

Insurance Newsletter

Number 01 Year 1997



**Financial Services
Commission**

Insurance Guidance Notes

Introduction

On 18 December 1996, Insurance Newsletter No.1 of 1996 was issued covering the first batch of guidance notes for insurance companies and their advisers on the way the Commissioner interprets the legislation relating to various insurance issues. These included the way companies should make application for new licences to carry on insurance business in Gibraltar, the valuation of insurance companies' assets and liabilities, reporting to the Commissioner on various matters, including details of persons who exercise control over, and manage, insurance companies, and the form in which annual returns must be made.

This present Newsletter covers a further batch of Insurance Guidance Notes on four further important aspects of the insurance legislation which has been introduced in Gibraltar following the implementation of the third insurance directives. It also discusses two other related aspects, namely the certificates which directors and auditors of insurance companies must provide with the annual returns, and the sterling value of the ECU.

Guidance issued on 17 January 1997

- Insurance Guidance Note No 5 - Systems of Control Over Investments (and Counterparty Exposure) Including The Use of Derivatives. This note deals with aspects of the new legislation which came into force on 1 July 1996 and introduced a number of new requirements, some general and some specific to the use of derivatives, which impact on the systems and controls which companies should have over their investments and counterparty exposure. These notes impact in particular on an important aspect of the criteria, set out in the third insurance directives, against which it can be judged whether insurance companies are managing their business in a sound and prudent manner.
- Insurance Guidance Note No 6 - Systems of Control over General Business Claims Provisions. This note provides guidance for insurance and reinsurance companies on the controls which should be in place in order to ensure that the amounts set aside for claims outstanding and for claims handling expenses are appropriately established, properly recorded and effectively monitored. The Note does not contain prescriptive rules for the design of appropriate systems; rather, it sets out the Commissioner's views on the matters to be taken into account in setting up and maintaining control systems.

Two further Guidance Notes, Nos. 7 and 8 issued on 17 January 1997 cover the disclosure of information relating to non - life and life insurance contracts and are dealt with below.



Directors Certificates

Paragraph 7 of Schedule 5 to the Insurance Companies (Accounts and Statements) Regulations 1996 requires the directors of insurance companies to state in the annual returns which the company provides to the Commissioner, by way of a list, "any published guidance with which the systems of control established and maintained by the insurer in respect of its business comply, or in accordance with which the return has been prepared."

Paragraph 13 of Schedule 5 to those regulations also requires the auditors to add to their report "such qualification, amplification or explanation as may be appropriate" if, in their view, it was not reasonable for the directors to have made the statement in paragraph 7.

The above two guidance notes, Nos. 5 and 6, together with Insurance Guidance Note Nos. 2 (Preparation of Annual Returns) and 4 (Valuation of Assets) which were issued on 18 December 1996, are relevant for the purpose of enabling directors to provide, in their certificates, lists of guidance with which they have complied, or in accordance with which the returns have been prepared. Because all these guidance notes were issued very close to, or after, most insurers' year ends, the Commissioner will not expect directors to list these notes as having been complied with in respect of the next set of returns submitted, unless directors consider that they are able to do so. However, where no such statements are provided in the next set of returns, he has asked the Insurance Supervisor to contact the relevant directors in order to discuss with the companies concerned whether there are any obstacles to the provision of such statements in future returns.

Further Guidance Notes on the reporting and use of derivatives will also be relevant, and will be issued shortly

Disclosure of information to policyholders

The third insurance directives extended the information which is required to be given to policyholders for both non-life and life insurance business. The required information was implemented by, and is set out in Section 70B of, and Schedule 12 to, the Insurance Companies Ordinance 1987. The requirements are described in Insurance Guidance Note No. 7 (Disclosure of information relating to non - life contracts) and Insurance Guidance Note No. 8 (Disclosure of information relating to Life assurance contracts) which offer guidance to insurers as to the methods by which they may best comply with the legislation.

It should be noted that the requirements for disclosure which were implemented by the changes to the Ordinance referred to above apply to all non-life and life insurance contracts which are issued by a head office, or branch, of an insurance company which is

- a) situated in Gibraltar; or
- b) situated in an EEA State, where one or more of the other parties to the contract is habitually resident in Gibraltar.

These two Guidance Notes (Nos. 7 and 8) are, therefore, being issued to Insurance Brokers, licensed under the Financial Services Ordinance, as well as to Insurance Companies and their advisers. Whilst they cannot be held directly responsible for any breaches of the requirements, Insurance Brokers should nevertheless check, as far as possible, that the policies issued by EEA insurance companies with which they deal are in compliance with the legislation relating to disclosure of information.



The sterling value of the ECU

A number of companies have been asking us what is the rate of conversion from ECU to sterling. This is an important issue for some companies whose solvency margin is the minimum guarantee fund which is calculated by reference to the number of ECUs set out in Schedule 4 of the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 1996. In accordance with section 4 of the Insurance Companies Ordinance 1987, the rate of conversion from ECU to sterling for each year beginning 31st December, for the purpose of determining the minimum guarantee fund, is the rate published in the Official Journal of the Communities on the last day of the preceding October. On 31 October 1996, the rate published was 78.2167 pence per ECU, and this is the rate which applies from 31 December 1996 until 30 December 1997. It is, therefore, the rate to be applied in calculations carried out by any company with a 31 December 1996 year end.

Published by:

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Suite 943, Europort,
PO Box 940,
Gibraltar.

17th January 1997