in accordance with paragraph (4) of this regulation whether a required provision is significant, regard shall be had to the obligations of the company under the contract and the volatility of the assets identified by the company 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 insurance company reasonably believes may be readily closed out; and

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

(7) This paragraph 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 of any country falling within the zone of countries;

or an arithmetic average thereof, and –

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

(8) This paragraph 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 (7) of this regulation.

Contracts and assets having the effect of derivative contracts.

60. (1) Subject to paragraph (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 insurance company 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 54 of these regulations to or by the insurance company; or

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

(i) an asset of a different type; or

(ii) a different asset of the same type.

(2) Subject to paragraph (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 sub-paragraph (a) of paragraph (1) of regulation 56 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 sub-paragraphs (a) to (c) of paragraph (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 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 paragraph (9) of regulation 49 of these regulations in respect of which the conditions set out in paragraph (10) of regulation 49 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 59 of these regulations applies shall -

(a) where the asset is a security, be valued in accordance with regulation 55 of these regulations;

(b) where the asset comprises units or other beneficial interests in a collective investment scheme, be valued in accordance with regulation 56 of these regulations; and

(c) where the asset is a debt or other right, be valued in accordance with regulation 52 of these regulations.

(5) Rights in respect of a contract or asset having the effect of a derivative contract to which regulation 59 of these regulations does not apply shall have a value determined in accordance with paragraph (12) of regulation 52 of these regulations.

(6) For the purposes of determining whether a contract or asset has the effect of a derivative contract to which regulation 59 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.

61. (1) Subject to paragraphs (5) and (6) of this regulation the aggregate value of the assets of an insurance company 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 company 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 company is exposed to a counterparty in excess of the permitted counterparty exposure limit for such counterparty;

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

(d) the value of any assets transferred to or for the benefit of the company in pursuance of a condition in a derivative contract to which paragraph (2) of regulation 59 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 company in pursuance of a contract having the effect of a derivative contract to which paragraph (2) of regulation 59 of these regulations does not apply or a related contract,

as determined in accordance with the Tenth Schedule.

(2) Where a company 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 sub-paragraph (a) of paragraph (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 insurance company; and

(b) where the company 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 company would otherwise be permitted to take into account for any of the purposes for which this Part of these regulations applies.

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

(4) Where an insurance company 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 insurance company comprising –

(a) approved securities or any interest accrued thereon;

(b) debts to which paragraph (3) of regulation 52 of these regulations applies;

(c) rights to which paragraph (5), (9) or (10) of regulation 52 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 of any country falling within the zone of countries;

(f) shares in or debts due or to become due from a dependant falling within regulation 50 of these regulations; or

(g) deferred acquisition costs,

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

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

(7) The provisions of this regulation shall not apply to a company if its business in or from Malta is restricted to reinsurance.

PART X – DETERMINATION OF LIABILITIES

Interpretation.

62. (1) In this Part of these Regulations -

"derivative contract" has the meaning given in paragraph (1) of regulation 48 of these regulations;

"general business liabilities" has the same meaning as in paragraph (1) of regulation 48 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 insurance company 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 company 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 Centre for the purposes of this regulation.

Application.

63. This Part of these regulations applies with respect to the determination of the amount of liabilities of insurance companies for the purposes of –

(a) paragraph (c) of subsection (1) of section 11, sections 14, 16, 17 and 18, subsection (4) of section 41 and subsections (2) and (3) of section 42 of the Act;

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

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

Long term business and general business.

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

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

(3) In determining the amount of the own funds of an insurance company pursuant to an Insurance Directive to be made by the Centre for the purposes of the Act to determine the amount and the components which make up the own funds of the insurance company, cumulative preference share capital and subordinate loan capital in an amount not to exceed the percentage of the amount of the own funds of the company 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 paragraph (2) of this regulation, be taken as liabilities of the company for the purposes of the amount of the own funds of the company.

Provision for adverse changes.

65. (1) An insurance company which has or may have (following the exercise of any right by the company 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 paragraph (1) of this regulation the company 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 paragraph (1) of regulation 48 of these regulations;

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

"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 paragraph (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 sub-paragraph (a) of this paragraph; 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 company and used by the company for the conduct of its business.

General business liabilities.

66. 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.

Long term liabilities.

67. (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 valuation date.

(3) Without prejudice to the generality of paragraph (1) of this regulation, the amount of the long term liabilities shall be determined in compliance with each of regulations 68 to 78 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) expenses, including commissions;

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

Method of calculation.

68. (1) Subject to paragraphs (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 company in the manner and timing of the distribution of profits or the granting of discretionary additions, as the case may be.

(7) For the purposes of paragraph (6) of this regulation "established surplus" means an excess of assets representing the whole or a particular part of the fund or funds maintained by the company in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as shown by an investigation to which section 23 of the Act applies or an actuarial investigation which is made in pursuance of a directive made by the Centre under any other provision of the Act.

Avoidance of future valuation strain.

69. (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 insurance company shall include in the report of any investigation made under section 23 of the

Act or in pursuance of a directive made by the Centre 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 paragraph (2) of this regulation, all aspects of the financial situation of an insurance company may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in such a way that it may jeopardise the company's solvency in the long term.

Valuation of future premiums.

70. (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 paragraph (4) of this regulation and regulation 71 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 sub-paragraph (a) of this paragraph 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 paragraph if the change is indicated in an endorsement on the policy but not if a new policy is issued), then, for the purpose of paragraph (1) of this regulation it shall be assumed that

those changes from the time they occurred were provided for in the contract at the time it was made.

(3) Where under a contract (not being linked long term contract) -

(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 company resulting from the payment of future premiums might exceed the amount of the premiums.

(4) An alternative valuation method to that described in paragraphs (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 paragraphs.

Acquisition expenses.

71. (1) In order to take account of acquisition expenses, the maximum annual premium to be valued under regulation 70 of these regulations may (subject to paragraph (2) 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 paragraph (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 increase permitted by paragraph (1) of this regulation shall be subject to the limitation that the amount of a future premium valued shall not in any event be greater than the amount of the premium actually payable by the policyholder.

(4) For the purposes of this regulation –

(a) for contracts other than temporary assurances, the relevant capital sum under a contract shall be arrived at in accordance with paragraph (4) of regulation 11 of these regulations, and

(b) for temporary assurances, the relevant capital sum shall be the sum assured on the valuation date.

Rates of interest.

72. (1) The rates of interest to be used in calculating the present value of future payments by or to an insurance company 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 paragraph (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 paragraphs (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 section 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the Centre 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 12 of Part I of the Tenth 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 paragraph (1) of regulation 48 of these regulations) the yield on an asset, subject to paragraph (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 paragraph (1) of regulation 48 of these regulations) that are equity shares or land, the yield on an asset, subject to paragraph (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 is to say, investments which are not fixed interest securities as defined in paragraph (1) of regulation 48 of these regulations) other than equity shares or land, the yield on an asset, subject to paragraph (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 paragraphs (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.

(7) 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 sub-paragraph, a "category of asset" comprises assets of a similar nature, type and degree of risk.

(8) 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 paragraphs (9) and (10) of this regulations.

(9) 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 Centre,

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 paragraph (2) of this regulation adjusted linearly over the said three years to the yield determined in accordance with sub-paragraph (a) of this paragraph.

(10) 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 paragraph (9) of this regulation.

(11) In no case shall a rate of interest determined for the purposes of paragraph (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 paragraph (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 section 23 of the Act applies or any actuarial investigation made in pursuance of a directive made by the Centre 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 paragraph (1) of regulation 48 of these regulations), both the yield and the value of any linked assets (as so defined) shall be omitted from the calculation.

(12) 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 paragraph (9) 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.

73. 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.

74. (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 company were to cease to transact new business twelve months after the valuation date. Expenses.

(2) The provision mentioned in paragraph (1) of this regulation shall have regard to, among other things, the company'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.

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

(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.

76. No contract for long term business shall be treated as an asset. Contracts not to be treated as assets.

77. 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. No credit for profits from voluntary discontinuance.

78. 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 - Nature and term of assets.

(a) the ability of the company 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 68 to 77 of these regulations.

PART XI – MISCELLANEOUS PROVISION

Revocation.

79. Without prejudice to the provisions of regulation 34 of these regulations, the Insurance Business (Custodian of Assets) Regulations, 1999 are hereby revoked.

L.N. 62 of 1999.

FIRST SCHEDULE

(Regulation 8)

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 last preceding 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 last preceding 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 last preceding 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 authorised company bears an investment risk, the first calculation shall be applied.

(3) In so far as –

(a) an authorised company bears no investment risk, and

(b) the total expired and unexpired term of the relevant contract exceeds five years, and

(c) the allocation to cover management expenses in the relevant contract has a fixed upper limit which is effective as a limit for a period exceeding five 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) If neither sub-paragraph (2) nor sub-paragraph (3) of this paragraph applies, then, subject to sub-paragraph (5) of this paragraph, the required margin of solvency is zero.

(5) Where an authorised company 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 required 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. For long term business of class IV or VI the required margin of solvency shall be determined by applying the first calculation.

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 8)

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 a company 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 authorised company, a financial year and a premium, means due to the company 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 authorised company and a financial year, means recorded in the company's books as due in that year, whether or not the company has received any payment.

2. The gross premiums receivable in respect of the company's entire general business for the last preceding financial year shall be aggregated.

3. From the aggregate arrived at under paragraph 2 of this Schedule there shall be deducted -

(a) any taxes included in the premiums mentioned in paragraph 2 of this Schedule, and

(b) any levies that are related to premiums and are recorded in the company's books as payable in the last preceding financial year in respect of general business.

4. The amount arrived at under paragraph 3 of this Schedule shall be multiplied by twelve and divided by the number of months in the financial year.

5. If the amount arrived at under paragraph 4 of this Schedule is more than 5 million Maltese liri, it shall be divided into two portions, the former consisting of 5 million Maltese liri, and the latter comprising the excess.

6. Where there has been a division into two portions pursuant to paragraph 5 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 4 of this Schedule.

7. In the case of general business consisting of health insurance based on actuarial principles, paragraph 6 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.

8. For the purposes of paragraph 7 of this Schedule, the necessary conditions are the following -

(a) the gross premiums receivable shall be calculated on the basis of sickness tables appropriate to business of insurance;

(b) the reserves shall include provision for increasing age;

(c) an additional premium shall be collected in order to set up a safety margin of an appropriate amount;

(d) it shall not be possible for the insurer to cancel the contract after the end of the third year of insurance;

(e) the contract shall provide for the possibility of increasing premiums or reducing payments during its currency.

9. Where paragraph 7 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 7 of this Schedule shall operate separately for each part of the general business, so as to produce a sum under paragraph 7 thereof for the health insurance and a sum under paragraph 6 thereof for the other business.

10. (1) If the provision for claims outstanding at the end of the last preceding financial year exceeds the provision for claims outstanding at the beginning of that year, the amount of the excess shall be added to the amount of claims paid in the last preceding financial year.

(2) If the provision for claims outstanding at the beginning of the last preceding financial year exceeds the provision for claims outstanding at the end of that year, the amount of the excess shall be deducted from the amount of claims paid in the last preceding financial year.

11. (1) For the purposes of paragraph 10 of this Schedule, the amount of claims paid, in relation to an authorised company and a financial year, is the amount that is recorded in the company's books as at the end of the financial year –

(a) in relation to general business classes 1 to 17, as paid by it (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 company (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 (and under contracts of reinsurance accepted by the company) 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 company, 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 company:

Provided that the exclusion of the amounts recoverable in respect of reinsurance ceded does not apply to the Recognised Insurance Body known as Lloyd's.

12. (1) For the purposes of paragraph 10 of this Schedule, the provision for claims outstanding, in relation to an authorised company and a financial year, is (subject

to any applicable valuation regulations) the amount set aside by the company as at the beginning or end of the financial year 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 (and under contracts of reinsurance accepted by the company) 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 and including claims relating to business accounted for over a longer period than a financial year, claims the amounts of which have not been determined and claims arising out of incidents that have not been notified to the company.

(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 company, 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 company 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 company:

Provided that the exclusion of the amounts recoverable in respect of reinsurance ceded does not apply to the Recognised Insurance Body known as Lloyd's.

13. From the amount determined under sub-paragraph (1) or (2) of paragraph 10 of this Schedule there shall be deducted the total sum recoverable in respect of that amount under reinsurance contracts ceded.

14. The amount determined under paragraph 13 of this Schedule shall be expressed as a percentage of the amount determined under sub-paragraph (1) or (2) of paragraph 10 of this Schedule.

15. The sum arrived at under paragraph 6 or 7 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 14 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 8)

GENERAL BUSINESS SOLVENCY MARGIN: SECOND METHOD OF CALCULATION

(CLAIMS BASIS)

1. In this Schedule "reference period", in relation to an authorised company, means either -

(a) the three last preceding financial years, or

(b) the seven last preceding financial years if more than one-half of the gross premiums receivable 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 a company 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 company.

3. (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 10 of the Second Schedule in relation to a financial year.

4. The aggregate obtained under sub-paragraph (1) or (2) of paragraph 3 of this Schedule shall be divided by the number of months in the reference period and multiplied by twelve.

5. If the amount arrived at under paragraph 4 of this Schedule is more than 3.5 million Maltese liri, it shall be divided into two portions, the former consisting of 3.5 million Maltese liri and the latter comprising the excess.

6. Where there has been a division into two portions pursuant to paragraph 5 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 4 of this Schedule.

7. In the case of general business consisting of health insurance based on actuarial principles, paragraph 6 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.

8. The necessary conditions for the purposes of paragraph 7 of this Schedule are the same as those set out in paragraph 8 of the Second Schedule.

9. In a case of the kind mentioned in paragraph 9 of the Second Schedule, that paragraph shall apply (with the necessary modifications) so as to produce separate sums under paragraphs 6 and 7 of this Schedule.

10. The sum arrived at under paragraph 6 or 7 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 15 of the Second Schedule.

FOURTH SCHEDULE

(Regulation 14)

MINIMUM GUARANTEE FUND

Long term business

1. Subject to paragraph 7 of this Schedule, the minimum guarantee fund for long term business shall be -

(a) in the case of a mutual, 300,000 Maltese liri.

(b) in any case other than a mutual, 400,000 Maltese liri, and

General business

2. Subject to paragraphs 3 to 7 of this Schedule, the minimum guarantee fund for general business shall be the amount shown in the table below as applicable to the general business class for which the relevant company is authorised (or the highest such amount if the company is authorised for more than one class).

General Business Class	Amount
Class 10,11,12,13,14 or 15	200,000 Maltese liri
Class 1,2,3,4,5,6,7,8,16 or 18	150,000 Maltese liri
Class 9 or 17	100,000 Maltese liri

3. In the case where the risks covered fall within class 14 of Part I of the Third Schedule to the Act and where the annual amount of premiums or contributions of the company due in respect of that class for each of the preceding three financial years exceeded 1,250,000 Maltese liri or 4 per centum of the total amount of premiums or contributions receivable by the company, for the amount of Maltese liri given in the table in paragraph 2 of this Schedule there shall be substituted the amount of 700,000 Maltese liri.

4. Where a company carrying on credit insurance business is required to increase the amount of Maltese liri pursuant to paragraph 3 of this Schedule, the company shall have -

a period of three years in which to bring the fund up to 500,000 Maltese liri;
a period of five years to bring the fund up to 600,000 Maltese liri;
a period of seven years to bring the fund up to 700,000 Maltese liri;

such periods to run from the date on which the criteria set out in paragraph 3 of this Schedule are fulfilled.

5. A company authorised for part of a class shall, for the purposes of paragraph 2 of this Schedule, be regarded as authorised for the whole of the class.

6. In the case of a mutual, the minimum guarantee fund required by paragraphs 2 to 5 of this Schedule shall be reduced by 25 per centum.

Long term business and general business

7. In relation to a Malta margin of solvency maintained under paragraph (b) of subsection (2) of section 14 of the Act, 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.

FIFTH SCHEDULE

(Regulation 24)

PERSONS ACTING AS CUSTODIAN OF ASSETS

1. The persons listed in this Schedule shall act as custodian of assets for the purposes of section 18 of the Act and hold in custody for companies' 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 Centre listed or dealt in on a foreign stock exchange or regulated market acceptable to the Centre; and

(b) currency deposits acceptable to the Centre 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 company.

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 Centre for the account of the company.

4. For the purposes of this Schedule –

"bank" and "credit institution" have the meaning given in paragraph (2) of regulation 6 of the regulations;

"convertible" has the meaning given in paragraph (2) of regulation 6 of the regulations;

"deposit" has the meaning given in paragraph (2) of regulation 6 of the regulations;

"regulated market" has the meaning given in paragraph (1) of regulation 48 of the regulations.

SIXTH SCHEDULE

(Regulation 36)

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 41)

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. The company 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 7 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.

6. For the purposes of paragraph 5 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.

7. The table referred to in paragraph 5 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%

8. The abnormal loss for each business group shall be aggregated and shall, subject to paragraph 9 of this Schedule, be the amount to be transferred from the equalisation reserve.

9. If the abnormal loss in respect of any business group pursuant to paragraph 8 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

10. 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 11 of this Schedule.

11. (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 a company 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 last financial year and the previous four financial years;

(b) in the case of a company 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 last financial year and any previous financial years ending on or after the appointed date.

(3) For the purposes of sub-paragraph (2) of this paragraph, if any of the financial years which the company 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 subsection (3) of section 164 of the Companies

Act, 1995, 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

12. 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 11 of this Schedule.

PART IV

Method of calculating business group alternative maximum

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

(2) In sub-paragraph (1) thereof -

(a) reference to "business group maximum" shall be deemed to be a reference to "business group alternative maximum"; and

(b) the table of percentage of average net premiums written contained therein shall be substituted with the following table:

Business Group	Percentage of average net premiums written
A	40%
B	40%
C	80%
D	600%
E	100%

Method of calculating the alternative maximum reserve

14. The alternative maximum reserve at the end of a financial year shall be the aggregate value of the business group alternative maxima as calculated in accordance with paragraph 11 of this Schedule as modified by paragraph 13 thereof.

EIGHTH SCHEDULE

(Regulation 47)

METHOD OF CALCULATING THE EQUALISATION RESERVE FOR CREDIT INSURANCE BUSINESS

1. The company 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 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 51)

VALUE OF DEPENDANTS

PART I

THE SUPPLEMENTARY AMOUNT

1. Subject to sub-paragraph (1) of paragraph 2 of this Schedule, the supplementary amount in relation to assets of a relevant description held by a dependant of the insurance company shall be determined in accordance with the following formula -

$$A = \frac{B}{C} \times D$$

in which –

A is the supplementary amount;

B is the amount by which the value of assets of that description held by the dependant, excluding any long term business assets of the dependant if it is an insurance company, exceeds the permitted limit applicable to the dependant in relation to those assets;

C is the aggregate of the amount specified in B above and of the amounts by which the value of assets of the same description, held by other relevant dependants, excluding any long term business assets of a dependant which is an insurance company, exceeds respectively the permitted limits applicable to such other relevant dependants in relation to those assets;

D is –

(a) where the insurance company holds no assets of the same description of the relevant class, the amount of the permitted limit that would be applicable to the insurance company in relation to such assets were it to hold them; and

(b) where the insurance company holds assets of the same description of the relevant class, the amount by which the permitted limit applicable to the insurance company in relation to those assets exceeds the value of those assets.

2. (1) Where for the purpose of determining any supplementary amount in accordance with paragraph 1 of this Schedule the insurance company cannot reasonably ascertain–

(a) the value of any asset of a relevant dependant, or

(b) the amount of the permitted limit applicable in relation to any asset of a relevant dependant,

the asset in question shall be left out of account for that purpose.

(2) In this Part of this Schedule –

"relevant dependant" means –

(a) where this Schedule is being applied in relation to the determination of the value of a share in, or debt due or to become due from, a dependant of the insurance company which is a long term business asset of the insurance company, any dependant of the insurance company:

(i) a share in which, or in any company of which it is a dependant, is a long term business asset of the insurance company, or

(ii) from which a debt is due, or will become due, to the insurance company which is a long term business asset of that company; and

(b) in any other case, any dependant of the insurance company:

(i) a share in which, or in any company of which it is a dependant, is a general business asset of the insurance company, or

(ii) from which a debt is due, or will become due, to the insurance company which is a general business asset of that company.

PART II

FURTHER PROVISIONS AND MODIFICATIONS OF THE REGULATIONS APPLICABLE WITH RESPECT TO THE DETERMINATION OF THE VALUE OF DEPENDANTS

3. (1) This paragraph applies where, for the purpose of ascertaining the value of the assets of the subject company under regulation 51 of the regulations, any determination falls to be made in accordance with the said regulation 51 of the value of the assets of a dependant of the insurance company, a share in which, or a debt due or to become due from which, is an asset of the subject company; and references herein to a determination of the value of assets of a dependant to which this paragraph applies are references to any such determination.

(2) Paragraph (4) of the said regulation 51 shall not apply with respect to a determination of the value of assets of a dependant to which this paragraph applies.

(3) Where, in the case of a determination of the value of assets of a dependant to which this paragraph applies -

(a) the dependant is an insurance company and has general business assets of a relevant description or is not an insurance company and has assets of a relevant description,

(b) the value of such assets exceeds the permitted limit applicable to the dependant in relation to those assets, and

(c) any controller of the dependant has no assets of the same description of the relevant class, or has assets of the same description of the relevant class and their value is less than the permitted limit applicable to that controller in relation to those assets,

then, for the purposes of such determination, there shall be added to the permitted limit applicable to the dependant in relation to the assets referred to in indent (a) of this sub-paragraph, an amount equal to the supplementary amount or, if there is more than one such controller, to the aggregate of the supplementary amounts, determined with respect to any such controller in accordance with Part I of this Schedule, subject, where the controller is not the insurance company, to the modifications specified in sub-paragraph (5) of this paragraph.

(4) In this paragraph, "a controller" means, in relation to a dependant -

(a) the insurance company,

(b) the subject company, if it is an insurance company, and

(c) a dependant of the insurance company which is an insurance company and of which the subject company is a dependant.

(5) Where sub-paragraph (3) of this paragraph is being applied in relation to a controller, other than the insurance company -

(a) Part I of this Schedule, as applied in accordance with the said sub-paragraph (3), shall have effect as if, for the reference to the insurance company, there were substituted references to the controller, and

(b) the references to assets being of a relevant class in the said sub-paragraph (3) and in Part I of this Schedule, as so applied, shall be construed as referring to long term business assets of the controller, if the said sub-paragraph (3) is being applied in connection with the determination of the value of a long term business assets of the controller, and to general business assets of the controller, in any other case.

4. The modifications of these regulations applicable (in addition to that specified in sub-paragraph (2) of paragraph 3 of this Part of this Schedule) with respect to the determination of the value of the assets of the subject company where it is not an insurance company are as follows -

(a) these regulations shall apply to the subject company as if it were an insurance company and its assets were being valued for the purpose specified in paragraph (1) of regulation 49 of the regulations;

(b) paragraph (2) of regulation 49 of the regulations shall not apply; and

(c) regulation 61 of the regulations shall not apply.

5. In this Schedule, "subject company" means the dependant of the insurance company the value of whose assets is being determined in accordance with paragraph (2) or (3) (as the case may be) of regulation 51 of the regulations.

TENTH SCHEDULE

(Regulation 61)

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 a company carrying on only general business, the general business amount;

(b) for a company carrying on only long term business, the long term business amount;

(c) for a company 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 a company 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 dependants of the insurance company; or

(e) any government of a state as the Centre 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 insurance company has made investments or against whom it has rights whether in pursuance of a contract entered into by the insurance company 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 insurance company 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 17 of this Part of this Schedule;

"general business amount" means the aggregate of the company's insurance liabilities (net of reinsurance) in respect of general business and an amount equal to whichever is the greater of 200,000 Maltese liri or 20 per centum of the general premium income;

"group" has the same meaning as is assigned to the term "group company" in subsection (1) of section 2 of the Companies Act, 1995.

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

(a) the amount of the required margin of solvency determined in accordance with the First Schedule to the regulations (or the amount of the minimum gurantee fund if greater determined in accordance with regultion 14 of, and the Fourth Schedule to, the regulations) less the amount of any implicit item valued in accordance with regulations 10 to 12 (or regulation 15) of the regulations; and

(b) the amount of any deposit-back in connection with a contract of reinsurance in respect of long term business,

save that for the purposes of assessing compliance with the permitted asset exposure limit, it shall further exclude index linked liabilities;

"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 paragraph (3) of regulation 55 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 company 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 company is exposed to assets of each description shall be determined by adjusting the value of the assets in accordance with paragraphs 6 to 11 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 company 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 company 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 company; or

(b) is listed and provides for the disposal of assets by the company; or

(c) is not listed but provides for the disposal of assets by the company 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 company 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 company 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 company; or

(b) is listed and provides for the disposal of assets by the company; or

(c) is not listed but provides for the disposal of assets by the company 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

9A. 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 company 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

10. The amount arrived at in accordance with paragraphs 6 to 9A of this Part of this Schedule shall be increased or decreased by an amount representing the value of assets which the company 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.

11. For the purposes of paragraph 10 of this Part of this Schedule, the company 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.

Excess asset exposure

12. The amount by which the company 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 11 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

13. Subject to paragraphs 14 and 15 of this Part of this Schedule, the value of all investments (determined in accordance with regulation 55 of the regulations) issued by any one counterparty and the value of all rights (determined in accordance with regulations 52, 59 and 60 of the 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 sub-paragraph (c) of paragraph (1) of regulation 56 of the regulations, the value of units or other beneficial interest in the collective investment scheme shall be included.

14. Where an insurance company 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 13 of this Part of this Schedule need not include the value of such rights.

15. If the insurance company 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 insurance companies, then, such liabilities may be offset for the purposes of the aggregation required by paragraph 13 of this Part of this Schedule.

Excess counterparty exposure

16. The amount by which the company 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 company 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 sub-paragraph (b) of paragraph (1) of regulation 61 of the regulations only in respect of the circumstances leading to the greatest excess exposure.

Excess concentration with a number of counterparties

17. 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 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%

1A. A reversionary interest or a remainder not falling within 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 ¼%

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 2½%

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 sub-paragraph (b) of paragraph (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 paragraphs 1A and 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 10%

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 5%

15. All securities issued by any one counterparty 10%

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 2½%